

**Legal Dissonance and Social Consequences of Unregistered Ṭalāq in Indonesia**

*Muhammad Nasrulloh,<sup>1</sup> Mohamad Zakky Ubaid Ermaawan,<sup>2</sup> Moh. Thoriquddin,<sup>3</sup> Khoirul Anam<sup>4</sup>*

<sup>1,3,4</sup> UIN Maulana Malik Ibrahim Malang, <sup>2</sup>Kementerian Agama Kabupaten Pasuruan

<sup>1</sup>[muhammadnasrulloh1028@gmail.com](mailto:muhammadnasrulloh1028@gmail.com), <sup>2</sup>[zakky.ubaid@gmail.com](mailto:zakky.ubaid@gmail.com),

<sup>3</sup>[toriquddin@syariah.uin-malang.ac.id](mailto:toriquddin@syariah.uin-malang.ac.id), <sup>4</sup>[anam@syariah.uin-malang.ac.id](mailto:anam@syariah.uin-malang.ac.id)

\*[muhammadnasrulloh1028@gmail.com](mailto:muhammadnasrulloh1028@gmail.com)

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**Abstract:** This study explores the legal dissonance and social consequences arising from the widespread practice of unregistered ṭalāq in Indonesia. It aims to examine the normative conflict between fiqh-based principles and state law, and its implications for husbands, wives, and children. Using normative legal research with a conceptual and descriptive approach, the study finds that unregistered ṭalāq contributes to systemic legal uncertainty and structural inequality, particularly disadvantaging women and children. Legal complications include ambiguous marital status, limitations on remarriage, and procedural obstacles in court and civil registration. Husbands may face the risk of ṭalāq repetition across normative systems, potentially leading to unintended final divorce, alongside repeated obligations related to nafaqah and muṭ'ah. Wives face prolonged 'iddah, abandonment, and disproportionate legal burdens, while children are exposed to psychological distress and a lack of enforceable custodial rights. To address these issues, this paper proposes the institutionalization of ṭalāq validation (isbat ṭalāq) as a harmonizing mechanism between religious and state legal systems, aiming to restore legal certainty, protect vulnerable parties, and promote justice in marital dissolution.

**Keywords:** *Unregistered Ṭalāq, Legal Dissonance, Islamic Family Law, Normative Conflict, Ṭalāq Validation (Isbat Ṭalāq).*

**Abstrak:** Penelitian ini membahas disonansi hukum dan konsekuensi sosial dari maraknya praktik ṭalāq tidak tercatat di Indonesia. Tujuannya adalah untuk menganalisis konflik normatif antara prinsip-prinsip fikih dan hukum negara serta dampaknya terhadap suami, istri, dan anak. Dengan menggunakan metode penelitian hukum normatif, pendekatan konseptual, dan analisis deskriptif, kajian ini menemukan bahwa praktik ṭalāq tidak tercatat melahirkan ketidakpastian hukum secara sistemik dan ketimpangan struktural, khususnya bagi perempuan dan anak. Dampak hukumnya mencakup status perkawinan yang ambigu, hambatan legal untuk menikah ulang, serta kesulitan administratif dalam proses peradilan dan pencatatan sipil. Suami menghadapi risiko pengulangan ṭalāq lintas sistem norma yang dapat mengarah pada jatuhnya talak final secara tidak disadari, disertai dengan kewajiban ganda terkait nafkah dan muṭ'ah. Istri mengalami masa 'iddah yang berkepanjangan, keterlantaran, dan beban hukum yang tidak seimbang. Anak turut terdampak secara psikologis dan kehilangan akses terhadap perlindungan hak asuh secara formal. Untuk menjawab persoalan ini, tulisan

ini menawarkan solusi normatif berupa institusionalisasi isbat ṭalāq sebagai mekanisme harmonisasi antara hukum keagamaan dan hukum negara guna memulihkan kepastian hukum, melindungi kelompok rentan, dan mewujudkan keadilan dalam penyelesaian perceraian.

**Keywords:** *Ṭalāq Tidak Tercatat, Disonansi Hukum, Hukum Keluarga Islam, Konflik Normatif, Isbat Ṭalāq.*

## INTRODUCTION

John Griffiths defines legal pluralism as the coexistence of more than one legal order within a single social field.<sup>1</sup> Otto von Gierke elaborates that it denotes the simultaneous presence of multiple normative systems shaped by the interaction between customary law and the newly established state law during the early stages of modernization.<sup>2</sup> Yet, this plurality also poses challenges, such as legal uncertainty, overlapping jurisdictions, and unequal access to justice.<sup>3</sup> Stijn Cornelis van Huis observes that legal pluralism affects both judicial and extra-judicial processes, often resulting in a dual mode of adjudication through formal litigation and informal settlement.<sup>4</sup>

Indonesia's legal landscape exemplifies such pluralism through the concurrent operation of state law, Islamic jurisprudence (fiqh), and customary law.<sup>5</sup> In family and marriage matters, this coexistence generates significant complexity when statutory provisions conflict with enduring religious norms. One of the most visible manifestations of this normative tension is the practice of unregistered ṭalāq, where a husband pronounces divorce outside the jurisdiction of the religious court.

According to Law No. 1 of 1974 on Marriage and Article 115 of the Compilation of Islamic Law (Kompilasi Hukum Islam), divorce must be concluded before a religious court following reconciliation procedures. Classical fiqh, however, considers a divorce valid immediately upon verbal pronouncement, without requiring witnesses or judicial approval.<sup>6</sup> In practice, ṭalāq continues to be performed outside the court system.<sup>7</sup> For

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<sup>1</sup> Suci Flambonita, "The Concept of Legal Pluralism in Indonesia in the New Social Movement," *Jurnal Analisa Sosiologi* 10, no. 3 (July 23, 2021), <https://doi.org/10.20961/jas.v10i0.45939>.

<sup>2</sup> Emanuele Conte, "Legal Pluralism from History to Theory and Back: Otto von Gierke, Santi Romano, and Francesco Calasso on Medieval Institutions," *Law and History Review* 42, no. 2 (May 2024): 169–80, <https://doi.org/10.1017/S0738248023000159>.

<sup>3</sup> Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (October 31, 2024): 146–70, <https://doi.org/10.21580/walrev.2024.6.2.25566>.

<sup>4</sup> Universitas Bina Nusantara and Stijn Cornelis Van Huis, "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance," *The Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2025), <https://doi.org/10.54828/ijsls.2024v4n1.4>.

<sup>5</sup> E. Fernando M. Manullang, ed., *Selayang pandang sistem hukum di Indonesia*, Edisi pertama (Jakarta: Kencana, 2016), 26.

<sup>6</sup> Farid Nu'man Hasan, *Fiqh Perempuan Kontemporer* (Depok: Gema Insani, 2019), 166.

<sup>7</sup> Aghniya Salamah and Diniyanto Diniyanto, "Kesadaran Hukum Masyarakat Terhadap Perceraian Di Pengadilan: Studi Masyarakat Desa Tangkil Tengah Terhadap Perceraian Di Luar Pengadilan Atas Dasar Pelanggaran Taklik Talak," *Al-Hukkam: Journal of Islamic Family Law* 3, no. 2 (October 17, 2023), <https://ejournal.uingusdur.ac.id/al-hukkam/article/view/8870>.

many, fiqh represents a binding moral authority that outweighs state regulation, which is often viewed as bureaucratic and lacking spiritual legitimacy.<sup>8</sup> This tendency is reinforced by religious leaders who emphasize the supremacy of fiqh,<sup>9</sup> coupled with limited public literacy on legal procedures.<sup>10</sup> Unregistered or *sirī* marriages further normalize extra-judicial divorce, embedding fiqh deeply in the legal consciousness of Indonesian Muslims.<sup>11</sup>

This situation reveals a broader conflict between two normative paradigms: a state legal order grounded in procedural legitimacy and institutional authority, and a religious legal framework based on spiritual and communal validation. The resulting dualism generates legal uncertainty and selective legal compliance.<sup>12</sup> While fiqh regards verbal ṭalāq as binding, the state recognizes only court-issued divorces,<sup>13</sup> leaving individuals simultaneously “divorced” under religion yet “married” under state law. Such contradictions have tangible implications, especially for women and children, who face unclear marital status and limited legal protection.

Overlapping claims of authority between religious and state institutions further exacerbate this issue. The state maintains exclusive jurisdiction over family law to ensure legal certainty and rights protection, whereas many citizens continue to prioritize religious legitimacy.<sup>14</sup> Consequently, numerous divorces remain unregistered, producing social, legal, and administrative complications. The absence of effective enforcement mechanisms also widens the gap between formal regulations and societal practice.<sup>15</sup>

Against this backdrop, this study examines unregistered ṭalāq through both legal and sociological perspectives. It identifies the normative conflict between fiqh and state law, and analyzes its consequences for the rights and status of spouses and children.

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<sup>8</sup> 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 14, 2020): 159, <https://doi.org/10.18592/sjhp.v20i2.3945>.

<sup>9</sup> Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, “The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts,” *Al-Manahij: Jurnal Kajian Hukum Islam*, November 25, 2022, 165–80, <https://doi.org/10.24090/mnh.v16i2.6389>.

<sup>10</sup> Abd. Karim Faiz, Zulfahmi Ar, and Ahmad Izzuddin, “Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia,” *JIL: Journal of Islamic Law* 3, no. 2 (August 31, 2022): 176–92, <https://doi.org/10.24260/jil.v3i2.848>.

<sup>11</sup> Dahlia Haliah Ma’u, Wagiyem Wagiyem, and Rita Mustika Rahayu, “The Construction of Cerai Manis (Preferred Divorce) on the Border of Indonesia and Malaysia Communities,” *Al-’Adalah* 20, no. 1 (June 27, 2023): 19, <https://doi.org/10.24042/adalah.v20i1.16518>.

<sup>12</sup> Agung Barok Pratama and Dewi Sekar Arum, “The Conflict of Legal Norms: Islamic Law and Positive Law in the Regulation of Alcoholic Beverages in Pekalongan City,” *Al-Mazaahib: Jurnal Perbandingan Hukum* 12, no. 2 (December 15, 2024): 165–83, <https://doi.org/10.14421/al-mazaahib.v12i2.3671>.

<sup>13</sup> Hardilla Hardilla, Nadya Faizal, and Andi Darna, “Ikrar Talak Di Luar Pengadilan Ditinjau Menurut Hukum Keluarga Islam (Studi Kasus Pada Desa Pattimpa Kecamatan Ponre Kabupaten Bone),” *Jurnal Ar-Risalah* 4, no. 2 (December 4, 2024): 43–56, <https://doi.org/10.30863/arrisalah.v4i2.5756>.

<sup>14</sup> Maryati Maryati, “Akibat Hukum Terhadap Perceraian Yang Dilakukan Di Luar Pengadilan Agama Merlung Kabupaten Tanjung Jabung Barat,” *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 3 (October 31, 2022): 1618, <https://doi.org/10.33087/jiubj.v22i3.2606>.

<sup>15</sup> Ahmad Fauzi, Gunarto Gunarto, and Anis Mashdurohatun, “Legal Reconstruction of Reasons for Divorce in Islamic Marriage Law in Indonesia Based on Justice Values,” *Scholars International Journal of Law, Crime and Justice* 7, no. 05 (May 7, 2024): 173–78, <https://doi.org/10.36348/sijlcj.2024.v07i05.002>.

Using a normative legal method with a conceptual and descriptive approach, this study argues that legal pluralism contributes to systemic uncertainty and structural inequality. It proposes the positivization of *isbāt ṭalāq* (the judicial validation of divorce) as a framework to harmonize religious and state law, ensuring legal certainty, protection for vulnerable parties, and a more equitable system of marital dissolution.

## DISCUSSION

The issue of unregistered *ṭalāq* in Indonesia, as introduced earlier, stems from a persistent normative conflict between *fiqh*-based understandings and state legal mandates. This duality not only reflects Indonesia's broader legal pluralism, but also raises serious concerns about legal certainty and the protection of rights, especially for women and children. The previous literature has explored the implications of legal pluralism in marriage law, but has yet to fully examine how the clash between religious authority and legal formalism produces real, cumulative harm in marital dissolution. This study contributes to filling that gap by analyzing the practical impact of unregistered *ṭalāq* through a legal-sociological lens, revealing how normative dissonance leads to structural vulnerability.

### **Dialectical Conflict Between Islamic Jurisprudence and State Law on Ṭalāq**

The weakness of state law within Indonesian society stems from an accumulation of various interrelated factors. One major factor is the persistence of strong patronage toward religious leaders. In most communities, any issue that cannot be handled individually is generally referred to local religious figures, whose decisions are guided by *fiqh* rather than state law.<sup>16</sup> As a result, the normative influence of *fiqh* tends to prevail over the authority of state law.

Another significant factor is the low level of legal literacy concerning divorce regulations. Only a small portion of the population is familiar with state law, which explains the generally weak level of legal awareness. This lack of literacy is rooted in cultural tendencies that do not encourage synergy with the formal legal system. Moreover, legal education receives insufficient attention within schools, further limiting the public's understanding of state-based legal norms.<sup>17</sup> Wahyu Prijo reinforces this view by arguing that state law cannot gain strength if its substance accommodates excessive legal pluralism.<sup>18</sup>

The contradiction between Indonesia's state law and Islamic jurisprudence (*fiqh*) regarding the practice of *ṭalāq* outside the religious court has led to serious legal and

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<sup>16</sup> Erfaniah Zuhriah et al., "Breaking the Cycle of Divorce: Religious and Cultural Mediation by Kyai-Imams in Coastal Muslim Communities in Rembang and Melaka," *IBDA` : Jurnal Kajian Islam Dan Budaya* 23, no. 1 (July 24, 2025): 155–70, <https://doi.org/10.24090/ibda.v23i1.13658>.

<sup>17</sup> Hamda Sulfinadia, *Meningkatkan Kesadaran Hukum Masyarakat: Studi Atas Pelanggaran Peraturan Perundang-Undangan Tentang Perkawinan*, Cetakan pertama (Yogyakarta: Deepublish, 2020), 12.

<sup>18</sup> Wahyu Prijo Djatmiko, *Budaya Hukum Dalam Masyarakat Pluralistik* (Yogyakarta: Thafa Media, 2021).

social consequences for the Muslim community.<sup>19</sup> This legal contradiction refers to cases in which a husband pronounces ṭalāq without judicial involvement, producing opposing legal effects: according to state law, such divorces are invalid, while under fiqh, they are fully recognized as binding.<sup>20</sup> This divergence gives rise to both juridical and sociological tension. On one hand, the state seeks to uphold a legal system grounded in administrative procedure and the protection of post-divorce rights, particularly for women. On the other hand, the Muslim community continues to rely on fiqh as the principal normative framework in both ritual and non-ritual domains, including marriage and divorce.

In this context, fiqh serves as a functional and authoritative legal guide for daily life. As a body of practical rules derived from revealed sources (naṣṣ), fiqh governs nearly every human action, leaving little room for moral or legal neutrality.<sup>21</sup> Within the matter of ṭalāq outside the court, fiqh plays a decisive role in shaping public perception of legitimacy. Among Indonesian Muslims, the prevailing standard for divorce remains rooted in fiqh, not in state law. This is due in part to the way fiqh has become deeply embedded in the moral consciousness of the people, acting as a spiritual compass that guides all aspects of life.<sup>22</sup> Moreover, limited legal literacy among the population exacerbates the marginalization of state law.<sup>23</sup> Fiqh retains a strategic position, while state law is often treated as a secondary system invoked primarily for administrative purposes, such as official documentation.<sup>24</sup>

The Muslim public and the fiqh tradition form an inseparable sociocultural unity. From birth, individuals are educated and raised within a religious environment shaped by fiqh-based norms. This early exposure fosters the internalization of fiqh as a source of ultimate legal and moral authority. Consequently, any attempt to replace fiqh norms with state legal standards raises significant theological and social concerns, including questions of whether such substitution remains faithful to Islamic law. The centrality of fiqh in public life makes it difficult for state law, such as the requirement for court-based divorce, to be implemented effectively. Law, in this sense, is not merely a state-imposed norm but a reflection of the values and beliefs held by the society it seeks to regulate.<sup>25</sup> Given its deep-rooted influence on thought, belief, and behavior, fiqh cannot be easily replaced or subordinated by state law.

<sup>19</sup> Budiono Kusumohamidjojo, *Teori Hukum: Dilema Antara Hukum Dan Kekuasaan* (Bandung: Yrama Widya, 2019), 30.

<sup>20</sup> Wani Maulida Alsa, "Divorce Outside the Court According to Fiqh," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 5, no. 2 (June 14, 2022), <https://www.bircu-journal.com/index.php/birci/article/view/5469>.

<sup>21</sup> 'Abd Al-Karīm Zaydān, *Al-Wajīz Fi Uṣūl Al-Fiqh* (Muassasah Qurṭubah, 1976), 9, [archive.org/details/wosol](https://archive.org/details/wosol).

<sup>22</sup> Sulfinadia Hamda, *Meningkatkan Kesadaran Hukum Masyarakat (studi Atas Pelanggaran Peraturan Perundang-Undangan Tentang Perkawinan)* (DEEPUBLISH, 2020), 8, <https://scholar.uinib.ac.id/id/eprint/106/>.

<sup>23</sup> Iskandar, *Hukum Perceraian Adat: Tinjauan Fiqih & Peraturan Perundang-Undangan Perkawinan Di Indonesia: Monograf* (Riau: Dotplus Publisher (dp), 2021).

<sup>24</sup> Fatahuddin Aziz Siregar, "Telaah Sosiologi Hukum Terhadap Fenomena Talak Di Luar Pengadilan Agama," *Jurnal AL-MAQASID: Jurnal Ilmu Kesyarifan Dan Keperdataan* 9, no. 1 (June 20, 2023): 122–34, <https://doi.org/10.24952/almaqasid.v9i1.7974>.

<sup>25</sup> Joko Subroto, *Norma Dalam Masyarakat* (Bumi Aksara, 2023).



This structural imbalance becomes evident in the operation of Indonesia's unified legal system. Within this system, state law serves as the primary reference for regulating state affairs.<sup>26</sup> Divorce is only considered valid if issued by a religious court. This means that individuals seeking to end a marriage must file for divorce through the court, which holds exclusive authority to adjudicate and issue official divorce certificates.<sup>27</sup> The state's insistence on court-based divorce is not merely a matter of procedural formality; it is rooted in concerns over legal order and administrative certainty. Proper judicial processing of divorce is intended to provide legal clarity, safeguard the rights of both parties, and minimize future disputes.

Therefore, the legal dualism surrounding ṭalāq outside the court reflects two distinct normative paradigms. Fiqh functions as the moral and legal reference for the majority of Muslims, while state law is often reduced to a procedural stamp. As a result, the objective of legal unification under Law No. 1 of 1974 on Marriage, which was intended to harmonize divorce law across legal traditions, remains largely aspirational at the ground level. While unification exists formally, it has not transformed the underlying belief system that continues to shape public legal consciousness. Legal unification, in this context, refers to the adoption of a single legal framework in place of multiple, often contradictory ones that stem from diverse normative backgrounds.<sup>28</sup> However, the fiqh-based foundation of Islamic divorce law has been insufficiently accommodated in the current state legal structure.<sup>29</sup>

### **Legal Uncertainty in Normative Conflicts over Ṭalāq**

Legal certainty is a fundamental principle in any legal system, ensuring that laws are clear, consistent, and enforceable.<sup>30</sup> A law that is certain provides a reliable framework for individuals to anticipate the legal consequences of their actions and prevents confusion, manipulation, and arbitrary application. Conversely, legal uncertainty often results in injustice, inefficiency, and the erosion of public trust in legal institutions.<sup>31</sup> It may arise from vague statutory language, overlapping regulations (disharmony), or inconsistent enforcement by authorities.

In this context, the regulation requiring ṭalāq to be pronounced exclusively through the religious court raises a significant problem. Substantively, this requirement

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<sup>26</sup> Munawir, *Hukum Perkawinan dan Waris Dalam Sistem Hukum Nasional dan Syariah Di Indonesia* (Serasi Media Teknologi, 2025), 1.

<sup>27</sup> Arif Wisnu Wardhana, Dea Justicia Ardhya, and Febrina Hertika Rani, "The Authority of Religious Courts and Religious Affairs Offices on the Issue of Marriage and Divorce Recording After the Publication of the Indonesian Minister of Home Affairs 'Regulation Number 108 of 2019,'" *DE LEGA LATA: Jurnal Ilmu Hukum* 8, no. 2 (June 26, 2023): 177–91, <https://doi.org/10.30596/dll.v8i2.15017>.

<sup>28</sup> Bagus Amirullah and Anton Muhibuddin, *Pluralitas Budaya Di Indonesia Dan Korelasinya Dengan Status Hukum Islam dalam Tata Hukum Positif di Indonesia* (Yayasan Erhaka Utama, 2020), 59.

<sup>29</sup> Dahwadin et al., *Perceraian Dalam Sistem Hukum di Indonesia* (Penerbit Mangku Bumi, 2019), 95.

<sup>30</sup> Mancur Sinaga, Ahmad, and Saleh, *Filsafat Hukum: Teori, Prinsip Dan Hukum Di Indonesia* (Sonpedia Publishing Indonesia, 2025), 58, <https://buku.sonpedia.com/2025/03/filsafat-hukum-teori-prinsip-dan.html>.

<sup>31</sup> Sitta Saraya et al., *Dinamika Hukum di Indonesia: Perkembangan & Tantangan* (Yogyakarta: PT. Star Digital Publishing, 2025), 62.

conflicts with the principle of legal certainty. The inconsistency between legal doctrine and the lived reality of the majority of the Muslim population creates ambiguity and weakens the law's authority. According to Jan M. Otto, legal certainty is best achieved when laws reflect the normative values of the majority population.<sup>32</sup> However, in Indonesia, the formal regulation of ṭalāq does not align with the normative religious beliefs held by most Muslims, who continue to follow fiqh traditions. Consequently, the state's insistence on judicial ṭalāq procedures creates a dilemma: while ṭalāq outside court leads to harmful effects, enforcing the court requirement does not guarantee legal certainty or utility.

The root of this uncertainty lies in the normative dissonance between fiqh and state law. In fiqh, the right to pronounce ṭalāq belongs solely to the husband, without the need for judicial authorization.<sup>33</sup> In contrast, Indonesian state law grants exclusive authority to the religious court to issue a valid divorce.<sup>34</sup> This contradiction blurs the legal status of ṭalāq, forcing Muslims, especially those unfamiliar with the legal dualism, to choose between two conflicting systems. Choosing fiqh may result in lack of official recognition, while choosing state law may raise doubts about the religious validity of an already uttered ṭalāq. This situation generates confusion, as compliance with one legal system can create non-compliance in the other.

The widespread occurrence of ṭalāq outside court reflects the public's reliance on fiqh-based standards rather than state law. This practice indirectly undermines the authority of national legal institutions. As a result, the law loses its functional purpose, namely to deliver justice, protection, and a sense of security, particularly for women and children.<sup>35</sup> When legal certainty and utility are absent, the state's regulatory power over family law weakens, indicating a systemic failure to uphold justice.<sup>36</sup> The continued prevalence of informal ṭalāq highlights the unmanageable nature of Indonesia's legal pluralism and the lack of effective resolution mechanisms to harmonize conflicting norms.

## **Negative Legal and Social Consequences of Unregistered Ṭalāq**

### **Impacts on the Marital Relationship**

#### **1) Ambiguous Marital Status**

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<sup>32</sup> Soeroso, *Pengantar Ilmu hukum* (Jakarta: Sinar Grafika, 2005), 54.

<sup>33</sup> Wahbah al-Zuhayli, *Al-Fiqh al-Islāmi Wa-Adillatuhu* (Beirut: Dār al-Fikr, 1995), 7:360.

<sup>34</sup> Putri Cicilia Tambun, Novea Elysa Wardhani, and Syamhudian Noor, "Pertimbangan Hakim Pengadilan Agama Tentang Perceraian Dengan Alasan Pisah Rumah Singkat (Studi Putusan Nomor 375 Pdt.G/2024/PA. Plk)," *Al-Hikmah: Jurnal Agama Dan Ilmu Pengetahuan* 22, no. 1 (April 13, 2025): 105–15, [https://doi.org/10.25299/ajaip.2025.vol22\(1\).21698](https://doi.org/10.25299/ajaip.2025.vol22(1).21698).

<sup>35</sup> Ansori, Safi', and Muwaffiq Jufri, *FILSAFAT HUKUM: Mengurai Esensi Hukum Berbasis Multi-Perspektif* (Jakarta: Prenada Media, 2023), 40, <https://prenadamedia.com/product/filsafat-hukum-mengurai-esensi-hukum-berbasis-multi-perspektif/>.

<sup>36</sup> Munir Fuady, *Aliran Hukum Kritis (Paradigma Ketidakberdayaan Hukum)* (Citra Aditya Bakti, 2003), 57.

The pronouncement of ṭalāq outside the court often results in legal ambiguity concerning the couple's marital status.<sup>37</sup> It raises the critical question: does the marriage end immediately after the ṭalāq declaration, or must it await judicial confirmation? If the unregistered ṭalāq is considered valid, then the marriage is deemed dissolved, obligating both parties to separate, with the husband required to provide maintenance and the wife to observe her 'iddah. They would then be classified as divorcees. Conversely, if the ṭalāq is invalid without court approval, they legally remain husband and wife, and post-divorce rights and obligations are not enforceable.<sup>38</sup>

This legal limbo causes confusion among the public, particularly when navigating the normative clash between fiqh and state law. For those adhering to fiqh, court registration remains necessary as a legal requirement. Conversely, those compliant with state law may neglect fiqh standards, raising ethical concerns regarding religious obligations and potential sin or merit. In either scenario, legal uncertainty persists: couples may live separately as if divorced, while still formally bound by marriage under the law.

## 2) Procedural Barriers in Divorce Litigation

Legal complications emerge at multiple stages of litigation. First, the procedural confusion about who should file the case: the husband or the wife. If the husband files, the case is registered as a ṭalāq petition; if the wife files, it becomes a divorce claim. Ideally, the husband should file, given that he initiated the ṭalāq. However, many men avoid the legal process due to costs or to expedite separation without formal obligations.<sup>39</sup> As a result, the burden often shifts to the wife, who must independently bear the financial and emotional costs of litigation.<sup>40</sup>

Second, the legal system does not recognize unregistered ṭalāq as a valid reason for divorce. Grounds for divorce must align with statutory provisions, such as Article 19 of Government Regulation No. 9/1975. If the reasons presented do not meet legal criteria, even mutual agreement to separate may be rejected by the court. Thus, despite the husband's declaration of ṭalāq, the lack of a legally acceptable cause may render the court unable to dissolve the marriage.

## 3) Obstacles to Lawful Remarriage

A major consequence of unregistered ṭalāq is the administrative challenge it poses to future marriage plans. If the prior marriage remains unregistered as dissolved, the individual is still considered legally married. This hinders the issuance of a marriage license for a new union by the Office of Religious Affairs (KUA). Proceeding with marriage without resolving the former one can result in overlapping legal statuses, an

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<sup>37</sup> Zulfadli Zulfadli and Muchlis Aziz, "The Impact of Divorce Outside the Religious Court on the Social Life of the Communities in Aceh Utara and Aceh Barat," *JURNAL AL-IJTIMAIYYAH* 10, no. 1 (June 30, 2024): 28–35, <https://doi.org/10.22373/al-ijtimaiyyah.v10i1.23859>.

<sup>38</sup> Ilyas Malik, 10 2025.

<sup>39</sup> Taufiqurrohman, October 20, 2025.

<sup>40</sup> Sudirman L Sudirman L et al., "Peace Efforts in the Divorce Cases: An Analysis on Verstek's Decision at the Religious Courts," *Al-Ulum* 23, no. 1 (June 25, 2023): 213–39, <https://doi.org/10.30603/au.v23i1.3735>.



illegal condition, especially for women, who cannot be married to more than one man simultaneously. While men may legally marry more than one wife, this too requires court permission.<sup>41</sup>

Such complications often lead to informal unions (nikah siri), which are not legally recognized. While couples may later file for isbat nikah (a judicial confirmation of unregistered marriage), unresolved status from the previous marriage can delay or prevent this process. Furthermore, unregistered ṭalāq precludes the issuance of a divorce certificate, an essential legal document.<sup>42</sup> In extreme cases, some men resort to identity fraud to remarry without completing legal divorce proceedings.

#### 4) Psychological Consequences and Prolonged Conflict

Divorce inevitably causes emotional distress to all parties involved. However, when it occurs outside the legal system, psychological burdens tend to persist. The absence of formal legal closure leaves unresolved emotional and social conflicts. Stress, trauma, anxiety, and tension often follow, escalating disputes between former spouses.<sup>43</sup>

Moreover, such unresolved separations can deteriorate moral conduct and social behavior due to prolonged uncertainty and lack of closure. Without legal finality, individuals struggle to rebuild personal stability, exacerbating psychological harm over time.

### **Impacts on the Husband**

#### 1) Risk of Multiple Ṭalāq

When a husband pronounces ṭalāq outside the court, he is still required to file a ṭalāq petition through the religious court to legally end the marriage. This leads to a problematic scenario: if the court approves the petition, the husband must declare ṭalāq again during the hearing. In Islamic jurisprudence, issuing multiple declarations of ṭalāq during the 'iddah period, even if spaced apart, can result in cumulative ṭalāq, potentially reaching ṭalāq bā'in kubrā (irrevocable divorce).<sup>44</sup>

This risk becomes even more complex in cases where the husband initially pronounces ṭalāq extrajudicially, later performs rujū' (reconciliation), and then divorces his wife again, followed by a formal court application. In such a sequence, the court-ordered ṭalāq could be interpreted in fiqh as the third and final one, prohibiting reconciliation without an intervening marriage (taḥlīl). The situation worsens when the husband initially utters triple ṭalāq outside the court, as fiqh considers this immediately

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<sup>41</sup> Salma Nafisatul Qudsiyah, Achmad Chisnul Charis, and Zulfadli Zulfadli, "Kontradiksi Terhadap Keabsahan Perkawinan Pasca Talak Lisan Di Mojokerto," *The Indonesian Journal of Islamic Law and Civil Law* 5, no. 2 (October 28, 2024): 233–47.

<sup>42</sup> Melvi Rahmi, Endri Yenti, and Nofiardi, "The Urgency of Recognizing Out-of-Court Divorce in Banuhampu Sub-District from a Maslahah Perspective," *Modern Islamic Studies and Sharia Research* 1, no.1 (June 30, 2025), <https://ejournal.uinbukittinggi.ac.id/index.php/missr/article/view/9632>.

<sup>43</sup> Abdul Wafi and Shofiatul Jannah, "The Rising Trend of Divorce Cases: Social and Psychological Implications in Modern Society," *Jurnal Ius Constituendum* 9, no. 1 (February 28, 2024): 88–100, <https://doi.org/10.26623/jic.v9i1.8157>.

<sup>44</sup> Muhammad Saifuddin, October 22, 2025.

as ṭalāq bā' in kubrā.<sup>45</sup> In such cases, any subsequent declaration of ṭalāq before the court holds no legal consequence in fiqh, while the state disregards the initial pronouncement. This legal-religious disparity is common in society and poses severe risks for the husband.

2) Risk of Duplicate Financial Obligations: Nafaqah and Mut'ah

Islamic law mandates that a husband who divorces his wife must provide maintenance during the 'iddah period and offer mut'ah, a consolation gift following divorce. However, if he has already fulfilled these obligations after unregistered ṭalāq, the court may not recognize them, as the only legally valid divorce is the one formalized through judicial proceedings.<sup>46</sup> As a result, the husband may be required to pay nafaqah and mut'ah twice, leading to legal redundancy.

Although in practice, the enforcement of post-divorce maintenance is often weak, the legal risk of duplication remains. The amount to be paid may also differ, depending on the judge's discretion. This creates legal uncertainty and financial reluctance among husbands to file formal ṭalāq petitions. Many believe the divorce has already taken effect through the unregistered declaration and view the court merely as an administrative formality. Consequently, formal divorce registration is often neglected by husbands, reinforcing informal practices that bypass legal protections.<sup>47</sup>

**Impacts on the Wife**

1) Women as the Most Vulnerable Party in Unregistered Ṭalāq

Women are disproportionately affected by divorce, especially when it occurs outside the formal legal system. Their legal protection is severely limited in such cases. According to Nasaruddin Umar, a woman bringing divorce documents to the religious court carries not only legal burdens but also emotional distress and social stigma.<sup>48</sup> Additionally, women face procedural difficulties, including strict legal requirements and the burden of presenting evidence to support their claims.

Data from the Religious Judiciary Body of the Indonesian Supreme Court confirms that many women suffer legal uncertainty due to unregistered divorces.<sup>49</sup> This uncertainty prevents them from exercising their post-divorce rights such as nafaqah

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<sup>45</sup> Nur Rofiq et al., "Judges Perspective on the Third Talak Imposed Outside of Court Session," *Diponegoro Law Review* 8, no. 1 (April 30, 2023): 76–92, <https://doi.org/10.14710/dilrev.8.1.2023.76-92>.

<sup>46</sup> Asni, *Peradilan Agama dan Dinamika Kontemporer* (Deepublish, 2021), [//opac.dpr.go.id/2Findex.php%3Fp%3Dshow\\_detail%26id%3D36719%26keywords%3D](https://opac.dpr.go.id/2Findex.php%3Fp%3Dshow_detail%26id%3D36719%26keywords%3D).

<sup>47</sup> Fahlur Razi, October 22, 2025.

<sup>48</sup> Nasaruddin Umar, *Ketika Fikih Membela Perempuan* (Jakarta: PT Elex Media Komputindo, 2025), 108.

<sup>49</sup> Mahkamah Agung Republik Indonesia, "Laporan Tahunan 2023, "2024, [https://kepaniteraan.mahkamahagung.go.id/images/laporan\\_tahunan/FA-LAPTAH\\_MA\\_2023\\_low.pdf](https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA-LAPTAH_MA_2023_low.pdf).

‘iddah, mut‘ah, and child custody.<sup>50</sup> As a result, these women are legally still wives, yet abandoned and left without protection or financial support.

## 2) Prolonged and Double ‘Iddah Period

Unregistered ṭalāq exposes women to the risk of undergoing multiple ‘iddah periods. The first begins when the ṭalāq is pronounced; the second starts upon the court's ruling.<sup>51</sup> This extended obligation results in psychological, material, and physical burdens. Considering that the standard ‘iddah duration is three menstrual cycles, three months, or until childbirth, the overlapping timelines can cause the ‘iddah to last up to six months or more.

In severe cases, a woman may be divorced during pregnancy and receive a court ruling only after childbirth. Under current rules, she may still be required to observe another ‘iddah of three months or three clean cycles.<sup>52</sup> This protracted waiting period places an undue burden on the woman, affecting her emotional health, finances, and social well-being.

## 3) Legal Neglect and Financial Abandonment

Under Islamic principles, a divorced woman is entitled to financial support during her ‘iddah, including food, clothing, and shelter (nafaqah ‘iddah). However, this right is often denied in cases of unregistered ṭalāq.<sup>53</sup> The absence of a legal framework causes enforcement difficulties. Additionally, many husbands avoid court proceedings, leaving women to initiate the legal process themselves. This often leads to *verstek* (default) rulings due to the husband's absence in court, further complicating the enforcement of rights.

In cases where the husband previously failed to provide adequate nafaqah, that unpaid support should be considered a legal debt. Yet, without a formal court decision, women are left without effective means of legal recourse. The systemic lack of enforcement mechanisms increases the risk of post-divorce neglect, putting women in highly vulnerable and insecure positions.

## 4) Inaccessibility to Mut‘ah

Mut‘ah, a mandatory post-divorce consolation payment, is often denied to women due to the unregistered nature of the ṭalāq. Many women are unaware of their entitlement, and because the ṭalāq is not officially recorded, legal claims are nearly impossible.<sup>54</sup> Furthermore, if the woman is the one filing for divorce, she is not eligible

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<sup>50</sup> Siti Badriah, October 21, 2025.

<sup>51</sup> Diana Farid et al., "Harmonizing the Iddah Period for Women Divorced Outside the Court According to KHI and Fiqh Law," *JUSTISI* 10, no. 1 (December 1, 2023): 55–67, <https://doi.org/10.33506/jurnaljustisi.v10i1.2455>.

<sup>52</sup> Misnanto Misnanto, "The Problematics of Divorce Before Judges The Perspective of Islamic Law Compilation and Madzhab Syafi'i," *Indonesian Journal of Law and Islamic Law (IJLIL)* 4, no. 1 (June 13, 2022): 148–85.

<sup>53</sup> Risa Putri Sinaga, Aria Zurnetti, and Yasniwati Yasniwati, "Legal Protection for Women Divorced Outside the Court in Indonesian Law," *Nagari Law Review* 8, no. 3 (July 1, 2025): 582–95.

<sup>54</sup> Dedi Kusnandar and Fitriani Rahma, "Optimizing Legal Protection for Divorce Outside of Court: Study of the Need for Divorce Isbat in the Indonesian Legal System," *Indonesian Journal of Islamic Law* 6, no. 2 (December 30, 2023): 73–88, <https://doi.org/10.35719/ijil.v6i2.2010>.

for mut'ah under Islamic law. This loophole allows many men to evade financial responsibility, leaving women with no recognized legal status and cannot remarry, claim rights, or be acknowledged as lawful divorcees.

#### 5) Burden of Litigation and Legal Dependency

Women subjected to unregistered ṭalāq often face the dual burden of being abandoned and bearing the full responsibility of legal proceedings. This occurs because husbands either show indifference or deliberately avoid litigation to escape financial duties.<sup>55</sup> The prevailing perception is that when a wife files for divorce, the husband is exempt from obligations such as nafaqah and mut'ah, while a husband-initiated petition entails financial consequences. Consequently, many husbands are uncooperative, evasive, and difficult to contact.<sup>56</sup>

Women are thus compelled to pursue legal action alone. According to Supreme Court Circular (SEMA) No. 3 of 2023, women filing for divorce based on continuous conflict must wait a six-month separation period before obtaining a court ruling. This policy, when combined with unregistered ṭalāq, severely disadvantages women, forcing them to bear the status of a wife without legal or emotional support during the waiting period. The extended delay also diminishes women's motivation and ability to pursue justice through the legal system.<sup>57</sup>

### Impacts on Children

#### 1) Psychological Trauma and Loss of Legal Protection

Children are among the most deeply affected victims of unregistered ṭalāq.<sup>58</sup> The dissolution of their parents' relationship, conducted without legal clarity, creates long-term psychological distress. This often manifests as emotional instability, behavioral disorders, and disruptions in moral development and educational performance. Moreover, the ambiguity of the divorce process fosters a negative social stigma, further aggravating the child's sense of insecurity.

The most critical legal issue involves child custody. Without a formal court ruling, there is no clear legal decision about which parent holds custodial rights. As a result, children may be left in limbo, facing disputes over guardianship, residence, and daily care. This situation becomes even more detrimental when financial responsibilities such as child support, healthcare, and education are neglected.<sup>59</sup>

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<sup>55</sup> Azwir, Pagar, and Nasution, "The Legality of Divorce in Aceh."

<sup>56</sup> 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 20, 2025): 135–52, <https://doi.org/10.20885/mawarid.vol7.iss1.art8>.

<sup>57</sup> Masyrifah, October 23, 2025.

<sup>58</sup> Budi Santoso and Maya Sari, "The Psychological Impact of Divorce on Children and Parental Obligations in Islamic Family Law," *Indonesian Journal of Islamic Law* 4, no. 2 (May 19, 2024): 54–67, <https://doi.org/10.35719/ijil.v4i2.2004>.

<sup>59</sup> Megan Belghis Yolanda and Hariyo Sulistiyantoro, "Legal Protection of Children in Divorce Claims in Sidoarjo Religious Court," *JARES (Journal of Academic Research and Sciences)* 9, no. 2 (September 1, 2024): 76–84, <https://doi.org/10.35457/jares.v9i2.2916>.

The absence of a judicially sanctioned divorce deprives children of their right to ḥaḍānah, a fundamental protection under Islamic and national law. Without court intervention, children are often left unprotected by legal, financial, and psychological safeguards. Therefore, unregistered ṭalāq not only disrupts family structure but also threatens the long-term development and well-being of the children involved.

### **Dialogical Integration of Islamic and State Legal Systems**

Religious courts indeed do not have jurisdiction over criminal matters. Therefore, this limitation poses a unique challenge to the effectiveness of sanctions for extra-judicial ṭalāq. This limitation, however, can be mitigated through religious court rulings that serve as admissible legal evidence, enabling a wife to report her former husband to the police based on the court's decision. Subsequently, law enforcement authorities may take firm action against the perpetrator of ṭalāq outside the court. This process applies particularly when the wife files for isbāt ṭalāq and is able to provide sufficient evidence, while the husband either fails or refuses to appear in court. Such a mechanism is relatively straightforward; the key question lies in whether this procedure will be formally incorporated into national regulation or not.

The dilemma surrounding unregistered ṭalāq cannot be resolved simply by choosing between Islamic jurisprudence (fiqh) and state law. Prioritizing one legal framework while dismissing the other not only fails to solve the issue but exacerbates the conflict between religious norms and state authority. A dialogical and integrative approach is therefore essential, one that harmonizes the normative principles of fiqh with the formal requirements of national state law. In this context, the registration of ṭalāq (isbat ṭalāq) must be institutionalized as part of Indonesia's national legal system.

The positivization of isbat ṭalāq strengthens legal certainty by ensuring consistency between religious legitimacy and state recognition. This concept aligns with Jan M. Otto's theory of realistic legal certainty, which posits that genuine legal certainty arises when formal law operates in harmony with society's core normative values.<sup>60</sup> Legal frameworks must synergize with these societal values in order to deliver justice and social utility.

Incorporating isbat ṭalāq into formal legal processes also reflects the fundamental goals of lawmaking, namely to uphold legal certainty, justice, and public benefit.<sup>61</sup> Although balancing all three objectives simultaneously is challenging, the isbat ṭalāq mechanism offers a more effective means to realize them, as it operates at the intersection of fiqh and state law.<sup>62</sup> This dual legitimacy addresses the root of legal dualism and provides a foundation for a more adaptive and responsive legal system.

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<sup>60</sup> Eduard Awang Maha Putra, *Peraturan Kebijakan (beleidsregel) Dalam Hukum Positif Indonesia* (Samudra Biru, 2024).

<sup>61</sup> M. Syamsuddin, *Mahir Menulis Studi Kasus Hukum* (Prenada Media, 2018), 100.

<sup>62</sup> Akmaluddin Syahputra, Imam Yazid, and Opi Wandasari, "Implications Of The North Sumatra Mui Fatwa On Talaq Outside The Court: Harmonization of Islamic Sharia and Positive Law in Indonesia," *SANGKÉP: Jurnal Kajian Sosial Keagamaan* 8, no. 2 (July 19, 2025), <https://doi.org/10.20414/sangkep.v8i2.13776>.



The integrative nature of isbat ṭalāq supports the broader concept of legal unification, which involves consolidating multiple normative systems into a coherent national legal structure.<sup>63</sup> This approach does not marginalize existing legal traditions, but rather incorporates them into a unified legal framework adapted to the socio-cultural realities of Indonesian society.<sup>64</sup> The unification process respects and formalizes community-based legal norms, thereby ensuring broader compliance and greater legitimacy.

Furthermore, the institutionalization of isbat ṭalāq should consider comparative legal practices in countries such as Jordan, where legal sanctions are used effectively to enforce ṭalāq registration.<sup>65</sup> In the Jordanian model, a husband who refuses to register the ṭalāq can be penalized through fines or imprisonment, while the wife is entitled to a one-year maintenance guarantee.<sup>66</sup>

Indonesia could consider adopting a similar enforcement framework by imposing a fine of up to IDR 50 million, imprisonment for up to six months, or both, on husbands who refuse to register their ṭalāq. In cases where a wife files for divorce on the grounds that her husband has issued ṭalāq, supported by sufficient evidence, but the husband fails to appear in court (*verstek*), he could be reported to law enforcement authorities. The police may then detain him or require him to pay the designated fine.

### **From Legal Dissonance to Normative Resolution: Insight, Impact, and Contribution**

The findings of this study offer a new perspective on the persistent dualism in Indonesian marital law by shifting the focus from doctrinal legality to socio-legal consequences. Rather than debating the theological validity of ṭalāq, this research highlights how normative fragmentation manifests in practical harm, legal exclusion, and structural disadvantage. This shift in lens, viewing unregistered ṭalāq as a systemic fault line rather than a mere deviation from legal procedure, provides a novel framework for understanding the lived experience of legal pluralism.

Existing literature on Islamic family law in Indonesia has often concentrated on formal mechanisms of marriage dissolution and judicial reform. However, there has been limited focus on the socio-legal vacuum created by unregistered ṭalāq, especially in communities where religious authority is perceived as overriding statutory obligation. By focusing on the implications for legal certainty, procedural justice, and gender-based vulnerability, this study expands the discourse beyond doctrinal compliance and

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<sup>63</sup> Diva Pitaloka et al., *Pengantar Ilmu Hukum* (Mega Press Nusantara, 2023), 24.

<sup>64</sup> Jefry Tarantang, Ramdani Wahyu Sururie, and Idzam Fautanu, "Unification of Law in the Marriage and Divorce Processes of the Dayak Ngaju Muslim Communities in Central Kalimantan," *Mazahib* 23, no. 2 (December 17, 2024): 529–54, <https://doi.org/10.21093/mj.v23i2.6940>.

<sup>65</sup> Muhammad Nasir et al., "Legal Status and Consequences of Unilateral Divorce: Comparative Studies Between Egypt, Jordan, Tunisia and Indonesia," *Malaysian Journal of Syariah and Law* 12, no. 2 (August 31, 2024): 457–70, <https://doi.org/10.33102/mj.v12no2.614>.

<sup>66</sup> Mahmudin Bunyamin, "Pembaruan Undang-Undang Perkawinan Yordania Dan Relevansinya Terhadap Pengembangan Hukum Perkawinan Islam Modern," *ASAS* 11, no. 2 (December 19, 2019): 51–76, <https://doi.org/10.24042/asas.v11i2.5597>.

towards the lived impact of legal dissonance. This fills a notable gap in current scholarship and offers a basis for reevaluating existing regulatory frameworks.

The study underscores the urgent need for regulatory mechanisms that can bridge the normative gap between fiqh and state law. Institutionalizing ṭalāq validation (isbat ṭalāq) not only ensures legal certainty but also functions as a protective measure for women and children who are disproportionately affected by unregistered divorce. In addition, the absence of enforceable sanctions for noncompliance highlights the necessity of legislative reform that not only mandates procedural adherence but also introduces legal consequences for its violation. Such reforms must be culturally responsive, engaging religious authorities and grassroots communities to ensure legitimacy and effectiveness.

This study contributes to the broader field of Islamic legal studies and comparative family law by exposing how normative inconsistencies produce real-world injustice. It also proposes a concrete pathway, ṭalāq validation through judicial means, to harmonize religious and state legal systems in a manner that respects both doctrinal legitimacy and procedural justice. As such, it not only deepens theoretical understanding of legal pluralism in Muslim-majority contexts but also offers actionable insights for policymakers seeking to resolve the tensions between sacred law and state governance.

## CONCLUSION

The practice of divorce (ṭalāq) outside the court system in Indonesia reflects a structural failure to reconcile the authority of fiqh-based legal norms with the mandates of state law. The dissonance between fiqh legitimacy, which recognizes verbal ṭalāq as valid, and state law, which requires ṭalāq to be adjudicated through religious courts, creates significant challenges in legal implementation, directly undermining legal certainty, justice, and social protection. This phenomenon generates serious consequences, including ambiguous marital status, administrative obstacles to remarriage, and weakened legal protection for women and children. For husbands, unregistered ṭalāq may lead to the risk of double divorce and duplicated obligations of nafaqah al-‘iddah and mut‘ah, while for wives, it often results in prolonged waiting periods (‘iddah) and neglect due to the husband’s reluctance to formalize the divorce. Children also suffer psychological, social, and legal repercussions stemming from the loss of clarity over custody rights and formal protection. These conditions reveal that an ineffectively managed legal pluralism produces structural uncertainty and injustice within Muslim family life.

Accordingly, resolving the issue of extra-judicial ṭalāq cannot be achieved by siding exclusively with either legal system, whether fiqh or state law. A dialogical and integrative approach is required to harmonize Islamic normative values with state legal procedures, thereby fostering legal awareness, order, and compliance. This pluralistic dynamic has resulted in dual mechanisms of resolution, litigation and non-litigation, with the latter overwhelmingly prevailing. In light of this, the article proposes a solution

through the positivization of *isbāt ṭalāq*, the judicial ratification of divorce through religious courts, as a means of harmonizing religious and state law. Such an approach not only guarantees legal certainty and protection for vulnerable parties but also reinforces the legitimacy of the state in the eyes of religious communities. Therefore, the judicial ratification of *ṭalāq* represents a strategic step toward constructing an Islamic family law system that is integrated with religious values, responsive to social realities, and just for all stakeholders.

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