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The Evolution of Grounds For Divorce in Islamic Family Law: an Analysis of The Theory of Legal Change and The Practice of Religious Courts in Indonesia

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Abstract: This study aims to analyze the transformation of grounds for divorce in Islamic family law in Indonesia through an integrative approach combining legal change theory, maqāṣid al-syarī‘ah, and the practices of religious courts. The main issues addressed include the normative construction of grounds for divorce in Islamic law, the development of grounds for divorce in Indonesian positive law, and the relevance of legal change theory in explaining such dynamics. This research employs a normative juridical method with conceptual, statutory, and socio-legal approaches. The findings reveal that, normatively, grounds for divorce in Islamic law are derived from the Qur’an, Hadith, and classical fiqh, which position divorce as a last resort (ultimum remedium) with limited justifications, such as failure to provide maintenance, physical defects, and severe marital discord (shiqāq). However, in Indonesian positive law, particularly through the Marriage Law and the Compilation of Islamic Law, there has been an expansion and codification of grounds for divorce in a more flexible manner. In judicial practice, religious court judges actively engage in contextual interpretation, whereby the category of “continuous disputes and quarrels” evolves into an umbrella clause encompassing psychological conflict, emotional abuse, and even digital-related issues. This transformation can be explained through legal change theory, which views law as a dynamic system responsive to social change. The maqāṣid al-syarī‘ah approach provides normative legitimacy for such flexibility by emphasizing the protection of welfare (maṣlaḥah) and the prevention of harm (mafsadah). Accordingly, Islamic family law in Indonesia demonstrates characteristics of a progressive, contextual, and substantively just legal system, with judges acting as agents of legal transformation.

Keywords: Divorce, Islamic Family Law, Maqāṣid Al-Syarī‘Ah, Legal Change, Religious Courts.

INTRODUCTION

Marriage in Islam is a normative institution that possesses not only a social dimension but also a strong theological dimension. The Qur’an affirms that the primary purpose of

marriage is to establish a harmonious family, filled with tranquility, affection, and love (*sakinah, mawaddah, wa rahmah*), as reflected in the words of Allah SWT in Surah Ar-Rum, verse 21.¹ This concept demonstrates that marriage in Islam is not merely a social contract (*'aqd al-nikāh*), but also a form of worship with lofty moral and spiritual objectives, namely to bring about the greater good for individuals, families, and society at large.

However, in social reality, not all marriages are able to achieve this ideal goal. The complex dynamics of family life often give rise to conflicts that cannot be resolved peacefully, making divorce one of the legal mechanisms resorted to. From the perspective of Islamic law, divorce is indeed recognized, but it is regarded as a last resort (*ultimum remedium*) after various attempts at reconciliation have failed. This is emphasized in a hadith of the Prophet Muhammad (peace be upon him) narrated by Abu Dawud: “The most detested lawful matter in the sight of Allah is divorce.”² This hadith conveys a normative message that although divorce is permitted, its use must be ethically and morally restricted, so that it is not carried out carelessly.

In classical fiqh, the grounds for divorce are defined within a relatively narrow and normative framework. Scholars of the various schools of thought identified several primary grounds that could justify a divorce, including the husband’s inability to provide financial support (*al-’ajz ‘an al-nafaqah*), the presence of a defect or illness that hinders the purpose of marriage, and the occurrence of severe conflict (*syiqāq*) that cannot be reconciled.³ In this context, divorce is better understood as a response to conditions that objectively hinder the normal functioning of family life.

For example, according to Ibn Qudāmah in *Al-Mughnī*, *fasakh* may be granted if there is a clear harm in the marital relationship, such as the failure to provide maintenance or the presence of a defect that prevents marital relations.⁴ Meanwhile, in the Mālikī school of thought, the concept of *syiqāq* even allows for judicial intervention through the mechanism of *ḥakam* to assess whether a marriage is still worth preserving or not.⁵ This demonstrates that although classical fiqh is normative in nature, there is room for flexibility in addressing domestic conflicts.

However, developments in modern society indicate that the factors leading to divorce are becoming increasingly complex and multifaceted. Changes in social structures, the growing participation of women in the public sphere, and the advancement of information technology have transformed the dynamics of family relationships. Domestic conflicts are no longer caused solely by economic or biological factors, but also include psychological conflicts, emotional disharmony, and differences in values and lifestyles.⁶

In addition, the rise of gender-based violence—whether in the form of physical, psychological, or economic abuse—has become one of the dominant factors in divorce cases before the Religious Courts.⁷ In this context, psychological abuse such as verbal abuse, emotional manipulation, and mental pressure is often difficult to prove through conventional means, yet it has a significant impact on the stability of a marriage.

Advances in digital technology have also influenced the dynamics of divorce. The phenomenon of *digital infidelity*, excessive use of social media, and unhealthy virtual communication have become new sources of conflict in modern households.⁸ This indicates

¹ Quran 30:21.

² Abu Dawud, *Sunan Abi Dawud*, Book of Divorce, Hadith No. 2178.

³ Amir Syarifuddin, *Islamic Marriage Law in Indonesia*, (Jakarta: Kencana, 2014), p. 197.

⁴ Ibn Qudāmah, *Al-Mughnī*, (Beirut: Dar al-Fikr), p. 234.

⁵ Wahbah al-Zuhaili, *Islamic Jurisprudence and Its Evidence*, (Damascus: Dar al-Fikr, 1985), p. 481.

⁶ M. Atho Mudzhar, *Approaches to Islamic Studies in Theory and Practice*, (Yogyakarta: Pustaka Pelajar, 2001), p. 215.

⁷ Nur Rofiah, “Domestic Violence from the Perspective of Islamic Law,” *Al-Ahwal Journal*, Vol. 10 No. 1 (2017).

⁸ Ahmad Tholabi Kharlie, *Indonesian Family Law*, (Jakarta: Sinar Grafika, 2013), p. 256.

that the reasons for divorce are no longer limited to physical and economic factors, but also encompass psychological and virtual dimensions that were previously unknown in classical fiqh literature.

On the other hand, global economic pressures are also a significant factor affecting household stability. Economic instability, unemployment, and rising living costs often trigger conflicts that lead to divorce.⁹ Thus, it can be said that the causes of divorce in contemporary society are complex, interdisciplinary, and cannot be explained solely through a normative approach.

Nevertheless, previous studies tend to have limitations. First, most studies still focus on the normative aspects of fiqh without linking them to contemporary social dynamics.¹⁰ Second, studies examining positive law are often partial and descriptive, without providing an in-depth theoretical analysis of legal change.¹¹ Third, there has not been much research that comprehensively integrates the theory of legal change with the maqāṣid al-syarī‘ah approach and religious judicial practice.

Given these circumstances, there is a significant *research gap* in the study of Islamic family law, particularly regarding grounds for divorce. To date, there has been no study that systematically integrates three main dimensions, namely: (1) the theory of legal change from a sociological perspective, (2) the maqāṣid al-syarī‘ah approach as the normative foundation of Islamic law, and (3) religious court practices as a representation of *living law* in society.¹²

In fact, the integration of these three dimensions is crucial for understanding how Islamic family law evolves in response to social change. Theories of legal change, as proposed by Roscoe Pound and Eugen Ehrlich, emphasize that law not only reflects social reality, but also serves as an instrument to guide that change.¹³ Meanwhile, the maqāṣid al-syarī‘ah approach provides a normative framework that allows for legal flexibility in preserving public interest and preventing harm.¹⁴

In this context, the practice of religious courts serves as a crucial arena in the process of legal transformation. Judges do not merely act as enforcers of the law, but also as legal interpreters (*rechtsvinding*) who interpret legal norms contextually in accordance with societal developments.¹⁵ Thus, the dynamics of grounds for divorce in religious courts can be understood as a manifestation of the interaction between legal norms, theories of legal change, and an ever-evolving social reality.

Based on the background outlined above, the evolving dynamics of grounds for divorce in Islamic family law indicate a significant shift from classical normative constructs toward formulations that are more contextual and responsive to social change. This shift is occurring not only at the normative level but also in religious judicial practice, which is becoming increasingly adaptive in interpreting grounds for divorce. Therefore, a comprehensive study is needed to understand the normative constructs, legal transformations, and theoretical frameworks that explain these dynamics.

In this context, the research problem formulation is aimed at answering several fundamental questions. First, how are the normative grounds for divorce constructed in Islamic law—whether derived from the Qur’an, the Hadith, or the elaborations of classical fiqh

⁹ Abdul Manan, *The Application of Civil Procedure Law in Religious Courts*, (Jakarta: Kencana, 2016), p. 387.

¹⁰ Wahbah al-Zuhaili, *op. cit.*, p. 340.

¹¹ Abdurrahman, *Compilation of Islamic Law in Indonesia*, (Jakarta: Akademika Pressindo, 2010), p. 137.

¹² Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, (London: IIIT, 2008), p. 21.

¹³ Roscoe Pound, *An Introduction to the Philosophy of Law*, (New Haven: Yale University Press, 1954), p. 47.

¹⁴ Jasser Auda, *op. cit.*, p. 30.

¹⁵ Sudikno Mertokusumo, *Legal Discovery*, (Yogyakarta: Liberty, 2009), p. 45.

scholars—and how are these normative boundaries understood within the framework of *maqāṣid al-syarī‘ah*. Second, how have the grounds for divorce been transformed in Indonesian positive law, particularly in the Marriage Law and the Compilation of Islamic Law, and how do religious courts develop and interpret these norms in the face of contemporary social realities? Third, how theories of legal change—whether from the perspective of sociology of law or progressive law—can explain the dynamics of the evolution of these grounds for divorce, and to what extent these theories are relevant in the context of Islamic family law in Indonesia.

Thus, this research question is not merely descriptive but also analytical and theoretical, aiming to conduct an in-depth examination of the relationship between legal norms, judicial practices, and social change in the context of divorce.

In line with the research questions formulated, this study aims to make an academic contribution to the development of research on Islamic family law, particularly regarding the dynamics of grounds for divorce from the perspective of legal change theory. More broadly, this study aims to comprehensively examine and analyze the transformation of grounds for divorce in Islamic family law in Indonesia.

More specifically, this study aims to explain the concept of divorce in Islamic law, both from the normative aspects derived from the Qur’an and Hadith, and from the perspective of classical *fiqh*, which governs divorce mechanisms such as *talak*, *khulu’*, and *fasakh*. This study also aims to analyze the development and changes in the grounds for divorce under Indonesian positive law, particularly within the context of legislation and religious court practices, which indicate an expansion of the meaning and interpretation of legal norms.

Furthermore, this study aims to formulate an integrative analytical model that combines the theory of legal change with the *maqāṣid al-syarī‘ah* approach, thereby providing a more comprehensive theoretical framework for understanding the dynamics of Islamic family law. Thus, this study is not merely descriptive but also constructive, offering a conceptual model that can serve as a foundation for the development of Islamic family law that is more responsive and oriented toward substantive justice.

The novelty of this study lies in its integrative approach, which combines normative, theoretical, and empirical dimensions in analyzing the grounds for divorce in Islamic family law. Unlike previous studies, which tended to be partial and fragmented, this study offers a more comprehensive analytical framework through the integration of three layers of legal theory: *grand theory*, *middle theory*, and *applied theory*.

At the *grand theory* level, this study employs theories of legal change from the perspective of sociology of law, such as Roscoe Pound’s conception of law as *a tool of social engineering* and the concept of law as a reflection of society (*volksgeist*) as articulated by Savigny. At the *middle-theory* level, this study adopts Eugen Ehrlich’s concept of “*living law*” as well as Satjipto Rahardjo’s theory of progressive law, which emphasizes that law must be able to respond dynamically to the needs of society. Meanwhile, at the *applied-theory* level, this study employs the *maqāṣid al-syarī‘ah* approach as a normative foundation for assessing the flexibility and objectives of Islamic law.

Furthermore, the novelty of this study lies in its attempt to reconstruct the concept of grounds for divorce based on *maqāṣid al-syarī‘ah*. In this regard, grounds for divorce are no longer understood narrowly as rigid normative categories, but rather as instruments to safeguard the public interest and prevent harm within family life. Thus, divorce is positioned as a protective mechanism for individual rights, particularly in the context of domestic violence and injustice in spousal relationships.

Furthermore, this study also proposes the concept of the judge as *an agent of legal transformation*. In this context, judges of the Religious Court do not merely act as enforcers of the law but also as active agents engaged in legal discovery (*rechtsvinding*) through contextual

interpretations grounded in substantive justice. This role is crucial in bridging the gap between general legal norms and the ever-evolving social reality.

Thus, this study makes a theoretical and practical contribution to the development of Islamic family law, particularly in understanding the dynamics of grounds for divorce as a legal phenomenon that is dynamic, contextual, and oriented toward the public interest.

METHOD

This study employs a normative legal research approach, which focuses on the analysis of legal norms codified in legislation, as well as those evolving within Islamic legal doctrine and literature. This approach was chosen because the subject of study pertains to the normative construction of grounds for divorce and the dynamics of legal change within the framework of Islamic family law.¹⁶

In its implementation, this study employs several approaches. First, the conceptual approach, which is used to analyze the concept of divorce in Islamic law, including classical fiqh theories and maqāsid al-syarī'ah.¹⁷ Second, the statutory approach, which involves examining various relevant regulations, such as Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law (KHI).¹⁸ Third, the socio-legal approach, which is used to understand how these legal norms are implemented and developed in religious court practice as part of *living law*.¹⁹

The data sources in this study consist of three types of legal materials. First, primary legal materials, namely the Qur'an, Hadith, and laws and regulations related to divorce. Second, secondary legal materials, which include classical fiqh texts, legal books, and academic journals relevant to the research topic. Third, **tertiary legal materials**, such as legal dictionaries and encyclopedias used to clarify the terms and concepts employed in the study.²⁰ The data analysis was conducted qualitatively using a descriptive-analytical method, which involves systematically describing and analyzing legal norms and divorce practices. Additionally, an interpretive approach was employed to interpret legal provisions within the context of evolving social conditions, as well as a constructive approach to formulate an integrative analytical model regarding changes in the grounds for divorce from the perspective of Islamic family law.²¹

Grounds for Divorce in Islamic Law and Positive Law

Divorce in Islamic law is a legal institution recognized as a mechanism for resolving domestic conflicts when the objectives of marriage can no longer be fulfilled. Normatively, the Qur'an provides a principled foundation regarding divorce, particularly in Surah Al-Baqarah verses 229–232 and Surah An-Nisa verse 35, which affirm that divorce is permitted under certain conditions while upholding the principles of justice, consultation, and efforts toward reconciliation (*ishlāh*).²² These verses indicate that divorce is not a prohibited act, but should be considered a last resort after reconciliation efforts have failed.

From an exegetical perspective, scholars emphasize that the concept of divorce in the Qur'an carries a strong ethical dimension. Ibn Kathir's exegesis explains that divorce must be conducted in a proper manner (*tasrīh bi ihsān*), without causing injustice to either party.²³

¹⁶ Soerjono Soekanto, *Normative Legal Research*, (Jakarta: Rajawali Press, 2014), p. 13.

¹⁷ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, (London: IIIT, 2008), p. 21

¹⁸ Law No. 1 of 1974 on Marriage; Compilation of Islamic Law.

¹⁹ Achmad Ali, *Unveiling Legal Theory*, (Jakarta: Kencana, 2015), p. 121.

²⁰ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2016), p. 181.

²¹ Sudikno Mertokusumo, *Legal Discovery*, (Yogyakarta: Liberty, 2009), p. 45.

²² QS. Al-Baqarah: 229–232; QS. An-Nisa: 35.

²³ Ibn Kathir, *The Exegesis of the Noble Qur'an*, (Beirut: Dar al-Fikr), p. 412.

Meanwhile, Al-Qurthubi asserts that the presence of a *ḥakam* (mediator) in Surah An-Nisa verse 35 is an indication that Islam prioritizes peaceful conflict resolution before a divorce is finalized.²⁴

In a hadith of the Prophet Muhammad (peace be upon him), divorce is regarded as a lawful act but *one that* is detested by Allah, as mentioned in , narrated by Abu Dawud: “*The lawful matter most detested by Allah is divorce.*”²⁵ This hadith contains a moral dimension that positions divorce as a *last resort*, meaning it must not be carried out arbitrarily without a valid reason.

In classical fiqh, divorce is classified into several main forms: *talak*, *khulu'*, and *fasakh*. *Talak* is the husband's right to end the marriage, while *khulu'* allows the wife to request a divorce in exchange for a specific form of compensation. Meanwhile, *fasakh* is the annulment of a marriage by a judge due to specific causes that result in harm.²⁶ Fiqh scholars have identified a number of grounds for divorce, including the inability to provide financial support, physical defects or illnesses that hinder the purpose of marriage, and the occurrence of severe conflict (*syiqāq*).²⁷

However, from the perspective of *usul al-fiqh*, the grounds for divorce cannot be interpreted rigidly but must be analyzed within the framework of the *maqāṣid al-sharī'ah*. According to Jasser Auda, Islamic law must be understood systematically by taking into account the primary objectives of the sharia, namely preserving public interest and preventing harm.²⁸ Thus, divorce may be justified if maintaining the marriage would actually cause greater *harm*, such as domestic violence or prolonged disharmony. The fiqh principle of *dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* serves as the basis for the legitimacy of flexibility regarding grounds for divorce in this context.²⁹

Under Indonesian positive law, grounds for divorce have been codified in various laws and regulations. Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, stipulates that divorce may only be granted by a court after attempts at reconciliation have failed.³⁰ These provisions are detailed in Government Regulation No. 9 of 1975 and the Compilation of Islamic Law (KHI), specifically Article 116, which outlines grounds for divorce such as persistent disputes, abandonment, domestic violence, and violation of the conditions for divorce.³¹

This codification reflects a transformation from classical fiqh norms into a more systematic and adaptive national legal system. In practice, the formulation of grounds for divorce in positive law is open-ended and flexible, allowing judges to interpret them in accordance with societal developments. Thus, the theory of divorce in Islamic law and Indonesian positive law demonstrates the character of a legal system that is not only normative but also dynamic and contextual.

Legal Changes from the Perspectives of Positive Law and Islamic Law

Legal change is an inherent phenomenon in every legal system that exists within society. From a sociological perspective, law is not understood as a static system, but as a social institution that constantly interacts with societal changes. Satjipto Rahardjo asserts that law is

²⁴ Al-Qurthubi, *The Comprehensive Explanation of the Legal Rulings of the Qur'an*, (Cairo: Dar al-Kutub al-'Ilmiyyah), p. 98.

²⁵ Abu Dawud, *Sunan Abi Dawud*, Hadith No. 2178.

²⁶ Wahbah al-Zuhaili, *Islamic Jurisprudence and Its Evidence*, (Damascus: Dar al-Fikr, 1985), p. 481

²⁷ Amir Syarifuddin, *Islamic Marriage Law in Indonesia*, (Jakarta: Kencana, 2014), p. 197.

²⁸ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, (London: IIIT, 2008), p. 21.

²⁹ Wahbah al-Zuhaili, *Islamic Jurisprudence and Its Evidence*, p. 340.

³⁰ Law No. 1 of 1974 as amended by Law No. 16 of 2019 on Marriage

³¹ Compilation of Islamic Law, Article 116.

always in the process of becoming (*law in the making*), and therefore must be able to respond to social dynamics in a progressive manner.³²

Within the framework of *grand theory*, Roscoe Pound's conception of *law as a tool of social engineering* provides a crucial foundation for understanding legal change. According to Pound, law not only reflects social reality but also serves to steer that change toward a more just order.³³ In the context of divorce, the expansion of grounds for divorce constitutes a form of legal intervention to protect individual interests, particularly those of vulnerable groups such as women.

Furthermore, the theory of "*living law*" proposed by Eugen Ehrlich asserts that the law that actually prevails in society often differs from written law.³⁴ In the practice of religious courts, judges often develop interpretations of legal norms based on the social realities they encounter, so that the law evolves through practice (*judge-made law*).

At the level of *middle theory*, the theory of progressive law developed by Satjipto Rahardjo is relevant in explaining the role of judges in legal change. Progressive law prioritizes substantive justice as its primary goal, thereby granting judges the freedom to engage in contextual and humanistic interpretation.³⁵ Thus, judges do not merely act as enforcers of the law, but also as *agents of legal change*.

From the perspective of Islamic law, changes in the law can be explained through the concept of *ijtihad* and the principle of *taghayyur al-ahkām bi taghayyur al-azmān wa al-amkinah* (changes in the law in accordance with changes in time and place).³⁶ This principle demonstrates that Islamic law possesses the flexibility to adapt to social changes without losing its fundamental principles. The *maqāṣid al-syarī'ah* approach reinforces this flexibility by placing public interest as the primary objective of the law.

According to Jasser Auda, the *maqāṣid al-syarī'ah* must be understood in a multidimensional way, thereby enabling Islamic law to respond to contemporary issues in a more contextual manner.³⁷ In the context of divorce, this approach legitimizes the recognition of new grounds—such as psychological abuse, digital conflict, and emotional disharmony—as grounds for divorce.

Thus, theories of legal change from the perspectives of positive law and Islamic law reveal common ground in understanding law as a dynamic, adaptive, and justice-oriented system. Changes in the grounds for divorce within the practice of religious courts reflect the interplay between legal norms, theories of legal change, and an ever-evolving social reality. In this context, Islamic family law in Indonesia can be understood as a progressive, responsive, and public-interest-oriented legal system.

RESULTS AND DISCUSSION

Research Results

The trend in divorce cases in Indonesia over the past decade shows not only a quantitative increase but also qualitative changes in terms of the characteristics and grounds cited by the parties. Data compiled by the Supreme Court of the Republic of Indonesia through the Directorate General of Religious Courts shows that the number of divorce cases each year is in the range of hundreds of thousands, with divorce by petition consistently outnumbering

³² Satjipto Rahardjo, *Law and Social Change*, (Yogyakarta: Genta Publishing, 2009), p. 45.

³³ Roscoe Pound, *An Introduction to the Philosophy of Law*, (New Haven: Yale University Press, 1954), p. 47.

³⁴ Achmad Ali, *Unveiling Legal Theory*, (Jakarta: Kencana, 2015), p. 121.

³⁵ Satjipto Rahardjo, *Progressive Law*, (Jakarta: Kompas, 2009), p. 7.

³⁶ Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, (Beirut: Dar al-Kutub al-'Ilmiyyah), p. 23.

³⁷ Jasser Auda, *Maqasid al-Shariah*, p. 30.

divorce by repudiation.³⁸ This phenomenon cannot be understood merely as an increase in divorce rates, but must be interpreted as an indicator of changes in the social structure and power relations within Muslim family institutions in Indonesia.

Empirically, the grounds for divorce filed in Religious Courts indicate a significant shift from classical patterns toward more complex and multidimensional ones. Whereas in classical fiqh, grounds for divorce primarily revolved around objective aspects such as the inability to provide financial support or the presence of a physical defect hindering the marital relationship, in contemporary practice, grounds for divorce are instead dominated by relational and psychological factors. The category of “constant disputes and quarrels,” which is normatively defined as “” in Article 116 of the Compilation of Islamic Law, has become the most dominant and, at the same time, the most flexible ground for divorce in judicial practice.³⁹

In various rulings, this category is no longer interpreted narrowly as recurring verbal conflicts, but has evolved into a legal umbrella encompassing various forms of domestic discord, including communication conflicts, value incompatibilities, psychological pressure, and even digital-based infidelity. This indicates that judges in the Religious Courts are actively expanding the meaning of the law through contextual interpretations of general legal norms.⁴⁰ Thus, judicial practice is not merely an arena for the application of law, but also a space for the production of new legal meanings.

In addition, the rising number of divorce lawsuits also indicates a shift in women’s legal awareness. Women are no longer merely objects in marital relationships but have become active legal subjects in the fight for their rights.⁴¹ This is evident in women’s growing courage to file for divorce in situations that no longer serve their best interests, such as cases of domestic violence, neglect, or prolonged psychological pressure. Thus, divorce in this context is not merely a legal event but also a reflection of broader social change.

Discussion

The transformation of grounds for divorce in the practice of Religious Courts indicates a fundamental paradigm shift in Islamic family law in Indonesia. This shift can be understood as a transition from a normative-formal approach toward a more substantive and contextual approach. Within the framework of classical fiqh, divorce is situated within a relatively rigid normative legal structure (), with limited categories of grounds based on specific objective conditions. However, in the context of a complex modern society, this approach is no longer sufficient to address the various multidimensional issues within households.

From the perspective of legal change theory, this phenomenon can be explained through the ideas of Roscoe Pound, who viewed law as *a tool of social engineering*. Within this framework, law functions not only as a reflection of social conditions but also as an instrument for steering social change toward a better direction.⁴² The recognition of domestic violence, including psychological abuse, as grounds for divorce is a concrete example of how the law plays a role in protecting vulnerable groups and promoting the creation of more equitable family relationships.

However, legal change does not occur solely through legislation, but also through social practices that evolve within society. In this regard, the theory of “*living law*” proposed by

³⁸ Supreme Court of the Republic of Indonesia, *Annual Report on Religious Courts*, (Jakarta: Supreme Court of the Republic of Indonesia).

³⁹ Abdurrahman, *Compilation of Islamic Law in Indonesia*, (Jakarta: Akademika Pressindo, 2010), p. 137.

⁴⁰ A. Mukti Arto, *Civil Case Practice in Religious Courts*, (Yogyakarta: Pustaka Pelajar, 2011), p. 214.

⁴¹ Nur Rofiah, “Domestic Violence from the Perspective of Islamic Law,” *Al-Ahwal Journal*, Vol. 10 No. 1 (2017).

⁴² Roscoe Pound, *An Introduction to the Philosophy of Law*, (New Haven: Yale University Press, 1954), p. 48.

Eugen Ehrlich is relevant for explaining how the law as it exists in society is often more dynamic than written law.⁴³ Religious court practices demonstrate that judges actively interpret legal norms based on the social realities they encounter, thereby making the law more responsive to the needs of society.

This phenomenon is also consistent with the concept of progressive law developed by Satjipto Rahardjo, which emphasizes that the law must be placed to serve humanity, not the other way around.⁴⁴ In the context of divorce, this progressive approach is reflected in the judge's boldness to interpret legal norms contextually in order to achieve substantive justice. Judges no longer merely act as "mouthpieces of the law," but as active agents who engage in legal discovery (*rechtsvinding*) by considering the social, psychological, and moral aspects of the parties involved.

From the perspective of Islamic law, this change can be analyzed through the *maqāsid al-syarī'ah* approach, which emphasizes that the primary purpose of the law is to preserve public interest and prevent harm. According to Jasser Auda, Islamic law must be understood in a systemic and contextual manner, so that it can respond to changing times without losing its fundamental principles.⁴⁵ In the context of divorce, this approach legitimizes legal flexibility in accommodating various new reasons that arise in society.

Psychological abuse, for example, although not explicitly mentioned in classical *fiqh*, can be categorized as a form of *mafsadah* that undermines the purpose of marriage. Similarly, prolonged separation can be understood as an indication of the loss of the marriage's function as a social institution. Thus, divorce under such circumstances can be viewed as an effort to preserve the greater public interest, in accordance with the *fiqh* principle of *dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*.⁴⁶

Furthermore, these dynamics demonstrate that Islamic family law in Indonesia is not static, but is constantly undergoing transformation through the interaction between legal norms, judicial practices, and social realities. In this context, judges of the Religious Courts play a strategic role as *agents of legal transformation* that is, as actors who bridge the gap between legal texts and social contexts.⁴⁷ Through the rulings they issue, judges indirectly shape new patterns of interpretation that subsequently become part of the living legal practice within society.

Thus, it can be understood that the evolution of grounds for divorce in Religious Courts is a manifestation of a multidimensional legal transformation process that involves normative, sociological, and philosophical aspects simultaneously. Law is no longer understood as a closed and rigid system, but as an open system that adapts to social change. Within this framework, Islamic family law in Indonesia demonstrates the character of a dynamic, responsive law oriented toward substantive justice.

CONCLUSION

Based on the research findings and discussion outlined above, the following conclusions can be drawn:

First, the normative framework for grounds for divorce in Islamic law is derived from the Qur'an, the Hadith, and classical *fiqh*, which regard divorce as a last resort (*ultimum remedium*). The grounds for divorce in classical *fiqh* are limited and tend to be based on objective conditions, such as the inability to provide financial support, the presence of a physical defect or illness, and severe conflict (*syiqāq*). However, from the perspective of

⁴³ Achmad Ali, *Unveiling Legal Theory*, (Jakarta: Kencana, 2015), p. 121.

⁴⁴ Satjipto Rahardjo, *Progressive Law*, (Jakarta: Kompas, 2009), p. 7.

⁴⁵ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, (London: IIIT, 2008), p. 30

⁴⁶ Wahbah al-Zuhaili, *Islamic Jurisprudence and Its Evidence*, (Damascus: Dar al-Fikr), p. 340.

⁴⁷ Sudikno Mertokusumo, *Legal Discovery*, (Yogyakarta: Liberty, 2009), p. 45.

maqāsid al-syarī‘ah, the grounds for divorce cannot be understood rigidly but must take into account the public interest and the prevention of harm within the household.

Second, under Indonesian positive law, there has been a significant transformation in the grounds for divorce through codification in the Marriage Law and the Compilation of Islamic Law. The grounds for divorce are no longer limited to classical normative categories but have evolved to become more flexible and open-ended, particularly through the formulation of “constant disputes and quarrels.” In religious court practice, judges actively engage in contextual interpretation of these norms, thereby encompassing various contemporary phenomena such as psychological abuse, emotional disharmony, conflicts stemming from digital technology, and shifts in gender dynamics within the family.

Third, the dynamics of the transformation of grounds for divorce can be explained through theories of legal change that view law as a dynamic and adaptive system in response to social change. The theories of Roscoe Pound, Eugen Ehrlich, and Satjipto Rahardjo demonstrate that law functions not only as a reflection of society but also as an instrument of social engineering oriented toward substantive justice. From an Islamic legal perspective, this flexibility is reinforced by the concepts of *ijtihad* and *maqāsid al-syarī‘ah*, which legitimize legal changes as long as they aim to preserve the public interest.

Thus, the evolution of grounds for divorce in Islamic family law in Indonesia demonstrates that the law is not static but rather evolves dynamically through the interaction between legal norms, judicial practices, and social realities. In this context, judges of the Religious Courts play a strategic role as agents of legal transformation who bridge the gap between normative texts and the needs of society, so that Islamic family law can evolve to become more responsive, contextual, and oriented toward substantive justice.

REFERENCE

- Abdurrahman. *Compilation of Islamic Law in Indonesia*. Jakarta: Akademika Pressindo, 2010.
- Abu Dawud. *Sunan Abi Dawud*. Book of Divorce, Hadith No. 2178.
- Ali, Achmad. *Unveiling Legal Theory and Judicial Prudence*. Jakarta: Kencana, 2015.
- The Holy Qur’an.
- Al-Qurthubi. *The Comprehensive Explanation of the Rulings of the Qur’an*. Cairo: Dar al-Kutub al-‘Ilmiyyah.
- Al-Zuhaili, Wahbah. *Islamic Jurisprudence and Its Evidence*. Damascus: Dar al-Fikr, 1985.
- Arto, A. Mukti. *Civil Case Practice in Religious Courts*. Yogyakarta: Pustaka Pelajar, 2011.
- Auda, Jasser. *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: IIIT, 2008.
- Ibn Kathir. *The Exegesis of the Noble Qur’an*. Beirut: Dar al-Fikr.
- Ibn Qayyim al-Jawziyyah. *I’lam al-Muwaqqi’in*. Beirut: Dar al-Kutub al-‘Ilmiyyah.
- Ibn Qudāmah. *Al-Mughnī*. Beirut: Dar al-Fikr.
- Kharlie, Ahmad Tholabi. *Indonesian Family Law*. Jakarta: Sinar Grafika, 2013.
- Supreme Court of the Republic of Indonesia. *Annual Report on Religious Courts*. Jakarta: Supreme Court of the Republic of Indonesia.
- Manan, Abdul. *The Application of Civil Procedure Law in Religious Courts*. Jakarta: Kencana, 2016.
- Marzuki, Peter Mahmud. *Legal Research*. Jakarta: Kencana, 2016.
- Mertokusumo, Sudikno. *Legal Discovery*. Yogyakarta: Liberty, 2009.
- Mudzhar, M. Atho. *Approaches to Islamic Studies in Theory and Practice*. Yogyakarta: Pustaka Pelajar, 2001.
- Pound, Roscoe. *An Introduction to the Philosophy of Law*. New Haven: Yale University Press, 1954.
- Rahardjo, Satjipto. *Law and Social Change*. Yogyakarta: Genta Publishing, 2009.

Rahardjo, Satjipto. *Progressive Law*. Jakarta: Kompas, 2009.

Rofiah, Nur. "Domestic Violence from the Perspective of Islamic Law." *Al-Ahwal Journal*, Vol. 10, No. 1, 2017.

Soekanto, Soerjono. *Normative Legal Research*. Jakarta: Rajawali Press, 2014.

Syarifuddin, Amir. *Islamic Marriage Law in Indonesia*. Jakarta: Kencana, 2014.

Law No. 1 of 1974 on Marriage in conjunction with Law No. 16 of 2019.

Compilation of Islamic Law.