
Navigating Divorce in the Global South: Comparative Insights into Legal Procedures and Gender Implications in Muslim-Majority Countries

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ABSTRACT

Although research on divorce has been extensively documented, studies focusing on the Global South remain limited. To address this research gap, this study aims to analyze a comparative overview of divorce regulations in Indonesia, Malaysia, Pakistan, Egypt, Morocco, Tunisia, and Turkey, highlighting implementation procedures and their impacts. This study employs a content analysis design of the divorce regulations applicable in the seven countries. The method used is normative research with a comparative approach. The study is grounded in Islamic family law theory as the analytical framework. The findings indicate that in Indonesia and Malaysia, divorce is processed through religious courts, with child custody and alimony rights ensured, although property division remains conservative. Pakistan permits unilateral talaq, but legal procedures for women are complex to access, and social stigma is high. Egypt, Morocco, and Tunisia grant broader rights to women, with fair property division and protection of child custody rights. Turkey combines Islamic and secular law with equitable procedures. Similarities lie in child custody and alimony rights, while differences exist in women's access, property division, and socio-cultural impacts. Challenges include unequal rights, social stigma, and complex legal procedures. Opportunities for legal reform involve expanding women's rights and fair property distribution. The study's implications emphasize the need for reforms in Islamic family law to enhance gender equality and protect women's rights.

Keywords: Divorce, Comparative Law, Global South

Introduction

Divorce is one of the central issues in Islamic family law and continues to receive attention across various Muslim countries. Islam permits divorce as a last resort to resolve marital conflicts, although it is not the primary solution for addressing family disputes. (Akbar Syahru Rama & Murni Murni, 2024). However, in practice, divorce regulations across Muslim countries exhibit significant variations. (Januari, 2023). These differences are influenced by fiqh schools, local traditions, and modern legal reform agendas, which affect divorce mechanisms, the status of women, and child protection. Therefore, a comparative study is relevant to understand the extent to which divorce regulations are adopted, implemented, and capable of protecting vulnerable parties.

Several previous studies have illustrated the diversity of family law regulations in the Muslim world. Ropei (2023) examined the minimum marriage age in Egypt, Pakistan, Tunisia, and Indonesia, and found that although progress has been made, differences in minimum age standards still leave inconsistencies in protecting children's and women's rights. Ade Khoirunnisa et al., (2025) compared Islamic family law in Malaysia and Indonesia and emphasized that differences in institutional structures affect the consistency of law implementation. Anggraeni & Gofar (2025) highlighted the practice of unilateral talaq in Egypt, Jordan, Tunisia, and Indonesia, and demonstrated variations in the imposition of sanctions on husbands after divorce. Meidina (2023) outlined polygamy and divorce regulations in Turkey, Pakistan, and Indonesia, concluding that Turkey is more progressive by prohibiting polygamy, whereas Pakistan and Indonesia maintain a traditional approach. Jansen (2023) reviewed family law reforms in Egypt, Tunisia, and Morocco, focusing on women's rights in divorce. Aziz (2024) examined the minimum marriage age in Indonesia, Tunisia, and Turkey, and its impact on child protection.

Furthermore, Maktabi (2024) analyzed citizenship and divorce law reforms in North Africa, while Sona (2023) studied court access for Muslim wives in Morocco who obtain a divorce abroad. Noviana (2022) discussed family law reforms in Asia and Africa, including Indonesia, Malaysia, Pakistan, Morocco, and Tunisia. Booley (2019) emphasized that Tunisia pioneered in pro-women legislation following the Arab Spring. Mulia (2015) examined Muslim family law as diverse and artificial, making its reform possible; justice and equality are the main principles for realizing an inclusive and non-discriminatory Muslim family. Meanwhile, Welchman (2007) studied the integration of normative analysis of legal texts with socio-political examination of advocacy and public discourse, particularly in the context of the transformation of Muslim family law in the Arab world, which has implications for women's rights and the dynamics of legal globalization.

The aforementioned studies indicate significant developments in the study of divorce in Muslim countries, especially regarding issues such as minimum marriage age, polygamy, unilateral talaq, and the rights of women and children. However, most research remains partial, focusing on specific aspects and lacking a comprehensive comparative mapping of divorce regulations across countries. Comprehensive studies that address divorce procedures, property division, child custody, and social impacts based on Islamic family law theory remain limited. Therefore, a research gap needs to be filled by providing a systematic cross-country analysis to examine variations in divorce regulations and their implications for protecting women and children.

Based on this background, this study aims to analyze comparative divorce regulations in seven Muslim countries: Indonesia, Malaysia, Pakistan, Egypt, Morocco, Tunisia, and Turkey. The study focuses on the legal basis of divorce, procedural implementation, and its impact on gender justice and child protection. The research questions formulated are: (1) How do the legal bases and divorce procedures differ across the seven Muslim countries? and (2) How do these divorce regulations affect the protection of women and children? Academically, this study contributes by expanding the comparative literature on Islamic family law through cross-country mapping of divorce regulations, emphasizing the principles of Sharia justice, public welfare, and gender equality as theoretical foundations.

Methods

This study employs a qualitative comparative research design, primarily comparing divorce regulations in seven Muslim countries: Indonesia, Malaysia, Pakistan, Egypt, Morocco, Tunisia, and Turkey. This appropriate design allows the researcher to examine the variations in legal norms and the social implications of divorce within different Islamic family law systems. Data was collected through a comprehensive literature review, including legal documents such as divorce legislation and academic sources such as journal articles and relevant books. In addition, the researcher explored secondary literature that examines divorce practices from social, cultural, and political perspectives, ensuring that the collected data reflect the diversity of legal aspects and implementation contexts. The analysis was conducted using a comparative method, comparing divorce procedures and the social impacts of divorce across the seven countries. The data were categorized based on key issues and then analyzed to identify similarities, differences, and patterns reflecting the dynamics of Islamic family law across nations. This analysis was guided by the theoretical framework of Islamic family law, which emphasizes principles of justice, equality, and public interest (*maslahah*).

Findings

Overall, the study's findings indicate a considerable variation in divorce regulations across several Muslim countries. These variations are evident in the types of divorce recognized, the role of the courts, and the resulting socio-economic consequences.

1. Indonesia

In Indonesia, divorce for Muslim couples is regulated under Law No. 1 of 1974 on Marriage, later amended by Law No. 16 of 2019, and reaffirmed through the Compilation of Islamic Law (KHI). The legal system designates Religious Courts as the sole official authority to adjudicate divorce cases. Divorce in Indonesia takes two forms: *cerai talak* (divorce initiated by the husband) and *cerai gugat* (divorce initiated by the wife). In practice, the majority of divorce cases are filed by wives, primarily due to economic reasons, marital discord, and domestic violence. This is corroborated by data from the Central Statistics Agency, which shows that approximately 80% of divorce petitions come from women. (Badan Pusat Statistik, n.d.) However, the main issue in Indonesia is not only the high divorce rate but also the legal system's inability to ensure the fulfillment of post-divorce rights. Many cases show that husbands often fail to comply consistently even when the court has ruled on alimony. In addition, lengthy court proceedings and legal costs pose significant obstacles for wives, particularly those from economically disadvantaged backgrounds.

2. Malaysia

Malaysia places Islamic family law under the jurisdiction of the Syariah Courts in each state. Divorce regulations are governed by each state's Islamic Family Law Enactment, resulting in minor variations across regions. The types of divorce recognized include talaq, fasakh (annulment by the court for specific reasons), taklik (breach of the husband's pledge), and khul' (divorce requested by the wife with specific compensation). Although Malaysian law normatively provides various instruments for women to exit problematic marriages, in practice, proceedings in the Syariah Courts are often considered complex and time-consuming. Research by Ismail et al., (2011) indicates that divorce proceedings in the Syariah Courts can take an average of six months to one year, making it difficult for women who wish to exit abusive household situations promptly. Another prominent issue is the weak enforcement of rulings on child support and alimony for former wives.

3. Pakistan

Pakistan still practices a divorce system dominated by the husband's right to pronounce talaq. While the law provides space for women to petition for khul', in practice,

this requires powerful justification, such as the return of the mahr. This situation places women in a weaker position compared to men regarding access to divorce. According to research Sonneveld & Stiles (2019) According to research published by Brill in its study on khul' in Muslim-majority countries, in Pakistan, many judges and courts still interpret the requirements for khul' strictly, making it difficult for women to obtain a divorce. The social impact is considerable: divorced women not only face social stigma but also lose adequate economic access due to the weak post-divorce alimony system. Another study by Abbasi (2017) reveals that although family law amendments have been enacted in Pakistan, implementation at the grassroots level is still heavily influenced by patriarchal norms and conservative interpretations of Sharia.

4. Egypt

Egypt is one of the Muslim countries that has undertaken significant family law reforms by adopting regulations on khul' in 2000. Through this reform, a wife can file for divorce unilaterally without the husband's consent, provided she returns the mahr she has received. This reform is regarded as a progressive step in enhancing women's rights to exit unhappy marriages. Following the implementation of khul', there has been a reduction in domestic violence and an increase in family investment in child welfare. However, another consequence that cannot be overlooked is the overall rise in divorce rates. Lindbekk (2016) in her article "Inscribing Islamic Shari'a in Egyptian Divorce Law," she emphasizes that although this legal reform has strengthened women's position, there remains social resistance from conservative groups who view the policy as conflicting with local traditions.

5. Morocco

Significant reforms took place in Morocco in 2004 through amendments to the Moudawana (Family Code). The new regulations substantially enhanced women's rights, including stricter controls on polygamy, raising the minimum marriage age, and providing women with opportunities to file for divorce through various mechanisms, including khul' and fasakh. However, a gap exists between the legal text and its implementation. Many women face difficulties in exercising their rights due to bureaucratic limitations, financial constraints, and patriarchal bias within the judicial system. In some cases, judges still issue interpretations inconsistent with the spirit of the Moudawana reforms. Rifka Alkhilyatul Ma'rifat, I Made Suraharta (2024) emphasize that although Morocco has legally become a pioneer in family law reform in the Arab world, under-enforcement and lack of public awareness remain serious obstacles.

6. Tunisia

Tunisia is recognized as one of the Muslim countries with the most progressive family law regulations. Through the Code of Personal Status (1956), from the outset, Tunisia has placed divorce entirely under the jurisdiction of civil courts. Divorce can only occur through a judge's decision, either at the request of one party or by mutual agreement. There is no form of unilateral talaq by the husband, as in many other Muslim countries. Tunisia's family law reforms also prohibit polygamy and grant women equal rights in matters of divorce. The Code of Personal Status represents a landmark that strengthens women's position within the family and serves as an inspirational model for other Muslim countries. Its impact includes a relatively lower social stigma against divorced women compared to neighboring countries, although cultural challenges persist in some communities.

7. Turkey

Since the era of legal reforms in the early 20th century, Turkey has adopted an entirely secular Civil Code. Family and divorce law are no longer governed by Sharia but by civil law, which regulates divorce procedures formally. The Turkish divorce system distinguishes between uncontested divorce (divorce by mutual agreement, processed relatively quickly) and contested divorce (disputed for specific reasons). The Turkish civil law system provides full equality between men and women in divorce matters, including the division of marital property, child custody, and alimony. However, other studies indicate that although the secular legal framework provides an egalitarian basis, patriarchal social and cultural norms still influence practice on the ground, for example, in matters of child custody and women's post-divorce position.

All countries analyzed implement divorce processes through official court institutions, ensuring that each divorce is legally registered and that children's rights and post-divorce alimony are protected. The most fundamental similarity among these countries is the recognition that divorce remains valid if it meets the conditions stipulated under Islamic law. Nevertheless, significant differences exist among these countries, as illustrated in the following table 1:

Table 1. Differences among The Global South Country

Country	Main Form of Divorce	Role of the Court	Wife's Rights in Divorce	Socio-Economic Impact
Indonesia	Talaq & wife-initiated divorce	Religious Court	Can file for divorce, limited alimony	Economic burden on women
Malaysia	Talaq, fasakh, taklik, khul'	Syariah Court	Relatively protective, lengthy bureaucracy	Child support often problematic
Pakistan	Talaq dominant	Religious & Civil Courts	Khul' difficult, strict requirements	High socio-economic burden on women
Egypt	Talaq & khul'	Syariah Court	Khul' without husband's consent, return of mahr	Divorce rate increased
Morocco	Talaq, khul', fasakh	Family Court	More equitable (Moudawana 2004)	Social impact relatively controlled
Tunisia	Divorce only through civil court	Civil Court	Equal rights, non-religious grounds	More egalitarian, reduced stigma
Turkey	Civil divorce	Civil Court	Full equality	Stable divorce rate, lower stigma

Discussion

The differences in divorce regulations and practices across seven Muslim countries can be understood within the Islamic Family Law (IFL) framework, which is fundamentally rooted in classical fiqh but undergoes transformation when integrated into modern state legal systems. In classical fiqh, talaq is the husband's prerogative. At the same time, the wife's access is limited through mechanisms such as khul' (divorce initiated by the wife through the return of the mahr) or fasakh (annulment by a judge for valid shari'ah reasons, e.g., failure to provide maintenance). These principles remain clearly observable in Pakistan, where talaq continues to dominate, and women's access to khul' is restricted by conservative interpretations. In Indonesia and Malaysia, the same principles are translated into cerai talak (husband-initiated divorce) and cerai gugat (wife-initiated divorce), with religious courts as the sole authority.

Meanwhile, countries such as Egypt and Morocco have engaged in institutional ijthad by reforming family law to promote gender equality. For example, implementing khul' without the husband's consent in Egypt reflects a reinterpretation of Hanafi fiqh within the framework of modern positive law. Similarly, Morocco's 2004 Moudawana reform combines Maliki fiqh principles with international human rights norms to expand

women's rights. Tunisia and Turkey have gone even further by placing family law under a secular civil system, which, although not explicitly based on fiqh, represents the outcome of a long historical interaction between Islamic law and modern reforms.

This study demonstrates that IFL is not monolithic but rather the result of collective *ijtihad* by Muslim countries in response to social, economic, and political challenges. This is significant as it affirms that Islamic law can evolve according to local contexts and contemporary demands. Therefore, the contribution of this research to Islamic legal studies is to reinforce the thesis that IFL is dynamic and pluralistic, as emphasized by Coulson and Nasution, and consistent with the concept of legal pluralism.

From a practical perspective, the study highlights that although Islamic family law normatively provides space for women to initiate divorce, its implementation heavily depends on judicial structures and social culture. For instance, in Indonesia, although wife-initiated divorce is possible, the enforcement of alimony rulings often fails. In Egypt, while *khul'* is available, cultural resistance continues to stigmatize women. These findings reinforce previous literature. Studies in Morocco, for example, have identified a gap between legal texts and practice, a phenomenon similarly observed in Indonesia and Malaysia. Sonneveld & Stiles (2019) highlighted Pakistani women's limited access to *khul'*, whereas this study shows a different variation: in Indonesia, wives are more dominant in filing for divorce. Thus, this research contributes a comparative perspective that is still rare, examining seven countries simultaneously within the IFL framework.

The study yields several important implications. Theoretically, it enriches IFL literature by demonstrating variations in implementing fiqh in modern contexts while broadening the understanding of Islamic law's flexibility. Practically, it underscores the importance of law enforcement: without robust execution mechanisms, women's post-divorce rights remain neglected, as observed in Indonesia and Malaysia. From a policy perspective, the study offers concrete recommendations: Pakistan needs to reform access to *khul'*; Indonesia and Malaysia must strengthen alimony enforcement; Morocco and Egypt should ensure that legal reforms are accompanied by adequate public dissemination; and Tunisia and Turkey, with their civil law models, can serve as alternative references for other Muslim countries considering IFL reform.

Conclusion

This article discusses a comparative analysis of divorce laws in seven Muslim countries: Indonesia, Malaysia, Pakistan, Egypt, Morocco, Tunisia, and Turkey, identifying similarities and differences in implementing divorce based on Islamic family law theory. The findings indicate that, although there are common principles in divorce,

such as the husband's right to talaq, the wife's right to petition for divorce, and the regulation of alimony, significant differences exist in divorce procedures and the social impacts faced by women. This study makes an important contribution to understanding reforms in Islamic family law. However, it has limitations, as it only examines the comparative divorce laws of seven Muslim countries without exploring in depth the social and cultural practices that influence the implementation of these laws. Additionally, the data used are secondary and do not include the perspectives of individuals directly involved in the divorce process. Therefore, further reforms in divorce laws in Muslim countries are essential to ensure more equitable rights for women, particularly regarding the right to petition for divorce, property division, and child custody.

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