

Substantive Inequality in Article 116 (b) and (c) of the *Kompilasi Hukum Islam*: A Rawlsian Analysis of Divorce Law Reform

¹Muhammad Danias Salsabila, ²Abd. Rouf, ³Syaikhoni

^{1,2}Fakultas Syariah, UIN Maulana Malik Ibrahim Malang, Indonesia

³Korea Muslim Federation, South Korea

*email corresponding author: 250201210067@student.uin-malang.ac.id

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ABSTRACT

The regulation of divorce grounds in Article 116 of the *Kompilasi Hukum Islam* (KHI), particularly letters (b) and (c), reveals a temporal disparity that affects parties' access to justice. Although widely discussed in normative and judicial contexts, studies applying a Rawlsian framework especially the difference principle remain limited. This study examines whether these temporal differences constitute substantive inequality and whether they are normatively justifiable. Using normative legal (doctrinal) research with statutory and conceptual approaches, the study operationalizes John Rawls' theory of justice as an evaluative framework to assess the distribution of legal protection for the least advantaged. The findings show that the disparity between Article 116 (b) and (c) reflects substantive inequality, as it applies inconsistent time- and status-based parameters to situations that are essentially similar, namely the failure to fulfill marital obligations. Such inequality cannot be fully justified under the difference principle, as it may prolong or generalize the harm suffered by disadvantaged parties. Accordingly, this study argues for a shift from a formally time-based approach toward one based on substantive impact, to ensure that divorce law is more responsive in protecting vulnerable individuals.

Keywords: Article 116; Divorce; John Rawls' Theory of Justice; *Kompilasi Hukum Islam*.

Introduction

The regulation of divorce in Islamic family law in Indonesia, particularly through *Kompilasi Hukum Islam* (KHI), functions not only as a normative framework but also determines the extent to which access to justice can be obtained by parties within marital relations. A number of previous studies have examined the regulation of divorce grounds in *Kompilasi Hukum Islam* (KHI) from various perspectives. Research on *Legal Certainty in the Division of Joint Property after Divorce* emphasizes the importance of legal certainty following divorce, particularly in the distribution of marital property, thereby highlighting the role of divorce norms in ensuring the rights of parties after marriage (Firayani, 2024). Meanwhile, the study *Analysis of Causes of Divorce in the Perspective of Islamic Law: A Case Study in the Class 1 A Religious Court of Padang* identifies the factors causing divorce in the practice of religious courts and relates them to the normative foundations within *Kompilasi Hukum Islam* (KHI), thereby demonstrating the relationship between legal norms and empirical realities (Adhha, 2019). On the other hand, the study entitled *Bias Tafsir 'Cacat' dalam Pasal 116 Kompilasi Hukum Islam Perspektif Perlindungan Pasangan Disabilitas* reveals the potential for interpretive bias in the provisions of Article 116, which may have discriminatory implications for vulnerable groups (Khotimah et al., 2025).

The findings of these studies essentially indicate that the regulation of divorce in *Kompilasi Hukum Islam* cannot be separated from issues of substantive justice, whether in the context of legal certainty, judicial practice, or potential bias in the interpretation of norms. This underscores that the provisions governing divorce grounds in KHI function not merely as formal rules, but also carry direct implications for the protection of the parties' rights, particularly those in vulnerable positions (Fitriawati & Zainuddin, 2020). Thus, examining the structure and construction of divorce grounds becomes highly relevant, particularly in assessing the extent to which such regulations reflect principles of justice in Islamic family law. In this context, the present study seeks to extend and deepen previous research by focusing on normative inequality as the core of analysis, specifically concerning the disparity between Article 116 (b) and (c).

The research gap in this study lies in the absence of analyses that specifically examine this regulatory disparity using a modern theory of justice, particularly John Rawls' theory of justice. Through the difference principle, Rawls asserts that inequalities within a system can only be justified if they provide the greatest benefit to the least advantaged. Accordingly, this approach is relevant for assessing whether the differences in regulation under Article 116 (b) and (c) serve

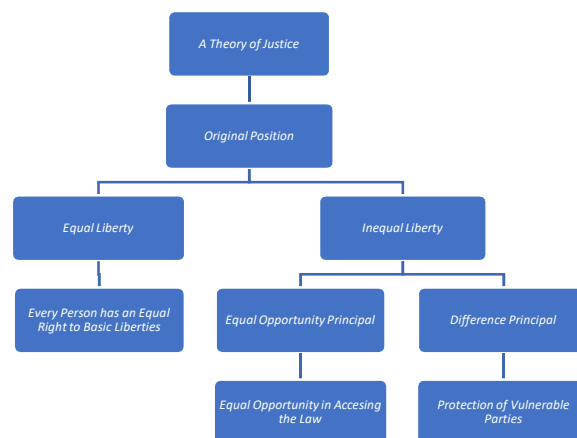
to protect or, conversely, disadvantage vulnerable parties within marital relationships.

Based on this background, the research questions in this article are formulated as follows: (1) whether the temporal disparity in Article 116 (b) and (c) of *Kompilasi Hukum Islam* reflects substantive inequality in the grounds for divorce; and (2) whether such inequality can be justified under the difference principle in John Rawls' theory of justice. Accordingly, the objective of this study is to analyze the substantive inequality within Article 116 (b) and (c) of KHI through the perspective of the difference principle, as well as to examine its implications for the reform of divorce law in Indonesia. Theoretically, this study contributes to the development of Islamic family law scholarship by integrating a contemporary theory of justice. Practically, it is expected to serve as a normative basis for reflecting on the reform of divorce grounds, with a stronger focus on protecting the parties who are most disadvantaged.

Theoretical Framework

As the theoretical foundation of this study, John Rawls' theory of justice is employed to assess fairness in divorce law regulations. Through the concept of *justice as fairness*, Rawls critiques utilitarian approaches that tend to overlook the protection of vulnerable groups, emphasizing that justice must ensure a fair distribution of rights and obligations, particularly for those who are most disadvantaged. This framework is based on the concepts of the *original position* and the *veil of ignorance*, which require the formulation of justice principles objectively, without biased self-interest (Rawls, 2019).

Figure 1. John Rawls' Theory of Justice



From the construction of the original position, Rawls formulates two main principles of justice. The first is the *equal liberty principle*, which holds that every individual has the same rights to the most extensive basic liberties, provided that these liberties are compatible with the same liberties for others. These basic liberties include freedom of thought, freedom of expression, freedom of association, and protection of personal integrity. In the context of family law, the principle of equal liberty can be understood as guaranteeing that every individual within a marriage has an equal legal standing as a legal subject, including access to legal mechanisms when their rights are violated (Rawls, 2019).

The second principle concerns *inequal liberty*, which refers to situations where legal freedoms are not distributed equally, so that some individuals have greater access and scope of liberty compared to others within the legal and social structure. This principle includes the *equal opportunity principle*, which demands that every individual has an equal and fair chance to access rights, resources, and legal mechanisms, without being limited by social position, gender, or structural conditions. It also encompasses the *difference principle*, which states that social and economic inequalities are only justified if they provide the greatest benefit to those who are least advantaged (Rawls, 2019). This principle becomes a key element in the analysis of substantive justice, because Rawls does not reject the existence of differences or inequalities, but requires that such differences have strong moral justification and are oriented toward the protection of vulnerable groups. Accordingly, the law should not be evaluated solely on its formal neutrality; it must also be assessed based on its real impact on those who occupy weak positions within the social and legal structure.

Rawls formulates a key principle relevant to this study, namely the *difference principle*, which states that inequalities are only justified if they provide the greatest benefit to those who are least advantaged. In the legal context, this principle emphasizes that norms should not be evaluated solely based on their formal certainty, but must also be assessed according to their impact on vulnerable groups. In family law, particularly divorce, this approach is crucial given the imbalanced relationship between husband and wife in social practice. Although both are normatively positioned as equals, wives often occupy a more vulnerable position. Therefore, divorce law regulations must be evaluated in terms of the extent to which they provide protection for the disadvantaged party.

In the context of Article 116 of *Kompilasi Hukum Islam*, the temporal disparity between letters (b) and (c) needs to be examined through the perspective of the difference principle. If this disparity actually hampers access to justice for parties who have lost their rights within the marriage, then the norm fails to meet

the requirements of substantive justice. Accordingly, Rawls' theory provides an analytical foundation to assess and critique inequalities in divorce law norms, as well as to formulate directions for a more just legal reform.

Methods

This research constitutes normative legal research that focuses on the examination of written legal norms and the legal reasoning underlying them. The research employs a statute approach and a conceptual approach (Suyanto, 2023). The statute approach is employed to analyze the provisions of *Pasal* 116 letters (b) and (c) of the *Kompilasi Hukum Islam* (KHI) as the legal basis for grounds of divorce in Indonesia, particularly with regard to the differences in the time requirements for filing for divorce. Meanwhile, a conceptual approach is employed to examine the principle of substantive justice through John Rawls' theory of justice, particularly the *difference principle*, as an analytical tool to assess how effectively Articles 116 (b) and (c) are implemented.

The sources of legal materials in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include the *Kompilasi Hukum Islam* (KHI), as well as the principal works of John Rawls, particularly *A Theory of Justice*, which are used as the normative basis for analyzing the concept of justice. Secondary legal materials comprise scholarly books, academic journals, previous research findings, and scientific works that discuss Islamic family law, divorce, and the application of John Rawls' theory of justice in legal and policy contexts. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources used to clarify legal concepts and terminology.

The technique for collecting legal materials is conducted through library research by systematically reviewing and examining various relevant legal sources. The analysis of legal materials is carried out qualitatively using a prescriptive-analytical method, which involves elaborating the applicable legal provisions, identifying normative inequality in the regulation of time requirements in *Pasal* 116 letters (b) and (c) of the KHI, and providing normative arguments regarding the direction of more just legal reform. All legal materials are analyzed deductively by drawing conclusions from the general principles of John Rawls' theory of justice in order to assess substantive justice in the regulation of grounds for divorce within the KHI.

Findings

A Normative Analysis of *Pasal 116 Letter (b) KHI*

Pasal 116 letter (b) of the *Kompilasi Hukum Islam* stipulates that divorce may be filed if one party abandons the other for two consecutive years without permission and without a legitimate reason (Abdurrahman, 2015). This provision is essentially intended as a form of legal protection for the party who is abandoned within the marital bond, particularly when the continuity of the household has been factually disrupted due to the absence of one party. Nevertheless, upon closer examination, this norm contains normative issues that are not merely procedural in nature but also touch upon aspects of substantive justice. Normatively, the phrase “abandoning the other party for two consecutive years” indicates the existence of a relatively lengthy temporal requirement before the right to file for divorce can be realized. This time requirement suggests that the norm-maker assumes the absence of one party may still be remedied within a certain period, such that the law does not immediately open access to divorce. From the perspective of legal certainty and the protection of the institution of marriage, this assumption can be understood as an effort to preserve marital stability and to prevent hasty divorces.

However, when viewed from the perspective of the substantive obligations and rights within marriage, *Pasal 116 letter (b)* raises serious issues. Under both Islamic law and national marriage law, the husband has fundamental obligations to provide both material and emotional support, to protect the wife, and to ensure the continuity of marital life (Mujiono, 2022). When one party abandons the other, a direct violation of these obligations has, in essence, already occurred. This violation is actual from the moment the abandonment takes place, not only after the two-year period has elapsed. Consequently, substantively, the rights of the abandoned party have been infringed from the onset of the abandonment. A normative problem arises when the law requires the abandoned party to wait for two years before accessing the divorce mechanism, while during this period the wife remains in a state of legal and social uncertainty. She is neither fully recognized as a wife whose rights are fulfilled, nor has she obtained a new legal status that would allow her to build a more sustainable life. This situation illustrates a disparity between legal norms and social reality, in which the law prolongs the suffering of the disadvantaged party in order to preserve a formal marital structure that has, in substantive terms, already lost its function.

From the perspective of substantive justice, the two-year time requirement in *Pasal 116 letter (b)* tends to prioritize the abstract interests of the marital institution over the protection of the disadvantaged individual. This approach is

legalistic and formalistic, as it measures the disruption of the household based on the duration of time rather than the actual violation of rights and obligations. Substantive justice, however, demands that the law respond proportionally to rights violations, particularly when such violations have a direct impact on the fulfillment of basic needs and human dignity (Fitrian et al., 2025). Furthermore, the provision in *Pasal* 116 letter (b) also has the potential to overlook the socio-economic realities faced by the abandoned wife. In many cases, abandonment not only entails the physical absence of the departing spouse but also the cessation of financial support and social assistance. During the two-year waiting period, the wife often bears the economic burden independently without legal certainty regarding her marital status. This situation further underscores that the norm is insufficiently sensitive to the wife's vulnerable position as the party most affected. When analyzed through John Rawls' theory of justice, particularly the difference principle, *Pasal* 116 letter (b) reveals weaknesses in protecting those in the least advantaged position. The two-year temporal requirement does not benefit the wife as the disadvantaged party; rather, it delays her access to justice. Consequently, the unequal treatment reflected in this time regulation cannot be morally justified, as it fails to provide the greatest benefit to those in a weak or vulnerable position.

Furthermore, this norm also reflects an underlying patriarchal assumption, where the absence of the husband is still considered tolerable for a certain period, while the impact of abandonment on the wife is not treated as a primary consideration. Such assumptions conflict with the principle of equal standing of husband and wife as recognized in national marriage law and the principle of justice in Islam. The law should not normalize abandonment as a phenomenon that can continue without immediate legal consequences. Accordingly, from a normative-substantive perspective, *Pasal* 116 letter (b) of the KHI requires critical evaluation because it places the temporal requirement as the main condition for divorce without taking into account the rights violations that have already occurred from the outset. This norm fails to capture the essence of the injustice experienced by the abandoned party, thereby potentially perpetuating inequality within marital relations. Therefore, analyzing *Pasal* 116 letter (b) provides a crucial foundation for understanding broader disparities when this provision is compared with *Pasal* 116 letter (c), as well as for formulating directions for a more just reform of divorce law.

A Normative Analysis of *Pasal* 116 Letter (c) KHI

Pasal 116 letter (c) *Kompilasi Hukum Islam* stipulates that divorce may be filed if one party is sentenced to imprisonment for five years or more after the marriage has commenced (Abdurrahman, 2015). This provision reflects the legal view that

imprisonment for a certain period constitutes an extraordinary condition that directly affects the continuity of marital life. Imprisonment not only restricts an individual's physical freedom but also has systemic implications for the convicted party's ability to fulfill fundamental marital obligations. Normatively, this regulation rests on the assumption that imprisonment for five years or more creates a practical impossibility for the incarcerated party to fulfill material and emotional support obligations, provide protection, and maintain marital harmony. Consequently, the law legitimizes the abandoned spouse to file for divorce without an excessive waiting period, as the factual continuity of the marriage has lost its functional basis. The substantive essence of *Pasal* 116 letter (c) lies in the recognition that marriage is not merely a formal bond but a legal relationship that requires the fulfillment of reciprocal obligations. When one party legally loses their freedom for an extended period due to imprisonment, the relationship experiences fundamental dysfunction. Therefore, this norm functions as a corrective instrument to prevent the innocent party from being trapped in a legal bond that no longer ensures the fulfillment of their rights.

From the perspective of substantive justice, *Pasal* 116 letter (c) demonstrates a protective orientation toward the spouse directly affected by the consequences of imprisonment. This norm does not require additional proof of concrete harm, as such harm is assumed to be inherent in the condition of incarceration itself. This approach reflects legal awareness of the social reality that long-term imprisonment almost invariably results in the disruption of economic, emotional, and social support within marital life (Rizkillah & Arinda, 2023). Nevertheless, the regulation based on the duration of imprisonment also raises normative questions regarding the rationale for setting the five-year threshold. The norm generalizes that imprisonment of less than five years is insufficient to be considered substantially disruptive to marital life. In practice, however, shorter-term incarceration can still have significant impacts on the fulfillment of spousal rights, particularly in families with high economic dependence on the incarcerated party.

Furthermore, *Pasal* 116 letter (c) positions a criminal sentence as the primary indicator of marital dysfunction. This approach is formalistic, as it links access to divorce with legal criminal status rather than solely with the degree of fulfillment of marital rights and obligations. Although this approach facilitates evidence and provides legal certainty, it may overlook the more complex and varied factual conditions of family life. From the perspective of John Rawls' theory of justice, this norm can be analyzed through the principle of justice as fairness, particularly in the context of protecting those in the most vulnerable position. *Pasal* 116 letter (c) relatively satisfies the difference principle because it provides a legal mechanism

that allows the disadvantaged spouse to mitigate the burden of injustice resulting from circumstances beyond their control. By granting access to divorce, the norm offers individuals the opportunity to rebuild a more sustainable and dignified life.

However, substantive justice does not only require legal access but also demands the rationality and proportionality of the norm. Setting a five-year threshold as the sole condition has the potential to produce new injustices when applied rigidly, without taking into account the concrete circumstances of the affected party. In this regard, *Pasal* 116 letter (c) still leaves room for evaluation to align more closely with the principle of justice that is responsive to the diversity of social realities. Accordingly, from a normative-substantive perspective, *Pasal* 116 letter (c) KHI demonstrates a legal effort to accommodate justice for spouses affected by imprisonment, yet it still has limitations in addressing the complexity of family life. This norm emphasizes that the continuation of marriage must be based on the actual ability of the parties to fulfill their obligations, rather than merely on the existence of a formal legal bond. Therefore, *Pasal* 116 letter (c) can be regarded as a norm that is progressive in principle, but it still requires further development to fully align with the demands of substantive justice.

Inconsistency Between Formal Legal Classification and Substantive Marital Harm

A comparison between Articles 116 (b) and (c) of *Kompilasi Hukum Islam* (KHI) reveals an inconsistency in the construction of divorce grounds. Although both provisions relate to the failure to fulfill marital obligations, the normative approaches applied differ fundamentally, both in terms of their regulatory basis and their implications for access to justice for the parties involved.

Structurally, Article 116 (b) bases divorce on a temporal indicator, namely abandonment for two consecutive years, whereas Article 116(c) is based on legal status, specifically imprisonment for five years or more. This difference demonstrates that the law employs inconsistent parameters in assessing marital dysfunction. Under (b), the mere existence of a violation of marital obligations is insufficient to allow divorce without meeting a specified duration requirement, whereas under (c), imprisonment is directly considered sufficient to justify divorce without waiting for the actual consequences to unfold over a set period.

From a substantive perspective, both conditions are essentially similar, as they each result in the failure to fulfill fundamental marital obligations, such as provision of support, protection, and presence in domestic life. Both abandonment and imprisonment place the spouse particularly the wife in a position of losing basic rights. However, the law treats these two substantively similar conditions differently.

This differential treatment has direct implications for access to justice. Under Article 116 (b), the abandoned party must wait for two years before filing for divorce, potentially prolonging the harm experienced. Conversely, under letter (c), the spouse affected by imprisonment can access divorce mechanisms more quickly, without being subject to a similar temporal requirement. Thus, the law creates a disparity in treatment for parties who are both in disadvantaged positions (Abdurrahman, 2015).

This inequality becomes even more problematic when analyzed within the framework of substantive justice. The emphasis on the temporal requirement in Article 116 (b) reflects a formalistic approach that does not fully consider the real impact of violations of marital obligations. Meanwhile, Article 116(c) tends to be more responsive to factual conditions, although it is still limited by generalized penal duration parameters. This inconsistency indicates that the law lacks a uniform standard for determining when a marriage can be considered substantively dysfunctional.

From the perspective of John Rawls' theory of justice, particularly the difference principle, this disparity cannot be justified. The principle asserts that differences within a system are only legitimate if they provide the greatest benefit to the least advantaged. In this context, the least advantaged are the spouses whose rights within the marriage are unfulfilled, especially wives in cases of abandonment or the husband's imprisonment.

However, the difference in regulation between (b) and (c) does not consistently favor these parties. Under (b), the two-year temporal requirement delays access to justice and prolongs the disadvantaged condition, thus failing to benefit the least advantaged. Conversely, (c) provides relatively greater protection by allowing quicker access to divorce. Therefore, the disparity between these two norms does not meet Rawlsian justice criteria, as it is not designed to benefit those in weak positions.

Furthermore, this inconsistency shows that the regulation of divorce grounds in KHI remains fragmented and is not fully grounded in a coherent principle of justice. Norms that are supposed to protect the disadvantaged instead produce differential treatment without adequate justification (Chaudhary & Smith, 2026). As a result, the law not only fails to provide optimal protection but also has the potential to perpetuate inequalities within marital relationships.

Thus, it can be concluded that there is substantive inequality in the regulation of Articles 116 (b) and (c) of KHI, stemming from the use of inconsistent parameters in assessing marital dysfunction. This disparity does not align with principles of justice, particularly the difference principle, as it fails to provide

greater benefit to those who are most disadvantaged (Hirose, n.d.). Therefore, efforts are needed to reform the law toward aligning norms based on the substantive violation of obligations, rather than solely on formal parameters such as duration or legal status.

Table 1. Normative Comparison of Article 116 Letters (b) and (c) of the *Kompilasi Hukum Islam*

Aspect	Letter (b)	Letter (c)	Analysis
Parameter	Time period (2 years)	Criminal status (\geq 5 years)	Uses different basis
Substance	Failure to fulfill obligations	Failure to fulfill obligations	Has substantive similarity
Access to Divorce	Requires a waiting period	Does not require an additional waiting period	There is a difference in access mechanism
Impact	Potentially prolongs harm	Potentially generalizes the level of harm	Both have limitations

Discussion

Reinterpreting Inequality from the Perspective of Rawls' Difference Principle

The findings regarding the inconsistency between formal legal classification and substantive marital harm indicate that the regulation of divorce grounds in *Kompilasi Hukum Islam* cannot be understood merely as a technical normative issue. This inequality reflects a deeper problem: how the law distributes access to justice among parties in marital relationships. In this context, a reinterpretation of the norms in Article 116 KHI becomes important, using John Rawls' *difference principle* as a framework.

The difference principle asserts that any form of inequality within social and legal structures is only justified if it provides the greatest benefit to those who are least advantaged (Rawls, 2019). This principle shifts the focus of analysis from formal equality to substantive justice, by assessing whether a regulation truly protects those in vulnerable positions. Within this framework, the law is evaluated not only based on its normative consistency but also on its impact on the distribution of benefits and burdens among the parties.

When the previous findings are viewed from this perspective, it becomes evident that the disparity in regulation between Articles 116 (b) and (c) does not meet the moral justification criteria set out in the difference principle. The

temporal differences in regulation do not provide benefits to the disadvantaged party; instead, they increase the burdens that must be borne in certain circumstances. Thus, this inequality cannot be understood as a legitimate form of differentiation, but rather as a normatively problematic disparity.

In line with this, Martha Fineman, through the *vulnerability theory*, asserts that the law must be designed with consideration of the inherent vulnerability of individuals within social relationships (Albertson Fineman, 2017). In the context of marriage, parties experiencing abandonment or the loss of their marital rights are in a vulnerable position that requires more responsive legal protection. Therefore, a norm that restricts access to relief from such conditions reflects a failure to address structural vulnerability.

From a comparative perspective, family law trends in various countries show a shift toward a more substantive approach. For example, in the legal system of the United Kingdom, the application of the *no-fault divorce* principle emphasizes that divorce can be based on an irretrievable breakdown of the marriage, without being restricted by specific formal classifications (Ingleby, 1989). This comparison indicates that global divorce law reforms tend to strengthen substantive justice by reducing reliance on formal indicators. Within this framework, the disparity in Article 116 KHI reflects the law's suboptimal orientation toward protecting the most disadvantaged parties and highlights the need for adjustments to align with the development of modern principles of justice.

From a Rawlsian perspective, this situation indicates that the structure of divorce law does not yet fully function as a mechanism for distributing justice fairly. When the law slows down or restricts access for the disadvantaged party to exit an unjust situation, it fails to fulfill the principle of justice as fairness. In other words, the identified disparity is not merely a matter of normative inconsistency but also reflects a failure to realize distributive justice within family law relationships.

Thus, reinterpretation through the difference principle leads to the conclusion that divorce grounds regulations must be evaluated based on their impact on the most disadvantaged parties. Just divorce law is not merely law that is formally consistent; it is law capable of reducing inequalities and providing effective protection for those in vulnerable positions. This perspective provides an essential foundation for formulating directions for legal reform that are more oriented toward substantive justice.

Legal Implications for the Least Advantaged in Divorce Law

The disparity in the regulation of divorce grounds does not stop at the normative level but also produces tangible legal consequences for those in the most disadvantaged position (*least advantaged*). In the context of marital relationships, this refers to individuals whose basic rights are unfulfilled due to the dysfunction of the marriage, whether economically, socially, or emotionally. Therefore, an analysis of the legal consequences is essential to assess the extent to which divorce norms can provide effective protection for this group.

First, this regulatory disparity creates legal status uncertainty for the *least advantaged*. Individuals in disadvantaged positions remain bound in a legal relationship that has, in fact, lost its fundamental function, leaving them in an ambiguous situation between formal attachment and substantive helplessness. This uncertainty not only affects formal legal aspects but also impedes access to other rights that depend on clarity of legal status.

Second, there is a disproportionate economic and social burden borne by the *least advantaged*. In situations where marital obligations are no longer fulfilled, the disadvantaged party often must meet their own living needs without adequate legal protection. This condition shows that the law indirectly transfers the burden of loss to the most vulnerable, thereby deepening existing inequalities within marital relationships.

Third, the disparity hinders the restoration of rights and autonomy for the *least advantaged*. Divorce should serve as a legal mechanism to end injustice and enable individuals to rebuild their lives. However, when access to divorce is restricted by rigid formal requirements, the disadvantaged party loses the opportunity to exit harmful situations, causing the law to fail in its emancipatory function.

Fourth, from a justice perspective, these legal consequences indicate a failure in the distribution of protection for the least advantaged. Under John Rawls' difference principle, the law should provide the greatest benefit to those who are most disadvantaged. Yet in this case, existing norms instead exacerbate the position of the *least advantaged* by delaying access to justice and prolonging their disadvantaged condition. This confirms that the disparity is not only normative but also reflects a failure to achieve distributive justice.

Moreover, from the perspective of Martha Fineman's vulnerability theory, this condition indicates that the law is not yet fully responsive to the protection needs of the least advantaged (Albertson Fineman, 2017). Instead of reducing vulnerability, the existing norms actually prolong exposure to social and economic

risks. Consequently, the resulting legal consequences are systemic and require more adaptive normative intervention.

Thus, the legal consequences of the disparity in divorce regulations directly affect the least advantaged, manifesting in legal uncertainty, disproportionate economic burdens, limited autonomy, and failure of legal protection. These findings underscore that divorce law reform must be explicitly aimed at protecting vulnerable parties as the core of substantive justice from a Rawlsian perspective.

Direction of Reform for Articles 116 (b) and (c) KHI from a Rawlsian Perspective

The identified disparity in divorce grounds regulation indicates that divorce law in the *Kompilasi Hukum Islam* still tends to follow a formalistic approach, particularly through the use of rigid time parameters and cause classifications. This condition results in the law being insufficiently responsive to the substantive harm experienced by those in the most disadvantaged position. Therefore, the direction of divorce law reform should focus on shifting the paradigm toward substantive justice, prioritizing the protection of the least advantaged.

From the perspective of John Rawls' theory of justice, particularly through the difference principle, any inequality in legal regulation can only be justified if it provides the greatest benefit to those who are most disadvantaged (Arianto et al., 2025). Thus, divorce law reform must ensure that no regulation further prolongs or exacerbates the harm experienced by these parties. This requires an evaluation of provisions that still restrict access to justice through disproportionate formal requirements.

One crucial direction for reform is a shift from a formal-cause-based approach to a substantive-impact-based approach. Divorce grounds should not only be based on categories of violation or legal status, but also consider the extent to which such violations affect the fulfillment of rights and obligations within the marriage. This approach makes the law more responsive to the real conditions faced by the parties and better able to identify situations where the least advantaged require immediate protection.

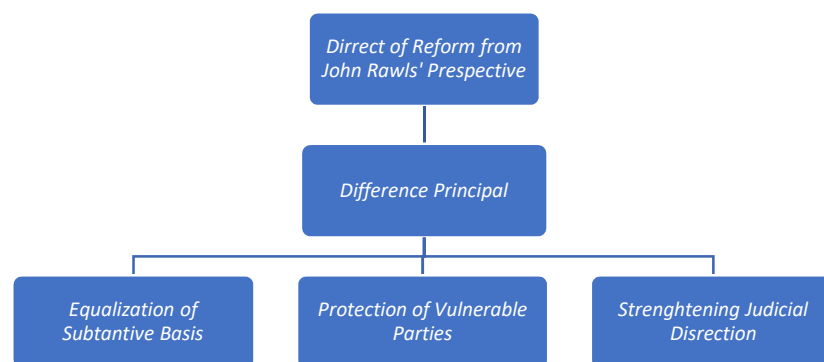
Furthermore, legal reform should reduce reliance on rigid temporal requirements. Setting a fixed time period as an absolute condition for divorce can hinder access to justice, especially when substantive harm has already occurred from the outset. From a Rawlsian perspective, such norms cannot be justified if they do not provide tangible benefits to the least advantaged. Therefore, the reformulation of these norms should aim for temporal flexibility, allowing assessment based on concrete conditions without compromising overall legal certainty.

On the other hand, the existence of a temporal corridor remains relevant for maintaining legal certainty. In the practice of marital law in Indonesia, the *sighat ta'lik* recorded in the marriage book includes provisions regarding abandonment over a period of two years. Although its wording is similar to the provisions of Article 116 (b) of the *Kompilasi Hukum Islam*, the KHI norm adds the element of “consecutively without permission and without a valid reason or due to circumstances beyond one’s control” (Harahap & Siregar, 2022). However, from a substantive perspective, whether with or without justification, the condition of abandonment still affects the fulfillment of rights and obligations within the marriage. From the perspective of the difference principle, this situation continues to place one party in a disadvantaged position, which cannot be conceptually justified.

Therefore, the provision in the *sighat ta'lik* can be maintained as a temporal corridor, but in a functional capacity rather than as a rigid normative requirement (Hasan et al., 2022). This approach allows judges to assess, in context, the degree of violation of marital obligations and the harm experienced by the parties, without being strictly bound by fixed temporal limits. In this way, divorce law can provide legal certainty while also achieving proportional justice that prioritizes the protection of the least advantaged.

Thus, the direction of reforming divorce law in the *Kompilasi Hukum Islam* should move toward a system that is more adaptive, contextual, and oriented toward substantive justice. Such reform aims not only to correct normative inconsistencies but also to ensure that the law fulfills its primary function as an instrument of justice that protects those most disadvantaged in marital relations.

Figure 2. Direction of Regulatory Reform



Conclusion

This study addresses two main research questions. First, the difference in temporal regulation in Article 116 (b) and (c) of the *Kompilasi Hukum Islam* reflects substantive inequality in the grounds for divorce. Although both provisions arise from substantially similar conditions—namely, the failure to fulfill marital obligations—the law applies different parameters: a temporal criterion in (b) and a legal status criterion in (c), creating disparities in access to divorce. Second, this inequality cannot be fully justified from the perspective of John Rawls' difference principle, as it does not consistently provide benefits to the least advantaged and, in certain cases, even prolongs or generalizes the harm experienced.

The novelty of this study lies in its analytical approach, which not only identifies textual differences in norms but also evaluates the rationale of temporal regulations through the operationalization of the difference principle as a tool to assess substantive justice in Islamic family law. Accordingly, this research offers the perspective that inequality in divorce law is not only about the substance of the grounds for divorce but also about how the law regulates access to divorce through the normative parameters employed.

The study contributes both theoretically and practically. Theoretically, it extends the use of Rawlsian justice theory in Islamic family law studies by demonstrating how the difference principle can be operationalized to evaluate legal norms concretely. Practically, it provides a normative basis for reforming divorce regulations in the *Kompilasi Hukum Islam*, particularly to shift from a formal time-based approach to a substantively impact-based approach and to strengthen the role of judges in assessing the concrete circumstances of the parties.

However, the study has limitations, as it uses a normative approach focused on legal text and theoretical frameworks, which does not fully capture the complexities of court practice and the lived experiences of parties in divorce cases. Future research is recommended to integrate empirical approaches to examine how these normative inequalities operate in practice and to evaluate the effectiveness of alternative arrangements, including mechanisms such as *sighat ta'lik talak*, more comprehensively.

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