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license**INFERTILITY, GENDERED EXPECTATIONS, AND
MARITAL BREAKDOWN: A SOCIO-LEGAL ANALYSIS
OF CHILDLESSNESS AS A GROUND FOR DIVORCE IN
INDONESIA****Justine Ardalia Maharani***Jenderal Soedirman University, Jalan Profesor Dr. HR.
Boenyamin No.708, Purwokerto 53122, Indonesia*Correspondence E-Mail: ardalia.maharani@gmail.comDOI: <https://doi.org/10.30598/baileofisipvol3iss2pp372-389>**ABSTRACT**

This study aims to analyze how reproduction-oriented social expectations influence legal reasoning and social legitimacy in divorce cases arising from childlessness in Indonesia. In a society deeply rooted in patriarchal and religious values, infertility is often perceived not merely as a biological issue but as a moral and social failure. Employing a qualitative approach through a socio-legal research design, this study combines normative analysis of Islamic family law with a sociological examination of gender and reproductive constructions. Data were collected from the Situbondo Religious Court Decision No. 1254/Pdt.G/2021/PA.Situbondo and in-depth interviews with judges, lawyers, and parties involved in divorce cases due to infertility. The findings reveal that infertility is socially interpreted as the wife's inability to fulfill reproductive duties, generating psychological pressure, social stigma, and legitimized divorce through judicial reasoning framed as "disharmony" or "no hope of reconciliation," despite the absence of explicit legal grounds in Law No. 1/1974 or the Compilation of Islamic Law. A new tendency among younger judges reflects an emerging view of infertility as a gender equality and individual rights issue. The novelty of this study lies in integrating legal and sociological analysis to uncover the silent patriarchal bias within contemporary Islamic legal practice. Theoretically, it advances socio-legal and family sociology discourse by demonstrating that law is not neutral but a site of social and gender negotiation, while practically, it advocates mainstreaming gender equality perspectives in marital law interpretation to achieve substantive justice in infertility-related divorces.

Keywords: Gender Equality, Infertility, Islamic Family Law, Patriarchy, Socio-Legal Study

INTRODUCTION

In the context of Indonesian society, which continues to uphold deeply rooted religious and patriarchal cultural values, marriage is often perceived not merely as a legal or emotional union between two individuals but as a social institution designed to ensure lineage continuity (Krismono et al., 2024; Munro et al., 2024). This perception is firmly embedded within the social structure and religious norms, where the success of a marriage is frequently measured by the presence of children. In many communities, couples who remain childless often experience social pressure, stigma, and even discriminatory treatment from extended families and the surrounding community (Arwansyah & Suharyanto, 2025; Hasanudin et al., 2024). Infertility, especially when

attributed to women, often becomes a central cause of marital tension that may ultimately lead to divorce. This phenomenon highlights how social constructions of gender roles and reproduction profoundly shape the meaning and legitimacy of marriage in Indonesia.

From a legal standpoint, particularly within the religious court system, infertility is not explicitly recognized as a legitimate ground for divorce under Law No. 1 of 1974 on Marriage or the Compilation of Islamic Law (KHI). Nevertheless, empirical practices reveal flexible judicial interpretations that link infertility to grounds such as “disharmony” or “no prospect of reconciliation” (Puspitasari et al., 2022; Susanto & Andini, 2023). In effect, childlessness is often equated with the failure to fulfill the purpose of marriage as mandated by law. The decision of the Situbondo Religious Court (Decision No. 1254/Pdt.G/2021/PA.Situbondo) provides a concrete example of how infertility can be used as a legal basis for divorce, despite not being explicitly stipulated. Such instances invite broader reflection on how law interacts with social values, moral norms, and gender constructions that prevail within society (Kusmardani, 2024; Silvana et al., 2024).

Scholarly inquiry into divorce caused by infertility in Indonesia remains limited, particularly in studies that integrate sociological and legal perspectives. Most family law research continues to emphasize normative aspects, analyzing statutes and jurisprudence, while overlooking the accompanying social dynamics. For example, Rinaldo et al. (2024) argue that infertility may result in divorce because it impedes the fulfillment of marital objectives, while Guna et al. (2024) associate it with moral and religious considerations within traditional Islamic communities. Similarly, studies by Hasanah (2022) and Mutolib and Nuraini (2022) reveal that in East Java, social pressure on women without children is so intense that it frequently drives couples toward divorce. However, these studies seldom connect their sociological findings with the actual judicial practices observed in religious courts.

International literature also demonstrates that infertility is widely constructed as a social issue intertwined with gendered meanings. In a Middle Eastern context, Algerian (2021) found that female infertility is often perceived as a moral failure that legitimizes polygamy or divorce. Comparable findings in East Africa by Atahigwa et al. (2025) indicate that infertility reconfigures household power relations and reinforces male dominance. In Southeast Asia, Menon and Gangopadhyay (2025), Teerawichitchainan and Ha (2024), and Xu et al. (2025) observed that social pressure on childless women is closely linked to the belief that reproduction is a moral obligation rather than a personal choice. These studies collectively emphasize that infertility must be understood not solely as a medical condition but as a social construct shaping gender relations and influencing both legal and social legitimacy.

In the sociology of law, numerous studies have underscored that law often mirrors dominant social values. Haiyan et al. (2024) and Sherrouse et al. (2022) assert that the law is never truly neutral; rather, it reflects and reproduces existing power structures. Within the context of Islamic family law, Brieger et al. (2021) and Luca et al. (2023) found that legal interpretations are often shaped by patriarchal values defining gender roles and expectations. In

Indonesia, Ardhana and Puspitasari (2023) and Hefner (2021) note that religious court practices remain influenced by traditional moral views concerning the roles of husbands and wives. Consequently, the issue of infertility in divorce cases cannot be separated from broader social structures wherein law and culture mutually reinforce each other in legitimizing divorce.

Furthermore, Burr's (2024) theory of the social construction of gender provides a crucial framework for understanding how gender identities and roles are produced through social interactions and institutionalized within legal systems. In the case of infertility, women often become the subjects of social constructions that link morality, religiosity, and family honor. Through the lens of patriarchal bargaining, Benstead (2021) and Yu (2024) emphasize that women frequently negotiate their positions within patriarchal systems that demand conformity to gendered norms, including within marital relationships. Thus, divorce resulting from infertility is not merely a legal issue but also a socio-cultural arena where women must navigate social expectations and normative hierarchies that position them as subordinate.

Empirical studies also reveal how social and cultural factors shape judicial interpretation in family cases. Alam et al. (2024) and Azzahra and Shuaib (2022) demonstrate that religious court judges in East Java often employ moral rather than purely legal reasoning. Likewise, Rismarini and Adira (2025) and Yulinda et al. (2025) find that societal pressure on childless couples can serve as an implicit social consideration influencing judicial decisions. Conversely, research by Kholiq and Halimatusa'diyah (2023) and Wardhani and Natalis (2024) highlights a generational shift among younger judges who increasingly incorporate gender equality and individual rights into their interpretations of Islamic law. This evolution reflects an ongoing transformation in judicial discourse, from traditional moral reasoning toward more substantive notions of justice.

Despite extensive discussions on the legal, moral, and social dimensions of infertility, few studies have comprehensively linked social constructions of gender with concrete legal practices in religious courts. Most existing works remain either normative or sociological in scope, without bridging both within an integrated analytical framework. Yet, understanding infertility as a ground for divorce requires deeper exploration of how Islamic legal interpretations, social values, and gender expectations intersect to produce what is perceived as a "legitimate" reason for divorce. This study therefore seeks to move beyond prior research by integrating legal analysis with a sociological lens that examines the social and gendered dynamics underlying judicial practices.

Focusing on the Religious Court of Situbondo, a region marked by strong religious and patriarchal traditions, this study provides a critical reading of how social norms influence legal practices and how the law, in turn, reproduces or challenges those norms. Rather than viewing law merely as a formal institution, this study approaches it as a symbolic and performative system that regulates gender relations and moralities. Through critical analysis of court decisions and interviews with legal actors, this research underscores that law does not operate in a vacuum; it coexists with surrounding social values and often serves as a mechanism of legitimacy for unequal social structures. Nonetheless, amidst the persistence of patriarchal hegemony, emerging signs

of change, particularly among younger judges, indicate a shift toward interpreting infertility not as a woman's failure but as a matter of individual rights and human well-being. Within this socio-legal landscape, the present study contributes to expanding discourses on the sociology of law and family in Indonesia, asserting that infertility should be understood not merely as a medical or moral issue but as a social construction negotiated at the intersection of religion, law, and gender.

RESEARCH METHOD

A qualitative approach with a socio-legal design was employed, as infertility as a ground for divorce cannot be adequately captured through quantitative measures or purely normative legal analysis. The issue exists at the intersection of legal norms, judicial practices, and socially constructed gender meanings. The socio-legal design enables the researcher to interpret court decisions not only as legal documents but also as social texts produced within cultural contexts, an approach aligned with contemporary socio-legal scholarship, which emphasizes that law both reflects and reproduces dominant social values (Ezirigwe & Glazewski, 2024; Peck, 2023). Furthermore, an interpretive-sociological framework that integrates the social construction of gender (Burr, 2024) and patriarchal bargaining (Cornejo-Abarca et al., 2025; Yu, 2024) was adopted to understand how legal actors negotiate the meaning of infertility within the setting of religious courts.

The locus of the study was the Religious Court of Situbondo, selected purposively because of its strong religiosity and entrenched patriarchal norms, which make it an empirical laboratory for examining the legitimacy of divorce due to childlessness. Decision No. 1254/Pdt.G/2021/PA.Situbondo was chosen as the central case study because it illustrates flexible interpretive practices and contains visible traces of social reasoning within the judicial decision. The selection of this site and case allowed the researcher to bridge formal legal data with the lived experiences of involved actors, thus providing a holistic understanding of the phenomenon.

Participants were selected using purposive sampling complemented by snowball techniques to reach key informants. A total of twenty individuals participated in the study, consisting of four judges (including younger judges who demonstrated distinct interpretive orientations), five family lawyers or legal advocates, eight parties directly involved in infertility-related cases (former spouses), one court clerk, and two community or religious leaders frequently consulted for moral-legal opinions. The selection criteria were based on direct involvement in cases, decision-making capacity, and social influence over the legitimacy of divorce, criteria that ensured a diversity of perspectives.

Data collection combined multiple qualitative techniques, including legal document analysis (court decisions, case files, and hearing notes), semi-structured in-depth interviews, participant observation during court sessions and related interactions, and informal

conversations recorded as field notes. The analysis of court decisions provided formal traces of judicial reasoning; interviews revealed subjective meanings, motivations, and social pressures; while observations uncovered everyday practices and courtroom rituals that remain unwritten. This combination of methods was designed to capture the multilayered dimensions of meaning, from legal texts to social interactions, in accordance with the principles of methodological triangulation in qualitative research (Siedlecki, 2022).

Triangulation was applied at three levels: (1) source triangulation, integrating perspectives from judges, lawyers, litigants, and court clerks; (2) methodological triangulation, combining document analysis, interviews, and observation; and (3) theoretical triangulation, interpreting the data through the lenses of Berger and Luckmann's social construction theory and Kandiyoti's feminist framework. Analytical triangulation was also performed through research team discussions and peer debriefing to minimize interpretive bias. The validity of findings was further enhanced through member checking, confirming preliminary results with selected key informants, and maintaining a transparent audit trail for documentation. Ethical considerations were paramount throughout the study, including obtaining written informed consent, ensuring participant anonymity, and maintaining sensitivity toward emotional or traumatic experiences.

RESULTS AND DISCUSSION

Infertility Beyond Biology: The Moralization of Childlessness in Indonesian Marriages

Field interviews conducted in Situbondo reveal that narratives surrounding infertility in marriage extend far beyond biological explanations. For most women interviewed, childlessness is not merely an undesirable medical condition but a profound social wound that erodes self-esteem and family honor. One informant, S (38 years old), shared that after five years of marriage without children, she frequently became the target of subtle mockery from her husband's relatives. She recalled being asked the same questions at every family gathering: "Have you seen a doctor yet?" or "Maybe you're the barren one?" Such remarks, though seemingly trivial, carry heavy moral undertones, illustrating how infertility is not viewed as a health issue but as a moral and social failure attributed primarily to women.

In rural East Java, particularly in Situbondo, religious and customary values remain deeply intertwined in everyday social practices. Field observations in both the religious court and household settings indicate that children are often regarded as the ultimate "completion" of a marriage and as tangible evidence of divine blessing. Conversely, the absence of children is perceived as a sign of spiritual or moral defect. A judge interviewed for this study explained that most divorce cases citing childlessness are triggered not by explicit marital conflict but by sustained social pressure. Husbands, he noted, often feel a loss of social status for being perceived as unable to "continue the lineage," prompting them to seek moral justification for ending the marriage.

This phenomenon reflects what Cicerchia (2023) terms the moral economy of reproduction, a social order in which reproduction functions as a moral and social currency. In Indonesia's deeply patriarchal context, a woman's capacity to bear children is not evaluated solely in biological terms but serves as a symbol of moral responsibility toward her extended family and community. Consequently, when a woman cannot conceive, she is not merely labeled "infertile" but is perceived as morally incomplete, thereby tarnishing the family's reputation. Within such a moral order, the female body becomes an instrument of social control, an arena where familial honor is contested and upheld.

Field observations corroborate this perspective. In one case in Panji Lor village, the social atmosphere surrounding a childless couple revealed subtle forms of exclusion. The woman was rarely invited to social or religious gatherings such as pengajian or extended-family events. Although no formal rules dictated this, such exclusion operated as a moral sanction. In interviews, several neighbors remarked that "a woman who has no children should pray more and reflect on herself." This statement encapsulates the moral logic linking infertility to spirituality, implying that childlessness results from inadequate faith or insufficient devotion.

Table 1. Social Perceptions of Infertility in Marriage

Perception Category	Common Social and Moral Expressions
Infertility as medical failure	"Maybe God hasn't granted it yet," "try visiting a herbal clinic."
Infertility as moral failure	"A woman should reflect on herself," "perhaps there's a sin yet to be atoned for."
Infertility as social disgrace	"Poor husband, no offspring," "the family feels incomplete."
Infertility as spiritual destiny	"It's God's will, but one must still make an effort."

Source: Field interviews, Situbondo (2024)

The table demonstrates that social perceptions of infertility are far from uniform. While a minority of respondents regard it as a medical condition, the majority associate it with moral and spiritual dimensions. In other words, infertility in Indonesia is often personalized and moralized, becoming a reflection of a woman's perceived moral quality and her family's social standing.

Within the theoretical framework of the moral economy of reproduction, this process exemplifies how moral values are reproduced through seemingly natural social practices. As Cicerchia (2023) emphasizes, in patriarchal societies reproduction is not solely a biological imperative but also a mechanism of social control, ensuring that women conform to their expected roles as caregivers, childbearers, and moral custodians of the family. Consequently, infertility represents a form of "deviation" that must be corrected, whether through social pressure or legal legitimation in the form of divorce.

An analysis of Situbondo Religious Court Decision No. 1254/Pdt.G/2021/PA.Situbondo shows that judges often employ the narratives of "marital disharmony" or "no hope for reconciliation" to legitimize divorce. Although infertility is not explicitly recognized as a lawful ground for divorce in positive law, moral reasoning remains central to judicial deliberation.

Judges frequently invoke socially grounded moral arguments under the pretext of preserving the dignity of both parties. In practice, however, such reasoning reinforces gender hierarchies, positioning women as primarily responsible for reproductive failure.

In another interview, N (42 years old), a respondent who had been the defendant in a divorce case due to infertility, admitted that her husband's decision to end the marriage was driven more by family pressure than personal dissatisfaction. "My husband said he was fine, but his parents insisted he find another wife to have children," she explained. This statement underscores the collectivized nature of infertility in Indonesian society, where a private biological issue becomes a collective moral concern, and individual autonomy is subordinated to family expectations.

These findings affirm that infertility in Indonesia is not merely a medical or personal phenomenon but a deeply social field embedded with moral values, cultural norms, and emotional regulation. Within this framework, law does not function as a neutral institution but as a symbolic apparatus that reproduces patriarchal social orders. Court decisions legitimizing divorce on the grounds of infertility cannot be detached from the moral assumptions that assign reproductive responsibility, and failure, primarily to women.

Judicial Elasticity: The Legal Translation of Social Expectations

The concept of judicial elasticity refers to the law's capacity to adapt to prevailing social values, particularly when written norms do not explicitly regulate specific conditions. In Indonesian divorce cases involving infertility, this elasticity is evident in the practices of religious courts, where judges interpret childlessness as a form of "marital disharmony," despite its absence as a legal ground for divorce in statutory law. Analysis of the Situbondo Religious Court Decision No. 1254/Pdt.G/2021/PA.Situbondo demonstrates that judicial interpretation is shaped not in isolation but within a matrix of social pressure, cultural expectations, and religious morality that sanctifies progeny as the ultimate measure of marital success.

In this ruling, the judge employed the phrases "lack of harmony" and "no hope for living together" as the juridical basis for granting a husband's petition to divorce his wife, who was considered unable to bear children after seven years of marriage. These phrases appeared in the legal reasoning without medical or clinical verification of infertility but were substantiated through witness statements and family testimonies describing persistent marital tension driven by familial pressure. From a purely legal perspective, this reasoning aligns with Article 39(2) of Law No. 1 of 1974 on Marriage, which allows divorce if there is "sufficient reason to believe that the spouses can no longer live harmoniously as husband and wife." However, from a sociological standpoint, this terminology operates as a flexible interpretive space that transforms social values about lineage and fertility into legally acceptable justifications for divorce.

An interviewed judge explained that infertility cases "cannot be viewed solely as medical problems, but as long-term social and psychological issues." He acknowledged that "emotional pressure from family mockery" and "loss of harmony due to mutual blame" often become

decisive factors in approving divorce petitions. In such cases, the law is not applied as a detached normative system but as a living social practice shaped by communal moral reasoning. Judicial elasticity, therefore, bridges the gap between legal text and social reality.

Field observations during court proceedings further reveal the emotional intensity permeating the judicial atmosphere. In one open hearing, a husband repeatedly declared, “I have been patient, but my family cannot accept this.” Family members in attendance nodded in visible agreement. The judge responded empathetically and refrained from probing the medical aspects of infertility or previous treatment attempts. Such scenes illustrate that divorce hearings are not merely legal arenas but also symbolic stages where social tensions are translated into juridical narratives.

The law-in-context framework articulated by Cotterrell (2024) provides a useful lens for understanding this dynamic. Cotterrell argues that law cannot be comprehended solely as a normative system written in codes but as a social practice operating within networks of values, emotions, and power relations. In infertility-related divorces, judges act as mediators between formal norms and social expectations, they must uphold legal authority while accommodating communal moralities that equate marital success with the ability to produce offspring. Thus, judicial elasticity becomes a form of legal adaptation to social pressures, albeit one that risks reproducing patriarchal biases that burden women with moral responsibility.

Analysis of the Situbondo court’s legal reasoning also reveals consistent narrative patterns aligned with the social values identified in earlier interviews. Judges rarely use the term infertility explicitly; instead, they employ phrases such as “incompatibility” or “loss of harmony.” These expressions function as flexible legal umbrellas through which social pressures, stigma, and family shame are transformed into legally valid reasons for divorce.

Table 2. Translation of Social Values into Legal Terminology

Social Values	Judicial Terminology Used
Offspring as a symbol of honor	“Marital harmony is disrupted”
Familial pressure on the wife	“No hope for living together”
Stigma toward infertile women	“Irreconcilable differences”
Moral obligation to have children	“The purpose of marriage is not achieved”

Source: Situbondo Religious Court decision analysis, 2024

The table illustrates that judicial elasticity operates through the strategic selection of symbolic legal language that is open to moral interpretation. Terms such as “lack of harmony” or “unfulfilled marital purpose” are not neutral descriptors but vehicles for translating and legitimizing social morality within formal legal reasoning.

A female lawyer, identified as H, noted that “many judges actually know infertility is the main reason, but they choose safer language to avoid appearing discriminatory.” This remark reveals judicial awareness of potential gender bias while also highlighting the law’s limitations in confronting entrenched social norms. By using neutral language, judges fulfill a dual function:

maintaining legal legitimacy while accommodating dominant social morality.

Nevertheless, among younger judges, an emerging trend suggests a shift toward more gender-equitable interpretations. One junior judge, identified as M, stated, “The absence of children should not automatically be viewed as disharmony; it can be managed if both partners have mutual understanding.” Such perspectives indicate a gradual transformation in judicial discourse, viewing law not only as a reflection of social values but also as a potential instrument for social change. Although still a minority, this shift signals an important development in contemporary Islamic judicial practice in Indonesia: judicial elasticity can function dually, as a means of preserving patriarchal norms and as a site for transformative interpretations that promote gender equity.

Patriarchal Bias and the Gendered Burden of Infertility

The gender dimension represents the most salient aspect in both social and legal debates surrounding infertility in Indonesia. In nearly all divorce cases analyzed, including Religious Court Decision No. 1254/Pdt.G/2021/PA.Situbondo, infertility is almost invariably associated with women. This assumption persists even in the absence of medical evidence identifying which partner is infertile. Both social perceptions and legal reasoning converge toward the same narrative: that the wife has failed to fulfill her reproductive duty as a woman, a spouse, and a symbol of family honor. In this context, infertility is not merely a biological condition but also a moral and social failure that undermines a woman’s status within the family and community.

An interview with Judge S at the Situbondo Religious Court revealed that in most divorce cases initiated by husbands, the primary claim cited is that “the wife cannot bear children,” which, according to him, is sufficient to demonstrate “a rupture in marital harmony.” The judge further noted that medical evidence is not always required because “psychological and social factors are adequate to prove disharmony.” From a formal legal perspective, this reasoning aligns with Article 39(2) of Law No. 1 of 1974 and Article 19(f) of Government Regulation No. 9 of 1975, both of which allow divorce when the couple is “no longer able to live harmoniously.” Sociologically, however, this reflects an institutionalized reproduction of patriarchal bias, where biological failure is socially constructed as moral failure, always attributed to women, while men’s positions remain protected by social norms that legitimize divorce.

An interview with a female informant, L, a divorced woman after eight years of marriage without children, revealed the heavy emotional toll caused by social stigma. She recounted that from the third year of her marriage, pressure from her husband’s family intensified, making her feel unworthy as a wife. In a subdued tone, she noted that her husband “never had himself examined by a doctor,” yet continually accused her of being “barren.” Such narratives illustrate how infertility becomes both personalized and feminized, functioning as a symbolic tool for regulating women within the moral framework of the family. This aligns with Korteweg and Yurdakul’s (2024) notion of gendered moral citizenship, wherein women’s moral worth in patriarchal societies is measured through conformity to familial norms, loyalty, and reproductive

capacity. Within this framework, women who fail to bear children are perceived as failing in their moral duty as moral citizens.

Field observations in Situbondo confirmed the embeddedness of these views within the social sphere. During an open court session observed by the researcher, several male family members of the plaintiff (the husband) appeared well-dressed and confident, while the defendant (the wife) sat alone, visibly anxious. Outside the courtroom, murmurs circulated among the family members, claiming that “the wife had long been unable to conceive.” Although such comments held no legal standing, they significantly shaped the moral perception of guilt. This scene underscores that religious courts are not insulated from social influence; they serve as arenas where patriarchal power is translated into ostensibly neutral legal narratives.

The logic of gendered moral citizenship also intersects with Yuchen’s (2021) concept of patriarchal bargaining, the adaptive strategies women employ to survive within patriarchal structures. In this study, such strategies were visible among women who sought to “compensate” for their infertility by performing socially valued roles, such as teaching Qur’an classes, joining religious women’s groups, or caring for nieces and nephews as a form of symbolic motherhood. For instance, an informant identified as N shared that after her divorce, she devoted herself to teaching at a Qur’anic Learning Center, where children affectionately called her “Ibu Guru” (Mother Teacher). This social recognition served as a form of bargaining to reclaim social dignity despite reproductive stigma.

However, patriarchal bargaining also embodies a paradox: while women attempt to resist social pressure, they continue to operate within moral boundaries established by patriarchal systems. A female lawyer, H, explained that in many cases, “women prefer silence and acceptance of divorce rather than confronting stigma.” According to her, when women resist or reject divorce on the grounds of infertility, they are often judged as “ungrateful” or “lacking submission.” Thus, the law, seemingly neutral in its text, functions as an instrument reinforcing patriarchal norms in practice.

Analysis of legal documents further reveals how patriarchal bias is linguistically institutionalized in judicial reasoning. In the Situbondo case, the decision stated: “marital disharmony occurred because the defendant could not provide offspring, leading the plaintiff to believe there was no hope of continuing the marriage.” This phrasing subtly yet decisively positions the wife as the passive and culpable party, without acknowledging the possibility of male infertility. Such language is not a mere factual description but a reflection of the moral and social order permeated by gender bias.

The law-in-context framework (Cotterrell, 2024) elucidates how patriarchal bias becomes institutionalized through subtle legal practices. Law operates within networks of value and power, rather than within an abstract or neutral sphere. In this setting, judges act not only as interpreters of law but also as moral mediators who legitimize prevailing patriarchal values (Folbre, 2021). Therefore, bias arises not from ignorance of law but from the sociological reality that law itself serves as a site where social morality and formal justice are negotiated.

At the same time, field data reveal an emergent consciousness among younger judges who approach infertility from an equality and individual well-being perspective. Judge M, for example, stated that in handling such cases, he now asks whether both parties have undergone medical examinations, though he admitted this remains “uncommon practice.” This indicates a small but significant fracture within the patriarchal structure of Islamic family law, signaling potential value transformation where women are recognized not merely as objects of morality but as autonomous legal subjects entitled to personal happiness.

Emerging Shifts: Young Judges and the Rise of Equality-Oriented Legal Reasoning

Generational change within Indonesia’s religious judiciary appears to be reshaping the moral reasoning underpinning Islamic family law. In recent years, a cohort of younger judges has demonstrated a progressive orientation toward family issues, particularly in divorce cases involving infertility. They no longer treat infertility purely as a female biological failure or an automatic justification for divorce but rather as a matter of individual rights, dignity, and mutual happiness. Field interviews and observations conducted at the Situbondo Religious Court and surrounding jurisdictions suggest that this new interpretive trend is rooted in growing awareness of gender equality and substantive justice.

Judge M, for instance, explained that when handling infertility-related divorce cases, he strives to balance textual fidelity with social empathy. He believes it is unfair for women to be blamed solely for childlessness and prefers to inquire whether both spouses have sought medical assistance or considered adoption as an alternative. Such reasoning represents a paradigmatic shift, from law as a vehicle of patriarchal reproduction to law as a means for affirming human well-being and choice.

This trend was also evident during courtroom observations. In one open session, a young judge attentively listened to a wife’s tearful account of social pressure from her husband’s family due to childlessness after five years of marriage. Unlike older judicial practices that swiftly categorized the case as “failure to provide offspring,” the young judge instead asked reflective questions: “Have you and your husband undergone medical testing together? Have you tried counseling or medical treatment?” These questions signify a moral-legal shift, from assigning blame to recognizing individual experience and agency.

The emergence of this new interpretive approach is closely tied to educational reform. Many young judges have studied at Islamic universities that integrate gender mainstreaming and substantive justice into their legal curricula. Additionally, judicial training programs under the Religious Court Directorate (Badilag) and the Supreme Court have introduced modules emphasizing *maqasid al-shariah*, the higher objectives of Islamic law, as a hermeneutic entry point for gender-sensitive interpretation. Judge R, a young female magistrate, noted that her recent training underscored that Islamic law must serve as “an instrument of welfare, not a restrictive text.”

In practice, these judges invoke the principles of *maslahah* (public good) and *adl* (justice) to prioritize substantive justice over procedural rigidity. In one decision analyzed, the judge asserted that “marriage is not merely a means of procreation but a framework for achieving happiness and tranquility.” Such statements, while simple, represent a transformative hermeneutic orientation, reading Islamic law through the lens of human welfare rather than patriarchal conformity.

This development resonates with Fowkes’s (2025) concept of transformative judicial reasoning, where judges act not only as interpreters of legal texts but also as social agents who reconstruct societal values through jurisprudence. In Indonesia’s religious courts, such transformation emerges as younger judges challenge traditional assumptions about women’s roles and replace them with narratives of equality. Law, in this view, is mobilized not merely to regulate behavior but to reshape moral and social consciousness.

Judge T articulated this view clearly: for him, a judge’s duty “does not end with issuing verdicts but includes educating society about Islamic justice as *rahmatan lil alamin*.” Although some senior judges criticize this empathetic stance as “too lenient toward women,” he regards empathy not as weakness but as fidelity to Islam’s true spirit of justice. He noted that classical *fiqh* texts are increasingly reinterpreted through *maqasid*-based frameworks, recognizing that Islam has always allowed adaptation alongside evolving human understanding.

Observations of courtroom discussions further reveal a dynamic intellectual atmosphere among young judges. Conversations about recent Supreme Court rulings that strengthen women’s and children’s rights often occur informally, reflecting a growing network of progressive judicial actors within Badilag. One judge described this moment as a “phase of moral reflection,” where long-held legal doctrines are reassessed by a generation exposed to global discourses of equality.

Sociologically, this generational shift represents a process of reflexive modernization (Rasborg, 2021), wherein traditional institutions like religion and law critically reassess their normative foundations. Young judges function as reflexive agents who internalize global equality norms while contextualizing them within Indonesia’s Islamic framework. The result is a form of hybrid reasoning, a jurisprudence grounded in religious ethics yet open to human rights and gender justice.

Resistance, however, persists. Senior judges such as A argue that younger colleagues are “too influenced by external ideologies” and risk “eroding traditional Islamic family values.” For them, the role of judges is to preserve moral stability, not to experiment with reinterpretation. This tension underscores the fragility of the transition toward gender-equitable jurisprudence. Nevertheless, younger judges appear undeterred, viewing the debate itself as part of Islam’s ongoing moral evolution.

Empirically, the rise of equality-oriented judges marks a pivotal shift, from law as an instrument of patriarchal reproduction to law as a potential medium of social emancipation. These judges reinvigorate law’s moral function as a living discourse that balances text and

context, rule and empathy, structure and human experience. Echoing Fowkes (2025), this transformation constitutes not merely a procedural reform but an epistemic one, a new way of understanding law as a site of value contestation and moral progress.

Law as a Social Mirror: Negotiating Religion, Gender, and Rights

Ultimately, law within the Indonesian socio-cultural context cannot be understood merely as a neutral text grounded in universal rational principles, but rather as a social mirror that reflects, negotiates, and simultaneously reshapes the living values of society. This study demonstrates that Islamic family law functions as a dynamic arena where religion, gender, and individual rights intersect in continuous tension. Decisions in religious courts, particularly in divorce cases based on infertility, reveal that law is never free from the moral biases and social structures underpinning it. Yet, law also provides interpretive openings through which new, more equitable and justice-oriented forms of legal reasoning can emerge.

Interviews with judges and litigants reveal that the notions of “marital harmony” and “the duty to bear children” serve as moral pillars in Islamic family law practice. One judge, referred to as A, noted that divorce due to childlessness often seems unavoidable because “there is no hope of future happiness.” While legally neutral, such expressions are laden with social assumptions that equate marital success with reproductive capacity. Observations in the Situbondo Religious Court further showed that social pressure toward childless women often penetrates the courtroom itself. Judges, lawyers, and family members frequently reproduce moralized discourse that a woman who cannot bear children has “failed to fulfill her natural role.”

This tendency reinforces the argument that law operates within networks of social meaning, as articulated in Cotterrell’s (2024) law-in-context framework. Law serves not only as a mechanism for conflict resolution but also as a means to reproduce or challenge social norms. In this sense, decisions of Indonesia’s religious courts function as mirrors reflecting dominant societal values, deeply patriarchal, religious, and rooted in traditional family morality. Yet, like a fractured mirror, the reflection is not seamless: among its cracks, traces of resistance and transformation emerge, particularly through a younger generation of judges and women who renegotiate their roles and rights.

This dynamic reveals a dialectical relationship between legal text and social context. On one hand, the law reinforces patriarchal structures through gender-biased language and interpretation; on the other, it opens interpretive spaces for progressive readings. In practice, legal phrases such as “disharmony” or “no hope of continued cohabitation” operate as elastic legal categories, flexible constructs that allow judicial adaptation to social realities but may also obscure substantive justice when applied uncritically. Some younger judges, as observed in this study, have begun to resist automatic reliance on such formulaic expressions, instead invoking moral reasoning grounded in contextual justice and human dignity (*karāmah insāniyyah*).

Judge M, for instance, emphasized that Islamic law possesses inherent moral flexibility when interpreted through the principles of *maqāṣid al-sharī’ah*. He explained that *maṣlaḥah*

(public welfare) and *'adl* (justice) should serve as moral foundations for more humane interpretations. Granting divorce, therefore, is not merely about legal compliance but about assessing whether continuing the marriage would perpetuate suffering and injustice. He further asserted that women facing psychological distress due to infertility-related stigma deserve equal legal protection as other victims of social harm. His statement encapsulates a key sociological insight: law both reflects the social contexts that produce it and holds transformative potential to reshape those very structures.

Field observations further illustrate that within courtroom spaces, the negotiation of values among religion, gender, and rights occurs continuously. During one mediation session, a young female judge attempted to mediate between a couple married for eight years without children, suggesting adoption or counseling. The husband's family rejected these options, insisting that "bloodline cannot be replaced by adoption." The tension vividly exposed the dual logics at play: the moral-religious logic prioritizing lineage purity versus the rights-based logic emphasizing personal fulfillment and dignity. Judges in such situations do more than interpret law, they navigate conflicting moral orders embedded within Indonesian society.

In this context, silent biases in legal practice do not stem from individual failings but from structural forces that sustain women's subordination. As Cicerchia (2023) argues through the notion of gendered moral citizenship, women's morality is measured by their conformity to reproductive and domestic expectations. Consequently, when infertility cases are adjudicated through such moral frames, the law itself reproduces narrow definitions of women's moral worth. However, when younger judges begin interpreting infertility as a matter of choice and individual right rather than moral failure, law transforms into a site of resistance against patriarchal order.

Theoretically, this study reinforces the sociological view that law is a socially negotiated product (Cotterrell, 2020; Deflem, 2022). It is not an autonomous system but a social practice continuously shaped through interactions among actors, institutions, and cultural values. In the context of Islamic family law in Indonesia, this interplay is particularly salient: law operates both as a reflection of moral and religious norms and as a potential medium of social change. A court ruling favoring women, therefore, constitutes not merely a legal act but a moral-political gesture that redefines the boundaries of public morality.

From the perspective of family sociology, Islamic family law in Indonesia actively participates in constructing the very meaning of "family." It not only regulates relations between spouses but also delineates what is considered a "normal" or "successful" family. Through judicial interpretation and surrounding social pressures, law reproduces moral categories such as "the good wife," "the harmonious family," and "the legitimate marriage." Yet, the shifts observed among younger judges suggest that these definitions are no longer singular. Family is increasingly being redefined as a space of mutual affection and individual rights rather than biological continuity alone.

In the concluding observation of this study, religious courts emerge as microcosms of Indonesian society, arenas where religion, law, and modernity meet and contend. On one side, they embody the enduring force of tradition that expects women to serve as the moral bearers of the family; on the other, they reveal a growing awareness of gender equality and substantive justice. The generational debates between senior and junior judges, between classical texts and progressive interpretations, indicate that Islamic law in Indonesia is undergoing an active process of moral renegotiation.

CONCLUSION

This study concludes that infertility within the framework of Islamic family law in Indonesia is not merely a medical or biological issue, but a sociological mirror reflecting a structure that situates reproduction at the core of marital legitimacy and gender identity. A sociological analysis of religious court practices and judicial reasoning reveals that divorce due to childlessness embodies an ongoing negotiation between rigid legal texts and dynamic social realities. Although infertility is not explicitly codified as a legitimate ground for divorce, judicial interpretations expose a moral elasticity that legitimizes childless divorce within patriarchal moral reasoning. Despite these entrenched biases, where women disproportionately bear the burden of infertility, emerging generations of judges are beginning to interpret law more reflectively and justly, viewing happiness and equality as integral to *maqāṣid al-sharī'ah*. This transformation signifies an epistemic shift in Indonesian Islamic legal practice: from law as a reproducer of gendered hierarchies to law as a potential instrument of social emancipation. Thus, this study reaffirms that law is not a neutral entity but a contested arena where morality, power, and meaning are negotiated, an arena in which gender equality becomes essential to realizing substantive justice in cases of infertility-related divorce.

ETHICAL STATEMENT AND DISCLOSURE

This study was conducted in accordance with established ethical principles, including informed consent, protection of informants' confidentiality, and respect for local cultural values. Special consideration was given to participants from vulnerable groups to ensure their safety, comfort, and equal rights to participate. No external funding was received, and the authors declare no conflict of interest. All data and information presented were collected through valid research methods and have been verified to ensure their accuracy and reliability. The use of artificial intelligence (AI) was limited to technical assistance for writing and language editing, without influencing the scientific substance of the work. The authors express their gratitude to the informants for their valuable insights, and to the anonymous reviewers for their constructive feedback on an earlier version of this manuscript. The authors take full responsibility for the content and conclusions of this article.

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