

Khulu' in Islamic Law: Concept, Procedure, and Its Legal Implications in the Family Law System

Ade Sultan Muhammad¹, R. Fahmi Natigor Daulay²

^{1,2} Faculty of Law, Social Sciences, and Political Sciences (FHISIP), University of Mataram, Indonesia
Email: adesultan@staff.unram.ac.id

Khulu' is a form of divorce in Islamic law that grants the wife the right to terminate a marriage by providing compensation (*iwadh*) to the husband. This concept reflects a legal mechanism that not only emphasizes the husband's right to divorce (*talak*), but also ensures fairness and protection for women within marital relationships. This study aims to analyze the concept, legal basis, procedures, and legal consequences of *khulu'* in Islamic law, as well as its relevance within the Indonesian family law system. The research employs a normative method with juridical and theological approaches, using primary sources such as the Qur'an and hadith, supported by classical fiqh literature and statutory regulations. The results indicate that *khulu'* has strong normative legitimacy in Islam, with procedures based on mutual agreement between spouses and, in modern contexts, involving judicial institutions to ensure legal certainty. Legally, *khulu'* results in the dissolution of marriage, changes in the rights and obligations of spouses, and adjustments in family rights, including maintenance, waiting period (*iddah*), child custody, and inheritance. In Indonesia, the concept of *khulu'* is substantively accommodated through *cerai gugat* in Religious Courts, reflecting a transformation from classical Islamic jurisprudence to national legal practice. This study concludes that *khulu'* is an essential legal instrument in promoting justice and balance within marriage, highlighting the importance of a comprehensive understanding of its concept and application in contemporary Islamic family law.

Keywords: *Khulu'*, Islamic family law, divorce, *iwadh*, Indonesian law

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Corresponding Author:

Ade Sultan Muhammad
Faculty of Law, Social Sciences, and Political Sciences (FHISIP), University of Mataram, Indonesia
Mataram West Nusa Tenggara
adesultan@staff.unram.ac.id

1. Introduction

Marriage in Islam is positioned as both a legal and social institution aimed at forming a harmonious family characterized by *sakinah*, *mawaddah*, and *Rahmah* [1]. However, in the social reality of Indonesia, marital relationships do not always run harmoniously and are often confronted with domestic conflicts that lead to divorce [2]. Data from religious courts indicate that the divorce rate remains relatively high each year, caused by various factors such as continuous disputes, domestic violence, and disharmony between spouses [3]. This condition reflects the need for legal mechanisms that are fair and responsive to the dynamics of family conflicts [4].

In this context, *khulu'* emerges in Islamic law as a divorce mechanism initiated by the wife by providing compensation (*iwadh*) to the husband [5]. *Khulu'* provides an opportunity for women to release themselves from marital bonds that are no longer beneficial, without the necessity of proving serious fault on the part of the husband [6]. In Indonesia, the concept of *khulu'* is recognized within the discourse of Islamic law and is often associated with principles of justice and the protection of women's rights within the family [7]. Its existence demonstrates the flexibility of Islamic law in responding to evolving social needs.

Conceptually and juridically, *khulu'* differs fundamentally from *talak* and *cerai gugat*, both in Islamic law and in Indonesian positive law [8]. *Talak* is the right of the husband, whereas *khulu'* originates from the wife's

initiative with the consequence of compensation, and *cerai gugat* is a legal term processed through the court system without necessarily explicitly referring to the classical concept of *khulu'* [9]. These differences often lead to confusion in practice, both among the public and law enforcement officials [10]. As a result, incomplete understanding may affect the application of law and the realization of substantive justice for the parties involved.

The implementation of *khulu'* in the practice of religious courts in Indonesia also presents significant issues, particularly concerning the determination of the form and amount of *iwadh*, as well as the classification of cases as *cerai gugat* or *khulu'* [5]. In practice, many divorce cases filed by wives are processed as *cerai gugat* without explicitly referring to *khulu'*, even though substantively they contain elements of *iwadh* [11]. This indicates a challenge in harmonizing classical Islamic jurisprudence with positive legal procedures [11]. These conditions highlight the importance of academic research to clarify the position and implementation of *khulu'* within the Islamic family law system in Indonesia.

Therefore, this study focuses on examining the concept, legal basis, procedures, legal consequences, and position of *khulu'* within the Indonesian legal framework. The objective of this research is to analyze and explain the concept of *khulu'* in Islamic law, describe its legal foundations and procedures, identify its legal consequences on marriage and the rights of the parties, and evaluate its position and implementation within Indonesian positive law. Through this study, it is expected to provide both theoretical contributions in enriching legal scholarship and practical insights for understanding the application of *khulu'* in society.

2. Literature Review And Problem Statement

The concept of *khulu'* has been widely discussed in Islamic legal scholarship as a form of marital dissolution initiated by the wife with compensation (*iwadh*) to the husband. Classical fiqh scholars define *khulu'* as a contractual separation that emphasizes mutual agreement and the principle of justice within marital relations [11]. Previous studies [11], [12], [13], [14] have highlighted that *khulu'* serves as an important mechanism to protect women from harmful or unsustainable marriages, aligning with broader objectives of Islamic law (*maqasid al-sharia*). In addition, several contemporary studies indicate that *khulu'* reflects the adaptability of Islamic family law in addressing gender-related issues and social dynamics [14]. However, other research suggests that the practical application of *khulu'* varies significantly across different legal systems, particularly in countries where Islamic law has been integrated into national legal frameworks [11], [15], [16].

In the Indonesian context, existing literature shows that the substance of *khulu'* is often implemented through the mechanism of *cerai gugat* in Religious Courts, as regulated in the Compilation of Islamic Law [11]. Some scholars [17], [18], [19] argue that this approach demonstrates a successful transformation of classical Islamic concepts into modern legal procedures. However, other studies reveal inconsistencies, particularly regarding the absence or unclear application of *iwadh* in court decisions, which deviates from classical *khulu'* requirements [5], [20]. These differences indicate a gap between normative Islamic jurisprudence and its practical implementation [21]. Furthermore, previous research tends to focus either on doctrinal analysis or on legal practice separately, without comprehensively examining the relationship between conceptual, procedural, and practical dimensions of *khulu'* within the Indonesian legal system [22], [23]. This gap highlights the need for a more integrated analysis that connects Islamic legal theory with its application in contemporary law.

Based on the identified research gap, the problem addressed in this study is formulated as follows: how is the concept of *khulu'* understood in Islamic law, what are its legal foundations and procedures, what legal consequences arise from its implementation, and how is its position manifested within Indonesian positive

law? This problem formulation aims to bridge the gap between classical legal concepts and modern legal practices, while also providing a clearer understanding of the role of *khulu'* in ensuring justice and legal certainty. Through this formulation, the study seeks to contribute to both theoretical discourse and practical legal development in Islamic family law.

3. Method

This study employs a normative legal research method with a descriptive-qualitative approach [23]. The selection of this method is based on its ability to systematically analyze legal norms, principles, and doctrines related to *khulu'* in Islamic law and its position within Indonesian positive law [23], [24]. Normative research is considered appropriate because the object of this study focuses on legal texts, including the Qur'an, hadith, classical *fiqh*, and statutory regulations, which require conceptual and doctrinal interpretation rather than numerical data processing [23], [24]. This method ensures consistent and stable results, as it relies on structured legal reasoning and authoritative sources [24].

The research process begins with the identification and collection of legal materials, which are classified into primary, secondary, and tertiary sources. Primary legal materials include the Qur'an, hadith, and the Compilation of Islamic Law (KHI). Secondary materials consist of scholarly books, journal articles, and previous studies discussing *khulu'* and Islamic family law [23], [24]. Tertiary materials, such as legal dictionaries and encyclopedias, are used to support conceptual clarification [23], [24]. All materials are collected through documentation techniques to ensure objectivity and completeness of data [23], [24].

The next stage involves data processing and organization, where the collected legal materials are systematically categorized based on the research focus, namely: the concept of *khulu'*, its legal basis and procedures, its legal consequences, and its position in Indonesian positive law [23], [24]. This classification facilitates a structured and focused analysis.

The analysis technique used in this study is qualitative legal analysis through a statutory approach, conceptual approach, and comparative approach [23], [24]. The statutory approach examines relevant legal provisions governing divorce in Indonesian law. The conceptual approach analyzes doctrines and principles of *khulu'* in Islamic jurisprudence [11]. Meanwhile, the comparative approach is used to identify similarities and differences between classical *fiqh* concepts and their implementation in modern legal systems [25]. The analysis is conducted through interpretation methods, including grammatical, systematic, and teleological interpretation, to understand both the textual meaning and the broader legal objectives [23], [24].

The evaluation approach is carried out by assessing the consistency between legal norms and their practical application, particularly in the context of religious court practices [23], [24]. This includes examining whether the principles of *khulu'*, such as *iwadh* and mutual consent, are effectively implemented within the framework of *cerai gugat* [5]. The evaluation also considers the alignment between Islamic legal principles and national law to identify potential gaps or inconsistencies [24].

Several assumptions underlie the application of this method. First, legal norms are assumed to be coherent and systematically structured, allowing for logical interpretation. Second, the legal materials used are considered valid and authoritative representations of Islamic and national law. Third, the analysis assumes conceptual independence between variables such as *khulu'*, *talak*, and *cerai gugat*, enabling clear differentiation and comparison [26]. These assumptions ensure that the method operates optimally in producing accurate and reliable findings.

Through this methodological framework, the study aims to provide a comprehensive and in-depth understanding of *khulu'*, both as a doctrinal concept in Islamic law and as a legal practice within the Indonesian legal system.

4. Results

The results of this study are presented in the form of qualitative legal findings (normative data analysis) derived from the examination of primary legal sources (Qur'an, hadith, and the Compilation of Islamic Law) as well as supported by relevant literature. These findings are structured to show patterns of legal interpretation, conceptual distinctions, and practical applications of *khulu'* in Islamic law and Indonesian positive law.

Table 1. Table 1. Overview of Research Results and Analysis

Aspect	Description
Key Findings	The analysis shows clear patterns in the conceptualization of <i>khulu'</i> as a wife-initiated divorce mechanism with compensation (<i>iwadh</i>). It highlights differences between <i>khulu'</i> , <i>talak</i> , and <i>cerai gugat</i> , as well as the transformation of <i>khulu'</i> from a classical Islamic concept into a modern legal practice within religious courts.
Comparison with Previous Research	The findings are consistent with prior studies indicating that <i>khulu'</i> is often substantively applied but not explicitly labeled in Indonesian legal practice. Differences arise due to variations in legal procedures, institutional frameworks, and the absence of explicit terminology in positive law.
Phenomena and Explanations	The phenomenon shows partial inconsistency between classical <i>fiqh</i> concepts and modern legal implementation. Contributing factors include procedural standardization in courts, differences in legal interpretation, and the adaptation of Islamic principles into national law systems.
Preliminary Conclusions	The results indicate that <i>khulu'</i> plays a significant role in ensuring justice and protection for women, although its implementation requires further harmonization between Islamic jurisprudence and positive law.

The qualitative findings derived from normative legal materials show that *khulu'* consistently appears in Islamic legal doctrine as a mechanism of divorce initiated by the wife with compensation. This finding aligns with previous literature which emphasizes *khulu'* as part of Islamic legal flexibility in resolving marital disputes [27]. However, analysis of legal practice in Indonesia shows that these elements are not always explicitly formalized, particularly in Religious Court decisions that categorize such cases under *cerai gugat*. This indicates a divergence between doctrinal concepts and procedural implementation, as also identified in earlier studies [27].

The phenomenon identified in this research demonstrates that although the theoretical framework of *khulu'* requires *iwadh* and mutual agreement, its application in positive law tends to simplify or omit these elements. This inconsistency can be explained by institutional legal adjustments, the need for procedural efficiency, and differences in judicial interpretation. From a theoretical perspective, this finding both supports and extends previous studies by showing that the transformation of Islamic law into national legal systems inevitably produces conceptual adaptation rather than full replication.

Based on these findings, it can be concluded that *khulu'* remains a relevant legal concept in ensuring gender justice, but its practical implementation requires clearer legal articulation. This supports the argument in prior research that harmonization between *fiqh* and positive law is necessary to avoid ambiguity and ensure substantive justice.

Discussion

The Concept of *Khulu'* in Islamic Law

Khulu' in Islamic law is understood as a form of marital dissolution initiated by the wife by providing compensation (*iwadh*) to the husband [28]. This finding confirms classical *fiqh* theory, which positions *khulu'* as a legal instrument that accommodates the wife's right to terminate a marriage under certain conditions. The results are consistent with previous studies that emphasize *khulu'* as part of the justice-oriented framework of Islamic family law [29].

Conceptually, *khulu'* differs from *talak* because the initiative comes from the wife [30]. However, the requirement of the husband's consent indicates a balanced relational structure, as also highlighted in earlier literature. This reinforces the interpretation that *khulu'* is not unilateral but contractual in nature. Compared to prior research, this study strengthens the argument that *iwadh* is a defining element that distinguishes *khulu'* from other forms of divorce.

From a qualitative analytical perspective, *khulu'* functions as a preventive mechanism against prolonged marital conflict [29]. This finding aligns with theoretical frameworks that link Islamic law to social stability and family welfare. Additionally, the recognition of the wife's agency reflects broader discussions on gender justice in Islamic law [31]. However, as noted in previous research, the application of *khulu'* must remain limited to reasonable grounds to prevent misuse.

Legal Basis and Procedure of *Khulu'*

The findings confirm that the legal basis of *khulu'* is derived from the Qur'an, particularly Surah Al-Baqarah verse 229 [30] and strengthened by hadith. This is consistent with established Islamic legal doctrine and prior studies that identify these sources as the primary normative foundation. The procedural analysis shows that *iwadh* is an essential element in *khulu'*, as indicated in both classical texts and scholarly interpretations [31]. The study also finds that the classical procedure—request, agreement, and pronouncement—remains theoretically intact but undergoes institutional modification in modern courts [28]. In comparison with previous studies, this research highlights a significant shift: the transformation of *khulu'* from a private agreement into a court-regulated process [32]. This confirms earlier findings while adding that such transformation affects the explicit recognition of *iwadh* in legal practice.

Legal Consequences of *Khulu'*

The results show that *khulu'* leads to the termination of marriage categorized as *talak bain* [28], which aligns with classical Islamic jurisprudence. This finding is consistent with previous literature emphasizing the finality of this form of divorce.

The study also finds that *khulu'* has direct implications for economic rights, including the return of dowry and limited post-divorce maintenance [30]. These findings support earlier research that highlights the contractual nature of *khulu'*. At the same time, the unchanged status of parental responsibilities confirms that Islamic law prioritizes child welfare [28]. This study extends previous findings by emphasizing that the implications of *khulu'* are not only legal but also social and psychological, requiring careful application in practice.

The Position of *Khulu'* in Indonesian Positive Law

The findings indicate that *khulu'* is not explicitly recognized in Indonesian legal terminology but is substantively implemented through *ceraai gugat* [28]. This supports previous studies that describe the adaptation of Islamic legal concepts into national law. However, this research also identifies a key inconsistency: the absence of explicit *iwadh* in many court decisions [29]. This confirms earlier critiques

while providing a clearer explanation that such differences result from procedural simplification and legal standardization. From a qualitative perspective, *khulu'* occupies a substantive rather than terminological position in Indonesian law [29]. This finding reinforces the argument that legal harmonization is necessary to bridge the gap between classical doctrine and modern legal systems.

5. Conclusion

The results of this study indicate that the concept of *khulu'* in Islamic law functions as a legal mechanism for marital dissolution initiated by the wife through the provision of compensation (*iwadh*) to the husband. This mechanism demonstrates that Islamic law does not position women as passive subjects in marriage, but instead provides legal space for them to exit marital relationships that no longer bring benefit. Thus, *khulu'* reflects the flexibility of Islamic law in maintaining a balance between preserving family integrity and protecting individual rights, particularly those of women.

The findings also confirm that the legal basis and procedures of *khulu'* are firmly rooted in the Qur'an and the hadith of the Prophet Muhammad SAW, which have been further elaborated by classical Islamic jurists within the framework of family law. The study shows consistency with existing literature in recognizing QS. Al-Baqarah verse 229 and the case of the wife of Thabit bin Qais as the primary normative foundations of *khulu'*. The procedural aspect emphasizes mutual consent, fairness, and caution, indicating that *khulu'* is not intended as an easy means of divorce but as a necessary solution to prevent greater harm in marital life.

In terms of legal consequences, this research finds that *khulu'* results in the termination of marriage in the form of *talak batin*, which does not allow reconciliation without a new marriage contract. It also has significant implications for the economic rights of the wife, including the return of dowry and limited post-divorce maintenance, while the rights and obligations toward children remain intact. These findings align with established Islamic legal principles that distinguish between marital conflict and the best interests of the child.

Furthermore, this study reveals that within Indonesian positive law, *khulu'* is not explicitly regulated as a distinct legal term but is substantively accommodated through the mechanism of *cerai gugat* in the Religious Courts, as stipulated in the Compilation of Islamic Law. This reflects both continuity and divergence with previous studies: continuity in terms of the preservation of *khulu'* principles, and divergence in its formal legal expression, particularly regarding the absence of explicit *iwadh* in judicial practice. This difference arises from the adaptation of classical Islamic concepts into a modern legal system that prioritizes procedural standardization and legal certainty.

The overall interpretation of the findings highlights that *khulu'* remains highly relevant in contemporary Islamic family law, particularly in promoting gender justice and protecting individual rights. Its practical significance lies in providing an alternative dispute resolution mechanism that is both humane and legally grounded.

This study contributes to the development of legal understanding by clarifying the conceptual, procedural, and practical dimensions of *khulu'*, as well as its transformation within Indonesian law. However, this research is limited by its normative approach, which focuses on legal texts and does not deeply explore empirical judicial practices or societal perceptions. Therefore, future research is recommended to incorporate empirical and comparative approaches to further examine the implementation of *khulu'* in religious courts, evaluate its effectiveness, and develop more harmonized legal frameworks that integrate Islamic jurisprudence with national law.

6. References

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