

The Price Of Freedom: Iwadh Payments In Divorce Through Critical Legal Studies

Muhammad Aminuddin Shofi
Institut Agama Islam Miftahul Ulum, Lumajang,
Indonesia
Shofihasan85@gmail.com

Belgis Elisa Bela
Institut Agama Islam Miftahul Ulum, Lumajang,
Indonesia
Belgiselisabela@gmail.com

ABSTRACT

This article examines the governance of khuluk (wife-initiated divorce) in Indonesia's legal system and its distinction from talak (husband-initiated divorce), or divorce initiated by the husband. Despite similar goal, khuluk requires the wife to pay iwadh (compensation) as economic exchange. Using a critical legal studies perspective, this research argues that khuluk and iwadh may reproduce gender inequality in contemporary Muslim society. The study employs normative legal research, drawing on conceptual and statute-based approaches, and uses documentation as the primary source of data. The data are analyzed through editing, classification, verification, interpretation, and conclusion drawing, with source triangulation used to ensure validity. The findings show that khuluk harms women because iwadh makes women seek khuluk under conditions of violence, pressure, or financial dependence, which weakens the idea of free consent. The article,

therefore, calls for a progressive reinterpretation of khuluk to support gender justice and legal equity.

Keywords: khuluk divorce, critical legal studies, equality before the law, iwadh payment.

A. Introduction

According to data from the Central Statistics Agency, there were 308,956 divorce cases in Indonesia in 2024. The top three provinces are West Java with 68,968 cases, East Java with 58,679 cases, and Central Java with 50,783 cases. However, it is unknown how many of the 308,956 contentious divorce cases that were recorded were khuluk (wife-initiated divorce) that is filed by the wife after she has compensated the husband or iwadh, typically by returning the mahr (dowry) (Badan Pusat Statistik, 2025).

According to several studies, khuluk is considered more adaptable in application because it is seen as a woman's right to divorce her husband when a proper marriage can no longer be maintained (Saputra, 2025, p. 139). An essential part of khuluk is iwadh (compensation). The majority of scholars now consider iwadh to be an indispensable foundation (Anggraeni et al., 2022, p. 46).

Khuluk appears to give women the same authority to end a marriage. As a result, a woman who is extremely upset about her spouse's situation may be able to secure a divorce in exchange for some money (Anggraeni et al., 2022, p. 41).

Taking closer look, women are less able to obtain a divorce than men. Islamic law grants the husband the sole authority to grant a divorce, or talaq (husband initiated divorce) (Jones, 2023, p. 8), so that, if the wife wishes to petition for divorce, she must pay iwadh (compensation) through a khuluk divorce. The complexities of gender roles and interactions inside Muslim families are reflected in khuluk in a social setting. Therefore, cultural, economic, and even legal issues frequently play a role in the choice to file for khuluk. For instance, women who want to dissolve their

marriage are stigmatized by society, which makes the divorce procedure much more difficult (Saputra, 2025, p. 137).

According to the Republic of Indonesia's Decree of the Minister of Religious Affairs Number 411 of 2000 about the Determination of the Amount of Iwadh Money, the wife currently gives her husband IDR 10,000 in iwadh. However, there is an element of injustice on the part of the husband, who has a bad attitude toward his wife to the point that she takes the matter to court and is still burdened with paying iwadh. In fact, with such a small amount of iwadh, it is not very evident that the wife is burdened with the iwadh payment (Meidina, 2022, p. 78).

The main focus of this research is to review the legal provisions governing khuluk divorce Indonesia. The key distinction lies in the payment of compensation money or iwadh in khuluk cases. The implementation of khuluk and the payment of iwadh will also be critically analyzed using the paradigm of critical legal studies. This paradigm is built on two theses: that law is politics, and that legal objectivism must be rejected (Atmaja & Erliyana, 2024, p. 167). Critical Legal Studies (CLS) is a school of thought in legal studies that emerged in the United States in the 1970s. CLS critiques the liberal legal perspective, which is often portrayed as neutral and objective, emphasizing that law is political and shaped by various interests (Neacsu, 2000, p. 415). CLS argues that law is not neutral but is laden with biases that support powerful groups and the status quo (Gilchrist Stewart, 2020, p. 4).

From the beginning, this movement has been dedicated to criticizing the prevailing legal orthodoxy by challenging the assumption of moral neutrality in legal doctrines, promoting transparency within legal culture, and highlighting the sociological and empirical consequences of legal practice and theory (Yeganeh, 2024, p. 1). To accomplish all of that, the Critical Legal Studies (CLS) School employs the methods of trashing, deconstruction, and genealogy. The trashing technique is

used to break down or reject established legal thought by revealing contradictions and one-sided conclusions based on doubtful assumptions. Deconstruction involves dismantling established legal ideas to allow for their reconstruction. Genealogy uses historical interpretation to support building legal constructions, recognizing that historical narratives are often dominated by those in power. This technique strengthens the legal constructs being developed (Gojali, 2022, p. 738). Thus, this research will analyze the relevance of the legal norms concerning khuluk and the payment of iwadh in a contemporary context, and will offer a new, more relevant legal interpretation.

Several previous studies serve as the basis for analyzing divorce payment of iwadh in khuluk cases in Indonesia. First, the research conducted by Badri et al. (2024) on factors causing khuluk divorce lawsuits in the Religious Court of Jember. Second, Saputra (2025) compares fasakh (annulment) and khuluk in the Compilation of Islamic Law. Third, (Begum et al., 2024) on gender equality in modern Muslim family law. Fourth, Maula & Ariyanti (2022) on negotiating justice for women in domestic violence divorce cases in the Religious Court. Fifth, E. Kurniawan et al. (2020) on khuluk in the Shafi'i and Hanbali madhhabs (school of thought) and their relevance in Indonesia. Sixth, Meidina, (2022) on iwadh khuluk from a gender justice perspective. Seventh, Ali Safa'at and Istiqomah (2022) on critical legal studies as a framework for critical legal thinking in Indonesia. Eighth, Gilchrist Stewart (2020) on the origins and developments of critical legal studies. Ninth, Elta and Yoserwan (2023) on using the "critical legal studies" paradigm in examining the criminal justice system in Indonesia. Finally, Moyn (2024) on reconstructing "critical legal studies" theory.

Studies on khuluk and iwadh have been extensively examined in various literatures. Critical studies of khuluk and iwadh draw on external paradigms such as gender theory, feminism, and human rights. Therefore, in this research, a sharper analysis will be conducted using the critical legal studies paradigm. This

approach aims to provide a critical exposition of khuluk and the payment of iwadh by dissecting the internal aspects of the legal norms governing khuluk and iwadh. Consequently, this research can offer more progressive paradigms and interpretations to better understand the relevance of khuluk and iwadh laws in modern Muslim societies.

Critical legal studies normatively attempt to demonstrate that beneath the neutral law and social order, there are actually interests loaded with cultural, racial, gender, and even economic biases (Colosi, 1990, p. 1683). Legal doctrines established to date actually favor those who possess power. Therefore, understanding legal issues must always be viewed within the context of power relations (Gojali, 2022, p. 737). The use of the critical legal studies paradigm explicitly aims to demonstrate that the legal norms regarding khuluk and the provision of iwadh money cannot be considered fully objective. Iwadh in khuluk is not a neutral instrument but a reflection of structural disparities between men and women. The legality of providing iwadh in the Compilation of Islamic Law (KHI) can serve as a tool of economic repression against women rather than a protection of their rights.

Men and women are equally entitled to various goods, benefits, and welfare. The types of goods received by men may differ from those received by women. The goods rightfully due to women should be based on their specific experiences, which differ from those of men. Likewise, benefits designed for women, considering their unique experiences, may differ from those designed for men (Faizah et al., 2024, p. 337).. In this scenario, a wife's ability to separate from her husband through divorce is not as straightforward as the husband's. Therefore, it is crucial to have laws regulating this situation. In reality, the dissolution of marriage increasingly becomes a social issue, not only due to the rising number of divorces but also because of the diverse and complex reasons for divorce. Although legally valid, divorce is considered a sin in religious societies, particularly in Islam, which regards it as “the most hated

halal matter” (Anggraeni et al., 2022, p. 36).

Therefore, this article aims to examine the legal provisions governing khuluk divorce in Indonesia and to critically analyze the requirement of iwadh within the framework of Critical Legal Studies. It seeks to uncover how the legal construction of khuluk operates in practice, particularly in relation to gender relations, economic burden, and women’s autonomy. By doing so, this study intends to offer a more progressive interpretation of khuluk and iwadh that is more responsive to contemporary Muslim family law and gender justice.

B. Discussion

1. Khuluk in the Context of Indonesian Law

Divorce lawsuit and khuluk (wife-initiated divorce) are two different concepts in the Compilation of Islamic Law (KHI). However, there are several similarities and differences. One similarity is that the wife is the party filing for divorce in both cases. Divorce does not always include the payment of iwadh (compensation). Article 148 of the KHI regulates that if the husband demands iwadh from the wife, there is legal protection for the wife who files for khuluk. If an agreement on iwadh amount is not reached, Article 148 paragraph (6) of the KHI states that the case is treated like other cases where the Religious Court has full authority to examine and decide on the matter (Anggraeni et al., 2022, p. 47).

Under Indonesian law, khuluk is not specifically regulated by Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage. However, khuluk is recognized in Islamic law as regulated in the Compilation of Islamic Law (KHI) and in the practice of Religious Courts.

Therefore, although the Marriage Law does not explicitly regulate khuluk, it is still recognized and governed within the framework of Islamic law in Indonesia. Article 1, letter (i), of the Compilation of Islamic Law states that khuluk is a divorce requested by the wife based on the husband's consent and upon payment of compensation or iwadh. Regarding the procedure for the wife to file a divorce lawsuit against her

husband through khuluk at the Religious Court, this is regulated in Article 148 paragraph 1 of the KHI, which states: a wife who files a divorce lawsuit through khuluk submits her petition to the Religious Court that has jurisdiction over her place of residence, accompanied by the reason or reasons for the request (Kompilasi Hukum Islam Di Indonesia, 1385).

In Islamic law, khuluk represents a form of justice within the legal framework. Conversely, if a wife feels unable to continue living with her husband, Islamic law provides her the opportunity to release herself from the marriage through the khuluk process (Badri et al., 2024, p. 59). The implications of khuluk depend on the agreement reached: the marriage can be dissolved immediately, the husband no longer retains rights over the wife, and the husband may remarry her if they reconcile. However, they must conduct a new *tajdid al-nikah* (marriage contract) with a new *mahr* (dowry) (Syarif, 2021, p. 166).

Classical jurists required iwadh to distinguish khuluk from ordinary divorce and to prevent frivolous claims for dissolution, while also treating it as compensation for the husband's marital financial obligations. At the same time, khuluk may function as a protective legal avenue for women who need to exit abusive or unworkable marriages without having to prove fault. Therefore, the present study does not assume that khuluk is uniformly oppressive; rather, it critically examines how the iwadh requirement may operate differently across social and legal contexts, and why its normative rationale must be reassessed in contemporary practice.

The Compilation of Islamic Law differentiates between a *cerai gugat* (divorce lawsuit) and khuluk. Nevertheless, both *cerai gugat* and khuluk share similarities and differences. The similarity lies in the fact that the desire for divorce comes from the wife. The difference is that a divorce lawsuit does not always require the payment of compensation or iwadh. Article 148 of the KHI regulates khuluk with the following

procedures:(Kompilasi Hukum Islam Di Indonesia, 1385)

- a. A wife who files a divorce lawsuit through *khuluk* submits her petition to the Religious Court that has jurisdiction over her place of residence, accompanied by the reason or reasons for her request;
- b. The Religious Court shall call the wife and husband to hear their statements no later than one month after the petition is submitted;
- c. In the hearing, the Religious Court provides an explanation regarding the consequences of *khuluk* and offers its advice;
- d. After both parties agree on the amount of *iwadh* or compensation, the Religious Court issues a decree authorizing the husband to pronounce his divorce before it. This decree is final and cannot be appealed or annulled;
- e. The subsequent resolution follows the provisions stipulated in Article 131 paragraph 5;
- f. In the event that no agreement is reached regarding the amount of compensation or *iwadh*, the Religious Court shall examine and decide the matter as an ordinary case.

Based on the above sequence, the provision that the resolution of *khuluk* cases subsequently refers to Article 131 paragraph 5 of the KHI has the potential to cause difficulties in execution, even if the compensation agreement has been reached, especially if the wife simultaneously files a counterclaim regarding the division of joint assets, which can be considerable in amount. It is also possible that the husband deliberately delays the execution of the divorce oath, because, according to Article 148 of the KHI, the subsequent resolution is carried out as provided in Article 131, paragraph 5, of the KHI. This means that after a Religious Court decision on divorce through *khuluk* has obtained permanent legal force, the husband is then summoned to pronounce the divorce oath against his wife.

The *iwadh* money in *khuluk* is usually not part of the material in a *ceraai gugat* (divorce lawsuit). In the *khuluk* process, *iwadh* money is a condition the wife imposes on the husband as a form of compensation for obtaining a divorce. However, in a divorce lawsuit, if there

are claims related to property or alimony, iwadh money can be mentioned as part of negotiations or settlements. In khuluk cases, if the wife is willing to pay iwadh money and the husband does not pronounce divorce, the court may grant the khuluk petition. This is because khuluk is a divorce request initiated by the wife, who offers compensation to the husband. However, the court will still consider the agreement and ensure the process is conducted in accordance with applicable law. If all conditions are met and there are no other obstacles, the khuluk petition is likely to be granted.

In a divorce lawsuit, the cost burden is generally borne by the party filing the lawsuit, usually the wife. However, in practice, costs can be negotiated between husband and wife, especially in khuluk cases where there is iwadh. The court can issue decisions on the distribution of costs based on the particulars of each case and the financial abilities of the parties. Therefore, it is important to discuss and understand these matters during the court process. The Religious Courts play a vital role in ensuring the rights of women and children post-divorce. The Supreme Court Regulation Number 3 of 2017 emphasizes the crucial role of judges in protecting women's rights and ensuring equal access to justice, reflecting a commitment to gender justice and the enforcement of children's rights in divorce proceedings (Syukrawati et al., 2024, p. 124).

The arguments that have been advanced so far concern the obligations to provide maintenance and the division of roles within the family, linked to the concept of a man's right to pronounce talak (husband-initiated divorce) and the wife's obligation to pay iwadh if she wants to divorce. Sociologically, there is significant social pressure regarding the roles of men and women within the family, especially when the division of roles does not align with the patriarchal culture prevalent in society. In Indonesian patriarchal culture, men typically hold the authority and are responsible for providing for and protecting the household. Women, on the other hand, often bear the burden of domestic tasks and child-rearing. This cultural backdrop influences the legal and

social dynamics surrounding divorce, khuluk, and obligations like iwadh payment.

Research by Parker et al. (2022)) states that role pressure also has a negative impact on men. Men who take on managing household chores are often perceived as less competent by others. This highlights the social challenges men face when deviating from traditional gender roles, especially in patriarchal cultures like Indonesia. Einiö and Ponkilainen (2025) propose the argument, common to economic and psychological theories, stating that in a society strongly influenced by patriarchal culture, "the husband's economic resources contribute to marital stability, whereas the wife's economic resources tend to disrupt marital stability." This illustrates how economic power dynamics within a patriarchal framework impact the perceived marriage stability.

Shesa et al. (2024), present a somewhat different view in their research, stating that the principle of making divorce difficult in the Supreme Court Circular Letter (SEMA) No. 1 of 2022 can be considered conservative because it arguably causes more harm than benefit for women. Conversely, the concept of khuluk in Islamic jurisprudence is more progressive, providing ease for women to file for divorce. In this context, khuluk rules benefit women's welfare without harming men, while the principles in SEMA No. 1 of 2022 negatively impact women. This underscores the need for policy reform that balances legal principles.

2. Critical Legal Studies Analysis on the Implementation of Iwadh Payment

The Critical Legal Studies (CLS) School emerged as a critique of dominant twentieth-century legal thought, where law was viewed as an instrument for achieving social order (Baumgardner, 2024, p. 4). Therefore, it is not surprising that what is known as the concept of law regarding the welfare state has actually failed to protect the interests of the broader society (Elta & Yoserwan, 2023, p. 2510). Critical legal scholars regarded this development as evidence of the failure of traditional legal

theories to achieve substantive justice (Finnis, 1985, p. 23).

From an ontological perspective, CLS fundamentally differs from legal positivism. The ontology of the positivist paradigm conceptualizes reality as what is visibly present and does not discuss essence. Law is therefore understood as a body of enacted rules rather than as a system of which legitimacy depends upon moral considerations (Elta & Yoserwan, 2023, p. 2508).

Positivism demands that decisions in legal cases refer to determinations and certainty. However, CLS considers the claim of certainty as false. Neither statutes, legal principles, nor customs can be used to determine the final outcome of a case. Legal rationality is a form of manipulation because the same principles, doctrines, or customs can be applied in different cases with different, even contradictory results. Statutes and the words or phrases used within them are highly susceptible to subjective interpretation, depending on which interpretation the judge accepts. In short, these decisions do not depend on the substance of the law, let alone follow a sense of legal rationality. Therefore, CLS rejects the idea that the entire legal system consists of established statutes (Ali Safa'at & Istiqomah, 2022, p. 14).

From a normative perspective, iwadh is likened to a dowry that has the usual characteristics in all situations according to the Shafi'i and Hanafi madhhab (schools of thought). Iwadh paid by the wife or from others can be anything that can serve as a dowry. However, there is no minimum or maximum limit for iwadh khuluk, which differs from the mahr (dowry). According to the majority of scholars, it is recommended that the husband does not take iwadh more than what he gave to the wife in dowry (Meidina, 2022, p. 79).

The majority of scholars argue that iwadh is required in khuluk cases because the husband is the provider. However, what if, the wife plays an active role in providing maintenance or experiences violence and then wishes to seek khuluk? (Meidina, 2022, p. 85).

Normatively, iwadh is considered acceptable, even as a form of "compensation" for the husband's rights that are relinquished. However, from the Critical Legal Studies (CLS) perspective, questions arise as to whether iwadh is genuinely neutral. This approach critiques the structural inequalities and power dynamics embedded in the legal obligation of iwadh in divorce, suggesting that it may perpetuate unfairness rather than equality.

Critical Legal Studies (CLS) views law not merely as normative texts but as reflections of unequal social and economic structures. In the context of iwadh payments, the legal structure grants economic privilege to men in khuluk-based divorces. From the CLS perspective, iwadh is both a symbolic and material form of power relations, not just a fair transaction. CLS is highly critical of legal concepts that claim to always be based on "free agreement" (Hunt, 1986, p. 7). In practice, many women who seek khuluk are in situations of emotional pressure, insecurity, or domestic violence. In such conditions, the payment of iwadh is not the result of an equal negotiation but rather a compromise born out of powerlessness.

Critical Legal Studies (CLS) also views law as a tool for perpetuating the domination of certain groups. In this case, iwadh reflects that men continue to hold control over the continuation of the marital relationship, even when the wife wants to end it. Men gain economic benefits from the woman's decision to divorce (Halimatusa'diyah & Triana, 2024, p. 4). This point shows that the khuluk system in the Compilation of Islamic Law (KHI) still perpetuates the patriarchal system through legal-formal instruments such as iwadh. From the CLS perspective, the distribution of resources within the law is also an object of critique that needs to be examined (Price, 1989, p. 9). In the context of iwadh, there is no definite rule in the Compilation of Islamic Law (KHI) regarding the reasonable limit of the amount of iwadh. The husband may request dowry-exceeding amount. This creates problems for economically weak women to redeem. As a result, the law indirectly locks women into unwanted marriages simply because they

cannot afford to pay. This is a form of economic exclusion legitimized by law, and Critical Legal Studies (CLS) highlights that such laws are systematically unjust to vulnerable groups. Using the CLS theoretical framework, the following analysis can be presented:

a. Trashing the Law of *Khuluk* and *Iwadh*

The payment of *iwadh* is often legally justified as a reasonable form of compensation for the husband's relinquished rights. However, upon critical examination, is *iwadh* truly a form of justice? In many cases, wives request *khuluk* due to pressure, violence, or emotional suffering. The legal system enforces the logic of a "ransom" in a relationship that should be based on equality. The right to divorce becomes an economic transaction. The law conceals the structural injustice behind the term "voluntary agreement." The giving of *iwadh* is an instrument that makes the law appear neutral, while in reality, it traps women in a structure of subordination.

In general, everyone experiences stress, but divorced women are a group at higher risk of experiencing stress due to their character. They need to adjust to life environments that require adherence to new social norms. They also must meet the needs of family, environment, friends, and other groups, which, in many cases, are influenced by the family and culture where they live (Hasanvandi et al., 2013, p. 1595). The inner conflict experienced by women between the social roles they carry, the tension in social relationships, depression, and stress that arise post-divorce, potentially hinders their ability to fulfill their responsibilities effectively (Jeong et al., 2024, p. 2), including fulfilling *iwadh* or the redemption payment.

Empirical data show that divorce remains a major legal issue in Indonesia, with 394,608 cases recorded in 2024 and 438,168 cases reported in 2025. In 2025, around 79% of these cases were contested divorces filed by wives, indicating that women continue to play a major role in marital dissolution proceedings. Although official statistics do not separately classify *khuluk* in national

reporting, studies suggest that khuluk functions as an important legal avenue for women facing domestic violence, severe marital conflict, or unmet marital obligations.

Nevertheless, it should also be acknowledged that iwadh is not necessarily intended as a punishment, but as part of a legal mechanism to regulate the dissolution of marriage in Islamic family law. In practice, khuluk may provide an important legal pathway for women to divorce without having to prove fault in the same way as in contested divorce. Therefore, the issue is not simply whether iwadh exists, but how it operates in unequal social conditions and whether its application still serves justice for women in contemporary practice.

b. Deconstruction of the Law of Khuluk and Iwadh

Marginalization of women, from a cultural perspective, is an implication of the social values upheld by certain cultures and maintained by specific communities, which often place women in disadvantaged positions (Widyaningtyas, 2025). Social values contain an unequal division of roles between men and women, which is formed and maintained by patriarchal societies and cultures. Because women spend most of their time fulfilling domestic responsibilities, they have limited time to participate in public spaces and are even particularly vulnerable to sexual violence (Widyawati et al., 2021, p. 336).

The law of khuluk constructs a binary opposition, namely: the husband's right to divorce versus the wife's right to request divorce, then talak which is the absolute right of men versus khuluk which is a conditional right for women, the payer of compensation (women) versus the recipient of rights (men). From the Critical Legal Studies (CLS) perspective, women's rights are never "whole" — they are always conditional, hierarchical, and must be negotiated. The concept of "ransom" gives the impression that the woman is at fault, whereas she only wants to exit an oppressive relationship. Men remain the "grantors of permission," while women are "petitioners." The khuluk law is structurally unequal. Through the

symbol of iwadh, the subaltern position of women is legitimized and naturalized as if it were logical. Deconstruction reveals that claims of justice are built upon a logic of domination (A. Kurniawan, 2024, p. 186).

A more concrete deconstruction of khuluk should begin with the legal text of the Compilation of Islamic Law (KHI), especially Article 148, which regulates the procedure for khuluk, and Article 149, which governs the legal consequences of divorce. Article 148 positions khuluk as a divorce initiated by the wife through the payment of iwadh, thereby making women subject to a specific procedural burden before the court can recognize the dissolution of marriage. Meanwhile, Article 149 reinforces the legal asymmetry by stipulating the consequences of khuluk, including the termination of marital relations and the legal implications for post-divorce rights. From a Critical Legal Studies perspective, these provisions show that khuluk is not a neutral legal mechanism, but a textually constructed form of conditional access to divorce that places women in a subordinate procedural position. Therefore, deconstruction must focus on how the KHI itself formalizes hierarchy, rather than treating khuluk only as a general social practice.

This critical reading is supported by empirical evidence showing that divorce remains a significant legal and social issue in Indonesia. BPS recorded 394,608 divorce cases in 2024 and 438,168 cases in 2025, with women continuing to account for the majority of divorce petitions. The persistence of high divorce numbers, together with studies indicating that women often seek khuluk because of domestic violence, prolonged conflict, economic dependency, or the inability to maintain an unhealthy marriage, demonstrates that khuluk operates within unequal social conditions rather than in a truly voluntary context. These data strengthen the argument that the legal structure of iwadh should be examined not only as a doctrinal requirement, but also as a mechanism that may reproduce gendered burdens in practice.

Genealogy of the Law of Khuluk and Iwadh

In classical Islamic law, *khuluk* emerged in the context of a patriarchal-tribal society with the purpose of providing wives an exit from marriage, but still under male control. In Indonesia's Compilation of Islamic Law (KHI), *khuluk* is formalized within a modern legal system, yet its historical roots (classical patriarchy) remain intact, including the logic of *iwadh*. From a genealogical perspective, one can question: Why must women pay to exercise their right to divorce when marriage relationships should be based on equality? In the context of a modern state and constitution that guarantees gender equality, *iwadh* represents a lingering remnant of a social-moral and legal system that considers women as the social property of men.

The genealogy of *khuluk* in Indonesia can be traced not only to classical Islamic family law, but also to its formal codification in the Compilation of Islamic Law (KHI). Article 148 of the KHI regulates the procedure of *khuluk* by requiring the wife to submit her request to the Religious Court, which then examines the legal grounds and, if accepted, determines the amount of *iwadh* to be paid by the wife to the husband. This provision shows that the wife's access to divorce is not immediate or unconditional, but mediated through a procedural framework that places *iwadh* as a legal prerequisite. Article 149 further explains the legal consequences of divorce, including the termination of the marital bond and the post-divorce rights and obligations of the parties. From a CLS perspective, these provisions reveal that *khuluk* is not a neutral legal instrument; rather, it is a legal construction that preserves the historical logic of male authority by making women's right to exit marriage dependent on compensation. In this sense, the KHI does not merely regulate divorce procedures, but also reproduces a genealogy of gendered hierarchy in which women must negotiate their freedom through payment.

In social structures, an individual is a product of history, not nature. History is filled with countless conflicts, and social rules serve as demarcations that define each person's position. Power becomes a right, obedience becomes a duty, and the division of social

hierarchies temporarily remains ambiguous (Ali Safa'at & Istiqomah, 2022, p. 13). The main difference between Critical Legal Studies (CLS) and other traditional legal theories is that CLS rejects the separation of legal rationality and political debate. There is no distinction of logical legal models; law is politics in a different attire. Law only exists within an ideology. CLS regards the function of courts as a primary concern when understanding the law (Ali Safa'at & Istiqomah, 2022, p. 12).

Furthermore, gender injustice can arise in religious life (Horii, 2018). Gender inequality among Muslims, for example, is caused by gender bias in the interpretation of the Qur'an. Oppression and subordination of women stem from religious thought, patriarchal culture, and ideology. Therefore, various approaches are needed to eliminate the subordination of women, one of which is through a feminist hermeneutic approach in interpreting Qur'anic verses. This approach is necessary to minimize the occurrence of subordination against women (Firdawati et al., 2022, p. 232).

The low level of legal awareness among the community remains an important issue in divorce cases before the Religious Courts, including khuluk cases, because it often affects whether parties are able to assert their rights effectively during litigation. Abdul Jamil and Muliadi Nur show that in many divorce proceedings, one of the parties does not fully participate in the hearing process, which can create obstacles in protecting legal entitlements. In contested divorce cases, the husband's absence may hinder the wife from claiming maintenance for herself and her children, while in talak cases, the wife's absence may similarly limit the court's ability to consider and protect her interests. This indicates that legal awareness is not only relevant to access to divorce, but also to the extent to which parties can safeguard their post-divorce rights. Therefore, the issue of legal literacy becomes closely linked to the procedural fairness of divorce proceedings in Religious Courts (Jamil & Nur, 2022, p. 443).

In conclusion, khuluk (wife's initiated divorce) should not be understood merely as a neutral and voluntary mechanism for ending marriage, but as a legal construction that still carries the legacy of gendered power relations. From a Critical Legal Studies perspective, this shows that the law of khuluk is not free from ideology, but instead reflects the historical dominance of patriarchal assumptions within Islamic family law. Therefore, the legal norms governing khuluk need to be reinterpreted in a more progressive and gender-responsive way so that the right to leave an unworkable or harmful marriage is truly accessible without reinforcing women's subordination.

C. Conclusion

This article finds that khuluk, as regulated in Indonesia's Compilation of Islamic Law and practiced in Religious Courts, provides women with a legal way to end marriage, but at the same time places them under an iwadh requirement that may create economic and procedural burdens. From the perspective of Critical Legal Studies, this shows that khuluk is not a neutral legal mechanism, but a legal construction shaped by historical patriarchal relations and structural inequality. Although the institution of khuluk may protect women in certain situations, its practical application may still disadvantage women, especially those facing violence, poverty, stigma, or limited legal awareness.

Therefore, the regulation of khuluk and iwadh needs to be reexamined in light of gender justice and substantive equality. A more progressive interpretation is needed so that women's right to exit an oppressive marriage is not conditioned by burdens that reinforce subordination. Strengthening legal literacy, improving protective mechanisms in court practice, and reopening the discussion of iwadh within a gender-sensitive framework are necessary steps to ensure that khuluk truly serves justice rather than reproducing inequality. Future research may further explore how khuluk and iwadh can be reformed to align Islamic family law better with contemporary principles of fairness and equality.

REFERENCE

- Ali Safa'at, M., & Istiqomah, M. (2022). Critical Legal Studies (CLS): an Alternative for Critical Legal Thinking in Indonesia. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 7(1), 11–20. <https://doi.org/10.22373/petita.v7i1.122>
- Anggraeni, R. R. D., Primadianti, D., Paminto, S. R., & Yunus, N. R. (2022). Legality of Khulu' Lawsuit for Wives in the Provisions of Legislation in Indonesia. *Jurnal Ilmiah Al-Syir'ah*, 20(1), 34–52. <https://doi.org/10.30984/jis.v20i1.1817>
- Atmaja, A. P. E., & Erliyana, A. (2024). Affirming the Democratic Economic System After the Amendment of Article 33 of the Indonesian Constitution: A Critical Legal Studies Perspective. *Jurnal Bina Mulia Hukum*, 8(2), 158–176. <https://doi.org/10.23920/jbmh.v8i2.1084>
- Badan Pusat Statistik. (2025). *Beranda Nikah dan Cerai Menurut Provinsi (kejadian), 2024 - Tabel Statistik - Badan Pusat Statistik Indonesia* (pp. 9–12).
- Badri, M. A., Burhanuddin, A., & Jauhar, G. (2024). Factors Influencing the Increase in Khulu's Divorce: A Case at the Jember Religious Court (2021-2023). *Al-'Adalah*, 21(1), 53–76. <https://doi.org/10.24042/adalah.v21i1.21074>
- Baumgardner, P. (2024). Trashing the Tables: The Critical Legal Studies Symposium of the Stanford Law Review, Then and Now. *Laws*, 13(2). <https://doi.org/10.3390/laws13020021>
- Begum, M. S. I., Ismail, I., Yaakob, Z., Razick, A. S., & Abdullah, M. M. A. (2024). Gender Equity in Muslim Family Law: Modern and Contemporary 'Ulamā's View. *Al-Ahkam*, 34(2), 221–256. <https://doi.org/10.21580/ahkam.2024.34.2.20773>
- Colosi, M. F. (1990). Critical Legal Studies. *Michigan Law Review*, 88(6). <https://repository.law.umich.edu/mlr/vol88/iss6/24>

- Einiö, E., & Ponkilainen, M. (2025). Divorce in same-sex and opposite-sex couples: The roles of intermarriage, religious affiliation, and income. *Advances in Life Course Research*, 64(July 2024). <https://doi.org/10.1016/j.alcr.2025.100669>
- Elta, Y. H. T., & Yoserwan, Y. (2023). Paradigma Critical Legal Studies Terhadap Asas Legalitas di dalam Sistem Hukum Pidana di Indonesia. *UNES Law Review*, 6(1), 2507–2518. <https://review-unes.com/index.php/law/article/view/1036>
- Faizah, N., Meidina, A. R., Chadziq, A. L., Iqbal, M., & Umam, M. S. (2024). The Role of Indonesian Women Ulama Congress (KUPI) in the Search for Gender Equality-Based Islamic Law. *Al-'Adalah*, 21(2), 323–346. <https://doi.org/10.24042/adalah.v21i2.23698>
- Finnis, J. M. (1985). On “The Critical Legal Studies Movement.” *The American Journal of Jurisprudence*, 30(1), 21–42. <https://doi.org/10.1093/ajj/30.1.21>
- Firdawati, L., Munji, A., Sukandi, A., Bukhari, N., & Apriani, I. (2022). Husein Muhammad’s Thoughts on Gender Equality in Islamic Inheritance Law. *Al-'Adalah*, 19(2), 223–244. <https://doi.org/10.24042/adalah.v19i2.13123>
- Gilchrist Stewart, J. (2020). Demystifying CLS: A Critical Legal Studies Family Tree. *Adelaide Law Review*, 41(1), 121.
- Gojali, D. (2022). FILSAFAT HUKUM: Aktualisasi Critical Legal Studies di Indonesia. *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam*, 4(2), 735–740. <https://doi.org/10.37680/almanhaj.v4i2.3508>
- Halimatusa’diyah, I., & Triana, W. (2024). Sexism and women’s access to justice: Feminist judging in Indonesian Islamic judiciary. *Women’s Studies International Forum*, 103, 102883. <https://doi.org/https://doi.org/10.1016/j.wsif.2024.102883>
- Hasanvandi, S., Valizade, M., Honarmand, M. M., & Mohammadesmaeel, F. (2013). Effectiveness of

- Stress Management on Mental Health of Divorced Women. *Procedia - Social and Behavioral Sciences*, 84, 1559–1564.
<https://doi.org/10.1016/j.sbspro.2013.06.788>
- Horii, H. (2018). Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce, and Desire, by Maria Platt. *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 174(2), 345–347.
<https://doi.org/https://doi.org/10.1163/22134379-17402017>
- Hunt, A. (1986). The Theory of Critical Legal Studies. *Oxford Journal of Legal Studies*, 6(1), 1–45.
<https://doi.org/10.1093/ojls/6.1.1>
- Jamil, A., & Nur, M. (2022). Perlindungan Hukum Dan Keadilan Para Pihak Melalui Ex Officio Hakim Dalam Putusan Verstek Perkara Perceraian. *Jurnal Hukum Ius Quia Iustum*, 29(2), 439–460.
<https://doi.org/10.20885/iustum.vol29.iss2.art10>
- Jeong, K. H., Lee, S., Kim, C., Im, J. H., & Jung, H. (2024). Patterns of depression among women post-divorce and the influential factors: Latent growth modeling. *Journal of Affective Disorders Reports*, 17(April), 100789.
<https://doi.org/10.1016/j.jadr.2024.100789>
- Jones, G. W. (2023). Muslim and non-Muslim divorce trends in Southeast Asia in the 21st century. *Asian Journal of Social Science*, 51(3), 137–145.
<https://doi.org/https://doi.org/10.1016/j.ajss.2023.04.004>
- Kompilasi Hukum Islam Di Indonesia, 17 302 (1385).
- Kurniawan, A. (2024). a Critical Legal Studies Paradigm of the Presidential Threshold Electoral System in Indonesia. *Constitutional Law Society*, 3(2), 185–194.
<https://doi.org/10.36448/cls.v3i2.88>
- Kurniawan, E., Fadhlan, U. A., & Yanti, I. (2020). Khul' Menurut Imam Syafi'i dan Imam Hanbali: Mencari

- Relevansinya di Indonesia. *Al-Hukama'*, 10(1), 150–170.
<https://doi.org/10.15642/alhukama.2020.10.1.150-170>
- Maula, B. S., & Ariyanti, V. (2022). Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts. *Jurnal Hukum Islam*, 20(1), 155–180. <https://doi.org/10.28918/jhi.v20i1.6024>
- Meidina, A. R. (2022). Meninjau Ulang Iwadl Khuluk Perspektif Keadilan Gender. *Al-Manahij: Jurnal Kajian Hukum Islam*, 16(1), 77–90. <https://doi.org/10.24090/mnh.v16i1.6027>
- Moyn, S. (2024). Reconstructing Critical legal Studies. *The Yale Law Journal*, 134(1), 1–37.
- Neacsu, E. D. (2000). CLS Stands for Critical Legal Studies, If Anyone Remembers. *Journal of Law and Policy*, 8(2), 1–21.
- Parker, G., Durante, K. M., Hill, S. E., & Haselton, M. G. (2022). Why women choose divorce: An evolutionary perspective. *Current Opinion in Psychology*, 43, 300–306. <https://doi.org/10.1016/j.copsyc.2021.07.020>
- Price, D. A. (1989). Taking Rights Cynically: A Review of Critical Legal Studies. *The Cambridge Law Journal*, 48(2), 271–301. <https://doi.org/DOI:10.1017/S0008197300105318>
- Saputra, D. A. (2025). A Study of Fasakh and Khulu in the Compilation of Islamic Law (Khi): Comparison, Causes, and Implications. *International Journal of Social Service and Research*, 5(1), 136–143. <https://doi.org/10.46799/ijssr.v5i1.1191>
- Shesa, L., Dzar, M. A., Elkhairati, & Utami, H. S. (2024). Reformulating Progressive Fiqh of Talak (Divorce): A Contemporary Study of the Principle of Making Divorce More Difficult in SEMA No. 1 of 2022 for Women's Protection. *MILRev: Metro Islamic Law Review*, 3(2), 236–262.
- Syarif, D. F. K. dan N. (2021). Right To Divorce for Women in Islamic Family Law of Morocco. *Al-Aḥwāl*,

Vol. 14(2), 159–172. <https://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/2294>

Syukrawati, S., Sidqi, I., Nisa, S. M., Zufriani, Z., & Witro, D. (2024). Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis. *Al-Ahkam*, 34(1), 121–146.

<https://doi.org/10.21580/ahkam.2024.34.1.20624>

Widyaningtyas, R. S. S. (2025). Navigating Crisis: An Intersectional Analysis of Marginalized Women's Role in Sustaining Community Cooperatives Through The Covid-19 Pandemic. *Indonesian Journal of Socio-Legal Studies*, 4(2).

<https://doi.org/10.54828/ijsls.2025v4n2.3>

Widyawati, A., Pujiyono, P., & Rochaeti, N. (2021). Elimination of Sexual Violence in Feminist Legal Theorist. *Journal of Indonesian Legal Studies*, 6(2), 333–352. <https://doi.org/10.15294/jils.v6i2.48346>

Yeganeh, O. E. (2024). Rights in Critical Legal Studies. *SSRN Electronic Journal*, 1986, 1–11. <https://doi.org/10.2139/ssrn.4993304>