

AN ISLAMIC LEGAL REVIEW OF WIVES REQUESTING KHUL' DUE TO POLYGAMY

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Abstract

St. Namirah. 105261101521. *An Islamic Legal Review of Wives Requesting Khul' Due to Polygamy*. Supervised by Erfandi AM and Risnawati Basri. This study investigates how Islamic law addresses khul' in the context of polygamy and examines the rights of wives and the kids following a court's decree of khul'. The research adopts a normative legal method, or library research, by analyzing literature and documentary sources. The data consist of secondary materials, including primary legal texts such as fiqh literature; secondary materials such as hadith compilations, legal books, journals, and scholarly articles; and tertiary references such as dictionaries, encyclopedias, and websites. The findings indicate differing scholarly perspectives on wives requesting khul' due to polygamy. Imam Abu Hanifah argues that a wife should not base her request solely on dislike, whether toward her husband's conduct or personal traits, but should also consider the positive qualities within the marriage. Conversely, the Maliki school permits khul' when marital disputes risk causing harm or neglect of divine obligations, thereby justifying dissolution. The Shafi'i school also allows khul', provided both spouses mutually consent. Regarding post-divorce rights, wives are entitled to *nafkah madhiyah* (past maintenance) and *nafkah iddah* (maintenance during the waiting period). The kids retain the right to financial support, which remains the father's responsibility until they reach maturity and independence. Judges hold a critical role in safeguarding these rights by ensuring that both wives and the kids are adequately protected following khul'. In practical terms, this study contributes to strengthening the protection of women's and children's rights in religious courts by providing a doctrinal and judicial framework that can be used by judges as a reference in handling khul' petitions related to polygamy. This study highlights the diversity of juristic opinions on khul' in polygamous contexts and underscores the judiciary's essential function in upholding justice for women and the kids in post-divorce arrangements.

Keywords: *Khul', polygamy, Islamic law.*

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Introduction

Marriage in Islam is regarded as both a physical and spiritual bond between a man and a woman, established to create a family founded upon *sakinah*, *mawaddah*, and *rahmah*. The marital relationship is not merely a social contract but also an act of worship, carrying a religious dimension that draws individuals closer to God (Musyafah, 2020b). Within the framework of Indonesian national law, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan affirms that the principle of marriage in Indonesia is monogamy, as stipulated in Pasal 3 ayat (1). However, ayat (2) of the same article allows a husband to marry more than one wife, provided that he obtains permission from the court and fulfills specific legal requirements.

Islam itself does not reject the institution of polygamy but imposes strict limitations and conditions. From the perspective of Islamic law, polygamy is permissible with a maximum of four wives, on the condition that the husband ensures justice and the welfare of all parties involved. This principle is based on the Qur'anic verse in Surah al-Nisa (4:3), which permits men to marry two, three, or four women, but explicitly emphasizes that if there is fear of failing to act justly, then only one wife should be taken. Thus, polygamy is not an obligation but rather a concession (*rukhsah*) that may only be exercised under strict conditions.

In practice, however, polygamy often generates considerable challenges. Many husbands enter polygamous marriages primarily to satisfy personal desires, disregarding the requirement of justice and neglecting both the principles of Islamic law and state regulations. Consequently, many wives feel neglected, both materially and emotionally, and suffer psychological distress due to a lack of care and affection (Joni, 2020). This situation frequently compels wives to seek legal remedies, one of which is *khulu'*, namely divorce initiated by the wife in return for financial compensation (*'iwadh*) to the husband.

Khulu' is recognized in Islamic jurisprudence as a legitimate form of divorce, with strong foundations in both the Qur'an and the Sunnah. Surah al-Baqarah (2:229) permits a wife to ransom herself if she fears being unable to uphold the limits set by Allah within the marriage. The legitimacy of *khulu'* is further affirmed in the Hadith, such as the case of the wife of Thabit ibn Qais, who sought divorce from the Prophet Muhammad (peace be upon him) on the grounds of incompatibility. These sources demonstrate that Islam provides women with the right to seek release from marriages that no longer serve their welfare or spiritual well-being.

In the Indonesian context, polygamy remains one of the principal reasons behind the filing of *khulu'*. According to data from the Central Bureau of Statistics (BPS) (2025), divorce cases filed by wives (*gugat cerai*) reached over 300,000, with a significant proportion linked to polygamous practices. This underscores that polygamy continues to pose serious challenges within Muslim households in Indonesia. For many women, polygamy is perceived as harmful and distressing, as it often leads to emotional estrangement, neglect of the kids, and the erosion of family harmony.

From the perspective of positive law in Indonesia, polygamy is permitted under strict requirements, including the consent of the first wife, the husband's proven ability to provide financial support, and guarantees of fairness (Nasution dkk., 2025). Nevertheless, in practice, many polygamous marriages are conducted clandestinely, without court approval, and even through unregistered (*siri*) marriages. Such practices exacerbate the vulnerability of wives and the kids, whose rights remain legally unprotected (Daud dkk., 2022).

At the same time, the filing of *khulu'* due to polygamy is a matter of scholarly debate. Some jurists argue that *khulu'* is permissible when supported by valid *shar'i* reasons, such as injustice, failure to provide financial maintenance, or domestic violence. However, if *khulu'* is sought solely for emotional reasons without evidence of such violations, it is considered impermissible. This highlights the importance of examining in greater depth how Islamic law views *khulu'* in cases of polygamy, and what implications it carries for the rights of wives and the kids following divorce. A study by Nurul Hidayah (2018) emphasizes that *khul'* is frequently chosen by women when polygamy is practiced without meeting the condition of justice, particularly in matters of financial support and emotional attention.

In addition, a study by Rahmawati (2020) highlights the practice of religious courts, which tend to accommodate petitions for *khul'* even when the wife's reasons are largely subjective. This tendency reflects the judicial orientation toward protecting women by applying the principle of *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* (preventing harm is prioritized over attaining benefit). On the other hand, research conducted by Ahmad Fauzi (2021) underlines that the kids's rights remain a primary concern even when marriages end through *khul'*. Judges of religious courts generally affirm that fathers remain obligated to provide for their the kids until they reach adulthood. Nevertheless, previous studies reveal certain limitations, particularly in the lack of comparative analysis between the perspectives of Islamic law and Indonesian positive law. Therefore, this study seeks to address that gap by offering a more comprehensive analysis of *khul'* due to polygamy, examining both normative-fiqh perspectives and judicial practice in Indonesian religious courts.

Given the rising number of divorce cases initiated by wives on the grounds of polygamy, research on *khulu'* has become both timely and significant. Such studies not only enrich academic discourse in Islamic family law but also provide practical contributions for society by clarifying the boundaries set by *sharī'ah* and positive law in regulating polygamy. Ultimately, this inquiry is expected to offer a comprehensive understanding of the status of *khulu'* in cases of polygamy from an Islamic legal perspective, while simultaneously emphasizing the protection of women's and the kids's rights within the pursuit of a just and harmonious family structure.

The significance of this study lies in two dimensions. First, its academic contribution: this research enriches the literature on Islamic family law by offering a comparative analysis between classical fiqh perspectives and the application of Indonesian positive law, thus filling the gap left by previous studies. Second, its practical contribution: the findings may serve as a reference for judges in religious courts when deciding *khul'* cases involving polygamy, and also as guidance for women seeking legal remedies when facing injustice in polygamous marriages. In this way, the study not only advances scholarly knowledge but also provides tangible benefits for the legal protection of women and children.

Research Methods

This study employs an Islamic legal approach with the use of normative legal research, also known as *library research*. Normative research was chosen because the primary focus of this study is to examine and analyze Islamic legal provisions as well as statutory regulations related to *khulu'* arising from polygamy, rather than to conduct field

experiments. Within legal scholarship, the normative method is particularly relevant for exploring legal texts such as the Qur'an, Hadith, and statutory law while also connecting these sources with practices reflected in secondary data. Several complementary approaches were adopted to strengthen the analysis: 1) Statute approach, which involves examining Indonesian positive law governing polygamy and divorce, particularly Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan and Kompilasi Hukum Islam (KHI). This approach aims to determine how state law regulates polygamy and the procedures for divorce through *khulu'*; 2) Case approach, which analyzes judicial decisions in cases of divorce due to polygamy handled by religious courts. This method allows the researcher to understand how judges interpret and apply legal provisions in *khulu'* cases filed by wives; 3) Conceptual approach, which explores scholarly views and Islamic legal theories regarding *khulu'*. This approach is necessary to link normative concepts in Islamic jurisprudence (*fiqh*) with the socio-legal realities faced by women in polygamous marriages.

The research relies on secondary data, which consist of 3 (three) categories as follows: 1) Primary legal materials, including the Qur'an, Hadith, Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law, and relevant religious court decisions concerning *khulu'* arising from polygamy; 2) Secondary legal materials, which provide explanation and interpretation of the primary sources. These include classical Islamic legal texts such as *Al-Umm*, *Subul al-Salam*, *Fiqh al-Sunnah*, and *Fiqh al-Madzahib al-Arba'ah*, as well as contemporary works on Islamic family law, academic journals, and scholarly opinions on *khulu'* and polygamy; 3) Tertiary legal materials, which consist of supporting references such as dictionaries, encyclopedias, and credible online sources, including publications from the Central Bureau of Statistics (BPS) and the Supreme Court of the Republic of Indonesia.

To strengthen the currency of this study, additional references were drawn from more recent religious court decisions, such as Religious Court Decision of Yogyakarta No. 135/Pdt.G/2022/PA.Yk and Religious Court Decision of Jakarta Selatan No. 4587/Pdt.G/2023/PA.JS, both of which deal with *khulu'* petitions based on polygamy and provide insight into contemporary judicial practice. Moreover, updated divorce statistics published by BPS in 2024 indicate a continued increase in cases of *khulu'* linked to polygamy, reinforcing the relevance of this research.

The technique of data collection was conducted through library research. Library research refers to a research strategy that relies on the systematic collection, identification, evaluation, and analysis of written sources, both primary and secondary, to answer research questions. In the field of legal studies, particularly Islamic law, library research is highly relevant because it focuses on the interpretation of authoritative texts rather than empirical data gathered through fieldwork (Benuf & Azhar, 2020). Relevant literature, both printed and digital, was systematically reviewed and selected. Primary legal materials served as the core references for identifying the normative legitimacy of *khulu'*, while secondary and tertiary sources were used to contextualize the discussion and enrich the analysis with scholarly debates, statistical data, and judicial practices.

The data were analyzed using content analysis, a method aimed at identifying, interpreting, and deriving meaning from legal texts and scholarly writings (Wiraguna, 2024), concerning *khulu'* in the context of polygamy. Content analysis is considered particularly suitable for this study, as it emphasizes interpretation rather than

quantification. The analysis was carried out using a qualitative descriptive method, which involved presenting the data systematically and then linking them with theories of Islamic law as well as provisions of positive law (Muammar & Taufik, 2024). Through this method, the researcher sought to formulate an objective conclusion regarding the position of *khulu'* in cases of polygamy and its implications for the rights of wives and the kids after divorce.

To ensure the reliability of the findings, source triangulation was applied by comparing the texts of the Qur'an and Hadith with the interpretations of prominent scholars, and further correlating these with statutory provisions and judicial practices. This multi-source verification ensured that the conclusions were not drawn from a single perspective but instead reflected a balanced and comprehensive understanding of the legal issue.

The choice of normative research with statute, case, and conceptual approaches was deemed most appropriate because the issue under study lies at the intersection of Islamic legal theory and the realities of Indonesian positive law. While the normative framework provides the doctrinal foundation, the case and conceptual approaches allow for a nuanced understanding of how these principles are applied and debated in practice.

Ultimately, this methodological framework is designed to produce a holistic and comprehensive analysis of how Islamic law evaluates *khulu'* filed on the grounds of polygamy, as well as how Indonesian positive law safeguards the rights of women and the kids following divorce. By combining doctrinal analysis with case-based and conceptual perspectives, this study aims to contribute both theoretically and practically to the discourse on Islamic family law in contemporary Indonesia.

Results and Discussion

Khul' is a form of divorce in Islamic law initiated by the wife in exchange for compensation (*'iwāḍ*) paid to the husband. Its legitimacy is grounded in the Qur'an (Musyafah, 2020a), particularly Surah al-Baqarah (2:229), which states that if a couple fears they cannot maintain the limits set by Allah, there is no blame if the wife ransoms herself from the marriage. The Prophet Muhammad also validated *khul'* in practice, as seen in the case of the wife of Thabit ibn Qays, who requested divorce because she could no longer live with her husband. The Prophet granted her request on the condition that she return the garden given to her as dowry. This illustrates that Islam does not confine women to marriages that cause harm. Instead, *khul'* provides a lawful mechanism for wives to free themselves, while balancing rights and obligations (Yudowibowo, 2012).

Islam permits polygamy under strict and narrowly defined conditions, with the principle of justice (*'adl*) as its central requirement, as articulated in Surah al-Nisā' (4:3). Justice in this context is not confined merely to the husband's ability to provide financial sustenance, but also encompasses a more holistic notion of fairness emotional stability, equitable distribution of time, sincerity in affection, and genuine concern for the welfare of each wife and the children involved. The Qur'anic command thus sets a demanding ethical threshold, underscoring that polygamy is not to be treated as a license for indulgence, but as a responsibility laden with moral and spiritual obligations.

Yet, the Qur'an itself tempers this conditional permission with a sober acknowledgement of human limitation. In Surah al-Nisā' (4:129), it is emphatically stated that "You will never be able to do justice between wives, even if you strive to do so." This

verse has been the subject of extensive exegetical reflection across the centuries, and the overwhelming consensus of the *mufassirūn* is that it demonstrates the inherent difficulty if not impossibility of achieving perfect justice in the marital context. The juxtaposition of verses 4:3 and 4:129 conveys a profound tension: while polygamy is permitted as an exceptional *rukḥṣah* (concession), it is not presented as the normative or ideal form of marital life. Rather, it is a pragmatic allowance designed for extraordinary circumstances, yet one that carries with it a high risk of moral failure and social harm, particularly with respect to the dignity and well-being of the first wife.

The Indonesian legal and social context illustrates the extent to which this tension manifests in practice. While the *Undang-Undang Perkawinan* and the *Kompilasi Hukum Islam* regulate polygamy through clear procedural safeguards including the requirement of court approval and the explicit consent of the first wife empirical reality shows that these conditions are frequently disregarded. Many polygamous marriages are entered into without judicial authorization, without the knowledge or agreement of the first wife, and often in the form of *nikah siri* (unregistered marriages). These informal practices not only circumvent the protective intent of state regulation but also erode the ethical safeguards envisioned by Islamic law.

The consequences of such irregular polygamy are far-reaching. Women, particularly first wives, often experience profound psychological distress, economic insecurity, and social marginalization as a result of being placed in unequal marital arrangements. In many cases, the cumulative injustice compels women to resort to legal remedies, most notably *khul'*, as a mechanism to dissolve marriages that have become oppressive and unsustainable (Septiandani et al., 2023). Thus, rather than functioning as a divinely sanctioned avenue of protection, polygamy when practiced without adherence to either the Qur'anic imperative of justice or the state's legal procedures becomes a source of systemic harm that contradicts the very objectives of Islamic family law (*maqāṣid al-sharī'ah*), namely the protection of dignity (*hiḏ al-'ird*), progeny (*hiḏ al-nasl*), and social harmony.

In this light, Indonesian experience highlights a critical jurisprudential insight: polygamy is not a right to be exercised at will, but a heavily conditioned responsibility that is valid only insofar as the stringent requirements of justice are observed. Where those requirements are absent or unattainable as both the Qur'an and social reality suggest they cannot be replaced with legal fictions or cultural justifications. Instead, the principle of *maslahah* (public good) demands that the welfare of women and children be prioritized, even if this requires limiting the practice of polygamy in positive law.

Wives typically seek *khul'* because they feel deprived of fairness and happiness in their marriage. Common grounds include (Malaka, 2023): 1) Unfair financial support: husbands fail to provide proportional maintenance; 2) Emotional injustice: wives feel neglected when husbands prioritize new wives; 3) Prolonged conflict: polygamy triggers ongoing disputes that cannot be resolved; 4) Loss of dignity: wives feel dishonored when polygamy is undertaken without consultation or approval.

Indonesian religious courts have frequently recognized these reasons as valid. For instance, in Religious Court Decision Of South Jakarta No. 2615/Pdt.G/2011/PAJS, the wife filed for *khul'* because the husband entered into a polygamous marriage without court authorization and failed to treat his wives fairly. The judges granted the *khul'*,

reasoning that the marriage no longer fulfilled the objectives of harmony and mutual care.

Classical Islamic jurists differed on the conditions for *khul'*. The Maliki school allowed *khul'* even without strong justification, treating it as the wife's right to free herself. The Hanafi and Shafi'i schools required *shar'i* grounds, such as neglect of financial duties or injustice. The Hanbali school took a more moderate stance, permitting *khul'* if the wife could no longer endure the marriage, even on subjective grounds (Satriana, 2019). In practice, Indonesian religious courts often adopt a moderate approach aligned with the Hanbali and Maliki perspectives. For example, in Religious Court Decision Medan No. 461/Pdt.G/2009/PA.Mdn, the judges granted *khul'* based primarily on the wife's subjective claim of emotional suffering from her husband's polygamy. The court reasoned that the prolonged conflict demonstrated the marriage was no longer viable.

In Islamic jurisprudence, *khul'* requires the wife to compensate the husband, usually equivalent to the dowry (*mahr*). Scholars agree that the amount should not exceed the dowry so as not to burden the wife (Nugroho dkk., 2024). This principle is consistently applied in court rulings. For instance, in Religious Court Decision Surabaya No. 613/Pdt.G/2012/PA.Sby, the wife was ordered to return ten grams of gold given as her dowry. The judges emphasized that the compensation must remain reasonable and within the bounds of fairness.

Regarding financial rights after divorce, wives in *khul'* are not entitled to *nafaqah al-'iddah* (maintenance during the waiting period) (Puspytasari dkk., 2023). However, the kids's rights to maintenance remain intact. In Religious Court Decision Makassar No. 1452/Pdt.G/2013/PA.Mks, the judges ruled that although the wife forfeited her right to post-divorce maintenance, the husband remained obliged to fund his the kids's living and education.

From the standpoint of *maqāṣid al-sharī'ah* (the objectives of Islamic law), *khul'* serves as a means of protecting life (*hifz al-naḥs*), dignity (*hifz al-'ird*), and lineage (*hifz al-nasl*) (Nurdin dkk., 2024). In polygamous contexts, *khul'* ensures that women are not forced to endure marriages that compromise these objectives (Fahmi dkk., 2024). Religious court decisions in Indonesia often emphasize this protective role. In Religious Court Decision Bandung No. 1520/Pdt.G/2014/PA.Bdg, the judges granted *khul'* on the grounds that the husband's polygamy had caused prolonged conflict and psychological distress. The court ruled that ending the marriage was more beneficial (*maṣlaḥah*) than forcing the wife to remain in a harmful relationship.

From a gender justice perspective, polygamy tends to disadvantage women. While Islam allows it, the condition of justice is rarely upheld in practice (Hafidzi, 2018). *Khul'*, therefore, operates as a corrective mechanism, granting women recourse when polygamy causes harm. Nonetheless, *khul'* cannot be requested arbitrarily (Rohmah & Budiardjo, 2021). Courts remain cautious in ensuring that petitions are based on legitimate grounds. For example, in Religious Court Decision Semarang No. 2270/Pdt.G/2015/PA.Smg, the judges rejected the wife's *khul'* petition because her claims were limited to jealousy without substantive evidence of injustice. This illustrates that both Islamic law and judicial practice seek balance: safeguarding women's rights while preventing frivolous divorces.

The range of court decisions highlights that Islamic law is not merely theoretical but actively applied in Indonesia's legal system. Cases such as those decided by Pengadilan Agama Of South Jakarta, Medan, Surabaya, Makassar, Bandung, and Semarang, reveal how judges contextualize Islamic legal principles in addressing real marital disputes. Normatively, *khul'* is justified by Qur'anic texts, prophetic traditions, and juristic consensus. Practically, Indonesian courts emphasize protection of wives and the kids, granting *khul'* to prevent harm while still imposing compensation requirements to maintain fairness. This integration of classical jurisprudence with modern judicial discretion reflects the adaptive nature of Islamic law (Sudrajat & Amanita, 2020).

From the Islamic legal perspective, *khul'* due to polygamy is permissible when the condition of justice is not met and the marriage causes harm to the wife. This view is supported by the Qur'an, Hadith, and scholarly opinion, and reinforced by judicial practice in Indonesia. Religious court decisions, such as Religious Court Decision Of South Jakarta No. 2615/Pdt.G/2011, Religious Court Decision No. 461/Pdt.G/2009, Religious Court Decision Surabaya No. 613/Pdt.G/2012, Religious Court Decision Makassar No. 1452/Pdt.G/2013, and Religious Court Decision Bandung No. 1520/Pdt.G/2014, demonstrate the judiciary's willingness to grant *khul'* in cases of unjust polygamy. At the same time, rulings like Religious Court Decision Semarang No. 2270/Pdt.G/2015 show that courts remain consistent in rejecting petitions based solely on emotional dissatisfaction. Thus, *khul'* in polygamous contexts functions as both a *shar'i* and judicial instrument, ensuring women's protection while maintaining the balance of rights and obligations. It underscores Islamic law's capacity to uphold justice and harmony in family life, even in the face of complex challenges such as polygamy (Anam & Nelli, 2021).

Khul' is a form of divorce initiated by the wife through compensation paid to the husband (Ramdania, 2020). Once *khul'* is legally established by a religious court, the marital bond is terminated, and new legal consequences arise for both parties, particularly concerning the rights of the wife and the kids (Nasir & Sunardi, 2018). In Islamic law, divorce through *khul'* does not extinguish all of the woman's rights but rather adjusts them according to *shar'ah* principles. Similarly, in Indonesian positive law, protections are granted through the Marriage Law, the Compilation of Islamic Law (KHI), and judicial rulings of the religious courts (Adharsyah dkk., 2024).

In Islamic law, a wife who divorces through *khul'* is not entitled to maintenance during her waiting period (Maimun, 2022). This contrasts with divorce through *ṭalāq*, where the husband remains obligated to provide for the wife during *'iddah* (Fikriana & Erpandi, 2024). In *khul'*, because the divorce is initiated by the wife with compensation, the right to *nafaqah al-'iddah* is forfeited. Nevertheless, the wife must still observe the waiting period, typically three menstrual cycles or three months, to ensure certainty of lineage in case of pregnancy. Thus, while financial rights during *'iddah* are absent, the obligation to observe it remains intact (Niswah, 2016). In practice, religious courts usually grant *mut'ah* to wives divorced through *ṭalāq*. In *khul'*, however, *mut'ah* is rarely awarded because the wife initiates the divorce. Nevertheless, certain court decisions still grant *mut'ah* as a form of compassion, particularly when the wife can prove that she suffered significant hardship in the marriage.

In *khul'*, the wife must return the dowry or provide alternative compensation. For example, in Religious Court Decision No. 613/Pdt.G/2012/PA.Sby, the wife was required to return ten grams of gold, which had been her dowry. This ruling is consistent with the

majority opinion of classical jurists, who held that compensation should not exceed the dowry so as not to burden the wife. *Khul'* does not eliminate the wife's right to marital property (*gono-gini*). In Indonesian positive law, marital assets must be divided fairly after divorce regardless of who initiated it. Pasal 97 of the Kompilasi Hukum Islam (KHI) stipulates that both husband and wife are entitled to half of the marital property.

The kids's right to financial support remains intact even after divorce through *khul'*. This includes living expenses, education, healthcare, and other essential needs (Malisi, 2022). In Religious Court Decision Makassar No. 1452/Pdt.G/2013/PA.Mks, the judges emphasized that although the marriage ended through *khul'*, the father remained obligated to support his the kids. This ruling aligns with Article 41(b) of Law No. 1 of 1974, which requires fathers to bear the cost of childcare and education. Islamic law grants custody of young the kids primarily to the mother unless she is proven unfit (Pakarti, 2024). This principle is also enshrined in Pasal 105 of the Kompilasi Hukum Islam (KHI), which provides that the kids under the age of twelve shall remain under their mother's custody. In Religious Court Decision Bandung No. 1520/Pdt.G/2014/PA.Bdg, custody of two minor the kids was awarded to the wife even though the divorce was by *khul'*. The judges reasoned that the the kids were still in need of maternal care and affection. Courts also emphasize the father's responsibility for his the kids's education. In Religious Court Decision Of South Jakarta No. 2615/Pdt.G/2011/PA.JS, the father was explicitly ordered to provide schooling for his the kids despite the *khul'* divorce. This reflects the long-term obligation of fathers toward the development and future of their the kids.

Indonesian law integrates *shari'ah* principles with modern protections for women and the kids. Several important implications include: 1) Mandatory Child Support: fathers remain legally responsible for their the kids, regardless of who initiates the divorce; 2) Division of Marital Property: wives retain their right to half of marital assets under Pasal 97 Kompilasi Hukum Islam (KHI); 3) Child Protection: courts prioritize the best interest of the child in custody decisions; 4) Distinction from *Ṭalāq*: in *ṭalāq* divorces, wives are entitled to *nafaqah al-'iddah* and *mut'ah*, while in *khul'* these rights usually do not apply due to the wife's request and compensation.

Although *khul'* theoretically requires the wife to forfeit certain rights, in practice many women resort to *khul'* under duress, such as enduring polygamy, neglect, or domestic violence (Nazmi & Syofyan, 2023). In such situations, wives may face a double burden: losing their rights to *nafaqah al-'iddah* while also paying compensation. This has led some scholars to critique *khul'* as potentially disadvantaging women (Zahra dkk., 2023). Nevertheless, Indonesian religious courts often strive to balance justice. Judges may reduce the amount of compensation to prevent undue hardship on the wife or, in some cases, waive the requirement of *mut'ah* when the wife has suffered considerable harm. This flexibility reflects Islamic law's emphasis on justice (*'adl*) and welfare (*maṣlahah*) (Hayati, 2022).

When *khul'* is granted by a religious court, the wife's rights differ significantly from those in *ṭalāq*. She is not entitled to *nafaqah al-'iddah* or *mut'ah*, but she retains her right to marital property (Yani, 2024). The kids, however, continue to enjoy full rights to maintenance, education, and care from both parents. Custody of young the kids generally rests with the mother unless proven otherwise (Mubarok & Hermanto, 2023). Judicial precedents, such as Religious Court Decision Surabaya No. 613/Pdt.G/2012,

Religious Court Decision Makassar No. 1452/Pdt.G/2013, Religious Court Decision Bandung No. 1520/Pdt.G/2014, and Religious Court Decision Of South Jakarta No. 2615/Pdt.G/2011, demonstrate that while wives' financial entitlements are limited, child protection remains a priority. Thus, *khul'* in both Islamic and Indonesian legal contexts functions not only as an avenue for wives to exit harmful marriages but also as a mechanism ensuring the ongoing protection of the kids's rights after divorce (Tahir, 2016). To provide a clearer understanding, the following table summarizes the main differences between the rights of wives in cases of *ṭalāq* and *khul'* as applied in Islamic law and Indonesian positive law.

Table 1. Comparison of Wife's Rights after *Ṭalāq* and *Khul'*

Aspect / Rights	<i>Ṭalāq</i> (Divorce initiated by husband)	<i>Khul'</i> (Divorce initiated by wife with compensation)
Maintenance during 'Iddah (Nafaqah al-'Iddah)	Entitled; husband must provide support during waiting period ('iddah)	Not entitled; forfeited because wife initiates divorce with compensation
Mut'ah (consolatory gift)	Commonly granted by court as moral/financial support	Rarely granted, unless wife can prove significant hardship during marriage
Mahr (Dowry)	Wife retains the dowry given to her	Wife usually required to return the mahr or equivalent as compensation
Marital Property (Harta Bersama)	Divided equally (50:50) under KHI Article 97	Divided equally (50:50) under KHI Article 97
Custody of Children (Hadhanah)	Normally granted to mother if children are under 12 years old	Same as <i>Ṭalāq</i> ; mother retains custody unless proven unfit
Child Maintenance	Father obliged to provide full financial support until adulthood	Same obligation applies; father must provide for children despite <i>khul'</i>

Conclusion

The study of *khul'* in cases of polygamy provides a comprehensive understanding of how Islamic law and Indonesian positive law respond to the complexities of family life, particularly when polygamy is practiced without fulfilling the principle of justice. In Islam, polygamy is not an obligation but a concession (*rukhsah*) permitted under strict conditions. The central requirement is justice in all aspects, financial, emotional, and spiritual. Yet social reality demonstrates that this condition is difficult to achieve. Consequently, polygamy often leads to harm (*mafsadah*), especially for wives and the kids. From the perspective of Islamic law, *khul'* serves as a legitimate solution that allows women to free themselves from marriages that no longer bring benefit. The Qur'an and the Sunnah provide strong normative foundations for *khul'*, and scholars recognize it as a right for women to escape marital relationships that endanger their lives, dignity, or well-being. Differences of opinion among jurists regarding the grounds for *khul'* reflect the flexibility of Islamic law in addressing diverse social conditions. In the context of polygamy, the majority view permits *khul'* when a wife feels unable to continue living

harmoniously due to her husband's injustice.

Judicial practice in Indonesia strengthens this interpretation. Decisions of the religious courts, such as Religious Court Decision Of South Jakarta No. 2615/Pdt.G/2011, Religious Court Decision Medan No. 461/Pdt.G/2009, Religious Court Decision Surabaya No. 613/Pdt.G/2012, Religious Court Decision Makassar No. 1452/Pdt.G/2013, and Religious Court Decision Bandung No. 1520/Pdt.G/2014, illustrate the tendency of judges to grant *khul'* petitions when polygamy has caused conflict, injustice, or psychological suffering for wives. The reasoning applied is that a marriage which no longer fulfills the objectives of *sakinah, mawaddah, wa rahmah* should be ended to prevent greater harm. At the same time, the judiciary remains consistent in rejecting *khul'* petitions based solely on emotional dissatisfaction without substantive evidence, as reflected in Religious Court Decision Semarang No. 2270/Pdt.G/2015.

From the standpoint of Indonesian positive law, *khul'* is implicitly regulated in the Undang-Undang Perkawinan and Kompilasi Hukum Islam (KHI). The law attempts to integrate *shari'ah* principles with modern protections for women and the kids. This is reflected in the wife's obligation to provide compensation to the husband, echoing classical *fiqh*, while at the same time preserving the wife's rights to marital property and ensuring the kids's rights to maintenance, education, and custody. In this way, Indonesian positive law frames *khul'* not only as a mechanism of divorce but also as an instrument of protection for vulnerable parties, particularly the kids. From the standpoint of Indonesian positive law, *khul'* is not explicitly codified as a distinct legal institution, but its essence is implicitly accommodated within the framework of the *Undang-Undang Perkawinan* (Marriage Law) and the *Kompilasi Hukum Islam* (KHI). Both legal instruments attempt to strike a delicate balance between the enduring principles of *shari'ah* and the evolving demands of modern legal protections, particularly with regard to women's rights and the welfare of children.

In classical *fiqh*, *khul'* is understood as a form of divorce initiated by the wife, conditioned upon her willingness to provide a certain form of compensation or *'iwaq* to the husband, often by returning part or all of the *mahr* (dowry). Indonesian positive law reflects this tradition by recognizing the wife's obligation to compensate the husband as part of the dissolution process, thereby maintaining continuity with the juristic consensus of earlier Islamic scholarship. At the same time, however, the legislative framework does not adopt this doctrine in isolation. Rather, it integrates *fiqh* principles with statutory guarantees designed to prevent the erosion of women's dignity and to safeguard the rights of children affected by divorce.

For instance, the KHI stipulates that even in cases of *khul'*, the wife retains her independent rights over jointly acquired marital property (*harta bersama*), subject to equitable distribution in accordance with Indonesian law. This represents a significant adaptation of Islamic jurisprudence to local socio-legal realities, ensuring that women are not rendered economically vulnerable by the dissolution of marriage. Furthermore, the law mandates that the children's rights to maintenance, education, healthcare, and custody remain paramount, regardless of the form or grounds of divorce. In doing so, Indonesian positive law reframes *khul'* not merely as a technical mechanism for ending marital relations but as a broader instrument of social justice and protection for vulnerable parties above all, the children whose future well-being is most directly impacted by the breakdown of the family unit.

This dual character of *khul'* in Indonesian law anchored in the *shari'ah* yet expanded through modern legislative interventions illustrates a dynamic model of legal accommodation. It demonstrates how Islamic family law, when embedded in a pluralist legal system, can evolve into a mechanism that simultaneously honors tradition and responds to contemporary human rights concerns. As such, the Indonesian approach to *khul'* highlights the law's mediating function: preserving fidelity to the spirit of Islamic jurisprudence while affirming the constitutional mandate to protect women and children as integral subjects of legal protection.

The rights of wives after *khul'* are indeed different from those in divorce through *talāq*. Wives are not entitled to *nafaqah al-'iddah* or *mut'ah*, but they maintain their rights to marital property. Meanwhile, the rights of the kids remain a priority. The kids are entitled to financial support, education, and parental care, with courts emphasizing that the father's responsibilities do not cease after divorce. Custody of young the kids is generally granted to the mother unless clear evidence proves she is unfitness, although *khul'* requires wives to forfeit certain rights and even pay compensation, courts in Indonesia often seek to balance interests. In several rulings, judges reduced the compensation amount to avoid burdening the wife or excluded *mut'ah* when evidence showed that the wife suffered significant harm in the marriage. Such judicial discretion reflects the spirit of *maqāṣid al-shari'ah*, the protection of life, dignity, and lineage, and the prioritization of welfare over literal application of legal texts.

In conclusion, *khul'* in cases of polygamy represents both a *shari'i* and judicial instrument relevant to contemporary contexts. Islamic law legitimizes the wife's right to leave harmful marriages, while Indonesian law ensures protection of women's and the kids's rights after divorce. Religious court decisions demonstrate that law functions not only at the normative level but also at the practical level, adapting to social realities.

This research underscores the importance of viewing *khul'* not merely as a classical fiqh discourse but as part of a living legal system. The study of *khul'* due to polygamy has strategic value, both academically and practically. Academically, it enriches the literature on Islamic family law by comparing fiqh theory with judicial practice. Practically, it provides guidance for society, especially women, in understanding their rights and available legal remedies when facing injustice in marriage. Ultimately, *khul'* in the context of polygamy is not merely a divorce mechanism but a protective instrument affirming the law's role in safeguarding the vulnerable. It symbolizes the balance between normative texts and practical welfare, proving that Islamic law can adapt to modern challenges while preserving the spirit of justice that lies at the heart of the *shari'ah*.

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