

BETWEEN RECOGNITION AND LEGITIMIZATION: WOMEN'S AND CHILDREN'S RIGHTS IN INDONESIA'S EXTRA-JUDICIAL DIVORCE



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Article History :

Submission : January 15, 2026

Revised : February 20, 2026

Accepted : March 19, 2026

Published : May 05, 2026

Keywords : Family Law, Islamic Jurisprudence, Legal Certainty, Women's Rights, Judicial Confirmation

Abstract

This study aims to examine the tension between the religious recognition of extra – judicial divorce under Islamic jurisprudence and its legitimization under Indonesia's positive law, concerning the protection of women's and children's rights. The study employs normative legal research using statutory, conceptual, and case approaches, supported by qualitative analysis based on *maṣlaḥah* and *maqāṣid al-sharī'ah*. The findings demonstrate that the dualism between Islamic jurisprudence, which recognizes the religious consequences of divorce pronounced outside the court, and positive law, which requires divorce to be determined by a court, creates legal uncertainty concerning marital status, maintenance, child custody, 'iddah, remarriage, and family law administration. This uncertainty affects women and children by weakening the enforceability of post – divorce rights and obligations. The analysis establishes that religious recognition of divorce occurring outside the court should not be equated with legitimization, because legitimization may undermine judicial oversight and protection of vulnerable members. Judicial confirmation of divorce can instead function as a restorative mechanism that provides legal certainty concerning an occurred divorce without legitimizing extra – judicial divorce as a lawful form. The study concludes that maintaining a clear distinction between recognition and legitimization is essential for reconciling Islamic legal consequences with Indonesia's positive law while safeguarding women's and children's rights. Academically, the study contributes a *maṣlaḥah* – and *maqāṣid al-sharī'ah* – based framework for family law that conceptualizes judicial confirmation of divorce as restorative recognition rather than legal legitimization, offering a rights – sensitive approach to resolving tensions surrounding extra – judicial divorce in Indonesia.

Abstrak

Penelitian ini bertujuan untuk mengkaji ketegangan antara pengakuan religius terhadap perceraian di luar pengadilan dalam hukum Islam dan legitimasinya dalam hukum positif Indonesia, khususnya dalam kaitannya dengan perlindungan hak-hak perempuan dan anak. Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus, yang didukung oleh analisis kualitatif berdasarkan *maṣlaḥah* dan *maqāṣid al-sharī'ah*. Hasil penelitian menunjukkan bahwa dualisme antara hukum Islam, yang mengakui konsekuensi keagamaan dari perceraian yang diucapkan di luar pengadilan, dan hukum positif, yang mensyaratkan perceraian ditetapkan oleh pengadilan, menimbulkan ketidakpastian hukum mengenai status perkawinan, nafkah, hak asuh anak, 'iddah, perkawinan kembali, dan administrasi hukum keluarga. Ketidakpastian tersebut berdampak pada perempuan dan anak karena melemahkan keberlakuan hak dan kewajiban pascaperceraian. Analisis menunjukkan bahwa pengakuan religius terhadap perceraian yang terjadi di luar pengadilan tidak

seharusnya disamakan dengan legitimasi hukumnya karena legitimasi dapat melemahkan pengawasan peradilan dan perlindungan terhadap anggota keluarga yang rentan. Konfirmasi yudisial atas perceraian dapat berfungsi sebagai mekanisme restoratif yang memberikan kepastian hukum mengenai perceraian yang telah terjadi tanpa melegitimasi perceraian di luar pengadilan sebagai bentuk perceraian yang sah secara hukum. Penelitian ini menyimpulkan bahwa mempertahankan perbedaan yang jelas antara pengakuan dan legitimasi sangat penting untuk mempertemukan konsekuensi hukum Islam dengan hukum positif Indonesia sekaligus melindungi hak-hak perempuan dan anak. Secara akademik, penelitian ini berkontribusi pada pengembangan kerangka hukum keluarga berbasis maṣlaḥah dan maqāṣid al-sharī'ah yang menempatkan konfirmasi yudisial atas perceraian sebagai bentuk pengakuan restoratif, bukan legitimasi hukum, sehingga menawarkan pendekatan yang berorientasi pada hak dalam menyelesaikan ketegangan terkait perceraian di luar pengadilan di Indonesia.

INTRODUCTION

Law must be clear and firm because legal norms that invite multiple interpretations can create ambiguity (Musaddad, Ishom, Mat Hussin, & Jambunanda, 2025), weaken legal certainty, and reduce public compliance (Fadil, Mazidah, & Mahmudi, 2024). This problem becomes particularly significant when positive law intersects with religious norms, as occurs in Indonesian divorce regulation (L A Yuni, 2021). Indonesian law requires divorce to be conducted before a court, while Islamic jurisprudence generally recognizes the religious consequences of divorce pronounced outside judicial proceedings. Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage provides that divorce may only be carried out before a court session after reconciliation efforts have been undertaken (Azwir, Pagar, & Nasution, 2022). Nevertheless, extra – judicial divorce continues to occur in society, while the legal framework provides no direct sanction for husbands who pronounce divorce outside court or fail to subsequently register and process the divorce (Dahlan et al., 2023). This gap between normative prohibition and practical enforcement weakens legal firmness and contributes to inconsistent compliance (Rahmawati, Budiman, Saka, & Sunuwati, 2025). The problem is not merely procedural but also concerns the legal protection of family members. Extra – judicial divorce can leave women and children in an uncertain legal position because the religious status of the marriage may differ from its status under state law (Schenk, 2019). Women may experience difficulties in obtaining formal recognition of their changed marital status (Hamidah, Furaida, Rosdiana, Sulalah, & Rahman, 2024), while children may face uncertainty concerning maintenance, caregiving, and other legal consequences (Faiz, Zulfahmi, & Izzuddin, 2022). Thus, the tension between religious recognition and state legitimization makes extra – judicial divorce an urgent issue of legal certainty, justice, and rights protection.

Existing scholarship has examined Indonesian divorce primarily through the framework of formal legal compliance, particularly regarding registration, judicial authority, and the protection of women and children. Studies have addressed marriage and divorce registration by examining its relationship with legal certainty (Siregar, Albani, & Yazid, 2023), family rights, and the continuing practice of unregistered marriage (Saragih, Pulungan, & Budhiawan, 2022). Other studies have discussed restrictions on divorce outside court proceedings and emphasized the importance of judicial mechanisms in preventing arbitrary dissolution of marriage (Al Jufri, Awang, & Mochammad Sahid, 2021). Research has also identified practical barriers to formal

divorce proceedings, including litigation costs, lengthy procedures, procedural complexity, geographical distance, and limited legal awareness, which may discourage parties from using judicial mechanisms (Afandi, Nelli, & Yunus, 2023). These studies demonstrate that registration and judicial determination are important instruments for ensuring legal protection. However, the existing literature remains predominantly preventive and procedural. It generally emphasizes how individuals should comply with state requirements rather than explaining how the legal system should respond when divorce has already occurred outside court (Firdaus, Ismail, Busyro, Yenti, & Mohamad, 2023). This distinction is important because extra-judicial divorce creates a situation in which religious consequences may already be considered effective according to certain interpretations of Islamic jurisprudence, while the state continues to regard the marriage as legally existing until a judicial process is completed (Lilik Andar Yuni & Haries, 2024). The resulting dual status can produce uncertainty regarding marital rights, financial obligations, children's welfare, and subsequent legal actions (Aeby, Cottier, Widmer, & Sahdeva, 2024). Consequently, existing scholarship leaves insufficiently explored the juridical mechanism required to reconcile an already-occurring extra-judicial divorce with the state requirement of judicial determination.

Previous studies provide an important foundation for understanding divorce registration, judicial authority, and the protection of family rights, but their approaches reveal a significant conceptual limitation. By treating extra-judicial divorce mainly as a violation of procedural requirements, previous scholarship tends to emphasize prevention and legal compliance rather than addressing the legal consequences of a divorce that has already occurred (Salamah, 2021). This orientation risks overlooking situations in which the religious relationship has ended while the civil status of the parties remains unchanged. The statistical disparity between *cerai talak* and *cerai gugat* further demonstrates the significance of this issue (Djawas, Eriyanti, Yulia, & Fauzan, 2023). The substantial difference between these categories indicates that the utilization of judicial divorce mechanisms is not evenly distributed between husbands and wives. Moreover, the prevalence of *verstek* decisions, particularly when husbands fail to attend judicial proceedings, illustrates continuing difficulties in ensuring their participation in formal divorce procedures. These circumstances demonstrate that the existence of judicial procedures alone does not necessarily resolve the social and legal consequences of extra-judicial divorce. A legal mechanism is therefore required to address situations in which divorce has already occurred outside court while maintaining the principle that judicial proceedings constitute the legally prescribed route for divorce. The analytical focus should consequently shift from merely preventing extra-judicial divorce toward establishing a restorative judicial mechanism through judicial confirmation of divorce, which can examine and determine the legal consequences of an already-occurring divorce without transforming the extra-judicial act itself into a legally authorized alternative to judicial divorce.

The purpose of this study is to analyze how Indonesian law should respond to divorce pronounced outside court and to examine whether judicial confirmation of divorce can function as a restorative mechanism for reconciling religious recognition with state legal requirements while protecting women's and children's rights. The study distinguishes between recognition of the occurrence of extra-judicial divorce and legitimization of the procedure through which the divorce occurred. Recognizing that a divorce has occurred for the purpose of resolving its legal consequences does not necessarily mean authorizing, normalizing, or encouraging divorce outside judicial

proceedings. Instead, judicial confirmation of divorce may provide a controlled judicial pathway through which the factual circumstances, religious consequences, and legal implications of an already – occurring divorce can be examined and determined by the court. Such a mechanism is important because the absence of formal legal status may restrict women's ability to claim *nafkah 'iddah*, *mut'ah*, and unpaid spousal maintenance (*nafkah madliyah*), while also creating difficulties concerning children's maintenance, caregiving, and other rights. Accordingly, this study conceptualizes judicial confirmation of divorce as a *maṣlaḥah* – oriented legal mechanism grounded in legal certainty, substantive justice, and *maqāṣid al-sharī'ah*. The study argues that judicial confirmation can bridge the gap between religious recognition and state legal determination by providing legal consequences for an already – occurring divorce without converting extra – judicial divorce into a lawful substitute for judicial divorce. This approach seeks to strengthen legal certainty, prevent prolonged ambiguity in family status, and ensure that women's and children's rights remain protected within the Indonesian legal system.

METHODS

This study employs normative legal research to examine the tension between the religious recognition and legal legitimization of extra – judicial divorce in Indonesia, particularly concerning the protection of women's and children's rights. The research uses statutory, conceptual, and case approaches. The statutory approach examines Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and other relevant legal provisions governing divorce and its consequences. The conceptual approach analyzes the distinction between recognition and legitimization and develops Judicial confirmation of divorce as a restorative legal mechanism. The case approach examines selected religious court decisions concerning divorce occurring outside judicial proceedings and its consequences for women and children. Legal materials consist of primary materials, including legislation and court decisions, and secondary materials, including peer – reviewed journal articles, scholarly books, and authoritative Islamic legal literature. Data were collected through documentary research by identifying, selecting, classifying, and recording relevant legal materials from official legal databases, religious court repositories, academic databases, and authoritative scholarly sources. The collection process focused on materials directly addressing extra – judicial divorce, women's and children's rights, judicial determination, and Islamic family law. Because this research is normative, it does not involve human participants, interviews, surveys, or field – based data collection.

The collected legal materials were analyzed qualitatively using a descriptive – analytical method. The analysis involved four stages: identifying and classifying relevant legal materials, interpreting applicable legal norms and judicial reasoning, comparing Islamic jurisprudential principles with Indonesian positive law, and synthesizing the findings through the Theory of Legal Protection, *maṣlaḥah mursalah*, and *maqāṣid al-sharī'ah*. The analysis focuses on distinguishing recognition of an occurred extra – judicial divorce from its legal legitimization and assessing the extent to which Judicial confirmation of divorce can restore legal certainty without transforming extra – judicial divorce into a legally authorized procedure. The Theory of Legal Protection is used to assess the protection of women's and children's rights, particularly concerning marital status, maintenance, custody, and post – divorce obligations. *Maṣlaḥah mursalah* is applied to evaluate the prevention of harm (*dar'u al-mafāsid*) and realization of public welfare, while *maqāṣid al-sharī'ah* provides a normative basis for evaluating substantive justice.

Methodological rigor is maintained through systematic source selection, cross-verification among legislation, judicial decisions, jurisprudential sources, and scholarly literature, and consistent application of the analytical framework. The validity of the findings is strengthened through doctrinal triangulation, ensuring that conclusions are supported by converging legal and theoretical sources.

RESULT AND DISCUSSION

RESULT

Patterns and Determining Factors of Extra-Judicial Divorce

Extra-judicial divorce appears in several interconnected forms that demonstrate a persistent discrepancy between religiously recognized marital dissolution and state-recognized legal status (Kasim, Nurdin, Muthalib, Syarifuddin, & Samad, 2022). The principal form occurs when a husband pronounces divorce outside judicial proceedings without subsequently initiating formal divorce proceedings. In such circumstances, the parties may regard their marital relationship as terminated in religious terms, while the state continues to recognize the marriage as legally existing. Another manifestation involves the absence of formal divorce documentation, resulting in factual separation without corresponding alteration of official marital records. The practice may also involve unilateral determination of marital dissolution without judicial verification of the circumstances, timing, intention, or consequences of the pronouncement (Quah, 2020). These patterns demonstrate that extra-judicial divorce is not limited to the location where the pronouncement takes place (Suryani, Warman, Efendi, & Tenrilawa, 2024). It develops into a continuing discrepancy between factual marital circumstances and formal legal status (Syukrawati, Sidqi, Nisa, Zufriani, & Witro, 2024). The persistence of this discrepancy indicates that the problem operates across religious, social, and institutional dimensions. Consequently, extra-judicial divorce should be understood as a condition in which the religious meaning of divorce, the lived experience of the spouses, and the state's formal recognition of marital status do not necessarily coincide. This condition constitutes the central manifestation of the legal uncertainty examined in this study.

Several factors contribute to the emergence and persistence of extra-judicial divorce. The first concerns differences between Islamic jurisprudential understandings of divorce and the requirements established by Indonesian positive law (Asman, Gassing, Kurniati, & Shuhufi, 2022). Where parties consider the religious pronouncement sufficient to terminate the marital relationship, the necessity of subsequent judicial proceedings may receive less attention. The second factor is limited legal awareness concerning the distinction between religious consequences and state legal determination (Yusuf, Azizah, & Hasan, 2023). The third involves economic barriers, particularly where litigation expenses and related costs are perceived as burdensome (Hanifah & Pascadinianti, 2023). Procedural complexity may constitute another obstacle when parties perceive judicial proceedings as lengthy, complicated, or difficult to navigate (O'sullivan, 2019). Geographical accessibility also matters where distance from religious courts increases the practical burden of formalization. Administrative requirements can further discourage parties who have already considered the marriage religiously terminated (Munala, Welle, & Hohenshell, 2022). The husband's reluctance to initiate or participate in judicial proceedings represents another significant factor because formal determination may remain unresolved when the person who pronounced divorce does not pursue the required process. Social perceptions regarding the sufficiency of religious divorce can reinforce these circumstances. Taken together, these factors demonstrate that extra-judicial divorce results from the interaction

of normative divergence, legal culture, practical constraints, and institutional accessibility rather than from procedural non – compliance alone.

The persistence of extra – judicial divorce reveals a structural limitation in the existing divorce framework. The legal system strongly emphasizes prevention by requiring divorce to be conducted through judicial proceedings, but prevention becomes insufficient when the pronouncement has already occurred outside court (Vatuk, 2019). The absence of a specific restorative mechanism can leave the parties in a prolonged condition of uncertainty because the law does not merely need to prevent an unauthorized procedure; it must also determine how to address an existing factual situation. This creates a gap between the preventive function of divorce regulation and its capacity to resolve post – occurrence consequences (Eiberg & Dahl, 2026). The structural problem therefore involves three interconnected dimensions: religious recognition, factual separation, and state legal determination. When these dimensions remain disconnected, procedural irregularity may develop into substantive uncertainty concerning marital status and family rights (Zainuddin, Khairina, & Caniago, 2019). The situation also demonstrates that legal certainty requires more than formal compliance. It requires institutional capacity to determine the legal consequences of circumstances that have already developed contrary to the prescribed procedure. Accordingly, the phenomenon points toward a need for a preventive – restorative model. Prevention remains essential for maintaining judicial control over divorce (Latif & Saidon, 2021), while restoration becomes necessary when extra – judicial divorce has already occurred. This transformation would allow the legal system to respond to social realities without weakening the requirement that divorce ordinarily be determined through judicial proceedings.

Legal Consequences and Vulnerability of Women's and Children's Rights

The legal consequences of extra – judicial divorce are particularly significant for women because the absence of judicial determination may leave them in an uncertain marital position. A woman may experience factual separation and understand the marriage to have ended religiously while remaining formally registered as married under state law. This discrepancy can complicate her ability to establish a legally recognized change in marital status. It may also create difficulties in exercising financial rights associated with divorce, including *nafkah 'iddah*, *mut'ah*, and *nafkah madliyah* (Muala & Wahyuni, 2024). The problem becomes more serious where the husband refuses to acknowledge the pronouncement, delays formal proceedings, or fails to initiate the required judicial process. In such circumstances, the wife may become dependent upon the husband's cooperation to obtain legal certainty. The resulting imbalance can prolong uncertainty and weaken access to effective legal remedies (Nursaidah, Rohman, & Rahayu, 2020). Extra – judicial divorce can therefore affect not only the status of marriage but also the practical ability of women to claim and enforce rights arising from marital dissolution. The situation demonstrates that procedural irregularity may produce substantive consequences when the legal system does not provide an effective mechanism for determining an already – occurring divorce. Protection of women consequently requires more than requiring judicial divorce prospectively (Pruett & Cornett, 2017). It also requires a mechanism capable of addressing the legal consequences of an extra – judicial pronouncement after it has occurred.

Children may also experience significant consequences from unresolved extra – judicial divorce, particularly where parental responsibilities are not clearly formalized following separation (Goyal, 2023). Although divorce does not eliminate parental obligations, uncertainty concerning the parents' legal status may complicate the practical

determination and enforcement of maintenance, caregiving, education, and other responsibilities. Where the marital relationship remains formally registered despite factual separation (Barlow, 2017), disagreements concerning the distribution of parental responsibilities may become more difficult to resolve. Administrative inconsistencies can further complicate matters involving family records and official documentation. The consequences are therefore not confined to the relationship between husband and wife but may extend to children as independent rights—holders whose welfare requires continuing parental responsibility (Bouland, 2021). This situation becomes particularly problematic when disputes concerning the validity or recognition of divorce overshadow questions concerning children's immediate needs (Wahyudi, 2022). A judicial mechanism addressing extra—judicial divorce should consequently incorporate children's interests rather than treating marital status as the sole issue requiring determination. The legal response should establish not only whether the marital relationship has ended but also how maintenance, caregiving, and other parental responsibilities will continue afterward (Merino & Moreno, 2019). Such an approach would prevent uncertainty concerning marital status from producing secondary uncertainty concerning children's rights. The protection of children therefore forms an essential component of any restorative response to extra—judicial divorce.

The combined consequences for women, children, and legal institutions demonstrate the transformative implications of the phenomenon. Extra—judicial divorce can transform a procedural deviation into prolonged legal uncertainty, unequal access to remedies, and difficulties in enforcing family rights. The discrepancy between factual circumstances and official records can also increase the possibility of subsequent disputes and complicate administrative determination (Haris, Lisdiyono, & Setiyowati, 2024). These conditions indicate that a purely preventive model does not fully address the realities produced after extra—judicial pronouncement. A restorative response is required to transform an uncertain factual situation into a judicially determined legal status. Within this framework, judicial confirmation of divorce can function as a controlled mechanism through which the court verifies the occurrence of divorce (Sjåblom, Franzén, & Aronsson, 2018), examines its circumstances (Mansari, Irwansyah, Rais, Sari, & Rahman, 2025), determines the legal status of the parties, and establishes the consequences for family rights (Harun, Yusuf, Jumanah, Dewi, & Hanim, 2026). Such confirmation should not be understood as authorization of divorce outside court. Rather, it should restore legal certainty after an event has already occurred while preserving judicial authority over divorce (Forsberg & Autonen—Vaaraniemi, 2022). The transformative significance of this approach lies in shifting the legal response from prevention alone toward prevention combined with restoration. It enables the state to maintain the normative requirement of judicial divorce while preventing women and children from bearing the continuing consequences of unresolved marital status (Haider, Noor, & Arshad, 2023). The resulting framework places legal certainty, substantive justice, and family—rights protection within a single judicial response.

DISCUSSION

The overall analysis demonstrates that extra—judicial divorce produces a persistent gap between religious recognition, factual marital separation, and formal state determination (Ferdousi, 2021). The principal pattern involves a husband's pronouncement outside court followed by delayed or absent judicial proceedings, leaving the parties in a condition where religious and legal statuses may diverge. This condition is sustained by differences in normative understanding, limited legal awareness, economic and procedural

barriers, accessibility problems, and reluctance to participate in judicial proceedings. Its consequences extend beyond marital status because women may encounter difficulties in exercising financial rights (Baharudin & Nasih, 2026), while children may face uncertainty concerning maintenance and caregiving responsibilities. Administrative institutions may likewise confront discrepancies between official records and factual family circumstances. These circumstances demonstrate that the central issue is not simply the existence of divorce outside court but the inability of a purely preventive framework to resolve the legal consequences of an event that has already occurred (Agustina, 2023). The situation therefore requires a legal mechanism capable of preserving judicial control while responding to established factual circumstances (Tveit, Gustavson, & Helland, 2024). Judicial confirmation of divorce can occupy this position by providing judicial determination after extra-judicial pronouncement without treating the outside-court procedure as an authorized method of divorce (Yani et al., 2025). Its purpose is to restore legal certainty, clarify rights and obligations (Thurnblad & Haugen, 2026), and prevent unresolved marital status from generating continuing vulnerability.

The causes identified in the preceding analysis demonstrate that extra-judicial divorce is produced through an interaction between normative differences, social perceptions, practical barriers (Takak & Atas̃ – Topcuoğlu, 2026), and institutional limitations (Kumlin, 2026). Differences between Islamic jurisprudence and Indonesian positive law are particularly important because parties may perceive religious pronouncement as sufficient to terminate marriage (Suryani, Warman, Husni, Andiko, & Azzahra, 2026). This perception can reduce the perceived necessity of subsequent judicial proceedings. Limited legal awareness further contributes to misunderstanding concerning the distinction between religious consequences and state legal status (Regasa & Molla, 2019). Economic barriers, procedural complexity (Syaefuddin, Miru, Saleng, Deviany, & Arief, 2026), administrative requirements, and geographical accessibility can make formal proceedings difficult, particularly for parties with limited resources. The husband's reluctance to initiate or participate in court proceedings may further delay legal determination because the person who pronounced divorce may not take the necessary steps to formalize the divorce (Fahn, Rees, & Wuppermann, 2016). These circumstances indicate that strengthening prohibition alone may not eliminate the practice (Fadhilah, Salma, Elfia, & Mawaddah, 2023). A more effective response requires attention to the conditions that encourage extra-judicial dissolution and to the institutional capacity available afterward. Legal policy should therefore combine preventive education (Bezrukova & Samoylova, 2020), accessible judicial procedures, and clear mechanisms for resolving cases in which prevention has failed (Salma, Subeitan, Bilalu, Zakariah, & Muhammad, 2025). The causal structure suggests that a comprehensive response must address both the reasons why extra-judicial divorce occurs and the consequences that emerge when it remains unresolved (Andrea & Awaliyah, 2022).

The consequences of unresolved extra-judicial divorce demonstrate that procedural uncertainty can develop into substantive injustice. Women may remain formally married while experiencing separation in practice (Kumlin, 2026), limiting their ability to obtain formal recognition and claim financial rights (Farque, 2024). Dependence upon the husband's willingness to initiate proceedings may create an unequal position between the parties. Children can also be affected when maintenance, caregiving, and parental responsibilities are not clearly determined following separation (Nurmala & Barkah, 2023). At the institutional level (Kamaruddin, 2023), discrepancies between factual circumstances and official records may generate administrative complications and increase the possibility

of subsequent disputes (Kesuma, Triputra, Zulhuda, & Dali, 2025). These effects show that legal certainty should encompass not only compliance with procedural requirements but also the capacity of the legal system to resolve situations that have already departed from those requirements (Fahmi, Sir, Anshari, Aminah, & Nurunnabi, 2025). From this perspective, judicial confirmation of divorce can be interpreted as a restorative mechanism designed to transform uncertain circumstances into judicially established status. The court should not merely confirm a private declaration but should investigate the alleged occurrence and determine its legal consequences (Patawari, Jafar, Supardin, Asni, & Kitta, 2026). This process can simultaneously protect women's rights, secure children's interests, and preserve the authority of judicial institutions (Farabi, 2025). The interpretive implication is therefore that restoration does not weaken prevention (Saidah, Rukiah, Sunuwati, & Nasohah, 2024). Instead, restoration complements prevention by ensuring that failure to comply with the prescribed procedure does not leave affected family members without an effective legal remedy (Kesuma et al., 2025).

The approach developed in this study differs from previous approaches that primarily emphasize registration, procedural compliance, judicial supervision, and prevention of divorce outside court (Turnip, Harahap, Talli, Arminsyah, & Sebyar, 2024). Those approaches provide an essential foundation because judicial control remains necessary to prevent arbitrary dissolution and protect family members (Basri, Rahmawati, Ridha, Luthfi, & Mohamad, 2025). However, their predominantly preventive orientation provides limited conceptual space for situations in which divorce has already occurred outside judicial proceedings (Shahid, 2018). This study addresses that limitation by distinguishing recognition from legitimization (Astuti & Prastio, 2022). Recognition refers to judicial determination of whether an existing divorce occurred and what consequences should follow, whereas legitimization would mean treating extra-judicial divorce as a legally acceptable alternative to judicial proceedings (Fardindaputri & Hasanudin, 2025). The distinction is essential because complete rejection may leave women and children exposed to prolonged uncertainty, while unconditional recognition could weaken the mandatory character of judicial divorce. Judicial confirmation of divorce therefore offers a different conceptual position by establishing a controlled judicial pathway between these two extremes (Ahyu, Jamilah, Yusmita, & Malik, 2024). It does not authorize the pronouncement outside court (Fardindaputri & Hasanudin, 2025), but it also does not disregard its possible consequences (Hidayat, Efrinaldi, Jayusman, & Sari, 2022). This perspective extends the analysis of divorce regulation from a prevention-centered approach toward a prevention-restoration framework (Anwa, 2021). The principal contribution lies in connecting judicial authority (Ikhwan et al., 2025), legal certainty, substantive justice, and family-rights protection within a single conceptual model.

The appropriate action is to develop a clearly regulated prevention-restoration framework in which ordinary judicial divorce remains the primary and legally required mechanism, while judicial confirmation of divorce serves only as an exceptional restorative pathway (Arifin, Ngazizah, Hameeyae, & Mahir, 2026). The procedure should establish strict evidentiary requirements (Suriani et al., 2024), including verification of the marriage, examination of evidence concerning the alleged divorce, determination of its timing and circumstances, and assessment of intention and legal capacity where relevant (Suriani et al., 2024). Both parties should be given meaningful opportunities to present evidence and arguments, while judicial safeguards should prevent fabricated or strategically asserted claims (Kholidah, Ridho, Sobhan, & Ritonga, 2023). Confirmation should also require judicial determination of women's financial rights and children's maintenance and

caregiving responsibilities (Triyono & Asmuni, 2023). From the perspective of *maṣlaḥah* and *maqāṣid al-sharī'ah*, the mechanism should prioritize legal certainty (Asni & Iqbal, 2026), justice, prevention of harm, and protection of vulnerable family members (Saidah, Badruzzaman, Afiah, Luthfiah., & Awaliyah, 2026). At the policy level, clear procedural standards should distinguish confirmation from ordinary divorce proceedings and prevent the mechanism from becoming an easier substitute for judicial divorce (Sebyar, Anisa, Asrori, Sukiati, & Bahy, 2026). Legal education and accessible court procedures should simultaneously be strengthened to reduce the occurrence of extra – judicial divorce. The proposed framework therefore preserves prevention while adding restoration, enabling the legal system to respond to social realities without legitimizing divorce outside court or weakening judicial authority.

CONCLUSION

The study concludes that extra – judicial divorce in Indonesia is characterized by normative dualism between Islamic jurisprudence (*fiqh*), which recognizes the religious consequences of divorce occurring outside the court, and positive law, which requires judicial determination for legal recognition. This dualism generates legal uncertainty concerning marital status, maintenance, child custody, *'iddah*, remarriage, and family law administration, with particularly significant consequences for women and children. The findings demonstrate that a purely preventive legal framework requiring judicial determination of divorce is insufficient to address divorces that have already occurred outside the court. Within this context, judicial confirmation of divorce can function as a restorative legal mechanism that addresses the consequences of an occurred divorce without transforming extra – judicial divorce into a legally authorized form of dissolution. Its restorative function lies in clarifying marital status, securing post – divorce rights and obligations, reducing prolonged family conflict, facilitating lawful remarriage, and strengthening administrative certainty. The distinction between recognition and legitimization is therefore essential: recognition addresses the legal consequences of an occurred divorce requiring judicial determination, whereas legitimization would imply acceptance of extra – judicial divorce as a lawful procedure. The study consequently finds that judicial confirmation of divorce provides a necessary corrective mechanism for strengthening legal certainty and protecting women and children within Indonesian Islamic family law.

The study contributes conceptually and theoretically by developing a *maṣlaḥah* – and *maqāṣid al-sharī'ah* – based framework that distinguishes restorative recognition from legal legitimization in the regulation of extra – judicial divorce. This framework shifts Islamic family law reform beyond procedural compliance toward substantive justice, rights protection, and the prevention of greater *mafsadah*. The study demonstrates that the protection of women and children should constitute a central benchmark for evaluating the legal consequences of divorce occurring outside judicial proceedings. From a theoretical perspective, the integration of the Theory of Legal Protection with *maṣlaḥah mursalah* and *maqāṣid al-sharī'ah* provides a multidimensional basis for assessing whether legal mechanisms adequately respond to vulnerable family members while maintaining judicial authority. Methodologically, the normative analysis demonstrates the value of combining statutory, conceptual, and case approaches to identify tensions between religious norms, social realities, and positive law. The proposed framework further emphasizes that judicial confirmation of divorce must remain subject to strict judicial scrutiny, clear eligibility requirements, sufficient evidence, and enforceable post – divorce

obligations. Accordingly, the study contributes a rights – sensitive model of Islamic family law reform that reconciles legal certainty, substantive justice, religious considerations, and institutional accountability without normalizing extra – judicial divorce.

The normative character of this study constitutes a limitation because the proposed judicial confirmation of divorce mechanism has not been empirically examined through the experiences of judges, litigants, legal practitioners, counselors, or families affected by extra – judicial divorce. Consequently, the study cannot fully assess its practical feasibility, accessibility, administrative implications, evidentiary challenges, or social consequences within religious court practice. Future research should therefore employ empirical socio – legal methods, including interviews, observations, and analysis of judicial practices, to evaluate how judges and affected parties understand and respond to the judicial confirmation of divorces occurring outside formal proceedings. Further research should also investigate whether the mechanism effectively improves women's and children's access to maintenance, custody, legal status, and other post – divorce rights. Comparative studies of jurisdictions that regulate or recognize extra – judicial divorce may provide additional insights for refining its institutional design. Future regulatory development should establish clear eligibility requirements, strict judicial scrutiny, evidentiary standards, enforceable post – divorce obligations, and appropriate consequences for non – compliance. These measures are necessary to prevent moral hazard and ensure that restorative recognition does not become indirect legitimization. Such developments can strengthen the responsiveness, coherence, and rights – protective capacity of Indonesian Islamic family law.

DECLARATIONS

AUTHOR CONTRIBUTION STATEMENT

Muhammad Nasrulloh Conceptualization, Methodology, Investigation. Navisatul Zahro Literature review, Data curation. Fikri Ahmad Islami Formal analysis, Data analysis. Faridatus Suhadak Islamic legal analysis. Zummy Humairoh Interpretation of findings. Rafeah Saidon Supervision, Validation. All authors contributed to the final manuscript, approved the submitted version, and agreed to be accountable for the work.

FUNDING STATEMENT

This research received no specific grant from any funding agency in the public, commercial, or not – for – profit sectors.

DATA AVAILABILITY STATEMENT

The data supporting the findings of this study are available from the corresponding author upon reasonable request. Access to interview data is subject to ethical considerations and participant confidentiality.

DECLARATION OF INTERESTS STATEMENT

The authors declare that they have no known competing financial or personal interests that could have influenced the work reported in this paper.

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