

# Reasons for Divorce Claims of Female Migrant Workers at the Religious Courts of Ex-Kediri Residency

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## Abstract

*This research focuses on understanding the reasons behind divorce claims made by female migrant workers at the Religious Courts of ex-Kediri Residency. These female workers have obtained permission from their husbands to seek employment abroad, and their departure is based on mutual agreement between them and their husband. However, while working overseas, these migrant workers file for divorce against their husbands, citing various reasons. This study aims to answer the question of why female migrant workers file for divorce claims at the Religious Courts of ex-Kediri Residency. The research method employed is qualitative research with a socio-legal, conceptual, and philosophical approach. The results of this study indicate six reasons for divorce claims among migrant workers at Religious Court of Kediri Residency. Firstly, economic issues play a significant role. Secondly, domestic violence within the marriage is a contributing factor. Thirdly, third-party interference from family members and friends is prevalent. Fourthly, misappropriation of funds for indulgent and lavish activities occurs. Fifthly, husbands exhibit irresponsibility or abandonment towards their wives. Lastly, some husbands display laziness and solely rely on their wives' monthly allowance. These phenomena call for efforts to restore the humanistic values of Islam, particularly regarding the provision of family livelihood from the perspective of equality and gender justice within migrant workers' families, through the implementation of mubadalah (mutual consultation).*

**Keywords:** Divorce Claims, Migrant Workers, Religious Court, Gender

## INTRODUCTION

This research aims to understand the phenomenon of female migrant workers who, despite obtaining permission from their husbands and departing according to mutual agreement, file for divorce against their husbands while working overseas, citing various reasons.

This situation creates differences in understanding gender equality within the families of female migrant workers. These differences in understanding gender among the parties involved have implications for their perspectives on gender in cases of divorce claims by female migrant workers regarding the provision of family livelihood.

This research topic is intriguing because there is a phenomenon of divorce claims filed by female migrant workers against their husbands for various reasons, including economic factors, husbands' irresponsibility, interference from third parties in the household, husbands spending their wives' money, and instances of domestic violence committed by husbands, both physically and psychologically, among other reasons.

Based on data from the Religious Courts in ex-Kediri Residency, including the Religious Courts of Trenggalek, Tulungagung, Kediri City, Kediri District, Nganjuk, and Blitar, the number of cases in those courts from 2017 to 2021 can be shown in the following table:

**Table 1:** *Number of Cases from 2017-2021 in the Religious Courts of ex-Kediri Residency*

No	Case Type	Year	Kediri Regency	City of Kediri	Tulungagung Regency	Trenggalek Regency	Blitar	Nganjuk
1	Case verdicts	2017	4.355	945	2.691	2.547	3.838	2.549
		2018	4.260	926	3.515	2.794	3.838	2.526
		2019	4.402	885	3.342	2.918	5.018	3.076
		2020	4.969	935	3.837	2.587	4.957	3.076
		2021	4.878	776	3.319	2.378	4.822	2.179
2	Divorce	2017	1.186	516	2.027	1.047	2.442	1.621

No	Case Type	Year	Kediri Regency	City of Kediri	Tulungagung Regency	Trenggalek Regency	Blitar	Nganjuk
	lawsuit by wives	2018	2.641	533	2.053	1.237	2.442	1.588
		2019	3.085	481	2.120	1.278	3.225	1.931
		2020	3.168	560	2.025	1.157	2.994	1.565
		2021	2.020	428	1.806	1.189	2.863	1.628
3	Divorce lawsuit by husbands	2017	561	185	883	454	954	589
		2018	977	190	487	527	954	550
		2019	1.054	163	917	562	1.209	621
		2020	1.040	151	784	496	1.120	627
		2021	991	156	703	487	1.103	498

Based on the discussions with the sources in the Religious Courts of ex-Kediri Residency, it is found that 25% of the divorce lawsuits cases filed in the court are from female migrant workers who are residing overseas and seeking divorce through the assistance of lawyers (personal communication, Mei 2022). The phenomenon of female migrant workers choosing to work abroad initially stems from economic constraints, and their departure is based on mutual agreement between spouses. However, this has led to the emergence of a perception among some communities in ex-Kediri Residency area that it seems as if the role of the husband has been replaced by the wife in providing for the family's financial needs. This understanding is influenced by patriarchal interpretations of religion and certain cultural beliefs that still uphold the notion that it is the husband's responsibility to sufficiently provide for the family, not the wife (Mosse, 2018, p. 86).

The gender perspective in this research study is crucial because it aligns with the values of humanity, which advocate for the equality of men and women in carrying out domestic and public duties. The roles of men and women in Islam are considered equal but different. Women have been bestowed by Allah with the ability to reproduce, such as getting pregnant, giving birth, and breastfeeding,

while men do not possess these capabilities. Islam, in its teachings, consistently emphasizes the equality of all individuals, except in matters of piety (*taqwa*).

Departing from the academic problem mentioned above, this research seeks to answer the the question of why female migrant workers file for divorce in the Religious Courts of ex-Kediri Residency. More specifically, this research aims to identify the reasons for divorce claims filed by wives or female migrant workers in the Religious Courts of ex-Kediri Residency

A comprehensive understanding of gender is needed, particularly in the contextualization of family financial support for female migrant workers in the Religious Courts of ex-Kediri Residency area. It is hoped that this understanding will foster a humanistic perspective within the Islamic framework when it comes to providing for the family's financial needs in migrant worker families in the ex-Kediri Residency area.

The gender perspective in the study of *mubadalah* (family financial support) is crucial in examining the phenomenon of divorce claims filed by female migrant workers at the Religious Courts of ex-Kediri Residency. It serves as an effort to obtain a clear description of the reasons behind such divorce claims. Before analyzing the reasons for divorce from a gender perspective using the concept of *mubadalah*, it is necessary to explain the concept of gender.

Gender, derived from English, means sex. However, many experts have revised this definition. Gender, therefore, not only encompasses biological sex but goes beyond that, emphasizing the influence of the environment in shaping an individual's identity. Gender refers to the visible differences in values and behaviors between males and females (Tanwir, 2017, p. 240).

Based on the above understanding, gender can be defined as the visible differences in values and behaviors between males and females created by society. According to Zaitunah Subhan, factors that shape gender and give rise to differences between males and females are cultural and social structures influenced by belief systems and life perspectives that have evolved over

centuries. These differences are considered relative and subject to change, but they have been perceived as natural and even absolute. It is these differences that are understood as gender (Subhan, 2004, p. 13).

According to Nasarudin Umar, gender is generally understood to be indirectly related to the social conditions that identify the differences between males and females from a socio-cultural perspective, while sex is used to identify males and females based on biological anatomy (Umar, 1999, p. 35). Both gender and sex are inseparable from the view of socio-cultural conditions that shape and create different socio-cultural circumstances.

In the dynamics of life, the roles of women and men greatly influence each other, both in the public and domestic spheres. This situation is inseparable from the development of an increasingly advanced life with all its challenges. In the past, women were only involved in domestic affairs, but now their roles have expanded. The roles of women are evident in social life and the dynamics of society.

The prevailing understanding is that gender is a socio-cultural construction, which is a label for the construction of relationships between males and females, commonly referred to as gender relations. Behavior related to the relationship between men and women is referred to as gender culture. While male and female are considered biological attributes that are fixed, stable, natural, and given, gender relations are cultural expectations regarding the ever-changing, modified, dynamic relationship between men and women (Yusdani, 2009, p. 244).

The construction of gender bias originates from patriarchal culture, which influences the interpretation of religion, educational institutions, and state policies, leading to increasing gender biases that result in gender injustice and marginalization, ultimately leading to gender-based violence (Yusdani, 2009, p. 248). This implies that the main reason for gender bias is the patriarchal culture present in society, created by the interests of patriarchal culture within the evolving dynamics of society.

## METHOD

This research is a qualitative research study. The use of qualitative research in this study is appropriate and relevant. The use of qualitative research aims to gather or obtain more complete, in-depth, credible, and meaningful materials, in line with the nature of qualitative research that emphasizes observing people in their environment, interacting with them, and seeking to understand their language and interpretations of the world around them (Sugiyono, 2014, p. 180).

Qualitative research emphasizes the quality or the most important aspect of a product/service. The most important aspect of a product or service, in the form of events/social phenomena, is the meaning behind those events, which can be valuable lessons for concept theory development (Satori & Komariah, 2020, p. 29). Qualitative research is explored and deepened from a social phenomenon or a social environment that consists of actors, events, places, and time (Satori & Komariah, 2020, p. 29). This qualitative research method is appropriate and suitable for studying the reasons for divorce among migrant workers at the Religious Courts of ex-Kediri Residency.

This research uses a socio-legal research approach, that identifies and conceptualizes law as a real and functional social institution within a real-life system (Soekanto, 2005, p. 51). Socio-legal research is legal research that uses secondary data as its initial data, which is then followed by primary data or data obtained in the field. Additionally, to strengthen the accuracy of this research, the researchers also uses the conceptual legal research approach and philosophical legal research.

The conceptual legal research approach involves taking principles from the sources of Islamic law, namely the Quran and Hadith, as well as *ijtihad* or the opinions of scholars related to the responsibilities of the parties in fulfilling family maintenance within the understanding of gender equality. Furthermore, the use of the conceptual approach requires references from existing or evolving legal principles (Marzuki, 2005, p. 178).

This research considers the Quran, Hadith, opinions of Islamic jurists, and laws as sources of understanding the basic concepts of divorce among migrant workers and the provision of maintenance for female migrant workers, which are studied within the framework of gender equality. On the other hand, with the juridical philosophical approach in this research, it is expected to gain a deeper understanding of the social effects and the impact of the application of a legal regulation on society. The philosophical approach is also used to delve into legal issues in the concept of legal teachings and philosophical issues.

This research was conducted at the Religious Courts of ex-Kediri Residency with data collected from 2017 to 2021. The focus of the research is on divorce cases filed by female migrant workers at the Religious Courts of ex-Kediri Residency. The key informants for the research include judges, lawyers, mediators, court clerks, and parties involved in cases at the Religious Courts of ex-Kediri Residency namely: Trenggalek Religious Court, Tulungagung Religious Court, Kediri City Religious Court, Blitar District Religious Court, Nganjuk Religious Court, and Blitar Religious Court.

The research uses purposive sampling as the technique for selecting informants. Purposive sampling is a method used to select samples based on specific objectives. Interviews are conducted with individuals who are considered knowledgeable about the situation, as selecting informants will facilitate the achievement of the research objectives. This enables easy data gathering since conducting qualitative research means collecting data using specific techniques and analyzing the collected data in a specific manner (Afrizal, 2014, p. 133).

The informants in this research are categorized into two groups: observer informants and actor informants (Afrizal, 2014, p. 139). The selection of observer and actor informants involves categorizing them based on the class status of the Religious Courts being studied, which are Class 1A and Class 1B Religious Courts.

The use of purposive sampling in selecting informants for this research is based on specific purposes, not on strata, randomization, or geographical considerations. This technique is employed due to various considerations such as time, resources, and budget limitations, which make it impractical to have a large and diverse sample. However, this approach is permissible as researchers can determine samples based on the relevant criteria in line with the research objectives (Arikunto, 2013, p. 183).

Another aspect to note is that sample selection is based on the information's relevance, not the quantity of informants (Satori & Komariah, 2020, p. 58). The researcher's focus is on obtaining information, rather than the number of informants involved.

Based on the description, the determination of informants in this research is based on the category of Religious Courts according to the class status of the Religious Courts of ex-Kediri Residency. The class status of the Religious Courts in ex-Kediri Residency has been detailed, and the following respondents were interviewed:

1. For Class 1A Religious Courts, the researchers interviewed 7 judges, 3 substitute court clerks, 5 staff members, 12 lawyers, 3 mediators, and 1 mediator staff member.
2. For Class 1B Religious Courts, the researchers interviewed 3 judges, 4 substitute court clerks, 3 staff members, 9 lawyers, and 3 mediators.
3. In addition, there were 19 respondents who were parties or actors in the divorce cases.

The selection of informants based on the class status of the Religious Courts of ex-Kediri Residency has facilitated the researchers in conducting data gathering and mapping clear and concise information to address the research questions.

## RESULTS AND DISCUSSION

This research found a number of reasons for divorce among migrant workers in the Religious Courts of ex-Kediri Residency, including Trenggalek Religious Court, Tulungagung Religious Court, Kediri City Religious Court, Kediri District Religious Court, Nganjuk Religious Court, and Blitar Religious Court. The reasons identified are as follows: First, economic problems. Second, domestic violence committed by one of the spouses. Third, interference from third-party family members and friends. Fourth, misappropriation of money by one of the spouses for personal enjoyment and pleasure. Fifth, irresponsible behavior or abandonment by the husband. Sixth, laziness and dependency on the husband's monthly allowance without working.

The research findings above depict the relationship between husband and wife within the family, emphasizing the need for gender equality in marriage. It is necessary to position women with equality, without gender injustice. In the context of the family, the relationship between the parties requires an understanding based on the concept of *mubadalah*.

*Mubadalah* refers to mutual cooperation (*mufa'alah*) and collaboration between two parties (*muasyarakah*), which implies mutual exchange, transformation, or interchange. The understanding of *Mubadalah* is developed as a perspective in understanding the relationship between two parties, which entails values and the spirit of partnership, cooperation, reciprocity, mutual benefit, and reciprocal principles (Werdiningsih, 2020).

The husband-wife relationship with such mutual approach involves shared needs between husband and wife, regardless of the dominance of either party, especially in making decisions within the household. The term *mubadalah* is used as a method of interpretation of Islamic source texts, emphasizing that men and women, or husbands and wives, are equal subjects. Thus, the concept of *mubadalah* has two meanings: first, the mutuality between men and women, and

second, how Islamic texts encompass women and men as equal subjects (Werdiningsih, 2020).

The principle of *mubadalah* emphasizes the partnership or mutuality between men and women in life. Just as men desire respect, recognition, and having their voices heard and their desires fulfilled, women also desire the same respect and recognition as men. In essence, *mubadalah* emphasizes equality in the public sphere. In the relationship between husband and wife, *mubadalah* means that what the husband can do, the wife can do, and vice versa.

The occurrence of divorce cases can be prevented if all parties involved in the journey of marriage place a strong emphasis on legal awareness and demonstrate mutual respect in accordance with the concept of *Mubadalah*. The prevalence of divorce cases among migrant workers in the Religious Courts of ex-Kediri Residency also indicates the legal consciousness of wives in seeking justice within the marital relationship according to existing family laws.

The phenomenon of divorce among migrant workers would not occur if all parties involved understand and respect the commitment to marriage. The occurrence of divorce cases can be analyzed from the perspective of the concept of *mubadalah* (Kodir, 2021, p. 49), which emphasizes understanding the communication dynamics within the marital relationship. Infidelity within the marriage indicates the presence of psychological domestic violence, eroding trust within the family.

*Mubadalah*, which entails mutual respect between partners, is no longer present. If both parties can maintain trust and refrain from engaging in domestic violence, particularly infidelity, the stability of the family would not be compromised. According to the law, domestic violence is defined as follows:

Any action against an individual, especially women, resulting in physical, sexual, psychological suffering, or neglect within the household, including threats, coercion, or unlawful deprivation of liberty within the household context (*Lae No. 23/2004 on the Eradication of Domestic Violence*, n.d.)."

Domestic violence is not limited to physical abuse or physical assaults. Psychological violence, such as verbal abuse, disrespect towards one's partner,

and infidelity manifested through an extramarital affair, is a problem that needs to be addressed by every couple. Although physical domestic violence may not always be apparent, as some societies consider it a family secret (Dzuhayatin et al., 2013, p. 265), this phenomenon contradicts the principles of *mubadalah*.

Positive relationships between parties are characterized by legal awareness, understanding of rights and responsibilities, mutual respect, and trust. No external interference can undermine the stability of a marital relationship if the parties maintain shared ownership of assets. This prevents one partner from squandering money recklessly or causing harm to the other party from a legal consciousness perspective.

The principle of *mubadalah* emphasizes that in maintaining a household, the relationship between husband and wife should be based on equality and justice, fostering participatory cooperation that benefits both parties without discrimination. In this context, the concept of *mubadalah* is not properly implemented in the communication dynamics among the parties in building a family.

Mutuality is not realized through genuine love between the parties; rather, infidelity by one party constitutes a betrayal of marital commitment. If the issue is solely economic, the parties might still be able to endure. However, when infidelity is involved, it becomes a different matter. The meaning of "mutuality" in a household, if not properly practiced, eventually erodes the commitment to the marriage.

The presence of a lazy husband who only requests a monthly allowance and occasionally becomes angry towards his wife indicates a lack of mutual respect between spouses. This leads to a lack of human values within a marital relationship, and there is a tendency towards the hegemony of masculinity, exploiting wives to work abroad or taking advantage of migrant workers overseas (Wardani, 2018).

This event demonstrates gender bias, ultimately reinforcing the strong position of patriarchy. On the other hand, the phenomenon of migrant workers seeking livelihoods overseas highlights a crisis of masculinity experienced by the husbands or men involved. Many wives working abroad in the Kediri Residency area indicate a crisis of masculinity among husbands. Normatively, husbands have the obligation to provide protection, clothing, shelter, and food. However, husbands allowing their wives to seek livelihoods in foreign lands indicates a crisis of masculinity, which tends to be relatively stronger among families of migrant workers.

However, the existing family law in Indonesia still does not comprehensively accommodate gender interests. Some provisions in family law have not positioned gender equality and justice for all parties, including placing the burden of family livelihood on husbands, the dominance of husbands in economic matters, and the lack of equal roles in providing for the family's needs. Particularly, there is a need for shared responsibility in fulfilling livelihood needs together.

## **CONCLUSION**

This study concludes that the reasons for divorce among female migrant workers in the Religious Courts of ex-Kediri Residency which include Trenggalek Religious Court, Tulungagung Religious Court, Kediri City Religious Court, Kediri Regency Religious Court, Nganjuk Religious Court, and Blitar Religious Court are as follows:

First, economic issues. Second, husbands committing domestic violence. Third, interference from third-party family members and friends. Fourth, husbands misappropriating their wives' money for indulgence or pleasure. Fifth, husbands being irresponsible or abandoning their wives. Sixth, husbands being lazy and only requesting monthly allowances.

Divorce cases would not occur if all parties involved in a marital relationship prioritize a well-implemented legal awareness and demonstrate mutual respect in accordance with the concept of *mubadalah*.

Therefore, efforts are needed to restore a more humane role in providing for the livelihood of migrant workers' families. It is essential to uphold the respect for women's nature in the realm of reproduction, namely pregnancy, childbirth, and breastfeeding, which are bestowed by Allah with distinctions compared to men.

In the future, apart from providing proper recognition to spouses, there is also a need for improvement in family law regulations that support gender equality and justice in the contextual, humane, and fair provision of family livelihood.

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