

The Dynamics of Legal Assistance in Divorce Cases at Religious Courts: An Empirical Analysis of Advocate Practices in Bondowoso

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Abstract

This study examines the dynamics of legal assistance provided by advocates in divorce cases before the Religious Courts in Indonesia, with a specific focus on Bondowoso. While previous studies have largely emphasized normative aspects of Islamic family law, this research adopts a qualitative socio-legal approach to explore how legal assistance is practiced in everyday litigation. Data were collected through field observations, semi-structured interviews with practicing advocates, and analysis of legal documents. The findings reveal that advocates perform multiple roles, including legal advisors, translators of legal norms, strategic actors in litigation, and mediators between clients and judicial institutions. Their practices are shaped not only by statutory regulations—such as Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law—but also by socio-economic conditions, client legal literacy, and the ethical values embedded in Islamic jurisprudence. In particular, advocates play a crucial role in bridging the gap between formal legal frameworks and the lived realities of litigants, especially in navigating issues such as child custody, maintenance, and procedural requirements. This study contributes to socio-legal scholarship by offering an empirical account of advocate practices in Religious Courts and proposing a contextual understanding of legal assistance within a plural legal system. It demonstrates that legal assistance is not merely procedural but also involves strategic, social, and ethical dimensions, reflecting the dynamic interaction between state law and Islamic legal principles in contemporary Indonesia.

Keywords

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Introduction

Indonesia, as a state governed by the rule of law as affirmed in Article 1(3) of the 1945 Constitution of the Republic of Indonesia, places the principles of legal supremacy and equality before the law as fundamental pillars of its judicial system. Within this framework, every citizen is entitled to equal legal protection and access to justice. However, in practice, access to justice continues to face various challenges, particularly for individuals with limited economic resources, educational backgrounds, and legal literacy (Cappelletti et al. 1982).

The issue of access to justice becomes increasingly complex in divorce cases adjudicated by the Religious Courts. Divorce is not merely a formal legal matter concerning the dissolution of marriage, but also entails broader social, economic, and psychological implications. The legal consequences of divorce encompass critical aspects such as child custody (*ḥaḍānah*), maintenance obligations, and the division of marital property, which frequently give rise to further disputes between the parties (Gillani et al. 2024). Therefore, the resolution of divorce cases requires not only a procedural approach but also a substantive one to ensure justice for all parties involved.

Within the framework of Indonesian positive law, divorce is regulated under Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (Afan and Al-Am 2025), which serve as the primary legal references for Religious Courts in examining and adjudicating divorce cases. These provisions stipulate that divorce may only be conducted through judicial proceedings following unsuccessful reconciliation efforts (Büchler 2012). This underscores that divorce is not merely a private act, but a legal process requiring formal mechanisms and judicial oversight.

With the increasing rate of divorce across various regions, including Bondowoso, the demand for professional legal services has become more urgent. Empirical data indicate a consistent rise in divorce cases each year, reflecting the growing complexity of household issues within society. Under such circumstances, litigants often encounter difficulties in understanding legal procedures, drafting claims, and effectively asserting their rights in court proceedings.

In this context, advocates play a crucial role as providers of legal assistance. According to Law Number 18 of 2003 on Advocates, advocates are recognized as law enforcement officers with a status equivalent to judges and prosecutors in upholding law and justice. Their responsibilities extend beyond courtroom representation to include legal consultation, the preparation of legal documents, and assisting clients throughout every stage of dispute resolution (Alrumayh et al. 2025).

In divorce cases before the Religious Courts, the role of advocates becomes even more significant due to the complexity of legal norms that integrate both positive law and Islamic law. The provisions within the Compilation of Islamic Law require a comprehensive understanding of Islamic family law principles. Consequently, advocates are expected not only to possess general legal competence but also to demonstrate substantive knowledge of Islamic law (Awang 2024). In this regard, advocates function as intermediaries between legal norms and the social realities faced by their clients.

However, existing studies on legal assistance in divorce cases tend to be predominantly normative and have not sufficiently explored empirical practices. Most research focuses on legal provisions governing the role of advocates without examining how these roles are implemented in everyday practice. In reality, the execution of legal assistance is often influenced by various factors, including client conditions, advocate strategies, and the dynamics of court proceedings (Nasution 2007).

This limitation in empirical studies indicates a gap between legal theory and legal practice. Therefore, there is a need for research that not only examines normative aspects but also integrates empirical approaches to achieve a more comprehensive understanding of the dynamics of legal assistance. Such an approach is essential to provide a more realistic depiction of how law operates and how advocates contribute to assisting clients in navigating divorce proceedings.

The concept of legal assistance is also closely related to the principle of justice in Islamic law. From the perspective of Islamic jurisprudence, justice ('adl) constitutes a fundamental value that must be upheld in all dispute resolution processes, including divorce cases. Although divorce is permissible, it is regarded as a last resort that must be undertaken with careful consideration of the welfare (maṣlaḥah) of the parties involved and its impact on the family, particularly children (Napisah 2022). In this context, legal assistance provided by advocates plays a vital role in ensuring that divorce proceedings are conducted fairly and do not disadvantage any party.

Based on the foregoing discussion, this study aims to analyze the dynamics of legal assistance provided by advocates in divorce cases before the Religious Courts, with a particular focus on practices in Bondowoso. This research employs an empirical approach supported by normative analysis to obtain a comprehensive understanding of the role of advocates in practice. The data were collected through observation, interviews, and document analysis conducted within the context of direct engagement in an advocate's office.

This study is expected to contribute to the development of Islamic legal scholarship, particularly in the field of family law and the practice of Religious Courts. Furthermore, the findings are anticipated to serve as a reference for legal practitioners in improving the quality of legal assistance services, as well as for judicial institutions in strengthening a more just, effective, and responsive judicial system that meets societal needs.

Method

This study constitutes a legal research employing a normative-empirical approach (normative-empirical legal research), aimed at comprehensively analyzing the practice of legal assistance provided by advocates in divorce cases before the Religious Courts. This approach is utilized to bridge the gap between law as a normative framework (law in books) and law as a social practice (law in action), thereby offering a holistic understanding of how the role of advocates is exercised within judicial realities (Afifah and Masrokhin 2021).

The normative approach in this study is conducted through an examination of statutory regulations relevant to the research object, including Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), and Law Number 18 of 2003 on Advocates. In addition, a conceptual approach is employed to analyze theoretical constructs related to the role of advocates, legal assistance, and the principle of justice in Islamic law, which serve as the foundation for understanding legal practices in divorce cases (Marzuki 2017).

Meanwhile, the empirical approach is undertaken to obtain data concerning the dynamics of advocate assistance practices in handling divorce cases before the Religious Courts. Empirical data are collected through field observations, interviews, and documentation studies conducted at an advocate's office in the Bondowoso region. Observations are carried out directly on legal assistance activities, ranging from the initial consultation between advocate and client, case analysis, preparation of legal documents, to the advocate's involvement in court proceedings at the Religious Court. This approach enables the researcher to gain contextual insights into how legal assistance is implemented in real-life situations (Creswell 2013).

Interviews are conducted in a semi-structured manner with advocates who have experience in handling divorce cases. This technique is chosen to allow flexibility in exploring in-depth information regarding assistance strategies, legal considerations applied, and challenges encountered in practice. Furthermore, documentation studies are conducted on various legal documents, such as powers of attorney, case files, and other supporting documents, which function as data sources to substantiate the

research findings.

The data sources in this study consist of primary and secondary data. Primary data are obtained directly from observations and interviews with advocates involved in handling divorce cases. Secondary data are derived from primary legal materials in the form of statutory regulations and the Compilation of Islamic Law, as well as secondary legal materials including books, academic journals, and previous studies relevant to the research topic, analyzed using an IRAC-based legal framework.

Data collection techniques are carried out through three main methods: observation, interviews, and documentation. These techniques are employed simultaneously to obtain comprehensive and complementary data. Observation provides a factual depiction of legal practices, interviews offer subjective perspectives from legal practitioners, while documentation serves as written evidence that strengthens the validity of the data (Yin 2011).

Data analysis in this study is conducted qualitatively using an interactive model comprising data reduction, data display, and conclusion drawing (Miles and Huberman 1994). Data reduction involves selecting and categorizing data relevant to the research focus. Data display is presented in a systematic descriptive-analytical narrative to illustrate the dynamics of advocate assistance in divorce cases. Subsequently, conclusions are drawn through a critical interpretation process by linking empirical findings with the previously examined normative framework.

To ensure the validity and reliability of the data, this study employs triangulation techniques, including both source triangulation and methodological triangulation. Source triangulation is conducted by comparing information obtained from various informants, while methodological triangulation involves comparing data derived from observations, interviews, and documentation. Thus, the research findings are expected to possess a high level of credibility and academic accountability (Ali et al. 2024).

By employing a normative-empirical approach, this study not only explains how advocate assistance practices are carried out in divorce cases but also evaluates the extent to which such practices conform to existing legal provisions and the principles of justice in Islamic law. This approach is expected to contribute more comprehensively to the understanding of the dynamics of legal assistance within the Religious Courts, particularly in the context of advocate practices in the Bondowoso region.

Results and Discussion

Dynamics of Advocate Assistance in Divorce Cases at Religious Courts

The dynamics of legal assistance provided by advocates in divorce cases before the Religious Courts reveal a complex interaction between procedural legal requirements, client conditions, and the socio-religious context in which disputes arise. Based on empirical observations and interviews conducted in an advocate's office in Bondowoso, legal assistance is not merely a technical legal service but constitutes a multidimensional process involving consultation, mediation, legal drafting, and courtroom representation (Muzammil 2019).

At the initial stage, legal assistance typically begins with a consultation process, during which the advocate identifies the legal position of the client, explores the underlying causes of marital conflict, and determines the most appropriate legal strategy. This stage is critical, as many clients lack a basic understanding of legal procedures and their rights within the framework of Islamic family law (Musadad et al. 2025). Advocates often encounter clients who are unaware of the distinction between *ceraai talak* and *ceraai gugat*, as well as the legal implications of each mechanism, particularly in relation to post-divorce rights such as maintenance (*nafkah*), child custody (*ḥaḍānah*), and the division of marital property.

Empirical findings indicate that advocates play a significant role in translating complex legal norms into accessible language for clients. This function aligns with the broader concept of access to justice, as articulated by Cappelletti and Garth (1982), which emphasizes the importance of enabling individuals to effectively claim their legal rights. In this context, advocates act as intermediaries who bridge the gap between abstract legal provisions and the lived realities of litigants (Cappelletti et al. 1982). The ability of advocates to communicate legal concepts in a comprehensible manner significantly influences the client's decision-making process and their confidence in pursuing legal action.

Following the consultation stage, advocates proceed to the preparation of legal documents, including the drafting of statements of claim (*gugatan*) or petitions (*permohonan*). This stage requires not only technical legal skills but also strategic consideration, as the formulation of legal arguments must be aligned with both statutory provisions and the evidentiary realities of the case. In practice, advocates often tailor their legal drafting to emphasize aspects that are more likely to be accepted by judges, such as evidence of continuous conflict (*perselisihan terus-menerus*) or failure to fulfill marital obligations, which are recognized grounds for divorce under Indonesian law (Tamam 2021).

In courtroom proceedings, the role of advocates becomes more pronounced as they represent clients in presenting arguments, examining evidence, and responding to opposing claims. Observations indicate that advocates must navigate a procedural environment that combines formal legal requirements with elements of Islamic judicial ethics (Anggraeni and Primadianti 2021a). For instance, judges in Religious Courts frequently encourage reconciliation (*islāḥ*) between the parties before proceeding with the adjudication of divorce. In such situations, advocates must balance their duty to represent the client's interests with the court's emphasis on preserving the marital relationship (Ali et al. 2024).

This dynamic reflects the dual character of Religious Courts as institutions that operate within both legal and moral frameworks. From the perspective of Islamic jurisprudence, marriage is regarded as a sacred contract (*'aqd*) that should not be dissolved without valid justification. Classical jurists, such as those in *Al-Majmu'* and *Bidayat al-Mujtahid*, emphasize that divorce, although permissible, is a lawful act that is most disliked (*abghad al-ḥalāl*) when undertaken without necessity (Muzammil 2019). Consequently, the involvement of advocates in divorce proceedings must also consider ethical dimensions, particularly in ensuring that legal actions do not contradict the principles of justice and welfare (*maṣlaḥah*) (Opwis 2010).

Another important aspect revealed in this study is the variability in advocate practices depending on the socio-economic background of clients. Clients with limited financial resources often require more intensive guidance, as they tend to have lower levels of legal literacy and limited access to supporting documents. In such cases, advocates frequently adopt a more proactive role, assisting clients not only in legal matters but also in administrative processes, such as obtaining marriage certificates or other required documentation (Djubaedah 2019). This indicates that legal assistance extends beyond formal representation to include practical support that enables clients to effectively participate in the judicial process (Jaffal et al. 2022).

Moreover, the findings demonstrate that the relationship between advocate and client is not purely contractual but also relational. Trust plays a crucial role in shaping this relationship, as clients often disclose sensitive personal information related to marital conflicts. Advocates are therefore required to maintain professional ethics, including confidentiality and impartiality, while simultaneously demonstrating empathy toward their clients' situations. This relational dimension highlights the human aspect of legal practice, which is particularly significant in family law disputes.

From a theoretical perspective, these findings illustrate the operation of law as a social institution, as conceptualized legal structures, legal substance, and legal culture

interact to shape legal outcomes. The practice of legal assistance in divorce cases reflects not only the application of legal rules but also the influence of cultural norms, religious values, and individual behaviors (Chanda 2025). In the context of Religious Courts, this interaction is further complicated by the integration of Islamic legal principles into the state legal system.

In sum, the dynamics of advocate assistance in divorce cases at Religious Courts demonstrate that legal practice is inherently complex and context-dependent. Advocates function as key actors who facilitate access to justice, interpret legal norms, and navigate the intersection between law and society. Their role extends beyond technical representation to encompass educational, strategic, and ethical dimensions, making them indispensable in ensuring that divorce proceedings are conducted in a manner that is both legally sound and socially responsive.

Legal Strategies and Procedural Navigation in Divorce Litigation: Evidence from Bondowoso

Legal strategies and procedural navigation in divorce litigation before the Religious Courts cannot be separated from the empirical realities of legal practice at the local level. Findings derived from field experience at the RZ & Partner Law Office in Bondowoso demonstrate that the formulation of legal strategies is deeply influenced by the characteristics of clients, the nature of marital disputes, and the procedural framework governing Religious Court proceedings.

The increasing number of divorce cases in the Religious Court of Bondowoso—recorded at 1,652 cases in 2025—indicates not only the growing prevalence of marital disputes but also the increasing demand for professional legal assistance. This empirical context shapes how advocates construct legal strategies, as they are required to respond to a high volume of cases with varying levels of complexity. In such conditions, efficiency and strategic prioritization become essential components of legal practice.

Based on observational data, the formulation of legal strategy begins immediately after the initial consultation stage. At this point, advocates conduct a structured case analysis aimed at identifying the most viable legal grounds for divorce. While clients often present multiple grievances—ranging from economic hardship and domestic conflict to issues involving extended family—advocates tend to streamline these issues into legally recognized categories as stipulated in the Compilation of Islamic Law (KHI), particularly the ground of continuous disputes (*perselisihan terus-menerus*) (Anggraeni and Primadianti

2021b). This strategic simplification is not merely a matter of convenience but reflects a practical understanding of judicial tendencies, where such grounds are more readily accepted and easier to substantiate in court.

Furthermore, the preparation of legal documents represents a critical strategic stage. At RZ & Partner, advocates systematically draft key documents such as the statement of claim (*gugatan*), power of attorney (*surat kuasa*), and supporting legal arguments. These documents are not prepared in a purely formalistic manner; rather, they are tailored to reflect both the legal framework and the factual circumstances of the case (Aer 2024). For example, in cases involving claims for child custody or financial maintenance, advocates explicitly structure their arguments to highlight the client's position as either a caregiver or a financially disadvantaged party, thereby strengthening the legal basis for judicial consideration (Samsukadi and Abdu 2016).

An important empirical finding is that advocates frequently assume an educative role during this stage. Many clients in Bondowoso lack sufficient legal literacy, which affects their ability to articulate their claims effectively. As one practitioner noted during field observation, clients often “do not understand even the basic procedural steps of divorce litigation and rely entirely on the advocate to navigate the process.” This condition necessitates that advocates not only draft legal documents but also actively guide clients in understanding the implications of each legal step, including the potential outcomes of the case.

Procedural navigation becomes particularly complex during the mediation stage, which is a mandatory requirement in divorce proceedings before the Religious Courts. In practice, mediation sessions in Bondowoso are not merely formalities but constitute a significant arena for strategic engagement. Advocates must carefully balance their role between facilitating reconciliation and preparing for litigation. Empirical observations indicate that, while reconciliation is encouraged by judges, many cases proceed to litigation due to the depth of conflict between the parties.

In this context, advocates often use mediation as an opportunity to negotiate specific issues, such as child custody arrangements or financial settlements. Even when mediation fails to achieve reconciliation, it can produce partial agreements that reduce the scope of dispute in subsequent court proceedings (Ardi and Shuhufi 2024). This demonstrates that procedural stages are actively utilized as strategic tools rather than being treated as passive legal requirements.

Another significant aspect of procedural navigation concerns the management of evidence. In divorce cases handled at RZ & Partner, advocates emphasize the importance of witness testimony as a primary form of evidence. Given the difficulty

of obtaining documentary proof for domestic conflicts, witness statements—often from family members or neighbors—play a crucial role in substantiating claims of ongoing disputes or neglect. Advocates therefore invest considerable effort in identifying and preparing witnesses whose testimonies can support the legal narrative presented in court.

Time efficiency also emerges as a key strategic consideration. Given the high volume of cases and the limited resources of clients, advocates strive to ensure that legal proceedings are conducted as efficiently as possible. This includes minimizing procedural delays, ensuring the completeness of documentation, and maintaining consistent communication with court officials (Alizha 2023). Such strategies are particularly important in cases involving urgent matters, such as child custody or financial dependency, where delays can have significant consequences for the parties involved (Ahmadi 2019).

From a theoretical standpoint, these findings reflect the operation of law as a dynamic social process, where legal strategies are shaped not only by formal rules but also by practical considerations and social realities. The concept of legal pragmatism is evident in the way advocates prioritize effective outcomes while remaining within the boundaries of legal norms. This pragmatic approach is essential in addressing the complexities of divorce cases, which often involve emotional, social, and economic dimensions that cannot be fully captured by legal provisions alone.

Moreover, the integration of Islamic legal principles further informs the strategic behavior of advocates. In the context of Bondowoso, where religious values strongly influence social life, advocates often frame their arguments in a manner that resonates with both legal and moral considerations. For instance, claims related to financial maintenance are not only justified through statutory provisions but also reinforced by reference to the moral obligations of spouses as recognized in Islamic teachings. Similarly, the emphasis on reconciliation during mediation reflects the broader Islamic principle of *ṣulḥ* (amicable settlement), which prioritizes harmony and the preservation of family integrity (Saidiyah and Julianto 2016).

However, the application of legal strategies is not without challenges. Variations in judicial interpretation often generate uncertainty in predicting case outcomes, thereby requiring advocates to remain adaptive and responsive in formulating and adjusting their legal approaches. Furthermore, the socio-economic limitations faced by clients frequently constrain both the availability of supporting evidence and the continuity of legal assistance (Sihabudin et al. 2025). These constraints, in turn,

significantly influence the selection, scope, and effectiveness of the legal strategies employed.

In conclusion, legal strategies and procedural navigation in divorce litigation at the Religious Courts in Bondowoso reflect a dynamic interplay between normative legal reasoning, practical adaptability, and socio-religious sensitivity. Advocates operate within a complex legal landscape where state law, Islamic jurisprudence, and local socio-cultural conditions intersect and interact. Their capacity to navigate this multifaceted environment not only determines the outcomes of individual cases but also contributes to shaping broader patterns of legal practice and access to justice within the religious court system.

Conclusion

This study has demonstrated that the practice of legal assistance provided by advocates in divorce cases before the Religious Courts, particularly in Bondowoso, represents a dynamic and context-dependent process shaped by the interaction between legal norms, procedural frameworks, and socio-cultural realities. The findings reveal that advocates play a multifaceted role that extends beyond formal legal representation. They function as legal advisors, strategists, mediators, and intermediaries who translate complex legal provisions into accessible guidance for clients with varying levels of legal literacy. Through stages such as consultation, case analysis, document preparation, mediation, and courtroom advocacy, legal assistance is carried out in a structured yet adaptive manner that responds to the specific conditions of each case.

The study further highlights that legal strategies employed by advocates are not purely doctrinal but are strongly influenced by empirical considerations, including the availability of evidence, judicial tendencies, and the socio-economic background of clients. In the context of Bondowoso, where divorce cases continue to increase significantly, advocates are required to develop pragmatic approaches that prioritize efficiency, clarity of legal arguments, and the effective protection of clients' rights. The integration of Islamic legal principles, particularly those related to justice ('adl), welfare (maṣlaḥah), and reconciliation (ṣulḥ), also plays a crucial role in shaping both the substance and orientation of legal assistance, reflecting the pluralistic nature of the Religious Court system.

From a theoretical perspective, this study contributes to the understanding of legal pluralism in Islamic family law by illustrating how classical Islamic

jurisprudence, state regulations, and local social practices interact within the everyday practice of legal assistance. It also enriches socio-legal scholarship by demonstrating that law operates not only as a normative system but also as a lived experience mediated by legal actors such as advocates. In this regard, advocates emerge as key agents in bridging the gap between law in books and law in action, particularly in contexts where access to justice remains uneven.

Nevertheless, this study is subject to several limitations. First, the empirical data are primarily derived from observations and experiences within a single law office, which may limit the generalizability of the findings to other regions or institutional contexts. Second, the study relies on qualitative data without extensive quantitative measurement, thereby restricting the ability to capture broader statistical patterns in divorce litigation. Third, the absence of direct perspectives from judges and litigants means that the analysis is predominantly centered on the advocate's viewpoint.

Based on these limitations, future research is recommended to adopt a more comprehensive multi-actor approach by incorporating the perspectives of judges, court officials, and litigants to obtain a more holistic understanding of divorce litigation dynamics. Comparative studies across different regions would also be valuable in identifying variations in legal practice and institutional behavior. Additionally, further research could explore the development of a *maqāṣid*-based framework for legal assistance in Islamic family law, which may provide a more integrative model for aligning legal practice with ethical and social objectives.

In conclusion, the effectiveness of legal assistance in divorce cases is not determined solely by legal expertise but also by the ability of advocates to navigate complex procedural, social, and moral dimensions. Strengthening the professional capacity of advocates, enhancing legal literacy among the public, and reinforcing institutional support within the Religious Court system are essential steps toward achieving a more just, responsive, and inclusive legal system.

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