

Does Gender Blindness Improve Gender Equality? Female Judges and the Glass Ceiling Effect in the Islamic Judicial System in Indonesia

Social & Legal Studies

1–20

© The Author(s) 2022

Article reuse guidelines:

sagepub.com/journals-permissions

DOI: 10.1177/09646639221094153

journals.sagepub.com/home/sls**Achmad Kholiq***IAIN Syekh Nurjati, Cirebon, Indonesia***lim Halimatusa'diyah** *Department of Sociology, State Islamic University
(UIN) Syarif Hidayatullah Jakarta, Tangerang
Selatan, Indonesia*

Abstract

Despite the increasing participation of women judges worldwide, including in Muslim countries, the glass ceiling effect in female judges' careers remains persistent. Using the Islamic judicial system in Indonesia as a case study, this article aims to analyze the representation of female judges and examine why the glass ceiling effect exists in the Islamic judicial system in Indonesia. Drawing on interviews with twenty judges in various provinces in Indonesia and analyzing the gendered organization framework, this article argues that gender blindness in the Islamic judicial organization has contributed to the persistence of gender inequality and the glass ceiling effect. This article also argues that a gender-neutral setting contributes to sustaining or encouraging gendered practices within organizations. Furthermore, focusing on work-life balance as the only solution for addressing the under-representation of women in the public sphere does not necessarily ease them from caring responsibilities as the gendered division of labor in the domestic sphere has not changed. Therefore, we suggest that making the judicial system a gender

Corresponding author:

lim Halimatusa'diyah, The Faculty of Social and Political Sciences (FISIP) UIN Syarif Hidayatullah Jakarta, Jl. Kertamukti No. 5 Pisangan, Ciputat Timur, Tangerang Selatan, Banten 15419, Indonesia.

Email: iim_hs@uinjkt.ac.id

transformative organization is essential in order to reduce the glass ceiling effect in the Islamic judicial system in Indonesia.

Keywords

Female judges, gender blindness, gendered organization, glass ceiling effect, Islamic judiciary

Introduction

Increasing the presence of female judges in the judicial system is important to promote equality of opportunity, representativeness, and diversity (Feenan, 2008). However, achieving equality for female judges in terms of representation at all levels of the judiciary remains a challenge for many countries.

The existing works on women judge primarily look at the appointment of women judges (Schultz & Masengu, 2020; Sonneveld & Lindbekk, 2017a), their judicial education (Schultz, 2014; Schultz et al., 2017), and their judging (Feenan, 2008; Hunter et al., 2010; Hunter, 2015; Schultz and Shaw, 2013b). Such studies have been conducted not only in western contexts such as the United States (O'Connor and Azzarelli, 2011), Canada (Backhouse, 2017; Brooks, 2010), Portugal (Duarte et al., 2014), and Northern Ireland (Feenan, 2008) but also in the Muslim world. While some Muslim countries have no women judges at all, Saudi Arabia, for example, the majority of Muslim countries have no restrictions on female judges. It is common to find women judges in various Muslim majority populations such as Sudan, Palestinian, Bahrain, Egypt, Indonesia, Turkey, Lebanon, Morocco, United Arab Emirates, Jordan, and others (Abdelkader, 2014). Studies have shown that women's participation in the judicial system has increased in Muslim countries (Sonneveld and Lindbekk, 2017b; UNESCWA, 2019). However, few works have studied the career path of female judges in the judicial system. Most of the works on these countries did not specifically examine the extent to which women are represented in different levels of courts and why the glass ceiling effect persists in the Islamic judicial system.

To fill in the gap in the literature, this study aims to examine the representation of women judges in different levels of courts and different hierarchal managerial positions in the Islamic judicial system in Indonesia. The country provides an excellent case to study the role of female judges in the Muslim world. First, Indonesia has the largest Muslim population in the world (World Population Review, 2021). Although it is not an Islamic state, Indonesia has both civil and Islamic judicial systems. Second, among other Muslim countries, Indonesia has been considered the pioneer of accepting women judges in its judicial system (Nurlaelawati and Salim, 2013). Third, while Indonesia is at the forefront in welcoming women judges, it is still unclear the extent to which the gender gap exists in the Islamic judicial system in the country and what factors contribute to this gap. Fourth, among available studies on the Indonesian context, they mainly focused on one or several Islamic courts. Therefore, this study aims to provide a more comprehensive view of the general situation in Indonesia and an in-depth understanding of women's positions in the judicial system.

This study aims to analyze the factors contributing to the persistence of the glass ceiling effect in the Islamic judicial system in Indonesia. Using gendered organization theory as the framework and drawing from interviews with twenty judges from various Islamic courts in Indonesia, we argue that although women's participation in the Islamic judicial system in Indonesia has witnessed an increasing trend, the gender gap persists. Gender blindness encourages gendered practices within the Islamic judicial system, which maintain gender inequality or the glass ceiling effect.

The article is structured as follows. First, the relevant literature is examined concerning the participation of women in the judicial system in general and in the Islamic judicial system in particular. Second, the theories which frame the glass ceiling in the judicial system are outlined. Third, the methodology and the data collection are detailed. Fourth, the study context of female judges in Indonesia's Islamic courts is explained. Fifth, key themes on female judges' representation and the glass ceiling in the Islamic courts are discussed. Finally, the last section draws conclusions.

Female Judges in the Judicial System

The role and position of female judges in the judicial system have been a subject of debate among researchers. Disagreements prevail over the nature of the social transformation that has swept the judicial system in the last few decades. In Portugal, for example, Duarte et al. (2014) revealed the increasing domination of female judges since 2006, a phenomenon that is often considered the feminization of the judicial system. However, other studies in Spain and Europe have shown that only a small proportion of women have been appointed to the highest positions, indicating the presence of a glass ceiling phenomenon (Goldar, 2020). As will be further discussed, the glass ceiling can be defined as a form of gender inequality which is greater at the top of the ladder than at lower levels and turns out to be worse later in an individual's career (Cotter et al., 2001).

Many factors may contribute to the glass ceiling effect. According to Goldar (2020), the glass ceiling in Spain's highest courts results from problems such as discrimination based on gender and the difficulty for women judges to deal with family-work balance. Similarly, the admissibility requirements for judges, the relations of merit and gender, gendered professional exclusion, and the "motherhood penalty" have contributed to the under-representation of women judges in Northern Ireland (Treanor, 2020). In the context of the United States, Wald (2019) has also argued that the under-representation of women on the 10th Circuit bench is the result of the persistent effects of past explicit and present implicit discrimination.

Research on female judges has been conducted not only in the Global North but also in the Global South. In Nigeria, for instance, Uzebu-Imarhiagbe (2020) found that the need for qualified judges regardless of gender has contributed to the inclusion of women judges and the increase of women in the High Court division in Mid-Western Nigeria. In China, Shen (2017) comprehensively explored the process of women judges' recruitment, their training, career path, roles and positions in the judicial profession, their gendered problems, and job satisfaction (Shen, 2017). This study showed that men outnumbered women in the Chinese judiciary and the proportion of women in the top leadership positions was still very small. It also found that although female judges

could participate in all types of judicial activities without any differences based on traditional norms of what women can and cannot do, gender stereotypes and discrimination still existed. Specifically, gender inequality in the Chinese judiciary 'is hidden in court, behind the official image' (Shen 2017: 128).

In the context of the Muslim world, even though the strict representation of Islamic law would not prefer women as judges, the appointment of women judges is not a new phenomenon in Muslim countries. Among various studies analyzing the appointment of women judges in Muslim countries, an edited book from Sonneveld and Lindbekk (2017b) provides a comprehensive understanding of domestic and international debates on the appointment of women judges in Muslim countries. The book covers case studies of Muslim countries of various regions, including Indonesia and Malaysia in Southeast Asia (Nurlaelawati and Salim, 2017; Zin, 2017), Pakistan in South Asia (Mehdi, 2017), Egypt, Libya, Morocco, Syria, and Tunisia in the Middle East and North Africa (Cardinal 2017; Carlisle 2017; Lindbekk 2017; Sonneveld 2017; Voorhoeve 2017). As the inclusion of women judges remains controversial in certain Muslim countries, the studies in this book focused more on domestic justifications for the inclusion of women judges in the judicial system. The studies also look at the extent to which international pressure plays a role in countries' decisions to accommodate women in their judicial system. The studies in this book also paid particular attention to women judges' everyday practices, particularly judging practices and their judicial training.

While these studies have covered wide-ranging issues concerning women judges in Muslim countries, there is a scarcity of research focusing on women judges in the different levels of courts and different hierarchical managerial/leadership positions in the judicial system in the Global South and Muslim majority countries like Indonesia. This study, therefore, aims to fill in the gap in the literature by analyzing the representation of women judges in various levels of the Islamic judicial courts in Indonesia.

Glass Ceiling and the Gender gap in Organizations: Theoretical Framework

Since the 1970s, various studies have analyzed women's experiences of inequality within workplaces and organizations. However, these studies often emphasized the individuals as the unit of analysis (Whitehead, 2013). Focusing on organizations as the unit of analysis, Acker (1990), on the other hand, has offered the first formulation of gendered organization theory. Often seen as a "paradigm shift" (Britton and Logan 2008:107) of understanding gender inequality from the individual to the organization, the critical point of this theory is that organizational structures are not gender-neutral. Thus, gender underlies rules, practices, social processes such as roles, images, identities, responsibilities, interactions, and symbols within organizations, which reproduce gender inequality (Acker, 1990; Britton and Logan, 2008).

Many scholars have argued that gender neutrality – treating women and men the same regardless of their sex - is the same as gender equality (Saari, 2013). However, following Acker's (1990) gendered organization theory, such a perspective is inadequate to explain persistent gender structuring. Gender neutrality often leads to gender blindness in which the differences between men and women are not recognized, and consequently, a male

standard predominates (Kantola, 2008). Gender-blindness tends to overlook the differences between women's and men's socially constructed roles, responsibilities, and abilities. Therefore it maintains an unequal position between men and women (Saari, 2013). In short, gender blindness has reinforced gendered practices within organizations that lead to the glass ceiling effect.

The glass ceiling concept has received considerable scholarly attention. While some scholars consider the glass ceiling as a form of gender inequality, Cotter et al. (2001) have argued that not all gender inequality can be considered a glass ceiling. Therefore, they define the glass ceiling effect as forms of gender inequality that are greater at the top of the ladder than at lower levels and turn out to be worse later in an individual's career (Cotter et al., 2001). Based on this definition, Cotter et al. (2001) have proposed a four-step operationalization of the glass ceiling effect. First, it is residual differences due to gender that cannot be explained by the level of education, experience, ability, and employee's other job-related characteristics. Second, it is stronger at higher levels of a given outcome such as salaries, managerial achievement, or authority. Third, it represents gender inequality in the opportunities of progression into higher levels. Fourth, it increases throughout a person's career.

As the glass ceiling is different from other forms of gender inequality, it has also been driven by specific causes. For example, Gorman and Kmec (2009) have argued that gendered stereotypes lead decision-makers to choose men over women. Gendered organization theorists suggest that gendered organizations reinforce gender stereotypes from existing gender hierarchies which favor the ideal male worker (Acker, 1990). Consequently, women are often regarded as less important and less qualified than men (Gorman, 2006; Lucas, 2003). On the other hand, some men question women's capabilities to perform in certain positions (Erickson et al., 2000) and presume that women's main responsibilities as family caregivers will impede their job performance. Additionally, men often do not perceive family responsibilities as barriers to their occupations as they often identify their main family role as economic breadwinners (Davies-Netzley, 1998).

Furthermore, gendered organizations emphasize ideologies which compel women to devote themselves heavily to mothering and family issues. Consequently, women may opt-out of high-rank positions or pursue more traditional female roles (Purcell et al., 2010). Instead of opting out, some studies have argued that gendered organizations have forced women out from the top hierarchy through institutional norms and societal pressures that are in favor of male privilege (Stone, 2007). While working women are expected to balance their work and family issues, men opt-out of sharing family assignments favoring their career progression (Purcell et al., 2010). Thus, women have been forced out from high-level positions to meet ideal expectations either as ideal workers or ideal mothers.

Based on these theoretical discussions, we argue in this article that although women have been fully accommodated in the judicial system, the gender blindness implemented in the Islamic judicial system in Indonesia has encouraged gendered practices within organizations. These practices, in turn, maintain the glass ceiling effect through the reproduction of gendered stereotypes and ideologies that have forced women out of the top hierarchy.

Data and Method

The present study draws on both quantitative and qualitative data. The quantitative data were derived from statistical records of judges in the Islamic judicial system. In addition to the statistical data, our data were also based on in-depth semi-structured interviews with both female and male judges. The inclusion of male judges' perspectives on women judges' performance and career path is also important to understand female judges' work environment. Additionally, having the male judges' perspectives functions as triangulation by data source, which helps to enhance the reliability of our analysis (Miles et al., 2014). We used both purposive and snowball sampling techniques. We targeted male and female judges in the Islamic judicial system. We first interviewed a few, selected judges that we could get their contacts and then asked those judges to recommend other judges who they happened to know and who were willing to participate in our research. The interviews were conducted from December 2020 to February 2021. Due to the COVID-19 pandemic and the judges' different locations, the interviews were carried out using online and phone interviews.

The interviews were semi-structured and followed an organized interview guide. Topics covered background questions; working situation, work-life balance, and family support; women judges' education and career motivation; views about women judges; and experiences concerning gender equality in the Islamic judicial system; obstacles and limitations, including gender discrimination in the Islamic judicial system; and opportunities and improvements for women in the Islamic judicial system. We recorded and transcribed the interviews using verbatim transcription. In terms of analysis, we first coded the transcriptions manually with the initial coding based on the interviewees' descriptions, experiences, understanding, and concepts. The coding helped us to see the patterns in the data. We then categorized them into several themes, which were later used as the basis of our data interpretation. Participation in the study was voluntary, and we asked permission and agreement from all informants to participate in the study before the interview was conducted. To guarantee the research ethics, we used pseudonyms to maintain the informants' anonymity and confidentiality.

Table 1 presents the informants' social characteristics. From a total of 20 informants, 12 were female judges, and eight were male judges. More than half of the informants were aged between 41 and 56 years old (55%), while the remainder were aged between 36 and 40 years old (45%). They were from various Islamic courts from 12 provinces in Indonesia, including West Java, Central Kalimantan and Banten (3 judges/15%), Aceh and Bali (2 judges/10%), and one judge each for the following seven provinces: West Sumbawa, Jambi, Lampung, Jakarta, Southeast Sulawesi, South Sumatera, and Central Java. Most of the informants had been judges for 10 to 12 years (70%), while the remainder had been judges for 21 to 23 years (30%).

Since the initial appointment as judges, judges in Indonesia must be ready to be appointed in various regions in Indonesia. Therefore, they are required to be transferred periodically to various religious courts throughout Indonesia. Before 2017, judges' rotation was usually carried out every three to four years; however, since 2017, it changed to every four to five years (Badilag, 2017). However, the duration of the rotation can be shorter or longer than the formal standard. The informants had been transferred several times, ranging from 3 to 10 times since they were first appointed as judges. In addition

Table 1. Social characteristics of informants.

Characteristics	Frequencies	Percent
Gender		
Male	8	40
Female	12	60
Age		
36-40	9	45
41-56	11	55
Years of Being Judges		
10-12 years	14	70
21-23 years	6	30
Times of Rotation		
3	1	5
4	8	40
5	6	30
6	2	10
8	1	5
9	1	5
10	1	5
Recent Position		
Chief Judges	4	20
Vice Chief Judges	11	55
Judges	5	25
Recent Religious Court		
West Java	3	15
Banten	3	15
Aceh	2	10
Jambi	1	5
Central Kalimantan	3	15
Lampung	1	5
Jakarta	1	5
Central Java	1	5
Southeast Sulawesi	1	5
West Sumbawa	1	5
Bali	2	10
South Sumatera	1	5
Total Informants	20	

to being judges, some judges can also be promoted to management and leadership positions responsible for court managerial issues. More than half of the informants were vice-chief judges, one-fifth were chief judges, and one-quarter were judicial members.

Study Context: Judicial System and the Initial Appointment of Women Judges in Indonesia

The Indonesian judicial system consists of various types of courts, including Islamic courts. Under the responsibility of the Supreme Court as the highest judicial authority,

jurisdiction in Indonesia is organized into four different types of courts. The first is the regular court which covers appellate and trial courts, with civil and criminal jurisdiction. The second is the Islamic court with religious jurisdiction. The third is the military court, and the last is the administrative courts with limited jurisdiction over government and agency disputes (Abdelkader, 2014). This one roof system commenced in 2004, five years after the enactment of the Amendment to the Basic Act on Judicial Power in 1999. The Act dissolved the previous dual-roof administrative structure and combined both administrative and juridical authority over the judiciary in the Supreme Court (Cammack and Feener, 2012).

The previous dual system in Indonesia consisted of the civil court based on western law and the Islamic court focused on family issues based on sharia or Islamic law. The administration and management of civil courts came under the full responsibility of the Supreme Court (based on the 1989 Religious Judicature Act), the administration of Islamic courts was under the responsibility of the Ministry of Religious Affairs, and responsibility of technical judicial issues was under the Supreme Court (Nurlaelawati and Salim, 2013).

Among Muslim countries, Indonesia was one of the first to appoint women as judges (Nurlaelawati and Salim, 2017). In the 1950s, Indonesia appointed five female judges in the lower civil courts and, in 1968, promoted the first woman to the Supreme Court (Dzuhayatin, 2020). The first appointment of female judges in the Islamic courts happened in 1964 amidst harsh criticism of conservative religious leaders, mainly influenced by Shafi'i legal doctrine, which requires judges to be men (Dzuhayatin, 2020; Nurlaelawati and Salim, 2013). Shafii, as the prominent school of Islamic law in Indonesia, only allows female judges when it is necessary (Abdelkader, 2014), which is often interpreted as a legal emergency (*darura*). Therefore, the initial appointment of female judges was justified as a form of *darura* as Indonesia lacked qualified Islamic judges, with many males not meeting the full requirement for being judges in the Islamic courts (Nurlaelawati and Salim, 2013).

Although female judges in the Islamic court were appointed in the early 1960s, they only played minor roles in courtrooms, such as hearing cases on family and economic issues (Nurlaelawati and Salim, 2017). The full accommodation of female judges in the Islamic courts did not happen until 1989, after the enactment of the Islamic Courts Law of 1989 (Nurlaelawati and Salim, 2017). Nevertheless, Indonesia was still considered at the forefront compared to other Muslim countries. While Malaysia, like Indonesia, appointed its first female judges in the civil courts in the 1950s, it only appointed the first female judges in its Islamic court in 2010 (Sonneveld, 2017). In most Muslim countries, the first appointment of female judges did not happen until the 2000s. Egypt appointed its first female judges in 2003, followed by Bahrain in 2006, UAE in 2008, Kuwait in 2010, and Mauretania in 2013 (Sonneveld and Lindbekk, 2017b).

Results and Discussion

Women Judges Representation and the Glass Ceiling Effect in Islamic Courts

Following the full accommodation of women judges in the Islamic judicial system in 1989, the number of women judges has significantly increased compared to the initial

appointment. Some scholars have argued that this is due to well-established traditions of sharing economic authority and joint marital property between husband and wife among various ethnic groups in Indonesia (Nurlaelawati and Salim, 2017). These traditions have also been considered a basis for women's participation in the labor force, private sectors, and government agencies (Sonneveld, 2017).

Although many women have been appointed as judges in the Islamic judicial system, proportional parity has failed to bring about gender equity. Our findings show no significant increase in the descriptive representation of female judges in the Islamic courts in Indonesia during the past decade. The proportion of female judges increased from around 22% in 2010 to just below 24% in 2013, before it slightly declined to 22% in 2018 (see Figure 1). It then slightly increased to 25% in 2020 (see Figure 2). These figures indicate that the proportion of male judges is still remarkably higher than that of female judges.

In terms of court levels, the 2018 data from the Directorate General of Religious Courts showed that the share of women judges in the first-instance Islamic courts was relatively higher (21.53%) than that in the Islamic appellate courts (only 8.21%), and no women judges sat in the Supreme Court. This data indicates a glass ceiling effect in which a small proportion of women judges sit at the top of the hierarchy than at lower levels (see Figure 3).

Similarly, the glass ceiling effect exists in terms of managerial and leadership positions. The proportion of female chief judges at the top of the hierarchy was less than at lower levels. Based on leadership positions, judges in a court consist of the chief judge, the vice chief judge, and judicial members. Among the 25% of women judges appointed to the Islamic court in 2020 (655 of 2655), the proportion appointed as chief judges was 18% in the first-instance religious courts (73 of 412), 14% in the appeal courts (4 of 29), 9% in the high courts. (32 of 368), and none in the Supreme Court (see Figure 2).

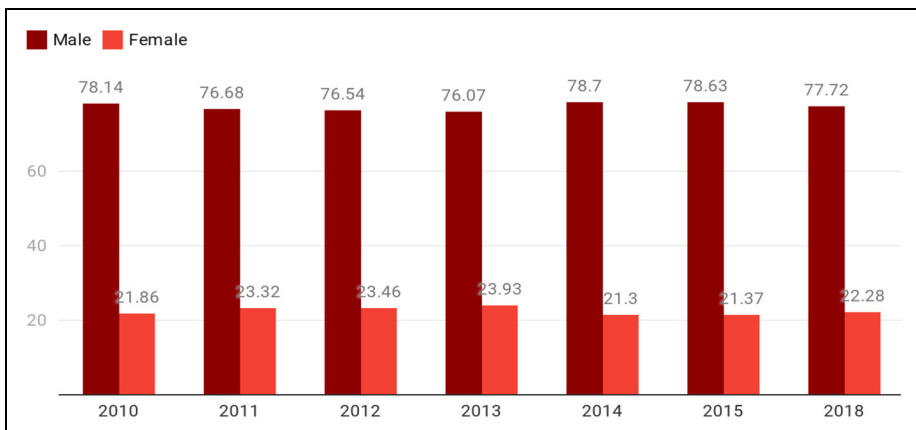


Figure 1. Percent of judges in religious court in Indonesia (2010-2018) by gender.

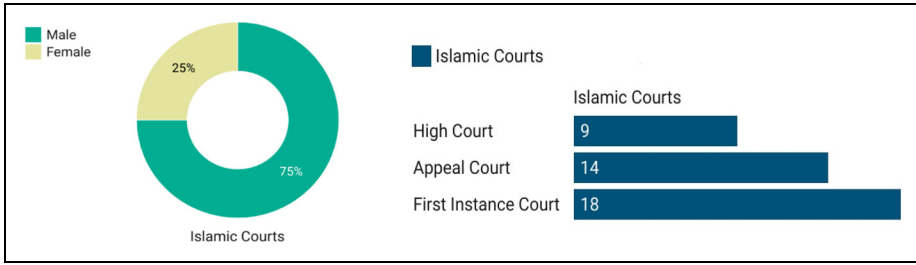


Figure 2. Percent of female judges and female chief judges by court level in Islamic courts, 2020 (Sumner and Lister, 2020).

These figures show that despite the inclusion of women in the Islamic judicial system in Indonesia, it is still hard for women judges to reach the top hierarchy. Therefore, the glass ceiling effect is often seen as the ‘invisible barriers through which women can see elite positions but cannot reach them’ (Davies-Netzley, 1998: 340).

Gender Blindness and the Glass Ceiling in the Islamic Judicial System

For the sake of gender equality, gender-neutral principles have been implemented in almost all processes and mechanisms within the Islamic judicial system, including the Islamic religious courts. The processes and mechanisms, such as the initial recruitment process, education and training, the transfer mechanism, and career development, apply to both male and female judges irrespective of their sex. In addition, in terms of litigation cases, our informants also confirm that both men and women judges in Islamic courts would handle the same legal issues, including divorce, joint property, inheritance, and sharia economics. Only in the sharia economic cases was a professional certificate in the sharia economy required. Applying these gender-neutral practices is

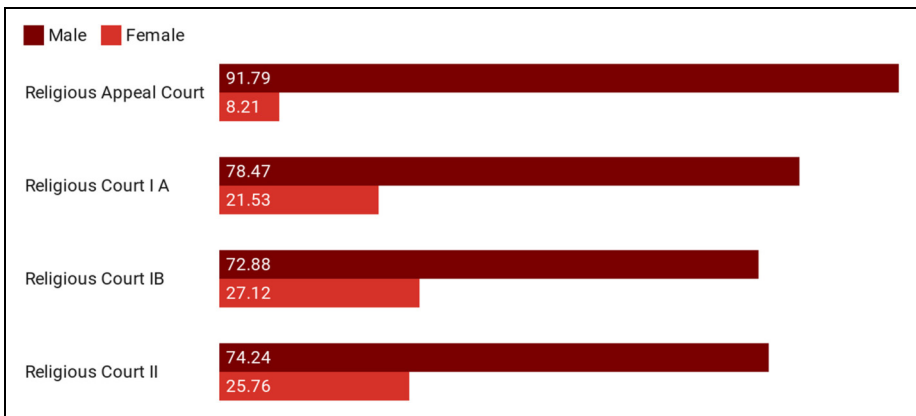


Figure 3. Percent of judges by gender and court level, 2018.

believed to provide the same opportunities for female judges as their male counterparts. None of the informants we interviewed mentioned facing any different procedures and mechanisms throughout their careers. One of the female judges, for example, explained that:

“There are no different procedures between female and male judges in the process of becoming a judge or career promotion. Everything is the same because the chiefs do not see whether it is a woman or a man. All is the same. There is also no difference in judges’ education and training. Everything is the same. There is no difference.” (Feby, Female Judge, 2021)

This gender-neutrality, however, has often led to gender-blindness. Some scholars have deemed gender blindness a strategy to minimize gender inequality (Martin and Phillips, 2017). However, others see that gender blindness would only preserve gender inequality, including the glass ceiling effect, by overlooking the differences between men and women. Consequently, gender becomes invisible, and gender inequality is maintained (Saari, 2013). Based on our interview data, none of the judges perceived any structural barriers for female judges to pursue their career advancement. Some female judges thought that every judge, regardless of gender, could improve their judicial careers. Thus, they believed that it was not gender that was a barrier to their career advancement but their competence and professionalism.

Interestingly, even though the existing data seemed to indicate the underrepresentation of women in the various levels of the Islamic courts, especially at the top hierarchy, the glass ceiling effect did not appear to be a matter of concern among the informants. By contributing to the invisibility of gender inequality within the Islamic judicial system, gender-blindness has made it difficult for both male and female judges to acknowledge the persistence of the glass ceiling effect. Therefore, appropriately addressing the glass ceiling is hard, especially when gender blindness and other gender-associated problems become obscured.

The Glass Ceiling and the Multiple Expectations of Being Female Judges

Institutional and Professional Expectations. Gender blindness, which encourages gendered practices within an organization, has contributed to the reproduction of gender stereotypes. The stereotypes are mainly based on the existing gender hierarchies in favor of professional expectations of the ideal image of male judges. These stereotypes have hindered female judges’ career progression. In Indonesia and other contexts, including the western context, a judge is often associated with male characteristics. Some studies show that the judiciary is a sex-typed profession in which the judge refers to male images (Treanor, 2020), and male judges are considered the ‘authoritative knower’ (Feenan 2008: 498). This masculine bias has led women to be identified as ‘nonjudicial’ (Rackley 2012: 602) or associated with the image of ‘other’ in judicial authority (Feenan 2008: 498). When women do meet the masculine quality, they are often regarded as ‘too aggressive’ (Davis & Williams 2003: 832). These gender stereotypes could hamper women from

choosing or being chosen to climb to higher steps on the career ladder (Gorman and Kmec, 2009).

Gender stereotypes have also forced women judges to demonstrate their competency. Some studies indicate that women judges face the so-called “double bind dilemma” (Goldar 2020: 8). Women judges are often seen as too soft or strict, but never just right; female judges face higher standards and lower appreciation than male judges; female judges are perceived as competent or pleasant, but rarely both (Goldar, 2020). These double-bind standards have belittled the impact of gender stereotypical bias, which creates an invisible obstacle to female judges’ progression that is hard to minimize or even detect (Goldar, 2020).

Male and Female Judges Expectations. Gendered organizations have also contributed to shaping male and female judges’ expectations of the ideal female judge. Our interview data showed that some male judges had a more positive perspective than others of women judges’ performance. They considered female judges were progressive and had the same abilities as male judges.

However, other male judges tended to have negative stereotypes of women judges, such as women judges being sensitive, emotional, and reactive. Although there was no difference in education and training among the male and female judges, some male judges considered female judges to lack competence, especially senior female judges. Some male judges stated that while young female judges were keen to learn and update their knowledge and skills, senior female judges were reluctant to do this and tended to enjoy their comfort zone.

Additionally, some male judges also mentioned that women judges tended to have different judging styles and decisions, as noted by the following male judge:

“Although female judges have the same education and training as their male counterparts, there is a disparity in their (female judges) ability to understand procedural and material laws. Their professional performance depends on whether they want to read, study, improve their professional skill through training, etc. Sometimes, there are disparities in dealing with certain issues, and they might judge differently and have different decisions.” (Mike, Male Judge, 2021)

On the other hand, twelve female judges in the study considered that the performance of judges did not depend on their gender but on their ability to judge in the courtrooms and their understanding of the law. Four of our female informants even said that female judges might be even better than male judges. They also mentioned that some female judges were more disciplined than their male counterparts. However, due to double-bind standards, those female judges said that rather than being considered disciplined, women judges who were outspoken and assertive were often considered chatty.

Furthermore, in terms of differences in judging, five female judges stated that they tried to be more sensitive to women-related issues in order to provide more just outcomes for women. For example, the implementation of divorce in Islamic courts is based on Islamic law. Therefore, divorce could be initiated by either the husband (*talaq/cerai talak*) or the wife (*khulu’/cerai gugat*). If initiated by the husband, the ex-husband

must provide alimony to the ex-wife (*iddah* allowance) (Subramanian, 2008). One female informant mentioned that judges should decide on the level of financial support from the ex-husband to the ex-wife before they terminate the marriage. This alimony obligation has been stipulated in several articles of the marriage law. Therefore, both male and female judges should, in practice, have the same stance on this issue. If initiated by the wife, women are not entitled to receive alimony during *iddah* - the mandatory three-month waiting period for women before remarrying after divorce, or the provision of *mut'ah* - a one-off post-divorce gift for a divorced woman (Wardatun and Smith, 2020). One of the reasons is that a divorce initiated by a wife can be considered as *Nushūz* - a disobedient wife (Wardatun and Smith, 2020). Therefore, the ex-husband is not required to provide the alimony.

While this perspective has been criticized as insensitive towards women and perpetuating gender inequality in the justice system, our female informants mentioned that many judges often follow this perspective as the obligation to provide ex-wives' alimony on *khulu'* is not stated in any marriage law in the Indonesian Islamic judicial system. Therefore, it is not surprising that a study of the Australia Indonesia Partnership for Justice 2 (AIPJ2) that analyzed divorce cases in 2018 showed that of the 447,417 divorce cases in the Islamic courts, only one percent of cases demanded provision of financial support to the ex-wife (Fanani, 2020). One female informant mentioned that only progressive judges would insist an ex-husband provide the alimony. They may use a certain article of the marriage law and supreme court regulations to require alimony in the cases of *khulu'* as she has ever done. According to her:

“What is not textually available in the law is the alimony for *khulu'* divorce. In this type of divorce, it is hard for wives to obtain their rights. Many judges still hold *fiqh* (Islamic jurisprudence) oriented views considering the wife who initiated divorce as *Nushūz* (disobedient) to her husband. Therefore, she has no right to alimony. However, article 41 C of the marriage law clearly states that the court can decide to require alimony from the former husband when he has a job and income and causes some physical and psychological damage (to the ex-wife) due to his infidelity or abuse. In this case, therefore, it is the judge's authority to determine this alimony obligation.” (Flora, Female Judge, 2020)

Furthermore, some scholars have mentioned that female judges' approach to decision-making improved judicial conduct by incorporating certain feminine aspects, such as emotional considerations, which added richness and texture into the justice system (Shen, 2017). In short, incorporating differences in the judiciary will improve the judicial outcomes for women (Hale, 2005) as female judges add depth and quality to the judicial system (Feenan, 2008; Schultz and Shaw, 2013a).

However, feminist judging - a judgment that incorporates women's experience into decision-making and the formulation of legal rules and seeks to achieve gender justice (Hunter, 2018) - can be conducted not only by female judges. As stated by one of our female informants, some male judges have decided cases using a feminist judging perspective. Yet, not all female judges, who were expected to have more gender sensitivity, used a feminist judging perspective. In addition to the descriptive representation of

female judges, the substantive representation of feminist judging is an important agenda for the Islamic courts to meet in protecting women's access to justice.

To ensure women's access to justice and improve judges' gender sensitivity, the Indonesian supreme court issued regulation No. 3/2017 on the guidelines for adjudicating women's cases against the law. This regulation recognizes the state's responsibility to guarantee that women have access to justice and are free from discrimination under the judicial system. The regulation also provides a specific code of conduct for judges in dealing with women's cases. As a supporting material for this regulation, the supreme court also published a pocketbook for all judges and court staff. This book has been written by the supreme court working group focusing on the issue of women and children, in cooperation with the Indonesian Judicial Society Research Team, the Family Court of Australia, and the Australia Indonesia Partnership for Justice 2 (AIPJ2) (MaPPI, 2018). We consider these efforts as an initial conception phase of Feminist Judgements Projects (FJP) in Indonesia, even though most of our informants are not familiar with the term FJP.

Particularly due to judges' opinion, whether or not this regulation is binding, the implementation of this regulation might vary, and judges might reach their decision differently. As mentioned above, the husband's obligation to provide alimony for his ex-wife is one example of how judges interpret this regulation differently. In short, feminist judgments projects are important agenda for the Indonesian Islamic judiciary to improve the application of a feminist perspective among its judges.

Societal and Familial Expectations. While some consider gender blindness an important policy for achieving gender equality within an organization, it fails to recognize that societal and cultural expectations towards females and males remain different. Traditional gender roles often consider males as the breadwinners and females as homemakers and care providers. Women are not automatically free from these traditional gender expectations when they work outside the home. Gendered organizations also reinforce these ideas. The finding of this study indicates that to meet institutional and social expectations either as ideal female judges or ideal mothers, many females have been forced out from high-level positions.

The majority of both male and female judges in our study stated that women judges usually had more things to take into consideration than male judges when they wanted to pursue positions in higher-level courts or managerial positions. These considerations mainly focused on family issues as explained by one of our informants:

“Everyone in the religious court has the same opportunity. Based on the system and written rules, everyone has the same opportunity. When individuals have met the requirements, such as after serving for several years, they will get an opportunity for career promotion. It then depends on the result of the fit and proper test. Once the result is good, yes, anyone has a chance. Women sometimes have a lot of considerations related to children and husbands, while men often do not want to be bothered with these problems.” (Fiona, Female Judge, 2021)

Most of our informants suggested that family considerations were the main challenge for women judges when it came to applying for high-level positions. When judges apply

for promotions, it is likely they could be transferred to any religious court in Indonesia and usually far away from their original location. This judicial rotation system has become a challenge for many female judges, especially when they have to be in a long-distance relationship with their husbands and children. Even when their children could join them, access to education and health care in more remote areas was an important consideration among the female judges. The decision to opt-out or refuse career promotions was more common among female judges whose husbands could not accompany them to the new locations or their family members had health issues. The decision to opt-out was more likely to occur among senior female judges. One senior female judge in our study, for example, mentioned that she would no longer apply for any high positions and was fine with her recent positions as long as she could be closer to her family. She added that she had been in managerial positions before, so it was now time for her to prioritize her family. She further explained that:

“We want to build a family and a career. So, there must be a balance between family and career. Most senior female judges usually want to be close to their family or their place of origin. Because the older you get, the more you have to pay attention to your family. If we want to have an intact family, we have to focus more on family than prioritizing careers, but we have broken families. It is why females’ careers lag behind their male counterparts. The age for the position of a high judge is between 58–60 years of age. At the same time, their partners usually need more attention. So, most of the female judges prefer to be closer to or take care of their families.” (Farah, Female Judge, 2021)

Some scholars have argued that motherhood stereotypes are a cultural trap – a cultural conception that considers career achievements a failure of the traditional role (Goldar, 2020). In this context, gendered organizations normalize and promote the reproduction of motherhood as the natural identity of women (Goldar, 2020). Therefore, this cultural trap has forced women judges to align with the expected identity of women who prioritize mothering and caring responsibilities over their careers. Those who do not meet this expected identity will be considered flawed or imprudent women (Goldar, 2020).

When enforcing this cultural trap, gendered organizations are more likely to set standards and rules favoring males over female judges. In the context of the Islamic judicial system in Indonesia, for example, most of the informants in our study agreed that there were no different processes between male and female judges to climb up the career ladder. However, before taking the fit and proper test for career promotion, women judges needed approval from their husbands, as explained by one female judge:

“There is no difference between men and women in achieving a high career path because there is a fit and proper test. Everyone has the same opportunity, whether a man or a woman. They have the same rights and chances to success. However, the organization requires the husband’s approval for female judges before taking the fit and proper test. If the husband approves, his wife could pursue her career in high managerial positions or high-level courts. As female judges in religious courts, we want to build a family and career. So, we should balance between family and career. While a wife follows her husband, the wife is not necessarily followed by her husband.” (Falia, Female Judge, 2021)

Most of the female judges in our study said that their husbands had supported their careers. However, after experiencing long-distance relationships for many years, there came a time when they had to reconsider their decision to pursue higher positions within the religious courts. The experience of one of the female informants revealed that her husband was very supportive of her career. She had been in a long-distance relationship with her husband throughout her career as a judge. In recent times, while still in a long-distance relationship, she was located relatively close to her husband, and they could meet on weekends. When she had a promotion to a higher position, she had to reconsider it more carefully. Although her husband did not explicitly disapprove of her intention to pursue a high-level position, he was not very supportive of her plan. One consequence of her promotion was that she could be transferred to other religious courts farther away from where her husband worked. Since her husband also had a career that he could not give up, she let her husband achieve his career as a director. She finally decided that it was time for her to be just an ordinary judge without any leadership position. With her current position, she could be at a close distance with her husband and children. However, as suggested by other female informants, while many husbands were very supportive of their careers, some faced disapproval from their husbands. Some husbands even threatened to divorce them if they prioritized their careers over their families.

Conclusion

Women's participation in the Islamic judicial system in Indonesia has witnessed an increasing trend since women's initial appointment as judges. However, the gender gap persists. Women's access to the intermediate and higher levels of the judicial hierarchy has been somewhat slow, indicating a glass ceiling effect. Positioning the judicial institution as a gender-blind organization has encouraged gendered practices, which have contributed to sustaining the glass ceiling effect in the Islamic judicial system. These gendered practices have reinforced gendered stereotypes and cultural traps that have forced women judges to opt-out of top-rank positions. Therefore, we recommend that making the judicial system a gender transformative organization is necessary in order to reduce the glass ceiling effect. Additionally, affirmative action is essential for providing equal opportunities and encouraging women judges to pursue high-rank positions.

This study contributes to the understanding of the glass ceiling effect in the Islamic judicial system in Indonesia. This study also contributes to the discussion of gendered organization theory in the context of non-western countries. However, further research should focus on a comparative analysis of the glass ceiling effect in Indonesia's civil and religious courts. While religious courts focus more on family and Islamic economic issues, civil courts deal with civil and criminal cases. Since the challenges in these two courts might vary, a comparative analysis would help provide a better understanding of institutional variations and the extent to which they contribute to the glass ceiling effect.

Finally, while this study briefly explains the importance of the substantive representation of feminist judging, it does not comprehensively address this issue. Further research is needed to analyze feminist judging perspectives in both Indonesia's Islamic and civil courts.

Acknowledgements

We would like to thank all informants who have participated and shared their experienced as judges in this study and anonymous reviewers for their critical inputs and suggestions.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

ORCID iDs

Lim Halimatusa'diyah  <https://orcid.org/0000-0002-7741-8830>

References

- Abdelkader E (2014) To judge or not to judge: A comparative analysis of islamic jurisprudential approaches to female judges in the muslim world (Indonesia, Egypt and Iran). *Fordham International Law Journal* 37(2): 310–372. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/frdint37&div=14&id=&page=> (accessed 12 October 2020).
- Acker J (1990) Hierarchies, jobs, bodies: A theory of gendered organizations. *Gender & Society* 4(2): 139–158.
- Backhouse C (2017) *Claire L'Heureux-Dubé: A Life*. Vancouver, Toronto: UBC Press.
- Badilag (2017) Kini hakim dimutasi tiap 4 hingga 5 tahun. Available at: <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/mutasi-hakim-kini-tiap-4-hingga-5-tahun#:~:text=Kini Hakim Dimutasi Tiap 4,Direktorat Jenderal Badan Peradilan Agama> (accessed 3 March 2021).
- Britton DM and Logan L (2008) Gendered organizations: progress and prospects. *Sociology Compass* 2(1): 107–21.
- Brooks K (2010) *Justice Bertha Wilson: One Woman's Difference*. Vancouver, Toronto: UBC Press.
- Cammack ME and Feener RM (2012) The islamic legal system in Indonesia. *Pac. Rim L & Pol'y J.* 21(13): 13–42. Available at: <https://digitalcommons.law.uw.edu/wilj/vol21/iss1/5>.
- Cardinal MC (2017) The politics of exclusion: women public prosecutors and criminal court judges in Syria (1975–2009). In: Lindbekk NS and M (ed.) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 237–258.
- Carlisle J (2017) The best of times, the worst of times: state-salaried, female legal professionals and foreign policy in post-qadhafi Libya. In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 259–283.
- Cotter DA, Hermsen JM, Ovadia S, et al. (2001) The glass ceiling effect. *Social Forces* 80(2): 655–682.
- Davies-Netzey SA (1998) Women above the glass ceiling: perceptions on corporate mobility and strategies for success. *Gender & Society* 12(3): 339–355.

- Davis R and Williams G (2003) Reform of the judicial appointments process: Gender and the bench of the high court of Australia. *Melbourne University Law Review* 27: 819–863. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/mulr27&div=40&id=&page=>.
- Duarte M, Fernando P, Gomes C, et al. (2014) The feminization of the judiciary in Portugal: dilemmas and paradoxes. *Utrecht Law Review* 10(1): 29–43. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/utrecht10&div=5&id=&page=>.
- Dzuhayatin SR (2020) Gender glass ceiling in Indonesia: manifestation, roots and theological breakthrough. *Al-Jāmi'ah: Journal of Islamic Studies* 58(1): 209–240.
- Erickson BH, Albanese P and Drakulic S (2000) Gender on a jagged edge: the security industry, its clients, and the reproduction and revision of gender. *Work and Occupations* 27(3): 294–318.
- Fanani AZ (2020) Why is the protection of the wife's rights in a divorce case not optimal? Available at: <http://www.pa-kabmadiun.go.id/169-artikel-pengadilan/412-mengapa-perlindungan-hak-hak-istri-dalam-cerai-gugat-tidak-maksimal> (accessed 26 December 2021).
- Feenan D (2008) Women judges: gendering judging, justifying diversity. *Journal of Law and Society* 35(4): 490–519.
- Goldar MG (2020) The glass ceiling at the highest levels of the spanish judiciary. *International Journal of the Legal Profession* 27(2): 189–202.
- Gorman EH (2006) Work uncertainty and the promotion of professional women: the case of law firm partnership. *Social Forces* 85(2): 865–890.
- Gorman EH and Kmec JA (2009) Hierarchical rank and women's organizational mobility: glass ceilings in corporate law firms. *American Journal of Sociology* 114(5): 1428–1474.
- Hale Lady (2005) Making a difference? Why we need a more diverse judiciary. *Northern Ireland Legal Quarterly* 56(3): 281–292.
- Hunter R (2015) More than just a different face? Judicial diversity and decision-making. *Current Legal Problems* 68(1). Oxford University Press: 119–141. DOI: :10.1093/clp/cuv001.
- Hunter R (2018) Feminist judging in the 'real world'. *Onati Socio-Legal Series* 8(9): 1275–1306.
- Hunter R, McGlynn C and Rackley E (2010) *Feminist Judgments: From Theory to Practice*. Oxford, UK: Bloomsbury Publishing.
- Kantola J (2008) 'Why do all the women disappear?' gendering processes in a political science department. *Gender, Work & Organization* 15(2): 202–225.
- Monika L (2017) Women judges in Egypt: discourse and practice. In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 284–316.
- Lucas JW (2003) Status processes and the institutionalization of women as leaders. *American Sociological Review* 68(3): 464–480.
- MaPPI (2018) Book launching of the guidelines for adjudicating women's cases against the law. Available at: <http://mappifhui.org/2018/01/22/peluncuran-buku-pedoman-mengadili-perkarapereempuan-berhadapan-dengan-hukum/> (accessed 19 March 2022).
- Martin AE and Phillips KW (2017) What "blindness" to gender differences helps women see and do: implications for confidence, agency, and action in male-dominated environments. *Organizational Behavior and Human Decision Processes* 142: 28–44.
- Mehdi R (2017) Lady judges of Pakistan: embodying the changing living tradition of islam. In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 204–236.
- Miles MB, Huberman AM and Saldana J (2014) *Qualitative Data Analysis: A Methods Sourcebook*. 3rd ed. Thousand Oaks, California: Sage Publication Inc.
- Nurlaelawati E and Salim A (2013) Gendering the islamic judiciary: female judges in the religious courts of Indonesia. *Al-Jāmi'ah* 51(2): 247–278.

- Nurlaelawati E and Salim A (2017) Female judges at Indonesian religious courtrooms: opportunities and challenges to gender equality. In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden: Brill, 101–122.
- O'Connor SD and Azzarelli KK (2011) Sustainable development, rule of law, and the impact of women judges. *Cornell International Law Journal* 44(1): 3–9. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cintl44&div=6&id=&page=>.
- Purcell D, MacArthur KR and Samblanet S (2010) Gender and the glass ceiling at work. *Sociology Compass* 4(9): 705–717.
- Rackley E (2012) *Women, Judging and the Judiciary: From Difference to Diversity*. New York, NY: Routledge-Cavendish.
- Saari M (2013) Promoting gender equality without a gender perspective: problem representations of equal pay in Finland. *Gender, Work and Organization* 20(1): 36–55.
- Schultz U (2014) Raising gender awareness of judges – elements for judicial education in Germany. *International Journal of the Legal Profession, Special Issue on Gender and Judicial Education* 3: 345–355.
- Schultz U and Masengu T (2020) Women and judicial appointments. *International Journal of the Legal Profession* 27(2): 113–117.
- Schultz U and Shaw G (2013a) *Gender and Judging*. Oxford: Hart.
- Schultz U, Dawson B and Shaw G (2017) *Gender and Judicial Education*. London, New York: Routledge.
- Schultz Ulrike and Shaw Gisela (2013b) Introduction: Gender and judging: Overview and synthesis. In: Schultz U and Shaw G (eds) *Gender and Judging*. Oxford: Hart, 3–47.
- Shen A (2017) *Women Judges in Contemporary China: Gender, Judging and Living*. Gewerbestrasse, Switzerland: Palgrave Macmillan.
- Sonneveld N (2017) Women's access to legal education and their appointment to the judiciary: the Dutch, Egyptian, and Indonesian cases compared. In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 51–100.
- Sonneveld N and Lindbekk M (2017a) Introduction: A historical overview of gender and judicial authority in the muslim world. In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 1–19.
- Sonneveld N and Lindbekk M (2017b) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill.
- Stone PB (2007) *Opting out?: Why Women Really Quit Careers and Head Home*. Berkeley, CA: University of California Press.
- Subramanian N (2008) Legal change and gender inequality: changes in muslim family law in India. *Law & Social Inquiry* 33(3): 631–672.
- Sumner C and Lister L (2020) *Women's Leadership in the Indonesian Judiciary: The State of Play 2020*. Jakarta, Indonesia: AIPJ2 (Australia Indonesia Partnership For Justice 2).
- Treanor L (2020) Problems in the pathways to judicial success: Women in the legal profession in northern Ireland. *International Journal of the Legal Profession* 27(2): 203–216.
- UNESCWA (2019) *Women in the Judiciary in the Arab States Removing Barriers, Increasing Numbers*. Beirut, Lebanon. Available at: <https://www.unescwa.org/publications/women-judiciary-arab-states-removing-barriers-increasing-numbers>.
- Uzebu-Imarhiagbe E (2020) Women in the Nigerian judiciary: considerable headway or organized progress? *International Journal of the Legal Profession* 27(2): 175–188.
- Voorhoeve M (2017) Tunisian Female judges and 'the mobilization of the emancipative potential of the Tunisian family law'. In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 178–203.

- Wald E (2019) Judicial under-representation, over-representation and “catch up”: Insights from a study of US district court judges in the 10th circuit. *International Journal of the Legal Profession* 26(1): 33–50.
- Wardatun A and Smith BJ (2020) Woman-initiated divorce and feminist fiqh in Indonesia: narrating male acts of nushūz in marriage. *Ulumuna* 24(2): 266–295.
- Whitehead AL (2013) Gendered organizations and inequality regimes: gender, homosexuality, and inequality within religious congregations. *Journal for the Scientific Study of Religion* 52(3): 476–493.
- World Population Review (2021) Muslim population by country 2021. Available at: <https://worldpopulationreview.com/country-rankings/muslim-population-by-country> (accessed 16 December 2021).
- Zin NM (2017) Female judges in Malaysian shari‘a courts: A problem of gender or legal interpretation? In: Sonneveld N and Lindbekk M (eds) *Women Judges in the Muslim World: A Comparative Study of Discourse and Practice*. Leiden, Boston: Brill, 153–177.