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Protection of Women's and Children's Rights After Divorce in Religious Courts: Challenges in Implementation and Legal Reconstruction

Novendri Eka Saputra*[1], Ilham Ramadhani[2]
[1] Universitas Islam Negeri Sultan Syarif Kasim Riau, Indonesia
[2] Universitas Andalas, Indonesia

*Correspondence E-mail: ekaputranoven@gmail.com

Abstract

The protection of women's and children's rights following divorce is one of the crucial issues in Islamic family law in Indonesia. Although the national legal framework, including the Marriage Law, Compilation of Islamic Law, and various Supreme Court policies, has recognized post-divorce rights such as iddah alimony, mut'ah, and child support, their implementation still faces various obstacles, resulting in these rights often not being effectively fulfilled. This study aims to analyze the implementation of protections for the rights of women and children after divorce in religious courts, identify the structural and cultural factors that influence the effectiveness of their implementation, and formulate a model for reconstructing legal protections oriented toward substantive justice. This study employs a juridical-normative approach through conceptual analysis integrating an analysis of religious court rulings. The findings reveal a significant gap between the normative recognition of post-divorce rights and the reality of their implementation. This gap is influenced by weak mechanisms for enforcing rulings, the suboptimal use of ex officio authority by judges, and the strong patriarchal social constructs that affect compliance with post-divorce obligations. These conditions result in legal protection that is more formal in nature rather than capable of providing real justice for women and children. This study proposes a model of enforceable justice that integrates the perspectives of gender justice and Sharia objectives through seven key mechanisms: conditional execution before *ṭalāq*, asset seizure as security, a maintenance payment system based on income deductions and monitored accounts, sanctions based on contempt of court, a maintenance enforcement system, an asset-based affirmative approach for the informal sector, and cross-sectoral institutional collaboration. This study contributes to the development of Islamic family law by presenting a protection framework that is more implementable, effective, and oriented toward fulfilling the rights of women and children after divorce.

Keywords: Women's Rights, Children's Rights, Post-Divorce Protection, Religious Courts, Enforceable Justice.

Abstrak

Perlindungan hak perempuan dan anak pasca perceraian merupakan salah satu isu krusial dalam hukum keluarga Islam di Indonesia. Meskipun kerangka hukum nasional, termasuk Undang-Undang Perkawinan, Kompilasi Hukum Islam, dan berbagai kebijakan Mahkamah Agung, telah mengakui hak-hak pasca perceraian seperti nafkah iddah, mut'ah, dan nafkah anak, implementasinya masih menghadapi berbagai kendala sehingga hak-hak tersebut sering kali tidak terpenuhi secara efektif. Penelitian ini bertujuan menganalisis implementasi perlindungan hak perempuan dan anak pasca perceraian dalam peradilan agama, mengidentifikasi faktor-faktor struktural dan kultural yang memengaruhi efektivitas pelaksanaannya, serta merumuskan model rekonstruksi perlindungan hukum yang berorientasi pada keadilan substantif. Penelitian ini menggunakan pendekatan yuridis-normatif melalui analisis konseptual mengintegrasikan analisis terhadap putusan peradilan agama. Hasil penelitian menunjukkan adanya kesenjangan yang nyata antara pengakuan normatif atas hak-hak pasca perceraian dan realitas implementasinya. Kesenjangan tersebut dipengaruhi oleh lemahnya mekanisme eksekusi putusan, belum optimalnya penggunaan kewenangan ex officio oleh hakim, serta kuatnya konstruksi sosial patriarkal yang memengaruhi kepatuhan terhadap kewajiban pasca perceraian. Kondisi ini menyebabkan perlindungan hukum lebih bersifat formal daripada mampu memberikan keadilan yang nyata bagi perempuan dan anak. Penelitian ini menawarkan model *enforceable justice* yang mengintegrasikan perspektif keadilan gender dan tujuan syariah, melalui tujuh mekanisme utama, yaitu *conditional execution before ṭalāq*, sita jaminan atas aset, sistem pembayaran nafkah berbasis pemotongan penghasilan dan rekening terpantau, sanksi berbasis *contempt of court*, *maintenance enforcement system*, pendekatan afirmatif berbasis aset untuk sektor informal, dan kolaborasi kelembagaan lintas sektor. Penelitian ini berkontribusi terhadap pengembangan hukum keluarga Islam dengan menghadirkan kerangka perlindungan yang lebih implementatif, efektif, dan berorientasi pada pemenuhan hak perempuan dan anak pasca perceraian.

Kata kunci: *Hak Perempuan, Hak Anak, Perlindungan Pasca Perceraian, Peradilan Agama, Enforceable Justice.*

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Introduction

The protection of the rights of women and children following divorce has become a key concern in various international legal instruments and national regulations in many countries.[1] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) affirm the obligation of states to ensure the fulfillment of the rights of women and children, including the right to economic, social, and legal protection after divorce. In many cases, women and children find themselves in a more vulnerable position owing to deeply entrenched gender inequalities.[2]

In religious courts, the protection of women's and children's rights following divorce has been normatively established through various legal provisions. One such provision is the Compilation of Islamic Law (KHI), specifically Article 149, which requires a former husband to provide *mut'ah*, '*iddah* maintenance, housing (*maskan*), and clothing (*kiswah*) to his ex-wife. Furthermore, Article 156(d) of the KHI stipulates that the father is responsible for the child's maintenance and support in accordance with his economic capacity. These provisions demonstrate that the codified Islamic legal system in Indonesia clearly recognizes the economic rights of women and children as part of post-divorce legal protection. Furthermore, the Supreme Court, through Supreme Court Regulation No. 3 of 2017 and Supreme Court Circular Letter No. 1 of 2017, has encouraged judges to ensure the fulfillment of women's and children's rights in divorce rulings. Rights such as iddah alimony, *mut'ah*, and child support are clearly regulated by law, but their implementation is often ineffective. This highlights the gap between legal norms and on-the-ground realities.[3]

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[1] N. Harun et al., "Revisiting Nafaqah Iddah for Women in Court Decisions: Evidence from Muslim Majority Legal Systems," *Nurani* 26, no. 1 (2026): 111–31, Scopus, https://doi.org/10.19109/nurani.v26i1.33600; E. Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025): 1–14, Scopus, https://doi.org/10.24090/volksgeist.v8i1.12214; M. O. Farque, "Muslim Wife's Right to Maintenance in Bangladesh: Analysed Through the Lenses of Shari'ah and Judicial Decisions," *Legal Transformation in Muslim Societies* 1, no. 3 (2024): 59–84, Scopus, https://doi.org/10.13140/RG.2.2.14950.54080.

[2] M. Atho Mudzhar, "Women's Rights in Islamic Family Law in Indonesia," *Al-Jami'ah* 45, no. 1 (2007): 1–28.

[3] Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: RajaGrafindo Persada, 2013).

Various studies show that, although court rulings have largely accommodated women's rights following divorce, enforcement is not always carried out optimally.[4] Many women do not receive their full economic rights, such as *'iddah* alimony, *mut'ah*, child support, or rights to joint property, even though these rights have been established in court rulings.[5] This situation indicates that existing legal protections remain largely formalistic and do not yet fully guarantee substantive justice,[6] ranging from the effectiveness of regulations and the implementation of court rulings to gender-sensitive analysis of judicial policies.

In addition to legal factors, society's social constructs, which remain patriarchal, also influence the implementation of such protections. Women are often viewed as the party who must bear the social burden following a divorce, while men tend to hold more dominant positions in social and economic structures. This reinforces gender inequality, which directly impacts the protection of the rights of women and children.[7] This situation becomes even more complex when considering the best interests of the child, who is directly affected by their parents' divorce. Children often experience a decline in their quality of life, both economically and psychologically, due to the failure to fulfill their basic rights. Therefore, the protection of children cannot be separated from the protection of mothers.[8]

The urgency of addressing the protection of women's and children's rights following divorce has grown alongside the rising number of cases of noncompliance with court orders regarding child support. This indicates that the legal system has not yet been fully effective in ensuring the actual implementation of these rights. Therefore, a more

[4] S. M. Subeitan et al., "The Authority of Ex Officio Judges in Protecting Women's and Children's Rights Post-Divorce at the Manado Religious Court," *Jurnal Ilmiah Al-Syir'ah* 23, no. 1 (2025): 102–16, Scopus, https://doi.org/10.30984/jis.v23i1.3318; S. Syukrawati et al., "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, no. 1 (2024): 121–46, Scopus, https://doi.org/10.21580/ahkam.2024.34.1.20624; A. Haris and E. Lisdiyono, "THE RECONSTRUCTION OF RELIGIOUS COURT DECISION EXECUTION ON THE FULFILMENT OF CHILDREN'S RIGHTS POST-DIVORCE IN INDONESIA," *Revista de Gestao Social e Ambiental* 18, no. 7 (2024), Scopus, https://doi.org/10.24857/rgsa.v18n7-035; Q. Barkah, "FULFILLING CHILD RIGHTS POST-DIVORCE IN RELIGIOUS COURTS BASED ON PEOPLE'S ECONOMIC FACTORS AFTER PANDEMIC," *Jurnal Ilmiah Mizani* 10, no. 1 (2023): 147–59, Scopus, https://doi.org/10.29300/mzn.v10i1.2950.

[5] Murniasih, "Perlindungan Hukum Terhadap Hak-Hak Perempuan Dan Anak Pasca Perceraian Dalam Perspektif Hukum Positif Indonesia," *Jurnal Hukum Keluarga Islam* 7, no. 2 (2022): 145–62.

[6] Euis Nurlaelawati, *Modernization of Indonesian Islamic Law* (Amsterdam: Amsterdam University Press, 2010).

[7] Mansour Fakih, *Analisis Gender Dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2001).

[8] Mansour Fakih, *Analisis Gender Dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2013).

comprehensive approach is needed to address this issue.[9] A purely normative approach is insufficient to address the complexity of issues surrounding the protection of women and children after divorce. A reconstruction of the protection of women's and children's rights is needed, one that integrates social, cultural, and legal aspects simultaneously, to provide a more comprehensive picture of the problems at hand.[10]

Many previous studies have examined the rights of women and children after divorce. For example, Rofiq examined the Islamic family law system in Indonesia, which has provided a sufficiently strong normative foundation for protecting women's rights after divorce, including iddah maintenance, mut'ah, and hadhanah. However, Rofiq's research remains normative-doctrinal in nature and has not examined the effectiveness of implementing these rulings in the practice of religious courts.[11] Furthermore, Nurlaelawati, in her study on the modernization of Islamic law, demonstrated that religious courts play a crucial role in strengthening women's positions through progressive judicial rulings. However, this research places greater emphasis on institutional aspects and general legal transformation.[12] Similarly, Manan investigated the implementation of religious court rulings and found that many rulings regarding post-divorce alimony are not effectively enforced. However, this research has not yet employed a gender perspective in analyzing the impact of this ineffectiveness on women.[13]

Furthermore, Fathoni's research found that the protection of women's economic rights after divorce remains suboptimal, particularly regarding the fulfillment of alimony obligations.[14] In line with Fathoni's findings, Misbach's research identified a gap between court rulings and their implementation on the ground.[15] Furthermore, Badirin studied the protection of women's rights after divorce in Indonesia and found that many of these rights remain unfulfilled.[16] Similarly, studies focusing on legal effectiveness and

[9] T. N. Rohmatun, M. Yahya, and ..., "Zihar Dalam Surat Al-Mujadillah 1-4 Perspektif Tafsir Maqasid," ... *Kajian Alquran Dan Hadis*, 2023.

[10] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: RajaGrafindo Persada, 2015).

[11] UN Women, "Progress of the World's Women," preprint, 2019.

[12] Husein Muhammad, "Kesetaraan Gender Dalam Perspektif Islam," *Musawa* 17, no. 1 (2018): 1–15.

[13] Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2005).

[14] Fathoni, "Perlindungan Hukum Perempuan Pasca Perceraian," *Jurnal Hukum Islam*, 2025.

[15] Misbach, "Socio-Legal Approach," *Jurnal Hukum Islam*, n.d.

[16] Badirin, *Hak Perempuan Pasca Perceraian*, 2023.

reconstruction have been conducted. Gutiérrez-Romero found that the effectiveness of the law is greatly influenced by social and institutional factors. However, this study did not link these findings to Islamic family law.[17] Similarly, in his study on transformative justice, Rabaan emphasized the need for legal reform oriented toward substantive justice. However, this research is general in nature and does not specifically address the issue of divorce. This study is more focused and applicable within the context of religious courts.[18] Unlike previous studies, this research specifically examines the reconstruction of protections for the rights of women and children following divorce by integrating empirical analysis with theoretical approaches such as feminist legal theory and *maqāṣid al-sharī'ah*.

This study aims to analyze the practices of protecting the rights of women and children after divorce within the religious courts in Indonesia. The analysis was conducted to assess the extent to which the law has functioned effectively in providing protection for women and children following divorce. Furthermore, this study seeks to formulate a model for reconstructing legal protections that is more just and responsive to the needs of women and children by integrating the perspectives of *maqāṣid al-sharī'ah* and gender justice.[19] The protection of these rights is part of the effort to realize the overall welfare of the community, as is the objective of Islamic law, and thus its implementation must be carried out optimally and equitably. Meanwhile, the Feminist Legal Theory approach provides a critical analytical framework for laws that are not fully responsive to women's needs. This is crucial in efforts to reform the existing legal system. The integration of maqashid syariah and gender theory is expected to produce a more comprehensive and just model of legal protection, not only normatively but also substantively.[20]

This study includes an analysis of the protection of women's and children's rights following divorce, covering both interrelated normative and implementation-related aspects.[21] Women's rights following divorce, such as iddah maintenance, mut'ah, and child support, are an essential part of legal protection that the state must guarantee.

[17] Gutiérrez-Romero, *Gender Law Effectiveness*, 2024.
[18] Rabaan, *Transformative Justice*, 2023.
[19] Mansour Fakih, "Analisis Gender Dan Transformasi Sosial," *Jurnal Perempuan* 2, no. 3 (1996): 12–25.
[20] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008).
[21] Amina Wadud, *Qur'an and Woman* (Oxford: Oxford University Press, 1999).

However, in practice, the fulfillment of these rights faces various obstacles.[22] This indicates a gap between the law and practice that requires in-depth examination by researchers.[23] This study integrates an Islamic legal approach with modern gender theory, an approach that remains rare in studies of Islamic family law in Indonesia, thereby offering a more significant contribution to the literature.[24] This study is also relevant to the global discourse on gender justice and the protection of women's rights under Islamic law. Thus, this study is expected to contribute to the development of Islamic family law that is more responsive to the needs of women and children, as well as promote the realization of gender justice in the practice of religious courts in Indonesia.[25]

Method

This normative legal study examines the gap between normative provisions regarding the protection of women's and children's rights following divorce and the reality of their implementation in religious court practice.[26] This descriptive-analytical study aims to systematically describe existing legal phenomena while critically analyzing them. In this context, the study not only describes the practices regarding the protection of women's and children's rights following divorce but also evaluates the effectiveness of the implementation of court decisions and identifies the factors influencing their success or failure. This approach enables the researcher to provide recommendations for legal reforms that are more just and responsive to the needs of society.[27]

The data sources for this study consist of primary and secondary data. Primary data were obtained from religious court rulings related to divorce cases, specifically those containing rulings regarding *'iddah* alimony, mut'ah, and child support. Secondary data include primary legal sources, such as legislation and the Compilation of Islamic Law, as well as secondary legal sources in the form of books, scholarly journals, and relevant previous research findings. Data collection was conducted through a literature review and documentary analysis, specifically by reviewing relevant literature and collecting and analyzing court rulings pertinent to the research subject. When necessary, data collection

[22] Wahbah al-Zuhayli, *Al-Fiqh al-Islami Wa Adillatuh* (Damascus: Dar al-Fikr, 1985).
[23] Ziba Mir-Hosseini, *Marriage on Trial* (London: I.B. Tauris, 2000).
[24] Naila Kabeer, "Gender Equality and Economic Growth: Is There a Win-Win?," *World Development* 41 (2013): 1–13, https://doi.org/10.1016/j.worlddev.2012.10.007.
[25] Brian Z. Tamanaha, *Law as a Means to an End* (Cambridge: Cambridge University Press, 2006).
[26] Soekanto and Mamudji, *Penelitian Hukum Normatif*.
[27] Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: RajaGrafindo Persada, 2016).

was also conducted through semi-structured interviews to obtain more comprehensive information regarding the protection of women's and children's rights following divorce. This technique allows the researcher to gain a deeper understanding of legal phenomena from various perspectives.[28]

The data analysis technique used is qualitative analysis, which involves systematically processing data through the processes of data reduction, data presentation, and drawing conclusions. In the analysis process, theoretical approaches were employed, including Feminist Legal Theory to identify gender bias in the law, Social Construction Theory to understand the influence of social structures, and *maqāṣid al-sharī'ah* to assess the alignment of legal practices with the objectives of justice in Islam. Thus, the analysis conducted is comprehensive and multidimensional.[29] To ensure the validity of the data, this study employs a triangulation technique, which involves comparing data from various sources and methods, including court decisions, academic literature, and interview results. This triangulation is essential for enhancing the validity and reliability of the research findings, ensuring that the conclusions drawn are scientifically sound. With this approach, the study is expected to provide an accurate picture of the protection of women's and children's rights following divorce.[30]

Results and Discussion

Practices for Protecting the Rights of Women and Children After Divorce in Indonesia's Religious Courts

From a normative perspective, practices for protecting the rights of women and children after divorce in Indonesia's religious courts demonstrate a relatively strong and comprehensive legal framework. This is reflected in various legal instruments, such as the Marriage Law, the Compilation of Islamic Law, and various Supreme Court policies governing the rights of women and children following divorce, including *'iddah* maintenance, *mut'ah*, child support, and the division of joint property, one of which is implicitly embodied in Supreme Court Regulation No. 3 of 2017 and Supreme Court

[28] Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2017).

[29] Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: RajaGrafindo Persada, 2012).

[30] D. Nuraini, N. M. Solichin, and N. Burhani, "Perbandingan Kerangka Hukum Untuk Perselingkuhan Non-Fisik Di Indonesia Dan Brunei Darussalam," *Mahakim: Journal of Islamic Family Law*, 2025.

Circular Letter No. 1 of 2017. [31] From a legal perspective, these provisions reflect the state's efforts to ensure protection for vulnerable groups, while also demonstrating that Islamic family law in Indonesia has undergone a progressive process of institutionalization. In fact, in several rulings, judges have begun to develop legal interpretations that are more responsive to the protection of women, including through a substantive-justice approach.[32]

However, in empirical practice, such protection relies heavily on women's initiatives to assert their rights. The protection of women's and children's rights following divorce still faces a significant gap between normative recognition and its implementation. Although various regulations have strengthened the legal standing of women and children, the fulfillment of these rights in practice remains heavily dependent on women's ability to access the judicial process, the quality of judicial rulings, and the effectiveness of the mechanisms for enforcing those rulings. This phenomenon is primarily caused by former husbands' low compliance with court rulings, suboptimal use of judges' ex officio authority, and lack of effective enforcement mechanisms for alimony payment obligations.[33] Furthermore, the courts do not yet have coercive enforcement instruments capable of ensuring compliance by the party ordered to pay.[34]

Similar problems are also found in the fulfillment of children's rights to child support. Although Article 156(d) of the Compilation of Islamic Law affirms the father's obligation to provide for the child's maintenance after divorce, research shows that this obligation is often ignored after the ruling becomes final and binding. Baharudin and Nasih conclude that violations of children's rights to child support are among the most serious issues in Indonesia's family law system because there are no effective mechanisms to compel fathers to fulfill their financial obligations to their children.[35] Low economic capacity, particularly in the post-pandemic period, has further increased the

[31] Rofiq, *Hukum Islam Di Indonesia*.

[32] Euis Nurlaelawati, "Modernization, Tradition and Identity," *Journal of Islamic Studies* 18, no. 2 (2007).

[33] Fadil Fadil, Zidna Mazidah, and Zaenul Mahmudi, "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (June 2024): 1–20, https://doi.org/10.18860/j-fsh.v16i1.25713.

[34] A. Fahmi et al., "JUDICIAL PRACTICES IN ENFORCING POST-DIVORCE MAINTENANCE RIGHTS FOR WOMEN AND CHILDREN IN INDONESIA," *Indonesia Private Law Review* 6, no. 2 (2025): 103–16, Scopus, https://doi.org/10.25041/iplr.v6i2.4608.

[35] M. H. Baharudin and A. M. Nasih, "VIOLATION OF CHILDREN'S MAINTENANCE RIGHT UPON DIVORCE IN INDONESIA," *Malaysian Journal of Syariah and Law* 14, no. 1 (2026): 47–60, Scopus, https://doi.org/10.33102/mjsl.vol14no1.877.

rate of noncompliance with child support payments, shifting the practical burden of child-rearing entirely onto mothers.[36]

This situation indicates that legal protection remains passive (passive legal protection), as judges have not consistently exercised their ex officio authority to protect the rights of women and children. From a progressive legal perspective, judges should not merely act as "mouthpieces of the law" but also as active agents of justice in protecting vulnerable groups.[37] Research by Subeitan and Bilalu at the Manado Religious Court shows that the exercise of this authority is still heavily influenced by each judge's individual perspective on substantive justice, resulting in variations in the legal protection afforded to women from one court to another.[38] Furthermore, gender sensitivity in the decision-making process significantly impacts the quality of protection for the rights of women and children following divorce.[39]

Furthermore, this practice highlights a gap between legal norms and their implementation, a phenomenon often referred to in socio-legal studies as the gap between law in books and law in action. Normatively, the law provides sufficient protection; however, in practice, the effectiveness of such protection remains heavily dependent on non-legal factors, such as the parties' legal awareness, economic conditions, and access to justice. This demonstrates that the law cannot be understood in isolation from its surrounding social context. On the other hand, religious courts also play a strategic role in carrying out educational and mediatory functions. In practice, judges not only adjudicate cases but also strive to facilitate the achievement of fair agreements through mediation mechanisms.[40] In some cases, mediation can produce solutions that are more flexible and equitable than litigation rulings. However, the effectiveness of mediation depends heavily on the gender perspectives and sensitivity of both the mediator and the

[36] Barkah, "FULFILLING CHILD RIGHTS POST-DIVORCE IN RELIGIOUS COURTS BASED ON PEOPLE'S ECONOMIC FACTORS AFTER PANDEMIC."

[37] Satjipto Raharjo, "Hukum Progresif: Hukum Yang Membebaskan," *Jurnal Hukum Progresif* 1, no. 1 (2011): 1–24, https://doi.org/https://doi.org/10.14710/hp.1.1.1-24.

[38] Subeitan et al., "The Authority of Ex Officio Judges in Protecting Women's and Children's Rights Post-Divorce at the Manado Religious Court."

[39] M. Iqbal, "Women Judging Women: Gender Sensitivity in the Decisions of Divorce Cases of Indonesian Religious Courts," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 20, no. 2 (2026): 588–615, Scopus, https://doi.org/10.19105/al-lhkam.v20i2.18999.

[40] Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975).

judge. Without an adequate gender perspective, mediation risks reinforcing power imbalances between men and women.[41]

The protection of children within the practice of religious courts is also an integral aspect of divorce cases. The child's right to care, education, and protection remains the responsibility of both parents, particularly the father, as the primary provider. The principle of "the best interests of the child" serves as the primary foundation for determining child custody and child support. However, in practice, the fulfillment of children's rights is often hindered by economic factors and the father's low compliance with court rulings.[42] Furthermore, the strong tendency toward legal formalism in religious court practice is also a factor affecting the effectiveness of legal protection. Judges tend to focus on fulfilling procedural and normative aspects without ensuring the realization of these rights in real life.[43] This causes the law to lose its transformative power as an instrument of social justice. Additionally, the society's still-patriarchal social structure further reinforces inequalities in the practice of legal protection. Women are often positioned as the party who must bear the social and economic consequences following a divorce, while men hold a more dominant position within the social structure. This demonstrates that legal practice cannot be separated from the social constructs that underlie it.[44]

The Effectiveness of Enforcing the Rights of Women and Children After Divorce in Indonesia's Religious Courts

The effectiveness of enforcing court decisions is a key measure in assessing the success of legal protection for women and children after divorce. From the perspective of the rule of law, legal protection does not end with the normative recognition of a right but must be realized through mechanisms capable of ensuring that such rights are fulfilled. Although legal regulations in Indonesia, such as the Marriage Law, the Compilation of Islamic Law, PERMA No. 3 of 2017, and various Supreme Court Circulars, have strengthened the protection of women's and children's rights, empirical evidence

[41] Misbach, "Socio-Legal Approach."

[42] Misbach, "Pendekatan Socio-Legal Dalam Studi Hukum Keluarga," *Jurnal Hukum Islam* 12, no. 1 (2025).

[43] Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row, 1978).

[44] Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality* (New York: Anchor Books, 1966).

indicates that the enforcement of court decisions regarding iddah alimony, mut'ah, and child support remains far from optimal.

Nevertheless, the findings indicate that the rate of actual enforcement of these rulings remains relatively low. Many cases show that husbands neglect their obligation to pay alimony even after a final and binding ruling has been issued, resulting in the rights of women and children receiving only legal recognition without effective protection in practice.[45] This low level of effectiveness is primarily influenced by the weakness of the ruling enforcement system. Research by Haris and Lisdiyono indicates that the main obstacle no longer lies in the substance of the law, but rather in the lack of effective enforcement mechanisms to ensure the implementation of court decisions.[46] While most religious court decisions provide protection for the rights of women and children, their enforcement relies heavily on the voluntary compliance of the former husband, as there are currently no adequate enforcement instruments in place.[47] As a result, women are often faced with a difficult choice between incurring significant enforcement costs or forgoing the rights granted by the court.

In addition to structural factors, cultural factors play a significant role in determining the effectiveness of judgment enforcement. Patriarchal culture continues to shape the public perception that providing alimony after divorce is an act of generosity on the part of the former husband rather than a legal obligation that can be enforced by the state.[48] This social construct contributes to low compliance rates with court rulings while simultaneously weakening women's bargaining power in asserting their rights in domestic violence cases. In this context, the law loses its social coercive power and fails

[45] Fadil, Mazidah, and Mahmudi, "Fulfillment of Women's Rights After Divorce"; Barkah, "FULFILLING CHILD RIGHTS POST-DIVORCE IN RELIGIOUS COURTS BASED ON PEOPLE'S ECONOMIC FACTORS AFTER PANDEMIC."

[46] Haris and Lisdiyono, "LA RECONSTRUCCIÓN DE LA EJECUCIÓN DE LA DECISIÓN DEL TRIBUNAL RELIGIOSO SOBRE EL CUMPLIMIENTO DE LOS DERECHOS DEL NIÑO DESPUÉS DEL DIVORCIO EN INDONESIA."

[47] Fahmi et al., "JUDICIAL PRACTICES IN ENFORCING POST-DIVORCE MAINTENANCE RIGHTS FOR WOMEN AND CHILDREN IN INDONESIA."

[48] Lilik Andar Yuni and Akhmad Haries, "Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?," *Mazahib Jurnal Pemikiran Hukum Islam* 23, no. 2 (2024), https://doi.org/https://doi.org/10.21093/mj.v23i2.7958; Kholidah et al., "Violation of Women's Rights on Divorce: Study on Religious Court Decision," *Journal of Law and Sustainable Development* 11, no. 6 (September 2023): e1230, https://doi.org/10.55908/sdgs.v11i6.1230; M. Ridho and M. Ritonga, "VIOLATION OF WOMEN'S RIGHTS ON DIVORCE: STUDY ON RELIGIOUS COURT DECISION," *Journal of Law and Sustainable Development* 11, no. 6 (2023), Scopus, https://doi.org/10.55908/sdgs.v11i6.1230.

to function as an instrument of change.[49] Many women choose not to claim their full economic rights out of fear of prolonging family conflicts or facing social pressure from their communities to not work.[50] This phenomenon demonstrates that the effectiveness of the law cannot be separated from the social context in which it operates in.

These issues indicate that the religious court system still faces challenges in achieving gender justice. The gender sensitivity of religious court judges reveals that the quality of protection for women's rights is significantly influenced by judges' perspectives in interpreting substantive justice, particularly regarding the exercise of ex officio authority and the determination of women's economic rights following divorce.[51] The implementation of ex officio authority remains inconsistent across courts, as it depends on the courage and paradigms of individual judges' actions.[52] This results in the legal protection received by women not being fully consistent, even though the legal norms are the same.

Furthermore, from a gender justice perspective, the effectiveness of the law is measured not only by the existence of norms but also by the law's ability to produce substantive justice. Substantive justice requires that the law not only grants rights formally but also ensures that those rights can be effectively enjoyed by those entitled to them. In this context, the failure to enforce court decisions indicates that the legal system has not fully upheld the principle of gender justice.[53] Integrating a gender perspective into the judicial system is of utmost importance. This can be achieved through gender sensitivity training for judicial officials and the development of policies that are more responsive to the needs of women and children. Thus, the law functions not only as a formal tool but also as an instrument of social justice, capable of addressing gender inequality.[54] Thus, it can be concluded that the effective enforcement of court decisions regarding the protection of the economic rights of women and children still faces various

[49] Kabeer, "Gender Equality and Economic Growth: Is There a Win-Win?"

[50] M. Ikhwan et al., "Deciding To Be A Widow or Stay with A Husband: The Experience of Muslim Women Filing for Divorce in the Aceh Sharia Court," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 10, no. 1 (2025): 80–99, Scopus, https://doi.org/10.22515/alahkam.v10i1.10825.

[51] Iqbal, "Women Judging Women: Gender Sensitivity in the Decisions of Divorce Cases of Indonesian Religious Courts."

[52] Subeitan et al., "The Authority of Ex Officio Judges in Protecting Women's and Children's Rights Post-Divorce at the Manado Religious Court."

[53] M. A. Murtadlo, "Analisis Maqasid Syariah Jasser Auda Terhadap Counter Legal Draft Kompilasi Hukum Islam," *Al-Syakhsiyyah: Journal of Law \&Family …*, 2021.

[54] V. M. Laamanen, "Changes in Work and Family Attitudes over Birth Cohorts and Links to Childfree Ideals in Finnish Women," *Population and Development Review*, 2024.

obstacles, whether structural, cultural, or normative. Therefore, a more comprehensive and integrative approach is needed to reform the legal system so that it can realize substantive justice oriented toward the protection of vulnerable groups.

Reconstructing the Protection of Women's and Children's Rights After Divorce in Religious Courts

The main problem in protecting the rights of women and children after divorce does not lie in a lack of legal norms, but rather in weak enforcement and the absence of effective mechanisms to ensure compliance. Islamic family law in Indonesia has provided a relatively comprehensive set of norms, but in practice, it often fails to guarantee the actual fulfillment of women's and children's rights. Therefore, legal reconstruction is needed that is not only normative but also integrative, transformative, and capable of ensuring enforceable justice.[55] This reconstruction must be built upon the integration of Feminist Legal Theory, Social Construction Theory, and the *maqāṣid al-sharī'ah*. From the perspective of Feminist Legal Theory, law cannot be understood as a neutral system but rather as an arena of power relations that often reproduces gender inequality. Therefore, judges must be positioned as key actors in realizing substantive justice through the exercise of ex officio authority, progressive interpretation, and gender sensitivity in every legal consideration.[56] Furthermore, the feminist approach demands a redistribution of power in legal relations between men and women. This requires a shift from passive protection toward active and enforceable protection, in which the state not only grants rights but also ensures their implementation.[57]

Meanwhile, social construction theory asserts that law cannot be separated from its underlying social context. The practice of noncompliance with court rulings, particularly regarding alimony payments, is caused not only by legal weaknesses but also by the still-dominant social construction of patriarchy. Therefore, legal reconstruction must be accompanied by a transformation of legal culture through public education, the strengthening of legal awareness, and the integration of gender justice values into the

[55] M. Ishida, "Childfree by Choice: The Untapped Economic Power of a Rising Market," *Gendereconomy.Org*, n.d.

[56] M. S. Babu, "'Are You a Real Woman?': Stigma and the Childfree Indian Woman," *Indian Journal of Gender Studies*, ahead of print, 2024, https://doi.org/10.1177/09715215241262134.

[57] UN Women, "Gender Justice Report," preprint, n.d.

social structure. In this way, law functions not only as a norm but also as an instrument of social change.[58]

From the perspective of *maqāṣid al-sharī'ah*, this situation indicates that the goal of Islamic law to protect public interest has not been fully achieved.[59] The protection of property (*ḥifẓ al-māl*), life (*ḥifẓ al-nafs*), and lineage (*ḥifẓ al-nasl*) should be the top priorities of the Islamic family law. However, if the economic rights of women and children are not fulfilled, these objectives cannot be optimally achieved. This indicates a gap between the normative values of Shariah and their practical application.[60] Based on these findings, reform efforts are needed in the system for enforcing court decisions to make it more responsive to issues of gender injustice. Such reforms can be achieved by strengthening the mechanisms for enforcing court decisions, including simplifying procedures, reducing costs, and improving access to legal aid. In addition, judges must play a greater role in ensuring compliance by the parties, including through the use of ex officio authority and the imposition of stricter sanctions against parties who fail to comply with court decisions.[61]

However, this theoretical integration must be translated into a concrete operational model for practical application. Therefore, this study proposes a legal protection model based on enforceable justice, which emphasizes that the law must possess real coercive power to ensure the enforcement of court decisions.

Table 1. Reconstruction of Economic Rights Protection for Women and Children Following Divorce in Religious Courts

No	Key Issues	Reconstruction Aspects	Implementation Mechanisms	Objectives/Expected Outputs
1	Payments for iddah maintenance, mut'ah, and child support are often not made after a	Conditional execution before divorce	Maintenance payments are a mandatory condition before the divorce	To prevent defaults, strengthen women's bargaining positions, and achieve preventive justice.

[58] M. Lutfi, "Wanita Karir Sebagai Dasar Penggunaan Alat Kontrasepsi Spiral (Analisis Maqasid al-Syariah Dan Gender)," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam*, 2021.

[59] Kamali, *Shariah Law*, hlm. 119.

[60] M. B. Ubaidillah and A. N. Laili, "Teori Maqosid Syari'ah Perspektif Ulama Modern Dan Kontemporer," *... Dan Ahwal al ...*, 2021.

[61] N. Evanty and F. T. Yunita, "Fake News and Violence against Women in Indonesia's Elections," *Fake News and Elections in Southeast Asia*, ahead of print, 2022, https://doi.org/10.4324/9781003342915-4.

	final and binding court decision is made.		declaration is pronounced.	
2	A husband's assets are often transferred or concealed, making it difficult to enforce court rulings.	Strengthening of provisional attachment (*conservatoir beslag*)	Temporary seizure of the husband's assets from the outset of court proceedings.	Ensuring the availability of assets for enforcement and enhancing legal certainty
3	Alimony payments depend on the former husband's good faith and are not guaranteed.	Income deduction system and court-monitored account	Direct deduction from income or payment through a court-monitored account.	Ensuring the sustainability, transparency, and accountability of alimony payments.
4	There are no effective consequences for parties that disregard court rulings.	Sanctions based on contempt of court	Imposition of fines, restrictions on certain rights, or administrative sanctions for non-compliance.	Strengthening the enforceability of rulings and fostering a culture of legal compliance are also important.
5	The burden of monitoring the enforcement of rulings rests entirely with women.	Maintenance enforcement system	Establishment of a special mechanism or institution to monitor and ensure maintenance payments.	Shifting responsibility from the individual to the system.
6	Income from the informal sector is difficult to verify and is often used as an excuse to avoid paying alimony.	Asset-based affirmative judicial order, asset disclosure, and security for maintenance	Assessment of financial capacity based on asset ownership, business revenue, and obligation to disclose assets.	Closing loopholes for evading alimony obligations and realizing substantive justice
7	The effective enforcement of court decisions is not supported by an adequate institutional ecosystem.	Cross-sector collaboration	Cooperation between the courts and local governments, cooperatives, market operators, and companies.	Strengthening compliance through an incentive-disincentive approach and expanding access to justice.

Source: Compiled by the author, 2026.

Based on Table 1, the reconstruction of protections for the rights of women and children after divorce proposed in this study stems from the finding that the main problem with Islamic family law in Indonesia no longer lies in the limitations of normative regulations but rather in the weak enforcement of court decisions. Various provisions in the Marriage Law, Compilation of Islamic Law, and Supreme Court policies have

provided an adequate legal basis for the fulfillment of post-divorce rights. However, these rights often remain mere "paper judgments", rulings that have acquired final legal force but are not followed by effective enforcement. This situation results in legal protection that is more declaratory in nature than beneficial to women and children.[62] Therefore, the reconstruction proposed in this study is aimed at shifting the paradigm from "rights recognition" to "rights enforcement."

This reconstruction model is built through the integration of seven complementary mechanisms into a single preventive, repressive, and restorative protection system. Conditional enforcement prior to divorce and the strengthening of the conservatoir beslag mechanism are positioned as preventive instruments aimed at reducing the potential for non-compliance from the outset of court proceedings. These two mechanisms ensure that the obligation to pay alimony no longer depends on the former husband's good faith after the judgment becomes final and binding but is instead guaranteed through asset control and the fulfillment of obligations before the divorce is pronounced. This approach simultaneously transforms the nature of judgment enforcement, which has traditionally been reactive, into a system of anticipatory protection (preventive enforcement), thereby minimizing the risk of women's and children's rights being disregarded from the outset.[63]

Furthermore, the income deduction system, court-monitored accounts, imposition of sanctions based on contempt of court, and establishment of a maintenance enforcement system are the main pillars of strengthening the effectiveness of judgment enforcement. These four instruments shift the burden of enforcing rights, which has traditionally fallen on women, to an institutional responsibility supported by state administrative and oversight mechanisms. Consequently, compliance with court orders no longer depends on the former husband's willingness but is driven by a system with enforcement power through oversight, income deductions, transparent payment mechanisms, and legal consequences for non-compliance. This finding aligns with various comparative studies showing that the effectiveness of post-divorce rights protection is largely determined by

[62] Z. Mazidah and Z. Mahmudi, "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 1–20, Scopus, https://doi.org/10.18860/j-fsh.v16i1.25713; Haris and Lisdiyono, "LA RECONSTRUCCIÓN DE LA EJECUCIÓN DE LA DECISIÓN DEL TRIBUNAL RELIGIOSO SOBRE EL CUMPLIMIENTO DE LOS DERECHOS DEL NIÑO DESPUÉS DEL DIVORCIO EN INDONESIA."

[63] Harun et al., "Revisiting Nafaqah Iddah for Women in Court Decisions: Evidence from Muslim-Majority Legal Systems."

the existence of a maintenance enforcement agency and administrative instruments capable of ensuring the sustained and continuous payment of alimony payments.[64]

On the other hand, this study also proposes an affirmative approach through asset-based judicial orders, asset disclosure, and security for maintenance for business owners in the informal sector, which has long been a major loophole for evading alimony obligations. The assessment of economic capacity is no longer based solely on formal income but also considers asset ownership, business revenue, patterns of economic transactions, and the actual financial capacity of the party subject to the obligation. This approach shifts the judge's assessment orientation from an income-based to an asset-based assessment, thereby reducing the practice of income manipulation, which has often been used as a pretext to evade alimony obligations. Concurrently, cross-sectoral collaboration among religious courts, local governments, financial institutions, companies, cooperatives, and market administrators expands the state's capacity to ensure the enforcement of court decisions through a coordinated mechanism that has not yet been fully developed in Indonesia's religious court system.[65]

Thus, these mechanisms collectively form a model of "enforceable justice" that integrates normative, administrative, institutional, and coercive instruments into a comprehensive legal protection framework. This restructuring strengthens the effectiveness of judgment enforcement and shifts the orientation of Islamic family law from a litigation paradigm toward a rights-based family justice paradigm. From this perspective, the success of the judicial system is no longer measured by the number of rulings issued, but rather by the extent to which those rulings are truly capable of delivering substantive justice through the sustainable fulfillment of the rights of women and children. Therefore, the model proposed in this study offers a theoretical contribution to the development of Islamic family law while also proposing an institutional design that is more responsive, gender-just, and oriented toward the public interest as a direction for reforming the religious court system in Indonesia.

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[64] Baharudin and Nasih, "VIOLATION OF CHILDREN'S MAINTENANCE RIGHT UPON DIVORCE IN INDONESIA"; Iim Halimatusa'diyah and Windy Triana, "Sexism and Women's Access to Justice: Feminist Judging in Indonesian Islamic Judiciary," *Women's Studies International Forum* 103 (March 2024): 102883, https://doi.org/10.1016/j.wsif.2024.102883.

[65] Haris and Lisdiyono, "LA RECONSTRUCCIÓN DE LA EJECUCIÓN DE LA DECISIÓN DEL TRIBUNAL RELIGIOSO SOBRE EL CUMPLIMIENTO DE LOS DERECHOS DEL NIÑO DESPUÉS DEL DIVORCIO EN INDONESIA"; Fadil, Mazidah, and Mahmudi, "Fulfillment of Women's Rights After Divorce."

Conclusion

This study concludes that the protection of women's and children's rights following divorce in Indonesia's religious courts is supported by an adequate normative foundation through the Marriage Law, Compilation of Islamic Law, and various Supreme Court policies aimed at protecting vulnerable groups. However, the effectiveness of such protection still faces various obstacles, including low compliance with court rulings, weak enforcement mechanisms, suboptimal use of judges' ex officio authority, and the persistence of strong patriarchal social structures. These conditions reflect a gap between legal provisions and their implementation "law in books" versus "law in action", resulting in protections that remain largely formal in nature and have not yet fully realized substantive justice for women and children.

In response to these issues, this study proposes a model of "enforceable justice" as a reconstruction of legal protection that emphasizes the effective enforcement of court decisions through seven key instruments: conditional execution prior to divorce (*ṭalāq*), strengthening of asset seizures, a maintenance payment system based on income deductions and monitored bank accounts, the application of sanctions based on contempt of court, the establishment of a maintenance enforcement system, an asset-based affirmative approach for the informal sector, and cross-sectoral institutional collaboration. This model contributes theoretically to the development of Islamic family law while offering an operational framework for reforming the religious court system to make it more responsive, gender-just, and oriented toward fulfilling women's and children's rights.

Nevertheless, the proposed model still requires broader empirical testing through comparative studies and policy implementation to assess its effectiveness in various contexts of Indonesian religious courts. Based on the research findings, it is recommended that the Supreme Court draft regulations that strengthen mechanisms for enforceable justice in divorce cases, while religious court judges should make more optimal use of their ex-officio authority from a gender-just perspective. In addition, the government needs to build cross-sectoral collaboration to support the enforcement of court decisions, particularly regarding the fulfillment of alimony obligations. Academics are encouraged to conduct further research on the effectiveness of the proposed model through empirical and comparative studies. On the other hand, raising public legal awareness is also

necessary so that the alimony obligation is understood as a binding legal obligation, thereby fostering a culture of compliance with court rulings and ensuring that the protection of women's and children's rights can be realized more effectively.

Declarations

Author contribution statement

N.E.S. and I.R. jointly conceived and designed the study, developed the research framework, conducted data collection and analysis, interpreted the findings, and contributed substantially to the writing, revision, and final approval of the manuscript. Both authors made significant intellectual contributions throughout the research process and share responsibility for the content of the article.

Declaration of interests statement

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

AI Usage Statement

In the process of drafting this manuscript, the author used ChatGPT (OpenAI) to assist with language editing, grammar correction, refining the writing structure and improving the manuscript's readability. Artificial intelligence technology was not used to generate research data, perform data analyses, interpret findings, construct main arguments, or draw research conclusions. All results generated with the help of AI were critically reviewed, verified, and re-edited by the author. The authors are fully responsible for the accuracy, integrity, originality, and overall content of this manuscript. The use of AI in this study fully complies with the Generative AI usage policy established by the Istinbath Journal.

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