



# LEGAL ANALYSIS OF LEGAL PROTECTION OF THE RIGHTS OF FOR-WIVES AND CHILDREN AFTER DIVORCE IN INDONESIAN LAWS AND REGULATIONS BASED ON THE VALUES OF JUSTICE

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Article Info	Abstract
<b>Article History</b> Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15  <b>Keywords:</b> <i>Legal protection, women's rights, post-divorce.</i>	<p>Legal protection for the rights of ex-wives and children after divorce in Indonesia still faces challenges in its implementation. Although regulations such as the Marriage Law and the Compilation of Islamic Law have regulated the obligations of ex-husbands to provide iddah, mut'ah, and children's rights, weak law enforcement mechanisms often result in these rights not being fulfilled. The lack of criminal sanctions for negligent ex-husbands, disparity in treatment in cases of divorce by talak and divorce by lawsuit, and low public legal awareness are the main obstacles in the realization of this legal protection.</p> <p>This study uses a normative legal method with a descriptive-analytical approach to examine legal arrangements and related policy implementation. The results of the study indicate that stricter legal reforms are needed, including enforcing sanctions for ex-husbands who do not fulfill their obligations, implementing an inter-agency interconnection system to ensure the execution of decisions, and increasing women's legal awareness so that they can fight for their rights. With a more comprehensive policy, legal protection for women and children after divorce can be more optimal, creating justice based on the principle of welfare.</p>

## I. INTRODUCTION

Justice is one of the main pillars in a legal system that is oriented towards protecting human rights. In the context of family law in Indonesia, justice is closely related to the fulfillment of women's and children's rights after divorce. The principle of equality before the law emphasizes that every individual, without exception, has the right to receive equal legal protection and justice, including in determining economic, social, and psychological rights after divorce. However, in practice, there are various obstacles that cause the fulfillment of the rights of ex-wives and children after divorce not to run as it should.

One of the problems that often occurs is the absence of criminal sanctions that can be used as a coercive force for ex-husbands to carry out their obligations. In the religious court system in Indonesia, judges do not have the authority to impose criminal sanctions on husbands who do not fulfill their obligations to their ex-wives and children after divorce. This results in weak enforcement of women's and children's rights, where many ex-husbands ignore their responsibilities without strict legal consequences. In addition, there is a disparity in the mechanism for fulfilling rights between divorce cases and divorce lawsuits, which often creates legal

uncertainty for wives who file for divorce. (Febrian-Eny, Maulana-Nelson, and Simamora, nd)

Another problem arises when the husband refuses to carry out the divorce vow because he feels the burden of support is too great. In this condition, the determination of the divorce vow can be invalidated, which results in the legal status between husband and wife remaining intact even though the intention to divorce has existed. This is very detrimental to the wife because she cannot exercise her rights, including the right to support that should be obtained after the divorce occurs. Furthermore, this legal uncertainty has the potential to cause structural injustice that further worsens the position of women in the family law system.

The low level of legal awareness in society is also a major factor that complicates the realization of women's and children's rights after divorce. Many women do not understand their rights as regulated in laws and regulations, so they cannot demand optimal fulfillment of their rights. In addition, this ignorance is often exploited by ex-husbands who are reluctant to take responsibility, so that women and children become the parties most disadvantaged in the divorce process. Therefore, more massive legal education efforts

are needed so that the community, especially women, can understand their rights and know the legal steps that can be taken when these rights are not fulfilled.(Nawafitrid et al. 2024)

In Indonesian positive law, the rights of women and children after divorce have been regulated in Law Number 1 of 1974 concerning Marriage, which was later updated by Law Number 16 of 2019, as well as in the Compilation of Islamic Law (KHI). The regulation emphasizes that the husband has an obligation to provide post-divorce maintenance, either in the form of mut'ah maintenance, iddah maintenance, child maintenance, or fulfillment of other economic rights that aim to ensure the welfare of the ex-wife and children. These rights are a form of legal protection for women so that they do not experience injustice due to divorce, as well as a guarantee for children to continue to get a decent life even though their parents have separated.

The dissolution of a marriage in Islamic law can occur due to three main factors, namely the death of one of the partners, divorce at the will of one of the parties (divorce talak or divorce sued), and court decisions based on certain conditions that make the continuation of the marriage impossible (fasakh). In cases of divorce, there are a number of rights that must be fulfilled by the ex-husband to his ex-wife and children. However, in practice, not all of these rights can be fulfilled properly. Therefore, the role of religious courts is very important in ensuring that the rights of women and children after divorce are maintained.(Ariska and Latif 2022)

In terms of fulfilling women's rights after divorce, there are several important aspects regulated in the KHI. Article 149 of the KHI states that divorced women are entitled to mut'ah maintenance (maintenance given as a form of respect for the divorced wife), iddah maintenance (maintenance during the iddah period or waiting period after divorce), and hadhanah maintenance (maintenance for the benefit of children until the children reach adulthood). In addition, women also have the right to joint property, as regulated in Articles 96 and 97 of the KHI, which state that women are entitled to half of the joint property in cases of divorce due to death or divorce by life.

Children's rights after divorce are also a major concern in legal regulations in Indonesia. Law Number 23 of 2002 concerning Child Protection emphasizes that children have the right to a decent life, the right to receive good care, the right to education, and the right to legal protection from all forms of exploitation or

neglect. In cases of divorce, child care becomes a shared responsibility between the father and mother, where the father still has the obligation to provide for the child even though custody falls to the mother. Unfortunately, many cases show that after divorce, fathers often neglect their responsibilities towards their children, both in terms of providing for the child and in emotional and social involvement.(Nawafitrid et al. 2024)

In an effort to enforce legal protection for children's rights after divorce, the government has implemented a number of policies aimed at ensuring that these rights are still fulfilled. One of the policies implemented is the imposition of sanctions on parents who neglect their children after divorce, as regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. However, in practice, the implementation of these sanctions still encounters many obstacles, especially due to weak law enforcement mechanisms and the lack of public awareness of the importance of protecting children's rights after divorce.(Ariska and Latif 2022)

Based on the various problems that have been described, this study aims to analyze the legal regulations on the rights of ex-wives and children after divorce from a positive legal perspective based on justice values. In addition, this study will also examine how policies are implemented in fulfilling these rights and examine legal protection efforts that can be applied to ensure that the rights of ex-wives and children are maintained after divorce. With a normative and empirical legal approach, this study is expected to provide recommendations for policy makers, judges, advocates, and the wider community regarding legal steps that can be taken in order to ensure justice for women and children after divorce.

In the long term, the fulfillment of women's and children's rights after divorce will not only improve legal protection for them, but will also contribute to more inclusive and equitable social development. Therefore, more comprehensive efforts are needed to strengthen regulations, increase public legal awareness, and ensure that every individual affected by divorce can obtain proper justice in accordance with the legal principles applicable in Indonesia.

## **II. RESEARCH METHODS**

The research method in this study uses a normative legal approach, which focuses on the

analysis of legal norms contained in laws and regulations, legal doctrines, and court decisions related to the rights of ex-wives and children after divorce. This research is qualitative, with data collection methods through literature studies (secondary data) and supported by primary data obtained through interviews and observations of legal practices in the field. Sources of legal materials consist of primary legal materials such as the 1945 Constitution, the Marriage Law, the KHI, and child protection regulations; secondary legal materials in the form of journals, books, and related research results; and tertiary legal materials such as legal dictionaries that help in understanding the concepts used in this study. (Indra Utama Tanjung 2024)

Data analysis was conducted using a descriptive-analytical method, which aims to organize and interpret data based on predetermined patterns and categories in order to obtain relevant conclusions. This analysis process begins with processing data from various sources, both normative and empirical, in order to provide a comprehensive understanding of the implementation and challenges in fulfilling the rights of ex-wives and children after divorce. With this approach, the study is expected to provide recommendations for policy makers and legal practitioners in improving legal protection based on justice values for women and children in Indonesia.

### **III. RESULTS AND DISCUSSION**

#### **A. Legal Regulations Regarding the Rights of Former Wives and Children After Divorce from the Perspective of Positive Law Based on Public Interest**

Divorce in positive law in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage, which states that divorce can only be carried out in front of a court hearing after efforts to reconcile both parties have failed. For Muslims, divorce law is further regulated in Law Number 7 of 1989 concerning Religious Courts and the Compilation of Islamic Law (KHI). (Ridwan 2006) Divorce has legal consequences for the rights of the ex-wife and children, which the ex-husband must fulfill for the sake of justice and welfare.

In the context of positive law, a husband who pronounces a divorce is required to provide certain rights to his ex-wife, including iddah maintenance, mut'ah, and other economic rights.

Iddah maintenance is a provision during the waiting period after a divorce, which includes basic needs such as clothing, food, and shelter. Mut'ah is a gift from a husband to his divorced wife to comfort and ease the economic burden of the ex-wife after the divorce. KHI emphasizes that mut'ah must be given in cases of divorce and must be adjusted to the husband's ability. In addition, the husband is also required to provide for the child until the child reaches the age of 21, in accordance with the provisions of KHI and the Marriage Law.

However, in practice, many ex-husbands ignore these obligations, either for economic reasons or due to a lack of legal awareness. Many religious court decisions include the obligation to provide support for ex-wives and children, but their implementation is often hampered by the husband's unwillingness to pay. There are also cases where husbands avoid the divorce oath hearing to avoid the obligation to provide support, so that the divorce is not considered legally valid. This shows a weakness in the regulations that allows husbands to escape their responsibilities. (Purba and Tanjung 2022)

To address this issue, several solutions have been proposed, including an inter-agency interconnection system that can block administrative services for ex-husbands who do not fulfill their maintenance obligations. This system includes blocking population services, passports, bank accounts, and salary deductions for civil servants or private employees who neglect their ex-wives and children. In addition, stricter regulations are needed to regulate sanctions against ex-husbands who neglect their obligations. (Sartika et al., nd)

From an Islamic legal perspective, women's rights after divorce have been clearly regulated in the Qur'an and Hadith, which emphasize the husband's obligation to provide for his ex-wife and children. Islamic jurisprudence scholars also have various views on iddah and mut'ah maintenance, but generally agree that the husband remains responsible for the welfare of his ex-wife and children after divorce. In the context of positive law, this rule is implemented through Law Number 1 of 1974, the KHI, and various Supreme Court regulations governing divorce procedures and the rights that must be given to parties affected by the divorce. (Yani and Mulyadi 2021)

In addition to economic rights, the fulfillment of children's rights after divorce is also an important aspect regulated in positive law. The

Child Protection Law and the Marriage Law emphasize that children still have the right to care for and support from both parents, even though they have divorced. The father remains responsible for the child's needs, including education costs, health, and daily needs, until the child reaches the age of 21. In cases where the father is unable to provide support, the court may determine that the mother also bears these costs.(Priyadi 2021)

However, in practice, many children become victims of their parents' divorce due to the negligence of the father in providing for them. The main factors causing this negligence include the mother's ignorance of her child's rights, the father's weak economic condition, and the father's irresponsible attitude. To overcome this problem, the government has issued various policies, such as the policy of blocking administrative services for fathers who are negligent in providing for their children and the obligation of the court to include the obligation to provide for children in every divorce decision.

In some cases, religious courts also face obstacles in enforcing decisions related to iddah, mut'ah, and child support. This is because the provisions in the Marriage Law and KHI are more civil in nature and do not have criminal sanctions for ex-husbands who neglect to carry out their obligations. As a result, although the court can "punish" the husband to pay support, if the husband does not comply, there is no effective law enforcement mechanism.

In an effort to provide stronger legal protection for ex-wives and children after divorce, several regulatory changes have been proposed. One of them is adding criminal provisions to the Marriage Law and KHI, so that husbands who neglect their maintenance obligations can be subject to legal sanctions. In addition, expanding the authority of religious courts in handling cases of wife and child neglect can also be a solution to ensure justice for women and children after divorce.

In some cases, religious courts have used the Law on the Elimination of Domestic Violence as a basis for prosecuting husbands who neglect their ex-wives and children. This law stipulates that neglect of the family can be subject to criminal sanctions, including imprisonment and fines. However, religious courts do not have the authority to impose criminal sanctions, so there are still limitations in enforcing this rule. Therefore, cooperation is needed between religious courts and district courts in handling

cases involving violations of the rights of ex-wives and children after divorce.(Lubis 2024)

In addition to legal channels, there are also social mechanisms that can be used to enforce the rights of women and children after divorce. One of them is by increasing legal awareness among women so that they better understand their rights and can file lawsuits if their ex-husbands neglect to fulfill their obligations. Legal education for the community also needs to be improved so that awareness of the importance of fulfilling obligations after divorce increases.(Rahmat, Adhyaksa, and Fathanudien 2021)

Ultimately, the legal system must continue to adapt to social developments and the needs of society. Protection of the rights of ex-wives and children after divorce must be a priority in the Indonesian legal system, both through stricter laws and through policies that ensure effective implementation of the law. In this way, justice and welfare can be realized for all parties affected by divorce.

## **B. Legal Protection of the Rights of Former Wives and Children After Divorce in Indonesian Legislation Based on the Value of Justice**

Legal protection of the rights of ex-wives and children after divorce in Indonesian laws and regulations based on the value of justice is an important issue in the national legal system. Although various regulations have regulated these rights, implementation in the field still faces various obstacles.(John 2021)

Legal protection is a key element in ensuring justice for women. De jure, various regulations have been drafted, but de facto, women still experience discrimination. Therefore, a strategy is needed to ensure more effective legal protection, including including the principles of CEDAW in national legislation, harmonization of legislation with international standards, and increasing the capacity of judicial institutions on gender issues. In addition, women's active participation in the legal sector needs to be increased so that they can better understand and fight for their rights.(Suadi 2018)

Legal awareness is also an important aspect in protecting the rights of ex-wives and children. In many cases, women have difficulty fighting for their rights due to lack of access to legal information. Therefore, the state must ensure an effective information dissemination mechanism, both through government institutions and NGOs



that play a role in legal education for women. In addition, the role of paralegals and women's organizations is very important in providing legal counseling and advocacy for women who face legal problems after divorce.(Iskandar et al. 2022)

Legal aid also plays a crucial role in ensuring that women have access to justice. The state needs to provide support for women who want to develop a career in law and ensure that legal services are affordable for disadvantaged women. Court proceedings must also ensure that women receive fair and non-discriminatory treatment. Judicial reforms need to be implemented to ensure that the legal system is more responsive to the needs of women and children.

The implementation of court values is also an important factor in ensuring justice for ex-wives and children. The Supreme Court has established seven court values, namely independence, integrity, accountability, responsibility, openness, impartiality, and equal treatment before the law. These values must be applied in every judicial process so that the rights of women and children can be properly fulfilled.

In the aspect of law enforcement, there are still practices that are detrimental to women's rights. Therefore, there needs to be a firmer policy in ensuring that law enforcement officers have a strong gender perspective. Gender-based training for police and court officers must continue to be carried out, and there needs to be a strict monitoring mechanism for the implementation of women's protection policies.

Supreme Court Regulation Number 3 of 2017 is a breakthrough in providing guidelines for judges in trying cases involving women in conflict with the law.(Setyaningrum and Arifin 2019) This regulation aims to eliminate discrimination against women in the justice system and ensure women's access to justice is more equal. In addition, this regulation also regulates various important aspects, including gender-sensitive trial mechanisms, prohibitions on discrimination, and guidelines for determining fair decisions for women.

In the religious court system, the Supreme Court has issued various policies to ensure legal protection for ex-wives and children after divorce. One of the main challenges in divorce cases is the difficulty of executing decisions related to iddah maintenance, mut'ah, and child custody.(Iskandar et al. 2022) In many cases, the ex-husband does not carry out the obligations stipulated in the court decision, so the woman has to file an

execution application which is time-consuming and expensive.

To address this issue, religious courts must be more proactive in upholding the rights of women and children. Judges can use ex officio authority to ensure that women and children's rights are protected in divorce decisions. In addition, the Supreme Court can collaborate with other institutions, such as the police and relevant ministries, to ensure more effective execution of decisions.

In the context of child protection, Law No. 35 of 2014 concerning Child Protection has emphasized that children have the right to receive protection and guarantees of their rights, including in terms of maintenance and living after parental divorce. However, in practice, there are still many children who do not receive these rights due to the lack of effective law enforcement mechanisms.(Hartono 2014)

Judges handling divorce cases must be more active in ensuring that children's rights are not ignored. Court decisions must include clear provisions regarding child custody and child support, as well as an execution mechanism that ensures that the decision is actually carried out by the obligated party.

In addition, the state must be more active in providing social assistance and economic security for women and children affected by divorce. One solution that can be implemented is the establishment of a social security fund for mothers and children after divorce, as has been implemented in several other countries. With this social security, children can still receive a decent living even though their father does not fulfill his obligations voluntarily.(Murniasih, nd)

The Supreme Court has also issued Circular Letter Number 3 of 2018 and Circular Letter Number 2 of 2019 which provide guidelines for courts in providing legal protection for women after divorce. One of the provisions in this circular is that payment of maintenance to the ex-wife and children must be made before the ex-husband can take the divorce certificate. This aims to ensure that the rights of women and children are not neglected after divorce.

On the other hand, the legal system in Indonesia still faces challenges in ensuring the effectiveness of the implementation of court decisions. One solution that can be implemented is the implementation of a system of interconnection of court decisions with other institutions, such as the Ministry of Home Affairs, the Ministry of Law and Human Rights, and the

Financial Services Authority (OJK). This system can ensure that court decisions related to child support and custody can be directly executed through a salary deduction mechanism or the provision of benefits from financial institutions.

In addition, Indonesia can follow the example of other countries such as Egypt which has a joint insurance fund institution that provides a living guarantee for women and children after divorce. With this system, the rights of women and children can be fulfilled without having to go through a long and tiring legal process.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

Legal protection of the rights of ex-wives and children after divorce in Indonesia still faces various challenges, both in terms of regulation and implementation in the field. Although positive law has regulated these rights through the Marriage Law, the Compilation of Islamic Law, and various regulations related to child protection, there are still weaknesses in the law enforcement mechanism. Many cases show that ex-husbands ignore their obligations without strict legal consequences, especially due to the absence of criminal sanctions in the religious court system. Therefore, stricter legal reform is needed, including harmonization of regulations with international standards, as well as strengthening the role of the courts in ensuring the fulfillment of the rights of women and children after divorce.

To achieve justice based on welfare, strategic steps that need to be taken include increasing public legal awareness, implementing more effective mechanisms for monitoring and executing court decisions, and strengthening coordination between judicial institutions and related agencies. The establishment of a social security fund for women and children after divorce can also be a solution to overcome economic problems that arise due to the negligence of ex-husbands in fulfilling their obligations. With a more comprehensive and responsive approach to the needs of women and children, the Indonesian legal system is expected to provide more optimal protection, so that justice based on the principle of welfare can be realized in real life in society.

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