

Maintenance Rights of Wife and Children After Divorce in Islamic Family Law

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ABSTRACT

Divorce in Islamic family law does not automatically eliminate a husband's responsibilities toward his former wife and their children. One of the most critical and frequently disputed issues following divorce is the right to financial support, which includes maintenance for the former wife during her iddah period and ongoing support for the children. This article explores the legal standing, forms, and implementation of post-divorce maintenance rights within the framework of Islamic family law, with a particular focus on how these principles are applied in Indonesia. By employing a normative legal approach, the study examines the foundations laid out in the Qur'an and Hadith, relevant national regulations such as the Compilation of Islamic Law (KHI), and actual judicial practices in religious courts. The findings aim to provide a thorough understanding of the legal obligations related to post-divorce maintenance, emphasizing the necessity of fair treatment and legal protection for women and children. Ultimately, this article seeks to raise awareness and contribute to a more just and responsible approach to family dissolution in Islamic contexts.

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INTRODUCTION

Divorce is an undeniable social reality in modern society. While marriage is ideally intended to be a lifelong and sacred bond, various internal factors such as disharmony, domestic violence and external pressures such as economic difficulties and social influences often serve as triggers for the breakdown of marital relationships (Ubaidilah & Husna, 2023). In this context, divorce should not merely be seen as a private matter, but rather as a societal issue that significantly impacts the broader structure of the family and community.

As a legal event, divorce carries complex and multilayered consequences. The legally recognized bond between husband and wife is dissolved, yet this dissolution does not necessarily absolve the obligations that were previously in place, particularly those of the husband towards his former wife and the children born of the marriage. One of the most pressing post-divorce concerns is the issue of financial maintenance or alimony.

In Islamic family law, divorce is governed with great caution and guided by the principles of justice and responsibility. Islam acknowledges that, in certain situations, divorce may be the best solution to irreconcilable marital conflicts. Nonetheless, the religion emphasizes that divorce, although lawful, is the

most disliked of permissible actions in the sight of Allah SWT (Ferdousi, 2021). Therefore, Islamic teachings not only regulate the procedure for divorce but also define its legal consequences particularly in terms of post-marital rights and obligations.

One of the essential responsibilities that continues after divorce is the provision of maintenance by the former husband. In Islamic legal understanding, *nafaqah* (maintenance) includes basic necessities such as food, clothing, shelter, and education obligations that must be fulfilled during the marriage. After divorce, these duties do not vanish automatically, especially during the *iddah* (waiting period) of the ex-wife, and for the children who are still minors or unable to support themselves.

Unfortunately, in practice, many women in Indonesia continue to face economic injustice following divorce. A significant number of former husbands evade their responsibility to provide financial support to their ex-wives and children. The reasons vary widely, ranging from financial hardship and broken communication to personal resentment or prolonged emotional conflicts.

The neglect of post-divorce financial obligations has far-reaching consequences. Women who are left without economic support often experience a sharp decline in their quality of life and are forced to assume the role of sole providers. More critically, children who have an inherent right to financial support from both parents become the primary victims of this neglect. They are often deprived of access to proper education, healthcare, and social development opportunities, which are fundamental rights for their growth and well-being.

Islamic law is unequivocal in its provisions concerning the rights to maintenance after divorce. The Qur'an explicitly states that divorced women are entitled to maintenance during their *iddah* period (Surah At-Talaq: 6), and men bear the responsibility for the welfare of their children. These teachings are reinforced by Hadiths of Prophet Muhammad SAW, which affirm the father's obligation to provide for his children even after the termination of the marital bond (Hasnat & Shah, n.d.). Thus, Islam emphasizes responsibility and fairness as guiding principles in addressing post-divorce matters.

In the Indonesian legal framework, these principles are translated into national regulations. Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI) both contain clear provisions regarding the rights of women and children following divorce. Article 41 of the Marriage Law stipulates that a father is still obligated to support his children financially. Similarly, Article 149 of the KHI mandates the provision of maintenance during *iddah*, a *mut'ah* payment as a form of respect, and the division of jointly acquired property (Shahid, 2018).

Despite the comprehensiveness of the normative legal framework, a gap remains between the law and its practical implementation. Many women do not pursue their legal right to post-divorce maintenance due to a lack of legal awareness, fear of engaging with the court system, or social pressures. On the other hand, the enforcement of court decisions regarding maintenance for ex-wives and children often encounters technical obstacles such as difficulties in locating uncooperative former husbands.

Judicial practices in religious courts reveal that divorce cases that include claims for maintenance are still relatively limited in number. This highlights the fact that legal protection for women and children after divorce has yet to be fully realized. Therefore, the active involvement of various stakeholders courts, law enforcement agencies, and religious or social organizations is essential in educating and advocating for the post-divorce rights of affected parties.

The urgency of regulating post-divorce maintenance is not only a matter of upholding civil rights but also a strategic effort to preserve social stability. Children who grow up without sufficient financial support are more vulnerable to structural poverty and restricted access to opportunities for a quality life. This condition can have long-term implications for the development of human resources in the future.

Hence, it is crucial to approach post-divorce maintenance not only from a legal standpoint but also as a moral and social responsibility. Legal decisions regarding family matters should prioritize substantive justice and the protection of vulnerable groups, particularly women and children, who often bear the brunt of post-divorce hardships.

Based on the background described above, this article aims to comprehensively examine the rights to maintenance for ex-wives and children after divorce, from the perspective of Islamic family law. This study will explore normative aspects drawn from the Qur'an and Hadith, national legal instruments such as the Marriage Law and KHI, as well as the practical realities in religious court proceedings.

Accordingly, this article is expected to make a relevant academic contribution to the ongoing discourse on Islamic family law and serve as a practical reference for judges, legal practitioners, family counselors, and the general public in pursuing legal justice and protection in post-divorce scenarios.

RESEARCH METHOD

This study adopts a normative juridical research method, which primarily involves examining legal norms, principles, and doctrines as found in legal sources. The normative approach focuses on studying written laws and legal interpretations relevant to the issue at hand, particularly within the framework of

Islamic family law. This method is suitable for analyzing legal responsibilities related to post-divorce maintenance, especially the obligations of former husbands towards their ex-wives and children.

The primary legal materials utilized in this research include authoritative Islamic sources such as the Qur'an and Hadith, which provide the foundational basis for understanding maintenance rights in Islamic jurisprudence. In addition to religious texts, statutory regulations such as Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) are also examined, as they reflect Indonesia's legal codification of Islamic family norms. Relevant decisions from religious courts are further used to analyze how such legal norms are applied in real-world contexts.

Secondary legal materials complement the primary sources by providing interpretative and analytical support. These include scholarly books, academic journals, and peer-reviewed articles that discuss the theoretical and practical dimensions of post-divorce maintenance in Islamic law and Indonesian legal practice. The integration of these sources enables a more comprehensive understanding of both the normative framework and its practical enforcement.

This study employs a qualitative analysis method, which is well-suited for legal research that emphasizes the depth and richness of textual interpretation rather than statistical generalization. Through this method, legal texts and judicial decisions are not only described but also critically analyzed to identify underlying legal principles, patterns of interpretation, and inconsistencies between law and practice.

The descriptive-analytical approach is used to systematically describe legal norms related to the rights of maintenance after divorce and to analyze their implementation in both theoretical and practical domains. This approach allows the researcher to assess whether the legal provisions effectively protect the rights of women and children in post-divorce situations and to what extent they are enforced through judicial mechanisms.

Moreover, the research involves comparative elements, particularly in contrasting the normative ideals set forth in Islamic teachings with their application in Indonesian legal institutions. By comparing statutory provisions with actual case law and judicial decisions, this study highlights the gaps, challenges, and prospects for better legal enforcement.

In sum, this methodical approach provides a robust legal analysis grounded in Islamic and national legal doctrines while being sensitive to the socio-legal realities faced by divorced women and children in Indonesia. It ensures that the discussion remains rooted in both textual authority and empirical judicial practice, thereby offering a well-rounded exploration of post-divorce maintenance rights in the context of Islamic family law.

RESULT AND DISCUSSION

The Role of Post-Divorce Maintenance in Islamic Law

Islamic law distinguishes between two key forms of post-divorce financial obligations: support for the ex-wife during her iddah period and continued support for the children of the marriage. The Qur'an, particularly in Surah At-Talaq (verses 1 and 6), outlines the duty of a husband to provide accommodation and living expenses to a divorced wife throughout her iddah. Similarly, a father's duty to support his children does not cease with the dissolution of marriage (Yusoff et al., 2024).

Scholars of Islamic jurisprudence generally agree that this responsibility remains binding on the husband unless the wife is guilty of nusyuz, or marital disobedience. This view underscores a commitment to fairness and compassion, ensuring women are not left vulnerable during the transitional period after divorce. Such support reflects not only a legal requirement but also a moral imperative in Islamic teachings.

This approach aims to safeguard the well-being of both women and children following a divorce, recognizing the economic and social instability that often follows. Islamic law thus emphasizes continuity of responsibility, even when the marital relationship ends. It illustrates how Islamic legal principles integrate both spiritual values and social protection mechanisms.

Regulations on Post-Divorce Maintenance under Indonesian National Law

In the Indonesian legal system, regulations on post-divorce maintenance are primarily governed by the Compilation of Islamic Law (KHI). Articles 149(d) and 156 of the KHI outline the financial obligations of a former husband toward his ex-wife and children. Specifically, ex-husbands are required to provide iddah support and a consolation gift (mut'ah) to their former spouses, while continuing to support any children born from the marriage.

The Religious Courts (Pengadilan Agama) are entrusted with the authority to determine the appropriate amount and form of maintenance based on several factors, including the financial capabilities of the husband and the needs of the wife and children (Aziz et al., 2021). This flexibility allows for contextual consideration in each individual case. The rulings aim to provide a balanced solution that protects the rights of both parties.

However, in practice, the enforcement of these rulings can be inconsistent. Even when the court issues a fair decision, the lack of enforcement mechanisms means many ex-wives and children do not receive what is rightfully due. This points to the need for stronger institutional frameworks to ensure that the judgments passed by religious courts are effectively carried out.

Challenges in the Implementation of Post-Divorce Maintenance

Despite the clarity of legal guidelines, the actual implementation of post-divorce maintenance remains a significant challenge in Indonesia. Many former husbands fail to fulfill their financial responsibilities, often citing personal disputes or economic hardship as justification (Iman et al., 2023). This frequently results in ex-wives and children being left without adequate financial support, even when entitled by law.

A major issue lies in the limited enforcement of court decisions regarding maintenance. Religious court rulings may include detailed maintenance provisions, but without an effective execution system, these judgments often remain symbolic. As a result, affected parties may struggle to obtain the support ordered by the court.

This systemic weakness highlights the urgent need for reform, especially in terms of judicial enforcement within the religious legal system. Strengthening execution mechanisms would not only ensure legal certainty but also enhance public trust in the justice system. Ensuring that court orders are respected and upheld is critical for the protection of post-divorce rights.

Legal Protection Strategies for Women and Children Post-Divorce

To ensure that women and children receive their rightful maintenance after divorce, several proactive legal measures can be adopted. One such measure is to include the maintenance claim within the initial divorce petition, allowing the court to address both matters simultaneously. This approach can streamline the process and produce more enforceable outcomes (Naleemi, n.d.).

The courts also have the authority to include maintenance provisions in their final rulings, granting them the status of enforceable orders. Beyond litigation, access to legal aid is essential. Support from legal aid institutions and civil society organizations can help vulnerable women and children navigate the legal process more effectively and secure their rights.

Furthermore, raising public awareness about the legal and moral dimensions of post-divorce maintenance is crucial. Community education campaigns can instill a sense of responsibility in former spouses, particularly men, and encourage compliance with legal obligations. Cultivating this awareness is key to promoting justice and reducing the frequency of maintenance violations.

CONCLUSION

The issue of post-divorce maintenance represents a vital component of both Islamic legal tradition and Indonesian national law. Islam places strong emphasis on the moral and financial obligations of a former husband to his ex-wife during the iddah period and to his children beyond the marriage. These responsibilities are not only rooted in religious doctrine but also reflect a broader commitment to social justice and gender equity within family law.

Within the framework of Indonesia's legal system, particularly through the Compilation of Islamic Law (KHI), the state has institutionalized these principles into enforceable legal norms. The authority granted to the Religious Courts enables them to decide on maintenance claims by considering the financial conditions of the parties involved. Nonetheless, the reality on the ground reveals that many court decisions fail to be effectively implemented due to weak enforcement mechanisms and a lack of awareness among the public.

To improve protection for women and children after divorce, a more integrated legal approach is necessary. This includes ensuring maintenance claims are addressed during divorce proceedings, strengthening the enforcement of court orders, and expanding access to legal aid services. Equally important is fostering a cultural shift through legal education that reinforces the idea of maintenance not just as a legal duty, but as an ethical and social responsibility. Through these combined efforts, justice in post-divorce arrangements can be more effectively realized.

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