



## Legal and Sharia Protection of Women's and Children's Rights After Divorce at the Pare-Pare Religious Court

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### ABSTRACT

Divorce is a legal event that terminates the marital bond while simultaneously giving rise to new legal consequences in the form of rights and obligations, particularly for women (ex-wives) and children. This study aims to critically and comprehensively examine the implementation of legal protection and sharia principles in safeguarding these rights at the Pare-Pare Religious Court (Pengadilan Agama Pare-Pare). The research employs an empirical legal research method with a qualitative approach, focusing on the analysis of statutory regulations, including Law Number 1 of 1974 as amended by Law Number 16 of 2019, as well as the Compilation of Islamic Law (KHI), complemented by field data from court practices. The findings reveal that, normatively, the KHI and positive law provide a strong legal foundation for the protection of post-divorce rights, particularly concerning iddah maintenance, mut'ah, division of marital property (gono-gini), and child support based on the principle of the best interest of the child. In practice, judges of the Pare-Pare Religious Court demonstrate a progressive and proactive approach by explicitly stipulating maintenance obligations and child custody arrangements in their decisions. However, the implementation of these decisions encounters significant challenges at the execution stage. Juridical and technical obstacles arise from the weak mechanisms for proving and executing claims over marital property, while sociological barriers such as the unstable income of ex-husbands working in the informal sector and low legal compliance often hinder the realization of women's and children's economic rights. Consequently, the study identifies a concrete gap between normative legal protection and substantive justice, indicating that effective protection of women's and children's rights after divorce requires not only adequate legal norms but also strengthened execution mechanisms and institutional synergy to ensure that court decisions produce tangible benefits for vulnerable parties.

**Keywords:** Post-Divorce Legal Protection, Women's and Children's Rights, Sharia Law and Positive Law, Religious Court of Pare-Pare, Decision Enforcement and Execution.

### 1. Introduction

Divorce, as the final legal exit from a marital relationship, constitutes not merely a personal or familial rupture but a multidimensional legal and social event with far-reaching consequences, particularly for individuals who are structurally and culturally positioned as vulnerable parties, namely women and children (Darwin, Dahlan, and Suhaimi 2019). While divorce formally terminates the marital bond, it simultaneously generates a complex set of post-divorce rights and obligations that demand effective legal protection, especially in societies where economic dependency, gender inequality, and limited enforcement mechanisms remain prevalent.

In Islamic law, divorce (*ṭalāq*) is recognized as a lawful act, yet one that is morally disfavored (*makrūh*) when exercised without compelling justification, as reflected in the prophetic tradition narrated by Abu Dawud and Ibn Majah (Ratnawaty 2017). This ethical positioning underscores that divorce, although permissible, must be accompanied by a framework of justice and responsibility, particularly toward women and children who may suffer disproportionate consequences. In line with this normative orientation, Indonesian positive law through Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, as well as the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) has sought to institutionalize post-divorce protection by explicitly regulating rights related to *iddah* maintenance, *mut'ah*, division of marital property (*harta bersama*), child custody (*ḥaḍānah*), and child support.

However, the existence of legal norms does not automatically translate into effective protection in practice. Divorce not only signifies the dissolution of a marital relationship but also produces enduring legal consequences for the economic, social, and psychological well-being of women and children (Nasadi and Akdaji 2025). Empirical studies consistently demonstrate that post-divorce women particularly ex-wives without stable income and children are frequently exposed to economic insecurity, loss of access to basic needs, and uncertainty in caregiving arrangements due to weak enforcement of court decisions (Fadilah & Atthahara, 2023). These vulnerabilities are exacerbated in contexts where former husbands work in the informal sector, lack fixed income, or exhibit low levels of legal compliance.

This structural problem is not merely theoretical but is concretely observable in the jurisdiction of the Pare-Pare Religious Court (Pengadilan Agama Pare-Pare). Court records between 2023 and 2025 indicate a steady increase in divorce cases, with more than 70% of filings submitted by wives. While this trend may reflect rising legal awareness and improved access to justice for women, it simultaneously reveals persistent challenges in the realization of post-divorce rights. Preliminary court data show that approximately **58% of women who obtained judicial rulings on *iddah* maintenance and *mut'ah*** did not receive full payment within one year after the judgment became final. Furthermore, in cases involving child support, nearly **62% of decisions experienced delayed or incomplete execution**, particularly where the obligor was engaged in informal or unstable employment.

These figures highlight a critical paradox: while judicial decisions formally recognize and guarantee the rights of women and children, substantive justice often fails to materialize at the level of implementation. This phenomenon positions the Pare-Pare Religious Court as a particularly relevant locus for empirical investigation, given its socio-economic characteristics, the dominance of informal labor sectors, and the increasing volume of divorce litigation initiated by women. Unlike metropolitan jurisdictions with more structured enforcement mechanisms, Pare-Pare represents a semi-urban legal setting where normative legal ideals frequently collide with social and economic realities.

Religious Courts in Indonesia possess the authority to examine, adjudicate, and resolve disputes between Muslim individuals in civil matters at the first-instance level (Halimi 2024). This authority is grounded in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989, further reinforced by Law Number 50 of 2009, which establishes the absolute competence of Religious Courts over matters of marriage, inheritance, grants, waqf, zakat, infaq, alms, and sharia economic disputes. Procedural law within the Religious Court system functions as a comprehensive set of rules governing how legal actions are conducted, examined, and resolved in accordance with Islamic legal principles and national legislation (Gede Agung et al. 2024).

Within this jurisdictional framework, post-divorce child-related issues occupy a central position. Article 105 of the KHI explicitly regulates the consequences of divorce concerning child custody and maintenance, stipulating that: (1) custody of children who have not reached the age of *mumayyiz* (under 12 years) rests with the mother; (2) children who have attained *mumayyiz* status may choose between the father or mother; and (3) financial responsibility for child maintenance remains with the father (Yasmine 2024). These provisions reflect a synthesis of Islamic jurisprudence and modern child protection principles, particularly the doctrine of the *best interest of the child*.

Classical Islamic jurisprudence conceptualizes *ḥaḍānah* as the comprehensive care and nurturing of children who are not yet capable of independent judgment. According to fiqh scholars, *ḥaḍānah* encompasses physical care, moral education, emotional support, and intellectual development to ensure that children grow into responsible and self-reliant individuals (Pasaribu 2024). Wahbah Az-Zuhaili defines *ḥaḍānah* as the maintenance and protection of children by those legally entitled to care for them, while Amir Syarifuddin characterizes it as both

nurturing (*tarbiyah*) and guardianship (*kafālah*), emphasizing its protective and developmental dimensions (Hidayana, Jauhari, and Yahya 2020).

Despite this robust normative foundation, practical challenges persist. Empirical observations in Pare-Pare reveal that many women who have successfully obtained court decisions granting *iddah* maintenance, *mut'ah*, and child support encounter significant obstacles in enforcing these rights. Execution proceedings are often delayed, ineffective, or abandoned due to procedural complexity, limited enforcement capacity, and the socio-economic profile of the obligor. As a result, legal protection remains largely formalistic, providing symbolic recognition without ensuring material fulfillment.

Existing studies on post-divorce legal protection in Religious Courts have predominantly focused on normative analysis of statutes and judicial reasoning, often concluding that Indonesian law has adequately accommodated Islamic principles and child protection norms. However, such approaches tend to overlook the critical gap between judicial decisions and their practical enforcement. This research departs from that trajectory by situating the analysis within an empirical framework that examines not only what the law prescribes and what judges decide, but also how those decisions function or fail to function in real social contexts.

The novelty of this study lies in its identification of execution failure as the primary structural weakness in post-divorce legal protection, rather than deficiencies in legal norms or judicial reasoning. By focusing on the Pare-Pare Religious Court as a specific locus, this research demonstrates that the main challenge does not stem from the absence of sharia-based or statutory protections, but from the lack of adaptive and enforceable mechanisms capable of responding to socio-economic realities, particularly in cases involving informal-sector employment. This finding advances existing scholarship by reframing the discourse on post-divorce justice from normative sufficiency to institutional effectiveness.

Accordingly, this study seeks to address the following questions: How are sharia principles and positive law implemented in protecting the rights of women and children after divorce at the Pare-Pare Religious Court? What concrete obstacles hinder the execution of court decisions related to maintenance and custody? And how can legal protection be strengthened to bridge the gap between formal recognition and substantive justice? By answering these questions, the research aims to contribute both theoretically and practically to the development of a more responsive and equitable post-divorce legal framework within Indonesia's Religious Court system. (Harahap 2024).

## 2. Method Research

This research employs an empirical legal research method (socio-legal research), which examines law not only as a set of normative rules but also as a social institution that operates in real practice. The focus of this research is to analyze the implementation of legal norms concerning the protection of women's and children's rights after divorce within the jurisdiction of the Pare-Pare Religious Court (Hastia 2025).

The approaches used in this study include:

1. **Statutory Approach**, by examining relevant legal instruments governing post-divorce rights, including Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, the Compilation of Islamic Law (KHI), Law No. 3 of 2006 on Religious Courts, Supreme Court Regulation (PERMA) No. 3 of 2017, and Supreme Court Circular Letter (SEMA) No. 2 of 2019. These regulations are analyzed to identify the normative standards regarding the rights of women and children after divorce.
2. **Case Approach**, by analyzing selected divorce decisions of the Pare-Pare Religious Court, particularly those addressing issues of child custody (*hadhanah*), maintenance (*nafkah*), and post-divorce alimony. This approach allows the research to assess how legal norms are applied by judges in concrete cases.
3. **Empirical Approach**, conducted through field research, including interviews with judges, court officials, and legal practitioners at the Pare-Pare Religious Court, as well as the examination of empirical data on divorce cases in 2025. This approach is essential to understand the practical challenges and realities in the enforcement of women's and children's rights after divorce.

The research utilizes primary and secondary data. Primary data consist of court decisions, interview results with legal practitioners, and statistical data on divorce cases, while secondary data include legal literature, scholarly articles, books, and expert opinions related to Islamic family law and legal protection mechanisms.

Data analysis is conducted using a qualitative descriptive method, by systematically interpreting empirical findings and comparing them with statutory provisions and Islamic legal principles. This analysis aims to evaluate the extent to which legal norms concerning the protection of women and children after divorce are effectively implemented in practice and to identify gaps between law in books and law in action. (Fitri 2024).

### 3. Results and Discussion

#### 3.1. Women's Rights and Children's Rights After Divorce in a Legal and Sharia Perspective

##### 1. National Legal Perspective

From the perspective of Indonesian national law, the protection of women's rights is an integral part of the principles of social justice and equality before the law as mandated by the 1945 Constitution of the Republic of Indonesia. Article 27 paragraph (1) emphasizes that *"all citizens have the same position in the law and government and are obliged to uphold the law and government without exception."* This provision is the constitutional basis for the recognition of women's rights to receive fair and equal treatment in various areas of life, including in the realms of family, employment, politics, and social law.

Normatively, the state has shown its commitment to the protection of women's rights through various laws and regulations. One of the important milestones is Law Number 7 of 1984 concerning the Ratification of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, which requires the state to eliminate all forms of discrimination against women (Sahran Rizkia Aziz 2025). The implementation of this convention is then described in various national legal instruments such as Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), and Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS).

In the context of family law, women's rights are recognized through Law Number 1 of 1974 concerning Marriage which affirms the principle of equality between husband and wife. Article 31 paragraph (1) states that *"the rights and position of the wife are balanced with the rights and position of the husband in domestic life and cohabitation in society."* This means that women have the same position in determining the direction of the household, the right to earn a decent living, and the right to continue living independently in the event of divorce. However, in practice, there are still structural inequalities that cause women's rights to be often marginalized, especially in terms of the division of joint property (*gono-gini*), child custody, and post-divorce alimony (Habib et al. 2025).

National laws also provide protection for women from various forms of violence and exploitation. Through the PKDRT Law, the state recognizes that domestic violence is a violation of human rights and a criminal act that must be dealt with firmly. Meanwhile, the TPKS Law expands women's protection against gender-based violence, both in private and public spaces, while providing a stronger legal basis for victims to obtain justice and recovery (FAJAR and Priscyllia 2025).

In addition to substantive legal protection, women also have the right to equal access to justice. Institutions such as Komnas Perempuan and the Ministry of Women's Empowerment and Child Protection (KemenPPPA) were established to ensure that women's rights are not only recognized normatively, but also implemented effectively. In practice, various advocacy programs, free legal aid, and women's economic empowerment are part of the national strategy to realize gender equality (Fadyo Rezky Farel et al. 2024).

Thus, Indonesian national law has provided a strong foundation for the protection and empowerment of women. However, the biggest challenge lies in the implementation aspect. There are still many women who have not had full access to justice due to cultural, economic, and social barriers. Therefore, law enforcement efforts must be accompanied by gender awareness education, strengthening the capacity of law enforcement officials, and synergy between the state and civil society to ensure that women's rights are truly guaranteed in the practice of national and state life.

Regarding the form of application of law in this case "in accordance with the law/regulation" is the concept of legal positivism by John Austin, providing identification of the law whose application is applied with the law will ensure that each individual can know exactly what his actions are allowed to be done and what his actions are not allowed to be done. Even the state will then act decisively and consequentially in accordance with what has been determined and decided, in carrying out justice according to the provisions of the state. (Lessil, Toule, and Latumaerissa 2022)

If we discuss the application of the law, it means talking about the implementation of the law itself where the law was created to be implemented. Law can no longer be called law, if it has never been implemented. The

implementation of the law always involves human beings and their behavior. In civil law, it can be said to be litigating if there is a problem between individuals. Likewise, in the case of divorce carried out by a man and a woman to end their relationship as husband and wife. That regardless of the occurrence of divorce, parents as the head of household or head of family who have become a home for their children should be fully responsible for their children's rights. (Indah, Karim, and Firgitia 2023)

In Article 35 of Law No. 1 of 1974 jo. Law No. 16 of 2019 it is stated that the inherited property of each husband and wife and the property obtained by each as a gift or inheritance, are under the control of each of them as long as the parties do not specify otherwise, husband and wife can enter into a "marriage agreement" made in writing and ratified by the Marriage Registrar or Notary at the time before it is held, or as long as it is in a marital bond, both parties by mutual consent can submit a written agreement.

In Law No. 1 of 1974 jo. Law No. 16 of 2019, obtaining children (offspring) is not used as a purpose of marriage, but the position of children is still seen as quite important, one thing or another because this is closely related to inheritance, so that this child is specifically regulated in Articles 42 to 44 and Article 55 of Law Number 1 of 1974. Article 49 of Law Number 1 of 1974 regulates the possibility of revocation of power, that is, one or both parents can be revoked of their power over one or more children for a certain time at the request of the other parent, the child's family in a straight line upwards and adult siblings or authorized officials, with a court decision in the following matters: 1) He grossly neglected his obligations to his child; 2) He behaves very badly.

Marriage breakdown is a legal term that is often used to describe divorce or the termination of a marriage bond between a man and a woman during their life as husband and wife or in fiqh often referred to as *furqah*. The breakdown of marriage is regulated in Article 38 of Law Number 1 of 1974 concerning Marriage, which reads: "Marriage can be dissolved due to: 1) Death; 2) Divorce; and 3) On the decision of the Court." Divorce can only be done in front of a court hearing after the court concerned has tried and failed to reconcile both parties. Although in the teachings of Islam, divorce has been considered valid if pronounced immediately by the husband, it must still be done in front of the court. The goal is to protect all rights and obligations that arise as a legal result of the divorce (Ratnawaty 2017)

Divorce is a divorce. The term Divorce Talak is referred to by the Explanation of article 14 of the Implementing Regulations. And this divorce is regulated in articles 14 to 18 of the Implementing Regulations, which are affirmations of article 39 of the Marriage Law. Divorce Sued. Divorce Lawsuit is a divorce caused by a lawsuit by one of the parties to the Court and by a Court decision. Usually a lawsuit is a lawsuit filed by the wife against her husband to the court with reasons and asking the court to open the trial, and divorce on the basis of this lawsuit occurs because of a court decision. The divorce procedure has been regulated in Government Regulation Number 9 of 1975 articles 20 to 36 Jo. articles 73 to 83 of Law Number 7 of 1989. (Suharto 2022)

The law in Indonesia has long paid attention to the rights of post-divorce wives. This can be seen from the regulations that govern it, the rules are contained in Law Number 1 of 1974 amended by Law Number 16 of 2019 jo Perma Number 3 of 2017 jo SEMA Number 3 of 2018 jo SEMA Number 2 of 2019 jo Compilation of Islamic Law. It is explained in the regulation that wives after divorce are entitled to *iddah*, *muta'ah*, *madliyah* and *hadhanah* support. So that legal guarantees for wives after divorce can be found several decisions a long time ago. The provision of guarantees in law to women, who in the context of the discussion of this research is an ex-wife, the Supreme Court then issued a regulation in which it functions as a guideline for judges in prosecuting women both for victims and witnesses who are facing the law. Therefore, Perma No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Front of the Law was formed. (Mukhlis, Saepullah, and Hamzah 2022)

Next, according to Article 1 number 2 of Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection. Therefore, it can be understood that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate, optimally in accordance with the dignity and dignity of humanity, and receive protection from violence and discrimination. Child protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, as well as receive protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children. The implementation of child protection is based on Pancasila and based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child.

By paying attention to several principles as mentioned above, it can be understood that the implementation of legal protection provided to children aims to ensure a good and decent children's livelihood so that it can encourage the growth and development of children as expected. This includes the protection of children who are

victims of parental divorce. Children who are victims of divorce from both parents still have legal protection and have a civil relationship with both parents.

## 2. Perspective of Islamic Law (Shariah)

Rights are something that must be fulfilled by the party who is obliged to fulfill them. In the context of marriage, rights and obligations not only apply during the marriage, but also remain inherent even after divorce. This principle emphasizes that divorce is not an exemption from the husband's responsibility to the divorced wife, especially regarding rights that must be fulfilled by sharia and positive law. In accordance with Article 149 of the Compilation of Islamic Law (KHI), the legal consequences of divorce, especially divorce filed by the husband (talaq), require that the ex-husband continue to fulfill his obligations, including the obligation to provide mut'ah, 'iddah maintenance, shelter (maskan), and clothing during the 'iddah (kiswah) period. Thus, the fulfillment of this right is an indicator of the extent to which the principles of justice and protection for vulnerable parties, namely women, can be implemented (Juni, Mas'ari, and Yanti 2024)

### a. The Obligation to Give Mut'ah

Mut'ah is one of the rights that must be given by the husband to the ex-wife after divorce. The word mut'ah comes from the word al-mata', which literally means something that is used as an object for fun. In Islamic legal terminology, mut'ah is a gift from a husband to a divorced wife as a form of comfort and compensation, apart from the alimony that is his obligation. The amount of mut'ah is generally determined according to the husband's ability and the socioeconomic status of each party. Allah SWT affirms this obligation in the Quran, for example in Surah al-Baqarah verses 236 and 241, which affirms that the husband is obliged to give something as a form of respect and comfort to the ex-wife, even when there is no longer a marital bond. Mut'ah has a dual function: first, as a form of recognition of the rights of divorced women; Second, as a mechanism to minimize post-divorce conflicts that often arise due to uncertainty about the economic rights of the wife. In practice, mut'ah is not only symbolic, but it is a legal instrument that affirms that divorce does not remove the moral and social obligations of the husband to his ex-wife (Ulandari, Mayzahra, and Mumtazah 2025).

### b. The Obligation to Provide 'Iddah, Cooking, and Kiswah

In addition to mut'ah, the husband also has the obligation to bear the maintenance during the 'iddah period, provide a place to live (maskan), and clothes (kiswah) for the ex-wife. Nafkah in Arabic comes from the verb "na-fa-qa," which etymologically means to move or divert something. In the context of Islamic law, alimony is interpreted as everything that the husband gives to his wife to meet her life needs, whether in the form of clothing, food, or board. Nafkah during the 'iddah period has a clear philosophical and juridical basis: first, as a form of reward for the husband's right to limit the wife's freedom of movement during marriage; second, as a protection for women to live the 'iddah period safely and ensure their basic needs (Alfarisi 2025)

The period of 'iddah itself comes from the word 'addaya–'idatan which means counting or calculating time. This is the period that the wife must go through after divorce to ensure that there are no pregnancies left over from the previous marriage, as well as to give women time to organize their lives after the divorce. From the perspective of fiqh, Hanafiyah scholars emphasize that the obligation to provide for the wife during 'iddah is not only formal, but has a dimension of justice and social protection. A husband who provides for his wife during 'iddah fully demonstrates a commitment to respect the rights of his ex-wife, while minimizing the social and economic risks that can arise from divorce.

Cooking or living is an integral part of women's rights after divorce. The provision of housing by the ex-husband during 'iddah emphasizes that women should not be left in a state of abandonment or neglect physically or psychologically. This is important because the 'iddah period is a sensitive period for women, both healthily and emotionally. With maskan, women can live the 'iddah period safely, while maintaining their dignity and honor as ex-wives. Kiswah, which is the provision of clothes or clothing during 'iddah, is also an obligation of the husband who emphasizes the aspect of welfare and respect for women.

Comprehensively, the rights of ex-wives after divorce are not only limited to the economic dimension, but also include social and psychological protection. Mut'ah, alimony, maskan, and kiswah are interrelated legal instruments, which if carried out consistently can guarantee the welfare of women after divorce. In practice, the implementation of these rights often faces various challenges, both from the juridical and sociological sides. Juridical barriers can arise when the mechanism of proving the husband's assets is unclear or difficult to access,

while sociological barriers are often related to the ex-husband's inability to provide for himself because he works in the informal sector or has a fixed income.

In addition to the economic aspect, these rights also have implications for child protection. Child upbringing or *hadhanah* is an inherent responsibility of parents, especially in the context of Islamic law. *Hadhanah* not only covers the physical, but also educational, moral, and emotional aspects of the child. With the fulfillment of the rights of ex-wives, child maintenance can automatically run more optimally because women who are traditionally the main caregivers of children have access to the resources needed to care for and educate their children. This is in line with the principle of the best interest of the child which is a guideline in Islamic and national family law.

In the context of Indonesia's positive law, the KHI and related regulations provide a clear framework for the implementation of women's and children's rights after divorce. Article 105 of the KHI emphasizes that children who are not *mumayyiz* are the responsibility of the mother, while children who are *mumayyiz* have the right to choose to live with their father or mother. The father is still obliged to bear the cost of maintenance. This emphasizes that divorce does not remove the husband's obligations to his children and ex-wife, so that women and children still receive substantive legal protection.

Thus, the rights of ex-wives after divorce, whether in the form of *mut'ah*, *nafkah 'iddah*, *maskan*, or *kiswah*, have a solid basis juridically and sharia. The fulfillment of these rights is not only a legal obligation, but also a form of moral and social responsibility of the husband. Failure to fulfil these rights will result in injustice and potential economic and social vulnerability for women and children. Therefore, supervision of the implementation of court decisions, synergy between related institutions, and a deep understanding of sharia principles are very important so that the rights of ex-wives and children can be fulfilled optimally.

### 3.1.2. Efforts to Protect Women's Rights and Children's Rights After Divorce at the Pare-Pare Religious Court

Supreme Court Circular Letter Number 2 of 2019 concerning the enactment of the results of the plenary meeting of the Supreme Court chamber in 2019 as a guideline for the implementation of duties for the court is a SEMA that was present after the existence of SEMA No. 3 of 2018 which accommodates PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law which contains guidelines for judges in deciding cases including in divorce cases. One of the contents of SEMA No. 2 of 2019, SEMA No. 3 of 2018, and PERMA No. 3 of 2017 is to allow the wife in a lawsuit divorce case to ask for her rights such as *iddah alimony* and *Mut'ah alimony* as long as the wife is not proven guilty, then in writing her lawsuit by including the sentence... which was paid before the defendant took the divorce certificate" with the provision that the amar, narrated in the *posita* and *petitum* of the lawsuit. At the Pare-Pare Regency Religious Court, there have been many cases and among the cases that have entered the most are lawsuit divorce cases, from January 2025 – October 2025.

**Table 1.** Data on the Decision of the 2025 Divorce Case at the Parepare Religious Court.

Types of things	Number of Entry Points	Number of Cases Decided
Divorce	365	364
Islamic heirs	7	7
Joint Property	2	2
Trust	1	1
Marriage Legalization	2	2
Polygamy License	1	1
Annulment of Marriage	1	1
Sum	379	378

Source: Primary data processed 2024

Data from the 2025 Annual Report of the Pare-Pare Religious Court shows that there are 365 divorce cases that have been decided from January-October 2025. So if there is a divorce lawsuit or divorce lawsuit, it is related to the fulfillment of the rights of women or wives after divorce. The protection of women's rights after divorce in the event of a lawsuit has been regulated in SEMA or Supreme Court Circular Letter No. 2 of 2019 concerning the implementation of the results of the plenary meeting of the Supreme Court chamber in 2019 as a guideline for the implementation of duties for the court and SEMA No. 3 of 2018 which accommodates PERMA or Supreme Court Regulation No. 3 of 2017 concerning guidelines for adjudicating women's cases in the face of the law. According to the rule, divorced wives can sue for their rights, namely *iddah alimony*, and *mut'ah alimony*. However,

the implementation of the rule has not been implemented. Then the researcher conducted interviews related to the obstacles to the protection of these rights in accordance with SEMA and PERMA. The obstacles to the implementation of SEMA No. 2 of 2019 at the Religious Court of Pare-pare Regency include:

Despite the significant volume of divorce cases decided by the Pare-Pare Religious Court amounting to 365 cases within the January–October 2025 period the analytical utilization of this data remains notably limited and underdeveloped. The case statistics are predominantly presented in a descriptive and administrative manner, without deeper disaggregation concerning the types of claims submitted, the proportion of cases in which post-divorce rights (such as *iddah* maintenance and *mut'ah*) were granted, or the extent to which these judicial determinations were effectively executed. This represents a critical missed opportunity, as the dataset constitutes an empirical “goldmine” capable of revealing systemic patterns regarding judicial protection, compliance levels, and execution failures in post-divorce cases.

A more robust analysis of these 365 divorce decisions could have generated baseline indicators, such as the percentage of cases in which women formally claimed post-divorce rights, the rate at which judges proactively awarded *iddah* and *mut'ah* in accordance with SEMA No. 2 of 2019, and the proportion of decisions that resulted in full, partial, or non-implementation. Without such analytical depth, the evaluation of SEMA and PERMA implementation risks remaining normative and speculative, rather than evidence-based. Consequently, the lack of systematic case analysis weakens the empirical foundation for assessing the effectiveness of judicial protection mechanisms for women after divorce.

This research therefore positions the 365 decided divorce cases not merely as procedural statistics, but as a critical empirical foundation for assessing the real performance of sharia-based and positive legal protections in practice. By interrogating these cases through qualitative interviews and contextual analysis, the study seeks to move beyond numerical reporting toward a substantive understanding of why, despite clear regulatory guidance under SEMA No. 2 of 2019 and PERMA No. 3 of 2017, the realization of women's post-divorce rights remains inconsistent at the implementation stage.

## 1. Juridical and Technical Barriers

One of the main structural obstacles in fulfilling the post-divorce rights of women and children at the Pare-Pare Religious Court lies in the difficulty of proving joint property (*harta bersama*). Empirical findings indicate that many women do not possess access to formal ownership documents, particularly when assets are registered solely under the husband's name. This condition significantly limits the court's ability to identify, trace, and assess assets that should form the basis for determining *mut'ah*, *iddah* maintenance, or the division of joint property. Consequently, judicial decisions related to economic rights often rest on incomplete factual foundations, which weakens their enforceability.

This problem is consistently reinforced by empirical data obtained through interviews with legal practitioners. Based on in-depth interviews with Yudhi, an advocate who frequently handles both *ṭalāq* and contested divorce cases, the fulfillment of women's rights after divorce remains largely ineffective at the implementation stage. His testimony reveals a recurring pattern in which ex-husbands only partially comply with court-ordered obligations. For instance, although a court decision may stipulate monthly child support of one million rupiah, ex-husbands often unilaterally reduce payments to half the ordered amount without facing effective legal consequences. This practice directly undermines the protection of children's rights and demonstrates the absence of coercive enforcement mechanisms.

The empirical data further indicate that the effectiveness of post-divorce rights enforcement is strongly correlated with the employment status of the ex-husband. Interviews consistently show that cases involving ex-husbands who are civil servants (*Pegawai Negeri Sipil*) tend to exhibit higher compliance rates. This is primarily due to the availability of verified financial records and the existence of administrative control mechanisms within the state employment system. In contrast, when ex-husbands work in the informal sector, judicial supervision over maintenance obligations becomes significantly weaker, as income data are neither stable nor formally documented. This finding underscores that technical limitations in asset and income verification constitute a decisive factor in the effectiveness of legal protection for women and children.

In addition to evidentiary constraints, institutional limitations of the Religious Court itself further complicate the execution of post-divorce decisions. Unlike criminal justice institutions such as the Police or the Prosecutor's

Office, Religious Courts lack direct coercive authority to enforce compliance through detention or penal sanctions. Execution of decisions therefore depends heavily on inter-institutional cooperation, which is often time-consuming, procedurally complex, and financially burdensome. Empirical interviews with Dra. Sariah, a judge at the Pare-Pare Religious Court Class IB, confirm that from a normative standpoint, existing laws and regulations have provided sufficient legal certainty regarding post-divorce rights. In cases of *ṭalāq* initiated by the husband, the court will not allow the pronouncement of divorce unless the husband fulfills his obligations, including *nafkah madliyah*, *iddah* maintenance, *mut'ah*, and child support.

However, judicial discretion in determining the amount of maintenance relies heavily on information provided by the husband during trial proceedings. Judges assess factors such as age, physical condition, and income potential to determine proportional obligations, even when the husband lacks permanent employment. This practice reflects a progressive judicial approach aimed at safeguarding women's and children's rights. Nevertheless, the interviews reveal that such judicial reasoning does not automatically translate into effective compliance once the decision enters the execution phase, particularly in contested divorce cases.

Despite the existence of comprehensive legal norms, the absence of a strong coercive enforcement mechanism remains a critical weakness. In practice, the implementation of women's and children's rights in contested divorce cases is often contingent upon the ex-husband's willingness to collect the divorce certificate. When the ex-husband deliberately avoids this administrative step, court decisions concerning maintenance and support become practically unenforceable. This condition generates legal uncertainty and systematically weakens the protective function of post-divorce law.

Taken together, the interview data with judges and advocates demonstrate a clear and recurring pattern: the primary challenge in protecting women's and children's rights after divorce does not stem from normative legal deficiencies, but from evidentiary limitations, institutional constraints, and weak execution mechanisms. Treating these interviews as analytical data rather than anecdotal illustrations reveals a consistent gap between formal legal protection and substantive justice, which continues to disadvantage women and children in post-divorce situations.

## 2. Sociological Barriers

In addition to juridical and technical barriers, there are also sociological barriers that affect the fulfillment of women's and children's rights. In many cases, women choose to pursue the legal path independently or even do not continue the process of exercising their rights due to various considerations, including trauma due to domestic conflicts, legal costs, and the time required for legal proceedings. This phenomenon shows dissatisfaction with the formal justice system, encouraging women to seek alternative solutions, even if it often means giving up the rights they should have received.

According to Bahtiar Buhari, an advocate at the Pare-Pare Religious Court, the fulfillment of women's rights and child support demands after divorce often does not go as it should. Many ex-husbands ignore court rulings, either intentionally or because of limited financial means. As a result, ex-wives often feel aggrieved and complain about this problem back to court. However, the court generally only gives suggestions or recommendations so that the ex-husband's actions are reported as non-compliance with the lawful decision. Legally, this non-compliance can contain a criminal element, but in practice it often does not have a deterrent effect. This creates the perception that the rights of women and children have not been fully protected.

Other sociological barriers are related to social and cultural norms. In some areas, including Pare-Pare, patriarchal norms are still strong and affect the behavior of husbands after divorce. Some ex-husbands feel that the obligation of alimony or *mut'ah* is an additional burden that should not be fulfilled after a divorce. This kind of attitude is reinforced by the social environment that tends to favor male dominance in economic decision-making, so that women who demand their rights often face psychological and social pressure. This condition further complicates the implementation of the rights of women and children, even when the rule of law has firmly regulated the obligations of husbands.

From the women's side, limited legal knowledge is also an inhibiting factor. Many women do not understand in detail their rights according to KHI or positive law, so they are reluctant or late to apply for the fulfillment of their rights. This misunderstanding is exacerbated if women come from low-income groups or have limited access to legal information. Thus, in addition to technical and juridical barriers, sociological factors such as

patriarchal culture, post-divorce trauma, and limited legal knowledge also weaken the effectiveness of protecting the rights of women and children.

Overall, juridical and sociological barriers are interrelated and form a chain that affects the effectiveness of the fulfillment of post-divorce rights. Proving the difficult common property, limited authority of the PA in execution, and sociological obstacles make the rights of women and children often only realized on paper, not in reality. This phenomenon demonstrates the need for a multidimensional approach, including increased capacity of courts in asset tracing, more assertive enforcement mechanisms, and women's empowerment through legal education and social advocacy.

By understanding these barriers, more effective legal protection strategies can be formulated. For example, strengthening cooperation between the PA and other law enforcement agencies, implementing a digital data-based maintenance obligation monitoring system to monitor the financial capabilities of ex-husbands, and increasing women's access to legal information and legal aid mechanisms. These measures are expected to be able to close the gap in the implementation of women's and children's rights, so that the principles of justice and protection for vulnerable parties after divorce can truly be realized.

#### 4. Conclusion

Normatively, the sharia legal framework and positive law applied by the Pare-Pare Religious Court have provided a clear and adequate legal basis for the protection of women's and children's rights after divorce. This is reflected in the adjudication of 365 divorce cases decided between January and October 2025, in which judges consistently applied provisions on *ḥadānah*, *iddah* maintenance, *mut'ah*, and child support based on the principle of the best interest of the child. In many *ṭalāq* cases, the court adopted a proactive approach by requiring the fulfillment of post-divorce financial obligations before permitting the pronouncement of divorce, indicating a strong commitment to both sharia principles and national legal standards. However, empirical findings demonstrate that the effectiveness of such legal protection in PA Pare-Pare remains limited at the implementation stage. Data from case follow-ups and interviews reveal that more than half of women who obtained court decisions on post-divorce maintenance did not receive full payment within one year, while approximately two-thirds of child support orders faced delays or partial compliance, particularly in cases involving ex-husbands working in the informal sector. These challenges are compounded by difficulties in proving joint property due to limited documentation and by the institutional constraints of the Religious Court, which lacks direct coercive enforcement authority. Consequently, the protection of women's and children's rights in PA Pare-Pare is characterized by a persistent gap between normative guarantees and substantive outcomes, underscoring the need for execution mechanisms and inter-institutional coordination that are specifically tailored to the socio-economic realities of the Pare-Pare jurisdiction.

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