



Dis-implementation of the Islamic Family Law in Fulfilling the Rights of Ex-Wives After Divorce in Indonesia

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Abstract: This study seeks to examine the modalities of disimplementation of the Islamic family law in addressing the rights of ex-wives post-divorce. The study is crucial as the disimplementation of the law can lead to injustice, legal confusion, and dissatisfaction *for* the people that the law is intended to protect. This case study examines the disimplementation of ex-wives' rights post-divorce within the religious courts of Pinrang, Sidrap, Tangerang, and Pariaman in Indonesia. Data were collected through interviews and document analysis. The data analysis employed a three-stage interpretative method: restatement, description, and interpretation. The findings reveal that the disimplementation of the Islamic family law regarding the rights of ex-wives post-divorce arises from three factors: firstly, the ex-husband's failure to fulfill his obligations towards his ex-wife's rights. Secondly, the presence of a complex execution process for realizing the wife's rights necessitates substantial financial resources (bureaucracy). Third, deficiencies in law enforcement include the complexities of the legal process for victims (ex-wives), inadequate penalties, and limited legal literacy among ex-wives concerning their rights. The inability to uphold these rights has resulted in economic, social, and psychological damages for ex-wives. This disimplementation is theoretically attributed to inadequate law enforcement, alongside the influences of law enforcement agents, culture, and societal dysfunction.

Keywords: Disimplementation, Divorce, Islamic Family Law, Rights of Former Spouses

Abstrak: Penelitian ini bertujuan untuk menelusuri bentuk-bentuk disimplementasi hukum keluarga islam dalam pemenuhan hak-hak mantan istri pasca bercerai. Hal ini penting diteliti karena disimplementasi hukum dapat membawa dampak pada ketidakadilan, ketidakpastian hukum, dan frustrasi bagi masyarakat yang seharusnya dilindungi oleh undang-undang. Penelitian ini menggunakan desain "studi lapangan" yang berfokus pada disimplementasi pemenuhan hak-hak mantan istri pasca cerai pada pengadilan agama Pinrang, Sidrap, Tangerang, dan Pariaman di Indonesia dianalisis dengan teori implementasi hukum. Pengumpulan data dilakukan melalui metode wawancara dan studi dokumen. Analisis data menggunakan metode interpretasi dengan tiga tahapan, yaitu: restatement, description, dan interpretation. Temuan penelitian ini menunjukkan bahwa disimplementasi hukum keluarga Islam dalam pemenuhan hak-hak mantan istri pasca perceraian terjadi karena tiga hal, yaitu; Pertama, pengabaian mantan suami terhadap kewajiban pemenuhan hak-hak mantan istri. Kedua, adanya proses eksekusi pemenuhan hak istri yang berbelit-belit dan membutuhkan biaya yang tidak sedikit (birokrasi). Ketiga, kelemahan dalam penegakan hukum seperti sulitnya proses hukum bagi korban (mantan isteri), sanksi minim, serta literasi hukum rendah bagi mantan istri terkait dengan hak-haknya. Tidak terpenuhinya hak-hak ini telah membawa pada kerugian bagi mantan istri baik secara ekonomi, sosial maupun psikologis. Dari sudut teoritis dan praktis, terjadinya disimplementasi ini disebabkan karena penegakan hukum yang tidak sempurna, kendala birokrasi juga factor oknum aparatatur hukum, budaya dan masyarakat yang tidak berjalan dengan baik.

Kata Kunci: Disimplementasi, Perceraian, Hukum keluarga Islam, Hak Mantan Isteri

Introduction

The abrogation of the statute has resulted in inaccuracies about the enforcement of wives' rights post-divorce. The inability to ensure the safeguarding of women's rights post-divorce indicates legal ambiguity and insufficient legal awareness.¹ This affects unfairness, legal ambiguity, and discontent within the community that these policies are intended to safeguard.² Religious Court rulings frequently infringe upon women's rights, resulting in adverse effects on poverty and psychological issues for women post-divorce. Law Number 7 of 1974 about Marriage and the Compilation of the Islamic Law

¹Maimun Maimun, "The Women's Rights in Divorce and Gender Equality Discourse in The Dynamics of Divorce in Madura," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 1 (2022). Gunarto Gunarto, et.al., "Legal Reconstruction on Talak Divorce Regulation Based on Justice Value," *Scholars International Journal of Law, Crime and Justice*, (2022).

²Rahmat Hidayat, et.al., "Review of Maqāsid al-Syarī'ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, No. 2 (2022).

explicitly delineates the rights of ex-wives post-divorce that must be honored.³ These rights aim to safeguard the wellbeing of women post-divorce and guarantee that both parties adequately perform their obligations.

Previous studies have examined the realization of women's rights post-divorce. Research conducted by Dahlan et al. investigated the realization of women's rights post-divorce in Malaysia and Indonesia.⁴ Analyzing the *khulu* reform in Egypt, which influences the reduction of domestic violence and enhances the realization of women's rights post-divorce.⁵ A pertinent study was undertaken by Fadil, examining the ineffectiveness of the enforcement of women's rights post-divorce at the Malang Religious Court, attributed to insufficient understanding and adherence to the law within the community.⁶

Shesa elucidated that the Islamic law in Indonesia governs divorce to enhance the protection of women's rights, emphasizing mediation and amicable dispute resolution. Despite its current application, numerous hurdles persist in applying this idea in practice, including cultural and social resistance.⁷ Kasim stated that legal institutions, including courts, have endeavored to uphold women's rights concerning *'iddah* maintenance, *mut'ah* maintenance, shared property, child custody, and living expenses. This is executed as a component of the legal framework to ensure equitable protection for women.⁸ Consequently, numerous studies address the realization of women's rights post-divorce; nevertheless, none of the three have examined the application of the law through the lens of the Islamic family law within the Indonesian context.

This study aims to examine the disimplementation of the Islamic family law in the context of women's rights post-divorce. This research encompasses individuals directly responsible for upholding the wife's rights, including the husband and legal practitioners, including the judge, as well as parties who have suffered violations of their rights, notably the ex-wife. This article tries to identify

³ Kholidah, et.al., "Violation of Women's Rights on Divorce: Study on Religious Court Decision," *Journal of Law and Sustainable Development* 11, no. 6 (2023), p. 1–17. Muhammad Iqbal Juliansyahzen, et.al., "Between Sharia, Gender, and Science in the Construction of 'Iddah: The Response of Banyumas' Ulama," *El-Mashlahah* 14, No. 1 (2024).

⁴ Abd Rahman Dahlan, et. al., "Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions." *Ahkam: Jurnal Ilmu Syariah*, (2023).

⁵ Viola Corradini and Giulia Buccione. "Unilateral Divorce Rights, Domestic Violence and Women's Agency: Evidence from the Egyptian Khul Reform," *Journal of Development Economics*, (2023).

⁶ Fadil et. al., "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), p. 1–20.

⁷ Laras Shesa, et.al., "Reformulating Progressive Fiqh of Talak (Divorce): A Contemporary Study of the Principle of Making Divorce More Difficult in SEMA No. 1 of 2022 for Women's Protection," *Milrev: Metro Islamic Law Review* 3, No. 2 (2024).

⁸ Fajri M Kasim, et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, No. 2 (2022).

and examine the factors hindering the implementation of rules regarding the rights of ex-wives. This study aims to address the issue of women's rights abuses post-divorce to enhance protection and welfare for women, both within the Indonesian context and globally.

This study asserts that the Islamic family law, as manifested in legislation, has insufficiently addressed women's rights post-divorce. The insufficient enforcement of rules and penalties undermines the regulations pertaining to the rights of ex-wives. Thus, the research relates to the theory of the legal system, highlighting the functioning of law within the society and its impact from various social, political, and economic factors. This concept facilitates the analysis of how legislative structures and judicial systems affect women's access to their rights post-divorce. This article seeks to enable the evaluation and supervision of the existing legal system to guarantee the fulfillment of the law's intended objectives.

The main aim of this study is the execution of ex-wives' rights post-divorce in Indonesia, examining the application of these rights in accordance with the Islamic family law. In Indonesia, the rights of spouses post-divorce are governed by Law No. 1 of 1974 on Marriage and the Compilation of the Islamic Law 1991. The significance of examining the realization of wives' rights post-divorce stems from the notion that the established regulations in family law are theoretically sound, yet have not been effectively executed by ex-husbands, particularly regarding the discrepancies in the fulfillment of these rights. This research is essential to investigate the factors that hinder the fulfillment of women's rights and the subsequent consequences, serving as a foundation for developing a more comprehensive strategy to address the issue of legal disimplementation, particularly regarding the realization of women's rights post-divorce.

This is a qualitative research through the lens of law enforcement theory.⁹ Theory of law enforcement significantly impacts the application of law within the society, particularly concerning the enforcement and substance of legal principles, as well as societal and cultural contexts.¹⁰ This research examines four Religious Courts in Indonesia: the Pinrang and Sidrap Religious Courts in South Sulawesi, the Tangerang Religious Court in Banten, and the Pariaman Religious Court in West Sumatra. The primary focus of the study is the implementation of family law concerning the realization of wives' rights, significantly affected by socio-cultural and structural factors. This study is crucial in elucidating the actual provision of rights to wives post-divorce. This study identifies several challenges, obstacles, and barriers encountered by women post-divorce in securing their

⁹ Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Konsep*, Jakarta: Raja Grafindo Persada, 2018. Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2013.

¹⁰ Satjipto Raharjo, *Masalah Penegakan Hukum*, Bandung: Sinar Baru, 1993. Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Raja Grafindo Persada, 1993.

rights. This encompasses legal, social, economic, and cultural elements that affect the enforcement of these rights.

The data source for this study include interviews with informants, former spouses, and judicial authorities or parties engaged in the enforcement of ex-wives' rights. Three participants, former spouses, have supplied information regarding personal experiences and difficulties encountered in securing rights such as *iddah* maintenance, *mut'ah* maintenance, *madhiah*, or shared property. The choice of ex-wives as participants was to comprehend the realities and challenges faced by divorced women concerning the realization of their rights. Three participants were chosen as judges. They have supplied information regarding court procedures pertaining to divorce, judicial rulings on spousal rights, and challenges in executing decisions. The selection of judges as participants aimed to elucidate the implementation of court decisions and the potential barriers encountered at the judicial level.

Data analysis was conducted using an interpretative method on the acquired data. The analytical method comprises three stages: restatement or rearrangement of data for precise comprehension; description to identify patterns within the data; and interpretation to ascribe meaning to the examined facts. This technique seeks to elucidate and analyze the significance of the data to investigate the ramifications, affects, and causative factors of the ex-husband's failure to meet his obligations regarding the ex-wife's rights post-divorce. This interpretative method is crucial as it enables researchers to investigate the profound significance of the data by meticulously analyzing the contextual factors.¹¹

Disimplementation in Islamic Family Jurisprudence

Disimplementation denotes the failure to adequately execute or the complete disregard of a policy decision.¹² Disimplementation manifests in various forms, including passive resistance, where individuals or groups gradually repudiate a policy without overt confrontation, and active obstruction, which entails intentional acts to impede the policy's implementation.¹³ Another

¹¹ Gerald Amandu Matua and Dirk Mostert Van Der Wal, "Differentiating between Descriptive and Interpretive Phenomenological Research Approaches," *Nurse Researcher* 22, no. 6 (2015), p. 22–27.

¹² Meng Zhao and Jun Han, "Tensions and Risks of Social Enterprises' Scaling Strategies: The Case of Microfinance Institutions in China," *Journal of Social Entrepreneurship* 11, no. 2 (2020), p. 134–54. Virginia R. McKay et al., "Missing the Target—Mis-Implementation and De-Implementation," in *Dissemination and Implementation Research in Health: Translating Science to Practice* (Oxford University Press, 2023), p. 251.

¹³ John Kojiro Yasuda, "Explaining Policy Failure in China," *The China Quarterly* 257 (2024), p. 3–19. Eui Dong Kim et al., "Passive Resistance to Health Information Technology Implementation: The Case of Electronic Medication Management System," *Behaviour & Information Technology* 42, no. 13 (2023), p. 2308–29. McKay et al., "Missing the Target Mis-Implementation and De-Implementation."

perspective posits that disimplementation or misimplementation pertains to the improper or erroneous application of *Sharia*. The issue is not in the law itself, but in its practical application.¹⁴ This disimplementation results in breaches of *Sharia* norms, provoking criticism and objections from Islamic jurists and practitioners.¹⁵

Misimplementation of court rulings happens when the government executes the decision partially or in a manner counter to its objective and purpose, resulting in incomplete implementation.¹⁶ This phenomenon may result from bureaucratic inefficiency, resource scarcity, or political opposition.¹⁷ In the country like Nigeria, the misapplication of *Sharia* law, stemming from religious disparities, has intensified national instability. The delicate nature of religion in Nigerian politics has engendered considerable controversy and strife, particularly around the incorporation of *Sharia* law into the 1999 Constitution.¹⁸ Misimplementation frequently arises from a flawed comprehension and application of *jihad* in a non-combat environment (*daar as salam*), resulting in radical ideologies and acts of terrorism.¹⁹

The Islamic family law, grounded in *Sharia*, governs marriage through divorce, exhibiting considerable variations among Muslim-majority nations. According to the same source, divorce is categorized into four types: 1) *Talaq*, initiated by the husband; 2) *Khul'*, initiated by the wife; 3) *Mubara'ah*, based on mutual consent; 4) *Faskh*, involving court intervention. The Islamic family law governs not just marriage and divorce but also matters pertaining to gender, child custody, and inheritance.²⁰ On the other hand, sustaining family stability necessitates comprehension of efficient governance. Consequently, Islamic

¹⁴ Basim Mohammed Ali Al-Mabadi, et.al., "The Issues of Contracts Regulating The Investment of Cooperative Insurance Fund: SABB as a Case Study," *The Journal of Muamalat and Islamic Finance Research* 17, no. 1 (2020), p. 89–101.

¹⁵ Olayinka Kehinde Binuomoyo, "The Paradox of 1914 and the June 12: Nigeria's Unending Nightmares," *International Journal of Research and Innovation in Social Science* 2, no. 12 (2018), p. 289–307. Al-Mabadi, Ab Rahman, and Ali, "The Issues of Contracts Regulating The Investment of Cooperative Insurance Fund: SABB as a Case Study."

¹⁶ Asam Saud Alsaia, "Administration Refraining from Implementing Judicial Rulings That Vacate Its Administrative Decisions in the Saudi Legal System," *Journal of Law* 19, no. 2 (2022), p. 308–44.

¹⁷ Elodie Allain and Claude Laurin, "Explaining Implementation Difficulties Associated with Activity-Based Costing through System Uses," *Journal of Applied Accounting Research* 19, no. 1 (2018), p. 181–98. Helle Zinner Henriksen, "One Step Forward and Two Steps Back: E-Government Policies in Practice," in *Policy Analytics, Modelling, and Informatics*, 2018, p. 79–97. Iza Ding and Michael Thompson-Brusstar, "The Anti-Bureaucratic Ghost in China's Bureaucratic Machine," *The China Quarterly* 248, no. S1 (2021), p. 116–40.

¹⁸ Binuomoyo, "The Paradox of 1914 and the June 12: Nigeria's Unending Nightmares."

¹⁹ Muhyidin, "Perspective of Islamic Law in Counter-Radicalism in Indonesia," *Jurnal Masalah-Masalah Hukum* 52, no. 3 (2023), p. 227–36.

²⁰ Muhammad Abdillah et al., "Transwomen and Transmen from Islamic Family Law Perspective," *IAS Journal of Localities* 1, no. 1 (2023), p. 67–80.

family law emphasizes ideas such as *khilafah* (responsibility), *amanah* (trust), *taklif* (obligation), and *ihtisab* (accountability).²¹

The development of Islamic family law has been shaped by various schools of thought, including the Hanafi, Maliki, Shafi'i, and Hanbali schools, each possessing distinct interpretations and applications of the Quran and Sunnah.²² The implementation of Islamic family law within expatriate communities in the UK, US, and Canada has unique obstacles. These populations frequently encounter cultural and legal disparities that necessitate unique interpretations of Islamic teachings.²³ Consequently, numerous disparities exist between the Islamic family law and international human rights. This inheritance law has faced criticism for allocating less to women than to men, with much of the discourse focused on bridging this disparity while adhering to Islamic legal principles²⁴. Conversely, the Islamic family law must address the realities of transgender individuals in society and reconcile religious principles with human rights concerns.²⁵

Entitlements of Wives Post-Divorce

The entitlements of wives post-divorce might differ significantly by jurisdiction. These rights are established to provide equitable treatment for all parties and sound judgments regarding their children.²⁶ Indonesian law delineates the rights of ex-wives post-divorce, as stipulated in Law No. 1 of 1974 on Marriage and the collection of Islamic law applicable to Muslims. These rights

²¹ Rafeah Saidon et al., "Analysing the Principles of Good Family Governance from the Islamic Law Perspective," *Journal of Legal, Ethical and Regulatory* 22, no. 3 (2019).

²² Bambang Sutrisno and Rika Handayani, "Childfree and Inheritance Rights in Islamic Family Law: A Comparative Review," *Indonesian Journal of Islamic Law* 3, no. 1 (2020). Aldi Sofiandi et al., "Explore the Foundations and Principles of Islamic Family Law," *ANAYASA: Journal of Legal Studies* 1, no. 2 (2024), p. 168–77.

²³ Ihsan Yilmaz and Denitsa Pirinova Sokolova-Shipoli, "Muslims and Unofficial Islamic Law (Shari'a) Debates in the West," in *Muslim Legal Pluralism in the West* (Singapore: Springer Nature Singapore, 2024), p. 57–104. Justin Jones, "Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic Legal Practice between South Asia and Contemporary Britain," *Journal of Muslim Minority Affairs* 40, no. 1 (2020), p. 48–66.

²⁴ Moha Ennaji, "Mernissi's Impact on Islamic Feminism: A Critique of the Religious Approach," *British Journal of Middle Eastern Studies* 49, no. 4 (2022), p. 629–51. Talha Rehman, "Islamic Feminism: The Challenges and Choices of Reinterpreting Sexual Ethics in Islamic Tradition," *Society and Culture in South Asia* 6, no. 2 (2020), p. 214–37.

²⁵ Abdillah et al., "Transwomen and Transmen from Islamic Family Law Perspective."

²⁶ Supadi Supadi et. al., "Ratio Legis of the Government Regulation No. 10 Of 1983 Towards an Obligation to Distribute Salary from Ex-Husband Who Works as Civil Servant to Ex-Wife after Divorce," *International Journal of Multicultural and Multireligious Understanding* 6, no. 2 (2019), p. 457. Mursyid Djawas et al., "The Alimony Obligation of a Civil Servant and Non-Civil Servant Father towards Children Post-Divorce (The Study on Aceh Syar'iyah Court Decision Study of 2019)," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023), p. 91.

encompass *Iddah* and *Mut'ah* maintenance, which persists for three menstrual cycles following divorce.²⁷ Property obtained during marriage is deemed joint property. Per Articles 35 and 36 of the Marriage Law, marital assets are equitably allocated amongst the former wives. This allocation considers each party's contribution to the asset acquisition, encompassing non-financial contributions such as caregiving for family and children.²⁸

Moreover, custody and child support are typically awarded to the mother for children under 12 years of age, based on the premise that the mother is more adept at providing care and nurturing.²⁹ If the ex-husband neglects to meet his duties as mandated by the court concerning *iddah* maintenance, child support, or the partition of joint assets, the ex-wife may submit a petition for legal enforcement through the court. The court may mandate different legal measures to ensure the ex-husband complies with his commitments, including asset deposits or wage garnishments.³⁰ In the United States, an ex-wife may maintain the right to health insurance coverage via her ex-husband's employment for a period following the divorce under COBRA (Consolidated Omnibus Budget Reconciliation Act). She may be entitled to a share of her ex-husband's pension, contingent upon the duration of the marriage and relevant legislation.³¹

Disimplementation of Islamic Family Law in Fulfilling the Rights of Ex-Wives After Divorce

1. The ex-husband's neglect of his obligation to fulfill his ex-wife's rights

Divorce frequently engenders numerous issues, one of which is the ex-husband's failure to meet his commitments regarding the ex-wife's rights. This situation is not only economically harmful but also affects the social and psychological well-being of the ex-wife. Consequently, research indicates that

²⁷ Sanusi Sanusi et al., "Judges' Ijtihad on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity* 3, no. 1 (2023), p. 1. Titin Triana, et.al., "Providing Nafkah Mu'tah for Wives in Lawsuits of Divorce According to Islamic Law and Indonesian Legislation," *Journal of Comprehensive Islamic Studies* 2, no. 1 (2023), p. 149–66.

²⁸ Abd. Rouf, "Jurimetrics in the Reconstruction of the Joint Property Division Model for Wage-Earner Wives in Indonesia," *Al-Ahkam* 34, no. 1 (2024), p. 1–32.

²⁹ Ahmad Muhamad Mustain Nasoha, et.al., "Rechtvindind in Resolving Child Custody Disputes," (2024), p. 359–63. Hartini Hartini, et.al., "Sole Custody and The Implication of Fault-Based Divorce Under the Indonesian Legal System," *Journal of Indonesian Legal Studies* 9, no. 1 (2024), p. 249–78.

³⁰ Yulius Oktaber, "Implementation National Agreements in the Division of Collective Property in the Time of Divorce," *Indonesia Private Law Review* 4, no. 1 (2023), p. 23–34. Ezi Azwar, "Implementation of Husband's Obligations Post-Divorce (Case Study in Mutiara Timur District, Pidie Regency)," *Al-Mashaadir Journal* 3, no. 1 (2022), p. 39–56.

³¹ S. Reece, "The Accordion Type Jurisprudence of ERISA Preemption Creates Unnecessary Uncertainty," *UMKC Law Review* 88, no. 115 (2019).

instances of neglect arise from the ex-husband's failure to fulfill various maintenance obligations towards the ex-wife, particularly during the iddah period.

According to the Judge of the Religious Courts of Pinrang, Tangerang, and Sidrap, the ex-husband shown negligence regarding the upkeep of iddah. Historically, in divorce proceedings, it was uncommon for judges to mandate that the Defendant (husband) compensate the wife for her entitlements, such as iddah and mut'ah maintenance, resulting in several ex-husbands neglecting their ex-wives' rights post-divorce.³² Some ex-husbands failed to offer iddah maintenance to their former spouses. Although the ruling has been rendered, its implementation is infrequent.³³ Despite the ex officio norm, the judge mandates that the husband satisfy the wife's rights post-divorce by incorporating an injunction into the ruling, but compliance by the ex-husband is not always fully realized.³⁴

Similarly, the allocation of *mut'ah* maintenance that remains unpaid to his former spouse. In certain instances, the husband fails to meet the obligations owed to his ex-wife, including mut'ah maintenance. A judge at the Pariaman Religious Court (West Sumatra) indicated that the elevated demands may be a contributing factor.³⁵ The judge typically incorporates the maintenance obligations owed to the ex-wife in the ruling, including *iddah* maintenance, *mut'ah* maintenance, and other forms of support; nevertheless, these obligations are frequently neglected by the ex-husband.³⁶ I have litigated to secure my rights, yet my ex-husband refuses to meet his commitments. It appears inequitable and exhausting. I anticipate enhanced legal protections to guarantee the fulfillment of women's rights, including my own. I perceive a lack of defense on my behalf.³⁷

The interview results elucidate several manifestations of negligence by ex-husbands on their obligations to uphold the rights of ex-wives post-divorce. These omissions encompass the disregard of iddah maintenance, mut'ah maintenance, and madhiyah maintenance. The husband's inability to provide maintenance for the wife post-divorce, due to economic constraints, constitutes a significant issue that necessitates governmental intervention. Despite regulations mandating husbands to fulfill their wives' entitlements, such as iddah and mut'ah maintenance in divorce proceedings, the enforcement of these provisions is frequently erratic. Judicial information indicates that a stipulation exists requiring the divorce certificate to be issued only after the settlement of the wife's rights; however, this stipulation is not consistently adhered to. Certain husbands

³² Interview with Amiruddin, the judge of Pinrang Religious Court, September 2023.

³³ Interview with Abdul Havidz, the judge of Tangerang Religious Court, September 2023.

³⁴ Interview with Mun'amah, the judge in Sidrap Religious Court, September 2023

³⁵ Interview with Muhammad Rais, the judge in Pariaman Religious Court, November 2023.

³⁶ Interview with Mun'amah, the judge in Sidrap Religious Court, September 2023.

³⁷ Interview with Siti Aisyah, an ex-wife in Tangerang, September 2023.

disregard mut'ah and iddah maintenance owing to financial constraints or substantial expectations from their spouses.

This information reveals at least three significant concerns. The disregard exhibited by ex-husbands toward their responsibilities to uphold the rights of their ex-wives is mostly characterized by the failure to provide maintenance. The maintenance requirement owed to the ex-wife, notwithstanding their divorce, is not met by the ex-husband, who believes that the divorce has dissolved the marital bond and consequently terminated his duty to give support. The predominant reason for ignoring maintenance is often the ex-husband's constrained financial circumstances. This situation renders the ex-husband unable of meeting his commitment to provide maintenance to the ex-wife. The ex-husband's failure to meet his obligations towards the ex-wife illustrates the inadequate public understanding of Islamic family law about post-divorce rights and responsibilities. The three accounts of this reality show indicate that the neglect of the ex-husband's duty to the ex-wife is a significant signal of the inadequacy of Islamic family law in regulating divorce.

2. The Complex Bureaucratic Procedure and Implementation of Wives' Rights Fulfillment

The disimplementation of the Islamic law in the context of women's rights is seen in the challenges women face in accessing their rights post-divorce. The execution of court rulings pertaining to the enforcement of spouses' rights frequently entails a protracted, arduous, and expensive endeavor. Complex bureaucracy and exorbitant expenses are the primary impediments to achieving justice for victims.

Multiple bureaucratic obstacles are apparent from various situations that have occurred. An ex-wife in Sidrap, South Sulawesi, has constantly pursued maintenance through familial avenues, while her ex-husband persistently evades and rejects responsibility. She subsequently decided to file a lawsuit with the Sidrap Religious Court to pursue the enforcement of the verdict. Nevertheless, the execution process was remarkably slow and ineffective. She was often asked to repeatedly fill out the documents, while the costs related to attending the trial and fulfilling other legal responsibilities were exceptionally burdensome, especially considering my unstable income post-divorce.³⁸

In Bandung, an ex-wife encountered challenges in asserting her rights notwithstanding a court ruling. Upon her ex-husband's persistent neglect of his responsibilities, she resolved to revisit the Religious Court to initiate the enforcement of the judgment. Nonetheless, the implementation process was protracted, the bureaucracy was intricate, and necessitated several documents and substantial financial resources. As an ex-wife lacking a stable income, she felt

³⁸Interview with Rahma (pseudonym), an ex-wife in Sidrap, September 2023.

inundated by the prolonged and arduous legal proceedings.³⁹ An ex-wife in Jakarta encountered a similar issue when seeking support rights, as there were consistently missing or erroneous paperwork each time she attended court. I have oscillated for months and yet lack conviction she said.⁴⁰

The implementation of a religious court ruling necessitates substantial financial resources. Numerous former spouses acknowledged that they were frequently had to continually complete forms, while the expenses associated with court attendance and other legal obligations were exceedingly onerous, particularly given my lack of a stable income post-divorce.⁴¹ Upon my ex-husband's persistent disregard for my commitments, I resolved to revisit the Religious Court to initiate the enforcement of the ruling. Nevertheless, this implementation method necessitates numerous paperwork and incurs substantial expenses. As a former spouse lacking a stable income, I felt inundated by the prolonged and arduous legal proceedings.⁴² An ex-wife is required to pay a lawyer millions of rupiah to address the matter, despite the funds being critically necessary for her children's needs.⁴³

The implementation of the ex-wife's rights is subject to gender discrimination. In local culture, it is frequently regarded as male property, and woman is perceived as lacking rights to familial assets. She encounters societal pressure from her ex-husband's family, who persuades her that women ought to acquiesce to their husband's decisions and refrain from asserting greater claims to property ownership. This gender-biased perspective impedes the legal procedure and hinders her ability to obtain her rights.⁴⁴ In Jakarta, an ex-wife perceives that the obligation of child-rearing predominantly falls upon women. This perspective leads ex-husbands to believe they are not obligated to incur the substantial expenses associated with raising their children. In court, some judges propose that, as a mother, she ought to have greater financial and emotional responsibility for her children, while ex-husbands receive increased leniency. The process of acquiring child support rights is protracted and fraught with challenges stemming from gender-based discrimination.⁴⁵

Simultaneously, in Pinrang, a former spouse encountered bias in the judicial proceedings of her case. Numerous court authorities and the ex-husband's family asserted that due to her gender, I need to exhibit greater "patience" and refrain from insisting that her ex-husband furnish maintenance. Moreover, the local community's perception that women should be submissive and refrain from

³⁹Interview with Dewi, an ex-wife in Bandung, September 2023

⁴⁰Interview with Rini, an ex-wife in Jakarta, September 2023

⁴¹Interview with Rahma (pseudonym), an ex-wife in Sidrap, September 2023

⁴²Interview with Dewi, an ex-wife in Bandung, September 2023

⁴³Interview with Siti, an ex-wife in Bandung, September 2023

⁴⁴Interview with Rahma (pseudonym), an ex-wife in Sidrap, September 2023.

⁴⁵Interview with Dewi, an ex-wife in Bandung, September 2023.

assertively advocating for their rights exacerbates this issue. Consequently, she encountered challenges in obtaining justice, and her case was deprioritized.⁴⁶

The aforementioned information indicates that the enforcement of the Islamic family law on the rights of ex-wives post-divorce is hindered by bureaucratic obstacles faced by ex-wives in securing their entitlements. An informant who submitted an execution application expressed dissatisfaction, stating that the application process for maintenance rights was excessively complex, resulting in months of ambiguity without a definitive outcome. Another informant from the judge's side indicated that the realization of ex-wives' rights post-divorce necessitates a protracted process, as the application for the enforcement of these rights must be resubmitted. The application process involves multiple steps that extend the required duration significantly. The realization of women's rights post-divorce entails a protracted and intricate legal procedure.

Consequently, it is evident that the realization of wives' rights post-divorce may be hindered by an extended execution procedure and necessitates substantial financial resources. In formal law, the submission of the wife's rights post-divorce may occur concurrently with the divorce application; however, if the husband fails to comply with the court's ruling, the wife may submit an execution application to the court. This protracted process would necessitate substantial financial resources, particularly for women requiring legal representation or counsel. Consequently, numerous instances of execution applications are not pursued by the ex-wife, as the process can extend for months and may necessitate substantial financial resources for legal representation. The unfulfilled rights of the ex-wife post-divorce may be affected by the protracted legal proceedings and substantial expenses involved.

3. Deficiencies in Law Enforcement Regarding the Neglect of Women's Rights Post-Divorce

The inadequate execution of laws pertaining to the rights of ex-wives post-divorce significantly impedes the effective application of the Islamic family law in addressing divorce matters. Barriers such as the challenges of obtaining justice, inadequate penalties for offenders, and little legal knowledge among victims result in numerous incidents of rights violations remaining unresolved equitably. This section's findings indicate that inadequate law enforcement remains a significant issue in the field, adversely impacting the enforcement of women's rights post-divorce.

Inadequate law enforcement in safeguarding the rights of ex-wives post-divorce complicates the legal proceedings for victims (ex-wives). An ex-wife in Sidrap has had nearly a year of continual postponements in her case hearing due to numerous factors, including the absence of the judge and the failure of the ex-

⁴⁶Interview with Fatimah, an ex-wife in Pinrang, September 2023.

husband to attend the hearing. The hearing was delayed multiple times, lacking any assurance regarding the timeline for a ruling. This postponement necessitated considerable expenditure for my repeated attendance at the hearing. The ex-husband's absence from multiple trials exacerbated the problem, leading to my frustration over the squandered time and the perception that the legal proceedings did not adequately prioritize her rights as an ex-wife entitled to financial assistance.⁴⁷

A comparable incident occurred in Pinrang, when an ex-wife opted to initiate a new lawsuit to assert her rights at the Religious Court. The legal process she encountered was fraught with challenges. The initial trial was set many months post-filing of the action, although it was frequently delayed due to administrative issues or judicial unpreparedness. Nearly a year later, the trial for her case had not yielded a verdict owing to persistent delays. Each time the trial was planned, her ex-husband failed to appear, resulting in the postponement of the trial without a resolution. The court appeared to deprioritize this matter, causing me considerable stress while I awaited a ruling that never materialized. The protracted legal proceedings hindered her ability to attain the justice she warranted.⁴⁸

The challenges faced by ex-wives in the legal procedure, coupled with the negligible penalties imposed on ex-husbands, underscore the deficiencies in law enforcement. The issue of punishments appears to be abundant; yet, there is a lack of stringent enforcement. Law No. 23 of 2024 on Domestic Violence (KDRT) has been ineffective in addressing the neglect of wives and children by husbands.⁴⁹ In Bandung, there was a case in which the parties had been awaiting a court ruling for over a year, although the trial was consistently deferred. He was unaware of when this will conclude due to the ambiguous timeframe.⁵⁰ In the execution of decisions pertaining to the fulfillment of the wife's rights, violations frequently arise due to the absence of stringent penalties for the husband.⁵¹ Despite obtaining an execution decision, the ex-husband faced just minor administrative penalties. The authorities did not take decisive measures to compel the ex-husband to fulfill his commitments. The husband often failed to appear at court summons, and there were no substantial measures to execute the ruling.⁵²

The inadequate legal literacy of ex-wives contributes to ineffective law enforcement. Numerous women lack comprehension of the post-divorce spousal rights that the husband is obligated to perform, resulting in their omission from

⁴⁷ Interview with Aini (pseudonym), an ex-wife in Sidrap, September 2023.

⁴⁸ Interview with Nur (pseudonym), an ex-wife in Pinrang, September 2023.

⁴⁹ Interview with Muhammad Rais, the judge in Pariaman Religious court, Nopember 2023.

⁵⁰ Interview with Dewi, an ex-wife in Bandung, September 2023.

⁵¹ Interview with Amiruddin, the judge in Pinrang Religious Court, September 2023

⁵² Interview with dengan Dewi, an ex-wife in Bandung, September 2023.

the divorce petition when initiating legal proceedings.⁵³ They believe that post-divorce, the ex-wife forfeits her entitlement to request alimony from her ex-husband. They presume that their separation necessitates self-reliance. They are also unaware that the wife is entitled to a portion of the assets accumulated during the marriage (marital assets). They are uncertain about their ability to retain custody of the children if their ex-husband seeks it. They merely seek to avert complications, thereby refraining from inquiring further.⁵⁴ Subsequently, following two decades of marriage, a divorce transpired between the spouses due to an extended conflict. Subsequent to the divorce, the woman returned to her parents' residence with merely her personal possessions. She refrained from requesting anything from her ex-husband due to her ignorance of her entitlement to the marital joint assets acquired throughout their marriage.⁵⁵

The three forms of disimplementation of Islamic family law encountered by ex-wives in religious courts in Indonesia are delineated in the following table:

Tabel 1: Forms of Implementation of Islamic Family Law in Indonesia

No	Religious Court Judge	Ex Wife	Forms of Disimplementation
1	Pinrang Religious Court	an ex- wife in Pinrang	1. Iddah maintenance is ignored 2. Mut'ah maintenance is ignored 3. Long and complicated legal process 4. Requires large costs 5. Gender discrimination 6. Long trial process 7. Minimal sanctions for perpetrators 8. Low legal literacy for ex-wife
2	Sidrap Religious Court	an ex-wife in Pinrang	
3	Tangerang Religious Court	An ex-wife in Tangerang	
4	Pariaman Religious Court	Ex Wife in Pariaman	

Data Source: Analyzed in 2023

The table above illustrates that inadequate law enforcement significantly contributes to the failure in executing Islamic family law regarding the rights of ex-wives post-divorce. The ineffectiveness of law enforcement stems from the complexities of the legal process for victims, namely ex-wives, and the absence of stringent penalties for ex-husbands who fail to uphold their wives' rights. Conversely, there is a deficiency in ex-wives' comprehension of the rights acquired post-divorce. This was asserted by multiple sources from both the judge

⁵³Interview with dengan Mun'amah, Sidrap Religious Court, September 2023.

⁵⁴Interview with Dewi, an ex-wife in Bandung, September 2023.

⁵⁵Interview with Siti, an ex-wife in Jakarta, September 2023.

and the victim, the ex-wife, whose rights were not upheld.⁵⁶ Consequently, deficiencies in law enforcement may arise from challenges in the legal proceedings faced by victims or ex-spouses, insufficient punitive measures for offenders, and a lack of legal awareness of women's rights post-divorce.

The ex-wife's confession reveals three primary patterns that might be established to comprehend facts concerning deficiencies in the execution of wives' rights post-divorce. The complexity of the legal process frequently serves as a significant barrier for women seeking to assert their rights, as intricate and costly procedures lead many ex-wives to abandon their pursuit before achieving justice. The absence of stringent penalties for ex-husbands who fail to meet their maintenance duties fosters an environment where infractions frequently remain unpunished, diminishing the motivation for ex-husbands to adhere to court rulings. Third, insufficient legal literacy among women concerning their post-divorce rights renders them more susceptible to abuse and misinterpretation, as they do not fully comprehend or acknowledge their legal rights.

4. Legal Uncertainty in Fulfilling Women's Rights After Divorce

This study identified the disimplementation of the Islamic family law regarding the rights of ex-wives post-divorce as a significant issue in Indonesia. Despite the explicit provisions of Law Number 7 of 1974 on Marriage and the Compilation of Islamic Law 1991 regarding the rights of ex-wives, the practical situation reveals a significant neglect of these rights. This pertains specifically to the obligations of *iddah*, *mut'ah*, and *madhiyah* maintenance, as well as child maintenance and educational expenses, which should be borne by the ex-husband. The challenges encountered in the realization of these rights encompass the ex-husband's economic circumstances, intricate bureaucracy, and inadequate law enforcement.⁵⁷

The ramifications of the abrogation of Islamic family law are many and significant. Legal ambiguity and inadequate law enforcement result in ex-wives suffering not only financial detriment but also social and psychological harm. The injustice stemming from the neglect of ex-wives' rights post-divorce engenders distrust in the judicial system and incites frustration among the impacted

⁵⁶M. Haikel Afandi, et.al., "An Examination of Islamic Family Law in Kampar Regency, Riau: Focusing on the Causes and Prevalence of Divorce in the Community," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

⁵⁷Abdullah Abdullah, et.al., "Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, No. 1 (2024).

women.⁵⁸ This issue illustrates the state's failure to ensure sufficient protection for women, a primary purpose of the Islamic family law.⁵⁹

The denial of the realization of ex-wives' rights post-divorce is mostly attributable to three key considerations. The ex-husband's precarious financial situation frequently constitutes the primary factor for the non-fulfillment of *iddah* and *mut'ah* maintenance obligations.⁶⁰ Secondly, intricate bureaucracy and elevated legal expenses impede women's access to their rights.⁶¹ Moreover, insufficient legal literacy among women frequently results in their unawareness of the rights they can assert post-divorce, exacerbating the problem.⁶²

The disimplementation of Islamic family law in this instance illustrates the legal system's failure to maintain the justice ideals inherent in Islamic law. This incapacity not only adversely affects women but also undermines the integrity of Islamic law itself. Furthermore, this indicates that gender equality in Indonesia remains significantly below expectations, as current legislation has failed to adequately safeguard women's rights.⁶³

The insufficient legal implementation can be traced back to specific personnel or legal actors within the religious court not fulfilling their responsibilities effectively. Moreover, the influence of culture and society plays a significant role in the implementation process, often obstructing its effectiveness.⁶⁴ The inadequate legal implementation is attributable to certain personnel or legal actors within the religious courts failing to perform their duties adequately. Moreover, culture and society impact the implementation process, hindering its effectiveness.

This can be utilized in assessing the correct implementation of legislation within society for the advantage of the state, nation, and society at large. This also addresses allegations that Islamic law discriminates against women and fails to safeguard their rights. This study enhances the comprehension of the

⁵⁸Kholidah, Muhammad Ridho Kholidah, et.al., "Violation of Women's Rights on Divorce: Study on Religious Court Decision." *Journal of Law and Sustainable Development* 11, no. 6 (2023).

⁵⁹Abd Rahman Dahlan, et.al., "Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions." *Ahkam: Jurnal Ilmu Syariah*, (2023).

⁶⁰Gunarto, Gunarto, et.al., "Legal Reconstruction on Talak Divorce.

⁶¹Fadil, et.al., "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).

⁶²Eka Susylawati and Siti Musawamah, "Bantuan Hukum Terhadap Istri dalam Perkara Perceraian Melalui Posbakum di Pengadilan Agama Sampang," *NUANSA: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam* 19, No. 2 (2023), p. 209-231.

⁶³Ramadhita Ramadhita, "Bias Gender dalam Hukum Acara Perceraian di Indonesia: Latar Belakang, Dampak, dan Solusinya," *De Jure: Jurnal Hukum dan Syar'iah* 14, No. 1 (2022), p. 1-20.

⁶⁴Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Raja Grafindo Persada, 1993.

implementation of Islamic family law within the Indonesian setting and identifies the challenges to its execution. Several ideas can be proposed to ameliorate this condition. Bureaucratic change is necessary to enhance women's access to the realization of their rights post-divorce. Secondly, enhancing legal literacy among women is essential to increase their awareness of their rights.⁶⁵ Third, there must be more stringent law enforcement, including the imposition of severe penalties on ex-husbands who fail to meet their commitments.⁶⁶ The government must address economic issues that frequently lead to the lack of sustenance by offering support or help to people in need. Consequently, it is anticipated that the rights of former spouses post-divorce will be more effectively safeguarded and justice achieved.

Conclusion

This study's principal finding indicates that the disimplementation of Islamic family law regarding the rights of ex-wives post-divorce has led to economic, social, and psychological detriments for these women. The disregard for the rights of ex-wives is attributable to three factors: the economic circumstances of the ex-husband, intricate bureaucracy, inadequate law enforcement, and insufficient legal literacy among ex-wives concerning their rights. The failure to uphold the rights of ex-wives by ex-husbands has led to significant consequences, including legal ambiguity, inadequate law enforcement, and injustice for those whose rights are overlooked, ultimately resulting in diminished public confidence in the law and institutions. This disimplementation is theoretically attributed to inadequate law enforcement and the dysfunction of law enforcement authorities, culture, and society. This study's strength resides in its substantial contribution to the theoretical and practical aspects of the Islamic family law science. This work theoretically enhances the discourse on the application of Islamic family law, particularly concerning the rights of women post-divorce. Notwithstanding its considerable contribution, this study is constrained by constraints in the data derived from specific cases and does not encompass the entirety of practices regarding the fulfillment of ex-wives' rights post-divorce. This study, however limited, lays the groundwork for subsequent research that may offer a more comprehensive understanding of the realization of spouses' rights post-divorce.

⁶⁵Eka Susylawati and Siti Musawwamah, "Bantuan Hukum Terhadap Istri dalam Perkara Perceraian, p. 209-231.

⁶⁶Fadil, et.al., "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). Abidin Nurdin, "Mut'ah and Iddah: Post-divorce Payment Practices in Aceh," in John R. Bowen and Arskal Salim, *Women and Property Rights in Indonesian Islamic Legal Contexts*, (2018).

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Interviews

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