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Evaluating the Effectiveness of Legal Support for Women's Post-Divorce Rights: *Maslahah* Approach in Indonesia and Malaysia

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Abstract

The purpose of this study is to analyze and compare the fulfillment of women's post-divorce rights in Indonesia and Malaysia through the lens of *maslahah* (general welfare). The research specifically examines rights such as *nafkah iddah* and *mut'ah*, as well as the challenges associated with their implementation in both countries. A qualitative methodology with an empirical juridical approach was employed, relying on in-depth interviews with judges in Indonesia's religious courts and officials and community leaders in Malaysia, supplemented by observations and document analysis. Data were analyzed using a flow model that included data reduction, data presentation, and conclusion drawing. The results indicate that Malaysia's legal system, supported by the Family Support Division (BSK), more effectively secures women's post-divorce rights compared to Indonesia, where, despite the protective provisions of SEMA No. 2 of 2019, women continue to face complex legal procedures and high execution costs. The originality of this study lies in its comparative approach and application of *maslahah* theory to assess women's welfare within family law in two Muslim-majority countries. The study implies that Indonesia's legal system could benefit from reform by incorporating elements of Malaysia's institutional support structures, enhancing women's access to their rights post-divorce, and promoting a more equitable system for women's welfare.

Keywords: Post-divorce rights, *Nafkah Iddah* and *Mut'ah*, Women's welfare, *Maslahah* approach, Comparative legal analysis.

Abstrak

Penelitian ini bertujuan untuk menganalisis dan membandingkan pemenuhan hak-hak perempuan pascaperceraian di Indonesia dan Malaysia melalui perspektif masalah (kemaslahatan umum). Penelitian ini secara khusus mengkaji hak-hak seperti nafkah iddah dan mut'ah, serta berbagai tantangan dalam pelaksanaannya di kedua negara. Metode penelitian yang digunakan adalah kualitatif dengan pendekatan yuridis empiris, yang didasarkan pada wawancara mendalam dengan para hakim di pengadilan agama di Indonesia serta pejabat dan tokoh masyarakat di Malaysia, yang dilengkapi dengan observasi dan analisis dokumen. Data dianalisis menggunakan model alur yang meliputi reduksi data, penyajian data, dan penarikan kesimpulan. Hasil penelitian menunjukkan bahwa sistem hukum di Malaysia, yang didukung oleh keberadaan Family Support Division (BSK), lebih efektif dalam menjamin pemenuhan hak-hak perempuan pascaperceraian dibandingkan dengan Indonesia. Di Indonesia, meskipun telah terdapat ketentuan perlindungan melalui SEMA Nomor 2 Tahun 2019, perempuan masih menghadapi prosedur hukum yang kompleks serta biaya eksekusi yang tinggi. Keaslian penelitian ini terletak pada pendekatan komparatif dan penerapan teori masalah untuk menilai kesejahteraan perempuan dalam hukum keluarga di dua negara dengan mayoritas penduduk Muslim. Penelitian ini mengimplikasikan bahwa sistem hukum di Indonesia dapat memperoleh manfaat dari reformasi dengan mengadopsi unsur-unsur dukungan kelembagaan seperti yang diterapkan di Malaysia, sehingga dapat meningkatkan akses perempuan terhadap hak-haknya pascaperceraian serta mendorong terwujudnya sistem yang lebih adil bagi kesejahteraan perempuan.

Kata kunci: *Hak pascaperceraian, nafkah iddah dan mut'ah, kesejahteraan perempuan, pendekatan masalah, analisis hukum komparatif.*

Introduction

Divorce in Indonesia significantly impacts women's psychological, emotional, and economic well-being.¹ The high number of divorce cases, particularly those filed by women, reveals the financial and emotional strains that often follow.² The increasing divorce rate emphasizes the urgency of post-divorce protections, especially for economically vulnerable women. In 2021, data from Indonesia's Central Bureau of Statistics (BPS) recorded 447,743 divorce cases, reflecting a rise from 2020. Of these cases, a substantial portion were initiated by wives, indicating a shift in societal trends. The upward trend continued in 2022, with divorce cases reaching 516,334 the highest in six years highlighting the need to secure women's

¹ Atun Wardatun and Bianca J Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna* 24, no. 2 (2020), pp. 266–95.

² Mursyid Djawasi et al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi," *AHKAM: Jurnal Ilmu Syariah* 21, no. 1 (2021).

rights after divorce. These statistics underscore the importance of ensuring that women receive necessary protections to mitigate the adverse effects of divorce.³

Both Islamic and statutory laws address post-divorce rights and obligations for spouses.⁴ Conventional Islamic jurisprudence and modern family laws have long set standards for post-divorce rights, reflecting ongoing reforms in Muslim family law worldwide.⁵ Scholars like Tahir Mahmood note that such aspects are central to contemporary Muslim family law frameworks. For example, Indonesia's Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) Article 149 outline clear post-divorce rights for women. Additionally, Supreme Court Circular No. 2 of 2019 enhances these protections by specifying that payment obligations be settled before obtaining the divorce certificate.⁶ In Malaysia, these rights are upheld through the Islamic Family Law Enactment, offering guidelines for iddah maintenance and other essential support.⁷ These examples highlight how Islamic and national laws work together to support women's post-divorce rights, aligning with evolving family law practices in Muslim-majority countries.⁸

³ Cindy Mutiah Annur, *Kasus Perceraian di Indonesia Melonjak Lagi pada 2022, Tertinggi dalam Enam Tahun Terakhir* (n.d.).

⁴ Vida Nurul Fadillah, "Eksekusi Putusan Pengadilan Agama Mengenai Hak Istri Selepas Perceraian: Studi Komparatif Kompilasi Hukum Islam Indonesia Dan Enakmen Undang-Undang Keluarga Islam Malaysia" (UIN Sunan Gunung Djati Bandung, 2023); H Hamzah, Oyo Sunaryo Mukhlas, and Usep Saepullah, "Hak-Hak Perempuan Pasca Perceraian Dalam Hukum Positif Dan Hukum Islam," *Usroh* 6, no. 1 (n.d.), pp. 62–80; Mursyid Djawas Djawas, Azka Amalia Jihad, and Kemala Dewi, "Hukum Talak Dalam Kondisi Mabuk Perspektif Ibn Rusyd," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021), pp. 1–17.

⁵ Fatahuddin Aziz Siregar et al., "Staying at Home: The Perspectives of Minangkabau Ulemas Concerning Husbands' Provision of Sustenance in Covid-19 Impacted Households," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022), pp. 133–42; Mursyid Djawas et al., "The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022), p. 139.

⁶ Agustin Hanafi and Mohamad Hedhayatullah Bin Mohamad, "Peran Bahagian Sokongan Keluarga Dalam Masalah Pemenuhan Nafkah Isteri Pasca Perceraian (Studi Kasus Di Mahkamah Tinggi Syariah Kedah, Malaysia)," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 20, no. 1 (2020), pp. 57–74; Zulzaidi Mahmod, Ahmad Hidayat Buang, and Afifah Baharuddin, "Cabaran Penguatkuasaan Penghakiman Mahkamah Syariah: Kajian Peranan Bahagian Sokongan Keluarga Terhadap Hak Wanita Dan Kanak-Kanak Di Sarawak," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 6, no. 10 (2021), pp. 252–67; Nur Zulfah Md Abdul Salam and Nur Syazwani Mohd Khatib, "Isu Tunggakan Nafkah: Keperluan Penubuhan Bahagian Sokongan Keluarga (BSK): Arrears of Maintenance Issues: Requirements of Family Support Division (BSK) Establishment," *Journal of Muwafaqat* 3, no. 1 (2020), pp. 38–51.

⁷ Nabila Farhana Yahya and Mek Wok Mahmud, "Polygamy: Between Obligation and Lust in Forming A Happy Family," *Journal of Islam in Asia* 17, no. 3 (2020), pp. 240–67.

⁸ Mursyid Djawas Mursyid Djawas and Muhammad Yahya Muhammad Yahya, "Status Talak Bagi Wanita Haidh (Analisis Pendapat Ibnu Qayyim Al-Jauziyyah)," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 1, no. 1 (2017), p. 1; M. Ihsan Azni Azni, Muhammad Hafis, Asril Amirul Zakariah, Adi Harmanto, Miftahuddin Miftahuddin, "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Jurnal Ilmiah Peuradeun* 13, no. 2 (2025).

This study aims to compare Indonesian and Malaysian post-divorce legal frameworks from the *maslahah* (public welfare) perspective. By analyzing the legal structures of both countries, the study seeks to assess their effectiveness in safeguarding women's post-divorce rights.⁹ *Maslahah* serves as a foundational principle to evaluate the welfare of divorced women in each system. In Indonesia, procedural complexities and high execution costs limit the accessibility of post-divorce rights, leaving many women without full protection. In contrast, Malaysia's Family Support Division (BSK) provides specialized assistance, streamlining the enforcement of these rights. Malaysia's framework demonstrates a stronger alignment with *maslahah* by reducing legal burdens on women. Comparing these systems through *maslahah* offers insight into the effectiveness of each approach in promoting women's post-divorce welfare.

Malaysia's legal approach better safeguards women's welfare after divorce compared to Indonesia's system.¹⁰ The absence of dedicated support institutions and high execution fees in Indonesia create barriers to fulfilling women's post-divorce rights, impacting their overall welfare. Conversely, Malaysia's legal provisions and supportive institutions facilitate access to rights for divorced women. Studies show that Malaysian laws, such as the 2003 Family Law Enactment, ensure that women receive *iddah* maintenance and compensation swiftly. Research highlights Indonesia's challenges, where women face extended legal processes, impacting their well-being. These findings reveal that Malaysia's system aligns more closely with the principles of *maslahah* by prioritizing accessible and fair support. Malaysia's effective legal structure demonstrates a stronger commitment to post-divorce welfare, offering a potential model for Indonesia.

Several studies have examined women's post-divorce rights in Indonesia and Malaysia. Research on this topic underscores both similarities and differences in the legal treatments of *iddah* and *mut'ah* provisions, reflecting a range of interpretive and procedural approaches. While most studies examine the presence of these rights, few focus specifically on their implementation's alignment with *maslahah*. Hammad's study on *iddah* and *mut'ah* in Malaysia and Jordan highlights regional differences,¹¹ while Dahlan et al. examine the *ex officio* rights in Indonesian courts, contrasting with Malaysia's requirement for active claims.¹² Basri's research focuses

⁹ 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), pp. 189–210.

¹⁰ Dahlia Haliah Ma'u, "The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023), pp. 669–86.

¹¹ Muchammad Hammad, "Hak-Hak Perempuan Pasca Perceraian: Nafkah Iddah Talak Dalam Hukum Keluarga Muslim Indonesia, Malaysia, Dan Yordania," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 7, No. 1 (2014), pp. 17–28.

¹² R R Abd Rahman Dahlan et al., "The Rights of Wife in Divorce in The Decision of Religious Courts in Indonesia and Sharia Courts in Malaysia," n.d.

on judicial discretion in enforcing *mut'ah* and *iddah*,¹³ while Wardana and Sadari analyze the variations in family law flexibility across Muslim-majority nations.¹⁴ These studies offer a foundation,¹⁵ but none specifically address the welfare (*maslahah*) aspect of post-divorce rights.¹⁶ This research fills a gap by focusing on how Indonesian and Malaysian legal frameworks impact women's welfare post-divorce through the lens of *maslahah*.

This study employs a qualitative research design with an empirical juridical approach. This approach is ideal for examining the legal provisions and their practical applications regarding women's rights after divorce within Muslim family law frameworks in Indonesia and Malaysia. By focusing on the concept of *maslahah* (general welfare), the study goes beyond written laws to explore how legal rulings impact divorced women's well-being. Thus, the empirical juridical approach allows for a comprehensive analysis of both legal texts and their real-world implications. Data collection for this study utilizes interviews, observations, and documentation. Interviews were conducted with key informants, including judges from Indonesian religious courts and officials and community leaders from Malaysia, ensuring diverse perspectives on post-divorce rights.¹⁷ Additionally, direct observations of legal proceedings and the collection of official documents provided concrete evidence of how post-divorce rights are enforced. This mixed-methods approach to data collection enriches the understanding of both countries' legal contexts and practical applications. The data was analyzed using a flow model, which included data reduction, data presentation, and conclusion drawing. In the reduction phase, irrelevant or redundant information was filtered out, focusing the analysis on core insights related to *maslahah* and women's post-divorce rights. Following this, data was organized and presented in a coherent format to clarify trends and key issues. This process facilitated drawing conclusions based on patterns that emerged, allowing the study to construct a clear understanding of *nafkah iddah* and *nafkah mut'ah* provisions.

Fulfillment of Women's Rights Post-Divorce in Indonesia and Malaysia

Indonesian law stipulates that women are entitled to *nafkah mut'ah*, *nafkah iddah*, and *nafkah madhiyah* after divorce.¹⁸ However, the implementation of these

¹³ Rusdaya Basri and Rukiah Rukiah, "Kontekstualisasi Maqaashidu Al-Syariah Terhadap Penerapan Hak Ex Officio Hakim," n.d.

¹⁴ Muhammad Radhia Wardana, "Perlindungan Hukum Terhadap Hak-Hak Perempuan Dan Anak Pasca Perceraian" (Pascasarjana, 2022).

¹⁵ Hariri Ocviani Arma, "Pembayaran Nafkah 'Iddah Dan Mut'Ah Dalam Perkara Cerai Talak Di Pengadilan Agama," *Sakena: Jurnal Hukum Keluarga* 7, no. 2 (2022), p. 156–69.

¹⁶ Sadari Sadari, "Hak Perempuan Pasca Perceraian: Analisis Perbandingan Hukum Keluarga Di Indonesia Dan Dunia," *Istinbath: Jurnal Hukum* 12, no. 2 (2015), p. 215–47.

¹⁷ Abdul Syatar et al., "Examining Call for the Dissolution of Indonesian Ulama Council: Siyāsah Syar'iyah Perspective," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023), p. 199.

¹⁸ Kutbuddin Aibak and Inama Anusantari, "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia Dan Malaysia," *Hukum Islam* 22, no. 2 (2022),

rights often faces challenges, including high execution costs and complex legal procedures.¹⁹ The legal framework, outlined in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), aims to ensure the welfare of divorced women. Articles 149 and 152 of the KHI mandate that the ex-husband provides *nafkah mut'ah*, *nafkah iddah*, *nafkah madhiyah*, and other financial rights.²⁰ Despite these provisions, many women struggle to access their entitlements due to procedural difficulties and financial barriers.²¹ Supreme Court Circular No. 2 of 2019 has introduced better legal protection for women filing for divorce, particularly in securing *nafkah mut'ah* and *nafkah iddah*.²²

Table 1

Description	Source
<i>Nafkah mut'ah</i> must be provided by the husband to the divorced wife.	Law No. 1 of 1974 Article 41, KHI Articles 149, 152, 158
<i>Nafkah iddah</i> is provided by the husband during the post-divorce waiting period (<i>iddah</i>).	Law No. 1 of 1974 Article 41, KHI Article 152
<i>Nafkah madhiyah</i> refers to financial obligations unmet during the marriage, payable after divorce.	KHI Article 149, Supreme Court Circular No. 2 of 2019
Legal procedures and execution costs often hinder access to these rights.	Observations and interviews with religious court judges
Supreme Court Circular No. 2 of 2019 enhances protections for women filing for divorce.	Supreme Court Circular No. 2 of 2019

Source: Author interpretation

The above data highlights the significance of Supreme Court Circular No. 2 of 2019 as a pivotal step in strengthening legal protections for women, particularly

pp. 73–96; Mutiara Fahmi et al., “Raj’i Talaq Law According to the Shafi’i School in Polyandry Cases (Case Study of Banda Aceh Shar’iyah Court Decision Number 383/Pdt.G/2020/MS. Bna),” *El-Usrah* 6, no. 1 (2023).

¹⁹ Fadillah, “Eksekusi Putusan Pengadilan Agama Mengenai Hak Istri Selepas Perceraian: Studi Komparatif Kompilasi Hukum Islam Indonesia Dan Enakmen Undang-Undang Keluarga Islam Malaysia”; Rosdalina Bukido et al., “Divorce Among Female Muslim Civil Servants: Legal Perspectives in Indonesia,” *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 1 (2025), p. 85–116.

²⁰ Rizki Putra Pratama and Zuraidah Azkia, “Pembebanan Nafkah Iddah Dan Mut’ah Dalam Perkara Cerai Gugat Dalam Tinjauan Hukum Islam Di Indonesia Dan Malaysia,” *Usroh: Jurnal Hukum Keluarga Islam* 7, no. 1 (2023), p. 11–26.

²¹ R P Pratama and Z Azkia, “Pembebanan Nafkah Iddah Dan Mut’Ah Dalam Perkara Cerai Gugat Dalam Tinjauan Hukum Islam Di Indonesia Dan Malaysia,” *Usroh: Jurnal Hukum Keluarga ...*, 2023, p. 11–26.

²² Nur Sarah Tajul Urus et al., “Sumbangan Simbolik Dalam Pembahagian Aset Harta Sepencarian Di Malaysia: Satu Permintaan Pasxa Perceraian: Symbolic Contribution In The Distribution of Jointly Acquired Assets in Malaysia: A Post-Divorce Demand,” *Journal of Fatwa Management and Research* 24, no. 2 (2021), p. 1–39.

in *cerai gugat* (divorce initiated by the wife). This regulation ensures that financial rights, such as *nafkah mut'ah*, *nafkah iddah*, and *nafkah madhiyah*, are addressed before the divorce certificate is issued. Previously, women faced significant challenges in claiming these rights due to vague legal provisions regarding *cerai gugat*. The circular now mandates that a husband's financial obligations must be fulfilled before the issuance of the divorce certificate, thus providing more robust protection for women. Consequently, women filing for divorce, whether *cerai talak* or *cerai gugat*, now have improved access to post-divorce rights, provided they are not proven to be *nusyuz* (disobedient).

In Malaysia, divorce for Muslims is governed by Sharia law, which obligates the husband to provide *nafkah iddah* and *nafkah mut'ah* to the wife after divorce.²³ Although the legal framework is clear, its implementation faces challenges, including lengthy processes and difficulties in claiming rights.²⁴ The provisions for *nafkah iddah* and *nafkah mut'ah* are regulated under the Islamic Family Law Enactment (EUUKI), which aims to ensure financial support for divorced women. According to the EUUKI, the husband is required to provide *nafkah iddah* for the wife's basic needs during the waiting period (*iddah*) and *nafkah mut'ah* as compensation after divorce. If the husband fails to fulfill these obligations, the wife can file a claim in the Sharia court. While the law supports the fulfillment of women's post-divorce rights, challenges such as complex legal procedures and social stigma often hinder women from obtaining these entitlements.²⁵

Table 2

Description	Source
<i>Nafkah iddah</i> is the husband's obligation to provide financial support during <i>iddah</i> .	EUUKI Sections 47–51
<i>Nafkah mut'ah</i> is the compensation the husband must provide after divorce.	EUUKI Sections 56–60
Difficulties in claiming <i>nafkah iddah</i> and <i>mut'ah</i> often arise due to lengthy processes.	Observations and field interviews

Source: Author interpretation

The Family Support Agency (Badan Sokongan Keluarga, BSK) plays a pivotal role in assisting women in securing their financial rights after divorce, particularly with regard to *nafkah iddah* and *mut'ah*. BSK provides financial assistance and legal advice to women who face difficulties claiming their

²³ Muhammad Ifzal Mehmood and Noraini Binti Md Hashim, "Marriage Without Wali's Consent: A Paradigm Shift in the Family Structure of Pakistan," *IJUM Law Journal* 29, no. (S1) (2021), p. 135–51.

²⁴ Siti Musawwamah et al., "Resistance to Child Marriage Prevention in Indonesia and Malaysia," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (2023).

²⁵ Mursyid Djawas and Nurzakia Nurzakia, "Perkawinan Campuran Di Kota Sabang (Studi Terhadap Faktor Dan Persepi Masyarakat Tentang Dampak Perkawinan Campuran)," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 2 (2019), p. 307.

entitlements following a divorce. In addition to financial aid, BSK supports women through legal processes, including obtaining court orders to ensure that former husbands fulfill their obligations. The presence of BSK is crucial in ensuring that divorced women in Malaysia can access their financial rights, especially in cases where the legal process is complex or the husband fails to meet his responsibilities.²⁶

The findings of this study reveal that in both Indonesia and Malaysia, post-divorce rights for women, such as *nafkah mut'ah*, *iddah*, and *madhiyah*, are clearly stipulated within each country's legal framework. However, the implementation of these rights often encounters significant challenges. In Indonesia, although Supreme Court Circular (SEMA) No. 2 of 2019 provides better protection for women filing for divorce, many still face difficulties due to complex procedures and high costs. In Malaysia, while *nafkah iddah* and *mut'ah* are governed by Syariah law, challenges such as social stigma and lengthy legal processes continue to hinder women from claiming their rights.

Both countries have legal systems that aim to protect women's post-divorce rights, but procedural complexities and social barriers often delay their fulfillment. In Malaysia, the Family Support Agency (BSK) plays a significant role in assisting women in claiming their rights. BSK provides financial support and legal counsel, empowering women to navigate the divorce process. In Indonesia, SEMA facilitates women filing for divorce to secure their rights, although implementation challenges persist.

Data collected highlights that women in Indonesia continue to face difficulties accessing financial entitlements after divorce due to lengthy execution processes and high costs.²⁷ In Malaysia, divorced women receive assistance from BSK to ensure their rights to *nafkah iddah* and *mut'ah* are upheld.²⁸ However, social stigma against divorced women in both countries often deters them from fully claiming their rights. While legal regulations in Indonesia and Malaysia support post-divorce rights for women, successful implementation hinges on reducing procedural, social, and economic barriers. The presence of support institutions like BSK in Malaysia has proven to be more effective in assisting divorced women than the situation in Indonesia.²⁹

²⁶ Nur Dayana Mohd Khalil et al., "Peranan NGO Sebagai Sistem Sokongan Pembangunan Keluarga Islam Golongan OKU Pendengaran: Satu Tinjauan Ringkas: The Role of NGO as a Support System for the Development of Islamic Families for the Hearing Disabled: A Brief Overview," *Jurnal Pengajian Islam* 16, no. 1 (2023), p. 42–48.

²⁷ Ikhwanuddin Harahap, Fatahuddin Aziz Siregar, and Erie Hariyanto, "Understanding The Rise of Childfree Marriage: Avoiding Toxic Family, Being Happy and Well Without Children Despite Contradiction With Maqashid Al-Sharia," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025), p. 303–29.

²⁸ Salam and Khatib, "Isu Tunggalan Nafkah: Keperluan Penubuhan Bahagian Sokongan Keluarga (Bsk): Arrears of Maintenance Issues: Requirements of Family Support Division (BSK) Establishment."

²⁹ Nursaidah Nursaidah, Adi Nur Rohman, and Panti Rahayu, "The Out of Court Divorce Model and Its Legal Implications: A Juridical Study in Babelan District Bekasi," *Syariah: Jurnal*

In conclusion, the fulfillment of women's post-divorce rights in Malaysia and Indonesia is governed by Islamic law-based judicial systems, but significant differences exist in their implementation. In Malaysia, a more structured and integrated system, as outlined in the Islamic Family Law Enactment No. 17 of 2003, offers a flexible claims process based on the value of entitlements. Support from the Family Support Agency (BSK) ensures that maintenance is paid even if former husbands are unable to meet their obligations, with mediation facilitating dispute resolution before court proceedings.

In Indonesia, while the Compilation of Islamic Law (KHI) and the Marriage Law regulate women's rights, their implementation is often hindered by a lack of effective enforcement and the non-cooperation of former husbands. Maintenance payments are frequently delayed or ignored if the husband fails to comply, with no agency like BSK stepping in to assume payment obligations. Malaysia has established a stronger and more flexible system to guarantee women's post-divorce rights, supported by structured regulations, flexible payment mechanisms, and institutions like BSK. Meanwhile, in Indonesia, although regulations exist, significant challenges remain in enforcing and fulfilling women's rights after divorce, particularly due to the absence of robust support institutions akin to BSK in Malaysia.

Implementation of Post-Divorce Women's Rights Fulfillment in Indonesia and Malaysia

In Indonesia, the fulfillment of women's rights after divorce encompasses several legal aspects designed to safeguard the welfare of ex-wives. These rights include:

a. *Nafkah Iddah*

Nafkah iddah refers to financial support for daily needs such as food, clothing, and housing during the iddah period. The total amount for these components is to be provided by the husband as part of his responsibility.³⁰

b. *Mut'ah*

Mut'ah, meaning "a token of remembrance," is a gift from the husband to the wife upon divorce. According to the Qur'an (Surah al-Baqarah, verse 236), the form or amount of *mut'ah* is not specified. It could be money, gold, vehicles, or other items. The verse states that *mut'ah* should be given "according to one's ability" and

Hukum Dan Pemikiran 20, no. 2 (2020), p. 159; Muhamad Arifin Badri, Anas Burhanuddin, and Ghufran Jauhar, "Factors Influencing The Increase in Khulu's Divorce: A Case at The Jember Religious Court (2021-2023)," *Al-'Adalah* 21, no. 1 (2024), p. 53.

³⁰ Nur Fadhilah et al., "Reevaluating Nafkah Obligations: Female Muslim Scholars' Insight and Ethics of Gendered Finance in Indonesian Families," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2025), p. 458–89; Shofiatul Jannah and Dwi Hidayatul Firdaus, "Reformulation of the Concept of Iddah in The Compilation of Islamic Law Perspective of Negotiative Hermeneutics," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023), p. 286–300.

“*bil ma'ruuf*” (appropriately). This highlights that *mut'ah* should align with the husband's capacity while ensuring fairness.³¹

c. *Nafkah Madhiyah*

Nafkah madhiyah refers to the maintenance payments the husband failed to provide during a specific period before the divorce. For instance, if the husband neglected financial support for ten months, the wife may claim the total amount owed during that period through the court, either in a written divorce petition or orally.³²

The payment system for post-divorce women's rights in Indonesia includes *nafkah iddah*, *mut'ah*, and *nafkah madhiyah*, which remain the husband's responsibility. Its implementation depends on the husband's financial capacity and the court's decision. According to Religious Court Judges Abd. Jamil Salam and Heru Fachrurizal:

“*Nafkah iddah* must be provided before the pronouncement of talak unless the wife agrees to a deferred payment. *Mut'ah* is given based on the husband's ability, and past maintenance can be claimed if it was previously neglected.³³ In talak cases, iddah maintenance payments are directly transferred to the wife's account before the pronouncement of talak.”³⁴

Post-divorce rights may be granted either at the wife's request or at the judge's discretion (*ex officio*). If the wife is not deemed *nusyuz* (disobedient to the husband), these rights can be obtained through a claim or court ruling. Judge Amiruddin explained:

“Rights such as *nafkah iddah*, *mut'ah*, and past maintenance can be requested by the wife or decided directly by the judge, except for women declared *nusyuz*.”³⁵

The amount of *mut'ah* is not explicitly regulated in Islamic law or Indonesian statutes, leaving its determination to the husband's financial capacity and the duration of the marriage. Judge Drs. H. Amiruddin elaborated:

³¹ Dede Rohayati et al., “Legal Enforcement Against Non-Compliance by Ex-Husbands with Court Orders on Iddah and *Mut'ah* Support,” *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025), p. 157–70.

³² Firdaus Firdaus et al., “Post-Divorce Child's Nafaqah Māḍiyah: An Analysis of the Shifting from Fulfilment to the Assertion of Ownership Rights,” *Al-Ahkam* 33, no. 1 (2023), p. 45–62; Hasanudin et al., “Phenomena of Domestic Violence Against Women and Divorce in 2020–2022 in Indonesia: An Islamic Perspective,” *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023), p. 137–52.

³³ Interview with Abd. Jamil Salam, Ketua Pengadilan Agama Enrekang, July 08, 2024 in Enrekang Religious Court Office.

³⁴ Interview with Heru Fachrurizal, Judge of the Sidrap Religious Court, on July 17, 2024, at the Sidenreng Rappang Religious Court Office.

³⁵ Interview with Jumardin, Judge of the Barru Religious Court, on July 1, 2024, at the Barru Religious Court Office.

“*Mut'ah* is a token of remembrance. The longer the marriage lasts, the greater the *mut'ah* value. Judges consider evidence such as the husband’s salary slips to assess his capacity.”³⁶

Challenges in fulfilling post-divorce rights arise when husbands fail to meet their obligations. Ex-wives often face difficulties, requiring them to seek enforcement through the court, which involves additional costs and security measures. Judge Abd. Jamil stated:

“If the husband defaults, assets like vehicles can be seized to cover the obligations, but this process requires security and incurs extra expenses. If the husband fails to pay within six months, the divorce may be annulled.”³⁷

In divorce-initiated cases where the husband is absent, fulfilling the wife’s rights, such as *nafkah iddah*, becomes even more challenging. Heru Fachrurizal noted:

“In many divorce cases, the husband’s whereabouts are unknown, making it difficult to enforce *iddah* maintenance.”³⁸

Furthermore, non-compliance by husbands and limited legal awareness among women hinder the implementation of their rights. Many women fear that demanding their rights may complicate the divorce process, or they lack knowledge of these entitlements. As revealed through interviews:

Mrs. A. Ar: “I did not claim my rights fearing it would prolong the divorce process.”³⁹

Mrs. WS and Mr. AH: “We were unaware of the obligation to provide post-divorce maintenance due to low education levels.”⁴⁰

Mrs. Ai: “I did not receive *iddah* maintenance because my husband remarried.”⁴¹

In Malaysia, post-divorce women’s rights are explicitly regulated under the Islamic Family Law Enactment No. 17 of 2003. Rights such as *nafkah iddah*, *mut'ah*, and past maintenance can be claimed through the Syariah Court system, either in the Lower Court or High Court, depending on the claim amount. As Mr. Mohd. Faizal explained:

“Claims below RM 300,000 are handled in the Lower Court, while larger claims are processed in the High Court.”⁴²

³⁶ Interview with Amiruddin, Judge of the Pinrang Religious Court, on July 17, 2024, at the Pinrang Religious Court Office.

³⁷ Interview with Abd. Jamil Salam, Ketua Pengadilan Agama Enrekang, July 08, 2024 in Enrekang Religious Court Office.

³⁸ Interview with Heru Fachrurizal, Judge of the Sidrap Religious Court, on July 17, 2024, at the Sidenreng Rappang Religious Court Office.

³⁹ Interview with A. Ar, a civil servant in Parepare City, in Parepare on August 1, 2024.

⁴⁰ Interview with Mrs. WS, a housewife, in Galung Maloang, Parepare on August 3, 2024.

⁴¹ Interview with Mr AH, Entrepreneur, interview in Galung Maloang, Parepare on August 3 2024.

⁴² Interview with Mohd. Faizal, Chief Registrar Officer at the Hulu Langat Lower Syariah Court Bandar Baru Bangi, Selangor Malaysia on March 8 2024.

The payment of post-divorce maintenance in Malaysia is flexible. Husbands may pay through installments, bank transfers, or salary deductions. Mr. Ismail stated: “Payments can be made directly or through salary deductions, particularly for military personnel.”⁴³

Mediation plays a key role in determining fair maintenance amounts. Mediators facilitate negotiations between ex-spouses before the case proceeds to court. Mr. Mohd. Faizal added:

“Mediation outcomes are submitted to the judge if agreed upon; otherwise, the judge makes the final decision.”⁴⁴

If a husband defaults on payments, the Family Support Agency (BSK) steps in to cover the maintenance, with the husband owing the amount to the agency. Mr. TN Mohd. Zamri bin Abdul Asis explained:

“BSK files the case in court and may impose travel restrictions on the husband until obligations are fulfilled.”⁴⁵

Malaysia’s Syariah Court system ensures women’s rights through clear regulations and institutional support. Prof. Zaeni emphasized:

“The Syariah Court ensures compliance, with BSK intervening if the husband defaults.”⁴⁶

In conclusion, the fulfillment of post-divorce women’s rights in Malaysia is governed by the Islamic Family Law Enactment No. 17 of 2003, with claims processed in either the Lower or High Court. Flexible payment options and mediation expedite the process. If the husband defaults, BSK ensures the wife receives her rights while holding the husband accountable. This comprehensive system guarantees fairness and legal protection for women post-divorce.

A *Maslahah* Analysis of Women’s Post-Divorce Rights in Indonesia and Malaysia

One of the primary focuses of Islamic law is to promote the welfare of humanity, especially in safeguarding women's rights after divorce.⁴⁷ Two critical forms of financial support in this context are *nafkah iddah* and *mut’ah*, which aim to ensure the well-being of women post-divorce. Based on the theory of *maslahah*

⁴³ Interview with Ismail SH, Lawyer at the Hulu Langat Lower Syariah Court Bandar Baru Bangi, Selangor Malaysia on March 8 2024.

⁴⁴ Interview with Mohd. Faizal, Chief Registrar Officer at the Hulu Langat Lower Syariah Court Bandar Baru Bangi, Selangor Malaysia on March 8 2024.

⁴⁵ Interview with TN Mohd. Zamri bin Abdul Asis, Sharia Officer at BSK, Sharia Court of the Federal Territory of Malaysia on 06 March 2024.

⁴⁶ Interview with Prof. Zaeni, Lecturer at the Faculty of Islamic Studies, Universitas Kebangsaan Malaysia (UKM), On March 11 2024 at the Faculty of Islamic Studies, Universitas Kebangsaan Malaysia.

⁴⁷ Cyra Akila Choudhury, “Between Tradition and Progress: A Comparative Perspective on Polygamy in the United States and India,” *University of Colorado Law Review Volume* 83, no. 4 (2020), p. 76–85.

(public benefit),⁴⁸ we can assess how these forms of support are fulfilled in Indonesia and Malaysia, taking into account the legal framework, welfare outcomes, and challenges faced by women after divorce. Below is an analysis of the fulfillment of women's post-divorce rights in Indonesia and Malaysia using the *maslahah* framework.⁴⁹

The provision of *nafkah iddah* and *mut'ah* in Indonesia and Malaysia falls under the category of *maslahah al-mu'tabarah*,⁵⁰ as both are mandated by sacred texts (*nash*) and acknowledged by state laws. These supports prioritize women's interests post-divorce in accordance with religious injunctions that obligate husbands to provide for their former wives during the *iddah* period and as a form of compensation through *mut'ah*.⁵¹

Nafkah iddah refers to financial maintenance provided by a man to his ex-wife during the waiting period (*iddah*). While Islamic texts do not specify a fixed amount, it is generally equated with the maintenance provided during the marriage. The Qur'an (Surah Al-Talaq, 65:7) advises that the maintenance should align with the husband's financial capacity. The primary purpose of *nafkah iddah* is to ensure financial support for women during the waiting period, as they are prohibited from remarrying during this time.⁵²

On the other hand, *mut'ah* is derived from the term "pleasure" and, in Islamic jurisprudence, refers to a gift from the husband to his ex-wife as a form of solace or compensation for the divorce. This gift may include money, goods, clothing, or jewelry, depending on the husband's means. The Qur'an (Surah Al-Baqarah, 2:241) states that "divorced women shall have *mut'ah* in a fair manner."

In Indonesia, these rights are regulated under the Compilation of Islamic Law (KHI) and the Marriage Law No. 1 of 1974,⁵³ which emphasize the husband's obligation to provide *nafkah iddah* and *mut'ah*. Similarly, Malaysia's Islamic Family Law Enactments uphold these provisions, aligning with Sharia principles to safeguard women's welfare post-divorce in both countries. Despite the absence of Sharia prohibitions against women's post-divorce rights, practical challenges in

⁴⁸ Noercholis Rafid. A, Muhammad Fajri, and Khairun Nizam Mohd. Noor, "Maslahah Evaluation of Judges' Sentences for Domestic Violence Crimes at the Majene District Court," *Mazahibuna: Jurnal Perbandingan Mazhab* 5, no. 1 (2023), p. 51–68.

⁴⁹ Sudirman et al., "Maslahah Perspective Towards Uang Panaik (Bride Price) in Bugis Makassar Community," *Jurnal Ilmiah Al-Syir'ah* 17, no. 2 (2019), p. 150–63.

⁵⁰ Abu Ishaq Al-Syatibi, "Al-Muwafaqat Fi Ushul Al-Syari'ah," *Vol. II (Beirut: Dar Al Kutub Al Ilmiyah, Ti)*, 2003.

⁵¹ Abidin Nurdin, "Mut'ah and Iddah Post-Divorce Payment Practices in Aceh," in *Leiden Studies in Islam and Society*, vol. 8, 2019.

⁵² Agama Kementerian, *Al-Quran Dan Terjemahnya* (Jakarta Timur: Lajnah Pentashihan Mushaf Al-Qur'an, 2019).

⁵³ Muhammad Aprizal Arsyita et al., "Smuggling of the Law in Different Religious Marriage As a Legal Action in the State of Pancasila," *SMART: Journal of Sharia, Traditon, and Modernity* 1, no. 1 (2021). p. 16.

implementation persist, particularly in Indonesia.⁵⁴ Issues such as complex legal procedures and non-compliance by ex-husbands often hinder women from accessing their rights. In Indonesia, courts frequently become the sole recourse for women seeking maintenance, which can be costly and time-consuming. In contrast, Malaysia benefits from institutions like the Family Support Agency (*Badan Sokongan Keluarga*, BSK), which facilitate easier access to *nafkah iddah* and *mut'ah*, thereby minimizing obstacles for women.⁵⁵

The role of Malaysia's Family Support Agency (BSK) exemplifies *masalah al-mursalah*, as no explicit religious text mandates the establishment of such an institution. However, its existence aligns with the Sharia objective of promoting welfare. The BSK ensures that women's post-divorce rights are protected, especially in cases where ex-husbands are unable or unwilling to pay. In Indonesia, the absence of a similar institution leaves women dependent on court rulings, which are often slow and expensive.

The theory of *masalah* underscores that Islamic law aims to create public benefit and avoid harm. Al-Ghazali outlines the primary objectives of Sharia (*maqasid al-shariah*),⁵⁶ which include safeguarding religion (*hifz al-din*), life (*hifz al-nafs*), lineage (*hifz al-nasl*), intellect (*hifz al-aql*), and wealth (*hifz al-mal*). Similarly, Imam al-Shatibi emphasizes that Sharia seeks to promote welfare and prevent harm (*jalb al-masalih wa dar' al-mafasid*). These objectives are classified into three levels: primary (*daruriyyah*), secondary (*hajiyyah*), and tertiary (*tahsiniyyah*).

In both countries, *nafkah iddah* and *mut'ah* are classified as *masalah dharuriyyah*, addressing women's basic needs for survival after divorce. Malaysia prioritizes these needs with structured mechanisms such as direct salary deductions, demonstrating its commitment to ensuring women's welfare. In Indonesia, although laws mandate these provisions, women often struggle to access their rights due to implementation challenges. Malaysia's flexible approaches, including mediation and direct payment systems, offer additional comfort by expediting the fulfillment of women's rights and reducing psychological distress. In Indonesia, the lack of such mechanisms results in prolonged legal processes, adding to the burden on divorced women. Malaysia's institutions like the BSK provide holistic welfare benefits, including psychological and social support, ensuring that women's post-divorce rights extend

⁵⁴ Muhammad Nurohim, Yusuf Hanafi Pasaribu, and Asmaiyani Asmaiyani, "The Relationship between a Wife's Satisfaction in the Iddah Period with Marriage and Divorce," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 2 (2021), p. 208–18.

⁵⁵ 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).

⁵⁶ Muhammad bin Muhammad Al-Ghazali, *Al-Mustashfa Min 'ilm Al-Ushul* (Kairo: Syirkah ath-Thiba'ah al-Fanniyyah al-Muttahidah, 1999).

beyond financial maintenance. This aligns with *maslahah tahsiniyyah*, enhancing women's overall quality of life after divorce.⁵⁷

The *maslahah al-khamsah* theory highlights the importance of safeguarding life (*hifz al-nafs*) and wealth (*hifz al-mal*).⁵⁸ The provision of *nafkah iddah* and *mut'ah* in Indonesia and Malaysia protects women's assets and prevents them from falling into poverty post-divorce. Malaysia's stronger institutional framework ensures better protection, while women in Indonesia face greater vulnerabilities due to procedural challenges.

Based on the *maslahah* framework, Malaysia's legal system is more effective in achieving women's welfare post-divorce compared to Indonesia. The presence of support institutions like the BSK in Malaysia enables faster and more efficient access to rights, in line with *maslahah dharuriyyah* and *hajiyyah*. In contrast, procedural barriers in Indonesia hinder the fulfillment of these rights. To improve, Indonesia should adopt elements from Malaysia's system to better protect women's post-divorce rights, thereby aligning with Sharia objectives to maximize welfare and justice.

Conclusion

This research highlights the contrasting challenges and successes in implementing women's post-divorce rights in Indonesia and Malaysia. In Indonesia, women face significant hurdles such as complex legal procedures and high execution costs, which hinder their access to iddah support, mut'ah, and *madhiyah* maintenance. In contrast, Malaysia offers a more structured legal system, supported by institutions like the Family Support Agency (BSK), enabling women to secure these rights more efficiently, particularly when ex-husbands fail to fulfill their obligations. These findings underscore the importance of systemic and institutional support in ensuring the realization of women's rights post-divorce. The study's primary strength lies in its comparative approach, providing a detailed legal analysis of Indonesia and Malaysia through the lens of *maslahah*. This perspective emphasizes how the legal frameworks in both countries aim to uphold justice and welfare for women after divorce, particularly in implementing iddah support and mut'ah. The research successfully demonstrates the pivotal role of institutional support in Malaysia, such as BSK, which significantly enhances the protection of women's post-divorce rights, creating a more equitable and sustainable system. Despite its contributions, the research has limitations. It primarily focuses on legal frameworks, offering limited exploration of the subjective experiences of women navigating divorce. Additionally, as a comparative study, cultural and social

⁵⁷ 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.

⁵⁸ Muhaimin, "The Interrelation between Islamic Law and Regional Regulations in Jember (Examining the Maqāṣid Al-Sharī'at-Based Reasoning in Istinbāt Al-Ahkām)," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020), p. 299–330.

differences between Indonesia and Malaysia, which may influence the outcomes of legal implementation, are not comprehensively addressed. Future research should incorporate sociological perspectives to provide a more holistic understanding of how post-divorce rights are realized in both countries, bridging the gap between legal provisions and lived experiences.

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Interviews

- Interview with Abd. Jamil Salam, Ketua Pengadilan Agama Enrekang, July 08, 2024 in Enrekang Religious Court Office.
- Interview with Heru Fachrurizal, Judge of the Sidrap Religious Court, on July 17, 2024, at the Sidenreng Rappang Religious Court Office.
- Interview with Jumardin, Judge of the Barru Religious Court, on July 1, 2024, at the Barru Religious Court Office.
- Interview with Amiruddin, Judge of the Pinrang Religious Court, on July 17, 2024,

- at the Pinrang Religious Court Office.
- Interview with Heru Fachrurizal, Judge of the Sidrap Religious Court, on July 17, 2024, at the Sidenreng Rappang Religious Court Office.
- Interview with A. Ar, a civil servant in Parepare City, in Parepare on August 1, 2024.
- Interview with Mrs. WS, a housewife, in Galung Maloang, Parepare on August 3, 2024.
- Interview with Anti. "Age 38, Address Lanyer, Housewife on November 5, 2023," n.d.
- Interview with Mr AH, Entrepreneur, interview in Galung Maloang, Parepare on August 3 2024.
- Interview with Mrs AI, Housewife, in Parepare on August 1 2024.
- Interview with Mohd. Faizal, Chief Registrar Officer at the Hulu Langat Lower Syariah Court Bandar Baru Bangi, Selangor Malaysia on March 8, 2024.
- Interview with Ismail SH, Lawyer at the Hulu Langat Lower Syariah Court Bandar Baru Bangi, Selangor Malaysia on March 8, 2024.
- Interview with TN Mohd. Zamri bin Abdul Asis, Sharia Officer at BSK, Sharia Court of the Federal Territory of Malaysia on, 06 March 2024.
- Interview with Prof. Zaeni, Lecturer at the Faculty of Islamic Studies, Universitas Kebangsaan Malaysia (UKM), On March 11 2024 at the Faculty of Islamic Studies, Universitas Kebangsaan Malaysia.