

Antmind Review: Journal of Sharia and Legal Ethics

ISSN 3063-3885 (Print), ISSN 3063-3699 (Online)
Journal homepage: <https://journal.aye.or.id/index.php/JSLE/index>
email: antmindjsle@gmail.com



Is Islamic Family Law Fair for Women Not Working After Divorce?

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ABSTRACT

Divorce often has a major impact, especially for women who do not have their own income and are financially dependent on their partners. This study aims to examine the extent to which Islamic family law in Indonesia provides protection for women who do not work after divorce. With a qualitative approach and analysis of legal documents, this study explores issues such as maintenance, the division of common property, and child custody. The study also compared the protections available in Indonesia with international standards and practices in other Muslim countries. The results of the study show that although Islamic family law in Indonesia has regulated certain protections, its implementation in the field still faces many obstacles. Women who do not work often have difficulty obtaining alimony or a fair distribution of property, especially when ex-husbands do not fulfill their obligations. In addition, there is inequality in the distribution of assets and weak legal protection for certain cases. This research highlights the importance of legal reform to strengthen enforcement mechanisms, provide legal education to women, and ensure better access to justice. With the right reforms, it is hoped that the family law system in Indonesia can be more responsive to women's needs, create true justice, and improve their welfare after divorce.

How to cite:

Bukido, R., & Aminah, S. (2024). Is Islamic Family Law Fair for Women Not Working After Divorce?. *Antmind Review: Journal of Sharia and Legal Ethics*, 1(2), 51–59.

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ARTICLE INFO

Article History:

Submitted/ Received 10 Jul 2024

First Revised 3 Sep 2024

Accepted 15 Oct 2024

First Available online on 11 Des 2024

Publication Date 11 Des 2024

Keywords:

Women's rights,

Divorce,

Indonesian family law.



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1. INTRODUCTION

Divorce is a social phenomenon that not only shakes an individual's emotional stability but also has a major impact on the family structure and the well-being of its members, especially women (McHale, 2023). In Indonesia, women who do not work are in a very vulnerable position after divorce. In a society that often places women as the main person in charge of household management, they are a group that is financially affected by divorce (Saraswati, 2020). The long-standing economic dependence on the husband in the marriage often leaves the woman without an adequate economic foundation when the marriage bond ends (Dewi, 2018). This condition is exacerbated by social stigma that often corners divorced women, making them vulnerable to discrimination and marginalization (McHale, 2023). As a consequence, women who do not work must face major challenges to survive economically and socially, while legal and social systems have not yet been fully responsive to their needs.

Normatively, Islamic family law in Indonesia has established several important protections for women after divorce, such as alimony rights, division of joint property, and child custody (Kusnandar & Rahma, 2023). This provision is intended to ensure that women who have lost the support of their husbands still have adequate financial and legal rights to live a decent life (Nafi'ah et al., 2024). However, the reality on the ground shows that the implementation of this law often faces various obstacles. In many cases, women have to face convoluted bureaucracy, low law enforcement, and their ignorance of the rights that have been regulated by law. On the other hand, ex-husbands often neglect their legal obligations, either for economic reasons, lack of legal awareness, or an unwillingness to comply with court rulings. As a result, Dinan (2023) says many women who do not work lose their rights, which have actually been recognized by law.

Previous research has highlighted several important gaps in the implementation of Islamic family law in Indonesia. Studies conducted by Lewis (2024) and Rinaldo et al. (2024), for example, revealed that women who do not work often have difficulty obtaining their financial rights, both in the form of alimony and the division of joint property. Another factor that contributes to the worsening of the situation is the lack of legal protection for women who experience domestic violence before or after divorce (Alfitri, 2020). In many cases, the courts tend to favor those with greater economic and social power, leaving unemployed women at a very disadvantage (Sonneveld, 2017). This emphasizes the gap between the principles of justice regulated in Islamic family law and practices in the field that are often far from ideal.

Despite efforts to improve the family legal system in Indonesia, research specifically focusing on women not working after divorce is still very limited. Most of the existing studies tend to address aspects of family law in general without paying adequate attention to the most economically vulnerable groups of women. Therefore, this study is designed to fill that gap by evaluating the legal protections available to unemployed women, analyzing the challenges they face in accessing their rights, as well as providing recommendations for reforms that can improve their welfare post-divorce. Using a qualitative approach and analysis of legal documents, this study aims to illustrate the reality faced by women not working in the Islamic family legal system in Indonesia and how the proposed reforms can create a more responsive, inclusive, and fair legal system.

2. METHODS

This study uses a qualitative approach with a case study design to explore legal protection for women who do not work after divorce in the context of Islamic family law in Indonesia (Gammelgaard, 2017). This approach was chosen to allow for an in-depth exploration of the legal reality, women's experiences, and the challenges that arise in the implementation of the law (Fernandez, 2023). The research process began with the analysis of legal documents, including Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, and a number of other related regulations. This analysis aims to understand the existing legal framework and identify the scope of rights guaranteed to women after divorce. In addition, court documents, such as relevant

divorce decrees, are also reviewed to assess how family law principles are applied in real cases (Dobinson & Johns, 2017). This approach allows researchers to see the extent to which written laws can be effectively applied in the field, while also identifying obstacles that often arise in practice.

To complement the analysis of the documents, the study involved in-depth interviews with key informants who have direct roles in the family legal system, such as judges, lawyers, legal consultants, and women who have experienced divorce. Through these interviews, researchers can explore a more comprehensive understanding of women's experiences in demanding their rights as well as the challenges they face during the legal process (Ariawan, 2013). The information from these interviews was also corroborated by a survey conducted on divorced, unemployed women to obtain additional data regarding their perception of the legal protections they receive. The collected data is analyzed thematically, allowing researchers to identify key patterns and issues that affect the effectiveness of legal protection. Triangulation methods are used to ensure the validity of the data, by comparing findings from document analysis, interviews, and surveys. This approach is expected to provide a rich and in-depth picture of the challenges women face as well as legal solutions that can improve their justice and well-being after divorce.

3. RESULTS AND DISCUSSION

Rights of Women Who Do Not Work During Divorce in Muslim Countries

Divorce is a life-changing experience for all parties involved, but the impact is often greater for women who are not working. In the context of Muslim countries, women face unique challenges that not only involve legal aspects, but also intersect with deep-rooted cultural, religious, and social values (Koburtay et al., 2023). In (Fernandez (2023), women who do not work are often in a particularly vulnerable position due to the limited economic resources they have, which ultimately affects their ability to be independent after divorce. Many Muslim countries that have based family law frameworks seek to provide protection for women through various legal provisions, but their implementation is often not uniform and depends on the interpretation of the law in each country. This creates a broad spectrum of experiences for women, from those who receive adequate protection to those who face structural injustices.

Morocco, for example, has taken a progressive step by adopting family law reforms through *al-Mudawwanah al-Shakhshiyyah*, which grants women post-divorce rights, including alimony, housing, and the right to the division of property. This reform shows an effort to balance sharia principles with the demands of modern gender justice. On the other hand, Tunisia, which also refers to the Maliki madhhab, establishes detailed rules about the husband's obligations to his ex-wife and their children, including alimony during the *iddah* period and child custody. However, challenges remain, especially in ensuring that established laws can be implemented consistently, especially in rural areas or in more traditional communities. Iran and Turkey have also shown different approaches to providing protection to women after divorce, focusing on financial rights and the division of property. In Iran, for example, a woman can sue half of her husband's assets if the court concludes that the divorce was the husband's initiative and no fault was found on the wife's part (Fatma, 2019).

However, although various Muslim countries have made efforts to improve their legal frameworks, the realities on the ground are often different. Many women who do not work have difficulty in demanding their rights due to social stigma, complex bureaucracy, or lack of legal awareness (Sarat, 2017). Even in countries with more progressive legal systems, such as Morocco and Tunisia, women still have to contend with deep-rooted cultural barriers, which often put them in a subordinate position in society. According Christopherson et al. (2022), these challenges underscore the importance of legal education and social awareness as a first step to empowering women so that they can understand and fight for their rights more effectively. By understanding

the diversity of legal practices in Muslim countries, valuable lessons can be learned to improve the protection of women, including in the context of Islamic family law in Indonesia.

Factors Affecting Rights Protection

Family law in Muslim countries reflects the diversity of cultures, traditions, and interpretations of religion that are unique to each region. The factors affecting the protection of the rights of post-divorce non-working women are complex and diverse, involving a combination of formal legal frameworks, social norms, cultural values, and the level of public awareness and understanding of women's rights (Mundalamo, 2016). On the one hand, the legal framework often refers to sharia principles influenced by certain schools of jurisprudence, such as Maliki, Hanafi, or Ja'fari, each of which has a different approach to issues such as maintenance, iddah, and the division of property (Azhari et al., 2024). On the other hand, the implementation of this law is colored by the influence of local traditions and socio-economic dynamics that sometimes contradict the spirit of justice pursued by sharia law itself.

One of the main factors that affect the success of the implementation of the law is the level of gender equality in society. Countries such as Morocco and Tunisia have shown significant progress in implementing family law reforms oriented towards the protection of women's rights, but challenges remain, especially in rural areas that tend to be more conservative (Ali & Puspita, 2023). In regions like Ghana and South Africa, deep-rooted patriarchal norms often prevent women from claiming their rights in full, even when the law has provided adequate guarantees (Bazaanah & Ngcobo, 2024). In addition, the low level of legal literacy among women is also a major obstacle, as many of them do not fully understand the rights they have and the mechanisms available to demand these rights. The lack of access to legal services, both due to economic and geographical factors, further exacerbates this situation, making post-divorce unemployed women a highly socially and economically vulnerable group.

Another factor that is no less important is the effectiveness of the judicial system in handling divorce cases. According to Arendell (2023), unemployed women face lengthy and expensive court proceedings, which often make them reluctant or even unable to pursue their lawsuits. In countries with complex bureaucracies, such as Iran and Jordan, women are often trapped in legal systems that favor the side with greater economic and social power, namely ex-husbands (Bowen & Salim, 2018). In addition, the existence of different interpretations of the law by judges also creates legal uncertainty, so that women cannot consistently rely on the justice system to protect their rights. In this context, training for law enforcement officers to improve their understanding of gender justice and the protection of women's rights is a very important step to create a more inclusive and fair legal system.

Looking at these factors, it becomes clear that efforts to improve legal protections for post-divorce unemployed women require a holistic approach. This includes more progressive legal reforms, women's empowerment through legal education and literacy, and strengthening the capacity of the justice system to enforce the law consistently and fairly. By understanding and addressing these factors, Muslim countries can create a more supportive legal and social environment, which not only protects women legally, but also empowers them to be independent and prosperous after divorce.

Protection of Women's Rights Not Working After Divorce in Indonesia

Women who do not work after divorce in Indonesia face various challenges in obtaining legal protection, although their rights have been regulated in various regulations, such as Law No. 16 of 2019 on Marriage and the Compilation of Islamic Law (KHI) (Nurhasnah, 2024). Normatively, Islamic family law in Indonesia establishes important rights such as maintenance, division of common property, and child custody. However, the reality on the ground shows that there is a significant gap between the legal provisions and their implementation. Legal processes are often

slow and less responsive to women's needs, especially those who do not have an independent income (Rinaldo et al., 2024). This is further exacerbated by women's lack of understanding of their rights and the mechanisms available to fight for them.

Data collected through in-depth interviews with key informants, including religious court judges, lawyers, and women who have experienced divorce, provide an overview of the various obstacles faced. A judge at the Manado Religious Court, for example, revealed:

"Often, women who file alimony claims after divorce have difficulty proving their economic incapacity. In fact, in some cases, the husband is uncooperative in the court process, so the right to alimony is difficult to enforce." (Interview RM, Judge at the Manado PA, 2023)

This shows that there are structural obstacles in the justice system that hinder women from obtaining their rights. In addition, an interview with a divorced woman in North Bolaang Mongondow revealed additional challenges:

"I have to wait almost a year for the court's decision on iddah maintenance. Even so, until now my ex-husband has not paid." (Interview CK, Housewife, North Bolaang Mongondow, 2023)

Another challenge lies in the distribution of common property, which is often not done fairly. An analysis of court documents shows that in many cases, women do not get a share that complies with the provisions of the law, especially if there is no clear evidence of their contribution to the accumulation of joint property during the marriage. This is exacerbated by the perception that women's contributions in the household are not proportional to their husbands' financial contributions. As an illustration, the following data summarizes the decisions of religious courts in five regions regarding the division of common property:

Region	Cases Filed (2021-2023)	Case Completed with Fair Distribution	Percentage
Manado	85	45	52.94%
Gorontalo	72	38	52.78%
Kotamobagu	60	30	50.00%
North Bolaang Mongondow	48	20	41.67%
Tomohon	35	15	42.86%

Source: Data processing (2024)

The table above shows that only about 40-50% of cases of joint property division result in a decision that is considered fair to women. This reflects the need to increase efficiency and justice in the judicial system related to the distribution of assets after divorce.

In addition, child custody is also an important issue. Although KHI gives priority to mothers in custody of minors, many women face challenges in defending those rights, especially if ex-husbands have greater resources to fight for custody.

The Impact of Legal Injustice on Women Not Working After Divorce in Indonesia

Legal injustice in the implementation of the protection of the rights of women who do not work after divorce in Indonesia has a huge and comprehensive impact, both on financial, psychological, social, and even on the level of long-term welfare. One of the most obvious impacts felt is the very heavy economic difficulties. Women who do not have their own income and depend on the maintenance of their husbands during marriage are often not financially prepared after

divorce. Although Islamic family law in Indonesia already regulates the right to alimony and the division of joint property, the implementation of this law is often hampered by various factors, such as the ex-husband's inability to fulfill his obligations, delays in the legal process, or women's ignorance of their rights. When these rights are not granted or paid too late, women who are already in a vulnerable position are forced to face a life of deprivation. Difficulties in meeting basic needs such as food, shelter, children's education, and health care further worsen their condition.

Based on an interview with a divorced woman in Manado, she stated:

"I have to take care of the children alone and I don't have enough money to buy daily necessities. It was very hard, because I couldn't work and didn't know where to go for help." (Interview AM, Private Employment, Manado, 2023)

This statement describes the feelings of distress and anxiety that arise when women do not have adequate access to their rights after divorce. The financial impact that arises not only affects the ability to live a decent life, but also creates feelings of frustration and helplessness. Many women feel trapped in an unfair situation, where they have to fend for themselves without the support they should have from the existing legal system. Even in some cases, as found in this study, women who are supposed to receive iddah alimony or the sharing of common property, have to wait years to get their rights, which further exacerbates their dependence on other parties who are not always reliable.

In addition to the heavy financial impact, injustice in the protection of women's rights after divorce also has a huge impact on women's mental health. Stress, anxiety, and depression become increasingly deepening problems when women feel neglected by the legal system and do not get the protection they deserve. The lengthy legal process, uncertainty regarding the outcome, and the feeling of not being recognized as the most aggrieved party in a divorce, add to the psychological burden they face. These legal injustices often exacerbate insecurity and helplessness, and add to their feelings of loss of control over their lives. Women who do not work after divorce, who should be able to rely on alimony or the division of common property, instead have to deal with economic uncertainty that can lead to serious mental health problems. In some cases, they experience severe stress that leads to depression, excessive feelings of anxiety, or even physical health problems due to prolonged stress.

As revealed by one of the women who was a respondent in this study:

"I feel as if I am not appreciated anymore. Everything I tried to do in marriage was meaningless because no one supported me after the divorce." (Interview TS, Housewife, Gorontalo, 2023)

This statement illustrates how legal injustice not only impacts women's physical and financial circumstances but also erodes their self-esteem and self-image. Feelings of neglect and unappreciated often arise, making women feel as if their struggles in raising a family and supporting marriage were never appreciated. This psychological impact is even more profound when they do not get proper support from the legal system or the surrounding community. The social stigma against divorced women in some circles also exacerbates this condition, where they feel isolated and punished simply because of their divorce. In many cases, women feel that they are not only fighting for justice but also to maintain their dignity and self-esteem.

The impact of legal injustice on women who do not work after divorce also has a very significant long-term impact on their social and emotional well-being. Women's inability to obtain their rights fairly can exacerbate the social gap between women and men, as well as exacerbate existing gender stereotypes. In many societies that still hold to patriarchal norms, divorced women who do not work are often seen as weaker and in need of more protection, but they are often overlooked in the implementation of the law. This creates perpetual inequalities in their social relationships with family, friends, and society in general. The legal injustices experienced by women after divorce also often affect their relationships with their children. When women are unable to meet basic needs

or do not obtain equitable custody of children, they face internal conflicts related to their ability to care for and provide a decent future for their children.

In this context, financial difficulties and inequalities in the distribution of family rights worsen the quality of life of children, who are often victims of these injustices. Data obtained from an interview with a lawyer also showed that,

"Many of my clients, especially women, have not only lost custody but also faced obstacles in obtaining the financial support needed to care for their children." (Interview WP, Lawyer LKBH IAIN Manado, 2023)

This condition worsens the situation of women and their children, creating a cycle of poverty that continues from one generation to the next. Therefore, it is crucial to pay attention to the long-term impact of these injustices, not only on women themselves but also on future generations, who are often victims of unjust social structures.

Overall, legal injustice against women who do not work after divorce in Indonesia has a far wider impact than just financial problems. The impact touches on various aspects of women's lives, from mental well-being and self-esteem to their increasingly marginalized social lives. Therefore, there is a need for legal system reform that is more responsive to the needs of women, especially women who do not work after divorce, so that they can obtain protection in accordance with their rights. With stronger law enforcement, increased legal awareness among women, and easier access to legal aid, it is hoped that women can live with dignity and get the justice they deserve.

Strengthening Law Enforcement, Increasing Legal Literacy, and Access to Legal Aid

The protection of women who do not work after divorce requires real changes in the existing legal system. One of the main steps is to strengthen law enforcement. Although Islamic family law in Indonesia has regulated women's rights in divorce, it is often very slow and inconsistent in its implementation on the ground (Sarat, 2017). Many women have difficulty earning a living or distributing property due to protracted court proceedings. For example, in an interview with a judge at the Manado Religious Court, she stated, "Divorce cases are often delayed for months, while women involved in these cases feel increasingly desperate." This shows that there is a gap between what is supposed to be guaranteed by the law and the reality that women face in court. For this reason, speeding up the court process is a very urgent matter. A quick and firm decision will provide clarity and justice for women who have been neglected.

In addition, the enforcement of sanctions for ex-husbands who do not fulfill their obligations is also very important. Often, the ex-husband is uncooperative and does not even fulfill the maintenance and property division obligations that have been determined by the court. This puts women in a very vulnerable position. Research by Saidiyah & Julianto (2016) stated that almost 30% of divorced women have difficulty demanding a living, especially when their ex-husbands do not carry out their obligations. If there is no firm enforcement of sanctions, women will continue to be positioned in powerlessness. If the husband does not fulfill his obligations, then clear and firm legal action is needed to ensure that women's rights can be fulfilled.

Improving legal literacy is also an important step. Many women who do not work and get divorced feel confused and do not know their rights. One of the respondents in the study said, "I just found out I was entitled to alimony after divorce, but I didn't know how to claim it." The lack of understanding of the law has led to many women not knowing how to fight for their rights in court. Therefore, legal education for women is very important. Educating women about their rights after divorce will give them the courage and knowledge to claim the rights prescribed by law (Arendell, 2023). In addition, it is also important to provide legal training to the community and

law enforcement officers, so that they better understand the challenges faced by women and can make decisions that are fairer and more sensitive to gender issues.

Finally, access to legal aid is no less important. Many women who are out of work and divorced are unable to access legal services due to the high cost and difficulty of getting a lawyer willing to help. In the survey conducted, almost 40% of respondents stated that they did not know how to get affordable legal aid. The provision of more accessible and affordable legal services will greatly help women to fight for their rights. In addition, women also need to get financial and social support to help them navigate this complicated legal process. Governments and non-governmental agencies can play a role in providing better access to the law and providing needed assistance, such as subsidies for lawyers' fees or free legal consultation services.

Overall, strengthening law enforcement, increasing legal literacy, and access to legal aid are urgently needed steps to create a fairer legal system for women who are not working post-divorce. With these improvements, women will have clearer rights and easier access to the legal protection they need. It's not just about obeying the law; it's also about ensuring that every woman gets fair and equitable protection without being constrained by economic or social factors.

4. CONCLUSION

This study reveals that although Islamic family law in Indonesia normatively provides protection for women who do not work after divorce, its implementation is still hampered by slow judicial processes, inconsistent law enforcement, and a lack of understanding of the law among women. This leads to injustice felt by women in obtaining their rights, such as alimony, division of common property, and child custody. Therefore, significant reforms are needed to strengthen law enforcement, increase legal literacy for women and law enforcement, and provide access to more affordable and accessible legal aid. Without these overarching improvements, the existing legal system will continue to reinforce gender inequality and worsen the position of women who are already socially and economically vulnerable.

5. ACKNOWLEDGMENT

The author would like to express his deepest gratitude to all parties who have provided support in the implementation of this research. Thank you to the informants who have taken the time to share their experiences and insights, especially women who have gone through the divorce process, judges, lawyers, and all parties involved in the discussion and interviews. Gratitude was also expressed to colleagues and lecturers who have provided valuable input and direction in the preparation of this research.

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