International Journal of Education, Vocational and Social Science
https://e-journal.citakonsulindo.or.id/index.php/IJEVSS
E-ISSN : 2963 4954
IJEVSS

Analysis of Islamic Family Law Texts on Women's Rights After Divorce in Context Positive Indonesia

Muktamar[1]
[1]State Islamic University of Mataram

Email: muktamarsyihab@gmail.com

Abstract

Divorce rate in Indonesia continues to rise increasing , dominated by divorce lawsuits (divorces initiated by wife). Although texts normative ensure rights women , its implementation often face obstacle formalistic and weaknesses implementation . Study in i aim For analyze construction texts law Islamic families in Indonesia regarding rights Woman post divorce and transformation law through policy Supreme Court . Research This use method juridical-normative qualitative with approach statute and conceptual based on study library . This study find that although Compilation of Islamic Law (KHI) initially limit right livelihood (iddah and mut'ah) on Divorce Talak , Circular Letter Supreme Court (SEMA) No. 3 of 2018 has change paradigm this , allows wife in case Divorce Lawsuit For demand rights the except proven nusyuz . However , the challenge main stay lack of strength strong execution in civil procedure law For uphold payment said . Protection law for Woman has experience significant progress , however need strengthening formal law through system implementation integrated For beyond " justice" illusion ".

Keywords: Women's Rights , Post- Divorce , Islamic Law, SEMA No. 3/2018, Indonesia.

INTRODUCTION

Phenomenon divorce in Indonesia shows continuing trend increase in a way significant every year . Data from the Central Statistics Agency (BPS) and the Supreme Court annual show that number Divorce lawsuit (divorce that is expelled) wife) dominates in a way consistent compared to Divorce by Divorce. (Khairuddin, 2024) Reality This reveal A paradox ; In one side , woman the more own awareness law For go out from connection toxic marriage or No healthy , but on the other hand , the position Woman post divorce often at the point vulnerability extreme

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

economic and social conditions . Many women who after divorce No only loss of marital status , but also loss access to support financially , even though text Islamic law and law positive Indonesia has ensure rights (Wibowo , 2023)

Problem main in study This lies in dualism between legal norms and practice law . In textual , Compilation of Islamic Law (KHI) and Marriage Law has arrange rights like living *iddah* , *mut'ah* , until treasure distribution together . (Ali et al., 2022) However , in in practice , providing rights the often hit by procedures formalistic . For example , the assumption that the wife who sued divorced considered *nusyuz* so that lost right financially , as well as weakness mechanism execution to ex-husband who doesn't comply with the execution court . (Arkan et al., 2025)

Study previously Lots focus on procedures divorce in a way general or outlook jurisprudence classic to right wife . The location of *the* novelty of the research This is in the analysis integrative between text Islamic law in the KHI with instrument law progressive the latest in Indonesia, such as SEMA No. 3 of 2018 and PERMA No. 3 of 2017. (Asmuni , 2016) Study This fill in gap with examine How policy latest The Supreme Court is trying break in stiffness the text of the KHI which has been This tend harm Woman in case divorced sue

Study This own extreme urgency remember position Woman often in a vulnerable position in a way economic and social after break up bond marriage . Without existence comprehensive understanding to transformation text law positive , decision risky only become formality failed law covers substance justice . Urgency other lies in the need harmonization between protection right basic Woman with mechanism execution law in Indonesia; because , neglect to rights post divorce like living *iddah* and *mut'ah* No only form injustice individuals , but also triggers emergence problem social new , namely impoverishment women and exile children . (Kurnia, 2023) Therefore that , study This become crucial as foothold theoretical in strengthen protection law for women so as not to trapped in poverty structural consequence weakness implementation text law .

In line with problems that have been described , research This aim For dissect in a way deep construction text law Islamic families in frame law positive Indonesia to map to what extent is protection to rights Woman has accommodated . More further research This intend to analyze change paradigm law of a nature rigid and textual going to implementation more laws progressive and gender responsive through policies latest Supreme Court . In the end , study This intended For compile agreement top strategic solutions constraint execution , so that rights Woman post divorce No Again just become a passive norm , but rather can come true as justice real that can enjoyed by the subject the law concerned .

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

RESEARCH METHODS

Study This is study law with method juridical-normative , namely A procedure study scientific For find truth based on logic science law from side normative . (Suganda, 2022) Focus main study This is do to analysis texts law Islamic families that apply in Indonesia, so that method data collection was carried out through *studies library* study. The approach used in study This is *approach statute* approach, namely with study various regulation like Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage , Instructions Presidential Decree No. 1 of 1991 concerning Compilation of Islamic Law (KHI), as well as policy latest in the Circular Letter Supreme Court (SEMA). In addition , researchers also used approach conceptual (*approach) conceptual*) for dissect doctrines protection right women and principles gender justice in contemporary Islamic law .

Data used in study This is secondary data consisting from material primary law , namely regulations and instruments law state officials , as well as material law secondary which includes journal scientific , books text law , and results study relevant previous with object study . Data analysis techniques were carried out in a way descriptive-analytical , where researchers No only to explain content text law in a way raw , but also doing interpretation systematic and evaluation critical to synchronization between regulations . This is done to attract conclusion that answers problem about right Woman post divorce in framework law positive Indonesia.

RESULTS AND DISCUSSION

Typology of Women's Rights After Divorce in Indonesian Positive Legal Texts

In system law family in Indonesia, rights Woman post divorce constructed as instrument protection law For ensure dignity and continuity life ex- wife . (Mansari , 2021) Analysis to text law positive , especially Compilation of Islamic Law (KHI) and Law No. 1 of 1974, show existence a number of classification rights of a nature material and immaterial . In a way textual , rights the can at stake as following : (Rusnadia & Dani, 2026)

Financial Rights (Maintenance and Mut'ah)

Article 149 of the KHI in particular explicit obligatory ex- husband For give a number of compensation financial in case divorce by talaq. First , Iddah maintenance , namely cost life during the waiting period (three month / holy) so that the ex wife can prepare independence the economy . (Sulistyaningsih & Anisah, 2017) Second , Mut'ah, which is in the KHI text is interpreted as proper giving . Analysis against Articles 158-160 KHI provides indication that magnitude living

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

This based on the principle suitability and capability husband , who aims For prevent impoverishment Woman consequence break up marriage . (In et al., 2024)

Living Madhiyah (Past Income)

Based on analysis text to jurisprudence and doctrine accommodated law in law positive , female entitled sue deliberate sustenance No given husband during the marriage period Still ongoing . This right put obligation living No just moral obligation , but rather as a legal debt that must be paid paid off by the ex husband . (Mansari et al., 2022)

Distribution Joint Property (Syirkah)

The text of Article 97 of the KHI is an important pillar in protection right economy women . Provisions This set that each couple entitled on half from assets acquired during marriage . In juridical , text This give confession to non- monetary contributions wife (domestic) in view modern law has mark equal economy with search living husband . (Mikraj et al., 2025)

Hadhanah Rights (Child Care)

Besides rights economics , text law give protection of the role mother . Article 156 of the KHI provides priority right foster care to Mother for children who have not *mumayyiz* (under 12 years old) . Provision This based on the principle *interest best for children* , where in particular psychological and biological , mother considered as the most competent party in guard welfare child post divorce . (Mikraj et al., 2025)

Findings in analysis text This show existence fragmentation law . The text of Article 149 of the KHI tends to limit living The obligation of iddah and mut'ah is only in the type of " Divorce and Talaq" (above will husband). In textually , the wife who filed for " Divorce Lawsuit " did not mentioned in a way explicit as recipient rights the gap normative this is what was in the past often detrimental Woman in a way economy moment they choose For end an unsuccessful marriage Healthy through track lawsuit . Limitations textual This become point beginning for Supreme Court for do reinterpretation law to realize greater justice substantive for Woman

Transformation Legal Interpretation of a Wife's Rights in Case Divorce Lawsuit

Problem classic in the text of KHI is give living *iddah* and *mut'ah* as if only become right wife If she was “ divorced ” (Cerai Talak) by her husband . By textually , Article 149 of the KHI lays down obligation mentioned in the former the husband who pronounced the divorce. (Holden et

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

al., 2022) This cause injustice juridical for Woman in case Divorce Lawsuit , where women often lost right financially only Because He take initiative For end bond marriage , although reason his lawsuit is to avoid greater harm large . (Rizkal et al., 2024)

Breakthrough law to stiffness text This appear through policy Supreme Court , especially the Circular Letter Supreme Court (SEMA) No. 3 of 2018. In the SEMA , the Supreme Court stated that the judge can charge obligation living *iddah* and *mut'ah* to husband in case Divorce Lawsuit , throughout wife No proven *nusyuz* (disobedient). (Chief Justice of the Republic of Indonesia, 2018) Interpretation This show that The Supreme Court does not Again look at divorce as incident unilaterally , but rather see reason occurrence divorce as base determination rights . If a person wife sue divorced Because husband do violation divorce , domestic violence, or resistance , then in a way substantive wife the is a victim whose rights must still protected . (Alfani et al., 2025)

Transformation interpretation This own essence broad sociological and juridical in context law families in Indonesia:

Protection towards victims of domestic violence

Legal text No Again punish woman who tries save himself from a destructive marriage . With still give right financial matters in divorce sued , the state acknowledged that initiative divorced often taken as road final on failure husband in operate obligations . (Nur et al., 2025)

Expansion Judicial Discretion

Through approach juridical-normative regarding this SEMA , the judge was given room For do *ijtihad* in realize justice substantive . The judge did not Again just become " mouth" laws ” (*la bouche de la loi*) are rigid , but become protector rights Woman . (Pradikta , 2022)

Balance Position Bid

Policy This repair position bid Woman in the judicial process . This is ensure that rights financial post divorce is not a " gift " from ex- husband , but rather obligation the law that arises from bond marriage that has been past . (Rafi'uddin et al., 2013)

With Thus , the analysis text to law positive Indonesia at the moment This No may stops at the KHI articles as a whole letter . Required understanding holistic to policy latest The Supreme Court has succeed bridge gap justice between text discriminatory laws with reality need protection for Woman post divorce .

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

Protection of Women's and Children's Rights: Analysis To Strength Executorial Decision

Although transformation text law via SEMA No. 3 of 2018 has give significant progress in confession right women , effectiveness law it really depends on the strength executive from decision court . In study law normative , a legal norm it is said effective if He No only stop at the level decision (*inkracht*), but can realized in a way real . In fact , one of the problematic the biggest in law Muslim families in Indonesia today This is weakness mechanism force to ex- husband who doesn't operate his obligations post divorce , in particular related living *iddah* , *mut'ah* , and maintenance child . (Khairuddin, 2025)

Analysis to text law civil law used in Religious Courts shows that system execution Still depend on mechanism application execution manually which takes time and cost . Conditions This often burdensome party women who are financial Already be in position vulnerable . Some constraint main in effectiveness text law This includes : (Muhammad et al., 2022)

Absence of an Executor Agency Special

Different with several other Muslim countries that have institution special For cut wages ex- husband in a way automatic (*cutting) wages automatic*), in Indonesia the obligation payment living still very dependent on good faith Good ex- husband . Legal text We Not yet arrange sanctions strict administrative for those who are negligent . (Fauzan, 2024)

Standard Determination of Nominal Amount of Maintenance

In a way textual , KHI only mention living must be " worthy " and according to " ability ". However , the absence of standard standard in text law regarding minimum nominal parameters often causes judges not to sufficient need base ex- wife and children , remembering existence inflation and costs life that continues increased . (KHULUQ, 2025)

Gap in Access to Information and Legal Aid

Analysis library show that Lots Woman No know rights new (like right living in divorced sue) so that they No list demands the in his lawsuit . This matter aggravated with limited access to help law for free for Woman No capable . (Hariaji & Yulianis, nd)

As solution constructive , strengthening to text law positive to front must directed at synchronization between law material (rights) women) with law formal (procedure) execution). Required existence regulations same level Regulation Government or The law that provides Power more force strong , like integration decision living with system administration population or

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

personnel . With thus , the right Woman post divorce No Again only to be " justice above " paper " (*justice illusion*), but rather truly become protection real capable ensure welfare women and children in Indonesia.

CONCLUSION

Based on analysis text law positive Indonesia regarding right Woman post divorce , can withdrawn three conclusion main :

1. Normative Text Construction : Indonesian positive law , through the KHI and the Marriage Law , has provide runway protection material for Woman covering living *iddah* , *mut'ah* , maintenance *madhiyah* , division treasure together , until right *hadhanah* . However , in textual early , there was fragmentation that tends to harm Woman in case Divorce Lawsuit
2. Transformation Progressive : The issuance of SEMA No. 3 of 2018 is point come back transformation interpretation law in Indonesia. Policy This succeed bridge gap justice with expand right financial for the wife who filed sue divorce , so that positioning law as responsive instruments to victim protection (especially in cases of domestic violence and neglect).
3. Problems Execution : Although law material has experience progress , effectiveness text law the Still hampered by weakness law formal (execution event). Absence institution executor special and system cutting wages cause rights automatic which has been launch court often difficult realized , so that create the condition of " justice above " paper " (*justice illusion*).

So, it is necessary regulations same level Regulation An integrating government settlement with system state administration (such as banking and personnel) for ensure Power force execution right women and children post divorce

REFERENCE

Alfani, MRI, Arfi, Q., & Fauzi, AS (2025). JOHN RAWLS' PERSPECTIVE OF JUSTICE SUIT (Case Study of the Purwokerto and Mungkid District Court Decisions) . 6 (July), 420–442.

Ali, I., Suci, WW, Hukum, P., Fakultas, K., Islam, A., & Nurul, U. (nd). The impact of dualism in marriage law on women . 6 , 11–24.

Arkan, M., Kurniawan, M., Wibowo, B., & Kurnia, AF (2025). LEGAL ANALYSIS OF THE FULFILLMENT OF WIFE AND CHILDREN'S RIGHTS AFTER DIVORCE: A STUDY OF THE DECISION OF THE SUKOHARJO RELIGIOUS COURT NUMBER 573 / PDT . G / 2024 / PA . SKH . 6 (July), 366–

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

377.

Asmuni. (2016). DIVORCE IN THE PERSPECTIVE OF CLASSICAL FIQH AND ISLAMIC LAW COMPILATION. Warta Journal , April .

Fauzan, A. (2024). Guarantee of Execution of Juvenile Decisions . 04 .

Hariaji, A., & Yulianis, MSF (nd). Legal Protection for Women and Children in Divorce Cases in Religious Courts . 166–179.

Holden, L., Nurlaelawati, E., Holden, L., Nurlaelawati, E., & Budaya, DN (2022). Cultural Values and Justice for Women in Indonesian Religious Courts: Best Practices. To cite this version: HAL Id: hal-03602231 .

In, BA, Zainuddin, M., & Naila, N. (2024). Rewang Rencang: Jurnal Hukum Lex Generalis. Vol. 5. No. 2 (2024) Theme/Edition: Islamic Law (Second Month) https://jhlg.rewangrencang.com/ . 5 (2), 1–19.

Chief Justice of the Supreme Court of the Republic of Indonesia. (2018). 2018sema003.pdf .

Khairuddin. (2024). The Divorce Trend Phenomenon in Indonesia: What Causes It? 1 (1), 1–8.

Khairuddin. (2025). Post -Divorce Maintenance: A Normative and Sociological Analysis of Women's Economic Inequality. Journal of Dual Legal Systems , 2 (2), 121–136. https://doi.org/10.58824/jdls.v2i2.331

KHULUQ, K. (2025). JUDGE'S BOARD OF JUDGES' DECISION ON JUSTIFICATION OF 'IDDAH AND MUT 'AH MAINTENANCE FROM THE PERSPECTIVE OF MAQASHID AL-SHARI 'AH JUDGES' DECISION ON JUSTIFICATION OF 'IDDAH AND MUT 'AH MAINTENANCE FROM THE PERSPECTIVE OF MAQASHID AL-SHARI 'AH .

Kurnia, TS (2023). Journal of Law & Development: A Theoretical Framework for Institutional Relations Based on Constitutionalism . 50 (2).

Mansari. (2021). EX OFFICIO RIGHTS FOR A NUSYUZ WIFE. Study of Decision Number 6 / Rev. G2020 / MS. Lsm STIPULATION OF 'IDDAH ALIMONY THROUGH THE EX OFFICIO RIGHTS FOR A NUSYUZ WIFE . 14 (2), 271–290. https://doi.org/10.29123/jy.v14i2.432

Mansari, Elidar, S., & Salman, AM (2022). LEGAL ANALYSIS OF THE REJECTION OF MADIYAH'S MAINTENANCE TO WIFE AND CHILDREN (STUDY OF DECISION NUMBER 251/Pdt.G/2021/MS.Mbo) . 9 (2), 306–322. https://doi.org/10.32505/qadha.v9i2.3903

Mikraj, AL, Pratitis, SA, & Harahaap, MY (2025). Reconstructing Justice in the Division of Joint Property When the Wife is More Dominant in Earning a Living: A Maqasid Syariah Perspective . December , 1909–1922. https://doi.org/10.37680/almikraj.v6i1.9064

Muhammad, P., Rahman, S., Paluaran, D., & Fauzan, A. (2022). Analysis of the Implementation of

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License

Civil Case Decisions (Execution) . 10 (November), 43–46.

Nur, FA, Sarib, S., & Putri, SR (2025). Legal Protection for Women Victims of Domestic Violence. Journal of Law and Public Policy Studies , 3 (1), 186–197.

Pradikta, HY (2022). Analysis of judge's decisions . Madza Media Member.

Rafi'uddin, SRDMS, Arief Maftuhin, Ilyas, LM-NH, M. Amin Abdullah, Saptoni, KNAMG, & Elly, S. (2013). TOWARDS PROGRESSIVE, GENDER-RESPONSIVE AND CHILD-ACCOMMODATIVE FAMILY LAW (SR Dzuhayatin, Lies Marcoes-Natsir, & M. Isnanto (eds.)). Suka-Press PSW UIN Sunan Kalijaga The Asia Foundation 17.

Rizkal, Irwansyah, Putri, RR, & Program. (2024). The Principle of Legal Justice Regarding Women's Rights in Divorce According to the Compilation of Islamic Law (Analysis of Decision Number 330/Pdt.G/2022/MS. Bna) Rizkal, Irwansyah, and Risca Riana Putri. Al-Ahkam: Journal of Sharia and Islamic Justice , 4 (1), 1–20.

Rusnadia, M., & Dani, I. (2026). Legal Protection of Women's and Children's Rights After Divorce According to Islamic Family Law (Case Study of the Wangi-wangi Religious Court) . 4 (1). https://doi.org/10.37397/al-usariyah.v4i1.1384

Suganda, R. (2022). A Legal Approach Method in Understanding the Sharia Economic Dispute Resolution System . 8 (03), 2859–2866.

Sulistyaningsih, P., & Anisah, S. (2017). PROVISION OF MUT 'AH AND IDDAH MAINTENANCE IN CASES . 39–59.

Wibowo, A. (2023). Philosophy of Law . Prima Agus Teknik Foundation.

Copyright at authors some right reserved this work is licensed under a Creative Commons Attribution-Share Alike 4.0 International License