

## Islamic Family Law and the Protection of Single Mothers: A Response to the Rising Trend of Divorce

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### ABSTRACT

This article examines the normative and institutional gaps in the legal protection of single mothers within Islamic family law, especially in the context of rising divorce rates in Muslim societies. Using a normative-juridical and conceptual approach, the study analyzes classical Islamic legal frameworks, *maqāṣid al-sharī‘ah*, and national legal instruments in Indonesia. It also draws comparative insights from other Muslim-majority countries to explore how Islamic values can be harmonized with gender-sensitive policy reform. The findings reveal that although Islamic law provides foundational principles for post-divorce responsibilities, its literal application often fails to address the socioeconomic vulnerabilities faced by women. The study argues that a contextual reinterpretation grounded in *maqāṣid* values such as justice and dignity is both theologically valid and socially necessary. Rather than positioning Islamic law as merely reactive to modern social demands, this study contributes to contemporary Islamic legal scholarship by framing the protection of single mothers as a legitimate evolution of *sharī‘ah*-based justice. It demonstrates that contextual *ijtihād* can serve as a methodological bridge between normative doctrine and lived realities, thereby reinforcing the transformative capacity of Islamic law in advancing inclusive legal systems.

### INTRODUCTION

In recent years, the divorce rate in Indonesia has shown a significant upward trend, as reflected in data from the Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia, which notes that the majority of divorce cases are filed by the wife (Rinaldo et al., 2024). This phenomenon reflects the complexity of the dynamics of domestic life, which is not only influenced by incompatibility between spouses, but also by structural factors such as economic

inequality, unbalanced domestic burdens, and domestic violence, which is often not handled fairly (Blaydes et al., 2025). Divorce, in this context, not only implies the breaking of the legal bond between husband and wife, but also carries heavy social consequences, especially for women who become single mothers (Kusmardani, 2024). In the post-divorce family structure, single mothers often bear the double burden of being breadwinners and child caregivers, without adequate guarantee of the fulfillment of their rights, both in terms of maintenance, housing, and legal protection (Valalan-Rajendran, 2023). This raises the urgency to review the effectiveness of the protection provided by Islamic family law for single mothers, especially in responding to social challenges due to the increase in divorce in Indonesian Muslim society (Sururie et al., 2023).

After divorce, the legal and social position of single mothers is often in a vulnerable condition, especially when there is no fulfillment of obligations on the part of the former husband as stipulated in the norms of Islamic family law as well as in national provisions such as the Compilation of Islamic Law (KHI) (Suadi, 2022). In practice, many single mothers face social challenges in the form of negative stigma from the surrounding environment, which still views widowhood as a moral burden and a marginalized identity (Hamamra & Uebel, 2025). In addition, economic challenges are a major issue, especially when child support is not provided properly, and women do not have sufficient access or economic capacity to sustain their families independently (Syukrawati et al., 2024). This vulnerability is further exacerbated by the limitations of implementative legal protection, where mechanisms for enforcing post-divorce rights are often ineffective due to the weak supervisory system for the implementation of religious court decisions (Andar Yuni, 2021). In this context, women as single mothers often experience discrimination in access to social assistance, health services, and children's education (Mbamba & Ndemole, 2021). This situation indicates a gap between the ideal legal norms and the social reality faced, which demands a systemic response within the framework of Islamic family law to ensure substantive justice for post-divorce single mothers.

Islamic family law contains normative principles that regulate domestic life, including mechanisms for divorce and the protection of women after the termination of marriage (Ismail et al., 2025). From a fiqh perspective, divorce is permissible (*mubah*) but not recommended, and can only be done after unsuccessful attempts at *islah* (reconciliation) (Qowiyul Iman & Joni, 2024). Husbands and wives have mutually binding rights and obligations, including the husband's obligation to provide physical and mental sustenance and protection, while wives are obliged to carry out domestic roles and maintain family honor (Ali, 2023). When divorce occurs, Islamic law establishes various forms of protection for women, including the *iddah* period as a waiting period before being allowed to remarry (Miftahudin, 2023), *mut'ah* as moral and material compensation for divorce (Al Said, 2024), as well as *hadhanah* as the custody of children, which in principle is in the hands of the mother as long as there are no *shar'i* obstacles (Multazam, 2024). The husband's obligation to continue providing child support even if the marriage relationship has ended is an important basis for continued protection (Ja'far & Hermanto, 2021). However, in the context of Indonesian national law, the implementation of these principles faces a number of challenges. Although the Compilation of Islamic Law (KHI) has adopted most of the fiqh provisions in the national legal system, its application is often constrained by aspects of proof, execution of decisions, and weak legal awareness in the community. Therefore, evaluating the compatibility of Islamic legal norms and juridical realities in Indonesia is crucial to

ensure that the rights of women, especially single mothers, can be effectively protected within the prevailing legal system.

Although Islamic family law has established a fairly clear normative framework in providing protection to post-divorce women, including provisions on iddah, mut'ah, child maintenance, and hadhanah, the reality on the ground shows a sharp gap between norms and practices. Single mothers in various regions still often face obstacles in claiming their rights, whether due to economic constraints, ignorance of the law, or weak implementation of religious court decisions (Yuni & Haries, 2024). This imbalance indicates that the ideal legal provisions have not been able to fully answer the complexity of the problems faced by women who become heads of families after divorce (Kusnandar & Rahma, 2023). In addition, until now there has been no truly comprehensive and integrative policy to ensure social and legal protection for single mothers, either in the form of specific regulations or affirmative programs based on Islamic law. This reflects a legal response vacuum that needs to be bridged, not only through more effective law enforcement, but also through policy reformulation that favors substantive justice. Therefore, it is important to examine more deeply how Islamic family law can be actualized as an instrument that is adaptive to social reality and able to provide real protection for single mothers amid the increasing trend of divorce.

This research aims to highlight how Islamic family law, with all its normative instruments, can be used as a responsive legal framework in the face of the increasing trend of divorce rates, especially in the context of the protection of single mothers. Within this framework, this study aims to identify the extent to which the principles of Islamic law have provided guarantees of protection for post-divorce women, as well as examine the various implementative obstacles that cause these norms not to be fully implemented effectively. On the other hand, the urgency of this research lies in the urgent need to encourage the formulation of more concrete and applicable legal protection for single mothers, both in the form of strengthening regulations, enforcing judicial decisions, and designing social policies that favor gender justice. Thus, this research not only contributes to strengthening the theoretical dimension of Islamic family law, but also provides an argumentative basis for the renewal of national laws and policies that are more adaptive to the social reality of single mothers in Indonesia.

## **METHODOLOGY**

This research uses the juridical normative method, which is an approach that aims to examine the law as a living norm in the national and religious legal systems. The main focus of this research is to analyze the provisions of Islamic family law, both those sourced from classical fiqh doctrine and from national legislation such as the Compilation of Islamic Law (KHI) and Law Number 1 of 1974 concerning Marriage and its amendments. In addition, a conceptual approach is used to examine the basic principles of Islamic law regarding the protection of women after divorce, including the concepts of iddah, mut'ah, hadhanah, and child maintenance. This research also uses a limited comparative legal approach to see how the protection of single mothers is regulated in the Islamic legal system in other countries as evaluative material for conditions in Indonesia. Data analysis is conducted qualitatively by focusing on normative arguments, compatibility between norms and practices, and their relevance in answering contemporary legal issues faced by single mothers as a result of the increasing divorce rate.

In addition, a comparative approach is employed to provide broader contextualization by examining how other Muslim-majority countries—such as Morocco and Tunisia have responded to similar challenges related to divorce and the legal protection of single mothers. This comparison is based on literature analysis of their reformed personal status codes (e.g., Morocco's Moudawana) and existing gender-responsive policies in Islamic legal systems. By comparing these legal reforms with the Indonesian context, the study seeks to identify normative gaps and offer insights into how Islamic principles can be integrated with gender-sensitive legal frameworks across different jurisdictions. This combination of methods enables the study to address not only the theological and normative dimensions of the issue but also its legal-institutional implications within both domestic and comparative contexts.

## **RESULTS AND DISCUSSION**

### **Protection Provisions in Islamic Family Law**

A review of classical fiqh doctrine, the Compilation of Islamic Law (KHI), and relevant legislation shows that Islamic family law has established a set of norms that explicitly provide protection to post-divorce women. These provisions include, among others, the right of women to receive alimony during the iddah period, which is a post-divorce waiting period that is not only religious in nature but also contains social and economic protection values. In addition, women who are divorced without a shar'i justification are entitled to receive mut'ah, which is a gift as a form of compensation or respect for the end of the marriage bond. In terms of children, Islamic law stipulates that custody (hadhanah) is generally given to the mother, especially for children who are still young or unable to choose for themselves, while still obliging the father as legal guardian to provide sustainable child maintenance, regardless of the marital status of the parents. These provisions are also reflected in Articles 149 and 156 of the KHI, which contain arrangements regarding women's post-divorce rights, including the husband's obligation to provide child maintenance.

The discussion of these provisions shows that Islamic family law has a strong and humanistic dimension of protection for women as a vulnerable group directly affected by divorce. This protection is not merely symbolic, but is designed to ensure the survival of women and children in an often patriarchal social context. However, the implementation of these norms is determined by three main aspects. First, the extent to which religious court officials have gender sensitivity and sensitivity to the principles of substantive justice in handing down decisions. Second, the extent to which the legal system has effective execution mechanisms to ensure the real fulfillment of these rights. Third, it depends on the level of awareness and responsibility of the ex-husband in carrying out his shar'i and legal obligations without having to go through the process of further lawsuits. Without these three components, norms that are doctrinally clear and just, risk becoming ineffective in practice. Therefore, further thought is needed to bridge the ideal provisions of Islamic law with the social reality of single mothers who often do not receive adequate rights after divorce.

### **Lacunae and Ineffectiveness of Protection in Practice**

A review of a number of religious court decisions, both through the review of first instance and appellate decisions, as well as annual reports from the Directorate General of Religious Courts, shows that in practice, many single mothers do not obtain their full post-divorce legal rights as guaranteed in Islamic family law. The most prominent

problems relate to the non-fulfillment of ongoing child maintenance and the non-realization of mut'ah awards, even though both matters have been legally decided by the court. In some cases, there was not even a stipulation of mut'ah in the verdict, with reasons that were not fully based on adequate legal considerations. The data also shows that the majority of single mothers do not have the ability to apply for execution of a legally binding decision, either due to procedural ignorance, economic limitations, or lack of legal advocacy from the state.

Discussion of these findings indicates a serious structural gap between idealized legal norms and the reality of implementation at the community level. The ineffectiveness of legal protection is caused by a number of systemic factors. First, the system for executing court decisions in religious civil cases, particularly in relation to alimony and mut'ah, still faces administrative obstacles and an unprepared law enforcement infrastructure. Secondly, the absence of a system of guarantees or supervision of the implementation of decisions makes women's post-divorce rights merely declarative, without a strong enforcement mechanism. Third, the low level of legal literacy among divorced women makes them not fully aware of their rights or the legal mechanisms that can be pursued. Fourth, there is no integrated social protection policy to assist single mothers in the legal process and afterwards. Thus, although normatively Islamic family law has provided a clear basis for protection, the institutional vacuum and structural weaknesses in its implementation have resulted in post-divorce women remaining in a very vulnerable position legally and socially.

#### **Absence of Comprehensive Affirmative Policy**

The results show that until now there has been no affirmative policy from the state specifically designed to provide legal and social protection for post-divorce single mothers within the framework of Islamic law. Protection of women in these conditions is still scattered in various general legal instruments, such as the Child Protection Law, the Law on the Elimination of Domestic Violence, and regulations related to social assistance, but none explicitly make divorced women or single mothers the main subject of protection based on Islamic family law values. In addition, legal instruments such as the Compilation of Islamic Law (KHI), which actually contains principles of protection for post-divorce women, such as the obligation of nafkah, mut'ah, and hadhanah, have not been translated operationally into state policies that have a direct impact, such as legal aid guarantees, nafkah subsidy schemes, or psychosocial assistance services based on gender justice and sharia.

The discussion of these findings shows that there is a regulatory vacuum that results in the absence of comprehensive protection guarantees for single mothers, especially in terms of economic protection, access to justice, and post-decree support. The state still tends to position post-divorce women in the general category of vulnerable women, without considering the specific dimensions regulated in Islamic family law that have the potential to become the moral and juridical basis for affirmative policies. In fact, the values contained in fiqh and in KHI are progressive and can be developed into sectoral regulations and social programs that are responsive to the reality of single mothers, such as providing structured maintenance assistance, free legal consultations, and post-divorce family-based productive economic training. Therefore, the absence of this affirmative policy not only reflects a legal vacuum, but also the failure of the state to actualize the principles of Islamic law as a foundation for social justice for women affected by divorce.

### **Urgency of Systemic Strengthening of Single Mother Protection**

The results show that the Islamic family law approach in Indonesia, despite having a strong normative framework in providing protection to post-divorce women, has not fully developed to respond to the social complexities faced by single mothers in the context of modern divorce. Women who become single heads of households are not only burdened with childcare and economic fulfillment responsibilities, but are also faced with limited access to justice, no guarantee of post-decree legal protection, and a lack of comprehensive state policy support. Under these conditions, the existence of norms such as *mut'ah*, *hadhanah*, and maintenance obligations need to be seen not only as part of the private legal relationship between ex-husbands and wives, but as a basis for establishing social responsibilities that can be managed by the state.

A re-reading of the principles of Islamic family law in this context opens up opportunities for the development of a more progressive and applicable approach. The basic values contained in *fiqh* and the Compilation of Islamic Law actually have the potential to be transformed into the foundation of affirmative policies and targeted social protection, especially in strengthening the legal position of single mothers. This includes the need for institutional support from the state to ensure the effective implementation of court decisions, the provision of gender-based legal and psychosocial assistance services, and strengthening collaboration between religious courts, welfare institutions and local governments. Thus, Islamic family law can function not only as a normative norm, but also as an operational and solutive legal tool in answering the challenges of protecting single mothers due to increasing divorce in Indonesian Muslim society.

### **Synthesis: Maqāṣid, Gender Justice, and Policy Reform**

The challenges faced by single mothers in post-divorce contexts illustrate a deeper dissonance between the literal application of classical Islamic jurisprudence (*fiqh*) and the lived realities of Muslim women in contemporary societies. Traditional *fiqh*, while offering foundational rules concerning maintenance, guardianship, and marital dissolution, was constructed within socio-historical contexts that assumed clear gender roles and economic dependence. However, the persistence of those formulas in modern settings where women increasingly serve as breadwinners, single caregivers, and legal agents often fails to produce outcomes that align with justice as envisioned by the *sharī'ah*. The *maqāṣid al-sharī'ah*, as higher objectives of Islamic law, provide an ethical framework that prioritizes the protection of essential human interests such as justice (*'adl*), dignity (*karāmah*), welfare (*maṣlahah*), and family integrity (*ḥifẓ al-nasl*). When these principles are brought into dialogue with contemporary gender realities, they legitimize an *ijtihād* reformist approach that does not oppose classical texts, but rather recontextualizes them to serve their intended purposes.

This perspective aligns with *fiqh al-nisā'*, a jurisprudential paradigm that re-centers women's voices and experiences in legal reasoning, and with *fiqh al-wāqi'*, which insists that legal rulings must reflect actual social conditions. Together, these approaches allow for the reinterpretation of post-divorce responsibilities in ways that do not undermine Islamic doctrine, but actualize its ethical spirit in service of vulnerable groups especially single mothers. Moreover, lessons drawn from comparative Muslim contexts, such as Morocco's Moudawana and Tunisia's family code, reveal practical avenues for institutionalizing such interpretations within the judiciary. Their reforms demonstrate that *maqāṣid*-based reasoning can be embedded in legal systems, producing rulings that are both *sharī'ah*-compliant and socially just. For Indonesia, where religious courts

(Pengadilan Agama) carry the burden of mediating legal certainty and social protection, this synthesis affirms that judicial discretion guided by maqāṣid is not a deviation from Islamic law, but its faithful continuation. It calls for integrative policies and interpretive courage to ensure that legal outcomes reflect the complexity of gendered realities without compromising theological integrity.

## CONCLUSION

Based on the results of the research, it can be concluded that Islamic family law has normatively provided an adequate protection framework for post-divorce women, through provisions regarding iddah maintenance, mut'ah, hadhanah, and child maintenance. However, in practice, this protection has not been fully implemented effectively, as can be seen from the large number of single mothers who do not receive their full rights after court decisions. This gap is exacerbated by weak execution mechanisms, lack of legal literacy, and the absence of a monitoring system and protection guarantees that favor women. On the other hand, the absence of affirmative policies that specifically regulate the protection of single mothers in the perspective of Islamic law shows the incompatibility between fiqh values and applicable public policies. Therefore, systemic strengthening is needed through the reinterpretation of Islamic family law principles that are adaptive to the modern social context, as well as the integration of these values into national legal policies that are more operational and solutive. With this approach, Islamic family law can play a strategic role in addressing the issue of single mother protection amidst the increasing trend of divorce rates. Ultimately, the legal and moral responsibility to protect single mothers should be recognized not merely as a response to modern social needs, but as a concrete expression of Islam's commitment to contextual justice a justice that upholds the spirit of the shari'ah in serving the vulnerable.

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