

Legal Protection of Women in the Divorce Process: Case Studies and Policy Implications in Indonesia

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Article Info

Received: 2024-11-4

Revised: 2024-12-17

Accepted: 2024-12-20

Keywords:

Legal Protection,
Women, Divorce, Policy,
Gender Justice

Abstract

The objective of this investigation is to examine the legal safeguards available to women in the Indonesian divorce procedure, with a particular emphasis on case studies and the existing policy implications. A qualitative approach was utilized in conjunction with a comprehensive literature review in order to gain an in-depth understanding of existing policies, regulations, and protections pertaining to women's rights in the context of divorce. Data were gathered via an analysis of legal documents, academic literature, and interviews with legal experts and women's rights activists. The findings indicated that despite the existence of a legal framework that supports women in divorce proceedings, there are still significant obstacles to the implementation of these rights at the local level. These obstacles are mainly attributed to gaps in legal understanding, patriarchal cultural norms, and limited resources. The research proposes the expansion of legal awareness initiatives within communities and the introduction of policy reforms that are more inclusive to guarantee gender equity in divorce procedures.

I. Introduction

The dissolution of marriage in Indonesia is frequently a legally arduous process, particularly for women who are often socially and economically disadvantaged. Despite the existence of a legal system in Indonesia that is designed to protect the rights of women in the context of divorce, in practice, many women continue to be marginalized and face significant challenges in asserting their rights. The 1974 Marriage Law has established the legal framework for divorce, including provisions regarding child custody, the division of joint property (*gono-gini*), and spousal maintenance for women in the event of divorce. Furthermore, several additional legal instruments exist that serve to safeguard the rights of women (Devi, 2023).

These include the Compilation of Islamic Law (KHI), which is applicable in the Religious Courts in cases of Muslim divorce, and the Child Protection Law No. 23 of 2002, which regulates the rights of children in the context of parental divorce. Nevertheless, despite the theoretical adequacy of the Indonesian legal system in protecting women's rights, numerous practical obstacles impede their access to these entitlements. One of the most significant challenges lies in the lack of legal awareness and education among the general public, particularly among women. There is a widespread lack of understanding about the legal entitlements associated with divorce, including those pertaining to child custody, spousal maintenance, and property division. The lack of socialization and legal education in the community, especially in remote areas, leaves many women unprepared to navigate the legal complexities of divorce proceedings and to advocate for their rights (Nazaruddin et al., 2021).

Furthermore, access to legal resources, such as lawyers or free legal aid, is frequently a significant challenge for women, particularly those from lower-middle economic groups. Many women are unable to afford the cost of a lawyer or are unaware of the availability of adequate legal assistance. This often results in women facing the divorce process without proper legal representation, which subsequently reduces their likelihood of obtaining a fair verdict in court (Achmad Walif Rizqy et al., 2024).

Furthermore, there are significant cultural barriers, particularly in contexts where patriarchal values remain dominant, which must be considered. In some cases, individuals seeking divorce are subjected to considerable social pressure from their families and communities to remain married, despite the detrimental circumstances, including domestic violence or economic neglect. This social pressure can lead to hesitation or even embarrassment among women in pursuing divorce, even if it would be in their best interest.

The objective of this research is to address the following primary question: The objective of this study is to examine the legal protection of women in divorce proceedings in Indonesia and to identify the policy implications that arise from this examination. To answer this question, the research employed a qualitative approach with a comprehensive literature review. The objective of this research is to identify the discrepancies between the policy and legal framework in Indonesia and its implementation in practice. Despite the law providing a robust foundation for the protection of women's rights, numerous challenges in its implementation frequently result in women being denied adequate justice in divorce proceedings.

Furthermore, this research investigates potential avenues for enhancing existing policies. It offers recommendations pertaining to legal socialization, augmented access to legal aid, and the fortification of judicial institutions in the adoption of gender justice tenets.

Following an exhaustive examination of the literature and interviews with legal experts and women activists, it became evident that comprehensive policy reforms and the reinforcement of legal implementation are indispensable for ensuring that women receive their rights equitably in divorce proceedings.

2. Research Method

This research employs a qualitative method with an exhaustive literature review methodology. The qualitative method was selected for its capacity to facilitate an in-depth exploration of the social and legal phenomena encountered by women in the context of divorce, which often entails intricate social, cultural, and legal dynamics. A literature study approach was employed as a basis for analyzing the extant legal framework and associated regulations pertaining to the protection of women in divorce in Indonesia. This literature study encompasses an examination of a diverse array of secondary sources, including academic literature, books, legal and social journal articles, as well as reports from institutional entities addressing matters related to women and human rights (Sarmadi, 2024).

The primary data for this study were obtained via an exhaustive review of pertinent legislation and regulations, including the 1974 Marriage Regulation, the Compilation of Islamic Law (KHI), along with various government policies concerning women's rights, child custody, maintenance, and joint property in divorce. Additionally, policy documents from pertinent ministries and civil society organizations focusing on women's protection were incorporated to enrich the legal analysis.

Furthermore, semi-structured interviews were employed as an additional data

collection technique, in addition to the literature review. Interviews were conducted with several family law experts, academics in the field of law and gender, and women activists with experience in advocating for women's rights in divorce. The semi-structured interview technique permitted investigators to gain a more nuanced and comprehensive understanding of the participants' experiences, as well as to identify the practical challenges that women encounter in the context of the divorce process. The interviews enabled respondents to delve deeply into the constraints associated with access to justice, gender inequality in the legal process, and the influence of patriarchal culture on law enforcement.

The data collected from the literature and interviews were then subjected to thematic analysis. This approach was employed to identify patterns that emerged in the data pertaining to the legal protection of women, both within the policy framework and in its implementation. The identified patterns encompass a range of issues, including gender inequality in court decisions, limited access to legal information for women, and structural challenges that impede the effective implementation of women's protection policies. This analytical process illuminates the discrepancy between existing legal policies and the realities faced by women on the ground.

This research is informed by a synthesis of recent literature on gender and law in Indonesia, including recent studies, the annual reports of Komnas Perempuan (Commission for the Disappearance of the Persons and the Protection of Victims of Violence, a human rights organization in Indonesia), and academic studies on issues pertaining to gender justice in religious courts. The literature review included a report by Komnas Perempuan (2023) that highlighted divorce cases involving domestic violence and women's rights to joint property, as well as articles in the Asian Journal of Women's Studies (2022) that examined the legal and cultural dynamics of divorce in Southeast Asian countries, including Indonesia. These sources provide a comprehensive picture of the state of legal protection for women and the challenges faced in securing their rights in divorce proceedings.

This research employs a multi-method approach, combining a literature review, document analysis, and semi-structured interviews, to gain an in-depth and critical understanding of the effectiveness of legal policies related to the protection of women in divorce in Indonesia, as well as the implications of these policies in the context of gender justice.

3. Results and Discussion

Legal Framework for the Protection of Women in Divorce

The following section will present an overview of the legal framework that exists to protect women in the context of divorce.

The protection of women in the Indonesian divorce process is regulated by several laws and regulations that aim to safeguard women's rights, particularly in matters pertaining to child custody, maintenance, and the division of property. However, despite the existence of clear regulations, challenges persist in their implementation in practice, particularly at the level of religious courts and general courts. The presence of varying legal interpretations and understandings can result in injustices for women. The following section provides a more detailed description of the legal framework governing the protection of women in divorce (Mesraini et al., 2023).

Law No. 1 of the Year of the 1974 on Marriage serves as the fundamental legal framework governing marriage and divorce in Indonesia. The articles in this law elucidate the provisions pertaining to divorce and provide a legal foundation to safeguard women's rights, particularly with regard to child custody and the division of joint property. Notably, the law stipulates that divorce can only be initiated before the court after the court has been unable to reconcile the two parties (Article 39). This introduces a formal mechanism to guarantee that divorce is not carried out arbitrarily.

With regard to the division of property, Article 35 of Law No. 1/1974 stipulates that all property acquired during the course of marriage is to be considered joint property. In the event of divorce, the property in question must be divided equally between the husband and wife. This implies that women are entitled to property acquired during the marriage, which can prove to be a significant asset in the post-divorce period, particularly for women who may lose their source of income as a result of the dissolution of the marriage (Maula et al., 2024).

The Compilation of Islamic Law (KHI) is a legal instrument that is applied in religious courts that handle divorce for Muslims. KHI serves as an additional legal basis for Muslim women who wish to assert their rights in divorce proceedings. KHI provides further provisions regarding child custody, maintenance, and the division of joint property (Novalia & Rachman Hakim, 2024).

Article 149 of the KHI, for instance, stipulates that in the event of divorce, the husband is obliged to provide mut'ah (a gift from the husband to the wife after divorce) and maintenance during the iddah period (the post-divorce waiting period), as well as ensuring child maintenance. The objective is to guarantee the well-being of women and children following a divorce. Furthermore, Article 156 of the KHI grants custody of children to the mother, particularly in cases where the child is under 12 years of age, unless the mother is deemed incapable or unfit to care for the child. This stipulation safeguards women in maintaining child custody, although there are still numerous challenges in its implementation in practice.

However, the application of KHI in different regions often varies, as it is influenced

by the interpretation of judges in religious courts. The existence of differences in understanding of the provisions on maintenance and custody often gives rise to uncertainty in court decisions.

The protection of child custody in divorce is also guaranteed by Law No. 23 of 2002 on Child Protection. This law specifically emphasizes the importance of the best interests of children in every legal decision involving children, including in divorce cases. In the context of divorce, this law provides guidelines for the court to decide custody based on the interests of the child (Fatonah et al., 2024).

Article 26 of the Child Protection Law stipulates that parents are obliged to nurture, educate, protect, and maintain their children. In the context of divorce, this implies that child custody should be determined based on the parents' capacity to fulfill this obligation. Additionally, the law asserts that the child's right to receive financial support and attention from both parents is guaranteed despite divorce.

This regulation serves to reinforce the position of women in the context of child custody proceedings, particularly in instances where they are in a more advantageous position to provide care and protection for the child in question. However, in practice, courts frequently encounter challenges in striking a balance between the best interests of the child and the rights of both parents, resulting in inconsistent decisions regarding custody (Fausi & Fida, 2022).

While the extant legal framework offers a robust foundation for the protection of women in divorce, significant challenges emerge in its implementation across diverse jurisdictions. Religious courts and general courts frequently exhibit disparate interpretations of women's rights in divorce, particularly with regard to child custody and maintenance (Disantara et al., 2024). This discrepancy can be attributed to a range of factors, including cultural divergences, limited legal comprehension at the local court level, and the persistence of social stigma that perpetuates women's disadvantaged position in divorce proceedings.

For instance, although a woman's entitlement to post-divorce maintenance is enshrined in legislation, in practice, numerous women are unable to secure adequate maintenance due to challenges in enforcing court rulings or due to the ex-husband's non-compliance with the decision. Furthermore, social pressure and patriarchal norms in certain regions dissuade many women from pursuing their legal rights, particularly if they encounter resistance from their family or community (Nurnaningsih, 2023).

Implementation Challenges in the Field

While Indonesian law ostensibly affords women protection in divorce proceedings, the practical implementation of this legislation frequently fails to align with the expectations of those seeking its benefits. Many women encounter substantial obstacles in accessing legal information and obtaining legal assistance, and they also confront pervasive social stigma due to the country's patriarchal culture. These

challenges collectively impede women's ability to assert their rights, whether in matters pertaining to child custody, maintenance, or joint property (gono-gini).

One of the primary obstacles that women encounter in the context of divorce is the lack of access to legal information. Many women lack sufficient knowledge of their rights in divorce, including those pertaining to maintenance, child custody, and the division of joint property. Lack of legal socialization at the grassroots level, particularly in remote areas, as a significant factor influencing this situation. Women in rural areas frequently have limited access to legal information sources, which impairs their ability to understand the procedures to be followed or the rights they can assert in court (Kusnandar & Rahma, 2023).

Additionally, low legal literacy represents a significant challenge. The women with limited educational attainment were more likely to lack comprehension of the legal procedures associated with divorce. This often results in their reliance on information obtained from family or community sources, which may be inaccurate or fail to align with their rights. Many women perceive divorce as a socially unacceptable or taboo decision, leading to reluctance to seek guidance from more qualified parties, such as lawyers or legal aid organizations (Sarib & Alimashariyanto, 2022).

Women seeking to file for divorce frequently encounter obstacles in obtaining sufficient legal assistance. Formal legal aid, such as lawyers, is frequently costly and unaffordable for women from impoverished families. Women from low-income groups rarely utilize the services of lawyers due to their inability to afford the requisite fees, and lawyers offering pro bono assistance are scarce in number.

The state has established legal aid institutions, such as the National Legal Development Agency (BPHN), which provides free legal aid services for underprivileged groups (Kurniawan, 2022). The patriarchal culture that is still prevalent in many parts of Indonesia, particularly in rural areas, represents a significant barrier for women seeking to exercise their rights in the context of divorce. This culture frequently situates women in a subordinate position within society, assuming that women must acquiesce to the decisions of their husbands or families. In numerous instances, women who wish to divorce encounter pressure from family members or society at large to remain in the marriage, despite experiencing domestic violence or economic neglect (Refikal, 2024).

The stigma attached to divorce is particularly strong in traditional communities. The perception of divorced women as failing in their roles as wives and mothers often leads to hesitancy in pursuing divorce. This is due to the fear of being seen as a "failure" or a "shame" to their family, which is influenced by both external and internal social pressures. Extended family members, in particular, may urge women

to remain in an unhealthy marriage, compounding the challenges faced by those seeking to end their union (Kamaruddin, 2023).

Women subjected to patriarchal norms are more inclined to refrain from reporting their issues to the court, particularly if they hail from families with traditional values. In such circumstances, women may opt for a compromise with their husbands over legal recourse, due to their apprehension about the social stigma that may ensue (Syarifullah M Nur et al., 2023).

The family unit can act as a significant barrier to women seeking a divorce, particularly when there is a perception that divorce is a disgrace or negatively impacts the family's reputation. In societies that adhere to traditional values, the extended family plays a significant role in divorce decisions, and women are rarely supported to make decisions independently.

As a consequence of these pressures, a considerable number of women perceive divorce as an unfeasible option, even in instances where they experience feelings of insecurity or lack of appreciation within their marital relationship. In numerous cases, women may opt to accept suboptimal marital circumstances in order to preserve familial harmony or for the benefit of their children, even if this entails the negation of their individual rights.

Case Study: Divorce in Religious and General Courts

In Indonesia, the legal framework governing divorce is structured around two distinct judicial systems: the Religious Courts and the General Courts. The Religious Courts are responsible for adjudicating divorce cases involving Muslims in accordance with Islamic law and the Compilation of Islamic Law (KHI), whereas the General Courts have jurisdiction over divorce proceedings for non-Muslims. A review of case studies conducted in several religious courts in Indonesia reveals that women frequently encounter substantial obstacles in asserting their rights, particularly with regard to the right to maintenance, child custody, and the division of joint property (gono-gini). While the legal framework provides a theoretical foundation for these rights, their interpretation and application in practice often exhibit inconsistencies, contingent upon factors such as the judges' knowledge, local cultural norms, and social pressure.

In accordance with the law, women are legally entitled to maintenance from their former husbands following the dissolution of their marriages, particularly in instances where they have children residing with the former husband. Article 41 of Law No. 1/1974 on Marriage stipulates that the former husband is obliged to provide living expenses (nafkah) to his former wife and children, unless the former wife has remarried. Furthermore, Article 149(c) of the Compilation of Islamic Law

stipulates that the ex-husband is obliged to provide nafkah 'iddah, or maintenance during the waiting period before a woman can remarry after divorce, to his ex-wife (Laksono & Wulandari, 2022).

Nevertheless, in practice, numerous women encounter significant challenges in securing this financial support. A review of case studies at the Banda Aceh City Religious Court reveals that women frequently encounter resistance from former husbands who are reluctant to provide maintenance, despite court decisions. In numerous instances, former husbands assert that they are unable to provide maintenance or deliberately disregard the court's decision.

With regard to child custody, Indonesian law, specifically the Compilation of Islamic Law Article 105, affords the mother a preference in obtaining custody of children who have not reached the age of 12, unless there are compelling reasons to suggest that the mother is unsuitable to serve as a caregiver. In general, religious courts assign custody of children (hadhanah) to the mother, particularly for young children. However, in certain instances, child custody may become a contested issue if the former husband seeks custody.

The division of joint property (gono-gini) in the context of divorce is a topic that frequently arises in legal proceedings. In accordance with Article 35 of the Marriage Law, any property acquired during the course of a marriage is considered joint property, unless a prenuptial agreement specifies otherwise. The decisions of both the Religious Courts and the General Courts are primarily guided by the principle of equitable division of this property, which is typically distributed in a 50:50 ratio between the husband and wife (Mayasari et al., 2023).

One of the primary issues identified in the case studies was the inconsistency in the application of the law by judges in both the Religious and General Courts. It has been observed that judges often apply different interpretations of the law, depending on their understanding of gender justice and the social context in which they operate. These obstacles demonstrate that, despite the progressive nature of Indonesian legislation in relation to the regulation of women's rights in divorce, many women remain unable to effectively exercise these rights. This is due to a number of factors, including limited access to legal aid, non-compliance by former husbands with court decisions, and inconsistencies in the application of the law.

Policy Implications in Legal Protection for Women in Divorce

The findings of this study indicate that the legal protection of women in divorce in Indonesia is still not optimal. There are various obstacles to the implementation of the law, which frequently result in women not receiving adequate justice. In order to address this challenge, a number of policies could be proposed, including more intensive legal socialization, the provision of free legal aid, and the strengthening of the capacity of court institutions in applying the principles of gender justice. The following section provides a more detailed

description of these policies.

One of the primary challenges confronting women in the context of divorce is their limited awareness of their legal entitlements. Many women are unaware of the legal protections afforded to them, including the right to maintenance, child custody, and the right to the division of joint property (gono-gini). This is particularly prevalent in remote areas where access to legal information is severely constrained.

It is recommended that the following policy be implemented:

It is imperative that the government implement a more comprehensive and systematic socialization program regarding women's rights in divorce. This program can be conducted through various avenues, including mass media, counseling at the village level, and collaboration with civil society organizations.

Furthermore, socialization efforts must engage community leaders, religious leaders, and women's rights activists to disseminate information about women's rights in divorce more widely and to foster greater acceptance of these rights at all societal levels.

A significant proportion of women, particularly those from lower-middle income groups, lack access to adequate legal services. The costs associated with legal representation, including lawyers' fees and high court costs, represent a significant barrier to accessing legal aid. Consequently, many women are unable to secure the assistance of a lawyer or legal aid, which ultimately results in court decisions that are unfavorable to them.

It is recommended that the following policy be implemented:

It is imperative that the government expand access to free legal aid, particularly for underprivileged women. This legal aid can be effectively channeled through the Legal Aid Post (Posbakum) in both religious and general courts.

It is imperative that the quality of Posbakum be enhanced, including the assurance that Posbakum officers possess a comprehensive understanding of divorce proceedings and the rights of women.

It is recommended that legal aid institutions and civil society organizations engaged in women's advocacy be provided with increased support in terms of funding and training.

Court institutions, both religious and general, frequently encounter challenges in implementing gender justice principles. A considerable number of judges and court officials remain inadequately informed about the significance of gender equality in divorce cases. Consequently, court decisions frequently fail to guarantee equal legal protection for women.

It is recommended that the following policy be implemented:

It is imperative that judges, court clerks, and other court officers receive continuous training on the concept of gender equity and its application in divorce cases. This training should encompass an understanding of women's rights, the handling of divorce cases in a fair and impartial manner, and the elimination of gender bias in the decision-making process.

Furthermore, the government must establish more explicit and comprehensive directives for courts on the handling of divorce cases in accordance with gender justice principles.

The following example illustrates the implementation of the aforementioned recommendations:

The importance of gender justice training for judges in religious courts is underscored by research conducted by Simanjuntak (2021). In some areas, judges continue to demonstrate a tendency to favor men in divorce cases, largely due to the influence of biased interpretations of religious rules and local customs. In response to this, specialized training for judges has been conducted in several major cities, including Surabaya and Makassar. This initiative has yielded positive outcomes, with judges demonstrating an enhanced capacity to make decisions that are more equitable for women.

4. Conclusion

The legal protection of women in divorce in Indonesia is formalized through various legislative instruments that inform the legal process. These include Marriage Law No. 1/1974, the Compilation of Islamic Law, and a number of regulations related to child custody, maintenance, and the division of joint property (gono-gini property). This legal framework theoretically guarantees the protection of women's rights in the event of divorce, preventing their loss. This encompasses the entitlement to alimony from the former spouse, the right to child custody, and the right to a portion of the assets held jointly during the marriage. However, despite the existence of this legal framework, the practical reality on the ground often deviates from the expected outcomes. The challenges faced by women in the divorce process in Indonesia are complex and multi-layered, encompassing structural constraints within the legal system and the pervasive influence of patriarchal culture in many communities. In many instances, women are unable to fully exercise the rights set forth in the legislation due to a multitude of impediments stemming from legal, social, economic, and cultural factors. One of the primary challenges is the lack of access to legal information and assistance. A significant proportion of women, particularly those from economically disadvantaged backgrounds or residing in rural areas, lack an adequate comprehension of their legal entitlements in the context of divorce. Furthermore, many women are unaware of the necessary steps to initiate the legal process, the rights they are entitled to assert, and the

legal procedures they must follow. Additionally, many women lack access to legal counsel, particularly those who lack sufficient financial resources. The costs associated with divorce proceedings, including lawyer fees, court administration costs, and time spent navigating the legal process, present a significant barrier for women seeking to assert their rights.

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