



Judicial Interpretations and Societal Realities: Muslim Women's Divorce Rights in Indonesia and Thailand

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Abstract:

Although Islamic family law formally guarantees post-divorce rights for Muslim women, substantial disparities persist in the realization of these rights across different socio-legal contexts. This contradiction is evident in Indonesia and Southern Thailand, where formal legal protections coexist with social, cultural, and institutional barriers that continue to limit women's access to justice after divorce. This study aims to examine how judicial interpretation and societal realities shape the protection of Muslim women's post-divorce rights in both jurisdictions. This qualitative research employs a comparative socio-legal approach using legal documents, court decisions, institutional records, field observations, and semi-structured interviews with judges, officials of the Islamic Religious Council (MAI), women's rights activists, advocates, and former litigants. Data were collected through document analysis, interviews, and non-participant observation, and analyzed using thematic qualitative analysis, juridical-normative analysis, and cross-country comparative analysis. The findings reveal that judges in Indonesia tend to interpret women's post-divorce rights within a rights-based judicial framework, enabling courts to actively order and enforce maintenance, child support, and other post-divorce obligations. By contrast, religious authorities in Southern Thailand prioritize mediation and communal reconciliation, resulting in greater dependence on voluntary compliance and informal religious legitimacy rather than judicial enforcement. The study further identifies three interconnected mechanisms restricting women's access to justice across both jurisdictions: patriarchal social norms, institutional fragmentation between legal and religious authorities, and women's limited legal literacy and economic bargaining power. These findings contribute to comparative socio-legal scholarship by demonstrating that the effectiveness of post-divorce rights protection depends not only on legal norms but also on judicial interpretation and the interaction between legal institutions and local socio-cultural structures. Future research may further investigate Muslim women's lived experiences across diverse plural legal systems.

Abstrak:

Meskipun hukum keluarga Islam secara formal menjamin hak-hak perempuan Muslim pasca-perceraian, masih terdapat ketimpangan yang signifikan dalam pemenuhan hak-hak tersebut di berbagai konteks sosio-yuridis. Kontradiksi ini terlihat jelas di Indonesia dan Thailand Selatan, di mana perlindungan hukum formal berdampingan dengan hambatan sosial, budaya, dan

kelembagaan yang terus membatasi akses perempuan terhadap keadilan setelah perceraian. Penelitian ini bertujuan untuk mengkaji bagaimana interpretasi yudisial dan realitas sosial membentuk perlindungan hak-hak perempuan Muslim pasca-perceraian di kedua yurisdiksi tersebut. Penelitian kualitatif ini menggunakan pendekatan sosio-hukum komparatif dengan memanfaatkan dokumen hukum, putusan pengadilan, catatan kelembagaan, observasi lapangan, serta wawancara semi-terstruktur dengan hakim, pejabat Majelis Ulama Indonesia (MAI), aktivis hak-hak perempuan, advokat, dan mantan pihak yang berperkara. Data dikumpulkan melalui analisis dokumen, wawancara, dan observasi non-partisipan, kemudian dianalisis menggunakan analisis kualitatif tematik, analisis yuridis-normatif, serta analisis komparatif lintas negara. Temuan penelitian menunjukkan bahwa hakim di Indonesia cenderung menafsirkan hak-hak perempuan pasca-perceraian dalam kerangka yudisial berbasis hak, yang memungkinkan pengadilan untuk secara aktif memerintahkan dan menegakkan kewajiban nafkah, tunjangan anak, serta kewajiban pasca-perceraian lainnya. Sebaliknya, otoritas keagamaan di Thailand Selatan memprioritaskan mediasi dan rekonsiliasi komunal, sehingga lebih mengandalkan kepatuhan sukarela dan legitimasi keagamaan informal daripada penegakan hukum. Studi ini selanjutnya mengidentifikasi tiga mekanisme yang saling terkait yang membatasi akses perempuan terhadap keadilan di kedua yurisdiksi tersebut: norma sosial patriarkal, fragmentasi kelembagaan antara otoritas hukum dan keagamaan, serta literasi hukum dan daya tawar ekonomi perempuan yang terbatas. Temuan-temuan ini berkontribusi pada kajian sosiologis-hukum komparatif dengan menunjukkan bahwa efektivitas perlindungan hak pasca-perceraian tidak hanya bergantung pada norma-norma hukum, tetapi juga pada interpretasi yudisial serta interaksi antara lembaga-lembaga hukum dan struktur sosio-budaya lokal. Penelitian di masa depan dapat menyelidiki lebih lanjut pengalaman hidup perempuan Muslim di berbagai sistem hukum yang pluralistik.

A. Introduction

Divorce remains a significant global issue that affects the legal, social, and economic well-being of women across different societies. In many Muslim communities around the world, including those in the Middle East, South Asia, Europe, and North America, the protection of Muslim women's rights after divorce continues to be a subject of legal debate and policy reform.¹ Although Islamic family law provides a normative framework for protecting women's post-divorce rights through maintenance (*nafkah*), *mut'ah*, child custody (*hadhanah*), and dowry obligations, their implementation varies considerably across jurisdictions due to differences in judicial interpretation, legal institutions, and socio-cultural contexts. While many Muslim-majority countries have introduced legal reforms to strengthen women's access to justice, Muslim-minority settings often face additional challenges arising

¹ Yüksel Sezgin, "A Global and Historical Exploration: Legislative Reform in Muslim Family Laws in Muslim-Majority versus Muslim-Minority Countries," *Law & Policy* 45, no. 2 (2023): 110–36, <https://doi.org/10.1111/lapo.12210>.

from the interaction between Islamic family law and secular legal systems.² These contrasting experiences demonstrate that protecting divorced Muslim women's rights is not merely a religious issue but also a legal, social, and human rights concern.³ Despite sharing the same Islamic legal foundations, different jurisdictions produce unequal levels of legal protection, raising an important socio-legal question of why similar principles generate different outcomes. This suggests that effective legal protection results not only from statutory provisions but also from the dynamic interaction between judicial discretion, institutional authority, and social reality, making this issue a critical subject in contemporary Islamic family law studies.

In Indonesia, Islamic family law has been formally integrated into the national legal system through the Marriage Law and the Compilation of Islamic Law (KHI). Nevertheless, divorce rates have remained consistently high over recent years. Data from the Religious Justice Agency (Badilag) indicate that divorce cases fluctuated significantly between 2021 and 2025, with 447,743 cases recorded in 2021, increasing to 516,344 cases in 2022, before declining to 463,654 cases in 2023 and continuing to show substantial numbers in subsequent years. A notable characteristic of these cases is that more than seventy percent were initiated by wives, suggesting that women frequently experience various forms of injustice, neglect, or dissatisfaction within marital relationships.⁴ The majority of cases (more than 70%) were filed by wives, indicating that women often bear the burden of injustice in the household. A similar trend can be observed in Southern Thailand, particularly in Yala Province, where records from the Majlis Agama Islam (MAI) show a continuing increase in divorce cases between 2022 and 2025. Divorce filings rose from 244 cases in 2022 to 302 cases in 2023 and continued to constitute a significant social issue in the following years, with many petitions submitted by women due to failure to provide maintenance, domestic violence, and drug-related problems. The persistence of high divorce rates in both countries demonstrates that the legal protection of Muslim women after divorce remains an urgent issue and highlights the continuing gap between Islamic legal norms and the social realities experienced by Muslim women in different socio-legal contexts. The persistence of similar social problems in both Indonesia and

² Fadil, Zidna Mazidah, and Zaenul Mahmudi, "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum Dan Syariah* 16, no. 1 (2024): 1–20, <https://doi.org/10.18860/j-fsh.v16i1.25713>.

³ Tambéh Wadi et al., "Navigating Divorce in the Global South: Comparative Insights into Legal Procedures and Gender Implications in Muslim-Majority Countries," *Kalosara: Family Law Review* 5, no. 2 (2025): 1–10, <https://doi.org/10.31332/kalosara.v5i2.11721>.

⁴ MA, "Directory of Decisions of the Supreme Court of the Republic of Indonesia," mahkamahagung.go.id, accessed January 8, 2025, <https://putusan3.mahkamahagung.go.id/direktori/index/tahunjenis/putus/tahun/2024.html>.

Southern Thailand presents an important analytical puzzle. Although both jurisdictions recognize Islamic principles concerning maintenance, child custody, and women's post-divorce rights, the realization of those rights differs considerably. These differences suggest that legal outcomes cannot be explained solely by the existence of Islamic legal norms, but rather by how judicial institutions interpret those norms and how social structures facilitate or constrain their implementation. This perspective shifts the analysis from comparing legal texts toward examining the interaction between judicial interpretation and societal realities.

A Recent scholarship has demonstrated a growing concern with the protection of Muslim women's rights within contemporary Islamic family law. Studies on Indonesia reveal that legal reforms and judicial innovation have expanded women's access to justice, particularly in matters of divorce, maintenance, and child custody. Sanusi et al. (2023) found that progressive judicial *ijtihad* in Religious Courts has contributed significantly to strengthening women's post-divorce rights, although the study primarily focuses on doctrinal developments rather than examining how those judicial interpretations operate within broader social realities.⁵ Comparative studies by Shiddieqy et al. (2025) on Indonesia and Morocco⁶ and Azhari and Asmuni (2025) on gender equality in Islamic family law reforms further demonstrate that legal protection for women is strongly influenced by socio-political contexts and reform trajectories.⁷ Marissa (2020) highlights the dynamics of Islamic family law in Indonesia in the context of judicial modernization, but does not discuss cross-border comparisons.⁸ Beyond Indonesia, research on Southern Thailand has emphasized the challenges of implementing Islamic family law in minority-Muslim settings, particularly the interaction between religious institutions, state law, and local social structures. Study by Mahamatamayudin (2017) examined the problems of implementing Muslim family law in Southern Thailand, especially social

⁵ Rifqi Qiwiyul Sanusi, Iman, Reza Baihaki, and Ibnu Farhan, "Ijtihad Mubadalah of Judges on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia," *Smart: Journal of Sharia, Tradition and Modernity* 3, no. 1 (2023): 1–15, <https://doi.org/10.24042/smart.v3i1.16981>.

⁶ Dinda Difia M Ahmad Ash Shiddieqy, Akhmad Roja Badrus Zaman, Sumayyah Faqihah, Muhammad Nur Fathoni, "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco," *Legitima : Jurnal Hukum Keluarga* 07, no. 02 (2025): 165–90, <https://doi.org/10.33367/legitima.v7i2.7101>.

⁷ Asmuni Doni Azhari, "The Politics of Reform in Islamic Family Law and Its Impact on Gender Equality," *USRATY: Journal of Islamic Family Law* 3, no. 1 (2025): 87–99, <http://dx.doi.org/10.30983/usraty.v3i1.8721>.

⁸ Fanny Shinta Permatahati Marisa Kurnianingsih, Nova Auliyanti Faiza, Dita Nadya Anastasya, "Legal Protection of Women's Rights after Divorce," *International Journal of Advanced Multidisciplinary Research and Studies* 11, no. 6 (2024): 716–20, <https://doi.org/10.62225/2583049X.2024.4.6.3502>.

barriers and lack of oversight mechanisms.⁹ Nasaiy elaborated on the issue of child marriage but did not specifically discuss rights after divorce.¹⁰ Zaini's research (2022) examined the right to alimony and mut'ah in Southeast Asian sharia courts but did not directly examine the relationship between judges' interpretations and social realities.¹¹ While these studies provide important insights into legal reform, women's rights, and institutional development, most of them analyze either legal norms, policy reforms, or implementation issues separately, without systematically exploring how judges' interpretations interact with social realities in shaping the actual fulfillment of women's rights after divorce.

The review of previous studies indicates a significant research gap in the comparative understanding of post-divorce Muslim women's rights across different socio-legal contexts in Southeast Asia. Existing studies have successfully explained legal reform, judicial reasoning, and gender justice within particular jurisdictions, yet they have rarely examined how judicial interpretations are negotiated, constrained, or reinforced by societal conditions in both Muslim-majority and Muslim-minority environments. Consequently, the relationship between judicial authority and lived social realities remains insufficiently explored, particularly in a comparative analysis between Indonesia and Southern Thailand. Building upon this gap, the present study argues that differences in women's post-divorce rights protection are not merely institutional variations between Indonesia and Southern Thailand. Instead, they reflect different patterns of interaction between judicial interpretation, legal institutions, and societal realities. By comparing a Muslim-majority country and a Muslim-minority region that share comparable Islamic legal principles but operate within different constitutional and socio-political settings, this study seeks to explain why similar normative foundations generate different legal outcomes. Accordingly, the article adopts a comparative socio-legal perspective that places judicial interpretation at the center of the analysis rather than treating it as a purely doctrinal issue. The novelty of this study lies in developing a conceptual explanation of how judicial interpretation, institutional practices, and societal

⁹ Nahid Ferdousi Samah, Mahamatayuding, Raihanah Abdullah, "Muslim Family Law in Southern Thailand: A Historical Overview. *Journal of Muslim Minority Affairs*," *Journal of Muslim Minority Affairs* 37, no. 3 (2017): 57–70, <https://doi.org/10.1080/13602004.2017.1379694>.

¹⁰ Miss Nifatimah Samo Nasaiy Aziz, Riadhus Sholihin, "Child Marriage in Kabang, South Yala, Thailand: Islamic Family Law Perspective," *El Ushab: Journal of Family Law* 6, no. 2 (2023): 215–26, <https://doi.org/10.22373/ujhk.v6i2.8699>.

¹¹ Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Journal of Family Law and Islamic Law* 2 8, no. 1 (2024): 1–19, <https://doi.org/10.22373/sjhk.v8i1.16553>.

realities interact to shape the protection of Muslim women's post-divorce rights within different plural legal systems.

B. Method

This study employs a qualitative comparative socio-legal approach to examine divorce mechanisms and the fulfillment of Muslim women's post-divorce rights in Indonesia and Southern Thailand. Using a Most Similar Systems Design (MSSD), the study compares two jurisdictions that share common Islamic family law principles governing marriage, divorce, maintenance (*nafkah*), *mut'ah*, and child custody, yet differ significantly in their institutional and socio-political settings. Indonesia administers Islamic family law through a state-based Religious Court system, whereas Southern Thailand relies on religious institutions operating within a secular legal framework. This comparison enables an analysis of how judicial interpretation, institutional arrangements, and socio-legal contexts shape the protection and realization of Muslim women's post-divorce rights.

Data were collected through document analysis, in-depth interviews, and limited field observations. Observations were conducted at selected Religious Courts in Indonesia and the Islamic Council and Sharia Court institutions in Southern Thailand to examine court procedures, case handling, and the implementation of judicial decisions concerning women's post-divorce rights. Documentary sources included relevant legislation and judicial decisions in Indonesia, such as the Marriage Law No. 1 of 1974 as amended by Law No. 16 of 2019, the Compilation of Islamic Law (KHI), and Religious Court decisions, as well as the Islamic Family and Inheritance Law Act B.E. 2489 and documents of the Islamic Religious Councils (MAI) in Yala and Pattani, Thailand. Court decisions analyzed were limited to cases decided between 2021 and 2025 concerning women's post-divorce rights. In-depth interviews were conducted with Religious Court judges, MAI representatives, women's organizations, female advocates, and former litigants to explore judicial perspectives, institutional practices, women's experiences, and the effectiveness of post-divorce rights enforcement. All interviews were recorded with participants' consent, transcribed, translated where necessary, and verified through triangulation with documentary and observational data.

Data analysis was conducted in three stages. First, laws, regulations, court decisions, and institutional documents were analyzed using a juridical-normative approach to identify legal principles, judicial interpretations, and regulatory frameworks governing Muslim

women's post-divorce rights. Second, interview transcripts and observational data were analyzed through thematic qualitative analysis by coding key themes, including divorce mechanisms, judicial interpretation, women's bargaining positions, administrative barriers, institutional roles, and socio-cultural dynamics. Third, a cross-country comparative analysis was undertaken to identify similarities and differences in judicial interpretation, legal procedures, institutional practices, and the protection of women's post-divorce rights in Indonesia and Southern Thailand. The findings were interpreted within a socio-legal framework to explain how legal norms are implemented across different social contexts. Data validity was ensured through source, geographical, and theoretical triangulation by comparing interview findings with legal documents, court decisions, institutional records, field observations, and evidence from different research locations, while interpreting the results through the perspectives of legal pluralism, Islamic feminist theory, and law implementation theory.

C. Result

The law enforcement mechanisms for Muslim women who have experienced divorce in Indonesia and Thailand show fundamental differences, both in structural and cultural aspects. In Indonesia, divorce remains a significant social and legal issue. Data from the Religious SCC indicate that more than 460,000 divorce cases are recorded annually, with women filing over 70 percent of all divorce petitions.¹² This trend suggests that many Muslim women continue to face challenges such as economic neglect, domestic violence, marital conflict, and the failure of husbands to fulfill their legal obligations. In Thailand, According to records obtained from the Islamic Religious Council (MAI) of Yala and interviews with MAI officials conducted in August 2024, divorce cases increased from 244 cases in 2022 to 302 cases in 2023, with many petitions initiated by women due to maintenance disputes, domestic violence, and drug-related problems.¹³ In Indonesia, divorce for Muslim couples is regulated through Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI). The divorce process can only be carried out through the Religious Court, so every divorce lawsuit submission requires the woman to

¹² Dudung Hidayat, "Small Claim Court (SCC): Implementasi Dan Hambatannya Dalam Penyelesaian Sengketa Perdata," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 47–69, <https://doi.org/10.14710/jphi.v5i1.47-69>.

¹³ Abdurrahma, "Personal Interview in MAI Yala Thailand" (14 August, 2024).

present sharia reasons such as disharmony, domestic violence, loss of livelihood, or *syiqāq*. The Religious Court is authorized to examine lawsuits, conduct mediation, summon the parties, and render a verdict based on evidence and witness statements.¹⁴ In an interview with Mrs. N (Salatiga, September 10, 2024), it was emphasized that this legal process provides space for women to make formal arguments, although it often takes a long time and a lot of financing.¹⁵

In Thailand, divorce for Muslim women is regulated through the Muslim Family Law which applies specifically in Muslim-majority areas such as Yala, Pattani, and Narathiwat. This system combines Thai national law with Islamic sharia, so the divorce mechanism is more flexible than Indonesia's. A woman can file for divorce voluntarily if her husband approves it, or through the Islamic Religious Council (MAI) and the local sharia court if there is a dispute.¹⁶ MAI plays an important role as a mediation institution as well as a guarantor that the divorce process is in accordance with sharia provisions. As explained by Dr. Abdul, mediation is a mandatory step before the case is submitted to a more formal adjudication process.¹⁷ The same procedure was also emphasized by Abdurrahman who explained that MAI provides administrative, psychological, and social services for women facing divorce, a form of support that has not been strongly adopted in Indonesia.¹⁸

Empirically, the divorce process in Indonesia begins with the registration of a lawsuit at the Religious Court, followed by the summoning of the parties, mediation, examination of evidence, and a verdict. If the husband is not present, the examination can be continued *verstek*. Women's rights such as *iddah* maintenance, *mut'ah*, *badhanah*, and the distribution of common property are decided through strict litigation mechanisms.¹⁹ In contrast, Muslim women in Thailand have two paths: voluntary divorce with the consent of their husbands, or filing a lawsuit with the MAI/court in case of a dispute. However, as Syarif said, when husbands refuse to divorce, women often face great social pressure, so the litigation process

¹⁴ Salma Salma, Hasanatul Wahida, and Muhammad Adib bin Samsudin, "Ignoring Family Law Administrative Procedure: Falsifying Death of Spouses for the Registration of New Marriage in Lengayang Muslim Community," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 1, <https://doi.org/10.14421/ahwal.2022.15101>.

¹⁵ Mrs.N, "Personal Interview in Salatiga" (10 Sept, 2024).

¹⁶ Mrs.Hayati, "Personal Interview in Yala, Thailand" (14 Agust, 2024).

¹⁷ Abdul, "Persolan Inteviu in MAI Yala Thailand" (16 Agust, 2024).

¹⁸ Abdurrahman, "Personal Interview in MAI Yala Thailand" (14 Agust, 2024).

¹⁹ Fadil, Mazidah, and Mahmudi, "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey."

can be more difficult than in Indonesia.²⁰ However, this flexibility gives Thai women access to divorce without always having to go through a lengthy court process, provided that there is an agreement.

The two countries also apply different mechanisms in the division of common property and the determination of *hadhanah*. In Indonesia, courts decide based on the principles of justice, the best interests of children, and sharia provisions adopted by KHI. Meanwhile, in Thailand, the division of property and custody of children is based on sharia law applied contextually by the MAI, so there is a wider space for judges to assess certain social situations.²¹ In another interview in Yala, Heir Chelong asserted that local cultural norms often influence court decisions, especially when women are considered disgraceful if they claim alimony or joint property.²² This suggests that although formal law provides protection, its implementation can be distorted by social norms.

Women's post-divorce rights in both countries are basically recognized by national and sharia law. In Indonesia, women have the right to iddah, mut'ah, *hadhanah*, and the division of common property,²³ although their implementation is often hampered by women's lack of understanding of legal procedures. Many women do not know that they can apply for an execution judgment when their husbands do not fulfill their obligations, as revealed in an interview by Mrs. N.²⁴ In Thailand, women also have similar rights, but often encounter obstacles when husbands refuse to cooperate or when society pressures women to maintain the household for the sake of community harmony (Sainee, Mac Muslim, interview, August 14, 2024).

In the institutional aspect, Indonesia relies on the Religious Court, while Thailand relies on a combination of the MAI and the sharia court. MAI has a mandate not only as a legal institution, but also as a provider of psychological and social support, which helps women cope with cultural and family pressures. In an interview with Nurhayati at HAP (August 15, 2024), it was explained that MAI and local women's organizations play an important role in changing the negative stigma against widows and women who demand rights. In Patani, the Perwani organization plays a strategic role in providing legal education, economic training, and

²⁰ Syarif, "Personal Interview in Yala Thailand" (15 August, 2024).

²¹ Abdul, "Persolan Interview in MAI Yala Thailand."

²² Chelong Wa, "Personal Interview in Songkla Thailand" (13 August, 2024).

²³ Mr.MB, "Personal Interview" ((Tendency to Choose Customary Law) On October 17st. in Semarang, 2024).

²⁴ Mrs.NRTP, *Personal Interview*, On September 12st. in Rembang Regency, 2024).

advocacy for women facing divorce.²⁵ This function has not been fully integrated in the structure of state institutions in Indonesia.

However, both countries face major challenges in law enforcement, especially related to access to justice, lack of legal literacy, and the strength of patriarchal culture. In Indonesia, limited costs and distance to the courts are common barriers, especially for rural women.²⁶ Meanwhile, in Thailand, family and community pressure has made many women reluctant to demand their rights, especially in areas that still hold conservative customs.²⁷ The study of Hamzah & Mukhlas (2022) shows that the low legal literacy of women in both countries results in them not knowing the rights that can be demanded according to Islamic law and state law.²⁸

Another factor that weakens the effectiveness of the law is the limited resources of law enforcement agencies and companion organizations. In Indonesia, NGOs often lack the funds and human resources to provide comprehensive legal assistance to women victims of divorce.²⁹ In Thailand, similar conditions are experienced by organizations such as APSW, FOWIA, and FFW that seek to help women but are unable to reach all conflict areas.³⁰ These limitations have an impact on women's access to advocacy, legal education, and social protection.

Overall, a comparison of law enforcement mechanisms in Indonesia and Thailand shows that although both countries have legal frameworks that recognize the rights of post-divorce Muslim women, the effectiveness of their implementation is largely determined by social, cultural, institutional accessibility, and institutional support. In Indonesia, the legal structure is more formal and integrated, but weak in terms of the execution of judgments and women's access to legal aid. In Thailand, there is procedural flexibility and strong social support through MAI and women's organizations, but conservative cultural norms often limit women's courage to demand full rights. These findings show that the enforcement of Muslim women's rights after divorce cannot be understood only through legal textual analysis, but must look at the social realities that shape women's experiences in the legal system in each country. Rather than viewing the findings as separate descriptions of each jurisdiction, Table

²⁵ Shainee, "Personal Interview in Pattani Thailand" (16 Agust, 2024).

²⁶ Riyadi, "Personal Interview in Kudus Indonesia" (9 Sept, 2024).

²⁷ Mahir, "Personal Interview in Yala Thaildand" (13 Agust, 2024).

²⁸ Usep Hamzah, Mukhlas, "Women's Rights After Divorce In Positive Law And Islamic Law," *Usroh Journal* 6 (2022): 70.

²⁹ Saefuddin, "Personal Interview in Lombok Indonesia" (8 Oct, 2024).

³⁰ Mr.J, "Personal Interview in Pattani Thailand" (16 Agust, 2024).

1 synthesizes the comparative results into key analytical themes. This presentation highlights how judicial interpretation, institutional arrangements, and socio-cultural contexts interact to shape the protection of Muslim women's post-divorce rights in Indonesia and Southern Thailand.

Table 1. Comparative Socio-Legal Findings on the Protection of Muslim Women's Post-Divorce Rights in Indonesia and Southern Thailand

Theme	Indonesia	Southern Thailand	Analytical Insight
Legal framework	Religious Court under national law	Islamic Family Law under MAI and Sharia Court	Different institutional arrangements despite shared Islamic principles
Divorce procedure	Formal litigation	Mediation followed by adjudication	Different procedural pathways influence access to justice
Judicial interpretation	Rights-based judicial enforcement	Community-oriented religious mediation	Judicial interpretation is shaped by institutional authority and socio-legal context rather than by Islamic legal principles alone.
Enforcement of maintenance	Court order and execution	Voluntary compliance mediated by MAI	Enforcement depends on institutional authority
Child custody	Court decision based on best interests	Contextual application of sharia	Different balancing between legal certainty and flexibility
Institutional support	Religious Court	MAI + Women's Organizations	Different support structures influence legal outcomes
Socio-cultural barriers	Legal literacy and economic constraints	Patriarchal norms and community pressure	Social reality affects realization of legal rights
Main finding	Stronger procedural protection	Stronger social mediation but weaker enforceability	Similar Islamic legal principles produce different legal outcomes because they are interpreted and implemented within different institutional and socio-cultural settings.

D. Analysis and Discussion

1. Differences in the mechanism of divorce proceedings in Indonesia and Thailand

The divorce mechanism for Muslim women in Indonesia and Thailand shows fundamental differences influenced by the legal framework, social structure, and political dynamics of the law in both countries. Indonesia is a country with a majority Muslim population, so Islamic family law has been formally integrated into the national legal system through the Marriage Law No. 1 of 1974 (which was later updated through Law No. 16 of

2019), Government Regulation No. 9 of 1975, and the Compilation of Islamic Law (KHI) as material law within the scope of religious justice.³¹ Thailand, on the other hand, is a country with a Buddhist majority population, but it provides a legal exception for Muslims in the southern regions of Patani, Yala, Narathiwat, and parts of Songkla to use Islamic family law.³² This fundamental difference results in two models of divorce settlement: Indonesia requires litigation through the Religious Court,³³ while Thailand allows settlement through voluntary mechanisms such as direct talaq or through Islamic institutions such as the Islamic Religious Council (Majlis Agama Islam / MAI).³⁴

In Indonesia, divorce is only valid if it is decided by a Religious Court. This is affirmed in Article 39 of the Marriage Law and Articles 65-66 of the KHI which stipulate that talaq must be pronounced in front of a court hearing and witnessed by two witnesses.³⁵ This mechanism is an effort by the state to ensure that divorce is not carried out arbitrarily by husbands and to provide protection for women who have been in a vulnerable position due to unilateral talaq practices for centuries. Poitras' study shows that religious justice reform in Indonesia has succeeded in shifting the practice of unsupervised talaq to state-supervised talaq, so that women have a legal mechanism to obtain their rights after divorce.³⁶

The divorce process in the Indonesian Religious Court tends to be formal and requires strong evidence from the woman if she sues for divorce. Under procedural law, women must include written evidence, witnesses, or other relevant evidence related to domestic violence, not being given support, or constant quarrels. Fajri explored that this evidentiary requirement is necessary to maintain the legitimacy of the decision and ensure that the divorce is carried

³¹ Kaosar Hayeejehwee Rozikin, Opik, "Reconstructing Usul Fiqh and Islamic Family Law for Environmental Justice in the Global South," *Justitia Nova: Indonesian Journal of Modern Law* 1, no. 1 (2025): 35–50, <https://ejournal.kampusalazhar.ac.id/index.php/jnova>.

³² David M. Engel, "Blood Curse and Belonging in Thailand: Law, Buddhism, and Legal Consciousness," *Asian Journal of Law and Society* 3, no. 1 (2016): 71–83, <https://doi.org/10.1017/als.2016.2>.

³³ Amran Suadi, "Protection Of Women's And Children's Rights Based On System Interconnection: A New Paradigm of Execution of Women and Children's Rights after Divorce," *Jurnal Hukum Dan Peradilan* 11, no. 3 (2022): 499, <https://doi.org/10.25216/jhp.11.3.2022.499-522>.

³⁴ Nasaiy Aziz, Riadhus Sholihin, "Child Marriage in Kabang, South Yala, Thailand: Islamic Family Law Perspective."

³⁵ Dri Santoso et al., "Harmony of Religion and Culture: Fiqh Munākahat Perspective on the Gayo Marriage Custom," *Ijtihad: Journal of Islamic Law and Humanitarian Law Discourse* 22, no. 2 (2022): 199–218, <https://doi.org/10.18326/IJTihad.V22I2.199-218>.

³⁶ K Poitras et al., "Family Dispute Resolution: Characteristics of Cases Resolved by Trial," *Children and Youth Services Review* 123 (2021), <https://doi.org/10.1016/j.childyouth.2020.105832>.

out on the basis of valid reasons according to sharia and the law.³⁷ On the other hand, for husbands who apply for talaq, the process is relatively simpler because it is enough to pronounce the talaq pledge in front of the judge after going through administrative procedures.

Mandatory mediation based on PERMA No. 1 of 2016 is an important part of the flow of the trial. This mediation serves to seek peace, but some research shows that mediation is often ineffective in cases of domestic violence or relationships that have been severely fractured. Harisuddin in her study on Muslim women and the judiciary of Southeast Asia noted that "mediation in the context of unequal relationships can actually prolong women's suffering because it opens up space for manipulation by the husband".³⁸ Thus, although mediation is a good legal instrument, its implementation needs to take into account the psychological and safety aspects of women.

Different from Indonesia, Thailand has a Muslim family law system that is a hybrid between national law and sharia law. Islamic law in the southern region allows Muslim communities to settle family matters, including divorce, under Islamic law.³⁹ However, Thailand does not require all divorces to be decided through the courts; divorce can occur voluntarily through talaq pronounced before the MAI or even directly between husband and wife, depending on the agreement of both parties. MAI acts as an administrative and religious body that oversees the implementation of Islamic family law.⁴⁰ Agustar (2024), in his research on the implementation of Islamic family law in Southern Thailand, stated that this model provides greater flexibility to the Muslim community but at the same time opens up a space of uncertainty for women who rely on their husbands' consent to resolve divorce in a non-litigation manner.⁴¹

The flexibility of this Thai system has two sides. On the one hand, women can resolve divorce quickly without going through a long bureaucratic process like in Indonesia. The results of the interview with Dr. Abdul Rasyid from MAI Yala showed that "the process at MAI is faster than in the national courts, so women feel more helped, especially if they

³⁷ Fajri M. Kasim et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Abkam: Jurnal Ilmu Syariah* 22, no. 2 (2022): 411–32, <https://doi.org/10.15408/ajis.v22i2.28747>.

³⁸ M. Noor Harisudin and Muhammad Choriri, "On the Legal Sanction against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," *Samarah* 5, no. 1 (2021): 471–95, <https://doi.org/10.22373/sjhk.v5i1.9159>.

³⁹ James Wise, *Thailand: History, Politics and the Rule of Law* (Bangkok: Chulalongkorn University, 2019).

⁴⁰ Abdurrahman, *Central Regulations of the Islamic Religious Council of Thailand* (Yala: MAI, 2018).

⁴¹ & Nurcahaya Agustar, A., "Application of Islamic Family Law to the Muslim Minority of South Patani Thailand," *Academic Journal of Social Sciences, Humanities and Religious Studies* 5, no. 1 (2024): 43–52.

experience psychological stress in the household."⁴² But on the other hand, dependence on the husband's consent can be detrimental to women. In some cases, women cannot access divorce because their husbands are unwilling to give talaq, and MAI does not have executory authority at the level of the Indonesian Religious Court.⁴³

In addition, legal pluralism in Thailand gives rise to different perceptions about the legality of divorce. In some communities, divorces carried out informally such as oral talaq without official documentation are considered religiously valid but do not have the legal force of state administration.⁴⁴ This has a major impact on women's access to post-divorce rights such as alimony, child custody, or property division. Women in Southern Thailand lose civil and administrative rights because their divorces are not legally recorded, so they cannot make claims to economic rights after separation.⁴⁵

Indonesia is in the opposite position. The state requires the registration of divorce through a court decision as an administrative legal requirement. The state's power in overseeing divorce provides guarantees of protection for women, including economic and legal protection. However, the very formal process makes some women experience bureaucratic constraints, especially those who come from remote areas or have economic limitations. Atun and Bianca's study shows that the bureaucratization of divorce in Indonesia is often an obstacle to access to justice, even though it is normatively intended to provide protection.⁴⁶

These differences in legal models show that the state has an important role in determining how far women can access justice. In Indonesia, the state takes a dominant role in regulating and supervising divorce, so the validity of talaq is not only religious but also legal formal. In contrast, Thailand gives autonomy to the Muslim community through the MAI, so that local religious authorities play a stronger role in determining the legality of divorce.⁴⁷ This

⁴² Abdul, "Persolan Interview in MAI Yala Thailand."

⁴³ *The Constitution of the Islamic Religious Governing Body in Thailand*, n.d.

⁴⁴ Fatimah Karim Aofa Abd Mutalib, "Causes of Divorce in Yala Province, Thailand: Impacts and Suitable Solutions)," *International Journal of Fiqh and Usul Al-Fiqh Studies* 9, no. 1 (2025): 46–62, <https://doi.org/10.31436/ijfus.v9i1.359>.

⁴⁵ Mahamatayuding Samah, "Divorce by Ta'lik in the Muslim Community At Three Southern Provinces of Thailand," *Selangor Humaniora Review* 4, no. 1 (2021): 260–77, <http://share.journals.unisel.edu.my/index.php/share/article/view/118>.

⁴⁶ Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna* 24, no. 2 (2020): 266–95, <https://doi.org/10.20414/ujs.v24i2.416>.

⁴⁷ "Case 0613/2552(2009) Yala Islamic Religious Council," (n.d.).

difference creates two important consequences: (1) Indonesia provides stronger legal protections for women's rights, but with a lengthy process; (2) Thailand provides a more flexible and faster process, but often weakens women's bargaining positions when dealing with uncooperative husbands.

These findings demonstrate that divorce mechanisms cannot be understood solely as juridical processes but must be analyzed within their broader social, political, and cultural contexts. Documentary analysis, interviews, and field observations show that Indonesia regulates divorce and enforces Muslim women's post-divorce rights through a state-administered Religious Court system, whereas Southern Thailand applies Islamic family law through a plural institutional framework in which the Islamic Religious Council (MAI) and local religious authorities operate alongside the national legal system. Although both jurisdictions share similar Islamic legal principles, differences in judicial interpretation, institutional arrangements, and socio-cultural conditions produce distinct patterns of legal protection and women's bargaining power during divorce proceedings. In Indonesia, formal judicial procedures provide stronger procedural safeguards, including access to mediation, evidence presentation, legally binding judgments, and claims for maintenance, *mut'ah*, and child custody, thereby strengthening women's legal position despite the time and cost involved. By contrast, Southern Thailand's more flexible and community-based mechanisms facilitate accessible dispute resolution but, because of limited enforcement authority and reliance on informal social and religious structures, often weaken women's bargaining power. Consequently, the fulfillment of Muslim women's post-divorce rights depends not only on Islamic legal norms but also on the interaction between judicial institutions, religious authority, and local socio-cultural realities.

2. Implementation of Women's Rights After Divorce: Alimony, *hadhanah* , and Joint Property in Court Decisions and Social Practice

The post-divorce rights of Muslim women are a fundamental aspect of Islamic family law, which serves to ensure social, economic, and psychological protection for women after the end of the marital relationship. In Indonesia, this normative framework of protection has been regulated through the Marriage Law No. 1 of 1974 in conjunction with Law No. 16 of 2019, the Compilation of Islamic Law (KHI), Supreme Court Decisions, and various judicial technical regulations. Meanwhile, in Southern Thailand, these rights refer to the Islamic *Family and Inheritance Law*, as well as the regulations of the Islamic Religious Assembly (MAI) of the

provinces, especially Yala,⁴⁸ Patani,⁴⁹ and Narathiwat.⁵⁰ Although the legal frameworks of both countries affirm the right to iddah, mut'ah, *badhanah*, and common property (*sin somros* in Thailand), their implementation is strongly influenced by social, cultural, and institutional dynamics at the local level. Therefore, understanding the implementation of women's rights post-divorce is not enough only through legal-normative analysis, but also through mapping women's empirical experiences in courts and communities.

In the Indonesian context, the right to iddah and mut'ah maintenance is an integral part of the divorce and talaq divorce decisions. Article 149 of the KHI expressly states that when there is a divorce arising from a petition for talaq, the husband is obliged to give proper mut'ah to the wife, iddah maintenance, and ensure the fulfillment of other rights such as maskan (residence). In practice, judges of the Religious Court use the principles of justice and feasibility by taking into account the economic condition of the husband. This verdict is basically final and binding, so it can be submitted for execution if the husband does not fulfill his obligations according to the verdict. However, studies have shown that the implementation of these rights often faces obstacles. Meivanza found that ex-husbands' compliance with post-divorce alimony payments tends to be low, especially among low-income communities.⁵¹ Religious Courts themselves face institutional limitations in the execution mechanism, because alimony cases fall into the civil category that requires separate execution applications that are not always known or capable of being carried out by women. These institutional limitations affect women's legal strategies because many divorced women perceive the execution process as costly, complex, and unlikely to succeed. Consequently, although judicial decisions formally recognize women's rights, many beneficiaries choose not to pursue enforcement, resulting in a substantial gap between legal entitlement and actual realization.

Another aspect is the division of common property (*gono-gini property*). Although Article 97 of the KHI stipulates that the division of joint property is half for husband and wife, its implementation in the field is highly dependent on the ability to prove ownership and the litigation process that requires cost and time. Euis' research shows that many women have difficulty accessing this right because they do not have documents proving their assets or

⁴⁸ "Case 0613/2552(2009) Yala Islamic Religious Council."

⁴⁹ "Case 152/ 2545 (2002), Pattani Court.," (n.d.).

⁵⁰ "Case 80/1992, Narathiwat Provincial Islamic Religious Council.," (n.d.).

⁵¹ Meivanza Dwi Aurellia and Abdul Halim, "The Urgency of the Establishment of Executing Institutions for the Fulfillment of the Rights of Women and Children After Divorce," *JURNAL USM LAW REVIEW*, 2023, <https://doi.org/10.26623/julr.v6i2.7270>.

because their assets are under the control of their husbands' families.⁵² In rural areas, property ownership is often communal or recorded in the name of extended families, thus weakening women's standing before the law. In addition, socially many women are reluctant to claim joint property because of cultural norms that view such actions as a form of immodesty or "greed," especially if the divorce occurs on the initiative of the wife. This reluctance reflects the internalization of patriarchal expectations that associate women's claims to marital property with disloyalty or excessive materialism. As a consequence, socio-cultural pressure influences not only women's willingness to litigate but also the extent to which legal protection can be effectively realized.

The implementation of *badhanah* rights (child maintenance rights) also has its own complexities. KHI stipulates that children under the age of 12 are in principle in the care of their mother, unless there are sharia reasons that prevent it.⁵³ However, child support is still charged to the father as the guardian. In practice, many women win the right to *badhanah* but do not receive regular child support. Shifa's research shows that the decision of *badhanah* is not always in line with the economic fulfillment by the father, so that the burden of child maintenance is ultimately borne by the mother.⁵⁴ This shows that there is a gap between the court's decision and the ability of state institutions to ensure the compliance of the ex-husband.

In contrast to Indonesia, the implementation of women's rights post-divorce in Southern Thailand is strongly influenced by the structure of legal pluralism that combines sharia law, Malay-Patani customary law, and Thailand's national legal system. The provincial MAI (Islamic Religious Council) plays a central role in determining and mediating post-divorce rights, but does not always have the same executory power as the country's civil courts. In an interview with Syarif, a staff member of MAI Yala, it was said that "the biggest challenge is when the ex-husband refuses to provide alimony, so the woman has to appeal to the MAI for further settlement."⁵⁵ This appeals system theoretically provides a new space for women to

⁵² Euis Nurlaelawati, "The Legal Fate of Indonesian Muslim Women in Court Divorce and Child Custody," in *Religion, Law and Intolerance in Indonesia* (London: Routledge, 2016), 353–68.

⁵³ Zakiyah Ulya and Endriyanti Endriyanti, "Protection of Women's Rights After Divorce in Divorce Lawsuit at the Padang Panjang Religious Court," *HUMANISMA: Journal of Gender Studies* 7, no. 2 (2023): 156, <https://doi.org/10.30983/humanisme.v7i2.8012>.

⁵⁴ Silfa Afriyani, "Interdisciplinary Approach in the Study of Marital Law (Study of the Determination of Child Custody)," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 21, no. 2 (2021): 219–30, <https://doi.org/10.19109/nurani.v21i2.9738>.

⁵⁵ Syarif, "Personal Interview in Yala Thailand."

claim rights, but the internal bureaucracy of MAI and the lack of socialization leave many women unaware of the procedure.

The right to iddah and mut'ah maintenance in Thailand is normatively guaranteed through *Islamic Family Law*, but its implementation is strongly influenced by the local Patani Malay norms that emphasize family deliberation. Rather than applying Islamic legal norms mechanically, MAI officials frequently negotiate between normative legal provisions and local customs by encouraging consensual settlements that are socially acceptable within the Malay-Muslim community. While this approach helps preserve community harmony, it may also reduce women's bargaining power when consensual agreements are shaped by unequal social relations rather than by legal entitlements. This, on the one hand, encourages peace and family settlement; But on the other hand, it has the potential to pressure women to accept unfair agreements. Rather than applying Islamic legal norms mechanically, MAI officials frequently negotiate between normative legal provisions and local customs by encouraging consensual settlements that are socially acceptable within the Malay-Muslim community. Consequently, legal outcomes are often shaped not only by the formal requirements of Islamic family law but also by prevailing community expectations and the desire to preserve social harmony. A UN Women study (2021) shows that many Muslim women in Southern Thailand do not receive a decent livelihood due to social pressure to "avoid conflict" or maintain the family's good name.⁵⁶ The social stigma factor against divorced women causes women to be reluctant to bring alimony disputes to civil courts even though they legally have the right to do so.

For *badhanah* rights, MAI Thailand generally follows the sharia principle that mothers have more rights over small children, but decisions are strongly influenced by recommendations from families and traditional leaders. This is different from Indonesia which is more based on juridical considerations. The findings suggest that judicial and quasi-judicial decision-making is influenced not only by legal principles concerning the best interests of the child but also by the authority of extended families and respected religious figures, illustrating how legal outcomes are socially negotiated within local communities. When a *badhanah* dispute occurs, the settlement process often involves the mediation of customary or local scholars before it is submitted to the MAI. Samah's research confirms that women in Southern Thailand often do not receive adequate support to take cases to a more formal level due to the

⁵⁶ Panpimol Wipulakorn, "Association for the Promotion of the Status of Women: Under the Royal Patronage of HRH Princess Soamsawali Krom Muen Suddhanarinatha," 2021, <http://www.apsw-thailand.org/board.html>.

dominance of patriarchal culture and control of the extended family.⁵⁷ As for the right to common property (*sin somros*), Thailand has unique characteristics. Although Thailand's national law regulates the proportional distribution of common property based on each party's contribution, the Islamic law used by MAI emphasizes the principle of *maslahah*-based justice.⁵⁸ However, its implementation is often inconsistent. A study by Abdoeh shows that Muslim women in Southern Thailand rarely claim joint property due to the lack of documentation of ownership and the strong influence of the husband's family in determining the division of property.⁵⁹

Structural barriers further exacerbate the implementation of these rights. In Indonesia, administrative constraints such as long trial times, litigation costs, and weak execution mechanisms are the main factors that hinder women from obtaining their rights. In interviews with some women in Salatiga, it was found that many women did not know that they had the right to apply for an execution for *iddah* or *mut'ah* maintenance.⁶⁰ Limited legal literacy therefore operates as more than an informational barrier; it shapes women's procedural choices by reducing their confidence to pursue execution proceedings or seek legal assistance after judgment. In Thailand, structural barriers include MAI's limited administrative capacity, a lack of female staff who understand gender perspectives, and the absence of a strict sanction mechanism for husbands who do not pay alimony.⁶¹

Socially, patriarchal norms in both countries affect the extent to which women can claim post-divorce rights. In Indonesia, women often face the stigma that "a wife who sues for divorce is not worthy of claiming alimony."⁶² Although judges generally recognize these rights in accordance with statutory provisions, patriarchal social norms discourage many women from pursuing litigation or enforcement proceedings, thereby limiting the practical realization of judicial decisions. Meanwhile, in Southern Thailand, divorced women are often labeled as "the cause of family problems," which makes them reluctant to bring alimony or

⁵⁷ Samah, Mahamatayuding, Raihanah Abdullah, "Muslim Family Law in Southern Thailand: A Historical Overview. *Journal of Muslim Minority Affairs*."

⁵⁸ MAI, "Islamic Legal Guidelines on Family and Inheritance," in *Courts of Justice* (Bangkok, 2011).

⁵⁹ Nor Mohammad Abdoeh, "Islamic Family Law Politics in Thailand (Dualism of State and Religious Rules)," *Journal of Indonesian Islamic Family Law* 6, no. 2 (2024): 174–97, <https://doi.org/10.19105/al-manhaj.v6i2.13299>.

⁶⁰ Mrs.N, "Personal Interview in Salatiga."

⁶¹ Syarif, "Personal Interview in Yala Thailand."

⁶² Lilik Andar Yuni and Jati Kusuma, "The Fulfillment of Women's Rights in Verstek Decisions at Samarinda and Sangatta Religious Court," *Al-'Adalah* 20, no. 2 (2023): 257–82, <https://doi.org/10.24042/adalah.v20i2.16119>.

property cases to court.⁶³ The study by Maoti explained that the identity of Patani Malay women is closely related to family honor, so the litigation process is considered an act of shaming the family.⁶⁴ The findings demonstrate that socio-cultural barriers actively shape the implementation of Muslim women's post-divorce rights rather than merely existing alongside the legal system. In Indonesia, patriarchal norms discourage many women from pursuing maintenance and joint property claims because of social stigma, family pressure, and limited legal awareness, despite judges generally recognizing these rights under statutory law. In Southern Thailand, the authority of religious leaders and community expectations favor negotiated settlements that prioritize family harmony over individual legal entitlements, leading religious institutions to mediate between Islamic legal norms and local customs in ways that influence legal outcomes.

Overall, the implementation of the rights to iddah, mut'ah, *badhanah*, and common property in Indonesia and Thailand shows a similar pattern: a strong legal framework does not automatically result in the fulfillment of rights for women. Social, cultural, accessibility, and institutional capacity factors play a huge role in determining whether women can actually obtain these rights. In the Indonesian context, the main challenge lies in the execution of judgments and limited access to the law.⁶⁵ In Thailand, the challenges have more to do with the social power of the family and the absence of a strong formal mechanism to uphold women's rights.⁶⁶ Therefore, the analysis of the implementation of post-divorce rights should include a thorough mapping of the interaction between legal norms, social conditions, local cultures, and institutional capacities to realistically guarantee women's rights.

3. Juridical, Cultural, and Structural Challenges in the Enforcement of Muslim Women's Rights Post-Divorce

Although legal instruments governing the rights of Muslim women after divorce are available in both Indonesia and Thailand, the reality of implementation shows that the

⁶³ Samah, Mahamatayuding, Raihanah Abdullah, "Muslim Family Law in Southern Thailand: A Historical Overview. *Journal of Muslim Minority Affairs*."

⁶⁴ Manapiyah Maoti, "The Role of Dato' Yuttitham in the Implementation of Family and Heirs Law in the Religious Courts of Four Provinces of Southern Thailand" (University of Muhammadiyah Surakarta, 1996).

⁶⁵ Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law To Guarantee Children's Rights," *Al-Jami'ah* 59, no. 2 (2021): 347–74, <https://doi.org/10.14421/ajis.2021.592.347-374>.

⁶⁶ Herbary Cheung, "Re-Defining Stigmatization: Intersectional Stigma of Single Mothers in Thailand," *Journal of Family Studies* 29, no. 3 (2022): 1222–48, <https://doi.org/10.1080/13229400.2022.2035797>.

existence of legal norms does not necessarily guarantee the fulfillment of these rights. Juridical, cultural, and structural barriers still affect women's ability to access legal mechanisms and obtain justice.⁶⁷ In this context, law cannot be understood as a normative system that works independently, but always exists in complex relationships with societal structures, local cultures, economic conditions, and gender power distribution. The two countries exhibit different dynamics but have a common pattern: women are often in a weak bargaining position, so their post-divorce rights of alimony, *hadhanah*, and joint property are often not fully realized. The findings demonstrate that judicial interpretation constitutes a critical mechanism through which legal norms are translated into practical protection for divorced Muslim women. Although judges in both Indonesia and Southern Thailand operate within comparable Islamic legal principles concerning maintenance, child custody, and post-divorce obligations, their interpretation and application of these norms are shaped by different institutional and socio-cultural environments. Consequently, judicial decisions are influenced not only by statutory provisions but also by prevailing social expectations, institutional authority, and the practical realities faced by litigants.

In Indonesia, the formal procedures of the Religious Courts provide legal certainty but also create structural barriers for women with limited access to judicial institutions.⁶⁸ Litigation costs, unequal court distribution, particularly in remote areas, and administrative obstacles often hinder women from claiming their rights to *iddah*, *mut'ah*, and joint property. Abro's research shows that access to legal formalities does not always parallel access to substantive justice.⁶⁹ Although judges generally seek to uphold women's statutory rights despite prevailing patriarchal norms, judicial discretion in determining maintenance, assessing husbands' financial capacity, and evaluating evidence means that effective protection often depends on women's ability to enforce judgments. In Southern Thailand, women encounter similar challenges within a different institutional framework. While Islamic Family Law recognizes their rights to divorce and maintenance, the Islamic Religious Council (MAI), which mediates such disputes, lacks the executory authority of state courts.⁷⁰ Consequently, non-compliance

⁶⁷ Ayu Yustika. Ahdiana Yuni Lestari Arifia, "Post-Divorce Consequences: A Legal Study of Decision No. 1442/Pdt.G/2018/PA. Btl," *Media of Law and Sharia* 6, no. 2 (2025): 235–54, <https://doi.org/10.18196/mls.v6i2.227>.

⁶⁸ Amran Suadi, "Judicial Authority and the Role of the Religious Courts in the Settlement of Sharia Economic Disputes," *Lex Publica* 7, no. 2 (2020): 1–14, <https://doi.org/10.58829/lp.7.2.2020.1-14>.

⁶⁹ Khoirul Abror, *Marriage and Divorce Law* (Yogyakarta: Ladang Kata, 2020).

⁷⁰ Maoti, "The Role of Dato' Yuttitham in the Implementation of Family and Heirs Law in the Religious Courts of the Four Provinces of Southern Thailand."

with MAI decisions requires women to pursue civil litigation, making the process longer, more complex, and more costly.⁷¹ Moreover, as MAI adjudicators simultaneously serve as mediators, religious authorities, and community representatives, their interpretations of Islamic family law often prioritize social harmony and local customs, sometimes weakening women's bargaining position and the effective enforcement of their legal rights. Beyond legal constraints, patriarchal culture remains a major obstacle to the enforcement of Muslim women's post-divorce rights in Indonesia, discouraging many women from claiming maintenance or other legal entitlements because of family and social pressure. Rather than directly shaping judicial decisions, these cultural norms influence women's willingness to pursue litigation, the evidence presented before the court, and the broader social context within which judges balance formal legal protection with prevailing gender expectations.

In Southern Thailand, cultural pressures are even stronger because the Malay-Patani community holds strict customary values regarding family honour and social stability. An interview with Nurhayati from HAP Patani shows that "women often hold back from filing lawsuits for fear of being labeled as the cause of family rifts."⁷² The social label that divorced women are "disgraceful" often forces women to accept unfair agreements for child support or custody in order to maintain the family's reputation. This condition is strengthened by the structure of society that places men as family leaders and moral authorities, so that women tend to follow the decisions of their husbands or extended families.

This is in line with Hududillah's finding that Islamic law in the context of Southeast Asia is always negotiated through local culture, so legal interpretations are often particular and do not fully reflect formal *fiqh* norms.⁷³ Thus, patriarchy is not just a cultural value, but also serves as a tool of social control that weakens women's ability to demand their rights after divorce. Structural challenges are the third factor that underscores how gender inequality operates through economic conditions and institutional capacity. In Indonesia, the majority of women who file for divorce come from the lower middle economic class. Limited financial capital makes it difficult for them to hire legal counsel or follow the entire court process.

⁷¹ Sunandpattira Nilchang and Dwight Y. King Arin Sa-idi, Kuson Nakachart, Srisompob Jitpiromsri, "Women in Rural, Southern Thailand: A Study of Roles, Attitudes, and Ethno-Religious Differences," *Southeast Asian Journal of Social Science* 21, no. 1 (1993): 81–97.

⁷² Nurhayati, "Personal Interview in Pattani" (17 August, 2024).

⁷³ T. A. Hududillah, T. H. ., Nikmah, S. ., Hamdi, F. ., & Bawana, "Reconstructing Islamic Family Law in ASEAN: A Normative Analysis of Marriage, Divorce, and Inheritance in Plural Legal Systems," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 02, no. 2 (2025): 183–210, <https://doi.org/10.62976/ajisc.v1i1.1427>.

Despite the availability of legal aid from non-profit organizations, research shows that the reach of legal aid is still limited, especially in rural areas. This makes women not fully understand the procedure of the lawsuit or the mechanism of execution of the judgment, so that their rights are often not realized even though they have been legally recognized.

In Southern Thailand, the situation is not much different. MAI does function as a dispute resolution institution, but limited resources make legal assistance not always optimal. Many women do not have adequate information about the procedure for filing alimony or joint property, so they rely on community mediators who are not always objective.⁷⁴ Limited legal literacy further reduces women's ability to understand and claim their legal rights, particularly regarding maintenance and joint property, as also reported by UN Women (2021).

In addition, the economic structure of Indonesian and Southern Thai society, which mostly depends on informal work, makes it difficult for the courts and the MAI to assess the economic capabilities of ex-husbands. This makes the determination of alimony or the division of assets often unrealistic and difficult to implement.⁷⁵ The situation is even more complex when the husband does not have a fixed income or deliberately avoids obligations. These three juridical, cultural, and structural factors show that the issue of enforcing women's rights after divorce is not just a matter of legal procedures, but a matter of gender power relations.⁷⁶ The findings suggest that judges in Indonesia generally attempt to uphold women's statutory rights; however, judicial discretion is exercised within broader socio-cultural constraints. When determining maintenance, assessing evidence, or evaluating the husband's financial capacity, judges must balance formal legal provisions with the realities presented during litigation. In Southern Thailand, MAI adjudicators simultaneously perform legal, religious, and community roles. Consequently, their interpretation of Islamic family law often reflects negotiation between normative legal provisions and local customs, particularly where community harmony is prioritized over adversarial litigation.

⁷⁴ Sulaiman Dorloh and Abdol Rauh Yaacob, "Roles and Functions of the Patani Muslim Religious Committee Council in Propagating and Preserving Islam as a Religion under Thai Constitution," *International Journal Of Humanities And Cultural Studies* 4, no. 2 (2017): 64–74, <http://www.ijhcs.com/index.php/ijhcs/index>.

⁷⁵ Kasetchai Laeheim, "The Islamic Way of Youth Care by Muslim Leaders in the Three Southern-Border Provinces of Thailand," *Asian Social Science* 9, no. 10 (2025): 160–68, <https://doi.org/10.5539/ass.v9n10p160>.

⁷⁶ Farhana Mehmood, Manahil Yaqoob, and Nasira Mehmood, "An Anthropological Perspective of Female Share in Inheritance: An Appraisal of Gap between Islamic Law and Practice," *Journal of Islamic Thought and Civilization* 12, no. 1 (2022): 199–211, <https://doi.org/10.32350/jitc.121.11>.

The findings indicate that judicial interpretation, together with juridical, cultural, and structural challenges, does not operate independently but interacts to shape the effective protection of Muslim women's post-divorce rights. Weak enforcement mechanisms and procedural limitations within legal institutions often reduce the effectiveness of court decisions, particularly regarding maintenance and joint property claims. These structural weaknesses are further exacerbated by socio-cultural norms that prioritize male authority within the family and discourage women from pursuing legal remedies. As a result, many women choose not to enforce their legal rights despite obtaining favorable judgments. In turn, the persistence of these cultural practices contributes to the continued ineffectiveness of legal institutions, creating a cycle in which legal recognition does not necessarily translate into substantive protection. Therefore, the gap between law and practice is not merely a legal problem but a product of the interaction between institutional capacity, social norms, and judicial implementation.

E. Conclusion

This study demonstrates that differences in the protection of Muslim women's post-divorce rights between Indonesia and Southern Thailand cannot be explained solely by variations in Islamic legal norms. Although both jurisdictions recognize similar principles concerning maintenance, *mut'ah*, child custody, and property rights, the findings show that these principles produce different legal outcomes because they are interpreted and implemented within distinct institutional and socio-cultural contexts. In Indonesia, the state-administered Religious Court system provides stronger procedural safeguards and legally enforceable judgments, whereas Southern Thailand's plural institutional framework emphasizes mediation and community-based dispute resolution through the Islamic Religious Council (MAI). Consequently, the realization of women's post-divorce rights is shaped by the interaction between judicial interpretation, institutional arrangements, and social realities rather than legal provisions alone.

Beyond its comparative findings, this study contributes to socio-legal scholarship on Islamic family law by proposing an analytical framework explaining how judicial interpretation mediates the relationship between Islamic legal norms and their implementation within plural legal systems. The findings further show that judicial interpretation is shaped by institutional authority, enforcement capacity, and socio-cultural expectations. This perspective explains why comparable Islamic legal principles produce different levels of legal protection for Muslim

women across jurisdictions and provides a broader analytical framework for future comparative research on Islamic family law and access to justice.

This study is limited to a qualitative comparative analysis of selected Religious Courts in Indonesia and Islamic Religious Councils (MAI) in Southern Thailand. Accordingly, the findings should be interpreted within these socio-legal contexts and should not be generalized to all Muslim legal systems. Future research may expand the geographical scope to other Muslim-majority and Muslim-minority jurisdictions, incorporate quantitative or mixed-method approaches, or further examine the lived experiences of Muslim women in accessing justice through formal judicial institutions, religious authorities, and community-based dispute resolution mechanisms.

F. Conflict of Interest Statement

The author declares that there is no conflict of interest in the publication of this article.

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