

The Fulfillment of Post-Divorce Rights for Former Wives and Children: A Maqāṣid al-Sharī'ah Analysis in Bantaeng Regency

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Article history: Received: December 15, 2024; Revised: April 15, 2025; Accepted: May 18, 2025; Published: May 31, 2025



Keywords:

Fulfillment of Rights;
Former Wife and Children;
Maqashid Syariah;
Islamic Family Law;
Islamic Law.

How to Cite:

Wahda, N. A., Sabir, M., & Anas, M. F. (2025). The Fulfillment of Post-Divorce Rights for Former Wives and Children in Bantaeng Regency: A Maqāṣid al-Sharī'ah Analysis. *Parewa Saraq: Journal of Islamic Law and Fatwa Review*, 4(1), 47–55.
<https://doi.org/10.64016/parewasaraq.v4i1.25>

Abstract: This study investigates the public understanding and practical realization of post-divorce rights for ex-wives and children in Bantaeng Regency, where 379 divorce cases were recorded in 2022. Despite clear legal provisions, many of these rights remain unfulfilled, reflecting a gap between legal rulings and social implementation. The purpose of this research is to examine how the local community perceives and practices the fulfillment of these rights in light of Maqāṣid al-Sharī'ah, the higher objectives of Islamic law. This study investigates the public understanding and practical realization of post-divorce rights for ex-wives and children in Bantaeng Regency, where 379 divorce cases were recorded in 2022. Despite clear legal provisions, many of these rights remain unfulfilled, reflecting a gap between legal rulings and social implementation. The purpose of this research is to examine how the local community perceives and practices the fulfillment of these rights in light of Maqāṣid al-Sharī'ah, the higher objectives of Islamic law. The findings reveal a significant disconnect between legal provisions and societal behavior. Although the Bantaeng Religious Court implements Supreme Court Circular (SEMA) No. 1 of 2017, which mandates the inclusion of post-divorce obligations (e.g., maintenance of iddah, mut'ah, and child support) in court verdicts, enforcement remains weak. When fathers neglect their responsibilities, mothers are often unaware of their right to request legal execution of these obligations. This research contributes original insights into the socio-legal dynamics of post-divorce justice in rural Indonesia. It highlights the need for broader legal literacy and institutional support. The study recommends that legal authorities and local governments actively disseminate information about SEMA No. 1 of 2017 to ensure post-divorce rights are properly understood and enforced.



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Introduction

Human intellect is what distinctly separates us from other creatures and shapes our existence. Through reason, humans engage in complex social interactions to fulfill both physical and spiritual needs (Mutawali, 2022). Indonesia exemplifies this pluralistic nature with its diverse ethnicities, religions, and cultures, united by the national motto, Bhineka Tunggal Ika (Unity in Diversity) (Acim et al., 2023). As a pluralistic society, Indonesia faces the

challenge of maintaining social harmony among various groups while respecting their differences. This diversity requires mutual understanding and coexistence to meet collective needs. The need for social cohesion is crucial in fostering national identity and peace, as highlighted by Indonesia's official philosophy (Sulaeman, 2017). Therefore, understanding social diversity is fundamental to addressing communal life and harmony in Indonesia.

Marriage is a sacred institution that requires clear rights and responsibilities to thrive (Lathifah, 2020). Scholars have emphasized the importance of regulating spousal duties to build a loving and enduring family founded on divine principles (Abdullah, 2018). Rights, as defined in authoritative sources like the *Kamus Besar Bahasa Indonesia*, encompass legal entitlements and duties essential for family stability (Binarsa & Nasution, 2021). Proper marriage registration ensures legal certainty regarding spousal rights and the status of children born within the marriage (Subagiyo & Tedjawati, 2022). Historical Islamic jurisprudence reveals that certain practices, such as *nikah mut'ah*, were initially permitted but later permanently prohibited due to social implications (Pratama & Azkia, 2023). Meanwhile, divorce remains a complex phenomenon influenced by economic hardship, domestic discord, violence, and breaches of marital agreements (Abdullah, 2018). Consequently, literature underscores that well-regulated marriage rights are key to family welfare and societal order.

Despite the ideal of lifelong marriage, practical realities often lead to divorce, necessitating legal clarity on related issues (Wardatun & Smith, 2020). This study aims to explore the dynamics of marriage dissolution, focusing on the enforcement of maintenance obligations and the challenges faced by former spouses, especially women (Mahfud & Rizanizarli, 2021). Understanding these challenges is crucial for improving legal frameworks and social protections post-divorce (Sururie et al., 2024). Although Islamic Family Law provides detailed provisions on maintenance, enforcement issues persist when former husbands do not cooperate (Ma'u, 2023). This gap often leaves ex-wives and mothers vulnerable, exacerbating their social and economic hardships. The research also considers the economic factors affecting early marriage rates among daughters in households facing income shocks. Hence, the study seeks to offer comprehensive insights into the socio-legal complexities of marriage, divorce, and maintenance enforcement.

Islamic jurisprudence prioritizes human welfare and flexibility in applying religious rulings to social realities. The principle of avoiding harm (*Dar'u al-Mafasid Muqaddam 'ala Jalbi al-Mashalih*) guides the allowance of certain exceptions in dire circumstances, including adjustments in worship and family law (Kasdi, 2014). Such flexibility ensures that laws serve the community's well-being without imposing undue hardship. For example, the allowance of emergency divorce as a last resort shows the balance between maintaining marital stability and protecting individual rights. The ongoing debate about maintenance enforcement highlights the need for adaptable legal mechanisms that respond to social changes and economic pressures. Scholars like Ibn Qudamah have also emphasized easing religious

obligations when necessary to preserve human dignity and survival (Yunta et al., 2023). Therefore, integrating Islamic legal principles with social realities promotes justice and compassion in family law.

1. Research Methods

This research adopts a qualitative field-based approach to explore the fulfillment of post-divorce rights from a *maqāṣid sharī'ah* perspective (Ropei, 2021). The study is designed to deeply investigate real-life situations through direct observation of social dynamics. The qualitative method enables the researcher to understand the social and religious factors influencing the fulfillment of rights for ex-wives and children. Through immersive observation in Kabupaten Bantaeng, the researcher explored how social interactions, legal mechanisms, and religious values interact in cases of divorce. This method allowed the identification of variables that influence the realization of rights, including cultural norms and religious authority. The research emphasizes situational understanding over numerical data, enabling a richer interpretation of *maqāṣid*-based practices.

The researcher used an interview guide to ensure consistency while conducting face-to-face interviews with former husbands, ex-wives, children, religious leaders, community figures, and scholars specializing in *maqāṣid sharī'ah*. These respondents were chosen to represent diverse perspectives and experiences regarding the fulfillment of rights after divorce. Observational notes were taken during site visits to reinforce and cross-validate verbal data. This analytical approach allows the researcher to identify recurring patterns, themes, and meanings related to the implementation of post-divorce rights. The aim is to interpret not only what happens but also why it happens within the *maqāṣid* framework. Data from interviews and observations were categorized and coded to detect key themes such as *nafkah* enforcement, child custody, and the role of religious norms. Interpretive analysis helped map each theme to relevant *maqāṣid* principles like *ḥifẓ al-nafs* (preservation of life) and *ḥifẓ al-māl* (protection of wealth). Patterns were compared across respondent groups to highlight both consistency and divergence in practice.

2. Discussion

2.1. The Bantaeng Community's Understanding of the Fulfillment of the Rights of Ex-Wives and Children after Divorce

Marriage is one of the divine laws (*sunnatullah*) established for all of God's creations—humans, animals, and even plants (Kharlie et al., 2021). It serves as the means ordained by God for the continuation of life, procreation, and the preservation of human existence, undertaken when both partners are prepared to assume their respective roles in realizing the goals of marriage (Setyawan et al., 2023). However, not all marriages unfold without challenges. Many couples experience conflicts that eventually lead to divorce, which marks

the legal termination of a marital relationship when both parties no longer wish to maintain the union.

Marriage, as a manifestation of sunnatullah, stretches across all creations and symbolizes a universal law woven into the fabric of life itself (Malek et al., 2023). In human terms, it transcends the union of two individuals; it forms part of a greater divine design for continuity and balance. Through marriage, human beings, in their diversity, are enabled to build families and nurture future generations (Itao & Kaneko, 2020). More than just a channel for procreation, marriage is meant to form stable, nurturing communities responsible for educating and guiding the next generation. Yet, despite its natural and divine character, marriage does not always unfold harmoniously. When serious disputes arise, continuing the marital relationship may no longer be a wise option, and divorce becomes an unavoidable end. At such a juncture, the sacred bond between two individuals is formally and legally dissolved.

Based on interview data collected from judges at the Religious Court of Bantaeng Regency and various other key informants, the researcher found that the community's understanding of divorce law and the concept of *maqāṣid al-sharī'ah* remains limited. In reality, it is essential for the community to comprehend not only the legal framework of divorce but also the moral and philosophical underpinnings embedded in the objectives of Islamic law (*maqāṣid al-sharī'ah*) in order to ensure the realization of public welfare (*maṣlahah*). Even when divorce occurs, a clear understanding of *maqāṣid al-sharī'ah* can foster justice and well-being. For instance, financial responsibilities such as alimony (*nafkah*) (Nurhadi, 2019), clothing allowance (*kiswah*) (Saebani, 2019), and housing (*maskan*)—all of which are subject to judicial determination upon the ex-wife's request—can be fulfilled as part of the ethical obligations emphasized in Islamic jurisprudence (Hilmi, 2020).

Through in-depth interviews with religious court judges and related stakeholders, the research highlights the existing gap in public comprehension of the intricacies of divorce law and the moral objectives (*maqāṣid*) it seeks to uphold. The data indicates that awareness of these legal and ethical dimensions is unevenly distributed across the community, despite their central importance in creating equitable post-divorce outcomes. In Islamic thought, a profound understanding of divorce regulations and the underlying principles of *maqāṣid al-sharī'ah* plays a pivotal role in shaping the trajectory of family life. When individuals internalize these principles, they are better equipped to navigate divorce with dignity and purpose. For example, a husband who comprehends *maqāṣid al-sharī'ah* will be more inclined to continue fulfilling moral and legal responsibilities such as *nafkah iddah*, *nafkah mut'ah*, *kiswah*, and *maskan*—acts guided by a commitment to justice and benevolence.

Therefore, it is crucial for the people of Bantaeng Regency to move beyond a superficial recognition of divorce as merely a legal outcome, and toward a deeper appreciation of the wisdom contained within *maqāṣid al-sharī'ah*. Such an understanding provides a solid ethical and legal foundation for decision-making, reduces potential conflicts,

and fosters a social environment conducive to mutual welfare and harmony for individuals and the broader community. The legal framework supporting this responsibility is explicitly stated in Law No. 1 of 1974, particularly Article 41(d), which authorizes courts to require former husbands to provide financial support and determine other obligations toward their ex-wives.

This provision stipulates that the court has the authority to require the former husband to provide living expenses or assign specific obligations to the former wife (Miszairi Sitiris et al., 2020). Furthermore, if the children remain in the custody of the mother, the father is held fully responsible for covering the costs of their upbringing and education. However, if the father is genuinely unable to meet these responsibilities, the court may assign a portion of this financial obligation to the mother. This legal foundation underlines the continued social and financial accountability of both parties post-divorce and reinforces the broader objectives of justice and welfare advocated by *maqāṣid al-sharī'ah*.

2.2. The Reality of the Rights of Children and Former Wives After Divorce in Bantaeng Regency: A Maqāṣid al-Sharī'ah Analysis

In 2022, divorce cases in Bantaeng Regency reached a total of 379, consisting of 58 cases of *cerai talak* (divorce initiated by the husband) (Hilmi, 2020) and 321 cases of *cerai gugat* (divorce initiated by the wife) (Pratama & Azkia, 2023). These figures reflect a social phenomenon that demands serious attention, as divorce not only affects the legal status of the couple but also has significant implications for the fulfillment of the rights of children and former wives. Interviews conducted with local residents reveal that these rights are still not being adequately fulfilled. This concern was also expressed by Hasan Basri, a prominent religious figure and Islamic counselor in Bantaeng, who stated that the rights of children and former wives are often neglected after a divorce decree is issued.

This pattern of divorce presents a serious impact on the realization of post-divorce rights, which should be guaranteed both by law and Islamic teachings (Susilawati et al., 2023). Observations and interviews indicate that several obstacles still hinder the proper implementation of these rights, including the limited understanding of former husbands and weak enforcement mechanisms. Hasan Basri emphasized that many individuals are unaware of the responsibility to provide maintenance for former wives and children after divorce. From the perspective of *maqāṣid al-sharī'ah* (Andiko et al., 2023), this situation undermines the essential objectives of preserving lineage (*ḥifẓ al-nasl*) (Roslan & Zainuri, 2023) and protecting life (*ḥifẓ al-nafs*), both of which are core principles in Islamic legal theory.

Field realities show that the provision of financial support—such as maintenance, *iddah* allowance (Arafah et al., 2023), *mut'ah* compensation, and child support—depends largely on the personal awareness and willingness of former husbands. This was highlighted by Muh. Nu'man, a religious leader and the imam of Nurul Huda Mosque in Tompobulu, who stated that in many cases, the rights granted by the court are only partially fulfilled. For instance, if a former wife is entitled to IDR 1,000,000, the ex-husband may only provide IDR

500,000. The lack of understanding or concern about legal obligations significantly contributes to the inadequate fulfillment of these rights. From a *maqāṣid al-sharī'ah* standpoint, such negligence compromises the principles of justice and the protection of vulnerable parties, particularly women and children (Rokhmad & Susilo, 2017).

From a formal legal perspective, the process of fulfilling post-divorce rights is governed by the Supreme Court Circular (SEMA) No. 1 of 2017 concerning the Application of Legal Formulations from the Plenary Meeting of the Chambers of the Supreme Court as Guidelines for Judicial Practice. According to Judge Dian Aslamiyah of the Bantaeng Religious Court, the payment of post-divorce obligations—including *iddah* maintenance, *mut'ah*, past-due maintenance, and child support—must be stated in the court ruling and paid before the pronouncement of the divorce declaration (*ikrar talak*) (Hilmi, 2020). Ongoing child support must then be provided monthly by the father. If he fails to comply, the mother is entitled to file for enforcement. This policy reflects an institutional effort to protect the rights of women and children. Nevertheless, in practice, implementation remains challenging due to issues of compliance and enforcement at the community level.

3. Conclusion

The findings of this study reveal that public understanding in Bantaeng Regency regarding the fulfillment of the rights of former wives and children after divorce remains limited. This lack of awareness is particularly evident in how post-divorce responsibilities are perceived and implemented by former husbands. One significant insight is that while the Religious Court of Bantaeng has implemented Supreme Court Circular (SEMA) No. 1 of 2017 to ensure the legal protection of women's and children's rights post-divorce, the actual fulfillment of these rights often falls short. For instance, obligations such as *nafkah iddah*, *mut'ah*, and ongoing child support are clearly outlined in court rulings but frequently not carried out in full. This gap between legal rulings and societal behavior underscores the need for broader legal literacy and social responsibility grounded in Islamic values.

One of the main strengths of this research lies in its integration of empirical data with the theoretical framework of *maqāṣid al-sharī'ah*, which provides a comprehensive understanding of the legal, social, and ethical dimensions of post-divorce rights. By combining interviews with religious figures, legal practitioners, and community members, the study offers a multi-perspective analysis that reflects both normative principles and lived realities. This methodological approach ensures that the research is grounded in real-world experiences while remaining consistent with Islamic legal objectives, particularly in protecting *hifẓ al-nasl* (preservation of lineage) and *hifẓ al-nafs* (protection of life), thereby contributing valuable insights to the discourse on Islamic family law reform.

Despite its contributions, this study is not without limitations. One notable constraint is the geographic focus on Bantaeng Regency, which may limit the generalizability of the findings to other regions with different social and cultural dynamics. Additionally, the study

primarily relies on qualitative data, which, while rich in depth, may not fully capture the statistical scope of non-compliance or the long-term effects on affected women and children. These limitations suggest the need for future research that expands to a broader sample and incorporates quantitative methods to strengthen policy recommendations and enhance the practical implementation of *maqāṣid al-sharī'ah* in family law across diverse settings.

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