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From Formal Rights to Substantive Justice: Examining Legal Protection for Divorced Wives in Indonesia

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Abstract

This study examines the effectiveness of legal protection for women victims of domestic violence after divorce and formulates strategies to strengthen substantive justice. Using an empirical juridical approach, the research employed statutory, case, and conceptual analyses. Primary data were collected through interviews with religious court judges, court clerks, advocates, and victims of domestic violence, supported by courtroom observations, while secondary data were derived from legislation, court decisions, Badilag documents, and relevant literature. The findings reveal that legal protection remains ineffective due to weak implementation structures, limited victim-centered perspectives among legal officials, and persistent legal cultures that treat domestic violence as a private matter. The study further finds that religious courts have not fully integrated gender-sensitive and recovery-oriented approaches into post-divorce dispute resolution. To address these challenges, the research proposes strengthening victim-oriented regulations, improving judicial capacity through gender justice training, expanding access to legal aid services, and promoting women's socio-economic empowerment after divorce. The study concludes that substantive justice for women victims of domestic violence requires an integrative legal framework that combines responsive legal norms, effective judicial practices, and broader social transformation to ensure comprehensive protection, recovery, and access to justice.
Keywords: Religious Court; Domestic Violence; Islamic Family Law; Gender Justice; *Maqasid al-Shariah*.

Abstract

Artikel ini mengkaji efektivitas perlindungan hukum bagi perempuan korban kekerasan dalam rumah tangga pasca perceraian serta merumuskan strategi untuk memperkuat keadilan substantif. Dengan menggunakan pendekatan yuridis empiris, penelitian ini menerapkan analisis peraturan perundang-undangan, kasus, dan konseptual. Data

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primer diperoleh melalui wawancara dengan hakim pengadilan agama, panitera, advokat, dan korban kekerasan dalam rumah tangga, yang didukung oleh observasi persidangan, sedangkan data sekunder berasal dari peraturan perundang-undangan, putusan pengadilan, dokumen Badilag, dan literatur terkait. Hasil penelitian menunjukkan bahwa perlindungan hukum masih belum efektif akibat lemahnya struktur implementasi, terbatasnya perspektif yang berorientasi pada korban di kalangan aparat penegak hukum, serta budaya hukum yang masih memandang kekerasan dalam rumah tangga sebagai persoalan privat. Penelitian ini juga menemukan bahwa pengadilan agama belum sepenuhnya mengintegrasikan pendekatan sensitif gender dan berorientasi pemulihan dalam penyelesaian sengketa pasca perceraian. Untuk mengatasi permasalahan tersebut, penelitian ini menawarkan penguatan regulasi yang berorientasi pada korban, peningkatan kapasitas peradilan melalui pelatihan keadilan gender, perluasan akses layanan bantuan hukum, serta pemberdayaan sosial-ekonomi perempuan pasca perceraian. Artikel ini memberikan kontribus bahwa keadilan substantif bagi perempuan korban kekerasan dalam rumah tangga memerlukan kerangka hukum integratif yang memadukan norma hukum yang responsif, praktik peradilan yang efektif, dan transformasi sosial yang lebih luas guna menjamin perlindungan, pemulihan, dan akses terhadap keadilan secara komprehensif.
Keywords: Pengadilan Agama; Kekerasan dalam Rumah Tangga; Hukum Keluarga Islam; Keadilan Gender; *Maqāṣid al-Sharī'ah*.

Introduction

Marriage in the Indonesian legal system is not merely understood as a civil contract but also as a moral and religious institution aimed at establishing a harmonious family grounded in the values of *sakinah*, *mawaddah*, and *rahmah* (Akmal et al., 2024; Al-Sharmani, 2018; Busriyanti et al., 2025; Saepullah et al., 2025). Nevertheless, the increasing divorce rate in Indonesia demonstrates a widening gap between the normative ideals of marriage and contemporary social realities (Ikhwan et al., 2025; Probert & Saleem, 2018; Rinaldo & Fehr, 2026). Data from the Directorate General of Religious Courts (Badilag) recorded 496,910 divorce cases in 2022 (Halim et al., 2025; Khairuddin, 2024), 464,866 cases in 2023 (Darmawan, 2024), and 469,159 cases in 2024, with cerai gugat (wife-initiated divorce) significantly dominating over *cerai talak* (Widiantari et al., 2018). This trend indicates the growing willingness of women to leave marriages characterized by conflict, neglect, economic hardship, and domestic violence (Anitha et al., 2018; Atiqul Haq et al., 2025; Hasanudin et al., 2023; Md Said & Emmanuel Kaka, 2023; Patil & Khanna, 2023). Although domestic violence represents a smaller percentage of divorce causes compared to incompatibility or economic factors, its consequences are substantially more severe because they involve physical, psychological, and economic suffering that often continues after divorce.

Domestic violence constitutes a serious violation of human rights and has been regulated under Law Number 23 of 2004 on the Elimination of Domestic Violence (Alfitri, 2020; Barkah et al., 2022; Ismail & Sarson, 2021; Putra & Acela, 2023; Sofyang et al., 2024). However, legal protection for women victims frequently weakens after the marital relationship formally ends. Many divorced women fail to obtain post-divorce rights such

as nafkah iddah, mut'ah, child custody, or equitable distribution of marital property (Astuti & Prastio, 2022; Fadil et al., 2024; Yusoff et al., 2024). Existing regulations, including Law Number 1 of 1974 and the Compilation of Islamic Law (KHI) (Kementerian Agama, 2018), mainly regulate procedural aspects of divorce and provide limited mechanisms for ensuring the effective fulfillment of victims' rights after divorce (Hanafi, 2024). Consequently, religious court decisions often terminate marital status without guaranteeing substantive justice for women who have experienced violence (Alimuddin et al., 2023; Jones & Aftab, 2023; Maula & Ariyanti, 2022; Musawwamah, 2022). This condition demonstrates the continuing gap between procedural justice and the actual realization of legal protection for vulnerable women (Haque et al., 2020).

Previous studies have discussed women's rights after divorce, domestic violence, and gender justice within Islamic family law. Research by Amran Suadi et al (2024) emphasized the fulfillment of women's and children's rights in religious courts (Suadi et al., 2024), while studies by Mutmainnah et al., (2023) and Mutmainah (2025) examined domestic violence from gender and human rights perspectives (Mutmainah, 2025; Mutmainnah et al., 2023). However, most existing studies remain normative and descriptive, focusing primarily on statutory analysis without critically examining how substantive justice is implemented in judicial practice. In addition, previous scholarship rarely integrates Islamic legal philosophy, particularly maqāṣid al-sharī'ah, with contemporary theories of justice in assessing post-divorce protection for victims of domestic violence. This gap reveals the need for empirical research that analyzes how religious courts operationalize substantive justice in resolving divorce cases involving domestic violence.

This study positions substantive justice as its central analytical framework by integrating Western legal theory and Islamic legal thought. John Rawls conceptualizes justice as fairness, emphasizing equal protection and the protection of vulnerable groups (Okelo et al., 2025; Yesilkaya, 2022), while Aristotle differentiates distributive and corrective justice in legal relations (Fadil et al., 2024; Maurya, 2022). In Islamic jurisprudence, maqāṣid al-sharī'ah emphasizes the protection of life, dignity, lineage, and property as the essential objectives of law. Within this framework, protecting divorced women who are victims of domestic violence is not limited to procedural legality but extends to restoring dignity, ensuring socio-economic security, and preventing revictimization (Fathiyah & Santiago, 2024; Miyamoto, 2024; Poor, 2023; Veseli & Arifi, 2025). By combining these theoretical perspectives, this article argues that legal protection in religious courts should be assessed not only through compliance with procedural law but also through the extent to which judicial decisions produce substantive and recovery-oriented justice for victims.

Based on these issues, this research examines two main questions: how is legal protection for women victims of domestic violence implemented after divorce in the Makassar Religious Court, and to what extent does the court reflect substantive justice in its judicial practices? Using an empirical juridical approach, this study analyzes court practices, judicial reasoning, and post-divorce rights fulfillment for victims of domestic violence (Mutiara & Aqsha, 2023). The Makassar Religious Court was selected because of its high divorce caseload and the diversity of disputes related to domestic violence. The scientific contribution of this study lies in its integration of empirical judicial analysis with theories of substantive justice and maqāṣid al-sharī'ah, thereby offering a multidisciplinary framework for strengthening victim-oriented legal protection within the Indonesian religious court system.

Methods

This study employs an empirical juridical research design that examines the implementation of legal norms in social practice (law in action) rather than limiting the analysis to statutory provisions (law in books) (Soekanto, 2006). The research specifically investigates the implementation of post-divorce legal protection for women victims of domestic violence, particularly concerning nafkah iddah, mut'ah, child custody, and joint property rights in religious courts. The study adopts a descriptive-analytical model to analyze the gap between normative legal guarantees and the realities of judicial practice in Indonesia (Ummah, 2004). Empirical juridical research is considered appropriate because the central problem lies not in the absence of legal norms, but in the weak enforcement of existing regulations and judicial mechanisms (Zaini, 2011).

This research applies three integrated approaches (Marzuki, 2010). First, the statute approach is used to examine the legal framework governing women's post-divorce rights, including Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and Law Number 23 of 2004 on the Elimination of Domestic Violence. Second, the case approach is employed to analyze religious court decisions related to divorce and the fulfillment of women's rights after domestic violence. Third, the conceptual approach is utilized to explore the theoretical foundations of substantive justice through Islamic legal principles, maqāṣid al-sharī'ah, gender justice theory, and legal protection theory. The integration of these approaches enables the study to evaluate not only the consistency of judicial decisions with legal norms but also the extent to which those decisions reflect substantive justice for victims.

The study uses both primary and secondary data sources (Irianto & Shidarta, 2019). Primary data were obtained through in-depth interviews with 5 judges of the Makassar Religious Court, 1 court registrar, 2 former wives who were victims of domestic violence, 2

lawyers handling divorce and domestic violence cases, and 1 representative from a legal aid institution (LBH). These informants were selected purposively based on their direct involvement and experience with divorce litigation and the fulfillment of women's post-divorce rights. In addition, field observations were conducted during court proceedings, mediation sessions, and judicial processes related to divorce disputes. Secondary data consisted of legislation, court decisions, official Badilag reports, academic journals, books, and previous studies relevant to domestic violence, Islamic family law, and women's legal protection.

The research sites were selected purposively based on two criteria: high divorce rates and the existence of cases involving domestic violence and disputes over post-divorce rights. The primary locus of the study is the Makassar Religious Court, supported by comparative data from several other religious courts to strengthen contextual analysis. Data collection was conducted through three techniques: in-depth interviews, document studies, and field observations. These techniques were chosen to capture both normative and empirical dimensions of legal protection practices in religious courts and to understand how judicial actors interpret and implement women's post-divorce rights in practice.

Data analysis was conducted qualitatively through data reduction, categorization, interpretation, and conclusion drawing. The analysis focused on identifying patterns of legal protection, judicial reasoning, and barriers to the enforcement of women's rights after divorce. To ensure the validity and reliability of the findings, the study employed source and method triangulation by comparing interview results, court documents, observations, and statistical data from Badilag. This triangulation process was intended to minimize subjectivity and strengthen the credibility of the research findings regarding the implementation of substantive justice for women victims of domestic violence in religious courts.

Result and Discussion

Legal Protection for Women Victims of Domestic Violence (KDRT) in Divorce Proceedings at the Makassar Religious Court

Legal protection for women who become victims of domestic violence remains one of the most critical challenges within the Indonesian family law system (Alifiyah & Anshori, 2023; Martitah et al., 2024; Widodo, 2026). Although Indonesia has established a relatively comprehensive normative framework through Law No. 23 of 2004 on the Elimination of Domestic Violence (Hertanto et al., 2024; Nuroniyah et al., 2025; Rohaya et al., 2024; Rusdiana & Setyowati, 2020), the implementation of such protection in religious courts continues to reveal a significant gap between normative guarantees and judicial practice.

In the context of Islamic family disputes, the Religious Court functions as the primary legal institution authorized to adjudicate divorce cases involving Muslim couples (Cusairi & Zahraa, 2018; Solihin & Fauzi, 2025; Taufik, 2021). However, in practice, the court's role in cases involving domestic violence tends to remain limited to the formal dissolution of marriage, rather than extending toward substantive protection of victims' post-divorce rights. The data concerning the causes of divorce from 2020 to 2024 are presented in Table 5 below, based on case records from the Makassar Religious Court.

Table 1. Causes of Divorce Cases at the Makassar Religious Court (2020–2024)

No.	Year	Causes of Divorce			Total
		Abandonment	Economic Factors	Domestic Violence (DV)	
1	2020	303	81	44	428
2	2021	275	70	52	397
3	2022	226	99	44	369
4	2023	53	44	10	107
5	2024	119	1	25	145
	5 Years	976	295	175	1,446

Based on the data above, it can be concluded that from 2020 to 2024 there were 1,446 divorce cases related to domestic violence, while only five divorce judgments included additional judicial burdens or obligations imposed upon the husband, as shown in the following table.

Table 2. Divorce Judgments Accompanied by Judicial Burdens/Obligations

No.	Year	Judicial Burden/Obligation Imposed	Remarks
1	2020	1	
2	2021	0	
3	2022	1	
4	2023	1	
5	2024	2	
Total	5 Years	5	

Source: research data

The empirical data from the Makassar Religious Court between 2020 and 2024 demonstrates the magnitude of divorce litigation initiated by wives (*cerai* gugat). During this five-year period, the court recorded 9,851 divorce claims, consisting of 2,092 cases in 2020, 2,007 cases in 2021, 1,963 cases in 2022, 1,851 cases in 2023, and 1,938 cases in 2024. Among these cases, domestic violence emerged as one of the recurring causes of marital dissolution. Court records indicate that 175 divorce cases explicitly involved domestic violence as a contributing factor, alongside other causes such as abandonment and

economic hardship. Nevertheless, only five decisions during the same period included judicial orders imposing post-divorce obligations upon the husband, including financial compensation or other forms of legal burden. This disparity illustrates the limited practical realization of women's post-divorce rights within judicial proceedings.

From a socio-legal perspective, these findings reveal that domestic violence cases reaching the Religious Court represent only a small fraction of actual incidents occurring within society. Domestic violence frequently operates within the private sphere, making it structurally underreported (Boethius & Akerstrom, 2020; Muzingili et al., 2025). Many victims avoid legal proceedings because of economic dependency, social stigma, fear of retaliation, and limited legal literacy (Childress et al., 2022; Wright et al., 2023). Consequently, the relatively small number of recorded cases should not be interpreted as evidence of low prevalence, but rather as an indication of systemic barriers that hinder women's access to justice (Akarcay & Polat, 2023; Smith et al., 2020; Wieberneit et al., 2024). In this regard, the Makassar Religious Court cases reflect what socio-legal scholars frequently describe as the "iceberg phenomenon" of gender-based violence.

Institutionally, the Religious Court occupies a paradoxical position. On the one hand, it serves as an accessible legal avenue for Muslim women seeking to escape abusive marital relationships (Afrouz et al., 2020; Alghamdi et al., 2022; Azmi et al., 2026). On the other hand, its jurisdiction remains narrowly confined to civil aspects of family law, particularly divorce, maintenance, child custody, and marital property disputes (Bahta & Taye, 2026; Walker, 2018). Criminal dimensions of domestic violence fall exclusively within the jurisdiction of the general courts. As a result, victims are compelled to pursue two separate legal processes: divorce proceedings before the Religious Court and criminal prosecution before the District Court. This fragmented institutional arrangement imposes substantial psychological, procedural, and economic burdens upon victims, thereby weakening the effectiveness of legal protection.

The limitation of jurisdiction significantly affects the realization of substantive justice for women victims of domestic violence. In many cases adjudicated by the Makassar Religious Court, judicial decisions merely declared the dissolution of marriage without comprehensively addressing the economic and social rights of the wife after divorce. Although Islamic family law and Indonesian positive law recognize women's rights to *nafkah iddah*, *mut'ah*, child custody, and marital property distribution, these rights are frequently absent from judicial decisions because they are not explicitly requested by plaintiffs or are considered insufficiently proven. Such procedural formalism illustrates how judicial protection often remains symbolic rather than transformative.

This condition demonstrates the persistence of a legal formalistic approach within religious court practices. Judges frequently focus on procedural legality and the

termination of marital status while paying insufficient attention to the structural vulnerability experienced by victims of domestic violence. Consequently, the Religious Court often functions merely as an administrative institution for marital dissolution instead of a mechanism for restoring women's dignity, security, and socio-economic stability. From the perspective of feminist legal theory, this phenomenon reflects how legal systems may reproduce gender inequality despite formally recognizing equal rights (Akhtar, 2026). Women may possess normative entitlements, yet structural barriers continue to impede effective access to justice.

The weak implementation of women's post-divorce rights is also closely connected to broader socio-cultural dynamics (Ottakkam Thodukayil et al., 2026). Patriarchal social structures continue to shape women's legal behavior and bargaining position within litigation (Batton & Wright, 2019). Many women prioritize immediate escape from abusive relationships rather than pursuing financial claims or property rights. Economic dependence on husbands further discourages victims from asserting their legal entitlements. In several cases, victims intentionally refrain from demanding *nafkah iddah* or *mut'ah* because they fear prolonged litigation or social retaliation. Such conditions reveal that legal protection cannot rely solely on normative provisions but must also involve broader strategies of legal empowerment and institutional support.

Another critical issue concerns the implementation of gender-sensitive adjudication. Although the Indonesian Supreme Court has introduced PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Women Facing the Law, its practical application within religious courts remains inconsistent (Asni & Iqbal, 2025). Some judges continue to perceive domestic violence primarily as a private marital conflict rather than a serious violation of women's human rights. This judicial perspective contributes to decisions that inadequately recognize victims' vulnerabilities and fail to integrate restorative considerations into legal reasoning. As a consequence, the distinction between formal justice and substantive justice becomes increasingly apparent. Procedurally, courts may have fulfilled legal requirements; substantively, however, victims often remain unprotected.

The difficulties faced by women victims of domestic violence are further aggravated by weaknesses in the enforcement of judicial decisions (Eleanor, 2024). Even in cases where courts grant *nafkah iddah*, *mut'ah*, or marital property rights, implementation frequently encounters obstacles due to lengthy execution procedures, financial costs, and the absence of effective enforcement mechanisms. Many women ultimately fail to obtain the economic rights recognized in court judgments. This indicates that judicial protection within the Religious Court system remains incomplete unless accompanied by effective post-judgment enforcement mechanisms.

From the perspective of Islamic legal principles, the inadequate implementation of protection mechanisms contradicts the ethical foundations of Islamic family law itself. Islamic jurisprudence recognizes women's right to seek divorce through *khulu'* or *fasakh* when subjected to harmful treatment or violence. Furthermore, Islamic law obligates former husbands to provide *nafkah iddah* and *mut'ah* as forms of moral and economic responsibility following divorce (Izzuddin & Alfikri, 2025). These principles have been incorporated into the Indonesian Compilation of Islamic Law (KHI). Nevertheless, their implementation within judicial practice remains limited due to procedural rigidity, inadequate legal assistance, and insufficient judicial sensitivity toward victims' conditions.

Comparatively, several Muslim-majority countries have adopted more integrated approaches to domestic violence within family court systems. In countries such as Malaysia and Pakistan, Syariah courts possess broader authority to issue temporary protection orders and provide certain forms of victim compensation alongside divorce proceedings. By contrast, the Indonesian Religious Court system remains institutionally fragmented, requiring victims to navigate multiple judicial institutions separately. This comparative disparity suggests the urgent need for institutional reform within Indonesia's religious judiciary framework.

Accordingly, strengthening legal protection for women victims of domestic violence requires both structural and cultural reforms. First, regulatory reform is necessary to expand the authority of Religious Courts in providing temporary protective measures for victims within divorce proceedings. Second, integrated judicial services should be developed through stronger coordination between Religious Courts, general courts, police institutions, women's protection agencies, and UPTD PPA services. Third, judges and court personnel require continuous training in gender-sensitive adjudication and victim-centered approaches. Fourth, legal aid institutions and *Posbakum* services must be optimized to ensure that victims understand and effectively claim their post-divorce rights. Finally, mechanisms for enforcing court decisions concerning maintenance and marital property must be strengthened to ensure that judicial protection produces tangible outcomes rather than symbolic declarations.

Ultimately, the experience of the Makassar Religious Court illustrates that the protection of women victims of domestic violence within Indonesia's family law system remains largely procedural and fragmented. Divorce judgments often succeed in formally ending abusive marriages but fail to secure victims' broader economic, psychological, and social recovery. This condition underscores the urgent necessity for transforming Religious Courts from institutions primarily focused on formal marital dissolution into judicial bodies capable of delivering substantive justice grounded in gender equality, victim protection, and human dignity.

Judicial Decisions as Manifestations of Substantive Justice and Legal Protection for Wives as Victims of Domestic Violence

The decisions rendered by the Makassar Religious Court between 2020 and 2024 demonstrate an evolving judicial orientation toward strengthening legal protection for women victims of domestic violence within the framework of Islamic family law. Although the Religious Court institutionally remains limited to civil jurisdiction, several judgments indicate a gradual transformation from a purely formalistic approach toward a more substantive understanding of justice, particularly concerning women's economic rights, child protection, and recognition of domestic violence as a serious factor underlying marital dissolution. The examined decisions reveal that the Religious Court increasingly functions not merely as an institution dissolving marriages, but also as a judicial arena in which victims seek recognition, economic protection, and legal restoration after experiencing violence within the household.

One of the earliest and most significant cases examined in this study is Decision Number 1502/Pdt.G/2020/PA.Mks. The case involved a divorce petition filed by the wife on the grounds of continuous domestic violence, economic neglect, verbal abuse, online gambling, and persistent marital conflict. The court granted the divorce and imposed several legal obligations upon the husband, including payment of past maintenance amounting to IDR 24,000,000, monthly child support of IDR 2,500,000 until the child reached adulthood, and the transfer of child custody to the mother. The judgment is important because it reflects an attempt by the Religious Court to provide not only procedural relief through divorce but also economic protection for the wife and child (Nizar, 2021). Nevertheless, the court's legal reasoning remained largely confined to the framework of marriage law and the Compilation of Islamic Law (KHI), without explicitly incorporating the Domestic Violence Elimination Law (UU PKDRT) as part of its legal considerations.

From the perspective of legal protection theory, the judgment demonstrates the operation of preventive and compensatory protection mechanisms. Preventive protection was manifested through the dissolution of the marriage, thereby freeing the victim from continued exposure to violence. Compensatory protection emerged through the award of past maintenance and child support (Lulciuc & Franguloiu, 2024). However, the protection remained partial because the court did not address restitution, psychological recovery, or criminal accountability arising from the violence itself. The judgment therefore illustrates the structural limitation of the Religious Court, which is authorized to adjudicate civil family disputes but lacks competence to address the criminal dimensions of domestic violence.

The same institutional pattern appears in Decision Number 2455/Pdt.G/2021/PA.Mks, although the legal reasoning in this case reveals a more progressive judicial orientation. In this dispute, the wife experienced repeated verbal and physical violence, including severe physical assault that resulted in visible injuries. The court granted the divorce, awarded past maintenance of IDR 19,000,000, imposed *mut'ah* compensation of IDR 12,000,000, and ordered monthly child support subject to an annual increase of ten percent. Compared with the 2020 judgment, this decision demonstrated greater judicial sensitivity toward the lived experience of the victim. The judges elaborated more comprehensively on the factual background of the violence and grounded their reasoning not only in statutory law but also in Supreme Court Circular Letters (SEMA), classical Islamic jurisprudence, and doctrinal opinions of scholars such as Abu Zahrah.

The significance of Decision Number 2455/Pdt.G/2021/PA.Mks lies in its gradual shift toward substantive justice. Unlike the earlier judgment, the court attempted to contextualize the victim's socio-economic vulnerability and recognized the need for sustainable economic protection following divorce. The inclusion of an annual increase in child support represented a teleological interpretation of family law aimed at ensuring the future welfare of the child rather than merely satisfying formal procedural obligations. This reasoning indicates an emerging judicial awareness that domestic violence cases involve structural inequality and economic dependency, particularly affecting women and children.

Nevertheless, despite these advances, both the 2020 and 2021 decisions remained institutionally fragmented. Neither judgment explicitly integrated the principles of the Domestic Violence Elimination Law nor provided mechanisms for psychosocial recovery or victim rehabilitation. The Religious Court still treated domestic violence primarily as a justification for divorce rather than as a broader violation of women's human rights requiring comprehensive protection (Sumanto et al., 2021). Consequently, although the judgments reflect improvements in economic protection, they stop short of establishing a fully victim-centered judicial approach.

A more substantial development became visible in Decision Number 362/Pdt.G/2022/PA.Mks. In this case, the husband's violent behavior was aggravated by narcotics abuse, repeated physical assaults, infidelity, and prolonged neglect of maintenance obligations. The court not only granted the divorce and transferred child custody to the mother, but also explicitly considered documentary evidence concerning the husband's rehabilitation for narcotics addiction (Stark et al., 2019). The court ordered payment of *mut'ah* and monthly child support with a ten percent annual increase. More importantly, the judges directly linked the husband's conduct to the instability of the

family and the welfare of the children, thereby demonstrating a stronger substantive orientation in judicial reasoning.

From the perspective of substantive justice, this decision marked a notable progression. The judges no longer confined themselves solely to procedural legality but considered the broader social and moral implications of the husband's conduct. The acknowledgment of narcotics abuse and violence as factors endangering both the wife and children reflects a teleological interpretation of family law oriented toward protection rather than merely dispute resolution. Furthermore, the judgment displayed greater sensitivity toward the unequal power relations experienced by women victims of domestic violence. Although the court still did not explicitly invoke feminist legal principles or the Domestic Violence Elimination Law, its reasoning implicitly recognized the structural vulnerability of women within abusive marital relationships.

The most progressive decision examined in this study is Decision Number 1107/Pdt.G/2024/PA.Mks. This case involved severe physical violence supported by medical evidence (*visum et repertum*) and a police report filed by the victim. The husband repeatedly abused the wife physically and verbally, abandoned the household, neglected financial obligations, and subjected the victim to prolonged suffering. The case was decided *verstek* because the defendant failed to appear before the court despite lawful summons. The Religious Court granted the divorce, transferred child custody to the mother, and imposed child support obligations of IDR 2,500,000 per month until the children reached adulthood.

The significance of this judgment lies in the explicit judicial acknowledgment of domestic violence as a factual and legal reality. Unlike earlier cases, the judges relied upon medical evidence and police documentation to establish the existence of violence. This represents an important transformation in the evidentiary culture of the Religious Court, where domestic violence had previously been treated as a secondary or implicit issue. By explicitly recognizing the victim's injuries and the abusive conduct of the husband, the court demonstrated a greater degree of gender sensitivity and responsiveness to women's experiences.

From the standpoint of feminist legal theory, Decision Number 1107/Pdt.G/2024/PA.Mks illustrates a movement away from rigid judicial neutrality toward implicit recognition of structural gender inequality. The court did not position the husband and wife as equal disputing parties in an abstract sense, but rather acknowledged the wife's vulnerability as a victim of violence. The transfer of child custody to the mother was justified not only because the children were underage but also because the father's violent conduct rendered him morally and socially unfit as a caregiver. This approach reflects a

broader understanding of protection that encompasses both women and children as interconnected vulnerable subjects within patriarchal family structures.

Despite these important developments, the decisions examined in this study continue to reveal significant normative and institutional limitations. None of the judgments explicitly integrated the Domestic Violence Elimination Law into their legal reasoning, even when domestic violence constituted the central basis of the dispute. Similarly, the judgments did not provide mechanisms for psychosocial rehabilitation, victim recovery, or coordination with criminal justice institutions. The Religious Court's protective function therefore remains largely confined to the civil sphere, producing fragmented protection that separates family law from broader victim protection mechanisms.

Comparatively, the progression from the 2020 judgment to the 2024 judgment demonstrates a gradual judicial transformation. Decision Number 1502/Pdt.G/2020/PA.Mks reflected a predominantly formalistic orientation focused on marital dissolution and basic financial obligations. Decision Number 2455/Pdt.G/2021/PA.Mks introduced more contextual reasoning and stronger economic protection. Decision Number 362/Pdt.G/2022/PA.Mks incorporated broader factual considerations concerning narcotics abuse and family welfare. Finally, Decision Number 1107/Pdt.G/2024/PA.Mks demonstrated the strongest victim-centered orientation through explicit acknowledgment of physical violence and reliance on medical and police evidence. Collectively, these decisions indicate a gradual shift from procedural justice toward substantive justice within the Religious Court system.

Nevertheless, the transformation remains incomplete. The Religious Court still operates within a fragmented institutional framework that limits its capacity to provide comprehensive protection for women victims of domestic violence (Aghtaie et al., 2020; Nuroniyah et al., 2025). The absence of integrated mechanisms between civil proceedings, criminal prosecution, and victim recovery services prevents the realization of holistic justice. Furthermore, feminist legal perspectives remain largely implicit rather than explicitly incorporated into judicial reasoning. Judges continue to rely predominantly on formal family law provisions instead of explicitly framing domestic violence as a gender-based human rights violation.

Accordingly, these findings underscore the urgent need for further reform within the Religious Court system. Judicial reasoning in domestic violence-related divorce cases should explicitly incorporate gender-responsive principles, victim-centered approaches, and the normative framework of the Domestic Violence Elimination Law. Teleological interpretation should be expanded beyond child welfare to encompass the broader protection and recovery of women victims. In addition, stronger institutional coordination

between Religious Courts, criminal courts, police institutions, and women's protection agencies is necessary to ensure that victims receive integrated legal, economic, and psychosocial protection.

The examined judgments reveal that the Makassar Religious Court has begun moving beyond its traditional role as a mere divorce adjudicator toward becoming an institution capable of delivering substantive justice for women victims of domestic violence. Although this transformation remains partial and uneven, the progression evident between 2020 and 2024 reflects an emerging judicial awareness that family law adjudication must not only terminate harmful marriages but also restore dignity, economic security, and legal protection for vulnerable women and children.

Factors Determining the Effectiveness of Legal Protection for Women Victims of Domestic Violence in the Religious Courts

The effectiveness of legal protection for women victims of domestic violence in the Religious Courts cannot be assessed solely through the existence of legal norms or judicial decisions. Rather, it must be examined through the interaction between normative frameworks, institutional capacity, socio-cultural structures, judicial interpretation, and the lived experiences of victims (Adongo & Kanwetuu, 2024). The analysis of four decisions of the Religious Court of Makassar between 2020 and 2024 demonstrates that although the Religious Courts have gradually moved toward a more victim-sensitive approach, the protection afforded to women victims of domestic violence remains fragmented and only partially effective. The findings reveal at least six interrelated factors that significantly influence the effectiveness of post-divorce legal protection for women victims of domestic violence: normative limitations, structural capacity, patriarchal culture, enforcement of judgments, victims' legal agency, and judicial approaches to legal interpretation.

1. Normative Limitations and Fragmentation of Legal Regimes

The first and most fundamental obstacle is normative in nature. The jurisdiction of the Religious Courts remains limited to civil matters within Islamic family law, including divorce, maintenance, child custody, and inheritance (Nafisah et al., 2024). Consequently, although domestic violence frequently constitutes the primary basis for divorce petitions, the Religious Courts lack authority to adjudicate criminal accountability or impose sanctions against perpetrators of violence. This institutional limitation creates a fragmented legal regime between Islamic family law and criminal law enforcement.

The implications of this fragmentation are evident in Decision Number 1107/Pdt.G/2024/PA.Mks, where the plaintiff submitted medical evidence (visum et repertum) and police reports proving severe domestic violence. Nevertheless, the Religious Court could only utilize these documents as evidentiary support for divorce and

child custody determinations, rather than as a basis for comprehensive victim protection or criminal accountability. As a result, the legal response remains confined to dissolving the marital relationship without addressing the broader dimensions of violence experienced by the victim.

This fragmentation is exacerbated by the absence of an integrated coordination mechanism between the Religious Courts and the general criminal justice system. Although Law Number 23 of 2004 on the Elimination of Domestic Violence formally guarantees victim protection, its implementation remains institutionally divided. Victims must pursue two separate legal pathways simultaneously: civil proceedings before the Religious Court and criminal proceedings through the police and general courts. For many women, especially those experiencing economic dependence and psychological trauma, navigating these parallel systems is practically burdensome and often unattainable.

Furthermore, the normative framework of Islamic family law in Indonesia, particularly the Compilation of Islamic Law, does not explicitly regulate restitution, rehabilitation, or psychosocial recovery for victims of domestic violence. Judicial protection therefore remains concentrated on conventional civil remedies such as mut'ah, child maintenance, and custody rights, which are often insufficient to restore the socio-economic and psychological conditions of victims. From the perspective of progressive legal theory, law should function as a dynamic instrument of social protection rather than merely as a textual system of procedural regulation. However, the current legal framework governing domestic violence and Islamic family disputes remains compartmentalized and institutionally rigid.

2. Structural Capacity and Institutional Readiness

The second factor concerns structural and institutional capacity within the Religious Court system itself. The study demonstrates that the effectiveness of legal protection is highly dependent upon the competence, sensitivity, and interpretive orientation of judges. Not all judges possess adequate understanding of domestic violence as a gender-based violation of human rights. In earlier decisions, particularly Decision Number 1502/Pdt.G/2020/PA.Mks, judicial reasoning remained predominantly formalistic and procedural, with limited elaboration regarding the victim's experiences or the structural dimensions of violence. By contrast, the 2024 decision reflected a more progressive approach through the acceptance of medical evidence, police documentation, and teleological reasoning aimed at protecting the victim and her children.

This disparity indicates that judicial protection is not merely determined by statutory norms but also by the institutional culture and intellectual orientation of judges. The absence of systematic gender-sensitivity training and victim-centered judicial education contributes to inconsistent approaches among judges handling domestic

violence-related divorce cases. Although Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women in Conflict with the Law provides important guidance for gender-responsive adjudication, its implementation appears uneven within Religious Court practice.

Institutional weaknesses are also reflected in the limited availability of legal aid and victim assistance mechanisms. Many women victims of domestic violence appear before the Religious Courts without legal representation and lack adequate understanding of their procedural and substantive rights (Erbas, 2021; Zlate, 2023). Consequently, numerous claims are drafted narrowly, focusing solely on divorce while omitting demands for mut'ah, unpaid maintenance, or broader economic compensation. This institutional deficiency weakens the substantive effectiveness of judicial protection after divorce.

In addition, the Religious Courts generally lack integrated referral systems connecting victims with psychological services, women's protection agencies, or legal aid organizations. The absence of collaboration with institutions such as local women and child protection agencies or legal aid organizations means that victims often leave the courtroom without any continuing support or rehabilitation mechanisms. Thus, the judicial process resolves the marital status of the parties but frequently fails to address the broader social consequences of violence.

3. Patriarchal Culture and Social Stigma

The third factor is cultural, particularly the persistence of patriarchal social structures that normalize women's subordination within marriage. In many communities, domestic violence continues to be perceived as a private household matter rather than a serious violation of human rights. This cultural perception significantly discourages victims from reporting abuse or pursuing their legal rights.

The findings reveal that many women endure years of violence before initiating divorce proceedings. Social stigma against divorced women, fear of losing child custody, economic dependence, and pressure to preserve family honor collectively discourage victims from seeking legal protection. Within the Bugis-Makassar socio-cultural context, patriarchal values and hierarchical family structures further intensify these pressures. Women who initiate divorce are often labeled disobedient or morally blameworthy, even when they are victims of sustained abuse.

Patriarchal norms also influence the manner in which victims formulate their legal claims. Many women seek only to escape violence and therefore refrain from demanding mut'ah, unpaid maintenance, or broader compensation (Akmal & Asti, 2021; Alimuddin et al., 2025). As a result, judicial protection frequently remains minimalistic. The internalization of patriarchal values is not confined to society at large but may also shape the legal culture of judicial actors themselves. In some cases, judges continue to treat

domestic violence merely as ordinary marital conflict rather than as gender-based violence requiring substantive judicial intervention.

4. Weaknesses in the Enforcement of Judicial Decisions

The fourth factor concerns the implementation and enforcement of court judgments. Even where judicial decisions provide economic protection through child maintenance or mut'ah, enforcement mechanisms remain weak and ineffective. One of the major deficiencies within the Indonesian civil procedural system is the absence of strong coercive mechanisms ensuring compliance with maintenance obligations.

The study indicates that many former husbands fail to comply consistently with maintenance orders. Although decisions such as Decision Number 1107/Pdt.G/2024/PA.Mks imposed monthly child support obligations, their practical effectiveness depends almost entirely on the voluntary compliance of the defendant. If the defendant refuses to comply, the burden shifts to the victim to initiate execution proceedings, which are procedurally complicated, financially costly, and often inaccessible without legal assistance. Unlike several comparative jurisdictions that employ salary garnishment or automatic deduction systems for child support enforcement, Indonesian Islamic family law lacks similarly effective enforcement instruments. Moreover, the Religious Courts do not possess institutional monitoring systems to supervise compliance with maintenance judgments. Consequently, many judicial decisions provide only symbolic legal protection without guaranteeing actual economic recovery for victims and children.

5. Victims' Legal Agency and Access to Justice

The fifth factor is the legal agency and psychological condition of victims themselves. Domestic violence frequently produces profound psychological trauma, fear, and dependency, all of which affect victims' willingness and capacity to pursue legal remedies. Many women initiate legal proceedings only after experiencing prolonged violence over several years. Victims who lack access to legal information or institutional support often submit incomplete claims, requesting divorce alone without demanding economic compensation or unpaid maintenance (Romero & Staudenraus, 2024). In contrast, victims who receive support from family members, legal aid organizations, or women's advocacy groups are more likely to pursue comprehensive legal remedies. The contrast between the 2020 and 2024 decisions demonstrates that victims who possess stronger legal awareness and institutional support tend to obtain broader judicial protection.

This finding illustrates that access to justice is not merely a procedural matter but also a socio-psychological issue. Legal empowerment, public legal education, and accessible legal aid services therefore constitute essential components of effective legal protection for women victims of domestic violence.

6. Judicial Interpretation and the Role of Judges

The final and perhaps most decisive factor is the judicial approach adopted by judges in interpreting the law. The study demonstrates a clear evolution in judicial reasoning between 2020 and 2024. Earlier decisions relied heavily upon grammatical interpretation and formalistic application of statutory provisions. Over time, however, judges increasingly incorporated historical and teleological interpretation, particularly regarding child welfare, economic protection, and victim vulnerability.

Decision Number 1502/Pdt.G/2020/PA.Mks reflected a predominantly textual and procedural approach. In Decision Number 2455/Pdt.G/2021/PA.Mks, judges began incorporating fiqh doctrines, Supreme Court Circular Letters, and more systematic legal reasoning. By 2022 and especially in 2024, teleological interpretation became more pronounced, with judges considering the social realities of violence, the best interests of the child, and the broader objectives of family law protection.

This progression indicates that improvements in legal protection may occur even without legislative reform, provided judges adopt more progressive interpretive methods. Judges who recognize domestic violence as a structural and gendered form of harm are more likely to produce decisions that substantively protect victims. Conversely, judges who remain confined within formalistic legal reasoning tend to produce decisions that resolve marital status without adequately addressing the realities of victimization.

These six factors operate in an interconnected and systemic manner. Normative fragmentation limits institutional authority; structural weaknesses reduce judicial capacity; patriarchal culture discourages victims from pursuing justice; weak enforcement undermines judicial outcomes; limited legal agency restricts victims' claims; and judicial interpretation determines the substantive quality of protection. The effectiveness of legal protection for women victims of domestic violence therefore depends not upon a single legal rule, but upon the interaction of legal structures, institutional practices, socio-cultural conditions, and judicial consciousness within the broader Indonesian legal system.

This study contributes theoretically and practically to the development of Islamic family law, gender-responsive adjudication, and the discourse on legal protection for women victims of domestic violence in Indonesia. Theoretically, the study expands the analysis of Religious Court decisions beyond doctrinal family law by integrating perspectives of substantive justice, legal feminism, and progressive legal interpretation within the context of Islamic adjudication. The findings demonstrate that Religious Courts are not merely institutions for dissolving marriages, but increasingly function as arenas for the protection of vulnerable parties, particularly women and children affected by domestic violence. Practically, the study provides an empirical mapping of the evolution of judicial reasoning in the Religious Court of Makassar from 2020 to 2024, revealing a gradual

transition from formalistic adjudication toward a more victim-oriented and teleological approach. The study also offers policy implications for strengthening institutional integration between Religious Courts, criminal justice institutions, and victim protection agencies, while emphasizing the importance of gender-sensitive judicial training, effective enforcement mechanisms, and broader access to legal aid for women victims of domestic violence.

Conclusion

Domestic violence (KDRT) represents not only a private family conflict but also a serious violation of human dignity and women's rights that requires substantive legal protection. This study demonstrates that the protection provided by religious courts for wives who are victims of domestic violence has gradually shifted from a rigid formalistic approach toward a more victim-oriented model of adjudication. Decisions of the Religious Court of Makassar between 2020 and 2024 indicate an increasing judicial willingness to recognize domestic violence as a central legal consideration through broader evidentiary acceptance, gender-sensitive interpretation, and stronger post-divorce protection for women and children. Nevertheless, the effectiveness of legal protection remains limited by fragmented legal regimes between civil and criminal law, unequal judicial capacities, patriarchal legal culture, weak enforcement of court decisions, and the limited accessibility of legal aid for victims. Consequently, legal protection for victims cannot rely solely on normative regulations, but must also involve institutional reform, judicial transformation, and socio-cultural change to ensure that the law functions as a concrete instrument of justice and recovery.

This study contributes to Islamic family law scholarship by demonstrating that contemporary religious courts increasingly function as spaces for the reinterpretation of Islamic legal norms through the principles of substantive justice, *maqāṣid al-sharī'ah*, and victim protection. The findings also contribute to the discourse on religious court reform by emphasizing the importance of institutionalizing gender-sensitive and victim-centered approaches within judicial practice, particularly through judicial training, integrated legal aid, and inter-institutional coordination. Furthermore, this article enriches the development of legal protection theory for women by arguing that effective protection must integrate normative guarantees, institutional responsiveness, cultural transformation, and enforceable judicial outcomes. Future studies should therefore examine comparative judicial practices across regions, evaluate the long-term implementation of post-divorce protection orders, and develop interdisciplinary approaches that connect Islamic law, gender justice, and socio-legal studies in addressing domestic violence cases.

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