



Women's Rights in Divorce and Post-Divorce Maintenance: Perspectives from Islamic Family Law in Indonesia and Human Rights

Hak Wanita dalam Perceraian dan Nafkah Pasca-Perceraian Perspektif Hukum Keluarga Islam di Indonesia dan Hak Asasi Manusia

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Abstract

This research analyzes the fulfillment of women's post-divorce financial rights within Indonesia's Islamic family law, confronting classical fiqh dogmas with human rights principles and maqashid al-syariah. Despite progressive legal frameworks and Supreme Court guidelines, empirical data reveals a systemic failure in securing alimony, particularly during wife-initiated divorces. Utilizing a mixed-methods socio-legal approach, this study identifies patriarchal interpretations, procedural rigidities like verstek rulings, and the crucial absence of an authorized state executorial body as fundamental obstacles. The findings indicate that relying solely on judicial ex officio interventions remains insufficient without structural reforms. To eliminate post-divorce economic marginalization and achieve substantive gender justice, Indonesia urgently requires the establishment of an autonomous execution institution. This agency must be fully integrated with the national banking sector to enforce alimony compliance directly. Ultimately, such transformation successfully harmonizes Islamic legal objectives with modern human rights standards, ensuring comprehensive protection for vulnerable women and young children nationwide.

Abstrak

Penelitian ini menganalisis pemenuhan hak finansial pascaberceraai bagi perempuan dalam hukum keluarga Islam Indonesia, menghadapi dogma fikih klasik dengan prinsip hak asasi manusia serta maqashid al-syariah. Meskipun terdapat kerangka hukum progresif serta pedoman Mahkamah Agung, data empiris menunjukkan kegagalan sistemik dalam mengamankan nafkah, terutama selama perceraian gugat. Menggunakan pendekatan sosio-legal metode campuran, studi ini mengidentifikasi interpretasi patriarkis, kekakuan prosedural seperti putusan verstek, dan ketiadaan fatal badan eksekusi negara yang berwenang sebagai hambatan fundamental. Temuan mengindikasikan bahwa hanya mengandalkan intervensi hakim secara ex officio tetap tidak memadai tanpa reformasi struktural. Untuk mengeliminasi marginalisasi ekonomi pascaberceraai dan mencapai keadilan gender substantif, Indonesia sangat membutuhkan pembentukan sebuah institusi eksekusi otonom. Lembaga tersebut harus terintegrasi secara penuh bersama sektor perbankan nasional guna memaksakan kepatuhan pembayaran nafkah secara langsung. Pada akhirnya, transformasi tersebut secara sukses akan menyelaraskan tujuan hukum Islam dengan standar hak asasi manusia modern, memastikan perlindungan komprehensif bagi perempuan serta anak-anak secara nasional.



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A. INTRODUCTION

1. Background

Within the epistemology of Islamic family law, the institution of marriage is not merely projected as an instrument for legalizing biological relationships, but rather as a sacred bond and a solemn covenant (*mitsaqan ghalizhan*) that possesses both transcendental and sociological dimensions. The fundamental objective of this union is to realize a family life order characterized by psychological tranquility (*sakinah*), profound love (*mawaddah*), and sustainable affection (*rahmah*). This ideal construction inherently positions the balance of rights and obligations between husband and wife as the primary pillar for domestic continuity.¹

The aspects of protection, guardianship, and the fulfillment of basic needs encompassing moral, spiritual, and financial dimensions are rigidly guaranteed within the *sharia* framework. Nevertheless, Islamic law, as a highly realistic normative system that adapts to sociological dynamics and human vulnerabilities, fully acknowledges that the essential ideals of the marriage institution cannot always be sustainably maintained. When structural dysfunction within a household reaches its nadir, resulting in destructive harm such as physical or psychological violence, economic neglect, or severe disputes that can no longer be reconciled through family mediation (*syqaq*), divorce is recognized and legitimized as the ultimate remedy (*ultimum remedium*).²

However, the theological justification for the dissolution of this marriage bond is consistently accompanied by stringent jurisprudential guidelines to ensure that divorce does not precipitate social marginalization or economic alienation, particularly for the most structurally vulnerable groups: women and children. These normative guarantees are manifested through the mandatory payment of post-divorce financial support, encompassing maintenance during the waiting period (*iddah*), consolatory compensation (*mut'ah*), settlement of past-due maintenance (*madhiyah*), as well as child custody and educational expenses (*hadhanah*), all of which are imperatively imposed upon the ex-husband.

¹ Ma'ruf Zaki Murtadho, "Motivation and Impact of Unregistered Marriage among the Community of Sukaramah Village, Panyipatan District, Tanah Laut Regency," *Journal of Law, Human Rights, Immigration, and Corrections* 1, no. 1 (October 16, 2025): 1–10, <https://doi.org/10.65101/lawric.v1i1.101>.

² Jeremiah Ray Wilson and Adi Sulistiyono, "Restorative Justice and Hybrid Mediation: Reforming Civil Dispute Resolution in Indonesian Courts," *Journal of Law, Human Rights, Immigration, and Corrections* 1, no. 3 (April 6, 2026): 85–106, <https://doi.org/10.65101/lawric.v1i3.244>.

In the empirical reality within the administration of Religious Courts in Indonesia, the modern divorce landscape reveals a paradigm shift that is both revolutionary and alarming. The dominance of court cases is no longer dictated by unilateral repudiation (*talak*) pronounced by the husband, but is instead overwhelmingly dominated by wife-initiated divorce lawsuits (*ceraai gugat*). The escalating increase in these wife-initiated divorces signifies a multidimensional crisis within modern family institutions, where the husband's failure to fulfill material and non-material maintenance responsibilities, alongside the escalation of domestic violence, serve as the predominant determinant factors compelling women to seek justice through the judicial system.³

Ironically, women's existential initiatives to liberate themselves from toxic and dysfunctional marriages often come at an exceptionally high cost, specifically through the systematic reduction, negation, or deprivation of their post-divorce financial rights. Indonesian positive law a product of compromising codification and the amalgamation of classical *fiqh* values with state supremacy has essentially attempted to design both preventive and curative protection mechanisms through Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law (KHI). These fundamental regulations unequivocally mandate that a divorce is legally valid only if it is executed and pronounced before a court of law.⁴

This measure constitutes a form of contemporary *ijtihad* aimed at eliminating extrajudicial *talaq* practices outside state supervision, thereby ensuring that state power instruments are practically present to execute the equitable distribution of financial rights for ex-wives and children. However, the objective enforcement and effectiveness of these normative guarantees frequently reach an impasse when confronted with empirical realities. These realities are laden with procedural anomalies, deeply entrenched patriarchal cultures within the communal consciousness, rigid textualist interpretations by certain judicial officials, and absolute deficiencies in the execution mechanisms for civil judgments within the Religious Courts.

³ Rahmawati Rahmawati et al., "Dis-Implementation of the Islamic Family Law in Fulfilling the Rights of Ex-Wives After Divorce in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 538–59, <https://doi.org/10.22373/sjkh.v9i1.27172>.

⁴ Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), <https://doi.org/10.1080/23311886.2023.2206347>.

Analyses of the dynamics, challenges, and pathologies concerning the protection of women's post-divorce rights have stimulated broad, comprehensive, and polemical academic discourse among Islamic family law scholars. To establish a study foundation and to map the position of this research within the global literature, the present review builds upon five highly reputable international studies that critically examine the intersection of positive law, gender bias, and judicial practices.

First, a highly comprehensive contemporary study by Fahmi, Scott, Ezzerouali, and Alejandro highlights the critical discrepancy between legal norms on paper and actual law enforcement in Indonesia. Their central finding asserts that, despite the Supreme Court issuing a progressive Circular Letter (SEMA) to reinforce the exclusive authority of judges in adjudicating financial rights, the actual protection afforded to vulnerable groups remains highly inconsistent and sporadic. Fundamentally, this protection is impeded by systemic deficiencies in judicial execution, which lacks direct instruments of financial coercion.⁵

Second, the analytical socio-legal research by Seff, Hidayat, Nurliana, Elrais, and Rosyid explores the empirical domain of Islamic civil law in Indonesia. This study deconstructs the intricate triadic tension between legal normativity, state reform agendas, and the persistence of static social realities. They conclude that the Compilation of Islamic Law (KHI) inherently preserves asymmetrical gender-biased structures in the allocation of divorce rights, wherein the mechanisms of *khulu'* and *ceraai gugat* (judicial divorce) remain subordinated to the husband's absolute right of *talaq*. Nonetheless, the study identifies a burgeoning trajectory of legal reform manifested through progressive judicial *ijtihad* within the courts of first instance.⁶

Third, a precise empirical investigation by Ridmajayanti et al. focuses on the anomalies surrounding *verstek* judgments (default judgments rendered in the absence of the defendant). Their study starkly demonstrates that the deliberate absence of the ex-husband from court proceedings diminishes, and even paralyzes, the court's capacity to verify financial assets and enforce compliance with the payment of *'iddah* maintenance and *mut'ah*. Consequently, in numerous *verstek* cases, women are entirely deprived of

⁵ Ahsanul Fahmi et al., "The Broken Bridge: Are Religious Courts Upholding the Promise of Post-Divorce Support for Women and Children in Indonesia?," *Journal of Private and Commercial Law* 9, no. 2 (November 30, 2025): 235–54, <https://doi.org/10.15294/jpcl.v9i2.34530>.

⁶ Nadiyah Seff et al., "Islamic Family Law and Women's Rights in Indonesia: Between Normativity, Reform, and Social Realities," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 2 (October 22, 2025): 237–56, <https://doi.org/10.62976/ajisc.v2i2.1430>.

their fundamental rights.⁷

Fourth, a critical study employing a sociological feminist legal perspective by Saputra, Murtadlo, and Haider dissects the experiences of judicial practitioners within the Religious Courts of the Mataraman region, East Java. This research reveals the striking reality that the primary impediment to enforcing wives' post-divorce rights is not merely rooted in society. Rather, it stems directly from the internal patriarchal culture and a deficit of gender awareness among the legal practitioners themselves, wherein systemic bias frequently frames female plaintiffs as disobedient parties rendering them ostensibly undeserving of financial compensation.⁸ Fifth, a jurisprudential examination by Sanusi et al. asserts that judicial *ijtihad* plays a paramount role as the vanguard of Islamic family law reform. Their findings demonstrate that when judges progressively and resolutely apply the principles of public interest (*maslahah*) and human rights, women's financial rights which were previously marginalized by classical *fiqh* constructs can be revitalized and precisely accommodated within state judgments.⁹

Building upon the aforementioned literature and discourse, the originality and novelty of this research reside in a macro-analytical framework that holistically integrates three fundamental pillars: a textual mapping of classical Islamic jurisprudence directly referencing the authoritative texts of the four schools of thought (*madhhabs*), the universal framework of Human Rights within the contemporary international legal landscape, and a quantitative and structural analysis utilizing the latest Supreme Court (Badilag) data up to the 2026 quarterly reports. Unlike previous studies that tend to examine juridical pathologies partially, in isolation, or restricted to specific socio-cultural loci, this study introduces an operational model of substantive justice rooted in *maqāṣid al-syarī'ah* (the objectives of Islamic law). This model is specifically designed to deconstruct the interpretative hegemony prevalent in *cerai gugat* (judicial divorce) cases. This research sharply demonstrates, both empirically and theoretically, that absent a centralized, modernized executorial restructuring equipped with autonomous state

⁷ Ridmajayanti et al., "Inequality of Rights in Verstek Divorce: Islamic Law Perspective and Practices in Religious Courts," *Journal of Indonesian Scholars for Social Research* 5, no. 1 (January 25, 2025): 73–82, <https://doi.org/10.59065/jissr.v5i1.175>.

⁸ Wahyu Saputra, Muhammad Ali Murtadlo, and Aftab Haider, "Challenges in Upholding Women's Post-Divorce Rights: Experiences From Legal Practitioners in the Mataraman Region, East Java," *AL-HUKAMA* 14, no. 1 (June 11, 2024): 46–73, <https://doi.org/10.15642/alhukama.2024.14.1.46-73>.

⁹ Sanusi Sanusi et al., "Judges' Ijtihad on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity* 3, no. 1 (July 30, 2023): 1, <https://doi.org/10.24042/smart.v3i1.16981>.

coercive power, substantive legal innovations such as Supreme Court Circulars (SEMA) or Supreme Court Regulations (PERMA) will merely manifest as utopian documents that fail to penetrate the structural barricades of Indonesia's civil justice system.

Concluding this comprehensive analytical framework, the research findings confirm a fundamental judicial paradox: the integration of progressive instruments by the Supreme Court has genuinely succeeded in expanding the normative dimensions of women's financial rights protection, thereby conceptually displacing rigid and discriminatory classical *fiqh* doctrines. Nevertheless, statistical data starkly illustrate that executorial deficiencies, the overwhelming prevalence of *verstek* judgments, and robust cultural resistance have confined the actualization of maintenance rights particularly in *cerai gugat* cases to a highly marginal percentage. This conclusion necessitates radical institutional interventions and reforms to uphold gender justice in accordance with constitutional mandates and *Sharia* principles.

2. Research Questions

Grounded in the aforementioned background rationale, gap analysis, and originality, the methodological trajectory of this research is crystallized into comprehensive research questions designed to advance the current literature on family law. These research questions are formulated as follows:

First, how do the normative constructs regarding women's post-divorce maintenance rights intersect and clash when classical Islamic *fiqh* traditions across various *madhhabs* are confronted with the architecture of positive family law in Indonesia?

Second, to what extent can international Human Rights discourse and the philosophical framework of *maqāṣid al-syarī'ah* be integrated as robust hermeneutical instruments to deconstruct the hegemony of patriarchal dogma within the administration of family justice?

Third, based on an examination of contemporary empirical data, what are the structural anomalies, procedural pathologies, and systemic barriers that precipitate the chronic failure in implementing Religious Court judgments concerning the execution of post-divorce maintenance? Furthermore, how can the reconstruction of judicial *ijtihad* and executorial innovations be operationalized to permanently secure women's rights?

3. Research Methods

This in-depth research is constructed upon the foundation of a normative-juridical approach that is dialectically integrated with empirical socio-legal analysis, aiming to produce a conceptual and factual examination characterized by a high degree of scientific soundness. This technically robust mixed-methods legal design is implemented with a profound awareness to bridge the glaring ontological gap between the ideal textual order or what ought to be (*das Sollen*) within Islamic legal dogma and formal state regulations, and the historical sociological reality or what actually is (*das Sein*) manifested in law enforcement behaviors, jurisprudential patterns, and the effectiveness of execution within Religious Court courtrooms across Indonesia.

In the primary stage of data collection, which is doctrinal and excavatory in nature, search instruments are rigidly focused on inventorying primary, secondary, and tertiary legal materials. Primary legal materials are precisely extracted from fundamental authoritative sources, namely the textual corpus of the Qur'an and the *Sunnah*, alongside the elaboration of various formal regulatory instruments representing the unification of modern Islamic civil law in Indonesia. These regulations encompass the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage, Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law (KHI), Supreme Court Regulations (PERMA), and a compilation of Supreme Court Circulars (SEMA) relating to the protection of women's rights. To deconstruct the epistemological foundations, philosophical roots, and evolution of the doctrine of women's maintenance, this study meticulously excavates classical *fiqh* literature across *madhhabs*. Specifically, it references monumental encyclopedic works such as *Al-fiqh 'ala al-madzahib al-arba'ah* Volume IV by Al-Jaziri (1990), the comparative jurisprudence compilation *Al-fiqh al-islami wa adillatuhu* Volume VII by Al-Zuhaili (1989), the phenomenal work *Aneka masalah hukum perdata Islam di Indonesia* by Manan (2006), and the contemporary thematic exegesis *Tafsir al-Mishbah* Volume 2 by the prominent scholar M. Quraish Shihab (2004). To ensure the quality of comparison and the validity of references at the discourse level of *fiqh* methodological theory and global human rights, this research extensively consults internationally standardized academic literature. This includes *Principles of Islamic Jurisprudence* by Kamali (2008), the discourse *Rights of Women in Islam* by Engineer (2008), the deconstructive thought in *Islam and Human Rights* (2010), and the harmonization review in *International Human Rights and Islamic Law* by Baderin (2017).

This entire comparative analysis and modern literature review is absolutely corroborated by reputable journal articles (published between 2019 and 2026) with active DOI validation, ensuring a state-of-the-art scholarly representation that is both reproducible and epistemologically accountable.

In the second stage, which is predicated on empirical data collection, data is gathered through statistical extraction and aggregation methods from the official database of the Directorate General of the Religious Courts (Badilag) of the Supreme Court of the Republic of Indonesia. This data documents the macro-level tabulation of fluctuating divorce case figures, meticulously disaggregating the instruments of *cerai talak* and *cerai gugat*, alongside the aggregation of maintenance rights fulfillment within judicial verdicts on a national scale for the consolidated period of 2018 to 2023. Furthermore, to dissect and provide case study depth (micro-level analysis) regarding real-time verdict dynamics, this research specifically validates secondary statistical data from the Case Tracking Information System (SIPP) of the Semarang Religious Court for the 2026 quarterly reporting period. This micro-level data is directly confronted to quantitatively demonstrate the disparity in the financial rights fulfillment ratio between male and female divorce initiators.¹⁰

The comprehensive dataset accumulated from these dual approaches is subsequently reduced, thematically classified, and analyzed utilizing content analysis alongside a systematic approach through the teleological lens of *maqāṣid al-syarī'ah*. This analytical technique endeavors to trace the *ratio legis*, the intrinsic meaning, and the ultimate humanitarian objectives of each legislative text, subsequently subjecting them to a critical comparison against the empirical realities of judicial verdict outputs in practice. The data interpretation process is executed iteratively; the root causes of anomalies and empirical statistical findings are elucidated by investigating the doctrinal loopholes within classical *fiqh*. Consequently, these doctrinal lags are addressed through the philosophical construct of universal human rights, thereby generating a dialectical argumentation that is conclusive, robust, and tangibly advances the paradigm of women's rights protection.

¹⁰ Pengadilan Agama Semarang, "Statistik Perkara Pemenuhan Hak Ibu Dan Anak," Pengadilan Agama Semarang, 2026, <https://mail.pa-semarang.go.id/id/kepaniteraan/statistik-perkara/perkara-pemenuhan-hak-ibu-dan-anak>.

B. DISCUSSION

1. The Normative Construction of Women's Maintenance Rights: The Clash Between Classical Fiqh and Indonesian Positive Law

Repositioning the understanding of the essence of post-divorce protection and maintenance within the Islamic intellectual framework necessitates meticulous historical tracing and a rigorous theological reading of the revealed texts as the primary sources of legislation. Islamic *Sharia* explicitly places financial responsibility upon the husband as a logical consequence of the *qawwam* concept (leadership predicated on protective responsibility), which is unanimously affirmed during the marriage contract (*'aqd al-nikah*). In QS. An-Nisa' [4]:34, the legitimacy of male leadership within the domestic sphere is textually conditioned upon their innate advantages and their proportional obligation to expend a portion of their wealth to ensure the maintenance and dignity of women. It is imperative to underscore that this logic of economic protection is not abruptly severed, nor does it instantly evaporate, upon the pronouncement of *talaq* (divorce).

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ
فَالصَّالِحَاتُ قَانِتَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِى
الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۚ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Translation: "Men (husbands) are the protectors and maintainers of women (wives) because Allah has favored some of them (men) over others (women) and because they (men) expend a portion of their wealth [for their maintenance]. Righteous women are devoutly obedient (to Allah) and guard themselves in the absence (of their husbands) by virtue of what Allah has guarded. As for those women whose *nusyuz* (disobedience/rebellion) you fear, advise them, forsake them in bed (separate beds), and (if necessary,) strike them (in a manner that does not inflict pain). However, if they obey you, do not seek a means against them. Indeed, Allah is Most High, Most Great."

The Qur'an, in Surah Al-Baqarah [2]:241, prescriptively and with profound majesty mandates the continuity of such protection:

وَلِلْمُطَلَّقاتِ مَتَاعٌ ۚ بِالْمَعْرُوفِ ۚ حَقًّا عَلَى الْمُتَّقِينَ

Translation: "For divorced women, there is a right to *mut'ah* (consolatory gift)

provided in a customary and fair manner. This constitutes a binding obligation upon the righteous."

Elaborating on this verse, M. Quraish Shihab profoundly asserts that the term *mut'ah* within the sociological context of the Qur'an is not merely a material asset transfer obligation post-separation. Rather, it serves as a psychological instrument of divine origin from Allah SWT, designed to function as a palliative for sorrow, a healer of grief, and the highest manifestation of respect for the wife's dedication and devotion throughout the marriage. Simultaneously, it protects her honor and social existence from the threat of sudden economic collapse.¹¹

While the Quranic foundation strongly emphasizes a dignified separation ethics (*ihsan*), the intellectual *fiqh* traditions of the four orthodox schools (*Hanafi, Maliki, Shafi'i, and Hanbali*) subsequently gave rise to a highly dynamic and prescriptive discursive dialectic, which was frequently influenced by the power relation biases prevalent during its formulation. Based on the jurisprudential exploration detailed by Al-Jaziri, jurists (*fuqaha*) across these schools reached a unanimous consensus (*ijma'*) that maintenance during the waiting period (*nafkah iddah*) is absolutely mandatory for a wife divorced through the *talaq raj'i* mechanism (the first or second divorce, which still permits the possibility of reconciliation). This fulfillment encompasses comprehensive basic needs, including clothing (*kiswah*), food, and housing (*maskan*), supported by the logical argument that, from a formal-juridical standpoint, the wife remains under the husband's authority and protection and is prohibited from leaving the marital residence.¹²

However, these fundamental rights transform into a sharp jurisprudential arena of contention, often discrediting women when the termination of marriage takes the form of *talaq ba'in* (irrevocable divorce, such as the triple *talaq*) or occurs through the instrument of *khulu'* (judicial divorce initiated by the wife in exchange for returning the dowry or other considerations). Classical *fiqh* dominantly posits that the wife's progressive initiative to unilaterally demand a separation dissolves her entire post-divorce financial protection rights. This is based on the premise that such a divorce is perceived as a moral defect on the wife's part, which emotionally and materially disadvantages the husband. Al-Zuhaili objectively deconstructs that rational grounds for a wife to file a lawsuit such as

¹¹ M. Quraish Shihab, *Tafsir Al-Mishbah: Pesan, Kesan, Dan Keserasian Al-Qur'an*, 2nd ed. (Jakarta: Lentera Hati, 2004). Hal, 46.

¹² Abdu Al-Rohman Al-jaziry, *Al-Fiqh 'ala Al-Madzahib Al-Arba'Ah*, 4th ed. (Beirut: Dar al-Fikr, 1990). Hal, 1014-1015.

enduring physical cruelty (domestic violence), prolonged maintenance neglect, the husband's failure to fulfill biological rights, or conduct that undermines moral foundations constitute highly valid *sharia* justifications. These grounds provide a strong precedent for rendering a *fasakh* judgment (annulment) or divorce without compelling the wife to forfeit her dignity or assets.¹³ Nevertheless, the historical record of Islamic legal development reveals a notable deficiency: because civil judicial structures during the classical era of *fiqh* had not yet been institutionalized as a modern state apparatus equipped with executorial coercive functions, the fulfillment of women's maintenance rights was frequently contingent solely upon the *tadayyun* (moral consciousness and personal piety) of the former husband. In the absence of such religious integrity, post-divorce women were often fatally relegated to a state of economic destitution.¹⁴

Recognizing this executorial void and the systemic threat to the welfare of its citizens, the positive law authorities in Indonesia sought to synthesize Sharia moral doctrines with the absolute power of *qadha'* (judicial administration). The promulgation of Law No. 1 of 1974 on Marriage, followed by the implementation of the Compilation of Islamic Law (KHI) in 1991, marked a transformative milestone in the juridical paradigm. Abdul Manan argumentatively asserts that the mandatory registration of marriage and the requirement to pronounce *talaq* solely before state judicial proceedings are far from mere administrative formalities. They constitute absolute prerequisites for ensuring legal certainty and order, curbing arbitrary male dominance (*arbitrary divorce*), and serving as a legal bulwark for the most vulnerable parties within domestic dispute frameworks. The KHI deliberately translated the moral discourse of classical *fiqh* into a binding dialect of positive law. Article 149 of the KHI codifies legally binding obligations for the former husband to provide *mut'ah*, maintenance, *kiswah* (clothing), and suitable housing during the *iddah* period, settle any outstanding *mahar* (dowry), and guarantee the continuity of *hadhanah* (child custody) financing.¹⁵

This monumental transition reflects what Mohammad Hashim Kamali brilliantly conceptualizes as the operationalization of the *maslahah mursalah* methodology (public interest that is neither explicitly prescribed nor prohibited in detail by the *nass* [scriptural texts], yet aligns with the objectives of Sharia). Restricting the husband's latitude to

¹³ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, 7th ed. (Damaskus: Dar al-Fikr, 1989). Hal, 356.

¹⁴ Ridwan Hasbi and Syafaruddin Hasbi, "The Legality of Divorce in the Perspective of Hadith," *Jurnal Ushuluddin* 24, no. 1 (June 2, 2016): 51, <https://doi.org/10.24014/jush.v24i1.1526>.

¹⁵ Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Kencana Prenada Media Group, 2006). Hal, 124.

arbitrarily pronounce *talaq* within private spheres constitutes an embodiment of contemporary *ijtihad* oriented toward preventing universal harms (*mafsadah*) that are destructive to the social order. Normatively and conceptually, the Indonesian legal framework has achieved scholarly success in formulating an integration between the theological dimensions of classical *fiqh* and the legal protections of a modern state. However, the shift in the locus of dispute from *fiqh* texts to the reality of state courtrooms has triggered massive implementation complexities at the enforcement level. This necessitates not only formal legality but also a sharp and comprehensive sensitivity to Human Rights to ensure that substantive justice does not merely become courtroom jargon.¹⁶

2. The Dialectics of Human Rights and the Integration of Gender Justice through the *Maqāsid al-Sharī'ah* Approach

The most formidable and labyrinthine challenge in safeguarding the enforcement of post-divorce rights in Indonesia, and across the modern Islamic world at large, lies in disentangling the intricate web between religious dogmas historically distorted by patriarchal cultural biases and the burgeoning wave of universalizing Human Rights protections. In this context, international human rights instruments such as the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) are frequently perceived by conservative factions as ideological threats to local jurisprudence. Patriarchal cultures in various regions have systemically subordinated the law, perpetuating puritanical assumptions that men, as sole breadwinner entities, possess absolute authority over economic control, reproductive decisions, and the dissolution of marital bonds thereby placing women in a highly vulnerable and asymmetrical position.

Confronted with this epistemological clash, Muslim intellectual Abdullahi Ahmed An-Na'im argumentatively and philosophically critiques that the enforcement of human rights instruments within the Islamic world will never succeed if imposed purely through a top-down Western secular liberal epistemology. Instead, the advocacy for women's fundamental rights must be pursued culturally through an internal reinterpretation of the Quranic and *Sunnah* textual corpus, which inherently carries a potent emancipatory spirit. The failure to interpret these sacred texts sociologically and contextually often culminates

¹⁶ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2008). Hal, 88.

in the institutionalization of discrimination legitimized in the name of religion.¹⁷

To operationalize this realization, Islamic law scholar Mashood A. Baderin proposes a promising intellectual synthesis by integrating the "margin of appreciation" doctrine with the core theory of *maqāṣid al-sharī'ah* (the higher objectives of Sharia). According to Baderin's rationale, the obligations and commitments of Muslim-majority states to ratify and comply with international covenants regarding the protection of women's financial rights are by no means contradictory to the essence of Sharia. On the contrary, these frameworks directly intersect, as the fundamental objectives of Sharia encompass the preservation of life and physical safety (*hifz al-nafs*), the safeguarding of future generations (*hifz al-nasl*), the maintenance of honor and dignity (*hifz al-'ird*), and the protection of property and the economic resilience of vulnerable parties (*hifz al-mal*).¹⁸

In an equality discourse aligned with these ideas, Asgharali Engineer courageously deconstructs the patriarchal status quo by asserting the historical fact that *iddah* maintenance and mandatory *mut'ah* compensation were essentially designed by Islam as the most progressive, humanistic, and radical socio-economic safety net instruments of their civilization. The primary function of this prescriptive safety net is to intervene and mitigate the risks of structural poverty, social marginalization, and the psychological dependence of women immediately upon the legal dissolution of marital economic bonds. Ironically, for centuries, conservative *fiqh* literature and understanding have frequently stifled the efficacy of this safety net by imposing stringent prerequisites that are logically almost impossible for victims of abuse to fulfill. For instance, by narrowly labeling a wife who flees domestic violence as *nusyuz* (disobedient/rebellious), this theological labeling is utilized as a legal weapon to automatically nullify all her financial claims in court a practice that clearly undermines the values of *maqāṣid* justice.¹⁹

Following the integrative demands of the theoretical review in the introduction, the foundation of Human Rights in Indonesia is firmly enshrined in the 1945 Constitution of the Republic of Indonesia. Article 27, Paragraph 1 and Article 28H, Paragraph 1 provide absolute constitutional guarantees for equality before the law without gender discrimination, alongside the inviolable human right to social welfare and a decent

¹⁷ Abdullahi An-Na'im, *Islam and Human Rights* (Routledge, 2017), Hal, 128. <https://doi.org/10.4324/9781315251790>.

¹⁸ Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford University Press, 2005), Hal, 118-125. <https://doi.org/10.1093/acprof:oso/9780199285402.001.0001>.

¹⁹ Asgharali Engineer, *Rights of Women in Islam*, New Delhi (Sterling Publishers, 2008). Hal, 116.

livelihood for every individual. Given that the Religious Courts are judicial institutions under state auspices, the presiding judges are constitutionally mandated to liberate themselves from the shackles of past family law textualism and inherently adopt Human Rights principles. The logical and judicial consequence of integrating these Human Rights and *maqāṣid* perspectives is the imperative to view the fulfillment of post-divorce maintenance rights not as a manifestation of charity or voluntary benevolence from the former husband, but as a constitutional and fundamental human right for women. This right must be guaranteed, protected, and forcibly enforced by state power instruments with zero tolerance for discrimination. Structural negligence by the state in addressing non-compliance with maintenance payments essentially signifies state complicity in facilitating economic abuse.

3. Analysis of Substantive Justice Implementation, Structural Anomalies, and Contemporary Empirical Data Review

To objectively ascertain whether the ideal normative framework and the discourse of human rights justice have permeated and pulsated through the core of Islamic civil judicial practice in Indonesia, an analytical framework grounded in national-scale empirical data is required. Based on an investigation of the Annual Reports of the Directorate General of the Religious Courts (Badilag) of the Supreme Court of the Republic of Indonesia, the demographic landscape of Indonesian families is undergoing a concerning phenomenon of hyper-escalation in the accumulation of divorce cases. Aggregate data demonstrates that in numerous jurisdictions, the proportion of marital dissolutions initiated by women through judicial divorce (*cerai gugat*) has reached an overwhelming majority, significantly eclipsing those initiated by husbands through *talaq* divorce (*cerai talak*).

Tabel 1. Komparasi Jumlah Perkawinan Terdaftar dan Putusan Perceraian (Talak dan Gugat) Skala Nasional Berdasarkan Data BPS Tahun 2020–2025

Tahun Pelaporan	Number of Registered Marriages	Total Divorce Decision (Divorce & Lawsuit)	Percentage of Divorces to Marriages (%)
2020	1.780.346	291.677	16,38%
2021	1.742.049	447.743	25,70%
2022	1.705.348	516.344	30,28%

2023	1.577.255	463.654	29,40%
2024	1.478.302	394.608	26,69%
2025	1.480.048	438.168	29,61%

(Source: Statistics Indonesia (BPS), 2020–2025)²⁰

When examined through sociological investigation, the dominant motives driving this explosion in judicial divorce cases (*cerai gugat*) do not stem from a shift toward boundless liberal values. Instead, they are firmly rooted in crises of family economic resilience, the husband's absolute inability to provide consistent and adequate maintenance, sharp and protracted marital disputes, and the prevalence of both physical and psychological domestic violence.

The most ironic and troubling judicial paradox arises in the shadow of the judge's gavel. While women possess the normative right to seek compensation and financial fulfillment through the articulation of the *posita* (legal grounds) and *petitum* (specific prayers for relief) in their pleadings, the actual realization rate of these granted rights on the ground reveals a degradation to critical levels.

This empirical anomaly can be mapped, visualized, and analyzed with enhanced precision through the extraction of the latest data from the Case Tracking Information System (SIPP) at the Semarang Class IA Religious Court for the 2026 quarterly reporting period.

Table 2. Comparative Ratio of Divorce Settlement Judgments and the Inclusion Rate of Maintenance Rights Fulfillment

Classification of Case Types	Year of Judgment	Number of Cases Decided Final	Matters that Explicitly Contain the Financial Rights of the Wife/Children	Actual Percentage of Fulfillment of Rights (%)	Details of the Distribution of the Types of Rights Most Frequently Granted by Judges
Divorce by Divorce (Husband's Pure Initiative)	2026	125	64	51,20%	Mut'ah (63 cases), Iddah Maintenance (15 cases), Child Hadhanah (1 case)

²⁰ Badan Pusat Statistik, "Nikah Dan Cerai Menurut Provinsi, 2020-2025," Badan Pusat Statistik, 2026, <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi--2020.html?year=2025>.

Divorce Lawsuit (Wife Protection Initiative)	2026	476	7	1,47%	Mut'ah (6 cases), Iddah Maintenance (4 cases), Child Hadhanah (3 cases)
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(Source: Aggregated Public Data from the Case Tracking Information System (SIPP) of the Semarang Religious Court, 2026 Quarterly Period)²¹

The quantitative data presented above reveals a grim reality, serving as an irrefutable justification of the fragility and asymmetry of Islamic civil law protection at the level of practical enforcement. Within the Talaq Divorce instrument where the husband, as the petitioner, is procedurally required by the judicial bureaucracy to deposit all financial obligations at the court registry before the sacred pledge of *talaq* is pronounced protection remains relatively guaranteed, reaching 51.20%. The Supreme Court has indeed constructed a protective administrative procedure whereby judges will suspend or even annul the execution of the *talaq* pledge if the husband refuses to pay the financial compensation stipulated in the judgment.

However, a jurisprudential disaster and a humanitarian crisis unfold openly within the Judicial Divorce (*Cerai Gugat*) track. Out of 476 settled cases where women fought for their autonomy, only 7 cases (1.47%) were accompanied by the stipulation of post-divorce maintenance obligations. This extreme disparity in the fulfillment of rights is not coincidental; rather, it is rooted in four fundamental structural anomalies.

a. The Shackles of Classical Legal Dogma

Historically, the instrument of *khulu'* was regarded as a mechanism that extinguished a woman's maintenance rights. Within the logic of classical *fiqh*, the wife is viewed as the party desiring to break the marital bond and is thus required to pay a ransom (*iwad*). Although the modern Compilation of Islamic Law (KHI) conceptually distinguishes between standard judicial divorce (due to breach of *taklik talaq* or neglect) and *khulu'*, the psychological stigma remains: "a wife who sues for divorce automatically becomes *nusyuz* (disobedient) and forfeits her right to claim even a single penny." This stigma is deeply embedded both within conservative judicial panels and the societal mindset. In practice, women physically and mentally exhausted by domestic suffering often sacrifice their fundamental financial rights bargaining in the shadow of the law as

²¹ Pengadilan Agama Semarang, "Statistik Perkara Pemenuhan Hak Ibu Dan Anak."

long as their petition for divorce is granted.

b. Procedural Barriers Punishing Legal Illiteracy

The colonial-inherited Civil Procedural Law, strictly adopted in Religious Courts, adheres to the principles of judicial passivity and *ultra petita* (where judges are prohibited from granting more than what is specifically requested in writing by the plaintiff). Ironically, the majority of women in these cases file their petitions *in personam* (independently) without professional legal counsel or paralegals. Consequently, they lack the legal literacy to formulate actuarial calculations for *iddah* maintenance or to comprehensively demand *mut'ah* within their *petitum*. This rigid system ultimately punishes those who are legally illiterate.

c. The Destructive Effect of *Verstek* (Default) Judgments

Empirical studies and civil procedural norms underline that if the husband (as the respondent) intentionally or in bad faith absents himself from all official summons and court proceedings, the judicial panel has no choice but to render a *verstek* (default) judgment. While default judgments were originally designed to expedite legal certainty for the wife to separate, they have transformed into a boomerang that wounds the fulfillment of financial rights. Without the husband's interactive presence, mediation procedures fail, validation of assets or income reaches a deadlock, and the enforcement of financial compensation becomes nearly impossible in court. Judges often decline to stipulate the amount of *mut'ah* or maintenance in the "vacuum" of a *verstek* hearing, arguing that the husband's actual economic capacity remains unknown resulting in the permanent disappearance of the woman's rights.²²

d. The Vacuum of Authority in Mandatory Enforcement Institutions

The greatest catastrophe in the Indonesian civil legal system is the inability to execute judicial victories. Even if a wife is fortunate enough to be represented by counsel and secures a legally binding judgment (*inkrah*) that explicitly orders the former husband to pay millions in *mut'ah* and monthly child maintenance, such court orders are frequently little more than "paper tigers" devoid of actual enforcement power. Conventional civil execution procedures in Indonesia require the former wife (acting as the applicant for execution) to re-file a petition for executory seizure (*sita eksekusi*) with the court.

²² Ridmajayanti et al., "Inequality of Rights in *Verstek* Divorce: Islamic Law Perspective and Practices in Religious Courts."

This process compels the wife to personally bear the clerkship's operational costs, asset tracking, security fees, and asset auction costs (*voorschot*) a procedure that is prohibitively expensive, labyrinthine, emotionally draining, and prone to bureaucratic collusion. It is frequently observed that the upfront administrative costs of execution far exceed the total amount of monthly child maintenance arrears being sought. As a logical consequence of this dysfunctional system, legal impunity for former husbands who violate court orders is rampant throughout the country, systematically facilitating what global human rights literature terms the structured "feminization of poverty" post-divorce.

4. Reconstructing Judicial Ijtihad and the Institutional Transformation of Judgment Enforcement

In response to the surging crisis of justice within courtrooms, the dynamics of Islamic family law reform in Indonesia demand a drastic paradigm shift moving away from the grip of passive legal-textualist positivism toward a sociological-judicial hermeneutic fully imbued with the philosophical values of *maqāṣid al-sharī'ah* (the humanitarian objectives of Sharia). Afandi prophetically posits that the progressive nature of Islamic marriage law absolutely necessitates the active intervention of state organs, not only in a regulatory capacity but also through enforcement-oriented protection, as divorce is fundamentally not an arena for the debasement of women. The systemic marginalization of women's economic rights post-divorce diametrically opposes and betrays the fundamental principles of *hifz al-nafs* (the protection of a dignified physical life) and *hifz al-māl* (the continuity and preservation of material dignity), which constitute the inseparable essence of Islamic law.²³

The most revolutionary and strategic institutional step pioneered by the Supreme Court in the last decade to break this impasse is the policy of optimizing the ex officio powers (the authority to decide a matter independently by virtue of one's office) of the Judicial Panel. The gender sensitivity of judicial officials plays an absolute role in navigating these procedural deadlocks. Mansari and Moriyanti articulate that a modern religious court judge who has internalized gender justice perspectives is morally and professionally obligated to engage in legal construction and law-finding (*rechtvinding*) to protect those who are structurally or relationally disadvantaged.

²³ Ali Afandi, *Hukum Keluarga Islam Di Indonesia: Perspektif Fiqh Dan Implementasi Modern* (Jakarta: Kencana, 2014). Hal, 46.

Through the issuance of the Supreme Court Circular Letter (SEMA) No. 3 of 2018, the Supreme Court of the Republic of Indonesia has made significant efforts to dismantle the stagnation of classical *fiqh* dogma. This SEMA imperatively provides a strong guideline that in judicial divorce cases specifically those where the wife's petition is purely grounded in months of economic neglect, the husband's infidelity, or physical domestic violence, and not resulting from moral defiance (*nusyuz*) on the wife's part judges are granted legitimacy and proactive latitude to exercise their *ex officio* powers. Through this right, a judge can directly stipulate the amount of *iddah* maintenance, *mut'ah*, and future child support to be borne by the husband, even if the wife, due to her legal illiteracy, did not explicitly include or state them in her *petitum*.²⁴

This progressive judicial *ijtihad* is conceptually compelling as it transforms the grim face of judicial divorce instruments. While judicial divorce was previously regarded as an automatic forfeiture of rights, it has now been reimagined as a jurisprudential shield for humanitarian protection. The profound legal reasoning (*ratio decidendi*) of judges who dare to transcend the formalities of the *ultra petita* principle to achieve the pinnacle of substantive justice clearly demonstrates that Islamic civil law in Indonesia is not stagnant; rather, it possesses extraordinary flexibility in accommodating the evolving discourse of Human Rights and women's protection without violating Sharia principles (*dalil syar'i*).

Furthermore, in determining the quantum of maintenance, judicial institutions should no longer rely on abstract interpretations, mere conjectures, or the husband's unilateral admissions during proceedings. The calculation of justice is weighed through innovative financial track record tracing such as electronic payroll validation, pay slips, or bank statements as well as the application of modern decency standards (*standard of living*) that account for regional economic inflation rates and the urgent necessity of fulfilling children's fundamental civilizational rights, including mandatory allocations for sustainable health insurance and higher education deposit guarantees. Should a husband attempt to deceive the court by hiding behind the guise of a *verstek* (default) judgment to conceal his wealth, progressive-leaning judges can essentially still calculate indicators of minimum financial capacity based on the provider's occupation as formally stated in the original marriage certificate extract, subsequently rendering a legally binding (*inkrah*)

²⁴ Mansari Mansari and Moriyanti Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Istri Pascaperceraian," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 1 (October 14, 2019): 43, <https://doi.org/10.22373/equality.v5i1.5377>.

maintenance debt verdict that burdens the husband in the future.²⁵

Although a robust foundation of revolutionary and gender-responsive legal dogmatics has been meticulously constructed through the strengthening of judicial *ex officio* powers, this study sharply contends that such courtroom legal breakthroughs remain utterly insufficient without radical systemic state intervention in the institutional sphere of judgment enforcement. Shofiatul Jannah et al. elucidate that a direct comparison with the advancements of the Sharia judicial system in neighboring Malaysia vividly demonstrates that the success of post-divorce guarantees is entirely contingent upon the state's interventionist presence within the private economic sphere.²⁶

Within the Malaysian family law system, the state has responsively established a specialized body known as the "Bahagian Sokongan Keluarga" (BSK) or the Family Support Division, an independent executorial institutional structure situated within the Sharia Court hierarchy. This innovative institution is granted full mandate and authority by state law to conduct covert asset tracking, unilaterally freeze savings accounts, and collaborate institutionally with national banking entities and private employers to implement direct deductions at source (auto-debit) from the former husband's salary or compensation on a monthly basis. Furthermore, at the highest level of non-compliance, this institution can issue immediate arrest warrants against former husbands who intentionally without valid grounds of bankruptcy disregard court mandates regarding *iddah* maintenance, *mut'ah* compensation, and *hadhanah* (child custody) rights, without burdening the victimized wife with exorbitant execution fees.

The fundamental conclusion of this extensive implementational analysis leads to an urgent constitutional imperative: Islamic family law within Indonesia's rule-of-law constellation necessitates a revolutionary transformation of structural procedures in the realm of civil execution. A teleological (*maqāṣid*) analytical approach philosophically asserts that court judgments concerning domestic maintenance obligations must no longer be classified or downgraded to mere private debt disputes between individuals (pure private law). Instead, they must be elevated to instruments of fulfilling *haqqullāh*

²⁵ Adi Nur Rohman and Elfirda Ade Putri, "Progressive Reading of Child Custody in Indonesian Marriage Law from a Gender Justice Perspective: A Comparative Study of Law No. 1 of 1974 and the Compilation of Islamic Law," *Jurnal Hukum Dan Peradilan* 11, no. 1 (March 31, 2022): 43–63, <https://doi.org/10.25216/jhp.11.1.2022.43-63>.

²⁶ Shofiatul Jannah et al., "Implementation of Post-Divorce Alimony Policies from a Gender Justice Perspective: A Comparative Legal Study of Indonesia, Malaysia, and Brunei Darussalam," *Ulumuna* 29, no. 2 (December 31, 2025): 959–89, <https://doi.org/10.20414/ujis.v29i2.1762>.

(divine obligation) and protecting fundamental human rights with a public interest dimension.

Consequently, robust policy integration at the ministerial and agency levels is absolutely necessary and must be realized without delay. This requires connecting data infrastructure between the Religious Courts under the Supreme Court, the Financial Services Authority (OJK) and centralized banking sectors, the taxation entities of the Ministry of Finance, and labor data institutions. This institutional synergy, built upon an e-governance architecture, will effectively restrict the financial access of former husbands who defy their maintenance obligations. This massive reconstruction is believed to be capable of evolving the operational system of Islamic family law in Indonesia from a mere procedural-administrative bureaucracy into the state's primary vanguard and the strongest instrument for the protection of women's fundamental rights. Ultimately, this transition will end structural patriarchal impunity, sever the cycle of intergenerational feminization of poverty, and manifest a profound sociological harmony between the spiritual essence of Sharia and the human standards of modern civilization.

C. CONCLUSIONS

The normative construction of the Islamic family law system in Indonesia regarding the guarantee of essential financial rights for women post-divorce has demonstrated a highly progressive judicial evolutionary trajectory. It has gradually transitioned from a classical *fiqh* textualist paradigm, steeped in patriarchal hegemony, toward the accommodation of justice within a constitutional state (*rechtsstaat*) through the instruments of the Compilation of Islamic Law (KHI) and protective *ijtihad* from the Supreme Court. Despite the strengthening of these normative pillars, the latest statistical data and empirical socio-legal analyses convincingly validate the continued occurrence of massive systemic failures in the implementation of substantive justice.

This is evidenced by the bitter reality that the majority of women, who are compelled to initiate judicial divorce (*cerai gugat*) for their autonomy, must instead forfeit their fundamental rights to *iddah* maintenance and *mut'ah* compensation. This forfeiture results from dominant legal traps in default (*verstek*) judgments, low legal literacy among petitioners, and the chronic dysfunction of civil asset execution mechanisms that remain inaccessible to the marginalized. In response to this humanitarian crisis within legal operationalization, the state is urgently required not only to apply the universality of

Human Rights and the philosophical framework of *maqāṣid al-sharī'ah* to support judicial *ex officio* justice maneuvers but also to revolutionize judicial institutions. It must immediately establish high-authority, autonomous execution bodies technologically integrated with centralized banking systems capable of directly criminalizing the defiance of maintenance orders.

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