



The Limits of Fatwa Discourse on Women's Rights in Divorce: A Gender Justice Perspective from Indonesia and Jordan

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Abstract

This article investigates the construction of women's rights in divorce within contemporary Islamic legal discourse through a comparative analysis of fatwas issued by the Indonesian Ulema Council (MUI) and Jordanian *Dār al-Iftā'* (JDI). The study is prompted by the rising number of women initiating divorce and the increasing incidence of children lacking adequate financial support from their fathers, with mothers often assuming this responsibility. Employing a normative socio-legal methodology, the research utilizes qualitative content analysis of fatwa documents in conjunction with relevant legal frameworks. The analysis is informed by the principles of *maqāṣid al-sharī'ah* and perspectives on Islamic gender justice. The findings reveal that both MUI and JDI predominantly adopt a literalist approach grounded in classical fiqh traditions. Although women's rights in divorce are acknowledged, they are generally framed within established doctrinal boundaries and are not consistently articulated from a broader rights-based perspective. Notably, the paternal obligation to provide financial support for children is not always explicitly emphasized within fatwa discourse. In contrast, national legal systems—such as Indonesia's Compilation of Islamic Law (KHI) and Jordan's Personal Status Law—offer clearer and more enforceable provisions. This study underscores the necessity of harmonizing religious interpretations with legal frameworks to enhance the effective protection of women's and children's rights.

Keywords

Divorce Fatwas;
Women's Rights;
Islamic Family Law;
Maqāṣid al-Sharī'ah;
Gender Justice

Introduction

Within classical Islamic jurisprudence, divorce is primarily conceptualized as a unilateral right (*talāq*) vested in the husband, whereas women's avenues for terminating marriage are confined to more burdensome mechanisms such as *khul'* and *faskh*, which typically entail higher evidentiary standards and procedural complexities.¹ In the contemporary context, fatwa institutions assume a significant role in addressing women's rights related to divorce, particularly in mediating between Islamic law and state legislation. Divorce has emerged as a prominent issue within contemporary Islamic family law discourse across numerous Muslim-majority countries. In Egypt, Jordan, Tunisia, Bangladesh, Malaysia, and Indonesia, increasing divorce rates coincide with persistent challenges in securing women's post-divorce rights, including maintenance, child custody, and

¹ Mhd Yazid, "Between Peace and Gender Justice: Islamic Court Mediators' Perspectives in Divorce Mediation in West Sumatra," *Journal of Islamic Law* 7, no. 1 (2026): 168–192.



financial protection.² This pattern indicates that the issue of women's rights following divorce constitutes a transnational problem arising from the interplay among classical Islamic jurisprudence, modern legal reforms, and deeply entrenched socio-cultural norms, rather than stemming solely from religious authority.

In this context, Islamic legal opinions (fatwas) occupy a critical yet frequently underexplored role. Although they do not possess direct coercive power, fatwas issued by institutions such as the Indonesian Ulema Council (MUI) and Jordanian *Dār al Iftā'* (JDI) exert significant moral, symbolic, and practical authority in shaping Muslim perceptions of rights and obligations in divorce. In many local contexts, individuals are more inclined to consult fatwas than statutory laws, particularly when they perceive conflicts between state legislation and Islamic law.³ Despite their central importance, there remains a scarcity of systematic research examining how these two prominent fatwa institutions construct women's rights in divorce, the extent to which their positions converge or diverge, and how they either reinforce or mitigate structural gender inequalities embedded within both social practices and legal frameworks. Addressing this gap is academically significant, as it connects doctrinal interpretations with lived experiences of gender justice. Moreover, recent developments in Islamic legal thought provide conceptual tools for reinterpreting gender relations and divorce in more egalitarian terms.

Building upon these debates, this article positions fatwa as a critical interface between religious norms and state law. A fatwa that remains solely textual and formalistic risks perpetuating injustice by legitimizing asymmetric power relations within the household. Conversely, a fatwa that is attuned to *maqāṣid* and gendered realities can serve as a conduit for more humane and equitable implementation of existing family law provisions. Accordingly, this study undertakes a comparative analysis of fatwas concerning women's rights in divorce issued by MUI and JDI as leading Islamic authorities whose opinions significantly influence public discourse and judicial reasoning. These objects of study are theoretically significant as they embody distinct methodological traditions in fiqh and fatwa, and empirically important because their positions shape concrete legal and social practices within two key Muslim-majority jurisdictions.

This article addresses an academic problem characterized by a normative and empirical gap between the increasing agency of Muslim women in seeking divorce and the limited responsiveness of key Islamic legal authorities in ensuring substantive justice for them. This gap is evident in the tension between progressive tendencies within certain fatwa institutions and the persistence of classical legal formalism in others, as well as in the disparity between formal rights enshrined in national legislation and their actual realization by women in practice. Accordingly, the primary research questions guiding this study are: (1) How do MUI and JDI construct women's rights concerning divorce and post-divorce entitlements in their fatwas? (2) To what extent do these constructions align with or resist the demands of substantive gender justice as conceptualized by

² Muhammad Nasir et al., "Legal Status and Consequences of Unilateral Divorce: Comparative Studies Between Egypt, Jordan, Tunisia and Indonesia," *Malaysian Journal of Syariah and Law* 12, no. 2 (2024): 456–470; Siti Marlina and Haris Mubarak, "Joint Property after Divorce in the Polygamous Marriage: Comparative Research in Indonesia and Malaysia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no. 2 (2022): 273–287; Shahnewaj Patwari and Abu N. M. A. Ali, "Muslim Women's Right to Divorce and Gender Equality Issues in Bangladesh: A Proposal for Review of Current Laws," *Journal of International Women's Studies* 21, no. 6 (2020): 50–79; Badan Pusat Statistik, "Nikah dan Cerai Menurut Provinsi (Kejadian), 2025," Accessed May 21, 2026.

³ Hala Mashaqbeh and Jaber Ismail Al-Hajahjah, "Nullification of Divorce: A Comparative Jurisprudential Study in Light of the Jordanian Personal Status Law," *Journal of Cultural Analysis and Social Change* 10, no. 4 (2025): 1612–23.



maqāṣid-based and feminist Islamic theories? (3) In what ways can these fatwa discourses be reinterpreted to more effectively mediate between religious norms and national legal frameworks?

This study has three primary objectives. First, it aims to map and compare the doctrinal positions of MUI and JDI concerning women's rights to initiate divorce and to secure post-divorce entitlements, including maintenance, custody, and shelter. Second, it seeks to evaluate these positions through the lens of *maqāṣid al-sharī'ah* and Islamic gender justice theories, identifying areas where they either advance or hinder substantive justice. Third, the research analyzes the interaction between fatwa discourses and the positive family law frameworks of Indonesia and Jordan, with particular attention to implementation gaps and potential avenues for synergy. The study critically examines the fatwas issued by MUI and JDI regarding women's rights in divorce and compares them with the respective national legal principles. Furthermore, it explores how religious narratives within fatwas can be strengthened to promote substantive justice for women and how fatwas might function as a bridge between religious norms and national legal systems. Consequently, this article aspires to contribute both theoretically and practically to the advancement of fatwas that are more just, contextually relevant, and responsive to the needs of contemporary Muslim societies.

Literature Review

A substantial body of comparative research demonstrates that women's rights in divorce within Muslim-majority jurisdictions continue to be significantly influenced by unilateral *ṭalāq* doctrines and patriarchal legal frameworks.⁴ In Indonesia, judicial discretion in Muslim divorce cases often perpetuates gender inequality, particularly when women's post-divorce rights rely on interpretation and enforcement rather than on automatic legal protections. More broadly, comparative studies reveal that women frequently encounter greater procedural obstacles in obtaining a divorce and receive weaker practical protections regarding maintenance, housing, and custody, even in contexts where such rights are formally acknowledged.⁵ These studies indicate that the issue is not solely doctrinal but also institutional and structural; however, they insufficiently address the role of fatwa institutions as normative actors that shape these outcomes.

Approaches rooted in *maqāṣid al-sharī'ah* and Islamic gender justice theories—such as Faqihuddin Abdul Kodir's concept of *mubādalāh*, which emphasizes reciprocity and shared responsibility between spouses,⁶ and Nur Rofiah's notion of substantive justice centered on women's lived experiences—challenge exclusively textual and male-centric interpretations of family law.⁷ The principle of mutuality in marriage entails not only shared responsibilities during the marital relationship but also equitable recognition of women's rights to initiate divorce and to obtain comprehensive post-divorce protections. These frameworks highlight that a legal system

⁴ Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2206347.

⁵ Muhammad Nasir et al., "Legal Status and Consequences of Unilateral Divorce: Comparative Studies Between Egypt, Jordan, Tunisia and Indonesia."

⁶ See Faqihuddin Abdul Kodir, *Qirā'ah Mubādalāh: Tafsir Progresif untuk Keadilan Gender dalam Islam* (Yogyakarta: IRCiSoD, 2019).

⁷ Refer to Nur Rofiah, "Feminist Islamic Hermeneutics: Women's Lived Experiences and Substantive Justice in Indonesian Islam," In *Islamic Feminism in Indonesia*, edited by Mirjam Kunkler and Alfred Stepan (New York: Columbia University Press, 2021); Nur Rofiah, *Nalar Kritis Muslimah: Refleksi atas Keperempuanan, Kemanusiaan, dan Keislaman* (Bandung: Afkaruna, 2020).

may appear gender-neutral in its textual provisions yet perpetuate structural injustice in practice by neglecting differentiated vulnerabilities and power imbalances.⁸

Recent comparative research underscores significant inter-jurisdictional variations in the regulation of divorce within Muslim-majority states. Nasir et al. demonstrate that Egypt and Jordan continue to acknowledge the religious validity of out-of-court *ṭalāq*, whereas Tunisia places divorce entirely under judicial authority, and Indonesia mandates a court decree for legal recognition.⁹ This comparative framework is particularly pertinent as it situates Jordan and Indonesia within distinct legal constellations encompassing *fiqh*, state law, and judicial oversight. However, existing scholarship predominantly focuses on statutory and judicial frameworks, leaving unexplored the ways in which fatwas themselves construct women's rights in divorce and whether these constructions serve to reinforce or alleviate substantive injustices. Concurrent research indicates that reform-oriented Islamic thought in Indonesia increasingly transcends purely textual and male-centered interpretations, as evidenced by studies on the role of KUPI in promoting gender-equitable Islamic law and broader narrative analyses concerning gender equity in marriage and divorce.¹⁰ Studies on fatwa institutions in Indonesia have examined institutional methodologies, legal authority, and contemporary contestations in family law; however, they have seldom directly addressed women's rights in divorce. Ansori and Juliansyahzen demonstrate that family-law discourse in the digital age is increasingly influenced by contestations among Islamic institutions, the state, and gendered public demands.¹¹ Nevertheless, these studies predominantly concentrate on procedural aspects, authority, or methodological differences rather than on the substantive construction of women's post-divorce rights.

The existing literature on JDI predominantly addresses broader issues such as public welfare, juristic adaptation, and contemporary fatwa reasoning, rather than focusing specifically on women's divorce rights. Mashaqbeh and Al-Hajahjah illustrate that Jordanian legal reasoning on divorce remains deeply anchored in classical jurisprudence, while simultaneously being mediated through modern personal status law.¹² Employing a comparative juridical approach, Amal Fathullah and Muhammad Abduh examine the positive laws of Indonesia, Thailand, and Jordan concerning the civil relationship between biological fathers and children, with particular attention to lineage, legal status, and paternal obligations. Their findings reveal significant cross-national variations in the legal recognition of biological paternity, resulting in divergent implications for children's civil rights and legal protection.¹³ These studies are valuable in demonstrating the institutional flexibility and doctrinal continuity within Jordanian fatwa and legal discourse; however, they do not directly analyze how JDI constructs women's rights in divorce or how its discourse compares with that of Indonesian fatwa authorities.

⁸ Refer to Omid Safi, *Progressive Muslims: On Justice, Gender, and Pluralism* (London: Oneworld Publications, 2003).

⁹ Muhammad Nasir et al., "Legal Status and Consequences of Unilateral Divorce: Comparative Studies Between Egypt, Jordan, Tunisia and Indonesia."

¹⁰ Nur Faizah et al., "The Role of Indonesian Women Ulama Congress (KUPI) in the Search for Gender Equality-Based Islamic Law," *Al-'Adalah* 21, no. 2 (2024): 323–346.

¹¹ Ansori and Muhammad Iqbal Juliansyahzen, "The Contestation of the Family Law Discourse in the Digital Age: Islam, State, and Gender," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (2022): 244–272.

¹² Hala Mashaqbeh and Jaber Ismail Al-Hajahjah, "Nullification of Divorce: A Comparative Jurisprudential Study in Light of the Jordanian Personal Status Law."

¹³ Amal Fathullah and Muhammad Abduh, "The Relationship of Children and Their Biological Father (Comparative Study of Positive Law of Indonesia, Thailand and Jordan)," *Syariah: Jurnal Hukum dan Pemikiran* 22, no. 2 (2022): 213–230.



The existing literature collectively identifies three primary gaps. First, comparative studies on divorce rights predominantly concentrate on statutory law, judicial decisions, and legal outcomes, while the role of fatwa institutions as normative authorities remains insufficiently explored. Second, although theoretical frameworks concerning *maqāṣid*, *mubādalah*, and substantive gender justice provide robust evaluative tools, these have not been systematically applied to the analysis of institutional fatwas in Indonesia and Jordan. Third, research on MUI and JDI tends to focus on methodological approaches, institutional authority, or broader social issues, rather than specifically addressing women's rights in divorce. This article seeks to fill this gap by investigating how MUI and JDI construct women's rights in divorce, the extent to which their fatwa discourse promotes or restricts substantive justice, and how these constructions mediate the interplay between Islamic normativity and the legal protection of women.

Research Methodology

This study adopts a qualitative methodology with a comparative research design to examine the construction of fatwas concerning women's rights in divorce issued by the Indonesian Ulema Council (MUI) and the Jordanian *Dār al-Iftā'* (JDI). A qualitative approach is employed to facilitate an in-depth understanding of doctrinal formulations within fatwas, interpretations of religious texts, and their normative implications for gender justice, aspects that are not amenable to quantitative measurement.¹⁴ The comparative design allows for a systematic analysis of the similarities and differences between these two fatwa institutions in addressing issues related to women's rights in divorce, including wife-initiated divorce, *mut'ah*, maintenance during *'iddah*, child custody, and housing and economic protection.¹⁵ This study is classified as library research with a normative-juridical and analytical-interpretive character.¹⁶ The data sources comprise official fatwa documents issued by MUI and JDI, classical and contemporary fiqh literature, the marriage laws of Indonesia and Jordan, and secondary analyses from prior studies on Islamic family law and gender justice. The material object of the research is the fatwas pertaining to women's rights in divorce, while the formal object concerns the construction of normative argumentation, *istinbāt* methods, and gender-justice orientation within these fatwas. The research subjects include the Fatwa Commission of MUI, as the principal fatwa institution in Indonesia, and Jordan's *Dār al-Iftā'*, the official fatwa body of the Jordanian state. The fatwas analyzed span the period from 1990 to 2025, a timeframe pertinent to contemporary family law reforms in both countries.

The primary data for this study comprises official fatwa documents issued by two institutions. From MUI,¹⁷ the primary sources include Fatwa No. 4/MUNAS VII/2005 concerning *khul'*, fatwas addressing *mut'ah* and post-divorce maintenance, the Marriage and Divorce Guidance manuals spanning 2010 to 2023, and the proceedings of the National Conference of the MUI Fatwa Commission. From JDI, the primary data encompass official fatwas on women's rights to initiate divorce through *ta'liq* and *tafriq*, fatwas on *mut'ah*, maintenance during *'iddah*, and *ḥaḍānah* (child custody), the *Al-Mausū'ah al-Fatāwā al-Urdūniyyah* (Jordanian Fatwa

¹⁴ Muhammad Amrul Irsyadi and Asmuni, "Analisis Komparatif Metode Fatwa MUI dan Dār Al-Iftā' Mesir," *Mu'āṣarah: Jurnal Kajian Islam Kontemporer* 5, no. 1 (2024): 61–73.

¹⁵ Muhammad Nasir et al., "Legal Status and Consequences of Unilateral Divorce: Comparative Studies Between Egypt, Jordan, Tunisia and Indonesia."

¹⁶ Kornelius Benuef and Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33.

¹⁷ Majelis Ulama Indonesia, <https://mui.or.id/>, Accessed May 21, 2026.

Encyclopedia), as well as materials from the official JDI website.¹⁸ Secondary data consist of classical fiqh literature from the four principal Sunni legal schools—Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī—pertaining to divorce; Indonesia's Marriage Law No. 1 of 1974 and the Compilation of Islamic Law;¹⁹ Jordan's Personal Status Law of 2010 and its 2019 amendment; scholarly articles on *maqāṣid al-sharī'ah*, feminist Islamic theory, and gender justice; and comparative studies of Islamic family law in Indonesia and Jordan.

The data analysis employed qualitative content analysis utilizing a critical-comparative approach adapted from the Miles and Huberman model,²⁰ comprising three distinct stages. The first stage, data reduction, involved the researcher thoroughly reading and examining all fatwa documents to achieve comprehensive understanding. Relevant units of information were identified, including normative claims, evidence, *istinbāt* methods, and conclusions, each of which was coded as follows: code 1 for women's right to initiate divorce; code 2 for *mut'ah* and post-divorce maintenance; code 3 for child custody; code 4 for housing and economic protection; and code 5 for *maqāṣid*-based gender justice orientation. The second stage, data display, entailed organizing the data into a comparative matrix contrasting MUI and JDI across each dimension—namely, the right to file for divorce, *mut'ah*, maintenance during *'iddah*, child custody, *istinbāt* method, and gender-justice orientation—accompanied by narrative descriptions supported by direct quotations from the fatwas. The third stage, conclusion drawing and verification, involved analyzing patterns of similarity and difference between the two institutions, evaluating the alignment of fatwa constructions with the frameworks of *maqāṣid al-sharī'ah* and Islamic gender-justice theories, assessing the extent to which the fatwas reinforce or undermine substantive justice for women, and formulating normative propositions aimed at reconstructing fatwas to promote greater gender justice.

The data interpretation is structured around three primary stages. The first stage involves *maqāṣid al-sharī'ah*,²¹ focusing on the key principles of *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-māl* (protection of property), and *ḥifẓ al-'ird* (protection of dignity).²² These principles serve as criteria to assess whether the fatwas effectively safeguard the essential interests of women following divorce. The second stage draws upon Islamic Feminist Theory, particularly the *mubāḍalah* theory advanced by Faqihuddin Abdul Kodir, which emphasizes the fundamental importance of equality between men and women within social and legal frameworks. In the context of divorce, this principle of equality entails granting women equal rights to determine the continuation of marriage and to access post-divorce justice. This focus on equality represents a critical step toward achieving gender justice within Islamic law.²³ Concurrently, Nur Rofiah's substantive justice theory argues that justice should not be evaluated solely through formal or symmetrical measures but must also account for women's unique experiences, including social vulnerability, cultural subordination, and

¹⁸ Dār al-Iftā' al-Urdūnī, <https://www.aliftaa.jo/Default>, Accessed May 21, 2026.

¹⁹ Republic of Indonesia, Law No. 1 of 1974 on Marriage; Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law; and Decisions of the Indonesian Supreme Court, with a focus on divorce cases and women's rights.

²⁰ Refer to Matthew B. Miles, A. Michael Huberman, and Johnny Saldana, *Qualitative Data Analysis: A Methods Sourcebook* (Thousand Oaks: SAGE Publications, 2014).

²¹ Abū Ishāq Ibrāhīm ibn Mūsā al-Shāfi'ī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. 'Abd Allāh Darrāz (Beirut: Dār al-Ma'rifah, n.d.), 2: 8–15.

²² Refer to Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008).

²³ Faqihuddin Abdul Kodir, *Qirā'ah Mubāḍalah*.



the dual burden of caregiving.²⁴ Within this framework, justice in divorce can only be realized if the law and fatwas provide additional protections for women affected by divorce, highlighting the pressing need for societal and legal reforms to safeguard women's rights in this context. The third stage involves Legal Pluralism, which explores the interactions among state law, classical fiqh, and fatwas, and is employed to analyze the discrepancies between formal legal rights and their practical implementation.

The comparative analysis is conducted through four systematic stages. The first stage involves description, which entails a systematic exposition of each institution's doctrinal position. The second stage consists of juxtaposition, wherein the two positions are compared within a parallel matrix. The third stage involves classification, identifying whether the positions of the two institutions are convergent, divergent, or complementary. The fourth and final stage is critical evaluation, which assesses the implications for gender justice based on *maqāṣid* and feminist Islamic theory. To ensure the validity and reliability of the data, the study employs source triangulation by comparing official fatwas with academic commentary, court decisions, and empirical studies. Furthermore, the researchers conduct an in-depth reading of the fatwa documents in their entirety, rather than relying solely on conclusions, to fully comprehend the context and underlying arguments. The study utilizes publicly available fatwa documents, thereby excluding sensitive or confidential data. Additionally, sources are cited accurately, institutions and authors are properly credited, personal bias is avoided by adhering faithfully to the original texts and contexts, and academic neutrality is maintained throughout the evaluation of each institution's position.

Result

Fatwas, as Islamic legal opinions, play a pivotal role in the lives of Muslims. Although they are not legally binding, fatwas function as the primary religious reference for addressing various communal issues.²⁵ In Indonesia, fatwas not only shape the normative religious landscape but also influence public perceptions of national law, particularly in matters of divorce.²⁶ This issue is critical as it intersects spiritual, social, and legal domains, especially affecting women who often endure prolonged legal proceedings and face the risk of losing fundamental rights.²⁷ Historically, the classical Islamic legal system vested the right to divorce predominantly in the husband's hands, a dynamic that affects power relations within the household and has significant implications for women's rights post-divorce.²⁸ Numerous challenges emerge when these classical fiqh norms are confronted with national laws that emphasize procedural and substantive justice.²⁹

²⁴ Nur Rofiah, *True Justice in Islam* (Jakarta: Rumah Kitab, 2020).

²⁵ Refer to Omer Awass, *Fatwa and the Making and Renewal of Islamic Law: From the Classical Period to the Present* (Cambridge: Cambridge University Press, 2023).

²⁶ See M. Barry Hooker, *Indonesian Islam: Social Change through Contemporary Fatawa* (Honolulu: University of Hawai'i Press, 2003).

²⁷ Hala Mashaqbeh and Jaber Ismail Al-Hajahjah, "Nullification of Divorce: A Comparative Jurisprudential Study in Light of the Jordanian Personal Status Law."

²⁸ Viktoriia Kobko-Odari et al., "Reconstructing Gender Equality in Family Law: A Normative and Comparative Analysis of European Family Law Systems in Religious Contexts," *Syariah: Jurnal Hukum dan Pemikiran* 25, no. 1 (2025): 195–214.

²⁹ 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, Tradition, and Modernity* 3, no. 1 (2023): 1–15.

Table 1. Comparative perspective of fatwa on women's rights in divorce.

Aspect	MUI	JDI
Wife's right to initiate divorce proceedings	Acknowledges women's right to seek divorce, such as through <i>khul'</i> , under specific conditions; however, this right is generally situated within classical fiqh frameworks, wherein the authority to initiate divorce predominantly resides with the husband.	Acknowledges mechanisms such as <i>khul'</i> and judicial separation within established legal frameworks, placing significant emphasis on classical jurisprudence and procedural requirements.
Post-divorce financial support (<i>nafaqah al-iddah</i> and <i>mut'ah</i>)	Recognizes obligations such as iddah maintenance and <i>mut'ah</i> in principle; however, these are not consistently or explicitly emphasized within fatwa discourse.	Recognizes maintenance and related obligations within the framework of classical fiqh; however, it typically portrays these obligations as established norms rather than explicitly defined rights within a modern justice context.
Child financial support (<i>nafaqah al-awlād</i>)	Implicitly bases its position on fiqh doctrine; however, this foundation is not consistently emphasized as a central issue within fatwa discourse, particularly regarding enforceable post-divorce rights.	Similarly grounded its position in classical jurisprudence; however, it is not consistently emphasized in fatwas as an integral component of a broader rights-based framework for children.
Attitudes toward divorce outside the judicial system	May acknowledge the religious legitimacy of extra-judicial divorce, despite its lack of legal recognition by the state, potentially resulting in conflicts with national law.	Operates within a more institutionalized framework that aligns with state procedures, while still maintaining doctrinal reasoning grounded in classical fiqh.
Comparison with national legislation	State law, as articulated through KHI, explicitly governs divorce procedures and post-divorce obligations; however, fatwa formulations do not consistently reinforce these legal provisions in a clear manner.	Closely related to the Personal Status Law; however, fatwas predominantly depend on juristic formulations and do not consistently articulate legal obligations within a rights-based framework.
General evaluation	Adopts both textual and doctrinal approaches, emphasizing continuity with classical fiqh while providing limited articulation of rights in contemporary terms.	Textually grounded and institutionalized, integrating legal structures with classical fiqh; however, it remains limited in its engagement with explicit gender or rights-based frameworks.

Source: Authors' elaboration, 2026

It is imperative to comprehend the broader context of fatwa authority within Muslim societies. A fatwa constitutes a non-binding outcome of Islamic legal reasoning that nonetheless possesses significant moral and symbolic authority. Although it lacks formal legal enforceability, a fatwa frequently guides public behavior and shapes religious understanding, particularly in domains such as family law, including divorce. In this regard, fatwas serve not only as interpretations of religious norms but also as social references that influence decision-making in legally consequential situations³⁰ This dual function underscores the complex interplay between religious authority and

³⁰ Badruddin Ibrahim, Mahmad Arifin, and Siti Zainab Abd Rashid, "The Role of Fatwa and Mufti in Contemporary Muslim Society," *Pertanika Journal of Social Sciences & Humanities* 23 (2015): 315–326.



practical realities, especially in relation to the rights of women and children following divorce. Table 1 presents a summary of the approaches employed by the MUI and JDI concerning women's rights in divorce.

In Indonesia, the global trend is distinctly evident, with over 70% of divorce cases in religious courts being initiated by wives.³¹ This phenomenon signifies an increasing female agency in decisions regarding the continuation of marriage. However, it concurrently reveals a structural deficiency, as many women continue to face difficulties in securing *mut'ah* (post-divorce compensation), maintenance, reliable child custody arrangements, and effective legal protection. The rise in wife-initiated divorces thus prompts a critical inquiry into whether the existing legal and religious frameworks in Indonesia and other Muslim-majority jurisdictions genuinely facilitate women's access to substantive justice, or if they merely confer formal rights that are challenging to actualize in practice.³² This doctrinal configuration often perpetuates male dominance and leaves women vulnerable in circumstances of prolonged marital harm. Indonesia's positive law—specifically Law No. 1/1974 on Marriage and the Compilation of Islamic Law (KHI)—has formally created procedural avenues for women to file for divorce and claim post-divorce rights. Nevertheless, empirical research indicates a persistent implementation gap: many wives are unable to effectively obtain *mut'ah*, maintenance during *'iddah*, or enforceable childcare and housing rights, particularly when legal provisions conflict with entrenched patriarchal norms at the community level.

The Indonesian Ulema Council (MUI) functions as a national fatwa institution and serves as the principal authority for Indonesian Muslims on issues pertaining to Islamic law and religious matters. Concerning divorce, the MUI does not possess a distinct codification of family law; nevertheless, several rulings documented in the Minutes of the *Ijtima' Ulama of the Fatwa Commission* offer critical insights into the institution's stance. Notably, the 2012 *Ijtima' Minutes* affirm that wives may initiate divorce proceedings for reasons deemed valid under sharia, including failure of financial support, domestic violence, and neglect by the husband. This acknowledgment signifies that the MUI not only recognizes women's right to seek divorce but also marks a progressive development in the interpretation of Islamic law.³³ Furthermore, the MUI accepts the validity of verbal divorce pronouncements made by the husband outside the judicial system, provided that the essential pillars and conditions are met. This position indicates a divergence from the national legal framework, which mandates court registration for divorce to attain legal recognition. From the perspective of *maqāṣid al-sharī'ah*, this approach is problematic with respect to the protection of women's interests (*ḥifẓ al-nafs* and *ḥifẓ al-'ird*), as it may result in legal and social vulnerabilities due to the unofficial nature of such divorces.³⁴

Regarding post-divorce rights, such as *mut'ah* and *nafaqah* during the *'iddah* period, the fatwas issued by MUI remain notably silent. Article 149, letters (b) and (c) of the Compilation of Islamic Law explicitly mandate that a husband who divorces his wife is obligated to provide *mut'ah* and bear maintenance during the *iddah* period. The absence of discussion on this critical issue within

³¹ Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung, "Kumpulan Dataset Perkara Peradilan Agama," Accessed May 21, 2026.

³² Pengadilan Agama Kuala Pembuang, "Hak-Hak Perempuan dan Anak Pasca Perceraian," Accessed May 21, 2026.

³³ Indonesian Ulema Council, *Ijtima' Ulama of Fatwa Commission throughout Indonesia in 2012* (Jakarta: MUI, 2012), 38.

³⁴ Muhammad Nasrulloh, et al., "Legal Dissonance and Social Consequences of Unregistered Ṭalāq in Indonesia," *Al-Syakhsyah: Journal of Law and Family Studies* 7, no. 2 (2025): 33–52.

MUI fatwas highlights the pressing need for reform. This omission suggests that the institution continues to adhere to a legal-formalistic approach, neglecting the substantive justice considerations demanded by contemporary legal frameworks and evolving social awareness. An analysis of MUI fatwas reveals that, although there is acknowledgment of women's right to seek divorce, the approach remains conservative and does not sufficiently affirm post-divorce rights. Such critique is vital to encourage the renewal of MUI fatwas, making them more responsive to societal dynamics and the needs of women. From the perspective of *maqāṣid al-sharī'ah*, fatwas should ideally not only regulate the legality of divorce but also ensure justice and protection in its aftermath. Otherwise, fatwas risk perpetuating structural inequalities that women affected by divorce have long contested.³⁵

JDI constitutes a state-affiliated fatwa institution that plays a pivotal role in shaping Islamic legal interpretation within the Jordanian context. In contrast to the pluralistic religious authorities found in Indonesia, JDI operates within a more institutionalized framework that is closely integrated with the national legal system, particularly the Personal Status Law. Consequently, its fatwas serve not only as religious opinions but also as interpretive instruments supporting formal legal regulations. In addressing issues related to divorce, JDI consistently bases its legal reasoning on established classical fiqh doctrines. It acknowledges various legal mechanisms available to women, such as *khul'* and judicial separation under specific conditions, thereby affirming women's access to divorce within the parameters defined by jurisprudence.³⁶ However, this recognition is strictly framed within traditional legal structures and evidentiary standards, without substantial reinterpretation of the underlying gender relations.

The JDI institution recognizes certain post-divorce rights, including maintenance during the *'iddah* period and matters pertaining to child custody. Several fatwas also affirm women's participation in economic activities and their independent financial capacity, reflecting a degree of accommodation to contemporary socio-economic conditions. However, these acknowledgments remain situated within a doctrinal framework that prioritizes gender complementarity over full equality between spouses. A distinctive feature of the JDI's fatwa discourse is its reliance on textual and juristic authority, frequently referencing established madhhab traditions and classical legal sources.³⁷ While this approach ensures doctrinal consistency, it tends to constrain engagement with modern concepts such as gender equality and rights-based discourse. For instance, in its responses to international frameworks like CEDAW, the institution underscores distinctions between men and women grounded in what it regards as natural and divinely ordained differences, thereby reinforcing a complementary rather than an egalitarian model of gender relations.³⁸

Regarding post-divorce obligations, specifically the financial support of children, the analysis reveals that although these responsibilities are grounded in classical fiqh, they are not consistently or explicitly articulated within fatwa discourse as components of a comprehensive framework for rights protection. This indicates a tendency to regard such obligations as implicit legal norms rather than as fundamental aspects of substantive justice. Consequently, a gap persists between doctrinal

³⁵ Pieterella Van Doorn-Harder, "Controlling the Body: Muslim Feminists Debating Women's Rights in Indonesia," *Religion Compass* 2, no. 6 (2008): 1021-1043.

³⁶ Nasir Albalawee and Amjed S. Al Fahoum, "Islamic Legal Perspectives on Digital Currencies and How They Apply to Jordanian Legislation," *F1000Research* (2023): 1–27.

³⁷ Hala Mashaqbeh and Jaber Ismail Al-Hajahjah, "Nullification of Divorce: A Comparative Jurisprudential Study in Light of the Jordanian Personal Status Law."

³⁸ Jennifer Harman et al., "Gender and Child Custody Outcomes across 16 Years of Judicial Decisions Regarding Abuse and Parental Alienation," *Children and Youth Services Review* 155 (2023): 1–13.



formulations and the explicit recognition of children's rights in the context of divorce. Overall, the approach adopted by JDI can be characterized as a form of fiqh-based institutional moderation: it accommodates certain contemporary realities while remaining firmly rooted in classical jurisprudence. This approach exemplifies a balance between legal continuity and limited contextual adaptation, yet it also underscores the necessity for a clearer articulation of post-divorce rights, particularly concerning the financial protection of children.

Discussion

A comprehensive analysis of the fatwas issued by MUI and JDI reveals that both institutions address women's rights in divorce within a largely similar doctrinal framework. The comparison indicates not a significant divergence but rather a shared adherence to classical fiqh principles, as evidenced by their legal reasoning and interpretative methods. Both MUI and JDI predominantly adopt a textual and doctrinally grounded approach, emphasizing continuity with established jurisprudential traditions. Regarding women's rights to initiate divorce, both institutions acknowledge mechanisms such as *khul'* and other forms of separation under specific legal conditions. Nonetheless, these rights are situated within conventional legal structures and are not expanded into a broader rights-based discourse.³⁹ From the perspective of *maqāṣid al-sharī'ah*, this approach demonstrates a commitment to preserving established legal norms but exhibits limited engagement with reinterpreted frameworks, such as *mubādalah*, which emphasize relational reciprocity.

With regard to post-divorce rights, particularly maintenance and financial obligations, both institutions recognize these responsibilities as integral components of classical fiqh doctrine. However, the articulation of such rights within fatwa discourse tends to be implicit rather than explicitly framed as enforceable rights within a modern justice framework. This tendency is especially pronounced concerning children's financial support, where the paternal obligation is not consistently emphasized as a central issue in post-divorce justice. This comparison further reveals a significant distinction between fatwa discourse and national legal frameworks. In Indonesia, the Compilation of Islamic Law delineates clear and structured provisions regarding post-divorce responsibilities, including obligations toward children. Similarly, Jordan's Personal Status Law establishes formal regulations governing maintenance and family obligations. Nonetheless, these legal guarantees are not always explicitly reflected in fatwa formulations, which remain primarily oriented toward internal fiqh logic. Overall, the findings suggest that both MUI and JDI operate within a framework of doctrinal continuity, ensuring consistency with classical Islamic law. Concurrently, this approach may constrain the explicit articulation of post-divorce rights, particularly those pertaining to children's welfare underscoring the need for greater alignment between fatwa discourse and contemporary legal frameworks to enhance substantive justice.

The relationship between Islamic fatwas and national law concerning divorce is characterized by a complex interaction between religious legitimacy and legal authority. Fatwas function as significant sources of moral and religious guidance within Muslim communities.⁴⁰ However, when

³⁹ Nasaruddin Umar, *Argumentasi untuk Kesetaraan Gender dari Perspektif Al-Qur'an* (Jakarta: Paramadina, 1999), 123–130.

⁴⁰ Omer Awass, "Fatwa, Discursivity, and the Art of Ethical Embedding," *Journal of the American Academy of Religion* 87, no. 3 (2019): 765–790.

their content does not fully align with state legislation, normative tensions may arise,⁴¹ particularly regarding the enforcement of rights and obligations following divorce. This tension is especially pronounced in the context of women's and children's rights, where national legal frameworks in both Indonesia and Jordan provide relatively clear and structured regulations. In Indonesia, Law No. 1 of 1974 and the Compilation of Islamic Law (1991) mandate that divorce must be conducted through the court system and explicitly regulate post-divorce obligations, including maintenance and financial support. Nonetheless, in practice, these legal provisions are not always consistently reflected in fatwa discourse. For instance, certain fatwas issued by MUI may recognize the religious validity of divorces conducted outside formal judicial procedures, despite such practices lacking legal recognition by the state. This discrepancy creates a gap between religious legitimacy and legal validity, which can have significant implications for women and children, particularly when post-divorce rights such as maintenance are not effectively enforced.⁴²

A comparable dynamic is evident in the case of JDI. In Jordan, the Personal Status Law regulates divorce procedures and delineates responsibilities related to maintenance and family welfare, including obligations toward children. Although operating within a more institutionalized framework and in closer association with state law, the fatwas issued tend to rely predominantly on classical fiqh formulations. Consequently, obligations such as financial support for children are frequently regarded as established legal norms within jurisprudence but are not consistently emphasized as enforceable rights within fatwa discourse. These circumstances indicate that, despite both Indonesia and Jordan having developed national legal systems that formally protect post-divorce rights, the incorporation of these protections into religious discourse remains limited. The disparity between doctrinal articulation and practical enforcement becomes particularly apparent in instances where children do not receive adequate financial support following divorce. In this context, enhancing the congruence between fatwa discourse and national legal frameworks is imperative. Rather than perceiving fatwas and state law as competing authorities, a more integrative approach is necessary, wherein religious interpretations actively facilitate the implementation of legal provisions that ensure substantive justice. Such alignment is particularly crucial for protecting the rights of women and children, especially by ensuring that post-divorce financial obligations are clearly defined and effectively enforced.

The comparison between the MUI and JDI reveals a generally similar reliance on classical fiqh frameworks, albeit with some contextual differences in institutional orientation and legal integration. Both institutions acknowledge a wife's right to seek divorce through mechanisms such as *khul'* and judicial separation; however, this right is typically framed within traditional jurisprudential structures that predominantly associate divorce authority with the husband. Concerning post-divorce financial entitlements, including *nafaqah* during *'iddah* and *mut'ah*, both MUI and JDI recognize these obligations in principle, though they are often presented as established doctrinal norms rather than explicitly emphasized as enforceable rights within contemporary discourse. A comparable pattern is observed in the treatment of child support (*nafaqah al-awlād*), which is rooted in classical jurisprudence but not consistently foregrounded as a central or enforceable post-divorce right. Regarding extra-judicial divorce, the MUI tends to acknowledge its religious validity despite potential conflicts with national legal frameworks,

⁴¹ Rizal Al Hamid et al., "Political Conflict between Islamic Law and National Law in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 48–62.

⁴² Abdul Jamil and Muliadi Nur, "Perlindungan Hukum dan Keadilan Para Pihak Melalui Ex Officio Hakim dalam Putusan Verstek Perkara Perceraian," *Jurnal Hukum IUS QUIA IUSTUM* 29, no. 2 (2022): 439–460.



whereas the JDI operates within a more institutionalized system aligned with state law, particularly the Personal Status Law. Nonetheless, in both contexts, a gap persists between legal provisions and their articulation in fatwa discourse, especially in translating obligations into a rights-based framework. Overall, while both institutions demonstrate a strong commitment to textual and doctrinal continuity with classical fiqh, their engagement with contemporary gender justice and rights-based perspectives remains relatively limited.

Conclusion

This study demonstrates that both the Indonesian Ulema Council (MUI) and the Jordanian *Dār al-Iftā'* (JDI) employ a legal reasoning approach predominantly rooted in classical fiqh traditions. Their fatwas exhibit a pronounced commitment to doctrinal continuity, particularly in acknowledging established mechanisms of divorce and their associated legal consequences. Within this framework, women's rights in divorce—such as access to separation and certain post-divorce entitlements—are recognized, albeit generally within conventional legal structures. However, the analysis also indicates that the articulation of post-divorce rights, especially those related to children's financial support, is not consistently emphasized in fatwa discourse. Although these obligations are firmly grounded in classical jurisprudence, they tend to be regarded as implicit norms rather than explicitly framed as rights from a contemporary justice perspective. This situation creates a disparity between doctrinal formulations and the effective protection of women's and children's rights in practice. In contrast, national legal frameworks in both Indonesia and Jordan—namely, the Compilation of Islamic Law (KHI) and the Personal Status Law—provide more explicit and enforceable provisions concerning post-divorce obligations. This distinction underscores the difference between the preservation of legal doctrine within fatwa discourse and the practical realization of rights through state-regulated systems.

This study underscores the significance of reinforcing the articulation of post-divorce obligations within fatwa discourse, with particular emphasis on women's rights and the protection of children's rights. This objective can be advanced by integrating the *maqāṣid al-sharī'ah* framework, notably the principle of *ḥifẓ al-nasl*, to prioritize the welfare of children in legal interpretations. Additionally, there is a pressing need to improve the coherence between religious interpretations and national legal systems. Rather than treating fatwas and state law as distinct entities, a more integrative approach should be pursued, enabling fatwas to function as ethical support for legally recognized rights, including fathers' financial responsibilities following divorce. Finally, the study advocates for contemporary fatwa institutions to articulate legal obligations more explicitly within a rights-based framework, thereby enhancing their responsiveness to contemporary social realities. Such initiatives would contribute to the achievement of substantive justice in Islamic family law, particularly in protecting the rights of women and children in post-divorce situations.

This study has several limitations. First, the analysis is limited to the official fatwas issued by the Indonesian Ulema Council (MUI) and Jordanian *Dār al-Iftā'* (JDI), and thus does not account for how these legal opinions are interpreted, applied, or contested by judges, legal practitioners, or Muslim communities in everyday contexts. Second, the comparative analysis primarily addresses doctrinal and normative texts rather than the empirical experiences of divorced women and children in asserting their post-divorce rights. Future research could adopt a socio-legal or ethnographic approach to investigate how fatwas interact with judicial practice and lived

experiences across diverse Muslim societies. Such studies would offer a more comprehensive understanding of the relationship among religious legal authority, state law, and the practical realization of women's and children's rights within contemporary Islamic family law.

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