

The Comparative Study of Child and Women's Rights Protection After Marital Dissolution in Indonesia and Philippines

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Abstract:

Marriage dissolution through divorce or annulment often impacts the rights of children and women, necessitating strong legal protections. This study aims to compare the protection mechanisms for children's and women's rights after marital dissolution in Indonesia and the Philippines. Employing a normative-legal research method with a comparative approach, the study analyzes primary legal sources including Indonesia's Marriage Law, Compilation of Islamic Law, Child Protection Law, and the Philippine Family Code and Constitution. The findings show that Indonesia provides two legal paths, divorce and annulment, offering a clearer framework for protecting post-marital rights, although enforcement remains inconsistent. Conversely, the Philippines, which only recognizes annulment for non-Muslims, faces challenges due to the absence of divorce, limiting access to legal remedies for women and children. Despite different legal systems, both countries prioritize the best interests of the child and uphold fundamental human rights principles. However, systemic obstacles, socio-cultural stigma, and gaps in implementation persist. The study concludes that enhancing the effectiveness of legal protections requires not only comprehensive legislation

but also structural reforms to improve access to justice and empower vulnerable groups affected by marital dissolution.

Keywords: Divorce, Annulment, Marital Dissolution, Child Protection, Women Protections

Abstrak

Pembubaran perkawinan melalui perceraian atau pembatalan sering berdampak terhadap hak-hak anak dan perempuan, sehingga memerlukan perlindungan hukum yang kuat. Penelitian ini bertujuan membandingkan mekanisme perlindungan hak anak dan perempuan pasca pembubaran perkawinan di Indonesia dan Filipina. Dengan menggunakan metode penelitian hukum normatif dan pendekatan komparatif, studi ini menganalisis sumber hukum primer seperti Undang-Undang Perkawinan, Kompilasi Hukum Islam, Undang-Undang Perlindungan Anak di Indonesia, serta Family Code dan Konstitusi Filipina. Hasil penelitian menunjukkan bahwa Indonesia menyediakan dua jalur hukum, yaitu perceraian dan pembatalan, yang memberikan kerangka perlindungan lebih jelas, meskipun implementasinya masih menghadapi tantangan. Sebaliknya, Filipina yang hanya mengakui pembatalan bagi non-Muslim mengalami keterbatasan perlindungan akibat tiadanya mekanisme perceraian. Meskipun sistem hukum berbeda, kedua negara tetap mengutamakan kepentingan terbaik anak dan prinsip-prinsip hak asasi manusia. Namun demikian, hambatan sistemik, stigma sosial budaya, dan kesenjangan implementasi masih menjadi tantangan besar. Penelitian ini menyimpulkan bahwa untuk memperkuat perlindungan hukum, diperlukan tidak hanya legislasi yang komprehensif, tetapi juga reformasi struktural untuk meningkatkan akses keadilan dan memberdayakan kelompok rentan yang terdampak pembubaran perkawinan.

Keywords: Perceraian, Pembatalan Perkawinan, Pembubaran Perkawinan, Perlindungan Anak, Perlindungan Wanita



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Introduction

Marriage is an institution recognized and respected in various legal and religious systems. Nevertheless, the dynamics of social relationships and internal conflicts within the family unit frequently result in the dissolution of marriage, manifesting either as divorce or annulment. In the event of divorce or annulment, the most vulnerable parties are children and women, especially with regard to the protection of their rights, economic welfare and psychosocial well-being.¹

¹ Ahmad Rusyaid Idris, Muhammad Khusaini, and Syaiful Anwar Al-Mansyuri, "Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage," *MILRev : Metro Islamic Law Review* 3, no. 1 (April 4, 2024): 1, <https://doi.org/10.32332/milrev.v3i1.8907>.

Indonesia and the Philippines offers a distinctive opportunity to comprehend the legal safeguards available for children and women. In Indonesia, the legal system has been observed to accommodate divorce, as evidenced by the provisions set forth in Law No. 1 of 1974 on Marriage, which was subsequently amended through Law No. 16 of 2019, and the Compilation of Islamic Law (KHI). This legislative framework has been instrumental in recording an increasing number of divorces on an annual basis. Recent data from the Central Statistics Agency (BPS) and the Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia has indicated a marked increase in divorce rates from 2022 to 2024.²

In contrast, the Philippines is one of the few countries in the world, apart from the Vatican, that does not recognize divorce.³ This country only provides a mechanism for marriage annulment, which is procedurally more complicated and costly.⁴ However, annulment rates have also increased in recent years, according to data released by the Philippine Statistics Authority (PSA)⁵ and reports from the Philippine Supreme Court.

Table 1. The Comparison of Case Numbers

Years	Divorce in Indonesia ⁶	Annulment in Filipina ⁷
2022	516.334	12.179
2023	532.786	13.824
2024	549.209	15.203

Source: Data obtained and processed from the Indonesian Central Statistics Agency and the Office of the Solicitor General of the Philippines

The concept of annulment in the Philippine family law system has the fundamental characteristic of considering the marriage as if it had never existed in the first place.⁸ The main obstacle to this concept lies in its legal implications for the rights derived from marriage, particularly those relating to the protection of children and women. In practice, the retroactive annulment of marital status can obscure or even weaken the legal basis for the social, economic and emotional protection of vulnerable parties following the dissolution of a marital relationship, especially children and women. As a result of the

² Badan Pusat Statistik, "Nikah Dan Cerai Menurut Provinsi 2020-2024," Badan Pusat Statistik, 2024, <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMyMwMDAw/nikah-dan-cerai-menurut-provinsi--kejadian-.html?year=2024>.

³ Jeffrey Abalos, "Divorce and Separation in the Philippines: Trends and Correlates," *Demographic Research* 36, no. 50 (May 9, 2017): 1515–48, <https://doi.org/10.4054/DemRes.2017.36.50>.

⁴ Rowalt Alibudbud et al., "Reframing Divorce as a Mental Health Policy Issue in the Philippines," *The Lancet Psychiatry* 11, no. 4 (April 2024): 241–42, [https://doi.org/10.1016/S2215-0366\(24\)00002-6](https://doi.org/10.1016/S2215-0366(24)00002-6).

⁵ "Annulment Mariage," Philippines Statistic Authority, 2025, <https://psa.gov.ph>.

⁶ Badan Pusat Statistik, "Tabel Statistik Nikah Dan Cerai Menurut Provinsi" (Jakarta: Badan Pusat Statistik, 2025), <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi--kejadian---2024.html?year=2024>.

⁷ Office of Solicitor General, "Number of Marriage Related Cases with Their Tagged Sub-Categories" (Makati City: Office of Solicitor General, 2025).

⁸ Abalos, "Divorce and Separation in the Philippines: Trends and Correlates."

presumption that the marital status never existed, rights such as maintenance, protection from domestic violence, inheritance, as well as custody and financial rights for children, are difficult to enforce in an optimal way.⁹

Conversely, in Indonesia, the concept of divorce that explicitly recognizes previous marriages provides a clearer legal basis for the protection of the rights of children and women after the end of marriage. Nevertheless, the primary impediment in Indonesia emanates from the ineffective implementation of these measures in the field. It is evident from an examination of legal documentation that although the legal framework pertaining to divorce explicitly delineates maintenance obligations, custody rights, and protection for former spouses and children, there are numerous instances of non-compliance or negligence regarding these obligations. This is evidenced by the prevalence of challenges in enforcing court decisions related to child maintenance and women's rights.¹⁰ The issue is further compounded by the inadequacy of the legal system in addressing such cases, and the societal prejudicial attitudes that continue to be prevalent towards women and children who are affected by divorce.¹¹

The issue of human rights protection, particularly in relation to children and women, is a major concern in both legal systems. The principles contained in the Convention on the Rights of the Child (CRC) emphasise the importance of the best interests of the child, particularly in situations of divorce or annulment that may threaten the child's well-being in various aspects, such as access to education, health and a stable social life.¹²

A number of studies have previously examined the legal protection available to children and women. The article titled *"Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia"* highlights the low effectiveness in meeting the living needs of children affected by divorce, with 45% of children reportedly not receiving alimony. Contributing factors include parental negligence, remarriage, family conflict, and financial constraints. The study advocates for the establishment of a child maintenance oversight body and inter-ministerial collaboration, such as implementing automatic salary deductions from divorced fathers. Its strength lies in presenting concrete field data and practical, actionable solutions. However, its limitations include a narrow geographic scope, lack of legal analysis, absence of children's perspectives, and no in-depth international comparisons.¹³

⁹ Alibudbud et al., "Reframing Divorce as a Mental Health Policy Issue in the Philippines."

¹⁰ Syukrawati Syukrawati et al., "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, no. 1 (April 30, 2024): 121–46, <https://doi.org/10.21580/ahkam.2024.34.1.20624>.

¹¹ Syaifuddin Zuhdi et al., "The Confiscation of Husbands' Wealth as A Collateral for Post-Divorce Child Support: Perspective of Maqāṣid Al-Sharī'ah," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (June 11, 2024): 912, <https://doi.org/10.22373/sjhk.v8i2.17326>.

¹² Wahyuni Retnowulandari et al., "The Prevalence Of Child Marriage: Comparative Study Of Indonesia And Other South Asian States," *Jambura Law Review* 6, no. 2 (July 24, 2024): 339–66, <https://doi.org/10.33756/jlr.v6i2.24257>.

¹³ Abdullah Abdullah et al., "Fulfillment of The Living Rights of Children the Victims of Divorce in the Muslim Community of Lombok, Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (July 1, 2024): 253, <https://doi.org/10.22373/ujhk.v7i1.22281>.

The second article, "*Legal Analysis of Legal Protection of the Rights of Ex-Wives and Children After Divorce in Indonesian Laws and Regulations Based on the Values of Justice*," underscores the gap between legal norms and their implementation in ensuring post-divorce rights for women and children. Its key strength lies in its holistic approach, combining legal frameworks with principles of social justice, supported by legal references, empirical insights, and policy suggestions like automatic salary deductions, administrative sanctions for negligent fathers, and adopting Egypt's social fund model. However, the article presents minimal field data despite referencing interviews and observations, lacks impact or feasibility analysis for its proposals, and provides limited engagement with international legal perspectives, weakening its comparative dimension.¹⁴

The third article, "*A Comprehensive Literature Review of Marital Dissolution in the Philippines*," critically explores the annulment process and the ongoing debate over legalizing divorce, analyzing legal, socio-cultural, and practical dimensions. It highlights that annulment under the Family Code is costly and time-consuming, while divorce remains opposed by dominant Catholic norms, although public acceptance is growing especially in cases involving domestic violence. The study also addresses the psychological and financial burdens faced by women post-annulment and emphasizes the role of social support and counseling. The article's strength lies in its integration of legal analysis, lived experiences, and international perspectives. However, it falls short in providing cross-country comparisons and lacks detailed policy discussion on the legal protection of women and children after marital dissolution.¹⁵

Unlike previous studies, this research offers a unique perspective by conducting a comprehensive comparative study between Indonesia and the Philippines, which were selected because both countries have different family law systems but face similar challenges in protecting the rights of children and women after divorce or marriage annulment. In addition, both countries also show interesting dynamics in integrating human rights values into their family laws. This study aims to fill an academic gap by conducting a comparative analysis of the legal protection mechanisms implemented by Indonesia and the Philippines to ensure the fulfilment of children's and women's rights, as well as to provide more responsive and inclusive policy recommendations. The important contribution of this study is expected to provide new insights for policymakers in both countries and serve as a reference for the development of legal protection that is more favourable to the interests of women and children.

Method

¹⁴ Ade Syafitri, Andoko Andoko, and Henry Aspan, "LEGAL ANALYSIS OF LEGAL PROTECTION OF THE RIGHTS OF FOR-WIVES AND CHILDREN AFTER DIVORCE IN INDONESIAN LAWS AND REGULATIONS BASED ON THE VALUES OF JUSTICE," *International Journal of Synergy in Law, Criminal, and Justice* 2, no. 1 (2024): 450–56.

¹⁵ Dorothy Grace Agliam et al., "A Comprehensive Literature Review of Marital Dissolution in the Philippines: Legal, Socio-Cultural, and Feasibility Perspectives," *International Journal of Current Science Research and Review* 07, no. 05 (May 7, 2024), <https://doi.org/10.47191/ijcsrr/V7-i5-19>.

This study uses a normative-legal research method with a comparative approach. The term “Normative legal research” is legal research that focuses on the study and analysis of legislation, legal doctrines, and applicable legal principles.¹⁶ The approach used is a comparative approach, which compares the concepts of the protection of children's and women's rights after Marital Dissolution in Indonesia and the Philippines. The data used in this study are secondary data, consisting of laws and regulations,¹⁷ including: Law No. 1 of 1974 on Marriage, Law No. 16 of 2019 amending Law No. 1 of 1974, Compilation of Islamic Law (KHI), Law No. 35 of 2014 on Child Protection for Indonesia; as well as The Family Code of the Philippines (Executive Order No. 209 of 1987), The Philippine Constitution of 1987, and Republic Act No. 7610 (Special Protection of Children Against Abuse, Exploitation, and Discrimination Act) for the Philippines. The data analysis technique used is qualitative-comparative analysis, which aims to identify similarities and differences in legal protection mechanisms for children's and women's rights in both countries. The results of this analysis are expected to provide applicable and comprehensive policy recommendations to improve the protection of children's and women's rights after divorce or annulment.

Discussion

The Marital Dissolution System In Indonesia and Philippines: Divorce and Annulment in Indonesia vs Annulment in Philippines

Dissolution of marriage refers to the legal ending of the marriage bond, either through divorce or annulment. Divorce is the termination or dissolution of a valid and existing marriage, for reasons that occur after the marriage has taken place.¹⁸ Divorce recognises that the marriage was once valid, but was later terminated by the court. In divorce, the status of the marriage ends with the court's decision, but all legal consequences of the marriage (such as the status of children and the division of property) are still recognised. Annulment, on the other hand, is a legal process to declare that a marriage was not legally valid in the first place, so it is considered to have never existed in the first place.¹⁹

The legal framework for the dissolution of marriage in Indonesia is based on Law No. 1/1974 on Marriage. This law (and its amendment, Law No.16/2019 for marriage age limit) is the main foundation. Article 38 of the Marriage Law states that a marriage can be dissolved by death, divorce, or a court decision (cancellation).²⁰

¹⁶ Khudzaifah Dimiyati and Kelik Wardiono, “Metode Penelitian Hukum,” *Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta*, 2004.

¹⁷ Peter Mahmud Marzuki, *Metode Penelitian Hukum* (Jakarta: Kencana, 2005); Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2006).

¹⁸ Dyah Anantalia Widyastari et al., “Marital Dissolution in Postmodern Java, Indonesia: Does Early Marriage Increase the Likelihood to Divorce?,” *Journal of Divorce & Remarriage* 61, no. 8 (November 16, 2020): 556–73, <https://doi.org/10.1080/10502556.2020.1799308>.

¹⁹ Atun Wardatun and Bianca J. Smith, “Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage,” *Ulumuna* 24, no. 2 (December 31, 2020): 266–95, <https://doi.org/10.20414/ujis.v24i2.416>.

²⁰ “Undang - Undang No 1 Tahun 1974,” 1974.

Article 39 paragraph (1) stipulates that divorce can only be carried out in front of a court session after the court has tried to reconcile the two parties unsuccessfully. This means that "unilateral" divorce outside of court is not recognised and must go through a judge's decision.²¹ Law 1/1974 also regulates the conditions for divorce (Article 39 paragraph 2) and regulates the prevention of marriage (Articles 16-18) and the cancellation of marriage (Articles 22-28). For example, Article 22 states that marriages that violate the conditions can be cancelled. Article 23 regulates who has the right to apply for annulment (among others, the parties to the marriage, parents, authorised officials, and interested parties).²²

Government Regulation No. 9/1975 on the Implementation of the Marriage Law. This PP lays out the technical procedures for divorce and annulment. Among other things, Article 19 of PP 9/1975 contains the legal grounds for divorce (such as adultery, drunkenness, domestic violence, imprisonment, abandonment of the spouse, continuous disputes, illness/disability) in line with the provisions in the Law. This PP also regulates the procedure for filing a divorce petition and requesting an annulment. Article 38 of GR 9/1975 confirms that the procedure for requesting an annulment follows the procedure for divorce lawsuits.²³

In addition, Law No.7 of 1989 (jo. Law No.3/2006 and Law No.50/2009) on Religious Courts provides the basis for the jurisdiction of the Religious Courts to hear divorce cases for Muslims, while the District Courts are authorised for non-Muslims. In the context of human rights, Indonesia has ratified instruments such as the Convention on the Elimination of Discrimination against Women (CEDAW) which demands equal rights in marriage and divorce, and is bound by the human rights principles in the 1945 Constitution Articles 28B and 28D regarding the right to form a family and legal certainty.

Divorce in Indonesia can be granted after it is proven that there are valid reasons why the husband and wife can no longer live together. The Marriage Law requires an attempt to reconcile the two parties first, and if that fails, only then can the court grant a divorce.²⁴ Recognised grounds for divorce include: one of the parties commits adultery or becomes a drunkard/heavy drug addict, there is domestic violence or serious maltreatment, neglect of one of the parties for at least 2 years, one of the parties is sentenced to imprisonment of 5 years or more, there are continuous disputes and quarrels without hope of

²¹ Abd. Karim Faiz, Zulfahmi AR, and Ahmad Izzuddin, "Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia," *JIL: Journal of Islamic Law* 3, no. 2 (August 31, 2022): 176–92, <https://doi.org/10.24260/jil.v3i2.848>.

²² Durotun Nafisah et al., "Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (May 21, 2024): 847, <https://doi.org/10.22373/sjkh.v8i2.16825>.

²³ "Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan UU Perkawinan," 1975.

²⁴ Isnawati Rais, "Tingginya Angka Cerai Gugat (Khulu') Di Indonesia: Analisis Kritis Terhadap Penyebab Dan Alternatif Solusi Mengatasinya," *Al-Adalah* 12, no. 1 (2014): 191–204, <https://doi.org/https://doi.org/10.24042/adalah.v12i1.183>.

reconciliation, or one of the parties has a disability/illness that hinders the duties as husband/wife.²⁵

In other words, divorce in Indonesia is based on a fault/problematical divorce system - there must be a specific cause recognised by law.²⁶ However, in practice the most dominant reason is "continuous disputes/ quarrels" (2022 data shows 63.4% of divorces are due to this factor), which shows that divorce can be granted due to relationship breakdown without the need for specific faults such as adultery.²⁷

Cancellation of marriage in Indonesia can be filed if at the time of the marriage it turns out that it does not meet the conditions of marriage specified by law, so that the marriage is legally defective.²⁸ No. 1 Year 1974 and its implementing regulations provide several grounds for annulment, including: (1) one of the parties is still bound by a previous legal marriage (bigamy/polygamy without permission); (2) the marriage is held before an unauthorised marriage registration officer; (3) the marriage for Muslims is conducted without a legal guardian; (4) the marriage is not attended by two witnesses; (5) the marriage takes place under unlawful coercion/threat; (6) there is a misconception about the identity of one of the parties; and (7) the marriage violates the minimum age limit set by law.²⁹

These grounds reflect a formal or material defect from the outset of the marriage, so that the marriage can be annulled by the court. As long as there is no annulment decision, the marriage is considered valid; once annulled, the marriage is considered to have never existed. The annulment process in Indonesia is filed like a contentious lawsuit (there is a petitioner and a respondent) and examined by the court (PA or PN) with procedures similar to divorce cases.³⁰

In contrast, in the Philippines, the comparison between divorce and annulment is more theoretical as under national law, divorce is not available to non-Muslim couples, hence, the concept of annulment is effective.³¹ The Philippine legal basis regarding marriage and its dissolution is found in several legal instruments, the 1987 Philippine Constitution, Article XV (Family), stipulates that the state recognises marriage as a social institution that is indissoluble and protected by the state. While not explicitly prohibiting divorce,

²⁵ Ibnu Radwan Siddik Turnip, *Hukum Perdata Islam Di Indonesia: Studi Tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah Dan Perwakafan* (Jakarta: Raja Grafindo Persada, 2021).

²⁶ Syaifuddin Zuhdi et al., "DIVORCE IN KANGAEAN ISLANDS: The Study on Judge's Legal Reasoning of Kangean Religious Court, 2020-2022," *Jurnal Jurisprudence* 12, no. 2 (February 9, 2023): 166–87, <https://doi.org/10.23917/jurisprudence.v12i2.1229>.

²⁷ Direktorat Badan Peradilan Agama, "Kumpulan Dataset Perkara Peradilan Agama," PUSAT DATA PERKARA PERADILAN AGAMA, 2025, <https://pusatdata.badilag.net/perkara/Direktorilist>.

²⁸ Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia*, Edisi Revi (Jakarta: Rajawali Pers, 2013).

²⁹ "Undang - Undang No 1 Tahun 1974"; "Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan UU Perkawinan."

³⁰ Nurunnisa Nurunnisa et al., "Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (July 4, 2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.9523>.

³¹ Cheryl L. Daytec, "Till the Judge Do Them Part: The Prospect of Absolute Divorce in the Philippines," *SSRN Electronic Journal*, 2015, <https://doi.org/10.2139/ssrn.2647585>.

this principle is often articulated by conservatives as a legal ground against divorce, in line with Catholic teachings.³²

The Family Code of the Philippines (Executive Order No. 209 of 1987), which came into effect in August 1988, replaced the marriage provisions in the previous Civil Code. This Family Code does not provide a divorce mechanism for non-Muslim Filipino couples. Instead, it provides for void ab initio and voidable marriages.³³ Section 36 of the Family Code on psychological incapacity is a legal loophole that is often used to invoke the cancellation of de facto failed marriages, on the grounds that one party is "psychologically incapable" of performing marital obligations. In addition, Section 45 of the Family Code provides six grounds for voidable marriages, such as lack of age, fraud, duress, impotence, contagious disease, or insanity. Annulment procedures in the Philippines must go through the Family Court and involve evidence and expert testimony (e.g. psychologists for Article 36 cases).

Regulations on Legal Separation. Legal separation is regulated under the Family Code (Sections 55-67) which provides a list of grounds for separation (e.g. severe physical abuse, neglect, infidelity, attempted murder, etc.).³⁴ Although legal separation is not a dissolution of marriage, it is part of the Philippine matrimonial law system and is usually filed by parties who wish to legally separate without breaking the marital status.³⁵

The process of Marriage Cancellation in the Philippines (Annulment) is governed by the Family Code of the Philippines (1987) and is the only way to legally terminate the marital status of non-Muslims. In order to annul a marriage, the petitioner must prove the existence of a legal defect from the time the marriage began. Some of the grounds for annulment recognised by Philippine law include: one of the parties was a minor (not yet 18 years old) or between the ages of 18-21 years old married without parental consent (annullable on application of the parents);³⁶ one of the parties lacked mental capacity (insanity) at the time of marriage; consent to marriage was obtained through fraud or coercion; one of the parties was physically impotent (permanently impotent); or one of the parties had a serious sexually transmitted disease that was unknown to the other party at the time of marriage. In addition, the "psychological incapacity" of one of the parties to perform marital obligations (as per Article 36 of the Family Code) is a popular reason for seeking a declaration of nullity, which is commonly considered annulment.³⁷ Psychological incapacity is often an umbrella reason for cases where the relationship between husband and wife is not harmonious, as reasons such as violence or infidelity are

³² "The 1987 Constitution Of The Republic Of Philippines," 1987.

³³ "Executive Order No 209 S. 1987 : The Family Code Of Philippines," 1987; "Presidential Decree No. 1083 : Code of Muslim Personal Laws Philippines," 1977.

³⁴ Neerushah Subarimaniyam, Siti Aishah Hassan, and Noor Syamilah Zakaria, "The Driving Forces of Marital Dissolution in Asian Countries," *The Family Journal* 25, no. 2 (April 8, 2017): 123–29, <https://doi.org/10.1177/1066480717697301>.

³⁵ Gamaliel Tulabing, "A Comparative Study on Legal Separation Under the 1983 Code of Canon Law and the Family Code of the Philippines," *Philippine Canonical Forum* 2 (2000): 167–81.

³⁶ Grace Agliam et al., "A Comprehensive Literature Review of Marital Dissolution in the Philippines: Legal, Socio-Cultural, and Feasibility Perspectives."

³⁷ Alibudbud et al., "Reframing Divorce as a Mental Health Policy Issue in the Philippines."

not directly recognised as grounds for annulment in the Philippines. To emphasise, domestic violence, adultery, and neglect cannot be grounds for annulment under current Philippine law.³⁸

As a result, wives/husbands who have been beaten, cheated on, or abandoned cannot dissolve the marriage based on these matters alone. They can only apply for a legal separation, which allows them to live apart but still maintain their marital status. Legal separation does not allow the parties to remarry, so it is not equivalent to divorce.³⁹

From the above, it is clear that Indonesia has two paths (divorce and annulment) according to the circumstances of the case, while the Philippines has practically only the annulment path to end the marriage. In other words, couples in Indonesia facing severe domestic conflict or domestic violence can opt for a legal divorce on the grounds of "marital breakdown" or "violence" etc., whereas in the Philippines couples in similar situations cannot simply "divorce" but must fulfil the criteria of a defective marriage from the outset. This difference makes many things that are sufficient grounds for divorce in Indonesia, legally insufficient in the Philippines. It is no wonder that many Filipinos feel trapped in dysfunctional marriages because they do not fulfil the criteria for annulment, while divorce is prohibited.

The Protection of Child and Women's Rights After Marital Dissolution

Divorce and marriage cancellation have various legal consequences on the status of children and the rights of women (wives) in the family. Indonesian family law has regulated these matters in detail through Law Number 1 Year 1974 on Marriage and its amendments, the Compilation of Islamic Law (KHI) for Muslims, and Law Number 35 Year 2014 on Child Protection. These three legal bases provide a normative basis for protecting the rights of children and women after a marriage ends, either due to divorce (the dissolution of a valid marriage) or annulment (a marriage declared invalid from the start).

Annulment in the context of Philippine family law is a legal process that terminates marital status by declaring the marriage null and void, as if it never existed in the first place. Unlike most other countries, the Philippines (for non-Muslim residents) does not recognise absolute divorce; instead, The Family Code of the Philippines (Executive Order No. 209 of 1987) provides a mechanism for the annulment or nullity of marriage to legally end the marital bond. This condition is influenced by the 1987 Philippine Constitution which asserts that "marriage, as an indissoluble social institution, is the foundation of the family and shall be protected by the State".⁴⁰

However, Philippine law also recognises that when a marriage is annulled through litigation, there needs to be clear rules regarding the rights of the wife (woman) and the children born out of the marriage. The basic norms of Philippine positive law are The

³⁸ Dee Diken Hunt and Cora Sta Ana-Gatbonton, "Filipino Women and Sexual Violence: Speaking out and Providing Services" (Brisbane: Immigrant Women's Support Service, 2000).

³⁹ Subarimaniam, Hassan, and Zakaria, "The Driving Forces of Marital Dissolution in Asian Countries."

⁴⁰ "Executive Order No 209 S. 1987 : The Family Code Of Philippines."

Family Code 1987, the principles of the 1987 Constitution, Republic Act No. 7610 of 1992, as well as Presidential Decree No. 1083 of 1977 which applies specifically to the Filipino Muslim community.

Table 2: Comparison of the Concept of Post-Divorce Protection and Marriage Cancellation in Indonesia and the Philippines

Protection Aspects		Indonesia	Philippines
Legal Mechanism		Divorce and Cancellation	Annulment for non-Muslims only
Child's Protection	Child Status	Remains valid after divorce or cancellation	remains valid after cancellation (legitimate)
	Child Custody Rights	Under the age of 12, mother's priority; over the age of 12, child self-selects	Under 7 years, mother's priority ("Tender Years Doctrine"); above that, the child chooses for themselves
	Child maintenance rights	Every child has the right to protection and fulfilment of their basic rights, including the right to life, growth, development, and optimal participation in accordance with the dignity of humanity, as well as protection from violence and discrimination.	Both parents are obliged to provide maintenance proportionally
	Child Special Protection	Set out in the Child Protection Law with criminal sanctions for neglect.	Regulated under RA 7610, with special protection against abuse, exploitation, and neglect
Women's Protection	Ex-wife's maintenance	There is nafkah iddah and mut'ah, especially for divorce; not applicable for marriage cancellation.	No maintenance obligation of ex-wife post-annulment
	Special Protection of Women	Protection in general in the Marriage Law and detailed in the Compilation of Islamic Law	More comprehensive protection through RA 9262 (Domestic violence).
Post-Cancellation Distribution of Assets		Set out in general terms, with protection for good faith parties	More detailed and strict division of property, protecting good faith parties, with sanctions for wrongdoers

The legal status of children born from a valid marriage is still recognised despite divorce or annulment of the marriage. This is confirmed in Article 42 of Law No. 1 Year 1974 which states that children born in or as a result of a legal marriage are still considered legal children.⁴¹ Analysis of this provision shows that the Indonesian legal system prioritises the principle of non-discrimination against children and prevents the emergence of social stigma and legal disadvantages due to mistakes or failures in the relationship between parents. Juridically, children still have full civil rights, including inheritance rights and the right to be provided for, regardless of the continuity of their parents' marital relationship.

In the context of marriage annulment, Indonesian law through Article 28 of the Marriage Law guarantees legal protection for children by stating that annulment decisions do not apply retroactively to children.⁴² In other words, children are still considered legitimate and have a civil relationship with their parents. This shows that in the construction of family law, the state places the protection of children above the administrative provisions regarding the validity of marriage. The best interests of the child become the main principle that balances the formal legal framework.⁴³

In terms of child custody after divorce, the main principle is "the best interests of the child". Indonesian law does not explicitly stipulate the age or preference of the caregiver, but through the Compilation of Islamic Law (Article 105), children who are not yet mumayyiz (approximately under the age of 12) are cared for by the mother, unless there are compelling reasons that make the mother unfit.⁴⁴ This provision reflects a combination of Islamic legal principles and the psychosocial needs of children, where the maternal role is considered crucial in early infancy.⁴⁵

The obligation to provide maintenance to children after divorce is expressly the primary responsibility of the father as stipulated in Article 41 letter (b) of the Marriage Law and Article 149 letter (d) KHI. This confirms the role of the father as the main economic bearer in the family structure, but does not rule out the possibility of the mother contributing if conditions require. This obligation is not only moral, but also legally binding, with criminal penalties for parents who neglect their children, as per Child Protection Law No. 35/2014. This is where we see Indonesian law moving from a civil to a criminal approach to strengthen the implementation of parental obligations.

⁴¹ Deni Saerofi et al., "Status Anak Akibat Pembatalan Perkawinan Dalam Perspektif Hukum Islam," *Borobudur Law and Society Journal* 1, no. 6 (February 17, 2023): 51–59, <https://doi.org/10.31603/8776>.

⁴² "Undang - Undang No 1 Tahun 1974."

⁴³ Sri Turatmiyah, M. Syaifuddin, and Arfianna Novera, "AKIBAT HUKUM PEMBATALAN PERKAWINAN DALAM PERSPEKTIF HUKUM PERLINDUNGAN ANAK DAN PEREMPUAN DI PENGADILAN AGAMA SUMATERA SELATAN," *JURNAL HUKUM IUS QUIA IUSTUM* 22, no. 1 (January 2015): 163–79, <https://doi.org/10.20885/iustum.vol22.iss1.art8>.

⁴⁴ Mahkamah Agung Republik Indonesia, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Dengan Pengertian Dalam Pembahasannya* (Jakarta: Mahkamah Agung Republik Indonesia, 2011), <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/23.pdf>.

⁴⁵ Anggraeni Rusmahadewi, Zufar Fadhlurrahman, and Kartika Nur Fathiyah, "Forgiveness Experiences in Early Adult Women with Divorced Parents," *Indigenous: Jurnal Ilmiah Psikologi* 9, no. 2 (2024): 136–49, <https://doi.org/10.23917/indigenous.v9i2.5561>.

In a comparative perspective, family law in the Philippines-which does not recognise divorce for non-Muslims-enforces annulment as the primary mechanism for ending conjugal relationships. However, Philippine law, through the 1987 Family Code, still guarantees the legitimacy of children born in marriages that are later annulled.⁴⁶ The principle of putative marriage is an important basis for protecting children from the negative implications of marriage annulment. This demonstrates a common principle across legal systems, that children should not be disadvantaged due to failures or errors in the administration or substance of their parents' marriage.⁴⁷

Parental rights and powers in the Philippines are determined by the courts with the interests of the child in mind. The "Tender Years" doctrine favours the mother for children under the age of seven, with exceptions if the mother is deemed unfit.⁴⁸ In this regard, both the Indonesian and Philippine legal systems emphasise that the determination of custody is not based solely on blood relationship, but also on parenting capacity and psychosocial conditions that best support the child's development.

In terms of economic rights, children remain entitled to maintenance and inheritance even after annulment. The Family Code of the Philippines provides in detail for the assignment of the child's legitimate share, as a guarantee of his or her economic rights. This protection is reinforced by criminal provisions that allow for action against negligent parents. This demonstrates a holistic approach where children's rights are not only recognised but also guaranteed through judicial and executive mechanisms.⁴⁹

In addition, Philippine law provides for the protection of women in the division of common property. The provision of good faith vs bad faith in annulment is the basis for determining the proportion of property. If one party is found guilty, the law sanctions the forfeiture of his or her share of the property which is then given to the innocent party or to the children. This reflects the principle of corrective justice that respects integrity and prevents abuse of the institution of marriage.⁵⁰

In a marriage cancellation, the obligation to provide alimony between husband and wife ends, as stipulated in Article 198 of the Family Code. However, economic protection for women continues through the mechanisms of property division and

⁴⁶ "Executive Order No 209 S. 1987 : The Family Code Of Philippines."

⁴⁷ Jose Mari Benjamin Francisco Tirol, "Protecting Tomorrow's Hope Today: The Philippine Legal Perspective from the Tender-Age Presumption to Shared Parenting," *Integrated Bar of the Philippines Journal* 47, no. 2 (2022): 1–21, <https://doi.org/10.2139/ssrn.3532295>.

⁴⁸ Ersha M. Bea and Kaira L. Sy, "Nobody's Child: A Study on Philippine Laws on Citizenship and the Status of Abandoned Children Declared as Foundlings" (Ramon V. Del Rosario College of Business, 2015).

⁴⁹ Teun van Leeuwen, "Budget Advocacy for Child Rights in the Philippines How Civil Society Can Increase Public Spending for Child Rights," *Student Undergraduate Research E-Journal* 3, no. Student Research Conference 2017 (2017): 188–91, <https://doi.org/https://doi.org/10.25609/sure.v3.2558>.

⁵⁰ Sedfrey M. Candelaria and Rosalyn C. Rayco, "The Philippines and the Convention on the Rights of the Child: Evaluating Compliance with Respect to the International Standards for Procedural Rules Involving Children," *Ateneo LJ*, 2004, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ateno49§ion=32.

compensation for losses. If there is an element of violence or fraud, the wife can file civil or criminal charges, expanding the spectrum of legal protection available to women.⁵¹

An analysis of these two legal systems shows that although there are differences in the mechanisms for terminating a marriage (divorce vs annulment), the universal principle is the protection of children and women. The interests of children are prioritised, whether in terms of legal status, care, maintenance or inheritance. Meanwhile, women's rights are safeguarded through fair arrangements for maintenance and joint property.

When compared comprehensively, Indonesia and the Philippines take different paths in regulating the rights of women and children after divorce, although both are bound by international human rights norms such as the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). From a formal legal standpoint, Indonesia recognises divorce and seeks to regulate its consequences in detail, while the Philippines (for its non-Muslim population) does not recognise divorce at all. Both countries' constitutions and laws uphold family and child protection, but implementation differs. Indonesia, through its Marriage Law and related regulations, is relatively aligned with its human rights obligations to provide avenues for dissolution of marriage and post-divorce protection. Indonesian women legally have the right to divorce and the right to the fulfilment of child maintenance, division of joint property, and even a short post-divorce allowance, although in practice the realisation is constrained. On the other hand, the Philippines has yet to meet international human rights standards for equality in the dissolution of marriage; CEDAW and the International Covenant on Civil and Political Rights (ICCPR) mandate equal rights for men and women to enter and end marriages, but the Philippines' ban on divorce restricts these rights for women. From a human rights perspective, this is often criticised as it can force women and children to endure dangerous or unhappy domestic environments, contrary to the rights to security, well-being and personal autonomy.

Child custody after divorce in both countries principally prioritises the best interests of the child. Both Indonesia and the Philippines predispose young children to the care of the mother, which is in line with the fulfilment of the child's right to care and affection. The difference is that the Indonesian rule (KHI) explicitly mentions the age limit (around 12 years) and then the choice of the child, while the Philippines uses a benchmark of 7 years as a tender years presumption and after that the decision is left to the discretion of the court. Child maintenance is legally required in both countries: the father (or parent who is able) must provide for the child's living expenses and education. Indonesia and the Philippines both make this obligation part of the court judgement. A similar challenge is ensuring the father's compliance in paying maintenance. Indonesia faces an enforcement problem, where many fathers ignore the obligation without serious consequences. The Philippines, through RA 9262, actually has a penal mechanism for fathers who neglect their maintenance obligations, making the law more stringent,

⁵¹ Abdul Basir Mohamad, Rohanee Machae, and Mutsalim Khareng, "Children's Protection in the Issue of Hadhanah Based on Islamic Family Law and the Law of Thailand," *Asian Social Science* 12, no. 10 (September 2016): 18, <https://doi.org/10.5539/ass.v12n10p18>.

although its ultimate effectiveness depends on the mother's courage and ability to pursue criminal charges.

The rights of women (ex-wives) after divorce are also regulated differently. Indonesian law, influenced by religious principles, provides for the right of *nafkah iddah* and *mut'ah* for wives who are divorced by their husbands (especially in the Islamic system), as well as opening up opportunities for other benefits through Article 41 of the Marriage Law. However, these entitlements are usually of limited value (short-term) and there is no concept of long-term alimony as recognised in some western countries. The Philippines, due to the absence of divorce, has no concept of ex-wife alimony at all; women can only claim a share of joint property or maintenance as a wife while still married (e.g. through legal separation). This means that in terms of long-term economic security after the end of the relationship, Indonesian women are slightly more legally advantaged than the Philippines (where without divorce there is no legal "ex-wife" status). However, it should be noted that Indonesia is not yet fully in line with CEDAW standards on equality in marriage, for example, it still permits polygamy under certain conditions that can impact the economic and emotional rights of the first wife after divorce.

In terms of protection from violence, both countries have implemented legal frameworks to protect women and children from domestic violence, which are in line with human rights obligations to prevent gender-based violence. Indonesia's PKDRT Law and the Philippines' RA 9262 are both implementations of commitments to the Declaration on the Elimination of Violence against Women. The Philippines is arguably more progressive in this regard as it makes economic neglect a legally recognised form of violence, so women have legal means even without a divorce to claim their rights. Indonesia, despite having the offence of family neglect in the Criminal Code, has not specifically categorised the refusal to provide child/wife maintenance as a criminal offence of domestic violence, so its handling is limited to civil lawsuits/execution of judgements.

In terms of access to justice, it is relatively easier for women and children in Indonesia to obtain legalisation of their post-divorce status because divorce can be processed legally on a wide range of grounds (including incompatibility/domestic violence). The infrastructure of religious courts down to the district/municipality level facilitates access, in addition to the provision of fee waivers and mobile court hearings for the poor. In the Philippines, access to justice is hampered at the dissolution of marriage stage itself - difficult annulment procedures put formal justice out of reach for many women. However, for issues of violence and maintenance, the Philippines provides access through criminal and public legal aid channels. Both countries face socio-cultural challenges: the stigma of divorce in society, inequality in legal knowledge, and economic constraints can prevent women from fighting for their rights in court.

Conclusion

This study concludes that the legal mechanisms for protecting the rights of children and women after marriage dissolution in Indonesia and the Philippines present

significant differences influenced by the characteristics of each country's family law system. In Indonesia, the existence of divorce and marriage annulment options provides a relatively clearer legal basis for the protection of economic rights and child custody rights. However, the implementation of these legal norms still faces substantial challenges in the form of weak law enforcement and persistent social stigma against women and children who are victims of divorce. Conversely, the Philippine legal system, which does not explicitly recognise divorce for non-Muslims, results in significant limitations on the protection of women's economic rights in the long term. Nevertheless, the Philippines still provides protection for children's rights through mechanisms for marriage annulment and clear rules on custody arrangements and the division of joint property. Both countries share the principle of the best interests of the child as the primary basis for legal protection, although its implementation still faces a number of systemic and socio-cultural obstacles.

This study contributes theoretically through a comparative study that enriches the literature on the protection of children's and women's rights after marriage dissolution in Indonesia and the Philippines. It also offers practical recommendations for stakeholders, such as the establishment of a supervisory body for child support, capacity building for judicial officials, and anti-stigma campaigns. However, this study is limited to normative analysis and does not explore empirical aspects or social-cultural dynamics at the local level. Therefore, further research is recommended to adopt an in-depth empirical and qualitative approach and consider sociocultural and regional perspectives to generate more contextual and effective policy recommendations.

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