

Protection of Women's Rights After Divorce in Religious Courts: What Makes this Mission Difficult to Achieve?

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Abstract

The normative assurance of protection for women's and children's rights post-divorce has been extensively regulated through laws, including the Compilation of Islamic Law (KHI), the Supreme Court Regulation (PERMA), and the Supreme Court Circular Letter (SEMA). However, not all these regulations have been effectively implemented post-divorce in Indonesian Religious Courts. Hence, this article is written to understand how the implementation of post-divorce women's rights protection occurs in the Religious Courts, especially when the husbands are absent from the divorce trials (*verstek* judgments). This normative-doctrinal legal research utilizes the statutory and case law analysis of selected decisions from Samarinda and Sangatta Religious Courts. The findings indicate that the protection of post-divorce women's rights is not adequately realized, as not all the rights of former wives in the Religious Courts are adequately accommodated, especially the alimony (*nafkah iddah*). This is attributed to cases being decided in absentia of the husband, indications of the wife's disobedience (*nushuz*), low awareness of the wife regarding her rights, and the gender sensitivity of the judges not being maximum.

Keywords:

Protection of Women's Rights, Post-Divorce, Alimony, Religious Courts

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Introduction

The divorce rate in Indonesia has shown a significant increase, as reported by Badan Peradilan Agama (Badilag).¹ In 2022, the divorce rate in Indonesia was the highest in Asia.² In 2023, there were more than 670,100 divorce cases; in 2022, 511,578 divorce cases and only 42 cases asked for the right women and children post-divorce.³ In East Kalimantan's Religious Courts, wives-initiated divorce rates are higher than *talaq* divorces, as seen in the Religious Court of Samarinda in 2020, with 1,546 women's-initiated divorce cases (*cerai gugat*) compared to 519 *talaq* divorce cases. Similarly, in the Religious Court of Sangatta, in 2020, there were 397 wives-initiated divorces, while divorces initiated by husbands were 170 cases.

According to Wardatun and Smith,⁴ husbands' resistance to adjusting to changing concepts of masculinity and domestic inequality are the leading causes of the high number of wives-initiated divorces. Maimun argues that women's increased awareness, shifting social views on the sanctity of marriage, and their economic independence are

¹ Mustafa Kamal Rokan, Imam Yazid, and Ahmad Makky, "Reconstruction of the Concept of Nushuz of the Wife in the Digital Era," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (December 28, 2020): 570, <https://doi.org/10.22373/sjhc.v4i2.7259>.

² Asna Husen, "Falling Out of Love: Divorce of Three Acehnese Ubanan Couples in the Islamic Law Perspective", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Vol. 7, No. 3, November 2023, h. 1868

³ Andi Akram et al., "Gender Mainstreaming through Guarantees of Legal Protection and Access to Justice for Women and Children in Religious Court," *Jurnal Hukum Dan Peradilan* 12, no. 2 (July 31, 2023): 278, <https://doi.org/10.25216/jhp.12.2.2023.267-292>.

⁴ 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): 267, <https://doi.org/10.20414/ujis.v24i2.416>.

the causes of this phenomenon⁵. Wardatun said there is an additional assumption that the increase in contested divorce rates has consequences for gender equality.⁶

Law No. 1/1974 concerning Marriage and Article 149 of the Compilation of Islamic Law (KHI), define women's rights following a *talaq* divorce normatively. However, in the case of wives-initiated divorces, this is not the case. In 2010, jurisprudence that permitted *iddah* maintenance (alimony) in contentious divorces was developed to remedy this problem. Even in cases where the divorce is contentious, this jurisprudential breakthrough does not ensure that post-divorce women's rights would be appropriately accommodated. The Supreme Court responded by enacting the PERMA and SEMA to guarantee women's rights further.

Some previous research about women's rights post-divorce has already existed. Lelita Dewi et al.'s research on women's rights protection is visible in their studies,⁷ and gender-perspective judgments can provide legal protection for women.⁸ Nasution has researched women's and children's access to justice in Indonesian Religious

⁵ Maimun Maimun, "The Women's Rights in Divorce and Gender Equality Discourse in The Dynamics of Divorce in Madura," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 472, <https://doi.org/10.22373/sjhc.v6i1.12804>.

⁶ Wardatun and Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia," 267.

⁷ Lelita Dewi, "Law Protection for Post Divorced Women Through Law Enforcement with a Gender Perspective," *Atlantis Press SARL Advances in Economics, Business and Management Research*, volume 140 (2020): 152–54, <https://doi.org/10.2991/aebmr.k.200513.031>.

⁸ Nasriah Nasriah, Dachran S Busthami, and Hamza Baharuddin, "Perlindungan Hukum Hak-Hak Istri Pasca Perceraian," *Journal of Lex Philosophy (JLP)* 1, no. 2 (2020): 195–211, <https://doi.org/10.52103/jlp.v1i2.272>.

Courts,⁹ whereas Nurdin examines post-divorce protection from a sociological perspective.¹⁰

Many researchers have examined how women's rights are applied in Religious Courts, including how judges' compassion affects whether they give ex-spouses their rights.¹¹ Rahmatullah¹² emphasizes the implementation technique for SEMA No. 2/2019, while Lilik examines the ex-officio approach to obtaining women's rights fulfillment. While Anwar¹³ looks into how judges' progressiveness influences the obligations imposed on wives following a divorce, Amran Suadi¹⁴ focuses on the

⁹ Hotnidah Nasution and Ahmad Rifqi Muchtar, "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/15702>.

¹⁰ Fajri M. Kasim et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (December 31, 2022), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/28747>.

¹¹ Hanik Harianti, Mansari Mansari, and Rizkal Rizkal, "Sensitivitas Hakim Terhadap Perlindungan Hak Isteri dalam Kasus Cerai Gugat (Analisis Putusan Mahkamah Syar'iyah Banda Aceh Nomor 157/Pdt.G/2020/Ms.Bna)," *Jurnal MEDIASAS: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyah* 4, no. 1 (June 3, 2021): 47-67, <https://jurnal.kopertais5aceh.or.id/index.php/mediasas/article/view/263>.

¹² Mochammad Agus Rachmatulloh, "Pemenuhan Hak Perempuan Pasca Cerai Gugat: (Eksistensi SEMA Nomor 2 Tahun 2019 Di Pengadilan Agama Nganjuk)," *SAMAWA: Jurnal Hukum Keluarga Islam* 2, no. 2 (August 1, 2022): 10-24, <http://ejournal.stisdafabondowoso.ac.id/ejurnal/index.php/samawa/article/view/48>.

¹³ Alfina Sauqi Anwar, "Progresivitas Hakim Dalam Menentukan Beban Akibat Perceraian Bagi Suami Kepada Istri Pasca Perceraian," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 1 (June 30, 2021): 1-13, <https://doi.org/10.22515/alahkam.v6i1.2952>.

¹⁴ Amran Suadi, "Peranan Peradilan Agama Dalam Melindungi Hak Perempuan dan Anak Melalui Putusan yang Memihak dan Dapat Dilaksanakan / The Role Of Religious Court In Women And

role of Religious Courts in safeguarding the rights of women and children. This review serves as the foundation for the study's understanding of how normative rules protecting post-divorce women's rights are applied in Religious Courts, particularly in East Kalimantan, with a particular emphasis on Samarinda Religious Court and Sangatta Religious Court, based on the fact that divorce cases increased and more of 76% *verstek* judgments. The normative-doctrinal legal research, which used legal and case analysis, was adopted in this study. How women's rights are upheld, and the factors courts consider while making *talaq* and wives-initiated divorce rulings were factors considered when statutes and cases law were analyzed.

This article identifies and analyzes how to protect women's rights after divorce in a Religious Court. Based on the previous explanation, this paper describes the legal protection of women's rights after the divorce and how protecting women's rights post-divorce is implemented, especially in Samarinda and Sangatta Religious Court.

This paper is formulated into four discussion sections. The first section describes the legal protection of women's rights after divorce, both in the form of Compilations of Islamic Law (KHI), the Supreme Court Regulations (PERMA), and the Supreme Court Circular Letters (SEMA). In contrast, the second explanation about the implementation of fulfilling women's rights after the divorce was case sampling selected from Samarinda Religious Court and Sangatta Religious Court, which are the subjects of this study. Then, the third section explores analysis and discussion about the implementation of

protection of women's rights and why women's rights are not accommodated. The last part, the fourth section, is the conclusion.

The Legal Protection Provisions of Women's Rights Post-Divorce

Protection refers to all measures taken and endeavors to guarantee safety while upholding fundamental human rights.¹⁵ According to Raharjo, legal protection is giving care and sanctuary to those whose rights have been violated by others so they can exercise their rights as guaranteed by law.¹⁶ Justice and equality principles are included in women's legal protection.

The state's protection of post-divorce wives' rights is more than enough. However, women's rights are still neglected. The first legal protection is outlined in Article 28I, paragraph (2) of the Constitution, which guarantees everyone the right to legal protection and freedom from discriminatory attitudes and practices.

Women's rights are protected in marital law by several laws, including jurisprudence, marriage laws, Compilation of Islamic Law (KHI), the Supreme Court Regulations (PERMA), and the Supreme Court Circular Letters (SEMA). This is especially true when it comes to divorce and its legal ramifications.

Following Articles 49 of Law No. 1/1974 and 149 and 152 of the Compilation of Islamic Law (KHI), ex-spouses

¹⁵ Fransiska Novita Eleanora and Edy Supriyanto, "Violence against Women and Patriarkhi Culture in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 7, no. 9 (2020): 109, <https://doi.org/10.18415/ijmmu.v7i9.1912>.

¹⁶ Aroma Elmina Martha and Endah Rizki Ekwanto, "Reformulasi Prosedur Perlindungan Dalam Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga Yang Tidak Efektif," *Lex Renaissance* 4, no. 2 (2019): 322, <https://doi.org/10.20885/JLR.vol4.iss2.art7>.

who do not fulfill their obligation are not eligible for maintenance after a *talaq* divorce. This implies that rights will be granted in a *talaq* divorce, while they are not regulated in wives-initiated divorces.

Further clarification on this subject is provided by Article 158 of KHI, which states that the former husband must give *mut'ah* if the husband initiates the divorce process. The purpose of Cassation rulings No. 347k/Ag/2010, 410k/Ag/2010, and 276k/Ag/2010 was to safeguard women's rights in wives-initiated divorces. Even under Jurisprudence No. 13k/Ag/2007, the judge may, *ex officio*, order the husband to produce *iddah* maintenance if the wife has not acted uncooperatively (*nushuz*).¹⁷ PERMA No. 3/2017, which deals with the Guidelines for Adjudicating Women Facing Legal Issues, came after this. The goal of the norm's issuing is to abolish all barriers and discrimination against women in the legal system.¹⁸ Article 3 highlights the need for courts to guarantee the equal and fair realization of women's rights while reviewing and deciding cases involving women.¹⁹ SEMA No. 3/2018, which addresses the husband's duty to furnish *iddah* and *mut'ah* in wives-initiated divorces, further supports this, provided that the woman is not considered disobedient to her husband (*nushuz*).

¹⁷ Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (2021): 139, <https://doi.org/10.18326/ijtihad.v21i2.135-154>.

¹⁸ Maisandra Helena Lohy and Aguz Machfud Fauzi, "Peningkatan Kekerasan Dalam Rumah Tangga (KDRT) Selama Pandemi Covid-19 Dalam Kacamata Sosiologi Hukum," *Res Judicata* 4, no. 1 (August 8, 2021): 83-98, <https://doi.org/10.29406/rj.v4i1.2475>.

¹⁹ Harianti, Mansari, and Rizkal, "Sensitivitas Hakim Terhadap Perlindungan Hak Isteri Dalam Kasus Cerai Gugat (Analisis Putusan Mahkamah Syar'iyah Banda Aceh Nomor 157/Pdt.G/2020/Ms.Bna)," 49.

Given that ex-husbands have frequently disregarded women's rights, the existence of these regulations demonstrates a clear trend in progressive legal changes in Religious Courts, favoring women and offering benefits and legal certainty.²⁰ SEMA No. 2/2019 was created to make alimony payments easier in wives-initiated divorce. It stipulates that payments will be made before the respondent takes possession of the divorce certificate. Undoubtedly, this SEMA gives women pursuing wives-initiated divorce fresh hope by guaranteeing the fulfillment of their legal rights.²¹

The most recent regulation is the Letter of Decree of The Director General of Religious Court Board (Badilag) Number 1960/DJA/HK.00/6/2021, which guarantees the protection of women's and children's rights after divorce. One of its contents is that judges must and should be encouraged to apply all legal standards to protect women's and children's rights following a divorce.

The Implementation of Fulfilling Women's Rights Post-Divorce

These divorce judgments from 2022 were case sampling selected from the Religious Court of Samarinda and the Religious Court of Sangatta, which are the subjects of this study. Before giving an overview of how post-divorce women's rights fulfillment occurs in the Religious Courts, these are some examples of divorce judgments. The table

²⁰ Harianti, Mansari, and Rizkal, 49.

²¹ Najichah, Qadri Azizah, "Implikasi Inisiatif Perceraian Terhadap Hak Nafkah Istri," 56, accessed September 7, 2021, https://scholar.google.co.id/citations?view_op=view_citation&hl=en&user=wCaFxfjIAAAAJ&citation_for_view=wCaFxfjIAAAAJ:zYLM7Y9cAGgC.

below divides these rulings into *talaq* and *cerai gugat* (women-initiated) divorces.

Table 1. *Talaq* Divorce Decisions of Samarinda Religious Courts and Sangatta Religious Courts Year 2022

No	Case	Reason For Divorce	Guarantees Of Protection Of Wife's Rights
1	No: 665/Pdt.G/2022/PA.Smd	The respondent is selfish and often takes the children away.	Through agreement: (a) <i>iddah</i> , (b) Mut'ah, (c) debt to the respondent's aunt to be paid, all of which must be provided in cash during the <i>talaq</i> pledge ceremony. (d) child support.
2	No: 1306/Pdt.G/2022/PA.Smd	Respondent does not like the petitioner's stepchild	None
3	No: 1112/Pdt.G/2022/PA.Smd	The respondent is disrespectful and often neglects the petitioner. In January	Agreement outcome: (a) <i>Idah</i> and Mut'ah paid in cash before the <i>talaq</i> pledge. (b)

No	Case	Reason For Divorce	Guarantees Of Protection Of Wife's Rights
		2022, the respondent left the shared residence.	Custody and child support.
4	No: 384/Pdt.G/2022/PA.Sgta	Respondent left in 2019 but often visits the house together to clean and see the children.	Through agreement: Mut'ah, due to indications of disobedience, paid before the <i>talaq</i> pledge.
5	No: 397/Pdt.G/2022/PA.Sgta	The respondent is dissatisfied with financial support.	Agreement outcome: (a) <i>Idah</i> and (b) <i>Mut'ah</i> . Child support.
6	No: 463/Pdt.G/2022/PA.Sgta	The respondent is stubborn and hard to advise. Since early 2022, the petitioner has left the house.	None

An overview of the types of women's rights that are accommodated and how they are gained may be found in the decisions of the two Religious Courts listed above, which include examples of various *talaq* divorce rulings

rendered in absentia (1 judgment) and in the presence of both parties (5 judgments).

Table 2. Wives-Initiated Divorce Decisions of Religious Courts of Samarinda and Sangatta

No	Case	Reason For Divorce	Guarantees of Protection of Wife's Rights
1	No. 1135/Pdt. G/2022/PA.Smd	Defendant's infidelity	Custody and child support
2	No. 1299/pdt.G/2022/PA.Smd/(verstek)	The defendant frequently gambles and receives an allowance from the defendant's parents, and the plaintiff has never been financially supported. In June 2022, the plaintiff was expelled by the defendant.	None
3	No. 1184/Pdt.G/2022/PA.Smd	The defendant is not open about finances, and	Idah and Mut'ah provided before receiving

No	Case	Reason For Divorce	Guarantees of Protection of Wife's Rights
		the couple has been separated since 2019.	the divorce certificate.
4	No. 396/Pdt.G/2022/PA.Sgta	The defendant is not honest about financial matters, has committed domestic violence, and in May 2022, the plaintiff left the shared residence.	None
5	No. 423/Pdt.G/2022/PA.Sgta (verstek)	The defendant is not transparent about money and has an extramarital affair.	None
6	No. 391/Pdt.G/2022/PA.Sgta	The defendant frequently lies, leaves the city without	None

No	Case	Reason For Divorce	Guarantees of Protection of Wife's Rights
		<p>informing the plaintiff, and watches pornography, and the plaintiff cannot fulfill the biological needs of the defendant.</p> <p>The defendant has committed domestic violence, and since July 2022, the defendant left the house.</p>	

From the examples of the description of 6 wives-initiated divorce, two cases were decided without the defendant (husbands), as can be seen from the descriptions of the six wives-initiated divorce rulings above, and four cases involved both parties. Of the six matters that accommodate the rights of the ex-wife, one case, the custody and the child maintenance one case, the other four things have no right whatsoever. These cases show the reason why women's rights are not accommodated; the

wives do not understand their rights post-divorce; the cases are decided in *verstek* decisions.

The Protection of Women's Rights Post-Divorces: Law in the Book vs Law in Action

Despite explicit regulations (KHI, SEMA, PERMA) that afford spouses protection after divorce, their provisions do not ensure complete satisfaction. The causes include aspects and procedures that do not fully support the achievement of these rights, as well as issues that affect women themselves and the role of judges.²² Does the same reason also occur in the Religious Court in East Kalimantan? The following case description will provide the answer.

The preceding analyses of *talaq* divorce and wives-initiated divorce verdicts offer a comprehensive glimpse into the extent to which women's rights are accommodated in divorce judgments as opposed to wives-initiated divorce verdicts. However, it is essential to note that the sample verdicts were solely comprised of six cases from the two Religious Courts under investigation and were randomly selected. Of the six rulings, four specifically address *iddah*, *mut'ah*, and child support (three rulings from the Religious Court of Samarinda, one from the Religious Court of Sangatta), and one ruling solely provides *mut'ah* (No. 384/Pdt.G/2022/PA.Sgta).

A comprehensive categorization of divorce judgments can be delineated as follows:

1. The rights of the ex-spouse and children will be upheld in the presence of both parties at the trial, as

²² Abu Rokhmad and Sulistiyono Susilo, "Conceptualizing Authority of the Legalization of Indonesian Women's Rights in Islamic Family Law," *Journal of Indonesian Islam* 11 (2017): 2, <https://doi.org/10.15642/JIIS.2017.11.2.489-508>.

per the respondent's (wife's) counterclaim (665/Pdt.G/2022/PA.Smd and No. 384/Pdt.G/2022/PA.Sgta).

- a) As observed in case No. 665/Pdt.G/2022/PA.Smd, the rights acquired consist of *iddah*, *mut'ah* provided prior to the decree of divorce, and child support through the wife's counterclaim or reconversion, often in the presence of an attorney. Case No. 384/Pdt.G/2022/PA.Sgta depicts a comparable circumstance; however, in this instance, the ex-wife only receives *mut'ah* due to her non-compliance.

Most wives, when filing for divorce, do not understand their rights, but since they were accompanied from the beginning by a lawyer, they explained and understood their rights so that they could obtain their rights after the divorce.

The presence of a lawyer provides benefits and facilities for the parties because, in addition to assisting in the legal proceedings, it also explains what rights will be acquired in the case of a divorce. It is like the Fatimah study²³ that in divorce cases, the lawyer has a role in them, accompanying the trial process and providing understanding and advice to the court. It benefits the parties because of the misunderstanding of the matter, the lack of time to advocate in court, and the limitation of knowledge about the legal procedure.²⁴

²³ Nuri Luthfia, Fatimah Zahara, and Siti Aminah, "Analisis Peran Advokat Dalam Menangani Perkara Perceraian," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 3 (February 3, 2023): 698, <https://doi.org/10.47467/as.v5i3.2845>.

²⁴ Luthfia, Zahara, and Aminah, 698.

- b) Consequences of agreements reached through mediation, as evidenced by the Religious Court of Samarinda Case No. 1112/Pdt.G/2022/PA.Smd and the Religious Court of Sangatta Case No. 397/Pdt.G/2022/PA.Sgta. The rights acquired are child maintenance, custody rights, *iddah*, and *mut'ah*, which were paid in cash before the divorce decree was issued. This point is in line with SEMA Number 2/ 2019.
2. When, as in case No. 463/Pdt.G/2022/PA.Sgta, all parties appear at trial, but the wife's rights are not upheld. The wife did not assert their right because they did not understand the rights they would obtain if their husband divorced them.
 3. Women's rights are not respected in default judgment instances, as demonstrated by case No. 1306/Pdt.G/2022/PA.Smd verdict. In decision *verstek*, the wife (woman) lost her right, except the judges used *ex officio* right.

According to Article 149 of the Compilation of Islamic Laws (KHI), in the event of a *talaq* divorce, the husband is required to provide child support and *mut'ah*, or a living allowance, if there is no evidence of the wife's disobedience (*nushuz*). Following SEMA 1/2017 regulations, the wife in case No. 665/Pdt.G/2022/PA.Smd was provided financial support before the *talaq* declaration, demonstrating the use of this norm.

This norm also confirms that the ex-wife's ability to support herself hinges on her not being a *nushuz*. One indication is that she leaves the house together. Meanwhile, *mut'ah* has nothing to do with the wife's attitude of disobedience because *mut'ah* is a form of

compensation and minimizes sadness because of her husband's divorce.²⁵

This is illustrated in ruling No. 384/Pdt.G/2022/PA.Sgta, where the judge did not accept the *iddah* maintenance submitted by the wife through a counterclaim because the wife left the shared residence. The trial demonstrated that the wife had left the house to ease tensions. Nevertheless, the petitioner's wives frequently visit to care for the kids and clean the home. Additionally, the petitioner declined to accept the request for financial support for his minor son. One of the reasons for this case is that the wife is categorized as having *nushuz*.

Given that he receives IDR. 18,000,000 a month as a Kaltim Prima Coal (KPC) employee, it is evident that the petitioner possesses the means to ensure the right to subsistence, but he does not fulfill this obligation. According to Article 41 of Act No. 1/74, which stipulates that after a divorce, the ex-husband is obligated to support his children until the adult child, the judge should have the authority to compel the petitioner to support his children in this situation. The indicator of *nushuz* in case No. 384/Pdt.G/2022/PA.Sgta is the wife leaving the shared residence.

The judges differ in their interpretation of *nushuz* and how it affects the rights of the former wife, as seen by the differing views in various Religious Courts. The judges in the Religious Court of Riau ruled, for example, that *nushuz* is when (1) a husband's order is not to be obeyed, (2) a wife leaves the house without permission and for apparent reasons, (3) a wife refuses when asked for sexual intercourse, (4) a wife has sex with another man, (5) a wife

²⁵ Nasriah, Busthami, and Baharuddin, "Perlindungan Hukum Hak-Hak Istri Pasca Perceraian," 209.

does not want to stay in the house together, (6) a wife files a lawsuit, and intimidating her husband.²⁶ Even the Religious Court of Bengkulu's judge stated that the wife's attitude is often in debt, and not keeping her husband's mercy is a form of *nushuz*.²⁷

Whether the *nushuz* indicator, as the opinion above, is binding or not, of course, should be seen as the factor why the wife committed the act. If, at first, the wife's attitude and behavior commit an act deemed unlawful because of the husband's attitude, then this should also be the judge's consideration in deciding whether a wife is *nushuz*.

These *nushuz* parameters give the impression that only the women in the household make mistakes. A disobedient wife even requests to ask to end her marriage. This shows discrimination against women. There is no provision for husbands to be *nushuz* when they can not fulfill their obligations. Numerous husbands in houses participate in *nushuz*. A husband's *nushuz* against his wife can be defined as follows: a) speaking angrily or reprimanding his wife, b) inflicting harm on her, c) abusing her,²⁸ and d) failing to carry out his inborn or internal

²⁶ Aprina Chintya, "Interpretasi Hakim Pengadilan Agama Di Riau Tentang Konsep Nushuz Dalam Perkawinan," *Tapis: Jurnal Penelitian Ilmiah* 2, no. 2 (2018): 210, <https://doi.org/10.32332/tapis.v2i2.1158>.

²⁷ Rosmawati Rosmawati, "Analisis Terhadap Pertimbangan Hakim Dalam Memutuskan Perkara Perceraian Karena Nushuz Isteri (Studi Kasus pada Putusan Perkara Nomor 0391/Pdt.G/2014/PA.Bn dan 8/Pdt.G/2015/PTA Bn)," *Qiyas: Jurnal Hukum Islam dan Peradilan* 3, no. 1 (April 1, 2018): 8, <https://doi.org/10.29300/qys.v3i1.957>.

²⁸ Rizqa Febry Ayu and Rizki Pangestu, "Modernitas Nushuz; Antara Hak Dan Kewajiban," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 1 (2021): 82, <https://doi.org/10.21043/yudisia.v12i1.8711>.

duties.²⁹ However, the judges of the Religious Court look more at the wife's *nushuz* than the husband's. This is detrimental to the wife because it results in the wife being unable to obtain the right to *iddah*. Because the requirements of *nushuz* are more closely viewed as a means of a wife's disobedience within the home and do not apply in the opposite situation as in the case of Article 83 paragraph (1) and Article 84 paragraph (1). *Nushuz* has a more significant impact, not merely a reduction in the rights of ex-wives but rather the value of justice and benefits for women.³⁰ It receives much criticism since *nushuz's* perspective is primarily male-oriented.³¹

Particular case No. 463/Pdt.G/2022/PA.Sgta involves the woman, a stay-at-home mom, and her husband, a temporary employee. Their two children are younger than ten years old. Eight months ago, the husband moved out of the shared apartment without giving any financial support. The ruling did not specify the rights of the former wife and the child. Given that the husband abandoned the family without offering any assistance, the woman in this situation may have been able to assert several rights, including *iddah*, *mut'ah*, and past-due support.

²⁹ Hulaimi Azhari and Ninda Ayu Nafisah, "Pembaruan Islam Bidang Keluarga: Relevansi dan Solusi Terhadap Persoalan Nushuz," *Familia: Jurnal Hukum Keluarga* 2, no. 2 (2021): 201, <https://doi.org/10.24239/familia.v2i2.31>.

³⁰ Muhammad Habib Adi Putra and Umi Sumbulah, "Memaknai Kembali Konsep Nushuz Dalam Kompilasi Hukum Islam Perspektif Gender & Maqashid Syariah Jasser Auda," *EGALITA* 15, no. 1 (2020): 45, <https://doi.org/10.18860/egalita.v15i1.10179>.

³¹ Rahmat ramadhan Rahmat, "Analisis Kompilasi Hukum Islam Pasal 84 Tentang Nushuz Istri Perspektif Mazhab Hanafi dan Mazhab Syafi'i," *Comparativa: Jurnal Ilmiah Perbandingan Mazhab Dan Hukum* 2, no. 1 (2022): 69, <https://doi.org/10.24239/comparativa.v2i1.21>.

Nevertheless, these rights were not respected, perhaps because the husband was unaware of his responsibilities.

If the departure of one of the parties is considered an indicator of misconduct, as previously mentioned, then the description of case No. 463/Pdt.G/2022/PA.Sgta indicates the husband's misconduct for leaving the house jointly and for failing to fulfill duties and obligations as a husband. It is anticipated that the judge in case No. 463/Pdt.G/2022/PA.Sgta would exercise empathy in deciding to provide greater justice for women and children.

Cases No. 665/Pdt.G/2022/PA.Smd and No. 384/Pdt.G/2022/PA.Sgta above also shows the importance of having lawyers during the divorce process. The wife's rights are accommodated because she was accompanied by a lawyer at the time of the trial. Meanwhile, an attorney did not assist the wife in case No. 463/Pdt.G/2022/PA.Sgta. The role of a lawyer, apart from being a legal advisor, is also to defend the client's interests.³² In cases No. 665/Pdt.G/2022/PA.Smd and No. 384/Pdt.G/2022/PA.Sgta, lawyers also fight for clients' rights apart from assisting.

The narrative of wives-initiated divorce verdicts (6 cases) and *talaq* divorce verdicts (6 cases) in the two aforementioned Religious Courts reveals:

- 1) The judgment attended by the plaintiff and the defendant does not guarantee the fulfillment of women's and children's rights after divorce, as seen in cases No. 391/Pdt.G/2022/PA.Sgta and No. 396/Pdt.G/2022/PA.Sgta because the plaintiff only focuses on requesting a divorce and does not understand their rights after divorce.

³² Luthfia, Zahara, and Aminah, "Analisis Peran Advokat Dalam Menangani Perkara Perceraian," 698.

- 2) A decision not attended by the husband also does not give any rights to the ex-wife, as seen in cases No. 1299/Pdt.G/2022/PA.Smd and No. 423/Pdt.G/2022/PA.Sgta.
- 3) In the presence of the plaintiff and the defendant, the rights of the ex-wife are acquired because the plaintiff was accompanied by legal counsel (No. 1184/Pdt.G/2022/PA.Smd). As for her rights to divorce, the *iddah* and *mut'ah* are given before obtaining the divorce certificate.
- 4) The role of the non-judge mediator is very influential in accommodating the custody and subsistence of the child, as depicted in No. 1135/Pdt.G/2022/PA.Smd. For this case, the role of the mediator has been explaining children's rights, encouraging the parties to put forward the best interests of the child, and reminding the obligation of both parties to fulfill the needs and the cost of their children's lives if the divorce was undertaken. The mediator not only serves as a communicator between the tense husband and wife but also successfully negotiates the desires of both parties, especially the wife's. At the same time, they focus on the interests of the child who is most affected by the divorce.³³

Of the six divorces filed, 4 cases were settled in the presence of the husband and wife, the right to divorce and *mut'ah* 1 case (No. 1184/Pdt.G/2022/PA.Smd), one

³³ Achmad Taufik, Hasbullah, Suhaimi, Win Yuli Wardani, "Pentingnya Mediasi dalam Penyelesaian Perkara Perceraian di Pengadilan Agama: Membangun Solusi yang Berkelanjutan," April 18, 2023, 343, <https://fh.unira.ac.id/Penelitian/377/achmad-taufik-s-h-m-h/pentingnya-mediasi-dalam-penyelesaian-perkara-perceraian-di-pengadilan-agama-membangun-solusi-yang-berkelanjutan>.

included custody of children and their livelihoods (No. 1135/Pdt.G/2022/PA.Smd), while the rest did not get anything.

In Case No. 391/Pdt.G/2022/PA.Sgta, the defendant, is a private employee, while the plaintiff, a wife, is solely employed as a housewife. She married in 1999, and the two had four unmarried children. The defendant has committed domestic violence against the wife and is not forthcoming regarding their revenue. However, neither a mother nor a child are present in the trial.

The lawsuit's Cases No. 391/Pdt.G/2022/PA.Sgta and No. 396/Pdt.G/2022/PA.Sgta made no claims for maintenance—just a divorce. Because he will decide based on the case's merits, the judge is more submissive. On the other hand, in their ex officio capacity, the judge has the authority to grant rights without the plaintiff's request. If we read the existing facts, that right can be utilized by the judge in this case to produce a ruling in favor of the woman, especially since there are no indications of the wife's disobedience.

A wife's unilateral divorce is a mark of respect and defense of women's human rights. However, there will not be a reconciliation if the woman asks for a divorce,³⁴ and it is thus seen as a kind of disobedience;³⁵ as a result, she is

³⁴ Alfian Qodri Azizi Najichah, "Implikasi Inisiatif Perceraian Terhadap Hak Nafkah Istri," *Journal of Islamic Studies and Humanities* 5, no. 1 (December 17, 2020): 54, <https://doi.org/10.21580/jish.v5i1.6960>.

³⁵ Sheila Fakhria, "Cerai Gugat Dan Implikasinya Terhadap Hak-Hak Finansial Perempuan," *Legitima: Jurnal Hukum Keluarga Islam* 1, no. 1 (2018): 118, <https://doi.org/10.33367/legitima.v1i1.648>.

without rights.³⁶ In this instance, achieving justice for women is difficult.³⁷

As previously mentioned, *mut'ah* is offered as comfort. It is highly uncommon for this entitlement to be awarded in divorce cases because it is assumed that the woman is the one filing and that compensation is not necessary. Therefore, the ex-wife's rights are mainly determined by the judge's decision in the claimant's divorce case.

The court plays a significant role³⁸ in ensuring that women's rights upon divorce are realized.³⁹ In order to increase the value of judgments for justice,⁴⁰ he ought to take a more active role.⁴¹ Depending on his role, the

³⁶ Dea Mahartika, "Ratio Decidendi Majelis Hakim Tentang Hak Ex Officio Hakim Dalam Memberikan Hak Asuh Dan Nafkah Anak Pada Perkara Cerai Talak," *UNISKA LAW REVIEW* 1, no. 2 (December 21, 2020): 53, <https://doi.org/10.32503/ulr.v1i2.177>.

³⁷ Anita Marwing, "Perlindungan Hak-Hak Perempuan Pasca Perceraian (Studi Terhadap Putusan Pengadilan Agama Palopo)," *Palita: Journal of Social-Religion Research* 1 (August 16, 2018): 47, <https://doi.org/10.24256/pal.v1i1.60>.

³⁸ Mansari Mansari and Moriyanti Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Isteri Pasca Perceraian," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 1 (October 14, 2019): 43–58, <https://doi.org/10.22373/equality.v5i1.5377>.

³⁹ Indriati Amarini, "Generating A High Quality and Integrity Career Judges Recruitment Post-Constitutional Court Decision Number 43/Puu-Xiii/2015," *Jurnal Dinamika Hukum* 18, no. 3 (September 14, 2018): 301, <https://doi.org/10.20884/1.jdh.2018.18.3.1960>.

⁴⁰ Koko Komaruddin, "Gender Bias in Interpretations of Domestic Violence in Rural Areas: A Case Study in Ciamis District, Indonesia," *Pertanika Journal of Social Sciences and Humanities* 27, no. 1 (2019): 457–65.

⁴¹ Eka Susylawati, "The Acceptability of Active Judge Principle in Divorce Talak Cases of Religious Courts at Madura to Assure The Wife's Rights," *Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 267–82, <https://doi.org/10.19105/al-ihkam.v14i2.2396>.

protection of women's rights will result in the enforcement and justice of the law.⁴²

Because the ex-wife expressly specified them in her claim, her rights are included in the divorce case No. 1184/Pdt.G/2022/PA.Smd. As per the directive of the Director General of the Supreme Court with number 1960/DJA/HK.00/6/2021, submitting those rights is admissible, provided there is no disobedient attitude on the wife's part (*nushuz*).

In addition, the complainant has relatively high comprehension and information. This understanding was reached because legal counsel initially accompanied the wife. In this case, the lawyer provides a legal understanding of the matter and its position to the parties involved in submitting a request or lawsuit.

Following SEMA Number 2/2019, an *iddah* and *mut'ah* are issued before the divorce is accepted. This suggests that the Religious Court of Samarinda has adopted the norm—applying this standard as a preventative measure against women and as a means of denying husbands.⁴³ Nevertheless, as SEMA No. 2/ 2019 is more of a suggestion than a mandate, not all judges apply it.⁴⁴ In the Religious Court of Nganjuk,⁴⁵ for example,

⁴² Rasyidin Rasyidin, Dian Eriani, and Ade Soraya, "The Role of Religious Courts in Protecting Women'S Rights in Distribution of Joint Property," *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 1, no. 2 (2021): 245–54, <https://doi.org/10.54443/ijerlas.v1i2.115>.

⁴³ Najichah, "Implikasi Inisiatif Perceraian Terhadap Hak Nafkah Istri," 57.

⁴⁴ Irman Fadly, "Mencari Instrumen yang Efektif dalam Pemenuhan Hak Istri dan Anak Akibat Perceraian | (14/12) - Direktorat Jenderal Badan Peradilan Agama," accessed August 26, 2024, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/mencari-instrumen-yang-efektif-dalam-pemenuhan-hak-istri-dan-anak-akibat-perceraian>.

⁴⁵ Rachmatulloh, "Pemenuhan Hak Perempuan Pasca Cerai Gugat," 22.

there has been no application of SEMA No. 2/ 2019 because the judge holds that the presence of the husband and *nushuz*-not the ex-wife determines the realization of nothing. Furthermore, it is accused in the petition of abandoning the *ba'in sughra* divorce and subsequently denying women the ability to obtain post-divorce rights.

At Kediri Religious Court, the same outcomes are observed.⁴⁶ In this instance, it appears that the judge maintains a conservative belief that a divorce in court denies women their rights.⁴⁷

The following can be discovered, at least, in the typology of women who file cases in Religious Courts:

- 1) The first is to recognize his rights since he was aware of them from the beginning, regardless of whether he learned them from the accompanying attorney or on his own. With this kind of typology, the divorce case is about requesting a divorce and acquiring post-divorce rights. At case No. 1184/Pdt.G/2022/PA.Smd, in this instance, fits into this group. According to Article 80(2) of the Compilation of Islamic Law (KHI), the judge's decision about the survivor's survival depends on the ex-husband's skill and financial capability.
- 2) Second, Women in this typology generally do not care about their rights and believe that getting a divorce is preferable to staying together but not being happy. Therefore, they know their rights but ignore them in favor of their divorce. Perhaps they were aware of her rights, but they also knew that the ex-husband would

⁴⁶ Moch Ichwan Kurniawan, Nurul Hanani, and Rezki Suci Qamaria, "Hambatan Pelaksanaan SEMA No. 2 Tahun 2019 Terhadap Pemenuhan Hak-Hak Perempuan Pasca Cerai Gugat Di Pengadilan Agama Kabupaten Kediri," *Al-Syakhsyiyah: Journal of Law & Family Studies* 4, no. 1 (September 1, 2022): 95-96, <https://doi.org/10.21154/syakhsyiyah.v4i1.3962>.

⁴⁷ Najichah, "Implikasi Inisiatif Perceraian Terhadap Hak Nafkah Istri."

not grant them to her because of his reckless behavior in the home.

- 3) Third, she does not know her rights; thus, the litigation is only about getting a divorce. Divorce cases No. 1135/Pdt.G/2022/PA.Smd, No. 391/Pdt.G/2022/PA.Sgta, and No. 396/Pdt.G/2022/PA.Sgta all demonstrate this.

Typologies two and three are meant in line with Mansari's study that (1) the understanding of the wife's rights is low; (2) the wife's primary focus is the divorce; (3) the wife is very disappointed with her husband; (4) the wife avoids the stigma of the gold digger.⁴⁸

The preceding account of the judgments in divorce cases (six cases) and divorce cases (six cases) before the two Religious Courts demonstrates:

Out of the six divorce proceedings that consider the rights of the ex-wife and the kid, four judgments have been rendered; the other two are void since one was terminated by default and the other, even if done in front of both parties, does not exist.

According to the six decisions that consider the child's rights, only one also considers the ex-wife's rights. Two of the four things are canceled by default and do not consider the rights of the former wife, while the remaining four have no rights at all.

The representation suggests that women's rights are frequently upheld in divorce rulings in contrast to divorce proceedings. Following a divorce, the following circumstances contribute to the non-accommodation of women's rights: (a) cases are resolved automatically; (b) signs of the wife's noncompliance; (c) women are not well-

⁴⁸ Mansari and Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Isteri Pasca Perceraian," 54.

informed about their legal rights; (d) judge support for women is lacking.

As previously stated, the fact that cases are decided in absentia is one of the reasons women's rights are not fulfilled following divorce. Nearly all Religious Courts are dominated by this type.

Like the Religious Court of Bandung, over 70% of cases are decided yearly without a defendant present. With an 80% rate, the Religious Court of Makassar experiences the same issue.⁴⁹ A similar situation is also seen in several East Kalimantan Religious Courts. One such court is the Samarinda Religious Court, where 1,467 divorce cases were accepted in 2021, and 1,151 cases (78.45%) were decided absentia. Of the 578 divorce cases in Sangatta Religious Court, 457 were handled without a defendant present.

The plaintiff's inability to establish the respondent's income is one of the absentia verdicts' many flaws⁵⁰ because (1) child custody arrangements are left undetermined, and (2) alimony and *iddah*, if due, cannot be paid, absentia decisions do not offer legal protection for women and children.⁵¹ Several default judgments from two wives-initiated divorce and one divorce by *talaq* from the Religious Courts of Samarinda and Sangatta completely disregard the rights of the ex-wife and the children.

⁴⁹ 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 (May 19, 2022): 442, <https://doi.org/10.20885/iustum.vol29.iss2.art10>.

⁵⁰ Nasution and Muchtar, "Access to Justice for Women and Children in Divorce Cases in the Indonesian Religious Courts."

⁵¹ Dian Saputra Saputra, Jamaluddin Jamaluddin, and Yulia Yulia, "Perlindungan Hak Perempuan dan Anak Dalam Putusan Verstek Di Mahkamah Syar'iyah IDI," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 9, no. 2 (2021): 6-7, <https://doi.org/10.29103/sjp.v9i2.4799>.

In addition to the multiple judgments of absentia that deny the wife's rights, the wife's improper conduct also plays a role. Because there is a distinction in who is deemed to be committed to *nushuz*, the *nushuz* category is regarded as discriminatory.

The description above provides an overview of why the fulfillment of women's rights after divorce is less than optimal, and it can even be said that very few are accommodated. Supporting evidence is statistics from Badilag, which indicates that in 2020, just 3% of 478,381 divorce verdicts awarded the ex-wives' rights.⁵²

Bangkalan Religious Court made a similar observation: of 1,745 divorce rulings rendered in 2019, just 8 cases resulted in the wife's rights being awarded following the divorce and becoming legally enforceable.⁵³

The inadequate fulfillment of women's rights post-divorce, as outlined above, indicates a weakness in legal protection and a lack of legal certainty regarding their rights.⁵⁴ Not all of these rights are realized, despite the expectation that the ex-husband would be required to provide post-divorce financial support as a preventive measure to ensure that the ex-wife's life is not abandoned

⁵² "Dialog Ditjen Badilag MA-RI Dan FCOA Perlindungan Hak Dan Akses Keadilan Bagi Perempuan Dan Anak - Direktorat Jenderal Badan Peradilan Agama," accessed November 2, 2022, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/dialog-ditjen-badilag-ma-ri-dan-fcoa-perlindungan-hak-dan-akses-keadilan-bagi-perempuan-dan-anak>.

⁵³ Galuh Widitya Qomaro, "Agensi Hakim Pengadilan Agama Bangkalan Dalam Pemenuhan Hak Istri Pasca Cerai," *Mahkamah: Jurnal Kajian Hukum Islam* 6, no. 1 (2021): 75, <https://doi.org/10.24235/mahkamah.v6i1.7455>.

⁵⁴ Siti Musawwamah, "The Implementation of PERMA Number 3 of 2017 Concerning the Guidelines for Dealing with Women's Cases on Laws as an Effort of Women Empowerment in The Judiciary in Madura," *Jurnal Hukum Dan Pranata Sosial* 15, no. 1 (2020): 69, <https://doi.org/10.19105/al-lhkam.v15i1.2883>.

and that she is left to live alone without the husband, who has been providing for her livelihood.⁵⁵

Conclusion

Although the assurance of protection for women's rights after a divorce is commendable in theory, current regulations fail to ensure the safeguarding of these rights sufficiently. The findings indicate that the protection of post-divorce women's rights is not adequately realized, as not all the rights of former wives in the Religious Courts are adequately accommodated, especially the alimony (*nafkah iddah*). This is due to several variables, such as the nature of the case, the parties involved, the attitudes of the judges, and the lack of supportive implementation of the procedures.

Only two Religious Courts in East Kalimantan, namely Samarinda and Sangatta, were investigated in this study. Further research scope and location expansion are necessary for a more thorough outcome. More in-depth research on the same issue is necessary to determine whether the guarantee of post-divorce women's protection has been successfully implemented or vice versa.

⁵⁵ Salsabeela Adnya, "Analisis Yuridis Pandangan Hakim Pengadilan Agama Sukoharjo Terhadap Pelaksanaan Putusan Tuntutan Nafkah Pasca Cerai," *AL-HUKAMA'* 7, no. 2 (2018): 308, <https://doi.org/10.15642/alhukama.2017.7.2.305-332>.

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