

PROTECTION OF WOMEN'S RIGHTS AFTER DIVORCE IN DIVORCE LAWSUIT AT THE PADANG PANJANG RELIGIOUS COURT

Zakiah Ulya

UIN Sjech M.Djamil Djambek Bukittinggi, Indonesia, zky.ulya@gmail.com

Endri Yenti

UIN Sjech M.Djamil Djambek Bukittinggi, Indonesia, endriyenti@uinbukittinggi.ac.id



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Abstract

Divorce is one of the reasons for the breaking of the binding rope between husband and wife. Divorce occurs due to the disharmony of the relationship between husband and wife in carrying out their rights and obligations in a family. The existence of divorce does not mean the release of the husband's responsibility to provide for the ex-wife. There are still some obligations of the husband to provide for his wife after the breakup of divorce, according to applicable regulations. The rights of wives after divorce are regulated by Law Number 1 of 1974 and the compilation of Islamic law in the form of Iddah, mut'ah, madhiyah, hadhanah, and children. This applies not only to divorce cases but also to lawsuit divorces. The purpose of this study is to determine the judge's decision that accommodates the rights of wives after divorce in divorce cases. As well as what rights are imposed on the husband. This research method uses qualitative methods that are more devoted to field research, namely research whose object is a judge's decision that accommodates the rights of wives after divorce in divorce cases. The results showed that out of 237 divorce cases, only 28 rulings gave wives post-divorce rights. The decision of the judge of the Padang Panjang Religious Court regarding women's rights is concluded as follows: (1). There are still divorce cases with vertex judgements that do not contain the rights of wives because the judge only decides cases by the material of the lawsuit, so the judge does not (2). Not all divorce cases accommodate claims regarding their rights as wives. Although judges have ex officio rights in determining the rights of women (wives), whether requested or unsolicited, the judges of the Padang Panjang Religious Court exercise their rights ex officio to punish husbands for providing *iddah*, *mut'ah*, and past income according to ability and eligibility.

Keywords : Women's Rights, Divorce, Lawsuit

Abstrak

Perceraian merupakan salah satu sebab putusnya tali pengikat antara suami dan isteri. Perceraian terjadi akibat tidak harmonisnya hubungan antara suami dan isteri dalam menjalankan hak dan kewajibannya di dalam sebuah keluarga. Adanya perceraian bukan berarti lepasnya tanggung jawab suami untuk memberikan nafkah kepada mantan Istri. Masih ada beberapa kewajiban suami untuk memberikan nafkah kepada sang istri pasca putusnya perceraian menurut ketentuan yang berlaku. Hak istri pasca perceraian yang diatur oleh Undang-undang Nomor 1 Tahun 1974 dan kompilasi hukum Islam berupa nafkah Iddah, mut'ah, nafkah madhiyah, hadhanah dan nafkah anak. Hal ini berlaku tidak hanya untuk perkara cerai talak, tetapi juga cerai gugat. Tujuan dari penelitian ini adalah untuk mengetahui keputusan hakim yang mengakomodir hak istri pasca perceraian dalam perkara cerai gugat. Serta hak-hak apa saja yang dibebankan kepada suami. Metode penelitian ini menggunakan metode kualitatif yang lebih dikhususkan pada penelitian lapangan, yaitu penelitian yang objeknya adalah putusan hakim yang mengakomodir hak-hak istri pasca perceraian dalam perkara cerai gugat. Hasil penelitian menunjukkan bahwa dari 237 perkara cerai gugat hanya 28 putusan yang memberikan hak-hak istri pasca perceraian. Putusan hakim Pengadilan Agama Padang Panjang mengenai hak-hak perempuan, disimpulkan sebagai berikut: (1). Kasus perkara cerai gugat dengan putusan verstek masih ada yang tidak memuat hak-hak istri, karena hakim hanya memutuskan perkara sesuai dengan materi gugatan sehingga hakim tidak (2). Kasus perkara cerai gugat belum semua yang mengakomodir gugatan mengenai haknya (istri). Meskipun hakim memiliki hak ex officio dalam menentukan hak-hak perempuan (istri) baik diminta maupun tidak diminta, namun hakim Pengadilan Agama Padang Panjang menggunakan haknya secara ex officio menghukum suami untuk memberikan nafkah iddah, mut'ah, dan nafkah lampau sesuai dengan kemampuan dan kelayakan.

Kata Kunci : Hak Perempuan, Perceraian, Gugat

Introduction

Marriage is an inner birth bond between a man and a woman, as husband and wife, to form a happy and eternal family (household) based on the One True Godhead. Marriage is a very strong covenant, or *mitsaqan ghalidzan*, to obey Allah's commandments and perform them as worship, as mentioned in Article 2 of the compilation of Islamic law¹. In Islamic law, marriage is known as *nikah*. Marriage in Islam aims to form a family to continue offspring and strive for tranquilly in the household to be created based on love and affection².

In Islamic law, marriage is known as *nikah*. Marriage in Islam aims to form a family to continue offspring and strive for tranquilly in the household to be created based on love and affection³. Through marriage, humans can meet each other's needs and complement each other⁴.

However, home life does not always run smoothly, and because of certain circumstances, some things require the breakup of a marriage. The breakup of marriage can occur due to several⁵ possibilities, namely: (1) death; (2) divorce; and (3) the breakup of marriage at the will of the wife because the wife sees something that wants the breakup of the marriage while the husband does not want it. The wife conveys her will in a certain way; this is accepted by the husband and continued with his speech to break the marriage, and this is called *khulu'*, and (4) Upon the Court's Decision, the termination of marriage is at the will of the judge as a third party after seeing and considering the existence of a matter that indicates the discontinuation of the marriage relationship, commonly called *fasakh*.

Divorce is a painful decision for husband and wife. Divorce is also a lawful thing but hated by Allah SWT. In Law Number 7 of 1989 concerning Religious Courts and the compilation

of Islamic law, it is known as divorce *talaq* and divorce lawsuit. Article 39 of the Marriage Law states "to consummate a divorce there must be sufficient grounds that between husband and wife will not be able to get along as husband and wife". *Cerai talaq* is a divorce filed by the husband while *cerai gugat* is a divorce filed by the woman as a wife. In the Compilation of Islamic Law explained about *talaq*, *talaq* is the husband's vow before a religious court which is one of the causes of the breakup of marriage, in the manner referred to in articles 129, 130, 131 of the Compilation of Islamic Law.

Although marriage regulations in Indonesia not only position women to be the object of divorce from the husband's side but also give space to the wife to be the subject of a divorce, Divorce can be filed by women through divorce lawsuits accommodated in marriage law in Indonesia. Facts show that divorce is not easy to do with the fulfilment of justice for women. Many rulings grant lawsuits, while the justice that women expect through the divorce process is often not fulfilled when they have to lose their right to provide for themselves, are separated from children because of guardianship rights, and face negative stigma in society because of the title of widow they bear.

Domestic disputes that end in divorce often place the wife as the disadvantaged party. Especially related to the neglected wife's livelihood (*madhiyah* bread), which is one of the post-divorce problems in addition to other problems such as *iddah* and *mut'ah* bread. The livelihood of a wife neglected by her husband is her right and can be prosecuted through the courts. If the husband never provides for a living, as long as their relationship is not harmonious, Legally, the husband is obliged to provide for the

¹ Mohammad Daud Ali, *Hukum Islam Dan Peradilan Agama*, cet. II (Jakarta: Raja Grafindo Persada, 2002), 5.

² Abdurrahman, *Himpunan Peraturan Perundang-Undangan Tentang Perkawinan* (Jakarta: CV Akademika Pressindo, 1986), 64.

³ Hamdan Rasyid, *Fiqh Indonesia* (Jakarta: P.T al-Mawardi, 2003), 171.

⁴ Abd Rahman Ghazaly, *Fiqh Munakabat* (Jakarta: Kencana, 2003), 12.

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wife during the marriage until and ends with the end of the wife's iddah period.

When the divorce occurs at the will of the husband, the former wife is entitled to a living born from her husband during the period of Iddah. This is stated in Article 149 of the Compilation of Islamic Law, which states that if the marriage breaks up due to talaq, the ex-husband is obliged to provide bread, *maskan*, and *kiswa* to the ex-wife during the iddah period unless the ex-wife is sentenced to talaq ba'in or nusyuz and is not pregnant.

In addition, the income that is not provided during the existence of the marital relationship becomes a debt that must be settled even if the marriage bond is broken. Husbands often neglect these obligations when there are ongoing disputes in the family. The consequences that are usually faced are separation between married couples with different residences. Separation of the residence of the husband and wife does not result in the cessation of providing for the living. Not given while still bound in the marriage bond, the wife has the right to claim back her rights. Even husbands in distressed or poor economic conditions do not abort their obligation to provide for them.⁶ This income is also called past income (madhiyah bread), which is not paid by the party who is obliged to carry it out. Although not a few women can meet their needs, there are even those whose income exceeds that of their husbands.⁷

The problem that often occurs in religious courts is the non-accommodation of wives' rights related to madhiyah, iddah, and mut'ah bread. In addition, demands for nafaqah māḍiyah (past bread) for children are often ignored in religious court rulings.⁸ This is very detrimental for women because the rights that should be obtained are lost.

⁶ Jumni Nelli, "Analisis Tentang Kewajiban Nafkah Keluarga Dalam Pemberlakuan Harta Bersama," *Al-Istinbath: Jurnal Hukum Islam* 2, *Jurnal Hukum Islam* 2 (2017).

⁷ Endri Yenti, "Wanita Bekerja Menurut Islam: Analisis Gender," *Kafa'ah: Journal of Gender Studies* 1, no. 1 (2011): 111, <https://doi.org/10.15548/jk.v1i1.49>.

⁸ Mohd Nasran Mohamad Firdaus Firdaus, Ismail Ismail, Busyro Busyro, Endri Yenti, "Post-Divorce Child's

Especially in divorce cases that are decided in a situation where the husband (the defendant) is not present at the trial, the husband's absence does not prevent the judge from breaking the marital relationship. The judge has the authority to decide it in the form of a vertices ruling. Often, in a lawsuit, the wife does not claim back these benefits. Though the rule of law protects his right to regain.⁹ In addition, the wife also cannot explain or prove the husband's income.

Religious justice is one of the most effective means of realising access to and control over gender-equitable rights. It is in this area that research on religious court rulings is important to see how judges as decision-makers empathise with women whose rights are often neglected, especially in divorce cases. Thus, this article aims to find out how the fulfilment of women's rights after divorce in the case of divorce lawsuit at the Padang Panjang Religious Court, as well as how the analysis of the decision of the judge of the Padang Panjang Religious Court regarding women's rights after divorce is perspective maqashid shari'ah.

Method

This research method uses qualitative methods that are more devoted to field research, namely research whose object is a judge's decision that accommodates the rights of wives after divorce in divorce cases

Result and Discussion

Wife's Rights After Divorce in Divorce Lawsuit

Divorce in marriage law in Indonesia is regulated in articles 38 to 41 of the Marriage Law Number 1 of 1974, and divorce procedures are

Nafaqah Māḍiyah: An Analysis of the Shifting from Fulfilment to the Assertion of Ownership Rights," *Al-Ahkam* 33, no. 1 (2023): 45–62, <https://doi.org/10.21580/ahkam.2023.33.1.14566>.

⁹ 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 (2019): 43, <https://doi.org/10.22373/equality.v5i1.5377>.

regulated in articles 14 to 36 of Government Regulation Number 9 of 1875 and technically regulated in the Regulation of the Minister of Religious Affairs Number 3 of 1975. In the Compilation of Islamic Law, articles 113–162 formulate more detailed legal lines regarding the causes of divorce, procedures, and legal consequences.

According to Article 38 of Law Number 1 of 1974, divorce is the "breakup of marriage." What is meant by marriage is the inner birth bond between a man and a woman as husband and wife, to form a happy and eternal family based on the divinity of the Almighty." Following Article 40 of Law Number 1 of 1974, "Divorce lawsuit submitted to the Court," This is confirmed by Article 115 of the Compilation of Islamic Law, which states, "Divorce can only be carried out before a religious court after the religious court has tried and failed to reconcile both parties."

Legal regulations in Indonesia recognise the principle of complicating divorce or preventive principles, which aim to maintain the integrity of the household. With the difficulty of the divorce process, it is expected that the party who filed for divorce will think again about doing a divorce and change his desire to divorce. Law Number 1 of 1974 regulates the divorce lawsuit process listed in Article 39:

- 1) Divorce can only be done before a court after the court concerned has tried and unsuccessfully reconciled both parties.
- 2) To divorce, there must be sufficient reason that the husband and wife will not be able to get along as husband and wife.
- 3) The procedure for divorce before the court is regulated by the laws and regulations.

In the legal system of marriage in Indonesia, the breakup of a marriage due to divorce can be divided into two parts, namely divorce, talaq, and lawsuit. Divorce talaq is a divorce desired by the

husband and submitted to the Religious Court; in the judicial process, it is called a divorce petition. While a divorce lawsuit can be interpreted as a divorce desired by the wife and submitted to the religious court, in the judicial process, it is called a divorce lawsuit. In general, the implementation of divorce lawsuits involves the wife suing her husband for divorce through the court, which then grants the lawsuit so that it breaks the relationship between the plaintiff (wife) and the defendant.¹⁰

A divorce lawsuit filed can be considered one of the efforts to claim rights for the husband. In other words, a wife who files for divorce means to claim her rights that have been harmed by her husband, so she needs and asks for definite and fair legal protection from the court that has the authority to examine, adjudicate, and decide her divorce case. A claim of right must have sufficient legal importance, which is the primary condition for the admissibility of the claim of right by the court.¹¹

To file for divorce in court, it must have sufficient and feasible interests and have a legal basis. These reasons must have been regulated in laws and regulations as national law and included in Islamic law and customary law, which are the basis or legal basis for filing a divorce lawsuit in court.¹²

Article 73 of Law No. 7 of 1989, jo. Law No. 3 of 2006, jis. Law Number 50 of 2009 states that a divorce lawsuit is filed by the wife or her attorney with the court whose jurisdiction includes the plaintiff's residence unless the plaintiff intentionally leaves the joint residence without the plaintiff's permission.¹³

If the wife, as the plaintiff, resides outside the country, the divorce lawsuit is filed with the Religious Court, whose jurisdiction includes the place where their marriage took place, or the Central Jakarta Religious Court.¹⁴ Divorce results in several legal consequences in the form of rights

¹⁰ Ali, *Hukum Perdata Islam*, 906.

¹¹ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty Press, 2006), 53.

¹² Muhammad Syaifuddin Dkk, *Hukum Perveraian*, Cet. II (Jakarta: Sinar Grafika, 2014), 135.

¹³ Dedi Supriyadi dan Mustofa, *Perbandingan Hukum Perkawinan Islam Di Dunia Islam* (Jakarta: Pustaka Al-Fikriis, 2009), 197.

¹⁴ Muhammad Syaifuddin Dkk, *Hukum Perveraian*, 255.

and obligations. The obligations of a husband who has imposed talaq on his wife can be described into several types, namely giving mut'ah, providing for both clothing and residence for the former wife during the iddah period, and paying or paying payment to the dowry.

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1. Right to get Nafkah, Maskan, and Kiswa

Etymologically, the word "nafkah" comes from the Arabic *النفقة* meaning *المصروف والنفاق*, i.e., cost, shopping, spending money. According to Amir Syarifuddin, the word nafaqah comes from the word *انفق* in Arabic, which etymologically means: *وقل نقص*, which means reduced. Also means *فنى وذهب*, which means lost or gone.¹⁶ Nafkah is divided into two categories. First, prioritize living for yourself. Second, providing for others, which is due to marriage, kinship, and ownership.¹⁷ Nafkah is an expense made to the person for whom he is responsible. *Nafkah* can also be understood as a consequence of the existence of a marital bond. The scholars agree that after the marriage contract the wife has the right to earn a living.

The right to have *nafkah*, *maskan*, and *kiswa* referred to is the income during the iddah period given by the husband to the wife during the iddah period. Iddah comes from the words *al-add* and *al-ihsha*, i.e., something that is counted by the woman; she occupies it in a few days and periods. Iddah is a time for women to wait and prevent them from marrying after the death of their husband or separating from him.¹⁸ Iddah is one of the obligations for a wife who is divorced by her husband, either a divorce caused by talaq from the husband or because of the wife's lawsuit to the court.¹⁹

In the Compilation of Islamic Law, the provisions regarding the livelihood of Iddah are stipulated in Article 153. For a wife who breaks her marriage, there is a waiting period, or iddah, except *qabla al dukhul*, and the marriage is not broken because of the death of the husband. Then, for a widow, if the marriage breaks up due to death, even though *qabla al dukhul*, the waiting time is set at 130 (one hundred thirty) days. If the marriage is broken due to divorce, the waiting time for those who are still menstruating is set at three holy times with at least ninety days, and for those who do not menstruate, it is set at 90 (ninety) days.

If the marriage breaks up due to divorce, the grace period of iddah is calculated from the fall of the religious court decision, which has permanent legal force, while for marriages that break up due to death, the grace period is calculated from the death of the husband. The waiting time for menstruating wives is at the time of undergoing iddah, not menstruating due to breastfeeding, and then the iddah is three times the time of menstruation. In that case, if it is not due to breastfeeding, then the iddah is for one year, but if

¹⁵ Mohammad Idris Ramulyo, *Hukum Perkawinan Islam "Suatu Analisis Dari Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam"* (Jakarta: Bumi Aksara, 1999), 190.

¹⁶ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakabat Dan Undang-Undang Perkawinan*, Ed. 1. Cet (Jakarta: Kencana, 2009), 165.

¹⁷ Wahbah Zuhaili, *Fiqh Imam Syafi'i: Mengupas Masalah Fiqhijah Berdasarkan Al-Qur'an Dan Hadits* (Jakarta: Al-Mahira, 2010), 41.

¹⁸ Ali Yusuf As-Subki, *Fiqh Keluarga: Pedoman Berkeluarga Dalam Islam* (Jakarta: Amzah, 2010), 348.

¹⁹ Fadhilatul Maulida and Busyro Busyro, "Nafkah Iddah Akibat Talak Ba`In Dalam Perspektif Keadilan Gender (Analisis Terhadap Hukum Perkawinan Indonesia)," *ALHURRIYAH: Jurnal Hukum Islam (ALHURRIYAH JOURNAL OF ISLAMIC LAW)* 3, no. 2 (2018): 113.

within that year she menstruates again, then her iddah becomes three times the holy time.

This income is excluded for ex-wives who are *nusyuz*. What *nusyuz* means is a condition where a woman, as a wife, does not fulfil her obligations to her husband, namely filial piety, outwardly and mentally, causing disputes in the household. Determining whether or not a woman is a wife is based on valid evidence presented during the trial process.

Nafkah during the iddah period is a form of guarantee and a form of accountability from the husband to his ex-wife. The provision of *nafkah* during the Iddah period is expected to be a means for those who have divorced to reconcile. The embodiment of the concept of justice in iddah income is that when divorce occurs, the women feel the impact more, especially since most of the women do not have income in the sense of only being housewives.

When there is a divorce, *nafkah iddah* becomes a resource for divorced wives to rearrange their lives again, and some people think *nafkah iddah* is a solace for divorced wives. The existence of income for an ex-wife who has been divorced during her iddah period provides a high enough opportunity for reuniting the broken bond. This happens because the existence of this income means that there is still a sense of affection between the two.

The amount of *nafkah* for a woman who has been divorced is equivalent to her needs while still with her husband. If the husband does not provide enough for the wife without a good reason, then the wife has the right to demand a certain amount of *nafkah* for her for food, clothing, and shelter. The judge can decide how much *nafkah* the wife should receive and require the husband to pay it if the allegations made by the wife turn out to be true.

1. Rights of *Mut'ah*

The words *mut'ah* and *dhammah mim* (*mut'ah*) or *kasrah* (*mit'ah*) are the roots of *al-mata'*, i.e., something to delight in. That is the material handed over by the husband to the wife

who is separated from his life because of *talaq*, or the same meaning with some conditions. *Mut'ah* is also defined as a material gift from the husband to the divorced wife, to please the wife and compensate for the pain of the divorce.

Article 149 of the KHI regulates several obligations of the ex-husband to the ex-wife whose marriage broke up due to *talaq*, including giving proper *mut'ah* to the ex-wife, either in the form of money or property, unless the ex-wife is *qabla al dukhul*. *Mut'ah*, according to Article 1 letter (j), is the gift of the former husband to the wife, who is sentenced to *talaq* in the form of objects, money, and others. Based on Article 158 of the KHI, *mut'ah* can be given on the condition that dowry has not been established for the wife of *ba'da al dukhul* and her divorce by the will of the husband. Based on the above provision, the obligation to give proper *mut'ah* by the ex-husband to his ex-wife is imperative and inherent, both financial (money) and non-financial (tangible things). This provision does not apply if, when the husband and wife are living in a household, the wife has never been courted by her husband at all (*qabla al-dukhul*).

2. Dowry payable

Dowry in Arabic is "shadaq." Originally, *isim mashdar* comes from the word *ashdaqa*; its *mashdar ishdaq* is taken from the word *shidqin* (true). The name *Shadaq* gives the true meaning of marital love, and this is the main thing in the obligation of dowry. According to *Shara'*, dowry is compulsory because of marriage or mixing. This phrase "obligatory" is general, encompassing both property and benefits, because a thing that has value or is valid as a dowry. Because *nikah* means something that must be married. "Or mixed" means mixed in *syubhat*.

When a man has intercourse with a woman who is suspected to be his wife or the woman sleeps in the wife's bed, then after intercourse it turns out that it is not his wife but another woman. Such mixing invalidates the penalty and obliges the woman to pay the dowry because it is similar to mixing. If the dowry has not been paid, the

husband must pay off the unpaid dowry in full, but if the divorce occurs before the conjugal relationship, it is enough to pay half under Article 149 letter (c) of the KHI.

Profile of Padang Panjang Religious Court

The Padang Panjang Religious Court was established based on Government Regulation Number 45 of 1957 concerning the Establishment of Religious Courts Outside Java and Madura and Decree of the Minister of Religious Affairs Number 58 of 1957 concerning the Establishment of Religious Courts or Shar'iyah Courts within the Padang High Religious Court located in the city of Padang. The Padang Panjang Religious Court is located on Jalan Perintis Kemerdekaan Kota Padang Panjang. In 2006, the Padang Panjang Religious Court moved to Jalan H. Agus Salim Kota Padang Panjang.

The Padang Panjang Religious Court, which is a court of first instance, has the duty and authority to examine, decide, and settle cases in the first instance. In addition to its main duties as the implementing body of judicial power, the Padang Panjang Religious Court has the following functions:²⁰ judicial power and coaching function.

One of the authorities of the Padang Panjang Religious Court is in the field of marriage, including divorce. In a marital situation that does not bring peace and affection, Islamic teachings provide a way out through talaq (divorce) as an alternative to human liberation from domestic life that is not in line with the noble ideals of marriage.²¹ Divorce cases can be in the form of divorce lawsuits and divorce talaq. Divorce is the breakup of marriage over the wife's lawsuit. While divorce talaq is a petition submitted by the husband to the court to divorce the wife.²²

From January to November 2023, the Padang Panjang Religious Court decided on 287 divorce cases. The divorce cases filed amounted to 307 cases. It means that every month there are

around 12-41 divorce cases filed and decided by a panel of judges of the Padang Panjang Religious Court.

Divorce is common for several reasons, including economics, infidelity, domestic violence, polygamy, and others. But the cause is usually not a single cause but an accumulation of disputes and quarrels that are continuously caused by responsibility in economic matters, lazy business, and separation of residence for a long time. So divorce is the last way out because there is no compatibility between husband and wife, and no other solution is found to stay in harmony and peace in the household.

The rights of women in divorce after divorce are: (1). Nafkah Iddah ; (2). Mut'ah; (3). Nafkah Madhiyah; (4). Hadhanah, (5). Child support. Meanwhile, the decision of the Padang Panjang Religious Court in 2023, which accommodates women's rights after divorce, includes the following:

1. Padang Panjang Religious Court Decision Number 58/Pdt.G/2023/PA. The PP, with a judgement, punishes the defendant to pay the plaintiff in the form of Madhiyah income in the amount of Rp. 5,000,000.00 (five million rupiah) before the defendant takes the divorce certificate.
2. Padang Panjang Religious Court Decision Number 74/Pdt.G/2023/PA. The PP, with a judgement, punishes the defendant to pay the plaintiff before the defendant takes the divorce certificate in the form of iddah income in the amount of Rp2,000,000.00 (two million rupiah).
3. Padang Panjang Religious Court Decision Number 85/Pdt.G/2023/PA. The PP, with a judgement, punishes Plaintiff and Defendant to abide by the peace agreement dated May 2, 2023, so that Defendant pays Plaintiff in the form of madhiyah income in the amount of Rp2,000,000.00 (two million rupiahs) and

²⁰ Kamarusdiana, *Hukum Acara Pengadilan Agama* (Jakarta: Fakultas Syariah dan Hukum UIN Syarif Hidayatullah, 2013), 1.

²¹ Siti Musdah Mulia, *Muslimah Reformis: Perempuan Pembaru Keagamaan* (Bandung: Mizan, 2004), 55.

²² M.Yahya Harahap, *Kedudukan Warga Negara Dan Acara Peradilan Agama* (Jakarta: Pustaka Kartini, 1997), 252.

- income during the iddah period in the amount of Rp1,500,000.00 (one million five hundred thousand rupiahs);
4. Padang Panjang Religious Court Decision Number 98/Pdt.G/2023/PA. PP with a judgement sentencing the defendant to pay to the plaintiff before the defendant takes a divorce certificate in the form of Madhiyah Income in the amount of Rp. 5,000,000.00 (five million rupiah);
 5. Padang Panjang Religious Court Decision Number 109/Pdt.G/2023/PA. The PP with a judgement punishes the Defendant to pay to the Plaintiff before the Defendant takes a divorce certificate in the form of iddah income in the amount of Rp. 1,500,000.00 (one million five hundred thousand rupiahs) and punishes the Defendant to provide a living for 2 (two) children every month given through Plaintiff starting from the time the judgement is handed down until the child is an adult or independent with an increase of 5 (five) to 10 (ten) percent every year excluding education fees and health;
 6. Padang Panjang Religious Court Decision Number 121/Pdt.G/2023/PA. The government regulation, with a judgement, punishes the defendant to pay the plaintiff in the form of Madhiyah income in the amount of Rp1,000,000.00 (one million rupiah) before the defendant takes the divorce certificate and orders the registrar of the Padang Panjang Religious Court to submit the divorce deed to the defendant after the defendant fulfils the contents of dictum number 4 (four) above in the registrar;
 7. Padang Panjang Religious Court Decision Number 124/Pdt.G/2023/PA. The PP, with a judgement, punishes the defendant to pay to the plaintiff before the defendant takes the divorce certificate in the form of Iddah income in the amount of Rp. 12,000,000.00 (twelve million rupiah), Mut'ah income in the form of money in the amount of Rp. 8,000,000.00 (eight million rupiah), and last income (madhiyah) in the amount of Rp. 20,000,000.00 (twenty million rupiah);
 8. Padang Panjang Religious Court Decision Number 142/Pdt.G/2023/PA. PP with the following ruling:
 - a. Determine that the custody of the child of the plaintiff and defendant, Muhammad Teguh Alfariz, male, born on April 7, 2005, is given to the defendant while still giving the plaintiff access rights to meet the child;
 - b. Establish that the custody of the child of the plaintiff and defendant, named Farenisa Khairatu Ummah, female, born on November 10, 2011, is given to the plaintiff while still giving the defendant access rights to meet the child;
 - c. Punish the defendant to pay the plaintiff in the form of Iddah income in the amount of Rp4,500,000.00 (four million five hundred thousand rupiah);
 - d. Punish the defendant to carry out dictum number 6 (six) regarding iddah income as mentioned above before the defendant takes the divorce certificate;
 9. Padang Panjang Religious Court Decision Number 152/Pdt.G/2023/PA. PP with a judgment *sentencing the defendant to pay to the plaintiff before the defendant takes the divorce deed in the form of income during the iddah period in the amount of Rp. 6,000,000 (six million rupiahs) and ordering the registrar of the Padang Panjang Religious Court to submit the divorce deed to the defendant after the defendant fulfills the contents of dictum number 4 (four) above in the registrar;*
 10. Padang Panjang Religious Court Decision Number 161/Pdt.G/2023/PA. PP with a judgment Sentencing the Defendant to pay madhiyah income to the Plaintiff before the Defendant takes the divorce certificate in the amount of Rp3,000,000.00 (three million rupiah);
 - a. Dismiss Plaintiff's claim for the rest.

11. Padang Panjang Religious Court Decision Number 164/Pdt.G/2023/PA.PP with amar verdict;
 - a. *Establish that two children of the plaintiff and the defendant are in the care (hadonah) of the plaintiff, with the obligation to continue to provide access to the defendant to meet the two children;*
 - b. *Punish the defendant to provide for two (two) children of the plaintiff and the defendant at least every month in the amount of Rp1,000,000.00 (one million rupiah) with a minimum increase of 10% (ten percent) every year, excluding education and health costs until the child is an adult and/or independent;*
 - c. *Punish the defendant to pay the plaintiff before the defendant takes the divorce certificate in the form of Iddah income in the amount of Rp1,500,000.00 (one million five hundred thousand rupiah);*
12. Padang Panjang Religious Court Decision Number 166/Pdt.G/2023/PA. PP with a judgment *sentencing the defendant to pay to the plaintiff before the defendant takes the divorce certificate in the form of Iddah income in the amount of Rp. 10,000,000.00 (ten million rupiah), Mut'ah income in the form of money in the amount of Rp. 10,000,000.00 (ten million rupiahs), and the last income (madhiyah) in the amount of Rp. 10,000,000.00 (ten million rupiah);*
13. Padang Panjang Religious Court Decision Number 175/Pdt.G/2023/PA. PP with a judgment *sentencing the defendant to pay to the plaintiff before the defendant takes the divorce certificate in the form of iddah income in the amount of Rp2,000,000.00 (two million rupiahs) and madhiyah income in the amount of Rp2,000,000.00 (two million rupiahs);*
14. Padang Panjang Religious Court Decision Number 181/Pdt.G/2023/PA. PP with the following ruling:
 - a. *Punish the defendant to pay the plaintiff in the form of income during the iddah period in the amount of Rp5,000,000.00 (five million rupiahs);*
 - b. *Establish that the children are in the care (hadhanah) of the plaintiff with the obligation to continue to provide access to the defendant to meet the two children;*
 - c. *Punish the defendant to pay for two (two) children of the plaintiff and the defendant at least every month in the amount of Rp 1,500,000.00 (one million five hundred thousand rupiah) with a minimum increase of 10% (ten percent) every year, excluding education and health costs until the child is an adult and/or independent;*
15. Padang Panjang Religious Court Decision Number 182/Pdt.G/2023/PA. The Government Regulation, with a judgement *sentencing the defendant to pay to the plaintiff before the defendant takes the divorce deed, in the form of income during the iddah period, in the amount of Rp. 4,500,000 (four million five hundred thousand rupiah), and orders the registrar of the Padang Panjang Religious Court to submit the divorce deed to the defendant after the defendant fulfils the contents of dictum number 4 (four) above in the registrar;*
16. Padang Panjang Religious Court Decision Number 184/Pdt.G/2023/PA. PP with a judgement *sentencing the defendant to pay to the plaintiff before the defendant takes the divorce certificate in the form of iddah income in the amount of Rp2,000,000.00 (two million rupiah);*
17. Padang Panjang Religious Court Decision Number 187/Pdt.G/2023/PA. PP with a judgment *sentencing the defendant to pay to the plaintiff before the defendant takes the divorce certificate in the form of iddah income in the amount of Rp. 3,000,000.00 (three million rupiahs) and ordering the Registrar of the Padang Panjang Religious Court to submit the divorce deed to the defendant after the defendant fulfills the contents of dictum number 4 (four) above in the Registrar;*

18. Padang Panjang Religious Court Decision Number 194/Pdt.G/2023/PA. PP with the following ruling:
- a. Establish that the custody of four (four) children of the plaintiff and the defendant is given to the plaintiff while still giving the defendant access rights to meet with the child;
 - b. Punish the Defendant to pay the Plaintiff in the form of the four children's income in dictum number 4 (four) above, a minimum amount of Rp1,000,000.00 (one million rupiah) every month until the child is an adult or independent (aged 21 years), with an increase of 10% every year in addition to education and health costs;
 - c. Punish the defendant to pay the plaintiff in the form of Iddah in the amount of Rp1,500,000.00 (one million five hundred thousand rupiah) and Mut'ah in the form of Rp500,000.00 (five hundred thousand rupiah);
 - d. Punish the defendant to carry out dictum number 6 (six) regarding the income of iddah and mut'ah as mentioned above before the defendant takes the divorce certificate;
19. Padang Panjang Religious Court Decision Number 211/Pdt.G/2023/PA. PP with the following verdict;
- a. Punish the defendant to pay the plaintiff before the defendant takes the divorce deed in the form of income during the iddah period in the amount of Rp3,000,000.00 (three million rupiah);
 - b. Establish the plaintiff as the holder of custody of the children while still granting the defendant access rights to visit the two children;
 - c. Punish the defendant to pay income for two (two) children of the plaintiff and the defendant in the amount of at least Rp1,000,000.00 (one million rupiah) every month until the child is an adult or independent (21 years old), with an increase of 10% every year in addition to education and health costs whose payments are handed over to the plaintiff;
13. Padang Panjang Religious Court Decision Number 218/Pdt.G/2023/PA. PP with the following ruling:
- a. Punish the defendant to pay to the plaintiff before the defendant takes the divorce deed, in the form of income during the iddah period in the amount of Rp2,000,000.00 (two million rupiahs) and mut'ah in the form of 1 gold ring weighing 5 grams of gold;
 - b. Order the Registrar of the Padang Panjang Religious Court to submit the divorce certificate to the defendant after the defendant fulfills the contents of dictum number 4 (four) above in the registrar;
 - c. Establish that the custody of two (two) children of the plaintiff and the defendant is handed over to the plaintiff while still granting access rights to the defendant to visit these children;
 - d. Punish the defendant to pay the income of two children in the amount of at least Rp1,500,00.00 (one million five hundred thousand rupiah) every month until the children are adults or independent (aged 21 years) with an increase of 10% every year in addition to education and health costs whose payments are handed over to the plaintiff;
20. Padang Panjang Religious Court Decision Number 235/Pdt.G/2023/PA. The Government Regulation with a judgement *sentencing the defendant to pay to the plaintiff before the defendant takes the divorce certificate in the form*

of iddah income in the amount of Rp. 1,000,000.00 (one million rupiah) and ordering the registrar of the Padang Panjang Religious Court to submit the divorce deed to the defendant after the defendant fulfils the contents of dictum number 4 (four) above in the registrar;

21. Padang Panjang Religious Court Decision Number 250/Pdt.G/2023/PA. PP with a judgment sentencing the defendant to pay to the plaintiff before the defendant takes the divorce certificate in the form of iddah income in the amount of Rp. 3,000,000.00 (three million rupiah);
22. Padang Panjang Religious Court Decision Number 262/Pdt.G/2023/PA. PP with a judgment sentencing the defendant to hand over or pay to the plaintiff in the form of income during the iddah period in the amount of Rp. 1,500,000.00 (one million five hundred thousand rupiah) and mut'ab in the form of a gold ring weighing 2.5 grams and punishing the defendant to carry out dictum number 4 (four) regarding the income of iddah and mut'ab as mentioned above before the defendant takes the divorce certificate.
23. Padang Panjang Religious Court Decision Number 267/Pdt.G/2023/PA. PP with the following verdict:
 - a. Punish the defendant to pay the plaintiff before the defendant takes the divorce deed in the form of income during the iddah period in the amount of Rp2,000,000.00 (two million rupiah);
 - b. Order the Registrar of the Padang Panjang Religious Court to submit the divorce certificate to the defendant after the defendant fulfils the contents of dictum number 4 (four) above in the Registrar;
 - c. Determine the custody of two (two) children of the plaintiff, and the defendant is handed over to the plaintiff while still giving the defendant the right of access to meet with these children;
 - d. Punish the defendant to pay the income of two (two) children in the amount of at least Rp2,000,00.00 (two million rupiahs) every month until the children are adults or independent (21 years old) with an increase of 10% every year, excluding education and health costs, whose payments are handed over to the plaintiff;
24. Padang Panjang Religious Court Decision Number 273/Pdt.G/2023/PA. PP with the following verdict:
 - a. Establish that the custody of 1 (one) child of the Plaintiff and the Defendant is given to the Plaintiff while still giving the Defendant access rights to meet the child;
 - b. Punish the Defendant to pay the Plaintiff in the form of 1 (one) child in dictum number 4 (four) above, a minimum amount of Rp750,000.00 (seven hundred fifty thousand rupiah) every month until the child is an adult or independent (aged 21 years) with an increase of 10% every year in addition to education and health costs;
 - c. Punish the Defendant to pay the Plaintiff in the form of Iddah Income in the amount of Rp1,000,000.00 (one million rupiah);
 - d. Punish the Defendant to carry out dictum number 6 (six) regarding iddah as mentioned above before the Defendant takes the divorce certificate;
25. Padang Panjang Religious Court Decision Number 286/Pdt.G/2023/PA. PP with the following verdict
 - a. Punish the defendant to pay the plaintiff before the defendant takes the divorce deed, in the form of madhiyah income in the amount of Rp. 5,000,000.00 (five million rupiah);
 - b. Order the Registrar of the Padang Panjang Religious Court to submit the divorce certificate to the defendant after the defendant fulfils the contents of dictum number 4 (four) above in the Registrar;
 - c. Establish that the custody of two (two) children of the plaintiff and the defendant is handed over to the plaintiff

while still giving access rights to the defendant to visit the children.

- d. Punish the defendant to pay the income of two children in the amount of at least Rp1,000,00.00 (one million rupiah) every month until the children are adults or independent (aged 21 years) with an increase of five to ten percent annually, excluding education and health costs whose payments are handed over to the plaintiff;
- e. Padang Panjang Religious Court Decision Number 287/Pdt.G/2023/PA. PP with a judgement *sentencing the defendant to pay the plaintiff in the form of Madhiyah income in the amount of Rp. 5,000,000.00 (five million rupiah) before the defendant took the divorce certificate; and ordered the registrar of the Padang Panjang Religious Court to submit the divorce certificate to the defendant after the defendant fulfils the contents of dictum number 4 (four) above in the registrar;*

26. Padang Panjang Religious Court Decision Number 293/Pdt.G/2023/PA. PP with the following verdict:

- a. Punish the defendant to pay the plaintiff before the defendant takes the divorce deed, in the form of madhiyah income in the amount of Rp1,000,000.00 (one million rupiah);
- b. Order the Registrar of the Padang Panjang Religious Court to submit the divorce certificate to the defendant after the defendant fulfils the contents of dictum number 4 (four) above in the Registrar;

From the 27 decisions of the judges of the Padang Panjang Religious Court above, there are 21 decisions of the judges of the Padang Panjang Religious Court that are vertex decisions. Verstek judgement is a judgement handed down because the defendant was not present at the trial even though he had been formally summoned, while the

plaintiff was present.²³ And the verstek ruling, accommodating the rights of the ex-wife even though the defendant was never present at the trial. While seven of the judgements were decided in the presence of the defendant.

In the verdict, it is mentioned that the rights of wives are in the form of iddah, mut'ah, and madhiyah bread. However, some of the decisions related to iddah income, decided by the Padang Panjang Religious Court, are not the same nominal amount as the plaintiff's lawsuit. The same goes for mut'ah and the cost of subsistence for madhiyah. This is because the judge considers it not only based on the needs of the wife's life but also adjusted to the husband's ability. In addition, the husband's habit of providing for his wife while still getting along and reasonable living costs in the area where the husband and wife live. Therefore, the judge's decision in deciding the nominal amount of iddah, mut'ah, and child support to be paid by the husband is not always the same between one decision and another.

From some of these judgements, it can be concluded that the judgement set by the judge, in all, granted the entire petitum of the plaintiff's lawsuit, namely imposing talaq ba'in sugra and punishing the plaintiff to pay the costs of the case. However, in divorce cases, judges cannot legally decide women's rights after divorce, such as iddah, mut'ah, and madhiyah, if they are not part of the lawsuit material. Therefore, the panel of judges of the Padang Panjang Religious Court in deciding cases does not always exercise their rights ex officio in determining the rights of wives requested or unsolicited.

Based on some examples of decisions of religious court judges above, it can be concluded that in the Verstek ruling, only a small part of the Verstek judgement contains the rights of wives as specified in Article 149 of the KHI. The judge is principled in deciding divorce cases. If the wife, from the beginning, does not file a claim against her rights in the event of divorce in the subject

²³ Mardani, *Hukum Acara Perdata Peradilan Agama*, Cet. II (Jakarta: Sinar Grafika, 2010), 119.

matter of the lawsuit, then her rights will be ignored. In conditions like this, it can be said that the contents of Article 149 KHI related to the rights of wives after divorce should be protected. The rights of the new wife are fulfilled and protected if the wife makes a clear claim in her lawsuit. Whereas in Islamic law, the rights of wives are not classified and grouped, so if the husband divorces his wife, then the wife has the right to receive her rights by the word of Allah SWT in QS. Al-Baqarah (2):223.

In addition, there is a rule that is guided by the judge in divorce cases with a *verstek* decision that does not contain the rights of the wife, so that the judge may not decide cases outside the lawsuit material (*ultra petitem*).²⁴ So that the judge does not dare to legally establish or guarantee women's rights after divorce, such as *iddah*, *mut'ah*, and *madhiyah*, if they are not the subject of the lawsuit. The breakup of a marriage does not mean that a wife's problems end; other, more complicated problems arise related to post-divorce rights and obligations.

Moreover, if this principle can be connected with the *ex aequo et bono* principle, which is usually contained in *subsidaire* claims. If the Religious Court thinks otherwise, please give a fair verdict.' That is, this principle provides flexibility for judges to explore the law as widely as possible in order to uphold justice. Because after all, judges are not only mouthpieces of the law, but can also interpret and find the law. In this case, judges are required to be able to trace, explore and uncover relevant legal facts and be developed in order to empower judges who care about justice, not solely the application of the law.

Even if doing *ultra petitem* is a violation of the principal rule of law, the Supreme Court has made a ruling affirming that *ultra petitem* can be justified as long as it is directly related, in line with, and in harmony with the core of the lawsuit. In this case, the issue of *iddah*, *mut'ah*, and *madhiyah* is an inherent right for women after the breakup of

marriage that can be broken at once. The judge, *ex officio*, because of his position, can decide more than what is required if the judge considers it to be beneficial. In this matter, the judges of the Padang Panjang Religious Court tend to be guided by Article 178 paragraph (3) HIR, Article 189 paragraph (3) RBG, and Supreme Court Decision N0. 1001./K/Sip/1972, which prohibits judges from granting unsolicited things.

Therefore, it can be said that the divorce decision in the Padang Panjang Religious Court still does not fully accommodate and protect women's rights. Although several other rulings already contain the rights of wives that must be fulfilled by the husband after a divorce, the wife's rights can be said to be fulfilled and protected if the husband carries out the decision. To protect this right, Director General Badilag has issued Circular No. 1959 of 2021 concerning a policy brief guaranteeing the protection of women's and children's rights after divorce. And to ensure the implementation of the decision on the rights of the woman, the defendant can only take the divorce certificate after submitting her obligations as stated in the judgement.

Conclusion

The rights of a woman after divorce have been regulated in the laws and regulations in Indonesia, namely Law Number 1 of 1974 concerning Marriage (Marriage Law) and the Compilation of Islamic Law (KHI). Both regulate women's rights after divorce, including *mut'ah* bread, *iddah* bread, *maskan* and *kiswa*, dowry owed, and joint property. Such allowances shall be determined both in type and amount by the Court based on an application filed by the woman.

What is meant by divorce is a divorce desired by the wife and submitted to the religious court. *Iddah* is the income given by the husband to the wife he divorced during the *iddah* period. In applying the provision of *iddah* to the wife of the judge of the Padang Panjang Religious Court, it is

²⁴ Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Gramedia, 2005), 801–3.

necessary to look at the legal events to determine whether the wife is indeed entitled to get iddah bread. In addition to iddah, a wife also has the right to obtain mut'ah and madhiyah bread.

1. The decision of the judge of the Padang Panjang Religious Court regarding women's rights can be summed up as follows: Divorce cases are only a small part whose decisions contain the rights of wives because the judge may not decide cases outside the material of the lawsuit (ultra petitem) so that the judge does not dare to legally establish or guarantee women's rights after divorce, such as iddah, mut'ah, and madhiyah, if it is not the material of the lawsuit.
2. If the lawsuit does not contain claims for women's rights after divorce, then the plaintiff cannot obtain his rights even though the judge has ex officio rights in determining the rights of women (wives), whether requested or unsolicited. Judges of the Padang Panjang Religious Court in divorce cases very rarely use their rights ex officio to punish husbands for providing iddah, mut'ah, and madhiyah under their ability and worthiness.

The judge's decision regarding *iddah*, *mut'ah* and madhiyah income decided by the Padang Panjang Religious Court is not always the same nominal amount as the Plaintiff's claim. This is due to the judge's consideration based on the husband's economic ability.

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