

Judicial Formalism and Women's Economic Rights After Divorce: A Feminist Legal Study of a Religious Court Decision

Rahma Khofifah Khoirun Umah

Universitas Islam Negeri Sayyid Ali Rahmatullah Tulungagung, Indonesia

Rahmakhofifah1@gmail.com

Maftukhin

Universitas Islam Negeri Sayyid Ali Rahmatullah Tulungagung, Indonesia

maftukhinali02@gmail.com

Abstract:

Religious court adjudication in divorce cases in Indonesia continues to exhibit a strong reliance on judicial formalism, often at the expense of substantive gender justice. One manifestation of this tendency is the rejection of post-divorce economic claims by former wives, particularly in cases involving civil servant salaries. This study examines a Religious Court decision that denied a former wife's claim to a one-third allocation of her ex-husband's salary, despite her demonstrated economic vulnerability following divorce. The research aims to critically analyze the judicial reasoning underlying this rejection and to assess the extent to which women's economic rights are accommodated within religious court practice from a Feminist Legal Theory perspective. Employing a normative juridical method, the study integrates a case-based and conceptual approach through an analysis of court decisions, statutory regulations, and feminist legal scholarship. The findings reveal that the judges' reasoning is predominantly procedural and formalistic, focusing narrowly on the husband's economic capacity while disregarding the wife's non-monetary contributions during marriage, such as domestic and reproductive labor. This approach effectively marginalizes women's lived experiences and reinforces gendered economic inequality after divorce. The study contributes to Islamic family law scholarship by demonstrating how judicial formalism can undermine the protective function of post-divorce economic rights. By applying Feminist Legal Theory as a critical analytical tool, this research highlights the need for a more substantive, gender-responsive interpretation of family law to ensure equitable outcomes for economically vulnerable women, particularly former wives of civil servants.

Keywords: *Divorce; Feminist Legal Theory; Religious Court Decision; Civil Servant Salary*



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Introduction

In essence, divorce is the end of a marital relationship between a man and a woman who have lived as husband and wife.¹ In the context of civil servants (PNS), the state has established regulations specifically governing the fulfillment of a former wife's right to maintenance after a divorce. Through Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 45 of 1990, the state expressly requires male civil servants to give a portion of their salary to their ex-wives as a form of responsibility and inherent legal protection.² This provision illustrates the state's efforts to realize social justice, especially for women who are often in a more economically vulnerable position after divorce.

The Kediri Regency Religious Court's decision, No. 145/Pdt.G/2025/PA.Kab.Kdr, which is the object of this research, highlights the issue of fulfilling the former wife's right to maintenance following a divorce from a civil servant husband, specifically regarding the judge's rejection of the former wife's demand for a third of her salary. In the decision, the former wife demanded a one-third salary distribution based on her husband's status as a civil servant. However, the panel of judges rejected the request, considering the husband's economic situation, dependents, and the factual circumstances following the divorce. This consideration demonstrates a gap between the norm of administrative protection for former wives of civil servants and the judge's reasoning in the decision.

The rejection of a one-third salary in this decision is problematic because it ignores the context of the long-term marital relationship and the wife's non-economic contributions during the marriage, including her domestic role and care work. These aspects were not given significant attention in the judge's considerations, while the husband's capabilities were placed as the dominant factor. As a result, justice is understood limited to short-term financial balance, rather than as a corrective measure to address the structural inequalities experienced by women after divorce.

Upon closer examination, this ruling also demonstrates a disharmony between the judge's considerations and the protections for former civil servant wives contained in Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990, which normatively aim to ensure the survival of former civil servant wives. This problem is further complicated by the absence of a standard operational mechanism for reporting, processing, and executing the salary distribution obligation. The lack of coordination between religious courts and civil service agencies renders the former wives' rights merely declarative in nature without clear guarantees of implementation. In fact, the existence of an enforcement mechanism is a primary requirement for a right to be considered effective. The absence of clear implementation procedures constitutes a legal loophole that requires further academic discussion.

Previous studies generally examine civil servant divorce decisions from the perspective of normative compliance, the judge's authority, or compliance with positive Islamic law. For example, Agung Nurusufa Imadudin's study, "Fulfillment of Support for Former Wives and Children Post-Divorce Through the Judge's Ex-Officio Rights (Study

¹ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, (Jakarta: Kencana Predana Media, 2009), 189.

² Anggi Salsha Musdalifa Lingga, Idha Apriliyana Sembiring, Utary Maharany Barus, "Provision of Maintenance for Former Wives of Civil Servants According to Government Regulation No. 45 of 1990," *Jurnal Hukum Indonesia*, no. 4: 68, diakses pada 13 Desember 2025, <https://doi.org/10.58344/jhi.v4i2.1591>.

of Decisions No. 6073/Pdt.G/2019/PA.Jr and 239/Pdt.G/2020/PTA.Sby).³ This research focuses on the extent to which Gustav Radbruch's legal ideals are reflected in religious court practice through the use of ex officio rights to decide divorce cases, particularly in the context of strengthening legal protection for women and children after divorce. However, this research has not specifically examined the fulfillment of livelihood in the context of civil servants (PNS). The research conducted by Ahmad Wildan Rofrofil Akmal, M. Aunul Hakim, and Moh. Toriquddin with the title "Dysfunction of PP Number 45 of 1990 Concerning the Distribution of Salaries After Civil Servant Divorce (Case Study at the Bojonegoro Religious Court),⁴ examines how judges apply PP 45 of 1990, where the results of the research found that article 8 which regulates the distribution of civil servant salaries is not fully implemented due to the emergence of harm in the future after the divorce if it is applied in civil servant divorce cases, such as the continued use of the wife's maintenance money from the ex-husband until the ex-wife remarries, this does not rule out the possibility that if the ex-wife marries in a secret marriage, the maintenance money will continue to flow to the ex-wife and her new husband. However, Badrul Hilmi in his research revealed that the judge did not approve the distribution of 1/3 of the civil servant's salary to the ex-wife because it had been proven in court that the ex-wife was *nusyuz*.⁵

This lack of research indicates an analytical gap: the lack of research that critically examines the rejection of a one-third salary in a religious court ruling as a gender justice issue. This ruling demonstrates how claims of legal neutrality can operate to marginalize women's experiences and vulnerabilities, particularly when reproductive labor and domestic contributions are not recognized as the basis for economic rights after divorce.

The urgency of this research is also driven by the need to evaluate whether existing legal instruments adequately protect women or whether they create new uncertainties. This research will provide a deeper understanding of how Government Regulation No. 45 of 1990 should be implemented, how religious courts decide cases related to the maintenance of former civil servants' wives, and how a Feminist Legal Theory perspective can be used to critique and improve the existing legal system. Thus, this research makes a direct contribution to the development of Islamic family law and employment law doctrine in Indonesia.

Therefore, this study uses Feminist Legal Theory to uncover the gender assumptions and biases hidden in the judge's reasoning in this ruling. The research problem is how the rejection of a one-third salary in a religious court ruling reflects legal reasoning that is not yet gender-sensitive. The research questions posed are: (1) how did the judge consider rejecting the demand for a one-third salary in the analyzed ruling; and (2) how can this ruling be critiqued through a Feminist Legal Theory perspective to assess the fulfillment of substantive justice for former wives of civil servants.

³ Agung Nursufa Imadudin, *Pemenuhan Nafkah Istri dan Anak Pasca Perceraian Melalui Hak Ex Officio Hakim* (Studi Putusan No. 6073/Pdt.G/2019/PA.Jr dan 239/Pdt.G/2020/PTA.Sby, Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2025. <http://digilib.uin-suka.ac.id/id/eprint/70519>

⁴ Ahmad Wildan Rofrofil Akmal, Aunul Hakim, dan Moh Toriquddin, "Disfungsi PP Nomor 45 Tahun 1990 Tentang Pembagian Gaji Pasca Perceraian PNS (Studi Kasus di Pengadilan Agama Bojonegoro), *Maqasid Jurnal Studi Hukum Islam*, No 1 (2025), diakses pada 17 Desember 2025 <https://doi.org/10.30651/mqs.v1i1.25960>

⁵ Badrul Hilmi, "Rekonvensi Pembagian Gaji Pegawai Negeri Sipil dalam Perkara Cerai Talak (Analisis Putusan Perkara No. 4455/Pdt.Cr/2014/PA.Blitar)", (2020), *SAKINA: Journal of Family Studies*, (4)2. Diakses pada 18 Desember 2025. <https://urj.uin-malang.ac.id/index.php/jfs/article/view/480>.

Research Methods

This research is a normative juridical legal study focused on analyzing a religious court decision regarding the refusal to grant one-third of the salary to the former wife of a civil servant (PNS) following a divorce. The study uses a case study approach to examine the judge's considerations in the analyzed decision, and a conceptual approach to examine the concept of gender justice and feminist legal theory. The legal materials consist of primary legal materials in the form of court decisions and relevant laws and regulations, and secondary legal materials in the form of legal literature and academic works on feminist legal theory and women's economic rights. Data analysis was conducted qualitatively. Feminist legal theory is used as an analytical framework to critique claims of legal neutrality in the judge's deliberations. Its application focuses on uncovering gender assumptions in the assessment of economic capacity, the neglect of the wife's non-economic contributions, and the impact of patriarchal power relations on the fulfillment of women's economic rights following a divorce. Normative analysis techniques include legal reasoning analysis to assess the coherence of the judge's reasoning, interpretive analysis to examine the judge's interpretation of applicable legal norms, and hermeneutic critique to interpret the decision within a social and gender context. These three techniques are used in an integrated manner to assess the extent to which the decision reflects gender-based substantive justice.

Results and discussion

Sitting the Case and the Legal Position of the Parties in Decision No. 154/Pdt.G/2025/PA. Kab.Kdr

In the perspective of Islamic law, divorce is the last resort (*ultimum remedium*) taken when the goal of marriage that realizes the *Sakinah* family, *mawaddah*, *warohmah* can no longer be achieved. Every divorce must be accompanied by moral and legal responsibilities, including the fulfillment of the wife's rights and the protection of children. The State through Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) emphasizes that divorce can only be carried out in court and binds the parties to resolve legal consequences, especially related to *iddah* maintenance, *mut'ah*, child maintenance, and the economic rights of wives after divorce.

The case in the Kediri Regency Religious Court Decision Number 154/Pdt.G/2025/PA. The Kdr Regency which examines and adjudicates the case of divorce at the first level in the trial of the Panel of Judges has issued a verdict between: Applicant: 41 years old, Islamic, employed as a Civil Servant in General Administration at SMPN 1 Kepung, in this case giving his power of attorney to the initials 'YEM', S.H, Advocate whose address is Jl. Langkat Hamlet Singgahan Pelem Village, Pare District, based on a special power of attorney dated January 10, 2025, hereinafter referred to as "Applicant". Against, the Respondent: 38 years old, Islamic religion, farm laborer, residing in Sabiyu Sumberjo Hamlet, in this case giving his power of attorney to the initials 'MR', S.H., and 'ABS', S.H., Advokay whose address is at Jalan Mayor Bidmo No. 44 Tertek Village, Pare District, based on a special power of attorney dated January 18, 2025, referred to as "Respondent".⁶

This case began with the Applicant filing an application for a divorce from the Respondent to the Kediri Regency Religious Court on January 9, 2025 as registered by the clerk with case number 154/Pdt.G/2025/PA. Kdr Regency, which stated the following

⁶ "putusan_154_pdt.g_2025_pa.kab.kdr_20251021130811."

matters: (1) The Applicant and the Respondent were married on April 16, 2009 at the KUA of Pare District. (2) After the marriage contract, the Applicant and the Respondent lived in the Applicant's house for 10 years and 2 months, then lived in a rented house for 4 years and had lived in harmony and was blessed with a child with the initials 'APIW' who joined the Respondent. (3) the condition of the Petitioner and the Respondent's innkeeper has been disharmonious since July 2010, there have been frequent disputes and quarrels, until at its peak in June 2023 the Applicant and the Respondent separated from each other and no longer had a relationship like husband and wife. (4) The applicant submits a divorce permit which on December 17, 2024 the Certificate of Granting of Divorce Permit is issued.

The Judge's Consideration in Decision No. 154/Pdt.G/2025/PA. Kab.Kdr

The panel of judges in the Decision of the Religious Court of Kediri Regency No. 154/Pdt.G/2025/PA. The Kdr Regency basically granted the Applicant's application for a divorce after considering that the domestic relationship between the Applicant was rife and it had been proven that the Applicant and the Respondent had not lived in the same house since December 17, 2024, the conflict lasted continuously, and the mediation carried out on January 31, 2025 was declared a failure. Therefore, it experiences a constant rift (syiqaq) and is impossible to maintain. The judge considered that there was no longer a purpose of marriage that could be realized as referred to in Article 1 of Law No. 1 of 1974 and Article 77 of the Compilation of Islamic Law (KHI). Therefore, the conditions for divorce are considered to be fulfilled based on Article 19 letter (f) of Government Regulation No. 9 of 1975 jo Article 116 letter (f) of the KHI.

The judge's consideration that is the subject of this problem is based on the testimony of the Applicant and the Respondent as well as the witnesses at the trial as follows: reconvention. The Respondent's demands regarding: (1) Considering the request of the Reconvention Plaintiff against the Reconvention Defendant for the demand that it provides: (a) iddah maintenance of Rp 3,000,000 per month which must be paid 3 months after divorce with a total of Rp 9,000,000; (b) muth'ah of Rp 50,000,000; (c) Distribution of 1/3 of the salary of the Reconvention Defendant every month based on Government Regulation No. 10 of 1983 jo. PP. No. 45 of 1990 concerning marriage and divorce permits for Civil Servants Article 8 paragraphs (1) and (2) to provide 1/3 of the salary to the Reconvention Plaintiff which is paid every month; (d) Custody of the child is handed over to the Plaintiff of the Convention; (e) child support of 1,500,000 per month for the child's lifetime.

Looking at the lawsuit filed by the Reconvention Plaintiffs, the Panel of Judges concluded that the household between the Petitioner and the Respondent was not harmonious so that the purpose and purpose of marriage as required by Articles 1 and 33 of Law No. 1 of 1974 jo. Articles (3) and 77 of the Compilation of Islamic Law (KHI) are very difficult to be realized in the marriage between the Applicant and the Respondent, because the Applicant and the Respondent have been separated from each other for approximately one year and both of them have no hope of living in harmony again.⁷

⁷ Sobhan, Nura ini Rangkuti, Kholidah, Mustafid, "Analisis Hukum Kewajiban Menafkah Mantan Istri oleh PNS Dalam PP Nomor 45 Tahun 1990 Ditinjau dari Hukum Islam", (2022), *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, (4):2, 153-164. Diakses pada 18 Desember 2025. <https://doi.org/10.37680/almanhaj.v4i2.1599>

In the Convention session, the Panel of Judges granted the Applicant's request, granting permission to the Applicant to impose a talaq of one raj'I against the Respondent in front of the Kediri Regency Religious Court session.

The Panel of Judges prepares legal considerations based on the facts at the trial and positive legal provisions, namely Law No. 1 of 1974 concerning marriage, Compilation of Islamic Law (KHI), Law No. 50 of 2009 concerning Religious Courts, and Government Regulation No. 10 of 1983 jo Government Regulation No. 45 of 1990, with the following considerations:

1. Consideration of Iddah Maintenance

In the lawsuit filed by the Reconvention Plaintiff, the Plaintiff filed a claim for iddah alimony of Rp 9,000,000 for 3 months, the judge considered that the Plaintiff was not a nusyuz wife and entitled to iddah alimony based on the provisions of Article 41 letter c of Law Number 1 of 1974 concerning Marriage jo. Article 149 letter b and Article 152 of the Compilation of Islamic Law, which if a marriage is broken up due to talaq, then the husband is obliged to provide alimony, maskan, and Kiswah during the iddah period to his ex-wife, as long as the wife is not nusyuz. The burden of iddah maintenance is not fixed in nominal size but according to the ability of her husband as Surah At-Talaq verse 7 says: "Let the one who is free (his sustenance) provide according to his ability, and the one who is limited in his sustenance, let him provide for what (wealth) Allah has bestowed upon him. Allah does not burden a person except in accordance with what Allah has bestowed upon him. Allah will grant spaciousness after narrowness."⁸

So, considering the income of the Reconvention Defendant as a Group 2 (two) civil servant with a monthly salary of IDR 3,384,300, the judge determined the Reconvention Defendant to provide iddah maintenance for 3 months, and each month IDR 1,500,000 x 3 months = IDR 4,500,000.

2. Consideration of Mut'ah

The Reconvention Plaintiff demanded a mut'ah of Rp 50,000,000, with the amount of salary obtained by the Reconvention Defendant, the judge considered the nominal amount to be too large and not in accordance with the ability of the Reconvention Defendant. Taking into account that the marriage has been running for 16 years and the economic condition of the Reconvention Defendant, the judge set the mut'ah at Rp 10,000,000. Article 149 letter a and Article 158 letter b KHI, that if the marriage is broken up due to talaq, then the ex-husband is obliged to give proper mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is qobla al dukhul. Which Allah says in Surah Al-Baqarah verse 241: "For divorced wives, there is the right of mut'ah in a proper manner. Thus this is the provision for the righteous."⁹

3. Consideration of Child Custody (Hadlanah) and Child Support

The Plaintiff Reconvention in his lawsuit requested that the child remain in his care, but the judge refused on the grounds that de facto the children of the Plaintiff and the Defendant have been taken care of sometimes by the Plaintiff in their daily lives sometimes by the Plaintiff who was then entrusted to the neighbors, and sometimes cared for, cared for and cared for by the Defendant assisted by his aunt (Mrs. De) and assisted by a maid, therefore, the Panel of Judges viewed the child from an emotional point of view as closer to the Defendant and it is better if the

⁸ <https://quran.nu.or.id/at-thalaq/7>

⁹ <https://quran.nu.or.id/al-baqarah#240>

child is cared for by his own family rather than by others considering the condition of the child who has special needs.

4. Consideration of Application for Distribution of 1/3 of Civil Servants Salary after Divorce

The plaintiff in his lawsuit requested that there be a distribution of 1/3 of the salary of civil servants after divorce. However, the Panel of Judges rejected this application on the grounds that: (1) The application of Government Regulation No. 10 of 1983 jo Government Regulation No. 45 of 1990 concerning the obligation of civil servants to provide 1/3 of salary to the ex-wife cannot be decided without an administrative mechanism in the agency where the Applicant works.

Such reasoning reflects a rigid and textual paradigm of positive law. Within the framework of Islamic law and national legislation, judges should play an active role in realizing substantive justice, not just procedural justice.¹⁰ This kind of formalistic approach ignores the social fact that the Respondent does not have a fixed income, so that the decision significantly weakens the economic position of women after divorce.

analysis of decisions in feminist legal theory

Feminist Legal Theory (FLT) etymologically, feminist comes from the word femme (woman), which means woman (singular) whose aim is to fight for women's rights (plural) as a social class.¹¹ Feminist legal theory first emerged in the 1970s, a concept that sought to make a breakthrough in the application of law to women and the discrimination women face under the law. According to Tong, as quoted by Suwastini, feminism is a movement that utilizes many perspectives, approaches, and even ways of thinking to provide a picture of the oppression experienced by women.¹² Meanwhile, according to Ani Soetjipto and Pande Trimayuni, feminism is a political movement whose main interest is women's rights and gender emancipation.¹³

Feminism can be defined as a collection of thoughts, positions, and actions that begin with awareness, assumptions, and concern for injustice, oppression, and discrimination against women. It is a movement that seeks to end all forms of injustice and discrimination. To date, various feminist movements have developed, including traditional feminists, liberal feminists, Marxist feminists, sociological feminists, and radical feminists.¹⁴

- a. Traditional feminists state that women are as rational as men and therefore should have equal opportunities to choose.
- b. Liberal feminists oppose the notion that there is male authority and try to eliminate gender differences caused by legislation or law, which at the same time makes women able to compete in the free market.
- c. Marxist feminists believe that the state is capitalist, using a system of enslaving women as workers. With the rise of capitalism, women will be liberated.

¹⁰ Sahetapy, Jacob Elvinus (2009). *Runtuhnya Etik Hukum*. Jakarta: Penerbit Buku Kompas, 112.

¹¹ Ikhlasiah Dalimoenthe, *Sosiologi Gender* (Jakarta: Bumi Aksara, 2021): 44.

¹² Ni Komang Arie Suwastini, "Perkembangan Feminisme Barat Dari Abad Kedelapan Belas Hingga Postfeminisme: Sebuah Tinjauan Teoritis," *Jurnal Ilmu Sosial dan Humaniora* 2, no. 1 (2020): 199.

¹³ Ani Soetjipto dan Pande Trimayuni dkk, *Gender dan Hubungan Internasional Sebuah Pengantar*, (Yogyakarta: Jalasutra, 2017): 11.

¹⁴ Dian Ferricha, *Sosiologi Hukum dan Gender: Interaksi Perempuan Dalam Dinamika Norma dan Sosio-Ekonomi*, (Malang: Bayumedia Publishing, 2010): 114-142.

- d. Sociological feminists share the same assumptions about women's issues, with the goal of liberating women by establishing a socialist social order. There can be no liberation without socialism; they believe that women will be liberated if the ownership system is abolished.
- e. Radical feminism is a women's liberation movement that challenges the culture of patriarchy and sexism that emphasizes male masculinity.

Feminist Legal Theory critically highlights how patriarchal culture is internalized in legal practice and reasoning, including through the normative assumption that women, particularly ex-wives, should be immediately economically independent after divorce. This assumption is often positioned as a rational and neutral standard, yet in social reality, many women do not have equal access to economic resources due to the division of gender roles during marriage. This structurally formed economic dependence is often ignored by the law when assessing post-divorce support obligations.

In the realm of religious courts, feminist legal theory helps assess the extent of gender sensitivity in judges' decisions regarding the distribution of alimony to the ex-wife of a civil servant. When a judge grants alimony based on considerations of justice and economic protection for women, the principles of feminist legal theory can be applied. However, if the decision rejects the claim based on formal legal considerations without considering women's vulnerabilities, then gender bias persists in legal practice. Therefore, feminist legal theory can be an important analytical tool for assessing the extent to which Indonesian law, both in terms of regulations on the distribution of civil servant salaries and the practice of religious court decisions, is able to achieve substantive justice for women after divorce.

In the context of divorce, women experience greater losses, including the loss of a spouse, loss of economic resources, and social stigma. When the husband is a civil servant and earns a steady income, the absence of a robust mechanism to guarantee the ex-wife's livelihood demonstrates a lack of structural support for women. This is why the distribution of one-third of the salary to the ex-wife of a civil servant needs to be analyzed from a feminist perspective.

The Kediri Regency Religious Court Decision Number 154/Pdt.G/2025/PA.Kdr has normatively fulfilled the legal provisions for divorce as stipulated in Article 39 of Law Number 1 of 1974 and Article 116 of the Compilation of Islamic Law, based on the evidence of ongoing disputes and quarrels that have resulted in the parties' marital life being deemed untenable. However, from a Feminist Legal Theory (FLT) perspective, the fulfillment of these formal elements does not necessarily reflect the achievement of substantive justice. This is because the legal framework and divorce mechanisms used still operate within a patriarchal structure that places the husband in a dominant position as the main subject of decision-making, while the wife is in a subordinate position.¹⁵ As a result, even though the divorce was legally decided according to positive law, the unequal power relations between husband and wife are still reproduced through judicial practice, so that the interests, vulnerabilities, and experiences of women after the divorce have not been fully accommodated in the legal considerations of the panel of judges.

FLT views that the divorce mechanism in the Islamic family law system, instituted through religious courts, does not exist in a neutral space, but rather operates within a legal structure that historically and normatively places the husband as the primary subject

¹⁵ Fitriyani, Fitriyani, "Feminist Paradigm in the Study of Islamic Family Law In Indonesia", (2025), *Scientia: Jurnal Hasil Penelitian*, 10 (1), 15-16, diakses pada 17 Desember 2025, <https://doi.org/10.32923/f6m0r893>

with control over the termination of the marriage. In this decision, even though the wife has filed objections and counterclaims, the divorce proceeds at the husband's unilateral will through the divorce, so the wife's legal position remains reactive and defensive. This condition indicates a systemic procedural inequality, as the wife does not have an equal, simple, and direct legal instrument to end the marriage without having to go through a heavier and multi-layered burden of proof.

This inequality is rooted in the concept of *qiwāmah*, which is traditionally interpreted as legitimizing male leadership and authority within the family, including in making fundamental decisions regarding the continuation of the marriage.¹⁶ When the court validates a divorce without making structural corrections to this unequal power relationship, the state essentially provides legal legitimacy to male dominance in the domestic sphere. Within the FLT framework, such practices demonstrate that the law functions not only as a dispute resolution mechanism but also as an instrument for the reproduction of power if not interpreted critically and gender-sensitively.

FLT emphasizes that courts should not stop at their administrative role in validating a husband's divorce, but rather serve as a corrective space that actively balances the power relations between the parties. A gender-just judiciary is required to interpret divorce not merely as a husband's formal right, but as a legal event that has a disproportionate social, economic, and psychological impact on women. Without such a corrective approach, the divorce mechanism institutionalized by the state has the potential to perpetuate gender inequality and deviate the objectives of the law from the ideals of substantive justice.

In determining the legal consequences of the divorce, the panel of judges set the iddah maintenance at Rp4,500,000 and the mut'ah at Rp10,000,000, far lower than the wife's demands. The primary consideration used was the husband's economic capacity as a Class II civil servant with debt. From FLT's perspective, this approach reflects a false sense of neutrality, as justice is measured solely by the husband's financial capacity without considering the wife's real needs and the economic dependence that developed during the marriage.

This approach ignores the socio-economic realities of post-divorce wives, including the real needs for survival, economic recovery, and the structural dependency that developed during the marriage due to the division of gender roles. Within the FLT framework, women's economic dependency is not an individual failure, but rather a consequence of a legal and social system that places women in domestic roles and unpaid reproductive work. When judges fail to factor in the wife's concrete needs and non-economic contributions during the marriage as key variables in determining maintenance, such decisions have the potential to perpetuate post-divorce economic inequality.

Furthermore, the determination of iddah and mut'ah maintenance, which is solely oriented towards the husband's "economic capacity" without adequate analysis of the wife's "real needs," demonstrates that the justice achieved by this decision is minimalist and formalistic. This approach positions post-divorce maintenance as merely an administrative legal obligation, rather than a social protection mechanism for women who are vulnerable due to the dissolution of marriage. From the FLT perspective, justice cannot be reduced to a one-sided balance of numbers or financial eligibility, but must instead consider the social context, power relations, and the lived experiences of women directly affected by the divorce.

¹⁶ Abdus Shomad, "Otoritas Laki-Laki dan Perempuan: Studi Penafsiran Kontekstual Abdullah Saeed Terhadap QS. An-Nisa 4:34"(2022), *Jurnal AlifLam Journal of Islamic Studies and Humanities*, 3(1): 1-21, diakses pada 18 Desember 2025. [10.51700/aliflam.v3i1.432](https://doi.org/10.51700/aliflam.v3i1.432)

Substantive justice, as understood in FLT, demands that the determination of the legal consequences of divorce serve as a corrective instrument that actively reduces women's economic vulnerability, not merely as temporary, symbolic compensation.¹⁷ This includes recognizing the economic dependence formed during marriage, women's non-economic contributions, and the real need to rebuild economic independence after divorce. Therefore, when the dimensions of women's needs and experiences are ignored in the judge's deliberations, the resulting decision not only fails to address gender justice issues but also has the potential to reproduce the structural inequalities that the law itself seeks to address. Therefore, this decision does not fully reflect the principle of gender-based justice, which positions women as legal subjects entitled to substantive protection, not merely objects of the application of formal norms.

The legal reasoning used in this decision also ignores the wife's non-economic contributions over fifteen years of marriage, including domestic work, care for children with special needs, and emotional support that sustains family life. From the FLT perspective, women's reproductive work constitutes a form of unpaid economic contribution (unpaid care work), yet it has fundamental value as a prerequisite for the functioning of social and economic life. When these contributions are not recognized as a basis for granting long-term economic rights after divorce, the law indirectly reproduces a patriarchal economic logic that only recognizes paid work and places women's work in the domestic sphere as a non-productive activity.

The most crucial aspect of this decision lies in the panel of judges' rejection of the demand for the distribution of one-third of the Civil Servant's salary as stipulated in Government Regulation Number 45 of 1990. The reasons put forward, namely that the case was filed in the form of a divorce, the religious court does not have the administrative authority to order a deduction from the ASN's salary, and that the implementation of salary distribution is the authority of the personnel agency, demonstrate a sectoral and formalistic legal approach. Within the FLT framework, these arguments reflect legal fragmentation that has a direct impact on weakening protection for women, because administrative norms explicitly designed to protect the economic rights of ex-wives are not integrated into the considerations and rulings of the court.

Furthermore, this approach demonstrates what FLT calls the false neutrality of law, namely a legal stance that claims neutrality of authority, but in practice ignores the unequal socio-economic positions of the parties. By placing the issue of salary distribution solely as an administrative matter, the court avoids its corrective responsibility to ensure that women's economic rights after divorce are truly accessible and enforceable. As a result, legal protection, which should be substantive, is reduced to a useless normative norm, leaving women again in a position of vulnerability and economic dependence after divorce.

In fact, Government Regulation Number 45 of 1990 explicitly stipulates that male civil servants who divorce their wives are required to pay a portion of their salary to their ex-wife and children. When courts refuse to include this provision in their rulings, citing jurisdictional reasons, the law loses its substantive function as a tool for protecting

¹⁷ Joko Susanto, Indah Sri Utari, Ali Masyhar Mursyid, "Implikasi Teori Hukum Feminis terhadap Interpretasi dan Penerapan Hukum dalam Kasus-Kasus Kekerasan Berbasis Gender", (2024), *Book Chapter Hukum dan Politik dalam Berbagai Perspektif Jilid 3*. <https://doi.org/10.15294/hp.v3i1.215>

vulnerable groups. Within the FLT framework, the rigid separation between family law and administrative law actually works to the detriment of women.¹⁸

This ruling also presents a problem in that the father is given custody of a disabled child, arguing that the child is "better cared for" and "closer to his own family." This consideration ignores the socioeconomic context of the mother, who must work to make ends meet and is therefore forced to leave the child in foster care. From a FLT perspective, this situation is not evidence of negligence, but rather a consequence of the double burden women bear due to a lack of structural support.¹⁹ Furthermore, the use of the term "own family" to refer to the father's environment demonstrates a bias against the paternal family structure and devalues the alternative caregiving network the mother has built. The principle of the child's best interests is formally applied, but in practice, it functions as a mechanism of mother-blaming, as system failures are displaced onto the mother's individual fault. This is even more problematic considering that the child in care is a special needs child who requires emotional closeness with the primary caregiver.

Overall, the Feminist Legal Theory analysis shows that the Kediri Regency PA's decision is procedurally valid, but does not reflect gender-based substantive justice. The judge's reasoning is still dominated by legal formalism, masculine standards of economic contribution, and fragmented norms that weaken women's protections. This decision reflects the tension between legality and justice and demonstrates that without gender-sensitive interpretative courage, family law has the potential to become an instrument for reproducing inequality, rather than a means of protecting women after divorce.

Thus, this analysis emphasizes the urgency of reorienting judicial reasoning from a formal legal approach to substantive justice with a gender perspective. Judges are not merely responsible for acting as "la bouche de la loi" applying norms textually. They must also perform an interpretive function that is sensitive to the power relations and structural inequalities experienced by women after divorce. In this context, post-divorce women need to be positioned as vulnerable legal subjects in need of affirmative protection, not merely as objects of the application of pseudo-neutral norms.

Without such interpretive courage, family law has the potential to continue to function as an instrument that reproduces gender inequality through decisions that are procedurally valid but ignore the social and economic realities of women. Conversely, if judges are able to utilize the space for legal interpretation in a progressive and gender-responsive manner, family law can become a means of transforming justice that not only upholds legal certainty but also provides real protection for vulnerable groups and promotes the realization of substantive justice in social life.

Conclusion

This study demonstrates that judicial decision-making in religious courts remains strongly influenced by procedural formalism, which can undermine the protection of women's economic rights after divorce. Through a Feminist Legal Theory analysis of a Religious Court decision rejecting a former wife's claim to a one-third allocation of her

¹⁸ Dede Santi Fatimah, Devi Siti Hamzah Marpaung, "Ketentuan Dan Akibat Hukum Perceraian Bagi Tentara Nasional Indonesia, Pegawai Negeri Sipil Dan Warga Sipil", (2022), *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora*, No. 1, 417-429. Diakses pada 19 Desember 2025. <https://doi.org/10.31604/justitia.v9i1.417-429>

¹⁹ Hamzah, Oyo Sunaryo Mukhlis, Usep Saepullah, "Hak-Hak Perempuan Pasca Perceraian Dalam Hukum Positif dan Hukum Islam", (2022), *Usroh*, No. 1, 62-80. Diakses pada 19 Desember 2025. [10.19109/ujhki.v6i1.12239](https://doi.org/10.19109/ujhki.v6i1.12239)

ex-husband's civil servant salary, the research reveals that judges tend to prioritize formal legal reasoning and assessments of the husband's economic capacity while neglecting women's non-economic contributions during marriage, including domestic and reproductive labor. Such an approach reinforces gendered economic vulnerability and fails to deliver substantive justice to women following marital dissolution. The study contributes to Islamic family law scholarship by illustrating how judicial formalism operates as a structural barrier to gender justice within religious court practice. By applying Feminist Legal Theory as a critical analytical framework, this research highlights the need for a more gender-responsive interpretation of post-divorce economic rights, one that recognizes marriage as a partnership involving both monetary and non-monetary contributions. The findings underscore the importance of reorienting judicial reasoning toward substantive equality rather than rigid procedural compliance.

Nevertheless, this study has several limitations. The analysis is based on a single court decision, which limits the generalizability of the findings across different religious courts or regional contexts. In addition, the study relies exclusively on normative legal analysis and does not incorporate empirical data such as interviews with judges, litigants, or court officials, which could provide deeper insight into judicial attitudes and institutional constraints. Future research is therefore encouraged to undertake comparative studies across multiple religious court decisions to identify broader patterns of judicial reasoning related to women's post-divorce economic rights. Empirical approaches, including socio-legal or qualitative interviews, would further enrich understanding of how gender norms and institutional practices shape judicial outcomes. Such research would contribute to the development of more equitable legal frameworks and judicial guidelines that better protect economically vulnerable women after divorce.

References:

Abdus Shomad, "Otoritas Laki-Laki dan Perempuan: Studi Penafsiran Kontekstual Abdullah Saeed Terhadap QS. An-Nisa 4:34"(2022), *Jurnal AlifLam Journal of Islamic Studies and Humanities*, 3(1): 1-21, diakses pada 18 Desember 2025. [10.51700/aliflam.v3i1.432](https://doi.org/10.51700/aliflam.v3i1.432)

Agung Nursufa Imadudin, *Pemenuhan Nafkah Istri dan Anak Pasca Perceraian Melalui Hak Ex Officio Hakim (Studi Putusan No. 6073/Pdt.G/2019/PA.Jr dan 239/Pdt.G/2020/PTA.Sby*, Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2025, <http://digilib.uin-suka.ac.id/id/eprint/70519>

Ahmad Wildan Rofrofil Akmal, Aunul Hakim, dan Moh Toriquddin, "Disfungsi PP Nomor 45 Tahun 1990 Tentang Pembagian Gaji Pasca Perceraian PNS (Studi Kasus di Pengadilan Agama Bojonegoro), *Maqasid Jurnal Studi Hukum Islam*, No 1 (2025), diakses pada 17 Desember 2025 <https://doi.org/10.30651/mqs.v14i1.25960>

Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, (Jakarta: Kencana Predana Media, 2009), 189.

Anggi Salsha Musdalifa Lingga, Idha Apriliyana Sembiring, Utary Maharany Barus, "Provision of Maintenance for Former Wives of Civil Servants According to Government Regulation No. 45 of 1990," *Jurnal Hukum Indonesia*, no. 4: 68, diakses pada 13 Desember 2025, <https://doi.org/10.58344/jhi.v4i2.1591>.

Ani Soetjipto dan Pande Trimayuni dkk, *Gender dan Hubungan Internasional Sebuah Pengantar*, Yogyakarta: Jalasutra, 2017.

Badrul Hilmi, "Rekonvensi Pembagian Gaji Pegawai Negeri Sipil dalam Perkara Cerai Talak (Analisis Putusan Perkara No. 4455/Pdt.Cr/2014/PA.Blitar)", (2020), *SAKINA: Journal of Family Studies*, (4)2. Diakses pada 18 Desember 2025. <https://urj.uin-malang.ac.id/index.php/jfs/article/view/480>.

Dede Santi Fatimah, Devi Siti Hamzah Marpaung, "Ketentuan Dan Akibat Hukum Perceraian Bagi Tentara Nasional Indonesia, Pegawai Negeri Sipil Dan Warga Sipil", (2022), *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora*, No. 1, 417-429. Diakses pada 19 Desember 2025. <https://doi.org/10.31604/justitia.v9i1.417-429>

Dian Ferricha, *Sosiologi Hukum dan Gender: Interaksi Perempuan Dalam Dinamika Norma dan Sosio-Ekonomi*, Malang: Bayumedia Publishing, 2010.

Fitriyani, Fitriyani, "Feminist Paradigm in the Study of Islamic Family Law In Indonesia", (2025), *Scientia: Jurnal Hasil Penelitian*, 10 (1), 15-16, diakses pada 17 Desember 2025, <https://doi.org/10.32923/f6m0r893>

Hamzah, Oyo Sunaryo Mukhlas, Usep Saepullah, "Hak-Hak Perempuan Pasca Perceraian Dalam Hukum Positif dan Hukum Islam", (2022), *Usroh*, No. 1, 62-80. Diakses pada 19 Desember 2025. [10.19109/ujhki.v6i1.12239](https://doi.org/10.19109/ujhki.v6i1.12239)
<https://quran.nu.or.id/al-baqarah#240>
<https://quran.nu.or.id/at-thalaq/7>

Ikhlasiah Dalimoenthe, *Sosiologi Gender*, Jakarta: Bumi Aksara, 2021.

Joko Susanto, Indah Sri Utari, Ali Masyhar Mursyid, "Implikasi Teori Hukum Feminis terhadap Interpretasi dan Penerapan Hukum dalam Kasus-Kasus Kekerasan Berbasis Gender", (2024), *Book Chapter Hukum dan Politik dalam Berbagai Perspektif Jilid 3*. <https://doi.org/10.15294/hp.v3i1.215>

Lusiana Margareth Tijow, dan Sudarsono, *Perempuan Menggugat Atas Integritas Tubuh Dirinya Tidak Terpenuhinya Janji Kawin*, Malang: Surya Pena Gemilang, 2017.

Ni Komang Arie Suwastini, "Perkembangan Feminisme Barat Dari Abad Kedelapan Belas Hingga Postfeminisme: Sebuah Tinjauan Teoritis," *Jurnal Ilmu Sosial dan Humaniora* 2, no. 1 (2020): 199.

Niken Savitri, *HAM Perempuan: Kritik Teori Hukum Feminis Terhadap KUHP*, Bandung: PT Refika Aditama, 2008.

Noor Rohmat, *Permasalahan Hukum di Indonesia Antara Teori dan Praktik*, Yogyakarta: K-Media, 2024.

putusan_154_pdt.g_2025_pa.kab.kdr_20251021130811.

Sahetapy, Jacob Elvinus (2009). Runtuhnya Etik Hukum. *Jakarta: Penerbit Buku Kompas*, 112.

Sobhan, Nuraini Rangkuti, Kholidah, Mustafid, "Analisis Hukum Kewajiban Menafkah Mantan Istri oleh PNS Dalam PP Nomor 45 Tahun 1990 Ditinjau dari Hukum Islam", (2022), *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, (4):2, 153-164. Diakses pada 18 Desember 2025. <https://doi.org/10.37680/almanhaj.v4i2.1599>