

## **Reassessing Justice Through Progressive Law: The Failure to Uphold Post-Divorce Alimony Rights in *Obscuur libel* Rulings in Indonesia**

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### **Abstract:**

This study critically reassesses Decision No. 2276/Pdt.G/2023/PA.Bgl of the Bangil Religious Court, in which the panel of judges rejected all claims for post-divorce spousal and child maintenance on the grounds of *obscur libel*, while granting only the divorce petition. Using Satjipto Rahardjo's Progressive Law theory, the research evaluates whether the ruling aligns with Indonesia's positive legal framework and whether it delivers substantive justice to vulnerable dependents. The analysis demonstrates that the court's reasoning fails to satisfy the four core principles of Progressive Law; flexibility, social justice, human rights protection, and responsiveness to social conditions. The judges relied narrowly on procedural formalism, particularly Article 8(3) of the Reglement op de Rechtsvordering, and overlooked substantive norms contained in Law No. 1/1974, the Compilation of Islamic Law, and Supreme Court Circular No. 3/2018. These legal instruments explicitly guarantee iddah maintenance for non-nusyuz wives and impose an unconditional obligation on fathers to support their children. Evidence from the case further indicates long-standing neglect of financial responsibilities by the defendant, yet this substantive injustice was overshadowed by procedural deficiencies in the plaintiff's claim. The study contributes to scholarship by demonstrating how rigid procedural interpretation can undermine the protective function of family law and contradict the transformative aims of Progressive Law. It also provides a normative framework for strengthening judicial reasoning in cases involving vulnerable parties, highlighting the need for a substantive, justice-oriented approach in adjudicating post-divorce financial rights.

**Keywords:** Maintenance, *Obscuur libel*, Satjipto Rahardjo's Progressive Law



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### **Introduction**

Not everyone can build the ideal family they dream of, as divorce can sometimes occur. Divorce is the dissolution of a marriage due to certain reasons, officially sanctioned by a court decision at the request of one or both parties.<sup>1</sup> Marriage in Islam is not merely

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<sup>1</sup> P.N.H. Simanjuntak, *Pokok-Pokok Hukum Perdata Indonesia* (Jakarta: Kencana, 2007), 58.

an ordinary civil contract but also holds spiritual and religious significance as an act of worship.<sup>2</sup> Article 115 of the Compilation of Islamic Law (KHI) states: "Divorce can only be carried out before a court session after the court has made an effort to reconcile both parties but has not succeeded." Based on Article 115 of the KHI, as mentioned above, divorce from the perspective of the Compilation of Islamic Law (KHI) refers to the process of pronouncing the talak (divorce declaration), which must be conducted in a court session and witnessed by a judge of the Religious Court.

This paper discusses a case handled by the Bangil Religious Court under Case Number: 2276/Pdt.G/2023/PA.Bgl. In this lawsuit, the plaintiff filed multiple claims against the defendant, including not only divorce but also post-divorce spousal support and child support. However, the panel of judges rejected all claims related to financial rights requested by the plaintiff and only granted the divorce petition. The judges ruled that the plaintiff's lawsuit was unclear (*obscuur libel*), arguing that the claims for post-divorce spousal and child support did not meet the material requirements of a legal claim. When viewed through the lens of Satjipto Rahardjo's Progressive Law, which emphasizes that law should not be rigidly bound by formalities, the plaintiff's cumulative lawsuit should have been granted. In the *obscuur libel* decision under Case Number: 2276/Pdt.G/2023/PA.Bgl., the plaintiff was deprived of post-divorce rights, both as a wife and as a mother. This outcome is unfair, as it denies the plaintiff her rightful entitlements solely due to procedural deficiencies in the lawsuit. As a result, the legal consequences of this ruling are that the ex-wife, as the plaintiff, does not receive *iddah* maintenance, and the child from the marriage is left neglected, as the court also rejected the child support claim.

The issue mentioned above has drawn the writer's interest to conduct further research on this matter. The purpose of this study is to examine the rights to financial support for wives and children in the case of *\*obscuur libel\** in Decision Number: 2276/Pdt.G/2023/PA.Bgl., which will be analyzed through the lens of Satjipto Rahardjo's progressive legal theory. Progressive law is a legal development concept introduced by Satjipto Rahardjo, emphasizing that law is created to serve humanity, not the other way around. Therefore, when legal issues arise, the focus should be on reviewing and improving the law itself rather than forcing individuals to conform to the existing legal framework.<sup>3</sup>

The issue of *obscuur libel* lawsuits was encountered by the author in a thesis written in 2019.<sup>4</sup> The similarity in this writing lies solely in the object of the *obscuur libel* lawsuit. Furthermore, the thesis discusses the rights to child and spousal support in a 2023 study. The similarity with this writing is in the discussion, as both address post-divorce financial support. The distinction in this writing is as follows: 1) The first thesis clearly differs in its lawsuit, as it concerns inheritance claims, and the research is a comparative study examining judges' perspectives in deciding cases. 2) The second thesis differs in its review approach, as the author applies Islamic law and also conducts a comparative study. The novelty of this writing lies in providing insight into how the rights to spousal and child support can still be fulfilled despite an *obscuur libel* lawsuit, analyzed through the lens of Satjipto Rahardjo's progressive legal theory.

<sup>2</sup> Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT Raja Grafindo Persada, 1998), 69.

<sup>3</sup> Satjipto Rahardjo, *Hukum Progresif* (Bantul: Genta Publishing, 2009).

<sup>4</sup> Imamah, "Tinjauan Yuridis Terhadap Gugatan *Obscuur libel* dalam Perkara Gugat Waris dan Pembatalan Wasiat" (Analisis Putusan Perkara Nomor 1515/Pdt.G/2012/PA.JS, Nomor 47/Pdt.G/2013/PTA.JK dan Nomor 673 K/Ag/2013)", (Skripsi, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2019)

The contribution of this writing is to provide a broader insight into the study of Islamic family law, particularly regarding the rights of wives and children to financial support after divorce. This paper presents Satjipto Rahardjo's progressive legal perspective on how the issue of post-divorce financial support for wives and children should be addressed, especially in cases filed through *obscuur libel*.

## **Method**

This writing employs a normative juridical approach, meaning that legal writing is conducted through the study of legal materials, including literature, statutory regulations, and secondary data in the form of relevant literature.<sup>5</sup> In this writing, observations, understanding, and analysis will be conducted on divorce lawsuits in cases of *obscuur libel*, specifically in Decision Number: 2276/Pdt.G/2023/PA.Bgl. This research adopts a statute approach, where the author will examine laws and regulations relevant to the discussed topic. Additionally, a case approach will be employed, involving the examination and analysis of legal norms related to the issues in this study, which have been adjudicated by the court and hold legal force. This approach includes an analysis of divorce lawsuits in cases involving *obscuur libel*.

Writing data is divided into two categories: primary writing data and secondary writing data. This study utilizes secondary data, which is further classified into two types of legal materials: primary legal materials and secondary legal materials. Primary legal materials refer to the main sources used in legal writing. These include legislation, official documents or records of law-making processes, and judicial decisions.<sup>6</sup> Primary legal sources include the Decision of the Bangil Religious Court No. 2276/Pdt.G/2023/PA.Bgl, Presidential Instruction of the Republic of Indonesia No. 1 of 1991 on the Compilation of Islamic Law (KHI), *Reglement op de Rechtsvordering*, Supreme Court Decision No. 1875 K/Pdt/1984, Supreme Court Circular No. 3 of 2018, and literature on progressive law by Satjipto Rahardjo. Meanwhile, secondary legal sources serve as supporting references for interpreting primary legal sources. These data are obtained from additional relevant sources, such as journals, books, and articles related to the discussed topic.

Regarding data collection methods, the technique used to gather legal materials is through documentary or library research.<sup>7</sup> At this stage, the author will gather relevant legal regulations, books, scientific works, and notes related to the discussion in this writing. The method of processing legal materials includes examination (editing), classification (classifying), analysis (analyzing), and conclusion (concluding). Meanwhile, the analysis of legal materials used is qualitative with a descriptive analytical approach.

## **Analysis of the Compliance of Wife and Child Support After Divorce in the *Obscuur libel* Lawsuit Decision Number 2276/Pdt.G/2023/PA.Bgl. with Positive Law in Indonesia**

The essence of this case is that the Plaintiff, through their lawsuit dated November 18, 2023, filed for divorce. The lawsuit was registered with the Registrar's Office of the Bangil Religious Court under Case Number 2276/Pdt.G/2023/PA.Bgl on November 28, 2023.<sup>8</sup> During their married life, the Defendant never provided financial support to the family as expected of a head of the household.

<sup>5</sup> Maiyestati, *Metode Penulisan Hukum* (Sumbar: LPPM Universitas Bung Hatta, 2022), 55.

<sup>6</sup> Peter Mahmud Marzuki, *Penulisan Hukum* (Jakarta: Kencana, 2010), 141.

<sup>7</sup> Nur Solikin, *Pengantar Metodologi Penelitian Hukum* (Pasuruan: CV Penerbit Qiara Media, 2021), 120.

<sup>8</sup> Putusan Nomor 2276/Pdt.G/2023/PA.Bgl

The Defendant never disclosed the amount of salary and allowances received while working for the Indonesian National Armed Forces, from the beginning of the marriage until the divorce was filed, despite the fact that it was the Plaintiff's right to know. In addition to the Plaintiff, the child was also never provided with child support by the Defendant, including basic necessities and healthcare. If the child fell ill, it was always the Plaintiff who took care of them using her own personal funds.

These actions led to conflicts in the household, culminating in November 2021, when the Defendant stopped providing financial support for the child, including school fees, religious studies, milk, and diapers. Following this incident, the Defendant left the house and has neither contacted nor been reachable ever since.

Obscure Lawsuit (*Obscuur libel*) refers to a lawsuit that contains elements of vagueness or ambiguity, making it unacceptable or contrary to applicable legal provisions.<sup>9</sup> According to M. Yahya Harahap, *Obscuur libel* refers to a lawsuit filed by the plaintiff that is unclear or vague (*onduidelijk*) or a claim formulation that lacks clarity. Referring to the provisions of Article 118(1), Article 120, and Article 121 of the *Herziene Indonesisch Reglement* (HIR), there is no explicit requirement to formulate a lawsuit in a clear and precise manner. However, in court practice, many refer to Article 8 of the *Reglement op de Burgerlijke Rechtsvordering* (Rv) as a legal reference, based on the principle of process doelmatigheid (for the efficiency of legal proceedings).

According to Article 8 of the Rv, the main points of a lawsuit must be accompanied by a clear and specific conclusion. Based on this provision, judicial practice has developed the application of an obscure libel, also commonly referred to as an unclear lawsuit.<sup>10</sup> The *Obscuur libel* lawsuit has several factors that contribute to the ambiguity in the claim, including:<sup>11</sup> 1) The Lawsuit Lacks a Clear Factual and Legal Basis. A lawsuit can be considered unclear if it does not have a well-defined factual and legal foundation. If the lawsuit's content fails to establish a clear legal basis for the case, it may hinder the court's ability to render a proper decision. 2) Unclear Disputed Object. The lack of clarity regarding the disputed object arises when its boundaries are not explicitly stated. Defining these boundaries is essential because, in deciding a lawsuit, the assets owned by the plaintiff must be clearly identified. This enables the judge to analyze the case accurately and fairly in reaching a verdict. 3) Contradiction Between Posita and Petitem. A lawsuit must maintain consistency between the *posita* (statement of facts and legal reasoning) and the *petitem* (claims or demands of the lawsuit). For example, if the *petitem* requests that the court acknowledge a marriage dispute and grant permission for the plaintiff to proceed *prodeo* (free of charge due to financial incapacity), but the *\*posita\** does not include any facts indicating that the plaintiff is financially incapable, the claim lacks coherence. Therefore, the plaintiff must formulate the *\*petitem\** clearly and firmly. If the lawsuit is ambiguous or vague, it may be deemed inadmissible, commonly referred to as *Obscuur libellium* (unclear lawsuit).<sup>12</sup> 4) Unspecified Petitem in a Lawsuit The

<sup>9</sup> Zulkarnaen dan Dewi Mayaningsih, *Hukum Acara Peradilan Agama di Indonesia* (Bandung: CV Pustaka Setia, 2017), 273.

<sup>10</sup> Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Cet. 14 (Jakarta: Sinar Grafika, t.t.), 448.

<sup>11</sup> I Gusti Agung Ketut Bagus Wira Adi Putra, Ida Ayu Putu Widiati, dan Ni Made Puspasutari uj, "Gugatan Tidak Dapat Diterima (Niet Ontvankelijke Verklaard) dalam Gugatan Cerai Gugat di Pengadilan Agama Badung," 2020-10-28, Jurnal Konstruksi Hukum, Vol 1, no. Jurnal Konstruksi Hukum (t.t.): 308, <https://doi.org/10.22225/jkh.1.2.2565.305-309>.

petitum in a lawsuit can be classified into two types. First, the primary petitum (*petitum primer*) refers to the main request that the plaintiff expects the judge to rule on. For example, in a case involving divorce and alimony rights, the plaintiff seeks a ruling granting the divorce and post-divorce alimony. Second, the subsidiary petitum (*petitum subsidair*) is a request in which the plaintiff asks the judge to consider an alternative opinion and issue a fair and just decision.<sup>13</sup> If the petitum primair is detailed, it can be clearly combined with the petitum subsidair or structured in a kompossitur form. A violation due to an unclear petitum in the lawsuit may result in the lawsuit being considered vague. 5) *Nebis in Idem* with the Same Subject and Object *Nebis in idem* refers to a lawsuit filed by the plaintiff that has previously been submitted with the same case and has already received a legally binding decision. As a result, the lawsuit cannot be filed again for a second time.

*Obscuur libel* often occurs to parties seeking to file a lawsuit in court due to the lack of material and formal requirements in the claim. This frequently results in the lawsuit being rejected or not granted, preventing the plaintiff from obtaining justice in court. An example of this can be seen in Decision No. 1515/Pdt.G/2012/PA.JS, where the ruling did not comply with the proper formulation of the claim (*Obscuur libel*).<sup>14</sup> The case also occurred in Decision Number 2276/Pdt.G/2023/PA.Bgl.

Decision Number 2276/Pdt.G/2023/PA.Bgl is a cumulative divorce lawsuit, which not only includes a claim for divorce but also addresses post-divorce financial support. In this ruling, the panel of judges rejected all claims related to post-divorce financial support for both the wife and children. The judges held that Decision Number 2276/Pdt.G/2023/PA.Bgl was *obscur libel* (unclear or vague) because, based on their considerations, the Plaintiff's claims aside from the divorce itself did not meet the material requirements of a lawsuit, rendering the Plaintiff's claim unclear.<sup>15</sup> This is based on the Panel of Judges' interpretation of Article 8, Paragraph 3 of the *Reglement op de Rechtsvordering* (RV) regarding the drafting of lawsuits, which states: "Efforts and the main points of the lawsuit must be accompanied by clear and specific conclusions."

In fact, the ruling has disregarded the aspect of justice in its decision, as the panel of judges leaned solely on the normative dogma of a single regulation—namely, the formal requirements for filing a lawsuit—without considering other relevant factors. The lawsuit involves two legal elements that should be taken into account: Article 8(3) of the RV concerning the drafting of lawsuits and Supreme Court Circular (SEMA) No. 03 of 2018 from the Plenary Session of the Religious Chamber, which states that in a divorce case filed by the wife, she may be entitled to *nafkah iddah* and *mut'ah* as long as she is not guilty of *nusyuz*. Judicial interpretation should rightfully encompass both material and immaterial aspects to ensure a fair and just ruling.

According to Bambang Sutiyoso, the process of legal discovery involves selecting applicable regulations, as in this case, where two regulations serve as the benchmark for judges in making a decision.<sup>16</sup> Therefore, the panel of judges must consider these

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<sup>13</sup> Anshary, *Hukum Acara Perdata Pengadilan Agama dan Mahkamah Syariah* (Bandung: Redaksi Mandar Maju, 2017), 90.

<sup>14</sup> Imamah, "Tinjauan Yuridis Terhadap Gugatan *Obscuur libel* dalam Perkara Gugat Waris dan Pembatalan Wasiat" (Analisis Putusan Perkara Nomor 1515/Pdt.G/2012/PA.JS, Nomor 47/Pdt.G/2013/PTA.JK dan Nomor 673 K/Ag/2013)", (Skripsi, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2019)

<sup>15</sup> Putusan Nomor 2276/Pdt.G/2023/PA.Bgl

<sup>16</sup> Bambang Sutiyoso, *Metode Penemuan Hukum*, Kedua (Yogyakarta: UII Press, 2007), 142.

regulations to achieve justice. Moreover, according to Agus Santoso, a ruling must fulfill three values to attain justice: 1) Distributive justice. 2) Legal justice. 3) Commutative justice.<sup>17</sup> According to the author, in the ruling, the judge only applied legal justice while disregarding other aspects of justice. Considering the events mentioned above, the panel of judges should not only take the lawsuit into account but also consider other relevant factors that could have implications for the decision. For instance, the fact that the wife was not provided with financial support while the husband left the household, and that she was clearly not in a state of *nusyuz* (disobedience), should have been taken into consideration.

Decision Number 2276/Pdt.G/2023/PA.Bgl states that the Plaintiff has presented the case by explaining the reasons for the divorce. The Plaintiff, both the wife and the child, did not receive financial support throughout the marriage. This is detailed in points 5, 6, 7, and 8, which state as follows:<sup>18</sup> a) That the Defendant has never provided financial support for the family, as is expected of the head of the household. b) That the Defendant has never disclosed his salary as a member of the TNI (Indonesian National Armed Forces) from the time of marriage until this lawsuit was filed, and all position-related allowances, whether in the form of basic necessities or monetary benefits that rightfully belong to the wife of a TNI member, have never been given to the Plaintiff. c) That the Defendant has also never provided child support that should have been given to his child, including food supplies and healthcare allowances. If the child fell ill, it was always the Plaintiff, accompanied by her mother, who took the child to the doctor and paid for the medical expenses with her own money. d) The peak of their conflicts occurred around November 2021, when the Defendant completely stopped providing financial support for his child, including school fees, religious study expenses, milk, diapers, and other essential needs.

Based on the explanations above, the author believes that the right to financial support after divorce should be granted. This is because the wife is not guilty of *nusyuz* (disobedience). If the wife is not *nusyuz*, her rights to post-divorce financial support should be fulfilled. This is in accordance with Supreme Court Circular (SEMA) No. 03 of 2018, as determined in the Plenary Session of the Religious Chamber, which states that in cases of *cerai gugat* (divorce initiated by the wife), the wife is entitled to *iddah* and *mut'ah* financial support as long as she is not *nusyuz*.<sup>19</sup> In the context of this ruling, the panel of judges did not grant the wife's post-divorce financial rights solely based on the formal aspects of filing the lawsuit. As a result, the wife did not receive her rightful entitlements, which could potentially create new problems rather than providing a solution. This issue arises because the plaintiff is a housewife who, during the *iddah* period, is prohibited from leaving the house except in emergencies, such as purchasing essential goods or addressing urgent matters. The rejection of post-divorce financial rights clearly disadvantages the Plaintiff, as she will face difficulties during the *iddah* period due to the lack of financial support. This situation is even more burdensome considering that the Plaintiff is a housewife, which means she will have to find a job first in order to sustain her livelihood.

A divorced wife, whether through *bain sughra* or *bain kubra*, and who is pregnant, is entitled to financial support (*nafkah*) and housing. Scholars unanimously agree on this,

<sup>17</sup> Agus Santoso, *Hukum, Moral, dan Keadilan: Sebuah Kajian Filsafat Hukum* (Jakarta: Kencana, 2014), 92.

<sup>18</sup> Putusan Nomor 2276/Pdt.G/2023/PA.Bgl

<sup>19</sup> Surat Edaran Mahkamah Agung (SEMA) Nomor 03 Tahun 2018

based on Surah At-Talaq, verse 6. However, there is a difference of opinion regarding a wife who is not pregnant. According to Ibn Mas'ud, Imam Malik, and Imam Shafi'i, the ex-wife is only entitled to financial support. Meanwhile, Ibn Abbas, Daud Ad-Dzahiri, and several other scholars argue that the ex-wife is not entitled to either financial support or housing. The second opinion is based on the reasoning that the marriage has been completely dissolved and the woman is not pregnant. This perspective may have been adopted in the Compilation of Islamic Law (KHI), leading to the rule that a woman who has been divorced through and is not pregnant is not entitled to *nafkah*, food, or clothing (*kiswah*).<sup>20</sup>

Children, who should not be involved in or affected by their parents' issues, often suffer losses due to the court's decision not to grant financial support for education, healthcare, and daily necessities. According to Article 41, paragraph (2) of Law Number 1 of 1974 on Marriage, the responsibility of parents after divorce is stated as follows: "The father is responsible for all costs related to the care and education of the child. However, if the father is unable to fulfill this obligation, the court may determine that the mother shares the financial responsibility." Even after divorce, parental obligations toward their children do not cease until the child reaches adulthood or becomes financially independent. The issue of fathers failing to provide child support after divorce has become a significant social problem in society. Ideally, providing child support after divorce remains the primary responsibility of the father.<sup>21</sup> The regulation clearly states that a father bears full responsibility for his child, including in the field of education. However, since the panel of judges only considered the procedural aspect of filing the lawsuit, as stated in Article 8 of the *Reglement op de Burgerlijke Rechtsvordering* (RV), and, in the author's view, disregarded Article 41(2) of Law No. 1 of 1974 on Marriage, the child was deprived of financial support for both maintenance and education. This situation is deeply concerning, as the court, which is supposed to uphold justice, instead creates new problems following the verdict. An innocent child, who should not be affected by parental disputes, ultimately suffers losses because their rights after the parents' separation were not granted by the panel of judges.

In adjudicating a case, the panel of judges should not view the matter from only one perspective. Judges must consider the supporting phenomena presented during the trial to ensure a fair and just decision. If judges focus solely on the formal and material completeness of the case without examining other relevant aspects and phenomena that contribute to uncovering legal facts, justice cannot be properly achieved. This aligns with Article 5, Paragraph (1) of Law Number 48 of 2009 on Judicial Authority, which states "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society."<sup>22</sup> This means that a judge, when adjudicating a case, should thoroughly explore the legal principles and sense of justice before making a decision in court.

### **Analysis of *Obscuur libel* Lawsuit in Decision Number 2276/Pdt.G/2023/PA.Bgl Regarding the Granting of Spousal and Child Support After Divorce from the Perspective of Satjipto Rahardjo's Progressive Law**

<sup>20</sup> Hamzah, Oyo Sunaryo Mukhlas, dan Usep Saepullah, "HAK-HAK PEREMPUAN PASCA PERCERAIAN DALAM HUKUM POSITIF DAN HUKUM ISLAM," 2022, Jurnal Hukum Keluarga Islam, Vol. 6 (t.t.), <https://doi.org/10.19109/ujhki.v6i1.12239>.

<sup>21</sup> Lutfi Yana dan Ali Trigiyatno, "Pemenuhan Hak Nafkah Anak Pasca Perceraian," 30 Oktober 2022, AlHukkam, Volume 2, no. Journal Of Islamic Family Law (2022): 117.

<sup>22</sup> Undang-Undang Nomor 48 tahun 2009 Tentang Kekuasaan Kehakiman

The success or failure of law enforcement will determine and serve as a benchmark for the legitimacy of the law within its social reality. According to Satjipto Rahardjo, the application of law should not be limited to the literal interpretation of legal provisions but must also consider the aspects of law as practiced by society.<sup>23</sup> From the explanation above, it is clear that the law should not rely solely on normative dogma but must also consider other legal facts that support the realization of justice for litigants (seekers of justice).

Efforts to achieve legal harmonization in Indonesia aim to provide a sense of justice for individuals seeking to uphold their rights. In this context, judges must possess strong legal analytical skills, integrity, morality, and ethics in applying the law. From this explanation, it can be concluded that judges, in enforcing the law within society, must remain impartial and not favor any party involved in legal proceedings.<sup>24</sup> One party, such as the prosecutor, has an interest in siding with the state and more dismisses the proof of the defendant's guilt for the sake of upholding the law and justice, on the other hand, against the lawyer who will side with the client's interests.

Etymologically, the word "progressive" comes from the English word progress which means progress. If the words "law" and "progressive" are combined, it means that the law should be able to keep up with the times in order to be able to serve the interests of society based on the morality aspect of law enforcers' resources. Meanwhile, if progressive law is associated with legal interpretation, this means that progressive interpretation understands the legal process as a process of liberation from an ancient concept that cannot be used in serving today's life. The power (interpretation) of progressive law is the power to reject and break the status *quo*.<sup>25</sup>

The idea of progressive law departs from two basic components in law, namely rules and behavior. Here the law is placed as an aspect of behavior but also as a rule. Regulations will build a positive legal system, while behavior or humans will drive the regulations and systems that have been (and will) be built.<sup>26</sup>

Progressive law was initiated to overcome various injustices that have been experienced by *the judiciary*, considering that in essence law enforcement is a series of processes to describe values, ideas, and minds that are quite abstract which are the goals of law. Progressive law is not only fixated on the dogmatism of the law and legislation because in progressive law the law is not final and absolute, but the law is a thing that always processes according to the times (*law as process, law in the making*).<sup>27</sup> This makes the view of progressive law even broader because progressive law does not have the view that the law is for human beings but a law that accommodates human beings, a law that is pro-people and a law that is pro-justice.

*Obscur libel decision* Number 2276/Pdt.G/2023/PA. According to the author, Bgl is contrary to the characteristics of progressive law. In this case, what is a parameter is the flexibility of law enforcement, the law is not only inclined to the rule of law but emphasizes the social context and conditions *of the judiciary*. This is because the decision

<sup>23</sup> Satjipto Rahardjo, *Ilmu Hukum*, VIII (Bandung: PT Citra Aditya Bakti, 2014), 372.

<sup>24</sup> Bening Permata Damarsari, Widhi Handoko, dan Anggita Doramia Lumbanraja, "Penerapan Nilai-Nilai Hukum Progresif Terhadap Pandangan Hakim Pada Hak Anak Hasil Poligami Tanpa Izin," 2021, Notarus, Vol. 14 (t.t.), <https://doi.org/10.14710/nts.v14i1.38862>.

<sup>25</sup> Mahrus Ali, *Membumikan Hukum Progresif* (Yogyakarta: Aswaja Pressindo, 2013), 107.

<sup>26</sup> Satjipto Rahardjo, *Dissecting Progressive Law* (Jakarta: PT. Kompas Media Nusantara, 2006), 265.

<sup>27</sup> Anak Agung Sagung Ngurah Indradewi, "Karakteristik Dasar dan Urgensi Pemikiran Hukum Progresif dalam Konteks Penegakan Hukum," *Widyasrama* 22, no. 2 (13 Maret 2017), <http://ejournal.undwi.ac.id/index.php/widyasrama/article/view/48>.



is contrary to the characteristics of progressive law, namely (1) Element of Flexibility. (2) Elements of Social Justice. (3) Elements of Human Rights. (4) Elements of Change.

*First.* Element of Flexibility. Progressive law emphasizes the importance of flexibility in the application of the law. In this case, law enforcement is not only based on standard rules, it is based on the characteristics of progressive law which views that the law is always moving in the process of change (*law as a process, law in the making*).<sup>28</sup> The main goal is to create balanced justice, not merely enforce the law formally. The Panel of Judges in the *Obscuur libel* Lawsuit Decision Number 2276/Pdt.G/2023/PA.Bgl. only leaned on dogmatic-normative rules, especially in article 8 of the *Regulmen op de Rechtsvordering* regarding the procedure for making a lawsuit in Court. In fact, in the verdict, it is clear that the wife filed a divorce lawsuit because she was not provided for by her husband either after marriage or after the husband left home. Moreover, a wife who is a housewife will certainly have a hard time carrying out *the iddah* period because there is no income.

The above explanation can be concluded in the *Obscuur libel's* Lawsuit Decision Number 2276/Pdt.G/2023/PA.Bgl. does not meet these indicators because in its implementation the Panel of Judges is very rigid in its normative dogma and social and individual context.

*Second.* Social Justice. One of the main focuses of progressive law is to create social justice. The law not only aims to punish the perpetrators of crimes, but also to improve the social conditions that cause the crimes. The justice in question is justice that is in favor of the interests of the people and is based on well-being and happiness.<sup>29</sup> The *obscur libel* lawsuit of Decision Number 2276/Pdt.G/2023/PA.Bgl. judging from these indicators, according to the author, does not meet the criteria of progressive law. This can be seen from the decision, namely the Panel of Judges set aside the justice of the Plaintiff who was a victim of the husband's irresponsibility in building a household and did not get justice in the decision. The Panel of Judges rejected the alimony lawsuit filed by the Plaintiff, even though the Plaintiff was not given alimony by the Defendant while running the household.

The above explanation can be concluded by the author that Decision Number 2276/Pdt.G/2023/PA.Bgl. has ignored social justice because it does not meet the characteristic elements of progressive law, namely justice that favors the interests of the people and is based on welfare and happiness.

*Third.* Human Rights Element. Progressive law has the characteristic of not wanting to make law something that has no conscience, but a moral institution.<sup>30</sup> Decision Number 2276/Pdt.G/2023/PA.Bgl. has very clearly waived the maintenance rights of the wife and children after the divorce. Where in the decision the Panel of Judges rejected the alimony lawsuit. In fact, the wife should have the right to get an *iddah* alimony because it is not *nusyuz* as per Article 41 letter c of Law Number 1 of 1974 and SEMA Number 3 of 2018. In addition, the child should also earn a living because parents, especially fathers, must provide for their children until they can provide for themselves and/or until the child is married as in Article 41 a and b of Law Number 1 of 1974.

<sup>28</sup> Deni Nuryadi, "Teori hukum Progresif Dan Penerapannya di Indonesia," *De'Jure: Jurnal Ilmiah Hukum*, Vol 1, no. Kajian Ilmiah Hukum (2016), <https://doi.org/10.35706/dejure.v1i2.515>.

<sup>29</sup> Nuryadi.

<sup>30</sup> Anak Agung Sagung Ngurah Indradewi, "Karakteristik Dasar dan Urgensi Pemikiran Hukum Progresif dalam Konteks Penegakan Hukum."

*Fourth. Elements of Change.* Progressive law has the characteristic of following the development of people's aspirations (the law depends on the situation and conditions of the needs of community regulation).<sup>31</sup> From this explanation, the *obscuur libel lawsuit* Decision Number 2276/Pdt.G/2023/PA.Bgl. contrary to the characteristics of Satjipto Rahardjo's progressive law. The Panel of Judges in the decision is not in accordance with the adigium of law as a process, law in the making, which means that the law is always moving in the process of change. This can be seen from the reason why the judge rejected the right to support the wife and children after the divorce because the decision did not meet the formulation of making a lawsuit. This shows that the judge only looks at it from the juridical aspect, without considering the philosophical and sociological aspects in making a decision, such as wives and children who are not properly provided for during the household. This is contrary to Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which explains that judges are obliged to explore, follow, and understand the value of legal values and a sense of justice in society.

As the legal goal of Satjipto Rahardjo Progressive Law which states that in order to achieve a just law, it is necessary to prioritize the moral of justice to the community, pro-people, pro-justice, aiming for welfare and happiness, based on a good life, responsive, supporting the formation of a conscientious legal state, carried out with spiritual intelligence and liberating. However, there are still many cases that are not decided fairly in court because there are still judges who decide only based on formal regulations, and do not see phenomena or dig up other facts that live in society.

Decision Number 2276/Pdt.G/2023/PA.Bgl. should be in favor of the Plaintiff in this context is related to the issue of wife and child maintenance after divorce. Because the results of the analysis with Satjipto Rahardjo's perspective show that the panel of judges should have provided support for his wife and children after divorce because of the 4 elements in Satjipto Rahardjo's progressive law, none of them have been fulfilled, so that the Plaintiff does not get rights and justice in the decision and must punish the Plaintiff to pay post-divorce maintenance rights to his wife and children.

### **Conclusion**

The examination of Decision No. 2276/Pdt.G/2023/PA.Bgl demonstrates that the panel of judges placed greater weight on the formal adequacy of the lawsuit than on the substantive rights of the parties involved. By relying predominantly on Article 8(3) of the *Reglement op de Rechtsvordering*, the judges concluded that the plaintiff's cumulative claim was *obscuur libel*, thereby rejecting all demands for post-divorce spousal and child maintenance. This outcome stands in contrast to the factual circumstances presented throughout the case, particularly the consistent absence of financial support from the defendant during the marriage and after his departure from the household. From the standpoint of Indonesia's positive law, the ruling does not align with the framework established by Law No. 1 of 1974, the Compilation of Islamic Law, and Supreme Court Circular No. 3 of 2018. These legal instruments collectively affirm the responsibility of fathers to provide for their children and the entitlement of non-nusyuz wives to receive iddah and mut'ah. The decision, therefore, fails to reflect the substantive protections that the law seeks to secure, especially for dependents who are materially affected by marital dissolution.

When analyzed through Satjipto Rahardjo's Progressive Law perspective, the decision similarly falls short of the essential principles of flexibility, social justice, human

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<sup>31</sup> Nuryadi, "Progressive Legal Theory and Its Application in Indonesia," 402.

rights protection, and legal responsiveness. The judges' reliance on procedural technicalities resulted in the marginalization of the plaintiff's rights and neglected the broader social and moral objectives of family law. Such an approach diminishes the judiciary's capacity to serve as an institution that safeguards welfare, fairness, and humanity. Based on this analysis, the study concludes that the adjudication of post-divorce maintenance claims requires a more substantive and contextual method of legal interpretation. Progressive Law offers an important normative basis for guiding judicial reasoning in cases involving vulnerable dependents. This research contributes to ongoing discourse on the need to recalibrate judicial practice toward outcomes that genuinely reflect justice, societal realities, and the protective purpose of family law within Indonesia's religious court system.

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