

Judicial Protection of Women's Maintenance Rights in Wife-Initiated Divorce: A Study of Religious Court Decisions in East Java

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Abstract:

Divorce has significant legal consequences, particularly regarding the rights and obligations of former spouses after the dissolution of marriage. One critical issue concerns women's right to maintenance following divorce, especially in cases initiated by wives (*cerai gugat*), where judicial practice often shows varying outcomes. This study aims to analyze judges' legal considerations in determining women's maintenance rights in wife-initiated divorce cases and to examine the implementation of Supreme Court Regulation (PERMA) No. 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women in Conflict with the Law. This research employs normative legal research with a case approach. The data were obtained through the analysis of five Religious Court decisions: Pasuruan Number 0410/Pdt.G/2025/PA.Pas, Probolinggo Number 639/Pdt.G/2025/PA.Prob, Sidoarjo Number 3617/Pdt.G/2025/PA.Sda, Surabaya Number 4099/Pdt.G/2025/PA.Sby, and Malang Number 51/Pdt.G/2025/PA.Mlg. The findings indicate that judges' considerations in determining women's maintenance rights are influenced by several factors, including the causes of divorce, the parties' economic conditions, the wife's contributions during the marriage, and the application of women's protection principles as regulated in PERMA No. 3 of 2017. The study further reveals that some judges adopt a substantive justice approach by granting maintenance rights despite the divorce being initiated by the wife. The novelty of this research lies in its comparative analysis of court decisions, which identifies patterns of inconsistency as well as a gradual shift toward gender-sensitive judicial reasoning. This study contributes to formulating ideal standards of legal reasoning for judges and emphasizes the importance of integrating gender perspectives in ensuring effective protection of women's post-divorce maintenance rights.

Keywords: *Right to Support; Divorce Lawsuit; PERMA No. 3 of 2017; Protection of Women*



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Introduction

Marriage is a physical and emotional bond between a man and a woman as husband and wife, aimed at forming a happy and everlasting family based on the belief in the Almighty God. This principle is affirmed in Law Number 1 of 1974 on Marriage, which positions marriage as both a legal and social institution with the objective of achieving a harmonious and prosperous family life. However, in social reality, not all marriages can be maintained, and divorce becomes one of the mechanisms for resolving conflicts within marital relationships. Divorce not only marks the termination of the legal relationship between husband and wife, but also gives rise to various legal consequences related to the rights and obligations of the parties after the dissolution of marriage, including the fulfillment of women's right to maintenance.¹

In the context of family law in Indonesia, the issue of post-divorce maintenance is highly significant as it is directly related to the protection of women's economic rights. In many cases, women are in a more vulnerable position after divorce because, during the marriage, some women depend on their husbands' income to meet their daily needs. This condition makes divorce potentially lead to economic vulnerability for women if it is not accompanied by the fulfillment of maintenance obligations by the former husband. Therefore, the existence of legal provisions that guarantee women's right to maintenance after divorce becomes essential as a form of protection for the economically weaker party within the marital relationship.²

Normatively, positive law in Indonesia has provided a legal basis for the fulfillment of women's right to maintenance after divorce. Article 41 letter (c) of Law Number 1 of 1974 on Marriage states that the court may obligate the former husband to provide living expenses to the former wife after divorce. This provision indicates that the state continues to place the former husband as a party who bears moral and legal responsibility for the economic consequences arising from the dissolution of marriage.

In addition, the Compilation of Islamic Law also affirms that the husband is obliged to provide a proper *mut'ah*, *'iddah* maintenance, and to settle any outstanding maintenance obligations incurred during the marriage in the event of divorce.³ Thus,

¹ Khoiruddin Nasution, *Hukum Keluarga (Perdata) Islam Indonesia* (Yogyakarta: TAZZAFI, 2021), 278-281.

² Euis Nurlaelawati, *Chapter 5 Women's Financial Rights after Divorce in Indonesia* (Brill, 2018), https://doi.org/10.1163/9789004386297_007; Shofiatul Jannah et al., "Implementation of Post-Divorce Alimony Policies from a Gender Justice Perspective: A Comparative Legal Study of Indonesia, Malaysia, and Brunei Darussalam," *Ulumuna* 29, no. 2 (2025): 959-89, <https://doi.org/10.20414/ujis.v29i2.1762>.

³ Mansari, Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Isteri Pasca Perceraian", *Gender Equality: International Journal of Child and Gender Studies*, Vol.5 No.1 (2023). <https://doi.org/10.22373/kesetaraan.v5i1.5377>

both under national law and Islamic law, there is recognition of women's right to receive maintenance protection after divorce.⁴

Although this normative framework has provided guarantees for women's right to maintenance, judicial practice shows that the implementation of these provisions still faces various challenges. One of the recurring issues is the difference in treatment between *talak* divorce (initiated by the husband) and divorce petitions filed by the wife in determining women's maintenance rights. In *talak* divorce cases, women as the party divorced by the husband generally receive clearer protection regarding their right to maintenance. Conversely, in divorce cases initiated by the wife, there is a tendency for women to be considered as relinquishing part of their rights, resulting in the fulfillment of maintenance rights not always being granted optimally. This condition raises debates regarding the extent to which women who file for divorce remain entitled to post-divorce maintenance, as well as how judges take such rights into consideration in their judicial decisions.⁵

Several studies indicate that the fulfillment of women's maintenance rights in divorce cases initiated by wives still shows variation in the practice of religious courts. Research by Patimah, et al., shows that judges' considerations in determining women's post-divorce rights are often influenced by the husband's economic condition, the wife's needs, as well as the facts revealed during the trial. However, such variations in judicial considerations have the potential to create legal uncertainty if they are not based on clear and consistent standards of assessment.⁶ Studies also found a tendency of gender bias in several divorce decisions, particularly in cases initiated by wives, where women as plaintiffs often do not receive adequate maintenance rights, even though normatively the law provides protection for such rights.⁷

In addition, studies on the practice of post-divorce maintenance awards indicate that judges play a crucial role in determining the amount of maintenance to be provided by the former husband. Research by Riyan Ramdani and Firda Nisa Syafitri shows that the determination of *mādhīyah*, *'iddah*, and *mut'ah* maintenance by judges involves considerations of the husband's economic capacity and the actual needs of the former wife. However, if such considerations are not accompanied by adequate legal reasoning, the resulting decisions may lead to legal uncertainty and

⁴ Shofiatul Jannah and Roibin Roibin, "The Urgency of Determining the Post-Divorce Iddah Payment Period in Indonesian Religious Courts," *Jurnal Ius Constituendum* 8, no. 3 (2023): 424–35, <https://doi.org/10.26623/jic.v8i3.7606>; Suud Sarim Karimullah et al., "The Concept of Nāfaqah in Islamic Law and Women's Right to Financial Support," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 2 (2025): 222–42, <https://doi.org/10.24042/el-izdiwaj.v5i2.23534>.

⁵ Ramadhita Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2206347, <https://doi.org/10.1080/23311886.2023.2206347>.

⁶ Patimah et al., "The Judge's Consideration in Determining Support for Wife Post-Divorce," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 10, no. 2 (2023): 112–20, <https://doi.org/10.24252/al-qadau.v10i2.43383>.

⁷ Abdul Aziz and Khafid Abadi, "Gender Bias in the Adjudication of Spousal Support in Wife-Initiated Divorce Cases at The Religious Court of Kajen Pekalongan," *International Journal of Social Science and Religion (IJSSR)*, October 12, 2025, 351–62, <https://doi.org/10.53639/ijssr.v6i3.374>; Asni Asni and Muhammad Iqbal, "Women Judging Women: Gender Sensitivity in the Decisions of Divorce Cases of Indonesian Religious Courts," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2025): 588–615, <https://doi.org/10.19105/al-lhkam.v20i2.18999>.

potential injustice for women.⁸ Therefore, it is essential for judges to apply the principles of reasonableness, fairness, and proportionality in determining the amount of post-divorce maintenance.

In order to strengthen the protection of women in conflict with the law, the Supreme Court of the Republic of Indonesia issued Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women in Conflict with the Law. This regulation provides guidance for judges that, in examining and deciding cases involving women including divorce cases they must take into account the principles of gender equality, non-discrimination, and the protection of vulnerable parties. The existence of this regulation is important as it provides a normative framework for judges not only to rely on a formalistic legal approach, but also to consider social conditions and power relations that may affect women's position in the judicial process.⁹

Nevertheless, several studies indicate that the implementation of Supreme Court Regulation Number 3 of 2017 in judicial practice is still not fully consistent. Research by Sulis Mai Fitri shows that although the regulation has provided clear guidelines regarding a gender perspective in the judicial process, its application still depends on judges' sensitivity and understanding of gender equality issues.¹⁰ This indicates that the existence of regulations alone is not sufficient if it is not accompanied by the internalization of the principles of substantive justice in judges' legal reasoning.

To address these issues, this study employs the conceptual frameworks of substantive justice and gender justice. Substantive justice emphasizes that legal decisions should not merely focus on the formal application of norms, but must also take into account the social conditions and inequalities experienced by the parties, thereby producing real justice.¹¹ Meanwhile, the gender justice perspective highlights the importance of eliminating bias and stereotypes against women in judicial processes, as well as ensuring that women receive equal protection before the law. These two approaches are used to analyze the extent to which judges' considerations in divorce decisions reflect the protection of women's economic rights.

Based on these conditions, a study on women's right to maintenance in divorce cases initiated by wives becomes important to be analyzed more deeply, particularly in relation to judges' legal considerations in divorce decisions. This research focuses its analysis on several decisions of Religious Courts, namely: Decision of the Pasuruan Religious Court Number 0410/Pdt.G/2025/PA.Pas, Decision of the Probolinggo Religious Court Number 639/Pdt.G/2025/PA.Prob, Decision of the Sidoarjo Religious Court Number 3617/Pdt.G/2025/PA.Sda,

⁸ Riyan Ramdani and Firda Nisa Syafitri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut'ah Dalam Perkara Perceraian Di Pengadilan Agama," *ADLIYA: Jurnal Hukum dan Kemanusiaan* 15, no. 1 (2021): 37–50, <https://doi.org/10.15575/adliya.v15i1.11874>.

⁹ Peraturan Mahkamah Agung Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum.

¹⁰ Sulis Mai Fitri, "Implementasi PERMA No. 3 Tahun 2017 dalam Perspektif Kesetaraan Gender," *Politika: Jurnal Hukum Tata Negara* 11, no. 2 (2024), 2024), <https://doi.org/10.32505/politika.v11i2.10627>

¹¹ Komang Kartika Yasa dkk, "Keadilan Substantif Dalam Praktik Diskresi Kepolisian: Telaah Normatif Filosofis Atas Kasus Anak Melaporkan Ibu Kandung", *Juris Prudentia: Jurnal Hukum EKselen*, Vol.7 No.4 Desember (2025), <https://journalversa.com/s/index.php/jhe/article/view/4919/5655>

Decision of the Surabaya Religious Court Number 4099/Pdt.G/2025/PA.Sby, and Decision of the Malang Religious Court Number 51/Pdt.G/2025/PA.Mlg. The analysis of these decisions is conducted to examine how judges consider women's right to maintenance in divorce cases initiated by wives, as well as to assess the extent to which Supreme Court Regulation Number 3 of 2017 is applied as a legal basis in judicial reasoning.

Thus, this study aims to analyze judges' legal considerations in determining women's right to maintenance in divorce cases initiated by wives, as well as to examine the role of Supreme Court Regulation Number 3 of 2017 as a legal basis in divorce decisions related to the fulfillment of women's economic rights after divorce.

Research Methodology

This study is normative legal research that focuses on analyzing legal norms related to women's right to maintenance in divorce cases. Normative legal research is conducted by examining various laws and regulations, court decisions, as well as legal literature relevant to the issues being studied.¹² The approaches used in this study are the statute approach and the case approach.¹³ The statute approach is used to analyze legal provisions governing women's right to maintenance as well as Supreme Court Regulation Number 3 of 2017. Meanwhile, the case approach is employed to examine several decisions of Religious Courts related to women's right to maintenance in divorce cases.¹⁴

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials.¹⁵ Primary legal materials include statutory regulations and Religious Court decisions related to divorce cases. Secondary legal materials consist of books, academic journals, and research findings relevant to the research topic. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias that support the understanding of the legal concepts used.¹⁶ Furthermore, the legal materials are analyzed using a qualitative descriptive method with several complementary analytical techniques. First, doctrinal analysis is employed to interpret legal norms related to women's maintenance rights as well as the principles set out in Supreme Court Regulation Number 3 of 2017. Second, comparative analysis is used to compare judges' considerations across decisions in order to identify similarities, differences, and trends in the granting of women's maintenance rights. Third, judicial reasoning analysis is applied to examine the basis of judges' considerations, including how judges assess facts, apply legal norms, and take into account aspects of justice, propriety, and gender perspective in their decisions.¹⁷ Through this analysis, the researcher seeks to obtain a comprehensive understanding of judges' legal considerations in determining women's right to maintenance in divorce cases.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2017), 35.

¹³ Bambang Sunggono, *Metodologi Penelitian Hukum*, (Jakarta: RajaGrafindo Persada, 2013), 36.

¹⁴ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2018), 59.

¹⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 2006), 43.

¹⁶ Ahmad Rofiq, *Hukum Islam di Indonesia*, (Jakarta: RajaGrafindo Persada, 2015), 77.

¹⁷ Wiwik Sri Widiarty. "Buku Ajar Metode Penelitian Hukum", (Yogyakarta: Publika Global Media, 2024), 132.

Results and Discussion

Judges' Legal Considerations in Determining Women's Right to Maintenance in Religious Courts Across Five Cities in East Java

In divorce cases within the jurisdiction of the Religious Courts, judges have the authority to determine the rights and obligations of the parties following the dissolution of marriage. One of the issues that frequently arises in divorce cases initiated by wives concerns women's right to maintenance after divorce. In judicial practice, the provision of maintenance to former wives is not always uniform, as it depends on the judges' legal considerations in examining and deciding each case.¹⁸ Normatively, the obligation of a husband to provide maintenance to his former wife after divorce has a legal basis in various statutory regulations. Article 41 of Law Number 1 of 1974 on Marriage states that the court may require the former husband to provide living expenses to his former wife after divorce. This provision grants judges the authority to determine whether the former husband remains obligated to provide maintenance to his former wife.¹⁹ In addition, Article 149 of the Compilation of Islamic Law stipulates that if a marriage is dissolved due to divorce, the husband is obliged to provide a proper *mut'ah* to his former wife as well as maintenance during the *'iddah* period, except in cases where the wife is considered *nusyuz*.²⁰ This provision indicates that Islamic law provides protection for women's economic rights after divorce.

In judicial practice, judges' considerations in determining women's right to maintenance are not solely based on these normative provisions, but also take into account various other factors such as the causes of divorce, the economic conditions of the parties, and the wife's contributions during the marriage. Furthermore, since the issuance of Supreme Court Regulation Number 3 of 2017, judges are also required to consider a gender justice perspective in deciding cases involving women.²¹ The regulation emphasizes that judges must avoid gender stereotypes and consider women's social and economic conditions when deciding cases. This is important because women are often in a more economically vulnerable position after divorce.²² The regulation emphasizes that judges must avoid gender stereotypes and consider women's social and economic conditions when deciding cases. This is important because women are often in a more economically vulnerable position after divorce. In this study, the analysis is conducted on five Religious Court decisions related to divorce cases initiated by wives, namely:

1. Decision of the Pasuruan Religious Court Number 0410/Pdt.G/2025/PA.Pas

In this decision, the panel of judges granted the divorce petition filed by the plaintiff after considering the facts presented during the trial, which showed that the marital relationship had been experiencing prolonged conflict. The

¹⁸ Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama* (Jakarta: Kencana, 2016).

¹⁹ Sandi Yoga Pradana et al., "Maintenance Rights of Wife and Children After Divorce in Islamic Family Law," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 7, no. 2 (2025): 816~820, <https://doi.org/10.56338/ijhess.v7i2.7309>.

²⁰ Kompilasi Hukum Islam Pasal 149.

²¹ Peraturan Mahkamah Agung Nomor 3 Tahun 2017.

²² Rahma Khofifah Khoirun Umah and Maftukhin Maftukhin, "Judicial Formalism and Women's Economic Rights After Divorce: A Feminist Legal Study of a Religious Court Decision," *Sakina: Journal of Family Studies* 9, no. 4 (2025): 463~75, <https://doi.org/10.18860/jfs.v9i4.19522>.

continuous disputes indicated that the purpose of marriage to establish a *sakinah, mawaddah, and rahmah* family could no longer be achieved.²³ Based on these facts, the panel of judges concluded that the condition of the parties' household had met the grounds for divorce as stipulated in Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law.²⁴ Therefore, the judges decided to grant the divorce petition filed by the plaintiff.

However, in its legal reasoning, the court did not explicitly and comprehensively determine the plaintiff's right to maintenance. This indicates that the judges' considerations were still more focused on establishing the grounds for divorce rather than addressing the legal consequences following the dissolution of marriage. From the perspective of women's protection, this condition suggests that the application of gender justice principles in this decision has not been fully optimal. The judges should have also taken into account the plaintiff's economic condition after the divorce, as well as the husband's responsibilities during the marriage, before determining whether the plaintiff was entitled to post-divorce maintenance.²⁵

2. Decision of the Probolinggo Religious Court Number 639/Pdt.G/2025/PA.Prob

In this case, the plaintiff filed for divorce on the grounds that the defendant failed to fulfill his obligations as the head of the household, particularly in meeting the family's economic needs. The facts presented during the trial showed that the defendant did not consistently provide maintenance to the plaintiff, which led to conflict within the marriage.²⁶ Based on witness testimonies and the evidence presented, the panel of judges concluded that the marital relationship between the parties could no longer be maintained. Therefore, the judges declared that the grounds for divorce had been legally and convincingly proven. In their consideration, the judges also took into account the condition of the plaintiff after the divorce. The court held that although the divorce was initiated by the wife, the husband's obligations toward his former wife do not automatically cease. Accordingly, the judges determined that the defendant still bears responsibility to provide maintenance to his former wife. This approach demonstrates that the judges considered aspects of substantive justice by taking into account the woman's condition after divorce. It is also in line with the principles set out in Supreme Court Regulation Number 3 of 2017, which encourages judges to provide protection for women in the judicial process.²⁷

²³ Putusan Pengadilan Agama Pasuruan Nomor 0410/Pdt.G/2025/PA.Pas.

²⁴ Peraturan Pemerintah Nomor 9 Tahun 1975 Pasal 19 huruf (f) jo. Pasal 116 huruf (f) Kompilasi Hukum Islam.

²⁵ Umah and Maftukhin, "Judicial Formalism and Women's Economic Rights After Divorce"; Azhari Akmal Tarigan et al., "Ensuring Equity in Post-Divorce Economic Rights: A Critical Analysis of Judicial Sensitivity in the Religious Court of Padang Sidempuan, Indonesia," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 13, no. 2 (2023): 181–202, <https://doi.org/10.15642/alhukama.2023.13.2.181-202>.

²⁶ Putusan Pengadilan Agama Probolinggo Nomor 639/Pdt.G/2025/PA.Prob.

²⁷ Dede Kania et al., "Gender Equality Implementation in Women's Legal Cases in Religious Courts," *Kosmik Hukum* 25, no. 2 (2025): 205–20, <https://doi.org/10.30595/kosmikhukum.v25i2.25472>; Wahyu Saputra et al., "Challenges in Upholding Women's Post-Divorce Rights: Experiences From

3. Decision of the Sidoarjo Religious Court Number 3617/Pdt.G/2025/PA.Sda
In this decision, the panel of judges granted the divorce petition after considering that the marital conflict between the parties had persisted for a considerable period of time. The disputes had resulted in the parties no longer being able to maintain a harmonious marital life.²⁸ In their reasoning, the judges also considered the duration of the marriage as well as the plaintiff's contributions during the marital life. Based on these considerations, the court held that the plaintiff remains entitled to economic protection after the divorce. This reflects that the judges did not rely solely on a normative approach, but also took into account aspects of social justice in deciding the divorce case.²⁹
4. Decision of the Surabaya Religious Court Number 4099/Pdt.G/2025/PA.Sby
In this decision, the panel of judges found that the marital relationship between the parties had deteriorated due to continuous disputes. The ongoing conflict led the parties to live separately for a considerable period of time, indicating that the objectives of the marriage could no longer be achieved.³⁰ Juridically, these circumstances have satisfied the grounds for divorce as regulated in Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the Compilation of Islamic Law. Accordingly, the panel of judges granted the divorce petition filed by the plaintiff. In this case, the judges exercised their ex officio authority to determine the rights of the wife after the divorce, even though such claims were not explicitly requested in the lawsuit. The court ordered the defendant to provide *iddah* maintenance in the amount of Rp1,000,000 per month for a period of three months and *mut'ah* in the amount of Rp5,000,000 to be paid to the plaintiff. This determination was made based on the principles of propriety and the defendant's financial capability, while also considering a reasonable standard of living for the plaintiff following the divorce. This approach reflects the judges' effort to implement the principle of protection for women as emphasized in Supreme Court Regulation (PERMA) Number 3 of 2017.³¹
5. Decision of the Malang Religious Court Number 51/Pdt.G/2025/PA.Mlg
In this decision, economic factors constituted one of the primary causes of the divorce between the parties. The husband's inability to fulfill his obligation to provide financial support for the family gave rise to conflicts that eventually developed into prolonged disputes within the household.³² The mediation process conducted by the court resulted in a partial agreement between the parties regarding the legal consequences following the divorce. In this

Legal Practitioners in the Mataraman Region, East Java," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 1 (2024): 46–73, <https://doi.org/10.15642/alhukama.2024.14.1.46-73>.

²⁸ Putusan Pengadilan Agama Sidoarjo Nomor 3617/Pdt.G/2025/PA.Sda.

²⁹ Eka Kristina Sinaga and July Esther, "Analysis of Judges' Considerations Regarding Divorce Lawsuits Caused by Domestic Disputes," *International Journal of Law and Society* 2, no. 1 (2025): 190–98, <https://doi.org/10.62951/ijls.v2i1.318>.

³⁰ Putusan Pengadilan Agama Surabaya Nomor 4099/Pdt.G/2025/PA.Sby.

³¹ Peraturan Mahkamah Agung Nomor 3 Tahun 2017.

³² Putusan Pengadilan Agama Malang Nomor 51/Pdt.G/2025/PA.Mlg.

agreement, the defendant agreed to provide *iddah* maintenance, *mut'ah*, as well as child support to the plaintiff. The agreement was subsequently affirmed in the ruling by the panel of judges, thereby granting it legally binding force upon the parties. Thus, the judges did not merely act as adjudicators of the case but also ensured that the rights of the woman remained protected after the divorce.³³

The Role of Supreme Court Regulation Number 3 of 2017 as a Legal Basis for Divorce Decisions Concerning Women's Maintenance Rights in Divorce Judgments at Religious Courts in Five Cities in East Java.

Divorce does not only terminate the marital relationship between husband and wife, but also gives rise to legal consequences concerning the rights and obligations of the parties, particularly with regard to economic security for women.³⁴ In the practice of household life in Indonesia, wives often occupy a more vulnerable economic position due to their dependence on the husband's income during the course of the marriage. When divorce occurs, women may potentially experience a decline in their standard of living and even social vulnerability if they do not receive financial protection after the dissolution of the marriage.³⁵ Normatively, the protection of women's economic rights after divorce has been regulated in Article 41 letter (c) of Law Number 1 of 1974 concerning Marriage, which grants the court the authority to oblige a former husband to provide financial support for his former wife.³⁶ This provision indicates that the state continues to position the former husband as the party who bears both legal and moral responsibility for the economic consequences arising from the divorce.

In the perspective of Islamic law, which forms the basis of the Compilation of Islamic Law (KHI), this obligation is manifested in the form of *iddah* maintenance, *mut'ah*, and *mādhīyah* maintenance. Article 149 of the Compilation of Islamic Law (KHI) stipulates that when a marriage is dissolved due to *talak* (divorce pronounced by the husband), the husband is obliged to provide appropriate *mut'ah*, *iddah* maintenance, and to settle any outstanding maintenance that remained unpaid during the marriage.³⁷

This provision indicates that divorce does not automatically eliminate the husband's responsibility toward his former wife; rather, it continues to ensure the sustainability of economic protection for women. However, in the practice of the Religious Courts, there are differences in treatment between *talak* divorce and divorce filed by the wife (*cerai gugat*). In *talak* divorce, women's rights are relatively clearer because the wife is positioned as the party being divorced. Conversely, in *cerai gugat* cases, there is often

³³ Amaliatus Sholikhah and Jamilah J, "Judge's Consideration of Post-Divorce Rights ('Iddah and Mut'Ah) from The Perspective of Maslahah Mursalah," *Sakina: Journal of Family Studies* 7, no. 1 (2023): 111–23, <https://doi.org/10.18860/jfs.v7i2.3780>.

³⁴ Imelda Hutasoit et al., "Analysis of The Causes And Impacts of Divorce in Wonogiri Regency Central Java Province," *Jurnal Konstituen* 6, no. 1 (2024): 35–56, <https://doi.org/10.33701/jk.v6i1.4160>.

³⁵ Yulia Hesti et al., "Economic Vulnerability of Women after Divorce Towards a Gender Responsive Family Law Policy," paper presented at Advances in Social Science, Education and Humanities Research, *International Conference on Law, Economics & Good Governance (ICLAW 2025)*, December 29, 2025, https://doi.org/10.2991/978-2-38476-519-5_47.

³⁶ Pasal 41 huruf (c) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

³⁷ Pasal 149 Kompilasi Hukum Islam.

an assumption that the wife has voluntarily relinquished her rights by filing for divorce. As a result, many judicial decisions reject claims for *iddah* maintenance or *mut'ah* on the grounds that the divorce was initiated by the wife. In fact, in many cases divorce petitions are filed due to the husband's negligence in providing financial support, committing violence, or abandoning his wife.³⁸

To address this issue, the Supreme Court issued Supreme Court Regulation (PERMA) Number 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women in Conflict with the Law. Although hierarchically it is not equivalent to a statute, PERMA possesses binding force internally as a technical guideline for judges based on the Supreme Court's authority to regulate the administration of the judiciary. Thus, PERMA functions as an interpretative framework that guides judges to apply the law from a gender equality perspective. Supreme Court Regulation Number 3 of 2017 emphasizes the principles of equality before the law, non-discrimination, respect for human dignity, and the obligation of judges to explore and realize substantive justice.³⁹ In divorce cases, these principles serve as a basis for judges to continue determining women's maintenance rights even when the divorce is initiated by the wife. Judges may even impose maintenance obligations *ex officio* when the facts revealed during the trial indicate the existence of economic inequality or the potential vulnerability of women after the divorce. The determination of the amount of maintenance in divorce decisions is generally based on several main parameters, namely the principles of justice, propriety, the husband's economic capability, and the wife's actual needs.⁴⁰ The principle of justice requires a balance between the rights of the former wife and the economic capacity of the former husband, while the principle of propriety demands that the amount of maintenance be consistent with reasonable standards within society. In addition, judges also take into consideration the husband's economic condition, including his income, assets, and other financial responsibilities.⁴¹ On the other hand, the wife's actual needs must also be comprehensively taken into account, including basic necessities such as clothing, food, housing, healthcare, as well as living adjustment costs during the *'iddah* period. In some cases, judges also consider the former wife's age, health condition, and employment opportunities. This demonstrates that maintenance is not merely understood as a legal obligation, but also as an instrument of social protection aimed at preventing a decline in women's standard of living after divorce. These principles are in line with the provisions of Supreme Court Regulation (PERMA) Number 3 of 2017, which requires judges to consider power imbalances as well as the socio-economic conditions of women in examining cases.⁴² Thus, the

³⁸ Zakiyah Ulya and Endriyanti Endriyanti, "Protection of Women's Rights After Divorce in Divorce Lawsuit at the Padang Panjang Religious Court," *HUMANISMA: Journal of Gender Studies* 7, no. 2 (2023), <https://doi.org/10.30983/humanisme.v7i2.8012>.

³⁹ Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Pasal 3 dan Pasal 5.

⁴⁰ Afifah Afifah et al., "Faktor Ekonomi Dalam Penentuan Nafkah Pasca Perceraian Menurut Hukum Islam (Studi Putusan PA. Probolinggo No. 312/Pdt.G/2023)," *QISTINA: Jurnal Multidisiplin Indonesia* 4, no. 1 (2025): 1458–67, <https://doi.org/10.57235/qistina.v4i1.6607>.

⁴¹ Faisal Arrayansyah et al., "Judicial Discretion in Determining the Quantum of Nafkah Māḍiyah (A Study of Banda Aceh Syar'iyah Court Decisions)," *El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law* 5, no. 2 (2025): 131–50, <https://doi.org/10.22373/hadhanah.v5i2.8227>.

⁴² Anggi Salsha Musdalifa Lingga et al., "Provision of Maintenance for Former Wives of Civil Servants According to Government Regulation No. 45 of 1990," *Jurnal Hukum Indonesia* 4, no. 2 (2025), <https://doi.org/10.58344/jhi.v4i2.1591>.

standard for determining maintenance is not solely based on legal norms, but also on the perspective of gender equality and the protection of vulnerable parties.

The reinforcement of orders for the payment of maintenance in divorce judgments is also related to the authority of judges to determine maintenance *ex officio*. Such determination cannot be regarded as a form of *ultra petita*, but rather as an effort by judges to ensure the protection of women's rights and to realize substantive justice.⁴³ In many divorce cases, women do not always explicitly include claims for maintenance due to limited legal knowledge or psychological conditions resulting from domestic conflict. Therefore, the active role of judges is crucial to ensure that women's rights remain protected. Research conducted by Siti Aminah shows that after the enactment of Supreme Court Regulation (PERMA) Number 3 of 2017, there has been an increasing tendency among judges to grant maintenance claims in divorce cases filed by wives (*cerai gugat*).⁴⁴ This indicates a shift in paradigm from a formalistic approach toward a more affirmative approach in protecting women's rights.

In the context of the case analyzed at the Pasuruan Religious Court, Decision Number 0410/Pdt.G/2025/PA.Pas, there is strong indication that the judge applied a perspective aligned with the Supreme Court Regulation. The judge consistently adopted an approach that protects women's rights by imposing maintenance obligations on the husband, both through the operative part of the judgment and *ex officio*. This practice demonstrates that Supreme Court Regulation Number 3 of 2017 functions as a normative foundation that strengthens the legal position of women in divorce cases.⁴⁵

In the Decision of the Probolinggo Religious Court Number 639/Pdt.G/2025/PA.Prob, the influence of Supreme Court Regulation Number 3 of 2017 can be observed. The judge considered the fact that the husband failed to fulfill his maintenance obligations during the marriage, indicating an awareness of economic inequality within the household. This consideration reflects a limited application of the principle of protection for women. It shows that the regulation has begun to influence judges' perspectives, although it has not yet been applied consistently.⁴⁶

In the Decision of the Sidoarjo Religious Court Number 3617/Pdt.G/2025/PA.Sda, the influence of Supreme Court Regulation Number 3 of 2017 is more clearly reflected in the judge's consideration of the wife's contributions during the marriage and the economic conditions of the parties. This approach is in line with the principles of gender justice, which emphasize the importance of recognizing women's domestic roles as a form of indirect economic contribution. However, it is not accompanied by an explicit determination of maintenance.⁴⁷

⁴³ Helpan Setiabudi et al., "Ex Officio Judge's Authority Towards Fulfillment of Women's and Children's Rights After Divorce as Reviewed from The Principle of Ultra Petita," *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 5, no. 5 (2025): 3744–50, <https://doi.org/10.54443/ijerlas.v5i5.3864>.

⁴⁴ Saputra et al., "Challenges in Upholding Women's Post-Divorce Rights."

⁴⁵ Pengadilan Agama Pasuruan, Putusan Nomor 0410/Pdt.G/2025/PA.Pas.

⁴⁶ Pengadilan Agama Probolinggo, Putusan Nomor 639/Pdt.G/2025/PA.Prob.

⁴⁷ Pengadilan Agama Sidoarjo, Putusan Nomor 3617/Pdt.G/2025/PA.Sda.

In the Decision of the Surabaya Religious Court Number 4099/Pdt.G/2025/PA.Sby, the judge explicitly granted maintenance rights to the woman, even though the divorce was filed by the wife. The judge's considerations reflect the principles of non-discrimination and substantive justice as mandated in the Supreme Court Regulation, whereby women do not automatically lose their economic rights merely because they are the petitioning party. This indicates that the Regulation has functioned as a normative foundation influencing judicial reasoning in providing protection for women.⁴⁸

In the Decision of the Malang Religious Court Number 51/Pdt.G/2025/PA.Mlg, the judge comprehensively considered the socio-economic conditions of the woman and affirmed the obligation of maintenance as a form of protection for the vulnerable party. This approach reflects a full internalization of the principles set out in the Supreme Court Regulation, particularly in terms of substantive justice and gender perspective. The judge not only applied legal norms textually, but also took into account the real impact of divorce on women's lives.⁴⁹

This practice demonstrates that Supreme Court Regulation Number 3 of 2017 functions as a normative foundation that strengthens the legal position of women in divorce cases. Therefore, Supreme Court Regulation Number 3 of 2017 plays a strategic role as a progressive legal basis in protecting women's maintenance rights after divorce. This regulation not only reinforces the legitimacy of judges in imposing maintenance obligations, but also ensures that divorce does not lead to the impoverishment of women, while remaining consistent with the principles of gender equality and the protection of human rights within the religious court system in Indonesia.

Conclusion

Based on the results of the research entitled *Analysis of Women's Maintenance Rights in Divorce Decisions in Divorce Petitions Filed by Wives: A Study of Supreme Court Regulation Number 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law*, it can be concluded that the legal considerations of judges in divorce cases filed by wives concerning women's maintenance rights demonstrate a development toward the application of substantive justice that is more responsive to the protection of vulnerable parties, particularly women. In practice, judges do not merely adhere to a normative and textual approach, but also take into account the principles of gender equality, propriety, and the husband's economic responsibility as a legal consequence of the dissolution of marriage. Therefore, post-divorce maintenance rights in cases of divorce filed by the wife are not considered to be automatically extinguished solely because the divorce was initiated by the wife.

In addition, Supreme Court Regulation (PERMA) Number 3 of 2017 plays an important role as an interpretative foundation in strengthening legal protection for women who are in conflict with the law. This regulation encourages judges to integrate a gender perspective into their legal reasoning and to avoid discriminatory practices in determining post-divorce maintenance rights. PERMA also provides a basis for judges to adopt a more proactive role in ensuring the fulfillment of women's economic rights, either through *ex officio* considerations or by reinforcing the

⁴⁸ Pengadilan Agama Surabaya, Putusan Nomor 4099/Pdt.G/2025/PA.Sby.

⁴⁹ Pengadilan Agama Malang, Putusan Nomor 51/Pdt.G/2025/PA.Mlg.

operative part of the judgment so that it possesses executorial force. Nevertheless, this research also shows that the application of the principle of proportionality in determining the amount of maintenance still requires further strengthening, particularly in terms of legal reasoning concerning the balance between the husband's economic capability and the actual needs of the former wife. Therefore, although the available normative framework is already adequate, the consistency and depth of judicial reasoning remain crucial factors in realizing effective and just legal protection for women after divorce.

Based on these findings, this study recommends that judges within the religious court system apply Supreme Court Regulation Number 3 of 2017 more consistently, particularly in considering the economic conditions and vulnerabilities of women after divorce. In addition, it is necessary to develop more technical guidelines regarding the standards for determining maintenance in divorce petitions filed by wives, in order to reduce disparities in judicial decisions. For future research, it is suggested to broaden the scope of analysis by including more decisions from various regions, as well as to examine the implementation of the Regulation empirically in order to obtain a more comprehensive understanding of its effectiveness in judicial practice.

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