

Application of Ex Officio Rights Based on Gender Justice in Divorce Lawsuit in Surabaya Religious Court, Indonesia

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Abstract

The divorce rate of PA Surabaya in 2022 was recorded at 10,327 divorce applications, 5,802 cases were decided, 4,171 divorce cases compared to 1,631 cases. High number of divorce cases makes PA Surabaya must play role and be able to resolve Islamic family law problems fairly for the litigants. This research is text-based through the reading of court rulings from gender justice perspective. The purpose of the study: (1) to know the legal basis for the judge's consideration in the divorce lawsuit case Number:3950/Pdt.G/2023/PA.Sby. (2) How to apply Ex Officio rights based on gender justice in PA Surabaya for the fulfillment of wife's rights after divorce. The type of qualitative research is in the form of analysis of divorce case decisions, in-depth interviews, with judges who tried cases number (3950/Pdt.G/2023/PA.Sby). Using a gender approach with benefit indicators, not based on stereotypes (ridicule), don't lead to the creation of marginalization (sex differentiation), don't lead to gender-based violence and the absence of subordination (deviation of one gender). The results of this study show that PA Surabaya in legal products, especially in divorce lawsuits, is not accordance with the principles of gender justice, able to equalize gender by punishing husbands to pay muth'ah, iddah, hadhonah to ex-wives even though it's not written in the lawsuit with Ex Officio rights and cooperates with the Surabaya City Government for the implementation of decisions and as a pioneer in the implementation of Book II article 41 C of Law Number 1 of 1974 and PERMA No.3 Year 2017.

Keywords: Divorce; Ex Officio Right; Gender Justice



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INTRODUCTION

Basically, Allah is Wise and All-Knowing what happens in the household, there are the worst moments when a married couple does not find a solution or solution, therefore Allah Almighty allows divorce because it cannot the realization of the purpose of marriage. (Ilahiyah & Musadad, 2023) The affirmation in the Compilation of Islamic Law (KHI) article 114 explains that the breakup of a marital relationship due to divorce can be caused by talaq carried out by the husband or a divorce lawsuit filed by the wife. (Thariq, 2019) Law Number 1 of 1974 explains that divorce is the release of the marriage bond between the two parties, namely after the court decision has legal force that remains valid since the marriage took place. (Matodang, 2014) The issue of divorce in Law Number 1 of 1974 is regulated in several articles, namely as in article 38 which explains that marriages break up due to death,

divorce, and decisions from the court. Article 39 which states that divorce must be before a court hearing and in article 40 explains the divorce lawsuit submitted to the court, with procedures for filing a lawsuit according to the rules and with clear reasons that the husband and wife are no longer able to reconcile. (Dahwadin et al, 2020)

Budly Prianto et al mentioned that the factors of divorce include 4 main factors, including: a) factors of lack of harmony, b) absence of responsibility, c) economic factors, d) moral factors and other factors that trigger divorce such as: jealousy, polygamy, domestic violence and so on. (Prianto et al, 2013) Divorce itself is divided into 2 types, namely divorce talaq filed by a husband and divorce filed by a wife.

The compilation of Islamic Law (KHI) article 149 explains some of the legal consequences of divorce proposed by the husband (divorce talaq), namely: 1) The husband is obliged to give proper muth'ah to the ex-wife in the form of money or objects unless the ex-wife is qobla al dukhul (unrelated married couple). 2) The husband is obliged to provide maskan and kiswa to the ex-wife during the iddah period unless the ex-wife has been ba'in and is not pregnant. 3) The husband must pay off the dowry that is still owed is entirely and partly if qobla al dukhul (unrelated married couple). And 4) The husband must give hadhonah rights to his child until the child is 21 years old. (Fuadi et al, 2020).

Based on the above provisions, the Compilation of Islamic Law generally does not regulate or punish husbands to provide mut'ah bread, iddah and hadhonah in divorce cases. So, it can be said that a post-divorce wife is not entitled to her rights, especially for wives who do nusyuz. Judges have a special right called *Ex Officio* which is used to administer justice to women in divorce cases.

Ex Officio rights are rights derived from judges to decide a case because of a position as stated in the big dictionary Indonesian *Ex Officio* means because of position. According to Aqwam, Thariq *Ex Officio* is the right of the judge because his position is used to decide more cases than demanded Although the parties did not write it down. (Thariq, 2019) The existence of *Ex Officio* rights makes judges free to decide cases with various considerations that exist as in deciding divorce cases, both divorce talaq and divorce. In line with the principle of examining women's cases facing the law listed in Article 2 of PERMA NO. 3 of 2017. Women's cases face the law that is tried by judges based on the principles of: a) Respect for human dignity and dignity b) Non-discrimination c) Gender Equality d) Equality before the law e) Justice f) Expediency and g) Legal certainty. (Princess and Amar, 2018)

Meanwhile, Article 6 of PERMA No. 3 of 2017 states that Judges in adjudicating women's cases face the Law: 1) Considering Gender Equality and Gender Stereotypes in laws and unwritten laws. 2) Interpret laws and/or unwritten laws that can guarantee Gender Equality Explore legal values, local wisdom and a sense of justice that lives in society to ensure Gender Equality. 3) Equal protection and non-discrimination and 4) Consider the application of ratified international conventions and treaties related to Gender Equality. (Latif, 2022)

As in writing this article, the author conducted research on the application of *Ex Officio* rights based on gender justice in the decision of the Surabaya Religious Court with Number: 3950 / Pdt.G / 2023 / PA. Sby with sitting cases began with a request or lawsuit filed with a religious court. The plaintiff and defendant are a married couple who have had a wedding

reception properly and are legally recognized in the eyes of religious law and state law. The result of the marriage of this married couple was blessed with two children. The beginning of the family relationship was well established and harmonious but over time the marriage relationship began to falter and there were frequent quarrels between the two. The case is related to a divorce dispute involving women's rights after divorce, with the existence of *Ex Officio* Rights that go hand in hand in the settlement of the decision. Gender justice referred to here is the fulfillment of the rights of wives after divorce, especially in divorce cases filed by a wife, considering that in the Compilation of Islamic Law it is only explained that the husband is obliged to give his wife rights if a husband is mentally His wife. However, there is a Supreme Court regulation No. 3 of 2017 concerning guidelines for adjudicating women's cases that uphold the dignity of a woman so that in this case judges try divorce cases by considering various aspects, especially in equating gender with the fulfillment of women's rights, namely iddah bread, muth'ah bread, and hadhonah bread.

In decision Number: 3950/Pdt.G/2023/PA. Sby hakim gave the rights of the wife after divorce filed by himself so that the judge has used his *Ex Officio* Rights to protect women's rights and implement the applicable PERMA. There are several studies that examine *Ex Officio* rights including Mansari & Fatahillah (2021) conducted research on the analysis of juridical perspectives on the decision to provide 'iddah to nusyuz's wife. The method used in this study is normative juridical research using legal principles, norms, and doctrines of legal science, which aims to analyze the problems in the study process. The results showed that there was a conflict between the Compilation of Islamic Law (KHI) and Decision Number 6/Pdt.G2020/MS. Ngo concerning the provision of 'iddah in that case nusyuz proved to be inappropriate, so the right to earn 'iddah was void. Moreover, the judgment does not elaborate systematically and logically on the burden of 'iddah on the husband. The juridical consequence of the outcome of the verdict is that the husband can appeal. However, if you do not submit it, then the decision must be carried out, because every decision is considered correct according to the principle of *res judicata pro veritate habetur*.

Rizkal & Rafiqah (2021) examined the efforts of judges in fulfilling the rights of women and children during the Covid-19 period at the Shar'iyah Court. The type of research used is empirical legal research that aims to obtain concrete information. The results showed that the low protection of women's and children's rights in the Shar'iyah Court during the Covid-19 period which should earn a living 'iddah, mut'ah, mahdliyah and hadlanah became neglected.

Abdul Jamil and Muliadi Nur (2022) who conducted research with the theme of Legal Protection and Justice of the Parties through *Ex Officio* Judges in Verstek Divorce Case Decisions. This research was conducted using normative research methods using a statutory approach (statute approach) and a conceptual approach (conceptual approach). The results of his research are first, the protection of law and justice is the *Ex Officio* authority of judges because of their position to help justice seekers to obtain justice effectively and efficiently through the judicial process. Second, the *Ex Officio* application of judges as a form of legal protection and justice in the decision of divorce cases is to adjudicate outside the petitum (*ultra petita*) in the form of adding unsolicited ammar in the petitum as stipulated in Article 41 letter c of UUP No. 1 of 1974 jo Law No. 16 of 2019.

Danie Setiawan (2022) conducted research on the *Ex Officio* Rights of Judges in Determining Husbands' Obligations to Wives in Divorce Cases. The research conducted is normative juridical research. The results of his research show that judges in carrying out their duties in divorce talaq cases can use *Ex Officio* in considering decisions on the husband's obligations to his wife.

Tuti unaisa (2023) in her thesis conducted research on the Application of *Ex Officio* Rights of Judges in Determining the Income of Iddah Due to Divorce Law (Case Study at the Banyumas Religious Court). The research conducted was normative juridical research and the results of the research showed that *Ex Officio* rights had been applied by judges at the Banyumas Religious Court, especially in divorce cases. The judge renders an *Ex Officio* ruling to determine the wife's iddah income that is not listed on the petition petitem by looking at the husband's ability and ability to be adjusted to his income. Some cases that are not decided *Ex Officio* due to verstek, there is no counterclaim (reconvention) and the judge's understanding is different.

The similarity of the research that the author conducted with the studies above is the obligation to grant the rights of wives and children after divorce by using the *Ex Officio* rights of judges in deciding cases while the latest that the author poured is the Application of *Ex Officio* Rights Based on Gender Justice carried out at the Surabaya Religious Court with a divorce lawsuit case Number: 3950 / Pdt.G / 2023 / PA. Sby. So that from the background presentation, problems arise including: What is the legal basis for the judge's consideration in the divorce lawsuit case Number: 3950/Pdt.G/2023/PA. Sby? How is the application of *Ex Officio* rights based on gender justice in the decision of the Surabaya Religious Court? The purpose of this study is to know the legal basis for divorce cases and aims to uphold gender justice for women after divorce.

RESEARCH METHODS

This type of research is included in the category of qualitative research with field studies, field studies are data collection obtained from observations, as well as interactions to find appropriate data based on research focus. (Abdurrohman, 1998) The research source was obtained through the analysis of the decision of the divorce case at the Surabaya Religious Court in the form of an in-depth interview (dept interview) with the judge who tried the case number (3950/Pdt.G/2023/PA. Sby). This research is descriptive analytic which is intended to describe a picture of objects related to facts and phenomena found in the verdict. (Subana & Sudrajat, 2000) This research approach is a gender approach, which is a study that analyzes written laws and legal products decided by judges through court processes. (Amiruddin & Asikin, 2006) The purpose of this gender approach is to find out whether the results of the verdict are in accordance or not with the principles of gender justice. (Narbuko & Ahmad, 2002) This research is supported by data sources, namely primary data on the decision of the divorce case Number: 3950 / Pdt.G / 2023 / PA. Sby, secondary data obtained from various sources through books, journals, and theses that are in accordance with the problem. With data collection techniques, namely observation, observation is a detailed and systematic observation of human activities and physical settings related to space, place, actors, activities, time, events, goals, and feelings experienced in fact. (Hasanah, 2016) Interviews are by

collecting data directly from informants that include informal objectives and questions to explore research data. (Rahmawati, 2007) As well as documentation, namely data collection in the form of evidence and information such as pictures carried out at the time of research. Analysis methods are divided into 3 types, including Data reduction is a form of analysis that concentrates, classifies, sharpens, and removes unnecessary information from information obtained by researchers when conducting research. The presentation of data in the form of data analysis that has been packaged by researchers and in this study the presentation of data presented in the form of tables or graphs so that it is easy to understand. (Sugiyono, 2019) And Conclusion drawing is an effort to verify to find or clarify the flow of research and interpret research data so that conclusions can be drawn about the phenomena obtained. (Princess Et al, 2021)

RESULTS AND DISCUSSION

of the Legal Basis for Judge's Consideration in the Divorce Case Number: 3950/Pdt.G/2023/PA. Sby

The legal basis for the judge's consideration is based on Article 40 and Article 63 Paragraph (1) letter (a) of Law Number 1 of 1974 jo. Article 49 of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 and most recently by Law Number 50 of 2009 jo. Article 1 letter (b) of Government Regulation Number 9 of 1975, therefore the Religious Court has the authority to examine and try and decide cases with Number: 3950 / Pdt.G / 2023 / PA. Sby. This divorce case has the following cases: That is, starting from a request or lawsuit filed with a religious court. The plaintiff and defendant are a married couple who have conducted a wedding reception properly and are legally recognized in the eyes of religious law and state law on August 9, 2009, based on Marriage Certificate Citation No. 472/20/VIII/2009 issued by KUA Kecamatan Krembangan. The Plaintiff and the Defendant live together as husband and wife and reside in the Plaintiff's house which is in Surabaya City harmoniously and harmoniously. The result of the marriage of this married couple is blessed with two children whose age is under the age or less than 21 years. The beginning of the family relationship was well established and harmonious but over time the marriage relationship began to falter and there were frequent quarrels and quarrels that were difficult to reconcile again because the Defendant was not honest with the Plaintiff in everything, the Defendant was involved in embezzlement cases at the Defendant's workplace, the Defendant often said rudely to the Plaintiff, and the Defendant often accused the Plaintiff of having a love affair with another man in 2011. So that the duration of the violence has peaked, finally since January 2023 between the Plaintiff and the Defendant have separated the bed for approximately 7 months and since then the Defendant has not provided mental bread. And the consequences of the dispute resulted in the custody of the minor.

The argument presented by the plaintiff is that there is no compatibility between the two, there are often disputes and quarrels that are difficult to reconcile, because the defendant is not honest with the plaintiff in everything, the defendant is involved in embezzlement cases at the defendant's workplace, the defendant often speaks rudely to the plaintiff, and the defendant often accuses the plaintiff of having a love affair with another man. The Plaintiff at the time of the trial was present before the court, while the Defendant was not present at the trial without a valid reason, nor did he tell anyone else to appear as his power of attorney or

representative. Although the Defendant has been formally and duly summoned by relaas No. 3950/Pdt.G/2023/PA. Sby who are read before the court but still do not appear before the court for reasons that are not valid according to law. So that there is no rebuttal given by the defendant to the plaintiff regarding the content of the lawsuit filed by the plaintiff. In this context, the Judge Council has given an understanding to the plaintiff as a party present in the trial so that peace and harmony again with the defendant in a good household, but it fails while mediation cannot be carried out because the defendant has never attended the trial.

Based on the examination at the trial, it was proved that the marriage relationship between the plaintiff and the defendant could not be reunited due to continuous disputes. The facts of the trial also show that the Defendant was not honest with the Plaintiff in all respects, the Defendant was involved in embezzlement cases at the Defendant's workplace, the Defendant often said rudely to the Plaintiff, and the Defendant often accused the Plaintiff of having a love affair with another man, as the plaintiff's claim argued and justified by the testimony of witnesses presented at the trial.

So that the panel of judges who tried the case decided to grant the plaintiff's lawsuit verstek, Dropping talaq one bain sughra Defendant against the Plaintiff. Punish the Defendant to pay the Plaintiff iddah in the amount of Rp. 1,500,000.00 (one million five hundred thousand rupiah) and mut'ah in the form of Rp. 3,000,000.00 (three million rupiah) which must be paid before the Defendant takes the divorce certificate. Punish the Defendant to provide the Plaintiff with 2 children with a minimum of Rp. 750,000.00 (seven hundred and fifty thousand rupiah) every month which is paid at least every six months excluding education and health costs with an additional 10% at the turn of each year, until the child is an adult or independent. As well as ordering the Surabaya City Government to provide identity change services for Family Cards and Identity Cards, permits and other public services after the Applicant or defendant has fulfilled the contents of the dictum on providing breads mentioned in the judge's consideration. As well as the legal basis of the case Number: 3950/Pdt.G/2023/PA. Sby was broken up on September 14, 2023.

Application of Ex Officio Rights Based on Gender Justice in Surabaya Religious Court

Decision A judge is an official who is within the scope of judicial power, namely who is trusted by law to carry out anything that is in accordance with the law and determined by the state, namely who has the task of accepting, examining, and deciding a dispute fairly and determining the applicable law. According to Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power that what is meant by judges is judges at the Supreme Court and judges at judicial bodies subordinate to them in the general judicial environment, judicial environment religion, military court, administrative court, and judges in special courts within the judicial environment. Thus, judges are State officials appointed by the head of State as law enforcers and justices who are expected to solve problems that have been carried out according to applicable law. The judge is the main element in the court. In fact, it is "identical" to the court itself. Freedom of judicial power is often identified with freedom of judges. Similarly, the decision of the court is identified with the decision of the judge. Therefore, the achievement of law enforcement and justice lies in the ability and wisdom of judges in formulating decisions that reflect justice.

The word *Ambtshalve* is Dutch for *Ex Officio* meaning because of position. While *Ex Officio* rights are an inherent right of a judge in deciding a case, by not going outside the applicable rules. (Faturrahman & Sadari, 2022) Another definition of *Ex Officio* rights finds interpretation as the authority, independence, and at the same time responsibility of judges given by law based on their position, by optimally utilizing all inherent potentials and exercising proportionally all authority to take concrete legal actions in court in examining, trialing, and resolving cases, as an effort to provide legal protection and justice to all parties. (Jamil & Muliadi, 2022)

The implementation of *Ex Officio* rights in the judiciary has a scope of regulation including: first, the freedom of judges is exercised when constituting disputed events, assessing arguments or rebuttals, assessing various evidence submitted by the parties, using various methods to find the law or interpret the law. According to Article 24 paragraph (1) of the 1945 Indonesian Constitution affirms that the judicial power in administering justice is the power who is independent. The freedom of judges is exercised when determining disputed events, assessing arguments and rebuttals, assessing various evidence submitted by the parties, using various methods to find the law and interpret the law. Nevertheless, the freedom of judges must still refer to Pancasila and the 1945 Constitution of the Republic of Indonesia. Second, Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power provides space for judges *Ex Officio* to explore, follow, and understand legal values and a sense of justice that lives in society. Third, Article 178 paragraph (1) HIR and Article 189 paragraph (1) RBg require the judge to *Ex Officio* satisfy all legal reasons in his decision that are not stated by the party in the *posita*. The judge is considered to know the law (*ius curia novit*). Fourth, Article 58 paragraph (2) of Law Number 7 of 1989 jo. Law Number 3 of 2006 jo Law Number 50 of 2009 states that judges are *Ex Officio* obliged to assist justice seekers and try their hardest to overcome obstacles and obstacles to achieve a simple and low-cost trial. (Damayanti & Haniyah, 2020)

So that there is an *Ex Officio* right, which is a right that exists in the judge because of his position that decides cases over his lawsuit for the sake of justice and law enforcement or rather the judge makes new regulations. *Ex Officio* rights exist or are used to adjudicate cases which, if determined without *Ex Officio*, will harm one of the parties, such as divorce cases (*khuluk*) in divorce cases, the judge can consider the payment of *iddah* bread, *muth'ah* bread, and *hadhonah* bread, especially the noise in the plaintiff's and defendant's household due to the behavior and attitude of the husband (defendant). Although in the decision of the case *Verstek* decided here, the judge used *Ex Officio* rights with the legal basis stated in book II of Law No. 41 of 1974 to uphold justice and implement Perma Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law. Namely those who have elements in gender equality between men and women. Gender equality in question is the fulfillment of women's rights after divorce that must be fulfilled by their husbands. *Mut'ah* must be given because the purpose of giving *mut'ah* is to provide comfort to the heart of the wife (plaintiff) who is hurt by her husband's actions. While the *iddah* income is given is used as an interval of time that a wife fears to have children from her husband and is the obligation and interest of the husband (defendant) to his ex-wife. And if there are children from marriage, the Judge is also obliged to provide legal protection to the children of the divorce

victim by determining the obligation to pay child support to be borne by the defendant *Ex Officio* and determining the responsibility for the child to one of the two parents who take care of the child. (Qomaro, 2021)

From the position of the case in decision Number 3950/Pdt.G/2023/PA. Sby a wife does not ask or propose a living for him, namely iddah bread, muth'ah bread, but the magistrate formulates and adjudicates to continue to provide the rights of the wife after divorce with considerations based on law or law so that these rights can be fulfilled with existing legal considerations including.

Considering that based on the above legal considerations, the panel of judges agreed that iddah income is calculated at Rp. 500,000 (five hundred thousand rupiah) every month multiplied by three months to Rp. 1,500,000.00 (one million five hundred thousand rupiah).

This statement is in accordance with the Compilation of Islamic law which contains the obligation to fulfill the rights of wives after talaq is imposed, considering that in perma number 3 of 2017 concerning guidelines for adjudicating women's cases facing the law, wives in divorce cases can be given mut'ah and iddah if it is not proven nusyuz. And based on Book II which is in article 41 letter c of Law Number 1 of 1974 concerning guidelines for the implementation of duties and administration of religious justice in divorce cases, the Religious Court can *Ex Officio* assign iddah to the husband, if the wife is not proven to have committed nusyuz. In his statement, the plaintiff is not proven to be nusyuz so that his position must obtain his rights in accordance with applicable regulations.

Considering, based on legal considerations, the panel of judges is of the opinion that it is necessary *Ex Officio* to determine the income of iddah and mut'ah to the Defendant.

The above legal considerations show the importance of the *Ex Officio* rights of judges in determining the income of iddah and the livelihood of muth'ah. The *Ex Officio* right of the judge is a right that exists because of the position, making the judge have the authority to decide more cases than what is written in the lawsuit if it is true according to law and supported by existing rules. The fulfillment of this post-divorce right must be adjusted to the ability of the Defendant and propriety or feasibility in the needs of life aimed at realizing benefit so that the existence of evil must be eliminated, because if it imposes a troublesome burden either on the wife for being too little or on the husband for being too burdensome, then such a condition will cause harm and the necessity must be eliminated in accordance with the rules of fiqhiyah which affirm "Mudharatan must be eliminated. Given the importance of upholding the principle of ability and the principle of propriety, namely, so as not to burden each other.

According to Dr. H. Ahmad Zaenal Fanani, S.H.I., the M.Si who decided the case Number: 3950/Pdt.G/2023/PA. Sby that a wife does not ask or apply for her rights due to several factors, including not all divorced people know about the law, the assumption of those who want to divorce quickly with their husbands and the relationship that men and women in a household in Indonesia are setra or afraid. so that judges here uphold women's rights after divorce as formulated in Law Number 3 of 2017 which outlines several provisions for women's rights including iddah bread. While in the muth'ah allowance the judge formulated the following considerations.

The judge's considerations on the muth'ah income include the provisions of Article 41 letter (c) of Law Number 1 of 1974 jo. Article 149 letter (a) of the Compilation of Islamic Law, Jurisprudence of the Supreme Court of the Republic of Indonesia Decision Number 548K / AG / 2010 dated December 17, 2010, as well as various provisions included in the Qur'an contained in Surat Al-Baqarah: 236, which stipulates that the Defendant as the husband can be burdened with the obligation to provide appropriate mut'ah to the Plaintiff as a wife in accordance with ability and propriety so as to find appropriate considerations, namely:

Considering, that based on these considerations, it is appropriate for the defendant to be punished to provide iddah in the amount of Rp. 1,500,000.00 (one million five hundred thousand rupiah) and mut'ah in the form of money in the amount of Rp. 3,000,000.00 (three million rupiah).

Muth'ah subsistence is a term for property given by a husband to his wife in the form of jewelry / objects or money as a comfort to the ex-wife's heart. The giving of muth'ah in various madzab has the difference that some say obligatory, sunnah or haram, but in the Qur'an, it is explained about muth'ah with the ability of her husband, according to Surah Al-Baqarah verse: 241 which reads.

وَالْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

Meaning: And for divorced women is a provision according to what is acceptable - a duty upon the righteous.

The verse explains the obligation of a husband who divorces his wife to fulfill the right of muth'ah yang ma'ruf or according to the husband's own ability. It is explained in the Compilation of Islam Law that related to the income of muth'ah is contained in article 158 which reads "muth'ah must be given by the husband with 2 conditions, namely the undetermined dowry for the wife of ba'da ad dukhul (having had conjugal relations) and the occurrence of divorce due to the will of the husband. Here the Compilation of Islamic Law does not regulate the muth'ah given by the husband in the case of khuluk (divorce filed by the wife). So that the Supreme Court issued SEMA No.3 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for the Court in the formulation of the law of the religious chamber letter A in point 3, namely: The obligations of husbands due to divorce against wives who are not nusyuz Accommodating Perma Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases In Accordance with the Law, the wife in a divorce case can be given mut'ah, and the income of 'iddah as long as it is not proven to be nusyuz. (Saragih et al, 2021) Perma Number 3 of 2017 contains guidelines for adjudicating women's cases facing the law, one of the points is gender equality, where gender itself is a differentiator between men and women, but gender equality here is oriented towards the dignity and rights of divorced women to get their rights perfectly and completely. Namely by fulfilling muth'ah and iddah and as a form of protection for children whose income is hadhonah in the Surabaya religious court is stated.

Considering, that based on these considerations, the panel of judges considered that *Ex Officio* reasonable and appropriate Defendant was burdened with paying income for 2

(two) children named: XXXo Binti XXX, NIK 3578150903100003, born in Surabaya 09-03-2010, and XXX Bin XXX, NIK 3578151011140003, born in Surabaya 10-11-2014 each child with a minimum of Rp. 750,000.00 (seven hundred fifty thousand rupiah) every month which is paid at least every six months excluding education and health costs.

From the judge's consideration, the children of the plaintiff and the defendant get hadhonah because the child is a minor, which has not reached 21 years with a legal basis, namely based on the provisions in Article 41 letter (a) of Law Number 1 of 1974 concerning Marriage, states that in the event of divorce between husband and wife, both mother and father are still obliged to maintain and educate their children, Solely based on the interests of the child, this shows that divorce between husband and wife (mother and father), does not result in a break in the relationship between parents and their children. Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which affirm the principles that must be considered in the implementation of child protection, namely: non-discrimination, the best interests of the child, the right to life, survival, and development and respect for the opinion of the child, and outlining that every child while in the care of a parent, guardian, or any other party responsible for care, shall be entitled to protection from treatment: discrimination, exploitation, both economic and sexual, neglect, cruelty, violence, and ill-treatment, injustice; and other mistreatment. So, the hadhonah provided by the child is solely to protect the child due to divorce from parents and does not become an obstacle between mother or father to give love to the child. in this case the Religious Court conducts an alternative to the implementation of the decision that has been decided to be able to protect the rights of women and children after divorce by periodically boring with the City Government as written in the judge's consideration, namely:

Considering that the protection and fulfillment of women's and children's rights after divorce ensures collaboration and synergy with the city government and related stakeholders to run effectively.

Considering, that to make effective the fulfillment of the rights of women and children after divorce, an Addendum to the Memorandum of Understanding between the Surabaya Class IA Religious Court and the Surabaya City Government Number W13-A1/6841/HM.01/6/2022, Number 415.4/9323/436.1.2/2022 concerning Synergy of Surabaya Religious Court Services, Number W13-A1/5633/HM.01/6/2023, Number 100.3.7.1/3859/436.1.2/2023 dated June 26, 2023 where article 5 number 2 letter (f) in the addendum is essentially mentioned one of the duties and responsibilities of the Surabaya City Government to intervene and monitor the families of divorce victims based on divorce data from the Surabaya Religious Court.

The legal basis for consideration as above, the author interviewed the judge on October 5, 2023, at the Surabaya Religious court, namely the judge who decided the case, namely Mr. Dr. H. Ahmad Zaenal Fanani, S.H.I., M.Si. which decides the following:

"Giving Ex Officio rights to the livelihood of Iddah, mut'ah and hadhonah. First, the legal basis stated in SEMA, PERMA and the Law and the most important thing is the agreement of the religious chamber from the legal basis whether to be used or not from the paradigm, the mindset of judges is very decisive to provide maximum legal protection to women and children. I personally have always had a high concern to

provide fulfillment as well as a form of protection of women's rights and post-divorce rights. Because Article 41 of the 1974 Law on women's rights after divorce is a right that must be fulfilled by the husband when there is no claim, the judge is Ex Officio allowed to exercise his authority in the protection of the woman.

Second, why a wife does not ask for her rights may be because she does not understand and wants to divorce quickly with her irresponsible husband and because the existence of a male and female relationship system in the household in Indonesia that is not fully equal which causes women to fear unwanted things.

So, this is where judges can make protection Ex Officio which then I invite judges in PA Surabaya to maximize Ex Officio rights to protect women's rights after divorce and Alhamdulillah the percentage every month increases (Aspects of Iddah and mut'ah income)

Meanwhile, the judge's child income does not let the husband be arbitrary, that is, he is not responsible for the child in his bread, so in the decision of case No: 3959/Pdt.G/2023/PA. Sby said the child must be protected so that there is a formal legal presence in the judgment regarding the nominal that must be borne by the husband as the father of the child.

The next step is to protect the rights of women and children as part of us so that mitigating divorce does not cause sustainable impacts that are increasingly prevalent on women and children. So that women and children who are potential victims of divorce do not cause new poverty clusters with guaranteed gift rights. It is evident that this year 2023 in the decision of the case that I decided, almost 90% have exercised Ex Officio rights related to the protection of women and children in divorce cases.

The next step, the judge mentioned how Amar this ruling works and a woman can get her rights without being perpetrated or getting her rights easily. Given that formal law in Indonesia still uses execution law, that is, people who do not want to fulfill the verdict must be executed (forced attempt). So that the judge provides a way out if in a divorce divorce talaq a husband cannot recite the talaq pledge before fulfilling his rights so that the income of Iddah mut'ah hadhonah for the first 6 months can be felt by children and wives. While divorced, the judge also sentenced the husband to not be able to take the divorce certificate before he paid the Iddah mut'ah hadhonah bread. This means that even if the husband does not show up for trial, the husband cannot marry before paying these expenses.

The next step, you judge in PA Surabaya initiated a new idea for a husband in the city of Surabaya who did not want to fulfill the verdict that had been decided in PA Surabaya, we collaborated and made an opportunity with the Surabaya City Government. So that the PEMKOT law is ordered to provide services to change KK, KTP and licensing as well as other public services after the man fulfills the rights of women and children.

Regarding the child's livelihood, we (the Surabaya PA judge) provide a rule every 6 months because if it is feared that the husband is negligent per month and to make it easier for the City Government to assist the Surabaya PA in carrying out services to the person concerned, which is once every 6 months, so if there is a delay, it can be checked by the Surabaya PA and the City Government.

The series is a form of our efforts by the Surabaya PA judges for the protection of women and children in divorce. Divorce the era. talaq is used to making a living"



Figure I: Author's Interview with the Judge

From the above considerations, the judge has a strategy that in protecting women's rights after divorce, the judge wants to punish the husband cannot pronounce talaq before the fulfillment of women's rights in divorce, talaq, while in a lawsuit divorce, the judge punishes the husband if he has not fulfilled his obligations, namely the rights of the wife, muth'ah bread, iddah bread, and child support, the husband cannot take the divorce certificate automatically, the husband cannot marry before fulfilling these rights, and Surabaya religious court collaborates with Surabaya city government who has a lot of authority in his service by directly touching the people of Surabaya, the religious court ordered the Surabaya City Government (Pemkot) to provide services for changing family cards (KK), ID cards, and permits as well as public services after the husband fulfilled his rights. From the judge's considerations, it is an effort made by judges in the Surabaya religious court to provide maximum protection for women and children who have been weakened from divorce so that there is no need for forced execution or forced auction, because forced auction is a difficult thing because they have to find the husband's property, looking for the certificate, looking for the BPKB number of the motorcycle or car, while if it has been obtained it must be auctioned at the auction hall which requires some costs so that the existence of *Ex Officio* rights equalizes gender between men and women after divorce in the form of women do not need to carry out forced executions but men have been systematically limited in their movements in accordance with the verdict issued by the court so that the husband is forced to fulfill his rights voluntarily.

CONCLUSION

1. Legal Basis for Judge's Consideration in Divorce Case Number: 3950/Pdt.G/2023/PA. Sby, namely based on Article 40 and Article 63 Paragraph (1) letter (a) of Law Number 1 of 1974 jo. Article 49 of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 and most recently by Law Number 50 of 2009 jo. Article 1 letter (b) of Government Regulation Number 9 of 1975. From this legal basis, the judge tried to implement book II of Law No. 41 of 1974 by collaborating with PERMA No. 3 of 2017 and Supreme Court Circular (SEMA) number 3 of 2018 which affirmed PERMA No. 3 of 2017.

2. According to the Surabaya PA Judge, filing a divorce lawsuit by a wife is not always considered a nusyuz act. On the agenda of the court examination, it will be examined whether the wife's actions deserve to be called nusyuz or not, considering that in Perma number 3 of 2017 concerning guidelines for adjudicating women's cases facing the law, wives in divorce cases can be given mut'ah and iddah if it is not proven nusyuz. And based on Book II which is in article 41 letter c of Law Number 1 of 1974 concerning guidelines for the implementation of duties and administration of religious justice in divorce cases, the Religious Court can *Ex Officio* assign iddah to the husband, if the wife is not proven to have committed nusyuz. In accordance with the rules of procedural law, that the judge will examine in accordance with petitum, to anticipate the wife's ignorance of her rights, the court will socialize the wife's rights in litigation at the trial and every time the registration of the case is carried out. To anticipate this, in the decision concerning the rights of the wife, the judge included the sentence "the income is paid before the pledge of talaq is pronounced", so that if the husband does not implement the contents of the judgment, the pledge cannot be implemented. This is one of the applications of the *Ex Officio* rights of judges in this case as well as other cases within the scope of the Surabaya Religious Court.

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