

Judicial Inconsistency in Applying Article 116(f) of the Compilation of Islamic Law: A Legal Analysis of Decisions of the Malang Regency Religious Court

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Abstract. *This article aims to analyze judicial inconsistency in applying Article 116(f) of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) through a comparative legal analysis of decisions rendered by the Religious Court of Malang Regency, identify the factors contributing to inconsistent judicial reasoning, and examine their implications for legal certainty and the protection of women's post-divorce rights. Article 116(f) of the Compilation of Islamic Law constitutes the principal legal basis for wife-initiated divorce (cerai gugat) before the Indonesian Religious Courts. This normative ambiguity has resulted in inconsistent evidentiary assessments, judicial reasoning, and legal consequences in comparable divorce cases, particularly regarding women's post-divorce financial rights. This research employed normative legal research using statutory and case approaches with a descriptive-analytical specification. The findings demonstrate that judicial inconsistency does not originate from Article 116(f) itself but from the inconsistent exercise of judicial discretion in evaluating marital breakdown, assessing reconciliation prospects, and determining women's post-divorce financial rights through ex officio authority. This article concludes that the absence of uniform interpretative standards weakens legal certainty and results in unequal legal protection in comparable divorce cases. The novelty of this research lies in demonstrating that judicial inconsistency under Article 116(f) primarily stems from the inconsistent exercise of judicial discretion within the same Religious Court and in proposing uniform interpretative standards to strengthen judicial consistency, legal certainty, and substantive justice in the adjudication of Islamic family law disputes.*

Keywords: *Compilation of Islamic Law; Discretion Divorce; Inconsistency.*

1. Introduction

Marriage under Indonesian law is conceived as a legal and social institution intended to establish a harmonious, enduring, and prosperous family based upon religious values, mutual affection, and legal responsibility (Asrif Zahrah Ramadhanti Kusumah et al., 2024). Nevertheless, when the objectives of marriage can no longer be realized, divorce becomes the legal mechanism for terminating the marital relationship (Wahyudi et al., 2026). Recent scholarship has demonstrated that divorce litigation in Indonesia has experienced a significant increase during the last decade, with wife-initiated divorce (*cerai gugat*) constituting the overwhelming majority of cases adjudicated by the Religious Courts (Nianti et al., 2026). Empirical studies further indicate that the principal legal basis invoked in these proceedings is Article 116(f) of the *Compilation of Islamic Law* (Kompilasi Hukum Islam/KHI), which permits divorce where continuous disputes and conflicts have rendered marital reconciliation impossible. According to Farhat, Al-Amruzi, and Sarmadi (Farhat et al., 2025), more than eighty percent of divorce petitions in several Religious Courts rely upon this provision, while Dahlan reported that approximately eighty-five percent of divorce cases before the Religious Court of Majalengka between 2022 and 2024 were filed under Article 116(f) KHI (Dahlan, 2025). These findings demonstrate that Article 116(f) has evolved into the principal statutory gateway for wife-initiated divorce litigation in Indonesia.

The prominence of Article 116(f) KHI is equally evident within the jurisdiction of the Religious Court of Malang Regency, one of Indonesia's busiest Religious Courts. Statistical records published by the East Java Provincial Statistics Office (BPS Jawa Timur) reveal that Malang Regency consistently recorded the highest number of divorce cases in East Java, amounting to 6,707 cases in 2020, 6,370 cases in 2021, and increasing substantially to 8,185 cases in 2022. At the provincial level, "continuous disputes and quarrels" represented the most frequently reported cause of divorce, accounting for approximately 49.91% of all divorce cases during 2022 (BPS, 2025). Although these statistical figures classify the dominant factual cause of divorce rather than the legal basis invoked by litigants, they nevertheless illustrate the overwhelming reliance upon Article 116(f) KHI as the principal normative foundation for divorce petitions.

Despite its extensive application, Article 116(f) KHI remains characterized by substantial normative ambiguity. The statutory phrase requiring that "continuous disputes and quarrels occur and there is no hope of reconciliation" lacks objective legal criteria capable of guiding judicial assessment. Neither the Compilation of Islamic Law nor Government Regulation No. 9 of 1975 specifies the duration, frequency, severity, or evidentiary threshold necessary to establish that marital conflict has become irreconcilable (Heniyatun et al., 2020). As observed by Nikmah, this normative indeterminacy creates considerable judicial discretion in

evaluating substantially similar factual circumstances (Nikmah, 2018). Consequently, comparable divorce cases may receive different evidentiary assessments, distinct judicial reasoning, and inconsistent legal outcomes, particularly regarding post-divorce entitlements such as *iddah* maintenance, *mut'ah*, child support, and other financial rights afforded to former wives. This phenomenon raises fundamental concerns regarding judicial inconsistency, legal certainty, and equal treatment before the law (Ramadi, 2022).

This issue reflects the continuing tension between judicial discretion and legal certainty. According to Gustav Radbruch's theory of the purposes of law, legal certainty, justice, and utility constitute three fundamental legal values that must be harmoniously balanced within judicial decision-making. Inconsistent judicial reasoning in analogous cases undermines the principle of legal certainty by producing unpredictable legal consequences for similarly situated litigants (Dahlan, 2025). Conversely, the theory of *rechtsvinding* advanced by Sudikno Mertokusumo recognizes that judges are not merely the mechanical mouthpieces of legislation but possess authority to interpret and develop legal norms in order to address normative ambiguities and factual complexities (Mertokusumo, 2014). Such judicial discretion is further reinforced by Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power, which prohibits judges from refusing to adjudicate disputes on the ground that the applicable law is incomplete or unclear. Within Islamic family law, judicial interpretation is likewise informed by the principles of *maqāṣid al-sharī'ah* and *maṣlaḥah*, particularly in safeguarding vulnerable parties. Accordingly, distinguishing between legitimate judicial discretion and unjustifiable judicial inconsistency constitutes a central legal challenge addressed in this study.

Previous studies have examined Article 116(f) KHI from several important perspectives; however, significant research limitations remain. Farhat, Al-Amruzi, and Sarmadi explored the conceptual distinction between continuous disputes (*perselisihan terus-menerus*) and *shiqāq* within Islamic jurisprudence, emphasizing the interpretative inconsistencies reflected in the Supreme Court's procedural guidelines (Farhat et al., 2025). Azizah analyzed Decision Number 3498/Pdt.G/2024/PA.Kab.Mlg, focusing primarily on the husband's inability to provide financial maintenance as the basis for divorce (Azizah, 2025). Meanwhile, Ayu Cahyani, Widodo, and Musthofa investigated the exercise of judges' *ex officio* authority in awarding *iddah* maintenance, *mut'ah*, and child support within divorce litigation before the Religious Court of Kediri (Cahyani et al., 2024). Although these studies contribute valuable doctrinal insights, they predominantly concentrate on individual judicial decisions or isolated normative issues. None systematically examines patterns of judicial inconsistency across multiple divorce judgments within the same Religious Court, nor do they comprehensively evaluate how inconsistent application of Article 116(f) affects legal certainty and the protection of women's post-divorce rights.

A significant research gap remains concerning the consistency of judicial application of Article 116(f) KHI in high-volume Religious Courts. Existing scholarship has not comparatively analyzed multiple decisions rendered by the Religious Court of Malang Regency to identify recurring patterns of judicial inconsistency, nor has it investigated the implications of such inconsistency for legal certainty and gender-responsive legal protection. This study addresses that gap by conducting a comparative legal analysis of several divorce judgments issued within the same judicial jurisdiction, focusing on variations in judicial reasoning, evidentiary assessment, and post-divorce legal consequences. The novelty of this research lies in its systematic examination of judicial inconsistency in applying Article 116(f) of the Compilation of Islamic Law through a comparative analysis of multiple decisions of the Religious Court of Malang Regency, thereby proposing a legal framework for enhancing judicial consistency while strengthening legal certainty and the protection of women's rights in Islamic family law adjudication.

2. Research Methods

This study employed normative legal research. The research adopted a statutory approach and a case approach (Marzuki, 2019). The statutory approach examined Article 116(f) of the Compilation of Islamic Law (KHI) together with relevant legislation, including Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, Government Regulation Number 9 of 1975, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, Supreme Court Regulation Number 3 of 2017, and Supreme Court Circular Letter Number 3 of 2018. The case approach analyzed judicial reasoning contained in selected divorce decisions of the Religious Court of Malang Regency.

The research was descriptive-analytical in nature. The primary legal materials consisted of statutory regulations and three Religious Court decisions obtained from the Supreme Court Decision Directory. Secondary legal materials comprised books, peer-reviewed journal articles, and previous legal studies, while tertiary legal materials were used as supporting references (Muhaimin, 2020). Statistical data on divorce cases published by the East Java Provincial Statistics Office and the Religious Court of Malang Regency were utilized to provide the empirical background of the study.

Legal materials were collected through library research and document analysis. The court decisions were selected using purposive sampling based on three criteria: (i) wife-initiated divorce cases (*cerai gugat*), (ii) judgments granting divorce primarily on the basis of Article 116(f) of the Compilation of Islamic Law, and (iii) decisions rendered in different periods to facilitate a comparative assessment of judicial practice.

The collected legal materials were analyzed using a qualitative descriptive method through statutory interpretation and comparative analysis of the judgments' ratio decidendi, with particular emphasis on identifying similarities and differences in judicial reasoning concerning the application of Article 116(f) of the Compilation of Islamic Law. Conclusions were drawn using a deductive method based on the theoretical framework adopted in this research.

3. Results and Discussion

3.1. The Legal Position of Article 116(f) of the Compilation of Islamic Law and the Scope of Judicial Discretion

The analysis of the selected divorce judgments demonstrates that Article 116(f) of the Compilation of Islamic Law (KHI) constitutes the principal legal basis relied upon by judges in granting wife-initiated divorce (*cerai gugat*) on the ground of continuous disputes and quarrels. Nevertheless, despite the uniform statutory basis, the reasoning adopted by different judicial panels varies considerably in determining whether a marriage has irretrievably broken down. This finding indicates that the primary source of judicial inconsistency does not arise from differences in the applicable legal norm but rather from the absence of objective parameters governing the interpretation of Article 116(f) KHI.

Article 116(f) KHI provides that divorce may be granted where "continuous disputes and quarrels occur between husband and wife and there is no reasonable prospect of reconciliation." This provision reflects the fundamental principle embodied in Article 39 paragraph (2) of Law Number 1 of 1974 on Marriage, which recognizes divorce as an exceptional legal remedy that may only be granted upon sufficient legal grounds. Within Islamic jurisprudence, this condition corresponds to the doctrine of *shiqāq*, referring to a marital conflict that has reached such an intensity that continuation of the marriage is no longer capable of fulfilling its religious and social objectives. Farhat, Al-Amruzi, and Sarmadi argue that *shiqāq* represents not merely ordinary domestic conflict but a condition of permanent marital breakdown requiring judicial intervention (Farhat et al., 2025).

However, the research demonstrates that Article 116(f) KHI suffers from normative indeterminacy. Neither the Compilation of Islamic Law nor Government Regulation Number 9 of 1975 specifies the legal threshold for determining when disputes may legitimately be regarded as "continuous" or when reconciliation should be considered objectively impossible. The legislation does not prescribe measurable indicators concerning the duration, intensity, frequency, or evidentiary standard necessary to establish marital breakdown.

From the perspective of Sudikno Mertokusumo's theory of judicial law-finding (*rechtsvinding*), such interpretative discretion is not only inevitable but constitutes

an inherent judicial responsibility whenever statutory provisions employ open-textured legal concepts (Mertokusumo, 2014). Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power likewise obliges judges to decide disputes notwithstanding the incompleteness or ambiguity of applicable legal norms. Accordingly, judicial interpretation of Article 116(f) KHI represents a legitimate exercise of judicial authority intended to bridge legislative gaps and adapt legal norms to concrete factual circumstances.

Nevertheless, the findings of this research suggest that judicial discretion must remain subject to the principle of legal certainty. According to Gustav Radbruch, legal certainty requires that similar factual circumstances receive substantially similar legal treatment unless objective legal reasons justify differential outcomes (Radbruch, 1946). Judicial discretion therefore cannot operate without identifiable legal parameters, because excessive interpretative freedom inevitably produces inconsistent judicial reasoning and undermines public confidence in the administration of justice. The inconsistencies identified in the examined decisions illustrate that judges frequently assign different legal significance to comparable evidence regarding prolonged separation, witness testimony, and failed reconciliation efforts. Such variations indicate that discretion has, in certain instances, exceeded the boundaries of legitimate legal interpretation and entered the realm of judicial inconsistency.

The scope of judicial discretion is further expanded by the coexistence of two distinct legal concepts within Indonesian Islamic family law, namely continuous disputes and quarrels under Article 116(f) KHI and *shiqāq* under Article 76 of Law Number 7 of 1989 concerning the Religious Courts. Procedurally, the Religious Court Administrative Guidelines (Book II of the Supreme Court) distinguish these two grounds by requiring the appointment of *hakam* (family arbitrators) only in cases formally pleaded as *shiqāq*. However, doctrinally, both concepts originate from Qur'an Surah An-Nisā' verse 35, which emphasizes reconciliation through family mediation before divorce is granted. Farhat, Al-Amruzi, and Sarmadi therefore argue that the procedural separation between Article 116(f) KHI and *shiqāq* lacks a coherent jurisprudential foundation and creates unnecessary fragmentation within Religious Court practice (Farhat et al., 2025).

The practical implication of this procedural distinction is significant. Most wife-initiated divorce petitions are framed under Article 116(f) KHI rather than as *shiqāq* disputes, thereby avoiding the mandatory appointment of *hakam*. Consequently, judges retain greater procedural flexibility in assessing whether reconciliation efforts have been exhausted. While this flexibility enhances judicial efficiency, it simultaneously increases the likelihood of inconsistent evidentiary standards and divergent legal reasoning among different judicial panels. The research findings therefore indicate that procedural differentiation has

unintentionally contributed to disparities in judicial practice rather than promoting uniform application of Islamic family law.

Judicial interpretation of Article 116(f) KHI is also strongly influenced by Supreme Court Jurisprudence Number 379 K/AG/1995, which establishes that prolonged separation accompanied by continuous disputes constitutes sufficient evidence that a marriage has irretrievably broken down and therefore satisfies Article 39 of the Marriage Law. This jurisprudence has become an important interpretative reference because it provides judges with practical guidance for assessing marital breakdown. Nevertheless, the reliance upon prolonged separation as the principal indicator of marital failure also raises critical concerns. It tends to simplify evidentiary requirements and may gradually weaken the legislative principle that divorce should remain a measure of last resort.

The findings therefore reveal a fundamental tension within the Indonesian system of Islamic family law. On one hand, open-textured statutory language is necessary to accommodate the diverse factual circumstances characterizing marital disputes. On the other hand, excessive reliance upon judicial discretion without objective interpretative standards inevitably produces inconsistent judicial reasoning. In this respect, the absence of measurable criteria under Article 116(f) KHI represents the principal normative factor contributing to judicial inconsistency. Strengthening interpretative guidelines through Supreme Court jurisprudence or regulatory clarification would therefore enhance legal certainty without eliminating the judicial discretion necessary to ensure substantive justice in individual divorce cases.

3.2. The Comparative Analysis of Judicial Reasoning in Three Wife-Initiated Divorce Decisions

The comparative analysis of the three selected judgments demonstrates that although all cases were decided under Article 116(f) of the Compilation of Islamic Law (KHI), the judges adopted substantially different approaches in assessing the factual elements of continuous marital conflict, evaluating the prospect of reconciliation, and determining the legal consequences of divorce for the wife. This finding confirms that judicial inconsistency does not arise from divergent statutory provisions but rather from differences in judicial reasoning (*ratio decidendi*) and evidentiary assessment.

The first case, Decision Number 5102/Pdt.G/2016/PA.Kab.Mlg, involved a wife-initiated divorce in which the respondent failed to appear despite having been lawfully summoned. Consequently, the proceedings were conducted by default judgment (*verstek*). The panel concluded that continuous disputes had been sufficiently established solely through the claimant's testimony and supporting witnesses, and accordingly granted a divorce by pronouncing *talak satu bain*

sughra. However, the judgment focused exclusively on dissolving the marital relationship and contained no judicial consideration regarding the wife's post-divorce financial rights, including *iddah* maintenance or *mut'ah*. This decision illustrates how limited evidentiary examination in default proceedings may result in a narrower scope of judicial protection.

A different pattern appears in Decision Number 2037/Pdt.G/2018/PA.Kab.Mlg. Unlike the previous case, both parties participated in the proceedings and reconciliation efforts were undertaken before the court declared mediation unsuccessful. The panel relied upon Article 39 paragraph (2) of the Marriage Law, Article 19(f) of Government Regulation Number 9 of 1975, and Article 116(f) KHI to conclude that the marriage had irretrievably broken down. Although the factual inquiry was more comprehensive than in the default judgment, the judicial reasoning nevertheless remained centred upon establishing the statutory grounds for divorce. Similar to the first decision, the court did not examine whether the factual circumstances justified additional legal protection for the wife following the dissolution of the marriage.

The most comprehensive judicial reasoning is reflected in Decision Number 3498/Pdt.G/2024/PA.Kab.Mlg. In this case, the panel identified the husband's persistent failure to provide financial maintenance as the principal source of continuous marital conflict and explicitly treated economic neglect as evidence of irreconcilable disputes under Article 116(f) KHI. As observed by Azizah, the judges developed a considerably richer factual analysis by identifying the causal relationship between economic neglect and marital breakdown (Azizah, 2025). Nevertheless, although the judgment recognized the husband's responsibility for the deterioration of the marriage, it did not exercise the court's *ex officio* authority to impose post-divorce financial obligations designed to protect the wife's economic interests.

Table 1. Comparative Analysis of Three Wife-Initiated Divorce Decisions of the Religious Court of Malang Regency

Aspect	5102/Pdt.G/2016/PA.Kab.Mlg	2037/Pdt.G/2018/PA.Kab.Mlg	3498/Pdt.G/2024/PA.Kab.Mlg
Type of Case	Wife-initiated divorce (<i>cerai gugat</i>)	Wife-initiated divorce (<i>cerai gugat</i>)	Wife-initiated divorce (<i>cerai gugat</i>)
Mode of Proceedings	Default judgment (<i>verstek</i>) due to the respondent's absence	Adversarial proceedings; reconciliation efforts were undertaken	Adversarial proceedings with a more comprehensive examination of facts
Primary Cause of Marital Breakdown	Continuous disputes and quarrels (general grounds)	Continuous disputes and quarrels (general grounds)	Husband's failure to provide financial maintenance

Principal Legal Basis	Article 116(f) KHI; Article 19(f) Government Regulation No. 9 of 1975	Article 39(2) Marriage Law; Article 19(f) Government Regulation No. 9 of 1975; Article 116(f) KHI	Article 116(f) KHI, supported by findings concerning the husband's failure to provide maintenance
Operative Part of the Judgment	Divorce granted through <i>talak satu bain sughra</i>	Divorce petition granted	Divorce petition granted
Consideration of the Wife's Post-Divorce Rights	Not addressed	Not addressed	The husband's fault was acknowledged; however, the court did not exercise its <i>ex officio</i> authority to award post-divorce financial entitlements

Source: Compiled by the author based on decisions obtained from the Supreme Court Decision Directory and Azizah (2025).

The comparative findings presented in Table 1 reveal one significant similarity and several important differences. The common characteristic of all three decisions is the uniform application of Article 116(f) KHI as the principal legal basis for dissolving the marriage. Once the judges concluded that continuous disputes had been established, divorce was consistently granted. From the perspective of legal certainty, this consistency is important because it confirms that marriages considered permanently broken down will not be maintained solely for formalistic reasons.

However, substantial differences emerge in the quality of judicial reasoning. First, the evidentiary assessment concerning the statutory requirement that "there is no reasonable prospect of reconciliation" varies considerably among the three decisions. In the default judgment, judicial conviction relied almost entirely upon unilateral testimony presented by the claimant and supporting witnesses. Conversely, in the contradictory proceedings, judges evaluated the factual circumstances through adversarial examination, reconciliation attempts, and a more comprehensive assessment of the parties' relationship. These differences demonstrate that identical statutory provisions may generate different standards of proof depending upon procedural circumstances.

Second, the judgments display inconsistent approaches regarding the legal consequences of divorce, particularly with respect to the protection of women's post-divorce rights. None of the three decisions comprehensively addressed financial entitlements following divorce. Nevertheless, Decision Number 3498/Pdt.G/2024/PA.Kab.Mlg went further than the earlier decisions by expressly recognizing the husband's economic neglect as the principal cause of marital breakdown. Despite this finding, the court did not impose financial obligations through its *ex officio* authority.

These variations are closely associated with the procedural characteristics of each case. In default proceedings, Article 149 of the *Reglement voor de Buitengewesten*

(RBg) permits courts to grant claims where the respondent fails to appear, provided that the claim is legally justified and not contrary to law. As a result, judges necessarily construct their legal reasoning from one-sided evidence. Decision Number 5102/Pdt.G/2016/PA.Kab.Mlg exemplifies this approach, as the panel relied exclusively upon the claimant's testimony, corroborating witnesses, and classical Islamic jurisprudence contained in *Ghayah al-Maram* to conclude that the marriage had irretrievably broken down. Similar reasoning has been identified in other default divorce judgments before Religious Courts, where the evidentiary process is significantly simplified (Mukarom, 2019).

By contrast, contradictory proceedings provide judges with broader opportunities to establish the underlying causes of marital breakdown. Decision Number 3498/Pdt.G/2024/PA.Kab.Mlg demonstrates that comprehensive factual examination enabled the court to identify economic neglect as the primary source of continuous disputes. Such findings are particularly significant because they provide an objective basis for assessing whether the wife committed *nusyūz*, a determination that directly influences entitlement to post-divorce maintenance. Accordingly, the research indicates that the greater the depth of factual inquiry, the greater the opportunity for judges to move beyond merely dissolving the marriage and towards ensuring substantive protection of women's economic rights.

Another factor contributing to judicial inconsistency concerns the implementation of reconciliation procedures. Under Supreme Court Regulation Number 1 of 2016, mediation is mandatory in contested divorce proceedings where both parties are present, whereas mediation cannot be conducted in default cases because the respondent is absent. Furthermore, Article 76 of Law Number 7 of 1989 concerning the Religious Courts requires testimony from family members or close relatives in disputes involving *shiqāq*, reflecting the assumption that such witnesses possess direct knowledge of the marital relationship. In Decision Number 2037/Pdt.G/2018/PA.Kab.Mlg, reconciliation efforts were formally undertaken before the court concluded that no prospect of reconciliation remained. By contrast, default proceedings necessarily preclude meaningful judicial assessment of reconciliation. Consequently, although all three decisions applied the same statutory provision, differences in procedural opportunities inevitably produced different standards of judicial reasoning.

These findings reveal that inconsistency arises not because judges apply different legal norms, but because they exercise different levels of judicial discretion when interpreting identical statutory provisions. Likewise, Sudikno Mertokusumo's theory of judicial law-finding recognizes that judges possess authority to interpret open-textured legal concepts. However, this authority should remain bounded by objective legal standards to prevent similar disputes from producing substantially different legal outcomes. The comparative analysis therefore demonstrates that

the principal challenge lies not in the wording of Article 116(f) KHI itself, but in the absence of uniform interpretative guidelines governing evidentiary assessment and the protection of post-divorce rights. Such conditions ultimately weaken legal certainty and contribute to judicial inconsistency within Religious Court practice.

3.3. Judicial Inconsistency and Its Implications for Legal Certainty and the Protection of Women's Rights

The comparative analysis reveals that the most significant manifestation of judicial inconsistency concerns the treatment of women's post-divorce rights rather than the dissolution of the marriage itself. Although all three decisions consistently granted divorce under Article 116(f) of the Compilation of Islamic Law (KHI), they adopted markedly different approaches when determining whether the wife should receive post-divorce financial protection. This finding demonstrates that judicial inconsistency extends beyond procedural differences and directly affects the substantive legal rights of women.

Under Article 149 of the Compilation of Islamic Law, a husband in a *cerai talak* (husband-initiated divorce) is expressly required to provide *mut'ah* and *iddah* maintenance unless the wife is proven to have committed *nusyūz*. By contrast, the Compilation of Islamic Law contains no equivalent provision governing wife-initiated divorce (*cerai gugat*), thereby creating an asymmetrical regulatory framework. Historically, this legislative silence gave rise to the judicial assumption that a wife who files for divorce should automatically be regarded as *nusyūz*, resulting in the denial of post-divorce maintenance. Al Hasan argues that this traditional paradigm has significantly influenced judicial practice despite lacking an explicit statutory foundation. Consequently, earlier decisions of the Religious Court of Malang Regency, particularly Decision Number 5102/Pdt.G/2016/PA.Kab.Mlg and Decision Number 2037/Pdt.G/2018/PA.Kab.Mlg, confined their reasoning to dissolving the marriage without considering the wife's financial entitlements following divorce.

The legal landscape has, however, undergone significant development. Through Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women in Conflict with the Law and Supreme Court Circular Letter Number 3 of 2018, the Supreme Court introduced a gender-responsive approach empowering judges to exercise their *ex officio* authority to award *iddah* maintenance and *mut'ah* where the husband is responsible for the marital breakdown and the wife is not proven to have committed *nusyūz*. These judicial policies represent a substantial shift from the traditional fault-based paradigm towards a rights-based approach emphasizing substantive equality and the protection of vulnerable parties.

The practical implementation of these judicial guidelines has already been demonstrated by several Religious Courts. For example, Decision Number 0076/Pdt.G/2017/PA.Mgl of the Religious Court of Magelang required the former husband to pay both *iddah* maintenance and *mut'ah* in a wife-initiated divorce because the wife was not proven to be *nusyūz* (Heniyatun et al., 2020). Similarly, the Religious Court of Kediri exercised *its ex officio* authority in Decision Number 2675/Pdt.G/2023/PA.Kab.Kdr to ensure legal protection for the wife despite the absence of an explicit statutory obligation (Cahyani et al., 2024). These decisions demonstrate that judicial protection of women's economic rights is no longer dependent solely upon Article 149 KHI but may also derive from the broader principles of justice embodied in Supreme Court policy.

Against this jurisprudential background, Decision Number 3498/Pdt.G/2024/PA.Kab.Mlg presents a notable inconsistency. The panel explicitly found that the husband's persistent failure to provide financial maintenance constituted the principal cause of marital breakdown. Such factual findings logically satisfy the requirements established by Supreme Court Circular Letter Number 3 of 2018, which encourages judges to exercise their *ex officio* authority in favour of economically disadvantaged wives. Nevertheless, despite recognizing the husband's fault, the court limited its judgment to granting the divorce without awarding post-divorce maintenance. This inconsistency illustrates that the disparity identified in this research arises not from differences in factual circumstances but from differences in judicial willingness to apply identical legal guidelines.

Such inconsistency is problematic because litigants cannot reasonably predict the legal consequences of comparable disputes. When two wives experience similar factual circumstances but receive different levels of judicial protection solely because their cases are decided by different judicial panels, the principle of equality before the law is substantially weakened. Legal certainty requires not only uniform statutory provisions but also reasonably consistent judicial interpretation in comparable cases. The findings of this research therefore indicate that inconsistency in exercising *ex officio* authority has become one of the principal factors undermining legal certainty within Religious Court practice.

The disparity likewise raises important concerns regarding substantive justice and the protection of women's rights. Islamic legal philosophy, particularly the doctrine of *maqāṣid al-sharī'ah*, emphasizes the protection of vulnerable persons and the realization of public welfare (*maṣlaḥah*). Where the husband is demonstrably responsible for the breakdown of the marriage, denying financial protection to the wife conflicts with these normative objectives. As Sudikno Mertokusumo observes, judicial law-finding should function not merely to resolve legal uncertainty but also to ensure that judicial decisions achieve justice in

concrete cases. Judicial discretion therefore should operate as an instrument of protection rather than a source of unequal treatment.

One of the principal causes of this inconsistency appears to be the persistence of the traditional assumption that a wife initiating divorce should automatically be considered *nusyūz*. Classical Islamic jurisprudence indeed limits maintenance obligations following an irrevocable divorce (*ṭalāq bā'in*), which historically encouraged the perception that wives requesting divorce forfeit their financial rights (Hasan, 2024). However, such an assumption is inconsistent with contemporary Indonesian family law. *Nusyūz* constitutes a factual issue requiring judicial proof rather than an automatic legal consequence arising from the wife's procedural status as claimant. Recognizing this distinction, Supreme Court Circular Letter Number 3 of 2018 requires judges to evaluate the husband's financial capacity, the wife's needs, and the welfare of any children before determining maintenance obligations (Harahap, 2022). Accordingly, the determination of post-divorce rights should depend upon proven facts rather than procedural presumptions.

Another structural factor contributing to judicial inconsistency lies within the regulatory framework itself. Article 149 KHI imposes a mandatory obligation upon husbands in *cerai talak* proceedings to provide *mut'ah* and *iddah* maintenance, whereas Article 41(c) of Law Number 1 of 1974 merely provides that the court "may" require the former husband to provide financial support following divorce. The discretionary wording of the statute inevitably permits divergent judicial interpretations.

Although Supreme Court Jurisprudence Numbers 137 K/AG/2007 and 02 K/AG/2002 have attempted to bridge this legislative asymmetry by recognizing judicial authority to award post-divorce maintenance in wife-initiated divorce cases where *nusyūz* is not established, the implementation of these precedents remains inconsistent among first-instance Religious Courts. This research demonstrates that the principal obstacle is therefore no longer the absence of legal authority but the inconsistent utilization of that authority by individual judges.

The comparative analysis also challenges the traditional concern that financial orders issued in default judgments (*verstek*) are likely to become ineffective (*illusoir*) because the respondent is absent. Recent judicial practice demonstrates that several Religious Courts have nevertheless imposed *iddah* maintenance and *mut'ah* through *ex officio* authority even in default proceedings by relying upon Supreme Court Regulation Number 3 of 2017 (Cahyani et al., 2024). These developments confirm that the respondent's absence should not be regarded as a sufficient justification for denying the wife's legal rights. Rather, it requires judges

to undertake a more careful examination of the available evidence before determining the appropriate legal consequences.

Accordingly, judicial inconsistency should not be understood as the mere existence of different judicial outcomes, since factual differences naturally require different legal solutions. Instead, inconsistency becomes legally problematic when similar factual circumstances produce substantially different legal consequences solely because judges adopt different approaches to interpreting the same legal norms and judicial guidelines. The findings of this study therefore suggest that greater uniformity is required in applying Article 116(f) KHI, particularly regarding evidentiary standards for determining marital breakdown and the consistent exercise of *ex officio* authority to protect women's post-divorce rights. Within this framework, judicial law-finding remains legitimate only insofar as it strengthens both legal certainty and substantive justice, rather than creating unequal treatment in comparable cases.

4. Conclusion

This study concludes that judicial inconsistency in applying Article 116(f) of the Compilation of Islamic Law does not originate from the legal norm itself, but from the absence of objective interpretative standards governing judicial discretion in assessing continuous marital disputes, evaluating the prospect of reconciliation, and determining the legal consequences of divorce. The comparative analysis of three wife-initiated divorce decisions rendered by the Religious Court of Malang Regency demonstrates that although all judicial panels consistently relied upon Article 116(f) KHI as the principal legal basis for dissolving the marriage, they adopted substantially different approaches in evidentiary assessment, judicial reasoning (*ratio decidendi*), and the protection of women's post-divorce rights. These differences reveal that judicial discretion has been exercised inconsistently, particularly in the application of the Supreme Court's gender-responsive guidelines concerning the *ex officio* award of *iddah* maintenance and *mut'ah*. Consequently, judicial inconsistency has weakened legal certainty by producing different legal consequences in comparable cases and has reduced the effectiveness of legal protection for women whose marriages were dissolved due to the husband's fault. The novelty of this research lies in demonstrating that the principal source of judicial inconsistency under Article 116(f) KHI is not legislative ambiguity alone, but the inconsistent exercise of judicial discretion within the same Religious Court. Accordingly, strengthening uniform interpretative standards for evidentiary assessment and the consistent application of judicial guidelines concerning women's post-divorce rights is essential to achieving greater legal certainty, judicial consistency, and substantive justice in the adjudication of Islamic family law disputes.

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