

## Implementation of Women's Rights in Divorce Sues in the Jepara Religious Court

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**Abstract.** *Divorce is one of the legal events that has a significant impact, both emotionally, socially, and economically, especially for women. In Jepara, divorce filed by the wife, known as a divorce lawsuit, gives women the right to file a lawsuit and obtain the fulfillment of their rights after the divorce, such as iddah maintenance, mut'ah, child maintenance, and child custody rights. Although it has been regulated in the Marriage Law, the Compilation of Islamic Law (KHI), and various other regulations, the implementation of women's rights after a divorce lawsuit often faces obstacles, either due to economic limitations, low legal awareness, or lack of enforcement of court decisions. This study analyzes the Implementation of Women's Rights in Divorce Lawsuits at the Jepara Religious Court. The author in the thesis has the aim and benefits of studying and analyzing the regulation of women's rights in divorce lawsuits at the Religious Court, to study and analyze the implementation of women's rights in divorce lawsuits at the Jepara Religious Court, to study and analyze the implementation of women's rights in divorce lawsuits at the Jepara Religious Court and its solutions. The research method used is legal research with a sociological juridical approach, analyzed using feminist legal theory, progressive legal theory, and the theory of justice in Islamic law. The author analyzes the regulation of women's rights in divorce lawsuits at the Religious Court, the Implementation of women's rights in divorce lawsuits at the Jepara Religious Court, obstacles to the Implementation of women's rights in divorce lawsuits at the Jepara Religious Court and their solutions.*

**Keywords:** *Divorce; Lawsuit; Religious.*

### 1. Introduction

Divorce is one of the final forms of a marriage bond that can no longer be maintained for various reasons that are personal or structural. Divorce is one of

the legal events that not only has an impact on the severance of the relationship between husband and wife, but also brings legal consequences that must be met by both parties. Article 28B of the 1945 Constitution of the Republic of Indonesia regulates human rights, especially individual rights in the context of personal and family freedom. "Everyone has the right to form a family and continue their lineage through a legal marriage. Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination."

Islam does not absolutely prohibit divorce, but there are certain rules that have been set by Allah and must be obeyed by His people. Although permitted, divorce is an act that is disliked by Allah. The decision to divorce is entirely up to the husband and wife. Divorce should be the last option taken after all peaceful efforts have been made as much as possible. Generally, divorce arises as a result of household disharmony that is not resolved properly by both parties.<sup>1</sup>

Divorce lawsuit is when a marriage bond ends or breaks up, where the wife sues her husband for divorce in court, and then the lawsuit is granted by the court. The factors that influence a wife to file a divorce lawsuit include: economic factors, poor communication factors, factors of the presence of a third person or infidelity, social and cultural factors.<sup>2</sup>

The reality after divorce does not always provide substantive justice for women, especially when the rights that have been decided by the court are not immediately fulfilled by the ex-husband. Women often have to take further legal steps such as filing for execution of the decision to the court. However, the execution process in civil cases is not carried out immediately, but requires additional complicated and convoluted procedures, including an official application to the court and an assessment of the defendant's assets. Not to mention if the husband is not cooperative, the execution process will drag on and even end in nothing. This of course requires mental resilience, time, energy, and great costs from the woman who is already quite psychologically depressed after the divorce process.

Women's rights in divorce, both material such as child support, iddah support, and mut'ah, as well as non-material such as child custody and protection against violence, are part of human rights. Therefore, the state has an obligation to ensure that these rights are not only regulated by law, but also enforced effectively through the religious court system.

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<sup>1</sup>M. Quraish Shihab, 2002, *Women's Fiqh: Critical Reflection on Gender Stigma and Discrimination in Islam*, Bandung: Mizan, p. 159

<sup>2</sup>Nibras Syafriani Manna, et al., "Divorce Lawsuit: Study of Causes of Divorce in Families in Indonesia," *Al-Azhar Indonesia Journal Humanities Series*, Vol. 6:1, 2021, pp. 13-15.

Religious Courts have an important role in ensuring that women's rights are fulfilled after a divorce lawsuit. In this case, religious courts are required to examine divorce cases fairly and ensure that women's rights, both material (child support, iddah support, mut'ah) and non-material (child custody, protection against violence) are fulfilled. This condition prompted the Supreme Court of the Republic of Indonesia to take firm steps in standardizing the law in the religious court environment. The Supreme Court realized that comprehensive, practical guidelines were needed that could be used as a reference for all judges so that divorce decisions had the same legal basis and were fair. This is where the urgency of drafting the Supreme Court Circular (SEMA) Number 3 of 2018 emerged.

Ahmad Rofiq explained that in fiqh muamalah, divorce (ṭalāq) is something that is permitted but is greatly hated by Allah. Therefore, the judicial institution must make maximum efforts to maintain the integrity of the household. He considered that SEMA No. 3 of 2018 contains the spirit of *islāh* or improvement, because it emphasizes the importance of mediation and consideration of the welfare in the divorce process.<sup>3</sup>

*Nusyuz* is an act of a wife who does not obey or violates her obligations towards her husband without any legal reason. A wife is considered *nusyuz* when she does not carry out her obligations to be physically and mentally devoted to her husband within the limits permitted by law. So, when *nusyuz* is not proven, the wife who files a divorce suit in court is entitled to receive *mut'ah* and *iddah* maintenance from her ex-husband.<sup>4</sup>

Women do not receive the right to *iddah* or *mut'ah* maintenance because they did not submit an application in the lawsuit or because the husband was not present at the trial.<sup>5</sup> Women's ignorance of their rights is one of the factors causing the non-request of *iddah* and *mut'ah* maintenance. This condition is exacerbated by limited access to legal aid and adequate legal information.

According to M. Yahya Harahap, civil procedural law in divorce cases often does not provide optimal protection for women, especially in the aspect of executing decisions related to maintenance and other economic rights. In some cases, husbands who have been sentenced to provide maintenance continue to ignore this obligation without any effective law enforcement mechanism.<sup>6</sup>

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<sup>3</sup>Ahmad Rofiq, *Islamic Law in Indonesia*, Jakarta: RajaGrafindo Persada, 2003, pp. 111–112.

<sup>4</sup>Muhammad Tsaqib Idary, et al., "Women's Rights in Divorce Lawsuits", *Journal of Economics, Management, Accounting* Vol. 3, No. 4, 2024, pp. 967-968

<sup>5</sup>Nurrohman. D, "Women's Rights in Divorce Lawsuit Decisions", *Al-Ahwal Journal*, Vol. 11 No. 2, 2018, p. 220.

<sup>6</sup>M. Yahya Harahap, *Civil Procedure Law*, Jakarta: Sinar Grafika, 2020, p. 88.

The Jepara Religious Court is able to ensure substantive justice for women after a divorce lawsuit, not just procedural justice that follows existing legal rules. Procedural justice usually only views the legal process itself as having been carried out correctly, namely from the receipt of the lawsuit to the reading of the verdict. However, substantive justice requires that the results of the legal process can truly fulfill women's rights fairly and equally, according to their needs after divorce.<sup>7</sup>

The increase in the number of divorces at the Jepara Religious Court has continued to increase, both from divorce by divorce and divorce by lawsuit. Based on data from the Jepara Religious Court, in 2023, there were 1,925 divorce cases that were granted, with details of 396 being divorce by divorce cases and 1527 being divorce by lawsuit cases. Meanwhile, in 2022, the Jepara Religious Court granted 2125 divorce cases, with 417 divorce by divorce cases and 1718 divorce by lawsuit cases. In 2021, there were 2015 divorce cases that were granted, with 462 divorce by divorce cases and 1553 divorce by lawsuit cases.

Jepara as a region with a strong patriarchal culture presents its own dynamics in enforcing women's rights after divorce. Not all women understand their rights, so they often do not file the claims they should get. The Jepara Religious Court also facilitates the submission of lawsuits at the Posbakum or Legal Aid Post by providing an understanding of women's and children's rights after divorce to women who want to file for divorce.

Divorce Lawsuit example of a case in the Religious Court Decision Letter Number 454/Pdt.G/2024/PA.Jepr, examining and trying a civil Religious case at the first level in the trial, the Panel has issued a decision in the Divorce Lawsuit case granting the Plaintiff's lawsuit in part with default, dated May 8, 2024 there are several important points in the verdict:

- 1) Madliyah Maintenance: The Defendant was ordered to pay madliyah maintenance to a child named Tania (Pseudonym), the Defendant's daughter, in the amount of IDR 6,000,000.00 (six million rupiah).
- 2) Total Payment: The total amount to be paid by the Defendant to the Plaintiff is IDR 14,000,000.00 (fourteen million rupiah).
- 3) Payment Deadline: The Defendant is required to pay the payment in full before collecting the Divorce Certificate.
- 4) Rejection of Other Claims: Plaintiff's claims other than those that have been granted are rejected by the court.

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<sup>7</sup>Satjipto Rahardjo, *Progressive Legal Science*, Jakarta, Kompas, 2009, p. 156

5) Court Costs: The Plaintiff is required to pay court costs of IDR 765,000.00 (seven hundred and sixty five thousand rupiah).

Decision Number 454/Pdt.G/2024/PA.Jepr, the judge requires the defendant to pay madliyah maintenance of IDR 6,000,000.00 and a total payment of IDR 14,000,000.00 before taking the Divorce Certificate.. In addition, the judge also requires settlement of payments before the issuance of the Divorce Certificate, which is in accordance with the provision that the alimony decision must have executory power.

## **2. Research Methods**

Research method is a method of working to be able to understand the object that is the target of the relevant science. Method is a guideline for how a scientist studies and understands the environments that are understood. The approach used in this study is sociological juridical. Soerjono Soekanto stated that sociological or empirical juridical research is a legal research that aims to identify and examine the laws that apply in society. In this study, law is not viewed as a mere norm, but as the behavior of society in its social life.<sup>8</sup>Sociological juridical is an approach based on binding norms or regulations, so that it is expected that from this approach it can be known how the law which is empirically a symptom of society can be studied as a causal variable that causes consequences in various aspects of social life. The type of sociological juridical research uses primary data, where the primary data is obtained directly from the source so that it is still raw data.

## **3. Results and Discussion**

### **3.1. Regulation of Women's Rights in Divorce Lawsuits in Religious Courts**

The regulation of women's rights in divorce lawsuits in Religious Courts is regulated in Law Number 1 of 1974 concerning Marriage, which gives women the right to file for divorce in court. In this case, women have the right to receive iddah maintenance, division of joint assets, and child custody, all of which are decided based on considerations of justice by the court. Articles 116 and 117 of the Compilation of Islamic Law (KHI) regulate the fair division of joint assets, while Article 105 of Law Number 1 of 1974 regulates child custody, which is generally given to the mother if the child is still young.

Religious Courts have the authority to handle divorce cases filed by women, as regulated in Article 49 letter a of Law Number 3 of 2006 which amends Law Number 7 of 1989 concerning Religious Courts. In divorce cases, women have the right to file a divorce petition based on certain reasons, such as domestic

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<sup>8</sup>Soerjono Soekanto, Introduction to Legal Research, Jakarta, UI Press, 1986, p. 51.

disputes or domestic violence. This provides greater space for women to obtain legal protection and their rights after divorce.

Procedures for regulating women's rights in divorce lawsuits at Religious Courts:

1) Filing for Divorce by Wife

A wife who wants to file for divorce must register the lawsuit with the Religious Court in the area where she lives. The lawsuit is filed in writing (or verbally with the assistance of an officer) containing the reasons for divorce according to Article 116 of the Compilation of Islamic Law (KHI), such as the husband not providing maintenance, violence, prolonged disputes, or the husband violating the marriage agreement.

2) Mediation Process

After the lawsuit is accepted, the judge will require both parties to follow the mediation process as stipulated in the Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court. Mediation aims to reconcile husband and wife. If mediation fails, the trial process continues.

3) Trial Examination

In the trial, the judge examines the evidence and witnesses presented by the wife (plaintiff) to prove the reasons for divorce. The judge also asks about the readiness of both parties regarding the legal consequences of divorce, such as the division of rights and obligations, including women's rights.

4) Establishment of Women's Rights After Divorce

Before deciding on a divorce case, the judge must consider and determine the rights of the woman left behind, namely:

- a. Iddah support: Support during the iddah period (3 months after divorce).
- b. Mut'ah: Gift in the form of property or money as a form of respect (Article 149 KHI).
- c. Unpaid dowry: If there is a dowry that has not been fully submitted.
- d. Child custody (hadhanah): Usually children who are not yet mumayyiz (not yet independent) are raised by the mother, unless there is a strong reason that prohibits it.
- e. Child support: The judge determines the husband's obligation to continue providing child support.

5) Divorce Decision and Certificate

If all the examinations are completed and the reason for divorce is proven, the judge grants the divorce suit and determines the verdict. After the verdict has permanent legal force (*inkracht*), the Religious Court issues a Divorce Certificate as official evidence of the end of the marriage relationship.

The importance of regulating women's rights in divorce is especially evident from the need to ensure justice, protection, and welfare of women after the end of marriage. Divorce, especially divorce filed by women, often involves many emotional, social, and economic aspects that can significantly affect women. Without clear regulations on women's rights in divorce, women can be trapped in ongoing injustice after divorce.

From an Islamic legal perspective, justice is a fundamental principle that is the basis for every aspect of law, including the regulation of children's rights after divorce.<sup>9</sup> The concept of *al-'adl* (justice) in Islam is not only understood as formal equality, but also as placing something in its place (*wad'u al-syai' fi mahallihi*), namely giving rights to those who are entitled proportionally.

In the Shafi'i school, child custody (*hadhanah*) is given to the party who is most able to provide the best benefit and protection for the child.<sup>10</sup> The Shafi'i school prioritizes the mother as the holder of custody rights as long as the mother meets the requirements, such as being of good morals, sound mind, and able to care for the child well.<sup>4</sup> This principle refers to the hadith of the Prophet Muhammad SAW when he decided that small children are more entitled to be cared for by their mothers.<sup>11</sup>

Islamic law requires a father to support his child's needs, both in terms of food, clothing, education, and health, as long as the child is not yet an adult or is not yet able to be independent. This obligation to provide support is a moral and legal responsibility that is not removed due to divorce, as stated in QS. Al-Baqarah (2): 233 which states that "And it is the father's obligation to feed and clothe the mother in a manner that is *ma'ruf*."

Imam Syafi'i, justice in living is not just the provision of material, but ensuring that the child's living needs are met according to decent standards in society. Thus, the child's right to maintenance and welfare is guaranteed fairly and is not neglected due to parental separation.

Progressive laws also encourage creative interpretations by judges in deciding cases, including ordering fathers or other parties to continue to provide child support, or providing additional protection for children, such as access to education, health, and a safe environment.

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<sup>9</sup>*Al-Fiqh al-Islami wa Adillatuhu*, Op Cit, p. 695.

<sup>10</sup>*Ibid*, p. 703.

<sup>11</sup>*Ibid*, p. 704.



## 1) Empowering Women After Divorce

Divorce often places women in a vulnerable situation, especially in economic, social, and psychological aspects. Many women who are divorced must bear the burden of raising children and earning a living, without adequate support from their ex-husband. Therefore, empowering women after divorce is very important so that women do not get trapped in a cycle of poverty and helplessness.

Feminist Legal Theory perspective (Joan Williams), gender inequality in social and legal relations often causes women to have a weak position in household and work matters, which has serious impacts when divorce occurs. Therefore, post-divorce women's empowerment strategies must include access to economic resources, skills education, and adequate legal protection.

Satjipto Rahardjo's Progressive Legal Theory, women's empowerment must be interpreted as a process that involves liberation from detrimental structural shackles, and places the law as a tool to strengthen women's position in society. Satjipto emphasized that the law must side with vulnerable groups, including post-divorce women, by providing substantive protection and social justice.<sup>12</sup>

Skills training, access to capital, and social empowerment programs are key to building women's independence after divorce. This is in line with the principle of gender equality in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which has been ratified by Indonesia through Law No. 7 of 1984.<sup>13</sup>

The author emphasizes that the regulation of women's rights in divorce lawsuits in religious courts must be increasingly directed at protecting women's basic rights, fulfilling child support, and providing equal access for women to obtain justice, both in social, economic, and legal contexts. Only with an approach based on the principles of substantive justice and gender equality can women obtain optimal legal protection in divorce situations. It is important to pay attention to three main aspects, namely the protection of women's rights, the protection of children's rights, and the empowerment of women after divorce, as an effort to ensure justice and gender equality in the Indonesian legal system. In this case, the protection of women's rights after divorce is not only limited to the fulfillment of material rights, such as support and division of joint property, but also to the right to a life free from structural and social injustice. As part of a progressive legal system, the law must respond to women's needs by providing fair solutions that favor vulnerable groups, especially women who have to face the double burden of being mothers and breadwinners.

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<sup>12</sup>Progressive Law, Op Cit, p. 110.

<sup>13</sup>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Law No. 7 of 1984.



### **3.2. Implementation of Women's Rights in Divorce Lawsuits at the Jepara Religious Court**

Jepara Religious Court is one of the judicial institutions under the Supreme Court of the Republic of Indonesia which has jurisdiction in the Jepara Regency area, Central Java Province. Based on its authority as regulated in Law No. 7 of 1989 concerning Religious Courts (as amended by Law No. 3 of 2006 and Law No. 50 of 2009), the Religious Court has the authority to examine, decide, and resolve cases in the field of Islamic law, which include:

- 1) Marriage (including divorce)
- 2) Inheritance
- 3) Will
- 4) Grant
- 5) Endowment
- 6) Zakat
- 7) Donation
- 8) Charity
- 9) Islamic economics

Protection of women's rights, Jepara Religious Court also refers to PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law, which requires judges to pay attention to the principles of gender equality, non-discrimination, and protection of women's rights during the trial process.

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According to Supriyadi based on an interview at the Jepara Religious Court, if the wife is not proven to be nusyuz as long as the husband is capable, these rights can be granted by the judge as long as the wife can prove that the husband has the financial ability to fulfill these obligations. Proof can be in the form of witness statements, pay slips (if civil servant/employee), proof of business, or other

relevant information. If the husband has non-civil servant status or is an informal worker, proving ability becomes more difficult so that it requires sufficient evidence, such as witnesses about the husband's income or lifestyle.<sup>14</sup>

Supriadi emphasized that the Jepara Religious Court applies the same legal provisions as other religious courts in Indonesia, namely referring to the Compilation of Islamic Law (KHI), Perma No. 1 of 2017, Sema No. 3 of 2018, and civil procedural law rules. The implementation of women's rights after divorce lawsuits at the Jepara Religious Court includes the following aspects:

1. In a divorce lawsuit, the wife usually requests several rights at once, including:
  - a. Divorce lawsuit (main cause of action)
  - b. Iddah maintenance
  - c. Mut'ah
  - d. Child support
  - e. Child custody (hadhanah)
  - f. Division of joint assets (if any)

In practice, the plaintiff (wife) often files a lawsuit in layers or excessively, including demands for iddah maintenance, mut'ah, child custody, even maintenance owed with the aim of pressuring or scaring the husband so that he does not come to court. If the husband does not attend the second or third court hearing, the plaintiff often withdraws the lawsuit after his goal is achieved (the husband withdraws or gives in).

According to Mrs. W (pseudonym), women in Jepara who file for divorce often face obstacles in fighting for their rights because after the judge decides on divorce, they are confused about how to ask for their rights from their ex-husband.<sup>15</sup> especially in rural areas. Because for those whose husbands do not have an income, it is very difficult to ask for their rights after divorce.

Divorced women do not fully understand their rights after divorce, due to lack of information or access to legal counseling. In addition, many women are afraid or embarrassed to take their cases to court because of social stigma or fear of the impact on their families and the surrounding community. Furthermore, they often cannot afford to hire lawyers to help them through the complex and costly legal process. Although there is a Legal Aid Post (Posbakum) at the Jepara

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<sup>14</sup>Interview with H. Supriyadi, S.Ag., MHES, Judge of Jepara Religious Court, Accessed April 23, 2025

<sup>15</sup>Interview Results with Mrs. W (pseudonym) Divorced Woman Sues in Jepara City, Accessed April 27, 2025

Religious Court, challenges in implementing women's rights after divorce in Jepara remain.

The urgent need to strengthen legal assistance for women in Jepara, especially after a divorce lawsuit. Women's organizations and local governments have an important role in providing maximum legal assistance, to ensure that women's rights are well protected in the divorce process. This legal assistance is very necessary to help women understand and fight for their rights, from iddah maintenance, mut'ah, child custody, to the division of joint property. In addition, this strengthening is also important to overcome social and cultural obstacles that often prevent women from daring to take legal action. With stronger support from these institutions, women can be more confident in undergoing the legal process and obtain justice that is appropriate.

The implementation of the regulation of women's rights after divorce at the Jepara Religious Court has been carried out in accordance with national regulations, but is faced with obstacles in proving the husband's ability, executing the decision, and socio-cultural obstacles that limit women's courage in fighting for their rights.

The author argues that divorce lawsuits in the Religious Court, is that legal protection for women must be strengthened, especially in areas such as Jepara. Many women still have difficulty understanding their rights after divorce, especially if they do not have access or the ability to hire a lawyer. Uncertainty about their rights, including iddah maintenance, mut'ah, child custody, and division of joint property often trap women in injustice. Therefore, it is very important to strengthen legal assistance, both from women's organizations and local governments, so that women not only understand their rights, but can also fight for them more easily.

### **3.3. Obstacles to the Implementation of Women's Rights in Divorce Cases at the Jepara Religious Court and Their Solutions**

The implementation of women's rights in divorce cases at the Jepara Religious Court faces various structural, cultural, and procedural obstacles. Behind the increasing number of divorce decisions, there are fundamental problems related to women's access to their economic rights, such as iddah, mut'ah, joint property, to child custody and alimony.

Based on the interview results of Yusuf, Judge of the Jepara Religious Court, according to his experience in handling cases, many women who file for divorce do not understand legal procedures. They come to court with the intention of getting a divorce, but do not know what evidence to bring, what legal reasons, and do not even know what they are entitled to after getting a divorce. So sometimes they just come with a marriage certificate and say they are no longer

compatible, even though we have to prove it first.<sup>16</sup>Yusuf explained that women often have difficulty in presenting evidence or witnesses. In divorce cases, the burden of proof lies with the plaintiff. However, cases such as verbal violence, economic neglect, or physical violence that occur in private spaces are difficult to prove legally because there are no witnesses who saw it directly or strong written evidence.

The obstacles faced at the Jepara Religious Court in the Implementation of Women's Rights in Divorce Cases from the analysis are:

a. Lack of Women's Legal Knowledge

Lack of legal knowledge is one of the main obstacles faced by women in divorce cases at the Jepara Religious Court. This often causes women to not understand the legal procedures, the types of rights they can claim, and how to prove them. In many cases, women only focus on the desire for divorce without understanding that they also have the right to iddah, mut'ah, and joint property (gono-gini), as regulated in the Compilation of Islamic Law (KHI) Article 149 and Article 156.

The factors causing this lack of legal knowledge can be traced from several aspects:

1) Low educational background

Most women seeking justice at the Jepara Religious Court come from lower secondary educational backgrounds, so their access to legal information is very limited.

2) Limited access to legal information

Information about legal rights in divorce has not been widely disseminated in rural communities, which are dominant in the Jepara area.

3) Limitations of digital literacy and law

Although the justice system has provided online information, not all women are able to access or understand this information.

4) Lack of pre-lawsuit legal guidance or counseling

Many women file lawsuits without first consulting an advocate, Posbakum, or legal counselor.

5) Patriarchal culture that hinders women's self-confidence

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<sup>16</sup>Interview with Drs. Yusuf, SH, MH, Judge of Jepara Religious Court, Accessed April 25, 2025

In a patriarchal social structure, women tend to position themselves as those who are "unworthy" of fighting for their rights openly, especially before the law.

As a result of this low level of legal knowledge, women often do not file claims that are actually their rights. For example, in a divorce case, they only file a divorce suit without including demands for mut'ah and iddah maintenance, even though this is guaranteed by the KHI and the Supreme Court's decisions in various jurisprudence.

b. Obstacles to the implementation of women's rights to supernatural divorce at the Jepara Religious Court.

Divorce by ghost (ghaib divorce) is a divorce filed by a wife against a husband whose whereabouts are unknown or who has not given any news (disappeared) for a certain period of time. In the Jepara Religious Court, the case of divorce by ghost is one of the challenges in implementing women's rights after divorce. The following are common obstacles:

1) Difficulty Tracking Husband's Address

invisible divorce, the defendant's (husband's) address is not known for certain. This complicates the process of summoning a proper trial as regulated in the HIR/RBg and the Supreme Court regulations on the procedure for summons in civil cases. The summons must be carried out by edlitching (via the mass media), which requires additional time and costs. This also prolongs the case process.

2) Defendant Cannot Be Confirmed Regarding His Rights and Obligations

The defendant is not present or his whereabouts are unknown, so there is no defense process from the husband regarding the wife's rights demands, including the division of joint property or provision of maintenance. The judge's decision is often limited to granting a divorce, without containing provisions for the execution of women's rights such as maintenance of iddah, mut'ah, and division of gono-gini.

3) No Execution of the Decision Can Be Carried Out

The court ruled that the wife is entitled to maintenance or joint property, if the husband's whereabouts are unknown, then the decision cannot be executed because there is no legal subject that can be charged. Women lose their material rights because there is no effective mechanism to force the husband to pay or hand over part of the property.

4) No Legal Certainty on Women's Economic Status

Women in supernatural divorce cases are left without clarity on child support status or housing rights, especially if they are unemployed or have no source of

income. Women become very vulnerable economically and socially, especially if they have young children.

#### 5) No Formal Evidence of Joint Ownership of Property

In the case of supernatural divorce, it is difficult for the wife to prove in detail the joint assets obtained during the marriage because there is no clarification from the husband or physical evidence such as certificates, accounts, or sales and

The contemporary fiqh approach allows judges to use the principles of *istihsan* and *qiyas* to consider substantive justice, including the use of witness testimony or household habits in assessing the division of property. Satjipto Rahardjo argues that the law must be flexible and sensitive to social realities. Therefore, judges should not be rigid with formal evidence, but rather open up space for proof based on the concrete conditions of the household. Oan Williams urges that the masculine-biased proof procedure be overhauled to be inclusive and in favor of the realities of women's lives. This is important so that justice does not become a legal illusion that is inaccessible to vulnerable groups.

Progressive Legal Theory as developed by Satjipto Rahardjo, emphasizes that the law should not be a tool of oppression, and judges should actively protect the weak. Therefore, in the context of supernatural divorce, judges must be proactive in simplifying the process and speeding up decisions for the protection of women.<sup>17</sup>

The Syafi'i School also emphasizes the importance of substantial justice in deciding cases, not just procedural ones. In *al-Majmu'* by Imam Nawawi, it is explained that judges are obliged to pay attention to the condition of women as the more vulnerable party. Rasulullah SAW said: "Fear Allah in matters of women, because indeed they are a trust by your side."<sup>18</sup>(HR. Muslim) This hadith provides a moral message that post-divorce women must be protected and given their rights with full responsibility and affection, not left in a vulnerable condition.

To overcome this, the Shafi'i school teaches the principle: "Difficulty brings ease."<sup>19</sup>Based on this principle, judges should provide ease of legal process and protection of women's rights as a form of *taysir* (التيسير) against the burden of life after divorce. One solution is to strengthen the role of Legal Aid Institutions and Posbakum in Religious Courts that understand Shafi'i fiqh and Islamic gender.

The author argues that the analysis of the three theories shows that the implementation of women's rights after divorce lawsuits has solutions that can

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<sup>17</sup>Progressive Law, Op Cit, pp. 23–25.

<sup>18</sup>Imam Nawawi, *al-Majmū' Sharḥ al-Muhadhdhab*, Volume 20, Beirut: Dar al-Fikr, 1997, p. 140.

<sup>19</sup>Al-Zarkasyi, *al-Manthūr fī al-Qawā'id al-Fiqhiyyah*, Volume 2, Kuwait, Wazarat al-Awqaf, 1985, p. 320.

be improved with structural changes and legal culture that favor substantial justice. The Jepara Religious Court needs to adopt a legal approach that is oriented towards humanity and equality, not merely formal procedures.

#### 4. Conclusion

The regulation of women's rights in divorce lawsuits in Religious Courts is very important to ensure the protection, justice, and welfare of women after divorce. Based on Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, women's rights including iddah maintenance, mut'ah, division of joint property, child custody, and child maintenance are guaranteed by law. The implementation of the principles of justice and gender equality, both through Satjipto Rahardjo's Progressive Law theory, Joan Williams' Feminist Legal Theory and Justice in Islamic Law, strengthens the protection of women's rights that have been marginalized, especially in economic and social aspects after divorce.

#### 5. References

##### Al-Quran dan Hadis

QS. Al-Baqarah

QS. An-Nisa

QS. An-Nahl

QS. At-Talaq

QS. Ar-Rum

Abu Dawud. (1990). *Sunan Abu Dawud* (Hadis No. 3573). Dar al-Fikr.

Al-Albani. (1985). *Irwa' al-Ghalil fi Takhrij Ahadits Manar as-Sabil* (Jilid 7 No. 2035). Al-Maktab al-Islami.

al-Nawawi, A. Z. Y. ibn S. (1996). *al-Majmu' Syarh al-Muhadhdhab* (Vol. 16). Dar al-Fikr.

al-Shafi'i, M. b. I. (1990). *al-Umm*, Vol. 2. Beirut: Dar al-Fikr.

al-Syafi'i, I. (1990). *al-Risalah* (A. M. Syakir, Ed.). Dar al-Fikr.

Al-Zarkasyi. (1985). *al-Manthūr fī al-Qawā'id al-Fiqhiyyah* (Jilid 2). Wazarat al-Awqaf.

Nawawi, I. (1997). *al-Majmū' Sharḥ al-Muhadhdhab* (Jilid 20). Dar al-Fikr.

##### Journals:



- Azizah, N. (2021). "Kendala Perempuan dalam Menuntut Hak Pasca Cerai Gugat di PA". *Jurnal Al-Mizan*, 17(2).
- Badriyah, Lailatul. (2019). "Perlindungan Hukum Terhadap Perempuan dalam Cerai Gugat: Analisis PERMA No. 3 Tahun 2017." *Jurnal Al-Ahwal*, Vol. 12 No. 1.
- Erniwati. (2020). "Dampak sosial perempuan pasca cerai gugat di Desa X". *Jurnal Sosiologi Islam*, 5(1).
- Hidayati, N. (2020). "Perjuangan Perempuan dalam Memperoleh Hak Pascacerai". *Jurnal Hukum dan Gender*, 6(2).
- Huda, N. (2021). "Pelaksanaan Hak-hak Istri dalam Perkara Cerai Ghaib". *Jurnal Al-Ahwal: Jurnal Hukum Keluarga Islam*, 13(2).
- Isnaini, R. (2019). "Telaah sosiologis terhadap fenomena perceraian dalam masyarakat Islam". *Jurnal Sosiologi Agama*, 10(2).
- Mahsun, M. (2020). "Hak-Hak Perempuan dalam Perspektif Hukum Islam dan Hukum Positif di Indonesia." *Jurnal Al-Mazahib*, Vol. 8 No. 1.
- Manna, N. S., dkk. (2021). "Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga di Indonesia". *Jurnal Al-Azhar Indonesia Seri Humaniora*, 6(1).
- Mulyadi, Lilik. "Harta Bersama dalam Perkawinan: Tinjauan Yuridis dan Putusan Hakim." *Jurnal Hukum dan Peradilan*, Vol. 3 No. 1, 2014.
- Nasrullah. (2021). "Analisis Perlindungan Hukum terhadap Nafkah Anak Pasca Perceraian." *Jurnal Hukum Islam Indonesia*, Vol. 6 No. 1.
- Rofiah, N. (2018). "Gender dalam Perspektif Islam". *Jurnal Al-Ahwal*, 11(2).
- Sari, D. R. (2020). "Perlindungan hukum terhadap istri dalam pembagian harta bersama akibat perceraian". *Jurnal Ilmiah Hukum Dirgantara*, 9(1).
- Tsaqib Idary, Muhammad, dkk. "Hak-Hak Perempuan dalam Cerai Gugat." *Jurnal Ekonomi, Manajemen, Akuntansi*, Vol. 3 No. 4, 2024.
- Williams, J. (2003). "The social psychology of stereotyping: Using social science to litigate gender discrimination cases and defang the 'cluelessness' defense". *Employee Rights and Employment Policy Journal*, 7(2).
- Williams, J., & Zelizer, V. (1989). "Legal realism and the social construction of gender: A comment on Martha Fineman". *Michigan Law Review*, 87(6).
- Zain, F. (2018). "Pembagian harta bersama pasca perceraian: Studi kasus putusan pengadilan agama. Mazahib". *Jurnal Pemikiran Hukum Islam*, 16(2).

**Books:**

- Ahsin, S. (2015). *Hukum perceraian dalam Islam dan relevansinya dengan peraturan perundang-undangan di Indonesia*. Jakarta: Kencana.
- Ali, M. D. (2008). *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*. Jakarta: RajaGrafindo Persada.
- Ali, Z. (2012). *Hukum Perdata Islam di Indonesia*. Jakarta: Sinar Grafika.
- Al-Munawwir, A. W. (1997). *Kamus Al-Munawwir Arab-Indonesia*. Surabaya: Pustaka Progressif.
- al-Qaradawi, Y. (1993). *Halal dan Haram dalam Islam*. Bandung: Mizan.
- Anshor, M. U. (2006). *Perempuan dan Hukum: Telaah Kritis atas Instrumen Hukum yang Diskriminatif terhadap Perempuan*. Jakarta: LBH APIK.
- Ash-Shiddieqy, H. (1980). *Pengantar hukum Islam*. Jakarta: Bulan Bintang.
- Bakhri, S. (2011). *Hukum Islam dan Pranata Sosial Kemasyarakatan*. Jakarta: Kencana.
- Dahlan, A. (2014). *Problematika hukum perceraian di Indonesia*. Bandung: Pustaka Setia.
- Departemen Pendidikan dan Kebudayaan. (2008). *Kamus besar bahasa Indonesia*. Jakarta: Balai Pustaka.
- Effendi, S. (2013). *Fiqh Munakahat*. Jakarta: Kencana.
- Fayumi, B. (2019). *Hukum perkawinan Islam dan praktiknya di Indonesia*. Jakarta: Prenadamedia Group.
- Ghazaly, A. R. (2011). *Fiqh munakahat*. Jakarta: Prenadamedia Group.
- Hallaq, W. B. (1997). *A History of Islamic Legal Theories*. Cambridge: Cambridge University Press.

**Regulation:**

The 1945 Constitution of the Republic of Indonesia

Law no. 1 of 1974 concerning Marriage

Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts

Circular of the Supreme Court (SEMA) Number 3 of 2018 concerning the Empowerment of Women in Divorce Cases

Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law.

Law no. 16 of 2019 concerning Amendments to the Marriage Law

Compilation of Islamic Law (KHI)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Law No. 7 of 1984

**Internet:**

KBBI Daring. "Implementasi." <https://kbbi.kemdikbud.go.id/entri/implementasi> , accessed on 15 April 2025, at 15.00 WIB.

Wahyudi, M. I. "Nalar keadilan hak-hak perempuan pasca perceraian dalam cerai gugat". Hukum Online dari <https://www.hukumonline.com/berita/a/hak-perempuan-pasca-perceraian-lt61dfb20d8e6fa/?page=1> . accessed on 27 November 2024 at 14.00 WIB