

Religious Court Judge's Perception granting the Right to Livelihood in Judicial Divorce Cases Based on the Judge's Ex Officio Rights

Widya Mayang Yuninda¹, Ali Maskur²

¹ Faculty of Syariah dan Hukum, UIN Walisongo Semarang, Indonesia

E-mail: widyamayang557@gmail.com

² Faculty of Syariah dan Hukum, UIN Walisongo Semarang, Indonesia

E-mail: alimaskur@walisongo.ac.id

Corresponding Author: widyamayang557@gmail.com

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Abstract: This study discusses the wife's *nafkah* right in a judicial divorce. The purpose of this study is to determine the legal considerations of the judges of the Ternate Religious Court, Bulukumba Religious Court, and Singkil Sharia Court in deciding judicial divorce cases that are considered *nusyuz* but the wife get *nafkah iddah*. This research is a library research where the collected data are cases with the legal problem regarding *nafkah iddah* for wife who sues her husband for divorce. The approach to this research is the statute approach. It is an approach used by examining the Law and its regulations regarding the legal issues raised. Beside, the researcher also uses the historical approach. This approach is used by analyzing the judge's decision to decide cases that are not yet legally certain in the Law. Next, the data is processed by a descriptive data analysis technique then the conclusions written deductively. The results in this study indicate that not always the wife who files for a judicial divorce can be considered *nusyuz* because in fact, the wife is the aggrieved party such as being cheated on, not given *nafkah* during an argument and experienced physical violence by her husband. So that in this case the judge can give the *nafkah* right to the wife as long as she is not proven to be *nusyuz* by SEMA Number 3 of 2018 which accommodates PERMA Number 3 of 2017 as a regulation that binds litigated and ex officio judges in order to achieve justice.

Keywords: Iddah Nafkah, Nusyuz, Ex Officio Rights of Judges

Abstrak: Penelitian ini membahas hak *nafkah* istri pada perkara cerai gugat. Tujuan penelitian ini untuk mengetahui pertimbangan hukum hakim PA Ternate, PA Bulukumba, dan Mahkamah Syariah Singkil dalam memutus perkara cerai gugat yang dianggap *nusyuz* tetapi istri mendapatkan *nafkah iddah*. Metode penelitian menggunakan *library research* yakni mengambil dan mengumpulkan data literatur yang memiliki korelasi terhadap permasalahan hukum *nafkah iddah*, penulis menggunakan pendekatan kualitatif, dengan



pendekatan *statuate approach* dan *historical approach* yang dilakukan dengan cara menelaah Undang-Undang terkait dan menganalisis putusan hakim kemudian diolah dengan Teknik analisis data deskriptif serta menarik kesimpulan secara deduktif. Hasil dalam penelitian ini menunjukkan bahwa tidak selamanya istri yang mengajukan cerai gugat dapat dianggap *nusyuz* karena realitanya dalam penelitian ini ternyata istri adalah pihak yang dirugikan seperti diselingkuhi, tidak diberi nafkah pada saat terjadi pertengkaran dan mengalami kekerasan fisik oleh suaminya. Sehingga dalam perkara ini hakim dapat memberikan hak nafkah kepada istri selama tidak terbukti *nusyuz* dengan menggunakan SEMA Nomor 3 Tahun 2018 yang mengakomodir PERMA Nomor 3 Tahun 2017 sebagai regulasi yang mengikat pihak berperkara dan secara hak *ex officio* hakim demi mencapai keadilan.

Kata Kunci: Nafkah Iddah, Nusyuz, Hak Ex Officio Hakim

A. Introduction

The dissolution of a marriage in Indonesia as stipulated in Law No. 1 of 1974 states that the death of a husband or wife, divorce, and due to a court decision are the causes of the end of a marriage.¹ Once both parties have done attempts to reconcile but do not show any good progress, then the divorce process can only take place in a court as stated in Article 39 of the Marriage Law. After divorce, both husband and wife still have obligations to each other as stated in Article 41 of the Marriage Law.²

Apart from having to enforce the law as fairly as possible for the community,³ the court must also consider women's and

¹ Penerapan Asas et al., "As-Syar ' i : Jurnal Bimbingan & Konseling Keluarga As-Syar ' i : Jurnal Bimbingan & Konseling Keluarga" 6, no. 135 (2024): 558–75, <https://doi.org/10.47476/assyari.v6i1.423>.

² MELISA, HAK NAKFAH IDDAH PADA KASUS CERAI GUGAT AKIBAT KDRT ANALISIS PUTUSAN: h. 1. NO.2816/Pdt.G/2019/PA.DPK SKRIPSI (2023).

³ Muhammad Akbar, "Penguatan kemandirian Hakim dalam Mengemban Hukum Praktis yang Progresif di Pengadilan Negeri Donggala," *Bilancia: Jurnal Studi Ilmu Syariah dan Hukum*, 2020, h. 31,

children's rights due to divorce.⁴ Therefore, the judge must be able to provide the right solution to the wife and children because in the case of divorce they are the disadvantaged parties. In addition, the wife as a woman is also often depicted with a lower position.⁵ However, in the case of a judicial divorce, the wife still does not receive the rights she should have after the divorce, such as *nafkah iddah*.⁶ Lack of public understanding of the existing regulations⁷ also often makes this problem just go by the board.

In a previous research such as the work of Rizki P.P, Zuraidah A, and Adawiyah bt Ismail with the title "Pembebanan *Nafkah Iddah* dan *Mut'ah* dalam perkara Cerai Gugat dalam Tinjauan Hukum Islam di Indonesia dan Malaysia" concluded that the ex-husband is obliged by the judge with his *ijtihad* to determine *nafkah iddah* received by the ex-wife is in accordance with the consideration of the evidence from the witness who stated that the ex-wife was not *nusyuz* and this is in line with the contents of Article 41 of the Marriage Law.⁸

<http://pn-simalungun.go.id/kepaniteraan/perdata/Mediasi-Perkara-Perdata>.

⁴ INNAKI RAHMAH SALSABIELA, Implementasi Pemenuhan Hak Perempuan pada Perkara Perceraian di Mahkamah Syariah Banda Aceh (2023), h. 2.

⁵ M. Adib Ridwan Azizy Khoirotin Nisa', Ali Maskur, "Gender sebagai Pendekatan Studi Islam," *Jurnal Istima (Media Kreatifitas dan Pengembangan Ilmu Pengetahuan)* 2, no. 2 (2021): 68–76., h. 1.

⁶ Nur Ushmi Usthyawat, "Proceeding International Conference on Islamic Studies," vol. 03, 2021, 21–36, <https://proceeding.iainkudus.ac.id/index.php/PICCP/article/view/891>, h. 22.

⁷ Abstrak Pembinaan et al., "INKAMKU : Journal of Community service" 2, no. 1 (2023): 2–5.

⁸ Rizki Putra Pratama, Zuraidah Azkia, dan A'dawiyah Bt Ismail, "Pembebanan Nafkah Iddah Dan Mut'Ah Dalam Perkara Cerai Gugat Dalam Tinjauan Hukum Islam Di Indonesia Dan Malaysia," *Usrob: Jurnal*

Another study done by Iin Malinda with the title "Hak *Ex Officio* Hakim terhadap Penetapan *Nafkah Iddah* pada Kasus Cerai Gugat di Mahkamah Syari'ah Banda Aceh". This paper concluded that the judge granted *nafkah iddah* to the ex-wife solely to fulfilled fulfilled the ex-wife's request to her ex-husband, while *ex officio* rights were not used in this decision.⁹

Meanwhile, Fatimatuzdan Salsabila A.R in her research " Studi Putusan Pada Perkara Cerai Gugat Nomor 474/Pdt.G/2020/PA.JS terhadap Hak *Nafkah Iddah*" drew conclusion that the judge gave *nafkah iddah* by referring to the Hanafi School which states that women have the right to have shopping expenses, buying clothes and stopover unless they are *nusyuz*. The panel of judges is also guided by Article 41 letter (c) of the Marriage Law and the judge's *ex officio* right to determine this matter.¹⁰

Based on mentioned previous studies, *nafkah iddah* can be obtained by ex-wives with different considerations from judges. This shows that there is no legal certainty that specifically regulates *nafkah iddah*. Therefore, this study was conducted to spread knowledge that *nafkah iddah* can be given with considerations other than previous discovery regulations by *ex officio* judges as in the decisions of the Ternate PA, Bulukumba PA, and the Singkil Sharia Court.

Hukum Keluarga Islam 7, no. 1 (1970): 11–26, <https://doi.org/10.19109/ujhki.v7i1.17738>, h. 24.

⁹ IIN Malinda, "Hak Ex Officio Hakim Terhadap Penetapan Nafkah Iddah Pada Kasus Cerai Gugat di Mahkamah Syar'iyah Banda Aceh" (2023), <https://repository.ar-raniry.ac.id/id/eprint/34939%0A>, h. 49.

¹⁰ Fatimatuz Zahro dan Salsabila Annisa Rohmah, "STUDI PUTUSAN HAKIM PADA PERKARA CERAI GUGAT NOMOR 474/Pdt.G/2020/PA.JS TERHADAP HAK NAFKAH IDDAH," *MASADIR: Jurnal Hukum Islam* 2, no. 1 (2022): 379–92, <https://doi.org/10.33754/masadir.v2i1.514>, h. 391.

B. Method

This research is a library research where the collected data are cases with the legal problem regarding *nafkah iddah* for wife who sues her husband for divorce. This study uses a qualitative approach.

The approach to this research is the statute approach. It is an approach used by examining the Law and its regulations regarding the legal issues raised. Beside, the researcher also uses the historical approach. This approach is used by analyzing the judge's decision to decide cases that are not yet legally certain in the Law. Next, the data is processed by a descriptive data analysis technique then the conclusions written deductively.

C. Discussion

1. Definition of *Nafkah Iddah* on Judicial Divorce

Etymologically, *nafkah* comes from Arabic word which means to decrease, in the Arabic-Indonesian dictionary *al-Nafakah* means costs, spending and expenses.¹¹ *Nafkah iddah* is amount of money that an ex-wife receives from her ex-husband during the *iddah* period.¹² Article 41 letter (c) of the Marriage Law, *nafkah iddah* could be an obligatory thing that the ex-husband must give to his ex-wife if the ex-wife does not perform *nusyuz*.¹³ The fact that the

¹¹ Sultan Adam et al., "CERAI GUGAT DALAM PERSPEKTIF GENDER PERCEPTIONS OF RELIGIOUS COURT JUDGES REGARDING THE PROVISION OF IDDAH MAINTENANCE AND MUT'AH MAINTENANCE IN THE CASE OF," n.d., 1–16., h. 7.

¹² Heniyatun Heniyatun, Puji Sulistyaningsih, dan Siti Anisah, "Pemberian Mut'Ah Dan Nafkah Iddah Dalam Perkara Cerai Gugat," *Profetika: Jurnal Studi Islam* 21, no. 1 (2020): 49, <https://doi.org/10.23917/profetika.v21i1.11647>.

¹³ Zainuddin Aulia Alya, "Analisis Putusan Pengadilan Agama Nomor 2429/Pdt.G/2023/PA.Mdn Tentang Nafkah Iddah dan Mut'ah oleh Suami Kepada Isteri dalam Perkara Cerai Talak," *Unes Law Review* 6,

wife is not *nusyuz* is one of the factors that influences the difference in treatment before the law,¹⁴ because a wife who is *nusyuz* cannot get it even in a talaq divorce.¹⁵

2. SEMA No. 3 Tahun 2018 dan Hak Ex Officio Hakim

SEMA No. 3 of 2018 can be a breakthrough in the law made by the Supreme Court for ex-wives so that they can earn a living, both *iddah* and *mut'ah* as long as the ex-wife does not *nusyuz* (disobey) her ex-husband.¹⁶ In this SEMA, the Religious Chamber's Legal Formulation section, point A. no. 2, states that judges must consider a sense of justice and fairness by exploring how capable the husband's economy is and the basic needs of his children and wife to determine *nafkah madhiyah*, *nafkah iddah* and *nafkah mut'ah*.¹⁷

Ex officio rights in KBBI are based on judges' position.¹⁸ It is the right or authority of a judge to decide a case because the position

no. 3 (2024): 7791–99,
<https://doi.org/https://doi.org/10.31933/unesrev.v6i3.1691>. h., 7794.

¹⁴ Muhammad Akbar, "Hukum Progresif Sebagai Alternatif Hukum Yang Ideal," *Bilancia: Jurnal Studi Ilmu Syariah dan Hukum* 15, no. 1 (2021): 125–37, <https://doi.org/10.24239/blc.v15i1.702>, h. 134.

¹⁵ Jamhir Cut Putri Saridevi, Soraya Devy, "PEMENUHAN HAK NAFKAH ISTRI DALAM MASA 'IDDAH (Studi Kasus Di Gampong Kuta Kumbang Kecamatan Seunagan)," *EL- 'AILAH: Jurnal Ilmiah Mahasiswa Hukum Keluarga* 1, no. 1 (2024): 80–102.

¹⁶ Dwi Nissa Kamalia Putri dan Ahmad Izzuddin, "Pertimbangan Hakim Pengadilan Agama Singaraja Dalam Penetapan Nafkah 'Iddah, Nafkah Mut'ah Dan Eksekusinya Pada Putusan Verstek Cerai Gugat," *Sakina: Journal of Family Studies* 6, no. 4 (2022), <https://doi.org/10.18860/jfs.v7i1.2518>, h. 3.

¹⁷ "SEMA_03_2018.pdf," n.d., h. 14.

¹⁸ Muhammad Amzad dan Endrik Safudin, "Hak Ex Officio Hakim dan Permasalahan Nusyuz dalam Perkara Cerai Talak," *Jurnal Antologi Hukum* 3, no. 2 (2023): 317–34, h. 332. <https://doi.org/10.21154/antologihukum.v3i2.2596>.

he holds can determine matters that are not included in the claim.¹⁹ Regulations regarding the *ex officio* rights of judges are also stated in PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law.²⁰ In a judicial divorce, the judge's *ex officio* rights can be implemented so as the ex-wife can get her rights.²¹ The rights referred to can be in the form of fulfilling maintenance, education, *kiswah*, *maskab*, *iddah*, *mut'ah*, and *madliyah*.²²

With *ex officio* rights, the judge can make a decision based on real legal facts regardless of what the ex-wife requested²³ in order

¹⁹ Ahmad Zainul Fata, PENERAPAN HAK EX OFFICIO HAKIM DALAM PENETAPAN NAFKAH IDDAH DAN MUT ' AH Skripsi PROGRAM STUDI HUKUM KELUARGA FAKULTAS SYARI ' AH DAN HUKUM UNIVERSITAS ISLAM NEGERI WALISONGO SEMARANG (2020)., h. 39.

²⁰ Harjono Khoirin Winta, "Analisis Yuridis Hak Ex Officio dalam Melindungi Perempuan yang Berhadapan dengan Hukum Sebagai Pihak Khoirin," *Kultura Jurnal Ilmu Sosial dan Humaniora* 2, no. Vol. 2 No. 3 (2024): *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* (2024): 118–28, <https://doi.org/https://doi.org/10.572349/kultura.v2i3.1109.>, h. 122.

²¹ Ghea Sakira, "TINJAUAN HUKUM ISLAM DAN HUKUM POSITIF TERHADAP PENERAPAN HAK EX OFFICIO HAKIM DALAM PERKARA CERAI TALAK," *TINJAUAN HUKUM ISLAM DAN HUKUM POSITIF TERHADAP PENERAPAN HAK EX OFFICIO HAKIM DALAM PERKARA CERAI TALAK* (2024), <http://repository.radenintan.ac.id/id/eprint/33090>.

²² Harjono Khoirin Winta, "Analisis Yuridis Hak Ex Officio dalam Melindungi Perempuan yang Berhadapan dengan Hukum Sebagai Pihak Khoirin," *Kultura Jurnal Ilmu Sosial dan Humaniora* 2, no. Vol. 2 No. 3 (2024): *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* (2024): 118–28, <https://doi.org/https://doi.org/10.572349/kultura.v2i3.1109.>, h. 121.

²³ Analisis Putusan, Nomor Pdt, dan G Pa Bjb, "BAB IV ANALISIS PUTUSAN NOMOR 581/Pdt.G/2022/Pa.Bjb.," 2022, 49–60.

to require the ex-husband to provide *nafkah* rights to the ex-wife by using considerations as per SEMA No. 3 of 2018.²⁴

3. Perception of the Judges of the Ternate Religious Court, Bulukumba Religious Court, and Singkil Sharia Court in Granting the Right to Maintenance in Judicial Divorce

Dalam In the case of judicial divorce in decisions number 611/Pdt.G/2021/PA.Te, number 627/Pdt.g/2012/PA/Blk, and number 8/Pdt.G/2024/MS.Skl, a wife can get *nafkah iddah* from her husband which is decided by the court with a judge using his *ex officio* rights, as long as the wife is not proven to be *nusyuz*.

So far, a wife who sues her husband for a divorce is considered to have committed *nusyuz* (disobedience) as in the hadith of the Prophet who forbade the smell of heaven for a wife because she asked to be divorced²⁵ (HR. Abu Dawud dan At-Tirmidzi). However, the judges at the Ternate Religious Court, Bulukumba Religious Court and Singkil Sharia Court, in granting the right to maintenance to the wife, initially looked at the facts that occurred in the trial²⁶ regarding the reason of why the wife can file for judicial divorce.

The results of this study found differences between one decision and another as follows:

²⁴ Taufiq Fathur Ronzie Saragih, Sahmiar Pulungan, dan Adlin Budhiawan, "Hukum Nafkah Mut'ah Dan Idah Istri Dalam Perkara Khuluk (Analisis Terhadap Sema No 3 Tahun 2018 Tentang Pemberian Nafkah Idah dan Mut'ah Pada Perkara Cerai Gugat)," *Al-Masblabah Jurnal Hukum Islam dan Pranata Sosial* 10, no. 01 (2022): 225, <https://doi.org/10.30868/am.v10i01.2443>.

²⁵ Ulul Albab, *Analisis Putusan Hakim Dalam Perkara Cerai Talak Qabl Al-Dukbūl*, 2023., h. 15.

²⁶ Aldio Fahrezi Permana Atmaja Aditya Yuli Sulistyawan, *Arti Penting Legal Reasoning Hakim dalam Pengambilan Putusan di Pengadilan untuk Menghindari "Olvondoende Gemotiveerd," Islamadina*, vol. 6, 2021, <https://doi.org/http://dx.doi.org/10.26623/jic.v6i2.4232>, h. 493.

- a) Wife not proven *nusyuz* in the decision with case number 611/Pdt.G/2021/PA.Te, number 627/Pdt.g/2012/PA/Blk, and number 8/Pdt.G/2024/MS.Skl.
- b) Husband found guilty which included violating the *taklik* such as having an affair²⁷ in decision number 8/Pdt.G/2024/MS.Skl, accusing his wife of having an affair as in decision number 8/Pdt.G/2024/MS.Skl, strangling and hitting his wife until she was injured²⁸ as in decision number 627/Pdt.g/2012/PA/Blk.
- c) The husband was dishonest about the salary he received while working as in decision number 611/Pdt.G/2021/PA.Te.
- d) After a big fight, the husband no longer provides for his wife, and the ex-husband neglects her²⁹ as in decision number 8/Pdt.G/2024/MS.Skl.

Based on what mentioned above, there are several considerations used by the judge.³⁰ There are judges who decide using *ex officio* while others use SEMA No. 3 of 2018, Chapter III Point A paragraph (3) which states that a wife who is not *nusyuz*

²⁷ Humaira Potabuga, “Pembaharuan Hukum Keluarga Islam Di Brunei Darussalam,” *Bilancia: Jurnal Studi Ilmu Syariah dan Hukum* 14, no. 1 (2020): 105–20, <https://doi.org/10.24239/blc.v14i1.516>, h. 116.

²⁸ L R SURYANI, CERAI GUGAT DISEBABKAN KEKERASAAN DALAM RUMAH TANGGA (STUDI PUTUSAN NOMOR 5425/Pdt. G/2019/PA. Sby) (2022), h. 20.

²⁹ Abdul Syakur, “Penerapan Hak Ex Officio Hakim Terhadap Perempuan dalam Perkara Cerai Gugat di Pengadilan Agama Kabupaten Madiun” (2024).

³⁰ Ahmad Syarif Fuadi, Dadin Eka Saputra, dan Munajah Munajah, “ANALISIS YURIDIS HAK EX OFFICIO HAKIM DALAM PERKARA CERAI GUGAT (Studi Kasus Putusan Pengadilan Agama Martapura Nomor 318/Pdt.G/2020/PA.Mtp),” *Jurnal Penegakan Hukum Indonesia* 1, no. 1 (2021): 70–87, <https://doi.org/10.51749/jphi.v1i1.21>, h. 74.

must be given *nafkah mut'ah* and *nafkah iddah* by her husband. The SEMA above also accommodates PERMA Number 3 of 2017.³¹

In deciding the verdict with case number 611/Pdt.G/2021/PA.Te, number 627/Pdt.g/2012/PA/Blk, and number 8/Pdt.G/2024/MS.Skl, the judge can use his *ex officio* right to grant the *nafkah* right to the wife who filed for judicial divorce. In addition, the judge can also use SEMA No. 3 of 2018 as a regulation to bind the parties.

Therefore, when involved in a judicial divorce case, it is better not only to prepare child's *nafkah*, but also money for other *nafkah* as written in SEMA No. 3 of 2018. Thus, the wife is very entitled to receive *nafkah* during her *iddah* period in the judicial divorce case as in the decisions above in order to achieve justice³² which can be realized by providing the rights that a wife should receive after a divorce.

D. Conclusion

Nafkah Iddah for an ex-wife who sues for judicial divorce from her ex-husband can be given if the ex-wife is not proven to have committed nusyuz. In SEMA No. 3 of 2018 which accommodates PERMA Number 3 of 2017 and the judge with *ex officio* rights can use it as a legal consideration in providing *nafkah iddah* to an ex-wife who sues for judicial divorce from her husband. The perception of the judges of the Ternate Religious Court, Bulukumba Religious Court, and the Singkil Sharia Court in their decisions with case numbers 611/Pdt.G/2021/PA.Te, number

³¹ Moch Ichwan Kurniawan, Nurul Hanani, dan Rezki Suci Qamaria, "Hambatan Pelaksanaan SEMA No. 2 Tahun 2019 terhadap Pemenuhan Hak-hak Perempuan Pasca Cerai Gugat di Pengadilan Agama Kabupaten Kediri," *Al-Syakhsyiyah: Journal of Law & Family Studies* 4, no. 1 (2022): h. 87, <https://doi.org/10.21154/syakhsyiyah.v4i1.3962>.

³² Putri Ayu Maharani, Suryanto Siyo, dan Rizza Zia Agusty, "Menyoal Disparitas Produk Hakim Pengadilan Agama Antara Keadilan Dan Kepastian Hukum," *Jurnal Legal Reasoning* 1, no. 2 (2019): 121–34, <https://doi.org/10.35814/jlr.v1i2.2181>.

627/Pdt.g/2012/PA/Blk, and number 8/Pdt.G/2024/MS.Skl, the nafkah right is given by first studying at the case whether the wife committed nusyuz or not, if it is not proven then the judge can very well determine that the wife has the right to receive nafkah iddah as in SEMA No. 3 of 2018 which accommodates PERMA No. 3 of 2017 to be used as a regulation that binds the parties to the case with ex officio rights in order to obtain justice.

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