

Gender Justice Review of Default Divorce Decisions and Fulfillment of Iddah and Mut'ah Maintenance Rights at the Pemalang Religious Court

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Abstract

The absence of a wife in *cerai talak* (husband-initiated divorce) proceedings often results in disadvantages for women, particularly in securing their post-divorce entitlements such as *iddah* maintenance and *mut'ah* compensation. This situation frequently occurs in *cerai talak verstek* (default divorce) cases, including those adjudicated at the Pemalang Religious Court. This study seeks to explore the application of gender justice principles in default divorce rulings and to evaluate the extent to which women's economic rights are upheld through existing legal mechanisms. Employing a qualitative approach with normative juridical and case study methods, the research analyzes selected *cerai talak verstek* decisions and includes interviews with judges of the Pemalang Religious Court. The findings reveal that while gender-sensitive justice has begun to be implemented, it remains inconsistent. Some judges have exercised their *ex officio* authority to award *iddah* and *mut'ah* to absent wives, whereas others have not. Moreover, the wife's absence is often construed as *nusyuz* (disobedience), although such an interpretation is not always legally justified. In conclusion, the protection of women's economic rights in *cerai talak verstek* cases still requires reinforcement, particularly through the consistent enforcement of Supreme Court Circular No. 1 of 2017 concerning the safeguarding of women's rights in religious courts.

Keywords: *cerai talak verstek* (default divorce), gender justice, *iddah* maintenance, *mut'ah* compensation, women's economic rights.

Introduction

Background

The increasing number of default divorce cases in various Religious Courts, including the Pemalang Religious Court, indicates a new dynamic and serious challenge in the practice of Islamic family law in Indonesia. In such cases, the wife, as the respondent, often fails to appear in court for various reasons, ranging from psychological to social to economic. This absence results in the loss of the opportunity for women to file a counterclaim (reconvention), which could have been used to demand post-divorce economic rights such as *iddah* (waiting period), *mut'ah* (waiting for temporary dowry), and *madliyah* (settlement) maintenance. As a result, women who are divorced through default decisions often lose economic rights that are normatively guaranteed by both Islamic and national law.

This situation reflects the potential for gender inequality in the religious justice system. Ramdani and Syafitri (2021) in *ADLIYA: Jurnal Hukum dan Kemanusiaan* (Journal of Law

and Humanity) assert that many divorce decisions fail to consider the wife's socioeconomic aspects and tend to focus solely on the husband's financial capabilities. Heniyatun, Sulistyaningsih, and Anisah (2024) echo this sentiment, stating that judges' considerations regarding iddah (waiting) and mut'ah (waiting period) maintenance are still oriented toward formalism and do not reflect substantive justice for women.

In an empirical context, research by Mutiara and Al-Aqsha (2023) in *Sakena: Jurnal Hukum Keluarga (Family Law Journal)* revealed that most default divorce cases in Religious Courts do not include a determination of iddah (waiting period) and mut'ah (waiting period). Some panels of judges simply issue a divorce declaration without addressing the wife's economic rights. Judges, however, have *ex officio* authority to determine these rights to protect the woman's interests, even if the respondent is not present at the hearing.

From a gender justice perspective, Fauzi and Azzahra (2022) demonstrate that structural bias against women in Islamic family matters remains strong, partly due to a patriarchal legal culture. A wife's absence from court is often interpreted as a form of *nusyuz* (disobedience), although legally, this is not always true. Nurhadi and Hidayat (2021) in *De Jure: Jurnal Syariah dan Hukum (Syariah and Law Journal)* assert that judges have a moral and legal responsibility to ensure the protection of wives' rights through the application of substantive justice principles, not simply following formal procedures.

Furthermore, Rosidah and Sulaeman (2022) highlight the suboptimal implementation of Supreme Court Circular Letter (SEMA) No. 1 of 2017, which emphasizes the obligation of judges to guarantee women's rights in divorce cases. This is despite the fact that Articles 149 and 152 of the Compilation of Islamic Law stipulate a husband's obligation to provide iddah and mut'ah maintenance to his ex-wife. The weak implementation of these regulations has created a gap between legal norms and practice.

Theoretically, Aisyah and Hidayah (2023) in the *An-Nisa Journal of Gender Studies* argue that the concept of *qiwamah* (male leadership) is often misinterpreted in patriarchal ways, thus perpetuating unequal gender relations, even in divorce proceedings. They emphasize the need to reinterpret Islamic values of justice that place husbands and wives in equal positions. Meanwhile, an international article titled "Gender Inequality and Judicial Discretion in Muslim Divorce of Indonesia" (2023, *Cogent Social Sciences*) shows that judicial discretion in Indonesia is still heavily influenced by gender-biased religious interpretations and social norms, ultimately resulting in weak protection of women's economic rights after divorce.

Based on these findings, it can be concluded that the application of gender-based justice principles in divorce cases is still suboptimal. Judges have not fully utilized their *ex officio* authority to guarantee the fulfillment of women's economic rights. Therefore, this research is important to examine the extent to which gender justice values are applied in the default divorce decision at the Pematang Religious Court, as well as how legal mechanisms can be strengthened to guarantee the protection of women's economic rights even though they are not present at the trial.

Problem

Based on the description above, the main problem addressed in this study is how the absence of the wife (respondent) in a divorce case impacts the fulfillment of post-divorce economic rights, such as iddah (waiting period), mut'ah (waiting for temporary support), and *madliyah*

(waiting for temporary support). Furthermore, this study also highlights the extent to which judges use their ex officio authority to ensure these rights are granted even if the wife is not present at the hearing.

Research Gaps

Although numerous studies have discussed iddah (waiting period) and mut'ah (waiting for temporary support) in the context of divorce, studies specifically examining default divorce decisions from a gender justice perspective are still very limited. Following the issuance of SEMA No. 1 of 2017 and the increasing discourse on gender mainstreaming in the judiciary, empirical analysis of the implementation of the principle of substantive justice in default cases has become crucial. This research gap in this area formed the basis for a case study at the Pematang Religious Court.

Research Objectives

This research aims to:

1. Analyze the application of the principle of gender justice in default divorce cases at the Pematang Religious Court.
2. Identify factors influencing the fulfillment of the right to iddah and mut'ah maintenance in default decisions.
3. Assess the extent to which these decisions reflect the principles of equality and substantive justice in Islamic family law in Indonesia.

Literature Review

a. The Concept of Default Divorce

In civil procedural law, the term default refers to a decision rendered against a defendant who fails to appear in court despite being legally and properly summoned, as stipulated in Article 125 of the HIR. In the context of Islamic family law, this mechanism also applies to default divorce cases, namely divorces filed by the husband before the Religious Court, as stipulated in Article 117 of the Compilation of Islamic Law (KHI), which states that a divorce is considered valid if pronounced by the husband before a panel of judges.

Default divorce decisions are unique because they are rendered without the presence of the wife (respondent) in court. This situation requires careful judges, as the absence of the respondent often results in the neglect of women's economic rights, such as iddah (waiting period), mut'ah (waiting for temporary support), and madliyah (waiting for temporary support). Ramdani and Syafitri (2021) in *ADLIYA: Jurnal Hukum dan Kemanusiaan* (Journal of Law and Humanity) note that many default divorce cases do not include the burden of maintenance because judges still adhere to procedural formalism. Heniyatun, Sulistyaningsih, and Anisah (2024) also believe that an overly formal legal approach can eliminate the essence of substantive justice, especially for women who have weak socio-economic positions.

Mutiara and Al-Aqsha (2023) added that the principle of protection for absent parties in default cases has not been implemented uniformly in various religious courts, including in Padang and Pematang. A wife's absence is often interpreted as *nusyuz*, even though legally, it does not always constitute disobedience. Therefore, judges should thoroughly examine the reasons for the absence and still guarantee the woman's rights based on the principles of substantive justice and a fair trial.

b. Iddah and Mut'ah Maintenance in Islamic Law

Providing *iddah* and *mut'ah* maintenance is a form of moral, social, and spiritual responsibility of the husband to his ex-wife after divorce. This principle is derived from the Quran, specifically Surah Al-Baqarah [2]: 241, which emphasizes that divorced women have the right to receive adequate *mut'ah*, an obligation for those who are pious.

In the national legal system, this provision is reinforced by Article 149 (a) of the Compilation of Islamic Law (KHI), which requires the husband to provide appropriate *mut'ah* (living allowance) to his ex-wife, unless the marriage has not yet occurred. Other articles, namely 152, 158, and 159 of the KHI, also emphasize the obligation to provide maintenance during the *iddah* period and the procedures for implementing it.

Heniyatun et al. (2024) explain that *iddah* maintenance is provided during the waiting period after divorce, while *mut'ah* is a form of respect and moral comfort for the divorced wife. Ramdani and Syafitri (2021) emphasize that determining the amount of maintenance should not only consider the husband's economic capacity but also consider the ex-wife's decent living needs according to local social standards.

In practice, research by Amin et al. (2025) shows that although many court decisions stipulate the obligation to provide *iddah* and *mut'ah* maintenance, the level of implementation remains low due to a lack of legal awareness among husbands and weak oversight by judicial institutions. In fact, based on the *maqāṣid al-syarī'ah* framework, the fulfillment of women's economic rights after divorce is part of the protection of *hiḏ al-naḑs* (soul) and *hiḏ al-māl* (property).

Thus, providing maintenance for the *iddah* and *mut'ah* periods is not merely a legal obligation, but a concrete manifestation of social and humanitarian justice as taught in Islamic law and implemented through the Indonesian family justice system.

c. The Concept of Gender Justice

Gender justice is a fundamental principle that must serve as a benchmark in assessing the practice of Islamic family law. Herien Puspitawati (2012) defines gender justice as a condition in which men and women receive equal treatment in accessing, controlling, and utilizing available legal resources and opportunities. In the realm of family law, this principle demands that women receive equal protection for their economic, social, and moral rights, both during marriage and after divorce.

Fauzi and Azzahra (2022) in *Musāwa: Jurnal Studi Gender dan Islam* (Journal of Gender and Islamic Studies) argue that patriarchal bias in judicial practice remains a major obstacle to the realization of substantive justice for women. Rosidah and Sulaeman (2022) similarly expressed their opinion, assessing that the implementation of SEMA No. 1 of 2017

concerning the protection of women's rights has not been fully internalized in the mindset and decisions of religious court judges.

Furthermore, Aisyah and Hidayah (2023) highlight the importance of reinterpreting the concept of *qiwamah* (husband's leadership) to prevent it from being used to legitimize gender inequality. They emphasize that *qiwamah* should be understood as a form of responsibility, not superiority, so that the husband-wife relationship is complementary and equal. This aligns with the findings of the international study "Gender Inequality and Judicial Discretion in Muslim Divorce of Indonesia" (2023, Cogent Social Sciences), which revealed that Islamic family law practices in Indonesia are still influenced by social norms and religious interpretations that are biased against women, leaving women in a vulnerable position in divorce proceedings.

Therefore, the application of gender justice in divorce cases is crucial to prevent a woman's absence from court from being used as a justification for ignoring her rights. Judges need to interpret the law not only textually, but also substantively and contextually, in accordance with the universal values of justice in Islam.

d. Judges' Ex Officio Rights

In the Indonesian legal system, judges have *ex officio* authority, the inherent right of their position to issue a decision in the interests of justice, even if not requested by the parties to the case. This principle is enshrined in Article 178 paragraph (1) of the HIR and reaffirmed in Law Number 48 of 2009 concerning Judicial Power, which requires judges to explore the values of law and justice that exist in society.

According to Subekti's view, and supported by research by Nurhadi and Hidayat (2021), *ex officio* authority allows judges to determine the husband's obligation to provide maintenance for the *iddah* and *mut'ah* periods, even if this is not requested by the wife. Some judges in religious courts have utilized this authority to protect the interests of women who are absent from divorce proceedings. However, Mutiara and Al-Aqsha (2023) note that this practice is still not implemented evenly across religious courts.

The use of *ex officio* rights aligns with the primary objective of Islamic law within the framework of the *Maqāsid al-Shari'ah* (the principle of Islamic law), namely to uphold justice and the common good. Therefore, judges function not merely as enforcers of the law but also as guardians of moral, social, and humanitarian values. In cases of defaulting on divorce, the use of *ex officio* rights is a crucial instrument to ensure that women's economic rights are fulfilled even if they are not formally present in court.

Research Method

Type of Research

This research adopts a qualitative approach combining juridical-normative methods and an empirical approach in the form of a case study. The juridical-normative approach is utilized to examine the legal regulations and doctrines governing women's rights in default divorce cases, including provisions derived from statutory regulations, the Compilation of Islamic Law (KHI), and classical and contemporary *fiqh* literature. Meanwhile, an empirical approach is applied to capture the reality of the implementation of these norms by judicial

officials, particularly how judges handle the rights to maintenance during the iddah (waiting period) and mut'ah (waiting period) for absent respondents.

This research design is based on the premise that the issue of gender justice in Islamic family law is not merely normative-theoretical in nature but is also influenced by the practices, perceptions, and policies of judges as law enforcers. Therefore, the study focuses not only on analyzing legal texts but also on documenting court practices as a reflection of the implementation of gender justice principles.

Research Location

The research field is located at the Pemalang Religious Court, Central Java. This location was chosen due to the increase in default divorce cases over the past few years and the variation in decisions regarding the imposition of iddah and mut'ah maintenance, thus providing a representative picture of the application of gender justice principles at the regional religious court level.

Data Sources

The research utilized two categories of data sources: primary and secondary data.

Primary data were obtained directly from the field through in-depth interviews with judges handling default cases and through observations of the trial process. The interviews were semi-structured so that the researcher could explore the judges' views on the application of ex officio authority and the interpretation of gender justice principles in decisions.

Secondary data were collected from legal documents and supporting literature, including: copies of default divorce decisions at the Pemalang Religious Court for the 2024–2025 period; relevant regulations such as Law No. 1/1974 concerning Marriage, the Compilation of Islamic Law, and SEMA No. 1/2017; as well as academic studies, books, and accredited journal articles that discuss the implementation of women's rights and gender bias in divorce decisions (e.g., studies by Ramdani & Syafitri 2021; Heniyatun et al. 2024; Fauzi & Azzahra 2022; Rosidah & Sulaeman 2022).

Data Collection Techniques

Data collection was carried out through three main procedures:

1. In-depth interviews
Conducted with several judges and court clerks involved in drafting divorce decisions. The interviews focused on their understanding and practices regarding ex officio rights and efforts to ensure gender equity in decisions.
2. Documentary study
The researcher reviewed case files and copies of legally binding decisions to identify patterns of judges' reasoning and the extent to which women's economic rights were taken into account.
3. Library research
Conducted to strengthen the theoretical basis of the research and compare empirical findings with relevant previous research.

Data Analysis Techniques

Data analysis was descriptive-qualitative and was conducted in the following stages:

1. Data reduction — filtering and focusing relevant information from interviews, observations, and decision documents.
2. Data classification — grouping findings based on key themes such as the reasons for the respondent's absence, the panel's considerations, and the practice of using *ex officio* rights.
3. Verification and Interpretation — Interpreting the findings by referring to gender justice theory, the principles of *maqāṣid al-syarī‘ah*, and applicable regulations.
4. Conclusion Drawing — Formulating answers to the research questions and assessing the level of implementation of gender justice principles in default divorce decisions at the Pemalang Religious Court.

This method is expected to bridge the analysis between ideal norms (*das sollen*) and practical reality (*das sein*), thereby providing empirical and theoretical contributions to the development of a more gender-sensitive Islamic family law perspective in Indonesia.

Results and Discussion

a. Empirical Conditions at the Pemalang Religious Court

Based on observations and analysis of case data from 2025, the Pemalang Religious Court recorded a significant increase in the number of default divorce cases. The large number of cases decided without the presence of the wife (respondent) indicates that social issues and legal awareness remain major challenges in resolving family disputes. The absence of respondents from court hearings is generally caused by psychological factors, economic constraints, and unfamiliarity with legal procedures.

The results of the investigation into five sample cases show that there is still inconsistency in determining the *iddah* and *mut'ah* maintenance, as presented in Table below.

Tabel Data Putusan Cerai Talak Verstek di Pengadilan Agama Pemalang Tahun 2025

No	Case Number	Year	Type of Decision	Iddah Maintenance	Mut'ah	Execution / Verdict
1	2594/Pdt.G/2025/PA.Pml	2025	Verstek	Rp 1.500.000	Rp 500.000	Pledge, burden paid
2	2769/Pdt.G/2025/PA.Pml	2025	Verstek	–	–	Without a living arrangement

No	Case Number	Year	Type of Decision	Iddah Maintenance	Mut'ah	Execution / Verdict
3	2843/Pdt.G/2025/PA.Pml	2025	Verstek	Rp 2.000.000	Rp 750.000	Determined ex officio
4	2850/Pdt.G/2025/PA.Pml	2025	Verstek	–	–	Just a vow of divorce
5	2854/Pdt.G/2025/PA.Pml	2025	Verstek	Rp 1.200.000	Rp 400.000	Determined at the judge's discretion

The table shows that only three of the five cases explicitly stipulated the payment of iddah and mut'ah maintenance. The other two cases did not include this obligation, citing the respondent's absence or perceived absence as *nusyuz*. This fact indicates a disparity in the enforcement of justice among panels of judges and a weak application of the principle of gender equality in their decisions.

This finding is consistent with research by Ramdani & Syafitri (2021), which states that most divorce decisions in religious courts are still formalistic and do not fully prioritize the protection of women's economic rights. Heniyatun et al. (2024) added that the variation in post-divorce maintenance awards indicates a suboptimal implementation of the *ex officio* principle by judges.

b. Legal Analysis of Default Decisions

An analysis of the five cases above reveals inconsistencies in the application of the law by the panels of judges. In case No. 2594/Pdt.G/2025/PA.Pml, the judge determined iddah maintenance at IDR 1.5 million and mut'ah at IDR 500,000. However, in case No. 2769/Pdt.G/2025/PA.Pml, the judge did not include these rights at all. Meanwhile in case no. 2843/Pdt.G/2025/PA.Pml, judges progressively use the *ex officio* right to determine maintenance without a request.

From a legal perspective, a judge's decision to determine maintenance *ex officio* has a strong legal basis under Article 178 paragraph (1) of the HIR and Article 10 of Law No. 48 of 2009, which grants judges the authority to guarantee justice even when not requested by the parties. However, not all judges at the Pematang Religious Court have applied this principle. In several decisions, the respondent's absence was cited as the basis for not determining maintenance, even though this contradicts the principle of substantive justice as taught in Islamic law.

According to Heniyatun et al. (2024), women's post-divorce rights cannot be revoked simply because of a failure to appear at the hearing; maintenance for the iddah (iddah) and mut'ah (mutual support) remains the husband's obligation. Rosidah & Sulaeman (2022) emphasized

that this structural bias reflects the weak implementation of gender justice in religious court practice.

Therefore, from a legal perspective, it can be concluded that the implementation of the principle of justice in default cases still depends on the interpretation of each judge, giving rise to legal uncertainty and inequality in the protection of women's rights.

c. Gender Justice Perspective

From a gender justice perspective, research findings show that some default divorce decisions at the Pemalang Religious Court still exhibit patriarchal bias. The woman's absence is often interpreted as a form of *nusyuz* (non-compliance), thus being used as a justification for not providing *iddah* (waiting) or *mut'ah* (waiting) maintenance. This interpretation contradicts the spirit of SEMA No. 1 of 2017, which explicitly requires judges to protect women's rights in divorce cases.

Fauzi & Azzahra (2022) explain that social and cultural bias against women remains embedded in the paradigms of some judges, making the principle of substantive equality difficult to achieve. Aisyah & Hidayah (2023) emphasize the need to reinterpret the concept of *qiwamah* (religious service) to understand it as a moral responsibility, not male domination. Therefore, a wife's presence or absence in court should not be used as a measure of morality or justification for neglecting economic rights.

On the other hand, Nurhadi & Hidayat (2021) remind us that the principle of protecting the vulnerable is a universal principle in Islamic law. Judges with a gender perspective should interpret the law based on the goals of protection and public welfare, not simply on the formal presence of the parties.

The implementation of gender justice in the Pemalang Religious Court has indeed shown progress, but it is not yet uniform across courts. Some judges have taken the initiative to determine maintenance *ex officio*, while others still rely on the wife's explicit request. This demonstrates the need to strengthen the internalization of the principle of gender equality in religious courts.

d. The Role of Judges and Challenges to Implementation

Judges have a significant responsibility as guardians of the values of substantive justice in Islamic family law. In cases of divorce (*talak vertek*), judges are expected not only to enforce procedural law but also to interpret the values of *maqāṣid al-syarī'ah*—namely, realizing justice, protection, and welfare. Determining the *iddah* and *mut'ah* maintenance *ex officio* is a concrete form of implementing this principle.

However, this study identified several implementation challenges in the field. First, judges' limited understanding of the concept of gender justice and the importance of *maqāṣid* in judicial practice remains. Second, high caseloads limit the time available for substantive analysis of each case. Third, the absence of comprehensive national technical guidelines on the application of *ex officio* rights to determine maintenance has led to variations in practice between courts.

Mutiara & Al-Aqsha (2023) emphasize the importance of improving judges' capacity through gender and substantive justice training, while the international study **Gender Inequality and Judicial Discretion in Muslim Divorce of Indonesia** (2023) states that social perceptions and religious interpretations are dominant factors influencing judges' discretion in deciding family cases. Therefore, strengthening a legal culture oriented toward protecting women's rights and implementing principles of justice based on the common good is necessary.

Conclusion

Based on the results of research conducted at the Pematang Religious Court, it can be concluded that the application of the principles of justice and gender equality in default divorce cases has begun to emerge, but has not been implemented evenly across all panels of judges. Some judges have demonstrated the courage to use their *ex officio* right to determine *iddah* and *mut'ah* maintenance even if the wife is not present at the hearing, while others still adhere to a formalistic approach that requires an explicit request from the respondent.

This phenomenon confirms that a wife's absence cannot be used as a justification for denying her economic rights. The principle of substantive equality in Islamic family law actually requires greater protection for vulnerable parties, particularly women, who are often in a socially and financially weak position.

Furthermore, this study found that the lack of detailed national guidelines regarding the application of *ex officio* rights is one of the causes of disparities in decisions between courts. Therefore, a clearer policy framework is needed to provide judges with a single point of reference to ensure substantive justice for women in default divorce cases.

Overall, the Pematang Religious Court has moved toward more gender-sensitive judicial practices, but this process still requires strengthening in terms of uniformity of decisions, normative awareness, and increasing the capacity of judges to interpret the law progressively in accordance with the *maqāsid al-syarī'ah*.

Recommendations

1. Strengthening the Capacity of Judges

The Supreme Court and the Religious Courts need to expand and deepen their training programs with a gender justice perspective. Training materials should be not only normative but also applicable—for example, through simulations of the application of *ex officio* rights in divorce cases—so that judges are able to interpret the law with consideration for the public interest and equality.

2. Improving Supervision and Consistency of Decisions

A stricter internal oversight system is needed to ensure uniformity in decisions between panels of judges, particularly regarding the determination of *iddah* and *mut'ah* maintenance. This oversight can be carried out by the High Religious Court or the Supreme Court Supervisory Body by assessing the extent to which each decision reflects the principles of substantive justice.

3. Digitization and Monitoring of Post-Divorce Maintenance

Religious Courts are advised to develop an electronic database that records all default divorce decisions and their execution. This system will help monitor the ex-husband's compliance with rulings regarding *iddah* and *mut'ah* maintenance, while also providing information for policy evaluation and public transparency. The results of this study are expected to contribute scientifically to the development of Islamic family law in Indonesia, oriented toward substantive justice and gender equality. In addition to enriching the academic literature, these findings are also expected to form the basis for formulating judicial policies that are more responsive to women's rights after divorce.

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