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Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey

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Abstract:

The Supreme Court has ruled that in contested divorce cases, women are entitled to receive *nafkah iddah*, *mut'ah*, and *nafkah madhiyah*, provided they do not act *nusyuz*. However, this provision is not being effectively implemented. This study examines the fulfilment of women's rights post-contested divorce in the Malang Regency Religious Court. The goal is to identify shortcomings in implementing these regulations and propose solutions for more effective enforcement. The research employs an empirical-juridical method, using secondary data from interviews and documentation with key personnel at the Malang District Religious Court. The qualitative analysis refers to Soekanto's theory. The Findings indicate that the fulfilment of women's rights in contested divorces at the Malang Regency Religious Court is ineffective. The law is clear and understandable, and officers, judges, and staff are accountable. Furthermore, the Malang District Religious Court provides sufficient infrastructure and support. However, the unmet factors—community awareness and cultural attitudes—pose significant barriers. Low legal awareness and compliance, coupled with cultural tendencies in Malang District to avoid legal processes and seek quick resolutions, hinder effective implementation. Addressing these issues is crucial for the regulations to achieve their intended impact on women's rights post-divorce.

Keywords: women's rights; divorce; religious court.

Introduction

As a husband and father, a man must bear the cost of living for his wife and children. These living expenses include *nafkah*, *kiswah* (clothing), and *maskan* (shelter). In addition, the husband must bear household expenses, maintenance costs, medical expenses, and children's education costs.¹ Such obligation applies not only when the marriage bond is ongoing but also until the divorce between husband and wife occurs. Several legal consequences of divorce are further explained in Article 41 of Law No.1 of 1974 concerning Marriage, including the following conditions: first, the father and mother are still obliged to maintain and educate their children based solely on the interests of the child. Second, the father is responsible for all maintenance and education costs required by the child. Third, the court may require the former husband to provide livelihood and determine an obligation for the former wife.²

The former husband has a legal obligation to his former wife to provide *mut'ah* in the form of money or goods, living expenses, clothing, and shelter for the former wife during the *iddah* period and pay off the dowry.³ The provision is continued in article 149 (b) of the Compilation of Islamic Law as follows, "Providing *nafkah*, *maskan*, and *kiswah* to the former wife during the *iddah* period, unless the former wife has been divorced *ba'in* and *nusyuz* and is pregnant."⁴ Currently, the two rules above are further strengthened by the enactment of Supreme Court Regulation of the Republic of Indonesia No.3 of 2017, followed by Supreme Court Circular Letter of

¹ Sifa Mulya Nurani, "Relasi Hak Dan Kewajiban Suami Istri Dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak Dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam Dan Hadits Ahkam)," *Al-Syakhsyiyah: Journal of Law & Family Studies* 3, no. 1 (July 30, 2021): 112, <https://doi.org/10.21154/syakhsyiyah.v3i1.2719>; Elimartati Elimartati et al., "Family Instability: A Study of Livelihoods during the Covid-19 Pandemic in Tanah Datar Regency, Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22 (June 13, 2023): 93, <https://doi.org/10.31958/juris.v22i1.6054>; Efa Rodiah Nur, Fathul Mu'in, and Hamsidar Hamsidar, "The Reconstruction of The Livelihood Concept from A Mubādalāh Perspective in Lampung Province," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (November 30, 2023): 1897–1920, <https://doi.org/10.22373/sjhk.v7i3.17613>.

² Asman Asman, "Parental Rights and Obligations to Children in the Era of Industrial Revolution 4.0 (Islamic Family Law Perspective)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (June 30, 2020): 232–58, <https://doi.org/10.22373/sjhk.v4i1.6899>; Mursyid Djawas et al., "The Alimony Obligation of a Civil Servant and Non-Civil Servant Father towards Children Post-Divorce (The Study on Aceh Syar'iyah Court Decision Study of 2019)," *El-Ussrah: Jurnal Hukum Keluarga* 6, no. 1 (September 26, 2023): 91–114, <https://doi.org/10.22373/ujhk.v6i1.9493>; Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 2206347, <https://doi.org/10.1080/23311886.2023.2206347>; Muhazir Muhazir, Azwir Azwir, and Zubir Zubir, "Legal Institutions in Resolving Divorce Cases in Aceh," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 30, 2024): 211–30, <https://doi.org/10.29240/jhi.v9i1.8529>.

³ Syamsul Hilal and Sumper Mulia Harahap, "Iddah in the View of Islam and Feminists," *Al-'Adalah* 18, no. 2 (December 23, 2021): 213–32, <https://doi.org/10.24042/adalah.v18i2.8515>.

⁴ Syukrawati Syukrawati et al., "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, no. 1 (April 30, 2024): 121–46, <https://doi.org/10.21580/ahkam.2024.34.1.20624akam>

; Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (December 29, 2021): 135–54, <https://doi.org/10.18326/ijtihad.v21i2.135-154>.



the Republic of Indonesia No. 3 of 2018. Both husband and wife have the same rights before the court. Before the existence of these two rules, the right to maintenance was only submitted in the divorce process, but with this rule, the rights of women after divorce are reaffirmed, and it can also be in the post-claim divorce filed by the wife.⁵ The number of filings for a contested divorce in the Malang District Religious Court is quite large; in 2022 alone, there were 4887 cases filed for a contested divorce. However, only two cases, such as the divorce filing, were simultaneously filed for women's rights. This number starkly contrasts the purpose of providing women's rights after a contested divorce in the Supreme Court Circular Letter No. 3 of 2018. This problem will certainly be a concern in itself, especially on the effectiveness or not of the regulation after it is applied to the intended community. When it comes to the working power of the law to regulate, society must at least fulfil three factors: the legal factor per se, the law enforcement factor, and the factor of public awareness of the law.

Previous research related to this study is described as follows: First, in terms of the imposition of alimony to the ex-wife after divorce, Taufiq Fathur R.S. mentioned that previously, often in cases of divorce filed with the Religious Court, the woman did not get her rights. However, the existence of the Supreme Court Circular Letter No.3 of 2018 serves as the basis with which Judges impose maintenance on the former husband using ex-officio rights after examination at trial.⁶ Second, the judges have the authority to impose maintenance on the former husband. Mansari and Moriyati explain that the judges must pay attention to both *iddah* and *madhiyah* maintenance when deciding a case. The realisation is that judges rarely use ex-officio rights to charge *madhiyah* maintenance because it is based on two factors. Namely, First, Judges are passive, so they cannot decide beyond what the parties demand. Second, the execution cost is relatively high, and the regulations do not authorise the *haki* to provide ex-officio regarding *madhiyah*.⁷ Third, Burhanatut Dyana and Agus Sholahudin S. also explained that if the wife does not submit her right to maintenance during the trial, then the Panel of Judges can use its ex-officio rights to impose maintenance on the husband⁸. Fourth, Dian Saputra explains that the fulfilment of women's rights after divorce is considered very low, especially in default cases. At the same time, many divorce cases filed are default judgments or are not attended by the husband during the trial.⁹ Fifth, similar to Dian Saputra, Ahmad Yani, et al. also explained that in default judgments at the Tigaraksa Religious Court, divorce

⁵ Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, "The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 25, 2022, 165–80, <https://doi.org/10.24090/mnh.v16i2.6389>.

⁶ Taufiq Fathur Ronzie Saragih, Sahmiar Pulungan, and 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-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 10, no. 01 (April 29, 2022): 225–38, <https://doi.org/10.30868/am.v10i01.2443>.

⁷ Mansari Mansari and Moriyanti Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Isteri Pasca Perceraian," *Gender Equality: International Journal of Child and Gender Studies* 5, no. 1 (October 14, 2019): 43–58, <https://doi.org/10.22373/equality.v5i1.5377>.

⁸ Burhanatut Dyana and Agus Sholahudin Shidiq, "Disparitas Putusan Hakim Terhadap Hak-Hak Istri Pasca Cerai Talak Raj'i," *Al Maqashidi: Jurnal Hukum Islam Nusantara* 2, no. 1 (August 2, 2019): 15–26, <https://doi.org/10.32665/almaqashidi.v2i1.860>.

⁹ Dian Saputra Saputra, Jamaluddin Jamaluddin, and Yulia Yulia, "Perlindungan Hak Perempuan Dan Anak Dalam Putusan Verstek Di Mahkamah Syar'iyah Idi," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 9, no. 2 (November 9, 2021): 1–24, <https://doi.org/10.29103/sjp.v9i2.4799>.



judgments did not include the wife's rights. This may occur because judges are assumed not to rule beyond the lawsuit's scope (*ultra petitem*). Thus, the judges lack the courage to establish women's rights after divorce legally.¹⁰

Sixth, Ahyaril Nurin Gausia and Fathur Rochim outline three issues arising from the fulfilment of women's rights: the execution process of judgments is considered expensive and lengthy, the winning party or wives are unaware of their husbands' assets, and finally, husbands refuse to comply with the judgment claiming they lack assets to fulfil alimony rights.¹¹ Seventh, Darmawati Yusriani et al. explain that the fulfilment of women's rights after divorce is deemed ineffective, especially in the Pare-Pare Religious Court because husbands lack assets and have remarried or built new families, thus unable to provide alimony to their former wives.¹² Eighth, Sumiati focuses more on the effects of post-divorce. Besides not receiving their rights, women also struggle to obtain economic rights, mainly due to gender discrimination in the workplace. Many women face difficulties in finding suitable employment after divorce.¹³ Ninth, Lilik Andar Yuni explains judges' use of *ex-officio* judicial authority in imposing the obligation on husbands to provide post-divorce alimony. Based on research conducted at the Samarinda Religious Court, judges argue that granting alimony rights through *ex-officio* measures is not *ultra petita* but instead in line with the legal objectives of certainty, justice, and legal utility.¹⁴ Lastly, Sanusi et al. argue that awarding alimony rights to former wives post-divorce through *ex-officio* measures aligns with the principle of *maslahah*. Thus, the development of Islamic family law in Indonesia continues to progress.¹⁵

Meanwhile, according to the Human Rights Principle of justice and equality, men and women have equal access to education, employment, and decision-making. However, what is observed currently is that women, especially wives, are unable to obtain their rights, such as maintenance rights that they should receive from their husbands after divorce. This occurs due to several factors, such as the low level of education that indoctrinates divorced women that they are not entitled to claim their rights. Instead, they are only allowed to accept whatever their former husbands provide. If this condition continues, it will lead to the formation of numerous clusters of impoverished communities. This is because divorced women are not adequately

¹⁰ Ahmad Yani, Sumarni Alam, and Edi Mulyadi, "Perlindungan Hukum Terhadap Hak-Hak Perempuan Dan Anak Pasca Perceraian Menurut Peraturan Perundang-Undangan Yang Berlaku," *JURNAL PEMANDHU* 2, no. 3 (2021): 299–313, <https://doi.org/10.33592/jp.v2i3.2173>.

¹¹ Ahyaril Nurin Gausia and Fathur Rochim, "Implementasi Kebijakan Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI Tentang Pemenuhan Hak Anak Dan Perempuan Pasca Perceraian Di Pengadilan Agama," *Islamic Law: Jurnal Siyasah* 8, no. 01 (March 1, 2023): 23–39.

¹² Darmawati Yusriani, Ma Hafidz, and Abdul Qahar, "Efektivitas Jaminan Pemenuhan Hak-Hak Anak Dan Perempuan Pasca Perceraian Studi Di Pengadilan Agama Pare-Pare Kelas IB," *Journal of Lex Philosophy (JLP)* 5, no. 1 (March 6, 2024): 17–35.

¹³ Sumiati Sumiati, "Faktor Penghambat Pelaksanaan Hak Ekonomi Perempuan Pasca Perceraian Di Perumahan Griyasehati Terongt Rawah," *Al-Ittihad: Jurnal Pemikiran Dan Hukum Islam* 9, no. 2 (September 17, 2023): 19–31, <https://doi.org/10.61817/ittihad.v9i2.113>.

¹⁴ Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court."

¹⁵ Sanusi Sanusi et al., "Judges' Ijtihad on Women's Rights after Divorce and Its Contribution to Family Law Reform in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity* 3, no. 1 (July 30, 2023): 1–15, <https://doi.org/10.24042/smart.v3i1.16981>.



prepared for life without their husbands. Therefore, this article is expected to broaden perspectives and knowledge, especially for women, letting them know that they have rights to fight for in the event of divorce and can reduce the number of women and children left destitute due to divorce.

Based on the previous research studies described above, there are many studies on fulfilling women's rights after divorce. However, no research or analysis of maintenance rights has been conducted after a contested divorce case. This study focuses more on assessing the provisions of women's rights after a contested divorce listed in the Supreme Court Circular Letter No. 3 of 2018 and whether it has been running effectively in the Malang Regency Religious Court. This research is expected to contribute to understanding the application of women's rights after a contested divorce after the enactment of the Circular Letter. With an empirical approach, this research presents an in-depth analysis of the legal reality in the community and the regulation's enactment. Moreover, this study is expected to become supporting material for further research and provide concrete recommendations for improving and refining the law regarding women's rights after a divorce.

Method

This article, empirical research, significantly contributes to exploring the dimensions of law and social reality.¹⁶ The researchers conducted direct observations at the Religious Court of Malang Regency to assess the extent to which the provisions regarding fulfilling women's rights after a contentious divorce, as outlined in Supreme Court Circular Letter Number 3 of 2023, are being implemented in that court. The aim was to investigate whether there are discrepancies between the regulations established and their actual implementation at the research site. By involving researchers directly in the field, the research was conducted by examining the Implementation of the Supreme Court Circular Letter of the Republic of Indonesia No. 3 of 2018 in the Religious Courts of Malang Regency. This research focuses on two research questions: How women's rights are implemented after a contested divorce following the enactment of the Supreme Court Circular Letter of the Republic of Indonesia No. 3 of 2018 in the Malang Regency Religious Court, and How is legal effectiveness in fulfilling women's rights after a contested divorce following the enactment of Supreme Court Circular Letter of the Republic of Indonesia No. 3 of 2018 in the Malang District Religious Court reviewed according to Soerjono Soekanto's theory? The research data was garnered from interviews.¹⁷ Thirteen speakers comprise four judges, two Integrated One-Stop Service (PTSP) officers, two Legal Aid Post officers, and five litigants at the Religious Court of Malang Regency. The selection of these speakers is tailored to the information needs regarding the fulfilment of women's rights after contentious divorce cases in the Religious Court of Malang Regency. Then, the interview results were selected to

¹⁶ Sudirman Sudirman et al., "Examining the Complexity of Child Marriage as Sexual Violence in Digital Era," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (September 30, 2023): 310–28, <https://doi.org/10.22219/ljih.v31i2.28881>; Mursyid Djawas et al., "The Integration Between Syara' and Ade' in Marriage Tradition Bugis Bone, South Sulawesi," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (October 15, 2023): 342–63, <https://doi.org/10.19105/al-lhkam.v18i2.10373>.

¹⁷ Kamarusdiana et al., "Family Dispute Resolution Practices in Kepulauan Seribu (Study of the Role of Religious Leaders, Community and State Apparatus)," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 163–75, <https://doi.org/10.18592/sjhp.v23i2.11453>.



ensure that the material produced aligned with the matters discussed. This research uses a qualitative approach by combining empirical data with Soerjono Soekanto's theory of legal effectiveness. This approach provides a holistic understanding of the implementation of regulations and their impact on women's rights after a divorce. The results of the research not only contribute to complementing the academic literature but also provide a solid empirical basis for recommendations for legal improvement and protection of women's rights post-contested divorce.

Results and Discussion

Women's Rights After Divorce Under Islamic Law

Divorce is the breakup of marriage or the end of the relationship between husband and wife. In Indonesian law, the dissolution of a marriage can be declared valid if it is carried out before a court judge based on the conditions specified by law.¹⁸ In Islamic law, divorce occurs instantly when the husband pronounces a divorce.¹⁹ Thus, such a divorce is only valid according to religious law but not for the laws that apply in Indonesia.²⁰ The Qur'an details the procedure for divorce in Surah at-Thalaaq verse 1:

“O Prophet! When you divorce your wives, divorce them at a time when they can meet their (reasonable) waiting period, and reckon the time of the waiting period, and fear Allah your Lord. And do not put them out of their houses, nor let them go out except when they have committed a clear abomination. These are the laws of Allah, and whoever transgresses the laws of Allah, then indeed, he has done wrong to himself. You do not know whether Allah may thereafter make a new ruling”.

As explained in the verse above, when divorcing his wife, the husband is encouraged to divorce when the wife can face her *iddah* period. In addition, the surah explains that divorce is an act that is permitted but is the most hated act by Allah SWT. As described in the following hadith, *“The lawful action that Allah hates the most is talaq”*. Indeed, the husband must bear some consequences after a divorce. In Islamic law, the provision of post-divorce maintenance is explained in Surah at-Talaaq verse 6:

¹⁸ Irnanda Lucky Ajisaputri, “Putusnya Perkawinan ‘Perceraian’ Terhadap Seseorang Disebabkan Tidak Saling Menghormati Dan Menghargai Antar Pasangan Suami Istri,” *Jurnal Indonesia Sosial Sains* 2, no. 5 (2021): 784, <https://doi.org/10.36418/jiss.v2i5.297>; Muhammad Aulia Rahman, Roibin Roibin, and Nasrulloh Nasrulloh, “Dayak Ngaju Customary Fines in Pre-Marriage Agreement to Minimize Divorce in The Perspective of Masalah Mursalah Ramadhan Al-Buthi,” *El-Mashlahah* 13, no. 1 (June 30, 2023): 57–75, <https://doi.org/10.23971/el-mashlahah.v13i1.5623>.

¹⁹ Abd Rahman Dahlan et al., “Women’s Post-Divorce Rights in Malaysian and Indonesian’s Court Decisions,” *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (June 26, 2023), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/27967>.

²⁰ Hasmiah Hamid, “Perceraian Dan Penanganannya,” *Jurnal Ilmiah Wahana Pendidikan* 4, no. 3 (December 12, 2018): 24–25.



“And if they (the divorced wives) are pregnant, then give them maintenance until they give birth, then if they nurse (children) for you, then give them their wages, and bargain among yourselves (all things) well; and if you meet with difficulty, then another woman may nurse (the child) for her”.

After divorce, a husband is still obliged to provide maintenance to his ex-wife, which applies until the wife's *iddah* period ends.²¹ The word *عِدَّة* in Arabic is derived from the word ... *عدّ* which means "counting", while *iddah* is defined as the time calculated by *shara'* to exhaust the lack of marital consequences after divorce or death of the husband²². Islamic law recognises two types of divorce: *raj'i* and *ba'in*. The scholars agree that a wife who is divorced *raj'i* by her husband is still entitled to maintenance and housing during the *iddah* period²³. As for women who are divorced *ba'in*, the *fuqaha* agree that these women are entitled to maintenance and housing if they are pregnant²⁴. However, for women who are divorced *ba'in* in a non-pregnant state, the scholars differ in thoughts, leading to three opinions as follows:

First, The Shafi'iyah and Malikiyah scholars think that a woman who is divorced *ba'in* in a non-pregnant state is entitled to housing and is not entitled to *iddah* maintenance. The provision of housing is based on Surah at-Talaq verse 6, namely on the phrase *askinuhinna* (give them a place to live). As for not being given *iddah* maintenance because the command to provide *iddah* maintenance is associated with pregnancy, if she is not pregnant, then she is not entitled. Second, The Hanbalis, Ishaq and Abu Tsur believe that a wife who is divorced *bain* is not entitled to maintenance and housing even if she is pregnant. They reason that when in divorced *ba'in*, the husband has no right of reconciliation, so there is no obligation for maintenance or housing.

Third, Hanafiyah scholars argue that wives who are divorced *ba'in* are still entitled to maintenance and shelter until the *iddah* period ends,²⁵ as in line with Surah at-Talaq verse 6 (six); Hanafiyah explains that in that verse, a *zahir* commands to the husband to provide a place to live, particularly in the phrase *askinuhunna* (give them a place to live) and women whom their husbands have divorced *ba'in* must complete the *iddah* period in their husband's house to determine whether the wife is pregnant, so it is common to see that the wife is still entitled to maintenance.²⁶

²¹ Abd Karim Faiz, Zulfahmi Ar, and Ahmad Izzuddin, "Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia," *Journal of Islamic Law* 3, no. 2 (August 31, 2022): 176–92, <https://doi.org/10.24260/jil.v3i2.848>.

²² Dahlan Idhamy, *Azas-Azas Fiqh Munakahat Hukum Keluarga Islam* (Surabaya: Al-Ikhlâs, 1984), 73.

²³ Ali Yusuf al-Subki, *Fikih Keluarga*, trans. Nur Khozin (Jakarta: Amzah, 2012), 358.

²⁴ Muhammad Fauzan, "Maqâshid Nafkah Iddah Dan Perlindungan Perempuan," *Hukum Islam* 16, no. 1 (June 1, 2016): 71–82, <https://doi.org/10.24014/hi.v16i1.2684>.

²⁵ Abdul Aziz M. Azzam and Abdul Wahab S. Hawwas, *Fiqh Munakahat, Khitbah, Nafka Dan Talak* (Jakarta: Amzah, 2011), 335–36.

²⁶ Fauzan, "Maqâshid Nafkah Iddah Dan Perlindungan Perempuan."



Women's Rights After Divorce Under Positive Law

The dissolution of marriage has legal consequences, namely the burden of maintenance on the husband²⁷. The provisions regarding the legal consequences after divorce are explained in Article 41 (c) of Law No. 1 of 1974: "The court may oblige the former husband to provide subsistence and determine an obligation for the former wife." The post-divorce legal consequences described in Article 41 letter c of Law No.1 of 1974 concerning Marriage, when associated with Islamic Law, can be said relevant because both regulations require the husband after divorce to provide maintenance to his ex-wife during the *iddah* period, as well as pay off the dowry, *ta'lik* talak agreement, and other agreements.

The previous rule is clarified again in Article 149 of the Compilation of Islamic Law as follows: First, "Provide *mut'ah* (something) that is appropriate to his former wife, either in the form of money or objects, unless the former wife is *qobla al-dukhu'*". Secondly, "Provide *nafkah*, *maskan*, and *kiswah* (shelter and clothing) to the former wife during *iddah*, unless the former wife has been divorced *ba'in* or *nusyuz* and is not pregnant." Third, "Repay the *mahr* that is still owed in full and a half if the case is categorised as *qabla al-dukhu'*". Fourth, "Provide *hadhanah* (children maintenance) costs for children who have not reached the age of 21 years²⁸.

In addition to the right to maintenance that must be fulfilled if the wife is the victim in a divorce matter, Supreme Court Regulation No. 3 of 2017 emphasises the Judge to consider gender equality and non-discrimination by identifying the facts of the trial, including the physical and psychological helplessness of the victim²⁹. Women also get the right to feel safe during the trial process. If the wife is declared unable to appear before the court with clear reasons based on the assessment of a doctor, psychologist, or the decision of the Witness and Victim Protection Agency (LPSK), she can testify through examination with remote audio-visual communication³⁰.

The fulfilment of women's rights in Law No. 1 of 1974 and also the Compilation of Islamic Law explained earlier implies that women can only be entitled to their rights if the divorce is carried out through a divorce case in Court, while in the case of a contested divorce, there is no explicit provision explaining that the woman is entitled to maintenance. This difference shows that previous

²⁷ Fadli Fadli, "Analisis Perlindungan Hak Perempuan Pasca Perceraian Dalam Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017," *Al-Ahkam: Jurnal Syariah Dan Peradilan Islam* 1, no. 1 (June 28, 2021): 68.

²⁸ Instruksi Presiden Indonesia, "Kompilasi Hukum Islam (KHI)" (1991) Article 149.

²⁹ H. Hamzah, Oyo Sunaryo Mukhlis, and Usep Saepullah, "Hak-Hak Perempuan Pasca Perceraian Dalam Hukum Positif Dan Hukum Islam," *Usroh: Jurnal Hukum Keluarga Islam* 6, no. 1 (June 27, 2022): 67, <https://doi.org/10.19109/ujhki.v6i1.12239>.

³⁰ Mansari and Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Isteri Pasca Perceraian."



Indonesian law has yet to protect the rights of women who want to file for divorce independently through a case of divorce in Court.

Fulfilment of Women's Rights Following Divorce Post the issuance of Surat Supreme Court Circular Letter

Following up on the discrimination regarding the fulfilment of women's rights after divorce previously explained, the Supreme Court, as an enforcer of law and justice, established Supreme Court Regulation Peraturan Mahkamah No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law as a basis for Judges in deciding a case, which with this rule both men and women have the same rights before the court, but it does not explain the rights that women can obtain after a contested divorce.

Accommodating the Supreme Court Regulation No. 3 of 2017, the Supreme Court passed the Supreme Court Circular Letter No. 3 of 2018, asserting that, in the religious chambers section, there are provisions regarding women's rights after divorce as follows: "The wife in a case of a contested divorce can be given *mut'ah*, and *nafkah 'iddah* as long as there is no evidence of *nusyuz*". It should be noted that Circular Letter No. 3/2018 details the results of the 2018 plenary meeting of the Supreme Court chambers attended by the five chambers, namely the Criminal, Civil, Religious, Military, and State Administration Chambers. In contrast to the previous regulation explaining that only in divorce cases can women obtain the right to maintenance through a counterclaim by placing the husband as the applicant and the wife as the respondent, Circular Letter No. 3/2018 provides a basis for the Court and its officials that in a case of divorce, the wife can also apply for maintenance rights and the judges can also protect the wife's rights³¹.

The Effect of Supreme Court Circular Letter of the Republic of Indonesia No. 3 of 2018 on the Filing of Divorce in the Religious Court of Malang District.

The provision of women's rights after a contested divorce described in the Circular Letter mentioned above certainly influences the agencies that implement these rules—especially the court and the ranks of the state apparatus that apply this rule in case settlement. The Malang District Religious Court is currently known as a court with a relatively large jurisdiction, covering 33 (thirty-three) sub-districts. The extent of this jurisdiction is directly proportional to the number of divorce filings at the Malang Regency Religious Court. In 2022, divorce filings were 6,704 (six thousand seven hundred and five) cases, with details of the filing of divorce cases 1,818 (one thousand eight hundred and eighteen) cases and 4,887 (four thousand eight hundred and eighty-seven) cases.

Referring to the previous explanation, since 2018, the Supreme Court has established rules that protect women's rights after divorce, especially in filing a

³¹ Betra Sarianti, "Tingkat Kepatuhan Ayah Membayar Nafkah Anak Pasca Perceraian," *Supremasi Hukum : Jurnal Penelitian Hukum* 27, no. 2 (2018): 105–17, <https://doi.org/10.33369/jsh.27.2.105-117>.



contested divorce case, namely in the Circular Letter. With the establishment of this regulation, the welfare of women will increase, especially for wives who file for divorce in court. Sutaji³² explained that the effect of this regulation was that the Judges became more assertive in handling the fulfilment of women's rights after divorce, in both divorce and contested divorce cases. In contrast to Sutaji, other Judges, namely Nurul Maulidah³³, Rasmulyani³⁴, and Fahrurrazi³⁵ argued that this regulation had not been very influential in the community. This is based on the lack of public interest in applying for women's rights in the case of a contested divorce at the Malang District Religious Court.

In 2022, the number of filings for maintenance rights and the filing of a contested divorce amounted to only two cases compared to the number of filings of contested divorce cases, unlike what the Supreme Court expected with the enactment of the Circular Letter. The very small number of applications for women's rights after a contested divorce is triggered by several factors. This figure is apparent in several litigants wanting to file a contested divorce at the Malang District Religious Court. Galuh, as a litigant, explained that she had previously known the rights that could be submitted during the trial process. She learned about this from her colleague. However, Galuh chose not to apply for these rights because she was frightened by her husband's threat that she would be killed if she asked for anything "strange" in court³⁶.

Unlike Galuh, the other litigants, Mujiati³⁷, Dwi Handayani³⁸, Yunita³⁹, and Lela⁴⁰, unanimously answered that they did not know anything about the women's rights that could be applied for in conjunction with a complaint for divorce. These four interviewees also did not intend to apply for these rights even though, during the registration process, the officer provided a detailed explanation. The four litigants had different reasons for not applying for maintenance rights while filing for divorce.

³² Sutaji, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

³³ Nurul Maulidah, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

³⁴ Rasmulyani, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

³⁵ Fahrurrazi, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

³⁶ Galuh, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

³⁷ Mujiati, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

³⁸ Dwi Handayani, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

³⁹ Yunita, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.

⁴⁰ Lela, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang, April 18, 2023.



Mujiati thought filing for these rights would make the case more “troublesome” and further slow the case settlement time. Dwi Handayani and Yunita, on the other hand, argued that the husband’s financial condition was already considered insufficient, so both parties considered it useless to file if the husband could not pay the maintenance. Lastly, in the case that Lela faced, previously, both Lela and her husband had agreed to the maintenance that would be given to the child to meet the child’s needs. So, with this agreement, Lela felt that she had enough and did not intend to apply for other maintenance rights in filing for a divorce.

Based on the explanation of the previous litigants, it shows that most people do not know the provisions for fulfilling women’s rights after a contested divorce described in the Supreme Court Circular Letter No. 3/2018. Even though in the process of making a lawsuit letter, the Legal Aid Post (henceforth referred to as Posbakum) officer not only asked the litigants about the events that occurred during the marriage but also explained in detail what rights could be submitted in the divorce lawsuit. Most litigants still adamantly chose not to apply for these rights for various reasons. If it is related to the influence of this regulation on the people of Malang district, then this regulation is not very influential.

Meanwhile, since the enactment of the Supreme Court Regulation, the Malang District Religious Court has made great efforts to facilitate adequate facilities and infrastructure to improve the fulfilment of women’s rights after divorce. This can be seen from the many *banners* and brochures at the Court location. The litigants can easily find these brochures and *banners*. It is hoped that litigants can understand what rights can be filed before registering a complaint for divorce. In addition, during the process of making a lawsuit at the Legal Aid Post, the Officer will explain to the litigants that not only divorce can be filed in a lawsuit, but other rights can also be filed at the same time, such as the right to *iddah* maintenance, *mut’ah* and *madhiyah* maintenance.

Judges play a crucial role in upholding women’s rights post-divorce as they interpret and enforce the law. It is essential for judges to deliver well-considered decisions that reflect a deep understanding of legal principles. Furthermore, in adjudicating cases, judges must also consider the evolving societal norms and conditions. Cordozo stated that a judge and legislator must consider social situations in forming a law.⁴¹ Nurul Maulidah⁴² as a Judge at the Malang District Religious Court, stated that for divorce cases, on the agenda of the first hearing, the Panel of Judges will certainly provide an explanation that not only can divorce be resolved through litigation, but there are also women's rights that can be submitted along with filing for divorce. The judges will examine whether the wife needs protection or not. If, after the examination, the wife is proven to be entitled to protection, then the

⁴¹ Boy Nurdin, *Kedudukan Dan Fungsi Hakim Dalam Penegakan Hukum Di Indonesia* (Bandung: P.T. Alumni, 2012), 93.

⁴² Maulidah, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang.



Judges will reformulate what rights will be imposed on the husband for his former wife.

Sutaji⁴³ and Rusmulyani⁴⁴ added that in determining the amount of maintenance to be charged to the husband, the Panel of Judges must examine in detail how much a salary slip evidences the husband's income so that the Panel of Judges will determine the amount of maintenance that is considered the fairest for both the husband and the wife. Based on the explanation described above, the Malang Regency Religious Court has made maximum efforts to implement the provisions for fulfilling women's rights after a contested divorce as described in Supreme Court Circular Letter No. 3 of 2018. However, even the best regulations and infrastructure will not function effectively if those expected to adhere to them, in this case, the community, choose not to comply. Observations from the litigants at the Malang Regency Religious Court reveal that the community still falls short in upholding women's rights post-divorce. Therefore, the implementation of these rules is currently suboptimal.

Review of Soerjono Soekanto's Theory of Legal Effectiveness on Women's Rights Following Divorce Post the enactment of Supreme Court Circular Letter of the Republic of Indonesia No.3 of 2018 at the Malang District Religious Court.

Soerjono Soekanto's⁴⁵ Theory of Legal Effectiveness sees the success of a law based on the operation of five factors: the legal factor, the law enforcement factor, the facility factor and infrastructure that support law enforcement, the community factor, and the cultural factor. Soerjono Soekanto stipulates that legal factors must fulfil four things. First, existing laws in several aspects are well organised. It should be understood that before the existence of Supreme Court Circular Letter No. 3 of 2018, the Indonesian Government had established rules regarding the provision of post-divorce women's rights, namely in Article 41 of Law No. 1 of 1974 concerning Marriage and Article 149 of the Compilation of Islamic Law. These two rules were effectively implemented in the Courts until 2018. However, these two regulations only stipulate the rights that could be awarded to wives after divorce through filing a divorce case in court. Meanwhile, fulfilling women's rights through filing a contested divorce case still needs to have a regulation confirming that she has the right to receive maintenance after reading the divorce case decision. This is very detrimental to women, who are often considered weak in front of the court. Following up on this problem, Supreme Court Circular Letter No. 3/2018 emphasised that women also

⁴³ Sutaji, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang.

⁴⁴ Rusmulyani, Pengaruh SEMA No. 3 Tahun 2018 Terhadap Pengajuan Cerai Gugat di Pengadilan Agama Kab. Malang.

⁴⁵ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: PT Raja Grafindo Persada, 2008), 8.



have the same rights as men in resolving divorce cases so that women can get their rights not only in divorce cases. However, in the case of a contested divorce, women are also entitled and can file their rights, such as *iddah* maintenance, *mut'ah*, and *madhiyah* maintenance in their lawsuit.

Second, the absence of conflict between existing regulations must be fulfilled. It should be noted beforehand that the provisions on women's rights after a contested divorce in Circular Letter No. 3/2018 complement and emphasise the previous rules to ensure that this rule does not conflict with the previous rule. The rules must be qualitatively and quantitatively adequate to be the third requirement for this legal factor. The existence of this rule is expected to improve the welfare of women, especially for wives after divorce, so that no more women are neglected after divorcing their husbands because many of the wives, after being divorced by their husbands, are unable to meet their needs and also their children's. This predicament arises because they depend solely on their husband's income, which ceases upon divorce, leaving them struggling to secure their financial needs.

The last requirement in this factor is that it aligns with the demands of existing law. This rule is crucial for women who seek to assert their rights while filing a contested divorce case in court. The number of contested divorce filings is significantly higher compared to uncontested cases. This regulation is intended to mitigate the risk of women being abandoned and to ensure that children's needs are met as they grow. Regarding legal factors, the four criteria outlined by Soerjono Soekanto are met, confirming that the rules for protecting women's rights after a contested divorce, as stipulated in Supreme Court Circular Letter No. 3/2018, have been effectively implemented.

The second factor that affects the legal effectiveness, according to Soerjono Soekanto, is the law enforcement factor. In this case, what is meant by law enforcement is the apparatus that plays a role in enforcing the provisions of women's rights after a divorce, as stated in the Supreme Court Circular Letter No. 3/2018. Law enforcement in this context begins with the Posbakum officer, who will explain what can be submitted in the lawsuit. The Posbakum Officer at the Malang District Religious Court has attempted to implement this obligation. Dina, one of the Posbakum officers, explained that she would first ask the litigants about the identity of the parties and what happened during the marriage. In addition, Dina also explained what could be submitted in the lawsuit, such as the right to maintenance and so on. Then, after the data is collected, Dina will put it in a lawsuit letter.⁴⁶

The law enforcer is the judge who handles divorce cases. As previously explained, the Judges at the Malang Regency Religious Court have implemented this rule by thoroughly examining whether the wife is entitled to get the right to maintenance because it is often found that not only husbands are unfair, but some

⁴⁶ Dina, Women's Rights Following Divorce Post the enactment of SEMA No.3 of 2018 at the Malang District Religious Court, April 18, 2023.



wives also disobey and do not carry out their obligations as wives. Such wives are presumably not entitled to *nafkah*.⁴⁷ After concluding that the wife is indeed entitled to maintenance, the Panel of Judges will charge the husband for maintenance, which will be considered based on the husband's income/salary so that a quality and fair decision is produced for both parties to the case. In addition, administrative officers also play an essential role in enforcing this rule. Lutvi, the Court's product collection officer, explained that she would not hand over the divorce certificate if the husband had not paid the alimony amount stated in the divorce case decision.⁴⁸

Rizky Ananda, serving as a Cashier Officer, clarified that a husband wishing to fulfil his maintenance obligations can do so in two ways. Firstly, the payment can be made directly to the wife in the presence of the Panel of Judges during the court proceedings. Secondly, the husband may also opt to deposit the maintenance payment with the cashier, who will issue a receipt in return. This receipt indicates that the husband has fulfilled his maintenance obligations, enabling the Court's collection officer to issue the divorce certificate to the husband.⁴⁹ The application of this rule, when viewed from the law enforcement perspective, is deemed effective based on the comprehensive efforts undertaken by law enforcers. These efforts range from the case registration process and the trial proceedings to the final execution of the divorce case decision at the Malang Regency Religious Court. This demonstrates the enforcement of the provisions concerning women's rights post-contested divorce as outlined in Supreme Court Circular Letter No. 3/2018.

The third factor that affects the legal effectiveness is the facility factor and infrastructure that support law enforcement. Since the enactment of the Supreme Court Circular Letter No. 3 of 2018, both the Supreme Court and the Religious Courts have made great efforts to enforce this rule. One can be seen by distributing electronic brochures about what wives can submit in terms of rights in filing contested divorces. The Malang District Religious Court, as the implementer of this rule, has also made breakthroughs to improve its enforcement. Currently, brochures, banners, and posters on women's rights after divorce can be easily found in spots litigants can reach at the Malang District Religious Court. In addition, PA Malang Regency also intensively conducts legal counselling, which is carried out in areas in Malang Regency. In the counselling, much knowledge is distributed by the Malang Regency Religious Court, one of which is about fulfilling women's rights after divorce. With this legal counselling, the community can understand what rights can be requested when applying for divorce in court.

⁴⁷ Mansari Mansari and Zahrul Fatahillah, "Penetapan nafkah â€˜iddah melalui hak ex officio bagi istri nusyuz," *Jurnal Yudisial* 14, no. 2 (2021): 271–90, <https://doi.org/10.29123/jy.v14i2.432>.

⁴⁸ Lutvi Nia Masruro, Women's Rights Following Divorce Post the enactment of SEMA No.3 of 2018 at the Malang District Religious Court, April 18, 2023.

⁴⁹ Rizky Ananda Putri, Women's Rights Following Divorce Post the enactment of SEMA No.3 of 2018 at the Malang District Religious Court, April 18, 2023.



The fourth factor is the community factor. In this case, the effectiveness of a law is gauged by the awareness of and adherence to it. These two elements must coincide because a law is rendered ineffective if people are aware of its existence but choose not to comply with it. According to interview results with litigants, as outlined previously, it appears that the majority of individuals are unaware of the provisions concerning women's rights after divorce. So, in terms of legal awareness alone, the people of Malang Regency should be made aware of the law. Then, there is the matter of legal compliance. Many brochures on women's rights after divorce are distributed in court. However, most parties chose not to apply for their rights due to several factors, such as not wanting to bother/wanting the case to be resolved immediately and having been threatened beforehand by the husband not to apply for alimony when filing for divorce in court. Based on the explanation above, it can be understood that the people of Malang Regency still need to be made aware of and obedient to the provisions on the fulfilment of women's rights after a contested divorce in the Supreme Court Circular Letter No. 3/2018. So, the community factor has just started running.

The fifth factor is cultural factor. The low level of education in Malang Regency is also one of the reasons why this regulation does not work well in the community. Many of these women do not think about the impact that will occur after a divorce. So, they hope only to be immediately released from the shackles of a marriage that they feel they can no longer fight for. Meanwhile, many of them lack a steady income; consequently, without applying for alimony, an increasing number of women find themselves neglected and without the financial means to support themselves. This situation is particularly challenging for those who have children, as they struggle not only to provide for themselves but also to meet their children's needs.

Based on the various factors of legal effectiveness discussed earlier, three factors are functioning well: legal frameworks, law enforcers, and the infrastructure supporting law enforcement. However, the remaining two factors—community and cultural aspects—could see improvement. This is partly due to factors such as the lower levels of education among the population of Malang Regency. According to Soerjono Soekanto's theory of legal effectiveness, a law's success or failure hinges on the fulfilment of the five factors previously described. Therefore, if these five factors do not align and work together, the law is considered ineffective.⁵⁰ Thus, the provisions for fulfilling women's rights after a divorce in the Supreme Court Circular Letter No. 3/2018 cannot be effective because the five factors of legal effectiveness required by Soerjono Soekanto at the Malang District Religious Court have yet to support each other.

⁵⁰ Nur Fitryani Siregar, "EFEKTIVITAS HUKUM," *Al-Razi: Jurnal Ilmu Pengetahuan Dan Kemasyarakatan* 18, no. 2 (December 1, 2018): 1–16.



Conclusion

In this discussion, it is clear that the regulation of women's rights after a divorce, as outlined in the Supreme Court Regulation No. 3/2018 of the Republic of Indonesia, has not been fully effective according to Soerjono Soekanto's theory of legal effectiveness. Soekanto identifies five crucial factors that must be met for a law to be deemed effective. As highlighted above, only three of these factors—legal factors, law enforcers, and supporting infrastructure—have been satisfactorily addressed. The remaining two factors, community and cultural factors, require further improvement. This is evident from the current situation in Malang Regency, where there is a lack of awareness and compliance with the regulations governing women's rights post-divorce as stipulated in the Supreme Court Circular Letter No. 3/2018. This issue is compounded by the local culture's insufficient emphasis on education, resulting in a low level of educational attainment in the region. This, in turn, impacts the local populace's mindset, leading to ill-considered decisions regarding filing for divorce. If this trend continues, the number of women and children who are neglected will likely increase, as many women who are divorced are not economically prepared and thus struggle to meet their own needs and those of their children into adulthood.

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