

Jurimetrics Implementation of Determining Wife's Rights in Divorce in Talu Religious Court

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ABSTRACT

This study delves into post-divorce wives' rights, particularly examining the impact of Jurimetrics. Divorce rulings often inadequately support these rights. The Talu Religious Court, part of the Padang High Religious Court, employs Jurimetrics due to disputes over divorce-related issues. Through normative legal research and content analysis, it's evident that Jurimetrics-influenced decisions notably enhance wives' rights compared to non-Jurimetrics rulings. These decisions prioritize fairness by considering factors like minimum wage, husband's income, and marriage duration. Notably, the application of Jurimetrics in divorce proceedings consistently leads to more equitable and just outcomes for wives, presenting a systematic and fair approach rooted in principles of fairness and justice. Overall, employing Jurimetrics significantly bolsters the protection of post-divorce wives' rights, providing a methodological framework founded on fairness and equity within divorce adjudications.

Keywords: implementation; jurimetrics; wife's rights; divorce.

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INTRODUCTION

Jurimetrics is a method of legal investigation involving scientific methods. The scientific method can include mathematical methods, such as mathematical logic, calculus, and others (Asnawi, 2016). Jurimetrics is also a model of legal analysis that judges can apply in deciding cases regarding circumstances, actions, legal phenomena, and the legal consequences of an act or legal event. Jurimetrics seeks a more accurate and tested conclusion. Lee Loevinger initiated the Jurimetrics method in the 1900s as an advocate at the Minnesota Supreme Court. Besides, Jurimetrics can be applied theoretically or practically by judges in deciding cases, especially in cases that demand accurate calculation of specific numbers that interpret a value of justice and legal certainty. The value of justice and fairness can be quantified through a tested quantitative analysis and is closer to the objectivity of justice itself. Even though this value is abstract, it does not mean that determining it relies on the judge's sense of justice (Asnawi, 2020b).

Jurimetrics was born as a concept that seeks to bring closer the different interpretations regarding the measure of justice that can be studied and concluded based on scientific investigation methods. Jurimetrics wants to produce a legal analysis based on empirical data, which is considered more objective and testable. Jurimetrics can apply to specific legal aspects, such as calculating compensation for acts against the law, compensation for defaults, and determining the share of joint assets based on the principle of justice. Jurimetrics can also be applied to accommodate the concept or principle of proportionality in determining the living expenses of ex-husbands in divorce, grouping data or variables in examining divorce cases, determining child custody, and calculating the amount of proper and fair child support.

Additionally, Jurimetrics can be applied to accommodate the concept or principle of proportionality in determining the living expenses imposed on ex-husbands/wife's rights in divorce, grouping data or variables in examining divorce cases, determining child custody, and calculating the amount of child sustenance, which is appropriate and fair. Judicial Judges Director General of the Religious Courts, Natsir Asnawi has compiled a Jurimetrics formula in divorce cases, precisely determining the rights of wives in divorce, in a book entitled *Introduction to Jurimetrics and Its Application in Settlement of Civil Cases: Quantitative Approach and Qualitative towards Law*. In this case, Jurimetrics is formulated in a pattern that can reflect the values of decency and justice for the wife. Determining the wife's rights in divorce is formulated by considering the determining internal aspects. The Jurimetrics formula in determining the rights of a wife in a divorce involves calculating the cost of living for basic daily needs based on the City/Regency Minimum Wage, the husband's net income per month, the length of the marriage, the average value of laundry fees, and the cost of renting per month in a City/Regency.

The practice of applying the Jurimetrics formula has been carried out in several decisions of divorce by thalaq and divorce by litigation related to

determining the wife's rights post-divorce. This fact is based on posts on the Supreme Court Decision Directory website. One of the religious courts that has implemented Jurimetrics is the Talu Religious Court located in Simpang Empat, West Pasaman Regency. The Talu Religious Court has applied Jurimetrics to determine the wife's rights in court. Among them is determining the nominal amount of iddah, mut'ah, madhiyah, and child sustenance based on the formula in this Jurimetrics. Judges began to implement the application of Jurimetrics in 2021. It can be seen in the decisions on divorce by thalaq and divorce by litigation with decision numbers 638/Pdt.G/2021/PA.Talu, 688/Pdt.G/2021/PA.Talu, and 438/Pdt. G/2022/PA. Talu.

Many previous studies have scrutinized calculating the wife's rights in court. Nevertheless, research on applying Jurimetrics in Religious Courts is still relatively minimal. Hammad (2014) stated that there are no differences in regulations regarding iddah sustenance in divorce by thalaq in Muslim Family Law, particularly in Indonesia, Malaysia, and Jordan. Asnawi (2016) also asserted that Jurimetrics is very relevant in calculating compensation for acts against the law and calculating the proper and fair amount of child support. Jurimetrics is also very compatible with being implemented by judges to determine the number of values considered fair and appropriate. It is obtained through collecting, processing, and analyzing quantitative data.

Hikmatiar (2016) specified that the decision of the South Jakarta Religious Court imposed a burden on ex-husbands to provide iddah sustenance to ex-wives in divorce by litigation cases in line with the principles of justice. Fanani & Ulfa's (2017) explained that in deciding to divorce with thalaq, the panel of judges at the Sidoarjo Religious Court determined iddah and mut'ah sustenance that was not requested by the ex-wife ex officio. Salma et al. (2017) mentioned that the rights of women and children in demand for a madhiyah income were not sufficiently protected due to several factors. Among them are no single sanction that could force the husband to pay for a living after the divorce, the monotonous pattern of judges' ijtihad in all decisions, a weak form of legal protection, and the absence of the judges' partiality in the decision to protect madhiyah income for the wife. Meanwhile, the factors of the lack of protection of children's rights included not granting the child's past alimony demands, determining the child's sustenance at a time when the nominal value was smaller than the wife's demands, and laws and regulations that provide an opportunity for fathers to be free from the obligation to provide for children.

Maulida & Busyro's (2018) elucidated that regulations regarding iddah sustenance for wives who were divorced ba'in could not be categorized as gender-equitable legal products. Fitriani & Aziz's (2019) also explained that the husband still has an obligation to his wife to pay iddah and mut'ah sustenance, even though the husband is an apostate and the marriage is fasakh. In addition, Mansari & Moriyanti's (2019) explained that judges are sensitive to protecting iddah and madhiyah income after divorce. Nurtasdiq (2020), on the other hand, mentioned that the agreement between husband and wife determined the amount of iddah

income at the Watampone Religious Court. However, if it turns out that no agreement was found between the two, the amount would be determined by the Panel of Judges based on the husband's ability and the wife's needs. Moreover, Harlina (2020) expounded that fulfilling women's rights after divorce at the Samarinda Religious Court aligns with the Ultra Petita principle.

For this reason, this article analyzes how Jurimetrics is applied in the Talu Religious Court and how the rights of wives are guaranteed in a divorce based on Jurimetrics.

METHODS

The type of research used was normative legal research, examining how Jurimetrics was applied to determining women's rights in divorce and how the guarantee of the wife's rights in divorce was based on Jurimetrics. Meanwhile, the approach in this study employed content analysis or document analysis. Content analysis is a technique used to conclude by trying to find the characteristics of the message, which is done objectively and systematically (Moleong, 2021). In this research, content analysis was performed by examining and analyzing judges' considerations in divorce by thalaq and divorce by litigation decisions that applied Jurimetrics to determining the wife's rights due to divorce.

The data source in this research was secondary. The secondary data consisted of primary and secondary legal materials. The primary legal material encompassed the Decisions of the Talu Religious Court, which used Jurimetrics to determine women's rights in divorce. Among them were Decisions Number 638/Pdt.G/2021/PA.Talu, 688/Pdt.G/2021/PA.Talu, and 438/Pdt.G/2022/PA.Talu. On the other hand, decisions that did not use Jurimetrics included Decisions Number 104/Pdt.G/2022/PA.Talu, 110/Pdt.G/2022/PA.Talu, and 449/Pdt.G/2022/PA.Talu. Meanwhile, the secondary legal materials in this study were regulations or legal bases related to the sustenance of the wife in divorce, books and research journals related to the wife's rights in divorce, and Jurimetrics.

Data collection techniques were carried out through document studies by collecting divorce by thalaq and divorce suits at the Talu Religious Court through online data on the Religious Court Decision directory website. After these decisions had been collected, the next step was to group the decisions according to the problem formulation. The data description used analytical techniques introduced by Miles et al. (2018): data reduction, data display, and conclusion drawing and verification. The data reduction step in this study was conducted by sorting divorce by thalaq and divorce by litigation decisions using Jurimetrics and several decisions that did not use Jurimetrics. The presentation of data in this stage presented decisions that had gone through the reduction stage to be analyzed and drawn conclusions. Conclusion drawing and verification were the results of research that answered the research focus based on the data analysis results. Conclusions were presented as descriptive research objects based on research studies.

RESULTS AND DISCUSSION

Wife's Rights in Divorce

There are several rights of the wife in a divorce that the husband must fulfill. Among them are *iddah*, *mut'ah*, and *madhiyah* sustenance. The husband's obligation to fulfill the three rights of the wife is based on specific conditions, which are based on regulations and legal basis. The regulations and legal basis include the Al-Qur'an and hadith related to sustenance in divorce, Law Number 1 of 1974, Compilation of Islamic Law, and several other supporting regulations related to marriage and divorce.

The first is *iddah*. *Iddah* sustenance combines the words "sustenance" and "*iddah*." Ibn Bakar argues that linguistically, "sustenance" refers to the mention of something that a person spends on his family (Fauzan & Nurlaelawati, 2019). Meanwhile, the word "*iddah*" comes from the word "*adda-ya'uddu-'iddata*," which means "to count" or "counting." The use of this word is caused by a wife who waits for her time to pass (Syarifuddin, 2009). In the Fiqh book, the meaning of *iddah* is the waiting period that a wife goes through to know that the uterus is clean or to worship (Hammad, 2014). Article 153 of the Compilation of Islamic Law defines *iddah* as a waiting period for a wife whose husband divorces her, unless the wife is *qabla ad-dukhul*, and the breakup of the marriage is not caused by the death of her husband (Direktorat Pembinaan Badan Peradilan Agama, 2000). Further, Soemiyati explained that *iddah* is a waiting period or grace period after the fall of *thalaq* during which the husband may reconcile with his wife again so that the wife is not yet allowed to enter into a new marriage (Syaifuddin et al., 2022). The legal basis for *iddah* sustenance is contained in Q.S. Ath-Thalaq verses 6-7, which reads:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمُّوا رِزْقَهُنَّ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتَرْضِعْ لَهُ أُخْرَىٰ لِلْيَفْقِ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يَكْلَفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ۚ

“Let them live where you live during their waiting period, according to your means. Moreover, do not harass them to make their stay unbearable. If they are pregnant, then maintain them until they deliver. Moreover, if they nurse your child,¹ compensate them and consult courteously. However, if you disagree, another woman will nurse the child for the father. Let the man of wealth provide according to his means. As for the one with limited resources, let him provide according to whatever Allah has given him. Allah does not require any soul beyond what He has given it. After hardship, Allah will bring about ease.”

The verse above emphasizes that the standard in determining the sustenance of a wife and children is the natural ability of the husband. The high and low of sustenance is determined by how much a husband's natural ability is. The husband is not obliged to provide for his wife and children beyond his accurate means.

Therefore, the wife's real needs must match the husband's financial capabilities. The child's actual needs must also adjust to the fundamental financial capabilities of the father (Hasanuddin, 2020). The verse above also explains the husband's obligation to provide sustenance to his wife in the form of a decent place to live for his wife. The obligation of a husband to provide sustenance to his wife and children contained in the verse includes the obligation to provide sustenance even after a divorce.

Article 41, letter c, Law Number 1 of 1974 jo, stipulates regulations related to iddah sustenance. Law Number 16 of 2019 concerning Marriage reads, "The court may oblige the ex-husband to provide living expenses or determine an obligation for the ex-wife" (Mahkamah Agung RI, 2011). The article explains that the court has the right to charge the wife's living expenses for the husband after a divorce. Article 149 of the Compilation of Islamic Law also explains that the husband is obliged to provide sustenance, *maskan* (place to live), and *kiswah* (clothes) to his wife during the 'iddah period if the marriage broken up due to *thalaq* (Direktorat Pembinaan Badan Peradilan Agama, 2000).

The second is mut'ah. The word *mut'ah* comes from mataa, which means "that which is enjoyed." This definition has four meanings: *mut'ah* hajj, marriage with a time limit, *mut'ah* of a divorced wife, and giving sustenance from a wife to her husband based on custom in several countries. Meanwhile, the *mut'ah* referred to in this discussion is clothing or property gifts from husbands to divorced wives. *Mut'ah* acts as a substitute for dowry as a consolation for a divorced wife and compensates for the pain caused by divorce (Az-Zuhaily, 2011). Divorced wives have the right to get *mut'ah*. Giving *mut'ah* from the husband acts as a solace for the wife's sadness after the divorce, as a provision for the wife's life, cleanses the wife's heart, and eliminates the worry of men insulting her (Ramdani & Syafitri, 2021). The existence of the obligation of *mut'ah* is due to the occurrence of *thalaq*. Giving *mut'ah* is also an effort to please and help the wife's difficulties or suffering, both emotionally and financially (Hashanah, 2017: 288). As for the legal basis related to *mut'ah*, the word of Allah Swt. in Q.S. Al-Baqarah (2): 236 reads:

لَا جُنَاحَ عَلَيْكُمْ إِن طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدْرَهُ وَعَلَى الْمُقْتِرِ قَدْرَهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ

"There is no blame if you divorce women before the marriage is consummated or the dowry is settled. However, give them a suitable compensation—the rich according to his means and the poor according to his. Reasonable compensation is an obligation on the good doers."

The verse explains that Allah SWT ordered to give *mut'ah*, as emphasized at the end of the verse. Jumhur ulama' also agreed that the husband is obliged to give *mut'ah* to the wife, who is *thalaq qabl ad-dukhul*, whose dowry has not been determined. Rules related to *mut'ah* are also regulated in several articles of the Compilation of Islamic Law. Article 149 of the Compilation of Islamic Law states that *mut'ah* is one of the rights received by a wife after a divorce. There are two

forms of *mut'ah* based on Indonesian law: obligatory *mut'ah* and sunnah *mut'ah*. Article 158 of the Compilation of Islamic Law further explains that the husband is obliged to give *mut'ah* to his wife who is divorced on the condition that the dowry has not been set, the wife gets *thalaq* in a condition of *ba'da dukhul*, and the divorce takes place on the initiative of the husband. Then, Article 159 of the Compilation of Islamic Law explains that it is sunnah for a husband to give *mut'ah* to a divorced wife if the three conditions contained in the obligatory *mut'ah* are not fulfilled (Direktorat Pembinaan Badan Peradilan Agama, 2000). Basically, the nominal amount of *mut'ah* is not determined absolutely, but must be adjusted to the husband's abilities and the principles of propriety (Ihwanudin, 2016).

The third is *madhiyah* sustenance. *Madhiyah* sustenance is a livelihood neglected or abandoned by the husband when he was still in the household. *Madhiyah* (past) sustenance is previous income that is not given by the husband to the wife as long as they are still in a legal marriage bond. The wife has the right to file a lawsuit with the Religious Court regarding sustenance that her husband has not paid (*madhiyah* sustenance) for more than three consecutive months, as stated in *sighat thalaq*. Article 116, letter g, Compilation of Islamic Law states that one of the reasons for divorce is the husband's violation of *sighat taklik thalaq*. The form of violation against *sighat taklik thalaq* is a husband not providing sustenance to his wife for three months. It results in the wife being displeased and filing a lawsuit at the Religious Court. If the judge justifies the lawsuit, the wife gives the husband ransom money (*i'wadh*). It resulted in the fall of one divorce from the husband to his wife. (Velawati et al., 2015).

Madhiyah sustenance is also a livelihood owed to the wife, which the husband does not fulfill. Jumhur ulama' believes that sustenance turns into debt since it becomes an obligation and the husband refuses to carry it out. In general, *madhiyah* sustenance is the obligation of a husband to a wife who has been neglected. Thus, *madhiyah* sustenance can become debt since it becomes an obligation, and the husband refuses to carry it out. Its status can be a substantial debt unless paid and with the wife's consent, so the sustenance debt can be considered paid off. Unpaid sustenance by a husband for three months or more can become a debt for the husband.

The Authority of Judges in Determining the Rights of Wives in Divorce

The Religious Court is a judicial institution authorized to try certain cases, including marriages based on Islamic Law, following the general elucidation of Law Number 7 of 1989. Law Number 3 of 2006 jo. Law Number 50 of 2009 concerning Religious Courts (Harahap, 2007). The Religious Courts are also known as family courts because most cases handled are marital problems (Arifin, 1996). The Religious Courts have greatly influenced and shaped the practices and habits in legal relations between men and women. This is because almost all the complexities of relational issues between men and women are part of the core competencies of the Religious Courts. The court, as an official and legal state

institution, is authorized to examine, try, decide, and resolve any disputes submitted.

The Annual Report of the Directorate General of the Religious Courts from year to year explains that divorce by litigation and divorce by *thalaq* are the two highest cases within the Religious Courts throughout Indonesia (Rahman, 2021). It is the basis on which the Religious Courts accept many divorce cases yearly. Many aspects are taken into consideration by judges in examining and resolving divorce cases in Religious Courts. Among them is the background of the emergence of conflicts, efforts to reconcile the two parties, divorce decisions, and the imposition of *iddah*, *mut'ah*, *madhiyah* sustenance, and child sustenance on husbands. The judge must also consider several principles in determining the wife's rights in divorce. One of the principles that judges must consider when examining cases related to the wife's rights in divorce is the principle of *ultra petitem partium* (Yulianti et al., 2020).

The principle of *ultra petitem partium* prohibits judges from deciding beyond what is demanded. Judges who decide beyond what the plaintiff demands are deemed to have exceeded their authority (*ultra vires*, beyond the powers of his authority). Judging by granting more than demanded can be equated with an illegal action, even if it is done in good faith. It is because the judge's actions have violated the principles of the rule of law. Over time, implementing the *ultra petitem partium* principle has shifted based on guidelines for several things. Yahya Harahap argued that a court decision that exceeded the demands could still be justified. This provision applies if the decision is still aligned or relevant to the plaintiff's claim. This rule was confirmed in the Supreme Court Decision Number 140 K/Sip/1971, dated August 12, 1972 (Asnawi, 2020a).

Another Supreme Court ruling stipulates that if the divorced wife is not proven to be *nusyuz*, the court can ex officio sentence the husband to pay sustenance, *maskan*, and *kiswah* during the *iddah* period. The Great Dictionary of the Indonesian Language defines ex officio as "because of a position." Subketi believes that ex officio is a right owned due to a particular position, not based on a letter of appointment and not on a letter of application. In the court context, ex officio rights are owned by a judge because of his position to decide on a case beyond what is demanded even though the plaintiff is not prosecuted (Subekti & Tjitrosoedibio, 1979). The legal basis for ex officio rights provisions is contained in Article 41, letter (c), Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage states, "The court may oblige the ex-husband to provide living expenses and determine an obligation for the ex-wife." This article states that judges as law enforcers who examine divorce cases based on ex officio rights can oblige husbands to provide sustenance to their wives in divorce. One of the implementations of ex-officio rights is the judge's efforts to obtain factual data on the husband's economic capabilities and also to consider the minimum requirements that apply in the area where the husband and wife live (Hidayah et al., 2022).

Jurimetrics

Jurimetrics is still reasonably new to legal studies. Lee Loevinger introduced the term Jurimetrics in the 1900s. Lee Loevinger is an advocate at the Minnesota Supreme Court (Allen, 2000). Jurimetrics is an archetypal legal study investigating legal issues using computer tools and symbolic logic (Rahardjo, 1991). Loevinger focused on enforcing antitrust laws. Loevinger also helped develop a concept of law that was considered revolutionary. This concept combines law and science, explicitly using computer media and mathematics (statistics) to solve legal problems. Loevinger's use of computer media and statistical analysis models in legal investigation activities is deemed an attempt to uphold a reliable (consistent) legal standard, which seems unresolved by legal science. Loevinger then emphasized that several archetypes in legal science can be answered using a scientific approach, which is the episteme of Jurimetrics.

Legal practice and theory known so far have developed various approaches applied in analyzing the values of justice, which will be displayed in a more empirical or measurable understanding building. So far, the various analytical models used refer to existing schools of legal thought that have not yet reached a single form that can be mutually agreed upon. It is related to a consistent measure of justice that represents the value of justice itself. Each existing school of legal thought has its paradigm in assessing justice and its urgency in law enforcement. Therefore, it is not surprising that their implementation in law enforcement differs. One example is legal decisions that differ from one another.

Jurimetrics was born as a concept that seeks to bring together differences in interpretation regarding the measure of justice, which can be studied and concluded based on scientific investigation methods. Jurimetrics wants to produce a legal analysis based on empirical data, which is considered more objective and testable. Jurimetrics can be applied to specific legal aspects, such as calculating compensation for unlawful acts, compensation for default, and determining the share of joint assets based on the principle of justice. Jurimetrics can also be applied to accommodate the concept or principle of proportionality in determining the living expenses of ex-husbands in divorce, grouping data or variables in examining divorce cases, determining child custody, and calculating the amount of child support fairly and adequately (Asnawi, 2020b).

Jurimetrics can be applied in some cases above, especially if the judge wants to determine the most fair and appropriate value. The value of justice can be obtained through a series of collection, processing, and analysis of quantitative data, either simple or more complex mathematical (statistical) methods. Jurimetrics can also facilitate grouping important data or variables and determine the concluding disputes experienced by the parties. By using the quantitative approach to analyzing court decisions, we can identify patterns and anomalies, making it possible to predict the outcome of court decisions and thereby make legislation easier to predict (Colombo et al., 2017).

Application of Jurimetrics in Determining Wife's Rights in Divorce

M. Natsir Asnawi seeks to develop the theory of Jurimetrics, which Lee Loevinger initiated. He is one of the Judicial Judges of the Directorate General of the Religious Courts of the Supreme Court of the Republic of Indonesia. The development of Jurimetrics theory for the settlement of civil cases is explained in his book entitled *"Introduction to Jurimetrics and Its Application in Settlement of Civil Cases."* The systematic discussion in the book begins by presenting the norms, theories, and basic principles of each category of civil law discussed. The discussion is then followed by a qualitative analysis of the variables influencing the case analysis. The discussion ends by compiling these variables into systematic and statistical symbols to determine the formula, mathematical formula, or descriptive statistics.

Jurimetrics analysis can be implemented in divorce cases, particularly in determining the wife's rights in divorce. Jurimetrics can be applied in determining costs due to divorce based on many components. There are two categories of consequences of divorce in the Religious Courts. *The first* is the cost of subsistence for ex-wives, which includes living expenses during the *iddah* period, the cost of buying or caring for clothes/*kiswah*, and the cost of providing housing for the wife who got *thalaq/maskan*, living expenses while pregnant, and wages for breastfeeding children. *The second* is an obligation for ex-wives, consisting of *mut'ah* and *madhiyah* sustenance, which the husband does not pay in a condition where he can and the wife is not *nusyuz* (Asnawi, 2020b).

Iddah Sustenance

The *iddah* sustenance value can be determined in a pattern expected to reflect the value of decency and justice for the wife who gets *thalaq*. The value will be formulated by considering the determining internal aspects. Based on the understanding and conception, *iddah* sustenance can be identified into several elements. *First*, the cost of living for ex-wives includes components of daily living expenses (basic needs) and additional costs that may be required by ex-wives (those who are pregnant may require additional costs). *Second*, the time during the *iddah* period is grouped into two: the wife who gets *thalaq* is not pregnant (90 days), and the wife who gets *thalaq* is pregnant (until giving birth). Based on these elements, a proper and fair estimate of *iddah* sustenance can be formulated according to the following pattern:

Iddah sustenance for a divorced wife who is not pregnant

The sustenance costs in this group are the basic daily needs of wives undergoing the *iddah* period. A difference in standard needs between the wives is very possible. This difference depends on household conditions, habits during marriage, and several other factors that determine the level of needs of a wife. Generally, basic needs are calculated by estimating the average cost needed for one meal—for example, the average ranges from IDR 20,000, IDR 30,000, IDR 50,000,

and others. The estimated average cost per meal is denoted by n . The habit of eating is done three times a day. The standard *iddah* period for a wife who gets *thalaq* during menstruation or when it is not determined is 90 days (three months). If the value of the sustenance is symbolized by μ , the formula for determining the *iddah* sustenance is (Asnawi, 2020b: 92): $\mu = (n \times 3) \times 90$ days. The way to read the formula above is "Miu is equal to n times three times 90."

Meanwhile, another method of determination that can be used as a guideline refers to the value of the local City/Regency Minimum Wage (symbolized by α). When referring to this standard, the determination of the *iddah* sustenance value is (Asnawi, 2020b: 93): $\mu = \alpha \times 3$ months. The formula can be read as "Miu equals alpha multiplied by three months."

Iddah sustenance for wives who receive thalaq while pregnant

The formula is the same as the formula above in determining the nominal *iddah* sustenance for a wife who gets *thalaq* and is not pregnant. The difference is only during the *iddah* period, and additional costs may be needed to look after the wife's fetus until delivery. These additional costs include components, such as supplements for pregnant women, pregnancy control costs, and other costs. These additional cost components can be calculated at once to simplify the calculation. For example, the doctor's control fee is set four times, with the price of IDR 150,000 for one visit.

Meanwhile, the cost of supplements during pregnancy, for example, is IDR 1,000,000. According to the calculation above, these costs are added to *iddah* costs. There are steps to make it easier to obtain the average value of the cost of seeing a doctor. This step can be done by collecting data on the range of fees for pregnancy consultations with specialist doctors in a city/regency to determine the average value. After collecting the range of costs for pregnancy consultations in a regency/city, the average cost can be determined using a formula for determining the distribution of data, namely (Asnawi, 2020b):

$$\bar{x} = \frac{x_1 + x_2 + x_3 + \dots + x_n}{n}$$

The formula above can be read as "x bar equals the first data value (and so on) divided by the total numbers of data."

Mut'ah

At this time, the most robust and followed opinion in determining the value of *mut'ah* is left to the judge's discretion. Judges are free to determine discretion over the value of a proper *mut'ah* for a wife who gets *thalaq*. In practice, the problems that arise are the steps to standardizing the value of *mut'ah* to be fair and proper. The rule of law in the jurisprudence of the Supreme Court is still an abstraction that needs to be concretized in a consistent pattern of determination that

reflects these two values (Asnawi, 2020b). M. Natsir Asnawi proposes a standardized pattern of determining the value of *mut'ah*, which is expected to reflect feasibility and fairness. This pattern is also expected to represent various circumstances. One of them is a husband with financial security and a husband with a perfunctory income. The pattern of determining the value of *mut'ah* is divided into two circumstances: married couples with and without children.

Married couples with children

The formula for determining *mut'ah* concluded by M. Natsir Asnawi after several stages (Asnawi, 2020b: 96) is $m = 20\% \times n \times l$. The formula can be read as "m equals twenty times n times l." Meanwhile, the description of each variable: m = the value of a decent and fair *mut'ah*, n = husband's net income per month, and l = length of marriage.

Married couples without children

The value of *mut'ah* is slightly lower for childless married couples. Determining the value of *mut'ah* is fundamentally the same as the formula above. The difference lies only in the multiplier coefficient, which is 10%.

The determination of the value of the *mut'ah* is based on several considerations. *First*, the difference between the coefficients of 10% and 20% for couples with children and those without children is based on consideration of respect for wives who can bear offspring. The existence of offspring is also a measure of the wife's responsibility, which is generally more significant than that of a wife who does not give offspring. *Second*, the determination of the variable "husband's monthly net income" represents a difference in determining the value of *mut'ah* sustenance according to the husband's factual situation. A husband's and other husbands' net income varies, which has implications for whether the value of *mut'ah* is considerable. *Third*, the duration of the marriage determines the size of the *mut'ah* value. The longer a marriage, the greater the wife's devotion and sacrifice, which should be rewarded with the high value of *mut'ah* (Asnawi, 2020b: 96).

Madhiyah Sustenance

Madhiyah sustenance is a livelihood not paid for by the husband during marriage. This sustenance is the wife's right if the wife is not proven *nusyuz*. In principle, determining the amount of *madhiyah* sustenance can be guided by determining the *iddah* sustenance value. The difference in the determination is only in the length of unpaid sustenance as a multiplier factor for the cost of living that the husband must pay the wife (Asnawi, 2020b).

Guarantee of Fairness of Wife's Rights in Divorce after the Application of Jurimetrics in Court Decisions

The rights of the wife in a divorce that the husband must fulfill include *iddah*, *mut'ah*, and *madhiyah* sustenance. The Panel of Judges considered these three matters based on the legal provisions in the Marriage Law Number 1 of 1974 jo. Law Number 16 of 2019 and Compilation of Islamic Law, as long as this regulation is in effect, court decisions regarding wives' divorce rights have not been protected and have not guaranteed justice. It can be seen from scientific research analyzing the protection of the wife's rights in court decisions. Several factors cause weak protection of wives' rights after divorce, including the lack of strict regulations regarding husbands who do not carry out the divorce vow, giving rise to legal uncertainty, decisions that cannot be executed, and the low level of legal awareness and legal knowledge in the community (Sholeh et al., 2019).

In other conditions, even though the judge has burdened the husband with giving the wife's rights post-divorce, sometimes the implementation does not run optimally, so the wife's rights cannot be protected. It is due to several things, including economic and psychological factors, the husband remarries, and the wife can support herself (Nasriah et al., 2021). Not a few scientific studies also state that court decisions related to wives' rights tend to be gender biased. It is detrimental to the wife who is not given a living while separated from her husband, especially for a wife with no other job. This fact is seen in Decision Number 638/Pdt.G/2021/PA.Talu, in which one of the witnesses stated that the wife's debt to a family member reached IDR 20,000,000 to support herself and her children. Based on this research, judges are expected to be able to provide pro-gender decisions for every wife who is a party to a divorce case (Qomaro, 2021).

These rules are increasingly clarified by Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Cases of Women Confronting the Law, Supreme Court Circular Letter Number 3 of 2018 concerning Enforcement of the Formulation of the Results of the 2018 Supreme Court Chamber Plenary Meetings as Guidelines for the Implementation of Duties for the Court, and Supreme Court Circular Letter Number 2 of 2019 concerning Enforcement of the Formulation of Results of the 2019 Supreme Court Chamber Plenary Meeting as Implementation of Duties for the Court. Rules related to the rights of wives in the Marriage Law and Compilation of Islamic Law are only limited to elaborating on the rights of wives in divorce. Thus, the presence of a Supreme Court Regulation and a Supreme Court Circular Letter further clarifies the steps for judges in determining the rights of a wife as a result of divorce. These two regulations are also one of the court's efforts to protect the rights of wives due to divorce, which previously tended to be unprotected.

The judge must pay attention to the principle of justice in examining and considering the wife's rights due to divorce. One of the efforts to obtain a clear overview of justice is through Jurimetrics. Jurimetrics is a mathematical calculation in the field of law. Jurimetrics can be applied to determine appropriate *iddah*,

mut'ah, and *madhiyah* sustenance for the wife. Suppose the panel of judges only bases the calculation of the wife's rights in a divorce based on the husband's ability in general. In that case, Jurimetrics pays attention to various aspects that act as variables. The existence of a variable used as a reference makes the value of *iddah*, *mut'ah*, and *madhiyah* sustenance measurable and tested, thus guaranteeing justice and feasibility for the wife.

First is the development of the cost of living referring to the City/Regency Minimum Wage value in determining *iddah* sustenance. M. Natsir Asnawi stated that the variable that can be used in determining *iddah* sustenance is the calculation of basic needs, specified by the estimated average cost required for one meal. This nominal can be based on the City/Regency Minimum Wage value every month in the local area. The City/Regency Minimum Wage can increase in a few years as the West Sumatra Province Minimum Wage increases in 2022. Based on the Decree of the Governor of West Sumatra Number 562/889/2021 concerning the Provincial Minimum Wage (UMP), it is stipulated that the Minimum Wage for West Sumatra Province in 2022 was IDR 2,512,539. This UMP has increased by IDR 28,498 compared to the 2021 UMP. The Panel of Judges can refer to this Provincial Minimum Wage as a guideline for the value of the City/Regency Minimum Wage. This variable also makes the basis that calculating the wife's rights due to divorce is measurable and tested to reflect the value of justice and decency.

The second is the husband's net income per month. The value of this variable or aspect is based on a detailed examination of the Panel of Judges on the income received by the husband in a month. The examination is obtained based on the husband and wife's testimony and the testimony of witnesses, who are the husband and wife's family. A detailed examination regarding this aspect will obtain valid data regarding the husband's net income per month, thus closing the possibility of the husband lying about his monthly income. Through examination of this aspect, it will be known whether the husband has debts that must be paid through this income. From this aspect, data will also be obtained on whether the husband has other income so that it is possible to provide more nominal value to the wife's rights due to the divorce. Based on this aspect, the Panel of Judges will find a sufficient nominal value to determine a proper and fair *mut'ah* for the wife.

Third is the length of the marriage. This variable is one of the aspects that can reflect justice in determining a wife's rights through Jurimetrics. This variable explains that the length of the wife's service to her husband can be used to determine the wife's rights due to divorce. It makes the wife's devotion to her husband contribute to determining the wife's rights so that the husband does not force the wife to follow only his ability to give *mut'ah*. This variable is also the latest breakthrough in scientific calculations for determining the value of *mut'ah*, which describes the value of fairness and feasibility in a more measurable and testable way.

The application of Jurimetrics in consideration of the Panel of Judges in determining the wife's rights due to divorce guarantees justice. The values of

fairness and decency are better reflected in Jurimetrics because they are based on several variables. The Panel of Judges' determination of the rights of wives due to divorce based on Jurimetrics is also more able to protect the rights of wives and guarantee justice for wives who are not supported. Not a few husbands try to reduce and even claim they cannot provide the rights of their wives due to divorce. This condition is contained in Decision Number 638/Pdt.G/2021/PA.Talu, which rejected claims for *iddah*, *mut'ah*, and *madhiyah* sustenance. Suppose the Panel of Judges bases the provisions on *iddah*, *mut'ah*, and *madhiyah* sustenance on the husband's ability alone. In that case, the wife will suffer because she lacks proper rights. In fact, in this condition, the husband has sufficient income to provide *iddah*, *mut'ah*, and *madhiyah* sustenance for his wife. Thus, the existence of Jurimetrics saves and guarantees the rights of the wife due to divorce. The judge's decision regarding the wife's rights is based on the husband's monthly income based on the legal facts in the trial. The Panel of Judges also examined the husband's income in detail to obtain data on the husband's ability to pay his wife's rights due to divorce.

Based on the explanation above, it can be seen that Jurimetrics, initiated initially by Lee Loevinger and formulated by M. Natsir Asnawi, is an effort to protect the rights of wives due to divorce. The existence of variables in the Jurimetrics formula better describes the value of feasibility and fairness. These variables are not only based on the husband's ability but also include the wife's needs, length of marriage, and husband's monthly net income. This difference is apparent in the nominal comparison of the wife's rights due to divorce, which does not use Jurimetrics. The application of Jurimetrics in calculating the rights of a wife as a result of divorce has proven to describe better the value of justice and fairness for the divorced wife. Based on the three cases that used Jurimetrics above, there was a 29%-30% increase in the total increase in the acquisition of wife's rights using Jurimetrics. This increase illustrates the value of justice and fairness in a more accurate and tested manner and better protects the rights of wives as a result of divorce. Based on this, it can be concluded that Jurimetrics better protects wives' rights due to divorce in court. The fairness and fairness aspects are also more measurable and testable with the application of these concepts.

CONCLUSION

Jurimetrics uses several formulas in court decisions based on certain variables or aspects. Some of these formulas explain that determining the wife's rights due to divorce in court decisions is based on justice. Generally, the nominal acquisition of the wife's rights due to divorce after using Jurimetrics is more significant or following the wife's demands. Referring to the three decisions using Jurimetrics, the total increase in the acquisition of wife's rights is around 29% -30%. This increase can be seen from the number of wives' rights obtained from the wife's demands and the husband's statement of ability regarding granting the wife's rights after divorce. If the judge determines the nominal rights of the wife in divorce based only on the husband's capabilities, the wife will not get the rights she should and will often even be harmed. Based on the three decisions using Jurimetrics, it can be seen that the wife obtains a larger nominal post-divorce right. The guarantee of

justice for the wife's rights in divorce after applying Jurimetrics in court decisions is also more guaranteed than decisions that did not use Jurimetrics. Evidence of this assurance is found in several variables considered in the Jurimetrics formula. Some of these variables include the development of the cost of living, which refers to the City/Regency Minimum Wage, the husband's net income per month, and the length of marriage. In Jurimetrics, determining the wife's rights due to divorce is not only based on the husband's ability.

For this reason, Jurimetrics guarantees justice and fairness for the wife since it is based on scientific calculations. The existence of variables that judges consider in determining wives' rights in divorce is one of the legal disciplines in applying Jurimetrics. One variable that is evidence of justice is the length of marriage. This variable considers the length of time the wife has devoted herself to her husband even though she is having problems with her husband. This consideration is not found in decisions that do not use Jurimetrics to determine the wife's divorce rights.

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REFERENCES

- Allen, L. E. (2000). Festschrift: Lee Loevinger. *Jurimetrics* 40, No. 4.
- Arifin, B. (1996). *Pelebagaan hukum Islam di Indonesia: akar sejarah, hambatan, dan prospeknya*. Gema Insani.
- Asnawi, M. N. (2016). Implementasi Jurimetri Dalam Penentuan Jumlah Nafkah Anak. *Jurnal Hukum Dan Peradilan*, 5(3), 331–350. <https://doi.org/10.25216/jhp.5.3.2016.331-350>
- Asnawi, M. N. (2020a). *Hermeneutika Putusan Hakim: Pendekatan Multidisipliner dalam Memahami Putusan Peradilan Perdata*. UII Press.
- Asnawi, M. N. (2020b). *Pengantar Jurimetri dan Penerapannya dalam Penyelesaian Perkara Perdata*. Kencana.
- Az-Zuhaily, W. (2011). *Fiqih Islam wa Adillatuhu, Jilid 3*. Gema Insani.
- Colombo, B. A., Buck, P., & Bezerra, V. M. (2017). Challenges When Using Jurimetrics in Brazil-A Survey of Courts. *Future Internet*, 9(4), 1–14. <https://doi.org/10.3390/fi9040068>
- Direktorat Pembinaan Badan Peradilan Agama. (2000). *Kompilasi Hukum Islam di Indonesia*. Departemen Agama R.I.

- Fanani, A., & Ulfa, B. N. L. (2017). Hak Ex Officij Hakim: Studi Kasus Perceraian di Pengadilan Agama Sidoarjo No. 3513 Th. 2015. *Tsaqafah: Jurnal Peradaban Islam*, 13(2), 339–352.
- Fauzan, M., & Nurlaelawati, E. (2019). Nafkah Pasca Perceraian pada Masyarakat Minangkabau: Perubahan Sistem Kekerabatan dan Praktek Rekonstruksi Hukum demi Keadilan Perempuan. In *Nilai-Nilai Budaya dan Keadilan bagi Perempuan di Pengadilan Agama Indonesia: Praktik Terbaik* (pp. 39–66). SUKA-Press.
- Fitriani, R., & Aziz, A. (2019). Review of Islamic Law on The Imposition of Mut'ah and Living Iddah against Apostate Husbands (Case Study of Nganjuk Religious Court Decision No: 1830/Pdt. G/2016/PA. Ngj). *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 3(2), 365–377. <https://doi.org/https://doi.org/10.22373/sjkh.v3i2.5242>
- Hammad, M. (2014). HAK-HAK PEREMPUAN PASCA PERCERAIAN : Nafkah Iddah Talak dalam Hukum Keluarga Muslim Indonesia , Malaysia , dan. *Jurnal Al-Ahwal*, 7(1), 17–28.
- Harahap, Y. (2007). *Kedudukan Kewenangan dan Acara Peradilan Agama*. Sinar Grafika.
- Harlina, Y. (2020). Tinjauan Usia Perkawinan Menurut Hukum Islam (Studi UU No. 16 Tahun 2019 Perubahan Atas UU No. 1 Tahun 1974 Tentang Perkawinan). *Hukum Islam*, 20, 219–238.
- Hasanah, D. U. (2017). *Hak-hak Perempuan dalam Putusan Pengadilan: Studi Perbandingan Hukum Keluarga Islam dan Konvensi CEDAW*. Cakrawala Budaya.
- Hasanuddin, N. (2020). Penerapan Metode Proporsional dalam Menentukan Jumlah Mut'ah, Nafkah Istri dan Nafkah Anak pada Peradilan Agama. In M. N. Asnawi & A. J. D. Atmojo (Eds.), *Penemuan Hukum di Peradilan Agama: Perkembangan Norma dan Praktik Terbaik*. UII Press.
- Hidayah, N., Yunanto, Y., & Saron, A. (2022). Implementasi Putusan Pengadilan Agama atas Mut'ah dan Nafkah Iddah (Studi di Pengadilan Agama Purwodadi). *Diponegoro Law Journal*, 11(2), 1–10.
- Hikmatiar, E. (2016). Nafkah Iddah Pada Perkara Cerai Gugat. *SALAM: Jurnal Sosial Dan Budaya Syar'i*, 3(2), 131–172. <https://doi.org/10.15408/sjsbs.v3i1.3316>
- Ihwanudin, N. (2016). Pemenuhan Kewajiban Pasca Perceraian di Pengadilan Agama. *ADLIYA: Jurnal Hukum Dan Kemanusiaan*, 10(1), 51–68. <https://doi.org/10.15575/adliya.v10i1.5146>

- Mahkamah Agung RI. (2011). Himpunan Peraturan Perundang-undangan yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian dalam Pembahasannya. In *Perpustakaan Nasional RI : Data Katalog Dalam Terbitan* (Vol. 1, Issue 1).
- Mansari, & Moriyanti. (2019). Sensitivitas Hakim terhadap Perlindungan Nafkah Isteri Pasca Perceraian. *Gender Equality: International Journal of Child and Gender Studies*, 5(1), 43–58.
- Maulida, F., & Busyro. (2018). Nafkah Iddah Akibat Talak Ba'in dalam Perspektif Keadilan Gender (Analisis terhadap Hukum Perkawinan Indonesia). *Alhurriyah*, 03(02), 113–129.
- Miles, M. B., Huberman, A. M., & Saldaña, J. (2018). *Qualitative data analysis: A methods sourcebook*. Sage publications.
- Moleong, L. J. (2021). *Metodologi penelitian kualitatif*. PT Remaja Rosdakarya.
- Nasriah, N., Busthami, D. S., & Baharuddin, H. (2021). Perlindungan Hukum Hak-Hak Istri Pasca Perceraian. *Journal of Philosophy (JLP)*, 2(1), 15–31. <https://doi.org/10.1093/mind/xxxvi.143.388>
- Nurtasdiq. (2020). Implementasi Nafkah Iddah pada Pengadilan Agama Watampone. *Al-Syakhshiyyah*, 2(1), 64–74.
- Qomaro, G. W. (2021). Agensi Hakim Pengadilan Agama Bangkalan dalam Pemenuhan Hak Istri Pasca Cerai. *Mahkamah : Jurnal Kajian Hukum Islam*, 6(1), 63–78. <https://doi.org/10.24235/mahkamah.v6i1.7455>
- Rahardjo, S. (1991). *Ilmu Hukum*. Citra Aditya Bakti.
- Rahman, A. (2021). *Laporan Tahunan Direktorat Jenderal Badan Peradilan Agama*. Direktorat Jenderal Badan Peradilan Agama.
- Ramdani, R., & Syafitri, F. N. (2021). Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah dan Mut'ah dalam Perkara Perceraian Di Pengadilan Agama. *ADLIYA: Jurnal Hukum Dan Kemanusiaan*, 15(1), 37–50. <https://doi.org/10.15575/adliya.v15i1.11874>
- Salma, Elfia, & Djalal, A. (2017). Perlindungan Hukum bagi Perempuan dan Anak (Analisis Putusan Hakim tentang Nafkah Madhiyah pada Pengadilan Agama di Sumatera Barat). *Istinbath; Journal of Islamic Law*, 16(1), 168–208.
- Sholeh, A., Rachmat Gumelar, D., & Tsamrotul Fuadah, A. (2019). Pendampingan Hak-hak Perempuan dan Anak Pasca Perceraian. *JCIC : Jurnal CIC Lembaga Riset Dan Konsultan Sosial*, 1(2), 80–99. <https://doi.org/10.51486/jbo.v1i2.19>
- Subekti, & Tjitrosoedibio, R. (1979). *Kamus Hukum*. Pradnya Paramita.

- Syaifuddin, M., Turatmiyah, S., & Yahanan, A. (2022). *Hukum perceraian*. Sinar Grafika.
- Syarifuddin, A. (2009). *Hukum Perkawinan Islam di Indonesia*. Kencana.
- Velawati, S. H., Budiono, D. A. R., & Sulistyarini, R. (2015). Nafkah Madliyah Dalam Perkara Perceraian. *Jurnal Fakultas Hukum Mahasiswa Universitas Brawijaya*, 7(2), 1–18.
- Yulianti, D., Abikusna, R. A., & Shodikin, A. (2020). Pembebanan Mut'ah dan Nafkah 'Iddah pada Perkara Cerai Talak dengan Putusan Verstek. *Mahkamah : Jurnal Kajian Hukum Islam*, 5(2), 286–297.
<https://doi.org/10.24235/mahkamah.v5i2.7285>