



## **The Application of Iddah Maintenance for a Nusyuz Wife in Religious Court Verdicts**

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**Abstract:** This study aims to explore the rationale behind the Religious Court's decision to grant iddah maintenance to a wife considered nusyuz (disobedient), despite this conflicting with the provisions of Islamic law as stipulated in the Compilation of Islamic Law (KHI). This research uses a qualitative approach and normative analysis to examine the Religious Court decision number 0295/Pdt.G/2020/PA.Kab.Mn as a key case study. Primary data, consisting of court rulings, is analyzed to understand the arguments presented by the plaintiff and the defendant and the judge's reasoning in granting iddah maintenance despite the wife's proven nusyuz status. The findings indicate that, although Islamic law dictates that a nusyuz wife is not entitled to iddah maintenance, the court applied the principle of justice through progressive legal reasoning and the use of contra legem principles. The judge determined that granting iddah maintenance was a fair measure to protect the wife's rights after divorce, considering the social and humanitarian circumstances underlying the case.

**Keywords:** Iddah; nusyuz; religious court; contra legem.

### **Introduction**

Divorce brings significant consequences for both the husband and wife, which they must fulfill. The result for the wife is the obligation to observe the iddah period before remarrying another man. Meanwhile, the husband is responsible for providing financial support, accommodation, and clothing for his wife during the iddah period (Heniyatun et al., 2020; Mansari & Moriyanti, 2019). Iddah maintenance, also called nafkah iddah, is a mandatory provision that the husband must give to his divorced wife. According to the Compilation of Islamic Law (KHI), Article 149(b) states that "if a marriage ends in divorce, the former husband is obliged to provide maintenance, housing, and clothing to his wife during the iddah period, except if the wife has been given a final divorce (talak bain) or is nusyuz, and she is not pregnant." Additionally, Article 152 of the KHI further specifies that "the former wife is entitled to nafkah iddah from her former husband unless she is nusyuz." Based on these provisions, a nusyuz wife is not entitled to nafkah iddah (Amal & Zulaicha, 2023; Haryadi & Suteki, 2017a; Sidang et al., 2023). However, the author found a different scenario in the decision of the Religious Court of Madiun Regency, where the court granted the iddah maintenance claim even though the wife had been deemed nusyuz. The awarding of nafkah iddah to a nusyuz wife was considered part of the court's effort to ensure justice for the wife.

Several studies have been conducted on the issue of nafkah iddah for a nusyuz wife, often focusing on judicial decisions commonly found in journals, theses, and dissertations. This paper categorizes prior research into two main sections: first, the provision of nafkah iddah to a nusyuz wife, and second, the provision of nafkah iddah to a nusyuz wife through ex officio by the judge. In the first category, Ramzy (2023), in his article "Judicial Decisions on Nafkah Iddah and Mut'ah for Nusyuz Wives," explains that the court granted nafkah iddah and mut'ah to a nusyuz wife based on a sense of justice and the protection of the wife's rights after divorce. Ramzy argues that the court did not find sufficient evidence of the wife's nusyuz, as the wife or her representative did not attend the trial. He points out that nusyuz should be proved by the wife through statements, either verbally or in writing, during the trial. Pratama & Prasetya's (2023) research, titled "Analysis of the Determination of

Mut'ah and Nafkah Iddah for a Nusyuz Wife from an Islamic Law Perspective (Study of the Court Decision No. 3085/Pdt.G/2022/PA.Lpk)," explains that although the wife's nusyuz was evident, the court still granted nafkah iddah as a form of caution and protection of the wife's rights, emphasizing that the divorce was not caused by nusyuz but by prolonged conflicts. Ratnasari's (2018) study, "Nafkah Iddah for Nusyuz Wives (Analysis of Decision No. 2707/Pdt.G/2017/PA.JT)," mentions that the court's decision to grant nafkah iddah follows the Hanafi school's perspective, where a wife who remains in her husband's house without his permission is not considered nusyuz.

The second category discusses studies on the provision of nafkah iddah to a nusyuz wife through ex officio by the judge. Mansari & Fatahillah (2021), in their article "The Determination of Nafkah Iddah Through Ex Officio for Nusyuz Wives," explain that judges grant nafkah iddah through ex officio based on the principle of justice and the ability of the husband to provide it. Similarly, Amal (2023), in the research titled "Ex Officio Judges in Determining Nafkah Iddah for Nusyuz Wives in a Verstek Decision," explores how judges apply the principle of justice when awarding nafkah iddah, even when it contradicts the Syafi'iyah school, which generally does not allow nafkah iddah for a nusyuz wife. They argue that while nusyuz eliminates the husband's obligation to provide maintenance, it does not prohibit him from giving nafkah iddah. These studies indicate that while Islamic jurisprudence often restricts nafkah iddah for nusyuz wives, judges may still exercise their discretion to grant it, emphasizing fairness and the circumstances of the case.

Based on the review of the previous research, the issue of granting nafkah iddah to a nusyuz wife presents an intriguing subject for further examination. This study raises the question of why the court grants nafkah iddah to a wife deemed nusyuz and the rationale behind the court's decision to provide nafkah iddah in such cases. Therefore, this study aims to delve deeper into the judges' reasoning and the objectives behind awarding nafkah iddah to a nusyuz wife, exploring whether the judicial decisions align with Islamic law and the pursuit of justice.

## Method

This research utilizes a qualitative method with a normative approach to analyze the judicial decisions regarding the awarding of nafkah iddah to a wife deemed nusyuz in the context of Islamic law (Creswell & Poth, 2016; Dobinson & Johns, 2017). The primary focus is to examine and interpret the rationale behind the court's decision to grant nafkah iddah to a wife who has been categorized as nusyuz, despite the prohibitions outlined in the Compilation of Islamic Law (KHI), particularly Article 149 and Article 152.

This study adopts a case study approach to analyze judicial decisions, focusing specifically on the ruling of the Religious Court of Madiun Regency in Decision No. 0295/Pdt.G/2020/PA.Kab.Mn, where the court granted nafkah iddah to a wife found to be nusyuz. The selected case represents a key example of judicial discretion in interpreting Islamic legal principles in contemporary settings (Bakhri & Taufiq, 2023; Sudirman, 2024).

Data for this study were collected through primary and secondary sources (Miles et al., 2018). The primary data includes the official court decision in the Religious Court of Madiun Regency case, which is examined to understand the arguments presented by both parties, the court's reasoning, and the final ruling. Secondary data comprises a review of relevant literature, including books, journal articles, and previous research, which provide context for discussing Islamic law, nafkah iddah, and the legal principle of ex officio applied by judges in similar cases. The research also reviews prior studies and academic discussions on the subject.

Data analysis follows a qualitative content analysis approach, examining the court decision and supporting literature (Ali, 2009). This method allows the researcher to identify key themes, arguments, and legal principles in the ruling. The focus is on the court's use of discretionary powers, notably the application of the ex officio principle, to provide nafkah iddah in cases of nusyuz. The analysis also compares the findings with the interpretations of Islamic jurisprudence and previous legal cases to understand the decision's broader implications. The aim is to assess whether the judicial interpretation aligns with or deviates from established Islamic law, and to explore the judicial rationale behind such deviations.

## Results and Discussion

### Legal Obligation of Nafkah Iddah

Iddah refers to the waiting period that a woman must undergo after a divorce (whether the divorce is due to death or separation) to determine the status of her womb (Ja'far, 2021; Subeitan et al., 2025; Turnip, 2025). The length of the iddah period is either three menstrual cycles or three months and ten days, depending on the type of iddah being observed (Maulida & Busyro, 2018; Nurasiah, 2011). During this waiting period, the husband must provide nafkah (financial support), accommodation, and clothing for the wife (Mokoagow & Asnawir, 2025). The primary purpose of nafkah iddah is to ensure that the wife remains under the protection and care of her husband, and it also allows the husband to reconcile with her. In essence, nafkah iddah is the financial support a husband must provide his wife after divorce (Sriwulan, 2020).

In Islamic teachings, the provision of nafkah iddah is emphasized in the Qur'an, specifically in Surah At-Talaq, verse 7, which states: "Let the one who has abundance spend according to his means, and let the one whose provision is limited spend from what Allah has given him." This verse forms the basis for the consensus among Islamic scholars that a woman divorced by *raj'i* (revocable divorce) is entitled to receive nafkah iddah and shelter (Heniyatun et al., 2020; Isnantri & Tanudjaja, 2024).

The regulation of nafkah iddah in Indonesian legislation is outlined in Article 34, paragraph (1) of Law No. 1 of 1974 on Marriage, and Article 80, paragraph (4), letter (b) of Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law. These regulations clarify the husband's obligations, including financial support, maintenance costs, and healthcare for the wife and children (Nurohim et al., 2021; Rajik et al., 2021). In accordance with the Compilation of Islamic Law, Article 149 letter (b) states that when a marriage ends due to divorce, the ex-husband is obligated to provide nafkah, accommodation, and clothing to his ex-wife during the iddah period, unless she has been divorced with a final (*ba'in*) divorce, is *nusyuz* (disobedient), or is not pregnant. Furthermore, a woman divorced due to *talak* is entitled to nafkah iddah unless she is *nusyuz* (Maulida & Busyro, 2018; Pratiwi & Tjoneng, 2024).

The obligation of the husband to provide nafkah iddah to a divorced wife is further emphasized in Article 152 of the Compilation of Islamic Law, which states that the ex-wife has the right to receive nafkah iddah from her ex-husband, unless she is *nusyuz* (Heniyatun et al., 2020; Razik et al., 2022). As outlined in Surah At-Talaq, verse 7, and Articles 149, letter (b) and 152 of the Compilation of Islamic Law, a husband is required to provide nafkah iddah during the waiting period as long as his wife has not been proven to be *nusyuz*. If the wife is proven *nusyuz*, the husband's obligation to provide nafkah iddah is annulled.

*Nusyuz* refers to the wife's disobedience towards her husband in fulfilling Allah's commands (Hosen, 1971; Nasriah et al., 2021). Suppose the wife is found to be *nusyuz*. In that case, the husband must follow a series of actions to address this situation: first, by advising her, second, by separating beds, and third, if necessary, by physically disciplining her in a manner that does not cause harm. These actions are stipulated in Surah An-Nisa, verse 34 of the Qur'an.

In the Compilation of Islamic Law, *nusyuz* is defined in Article 84, paragraph (1), which states that a wife who fails to perform her obligations as outlined in Article 83, paragraph (1) without a valid reason is considered *nusyuz*. As mentioned in the Compilation of Islamic Law, a wife who is *nusyuz* loses her rights from her husband. This is further specified in Article 80, paragraph (4), letters (a) and (b), except for the needs of the children. Moreover, suppose the wife is found to be *nusyuz*. In that case, she loses her right to receive nafkah iddah after divorce, as stipulated in Articles 149, letter (b), and 152 of the Compilation of Islamic Law.

### The Role of Judges and the Application of *Contra Legem* in Legal Decision-Making

A judge is expected to act with wisdom when considering the values that play a significant role in law enforcement and the pursuit of justice. As a law enforcer, the judge holds a noble philosophical meaning, as their duty goes beyond merely rendering a decision; they also examine and adjudicate the case (Haryadi & Suteki, 2017b; Wantu, 2012). A judge must base their decision on the written laws and regulations. However, if the written law does not answer, the judge should not refuse to adjudicate the case (Harahap, 2017; Marzuki, 2020; Said, 2022). In such circumstances, the judge may resort to *rechtsvinding* (legal discovery), or if the written law is

inadequate in providing justice or legal certainty, the judge may set aside that law. Setting aside the written law can be referred to as *contra legem*.

*Contra legem* refers to situations where a legal regulation, no longer in harmony with societal values and social conditions, can be set aside by a judge, provided the argumentation presented is rational and legally grounded (Fanani, 2017; Fitrianingrum et al., 2024). According to K. Wantjik Saleh (1981), the principle of *contra legem* grants a judge the authority to deviate from written legal provisions that have become outdated and no longer fulfill the sense of justice in society. From this definition, it can be concluded that *contra legem* involves disregarding a law or legal provision when it is deemed incapable of delivering justice to the parties involved or providing just legal certainty.

Applying the *contra legem* principle aims to establish a just legal system. It is permissible when there is no explicit legal provision to address a particular legal issue, or when an existing rule fails to resolve the matter (Putra et al., 2025; Sar'an et al., 2024). Judges' implementation of *contra legem* aligns with the provisions of Article 5, paragraph (1) of Law No. 48 of 2009 on Judicial Power. The goal of applying *contra legem* in a judicial decision is to provide legal certainty, justice, and practical benefit (Djojarahardjo, 2019; Hakim & Alkosibati, 2022).

According to Hans Kelsen, a judicial decision applies a general norm while simultaneously creating a special one. A special norm is binding in the specific case at hand and can also give rise to a general norm applicable to similar cases (Kelsen, 2017). A judicial decision is the final result of the court trial process, and as such, it must meet the demands of justice seekers. The decision includes various considerations based on the facts and available evidence, and ultimately, the decision is made based on the judge's conviction (Gulo, 2018; Nurhafifah & Rahmiati, 2015). Therefore, judges have the authority to apply *contra legem*, as they must explore, follow, and understand the legal values and the sense of justice prevailing in society (Maksum et al., 2021; Putra et al., 2025).

Judges' application of *contra legem* is an effort to create a just legal system that benefits society. Implementing *contra legem* represents the application of progressive law, where, in progressive legal theory, addressing legal issues should not be constrained by overly positivist or legalistic interpretations.

### **Application of the Contra Legem Principle in Case Number 0295/Pdt.G/2020/PA.Kab. Mn**

Judges' application of the *contra legem* principle can be observed in Decision Number 0295/Pdt.G/2020/PA. Kab. Mn. The panel of judges at the Madiun Religious Court carried out its duties by accepting, examining, and ultimately ruling on the petitioner's request in the divorce case. The decision granted the petitioner's request based on considerations focused on the benefits and welfare arising from the judgment (Anggraini & Hikmah, 2020; Naili et al., 2022).

The case (*posita*) stated that the petitioner and the respondent initially lived harmoniously. However, in January 2017, a dispute arose due to the petitioner's illness, which caused them to be unable to provide financial support within their capacity, while the respondent demanded more. The respondent frequently spoke harshly and ignored the petitioner's health condition, leading to a situation where the petitioner and the respondent eventually slept in separate rooms. As the relationship continued to deteriorate, and the petitioner's health worsened, the petitioner returned to live with their parents, as they felt poorly treated by the respondent during their illness. Throughout their separation, the respondent never inquired about the petitioner's condition or visited them, resulting in a communication breakdown. The petitioner then requested the court to grant their petition, which included permission to pronounce a divorce (*talak satu raj'i*) and assign the court costs according to the applicable legal provisions.

On the date set for the trial, the panel of judges attempted to reconcile the petitioner and the respondent through a mediation process involving a non-judge mediator from the Association of Religious Court Mediators of East Java (AMIRDA), according to the report of Drs. Badrodin, on February 27, 2020, the mediation attempt between the petitioner and the respondent failed. After this, the panel of judges read the petitioner's request, and the petitioner insisted on their petition.

The respondent responded to the petitioner's claims by rejecting most of the allegations, except for those admitted as accurate by the respondent. The respondent denied saying or acting harshly toward the petitioner due to financial demands when the petitioner was ill. The respondent claimed that during the petitioner's good

health, the petitioner never provided adequate support for the children. The respondent also said they tried to visit the petitioner to care for them during their separation. Still, the petitioner and their family treated the respondent harshly and even physically assaulted them.

In the counterclaim, the counter-plaintiff requested that if the respondent intended to divorce the counter-plaintiff, the respondent should be held accountable for paying mut'ah, naskah iddah, naskah madhliyah, and child support, in addition to being granted custody of their 5-year-old child.

After examining the case, the panel of judges concluded that the petitioner and the respondent's marriage had deteriorated, leaving no hope for reconciliation. The conflict stemmed from the petitioner's inability to provide sufficient financial support due to their illness, which escalated into a separation, followed by a communication breakdown.

The panel of judges ruled that the petitioner's request was legally justified, consistent with the grounds for divorce stipulated in Article 39 paragraph (2) letter (f) of Law No. 1 of 1974, Article 19 letter (f) of Government Regulation No. 9 of 1975, and Article 116 letter (f) of the Compilation of Islamic Law. As a result, the court granted the petitioner's request and allowed the petitioner to pronounce a divorce (talak satu raj'i) before the Madiun Religious Court.

The counter-plaintiff's claims regarding mut'ah, naskah iddah, and child support were settled through an agreement reached via mediation between the parties' respective legal representatives. The respondent agreed to provide naskah iddah amounting to IDR 2,000,000, mut'ah at IDR 4,000,000, and child support of IDR 500,000 per month, excluding education and healthcare costs. The child support was to be provided until the child reached age 21, with a 10% annual increase.

Regarding the claim for naskah madhliyah, the panel of judges ruled that the counter-plaintiff, deemed nusyuz (disobedient), was not entitled to naskah madhliyah. The judges based this ruling on the premise that the counter-plaintiff had failed to fulfill their duties by not caring for the respondent when sick, neglecting their responsibilities as a wife.

In this decision, the counter-plaintiff requested the respondent to provide post-divorce support, including mut'ah, naskah iddah, and naskah madhliyah, as the respondent initiated the divorce. However, after evaluating the facts, the panel of judges ruled that the counter-plaintiff's behavior was inconsistent with the concept of a dutiful wife, justifying the non-entitlement to naskah madhliyah.

This decision highlights a key element of the *contra legem* principle. Although the Compilation of Islamic Law (Article 152) stipulates that a wife who is nusyuz is not entitled to naskah iddah, the court's decision to grant naskah iddah to a nusyuz wife is an example of the application of *contra legem*, wherein the judges considered the broader values of justice and societal norms in their decision-making. According to Article 5, paragraph (1) of Law No. 48 of 2009 on Judicial Power, judges must explore, follow, and understand the legal values and the sense of justice prevailing in society.

Thus, the judge's decision to provide naskah iddah to the nusyuz wife is seen as an act of judicial activism (*ijtihad*) aimed at upholding justice and protecting the wife's well-being, despite the traditional legal norms. The progressive application of the law ensures that both parties—husband and wife—are treated fairly, and it aligns with the ethical theory of law, which emphasizes providing each individual their rightful share. In summary, the panel of judges applied the *contra legem* principle to provide naskah iddah to the nusyuz wife, recognizing the importance of a progressive, justice-oriented approach to resolving legal issues that supports societal welfare and individual rights.

## Conclusion

The Religious Court's decision to grant iddah maintenance to a wife considered nusyuz demonstrates the application of justice principles prioritizing human values and social fairness. While the Compilation of Islamic Law states that a nusyuz wife is not entitled to iddah maintenance, the judge in this case chose to disregard this rule and award the maintenance as a form of protection for the wife's post-divorce rights. The use of *contra legem* in this verdict reflects a more progressive legal approach that adjusts to evolving social contexts and emphasizes the welfare of both parties. This decision is an essential example of the flexible application of Islamic

law, which balances the letter of the law with broader principles of justice, particularly in safeguarding women's rights in divorce.

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