



Gender Bias in the Adjudication of Spousal Support in Wife-Initiated Divorce Cases at The Religious Court of Kajen Pekalongan

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Abstract

This study aims to analyze gender bias in the determination of alimony for wives in divorce cases filed by women at the Kajen Religious Court. Its primary focus is to evaluate the extent to which the judge's decision reflects the principles of gender justice after divorce. This study employs a normative juridical method using statutory and conceptual approaches, complemented by a gender perspective. It is a library research, with primary data consisting of court decisions, legal regulations, and secondary legal materials from academic literature. The research findings indicate that the majority of divorce rulings initiated by wives at the Kajen Religious Court do not accommodate the wife's right to alimony. However, the findings offer important implications for regulatory reform and highlight the need for gender sensitivity training for judges. This study offers a new contribution to the discourse on Islamic family law in Indonesia by providing empirical data and a critical analysis of the implementation of gender justice in divorce cases initiated by wives. It emphasizes the need for judges to exercise their *ex officio* authority to uphold justice for women.

Keywords: *Divorce, Gender Justice, Gender Bias*

1. Introduction

The dissolution of marriage under the Marriage Law is categorized into two types: *cerai talak* (divorce initiated by the husband) and *cerai gugat* (divorce initiated by the wife).¹ The terms *cerai talak* and *cerai gugat* are also used in Government Regulation Number 9 of 1975 to indicate who initiates the divorce proceedings.² When the husband initiates a divorce, it is referred to as *cerai talak*; conversely, when filed by the wife, it is called *cerai gugat*. This distinction leads to

¹ Siti Rohmatul Ilahiya and Ahmad Musadad, "Tinjauan Yuridis Terhadap Petitum Cerai Talak Dan Cerai Gugat Di Pengadilan Agama," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 4, no. 2 (2023): 320–333, <https://doi.org/10.36701/bustanul.v4i2.965>.

² Winda Fitri dkk, "Kajian Yuridis Implikasi Cerai Talak (Studi Kasus Putusan Pengadilan Agama Batam)," *Hakam: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam* 7, no. 2 (2023).

differences in the legal consequences and the obligations and entitlements imposed on each party following the divorce.³

A divorce resulting from *cerai talak* carries legal consequences for the ex-husband, requiring him to provide financial rights to his former wife, including alimony (*nafkah*), consolatory gift (*mut'ah*), maintenance during the waiting period (*nafkah iddah*), past maintenance (*nafkah madhiyah*), and child support, as stipulated in Article 149 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI).⁴ The wife's right to alimony as a result of *cerai talak* is also accommodated by Article 41(c) of the Marriage Law, which states that the former wife may receive living expenses from her ex-husband through a court decision. These two legal provisions serve as the legal basis for judges in *cerai talak* cases to issue rulings that grant such rights to the wife, either upon her request (as the Respondent) or *ex officio*, allowing the court to impose obligations on the Petitioner (the husband) regarding the consequences of the divorce.⁵

The above provisions indicate that the regulation of alimony claims in *cerai talak* cases has strong legal legitimacy. But what about *Cerai Gugat* cases, where the wife initiates divorces? So far, there is no specific legislation that clearly regulates the entitlement to alimony resulting from *cerai gugat*. The only existing regulation is found in the Compilation of Islamic Law (KHI), although not explicitly, namely Article 152, along with Supreme Court Circular (SEMA) No. 3 of 2018. These stipulate that in determining *nafkah madhiyah* (past maintenance), *nafkah iddah* (maintenance during the waiting period), *nafkah mut'ah* (consolatory gift), and child support, judges must consider a sense of justice and appropriateness by examining both the husband's financial capacity and the basic needs of the wife and/or child.⁶

The provision in the aforementioned Supreme Court Circular (SEMA) constitutes an *affirmative action*, a policy aimed at promoting gender justice by paying particular attention to a specific gender that is experiencing marginalization or inequality. This is done through structural means such as the enactment of laws, government regulations, presidential instructions, regional regulations, and similar legal instruments.⁷

Nevertheless, the government's affirmative action appears to be far from optimal. According to data from 2021, approximately 400,000 divorce cases were filed in Religious Courts or Sharia Courts across various regions of Indonesia. Of these, 70% were *cerai gugat* cases (divorces initiated by wives). However, only about 3% of those decisions included provisions for women's and children's post-divorce rights. In 2022, the number of *cerai gugat* cases nationwide reached 348,000, yet the fulfillment of wives' alimony rights was recorded in only 1.5% of the cases.⁸

The Kagen Religious Court is one of the institutions contributing to the above percentages. In 2021, out of a total of 1,924 cases, there were 393 *cerai talak* cases. In 11 of these cases, the judges either *ex officio* or upon request through a counterclaim (*rekonsensi*) ruled that the ex-husband must

³ Amir Syarifudin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Prenada Media, 2006), hlm.56.

⁴ Umar Haris Sanjaya & Aunur Rahim, *Hukum Perkawinan Islam* (Yogyakarta: GAMA MEDIA, 2017), hlm.78.

⁵ A. R. Ibrahim and Nasrullah, "Eksistensi Hak Ex Officio Hakim Dalam Perkara Cerai Talak," *Samarah* 1, no. 2 (2017): 459-478, <https://doi.org/10.22373/sjkh.v1i2.2378>.

⁶ M A Rahman and F Lubis, "Perlindungan Hukum Terhadap Hak Atas Nafkah'Iddah Istri Yang Mengajukan Cerai Gugat Perspektif SEMA Nomor 3 Tahun 2018," *Kabilah: Journal of Social Community* 8, no. 14 (2023): 935-943, <http://ejournal.iainata.ac.id/index.php/kabilah/article/view/935-943>.

⁷ Silvia Hanani, "Affirmative Action Di Era Reformasi Dan Implikasinya Terhadap Pembangunan Berwawasan Gender," *Kafa'ah: Journal of Gender Studies* 2, no. 1 (2012): 77, <https://doi.org/10.15548/jk.v2i1.45>.

⁸ "Materi Diskusi Pelaksanaan Putusan Perceraian" (bappenas, n.d.).

provide post-divorce alimony to his former wife. In contrast, among the 1,531 *cerai gugat* cases that year, not a single ruling imposed an alimony obligation on the ex-husband. In 2022, from a total of 1,864 cases, there were 367 *cerai talak* cases, of which 13 resulted in rulings that required the ex-husband to provide alimony. Meanwhile, out of 1,497 *cerai gugat* cases, only two included provisions for alimony obligations placed on the ex-husband.⁹

The data above clearly indicates the minimal number of court decisions that protect women and children following *cerai gugat*. This presents an interesting area of study, as there is regulatory room to grant post-divorce rights to women in *cerai gugat* cases. Yet, the reality shows that such rights are rarely accommodated in court rulings. This gap between legal potential and judicial practice forms the primary rationale and appeal of this research.

A review of previous studies is essential to understand the similarities and differences in the discourse, as well as to determine the position of this research within the academic field. A study by Teddy Lahati¹⁰ highlights the role of judges in *verstek* divorce rulings in protecting women's rights after divorce. The judge is expected to exercise *ex officio* authority to ensure that the former wife receives her entitlements, particularly in cases where the husband has neglected his responsibilities.

Judicial Sensitivity in Ensuring the Fulfillment of Post-Divorce Alimony for Wives, as discussed by Mansari,¹¹ explores the critical role of judges in guaranteeing the protection of *nafkah iddah* and *nafkah madhiyah* after divorce. The article emphasizes the importance of incorporating gender sensitivity in every court decision.

Meanwhile, Khatijah and Fuad Luthfi,¹² in their article, analyze judges' perspectives on the provision of *nafkah iddah* and *mut'ah* in *cerai gugat* cases, focusing on the gender perspective in several Religious Courts.

The Fulfillment of Ex-Wife's Rights after Cerai Gugat in the Context of Gender Justice and Legal Discovery¹³ explores the legal foundations used by judges in considering and determining the rights of wives after *cerai gugat*, especially in areas not explicitly regulated by legislation. The study also examines the application of gender justice principles and the role of legal discovery (*rechtsvinding*) in judicial reasoning.

Based on the studies above, it can be understood that the issue of gender bias in the determination of alimony in *cerai gugat* cases at the Religious Court of Kajen, Pekalongan, has not yet been explicitly explored, as the object and locus of this research differ. The majority of the three prior studies focus on the role of judges in considering legal aspects oriented toward the protection of women's and children's rights after divorce. In contrast, this research examines the legal basis used by judges to reconstruct the law regarding alimony claims in *cerai gugat* cases through a gender analysis perspective.

⁹ S.H Panitera Muda Hukum, Fadlillah, "Data Statistik Perkara Pengadilan Agama Kajen Tahun 2021 Dan 2022" (Pekalongan, 2023).

¹⁰ Teddy Lahati, "Menggugah Nurani Ex Officio Hakim Terhadap Putusan Cerai Verstek Yang Berkeadilan Perempuan," Pengadilan Agama Klaten, 2022, <https://drive.google.com/file/d/1JBdyj61n3V8RwJ08Kz48MmvwdGUPmIF8/view>.

¹¹ 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 (2019): 43, <https://doi.org/10.22373/equality.v5i1.5377>.

¹² Khotijah & Fuad Luthfi, "Persepsi Hakim Pengadilan Agama Terkait Pemberian Nafkah Iddah Dan Nafkah Mut'ah Pada Perkara Cerai Gugat Dalam Perspektif Gender," *Sultan Adam: Jurnal Hukum Dan Sosial* 2, no. 1 (2024), <https://yptb.org/index.php/sultanadam/article/view/692/581>.

¹³ Fariz Al Hamidi, *Hak-Hak Mantan Istri Pasca Cerai Gugat Perspektif Keadilan Gender Dan Penemuan Hukum*, Tesis, 2022.

This research contributes to the development of Islamic family law by highlighting the lack of protection for women's alimony rights in *cerai gugat* cases. The findings enrich academic discourse and encourage regulatory reform toward greater gender justice. Moreover, this study offers recommendations for judges and religious courts to consider gender justice aspects when ruling on *cerai gugat* cases. By understanding a broader legal foundation, judges can be more proactive in exercising their ex officio authority to determine post-divorce alimony rights for women.

Women's advocacy organizations and policymakers can also utilize the findings of this research to promote regulatory changes that are more favorable to women's rights after divorce. By presenting empirical data from the decisions of the Kajen Religious Court, this study reinforces the urgency of policy reform to ensure that women are better protected under the law.

2. Literature Review

a. Ratio Decidendi

Ratio decidendi is the singular form of *rationes decidendi*, a Latin term that literally means "the reason for a decision" or "the rationale for a decision." Black's Law Dictionary, as cited by Fauziyah Lubis, defines ratio decidendi as "the point in a case which determines the judgment." Similarly, Barron's Law Dictionary defines it as "the principle which the case establishes."¹⁴

Based on the thoughts of Michael Zander in his work *The Law-Making Process*, as quoted by Berry Ballen Saputra, ratio decidendi is defined as "a proposition of law which decides the case, in the light or in the context of the material facts." This means a legal proposition that forms the basis of a decision in a case, taking into account the perspective or context of the material facts.¹⁵ From this, it can be understood that the format of the *ratio decidendi* in a judge's decision is expressed in the form of a legal proposition. In this context, a proposition refers to the premise that contains the judge's legal reasoning. This proposition may be expressed either explicitly or implicitly.

The definition proposed by Michael Zander aligns with the view of Sir Rupert Cross in his book *Precedent in English Law*, which defines *ratio decidendi* as "any rule expressly or impliedly treated by the judge as a necessary step in reaching his conclusion" (any explicit or implicit rule applied by the judge as a necessary step in arriving at the decision).¹⁶ The word "rule," which commonly refers to a regulation, should not be interpreted solely as statutory law. Instead, it refers more specifically to a judge's proposition derived from their rational deliberation.

In the common law system, as stated by Shidarta,¹⁷ previous judicial decisions serve as a primary source of law that must be carefully considered when a judge handles a similar case. According to Shidarta, the term "similar" refers to the existence of shared characteristics in the facts of those cases. The facts in question must be material facts, those that are directly relevant to the legal decision and are used by the judge as the basis for constructing the reasoning behind their conclusion.

The term *ratio decidendi* was first introduced by John Austin in his legal lectures. It was used to distinguish from *ratio legis*, a term introduced by the German legal scholar Thibaut. Additionally, the term was also used by Scottish judges and the renowned legal writer Lord Kames. *Ratio decidendi*

¹⁴ Fauziyah Lubis, *Advokat Vs Pencucian Uang* (Sleman: Deepublish, 2020).

¹⁵ Berry Ballen Saputra dkk, "Ratio Decidendi Hakim Dalam Perkara Tindak Pidana Asal Penipuan Dengan Tindak Pidana Lanjutan Pencucian Uang (Perbarengan Tindak Pidana) (Analisis Putusan: 784 K/PID.SUS/2019)," *Jurnal Ikamukum* 1, no. 02 (2021): 726.

¹⁶ Berry Ballen Saputra dkk.

¹⁷ Shidarta, "Ratio Decidendi Dan Kaidah Yurisprudensi," *Binus University Faculty of Humanities* (Jakarta, March 2019).

has never been definitively defined by the courts. Still, it has been used as a means to bridge the gap between thinking analogically and thinking based on regulations.

Judicial consideration, or what is known as *ratio decidendi*, refers to the decision of the court based on the material facts of a case. Material facts are the focal point because both the judge and the parties involved will seek to find the most relevant legal basis to be applied to those facts in the case at hand.¹⁸ *Ratio decidendi*, which contains the judge's legal reasoning, can be found in a specific section of the judgment where the judge is asked to elaborate on the considerations or reasons behind the decision. In Indonesia's legal system, which follows the civil law tradition, the *ratio decidendi* can be found in the "consideration" or "menimbang" section of the judgment. This section refers to the opinions of experts, evidence, and jurisprudence, which must be organized in a systematic, logical, interconnected, and complementary manner. Concrete legal considerations must be communicated through the analysis, reasoning, perspectives, and conclusions of the judge.¹⁹

Ratio decidendi is a crucial element in ensuring justice in judicial decisions (*ex aequo et bono*) as well as guaranteeing legal certainty. If the legal considerations are not carefully, thoroughly, and precisely articulated, the judgment based on those considerations can be annulled by the High Court or the Supreme Court. This underscores the importance of clear, well-reasoned, and systematic judgments in maintaining the integrity and reliability of the judicial process.

A reasonable legal consideration must include *ratio decidendi*, which is the foundation or reasoning used by the judge in deciding on the case brought before them. Additionally, the legal consideration must also contain *obiter dicta*, which are the supporting grounds or statements used by the judge to back up the *ratio decidendi* in the ruling. In examining a case, judges require a process of proof, where the outcome of this proof serves as the basis for their considerations in issuing a decision. This ensures that the judgment is grounded in fact and law, reflecting a fair and reasoned approach to justice.²⁰

b. Gender Justice

The difference between the definitions of sex and gender often raises confusion, particularly regarding why differences in sex lead to gender injustice. The word "justice" etymologically comes from the word "adil" (just, fair, equitable, legal),²¹ which means alignment with what is right and adhering to the truth, or the characteristic, actions, and treatment that are fair. In the Indonesian Dictionary, the word "adil" means equal weight, impartial, and unbiased.²² Meanwhile, the word "keadilan" (justice) refers to the quality of being fair.

The difference between the definitions of sex and gender, as mentioned above, often confuses, particularly regarding why differences in sex lead to gender injustice (gender justice). The word "justice" etymologically comes from the word "adil" (just, fair, equitable, legal)²³, which means advocating for what is right and adhering to the truth, or the nature, actions, and treatment that is just. In the Indonesian Dictionary, the word "adil" means equal weight, impartial, and unbiased.

¹⁸ Peter Mahmud Marzuki, *Penemuan Hukum* (Jakarta: Sinar Grafika, 2010).

¹⁹ Bambang Sutyoso, *Upaya Mewujudkan Hukum Yang Pasti Dan Berkeadilan* (Yogyakarta: UII Press, 2012).

²⁰ Evi Retno Wulan, "The Principle Of Justice Ratio Decidendi Of The Judge In Decision Number 813 K / PID2-23 Asas Keadilan Ratio Decidendi Hakim Dalam Putusan Nomor 813" 10, no. 813 (2024): 185–90.

²¹ John M. Echols dan Hasan Syadily, *Kamus Inggris Indonesia*, XII (Yogyakarta: Gramedia, 1983).

²² Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2005).

²³ John M. Echols dan Hasan Syadily, *Kamus Inggris Indonesia*.

Meanwhile, the word “keadilan” means the quality of being just.²⁴ So, gender justice means a process of fair treatment toward both women and men.

The terminology of gender justice can be found in the attachment of Presidential Instruction No. 9 of 2000. Gender justice is defined as a process that is fair to both men and women. This concept of gender aims to address gender injustices, which include marginalization, subordination, stereotyping, violence, and work burdens.²⁵

The indicators of achieving gender justice can be seen through several factors: first, the extent of women’s access and participation or involvement in social roles in life, both in the family and community, as well as in development. Second, women have a level of control and mastery over various human and natural resources, as well as a role in decision-making and other areas. Third, the extent to which women benefit from the outcomes of multiple activities, both as actors and as beneficiaries and enjoyers of the results.²⁶

Gender justice, constitutionally, has indeed been accommodated in the 1945 Constitution (UUD 45) Article 27, where this article establishes the principle of equality between men and women. This provision serves as a basis for providing access, participation, and control for both women and men in the economic, social, and political spheres. In this regard, Indonesia has also ratified several international conventions on the elimination of discrimination and the advancement of women’s status. Likewise, various laws and policies in Indonesia have guaranteed the realization of gender equality.

1. Presidential Instruction No. 9 of 2000 on Gender Mainstreaming in National Development
2. Presidential Decree No. 45 of 1998 on Guidelines for the Implementation of Women’s Advancement in National Development
3. UU No. 23 of 2004 on the Elimination of Domestic Violence
4. Presidential Instruction No. 17 of 1996 on Technical Guidelines for the Implementation of Women’s Advancement Program Management at the Sub-National Level.²⁷

Several legal regulations in Indonesia have also accommodated gender justice, as seen in Supreme Court Circular No. 3 of 2018 on the Implementation of the Formulation of the Results of the 2018 Plenary Session of the Religious Chamber of the Supreme Court as Guidelines for Court Task Implementation. In Formulation No. 3, under the formulation of family law in the Religious Chamber, the second point reads: “Judges in determining maintenance for the wife (nafkah madhiyah), post-divorce maintenance (nafkah iddah), compensation (mut’ah), and child maintenance (nafkah anak) must consider a sense of justice and propriety by exploring the facts regarding the husband’s financial ability and the basic living needs of the wife and/or children.” Then, the third point states that the wife in a divorce case may be granted mut’ah and nafkah’ iddah, as long as there is no proven nusyuz (disobedience).

All of the above policy regulations are affirmative actions, which are measures aimed at promoting gender equality towards gender justice by paying more attention to certain genders that

²⁴ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*.

²⁵ Mansur Fakhri, *Gender Dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 1997).

²⁶ Rico Septian Noor et al., “Gender Equality in Indigenous Peoples in Indonesia (Challenges and Efforts Towards the 2030 Sustainable Development Goals),” *Journal of Law and Sustainable Development* 12, no. 1 (2024): e2173, <https://doi.org/10.55908/sdgs.v12i1.2173>.

²⁷ Djoko Siswanto Muhartono, “The Importance of Gender Mainstreaming Regulations in Regional Development in Kediri Regency,” *Jurnal Ilmu Sosial Dan Ilmu Politik* 3, no. 2 (2020): 117–134.

are experiencing setbacks and injustice through structural channels, such as the establishment of laws, government regulations, presidential instructions, regional regulations, and similar provisions. In this regard, the state plays a role in achieving gender justice through affirmative action.²⁸

Affirmative action can also be carried out through cultural channels, for example, by changing thought patterns that begin with academic studies that focus on the advocacy of certain genders experiencing setbacks and discrimination, using gender analysis. The results of these studies are then implemented in life to change perceptions and behaviors in society towards gender justice.²⁹

3. Method

This study employs a library research method, as its primary focus is on legal materials, particularly the decisions of the Kajen Religious Court concerning the resolution of alimony claims in *cerai gugat* (divorce initiated by the wife) cases. The research adopts a normative juridical method using a statute approach and a conceptual approach.³⁰ The normative juridical approach is applied because the study centers on legal regulations governing alimony claims in divorce cases.

In addition, this study adopts a gender approach to analyze the extent to which the application of the law reflects justice for women. In divorce cases initiated by wives (*cerai gugat*), the examination of whether the legal process embodies the principles of gender justice, particularly in determining the rights to financial support for women who file for divorce. This gender approach aims to explore whether judges' decisions have taken into account the needs and rights of women within the prevailing social and cultural context, as well as how gender influences the legal process in divorce proceedings.

The legal materials used in this research consist of primary legal sources, including court decisions on *cerai gugat* (divorce initiated by the wife), Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), Minister of Religious Affairs Regulation No. 3 of 2017, and the Supreme Court Circular Letter No. 3 of 2018 concerning the Plenary Results of the Religious Chamber. Meanwhile, secondary legal sources include reference books, literature, and scholarly research relevant to the topic. In analyzing and processing the data, the methods of editing, coding, reconstructing, and systematizing are employed to gain a deeper understanding of legal implementation from a gender perspective in divorce verdicts filed by women.

4. Result and Discussion

The Determination of Alimony in Divorce Lawsuits at the Kajen Religious Court in the Perspective of Gender Justice

Information regarding divorce cases at the Religious Court of Kajen indicates that the divorce rate in this 'city of santri' is quite high, although there was a decrease from 2021 to 2022. In 2021, there were 1,926 divorce cases, consisting of 1,531 cases of divorce filed by wives (*cerai gugat*) and 395 cases of divorce filed by husbands (*cerai talak*). In 2022, there was a decline, with a total of 1,864 divorce cases filed, comprising 1,497 cases of divorce filed by wives and 367 cases of divorce filed by husbands.³¹

²⁸ Peggy Antrobus, *The Global Woman Movement* (Banglades: The University Press, 2004).

²⁹ Dina Martiany, "Implementasi Pengarusutamaan Gender (PUG) Sebagai Strategi Pencapaian Kesetaraan Gender (Studi Di Provinsi Sumatera Utara Dan Jawa Tengah)," *Aspirasi* 2, no. 2 (2011): 121-136, <http://www.ipf.org/en/Resources/Articles/>.

³⁰ Abdulkadir Muhammad, "Hukum Dan Penelitian Hukum" 8, no. 1 (2004): 134.

³¹ "Laporan Tahun Pengadilan Agama Kajen Tahun 2021 Dan 2022," n.d.

The percentage of divorce cases filed by wives (*cerai gugat*) is higher than those filed by husbands (*cerai talak*) in each year of submission. This can be seen in the table below.

Table 1: Comparison Data of *Cerai Talak* and *Cerai Gugat* Cases
at the Religious Court of Kajen in 2021–2022

Year	(Divorce filed by the husband)	(Divorce filed by the wife)	Total
2021	393	1531	1924
2022	367	1497	1864

In terms of the burdens resulting from divorce, there is a significant difference between *cerai talak* and *cerai gugat* cases.

Table 2: Data on Financial Responsibilities Resulting from Divorce

Year	(Divorce filed by the husband)	(Divorce filed by the wife)	Total
2021	11	0	11
2022	13	2	15

In 2021, out of a total of 1,924 cases, there were 393 *cerai talak* cases. In these cases, the judge, either ex officio or upon request by the parties through reconvention, imposed alimony on the ex-husband in 11 cases as part of the divorce ruling. Meanwhile, in the 1,531 *cerai gugat* cases, there were no cases (0 cases) where alimony was imposed on the ex-husband.

In contrast, in 2022, out of a total of 1,864 cases, there were 367 *cerai talak* cases. In these cases, the judge, either ex officio or upon request by the parties through reconvention, imposed alimony on the ex-husband in 13 cases as part of the divorce ruling.

In general, the rulings on alimony for wives in *cerai gugat* cases are very minimal. National data from 2022 shows that there were 348,001 *cerai gugat* rulings. Out of this total, only 1.5% of the rulings addressed the alimony rights of the wife, with the breakdown as follows:³²

1. 512 cases (0.1%) provided/provided alimony for the ex-wife.
2. 2.108 cases (0.6%) provided/provided alimony for *iddah* (waiting period).
3. 63 cases (less than 0.1%) provided/provided *mut'ah* alimony (consolation payment).
4. 2.107 cases (0.6%) provided/provided alimony for *madhiyah* (maintenance during marriage).
5. 410 cases (0.1%) provided/provided housing or clothing (*maskan* or *kiswah*).

One of the contributors to the data above in 2022 is the Religious Court of Kajen in its ruling number 1272/Pdt.G/2022/PA.Kjn. This ruling is the only one that granted alimony rights out of the total 1,497 *cerai gugat* cases in 2022. However, the alimony claim requested by the plaintiff was only partially granted, with the rest being rejected.

The panel of judges in case number 1272/Pdt.G/2022/PA.Kjn granted only *iddah* alimony and rejected *madhiyah* alimony. The reasoning (*ratio decidendi*) of the judges in granting *iddah* alimony and rejecting *madhiyah* alimony is based on SEMA No. 3 of 2018, “Legal Formulation of the Religious

³² Dahris Siregar et al., “Studi Hukum Tentang Tingkat Perceraian Dan Efeknya Terhadap Anak,” *Jurnal Derma Pengabdian Dosen Perguruan Tinggi (Jurnal DEPUTI)* 3, no. 2 (2023): 178–85, <https://doi.org/10.54123/deputi.v3i2.276>.

Chamber,” letter A, point 3, which states that the husband’s obligation to provide *mut’ah* and *iddah* alimony applies to a wife in a *cerai gugat* case, as long as she is not proven to be *nusyuz* (disobedient). Based on the wording of this SEMA, the panel of judges rejected the request for *madhiyah* alimony, reasoning that *madhiyah* alimony is not mentioned in SEMA No. 18 of 2018. Thus the judge dismissed the plaintiff’s request.

This ruling by the judges does not fully reflect gender justice, especially when the SEMA regulation is used to reject the granting of *madhiyah* alimony. Indicators of achieving gender justice can be seen in several aspects: First, the extent to which women have access to, participate in, and are involved in social roles, both within the family, the community, and in the development process. Second, the extent to which women have control over and mastery of various resources, both human resources and natural resources, as well as their role in decision-making and other aspects. Third, the extent to which women benefit from the implementation of various activities, whether as actors, beneficiaries, or enjoyers of the results.³³ Based on the three indicators above, women will experience injustice in obtaining benefits from this SEMA regulation because the wording in the SEMA only includes the phrase “may,” which states that a wife in a *cerai gugat* case has the right to receive *mut’ah* and *iddah* alimony as long as she is not proven to have committed *nusyuz* (disobedience). This conditional language limits women’s access to these rights, reflecting an unequal application of gender justice.

Although only *iddah* alimony was accommodated by the judges in the ruling above, this represents a progressive legal step that holds values of gender justice in *cerai gugat* cases. These values serve as an indicator of gender equality achievement, where it is stated that the extent to which women benefit from the implementation of various activities, whether as actors, beneficiaries, or enjoyers of the results, depends on their access, participation, and roles in the process. This reflects a step toward ensuring that women gain equitable benefits from legal decisions in divorce cases.

The majority of judges’ rulings in *cerai gugat* cases do not include the determination of alimony rights because, in making a decision, judges are not allowed to exceed what is presented in the plaintiff’s claim. Therefore, if the plaintiff does not include a claim for alimony, the judge will not rule on it. This is in accordance with the principle of civil procedural law that judges cannot decide beyond or differ from what has been requested. This principle is known as *iudex non ultra petita* or *ultra petita non cognoscitur*.³⁴

This principle was applied by the judges of the Religious Court of Kajen in the ruling of case number 1754/Pdt.G/2022/PA.Kjn, where the woman’s alimony rights in the *cerai gugat* case were not accommodated because they were not included in the claim. Indeed, the petition filed by the plaintiff did not include any requests for *iddah* alimony, *mut’ah*, *madhiyah*, or *maskan* alimony. The plaintiff only requested the granting of child custody rights and financial support for the children, including education and healthcare expenses.³⁵

The omission of the wife’s alimony rights in the claim does not mean that the wife does not need it, because, generally, a wife only seeks a divorce without demanding alimony. This is seen as understandable, as the wife, psychologically, wants the matter to be resolved quickly. Meanwhile, if there are additional claims, it would delay the divorce process because it would require involving

³³ Mansur Fakhri, *Gender Dan Transformasi Sosial*.

³⁴ Benny Rijanto, *Sejarah, Dan Asas-Asas Hukum Acara Perdata* (Jakarta: Uneviritas Terbuka, 2019).

³⁵ “Salinan Putusan Pengadilan Agama Kajen 1754/Pdt.G/2022/PA.Kjn,” n.d.

another party (the defendant). Moreover, in the case of alimony claims, there must be mutual consideration between the plaintiff and the defendant.

The judge's ruling that does not grant the determination of alimony rights may initially seem not to harm the plaintiff (the wife), as she desires the divorce process to be resolved quickly. However, in general, this could lead to negative consequences for the wife, as she does not receive the rights typically granted in divorce cases, such as alimony, whether *madhiyah*, *iddah*, or *mut'ah*, which in principle, should be accommodated by the state through SEMA No. 3 of 2018.

The failure to accommodate alimony for the wife in this case results in gender injustice. In fact, judges have the authority to issue a ruling based on SEMA No. 3 of 2018, which states that in *cerai gugat* cases, a wife may be granted *mut'ah* and *iddah* alimony as long as she is not proven to have committed *nusyuz* (disobedience). With this SEMA, judges should be able to exercise their *ex officio* power to decide beyond or modify what is requested in the claim. Particularly when considering the economic status of the defendant, who is a doctor and financially well-off, this should be a factor in the decision. As a result of this ruling, there is no protection for women post-divorce, leaving them with no good options, either to remain in a marriage despite suffering or to divorce without receiving their rightful alimony, such as *iddah* alimony. This leads to marginalization, as women are pushed to the periphery, which is a clear indicator of gender injustice.

Marginalization of women in terms of granting *iddah* alimony is closely related to the existence and well-being of women after divorce. Islamic law requires a wife who has been divorced to observe *iddah*, during which time her living needs should still be the responsibility of her former husband. This responsibility is a form of protection for women post-divorce, ensuring they have financial security during this transitional period. The failure to provide this support through *iddah* alimony undermines this protective measure. It contributes to the marginalization of women after divorce, making it harder for them to rebuild their lives independently.³⁶

5. Conclusion

The conclusion of this study indicates that the legal reasoning of judges at the Religious Court of Kajen, Pekalongan Regency, in deciding divorce cases filed by wives (*cerai gugat*) remains normative and is limited to the claims submitted by the plaintiff, without considering other aspects beyond the *petitum*. As a result, in nearly 99% of divorce rulings, judges do not grant the wife her financial rights. This reflects that the decisions made have not fully embodied gender justice, particularly in regard to the fulfillment of a wife's right to post-divorce financial support. Therefore, further steps are necessary to strengthen the perspective of gender justice in the practice of religious courts, so that women's rights in divorce cases can be more fairly acknowledged and fulfilled."

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³⁶ Husnul Khitam, "Nafkah Dan Iddah: Perspektif Hukum Islam," *Az Zarka'* 12, no. 2 (2020): 201.

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