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Problematics of The Legal Position of Gender In The Division of Nafkah After Divorce (Case Study in Cirebon City)

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Abstract:

The issue of gender inequality in the legal framework governing post-divorce maintenance in Cirebon City continues to face significant challenges in its implementation. Although regulations such as Marriage Law No. 1 of 1974, Law No. 16 of 2019, and the Compilation of Islamic Law (KHI) establish the obligation of financial support for former wives and children, practical application reveals considerable disparities. Women who file for divorce (*cerai gugat*) encounter greater difficulties in securing financial maintenance compared to those in divorce initiated by the husband (*cerai talak*), where maintenance is automatically granted through an *ex officio* court ruling. Beyond regulatory issues, social, economic, and patriarchal cultural factors further exacerbate the difficulties faced by women after divorce. Strong societal norms discourage women from demanding financial support due to family pressure and social stigma. Even when courts grant maintenance, low compliance rates among ex-husbands and weak enforcement mechanisms pose significant obstacles to ensuring economic rights for divorced women. The need for inclusive legal reforms and increased legal awareness is essential to safeguard women's rights. Updates to regulations and improvements in enforcement mechanisms are required to ensure that divorced women receive fair financial support without structural barriers. With more effective policies and heightened legal awareness, gender disparities in post-divorce financial distribution can be minimized, providing better legal protection for women facing divorce.

Keywords: Post-divorce maintenance; Gender justice; Islamic family law; Gender bias; Legal protection

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A. INTRODUCTION

The distribution of maintenance after divorce is a primary concern in Islamic family law and legislation in Indonesia. Gender inequality in maintenance decisions has become a concern in various legal studies, especially in looking at the difference in treatment between women in a contested divorce and a non-contested divorce. In a divorce, the husband is obliged to provide iddah and mut'ah maintenance as a form of compensation for the former wife, because the divorce occurs at the initiative of the man (Nurhasnah, 2024; Ritonga, 2022). In contrast, in a contested divorce, the right to maintenance is not automatically granted unless the wife makes an explicit demand in the lawsuit (Hikmatiar, 2018). This suggests that the legal system requires women who wish to separate from their husbands to advocate more strongly for economic rights after divorce (Farrah, 2024; Rizkal et al., 2024).

This inequality is further reinforced by the deep-rooted patriarchal culture in society, where divorce is often perceived as something that disadvantages women. In many cases, divorced women face social stigma and family pressure not to claim maintenance rights (Kurniawati, 2022; Muhammad et al., 2019). This leads many women to choose not to pursue maintenance claims, even though they have the legal right to do so. The economic condition of ex-husbands is also often the primary reason why maintenance awards are difficult to enforce, as there is no effective mechanism to ensure compliance by ex-husbands in providing maintenance to their ex-wives and children.

One of the main issues of concern is the gender bias in the legal system, particularly in the difference in maintenance awards between divorce and contested divorce. In the case of divorce, the husband is automatically obliged to provide iddah and mut'ah maintenance to the ex-wife, whereas in a contested divorce, the woman must actively file a claim in order to obtain her maintenance rights, which often face legal and social obstacles. This difference in treatment indicates an imbalance in legal protection for women, where those who choose to sue for divorce have a greater burden in fighting for economic rights after divorce.

There are social, economic, and patriarchal cultural factors that influence the distribution of post-divorce maintenance (Reftantia et al., 2024). Social norms in the Cirebon City community still tend to place women in a weaker position in divorce, mainly because of the stigma against divorced women. Pressure from the extended family and social environment often inhibits women from claiming their rights, so many eventually choose not to file a claim for maintenance even though they are legally entitled. In addition, the economic condition of the ex-husband is also a significant factor in the execution of maintenance, where financial limitations are often used as an excuse for not fulfilling the obligations set by the court.

Furthermore, an evaluation of the effectiveness of the execution of maintenance decisions, especially in its implementation at the Cirebon City Religious Court. Although the law has regulated the distribution of alimony, its implementation in the field still faces various challenges, such as the lack of a monitoring mechanism for ex-husbands' compliance, a weak decision execution system, and a lack of sanctions for those who fail to fulfill their obligations. As a result, many women continue to experience economic

hardship after divorce, even though they have filed for maintenance through legal channels.

As part of the solution, there is a need for legal policy recommendations to improve protection for women experiencing divorce. More inclusive legal reforms are necessary to ensure equal access to maintenance rights, including the simplification of maintenance filing procedures, strengthening of judgment execution mechanisms, and increasing legal awareness in the community so that women are aware of and can effectively advocate for their rights. With policies that are more responsive to gender justice, it is hoped that inequality in the post-divorce maintenance distribution system can be minimized, so that women who experience divorce still receive optimal legal protection.

Gender justice in Islamic law emphasizes equal rights and obligations between husband and wife, including after divorce, where women are entitled to economic protection from their ex-husband. This principle is reflected in Marriage Law No. 1/1974, which obliges husbands to provide maintenance after divorce. Article 41 emphasizes that the father remains responsible for the maintenance of children, while a court decision determines the maintenance for the former wife. However, in practice, the execution of maintenance decisions often faces obstacles, ranging from social inequality to the low compliance of ex-husbands, thus limiting women's access to their rights. To overcome this, stronger regulations and effective execution mechanisms are needed, so that the principle of equality in Islamic law does not only become a theory, but is implemented and provides real protection for women after divorce.

In addition, the Compilation of Islamic Law (KHI) Article 156 regulates that women in divorce are entitled to receive iddah and mut'ah maintenance from their former husbands. However, in the case of a contested divorce, the right to maintenance for women is not automatically granted, so there are significant differences in the treatment of women based on the type of divorce. This bias creates a legal imbalance that aggravates the position of women in a contested divorce, as they have to fight for their rights through an additional lawsuit.

Previous views on the fulfillment of women's rights after divorce reveal that many women still experience difficulties in obtaining alimony that the court has determined. Millah and Huda (2024) highlighted that regulations in Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) have not been fully implemented effectively in the execution of post-divorce maintenance (Millah & Huda, 2024). Although the rule of law stipulates the husband's obligation to provide maintenance to his ex-wife and children, its implementation still faces various obstacles, especially in aspects of supervision and the mechanism for executing court decisions, which have not been optimized.

According to Hidayatullah & Setiyowati (2023), discussing legal protection for women in the division of joint property after divorce (Hidayatullah & Setiyowati, 2021). One of the important things revealed is that many women do not understand their rights related to joint property, so they are at risk of losing assets that are part of fulfilling their lives after divorce. This limited understanding, coupled with various social and

economic factors, often puts women at a disadvantage compared to their ex-husbands in the division of property. In addition, the role of the court in determining the division of joint property has also come under scrutiny, especially in relation to how social and economic factors can influence the decision, which ultimately results in women receiving a smaller share than their male counterparts.

Divorce brings significant changes in women's lives, especially in economic, social, and legal terms. Many face financial hardship due to non-fulfillment of court-ordered maintenance, so they must find ways to survive, such as working in the informal sector or relying on family support. These challenges are compounded by social pressures that discourage women from asserting their rights, due to the stigma attached to being a divorced woman.

In addition, a lack of understanding of their legal rights further exacerbates their condition in obtaining a livelihood. The lack of procedural clarity and administrative hurdles makes the struggle for maintenance even more complex. Even when there is a supportive legal basis, the low compliance of ex-husbands and weak execution mechanisms often mean that the right cannot be optimally realized. This situation points to the need for a more assertive and inclusive system to ensure women receive proper protection after divorce. From a judge's perspective, the determination of maintenance is influenced by various factors, including the ex-husband's financial capacity, the ex-wife's needs, and the children's interests (Herman et al., 2023).

One of the main challenges faced by the courts is the low compliance of ex-husbands in executing court decisions, as many maintenance decisions are not implemented due to the lack of a robust enforcement mechanism. In addition, judges also mentioned that in cases of contested divorce, women must make explicit demands for maintenance. In some cases, these demands are not always granted if women cannot provide strong evidence of their entitlement (Pratama et al., 2023).

Divorced women's patterns of interaction with their families and communities, as well as how their social environment influences their decision to claim maintenance. Women who have stronger family support tend to be more courageous in fighting for their maintenance rights through legal channels. In contrast, those without family support often choose not to claim maintenance for fear of social stigma and economic pressure.

Divorce is not just the separation of two individuals, but also brings significant changes in women's lives, especially in social and economic aspects. After separating from their husbands, many women face new challenges ranging from financial stability, social stigma, to difficulties in claiming their right to maintenance. Existing legal policies have not been able to fully ensure that women's rights after divorce are protected, especially in terms of executing court decisions related to alimony. Administrative barriers, low legal awareness, and a weak execution system are factors that exacerbate the situation, so many women have to find alternative ways to survive, such as working in the informal sector or relying on family assistance.

Therefore, real solutions are needed that not only improve the legal system but also ensure the effective execution of court decisions. Measures that can be taken include strengthening legal mechanisms, increasing public awareness of women's rights after divorce, and implementing a stricter monitoring system to ensure that alimony is provided as per the court's decision. With more inclusive policy changes and stricter legal mechanisms, it is hoped that women who experience divorce will be able to lead more stable and independent lives, without having to continue to face injustices in the legal system that is supposed to protect them.

B. METHOD

This research employs a qualitative approach, utilizing a case study method, to explore the issue of post-divorce maintenance distribution in Cirebon City. The research was conducted at the Cirebon City Religious Court, which was selected due to its high volume of divorces and its significant role in determining legal decisions regarding maintenance. Primary data was collected through semi-structured interviews with judges, clerks, divorced women and men, lawyers, academics, religious leaders, and community leaders. Additionally, direct observation of the proceedings enhanced the understanding of the legal practices in place (Kusumastuti & Khoiron, 2019). Documentation studies were also conducted on regulations, including Law No. 1 of 1974, Government Regulation No. 9 of 1975, and court decisions, between 2022 and 2025. All of this data was used to illustrate the gap between regulations and legal implementation, particularly due to weak execution of decisions and the influence of social pressure.

The research area covered five sub-districts and 22 villages within the jurisdiction of the Cirebon City Religious Court. The population consisted of two main groups: court officials and people experiencing divorce. Data collection techniques involved in-depth interviews, observation, and documentation. For data analysis, this study employed a descriptive-analytical approach, utilizing source triangulation techniques to enhance validity, which involved comparing the results of interviews, legal documents, and academic literature. The analysis was conducted to identify patterns of differences in the treatment of maintenance in cases of divorce and contested divorce, and to reveal the obstacles women face in demanding their rights. The results of the analysis emphasize the need for legal and social system reforms to create gender justice in the implementation of Islamic family law, especially in the distribution of post-divorce maintenance.

C. RESULTS AND DISCUSSION

1. Definition of Divorce and Post-Divorce Maintenance

Divorce is the legal termination of the marriage relationship, initiated either by the husband or the wife. In Islamic law and Indonesian legislation, divorce is regulated in Article 39 of Law No. 1 of 1974 on Marriage, which stipulates that divorce can only be carried out in court with valid and sufficient reasons. In addition, Article 116 of the

Compilation of Islamic Law (KHI) mentions various reasons for divorce that are legally acceptable, such as continuous disputes, domestic violence, inability to carry out obligations as husband and wife, and violation of talaq.

Divorce has a significant legal impact on the rights and obligations of each party, particularly in terms of post-divorce maintenance, child custody, and the division of joint property. The court plays a crucial role in ensuring that divorce proceedings are conducted by procedure and that the rights of the separated parties are protected.

Post-divorce maintenance refers to the obligation of a former spouse to provide financial support to their former spouse and children after the marriage has been legally terminated. In Islamic law and Indonesian regulations, post-divorce maintenance encompasses iddah maintenance, mut'ah maintenance, as well as child maintenance, if the marriage resulted in offspring.

Nafkah Iddah is the maintenance given to ex-wives during the iddah period (Sandara & Ikhwan, 2020), which is the waiting period after divorce before a woman can remarry. This maintenance aims to ensure the welfare of the ex-wife during the post-divorce transition period. Nafkah Mut'ah is a gift, a form of respect and compensation to a divorced wife, especially in cases of divorce, which is considered an initiative from the husband. Nafkah mut'ah aims to alleviate the economic impact on women who experience divorce. Child maintenance is an obligation for the ex-husband if there are children in the marriage. This includes fulfilling the basic needs of the children, such as education, health, and welfare, until they reach a certain age considered independent enough.

Based on data obtained from the Cirebon City Religious Court on the number of divorce cases from 2022 to April 2025, there were fluctuations in the number of cases received and resolved. In particular, the number of divorces that occurred showed an upward trend until 2023, before experiencing a slight decline in 2024.

An interesting phenomenon revealed by this data is the dominance of cerai gugat, divorces filed by women, compared to cerai talak, which men typically file. In the case of 2022, for example, out of a total of 946 divorce cases finalized, 732 were gugat divorces, while only 214 cases were talak divorces. The mediation success rate increased significantly from 13% in 2021 to 41% in 2022, demonstrating the effectiveness of the mediation approach in reducing divorce rates. This mediation plays a role in helping couples to reach an agreement regarding post-divorce rights and obligations, including maintenance.

In the legal aspect of post-divorce maintenance distribution, the data show that decisions involving the payment of iddah, mut'ah, and child maintenance have increased. This reflects better legal awareness among the community as well as stricter policies in regulating the rights of women and children after divorce.

One of the primary issues is the disparity in court decisions regarding post-divorce maintenance obligations between divorce and contested divorce cases (Heniyatun & Anisah, 2020). In divorce, the husband has a greater responsibility for providing iddah maintenance, mut'ah maintenance, and child maintenance (if any), as

the divorce typically occurs at his initiative. In contrast, in a contested divorce, women who file for divorce often face obstacles in obtaining nafkah mut'ah, because contested divorce is considered a decision by the wife, so court decisions do not always impose these obligations on the husband.

The role of judges in handling divorce cases in the Cirebon City Religious Court is crucial, particularly in ensuring justice for women. In divorce cases, the judge ex officio obliges the husband to provide iddah and mut'ah maintenance to the former wife (Thariq, 2019; Amzad & Safudin, 2023). However, gender aspects are also taken into consideration in the decision, especially through coordination with the Office of Women's Empowerment and Child Protection (P2AKP) and help center services that facilitate women's access to their rights.

Legal developments related to post-divorce maintenance in Cirebon City show increased protection for women and children. The Religious Court has enforced the execution of child maintenance for cases that have obtained a permanent legal verdict, including maintenance that the father did not previously provide to his child. Additionally, judges have the authority to ensure the fulfillment of women's rights, as stipulated in Article 41 of the Marriage Law and Article 156 of the Compilation of Islamic Law.

In the post-divorce maintenance system, there are significant differences between divorce and contested divorce. In divorce, the husband is obliged to provide iddah and mut'ah maintenance as a form of respect for the divorced wife. However, in a contested divorce, this maintenance is not automatically provided unless the wife files a petition in the divorce lawsuit or if the husband is proven to have been negligent in providing maintenance during the marriage. Although child maintenance remains an obligation of the husband in both types of divorce, the amount is determined based on the child's needs and the former husband's economic condition.

Court decisions related to post-divorce maintenance exhibit a distinct pattern, particularly in the enforcement of child support and women's rights. Based on a circular letter from the Directorate General of Religious Courts, divorced women are entitled to iddah maintenance, mut'ah, and joint property. In contrast, children are entitled to maintenance and living expenses from their parents. In practice, judges have the authority to ensure that maintenance is provided by applicable regulations.

Mediation plays a crucial role in post-divorce maintenance settlements in Cirebon City, enabling former spouses to reach an agreement without the need for a court ruling. In many cases, this process allows parents to discuss and determine children's maintenance rights more flexibly, taking into account their well-being both financially and emotionally. Through a restorative justice approach, the mediator aims to foster awareness of the shared responsibility of supporting children's development following divorce. Although it does not always result in an ideal agreement for both parties, mediation remains one of the primary mechanisms used by the Cirebon City Religious Court to resolve maintenance disputes, as well as to create more harmonious and sustainable solutions for separated families.

Although regulations have established rules on post-divorce maintenance, implementation in the community still faces challenges, especially for women who file for a contested divorce. Therefore, increased legal awareness and policy reforms are needed so that the principles of gender justice in family law are increasingly implemented and provide optimal protection for women and children affected by divorce.

2. Legal Basis and Principles of Gender

In deciding cases of post-divorce maintenance sharing, the Cirebon City Religious Court refers to various legal bases, including Article 39 paragraph (2) of the Marriage Law and Article 116 of the Compilation of Islamic Law (KHI), which explain the conditions of a valid divorce. In practice, divorce can occur for reasons such as prolonged disagreement, infidelity, or the inability of one party to fulfill their marital obligations. Judges consider these factors in determining post-divorce maintenance, while still paying attention to aspects of gender justice so that women and children receive optimal legal protection.

In Islamic law and positive law in Indonesia, the position of women and men in terms of post-divorce maintenance has differences and similarities. Fathers have a full obligation in child maintenance, which includes providing for the child's education, health, and daily needs. In addition, iddah and mut'ah maintenance must be provided by the husband in a divorce, as a form of compensation for the former wife during the iddah period (Ramdani & Syafithri, 2021). In terms of hadhanah (childcare), the mother is more entitled to care for the children until a certain age, while the father remains responsible for their maintenance.

Judges interpret the articles related to maintenance in the Marriage Law by considering justice, the husband's financial capacity, and the protection of women's and children's rights. In some cases, judges refer to the Supreme Court Circular Letter to determine maintenance that reflects the welfare of both parties. Additionally, the execution of past maintenance is a consideration, especially if the husband has been proven to have been negligent in providing maintenance during the marriage. Judges may also include a verdict requiring the ex-husband to pay maintenance before collecting the divorce certificate, to ensure that the rights of the ex-wife and children are still fulfilled.

The standard for assessing post-divorce maintenance encompasses several key aspects, including the former husband's financial capability, the former wife's economic needs, the duration of the marriage, and the right to child support. In some cases, a mediation approach is employed to achieve a more equitable agreement for both parties. Judges endeavor to ensure that their decisions not only reflect the applicable law, but also consider the social and economic impact on the separating parties.

The concept of gender justice in court decisions is realized through the application of *ex officio*, where the judge determines maintenance for the wife in a talak divorce without the woman's request (Amil & Nur, 2022). However, in a contested

divorce, women must include a claim for maintenance in the lawsuit in order for it to be processed by the court. Although the legal system attempts to maintain a balance, certain patterns of decisions suggest that women, in some instances, must fight for their maintenance rights through additional claims.

Although no explicit evidence of gender bias was found in court decisions, several factors suggest that women's position in divorce is often more difficult, especially in accessing maintenance rights without a formal request in the lawsuit. In terms of child maintenance, judges consider the husband's income, applying a minimum standard of one-third of his salary. On the other hand, if the husband has a high income, the maintenance set can be greater. Based on a circular letter from the Directorate General of Religious Courts, women are entitled to past maintenance, joint property, and custody of children if they are under 12 years old.

While regulations have established post-divorce maintenance rules, their implementation in the community still faces challenges. Judges try to balance the rights of women and children by considering the husband's ability. However, the reality is that women in contested divorces often have to file further claims to obtain their rights. Therefore, there is a need for increased legal awareness and policy reforms so that women receive more optimal legal protection in Indonesia's divorce system.

3. Implementation and Challenges

The implementation of the principle of gender justice in the distribution of post-divorce support in Cirebon City still faces various challenges, particularly in ensuring equal access to economic rights for divorced women (Habib et al., 2025). Data shows that most divorce cases are lawsuit divorces, where women are more often the ones who file for divorce than men. However, in practice, women who file for a lawsuit divorce do not always get the right to iddah and mut'ah support, because the law often places them in a weaker position than women who experience divorce.

In addition, social and cultural factors also strengthen gender inequality in the distribution of support after divorce. Strong patriarchal norms cause women to face pressure from their extended families and society, which often hinders them from demanding fair support rights. In some cases, divorced women are forced to accept unfavorable agreements due to the social stigma against women who separate from their husbands.

In terms of the execution of support, there are still many legal challenges in upholding women's rights after divorce. Although there are court decisions requiring husbands to provide child support, compliance with these decisions is often low, especially if the ex-husband has an unstable economic condition. The Cirebon City Religious Court has implemented several mechanisms, including mediation and the enforcement of child support. However, there are still cases where women's economic rights are not fulfilled due to weak law enforcement. Comparison with other regions reveals that Cirebon City has a pattern of decisions that still face obstacles in ensuring gender justice, particularly in divorce lawsuits. Judges are beginning to see

opportunities for legal reform to strengthen women's protection in divorce. However, several legal challenges, such as a lack of legal awareness and limited mechanisms for the execution of child support, still hinder the implementation of the principle of gender justice comprehensively. Therefore, this study emphasizes the need to revise legal policies and strengthen the role of legal and social institutions, so that divorced women can obtain their rights without facing economic and social discrimination.

D. CONCLUSION

Gender legal issues in the distribution of post-divorce support in Cirebon City still face various challenges. Although regulations such as Law No. 1 of 1974 on Marriage, Law No. 16 of 2019, and the Compilation of Islamic Law (KHI) have provided a clear legal basis, their implementation in the field remains suboptimal. Women who file for divorce often do not automatically receive the right to iddah and mut'ah support, while in divorce by talak, the husband is required to provide support based on the judge's ex officio decision. This inequality shows a bias in the legal system, where women who choose to divorce have a greater burden in demanding their rights than women whose husbands divorce them. In addition to the legal aspect, social and economic factors also strengthen the injustice in the distribution of support. Strong patriarchal norms cause many women not to demand their rights due to family pressure or societal stigma. In some cases, ex-husbands with limited financial resources may fail to fulfill their obligations, despite a weak legal enforcement mechanism that still struggles to ensure compliance with court decisions. Although the Cirebon City Religious Court has increased the effectiveness of child support execution, many women still have difficulty obtaining their rights due to low legal awareness and a lack of sanctions for negligent parties. More inclusive legal reforms, increased access to legal aid, and public education regarding women's rights in divorce are needed. A legal system that is more responsive to gender justice will ensure that divorced women continue to receive optimal legal protection, without having to face administrative or social barriers.

Concrete measures to improve gender justice in post-divorce maintenance distribution cover five main areas, namely: revision of regulations by strengthening mechanisms for executing maintenance decisions, imposing strict sanctions on negligent ex-husbands, and monitoring systems for women's rights; increasing legal awareness through socialization, education, and utilization of Posbakum; a fairer approach to mediation that takes gender justice into account; simplification of judicial procedures and digitization of the legal system to improve accessibility and transparency; and cooperation between courts, local governments, and international institutions in protecting the rights of women and children, including the provision of free legal aid.

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