

Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts

Nasruddin Yusuf^{1*}, Nur Azizah², Faradila Hasan³

Abstract: Domestic violence (KDRT) often arises in a marriage, which then encourages the wife to sue her husband for divorce through the courts. In this case, the Compilation of Islamic Law (KHI) does not regulate the rights of a wife who sues her husband for divorce to obtain *'iddah*, or *mut'ah* support. But the rules regarding this are in Book II of the Guidelines for Religious Courts and SEMA. This research is field research with a qualitative-comparative approach through a feminist perspective. The aim is to analyze the considerations of judges in deciding cases of divorce due to domestic violence in the Medan Religious Court and the Banda Aceh Sharia Court. The research found the fact that the considerations of judges in the Medan Religious Court when deciding cases of divorce due to domestic violence, do not consider the issue of *'iddah* or *mut'ah* maintenance rights to the plaintiff (ex-wife) because this is not regulated in the KHI. This research concludes that, if analyzed from a feminist perspective, the decisions of the judges of the Medan Religious Court and the Banda Aceh Sharia Court tend to be unfair and discriminatory towards women. the principle of gender equality, where the law discriminates between the legal effects of divorce by the husband's will (*talak*) and divorce by the wife's will (divorce). Therefore, this research recommends that judges when deciding on a domestic violence case should not only adhere to one KHI but also consider other rules relevant to it.

Keywords: divorce, domestic violence, feminism, *'iddah*, Religious Court decision

Abstrak: Kekerasan dalam Rumah Tangga (KDRT) kerap muncul dalam suatu pernikahan, yang kemudian mendorong pihak istri untuk menggugat cerai suaminya melalui lembaga pengadilan. Terhadap kasus ini, Kompilasi Hukum Islam (KHI) tidak mengatur soal hak istri yang menggugat cerai suaminya untuk memperoleh nafkah *'iddah*, atau *mut'ah*. Tetapi aturan tentang itu ada dalam Buku II Pedoman Peradilan Agama dan SEMA. Penelitian ini adalah penelitian lapangan dengan pendekatan kualitatif-komparatif melalui perspektif feminisme. Tujuannya adalah untuk menganalisis pertimbangan hakim dalam memutus kasus gugat cerai karena KDRT di Pengadilan Agama Medan dan Mahkamah Syariah Banda Aceh., Penelitian menemukan fakta bahwa pertimbangan hakim di Pengadilan Agama Medan, ketika memutus kasus gugat cerai karena KDRT, tidak mempertimbangkan soal hak nafkah *'iddah* atau *mut'ah* kepada penggugat (mantan istri) dengan alasan hal itu tidak diatur dalam KHI.

*Corresponding Author

^{1,2,3}IAIN Manado, Manado

E-mail: ¹nasruddinyusuf@iain-manado.ac.id, ²nurazizahhutagalungdo@gmail.com,

³faradila.hasan@iain-manado.ac.id

Penelitian ini menyimpulkan bahwa, jika dianalisis melalui perpektif feminisme, Putusan Hakim Pengadilan Agama Medan dan Mahkamah Syariah Banda Aceh cenderung tidak adil dan diskriminatif terhadap kaum perempuan. Prinsip kesetaraan jender, dimana hukum mendiskriminasi efek hukum antara cerai oleh kehendak suami (*talaq*) dan cerai oleh kehendak istri (cerai gugat). Karena itu, penelitian ini merekomendasikan bahwa hakim ketika memutuskan suatu perkara KDRT hendaknya tidak hanya berpegang pada satu KHI saja, melainkan juga mempertimbangkan aturan lain yang relevan dengan itu.

Kata kunci: cerai gugat, KDRT, feminisme, nafkah 'iddah, Putusan Pengadilan Agama

Introduction

Women often become the objects of Domestic Violence (KDRT).¹ Domestic Violence, as stated in Article 1 Paragraph 1 of Law No. 23/2004 concerning the Elimination of Domestic Violence, is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect, including threats to commit acts, coercion, or deprivation of freedom, in the household sphere. Physical violence can take the form of hitting, slapping, pulling, spitting, kicking, and injuring with cigarettes or sharp objects, as well as sexual violence in the form of forced sexual intercourse and sexual harassment.² Psychological violence may include: defrauding assets by one of the parties in the family for personal gain, neglecting or allowing children, wives, or household caregivers not to earn a living, narrowing the space

¹ Görkem Kelebek-Küçükarslan and Özlem Cankurtaran, 'Experiences of Divorced Women Subject to Domestic Violence in Turkey', *Journal of Interpersonal Violence*, 37.5–6 (2022): 2443–66 <<https://doi.org/10.1177/0886260520927503>>; Nicole Youngson and others, 'Challenges in Risk Assessment with Rural Domestic Violence Victims: Implications for Practice', *Journal of Family Violence*, 36.5 (2021): 537–50 <<https://doi.org/10.1007/s10896-021-00248-7>>; Alfritri Alfritri, 'Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia', *Studia Islamika*, 27.2 (2020): 273–307 <<https://doi.org/10.36712/SDI.V27I2.9408>>; Afdal Afdal and others, 'Why Victims of Domestic Violence Still Survive Their Marriage? Preliminary Analysis of Forgiveness Dynamics Conditions', *International Journal of Research in Counseling and Education*, 3.2 (2019): 125–30 <<https://doi.org/10.24036/00191ZA0002>>.

² Isabel Cepeda, Maricruz Lacalle-Calderon, and Miguel Torralba, 'Measuring Violence Against Women: A Global Index', *Journal of Interpersonal Violence*, 37.19–20 (2022) <<https://doi.org/10.1177/08862605211037424>>; Prapamon Seeprasert and others, 'Associations between Sexual Violence, Domestic Violence, Neglect, and Alcohol Consumption among Lahu Hill Tribe Families in Northern Thailand', *Women's Health*, 17 (2021), 174550652110658 <<https://doi.org/10.1177/17455065211065863>>; Claire Kelling and others, 'Modeling the Social and Spatial Proximity of Crime: Domestic and Sexual Violence Across Neighborhoods', *Journal of Quantitative Criminology*, 37.2 (2020): 481–516 <<https://doi.org/10.1007/S10940-020-09454-W>>.

for movement without clear reasons, threats, economic neglect, pressure, as well as words and acts that intentionally hurt feelings (mentally), all of which are considered to be detrimental to a person's right to life in the household. Domestic Violence (KDRT) does not only happen to family members such as husbands, wives, and children, but also may happen to other people living in the household, for example, caregivers (household assistants).

Acts of domestic violence by a man against a woman in Indonesia, especially in the context of husband and wife, occur very often; It's just that, many women feel embarrassed to reveal it to the public, and some even prefer to keep silent.³ This is confirmed by data from the National Commission on Anti-Violence against Women which recorded 544,452 cases of domestic violence (KDRT) that occurred during 2004-2021.⁴ The highest cases occurred in 2020, namely 299,911 cases, where violence against wives ranked first in the data.⁵

The occurrence of domestic violence acts by a husband against his wife, in many cases, ultimately encourages the wife to file a petition for divorce at the Religious Court.⁶ They feel that they can no longer survive with their husbands in marriage because they are often used as objects of violence.⁷ This phenomenon shows that women (wives) now

³ Rika Saraswati, 'Shame and Indonesian Women Victims of Domestic Violence in Making the Decision to Divorce', *Global Studies in Culture and Power*, 27.5 (2019): 557-73 <<https://doi.org/10.1080/1070289X.2019.1600313>>.

⁴ Tsarina Maharani, 'Sepanjang Tahun 2014-2021, Komnas Perempuan Catat 544. 452 Kekerasan dalam Rumah Tangga', *Media Elektronik, KOMPAS.Com*, 2021.

⁵ Tika Vidya Utami, 'Kasus KDRT Di Indonesia Masih Tinggi, Terbanyak Kekerasan Terhadap Istri', 2021, <https://www.inews.id/news/nasional/kasus-kdrt-di-indonesia-masih-tinggi-terbanyak-kekerasan-terhadap-istri>, Accessed on August 7, 2021.

⁶ Bianca J. Smith and Atun Wardatun, 'Domestic Violence and Islamic Spirituality in Lombok, Indonesia: Women's Use of Sufi Approaches to Suffering', *Contemporary Islam*, 16.2 (2022): 427-47 <<https://doi.org/10.1007/S11562-022-00495-5>>; Nazaruddin Nazaruddin and others, 'Divorce Due to Domestic Violence in Sinjai District (Perspective Analysis of Islamic Law)', *Jurnal Diskursus Islam*, 9.2 (2021), 137 <<https://doi.org/10.24252/jdi.v9i2.22862>>; Roswita Sitompul, Alesyanti, and Muhammad Ridwan, 'Domestic Violence as Initiated by Batak Culture in East Medan, Indonesia', *Journal of Human Behavior in the Social Environment*, 30.7 (2020): 835-42 <<https://doi.org/10.1080/10911359.2020.1750526>>.

⁷ Siti Mas'udah, 'Power Relations of Husbands and Wives Experiencing Domestic Violence in Dual-Career Families in Indonesia', *Millennial Asia*, 2021: 1-23 <<https://doi.org/10.1177/09763996211039730>>; Hacer Alan Dikmen and Gonenc Ilknur Munevver, 'The

dare to take a stand and are no longer shy, as the findings from several previous studies, to bring their cases to the court rather than hide the violent practices committed by their husbands, just because they cover up their family's disgrace.⁸

Moreover, the topic of domestic violence has received a lot of attention from previous researchers who studied this problem using various approaches, theories, and perspectives. One of them is research which is classified as normative juridical by Lelita Dewi and uses empirical methods, with a combination of rule of law theory, positivism theory, legal protection theory, responsive theory, and *maslahah mursalah*. Dewi concludes that the state has guaranteed legal protection for women through the principle of equality, without discrimination. However, it must be acknowledged that many judges' decisions still do not have a gender perspective.⁹ There are also other researches conducted by Ahmad Tarmizi that examine the phenomenon of Domestic Violence (KDRT) from the perspective of criminal law¹⁰ and Muh. Rizal Samad studied the phenomenon of domestic violence as a factor that greatly influenced the emergence of requests for divorce from wives in religious courts.¹¹

Different from previous studies, this research aims to analyze the judge's considerations in divorce cases due to domestic violence at the Medan Religious Court and the Banda Aceh Sharia Court using

Relationship between Domestic Violence and the Attitudes of Women towards Honor, Gender Roles, and Wife-Beating in Turkey', *Archives of Psychiatric Nursing*, 34.5 (2020): 421–26 <<https://doi.org/10.1016/J.APNU.2020.07.012>>.

⁸ Saraswati.

⁹ Lelita Dewi, 'Law Protection for Post Divorced Women Through Law Enforcement with a Gender Perspective', in *Proceedings of the International Conference on Law, Economics, and Health (ICLEH 2020)* (Atlantis Press, 2020), pp. 152–55 <<https://doi.org/10.2991/AEBMR.K.200513.031>>.

¹⁰ Ahmad Tarmizi, Bunyamin Alamsyah, and Amir Syarifuddin, 'Tindak Pidana Kekerasan dalam Rumah Tangga Yang Menjadi Alasan Putusnya Gugatan Perceraian di Pengadilan Agama Jambi', *Legalitas: Jurnal Hukum*, 9.2 (2019): 248–308 <<https://doi.org/10.33087/LEGALITAS.V9I2.152>>.

¹¹ Muh. Rizal Samad, 'Analisis Hukum Tentang Perceraian Yang Disebabkan oleh Kekerasan dalam Rumah Tangga (KDRT) (Studi Kasus di Pengadilan Agama Sidrap)', *El-Ahli : Jurnal Hukum Keluarga Islam*, 2.2 (2021): 40–54 <<https://doi.org/10.1234/EL-AHLI.V2I2.527>>; Maya Syirurifka and Syamsul Bahri, 'Cerai Gugat Karena Faktor Kekerasan dalam Rumah Tangga (Suatu Penelitian di Wilayah Hukum Mahkamah Syar'iyah Bireun)', *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan*, 5.2 (2021): 253–61.

a feminist perspective. Based on existing data, generally, judges who hear divorce cases filed by women victims of domestic violence do not give the ex-wife the right to obtain her rights to 'iddah and mut'ah maintenance. post-divorce lawsuit. This is because the Compilation of Islamic Law in Indonesia (KHI), as well as the Marriage Law, determines that a wife in cases of divorce is not entitled to 'iddah and mut'ah maintenance unless she divorces (*talaq*) at the husband's will.¹² There are other regulations, namely Book II Guidelines for the Administration and Duties of Religious Courts (2013) and Supreme Court Circular Letter (SEMA) No. 3/2018 which accommodate the rights of women (wives) victims of domestic violence to obtain the right to 'iddah and mut'ah living. This then attracted the attention of the author to study it further using the perspective of feminism and gender equality.

Research Methods

This research is field research with a qualitative-comparative approach.¹³ The primary data was obtained from informants namely judges at the Medan and Banda Aceh Syariah Court, young judges and clerks at the Courts, including the Acting Chairman of the Banda Aceh Syariah Court, while the secondary data was taken from documents or archives of the Medan Religious Court and the Banda Aceh Syariah Court. Data were collected using in-depth interview techniques,¹⁴ direct observation¹⁵ and written documents at the Medan Religious Court and the Banda Aceh Sharia Court. All data that has been collected were

¹² M. Yanis Saputra and Edi Rosman, 'Judge Consideration on Nominal Determination Iddah and Mut'ah Lives in Epistemological Review', *Al Hurriyah: Jurnal Hukum Islam*, 6.1 (2021), 25 <<https://doi.org/10.30983/alhurriyah.v6i1.4018>>; Hermin Sriwulan, 'Reformulation of a Fair Iddah Alimony Maintenance Arrangements in Indonesia's Muslim Family Law', *Journal of Law, Policy and Globalization*, 104 (2020), 80 <<https://doi.org/10.7176/JLPG/104-11>>.

¹³ Patrick A. Mello, 'Qualitative Comparative Analysis', in *Routledge Handbook of Foreign Policy Analysis Methods*, ed. by Patrick A. Mello and Falk Ostermann (Abingdon: Routledge, 2022), p. 36.

¹⁴ Natalie Osborne and Deanna Grant-Smith, 'In-Depth Interviewing', in *Methods in Urban Analysis* (Singapore: Springer, 2021), pp. 105–25 <https://doi.org/10.1007/978-981-16-1677-8_7>.

¹⁵ Prabhat Pandey and Meenu Mishra Pandey, *Research Methodology Tools and Techniques* (Bridge Center, 2021), p. 97.

analyzed using an inductive analysis model,¹⁶ in which the data analysis process proceeds from facts to theory.¹⁷ The process begins with field data and is then analyzed using Liberal Feminist and Legal Feminist theories. The purpose of using this inductive analysis is to avoid bias in concluding research results.¹⁸

Result and Discussion

Progressiveness of Law in Indonesia regarding the Legal Consequences of Divorce (*Khulu'*)

In general, there are two types of divorce in the Religious Courts namely *talaq* and *khulu'*.¹⁹ *Talaq* is the termination of the marriage bond at the will of the husband, while *khulu'* is the termination of the marriage bond at the will of the wife.²⁰ The term *khulu'*, which is often equated with divorce, comes from Arabic which means to remove or abandon.²¹ Several things can serve as the basis for allowing these two types of divorce in front of a Religious Court session namely: adultery, the two partners can no longer be expected to live together, or because of violence in the form of abuse or cruelty committed by one of the married couples.²²

¹⁶ Andrea J. Bingham and Patricia Witkowsky, 'Deductive and Inductive Approaches to Qualitative Data Analysis', in *Analyzing and Interpreting Qualitative Data: After the Interview*, ed. by C. Vanover, P. Mihas, and J. Saldaña (SAGE Publications Ltd, 2022), pp. 133–46.

¹⁷ H. Russell Bernard, Amber Wutich, and Gery W. Ryan, *Analyzing Qualitative Data: Systematic Approaches* (SAGE Publications, 2016), p. 75.

¹⁸ Matthew B. Miles, A. Michael Huberman, and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook*, 4th edn (SAGE Publications, 2020), p. 58.

¹⁹ Muhammad Haekal, Abidin Abidin, and Siti Musyahidah, 'The Effectiveness of the Implementation of the Principle of Simple Court Procedures, Fast and Low Cost in a Case of Divorce Lawsuit', *International Journal of Contemporary Islamic Law and Society*, 2.1 (2020): 81–100 <<https://doi.org/10.24239/IJCILS.VOL2.ISS1.16>>; Riza Mulia, 'Marital Beslag Outside Divorce Lawsuit in the *Maqâshid Syari'ah* Perspective', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 4.2 (2020): 398–415 <<https://doi.org/10.22373/SJHK.V4I2.7052>>.

²⁰ Hafsa, 'An Analysis of Lawsuit Divorce Factors at the Religion Court of Medan, Indonesia', *The Turkish Journal of Design Art and Communication*, 7 (2017): 462–70 <<https://doi.org/10.7456/1070ASE>>.

²¹ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2006), p. 88.

²² Wasman Wasman and Wardah Nuronyah, *Hukum Perkawinan Islam di Indonesia Perbandingan Fiqih Dan Hukum Positif* (Yogyakarta: Teras, 2011), p. 23.

Furthermore, *talaq* is a divorce application submitted by the husband to the Religious Court for valid reasons according to Indonesian regulations. *Talaq* is marked by the vow of *talaq* (divorce remark) made by the husband in a Religious Court session after going through the trial stage to the end. The husband's desire for divorce has legal implications for marital assets, the wife's rights of *hadhânah* and 'iddah, as well as the provision of 'iddah and *mut'ah* maintenance.²³ A wife who is sued for divorce by her husband in court is called a petition for *talaq*, then the husband is charged or obliged to provide maintenance during the period of 'iddah, *mut'ah*, including *maskan* (house), *kiswah* (clothing), and *mut'ah* (valuable keepsake).²⁴ A wife who has been given one or two *talaqs* by her husband is entitled to receive 'iddah support from her husband, as long as the wife is not proven to be *nusyûz* (perfidious).²⁵

In contrast to *talaq* divorce, *khulu'* divorce is a form of divorce caused by the wife filing a divorce suit in court that led the husband to impose *talaq*.²⁶ Similar to the *talaq* divorce filed by a husband, in *khulu'* divorce, the wife is required to undergo a period of 'iddah, but this *iddah* is the result of *talaq ba'in shugrâ*, namely that the wife cannot be referred by the husband unless she enters into a new marriage bond. During the 'iddah period, the wife is not allowed to accept other men and is obliged to protect herself (her honor). In *khulu'* cases, the wife files for divorce by paying a ransom for *talaq (iwâdh)*.²⁷ The word *khulu'* can also be equated with the termination of a marriage by giving ransom money (*iwâdh*) by

²³ Euis Nurlaelawati, 'Muslim Women in Indonesian Religious Courts', in *Islamic Law and Society* (Brill, 2013), xx, 242–71 <<https://doi.org/10.1163/15685195-0010A0003>>; Lilik Andar Yuni, 'The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court', *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan*, 21.2 (2021): 135–54 <<https://doi.org/10.18326/ijtihad.v21i2.135-154>>.

²⁴ Endang Ali Maksum and others, 'Application of Contra Legem in Judge Decisions (Critical Study of Iddah Alimony Rights in Divorce Cases)', *SMART: Journal of Sharia, Tradition, and Modernity*, 1.1 (2021): 49–64 <<https://doi.org/10.24042/SMART.V1I1.9794>>.

²⁵ Izzy Al Kautsar and Ahdiana Yuni Lestari, 'Renewal of Islamic Family Law: Relevance To The Nusyuz Settlement Process', *Mizan: Journal of Islamic Law*, 5.3 (2021): 373–82 <<https://doi.org/10.32507/MIZAN.V5I3.1080>>.

²⁶ Divorce can also be based on the judge's decision under the wife's demands.

²⁷ Ahmad Warson Munawwir, *Al-Munawwir Kamus Arab-Indonesia* (Surabaya: Pustaka Progressif, 1997), p. 65.

the wife to the husband as a ransom/replacement for divorce.²⁸ The legal consequences arising from the divorce suit by the wife are that the wife is obliged to pay a ransom of *talaq (iwâdh)*²⁹ the amount which is agreed upon by the husband and wife, or, in the case of divorce due to violation of the *taklik talaq* agreement by the husband, compensation money (*iwâdh*) which must be paid by the wife, is IDR 10,000. Another consequence of a *khulu'* divorce is that the husband's obligation to provide '*iddah* and *mut'ah* support during the '*iddah* period in the case of a contested divorce is invalidated because the type of *talaq* in a contested divorce (*khulu'*) is *ba'in shugrâ*, the legal consequence of which is that the husband cannot refer to it, wife during the '*iddah* period, which is 130 days, unless the husband and wife make a new marriage contract (re-marry). In the absence of the husband's right to refer, the obligation to provide '*iddah* and *mut'ah* maintenance is waived.³⁰ Thus the law generalizes all forms of reasons for *khulu'* divorce, whether due to the husband's negligence or the wife's negligence, all of which make the wife not entitled to '*iddah* and *mut'ah* maintenance as obtained by the wife in the case of *talaq* divorce.

The above provision refers to the regulations in force in Indonesia (KHI), which stipulate that a wife who files for divorce at the Religious Court is not entitled to maintenance during the '*iddah* and *mut'ah* periods. However, the case is different if her husband is a Civil Servant (PNS). According to Government Regulation No. 45/1990 concerning Amendments to Government Regulation No. 10/1983 concerning Marriage Permits and Divorce for Civil Servants,³¹ a wife who files for divorce due to her husband's mistakes, injustice, and negligence, or practicing polygamy, the wife is entitled to receive support in the form of half the

²⁸ Ibnu Rusyd, *Bidayatul Mujtabid Wa Nihayatul Muqtabsid* (Beirut-Lebanon: Daar al-Kutub al-Ilmiyah, 1996), p. 93.

²⁹ Marsyudi Na'imulloh, 'Legal Consequences of Pronouncing Sighat Taklik Talak Based on Decree of The Minister of Religion of The Republic of Indonesia Number 75 of 2014', *Sakina: Journal of Family Studies*, 5.3 (2021) <<https://doi.org/10.25217/jm.v4i2.634>>.

³⁰ H. A. Karim, Judge in Banda Aceh Sharia Court, interview on June 18, 2021.

³¹ Muhammad Roy Purwanto and others, 'Polygamy in Muslim Countries: A Comparative Study in Tunisia, Saudi Arabia, and Indonesia', in *Conference: 2nd Southeast Asian Academic Forum on Sustainable Development (SEA-AFSID 2018)* (Atlantis Press, 2021) <<https://doi.org/10.2991/aebmr.k.210305.082>>.

husband's salary. The wife's right to a salary from her husband applies until the wife remarries another man or dies. This is responsive to the principle of gender equality.³²

Apart from provisions stipulated in Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI) and Law no. 1 of 1974 concerning Marriage, which was later revised by Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage, there are other rules that are relevant to the issue of contested divorce, namely: Book II Guidelines for the Implementation of Administration and Duties of Religious Courts (2013) Revised Edition of the Supreme Court of the Republic of Indonesia and Supreme Court Circular Letter (SEMA) No. 3/2018 concerning the Implementation of the Results of the 2018 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court.

In Book II of the Guidelines for the Implementation of Administration and Duties of Religious Courts (2013) Revised Edition of the Supreme Court of the Republic of Indonesia, it is stated that:

- (a) In point (c) in cases of contested divorce, the plaintiff (wife) can include claims for *'iddah* and *mut'ah* maintenance in the lawsuit along with the divorce lawsuit.
- (b) In point (f) the Religious Court can oblige the husband to pay *'iddah* maintenance based on the judge's ex officio rights as long as the wife does not commit *nusyûz*.
- (c) Furthermore, in point (j) if the defendant (husband) is proven to have committed an act of domestic violence, then the judge can require the payment of *'iddah* maintenance.

Based on the points above, it can be understood that a wife who files for divorce for reasons of injustice or domestic violence committed by her husband is entitled to maintenance during the *'iddah* period as is the case with wives in cases of divorce due to the husband's wishes.

³² Fawait Syaiful Rahman, 'Analisis *Maqâshid Syari'ah* Jasser Auda Terhadap Izin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil', *Momentum: Jurnal Ilmiah Ilmu Sosial dan Keagamaan*, 7.1 (2018): 35–58.

In other words, even though the divorce is based on the wife's wishes, it does not mean that the wife's right to support during the '*iddah*' period is erased. Even more so if you remember that the wife is the victim of her husband's violence or cruelty.

Furthermore, in the 2018 Supreme Court Circular Letter (SEMA) there is also a provision that regulates the legal consequences of contested divorce, namely: (a) Divorce with proven reasons and the wife is not proven nusyuz, then the judge can require the husband to pay '*iddah*' maintenance and *mut'ah*; (b) The reason for divorce is because the husband commits cruelty or domestic violence, so the judge requires the husband to pay '*iddah*' and *mut'ah* maintenance.

SEMA Provision No. 3 of 2018 above is not only in line with the provisions of Book II of the Administrative Guidelines and Duties of Religious Courts (2013) but also at the same time provides a breath of fresh air to wives who file for divorce for reasons of domestic violence. Based on this rule, the judge can also require the husband to pay maintenance to his wife during the '*iddah*' period (i.e. 130 days after divorce). The wife can also obtain *mut'ah* support, namely valuable mementos to support the wife in facing her own life in the form of money, gold, house, land, certificates of ownership of objects, and so on, according to the husband's ability.³³ These provisions show that the Supreme Court is trying not to differentiate between a wife after a *talaq* divorce and a *khulu'* divorce, especially if the wife is proven to be a victim of domestic violence committed by her husband.

Liberal and Legal Feminist Theory

Liberal Feminists view that subordination and stereotypes of women are the result of limited laws and customs. For this reason, liberal feminist fighters developed the main concept that women must be qualified educationally and economically to be able to maintain their rights and existence as independent human beings.³⁴

³³ Rahman.

³⁴ Lorber, Judith, ed., *Gender Inequality: Feminist Theories and Politics*, (California: Roxbury Publishing Company, 2001), p. 254.

Several theories have been developed by Liberal Feminists including:

1. Gender justice requires fair rules of the game and ensures that no player is systematically disadvantaged.
2. Liberal feminists do not condone differences between men and women, except sex. Laws or regulations that are considered to preserve the patriarchal system should be changed because such laws cannot accommodate women's interests.³⁵
3. Exploitation and domestic violence in the domestic and public domains discriminate against women flourish. In the liberal feminist view, women, like men, have the right to develop themselves without narrowing their space.
4. Liberal feminists argue that a rigid understanding of religion is the cause of the growth of patriarchy.³⁶
5. For women to receive legal certainty in their rights, there must be strong legal laws regarding these rights.³⁷

In subsequent developments, Liberal Feminist exponents began to turn to the realm of law and developed the theory that women's subordination was not only caused by social and cultural conditions but also by the law.³⁸ From this perspective, Legal Feminists develop theories that include the following:

1. Legal Feminist Theory assumes that law is the product of a certain ideology, namely the ideology held by men. So, the laws that exist are gender biased. The law is a reflection of men, the law is to maintain the masculine nature of men.³⁹
2. Legal Feminist Theory views law as a male product, so law ignores women's experiences.⁴⁰

³⁵ Mansour Fakhri, *Membincang Feminisme* (Surabaya: Risalah Gustika, 1996), p. 97.

³⁶ Rosemarie Putnam Tong, *Feminist Thought* (Bandung: Jalasutra, 1998), p. 86.

³⁷ Lorber.

³⁸ D. Kelly Weisberg, *Feminist Legal Theory: Foundations* (Philadelphia, PA: Temple University Press, 1993), p. 90.

³⁹ Hari Chand, *Modern Jurisprudence* (Kuala Lumpur: International Law Book Service, 1994), p. 56.

⁴⁰ Sulistyowati Irianto and others, *Perdagangan Perempuan dalam Jaringan Pengedar Narkotika*, ed. by B. Rahmanto (Jakarta: Yayasan Obor Indonesia, 2005), p. 42.

3. Legal Feminist Theory offers a deconstruction method to rediscover the legal origin of a regulation.⁴¹
4. Legal Feminist Theory holds that legal neutrality, objectivity, and legal positivism will only have a more negative impact on women.⁴²
5. Legal Feminist Theory holds that the state, law, and society play an important role in realizing justice and gender equality or vice versa.
6. Adherents of the feminist school, which means that women feel unprotected by the legal system in place because there are often changes in the legal structure and social structure in a global community or the relationship between theory and practice that occurs, which is elaborated in a particular case with a particular effect.⁴³

Judge's Decision on Divorce Case (*Khulu'*) Due to Domestic Violence at Medan Religious Court and Banda Aceh Sharia Court

From 2015 to 2020, the number of divorce cases due to Domestic Violence (KDRT) submitted to the Medan City Religious Court and the Banda Aceh Sharia Court were as follows:

Table 1. Divorce Rate Due to Domestic Violence at Medan Religious Court and Banda Aceh Sharia Court (2015-2020)

NO.	COURT'S NAME	Y E A R					
		2015	2016	2017	2018	2019	2020
1.	Pengadilan Agama Medan	184	140	53	13	16	13
2.	Mahkamah Syari'ah Banda Aceh	1	25	19	3	10	10

(Sources: Medan & MS Banda Aceh Religious Courts 2020)

The data above shows a downward trend in the number of cases in recent years. This downward trend, on the one hand, may be because husbands' legal awareness has increased, or, on the other hand, it can also

⁴¹ Weisberg, *Feminist Legal Theory: Foundations*.

⁴² Irianto and others.

⁴³ Martha A. Fineman and Nancy S. Thomadsen, 'Feminist Legal Theory', *Journal of Gender, Social Policy & The Law*, 13.1 (2015), p. 14.

be assumed that there are still many wives who do not report the acts of violence they experience for various reasons, especially fear or shame.

Cases of contested divorce are not always caused by the wife's fault. In many cases, it is the husband's negligence and cruelty that drives a wife to file for divorce at the court so that they can escape the suffering of living under the confines of a cruel and irresponsible husband.⁴⁴ Based on the results of interviews with judges at the Medan Religious Court and the Banda Aceh Sharia Court, the majority of wives of domestic violence victims who applied for divorce to the Religious Court stated that they had no desire to become widows. However, because of their husband's repeated rude actions, they were forced to apply for divorce at the Religious Court.⁴⁵ Indeed, in all cases, violence perpetrated by husbands against their wives is not only limited to harsh words but is also followed by acts of bodily harm, even to levels that are life-threatening as happened in Medan, where a husband who was drunk on alcohol or drugs beat her. His wife was so careless that she was seriously injured and had to be hospitalized.⁴⁶

Moreover, Banda Aceh Sharia Court judges agree that domestic violence is a form of human rights violation. Therefore, it is appropriate for wives who are victims of domestic violence to have the right to receive *'iddah* and *mut'ah* support, especially if the husband is financially able to fulfill these obligations. If the husband is released from this obligation solely because of a divorce at the wife's request, this is an injustice to women.⁴⁷ The obligation to pay *'iddah* and *mut'ah* support is a consequence that must be borne by the husband as a result of his inappropriate behavior. Because, as the head of the household, the husband should be a protector and protector for all family members, instead of committing violence and cruelty against them.⁴⁸

⁴⁴ Zakian., M.H dan Mutmainah, AB, Judges in Medan Religious Court, interviews on June 11, and 16 2021.

⁴⁵ Abu Kholily Nasution, Judge in Medan Religious Court, and H. A. Karim, Judge in Banda Aceh Sharia Court, interviews on June 14, and 18, 2021.

⁴⁶ Zakian., M.H. and Mutmainah, AB, Judges in Medan Religious Court, interviews on June 11, and 16, 2021.

⁴⁷ Abu Kholily Nasution, interview on June 14, 2021.

⁴⁸ H. A. Karim, interview on June 18, 2021.

Unfortunately, the positive, egalitarian, and affirmative views of the judges regarding gender equality above were not reflected in their considerations when deciding on a divorce case filed by a wife who was a victim of domestic violence. In practice, judges still do not dare to depart from the current legal provisions.⁴⁹ This is confirmed by the information provided by the court clerk that so far there has been no judge's decision regarding the wife receiving *'iddah* and *mut'ah* support in a divorce due to domestic violence. All judges' decisions when deciding on contested divorce cases always stipulate that the ex-wife in the contested divorce case is not entitled to "*'iddah* and *mut'ah*."⁵⁰ Thus, there is an inconsistency between the judge's views and practice in the field. On the one hand, the judge acknowledged that the wife, as a victim of domestic violence, deserves to receive *'iddah* and *mut'ah* support but, on the other hand, to realize this view the judges still do not have enough courage to leave the provisions of the KHI.

However, recently there has been a new tendency among judges at the Banda Aceh Sharia Court to decide *khulu'* divorce cases by paying attention to the principle of gender equality. This is evidenced by the holding of gender sensitivity training for Banda Aceh judges, and the implementation of the newest lawsuit format at the Banda Aceh Syariah Court since May 2021, which contains guidelines for *'iddah*, *mut'ah* and *madliyah* livelihoods, whereas previously the judge granted only lawsuits for *madliyah* livelihoods. These efforts can be seen as a form of realization of justice and gender equality because even though divorce is at the will of the woman (wife), it does not mean that it completely eradicates the wife's rights. The Banda Aceh Syariah Court judge does not prohibit or blame if there is a judge's decision regarding the provision of *'iddah* and *mut'ah* maintenance in the case of a wife who is a victim of domestic violence. This is seen as retribution or punishment for husbands who act unjustly towards their wives. In other words, the judges at the Banda Aceh Sharia Court acknowledged and tended to agree with the provisions

⁴⁹ Abu Kholily Nasution.

⁵⁰ Husna Ulfa, SH, Acting Registrar of the Medan Religious Court, interview on June 15, 2021.

contained in SEMA No. 3 of 2018 and Book II of the Administrative Guidelines and Duties of Religious Courts (2013) even though in reality they do not implement these provisions.⁵¹

Furthermore, there are several types of support that the Syariah Court judge requires of a husband after a divorce due to domestic violence or other reasons. First, *Madliyah* support (support for wife and children). *Madliyah* maintenance is the debt owed by the judge to the ex-husband because, during the marriage period, the husband did not pay it to his wife and children even though he was able to. The Banda Aceh Syariah Court judge stated that the *Madliyah* (owed) maintenance must be paid by the husband to the wife based on the husband's abilities and the wife's needs. The task of earning and providing for the family is the husband's obligation, therefore he should pay off previous maintenance debts, which are calculated by looking at the length of time the maintenance has not been paid (debt) and the level of the husband's ability to pay it. However, for *'iddah* maintenance in cases of contested divorce, the judge does not dare to decide this against the husband, even because the husband has acted cruelly (domestic violence). Unless before filing the lawsuit in court or outside the court, the husband has already imposed an informal *talaq* on the wife, then in this case the judge can grant the claim for *'iddah* maintenance in cases of contested divorce due to domestic violence. What is meant by informal *talaq* is *talaq* imposed by the husband outside the Religious Court session, which must be proven with evidence. If it is proven that the husband has previously given *talaq*, then the Banda Aceh Syariah Court judge can determine the legal consequences of *talaq* divorce in contested divorce cases.

Second, *Mut'ah* livelihood. Judges at Banda Aceh Syariah Court do not grant *Mut'ah* in contested divorce cases. However, in the case of a divorce lawsuit brought by the wife of a husband who works as a Civil Servant (PNS), the judge at the Banda Aceh Sharia Court once granted the lawsuit regarding that matter, and that too with the husband's willingness because the husband wanted to do polygyny. The

⁵¹ H. Aminullah Usman, Acting Chairman of the Banda Aceh Sharia Court, interview on June 17, 2021.

granting of *Mut'ah* in the case of a civil servant divorce is something new because there is no provision stating that the wife is entitled to *Mut'ah* maintenance except for 1/3 of the husband's salary.⁵²

Feminism Analysis on Provisions of 'Iddah and Mut'ah Supporting after Divorce Due to Domestic Violence

According to the Liberal Feminist view, gender justice requires fair regulations so that no one, neither the wife nor the husband, is systematically disadvantaged.⁵³ In the relationship between men and women, both in the domestic and public spheres, there must be no injustice that could harm either party. So here, it is not the difference in treatment between men and women that is the main focus of the principle of gender equality but the losses experienced by women because of this difference.⁵⁴ Furthermore, liberal feminists also do not justify any distinction between men and women except for sexual relations. Laws or regulations that are considered to preserve the patriarchal system must be changed because such regulations cannot accommodate women's interests.

This feminist view is very relevant to the legal events that occurred at the Medan Religious Court. In this institution, including in several religious court institutions in other provinces, a divorce that occurs against the will of the wife, for whatever reason, results in the wife losing her right to claim *'iddah* and *mut'ah* maintenance rights. Meanwhile, if the divorce occurs according to the husband's wishes, the wife may claim *'iddah* and *mut'ah* support as long as she does not commit *nusyûz* (disobedience). This difference in treatment clearly shows that there is discrimination that is detrimental to the wife (woman), especially if she is the victim of a domestic violence case committed by her husband.⁵⁵ Here it appears that in cases of contested divorce, the law generalizes all forms of reasons for divorce, whether due to the husband's negligence or

⁵² H. Aminullah Usman, interview on June 18, 2021.

⁵³ Lorber.

⁵⁴ Fakih; Tong.

⁵⁵ Lorber.

the wife's negligence, all of which make the wife not entitled to '*iddah* and *mut'ah* maintenance as the wife gets in the case of *talaq* divorce.

The argument used by the judge in deciding the case was the provisions of Presidential Instruction no. 1/1991 concerning KHI, and the view of the majority of fiqh scholars who include cases of contested divorce in the category of *talaq ba'in* so that the husband is no longer obliged to provide '*iddah* or *mut'ah* support to his ex-wife. The implementation of this provision has been going on for a long time, even continuing after the publication of Book II of Guidelines for the Administration and Duties of Religious Courts (2013) and SEMA No. 3/2018 which allows the wife's rights to obtain '*iddah* and *mut'ah* support in cases of divorce due to domestic violence.

The application of regulations that differentiate the legal consequences of contested divorce from divorce *talaq* as described above discriminates against women increasingly flourished. In fact, according to the feminist view, women have the same rights as men; they have the right to develop themselves without narrowing their space.⁵⁶ Furthermore, the wife who was a victim of domestic violence, when she decided to apply for divorce to the court, was actually in a difficult and risky situation, but she was forced to do this because she could no longer bear the cruel treatment from her husband. Therefore, from the perspective of gender equality, if the judge decides that the wife has no rights, or deems her not entitled to '*iddah* and *mut'ah* living he has narrowed the wife's space and has not at all considered the difficult situation faced by the wife before or after divorce. The wife, before she filed for divorce, had experienced difficulties and suffering due to her husband's treatment, plus after the divorce occurred, she had to face economic difficulties, especially if the wife did not have a source of income that could support her living needs. Thus, by borrowing Tong's opinion, the judge has discriminated against the rights of women (wives) and narrowed their range of movement both domestically and publicly.⁵⁷

⁵⁶ Fakih.

⁵⁷ Tong.

Furthermore, liberal feminists argue that a rigid understanding of religion is one of the factors that causes the proliferation of patriarchal culture in society. The attitude of judges who adhere to the provisions of the Compilation of Islamic Law (KHI) which stipulate that a wife who files for divorce, for whatever reason, including domestic violence, does not receive 'iddah and mut'ah support, is wrong. This is because, in cases of divorce due to domestic violence, it is the wife who is treated inhumanely by her husband. In Legal Feminist theory, this phenomenon is a manifestation of gender inequality in the law, including judges' decisions, because judges hold a deep-rooted ideology, which tends to be based on the opinion of fiqh scholars who state that wives do not receive 'iddah support. In fact, in fiqh itself, there is no agreement on this matter, which is why some fiqh scholars think that filing for divorce (*khulu'*) does not result in the loss of the right to 'iddah maintenance. This means that releasing the right to 'iddah maintenance in cases of contested divorce is not legal.

Furthermore, liberal feminists argue that a rigid understanding of religion is one of the factors that causes the proliferation of patriarchal culture in society. The attitude of judges who adhere to the provisions of the Compilation of Islamic Law (KHI) which stipulate that a wife who files for divorce, for whatever reason, including domestic violence, does not receive 'iddah and mut'ah support, is wrong. This is because, in cases of divorce due to domestic violence, it is the wife who is treated inhumanely by her husband. In Legal Feminist theory, this phenomenon is a manifestation of gender inequality in the law, including judges' decisions, because judges hold a deep-rooted ideology,⁵⁸ which tends to be based on the opinion of fiqh scholars who state that wives do not receive 'iddah support. In fact, in fiqh itself, there is no agreement on this matter, which is why some fiqh scholars think that filing for divorce (*khulu'*) does not result in the loss of the right to 'iddah maintenance. This means that releasing the right to 'iddah maintenance in cases of contested divorce is not absolute law. Apart from that, with the publication of Book II Guidelines for the Administration and Duties of Religious Courts (2013) and SEMA No.

⁵⁸ D. Kelly Weisberg, *Feminist Legal Theory Foundation* (Philadelphia: Temple University Press, 1993); Fineman and Thomadsen; Chand.

3/2018 which allows the wife in a divorce case to sue due to domestic violence to obtain *'iddah* and *mut'ah* support. The judge should be able to oblige the husband to pay the maintenance. This is as regulated in PP no. 45/1990 Amendment to PP No. 10/1983 concerning Marriage and Divorce Permits for Civil Servants where the wife has the right to 1/3 of her husband's salary.⁵⁹

In contrast to the reality at the Medan Religious Court, at the Banda Aceh Sharia Court, a new tendency has emerged to accommodate the principle of gender equality in deciding divorce cases resulting from domestic violence. Even though the Banda Aceh Syariah Court judges still adhere to the provision that wives in cases of contested divorce (*khulu'*) are not entitled to *'iddah* and *mut'ah* maintenance, the judges still strive for wives to receive guaranteed maintenance from their husbands by granting *madliyah* maintenance. This is demonstrated by the fact that almost every demand for *madliyah* maintenance in contested divorce cases is granted by the Banda Aceh Syariah Court judge. By granting *madliyah* maintenance, the judge has made efforts so that women (wives) are not harmed. This tendency is in line with the views of Legal Feminists who require judges to side with women, if indeed women have the right to take sides, especially as victims of domestic violence.⁶⁰ In this way, the Banda Aceh Syariah Court judge did not ignore what the wife had experienced, although it must be admitted that the judge was still rigid in terms of *'iddah* and *mut'ah* maintenance.

The rigidity of judges in implementing justice, from a Legal Feminist perspective, is due to the power of the masculine nature of the law which is still entrenched.⁶¹ This is supported by the fact that judges at the Banda Aceh Sharia Court and the Medan Religious Court are dominated by men. Apart from that, commonly used legal sources (KHI) are legal products formed by male domination, and in the history of their formation the role of women was almost invisible in them. This is what is meant by the Legal Feminist school gender-biased laws are a product of male domination.

⁵⁹ Rahman; Purwanto and others.

⁶⁰ Weisberg, *Feminist Legal Theory: Foundations*.

⁶¹ Chand.

Slightly different from Liberal Feminists,⁶² Legal Feminists argue that the law, namely judges is not justified in being neutral towards the law or adhering to legal positivism.⁶³ Being neutral towards the law will only give rise to biased decisions. This means that, even though KHI and several ulama opinions state that wives are not entitled to '*iddah* and *mut'ah* maintenance, the wife's experience as a victim of domestic violence is a fact that must not be ignored by judges. Judges must open their eyes and be sensitive to the various experiences of women. Moreover, even though it is only a guideline, Book II Guidelines for the Administration and Duties of Religious Courts (2013) and SEMA No. 3/2018, can be used as a legal basis to justify '*iddah* and *mut'ah* income. In essence, judges must be active and courageous in reforming the law regarding wives' rights after divorce eliminating all forms of discrimination and supporting gender-sensitive laws.

Conclusion

This research concludes that the denial of '*iddah* and *mut'ah* living rights to women who are victims of domestic violence after divorce at the Medan Religious Court and the Banda Aceh Sharia Court is a form of discrimination and a violation of the principles of gender justice. This is because judges still adhere to the idea that women are not entitled to '*iddah* or *mut'ah* support if the divorce occurs at the wife's request (judicial divorce), even though there are regulations that allow this if the wife is a victim of domestic violence. This phenomenon shows that gender bias is still inherent in the justice system and the application of law in Indonesia, especially related to the protection of women's rights after divorce.

One thing that needs to be noted is that although the Banda Aceh Sharia Court judges have not accommodated the provision of '*iddah* and *mut'ah* support for women victims of domestic violence, they have gradually made efforts to uphold women's rights after divorce due to domestic violence by granting demands for their *madliyah* support. This

⁶² Lorber; Fakih; Tong.

⁶³ Weisberg, *Feminist Legal Theory: Foundations*; Fineman and Thomadsen; Chand.

small effort is in line with feminist aspirations for justice and gender equality before the law and is hoped to encourage legal reform to protect the rights of Indonesian women after divorce. In this way, it is hoped that the practices of discrimination and gender injustice that are still ongoing can be immediately overcome.

Acknowledgment

This research was carried out with financial assistance from Litapdimas in 2020. For this reason, the author would like to express his gratitude to the Directorate of Islamic Religious Higher Education, Directorate General of Islam, Ministry of Religion of the Republic of Indonesia.

Author Contributions

Nasruddin Yusuf made a significant contribution by providing an in-depth understanding of the formal legal theories that apply in Indonesia regarding *Iddah* and *Mut'ah* Support. He explained the legal basis, rules, and implementation of *Iddah* and *Mut'ah* Support in the legal system in Indonesia. Meanwhile, Nur Azizah made her contribution by linking the substance of the article to Liberal Feminist and Legal Feminist theories. She analyzes the issue of *Iddah* and *Mut'ah* Support from a feminist perspective and discusses its implications for gender equality. Nur Azizah also highlighted the gender gaps and injustices that may arise as a result of the *Iddah* and *Mut'ah* Living Regulations. Meanwhile, Faradila Hasan is responsible for improving this article. He reviewed, edited, revised, and translated the article until he arrived at the final draft. Faradila ensures the logical flow, coherence of ideas, completeness of references, and quality of the language of the article. The three of them were collectively involved in intense discussions to provide comments and contribute ideas based on their respective points of view. This collaborative discussion enriches the substance and sharpens the analysis of this article.

Conflict of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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