

PROTECTION OF WIFE'S RIGHTS AFTER A CONTESTED DIVORCE (Analysis of Judge's Decision Number: 143/Pdt.G/2014/PA.Sgm)

**Efrinaldi Efrinaldi¹, Jayusman Jayusman²,
Aris Margono³, Andi Eka Putra⁴,
Mahmudin Bunyamin⁵**

¹Universitas Islam Negeri Imam Bonjol Padang, , Indonesia

²³⁴⁵Universitas Islam Negeri Raden Intan Lampung, Indonesia

jayusman@radenintan.ac.id

Abstract

The research discusses the considerations of judges at the Sungguminasa Religious Court regarding fulfilling the rights of wives after divorce, decision Number: 143 /Pdt.G/2014/PA.Sgm. It is generally accepted that in contested divorce cases, there are no rights to the wife after the divorce. The judge's decision that was accepted usually only granted the divorce petition. Judges usually did not grant it if there were claims for their rights and the rights of children post-divorce in the lawsuit. This research question is: What is the progressive legal analysis of the judge's considerations in case Number: 143 /Pdt.G/2014/PA.Sgm? This research was a literature study related to the considerations of judges' decisions in case number: 143/Pdt.G/2014/PA.Sgm. The primary data of this research was the decision of case number: 143/Pdt.G/2014/PA.Sgm. The judge's considerations in the decision were analyzed using Progressive Law theory to conclude. After collecting data through interviews, the findings of this research are that the Judge's considerations in Decision Number: 143 /Pdt.G/2014/PA.Sgm in fulfilling the wife's rights after a divorce from her husband, is progressive. The panel of judges granted the wife's civil rights after the divorce based on the defendant's capabilities. This decision benefits and provides financial protection for the ex-wife in continuing her life.

Keywords: *Wife's Rights After Divorce; Judge's Considerations; Progressive Law*

Abstrak

Penelitian ini mengkaji pertimbangan hakim di Pengadilan Agama Sungguminasa yang memenuhi hak-hak istri pasca cerai gugat putusan Nomor: 143 /Pdt.G/2014/PA.Sgm. Lazimnya dalam kasus cerai gugat, tidak ada hak-hak istri pasca perceraian yang dikabulkan. Putusan hakim yang kabul biasanya hanya mengabulkan gugatan perceraian. Hakim biasanya tidak mengabulkan jika dalam gugatan itu terdapat pengajuan hak-haknya dan hak anak pasca perceraian. Fokus penelitian ini adalah Bagaimanakah analisis hukum progresif terhadap pertimbangan hakim pada perkara Nomor: 143 /Pdt.G/2014/PA.Sgm? Penelitian ini adalah penelitian kepustakaan terkait dengan pertimbangan putusan hakim pada perkara Nomor: 143 /Pdt.G/2014/PA.Sgm. data primer penelitian ini adalah putusan perkara Nomor: 143 /Pdt.G/2014/PA.Sgm. pertimbangan hakim dalam putusan tersebut akan dianalisis menggunakan teori Hukum Progresif untuk dilakukan penerikan kesimpulan. Hasil penelitian ini adalah Pertimbangan Hakim dalam Putusan Nomor: 143 /Pdt.G/2014/PA.Sgm dalam memenuhi hak istri pasca cerai gugat dari suaminya, bersifat progresif. Majelis hakim mengabulkan hak-hak keperdataan istri pasca cerai gugat berdasarkan atas pertimbangan kemampuan dari tergugat. Putusan ini membawa kemaslahatan dan memberikan perlindungan finansial bagi mantan istri dalam melanjutkan kehidupannya.

Kata Kunci: *Hak Istri Pasca Perceraian; Cerai Gugat; Hukum Progresif*

A. Introduction

By Wives who go through a contested divorce are often denied their rights. This is due to the husband's denial because the divorce was at the wife's will. Even wives who apply to the court for divorce and have their rights determined in a court judgment,

often do not receive their rights because the judgment is unenforceable and not legally guaranteed¹.

This is in contrast to the decision of a contested divorce in PA Sungguminasa, namely Decision Number: 143/Pdt.G/2014/PA.Sgm. In this decision, the judge decided on several post-divorce wife's rights that must be fulfilled by the husband. The judge imposed a burden on the husband to pay *Madiyah* alimony, *Idah* alimony, and *Mut'ah* alimony to the husband^{2,3,4,5,6,7}.

Literature reviews related to this research include Heri Irawan's research entitled, "Post-Divorce Maintenance in a Plaintiff's Divorce Case (Critical Study of Article 149 KHI Against Case Number XXXX/Pdt.G/2012 PAJs)." The findings of this study are that the basis for the judge's consideration in granting *iddah* maintenance, *maskan*, *kiswah*, and *mut'ah* in case No. xxxx/Pdt.G/2012/PA.JS is regulated in Marriage Law No. 1 of 1974 Article 41 Letter C. Textually divorce in the Article contains the meaning of divorce in general, so it can be interpreted that the PA judge has the right to oblige the former husband to provide livelihood expenses and determine an obligation for the former

¹ Betra Sarianti, "TINGKAT KEPATUHAN AYAH MEMBAYAR NAFKAH ANAK PASCA PERCERAIAN," *Supremasi Hukum: Jurnal Penelitian Hukum* 27, no. 2 SE-Articles (September 2019): 105–17, <https://doi.org/10.33369/jsh.27.2.105-117>.

² Eka Susylawati, Moh. Masyhur Abadi, and M. Latief Mahmud, "Pelaksanaan Putusan Nafkah Istri Pasca Cerai Talak Di Pengadilan Agama Pamekasan," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 8, no. 2 (2014): 374–93, <https://doi.org/10.19105/al-lhkam.v8i2.354>.

³ Margono Aris, "Hak Istri yang Bercerai Dari Suaminya (Analisis Terhadap Putusan Hakim Nomor: 143/Pdt. G/2014/PA. Sgm)" (UIN RADEN INTAN LAMPUNG, 2023).

⁴ Maya Yulita, "Pengawasan Ombudsman Terhadap Maladministrasi Pemenuhan Nafkah Istri Dan Anak Pasca Perceraian Bagi Pegawai Negeri Sipil," *Soumatara Law Review* 3, no. 2 (2020): 213–32.

⁵ Andi Alauddin, "Analisis Yuridis Tanggung Jawab Ayah Kandung Terhadap Nafkah Anak Setelah Perceraian," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 1, no. 1 (2019): 1–24, <https://doi.org/10.47435/al-ahkam.v1i1.96>.

⁶ Alauddin.

⁷ Alauddin.

wife due to divorce⁸. Urrahman Atho's research entitled, "Problematics of Post-Divorce Wife's Maintenance for Civil Servants." The result of this study is that according to the judges in PA Malang City and Malang Regency, the regulation of salary distribution for ex-wives for civil servants is not applied in the judicial environment. This is contrary to Islamic law, which limits it to the completion of the *iddah* period, and there is no justice created by this regulation⁹. El Lutfi Ikmal El's research entitled, "Legal Protection of the Rights of Former Wives and Children After Divorce." The results of the research conducted found that legal protection of the rights of ex-wives and children after divorce in PA Purwokerto was not given directly in the court's decision because the judge was still guided by Article 176 HIR paragraph 3 and most wives only demanded the breakup of marital ties so that the rights of wives and children lacked legal protection¹⁰. Research written by Dian Prabawati entitled, "Legal Protection Against Divorced Wives Who Do Not Get a Share of Marital Property from Their Husbands." This research only describes the rights of divorced wives regarding joint property. Divorced widows or widowers are each entitled to one-half of the joint property as long as it is not specified otherwise in the marriage agreement¹¹. The similarity between this research and the studies of Heri, Urrahman, El Lutfi, and Dian, which are previous studies, is the focus of the discussion on the rights of wives after divorce. As for the differences; Heri discusses the problem of post-divorce maintenance in the case of a contested divorce, Urrahman discusses the problematic issue of post-divorce wife's maintenance for civil servants, El Lutfi discusses the rights of ex-wives and children after divorce, and Dian discusses the legal protection of

⁸ Heri Irawan, "Nafkah Pasca Perceraian Dalam Perkara Cerai Gugat" (UIN Raden Intan Lampung, 2021).

⁹ Heri Irawan.

¹⁰ Ikmal El El Lutfi, "Perlindungan Hukum Terhadap Hak-Hak Mantan Istri Dan Anak Pasca Perceraian" (UNIVERSITAS MUHAMMADIYAH PURWOKERTO, 2017).

¹¹ Tidak Mendapatkan et al., "Perlindungan Hukum Terhadap Janda Yang" 5, no. 2 (2016): 1277–88.

widows who do not get a share of property in marriage. This research focuses on the legal considerations of the judge granting the rights of the wife after the divorce in Decision Number: 143 /Pdt.G/2014/PA.Sgm which is based on the objective conditions of the defendant. This has never been the same as previous research.

B. Method

The type of research is library research¹². The nature of this research is descriptive and analytical¹³. The data source of this research is using secondary data sources consisting of primary legal materials and secondary legal materials. The primary legal material used is Decision Number: 143 /Pdt.G/2014/PA.Sgm. This research is related to the consideration of the judge's decision in case Number: 143 /Pdt.G/2014/PA.Sgm. Then equipped with secondary legal materials¹⁴ books and articles relevant to this research. Data collection techniques using documentation. Then after the data is collected, data clarification and classification are carried out. Furthermore, it is explained that the data analysis process is carried out since data collection is deductive. Data analysis is carried out using Progressive legal theory to conclude¹⁵.

C. Results and Discussion

Progressive Law

Satjipto Rahardjo (hereinafter written as Pak Tjip) who initiated progressive law does not provide a definition and limitation of progressive law. He allows progressive legal science to always be open and fluid so that it can capture and digest any changes that occur and can carry out its duties to serve humans and

¹² Mustika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Nasional, 2004).

¹³ Sudaryono, *Metodologi Penelitian Kuantitatif, Kualitatif, Mix Method*, Cet. Ke-3 (Depok: PT. Raja Grafindo Persada, 2019)., h. 88.

¹⁴ *Ibid.*, h. 54

¹⁵ Moh Kasiram, *Metodelogi Penelitian, Refleksi Pengembangan Pemahaman, Dan Penguasaan Metodologi Penelitian* (Malang: UIN Maliki Press, 2010).

humanity¹⁶. The definition of progressive law was found by Pak Tjip's colleagues and students who explored the idea of progressive law.

According to Soetandyo, progressive law is: "A new legal paradigm that wants to answer contemporary problems that cannot be solved with the old paradigm (positivism)"¹⁷. Abu Rokhmat mentioned that progressive law is a scientific effort and this idea became widely known and developed rapidly. There are at least two main things behind the birth of progressive legal thinking. First, Pak Tjip's understanding of theory is always changing, so he then thinks about giving birth to a new theory. Second, his anxiety and worry about the legal conditions in this country became the foundation for him to initiate something that could overcome the legal chaos in Indonesia. He criticizes the old way of law (legal-positivistic) which causes the law in Indonesia to be unable to make justice seekers happy¹⁸. Suteki mentioned that progressive law is a liberation movement because it is fluid and always restless in search of the truth¹⁹. Then Bernard L. Tanya argued that progressive law is law with the spirit of doing the best for the community, nation, and State²⁰.

The idea of progressive law was first put forward by Pak Tjip in 2002 through his writing in Kompas Daily entitled "Indonesia Needs Progressive Law Enforcement"²¹. This idea became widely recognized and developed rapidly. There are at least two main things behind the birth of progressive legal thinking. First, Pak Tjip's understanding of theories that are always changing,

¹⁶ Satjipto Rahardjo, "Biarkan Hukum Mengalir; Catatan Kritis Tentang Pergulatan Manusia Dan Hukum," 2008.

¹⁷ Soetandyo Wignjosebroto, "Prof Tjip Dan Ajaran Hukum Progresifnya: Sebuah Pengantar Ringkas," *Satjipto Rahardjo Dan Hukum Progresif: Urgensi Dan Kritik*. Jakarta: *Epsitema Dan HuMa*, 2011.

¹⁸ Abu Rokhmad, "Gagasan Hukum Progresif Perspektif Teori Masalah," *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 1 (2013): 1–14.

¹⁹ Jayusman Jayusman et al., "The Development of Indonesian Marriage Law in Jakarta Governor Regulation No. 185 of 2017," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 825–45.

²⁰ Jayusman et al.

²¹ Rokhmad, "Gagasan Hukum Progresif Perspektif Teori Masalah."

so he then thought of creating a new theory. Second, his anxiety and concern about the condition of the law in this country so became the foundation for him to initiate something that can overcome the chaos of the law in Indonesia²².

To realize the form and practice of the legislation currently practiced in the country, it is necessary to use tactics by challenging the status quo and progressively carrying out legal leaps. Such leaps and liberation are blended into progressive legal thinking and types by rapidly changing, seeking extreme reversals in both theory and practice, and carrying out legal breakthrough efforts²³.

Progressive law has a different paradigm. The law should serve human beings. Therefore, legal actors can make creative changes to existing regulations²⁴. Legal actors in the legislative field can improve regulations to bring justice and welfare to the community. Legal actors in the courts can also think creatively and make interpretations in providing justice for the people and justice seekers. Legal actors must have sensitivity to crucial issues in society. Governments, both executive and legislative, are important and need to be encouraged to respond and care about the interests of people at all levels.

Satjipto Rahardjo in his book "*Menggagas Hukum Progresif di Indonesia*" states that progressive law has the characteristics of a visionary legal science, related to the major principles it promotes²⁵. Furthermore, progressive law also has characteristics that are always in process and not final. It always seeks the truth, both the truth about the meaning of justice, certainty, order, welfare, and others related to the needs of society²⁶.

Identity of the Parties

²² Satjipto Rahardjo, *Membedah Hukum Progresif* (Penerbit Buku Kompas, 2006).

²³ Satjipto Rahardjo, "Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum," *Dalam Buku Menggagas Hukum Progresif Indonesia, (Semarang: LAIN Walisongo Dan Program Doktor Ilmu Hukum UNDIP, 2006)*, 2006.

²⁴ Rahardjo.

²⁵ Rahardjo, *Membedah Hukum Progresif*.

²⁶ Endang Sutrisno, "Bunga Rampai: Hukum Dan Globalisasi, Yogyakarta" (Genta Press, 2007).

The PA Sungguminasa, which examines and hears cases at first instance, has handed down a decision in a case filed by the plaintiff, aged 32, Muslim religion, with a junior high school education, occupation housewife, residing at Jalan X Kelurahan X Kecamatan Somba Opu Kabupaten Gowa, as the plaintiff. Defendant, aged 33 years, Muslim religion, senior high school education, self-employed, residing at Jalan X Kelurahan X, Somba Opu Sub-District, Gowa Regency, as the defendant;²⁷

Sitting of the case

The plaintiff has filed a lawsuit dated 20 February 2014 which is registered with the Registrar of PA Sungguminasa in register No. 143/Pdt.G/2014/ PA.Sgm., dated 20 February 2014, which states the following matters:

1. The plaintiff and the respondent were legally married on 19 August 2000, which was recorded by the Marriage Registrar of the KUA of Somba Opu Sub-district, Gowa Regency under the register under the Marriage Certificate Excerpt Number: 318/37/IX/2000, dated 04 September 2000;
2. After the marriage, the plaintiff and the respondent lived together as husband and wife in a house owned by the respondent's parents in Kelurahan X, Gowa District;
3. In the marriage between the plaintiff and the respondent, there were 2 (two) children. The first child is currently under the care of the respondent, while the second child is under the care of the plaintiff.
4. The plaintiff-defendant started their marriage living in harmony. However, the household life of the plaintiff-defendant has not been harmonious since February 2013 until now due to:
 - a. The respondent left the joint residence without any clear reason and during his departure it turned out that the respondent had remarried another woman without the consent of the plaintiff;
 - b. The respondent did not provide physical and mental

²⁷ Aris, "Hak Istri yang Bercerai dari Suaminya (Analisis Terhadap Putusan Hakim Nomor: 143/Pdt. G/2014/PA. Sgm)."

maintenance to the plaintiff.

5. Around June 2013, which was 4 (four) months after his departure, the respondent returned to their shared residence, however instead of getting along with the plaintiff the respondent became angry and terrorized the plaintiff by destroying their shared residence and taking all of the timber belonging to UD "XX" which was a joint business between the plaintiff and respondent and since then the plaintiff has had no income to support herself and her two children;
6. Because the respondent no longer provided for the plaintiff, the plaintiff had no income to support herself and her two children He then returned to his parent's house on Jalan X in Gowa Regency now;
7. One day after the plaintiff returned to his parent's house, the defendant and his second wife immediately moved into the plaintiff-defendant's shared house until now, and all of the plaintiff-defendant's joint property including UD. "XX" is controlled by the defendant and his second wife;
8. The plaintiff's reasons underlying her divorce claim are under the grounds for divorce as set out in the KHI and Law No. 1 of 1974 on Marriage²⁸.

Furthermore, the demands are:

1. Child Support:

Based on the provisions of the law, every parent is obliged and fully responsible for providing for their children both physically and mentally; the Defendant should be ordered to provide for their two children until they can be independent and the appropriate child maintenance demand is in the amount of Rp. 4,000,000 per month, with details: Rp. 2,000,000,- X 2 (two) children Rp. 4,000,000,- (four million Rupiah) per month.

2. Past Expenses:

The plaintiff, as the wife of the defendant, took the initiative to file for divorce, however, this did not deprive her of her right to

²⁸ Aris.

claim past maintenance which was not provided by the defendant from February 2013 until February 2014 (for 12 months), especially as the plaintiff was not given any profits from UD "XX" which is a joint business of the plaintiff-defendant; The plaintiff demands that the defendant pay the aforementioned maintenance in the amount of Rp. 18,000,000,- with the following details: Rp. 1,500,000,- X 12 months = Rp. 18,000,000,- (eighteen million Rupiah).

3. *Iddah* maintenance:

Every wife who has been legally divorced is still entitled to receive *iddah* maintenance from her former husband (the defendant), therefore the plaintiff demands that the defendant provide *iddah* maintenance in the amount of Rp. 10,000,000 (ten million Rupiah);

4. *Mut'ab*:

The plaintiff also demands that the defendant provide *mut'ab* for IDR 10,000,000 (ten million Rupiah).

Furthermore, so that the demands for child maintenance, past maintenance, *iddah*, and *mut'ab* demanded by the plaintiff can be implemented later after the decision, in this case, has obtained permanent force, the plaintiff requests the Panel of Judges of PA Sungguminasa to declare that the defendant should not be allowed to take a divorce certificate before paying the entire amount of the demands specified in the final decision of this case²⁹.

Plaintiff's claim

Based on the above, the plaintiff requests that the President of PA Sungguminasa cq the Panel of Judges examining and trying this case be pleased to make the following decision:

Primair:

1. Grant the plaintiff's claim in its entirety
2. To pronounce divorce one *ba`in shughraa* against the defendant;
3. Punish the defendant to provide child maintenance in the amount of Rp. 4,000,000 (four million Rupiah) per month for

²⁹ ARIS.

- the plaintiff-defendant's two children until the children become independent;
4. Punish the defendant to pay past maintenance to the plaintiff in the amount of Rp. 1,500,000 (one million five hundred thousand Rupiah) per month from February 2013 until February 2014, totaling Rp. 18,000,000 (eighteen million Rupiah);
 5. Punish the defendant to pay alimony for *Iddah* to the plaintiff in the amount of Rp. 10,000,000 (ten million Rupiah);
 6. Punish the defendant to pay *Mut'ah* to the plaintiff in the amount of Rp. 10,000,000 (ten million Rupiah);
 7. Declare that the defendant is not allowed to take out a divorce certificate before paying the entire amount of the claim specified in the final decision of this case.
 8. Order the Registrar of PA Sungguminasa to send a copy of this decision to the Marriage Registrar where the plaintiff and defendant were married;
 9. To impose court costs following the applicable laws and regulations.

Subsidiary:

If the Panel of Judges is of another opinion, please issue a fair and just decision (*ex aequo et bono*)³⁰.

Judge's Consideration

After proper summons, at the first summons to the parties, the plaintiff was present while the defendant was absent. Therefore, mediation could not be conducted. However, the panel of judges continued to provide advice so that the plaintiff would change her mind and not pursue her divorce claim³¹.

The Panel considers from the statement of claim, that the reason for the plaintiff's claim is that the household between the plaintiff and the defendant has been in continuous dispute which is difficult to reconcile and this reason is following the provisions of Article 19 letter (f) of Government Regulation No. 9 of 1975 and

³⁰ Aris.

³¹ Aris.

therefore formally the plaintiff's claim should be accepted and considered;³²

The judges noted in the plaintiff's statement of claim that in June 2013 the dispute started when the respondent left home without reason, but it was discovered that the respondent had remarried without permission, and then the respondent had neglected to provide physical and mental support to the plaintiff. The judge considered from the submitted statement of claim, that the marriage between the plaintiff and the defendant could not be reunited, given the several disputes that had occurred³³.

During the trial process, the defendant was properly summoned but did not attend. Therefore, based on the provisions of Article 149 paragraph (1) RBg, as long as the plaintiff's claim is well-founded and based on law, the plaintiff's claim can be granted by verse;³⁴

Then regarding the children of money produced in marriage, the evidence marked P2 was submitted by the plaintiff to corroborate his arguments about his children named Child I P and T who were born from his marriage. Where the evidence is considered to have fulfilled the formal and material requirements of authentic evidence. Therefore, based on this evidence, it must be proven that Children I P and T are the children of the plaintiff and the defendant;³⁵

Then the plaintiff presented evidence from two witnesses, that based on the testimony under oath of the witnesses presented by the plaintiff, can be concluded as follows: the two witnesses knew that the plaintiff and the defendant had been separated for approximately 1 year;³⁶

Based on the aforementioned three pieces of testimony, it is evident that the plaintiff and the respondent are no longer living in a harmonious household. These circumstances and conditions have been illustrated by the continuous quarrels and arguments and the

³² Aris.

³³ *Ibid*

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ *Ibid*

separation of residence or the non-assembly of husband and wife in one common residence³⁷. The facts that occurred in the household of the plaintiff and the respondent showed a loss of happiness, which was caused by the plaintiff no longer feeling physically or psychologically bound to the respondent.

The separation of residence between the plaintiff and the respondent, which has lasted for approximately 1 year, has also shown that the integrity of the household has broken down (marriage breakdown). This means that the plaintiff and the respondent no longer have elements that are interdependent with each other. The plaintiff as a wife no longer feels that she has a husband, namely the defendant, this is what is called a marriage breakdown³⁸.

Furthermore, the Decision of the Supreme Court of the Republic of Indonesia Number 237 K/AG/1998 dated 17 March 1999, which was taken into consideration by the panel of judges in this case, where the abstract of the law contained therein is that disputes, quarrels, living apart, not in one place of residence together, one party does not intend to continue living together with the other party, it is a legal fact that is sufficient for reasons in a divorce following the intent of Article 19 letter (f) of Government Regulation Number 9 of 1975 jo Article 116 letter (f) KHI;³⁹

Based on the aforementioned considerations, there are sufficient legal grounds for the panel of judges to grant the plaintiff's claim, and because there has never been a divorce between the plaintiff and the defendant, then based on the provisions of Article 119 paragraph 2 letter (c) KHI, the plaintiff's main claim that her marriage should be divorced should be granted;⁴⁰

Regarding the plaintiff's claims relating to maintenance for her two children, past maintenance, *mut'ab*, and *iddah*, the panel of judges will consider all of the plaintiff's claims as a result of the

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ *Ibid*

⁴⁰ *Ibid*

divorce;⁴¹

Furthermore, concerning child maintenance, based on Exhibits P2 and P3, the marriage between the plaintiff and the defendant has been blessed with 2 children, so concerning the fulfillment of child maintenance needs as argued by the plaintiff, namely Rp 4,000.000,- per month for their two children, then in the opinion of the panel of judges that as an effort to promote the principle of children's life, growth and development for the present and as an inherent obligation and responsibility of parents towards children who are protected by the state as stipulated in the provisions of Article 4 and Article 26 of Law Number 23 of 2002 concerning Child Protection in conjunction with Article 45 paragraphs (1 and 2) of Law Number 1 of 1974, therefore about the plaintiff's claim, it is necessary to look at the level of appropriateness and the defendant's ability to fulfill it;⁴²

Both parents must maintain and educate the children as well as possible until the children marry or can stand on their own. This is regulated in Article 45 paragraphs (1 and 2) of Law No. 1 of 1974 so there must be a principle of legal certainty that can protect the interests of the children's lives; Both children of the plaintiff and respondent are undergoing school education as in the facts of the trial⁴³.

The panel of judges believes that there are sufficient legal grounds to determine the amount of maintenance for the plaintiff and respondent's two children at a minimum of Rp 1,000,000.00 (one million Rupiah) from the respondent's monthly income;⁴⁴

The plaintiff's claim for alimony totaled Rp 18,000,000 (eighteen million Rupiah), which was the accumulation of the defendant's failure to provide alimony to the plaintiff from February 2013 to February 2014, while the plaintiff was abandoned by the defendant and continued to fulfill her obligations as a wife in maintaining and caring for the plaintiff's and defendant's two

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ *Ibid*

⁴⁴ *Ibid*

children. Therefore, the plaintiff's claim is considered reasonable and not unlawful, and therefore the plaintiff's claim for alimony should be granted;⁴⁵

Regarding *iddah* maintenance, the provisions of Article 152 KHI confirm that the former wife is entitled to *iddah* maintenance from her former husband unless she is *nusyuz*. Based on the demand for *iddah* maintenance mentioned by the plaintiff, namely Rp 10,000,000 (ten million Rupiah), in the opinion of the panel of judges, at least the defendant should be declared to have accepted the plaintiff's demands and the plaintiff's claim is considered well-founded, therefore the defendant should be burdened to provide *iddah* maintenance to the plaintiff for three months for Rp 10,000,000 (ten million Rupiah);⁴⁶

As for *mut'ah*, based on the provisions of Article 41 letter c of Law Number 1 the Year 1974, it is confirmed that the Court can oblige the former husband to provide livelihood costs and/or determine something obligatory for the former wife, connected with the provisions in CHAPTER XVII in the First section on the consequences of divorce Article 149 KHI which confirms that if the marriage is broken up due to divorce, the former husband is obliged to provide a decent *mut'ah* to his former wife, either in the form of money or objects unless the former wife is *qobla al-dukbūl*, provide *nafkah*, *maskan*, and *kiswah* to the former wife during *iddah*, unless the former wife has been sentenced to divorce *ba'in* or *nusyuz* and is not pregnant, pay off the dowry that is still owed in full, and a half if *qobla al-dukbūl*, and provide *hadhanah* costs for children who have not reached the age of 21 years;⁴⁷

Regarding the plaintiff's petition in point 7 which requested that the defendant not be allowed to take the divorce certificate before paying the entire amount of the plaintiff's claim, in the opinion of the panel of judges that such a claim is not under the applicable legal provisions, because the divorce certificate is a valid proof of the divorce of a marriage, and about the fulfillment of all

⁴⁵ *Ibid*

⁴⁶ *Ibid*

⁴⁷ *Ibid*

the plaintiff's claims, it is related to the aspect of case settlement or execution so that the plaintiff's claim is rejected;⁴⁸

The panel of judges noted that the defendant had never appeared at the trial even though he had been duly summoned and that the plaintiff's claim was partly considered to be well-founded and based on law, so based on the provisions of Article 149 paragraph (1) R.Bg, the plaintiff's claim was partly granted by way of a verdict and the rest rejected;⁴⁹

Considering, that this case is included in the field of marriage, then based on the provisions of Article 89 paragraph (1) of Law Number 7 of 1989 as amended by Law Number 50 of 2009 concerning Religious Courts, therefore the costs of this case are borne by the plaintiff;⁵⁰

Judge's Verdict

Taking into account the facts of the trial and all the provisions of the applicable laws and regulations as well as *Sharia* law relating to this case, the panel decided that the defendant, who had been officially and properly summoned to appear in court, did not appear, and therefore the plaintiff's claim was partially dismissed by way of a verdict. The plaintiff ordered the defendant to pay the cost of *badanah* and education for the plaintiff and defendant's two children, the first child is 12 years old, and the second child is 6 years old, with minimum maintenance of Rp 1,000,000 (one million Rupiah) every month until the plaintiff and defendant's two children reach adulthood and/or become independent; Ordered the defendant to provide maintenance that he has neglected (*nafkah madhiyah*) to the plaintiff from February 2013 to February 2014 for Rp 18,000,000 (eighteen million Rupiah) after this decision becomes legally binding. Punish the defendant to provide *iddah* maintenance to the plaintiff for 3 months for Rp 10,000,000,- (ten million Rupiah), and provide *mut'ab* in the form of money to the plaintiff for Rp 10,000. 000,- (ten million Rupiah);

⁴⁸ *Ibid*

⁴⁹ *Ibid*

⁵⁰ *Ibid*

the panel of judges ordered the Registrar of PA Sungguminasa to deliver a copy of this decision to the Marriage Registrar in the place where the marriage of the plaintiff and the defendant took place to be recorded in the register provided for that purpose; charged the plaintiff to pay court costs for Rp 361,000,- (three hundred sixty-one thousand Rupiah)⁵¹.

Progressive Law Review of Judges' Considerations in Decision Number: 143 /Pdt.G/2014/PA.Sgm Fulfilment of Divorced Wife's Rights

Decision Number: 143 /Pdt.G/2014/PA.Sgm is a verdict on a contested divorce case. The case was filed for divorce because the husband left home without cause and married another woman without his wife's permission. The husband as the defendant returned to the house where the plaintiff originally lived, he brought a woman who had been polygamous in a *Siri* manner. Then the respondent took control of the business that the plaintiff had established together. Then the plaintiff returned to her parents' house. For one year the defendant did not provide for the plaintiff physically or mentally, and during this time the plaintiff had childcare. In this case, there was no element of *nusyuz* from the wife⁵².

Based on the facts of the trial, the panel of judges gave considerations in deciding this case. The panel of judges decided to grant some of the plaintiff's claims. On the other hand, there were plaintiffs' claims that were not granted because they did not have strong legal reasons. On the other hand, the panel of judges in granting the wife's request in the form of civil rights, the panel of judges considered the law and the ability of the defendant⁵³.

⁵¹ *Ibid*

⁵² Yulia Risa, "Tinjauan Yuridis Faktor Penyebab Cerai Gugat Di Pengadilan Agama Kelas II Kota Solok Tahun 2017," *Lex Librum: Jurnal Ilmu Hukum* 4, no. 2 (2018).

⁵³ Jayusman and Zuhri Imansyah, "The Decision on Joint Properties in Bengkulu High Religious Court Jurisdiction," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021): 99–134, <https://doi.org/10.18326/ijtihad.v21i1.99-134>.

Civil rights of ex-wives *nafkah madhyah*, *nafkah iddah*⁵⁴, and *mut'ab*. With the provision of *madhyah nafkah*, *iddah nafkah*, and *mut'ab* in judge's decision Number: 143 /Pdt.G/2014/PA.Sgm, in which there is a restoration and fulfillment of the wife's rights, both rights that are wasted (missed) or the rights of the wife after divorce, this is a form of protection of the wife's rights after divorce. This is a progressive decision. Typically^{55,56} In the decision of the case of suing for divorce, there is no provision of *nafkah madhyah*, *nafkah iddah*, and *mut'ab*; because the divorce is based on the will of the wife⁵⁷.

The protection of the wife's rights in this progressive decision is given to provide justice to the wife, that the wife has carried out her obligations during the marriage, even when her husband committed polygamy without the wife's permission, the wife still carried out her obligations properly in the form of taking care of the children and providing and fulfilling the needs of the children, on the other hand, the husband has neglected his maintenance to the wife and children.

Progressive legal review, on the consideration of Judges in Decision Number: 143 /Pdt.G/2014/PA.Sgm in fulfilling the legal protection of the rights of wives who have been divorced from their husbands this decision, has contained the values of benefit. This decision was given by considering the facts that occurred, on the other hand, the panel of judges also considered the husband's ability to fulfill his rights^{58,59}. The granting of a divorced wife's civil

⁵⁴ Erwin Hikmatiar, "Nafkah Iddah Pada Perkara Cerai Gugat," *Mizan: Journal of Islamic Law* 4, no. 1 (2018).

⁵⁵ Jayusman and Imansyah, "The Decision on Joint Properties in Bengkulu High Religious Court Jurisdiction."

⁵⁶ Nasriah Nasriah, Dachran S Busthami, and Hamza Baharuddin, "Perlindungan Hukum Hak-Hak Istri Pasca Perceraian," *Journal of Lex Philosophy (JLP)* 2, no. 1 (2021): 15–31.

⁵⁷ Zuhri Imansyah et al., "Tinjauan Maqāsīd Syarīah Terhadap Perkara Harta Bersama Dan Kontribusinya Dalam Pembaruan Hukum Keluarga Islam Di Indonesia (Studi Kasus Di Wilayah Hukum Pengadilan Tinggi Agama Bengkulu)," *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 13, no. 1 (2020): 1–20.

⁵⁸ Fikri Fikri, "Fleksibilitas Hak Perempuan Dalam Cerai Gugat Di Pengadilan Agama Parepare," *Al-Maiyyah: Media Transformasi Gender Dalam Paradigma Sosial Keagamaan* 12, no. 1 (2019): 1–16.

rights will help her to start her life after the divorce. This is to fulfill her needs and capital to plan her life in the future.

D. Conclusions

The conclusion of this research is 'The judge's consideration in Decision Number: 143 /Pdt.G/2014/PA.Sgm in fulfilling the rights of the wife after the divorce from her husband is progressive. The panel of judges granted the wife's civil rights after the divorce based on consideration of the ability of the defendant. This decision brings benefits and provides financial protection for ex-wives in continuing their lives.

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⁵⁹ Moch Ichwan Kurniawan, Nurul Hanani, and Rezki Suci Qamaria, "Hambatan Pelaksanaan SEMA No. 2 Tahun 2019 Terhadap Pemenuhan Hak-Hak Perempuan Pasca Cerai Gugat Di Pengadilan Agama Kabupaten Kediri," *Al-Syakhsyiyah: Journal of Law & Family Studies* 4, no. 1 (2022): 101.

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