



The Rights of Wife in Divorce in The Decision of Religious Courts in Indonesia and Sharia Courts in Malaysia

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Abstract: Indonesia and Malaysia are predominantly Muslim countries and belong to the Shafii school of thought. Both have similarities with regard to the rights of the wife in divorce. This study aims to determine the rights of wives in a divorce based on the decisions of the Religious Courts in Indonesia, in this case, the Religious Courts of South Jakarta and the Sharia Courts in Malaysia, particularly the Sharia Courts in Kuala Lumpur federal region. The time period for this research object is limited to 2014-2016. The research method used is a qualitative method with a comparative approach and statute approach. The results of the study stated that the rights that a wife can receive in a divorce are the right to support iddah, mut'ah and *badhanab*. However, in reality, court decisions regarding the rights of wives in divorce in Indonesia and Malaysia are different. The difference in the decision occurs in the event that the wife during the trial process does not request or demand her rights from the panel of judges. In Indonesia, judges have ex officio rights, so with these ex officio rights, especially in cases of talak divorce, judges grant the wife's rights even though the wife does not claim her rights as long as the respondent is always present in court. Whereas in Malaysia, the wife's rights must be requested from the panel of judges by the wife, because divorce is a request and agreement between the parties, so the panel of judges apart from not recognizing ex officio rights, also does not have the authority to grant the rights of the wife in a divorce without being asked. . Another difference in court decisions is that Malaysia has a special institution called BSK (Bahagian Support Keluarga). This institution functions to guarantee the implementation of the fulfillment of the rights of the wife contained in the judge's decision, especially with regard to the right to maintenance of 'iddah and mut'ah, after the decision has permanent legal force. Meanwhile, Indonesia does not have an institution that performs this function.

Keywords: Wife's Rights; Religious courts; Sharia Court; Ex officio rights

Abstrak: Indonesia dan Malaysia adalah negara mayoritas berpenduduk muslim dan bermazhab Syafii. Keduanya memiliki persamaan berkaitan dengan hak-hak isteri dalam perceraian. Penelitian ini bertujuan untuk mengetahui hak-hak isteri dalam perceraian berdasarkan putusan-putusan Pengadilan Agama di Indonesia, dalam hal ini Pengadilan Agama Jakarta Selatan dan Mahkamah Syariah di Malaysia, khususnya Mahkamah Syariah wilayah persekutuan Kuala Lumpur. Kurun waktu objek penelitian ini dibatasi tahun 2014-2016. Metode Penelitian yang digunakan adalah metode kualitatif dengan pendekatan komparatif dan pendekatan perundang-undangan. Hasil penelitian menyatakan bahwa hak-hak yang dapat diterima isteri dalam perceraian yaitu hak nafkah iddah, mut'ah dan hadhanah. Namun dalam kenyataan, putusan pengadilan tentang hak-hak isteri dalam perceraian di Indonesia dan Malaysia terjadi perbedaan. Perbedaan putusan tersebut terjadi dalam hal isteri pada proses persidangan tidak memohon atau menuntut hak-haknya kepada majelis hakim. Di Indonesia, hakim memiliki hak *ex officio*. Dengan hak *ex officio* ini, khususnya dalam kasus perceraian talak, hakim memberi hak-hak isteri meskipun isteri tidak menuntut hak-haknya selama temohon selalu hadir dalam persidangan. Sedangkan di Malaysia, hak-hak isteri harus diminta kepada majelis hakim oleh isteri, karena perceraian merupakan permohonan dan kesepakatan antara para pihak, sehingga majelis hakim selain tidak mengenal hak *ex officio*, juga tidak memiliki wewenang untuk memberikan hak-hak isteri dalam perceraian tanpa diminta oleh isteri. Perbedaan putusan pengadilan lainnya ialah, Malaysia memiliki Lembaga khusus bernama BSK (Bahagian Sokongan Keluarga). Lembaga ini berfungsi menjamin terlaksananya pemenuhan hak-hak isteri yang terdapat dalam putusan hakim, terutama berkaitan dengan hak nafkah '*iddah*' dan '*mut'ah*', setelah putusan tersebut berkekuatan hukum tetap. Sedangkan Indonesia tidak memiliki Lembaga yang menjalankan fungsi tersebut.

Keyword: Hak-Hak Isteri; Pengadilan Agama; Mahkamah Syariah; Hak Ex Officio

Introduction

Indonesia and Malaysia have essentially identical Islamic marriage laws, including measures guaranteeing the rights of ex-wives following divorce, which are in conformity with fiqh regulations. As is well known, Indonesian and Malaysian fiqh adheres to the Syafiyyah school of thought ([Jayasuriya, 1982](#); [Jones, 2021](#); [Mohamad, 2011](#); [Mohammad, 2016](#); [Harisudin, et.al, 2021](#)). However, as this study will explain, the application of the ex-rights wife's varies significantly.

The establishment of rights and responsibilities that husband and wife must perform is one of the effects of divorce. In the Muslim world, under addition to being governed by traditional fiqh, this issue also receives specific consideration in marriage law. This is demonstrated by the inclusion of this issue as one of thirteen components in modern Muslim Family Law ([Mahmood, 1987](#)).

In Indonesia, the Marriage Law No. 1 of 1974 and the Compilation of Islamic Law regulate the rights of the wife in divorce as mut'ah, maintenance, maskan, and kiswah. Regarding the size of the living quarters, maskan and kiswah are determined by the husband's decency and ability, which is based on his salary. If maintenance is not paid, the woman may initiate a case against the court for the husband's negligence in completing this obligation. According to Article 149 of the Compilation of Islamic Law (KHI), iddah and mutah maintenance are the results of divorce; hence, iddah and mutah maintenance become mandatory when a divorce happens. However, this legislation does not specify the timeline for payment of debts deriving from a divorce ([Ali; Sariroh; Rumawi, 2021](#)), ([Husni; Nasohah; Nor, 2015](#)).

In Malaysia, the Islamic Family Law Enactment of 1984 governs the rights of spouses in the event of divorce. In terms of life, iddah talak is governed as follows: First, in line with syara' law, the court may require a man to pay alimony to his wife or ex-wife, unless she is nusyuz. Second, the wife has the right to earn a living until the end of the 'iddah, unless the ex-wife commits adultery with someone else. Third, the ex-wife's right to accommodation, namely the right to live in the ex-husband's house before the husband provides the house where he lives, with the provision that the right to accommodation will be lost if the 'iddah period has expired, the ex-wife is married to someone else, and

the husband files a lawsuit in court so that the house returned to him. ([Islamic Family Law Enactment, 1984](#))

When the husband is unwilling to divorce his wife voluntarily by divorce, but both parties have consented to divorce by ransom or divorce by ransom, the court may order the husband to divorce his wife by ransom (*kbulu'*) and the divorce will be considered divorce *ba'in sugbra*. In the event that each side cannot agree on the ransom price, the court can estimate the amount of ransom that must be paid in line with sharia law and taking each party's position and capabilities into account ([Kharlie, 2011](#)).

Research Methods

The writers use a kind of research known as normative juridical research, which is also known as legal research in the literature. This research method involves performing research on library materials or secondary data. The following methodological approaches were utilized in this study: First, there is an approach based on statutes, which entails looking at the laws and regulations that pertain to the arrangements regarding marriage in Indonesia. This includes laws and regulations that are regulated in the 1945 Constitution of the Republic of Indonesia, as well as laws and regulations that are regulated in other laws and regulations. Second, there is the comparative method, which is research that compares the legal products and legal characteristics related to arrangements regarding marriage in the legal regulations of other countries. This is done by comparing elements that can be compared (*tertium comparationis*) with the legal material that is the focus study.

The type of data that was used in this study was secondary data. This type of data is obtained by examining and examining legal issues through legislation, searching literature and library materials that are closely related to the issues that were raised by the author in this study to understand the concept of law in legal source texts. Secondary data can be found by following the steps outlined above.

The author used a library research to carry out the data gathering tool, which was carried out by the author (library research). This is accomplished by searching for and collecting laws or themes, as well as collecting statutory regulations coming from recorded statutory regulations or from the internet. statutory regulations are also collected. The way of analyzing the data that was chosen to be used was a

qualitative method. The qualitative method involves analyzing and processing data based on the researcher's comprehension of the facts or information acquired, which is then told in order to obtain research results. This is how the qualitative method is carried out. The process of data analysis involves systematically describing the data in the form of sentences that are orderly, coherent, logical, not overlapping one another, and effective, thereby facilitating data interpretation and understanding of the results of data analysis originating from legal materials based on concepts, theories, laws, and regulations, doctrine, legal principles, expert opinions, or the views of the researchers themselves. Data analysis is carried out by systematically describing the data in the form of sentences that are orderly, coherent, logical, and not overlapping one another. Analytical and prescriptive research are the forms that the results of the author's research take. Analytical research provides an overview or formulates the problem in accordance with the existing circumstances/facts. Prescriptive research uses a review of laws and literature to seek meaning and provide advice on existing problems.

Rights of a Wife After Divorce in Fiqh

Before analyzing the rights of the woman in divorce according to the decisions of the Religious Courts in Indonesia and the Sharia Court in Malaysia, it is necessary to examine the decisions of the Religious Courts in Indonesia and the Sharia Court in Malaysia ([Yusof & Duasa, 2010](#)), ([Zakaria; Shukry; Nen; Kadir, 2020](#)), ([Jones, 2021](#)), ([Jamaluddin; et.al. 2021](#)), ([Zainab; Wan-Ibrahim; Asyraf, 2014](#)), then first described fiqh perspective on this matter. As mentioned, the rights of the wife after the divorce can be in the form of maintenance, mut'ah, hadhanah, maskan, and kiswa. ([Turatmiyah; et.al. 2019](#)), ([Sulaiman; et.al, 2016](#)), ([Asari; et.al, 2017](#)).

1. *Iddah* living rights

In general, experts classify the post-divorce wife's maintenance rights into the following categories, depending on the form of divorce: First, the maintenance rights of the woman in *talâq raj'î*. The majority of scholars agree that a wife who is divorced with *talâq raj'î* retains her maintenance and housing rights during her '*iddah*' period, regardless of whether she is pregnant or not. This is because the divorced wife is still subject to marriage regulations. ([Al-Mawardi, 1999](#))

Second: The wife's right to support the *Talâq Ba'in*. Scholars have different opinions regarding the maintenance of a wife who is divorced by *talâq ba'in*. Malikiyyah ([Al-Ashbahî, 1442](#)), Syafi'iyah ([Al-Syarbînî, tth](#)), and some scholars Hanabilah ([Qudamah, tth](#)) and Ibnu Mundzir ([Al-Jaburi, 2001](#)) are of the opinion that a woman who is divorced *ba'in* is only entitled to a place to live without a living, unless she is pregnant then she is also entitled to a living and a place to live. As for the wife who is divorced *ba'in* like the wife who asks for *khulu'*, it applies to her in accordance with *al-mabtutah* (*talâq ba'in*), namely she has the right to get a place to live, whether the wife who is divorced is pregnant or not. This is based on the word of Allah in the Koran sura Altalaq (65) verse 6. In verse 6 sura Altalaq it is explained that there is an obligation to provide maintenance to wives even though they have been divorced. For a woman who is divorced three times (*ba'in*) and is not pregnant, she is entitled to a place to live but not entitled to maintenance and clothing, because she cannot be reconciled and cannot obtain inheritance rights from her husband. Meanwhile, if she is pregnant, then she has the right to receive maintenance, clothing, and a place to live until the end of her *'iddah* period ([Al-Qurtubi, 1993](#)). According to Hanafiyah scholars, divorced women are entitled to a means of subsistence and a place to live until the end of their *iddah* period. According to Hanafiyah scholars, living and living space (*al-sukna*) are material rights that a wife is entitled to as a result of their marriage. Similarly, *iddah* is also a right in a marriage (wife). In accordance with the verse that specifies a divorced woman's place of residence, *ba'in*, she is also entitled to support. ([Al-Sarakhasi, 2001](#))

Third: The wife's claim to alimony upon divorce has no *iddah*, i.e., before the husband and wife have sexual relations (*jima'*). The majority of experts say that a wife divorced by a husband who does not have an *iddah* period is not granted the right to work and a place to dwell. This is because her spouse has never fucked her ([Al-Qurtubi, 1992](#)). In addition, with the occurrence of divorce, the marriage bond between the parties has ended, and the conditions that led to the wife's obligation to receive maintenance have also evaporated. ([Al-Kasani, 1996](#))

2. The right of *mut'ah*

The term *mut'ah* is derived from the Arabic word *matâ'*, which implies everything that may be enjoyed and used. The right of *mut'ah* is a present given by a husband to his wife as recompense or consolation for

their divorce. According to Muhammad al-Khâtib al-Syarbaini, *mut'ah* refers to the number of assets that a husband must transfer to his divorced wife through talak or a comparable procedure ([Al-Syarbaini, tth](#)). According to Imam Taqiy al-Din ([Al-Husaini, tth](#)), Mut'ah is a term for property given by a husband to his wife because the husband has divorced his wife.

Islam stipulates that every woman whose husband divorces her has the right to *mut'ah*, except for three things; women who are divorced women who curse their husbands (*li'an*), women who ask for *kehulu'*, and divorced women who have never had intercourse. In addition, there is no limit to the amount of *mut'ah* that must be given, it is only adjusted to the level of the husband's ability and can comfort the wife who was hurt by the divorce ([Anas, tth](#))

Scholars have different opinions about *mut'ah*, among them are: ([Rusyd, 1969](#)): Ibn Hazm and al-Tabari are of the opinion that every divorced wife must be given *mut'ah*, whether she has had intercourse or not, and whether or not the amount of dowry has been determined. This opinion is based on the generality of the Qur'an surah al-Baqarah, 2: 236. While Maliki scholars are of the opinion, *mut'ah* is a sunnah for every divorced wife in all circumstances, because the sentence *baqqan 'ala al-muhsinin* which is found at the end of the Qur'an sura al-Baqarah, 2; 236 means a person who is capable. So, people who can not afford not included. Thus, the injunctions in the verses of *mut'ah* are *amar mandub (sunnah)*. The end of the verse also indicates that the giving of *mut'ah* is an act of someone who wants to do good and virtue. The characterization of actions as *ibsan* does not mean obligatory. Imam Abu Hanifah is of the opinion that *mut'ah* is obligatory for a person who divorces his wife before intercourse and the dowry has not been determined, based on Q.S.al-Ahzab, 33: 49. In addition to these circumstances, *mut'ah* sunnah is given. As for the wife who was divorced before the *dukhul* but the dowry has been determined, the husband gives half of the dowry that has been determined. Imam Syafi'i in his *qawl Jadid* and Imam Ahmad bin Hambal, in one history, argues that *mut'ah* must be given to every divorced wife except for the wife who has not had intercourse but has already determined the dowry. The basis for this opinion is Q.S. al-Baqarah, 2: 237 and 241.

3. The right of *haḍānah*

Haḍānah etymologically means *al-janb* which means beside or under the armpit ([Manzur, tth](#)), or it could also mean placing something near the ribs such as carrying, or placing something in the lap ([Zein, 2004](#)). In terminology, *haḍānah* according to al-Zahabi is serving young children to educate and improve their personality by people who have the right to educate them at a certain age which they are unable to do on their own ([Zahabi, tth](#)). The majority of ‘ulama agree that when a divorce occurs, custody of the child goes to the mother as long as the child is not yet *mumayyiz*.

Post-Divorce Wife's Rights in Positive Law in Indonesia

The rights of the wife in divorce are regulated in article 41 letter c Law number 1 of 1974 concerning Marriage, which states that the Court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife. Likewise, Government Regulation Number 9 of 1975 in article 24 paragraph (2) letter a, confirms that during a divorce lawsuit at the request of the plaintiff or defendant, the court can determine the maintenance that must be borne by the husband. Furthermore, the Compilation of Islamic Law (KHI) regulates the rights of wives in more detail, in articles 149, 152, 158, 159 and articles 160. Meanwhile, regarding the rights of *haḍānah* it is also specifically regulated in Article 41 of the Marriage Law, and in articles 105, 112 and Article 156 KHI. Article 149 of the KHI emphasizes that when a marriage is broken up due to divorce, the ex-husband must: a). Giving a proper *mut‘ah* to his ex-wife, either in the form of money or goods, unless the ex-wife is *qobla al-dukhul*; b). Providing maintenance, *maskan* and *kiswa* to the ex-wife while in ‘*iddah*, unless the ex-wife has been divorced *ba‘in* or *nusyuz* and is not pregnant; c). Pay off the dowry that is still owed in full and half if *qabla al dukhul*; d). Provide *haḍānah* costs for their children who have not reached the age of 21 years.

Article 152 KHI explains that a former wife has the right to receive ‘*iddah* from her ex-husband, unless he is *nusyuz*. Whereas regarding the provisions of *mut‘ah* regulated in article 158 KHI, namely: *mut‘ah* must be given by the ex-husband on condition that no dowry has been set for the wife *ba‘da al dukhul*, and the divorce is initiated by the husband. Furthermore, in article 159 it is reaffirmed that *mut‘ah sunnat* is

granted by the ex-husband without the conditions contained in article 158. Regarding the amount of *mut'ah*, article 160 KHI states that the amount of *mut'ah* is adjusted to the propriety and ability of the husband. As for *baḍānah* rights, especially for children who are not yet *mumayyiz* or not yet 12 years old, they are the rights of their mothers. Meanwhile, if the child is *mumayyiz*, then the child can choose to live with his mother or father.

Post-Divorce Wife's Rights in Positive Law in Malaysia

Divorce that occurs in the household has several impacts. Among them is related to the rights of the wife in divorce which includes living *'iddah*, *mut'ah*, and *baḍānah*. Provisions regarding the rights of the wife in divorce, as stipulated in AUUKI WWP 1984 (Deed of the 1984 Islamic Family Law [Federal Territory]) are contained in articles (*sections*) 56 to 71. Provisions regarding child support are regulated in articles 72 to Article 80 AUUKI WWP 1984. Then Articles 81 to 87 are related to *baḍānah* rights.

Article 56 AUUKI WWP 1984 explains that *mut'ah* is the provision of *saguhati* (as entertainment) for a wife who is divorced by her husband. This gift is at the request of the wife herself and based on the consideration of the court in accordance with *yyara'* law. Giving *mut'ah* also ensures that the divorce is initiated by the husband. Article 57 regulates the dowry which does not need to be returned to the husband after a divorce. Article 58 regulates the distribution of joint assets. This article confirms that the court has the authority to divide the assets or goods owned by the former husband and wife during the course of the marriage. The distribution of joint assets must consider the role of each party in getting it, and calculate the amount of debt and the need for child expenses in a divorce.

The court has the right to order a husband to pay maintenance to his wife or ex-wife, unless the wife commits *nusyuz*. The *nusyuz* category in this case is contained in three actions. First, the wife distances herself from her husband. Second, the wife left her husband's house and the act was against her husband's will. Third, the wife is reluctant to follow her husband to one house or another. If the wife repents and does not repeat her mistakes again, then the wife is not classified as *nusyuz* ([AUUKI WWP, 1984](#)).

Article 60 AUUKI WWP 1984 contains the authority of the court to determine a living for a certain person, on the basis of benefit. Regarding the amount of maintenance received by the ex-wife, article 61 AUUKI WWP 1984 emphasizes that the court must consider the ability or income of the ex-husband and the needs of the ex-wife. To guarantee that the ex-husband can provide the rights of the ex-wife in divorce, especially those related to maintenance, AUUKI WWP 1984 in article 62 confirms that the court can order the ex-husband to provide a guarantee in the form of assets until he fulfills the ex-wife's rights ([AUUKI WWP, 1984](#)).

Article 63 regulates an agreement to pay maintenance with money or other assets in the future, as a demand for maintenance that has been approved by the court with certain conditions. Meanwhile, articles 64 and 65 regulate the time for giving maintenance to ex-wives; The ex-wife has the right to receive maintenance in accordance with the order of the court, unless there are several reasons which result in the cessation of maintenance for the ex-wife. Among these causes is the death of one of the parties, namely the ex-husband or ex-wife, or the nusyuz wife when they reconciled or *niju'*.

The court can change the maintenance order if at a later date there is a request from the ex-husband or ex-wife with the consideration that there is a real mistake, or a discrepancy in facts, or if a material change has taken place regarding the circumstances. Likewise, the court has the authority to change the subsistence agreement between the ex-husband and ex-wife if at any point in time a change in terms of circumstances has taken effect, regardless of the conflicting designation in the agreement ([AUUKI WWP, 1984](#)).

An ex-wife can sue if the ex-husband does not provide for her maintenance, because in principle the ex-husband owes the living to the ex-husband. In fact, article 69 AUUKI WWP paragraph 1 states, when the ex-wife can prove the arrears of the living, then the ex-husband dies before paying off his debts (derived from dependents), then the ex-wife gets the right to her inheritance with the amount in accordance with the debts of her ex-husband the. With regard to the right of residence for the wife, article 71 AUUKI WWP emphasizes that the ex-wife has the right to live at home according to the time the marriage took place as long as the ex-husband does not find another suitable place to live with the ex-wife. The right of residence is valid until the 'iddah period expires, or the child custody period has expired, or if the ex-wife has

remarried, or if the ex-wife has committed an act of open infatuation (*fahisyah*).

Articles 81-87 AUUKI WWP regulate the wife's right to obtain child custody (*haḍānah*) when in a divorce, especially for the wife who is considered appropriate by the court to obtain this right. The age of the child under the responsibility of the mother at the time of the divorce is when the child is 7 years old for the boy and 9 years for the girl. If there is a request from the mother to increase the duration of custody, the court can determine the age of 9 years for boys and 11 years for women. After that, custody is handed over to the father and when he enters the age of *mumayyiz*, the child can choose to live with his mother or father. ([Faizin; et.al. 2019](#)).

Post-Divorce Wife's Rights in the Judge's Decision at the South Jakarta Religious Court

The rights received by the wife after the divorce decision vary greatly. This is due to several reasons, including: the consideration of the panel of judges and the positive law in force in Indonesia. In fact, in 2010 there was jurisprudence in the form of the Supreme Court decision no. 276 K/AG/2010 which gives rights to the wife in a contested divorce. However, in reality, this jurisprudence was not followed by subsequent judges as befits a jurisprudence. When divorce occurs at the initiation of the wife, it is as if the wife is always the victim of her own demands for divorce. More than that, in general, the wife who is suing for divorce does not expect much from her position, but is only given divorce *ba'in sughra* and gets custody of the child that belongs to her. ([Lon & Widyawati, 2021](#)), ([Hamzani; et.al., 2021](#)), ([Rais & Muyassar, 2021](#)).

1. Wife's Rights After *Khulu*'s Divorce Decision

To get an overview of the rights of the wife in the judge's decision at the South Jakarta Religious Court in the period 2014-2016 after the divorce due to *khulu'*, can be seen in table 1 below.

Table 1
Wife's Rights in *Khulu'* Divorce
at the South Jakarta Religious Court in 2014-2016

Case Number	<i>Haḍānah</i>	'iddah income	<i>Mut'ah</i>	Others

1321/Pdt.G/2014/PA.JS	Yes	-	-	-
1445/Pdt.G/2014/PA.JS	Yes	-	-	-
2901/Pdt.G/2014/PA.JS	-	-	-	-
2946/Pdt.G/2014/PA.JS	-	-	-	-
1470/Pdt.G/2015/PA.JS	-	-	-	-
3143/Pdt.G/2015/PA.JS	-	-	-	-
1255/Pdt.G/2015/PA.JS	-	-	-	-
2119/Pdt.G/2015/PA.JS	-	-	-	-
0717/Pdt.G/2016/PA.JS	Yes	-	-	-
2787/Pdt.G/2016/PA.JS	Yes	-	-	-
1470/Pdt.G/2016/PA.JS	Yes	Yes	Yes	Distribution of Joint Assets
Amount	5	1	1	1

Table 1 above shows that of the eleven *khulu'* cases that were decided by the South Jakarta Religious Court in 2014-2016, there were 6 (six) decisions that did not give post-divorce wife rights at all, except for only giving *ba'in sughra* divorce decisions; only five decisions gave *badhanah* rights, one decision gave maintenance rights, one decision gave *mut'ah* rights, and one decision gave joint property rights. Among the eleven choices, only decision Number: 1470/Pdt.G/2016/PA.JS which gives several rights to the wife. This happened because before the divorce, the plaintiff and the defendant had made a joint agreement before the notary, which among other things, the husband gave several rights to the wife when the divorce had occurred and was decided by the panel of judges. The agreement was then approved and became one of the judge's decisions.

2. Wife's Rights After Divorce Decision Divorce

The rights of the wife in divorce due to divorce have basically been regulated in a formal juridical manner in Law Number 1 of 1974 and the Compilation of Islamic Law. In addition, the judge also has ex officio rights to determine the rights of the wife. ([Rosdiana & Nasution, 2020](#)), ([Subchi, 2020](#))

With regard to ex officio rights to the panel of judges at the Indonesian Religious Court, article 41 letter (c) of Law Number 1 of 1974 states that the Court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife. The word "may" contained in Article 41 letter (c) above is understood to give discretionary rights to judges, so that judges apply it ex officio, even without being based on a lawsuit. There are also those who argue that the article is purely material law, because it concerns obligations and rights, so its application must be based on a lawsuit and defended according to formal legal provisions. Thus, it may not conflict with the provisions of Article 178 HIR or 189 R.Bg, especially paragraphs (2) and (3) which state that the Judge is obliged to hear all parts of the claim; Judges are prohibited from passing decisions on cases that are not prosecuted or giving more than what is required.

The rights of the wife in divorce, especially talak divorce, are written in law. Therefore, on the basis of benefit, benefit, and legal protection, as well as the mandate of the law, judges can use their ex officio rights to determine the rights of wives in divorce. However, if the wife is not present at the trial (*verstek*), then based on the latest Supreme Court Regulation (PERMA) of 2018 it states that judges are prohibited from granting rights to wives who disobey the court and do not need their rights, one of which is not attend court hearings. However, when the wife takes legal action (*verzet*), there is a possibility that she will get her rights as long as she applies to the court. ([Jarkasih, 2019](#))

Table 2

Wife's Rights in Divorce Due to Talak Divorce at the South Jakarta Religious Court in 2014-2016

Case Number	<i>Haḍānah</i>	‘iddah income	<i>Mut’ah</i>	Others
1235/Pdt.G/2014/PA.JS.	-	Rp. 3.000.000	Rp. 500.000	-
0927/Pdt.G/2014/PA.JS.	-	Rp. 1.500.000	Rp. 500.000	-
2765/Pdt.G/2014/PA.JS.	-	Rp. 600.000	Rp. 400.000	-
2514/Pdt.G/2014/PA.JS.	-	-	-	-
2040/Pdt.G/2015/PA.JS.	Yes	Rp. 3.000.000	Rp. 500.000	-

2230/Pdt.G/2015/PA.JS.	-	Rp. 1.500.000	Rp. 500.000	-
3650/Pdt.G/2015/PA.JS.	Yes	Rp.6.000.000	Rp.10.000.000	Past living Rp. 18.000.000
2131/Pdt.G/2015/PA.JS.	-	-	-	-
565/Pdt.G/2016/PA.JS.	-	Rp. 4.500.000	Rp. 2.000.000	-
1165/Pdt.G/2016/PA.JS.	-	Rp. 1.500.000	Rp. 500.000	-
849/Pdt.G/2016/PA.JS.	-	Rp. 15.000.000	5 Gram	Nafkah 'iddah and Mut'ah are handed over at the time of reading the divorce pledge
Amount	2	9	9	1

In divorce cases, as shown in table 2 above, out of eleven cases decided by the South Jakarta Religious Court in 2014-2016, two decisions granted hadhanah rights, nine decisions granted iddah maintenance rights, nine decisions granted mut'ah rights, and one decision granted past maintenance rights that the husband had not paid before the divorce. Except for divorce decisions, just two judgements did not provide any rights to the wife. What is intriguing, however, is decision number 849/Pdt.G/2016/PA.JS. In this decision, the panel of judges was of the opinion, based on Article 58 of the Law on Religious Courts, that in order to ensure the creation of justice and balance between *talak* divorce and the fulfillment of the rights of the wife in a divorce, the applicant must pay off the iddah and mutah maintenance at the time of reading the divorce vow. In order for an ex-wife to achieve her divorce rights, the action performed by the panel of judges is an illustration of legal certainty.

Post-Divorce Wife's Rights in Decisions at the Sharia Court of the Federal Territory of Kuala Lumpur

There are many types of divorce at the Sharia Court in the Kuala Lumpur federal region contained in the AUUKI WWP (Deed of the Associated Territory Islamic Family Law). However, the majority of wives who filed lawsuits at the Kuala Lumpur Regional Sharia Court appealed to the panel of judges to use Article 47, namely divorce by *talak*. While others use article 52 relating to the *fasakh* of marriage.

1. Wife's Rights After Khulu's Divorce Decision

Despite the fact that some wives submit requests for *fasakh* from their husbands to the Court, in practice the panel of judges always takes the initiative to change the request for *fasakh* to khulu or ransom divorce based on consideration and mutual agreement between the parties and the panel of judges. The policy is adopted typically because the case does not merit a *fasakh* ruling.

Table 3

Post-Divorce Rights of Wife as a Result of Khulu' at the Sharia Court of the Federal Territory of Kuala Lumpur in 2014-2016

Case Number	<i>Haḍānah</i>	'iddah income	<i>Mut'ah</i>	Others
14008-056-0682-2014	-	-	-	Pay divorce to husband RM 5.000
14005-056-0739-2014	-	-	-	Pay divorce to husband RM 30.000
14001-055-0951-2012 & 14001-056-0890-2014	-	-	-	Pay divorce to husband RM 2.000 (shift from <i>fasakh</i> to <i>khulu'</i>)
14008-056-0887-2014	-	-	-	Pay divorce to husband RM 2.000
14008-014-0677-2014 & 14008-056-0083-2015	-	-	-	Pay divorce to husband RM 50 (shift from <i>fasakh</i> to <i>khulu'</i>)
14008-056-0814-2015	-	-	-	Pay divorce to husband RM 1.000
14005-056-0331-2015	-	-	-	Pay divorce to husband RM 501
14003-056-0400-	-	-	-	Pay divorce to husband

2015				RM 13.000
14003-014-0919-2016 & 14003-056-1263-2016	-	-	-	Pay divorce to husband RM 1.000 (shift from <i>fasakh</i> to <i>khulu'</i>)
14003-014-0976-2016 & 14003-056-1272-2016	-	-	-	Pay divorce to husband RM 1.000 (shift from <i>fasakh</i> to <i>khulu'</i>)
14002-014-0273-2016 & 14002-056-0602-2016	-	-	-	Pay divorce to husband RM 8.000 (shift from <i>fasakh</i> to <i>khulu'</i>)
Amount	-	-	-	11

In table 3 above, of the eleven divorce applications that were decided by the Kuala Lumpur Regional Sharia Court, six of them were originally filed as *khulu'* divorce applications. Meanwhile, the petition for the other five cases, namely the application case number: 14008-014-0677-2014 & 14008-056-0083-2015, 14003-014-0919-2016 & 14003-056-1263-2016, 14003-014-0976-2016 & 14003-056-1272-2016, 14002-014-0273-2016 & 14002-056-0602-2016, and 14008-014-0039-2016 & 14008-056-0039, originally a request for *fasakh* marriage filed by the plaintiff (wife). However, as the trial proceeded, the request was changed to *khulu'* or divorce by divorce.

As a result of changing the application for *fasakh* to *khulu'*, the rights gained by a wife in a divorce will change from the application and designation of the article used when registering her divorce and at the time of the court's judgment.

2. Wife's Rights After Divorce Decision Divorce

In Malaysia, Sharia Court Judges lack the ex officio rights enjoyed by Religious Court Judges in Indonesia. The inference is that judges at the Malaysian Sharia Court are always passive in assessing the post-divorce rights of the wife. In accordance with article 47 of the AUUKI WWP (Deed of the Law on Islamic Families in Associated Areas) of 1984, if a divorced wife wishes to receive her rights, she must first file a petition with the court.

Table 4

Wife's Rights in Divorce Divorce at the Sharia Court of the Kuala Lumpur Federal Area in 2014-2016

Case Number	<i>Haḍānah</i>	<i>‘Iddah</i> Income	<i>Mut‘ah</i>	Others
14003-024-0194-2014 & 14003-023-0195-2014	Yes	RM 1.200	RM 5.000	Past living RM 21.600
14001-021-0708-2014, 14001-016-0709-2014 & 14001-055-0607-2014	-	RM 6.000	RM 9.000	-
14008-024-0128-2014, 14008-021-0129-2014, 14008-055-0112-2014 & 14008-016-0131-2014	Yes	RM 900	RM 1.000	-
14008-055-0153-2015, 14008-024-0214-2015, 14008-016-0213-2015 & 14008-021-0215-2015	Yes	RM 600	RM 200	-
14001-055-0091-2015, 14001-021-0300-2015, 14001-016-0301-2015 & 14001-024-0302-2015	Yes	RM 3.300	RM 3.998	-
14003-055-0604-2015 & 14003-021-0648-2015	-	RM 5.400	-	-
14001-055-0489-2015	-	-	-	-
14004-016-0598-2016, 14004-021-0597-2016 & 14004-055-0214-2016	-	RM 1.500	RM 10.000	-
14007-055-0856-2016, 14007-016-0940-2016, 14007-021-0941-2016,	Yes	RM 9.000	RM 20.000	-

14007-024-0942-2016				
14009-016-0115-2016 & 14009-021-0116-2016	-	RM 3.000	RM 15.300	-
14002-055-0705-2016	-	-	-	-
Amount	5	9	8	1

In eleven divorce cases, the judge awarded five applicants with *hadhanah* rights, nine applications with *iddah* maintenance rights, eight applicants with *mut'ah* rights, and one applicant with previous maintenance rights, as shown in the table above. The judge decides the rights of the divorced wives because the wives actively submit requests to the panel of judges to be awarded their divorce rights, including *haanah* rights, *iddah* maintenance rights, and *Mutah* rights. In other words, if the wife does not petition the court for these rights to earn a living during a divorce, the panel of judges will not provide these rights in their ruling.

Differences in the Rights of Wives in Divorce Decisions at Religious Courts and Sharia Courts

Following are the differences in the rights of wives in divorce in the decisions of the Religious Courts and Sharia courts:

1. The right of *haḍānah*

Based on the rights of the wife in divorce, both contested divorce and *talak* divorce. *Haḍānah* is a right that should be received by the wife. Especially when the child is underage or immature. However, in the decisions of the *Sharia* Court do not accommodate this right when the divorce occurs due to divorce or *kebulu'* ransom. In contrast to decisions in the Religious Courts which accommodate the right of *haḍānah* for the wife in divorce, including the consequences of a contested divorce, in decisions of the *sharia* court, the right of *haḍānah* is not included for the wife, even though in practice the panel of judges will grant this right, because it is already attached to the wife as long as the child has not entered the age of *mumayyiz*.

2. Imposition of Divorce Redemption Fee/Tebus Talak

Tebus talak refers to a divorce initiated by the wife. At the time of this divorce, the fall of one bain sughra divorce was imposed. If in Indonesia it is referred to as a divorce and there is no provision in the judgement requiring the wife to pay ransom money to the husband, it is a divorce. This differs from Malaysia, where the wife is required to pay a ransom to her husband if she requested a divorce through a panel of judges. The amount donated by the wife is determined by the panel of judges based on the length of the marriage, the dowry, the wife's abilities, and her life status while still married.

3. Determination of living rights 'Iddah and Mut'ah

In cases of divorce owing to khulu in both Indonesia and Malaysia, it is known that the wife does not have the right to support iddah and mut'ah based on the preceding judgements. Regarding divorce cases (husband initiating), Indonesia and Malaysia reach different conclusions. In Indonesia, judges provide this right in their judgements regardless of whether the ex-wife seeks it. To get *iddah* and *mut'ah* maintenance rights in Malaysia, the ex-wife must submit an application to the panel of judges. If the ex-wife does not request it, she will not receive it. This is due to the fact that judges in Indonesia have the ex officio right to grant the wife's rights in divorce, whereas judges in Malaysia do not ([Mappiasse, 2015](#))

4. Execution of the wife's rights following the decision

The most crucial item following a judge's ruling, particularly regarding the granting of rights to the ex-wife, in both the Religious Court and the Sharia court, is that the decision is carried out as instructed. The Sharia Court has a unique institution, the BSK, to manage the fulfillment of the wife's divorce rights, although the Religious Courts do not (Family Support Division). In the meantime, there is no institution in Indonesia responsible for ensuring the fulfillment of these rights. The ex-wife must separately petition the court to ensure that her ex-husband obeys the judgment, particularly with regard to her rights that were not provided in accordance with the court's ruling.

Conclusion

In cases of contested divorce (khulu) in Indonesia and divorce for divorce (khulu) in Malaysia, there are significant differences between the decisions made by judges at the Indonesian Religious Court and the Malaysian Sharia Court regarding the rights received by ex-wives following a divorce. Among other things, these differences relate to the rights received by ex-wives after a divorce. In cases of khulu in Malaysia, the wife is compelled to pay a sum of money as a ransom for herself if she requests her husband to divorce her. This is unlike the case in Indonesia, where the ransom payment is not necessary. The rights of the woman that are mentioned in the talak divorce in Indonesia and Malaysia are essentially identical to one another. If the former spouse does not make a request for her rights to the judge or judge panel, however, there may be variations. Due to the fact that there exist ex officio rights, the judicial panel in Indonesia is able to assess the rights of a wife in the event of a divorce even if the ex-wife does not ask them to do so. Because there are no ex officio rights for the panel of judges in Malaysia, a judge is unable to decide the rights of an ex-wife if she does not specifically request that the judge do so. One more point of differentiation is that, in Malaysia, there is a specialized institution known as the Family Support Division (BSK) that is specifically tasked with the implementation of the judge's decision to fulfill the wife's rights in the event of a divorce and ensures that the judge's decision is carried out in terms of the judge's determinations regarding the wife's rights. In the meanwhile, this institution is not yet present in Indonesia; therefore, the former spouse will need to do additional efforts in order to satisfy it.

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