

The Ex Officio Authority of Judges in Determining Post-Divorce Maintenance: Integrating Sharia Norms and National Law in the Protection of Women and Children

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Abstrak

Perceraian kerap menempatkan perempuan dan anak pada posisi rentan ketika putusan pengadilan tidak menegaskan besaran dan mekanisme pemenuhan nafkah. Penelitian ini menjawab tiga persoalan: bagaimana norma syariah dan hukum nasional mengatur kewajiban nafkah pasca perceraian; bagaimana tinjauan yuridis penggunaan hak *ex officio* hakim dalam menetapkan kewajiban tersebut di peradilan agama; dan bagaimana bentuk integrasi keduanya dalam memperkuat kewenangan hakim. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan dan konseptual dengan bahan hukum primer berupa Al-Qur'an, hadis, peraturan perundang-undangan, serta rumusan kamar agama Mahkamah Agung, yang dianalisis secara deskriptif-analitis. Hasil penelitian menunjukkan bahwa syariah menempatkan nafkah anak sebagai kewajiban ayah yang tidak gugur oleh perubahan status perkawinan, serta mewajibkan nafkah iddah, mut'ah, dan madhiyah bagi mantan istri sesuai kemampuan suami. Hukum positif menerjemahkan norma tersebut melalui Pasal 41 huruf c Undang-Undang Perkawinan, Pasal 24 ayat (2) Peraturan Pemerintah Nomor 9 Tahun 1975, PERMA Nomor 3 Tahun 2017, dan rangkaian surat edaran kamar agama yang secara bertahap memperluas ruang *ex officio* hakim. Integrasi keduanya bertumpu pada asas *maslahah* dan keadilan substantif, sehingga hak *ex officio* bukan penyimpangan terhadap asas *ultra petitum partium*, melainkan instrumen yuridis untuk menutup kesenjangan antara pengakuan norma dan pemenuhan hak.

Kata Kunci: hak *ex officio*; keadilan substantif; nafkah pasca perceraian; peradilan agama; perlindungan perempuan dan anak.

Abstract

Divorce frequently leaves women and children vulnerable when court decisions fail to specify the amount and the mechanism for fulfilling maintenance obligations. This study addresses three questions: how sharia norms and Indonesian national law regulate post-divorce maintenance owed to former wives and children; how the judge's ex officio authority to impose such obligations is construed juridically within the religious courts; and how the two normative systems are integrated so as to strengthen that authority. Employing normative legal research with statutory and conceptual approaches, it examines primary legal materials comprising the Qur'an, hadith, and national law, analysed descriptively and analytically. The findings indicate that sharia treats child maintenance as a paternal obligation that does not lapse with a change in

marital status, and obliges the former husband to provide iddah, mut'ah, and madhiyah maintenance commensurate with his actual capacity. Positive law translates these norms through Article 41(c) of the Marriage Law, Article 24(2) of Government Regulation Number 9 of 1975, Supreme Court Regulation Number 3 of 2017, and a cumulative series of circular letters that have progressively widened the scope of ex officio authority. Integration operates at the level of legal reasoning and rests on maslahah and substantive justice, so that ex officio authority is not a deviation from the ultra petitum partium principle but a juridical instrument for closing the gap between normative guarantees and the actual fulfilment of rights.

Keywords: *ex officio authority; substantive justice; post-divorce maintenance; religious courts; protection of women and children.*

INTRODUCTION

Article 1 of Law Number 1 of 1974 on Marriage (the Marriage Law) defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, formed to build a happy and enduring family founded on belief in the One Almighty God.¹ In Islamic law, marriage is not merely a civil contract but a *mitsaqan ghalizhan*, a solemn covenant bearing the value of worship, so that its legal consequences reach beyond the parties' relationship into their moral and religious responsibilities.² That ideal cannot always be sustained, and unmanaged domestic conflict may end the marriage in divorce.

In fiqh, divorce is known as *al-talaq*, literally to release or untie a bond: not a prohibited act, but a final avenue taken once every effort at reconciliation has failed.³ Article 39(1) of the Marriage Law affirms that character procedurally, permitting divorce only before a court hearing and only after the court has attempted, without success, to reconcile the parties. Meanwhile, in articles 66 and 73 Law Number 7 of 1989 on the Religious Judicature, as last amended by Law Number 50 of 2009, for Muslim citizens, jurisdiction rests with the Religious Courts, which distinguish *cerai talak*, initiated by the husband, from *cerai gugat*, initiated by the wife.⁴ The distinction is not merely procedural: it bears directly on the parties' rights and obligations, particularly the former husband's maintenance obligations towards his former wife and children.

The issue is pressing because the majority of divorces in Indonesia are initiated by wives. Statistics Indonesia recorded 394,608 divorces during 2024, comprising 308,956 *cerai gugat* and 85,652 *cerai talak* cases, so that contested

¹ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019).

² Hamzah, Oyo Sunaryo Mukhlis, and Usep Saepullah, "Hak-Hak Perempuan Pasca Perceraian Dalam Hukum Positif Dan Hukum Islam," *Usroh: Jurnal Hukum Keluarga Islam* 6, no. 1 (2022): 62–80.

³ Ayu Cahyani, Muhammad Fajar Sidiq Widodo, and Mohammad Hendy Musthofa, "Pelaksanaan Hak Ex Officio Hakim Atas Nafkah Iddah, Mut'ah, Hadlonah Dan Madhiyah Dalam Perkara Cerai Gugat Ditinjau Dari Perma Nomor 3 Tahun 2017: Analisis Putusan No. 2675/Pdt.G/2023/PA.Kab.Kdr," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 3 (2024): 226–46, <https://doi.org/10.59059/mandub.v2i3.1391>.

⁴ Undang-Undang Republik Indonesia Nomor 7 Tahun 1989 Tentang Peradilan Agama Sebagaimana Telah Diubah Terakhir Dengan Undang-Undang Nomor 50 Tahun 2009.

divorce accounts for approximately 78 per cent of the total.⁵ This predominance encounters a normative asymmetry in substantive law: Article 149 of the Compilation of Islamic Law (the KHI) governs only the consequences of a marriage dissolved by talak, and no equivalent provision expressly imposes *iddah* maintenance and *mut'ah* upon the former husband in contested divorce.⁶ A woman who petitions for divorce may therefore forfeit her financial entitlements solely by reason of her procedural position as plaintiff, even where she has not been shown to be *nusyuz*.⁷

Children are comparably vulnerable. Child maintenance is often not a focus of the hearing, so that children may become secondary victims of their parents' separation through neglect or economic violence. That outcome runs counter to Article 13(1) of Law Number 35 of 2014 on Child Protection (the Child Protection Law), which affirms every child's right, while in parental care, to protection from neglect, economic exploitation, and other maltreatment,⁸ and to Article 9(1) of Law Number 23 of 2004 on the Elimination of Domestic Violence, which prohibits neglect of any person in one's household whom one is bound by law or agreement to maintain.⁹

Against this gap, judges of the religious courts hold the instrument of *ex officio* authority: the power attaching to judicial office to impose legal obligations not sought in the petitem. Existing scholarship approaches it from several directions. Yuni finds that its application depends heavily on the interpretive courage of the adjudicating panel,¹⁰ and Sakira, Baihaqi, and Fikri that it operates to avert harm to the former wife in talak divorce.¹¹ Cahyani and colleagues examine its exercise in contested divorce under Supreme Court Regulation Number 3 of 2017, while Malaka reads it through gender equality and identifies its tension with the *ultra petitem*

⁵ Badan Pusat Statistik, *Nikah Dan Cerai Menurut Provinsi (Kejadian)*, 2024, 2025, <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi-kejadian---2024.html>.

⁶ Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam.

⁷ Sheila Fakhria, "Cerai Gugat Dan Implikasinya Terhadap Hak-Hak Finansial Perempuan," *Legitima: Jurnal Hukum Keluarga Islam* 1, no. 1 (2019): 91-119, <https://doi.org/10.33367/legitima.v1i1.648>.

⁸ Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 297).

⁹ Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 95).

¹⁰ 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, no. 2 (2021): 135-54, <https://doi.org/10.18326/ijtihad.v21i2.135-154>.

¹¹ Ghea Sakira, Yusuf Baihaqi, and Arif Fikri, "Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak Istri," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 2 (2024): 135-54, <https://doi.org/10.24042/el-izdiwaj.v5i2.21534>.

partium principle.¹² Narrower studies address the difficulty of proving *nusyuz*,¹³ the use of the power where a party is absent, analysed through *maslahah*,¹⁴ and children's post-divorce rights read through Radbruch's theory of the aims of law.¹⁵ Comparatively, Jannah and colleagues map maintenance policy in Indonesia, Malaysia, and Brunei Darussalam from a gender justice perspective.¹⁶

Two gaps emerge. *First*, most existing work is casuistic, resting on one or two decisions of a single court, and so does not reconstruct in full the tiered normative architecture of *ex officio* authority, running from the constitution through statutes, implementing regulations, and Supreme Court regulations to the religious chamber formulations issued between 2012 and 2021. *Second*, earlier studies separate the objects of protection, treating the rights of the former wife and of the child in isolation, although both arise from a single legal event and are settled in a single decision. This study places both within one analytical frame and reads the chamber formulations as one normative architecture integrating sharia and national legal reasoning.

The study accordingly addresses three questions. *First*, how do sharia norms and national law regulate post-divorce maintenance obligations owed to former wives and children? *Second*, how is the exercise of *ex officio* authority in imposing those obligations to be assessed juridically within the religious courts? *Third*, in what form does the integration of sharia principles and national law strengthen that authority?

RESEARCH METHOD

This study is normative legal research using statutory, conceptual, and limited case-material approaches. Primary materials are organised hierarchically: the Constitution and statutes; Government Regulation Number 9 of 1975 and other implementing regulations; Supreme Court Regulations; the Compilation of Islamic Law as an authoritative source used in the religious-court context; Supreme Court Circular Letters and religious-chamber formulations as internal judicial guidance; and technical guidance. The study reviews relevant chamber formulations and circular guidance issued between 2012 and 2021 according to their subject matter and temporal effect. Secondary empirical studies are used only to describe reported

¹² Ayu Cahyani, Muhammad Fajar Sidiq Widodo, and Mohammad Hendy Musthofa, "Pelaksanaan Hak Ex Officio Hakim Atas Nafkah Iddah, Mut'ah, Hadlonah Dan Madhiyah Dalam Perkara Cerai Gugat Ditinjau Dari Perma Nomor 3 Tahun 2017: Analisis Putusan No. 2675/Pdt.G/2023/PA.Kab.Kdr."

¹³ Muhammad Amzad and Endrik Safudin, "Hak Ex Officio Hakim Dan Permasalahan Nusyuz Dalam Perkara Cerai Talak: Studi Putusan Nomor 878/Pdt.G/Pa.Kab.Kdr," *Jurnal Antologi Hukum* 3, no. 2 (2023): 317–34, <https://doi.org/10.21154/antologihukum.v3i2.2596>.

¹⁴ Rita Latassaqia, Sukron Ma'mun, and Fitrat Umirov, "Safeguarding Women's Rights in Divorce in Absentia: The Role of Ex Officio Judicial Powers in Iddah Maintenance," *Al-Syakhsiyyah: Journal of Law and Family Studies* 8, no. 1 (2026): 69–94, <https://doi.org/10.21154/syakhsiyyah.v8i1.13570>.

¹⁵ Anisa Nur Kanifah and Lukman Santoso, "Pemenuhan Hak Anak Pasca Perceraian Perspektif Hukum Positif Dan Teori Tujuan Hukum Gustav Radbruch," *Al-Syakhsiyyah: Journal of Law and Family Studies* 6, no. 1 (2024): 19–36, <https://doi.org/10.21154/syakhsiyyah.v6i1.9128>.

¹⁶ Shofiatal Jannah et al., "Implementation of Post-Divorce Alimony Policies from a Gender Justice Perspective: A Comparative Legal Study of Indonesia, Malaysia, and Brunei Darussalam," *Ulumuna Journal of Islamic Studies* 29, no. 2 (2025): 959–89, <https://doi.org/10.20414/ujs.v29i2.1762>.

implementation patterns and are not converted into findings of this normative research. The analysis identifies the beneficiary, trigger, duration, disqualification, ability-to-pay consideration, procedural basis, and legal source for each form of maintenance.

The primary legal materials fall into two groups. The first comprises the sources of Islamic law, namely the Qur'an and hadith. The second comprises national law: the 1945 Constitution, the Marriage Law, the Religious Judicature Law, the Domestic Violence Law, the Judicial Power Law, the Child Protection Law, Government Regulation Number 9 of 1975, the KHI, PERMA Number 3 of 2017, the Supreme Court Circular Letters (SEMA) of 2012, 2015, 2016, 2017, 2018, 2019, and 2021 promulgating the religious chamber formulations, Book II of the Technical Guidelines of the Religious Courts, and Letter of the Director General of the Religious Judicature Body Number 1669/DJA/HK.00/5/2021, each cited in full in the references.

Secondary materials were drawn from reputable scholarly journals and the literature on civil procedure, and supporting divorce data from Statistics Indonesia. All materials were collected through documentary research and analysed descriptively and analytically: the norms are set out systematically, then interpreted grammatically, systematically, and teleologically to yield a legal argument on the standing of *ex officio* authority in the fulfilment of post-divorce maintenance.

RESULTS AND DISCUSSION

Post-Divorce Maintenance Obligations in Sharia Norms and National Law

Etymologically, *nafkah* derives from *nafaqah*, meaning expenditure. In fiqh it denotes the provision of basic needs (food, clothing, and shelter) owed to those in one's charge, whether wife, child, or relative, according to one's capacity.¹⁷ The obligation is thus proportional: tied to the capacity of the person who bears it and to the real needs of the person entitled to receive it.

Its normative basis appears in the hadith narrated by al-Bukhari no. 4945 on the authority of 'A'ishah concerning Hind bint 'Utbah's complaint that Abu Sufyan failed to maintain her and her child adequately, in response to which the Prophet permitted her to take from her husband's property what was reasonably sufficient for them both.¹⁸ Three propositions follow: the right to maintenance may not be disregarded, and default does not extinguish it; a corrective mechanism exists where the obligation is not discharged voluntarily; and the measure of fulfilment is reasonable sufficiency rather than excess. These propositions are the seed of the reasoning later institutionalised in religious court procedure through *ex officio* authority.

a. Iddah Maintenance

Iddah maintenance is owed by a former husband to his former wife during the waiting period following dissolution of the marriage. QS al-Talaq [65]: 6 directs the husband to house her according to his means, forbids him to cause her distress, and

¹⁷ Muhammad Zhilal Haq, Muchlis Bahar, and Zainal Azwar, "Hak Nafkah Madhiyah Istri Dalam Konsep Hukum Islam Dan Implikasinya Pada Putusan Pengadilan Agama," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 10, no. 1 (2024): 19–37.

¹⁸ Hadits Tazkia, "Bab Jika Suami Tidak Memberikan Nafkah Maka Isteri Boleh Mengambil...," 2020, <https://hadits.tazkia.ac.id/hadits/bab/1:2716>.

requires him to maintain her until delivery where she is pregnant, while QS al-Talaq [65]: 7 states the principle of capacity: one of ample means spends according to his ampleness, and one whose provision is restricted spends from what God has given him. The exegesis of the Ministry of Religious Affairs reads the verses as requiring decent shelter within the husband's means, and as simultaneously fixing an upper limit on the obligation, namely his actual capacity, so that an award exceeding it runs against the purpose of the verse.¹⁹

National law absorbs this norm in Article 149(b) of the KHI, under which a former husband whose marriage has been dissolved by talak must provide maintenance, *maskan*, and *kiswah* during the *iddah* unless his former wife has been pronounced *ba'in* or *nusyuz* and is not pregnant, and in Article 152, under which she is entitled to *iddah* maintenance unless she is *nusyuz*. *Nusyuz* is qualified by Article 84(1) in conjunction with Article 83(1) of the KHI as a wife's refusal, without lawful cause, to discharge her duty of devotion to her husband within the limits recognised by Islamic law.²⁰

The juridical difficulty is that *nusyuz* is a highly open-textured construct whose legal consequence is the extinction of a right. Amzad and Safudin show that allegations of *nusyuz* are not infrequently advanced without adequate evidentiary support, so that where the judge remains passive the entitlement may lapse on the strength of a unilateral assertion by the petitioner.²¹ The burden of proving *nusyuz* must therefore rest on the party who alleges it, and in the absence of such proof the former wife stands entitled to *iddah* maintenance.

b. Mut'ah Maintenance

Mut'ah is a payment made over and above maintenance, in money or in kind, by way of consolation for the dissolution of the marriage. QS al-Baqarah [2]: 236 enjoins its giving in a measure set by the ample according to their means and by the straitened according to their capacity; QS al-Baqarah [2]: 241 confirms it as an obligation upon the God-fearing; and QS al-Ahzab [33]: 49 directs that a woman divorced before consummation be given *mut'ah* and released in the best manner. The exegesis of the Ministry of Religious Affairs treats *mut'ah* as an instrument for restoring dignity, calibrated to the former husband's capacity and delivered without wounding the recipient.²² Its character therefore differs from *iddah* maintenance: the latter is sustentative, supporting living needs during the waiting period, whereas *mut'ah* is compensatory, addressing the former wife's social and psychological standing.

In national law, Article 149(a) of the KHI obliges a former husband to give his former wife a suitable *mut'ah* unless she is *qabla al-dukhul*; Article 158 makes it obligatory where no dower has been fixed for a wife *ba'da al-dukhul* and the divorce

¹⁹Lajnah Pentashihan Mushaf Al-Qur'an, "Qur'an Kemenag," <https://quran.kemenag.go.id/quran/per-ayat/surah/65?from=6&to=7>, accessed 28 August 2026.

²⁰ Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam.

²¹ Muhammad Amzad and Endrik Safudin, "Hak Ex Officio Hakim Dan Permasalahan Nusyuz Dalam Perkara Cerai Talak: Studi Putusan Nomor 878/Pdt.G/Pa.Kab.Kdr.,"

²²Lajnah Pentashihan Mushaf Al-Qur'an, "Qur'an Kemenag," <https://quran.kemenag.go.id/quran/per-ayat/surah/2?from=236&to=241>, accessed 28 August 2026.

is at the husband's initiative; and Article 160 ties its amount to what is fitting and to his capacity.²³ Read grammatically and in isolation, Article 158 appears to close off *mut'ah* to a woman who petitions for divorce herself. That reading is disproportionate, since a wife who petitions precisely because she has suffered violence or neglect would lose her entitlement merely for having taken the initiative to end the marriage. Judicial practice has long corrected the narrow construction through Supreme Court jurisprudence holding that the payments consequent upon divorce are not extinguished by the woman's initiative, a correction subsequently confirmed in the religious chamber formulations.²⁴

c. Madhiyah Maintenance

Madhiyah or past maintenance is maintenance that ought to have been paid but was neglected by the husband, and which thereby becomes a debt to be discharged later. In the fiqh construction, where the husband deliberately withheld maintenance although able to pay, the judge may compel performance, including through the sale of his property; where he genuinely lacks the means, he cannot be compelled and the wife waits until his circumstances ease.²⁵

Neither the Marriage Law nor the KHI uses the term expressly, yet the obligation they impose extends to past maintenance where the husband has defaulted. Article 34(3) of the Marriage Law supplies the procedural basis, allowing either spouse to sue where the other neglects his or her obligations,²⁶ while Article 80(4) of the KHI details those obligations according to income, covering maintenance, *kiswah*, and shelter for the wife, household, care, and medical costs for wife and child, and the child's education. Together they ground the characterisation of unpaid maintenance as a debt.

Reinforcement for a child's *madhiyah* maintenance came through SEMA Number 2 of 2019, Religious Chamber Formulation point C.1.a, allowing past maintenance neglected by the father to be claimed by the mother or by the person actually caring for the child.²⁷ It matters because it confers standing on the actual carer, so that the child's right does not depend on formal custodial status. Quantification rests on reconstructing the period of default and the reasonable standard of living during it, read against the former husband's actual capacity.²⁸

²³ Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam.

²⁴ Fahadil Amin Al Hasan, "Hak Istri Menuntut Mut'ah, Nafkah Iddah, Dan Nafkah Madliyah Dalam Perkara Cerai Gugat," Pengadilan Agama Rangkasbitung, 2024, <https://pa-rangkasbitung.go.id/publikasi-artikel/arsip-artikel/673-hak->.

²⁵ Muhammad Zhilal Haq, Muchlis Bahar, and Zainal Azwar, "Hak Nafkah Madhiyah Istri Dalam Konsep Hukum Islam Dan Implikasinya Pada Putusan Pengadilan Agama."

²⁶ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019).

²⁷ Surat Edaran Mahkamah Agung Nomor 2 Tahun 2019 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2019 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

²⁸ Riyan Ramdani and Firda Nisa Syafitri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut'ah Dalam Perkara Perceraian Di Pengadilan Agama," *Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut'ah Dalam Perkara Perceraian Di Pengadilan Agama* 15, no. 1 (2021): 37–50, <https://doi.org/10.15575/adliya.v15i1.11874>.

d. Child Maintenance

Unlike *iddah* maintenance and *mut'ah*, which attach to the spousal relationship and end with the expiry of a defined period, child maintenance attaches to the tie of descent, which divorce does not sever. QS al-Baqarah [2]: 233 affirms that it is the father's duty to provide the child's food and clothing in a fitting manner, and that no soul is burdened beyond its capacity.²⁹ The exegesis of the Ministry of Religious Affairs states expressly that the obligation persists after the mother has been divorced and passes to the father's heirs upon his death, foreclosing any argument that divorce extinguishes his economic responsibility.

National law translates the norm consistently. Article 41(b) of the Marriage Law places all costs of the child's maintenance and education on the father, allowing the Court to require the mother to share them where he is in fact unable to pay.³⁰ The KHI reinforces this in Article 105(c), placing maintenance costs on the father upon divorce; Article 156(d), making all costs of *hadhanah* and child maintenance his responsibility according to capacity, at least until the child is grown and able to manage his or her own affairs at twenty-one; and Article 156(f), under which the court may also, having regard to his capacity, fix the costs of maintaining and educating children not living with him.³¹

The phrase "the court may also" in Article 156(f) is a normative node of considerable importance, for it is from this phrase that the judge's *ex officio* power to fix child maintenance derives its substantive legal basis. Read together with the principle of the best interests of the child adopted in the Child Protection Law, the child's right to maintenance stands as a non-negotiable right that not even the agreement of both parents may bargain away.³²

Table 1. Matrix of the Normative Bases of Post-Divorce Maintenance Obligations

Type of Maintenance	Sharia Basis	National Legal Basis
Iddah maintenance	QS al-Talaq [65]: 6 and 7; hadith narrated by al-Bukhari no. 4945	Articles 149(b) and 152 of the KHI; SEMA No. 3 of 2018
Mut'ah	QS al-Baqarah [2]: 236 and 241; QS al-Ahzab [33]: 49	Articles 149(a), 158, and 160 of the KHI; SEMA No. 3 of 2018
Madhiyah maintenance	Hadith narrated by al-Bukhari no. 4945 on sufficiency of maintenance	Article 34(3) of the Marriage Law; Article 80(4) of the KHI; SEMA No. 2 of 2019

²⁹QS al-Baqarah [2]: 233. See Lajnah Pentashihan Mushaf Al-Qur'an, "Qur'an Kemenag," <https://quran.kemenag.go.id/quran/per-ayat/surah/2?from=233&to=233>, accessed 28 August 2026.

³⁰ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019).

³¹ Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam.

³² Anisa Nur Kanifah and Lukman Santoso, "Pemenuhan Hak Anak Pasca Perceraian Perspektif Hukum Positif Dan Teori Tujuan Hukum Gustav Radbruch."

Type of Maintenance	Sharia Basis	National Legal Basis
Child maintenance	QS al-Baqarah [2]: 233	Articles 41(a) and (b) of the Marriage Law; Articles 105(c), 156(d) and (f) of the KHI; SEMA No. 4 of 2016; SEMA No. 5 of 2021

Source: compiled by the author from primary legal materials, 2026.

The four categories differ in juridical character and therefore call for different procedural treatment. *Iddah* maintenance is time-limited and comparatively easy to quantify; *mut'ah* is a single payment governed by an assessment of propriety and so depends most heavily on judicial appraisal; *madhiyah* has the character of a debt and requires proof of the period of default; child maintenance is continuing, so that its central problem lies not in the award but in securing performance over time. This divergence explains why the religious chamber has developed a distinct instrument for each. Table 1 also shows the absence of substantive conflict between the two systems: both converge on propriety as the qualitative measure, capacity as the limit of the obligation, and protection of the weaker party as the purpose, differing only in specificity, with sharia supplying the principles and national law the machinery to operate them.

A Juridical Review of the Judge's Ex Officio Authority to Impose Maintenance Obligations

Ex officio authority is the power inherent in judicial office to take particular legal steps in proceedings without a prior request from the parties. It stands in tension with the *ultra petitem partium* principle in Article 178(3) of the HIR and Article 189(3) of the RBg, under which a judge may not decide upon a matter not claimed or award more than claimed, a principle that preserves the passivity of the civil judge and shields the defendant from a decision on a matter he has had no occasion to answer.

That passivity has never been absolute. Mertokusumo records that the Supreme Court has come to accept decisions exceeding the claim where the matters are closely connected, since a judge must act actively and ensure that his decision genuinely resolves the dispute.³³ On this view, *ex officio* authority is not an exception denying the principle but its refinement where literal application would produce a decision that fails to settle the issues arising from the very event before the court.³⁴

a. Normative Foundations: From the Constitution to Supreme Court Regulation Number 3 of 2017

At the constitutional level, the space for judicial activism derives from Article 24(1) of the 1945 Constitution, which declares judicial power to be an independent power exercised to administer justice for the enforcement of law and justice.³⁵ The formulation is cumulative, so that a judge cannot position himself merely as the mouthpiece of the statute, where the textual application of a norm would negate the very justice it was meant to secure.

³³ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, 5th ed. (Yogyakarta: Liberty, 1998).

³⁴ Zuman Malaka, "Hak Ex Officio Hakim Dan Kesetaraan Gender Dalam Perceraian Di Pengadilan Agama," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 28, no. 1 (2025): 121–34, <https://doi.org/10.15642/alqanun.2025.28.1.121-134>.

³⁵ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Law Number 48 of 2009 on Judicial Power elaborates that mandate. Article 4(2) requires courts to assist those seeking justice and to strive to overcome all obstacles to simple, swift, and inexpensive justice; Article 5(1) requires judges to explore, follow, and understand the legal values and the sense of justice living in society; and Article 10(1) forbids a court to refuse to decide a case on the ground that the law is absent or unclear.³⁶ Read together, these provisions constitute a mandate of legal discovery (*rechtsvinding*) on which a judge may fill normative gaps, including the gap in the regulation of the consequences of contested divorce.³⁷

At the level of substantive law, the most direct basis is Article 41(c) of the Marriage Law, under which the Court may oblige a former husband to provide the costs of livelihood or determine an obligation for the benefit of the former wife; the word “may” is construed as a power exercisable by virtue of judicial office, unbound by the presence or absence of an application from the interested party.³⁸ The complementary procedural basis is Article 24(2)(a) of Government Regulation Number 9 of 1975, under which the Court may, during divorce proceedings and on the application of either party, determine the maintenance to be borne by the husband.³⁹

The *ex officio* authority discussed here is not a freestanding power to disregard procedural law. Its basis must be reconstructed from the court's statutory duties, the substantive rights at issue, Supreme Court procedural instruments, chamber guidance, and the judicial obligation to provide an effective remedy. A distinction is necessary between rights that the law expressly allows or requires the court to consider, rights that depend on a party's request under implementing rules, and the authors' normative proposal that a judge should act *ex officio* to prevent a vulnerable party's right from becoming illusory.

The instrument that has most reshaped this landscape is PERMA Number 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law, which requires judges to identify situations of inequality restricting women's access to justice and to weigh gender equality and non-discrimination at every stage of proceedings.⁴⁰ Its significance lies in a shift of perspective: a woman's ignorance of her own rights is no longer a procedural omission forfeiting them, but a structural obstacle the court must overcome.⁴¹ The methodological consequence is

³⁶ Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157).

³⁷ Ihat Istirahat, “Rekonstruksi Peran Hakim Dalam Mewujudkan Keadilan Substantif Di Pengadilan Indonesia,” *Yudhistira: Jurnal Yurisprudensi, Hukum Dan Peradilan* 1, no. 2 (2023): 44–51, <https://doi.org/10.59966/yudhistira.v1i2.1704>.

³⁸ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019).

³⁹ Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1975 Nomor 12).

⁴⁰ Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum.

⁴¹ Ayu Cahyani, Muhammad Fajar Sidiq Widodo, and Mohammad Hendy Musthofa, “Pelaksanaan Hak Ex Officio Hakim Atas Nafkah Iddah, Mut’ah, Hadlonah Dan Madhiyah Dalam Perkara Cerai Gugat Ditinjau Dari Perma Nomor 3 Tahun 2017: Analisis Putusan No. 2675/Pdt.G/2023/PA.Kab.Kdr.”

fundamental. Where the absence of a claim for maintenance was once read as tacit waiver, it must now first be read as a possible information and legal-literacy gap. Empirical research shows that women in litigation are generally unaware of their entitlement to *iddah* maintenance, *mut'ah*, or *madhiyah*, so that these rights are never framed in the petitum although normatively available.⁴²

b. The Development of the Supreme Court Religious Chamber Formulations

The religious chamber formulations promulgated through circular letters display a cumulative development. SEMA Number 7 of 2012, point 16, sets the criteria for fixing the amount of *mut'ah*, *iddah* maintenance, and child maintenance by reference to the husband's capacity and to propriety, including the duration of the marriage and his net income.⁴³ It matters because it shifted the discourse from whether an obligation exists to what amount is fitting, supplying judges with objective parameters.

SEMA Number 3 of 2015 added two operational rules. Point 11 affirms that child maintenance is a parental obligation but forbids an operative order made contingent on property yet to be acquired as security against default. Point 14 provides that an order imposing child maintenance should carry an annual increment of 10 to 20 per cent of the amount fixed, exclusive of educational and health costs.⁴⁴ The latter is a normative anticipation of inflation, ensuring that the real value of the award is not eroded over an enforcement period that may run for years.

SEMA Number 4 of 2016, Religious Chamber Formulation point C.5, was the first to use the term *ex officio* expressly, providing that a Religious Court may *ex officio* impose child maintenance upon the father where the child is in fact in the mother's care, under Article 156(f) of the KHI.⁴⁵ It links the substantive norm directly to the judge's procedural power and makes actual care, rather than formal status, the trigger.

SEMA Number 1 of 2017 added a dimension of enforcement security, providing that payment of *iddah* maintenance, *mut'ah*, and *madhiyah* may be stated in the operative part as payable before the pronouncement of the *ikrar talak*, while allowing the pronouncement to proceed where the wife does not object to non-payment at that moment.⁴⁶ The rule shifts the obligation from an order awaiting enforcement to a condition ordinarily attaching to the *ikrar talak*, increasing its

⁴² Aas Tri Ariska and Udin Latif, "Analisis Yuridis Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak-Hak Perempuan Yang Berhadapan Dengan Hukum Pada Perkara Cerai Talak Di Pengadilan Agama Sorong," *Muadalah: Jurnal Hukum* 2, no. 1 (2022): 55–69, <https://doi.org/10.47945/muadalah.v2i1.654>.

⁴³ Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012 Tentang Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

⁴⁴ Surat Edaran Nomor 3 Tahun 2015 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2015 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

⁴⁵ Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2016 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

⁴⁶ Surat Edaran Mahkamah Agung Nomor 1 Tahun 2017 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2016 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

compelling force without recourse to lengthy execution proceedings. That force is not absolute, since the pronouncement still depends on the wife's stance.

SEMA and religious-chamber formulations should not be described as legislation equivalent to statutes or Government Regulations. They function as internal Supreme Court guidance intended to promote consistency and may carry significant persuasive and institutional weight for judges, but the hierarchy of norms must remain clear. The effect of SEMA Number 3 of 2018 and related chamber formulations should therefore be explained as guidance on adjudication—particularly in *ceraai gugat*—read together with statutes, PP Number 9 of 1975, Supreme Court Regulation Number 3 of 2017, and the KHI rather than as an independent source that overrides higher norms.⁴⁷

The most recent development is SEMA Number 5 of 2021, Religious Chamber Formulation point 1.a, which allows a wife, in order to satisfy the best interests of the child, to apply for attachment of the husband's property as security for child maintenance, with the object described in detail in the *posita* and *petitum*, whether in the principal claim, a counterclaim, or a separate action.⁴⁸ It responds to a longstanding enforcement problem: the absence of any object of security where the former husband transfers or conceals his assets once the decision is final.

Table 2. The Development of the Religious Chamber Formulations on Post-Divorce Maintenance

Instrument	Substance of the Formulation	Implication for Judicial Authority
SEMA No. 7 of 2012, point 16	Criteria for the amount of <i>mut'ah</i> , <i>iddah</i> maintenance, and child maintenance: the husband's capacity and propriety	Supplies objective parameters for fixing amounts
SEMA No. 3 of 2015, points 11 and 14	Prohibition of orders contingent on property yet to be acquired; annual increment of 10 to 20 per cent for child maintenance	Preserves the real value of child maintenance and the certainty of the order
SEMA No. 4 of 2016, Religious Chamber C.5	A Religious Court may <i>ex officio</i> impose child maintenance upon the father	First express recognition of <i>ex officio</i> authority
SEMA No. 1 of 2017, Religious Chamber C.1	<i>Iddah</i> maintenance, <i>mut'ah</i> , and <i>madhiyah</i> may be ordered paid before the <i>ikrar talak</i> , provided the wife does not object	Strengthens the compelling force of the order without execution proceedings
SEMA No. 3 of 2018, Religious Chamber III.A-2 and III.A-3	Duty to elicit the facts of the husband's capacity and of basic needs; <i>mut'ah</i> and <i>iddah</i> maintenance in contested divorce absent proven <i>nusyuz</i>	Closes the asymmetry between <i>talak</i> and contested divorce

⁴⁷ Surat Edaran Mahkamah Agung Nomor 3 Tahun 2018 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2018 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

⁴⁸ Surat Edaran Mahkamah Agung Nomor 5 Tahun 2021 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2021 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

Instrument	Substance of the Formulation	Implication for Judicial Authority
SEMA No. 2 of 2019, Religious Chamber C.1.a	Past child maintenance neglected by the father may be claimed by the mother or the actual carer	Broadens legal standing for the fulfilment of the child's rights
SEMA No. 5 of 2021, Religious Chamber 1.a	Attachment of the husband's property as security for child maintenance	Strengthens security for the enforcement of the award

Source: compiled by the author from the religious chamber formulations of the Supreme Court, 2026.

c. Technical Guidelines and the Policy of the Religious Judicature Body

At the technical level, Book II of the Technical Guidelines of the Religious Courts had already provided guidance on *ex officio* practice: a Religious Court or Syar'iyah Court may *ex officio* impose *iddah* maintenance so long as the wife is not proven *nusyuz*, and may impose *mut'ah*, by reference to Article 41(c) of the Marriage Law in conjunction with Article 149(a) and (b) of the KHI; and in contested divorce on the ground of cruelty or violence the judge may *ex officio* impose *iddah* maintenance (*lil istibra'*).⁴⁹ The architecture is completed administratively by Letter of the Director General of the Religious Judicature Body Number 1669/DJA/HK.00/5/2021, which instructs all religious courts to make available, in service areas, legal aid posts, and self-filing applications, claim templates already incorporating the post-divorce rights of women and children.⁵⁰ This approach is preventive and complementary: by enabling women to frame their own petition, it reduces the need to resort to *ex officio* authority and so avoids tension with *ultra petitem partium* from the outset.

d. The Limits of Ex Officio Authority

Any *ex officio* award remains subject to substantive disqualifications and procedural fairness. *Iddah* maintenance and *mut'ah* must be distinguished from *madhiyah* (arrears) and child maintenance, and the relevance of *nusyuz* must be analysed only for the right to which the applicable norm attaches it. The judgment should identify the legal source, factual trigger, beneficiary, period, amount, and any reason for disqualification. This avoids treating all post-divorce economic rights as one undifferentiated category.

Table 3. Structure of Post-Divorce Maintenance Rights and Ex Officio Considerations

Right	Primary beneficiary	Typical trigger	Possible limitation/disqualification	Legal-source level	Ex officio note
Iddah maintenance	Former wife	Post-divorce period under applicable	Analyse <i>nusyuz</i> only where the governing rule makes it relevant	Statute/implementing rules/KHI + judicial guidance	Must reconcile request-based provisions with judicial guidance

⁴⁹ Mahkamah Agung Republik Indonesia, *Buku II Pedoman Teknis Administrasi Dan Teknis Peradilan Agama, Edisi Revisi* (Jakarta: Direktorat Jenderal Badan Peradilan Agama, 2013).

⁵⁰ Surat Direktur Jenderal Badan Peradilan Agama Nomor 1669/DJA/HK.00/5/2021 Tanggal 24 Mei 2021 Perihal Jaminan Pemenuhan Hak-Hak Perempuan Dan Anak Pascaperceraian.

		Islamic-family law			
Mut'ah	Former wife	Consequence of divorce in the circumstances recognised by law	Amount tied to propriety/capacity and governing rule	KHI/statutory context + guidance	Do not equate guidance with statute
Madhiyah/arrears	Former wife/entitled spouse	Past unpaid maintenance	Proof of period and obligation	Substantive family law + evidence	Separate arrears from prospective post-divorce awards
Child maintenance	Child	Continuing parental obligation	Needs, capacity, best interests; child cannot be prejudiced by parental waiver	Marriage/child-protection law + procedural framework	Where not expressly pleaded, ensure hearing and reasoned legal basis

Procedurally, ex officio adjudication must respect *audi alteram partem*. If an obligation not expressly pleaded is being considered, the parties should have a meaningful opportunity to address the legal basis, income and capacity evidence, the needs of the former wife or child, relevant defences, and the proposed payment mechanism. Substantive justice is strengthened rather than weakened when the reasoned judgment shows that both parties were heard on the obligation ultimately imposed.

Integrating Sharia Norms and National Law in Strengthening Ex Officio Authority

Integration here occurs not at the textual level but at the level of reasoning. Sharia supplies the substantive justification for why maintenance rights must be honoured, national law supplies the machinery by which their fulfilment is compelled. The two meet in the principle of *maslahah*, the orientation of law towards realising benefit and averting harm.

Within the framework of *maqashid al-shari'ah*, post-divorce maintenance engages at least two principal objectives of the law at once: the preservation of lineage (*hifz al-nasl*), through securing the child's growth and development, and the preservation of property (*hifz al-mal*), through protecting the proprietary rights of the weaker party. Where a judge determines the rights of the former wife and the child although these were not sought, a greater benefit is realised than would follow from granting the husband's petition literally, since a literal grant risks harm to the former wife, all the more so where she has dependent children.⁵¹

Qur'an 4:59 supports obedience to legitimate authority within its theological and interpretive context, but it should not be used as a direct textual grant of modern judicial ex officio jurisdiction. The authority of a Religious Court judge derives from Indonesian law. Qur'anic verses, hadith, fiqh, and maqasid can illuminate the

⁵¹ Ghea Sakira, Yusuf Baihaqi, and Arif Fikri, "Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak Istri."

substantive values of maintenance, prevention of harm, and protection of dependants, while the legal power to impose an obligation must still be connected to the applicable positive-law framework.⁵²

a. Operationalisation in Judicial Reasoning

This integrative reasoning is observable in the way judges impose *iddah* maintenance and *mut'ah* in talak divorce. Research by Sakira, Baihaqi, and Fikri identifies four recurrent patterns.⁵³ The panel first asks whether the wife falls within the category of *nusyuz*: absent such a finding she is entitled to *iddah* maintenance, whereas if it is proven the entitlement lapses under Article 149(a) and (b) of the KHI. It then reasons that she will observe the *iddah*, a period instituted essentially for the petitioner's benefit, during which the husband remains bound to maintain her, and on that basis imposes three months of maintenance at a level referable to local custom and standards of living. For *mut'ah*, it considers the purpose for which the payment was prescribed, to give the former wife peace of mind, so that it is not merely a religious duty but a provision for her life afterwards. Finally, it weighs the duration of the marriage as a variable reflecting her contribution and sacrifice.

These patterns show that the judge is not creating a new norm but operating an existing one by connecting the facts of the case to the standards of propriety and capacity. *Ex officio* authority is thus exercised as *ijtihad tatbiqi*, ijtihad in the application of a norm to a concrete case, rather than *ijtihad insha'i*, which would create new law outside the available framework.

b. Child Protection as a Limit on Party Autonomy

Parental agreement on child maintenance is relevant but cannot conclusively waive the child's independent interest. The court may review whether the proposed amount and mechanism adequately protect the child by considering demonstrated needs, the obligor's capacity, education and health costs, age, continuity of care, and reasonable future adjustments. Any departure from an agreement should be reasoned and directed to the child's best interests, not to a general assumption that judicial preference always supersedes parental autonomy.⁵⁴

The normative argument for *ex officio* child maintenance is therefore framed cautiously. Where the legal framework does not contain an express command to award a particular amount without a claim, the authors present *ex officio* consideration as a *de lege interpretanda/de lege ferenda* model grounded in the best interests of the child, judicial protection duties, and effective remedy, subject to hearing both parties and giving reasons. It should not be presented as an already explicit statutory rule if the text does not say so.⁵⁵

⁵² M. Taufiq, "Konsep Dan Sumber Hukum: Analisis Perbandingan Sistem Hukum Islam Dan Sistem Hukum Positif," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 5, no. 2 (2021), <https://doi.org/10.35316/istidlal.v5i2.348>.

⁵³ Ghea Sakira, Yusuf Baihaqi, and Arif Fikri, "Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak Istri."

⁵⁴ Aditya Aryo Nugroho, "The Best Interests of the Child: Fondasi Penetapan Nafkah Anak Pasca Perceraian," 2025, <https://marinews.mahkamahagung.go.id/artikel/the-best-interests-of-the-child-fondasi-penetapan-nafkah-0zl>.

⁵⁵ Anisa Nur Kanifah and Lukman Santoso, "Pemenuhan Hak Anak Pasca Perceraian Perspektif Hukum Positif Dan Teori Tujuan Hukum Gustav Radbruch."

Integration accordingly proceeds through three mutually supporting layers: a layer of values, where *maslahah* and justice meet as a shared orientation; a layer of norms, where the injunctions of the Qur'an and hadith are translated into the KHI and the Marriage Law without substantive distortion; and a procedural layer, where *ex officio* authority operates as the bridge ensuring that the second layer actually functions in concrete cases. Failure at the third layer would deprive the two above it of practical meaning, since a right recognised but not embodied in the operative part of a decision is no different from a right not recognised at all.

c. Implementation Gaps and Directions for Strengthening

Although the normative architecture is now relatively complete, the principal problem has shifted from normative absence to an implementation gap. Decisions specifying maintenance obligations are not always complied with voluntarily, while enforcement demands cost, time, and legal knowledge that former wives do not always possess.⁵⁶ Comparative study shows that Malaysia and Brunei Darussalam have developed supporting institutional mechanisms to secure compliance, whereas in Indonesia that burden still falls largely on the party entitled to payment.⁵⁷

The gap is also visible in the sensitivity with which cases are examined. Asni and Iqbal identify two patterns of reasoning among women judges in divorce cases, moderate and progressive, shaped by gender-based empathy, professional experience, judicial training, and the implementation of PERMA Number 3 of 2017.⁵⁸ The finding accords with Nurlaelawati's work showing that women's access to justice in the religious courts is determined largely by the interaction between reform of written norms and the strategies women themselves pursue in divorce proceedings.⁵⁹

On this basis, the strengthening of *ex officio* authority should be directed at three things. *First*, standardisation of legal reasoning: an obligation on judges to address the maintenance rights of the former wife and the child in every divorce decision, including where those rights are declared to have lapsed, with reasons set out in full. *Second*, reinforcement of the security instruments initiated by SEMA Number 5 of 2021, so that the operative part of a decision has a clear object of execution from the outset. *Third*, strengthening of legal literacy through legal aid posts and claim templates as mandated by the Director General's letter of 2021, so that *ex officio* authority may function as it should, namely as a final safety net rather than as the primary mechanism for the fulfilment of rights.

CONCLUSION

The obligation to provide post-divorce maintenance is a principle held in common by Islamic law and Indonesian national law. The Qur'an and hadith affirm

⁵⁶ Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court."

⁵⁷ Shofiatul Jannah et al., "Implementation of Post-Divorce Alimony Policies from a Gender Justice Perspective: A Comparative Legal Study of Indonesia, Malaysia, and Brunei Darussalam."

⁵⁸ Asni and Muhammad Iqbal, "Women Judging Women: Gender Sensitivity in the Decisions of Divorce Cases of Indonesian Religious Courts," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2026): 588–615, <https://doi.org/10.19105/al-lhkam.v20i2.18999>.

⁵⁹ Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 242–71, <https://doi.org/10.1163/15685195-0010A0003>.

that the father continues to bear responsibility for maintenance, shelter, and clothing for his former wife during the *iddah* and for his children irrespective of any change in marital status, with propriety and capacity as the governing limits. Positive law translates that principle through the Marriage Law, the KHI, and the religious chamber formulations, which establish concrete mechanisms for each category of maintenance, so that no substantive conflict arises between the two systems.

Juridically, that authority derives from a tiered set of norms running from Article 24(1) of the 1945 Constitution, through Articles 4(2), 5(1), and 10(1) of Law Number 48 of 2009, Article 41(c) of the Marriage Law, Article 24(2)(a) of Government Regulation Number 9 of 1975, and PERMA Number 3 of 2017, to the religious chamber formulations in SEMA Numbers 4 of 2016, 1 of 2017, 3 of 2018, 2 of 2019, and 5 of 2021. Although procedural law generally forbids a judge to decide beyond the claim, doctrine and practice afford room for judicial activism where a close connection with the subject matter exists, subject to the constraints of proven *nusyuz*, the former husband's actual capacity, and the status of *qabla al-dukhul*.

Integration takes place at the level of reasoning, with *maslahah* and substantive justice as its meeting point. The exercise of *ex officio* authority is therefore properly understood as *ijtihad tatbiqi*, affirming the role of the religious court judge in upholding sharia values within Indonesian positive law, rather than as a deviation from the *ultra petitum partium* principle. Three directions for reform follow: standardisation of legal reasoning on maintenance rights in every divorce decision, reinforcement of the instruments securing enforcement, and improvement of legal literacy among those seeking justice. Further research should take the form of empirical study or large-scale decision analysis measuring compliance with post-divorce maintenance awards, as a continuation of the normative inquiry undertaken here.

The study is limited by its normative design and does not measure how frequently religious courts exercise *ex officio* authority or the compliance rate with maintenance orders. A future multi-court empirical study should test whether the reconstructed hierarchy and procedural safeguards are reflected in actual judgments and enforcement.

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