

Protective Judicial Lawmaking: Post-Divorce Financial Rights and Enforcement in Indonesia's Religious Courts

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Abstract

Financial protection for women after divorce within Indonesia's Religious Court system has undergone significant developments through Supreme Court regulations, particularly following the issuance of PERMA No. 3 of 2017 and a number of SEMA rulings that expand and strengthen protections regarding mut'ah and iddah alimony. Although previous literature has extensively discussed judges' considerations in determining post-divorce alimony rights and amounts, there remains a limited number of studies that comprehensively explain the relationship between the expansion of substantive rights, the strengthening of procedural mechanisms, variations in judicial interpretation, and enforcement issues. This study employs a doctrinal legal research method combined with a systematic and comparative analysis of Supreme Court regulations and Religious Court rulings. The results indicate a dual transformation in post-divorce protections. On the substantive track, protection has evolved from status-based recognition of rights toward context-sensitive adjudication, including the extension of mut'ah and iddah alimony to cases of divorce by petition. On the procedural track, protection has evolved from condemnatory rulings toward the use of divorce proceedings as procedural leverage, through payments made prior to the pronouncement of divorce or before the issuance of the divorce decree. However, these two tracks do not always operate uniformly due to claim dependency, variations in judicial interpretation, and enforcement gaps. This study develops the concept of "protective judicial lawmaking" to explain these developments and analytically distinguish between progressive regulation, protective adjudication, and effective remedies. The findings indicate that existing reforms have moved toward enforcement-oriented protection but cannot yet be equated with effective enforcement without evidence of actual post-judgment compliance.

Keywords: *Protective Judicial Lawmaking; Nafkah Iddah; Mut'ah; Post-divorce Financial Rights; Religious Courts; Effective Remedy.*

Abstrak

Perlindungan finansial perempuan pascaperceraian dalam sistem Peradilan Agama Indonesia mengalami perkembangan penting melalui regulasi Mahkamah Agung, terutama setelah diterbitkannya PERMA Nomor 3 Tahun 2017 serta sejumlah SEMA yang memperluas dan memperkuat perlindungan terhadap mut'ah dan nafkah iddah. Meskipun literatur sebelumnya telah banyak membahas pertimbangan hakim dalam menentukan hak dan besaran nafkah pascaperceraian, masih terbatas kajian yang menjelaskan secara terpadu hubungan antara perluasan hak substantif, penguatan mekanisme prosedural, variasi penerjemahan oleh pengadilan, dan persoalan penegakan. Penelitian ini menggunakan metode penelitian hukum doktrinal yang dipadukan dengan analisis putusan secara sistematis dan komparatif terhadap regulasi Mahkamah Agung dan putusan Pengadilan Agama. Hasil penelitian menunjukkan adanya transformasi ganda perlindungan pascaperceraian. Pada lintasan substantif, perlindungan berkembang dari pengakuan hak berbasis status menuju adjudikasi yang lebih sensitif terhadap konteks, termasuk perluasan mut'ah dan nafkah iddah ke dalam cerai gugat. Pada lintasan prosedural, perlindungan berkembang dari amar condemnatoir menuju penggunaan tahapan perceraian sebagai procedural leverage, melalui pembayaran sebelum ikrar talak atau sebelum pengambilan akta cerai. Namun, kedua lintasan tersebut tidak selalu bekerja secara seragam akibat claim dependency, variasi penerjemahan yudisial, dan kesenjangan penegakan. Penelitian ini mengembangkan konsep protective judicial lawmaking untuk menjelaskan perkembangan tersebut serta membedakan secara analitis antara progressive regulation, protective adjudication, dan effective remedy. Temuan ini menunjukkan bahwa reformasi yang ada telah bergerak menuju enforcement-oriented protection, tetapi belum dapat disamakan dengan effective enforcement tanpa bukti kepatuhan aktual pascaputusan.

Kata Kunci: *Protective Judicial Lawmaking; Nafkah Iddah; Mut'ah; Hak Finansial Pascaperceraian; Peradilan Agama; Effective Remedy*

Introduction

Divorce not only terminates the legal relationship between husband and wife but also redistributes the economic risks

accumulated during the marriage.¹ The literature indicates that these consequences are not always gender-neutral. Income inequality and role specialization during marriage can lead to a greater decline in women's living standards after divorce, even after accounting for private transfers, public support, and changes in labor force participation.² Therefore, post-divorce financial rights serve as a crucial tool to prevent the dissolution of marriage from simultaneously resulting in disproportionate economic vulnerability.³ However, the mere existence of such rights in law does not necessarily guarantee that they can be effectively enforced. Problems can arise when financial obligations have been established, but payments are not made, when the entitled party must pursue additional enforcement procedures, or when such rights are not even included in the judgment because they were not claimed from the outset. In this context, post-divorce protection must be understood as a continuum linking rights recognition, judicial remedies, and enforcement, not merely as the recognition of financial obligations under family law.

Under Indonesian law, this issue has a unique character because post-divorce financial protection lies at the intersection of the Marriage Law, the Compilation of Islamic Law, civil procedure law, and Supreme

¹Charlotte Christiansen, Juanna Schröter Joensen, and Jesper Rangvid, "Understanding the Effects of Marriage and Divorce on Financial Investments: The Role of Background Risk Sharing," *Economic Inquiry* 53, no. 1 (2015): 431–47, <https://doi.org/10.1111/ecin.12113>; Anat Herbst-Debby, Miri Endeweld, and Amit Kaplan, "Differentiated Routes to Vulnerability: Marital Status, Children, Gender and Poverty," *Advances in Life Course Research* 49 (2021): 100418, <https://doi.org/10.1016/j.alcr.2021.100418>; Marcel Fischer and Natalia Khorunzhina, "Housing Decision with Divorce Risk," *International Economic Review* 60, no. 3 (2019): 1263–90, <https://doi.org/10.1111/iere.12385>; Jordan Neyland, "Love or Money: The Effect of CEO Divorce on Firm Risk and Compensation," *Journal of Corporate Finance* 60 (2020): 101507, <https://doi.org/10.1016/j.jcorpfin.2019.101507>.

²Carole Bonnet, Bertrand Garbinti, and Anne Solaz, "The Flip Side of Marital Specialization: The Gendered Effect of Divorce on Living Standards and Labor Supply: C. Bonnet et AL," *Journal of Population Economics* 34, no. 2 (2021): 515–73, <https://doi.org/10.1007/s00148-020-00786-2>.

³Pamela J Smock, Kristen Tzoc, and Deborah Carr, "Gender and the Economic Consequences of Divorce in the United States: Variation by Race and Ethnicity," *Journal of Family and Economic Issues* 45, no. 4 (2024): 800–818, <https://doi.org/10.1007/s10834-023-09940-w>; Thomas Leopold, "Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes," *Demography* 55, no. 3 (2018): 769–97, <https://doi.org/10.1007/s13524-018-0667-6>.

Court regulations.⁴ Article 41(c) of the Marriage Law grants the court the authority to order the former husband to provide maintenance and/or to impose certain obligations on the former wife. However, the fulfillment of mut'ah and iddah maintenance occurs within a legal framework that distinguishes between divorce by talak and divorce by lawsuit, as well as within civil procedures that, in principle, link the adjudication process to the parties' claims. Consequently, the level of protection may be influenced by who files for divorce, whether financial rights are included in the petition, the presence of the parties, the existence of a counterclaim, and the exercise of *ex officio* authority. A study on *ex officio* authority indicates that this instrument plays a crucial role in protecting wives who do not explicitly assert their rights, but its application in court decisions has not always been consistent.⁵ Thus, the legal issue lies in the relationship between substantive entitlement, procedural access, judicial reasoning, and remedial design.

Since 2017, the Supreme Court has gradually reconstructed this relationship through a series of regulatory interventions. PERMA No. 3 of 2017 directs judges to consider inequalities in legal protection, discrimination, powerlessness, power dynamics, and histories of violence against women, ensuring that adjudication does not stop at formal equality. SEMA No. 3 of 2018 further opened the possibility of awarding mut'ah and iddah maintenance in divorce by petition, provided the wife is not proven to be nusyuz. The transformation then shifted from substance toward remediation. SEMA No. 1 of 2017 allows for the payment of obligations arising from divorce to be linked to the pronouncement of the divorce decree, while SEMA No. 2 of 2019 allows the court's ruling in a divorce by petition to link the husband's payment of obligations to the issuance of the divorce certificate. The issue of the timing of payment itself has been identified

⁴Siska Lis Sulistiani and Intan Nurrachmi, "Hak Finansial Perempuan Dalam Keluarga Menurut Hukum Keluarga Islam Di Indonesia," *Musāwa Jurnal Studi Gender Dan Islam* 20, no. 2 (2021): 175–85, <https://doi.org/10.14421/musawa.2021.202.175-185>; Syukron Mahbub, "Solusi Pengadilan Agama Dalam Mengatasi Problematika Perceraian Yang Terjadi Di Masyarakat," *Jurnal Yustitia* 21, no. 2 (2020); Sheila Fakhria, "Cerai Gugat Dan Implikasinya Terhadap Hak-Hak Finansial Perempuan," *Legitima: Jurnal Hukum Keluarga Islam* 1, no. 1 (2018): 91–119.

⁵Adi Nur Rohman Uni, Sugeng Sugeng, and Hesti Widyaningrum, "Instrumentation of Ex-Officio Rights of Religious Courts Judge Related to Fulfilling Children and Wife's Rights Due to Divorce," *Jurnal Hukum & Pembangunan* 50, no. 2 (2020): 6, <https://doi.org/10.21143/jhp.vol50.no2.1126>.

as a critical aspect because the establishment of rights without certainty of their fulfillment still leaves former wives vulnerable.⁶ Thus, these developments reveal two interrelated paths of reform: the substantive expansion of financial rights and the procedural strengthening of remedies.

However, an increasingly protective regulatory framework has not resulted in a uniform judicial response. In the Surabaya Religious Court Decision No. 709/Pdt.G/2020/PA.Sbr, the judge awarded mut'ah and iddah maintenance even though these rights were not claimed and the wife was deemed disobedient (*nusyuz*), while also taking into account the husband's failure to provide maintenance. Conversely, the Surabaya Religious Court Decision No. 138/Pdt.G/2021/PA.Sby found that the husband had committed adultery, had neglected his maintenance obligations for four years, and that the wife had made a dominant economic contribution; consequently, it awarded two-thirds of the joint property to the wife but did not grant mut'ah or iddah maintenance when neither was claimed. A different approach was taken in Decision No. 4886/Pdt.G/2022/PA.Sby, which required payment of iddah maintenance and mut'ah before the divorce declaration. In a divorce by petition, Judgment No. 5592/Pdt.G/2022/PA.Sby employs a different mechanism by requiring payment before the former husband can obtain the divorce certificate. These variations indicate a gap between the protective regulatory framework established by the Supreme Court and the protective judicial outcomes produced by the courts.

Existing literature has addressed some aspects of this issue but tends to discuss them separately. Studies on Indonesian and Malaysian rulings have compared the construction of women's post-divorce rights, while other analyses focus on judges' considerations in determining mut'ah and iddah maintenance.⁷ Studies on *ex officio actions* highlight their potential as a protective instrument when a wife does not file a claim (including in *default* judgments) but also reveal variations

⁶Shofiatul Jannah and Roibin Roibin, "The Urgency of Determining the Post-Divorce Iddah Payment Period in Indonesian Religious Courts," *Jurnal Ius Constituendum* 8, no. 3 (2023): 424–35, <https://doi.org/10.26623/jic.v8i3.7606>.

⁷Fathinuddin Fathinuddin et al., "Women's Post-Divorce Rights in Malaysian and Indonesian's Court Decisions," *Abkam: Jurnal Ilmu Syariah* 23, no. 1 (2023), <https://doi.org/10.15408/ajis.v23i1.27967>.

in their application.⁸ Research on the timing of iddah alimony payments further demonstrates that the establishment of rights does not resolve the issue if the law does not provide certainty regarding when the obligation must be fulfilled.⁹ The literature has explained rights, judicial discretion, ex officio rulings, and payment issues, but has not yet linked them as a single process of judicial transformation: how the expansion of substantive rights interacts with procedural-remedial innovations and why both are interpreted differently in different case configurations. Therefore, *the research gap* in this study lies in the relationship between the expansion of substantive rights, procedural-remedial innovation, and their uneven judicial interpretation.

Based on these gaps, this study examines how the Supreme Court has transformed financial protection for women after divorce; how Religious Courts interpret this in their reasoning and rulings regarding mut'ah, iddah alimony, nusyuz, and payment mechanisms; and what doctrinal and procedural gaps still limit the establishment of *effective post-divorce remedies*. Through doctrinal legal research employing a *systematic comparative case-law analysis*, this article argues that Indonesia's judicial reforms have shaped a dual transformation of post-divorce protection. First, *the substantive protective trajectory* expands access to financial rights and enables more contextual assessments. Second, *the procedural remedial trajectory* utilizes the stages of divorce (particularly the pronouncement of divorce and the issuance of the divorce decree) as *procedural leverage* for the fulfillment of obligations. However, these two trajectories do not always converge in adjudicative practice. This article conceptualizes this process as protective judicial lawmaking, while distinguishing between *rights recognition*, *substantive protection*, *procedural strengthening*, and *enforcement-oriented protection* from *effective enforcement*. This distinction allows for the assessment of legal progress without prematurely equating it with the actual success of rights fulfillment.

⁸Khaidarulloh Khaidarulloh, Nuril Farida Maratus, and Sidiq Aulia, "Nalar Hukum Progresif Hakim Agama: Implementasi Hak Ex-Officio Dalam Putusan Perceraian Di Pengadilan Agama Tulungagung," *AL-MIKRAJ Jurnal Studi Islam Dan Humaniora* (E-ISSN 2745-4584) 4, no. 1 (2023): 51–67, <https://doi.org/10.37680/almikraj.v4i1.6425>.

⁹Syaiful Annas, "Masa Pembayaran Beban Nafkah Iddah Dan Mut'ah Dalam Perkara Cerai Talak (Sebuah Implementasi Hukum Acara Di Pengadilan Agama)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 1 (2017): 1–12, <https://doi.org/10.14421/ahwal.2017.10101>.

Literature Review and Theoretical Framework

Post-Divorce Financial Protection: From Rights Recognition to Substantive Protection

Post-divorce financial protection stems from the premise that the end of a marriage does not automatically eliminate the economic consequences that arose during the course of the marriage.¹⁰ The division of domestic roles, income disparities, child-rearing, and economic dependence can place former spouses in different positions when the marriage ends. Bonnet, Garbinti, and Solaz demonstrate that divorce produces different economic consequences for men and women, primarily due to income inequality and role specialization during marriage.¹¹ From this perspective, post-divorce alimony is not merely a continuation of marital obligations but can serve as a mechanism to more fairly distribute the economic risks resulting from divorce. Therefore, protection cannot be adequately measured by whether the law formally recognizes the rights of a former wife. A more relevant question is whether the legal structure is capable of identifying concrete vulnerabilities and transforming that recognition into substantive protection. It is this shift from formal recognition toward substantive protection that serves as the starting point for understanding the development of post-divorce law in Indonesia.

In the Indonesian context, the literature indicates that this development has primarily taken place through the reinterpretation of *mut'ah*, *iddah* alimony, and the judge's authority in determining the consequences of divorce. Research by Ramdani and Syafitri shows that the determination of *madhiyah* alimony, *iddah*, and *mut'ah* is not entirely mechanical, as judges take into account the husband's

¹⁰Nicole Kapelle and Janeen Baxter, "Marital Dissolution and Personal Wealth: Examining Gendered Trends across the Dissolution Process," *Journal of Marriage and Family* 83, no. 1 (2021): 243–59, <https://doi.org/10.1111/jomf.12707>; Céline Le Bourdais et al., "Impact of Conjugal Separation on Women's Income in Canada: Does the Type of Union Matter?," *Demographic Research* 35 (2016): 1489–1522, <https://doi.org/10.4054/DemRes.2016.35.50>.

¹¹Bonnet, Garbinti, and Solaz, "The Flip Side of Marital Specialization: The Gendered Effect of Divorce on Living Standards and Labor Supply: C. Bonnet et Al."

economic capacity and the concrete circumstances of the marriage.¹² Further research by Patimah, Kiljamilawati, and Tegar indicates that the absence of rigid nominal standards allows judges to consider the husband's financial capacity when determining the amount of post-divorce obligations.¹³ Meanwhile, the study by Sholikhah and Jamilah frames mut'ah and iddah maintenance within the context of public interest, meaning that determinations regarding these rights do not rely solely on the formal structure of the divorce.¹⁴ Taken together, these studies reveal a significant shift toward *context-sensitive adjudication*. However, the focus is primarily on what judges consider and the extent of the rights granted, rather than on how these developments interact with the procedural mechanisms designed to ensure payment. Thus, *substantive protection* constitutes one dimension of protection but does not yet account for the entire architecture of post-divorce remedies.

Judicial Lawmaking and the Transformation of Post-Divorce Remedies

The courts' involvement in the development of the law is not always limited to the mechanical application of statutory provisions. In situations where legal norms are open-ended, incomplete, or produce inadequate consequences, judicial interpretation and adjudicative practice can expand the meaning and scope of a right. In this study, "*judicial lawmaking*" is not intended to position judges as lawmakers in the legislative sense, but rather to explain how the judiciary shapes legal development through interpretation, adjudicative guidelines, and the design of remedies. This concept is relevant in the Religious Court system because changes in post-divorce protections occur not only through revisions to the Marriage Law or the Compilation of Islamic Law but also through PERMA, SEMA, chamber rulings, and their

¹²Riyan Ramdani and Firda Nisa Syafitri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut'ah Dalam Perkara Perceraian Di Pengadilan Agama," *Adliya: Jurnal Hukum Dan Kemanusiaan* 15, no. 1 (2021): 37–50, <https://doi.org/10.15575/adliya.v15i1.11874>.

¹³Patimah, Kiljamilawati, and Israh Ramdana Tegar, "The Judge's Consideration in Determining Support for Wife Post-Divorce."

¹⁴Amaliatus Sholikhah and Jamilah Jamilah, "Judge's Consideration of Post-Divorce Rights (Iddah and Mut'Ah) from the Perspective of Maslahah Mursalah," *Sakina: Jurnal of Family Studies* 7, no. 1 (2023): 111–23, <https://doi.org/10.18860/jfs.v7i2.3780>.

application in judicial decisions. Studies on court decisions as a source of family law development also show that judicial practice plays a role in adapting family norms to concrete issues, including divorce and post-divorce alimony.¹⁵ With this understanding, *judicial lawmaking* provides an institutional framework for explaining how the law moves from general norms toward more operational standards of protection through judicial activity.

Developments after 2017 illustrate this character more clearly. PERMA 3/2017 provides an adjudicative lens for recognizing inequality, discrimination, powerlessness, power dynamics, and violence against women. In the next phase, SEMA 3/2018 expanded the possibilities for mut'ah and iddah alimony in divorce by petition, while SEMA 1/2017 and SEMA 2/2019 linked financial obligations to the procedural stages of divorce. Thus, the Supreme Court not only influences who can obtain protection but also how rulings are designed to strengthen the likelihood of their enforcement. Studies on *ex officio rulings* up to 2023 reveal a similar function at the adjudicative level: judicial discretion can overcome the limitations of the petition when the protection of a former wife requires judicial intervention.¹⁶ However, the exercise of such authority is not always consistent, particularly when confronted with the *ultra petita* principle, *default* judgments, and differing legal constructions between divorce by repudiation (talak) and divorce by lawsuit (gugat). Therefore, this study uses the term “protective judicial lawmaking” more specifically to refer to the formation and operation of judicial norms aimed at both expanding and strengthening post-divorce protection.

Effective Remedy and Enforcement-Oriented Protection

The expansion of rights does not in and of itself guarantee the effectiveness of protection if the judgment does not provide adequate avenues for deriving benefits from those rights. Therefore, this study employs the concept of “effective remedy” as an evaluative framework

¹⁵Humaidi Kaha, Achmad Asfi Burhanudin, and Muhammad Al Faruq, “Judges’ Decisions as a Source of Family Law: Case Studies in Indonesia and Malaysia,” *VRISPRAAK: International Journal of Law* 7, no. 2 (2023): 62–69, <https://doi.org/10.59689/vris.v7i2.1149>.

¹⁶Rohman Uni, Sugeng, and Widyaningrum, “Instrumentation of Ex-Officio Rights of Religious Courts Judge Related to Fulfilling Children and Wife’s Rights Due to Divorce.”

to distinguish between the recognition of rights and the law's remedial capacity. In this sense, effectiveness is not determined solely by the normative victory of the woman, but by the relationship between the recognition of rights, the form of the judgment, access to procedures, and the possibility of fulfilling obligations. This issue is highly relevant in the context of post-divorce alimony because a condemnatory judgment may still require enforcement if the party ordered to pay does not do so voluntarily. Rahim's research indicates that the fulfillment of women's and children's rights after divorce faces a gap between what the judge orders and its implementation.¹⁷ Jannah and Roibin also demonstrate that uncertainty regarding the timing of iddah alimony payments can undermine the certainty of women's rights fulfillment.¹⁸ These findings suggest that "having a right," "obtaining a judgment," and "receiving the benefit of that judgment" constitute three distinct legal states. It is this distinction that forms the basis for the use of "*effective remedy*" in this study.

However, this study does not use "*effective remedy*" to conclude that every stronger payment mechanism has resulted in *effective enforcement*. A ruling ordering the payment of mut'ah and iddah maintenance before the declaration of divorce, for example, exerts stronger procedural pressure than an order that merely states the payment obligation. The same applies when payments in litigated divorces are linked to the issuance of the divorce decree. This mechanism uses the former husband's procedural interests as *leverage* to encourage compliance, and is therefore categorized in this study as "enforcement-oriented protection." However, without evidence that the payments were actually made, this mechanism cannot be treated as evidence of *effective enforcement*. This distinction is important because previous research has shown that the timing and mechanisms of payment are real issues in the fulfillment of post-divorce alimony.¹⁹ The framework of "*effective*

¹⁷Abdurrahman Rahim, "Judges' Consideration In The Deci-Sion Of Fulfilling The Rights Of Women And Children After Divorce In The Region Of The DKI Jakarta High Religious Court," *International Journal of Nusantara Islam* 8 (2020): 289–99, <https://doi.org/10.15575/ijni.v8i2.12413>.

¹⁸Jannah and Roibin, "The Urgency of Determining the Post-Divorce Iddah Payment Period in Indonesian Religious Courts."

¹⁹Evy Septiana Rachman and Siti Mahmudah, "Implementation Of The Fulfillment Of Child Support After Divorce At The Sukadana Religious Court Of

remedy” is thus not used as an empirical claim regarding the success of enforcement, but as a normative horizon for evaluating how far legal developments have moved from mere recognition of rights toward remedial designs that enhance the likelihood of their fulfillment.

Based on these three strands of literature, this study constructs a four-tier analytical model. “Rights recognition” constitutes the first tier, where financial rights are acknowledged or granted without meaningful substantive or procedural reinforcement. “Substantive protection” emerges when judges link rights to concrete conditions such as economic dependence, contributions during the marriage, grounds for divorce, nusyuz, or the vulnerability of the parties. Procedural strengthening occurs when protection is reinforced through *ex officio actions*, the restructuring of claims, mediation outcomes, or other procedural mechanisms. The next level, enforcement-oriented protection, emerges when the court intentionally uses the divorce proceedings as leverage to encourage payment. These four categories are not understood as stages that always progress linearly. A ruling may be strong substantively but weak procedurally, or vice versa. Effective enforcement is intentionally not included as a fifth level because it can only be demonstrated through actual data regarding payments or the implementation of rulings. This model allows the study to examine how these two trajectories (*the substantive protective trajectory* and *the procedural remedial trajectory*) converge or diverge in the practice of the Religious Courts.

Method

This study employs a doctrinal legal *research* method combined with systematic and *comparative case-law analysis*. Doctrinal research allows the law to be analyzed through systematic relationships between regulations, doctrines, legal principles, and court decisions to explain the structure and development of a legal issue.²⁰ The primary legal sources for this research include the Marriage Law, the Compilation of

Lampung Province” 2, no. 1 (2022): 41–58, <https://doi.org/10.24042/smart.v2i1.13527>; Pemenuhan Nafkah, Anak Pasca, and D I Provinsi Riau, “Pemenuhan Nafkah Anak Pasca Perceraian Di Provinsi Riau” 22, no. 1 (2022): 23–52, <https://doi.org/10.24014/jhi.v22i1.17198>.

²⁰Terry Hutchinson and Nigel Duncan, “Defining and Describing What We Do: Doctrinal Legal Research,” *Deakin Law Review* 17, no. 1 (2012): 83–119, <https://doi.org/10.21153/dlr2012vol17no1art70>.

Islamic Law, PERMA No. 3 of 2017, SEMA, and the Religious Chamber's Rulings regarding the financial consequences of divorce, as well as decisions of the Religious Courts. Judgments are not treated merely as illustrations of the application of norms, but as legal material that allows for tracing how protective norms are translated through judicial reasoning and remedies. This approach is complemented by *systematic case-law analysis*—that is, the reading of judgments based on consistently defined categories so that similarities, differences, and patterns of reasoning can be identified transparently.²¹ Thus, this study does not measure the social experiences of the parties after divorce but rather analyzes the transformation of protection through three interrelated components: the normative framework, judicial reasoning, and remedial orders.

The corpus of rulings was constructed through purposive doctrinal sampling based on the principle of maximum variation. The primary period begins in 2017, as PERMA No. 3 of 2017 marked a pivotal shift in the orientation of adjudication regarding women in legal proceedings. The selection of rulings was not intended to produce statistical representation but rather to identify legal configurations that allow for comparison of how the same norms are applied under different case circumstances. In comparative research, the selection of objects and comparison criteria must align with the research objectives and questions so that the similarities and differences identified hold analytical significance.²² Therefore, the corpus includes variations of talak and gugat divorces, *contradictory* and *verstek* proceedings, claims where rights were sought as well as those where they were not, *ex officio* applications, issues of nusyuz, and rulings that do or do not utilize payment mechanisms before the talak declaration or the issuance of the divorce decree. Negative cases and deviant cases were retained to avoid selecting only progressive rulings. Conversely, non-divorce cases, cases that were dismissed, and documents that did not provide sufficient substantive information were excluded during the *eligibility screening* stage.

²¹Mark A Hall and Ronald F Wright, "Systematic Content Analysis of Judicial Opinions," *Calif. L. Rev.* 96 (2008): 63, <https://doi.org/10.15779/Z38R99R>.

²²Mark Van Hoecke, *Methodology of Comparative Legal Research*, *Pravovedenie* (HeinOnline, 2013).

Each decision is analyzed through the same framework (namely, factual configuration → judicial reasoning → remedial order) and then compared through *within-case analysis* and *cross-case comparison*. The use of consistent categories is crucial in the systematic analysis of decisions because it allows researchers to move beyond an anecdotal reading of individual decisions toward the identification of patterns that can be tested across the entire corpus.²³ For this purpose, a *case-law codebook* is used to record the type of case, the configuration of the claims, issues of nusyuz and the parties' faults, references to PERMA, SEMA, KHI, and the Marriage Law, the type and amount of financial rights, the use of *ex officio*, and payment mechanisms in the judgment. "Nusyuz" is distinguished between allegation, judicial finding, and legal consequence, while "*ex officio*" is coded only after reviewing the statement of facts, the prayer for relief, the answer or counterclaim, the reasoning, and the judgment. The results are then classified into four categories: recognition of rights, substantive protection, procedural strengthening, and enforcement-oriented protection. These categories are not assumed to represent a linear progression, as a decision may demonstrate strong substantive protection but fail to provide procedural strengthening, or vice versa.

The analysis ultimately draws a clear distinction between "enforcement-oriented protection" and "effective enforcement." A court order requiring payment prior to the pronouncement of divorce or prior to the issuance of the divorce decree is categorized as *enforcement-oriented* because it uses the procedural stages of divorce as *leverage* to increase the likelihood of compliance. However, the existence of such an " " order does not prove that the payment was actually received by the former wife. This distinction is necessary because research on post-divorce alimony payments shows that the imposition of obligations in a judgment and the realization of rights are two distinct issues.²⁴ Since the research corpus consists primarily of judgment documents, rather than post-judgment data on compliance, payments, or enforcement processes, "effective enforcement" is treated as a normative horizon, not as an empirical finding. The validity of the analysis is ensured by prioritizing complete court decisions from

²³Hall and Wright, "Systematic Content Analysis of Judicial Opinions."

²⁴Jannah and Roibin, "The Urgency of Determining the Post-Divorce Iddah Payment Period in Indonesian Religious Courts."

official sources and re-examining cases that resulted in ambiguous classifications, particularly regarding *ex officio rulings*, nusyuz, and payment mechanisms. With these limitations, this study explains how the judicial architecture of post-divorce protection is shaped and translated into court decisions, without prematurely claiming the actual success of its implementation.

Results and Discussion

From Normative Recognition to Context-Sensitive Protection

The development of financial protection for women after divorce within the Religious Courts indicates a gradual shift from status-based recognition of rights toward protection that is increasingly context-sensitive.²⁵ Article 41(c) of the Marriage Law provides a general normative foundation by granting courts the authority to require a former husband to provide maintenance and/or to impose specific obligations on a former wife. In Islamic family law, Articles 149 and 152 of the Compilation of Islamic Law (KHI) provide a more specific framework by establishing mut'ah and iddah maintenance primarily as consequences of talak divorce and making nusyuz relevant to a wife's right to maintenance during the iddah period. This framework provides an important basis for financial protection, but it remains heavily dependent on formal categories: who initiated the divorce, the form of divorce pursued, and whether the wife is deemed to be in a state of nusyuz. Previous literature also indicates that the determination of mut'ah and iddah maintenance is largely based on the husband's economic capacity, the wife's needs, and the judge's discretion in determining an appropriate amount.²⁶

PERMA No. 3 of 2017 marks a pivotal point in this shift in orientation. This regulation does not establish mut'ah or iddah maintenance as new rights, but rather introduces an adjudicative framework that requires judges to consider legal protection disparities,

²⁵Defi Rahmi Fadhilah, "Jurimetrics Implementation of Determining Wife's Rights in Divorce in Talu Religious Court" 21, no. 2 (2023): 242–60, <https://doi.org/10.30984/jis.v21i2.2498>; Alfitri Alfitri, "Protecting Women from Domestic Violence: Socio-Legal Approach to CEDAW Bill in Indonesia," *Studia Islamika* 27, no. 2 (2020), <https://doi.org/10.36712/sdi.v27i2.9408>.

²⁶Ramdani and Syafitri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut'ah Dalam Perkara Perceraian Di Pengadilan Agama."

discrimination, powerlessness, power dynamics, and relevant histories of violence in cases involving women in the legal system. Thus, the primary function of PERMA 3/2017 lies in shifting *the adjudicative lens* used to interpret existing legal norms. This orientation took on a more concrete form through SEMA No. 3 of 2018. The Religious Chamber's ruling opens the possibility for a wife in a divorce by complaint to receive mut'ah and iddah maintenance, provided she is not proven to be nusyuz. The same SEMA also emphasizes that the determination of madhiyah alimony, iddah alimony, mut'ah, and child support must take into account a sense of justice and appropriateness by examining the husband's economic capacity as well as the basic needs of the wife and/or children. Thus, the ongoing transformation does not merely expand rights but also broadens the scope of facts considered relevant in determining protection.

Table 1. Transformation of Post-Divorce Financial Protection Regulations

Regulatory Level	Protection Orientation	Substantive Developments	Procedural Significance
Marriage Law, Article 41(c)	General Recognition	The court may determine obligations toward a former wife	No specific payment plan has been provided
KHI, Articles 149 & 152	Status-based rights	Mut'ah and iddah are primarily established in cases of divorce by talak; nusyuz affects these rights	Predominantly in the form of condemnatory rulings
PERMA 3/2017	Gender-sensitive and context-sensitive adjudication	Inequality, discrimination, powerlessness, power relations, and violence become relevant	Changing the lens of adjudication
SEMA 3/2018	Substantive Expansion	Mut'ah and iddah are extended to divorce by petition as long as the wife is not proven to be nusyuz	Reducing the rigidity of the talak–gugat dichotomy

SEMA 1/2017	Procedural Strengthening	Financial rights are linked to the resolution of the divorce proceedings	Payment before the pronouncement of divorce
SEMA 2/2019	Procedural Adaptations	Protective mechanisms adapted for divorce by petition	Payment prior to the defendant obtaining the divorce certificate, subject to the conditions of the statement of claim

Source: Authors’ synthesis based on Article 41(c) of the Marriage Law; Articles 149 and 152 of the Compilation of Islamic Law; Supreme Court Regulation (PERMA) No. 3 of 2017; and Supreme Court Circular Letters (SEMA) Nos. 1 of 2017, 3 of 2018, and 2 of 2019.

Table 1 shows that regulatory transformation has occurred through two interconnected but analytically distinct pathways. PERMA 3/2017 and SEMA 3/2018 primarily developed the substantive dimension of protection, both by shifting the adjudicative perspective and by expanding protection beyond the traditional dichotomy of talak divorce versus gugat divorce. Conversely, SEMA 1/2017 and SEMA 2/2019 primarily developed the procedural-remedial dimension by linking the payment of financial obligations to procedural stages that still hold value for the husband. SEMA 1/2017 opens the possibility for iddah alimony, mut’ah, and madhiyah alimony to be paid before the pronouncement of divorce, while SEMA 2/2019 adapts this approach in divorce by lawsuit through payment before the Defendant receives the divorce decree, provided that such obligations are specified in the statement of facts and the prayer for relief. Read together, this series of developments illustrates what this study terms a “dual transformation”: the expansion of substantive protections alongside the strengthening of procedural mechanisms.

This finding broadens the focus of existing literature. Ramdani and Syafitri demonstrate that the determination of madhiyah alimony, the iddah, and mut’ah requires judicial discretion and cannot be determined solely through mechanical application.¹ Patimah, Kiljamilawati, and Tegar also highlight the importance of judicial discretion in determining post-divorce alimony for the wife.²⁷ This

²⁷Patimah, Kiljamilawati, and Israh Ramdana Tegar, “The Judge’s Consideration in Determining Support for Wife Post-Divorce.”

literature is important for explaining how and to what extent financial rights are determined, but the series of regulatory developments outlined above points to a broader transformation. The issue is no longer merely the amount of rights granted, but rather who is eligible for protection, what factual circumstances are deemed relevant, and how the ruling is structured to ensure these rights have a greater likelihood of being realized. Therefore, the transformation of protection must be analyzed through the relationship between factual configuration → judicial reasoning → remedial design, rather than solely through the nominal amount of rights awarded.

Moving Beyond the Talak-Gugat Divorce Dichotomy: Uneven Expansion of Protection

The extension of mut'ah and iddah maintenance to divorce by petition is one of the most significant substantive changes in this development. In the conventional structure of the KHI, the financial consequences of divorce by talak and divorce by petition were not constructed symmetrically, as Article 149 primarily placed the husband's financial obligations in the context of talak. SEMA 3/2018 disrupts this structure by opening the possibility of awarding mut'ah and iddah maintenance in divorce by petition, provided the wife is not proven to be nusyuz. This shift is significant because the party initiating the divorce can no longer be used as the sole indicator for determining eligibility for protection. The focus is shifting toward the circumstances that led to the breakdown of the marriage and the concrete circumstances of the parties. However, the analyzed rulings show that this normative expansion does not automatically result in uniform protective adjudication. The talak–gugat dichotomy is indeed becoming less relevant, but it has not yet been replaced by a protection regime that operates automatically.

Table 2. Comparative Configuration of Verified Post-Divorce Decisions

Judgment	Type of Divorce	Procedural Configuration	Material Factual Configuration	Post-Divorce Financial Remedies	Procedural Leverage	Analytical Significance
138/Pdt.G/2021	Divorce by Petition	Adversarial +	Adultery; four years	No mut'ah or iddah in	None for mut'ah/iddah	Strong content

/PA.S by	Counte rclaim	without spousal support ; wife is the family’s breadwi nner	the final judgment			xtual reaso ning, but prote ction is provi ded throu gh the divisi on of joint prope rty
3861/ Pdt.G /2022 /PA.S by	Divorce by Petition	Adversa rial + mediati on	Eviden ce of domesti c violenc e exists; child- related issues are resolve d through mediati on	No evidence of mut’ah or iddah	No financial rights for the former wife	Select ive remed ial prote ction
4886/ Pdt.G /2022 /PA.S by	Divorce by talak	Adversa rial proceed ings + mediati on + counter claim	Post- divorce financia l rights were explicitl y claimed	Mut’ah: 185 million rupiah; iddah: 90 million rupiah	Prior to the pronounc ement of divorce	Stron g substa ntive prote ction and enfor ceme nt- orient ed measu res

5592/ Pdt.G /2022 /PA.S by	Divorce by Petition	Default Judgme nt	The judgme nt includes financia l protecti on for the former wife	Mut'ah: 5 million rupiah; iddah: 3 million rupiah	Before the Defendan t obtains the divorce certificate	Funct ional adapt ation of proce dural levera ge in divorc e by petiti on
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Table 2 shows that the type of divorce is no longer sufficient to explain variations in the outcomes of financial protection. Decision No. 138/Pdt.G/2021/PA.Sby serves as an important example. The trial facts revealed that the husband had committed adultery and had failed to provide spousal support to his wife since 2017. The panel even explicitly acknowledged the existence of an abnormal household situation: the husband no longer fulfilled his spousal support obligations, while the wife became the family’s breadwinner and played a major role in acquiring the joint property. These facts resulted in a larger share of the joint assets being awarded to the wife. However, this substantive reasoning did not lead to the award of mut’ah or iddah alimony. This decision demonstrates that contextual justice can be strongly applied in one remedial domain but does not automatically extend to other remedial domains.

Ruling No. 3861/Pdt.G/2022/PA.Sby illustrates another variation. In that case, there were allegations of domestic violence, while the mediation process resulted in an agreement regarding child custody. However, this protection was not accompanied by the award of mut’ah or iddah maintenance, as can be verified from the ruling. This case is significant as a “negative case”—not as evidence of the court’s failure, but to demonstrate that sensitivity toward one dimension of vulnerability does not always result in financial protection against all the consequences of divorce. Thus, the variations observed are more accurately described as “selective remedial protection” rather than merely distinguishing between “progressive” and “formalistic” judges. Judges may provide strong protection for children, joint

property, or certain aspects of the divorce, but they do not always extend the same level of protection to the former wife's financial rights.

A sharp contrast is evident in Decision No. 4886/Pdt.G/2022/PA.Sby. In this talak divorce case, the Respondent explicitly filed a counterclaim seeking mut'ah in the amount of Rp185 million and iddah maintenance in the amount of Rp90 million. These rights were subsequently reflected in the judgment and linked to the execution of the divorce declaration. A comparison with Judgment No. 138/2021 reveals what might be termed a "*remedial translation problem*." Facts that substantively support protection do not necessarily result in the same type of *remedy*, as the final outcome is also determined by the procedural pathway through which those rights enter adjudication. The literature on *ex officio* authority has highlighted the importance of judicial initiative in preventing the loss of a wife's rights due to limited legal knowledge.²⁸ The findings of this study expand on this issue: the primary problem is not merely whether judges possess *ex officio* authority, but whether the reality of vulnerability is successfully translated into relevant remedial forms.

This is where an internal tension arises within the protective framework. SEMA 3/2018 expands substantive rights by reducing the dependence of mut'ah and iddah on who files for divorce, but SEMA 2/2019, in certain mechanisms, still links procedural protections to the requirement that these obligations be articulated in the statement of facts and the prayer for relief. The resulting framework thus contains both an expansive substantive impetus and a procedural dependence on claims (*claim dependency*). These two elements need not be viewed as contradictory, as they operate at different levels. A wife may substantively fall into a category deserving of protection, but she will not always receive the strongest form of remedy if that right is not brought into the proceedings through adequate procedural channels. This explains why progressive regulations can still result in rulings with varying degrees of protection.

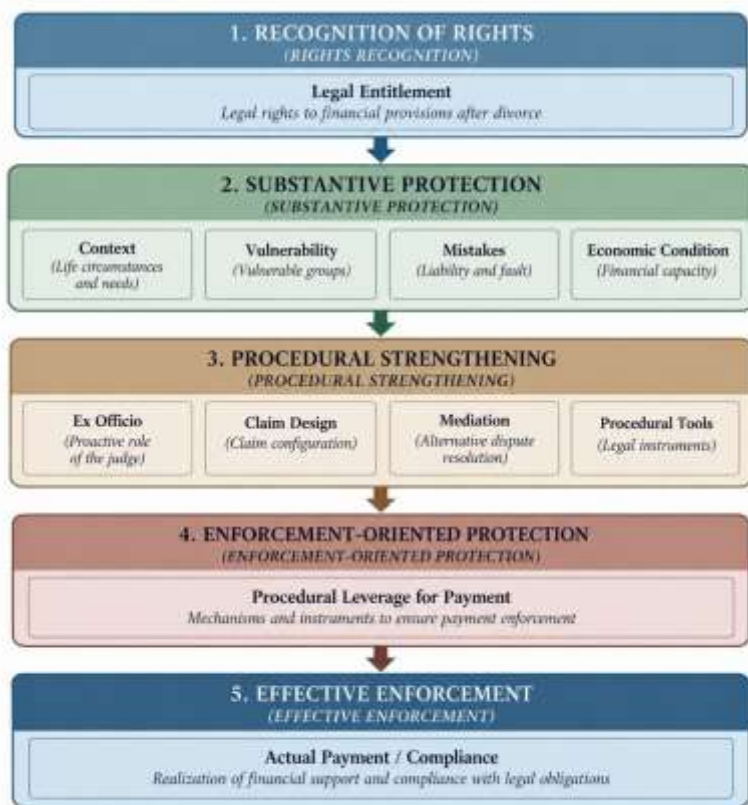
²⁸Rohman Uni, Sugeng, and Widyaningrum, "Instrumentation of Ex-Officio Rights of Religious Courts Judge Related to Fulfilling Children and Wife's Rights Due to Divorce."

From Financial Rights to Enforcement-Oriented Remedies

The second aspect of the transformation of protection is not primarily related to who is entitled to mut'ah and iddah maintenance, but rather to the structure through which these rights are realized. A conventional court order may stipulate that the husband is obligated to pay a certain amount of money, but the mere existence of this obligation in the order does not guarantee that the former wife will actually receive the payment. This distinction between recognition and realization is significant in the literature on post-divorce maintenance. Jannah and Roibin point out that the uncertainty regarding the timing of iddah maintenance payments is a distinct issue because the mechanisms and timing of payment determine whether the right can effectively fulfill its protective function.²⁹ The Supreme Court's response to this issue can be interpreted as an effort to move beyond mere recognition of rights by embedding financial obligations into the procedural structure of divorce itself.

Figure 1. Transformation of Post-Divorce Financial Protection

²⁹Jannah and Roibin, "The Urgency of Determining the Post-Divorce Iddah Payment Period in Indonesian Religious Courts."



Source: Authors' construction based on a synthesis of Supreme Court regulations on women's post-divorce protection (PERMA No. 3/2017; SEMA No. 1/2017; SEMA No. 3/2018; SEMA No. 2/2019) and a comparative analysis of Religious Court decisions in the study corpus.

Figure 1 distinguishes four levels of protection that can be observed through norms and rulings, ranging from theoretical concepts to actual enforcement. "*Rights recognition*" indicates that a right is normatively available or acknowledged in a ruling. *Substantive protection* arises when the court links the right to the concrete circumstances of the parties and does not stop at formal categories. *Procedural strengthening* adds instruments that facilitate the acquisition or realization of the right, whereas *enforcement-oriented protection* arises when the court links payment to a procedural interest that can create pressure on the party burdened with the obligation. The link to *effective enforcement* is deliberately not portrayed as an automatic consequence. A ruling

designed to encourage payment does not prove that payment has actually occurred. Therefore, effective enforcement constitutes *a normative horizon*, unless post-ruling evidence of payment or actual compliance is available.

SEMA No. 1 of 2017 provides the clearest regulatory expression of this remedial shift in divorce by talak. In implementing PERMA 3/2017, the Religious Court Chamber's ruling opens the possibility for the payment of iddah maintenance, mut'ah, and madhiyah maintenance to be made prior to the talak declaration. Judgment No. 4886/Pdt.G/2022/PA.Sby illustrates this technical approach. The respondent claimed mut'ah in the amount of Rp185 million and iddah alimony in the amount of Rp90 million. These entitlements were subsequently ordered in the judgment, with payment tied to the pronouncement of divorce. The significance of this decision lies not only in the relatively large amount of the entitlements. By linking payment to the steps the petitioner must take to finalize the divorce, the court transforms a financial obligation into a remedy that gains procedural leverage. The husband's interest in finalizing the pronouncement of divorce is utilized as an institutional mechanism to increase the likelihood that the wife's rights will be fulfilled.

The same technique cannot be applied identically in a divorce by complaint because the husband does not need a divorce declaration to finalize the divorce. SEMA 2/2019, therefore, makes a functional adaptation by opening the possibility for the judgment in a divorce by complaint to determine the payment of post-divorce obligations before the Defendant obtains the divorce certificate, while still taking into account the requirements of the statement of facts and the prayer for relief. Judgment No. 5592/Pdt.G/2022/PA.Sby provides a concrete illustration of this approach. The judgment orders a mut'ah payment of 5 million rupiah and iddah maintenance of 3 million rupiah, accompanied by a payment mechanism to be fulfilled before the defendant receives the divorce certificate. Thus, the point of leverage shifts from the declaration of divorce to access to the divorce certificate, while its protective function remains the same. This adaptation demonstrates that the expansion of protection from divorce by declaration to divorce by lawsuit does not stop at the substantive dimension but is followed by efforts to identify procedural mechanisms that are functionally equivalent.

Table 3. Functional Equivalence of Procedural Leverage in Divorce by Declaration and Divorce by Litigation

Dimension	Divorce by Talak	Litigated Divorce
Regulatory Basis	SEMA 1/2017	SEMA 2/2019
Illustrative Rulings	4886/Pdt.G/2022/PA.Sby	5592/Pdt.G/2022/PA.S by
Financial Rights	Mut’ah + iddah maintenance	Mut’ah + iddah maintenance
Husband’s procedural interests	Divorce settlement through a declaration of divorce	Obtaining the divorce certificate
Payment Arrangements	Before the declaration of divorce	Before the Defendant obtains the divorce certificate
Remedial function	Creating procedural leverage	Adaptation of procedural leverage
Analytical classification	Enforcement-oriented protection	Enforcement-oriented protection
Proof of actual payment	Cannot be proven solely from the judgment	Cannot be proven solely from the judgment

Source: Authors’ coding and comparative analysis of Surabaya Religious Court Decisions Nos. 138/Pdt.G/2021/PA.Sby, 3861/Pdt.G/2022/PA.Sby, 4886/Pdt.G/2022/PA.Sby, and 5592/Pdt.G/2022/PA.Sby. The classifications are limited to facts, judicial reasoning, and remedial orders that can be verified from the available judicial documents.

Table 3 illustrates the *functional* equivalence between two procedurally distinct mechanisms. In a divorce by talak, the court focuses on the husband’s need to pronounce the talak; in a divorce by lawsuit, the emphasis shifts to his interest in obtaining a divorce decree. Therefore, SEMA 1/2017 and SEMA 2/2019 should not be understood as two separate technical rules, but rather as manifestations of a single remedial logic: using *the divorce procedure* as payment leverage. This finding takes the analysis beyond studies that focus solely on determining the amount of alimony. Judicial developments have also extended to the design of *remedies*. Nevertheless, these mechanisms remain *enforcement-oriented* rather than *enforcement-effective*. When the former husband has no stake in these procedural steps or when payment requires the seizure and execution of assets, the available leverage may lose its effectiveness.

This finding also offers a new perspective on *ex officio* authority. Rohman, Sugeng, and Widyaningrum position this authority as a crucial instrument for Religious Court judges to protect the rights of wives and children, which may be overlooked due to the parties' limited legal knowledge.³⁰ However, the body of research indicates that successfully incorporating these rights into the judgment is merely the first step. Once rights are recognized, a second issue remains: does the design of the judgment provide a sufficiently robust pathway toward their realization? Thus, protective adjudication has at least two distinct dimensions: adjudication that generates or preserves rights (*rights-generating/ rights-preserving adjudication*) and adjudication that strengthens remedies (*remedy-strengthening adjudication*).

The Boundaries of Protective Judicial Lawmaking

When read as a whole, the Supreme Court's regulations and the patterns of decisions analyzed indicate a form of gradual legal development that this study conceptualizes as "protective judicial lawmaking." This concept is not intended to suggest that judges replace the role of legislators or create post-divorce rights without a legal basis. *Protective judicial lawmaking* refers to the process by which the Supreme Court and the Religious Courts progressively expand the scope, interpretation, and remedial mechanisms of rights that already have a normative basis through judicial regulations, chamber rulings, contextual interpretations, and the design of judicial orders. PERMA 3/2017 shifted the perspective of adjudication; SEMA 3/2018 expanded substantive protection beyond the talak–gugat dichotomy; SEMA 1/2017 and SEMA 2/2019 strengthened procedural frameworks; while the Religious Courts apply these constructs in specific cases. Thus, these developments constitute incremental and institutionally layered judicial lawmaking, rather than changes arising from a single landmark decision. This aligns with studies regarding court decisions as one of the sources of family law development within the Indonesian judicial system.³¹

³⁰Rohman Uni, Sugeng, and Widyaningrum, "Instrumentation of Ex-Officio Rights of Religious Courts Judge Related to Fulfilling Children and Wife's Rights Due to Divorce."

³¹Kaha, Burhanudin, and Al Faruq, "Judges' Decisions as a Source of Family Law: Case Studies in Indonesia and Malaysia."

However, the corpus also reveals at least three structural limitations. First is the “dependency” issue: protection may still depend on how financial rights are incorporated into the process through the petition, counterclaim, mediation, or *ex officio* authority. Second is “uneven judicial translation,” meaning that protective regulations are not always applied with the same intensity by courts across various types of remedies. Third is the compliance/enforcement gap: even the most procedurally robust orders merely demonstrate that the decision was designed to encourage payment, not that payment actually occurred. A comparison between Decisions 138/2021 and 4886/2022 reveals two instances of the first limitation, while Decisions 4886/2022 and 5592/2022 simultaneously illustrate the third limitation. These three conditions explain why the Supreme Court’s regulatory progressiveness and the progressiveness of protection in its rulings cannot be treated as identical concepts.

Figure 2. Two-Track Model of Protective Judicial Lawmaking



Source: Conceptual model developed by the authors based on a synthesis of Supreme Court regulations on women’s post-divorce rights (PERMA No. 3/2017; SEMA No. 1/2017; SEMA No. 3/2018; SEMA No. 2/2019) and findings from the comparative analysis of decisions in the study corpus.

Figure 2 presents the main conceptual synthesis of the research findings. The first trajectory illustrates the substantive development from the recognition of rights in regulations toward gender-sensitive adjudication, the expansion of protection to include divorce by petition, and the opening of space for increasingly contextual assessments of nusyuz, fault, economic capacity, and the needs of the parties. The second trajectory illustrates the remedial development from standard condemnatory rulings toward payment prior to the pronouncement of divorce, its adaptation through payment prior to the issuance of the divorce decree, and the emergence of an *enforcement-oriented remedy*. The convergence of these two trajectories results in protective judicial lawmaking. However, the two do not always develop in tandem. *Claim dependency*, inconsistent judicial interpretation, and enforcement gaps hinder a direct link between regulatory progressiveness and the realization of protections. Therefore, *effective post-divorce remedies* are positioned as a normative horizon, not an empirical outcome assumed to occur automatically.

This model explains patterns that are difficult to account for if the progressiveness of a ruling is assessed solely based on whether the judge awards mut'ah or iddah alimony. Ruling 138/2021 demonstrates strong contextual reasoning regarding the wife's economic contribution and the husband's negligence, but the protection is channeled through the division of joint property. Conversely, Decision 4886/2022 demonstrates financial protection that is simultaneously reinforced through a payment mechanism prior to the pronouncement of divorce. Decision 5592/2022 shows that such procedural innovations can transcend the divorce–litigation dichotomy through functional adaptation. Therefore, substantive and procedural progress cannot be treated as identical indicators. An increasingly protective regulatory framework does not, by itself, result in uniform protective adjudication because substantive and procedural transformations operate along different trajectories and are sometimes out of sync.

These findings expand the literature in three ways. First, previous research has shown that the determination of mut'ah and iddah maintenance depends on the judge's consideration of economic

capacity, need, appropriateness, and factual circumstances.³² Second, research on *ex officio actions* demonstrates how judicial initiative can prevent the loss of rights due to the parties' limited legal knowledge.³³ Third, Jannah and Roibin show that the timing and mechanism of payment constitute a separate issue once the right has been established.³⁴ This study connects these three discussions into a single analytical sequence: recognition of rights → substantive interpretation → procedural reinforcement → enforcement orientation. Thus, the focus of the analysis shifts from merely the existence of rights or the amount of alimony to the entire “*protective chain*” that links legal norms to the design of remedies.

The conceptual implications ultimately lie in the distinction between progressive regulation, protective adjudication, and effective remedy. *Progressive regulation* refers to the normative architecture developed by the Supreme Court; *protective adjudication* refers to how that architecture is translated into the court's reasoning and rulings; whereas *effective remedy* requires an additional condition, namely that the financial benefits are actually received by the rights holders. The research corpus allows for strong conclusions regarding the first two layers and indicates significant progress toward the third layer, but it does not provide sufficient post-ruling data to prove actual compliance. Therefore, a more accurate conclusion is not that the reform has failed or has resolved the issue of enforcement, but rather that the Supreme Court has established a dual transformation of post-divorce protection (through the substantive expansion of financial rights and the procedural strengthening of remedies), yet the resulting model remains enforcement-oriented and is not yet fully enforcement-effective.

³²Ramdani and Syafitri, “Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah Dan Mut’ah Dalam Perkara Perceraian Di Pengadilan Agama”; Patimah, Kilijamilawati, and Israh Ramdana Tegar, “The Judge’s Consideration in Determining Support for Wife Post-Divorce.”

³³Rohman Uni, Sugeng, and Widyaningrum, “Instrumentation of Ex-Officio Rights of Religious Courts Judge Related to Fulfilling Children and Wife’s Rights Due to Divorce.”

³⁴Jannah and Roibin, “The Urgency of Determining the Post-Divorce Iddah Payment Period in Indonesian Religious Courts.”

Conclusion

This study shows that the development of financial protection for women after divorce within the Indonesian Religious Courts can no longer be understood merely as a matter of normative recognition of *mut'ah* and *iddah* alimony. Since PERMA No. 3 of 2017, followed by SEMA No. 1 of 2017, SEMA No. 3 of 2018, and SEMA No. 2 of 2019, the Supreme Court has gradually fostered a dual transformation of post-divorce protection. On the substantive front, protection has shifted from a status-based framework toward context-sensitive adjudication, including considerations of the parties' unequal positions, economic capacity, needs, and assessments of *nusyuz* and the causes of marital breakdown. The extension of *mut'ah* and *iddah* maintenance to divorce by petition has also reduced the rigidity of the distinction between divorce by *talak* and divorce by petition. On the procedural track, protection has evolved from standard condemnatory rulings toward the use of divorce proceedings as *procedural leverage*, through payments made either before the *talak* declaration or before the issuance of the divorce decree. Analysis of the rulings shows, however, that these two tracks do not always develop simultaneously. Facts that substantively support protection can be translated into different types of *remedies*, while the strength of protection is also influenced by the configuration of claims, the exercise of *ex officio* authority, and the remedial techniques employed by the courts.

Based on these findings, this study develops the concept of "protective judicial lawmaking" to explain how the Supreme Court and the Religious Courts incrementally expand the scope while strengthening the remedial architecture of post-divorce financial rights through judicial regulation, interpretation, and the design of judicial orders. The main contribution of this concept lies in distinguishing between progressive regulation, protective adjudication, and effective remedies. Progressive regulation does not in and of itself result in uniform protective adjudication, and enforcement-oriented rulings cannot be equated with truly effective enforcement. Three limitations remain evident: claim dependency, uneven judicial interpretation, and a compliance/enforcement gap. Since this study is based on regulatory documents and court decisions, it cannot verify whether financial obligations are actually paid following a ruling. Therefore, *an effective post-divorce remedy* remains a normative goal rather than an empirical finding. Future reforms should focus on standardizing the

implementation of post-divorce rights, reducing the dependence of protection on the parties' ability to formulate claims, and developing enforcement mechanisms that enable a shift from enforcement-oriented protection to enforcement-effective protection.

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