
LEGAL PROTECTION OF WOMEN AND CHILDREN'S RIGHTS IN DIVORCE DECISIONS OF RELIGIOUS COURTS**Hidayatur Rahman¹, Sri Lum'atus Sa'adah², Busriyanti³**^{1,2,3}Universitas Islam Kiai Haji Achmad Siddi Jember, IndonesiaE-mail: play.hiday@gmail.com¹, sri.lumatus@yahoo.com², busriyanti2015@gmail.com³**Abstract:**

The protection of women and children in the context of marriage is not only in marriage but post-divorce. The protection of women and children after divorce has received its legality since the existence of SEMA No. 3 of 2018. Since the birth of SEMA, women can claim rights even through divorce, a lawsuit has occurred in the Jember Religious court ruling. This research was conducted to find out 1) How the Jember Religious Court Judge considered the post-SEMA No. 3 of 2018 bailout decision. 2) How is the legal protection for women and children in the decision of the Jember Religious court after SEMA No. 3 of 2018. The results of this study show 1) The judge's consideration in the post-SEMA No. 3 of 2018 bailout decision by looking at the reasons / arguments that can be proven into legal facts. There are three aspects of consideration, namely the first philosophical aspect, namely juridical and sociological considerations. 2) The form of legal protection for the rights of women and children in the divorce decision at the Jember religious court putsan, namely the wife gets mut'ah, madhiyah and living expenses during iddah, legal protection for children, namely the right to get decent living expenses. This is as stated as the provisions of SEMA No. 3 of 2018 All of these decisions have contained three teachings of legal ideals, namely justice, certainty and legal expediency

Keywords: Legal Protection, Divorce, rights of wife and children**INTRODUCTION**

As a bond established in Islam, marriage is the longest and longest worship for Muslims who perform it. The bond between these two pairs of lovers between wives has no time limit until when the two end the sacred bond, if it exists only death can separate (Abdullah & Tridewiyanti, 2021). The picture of this eternal bond of husband and wife at

least clearly has been signaled in the marriage law No. 1 of 1974 article 1 affirmed that marriage is an inner birth bond between lovers, namely a man (husband) and a woman (wife) as a pair of husband and wife lovers with the aim of forming a happy and eternal household or family based on the one and only god (Abdullah & Tridewiyanti, 2021).

But in reality, there is a big gap between the state of ideality and the condition of reality. Every day the Religious Court is never empty of those who want a divorce or end the bond that is desired to be happy and eternal. That of all types of cases in Religious Courts every year throughout Indonesia, the percentage of divorce cases reaches more than 90% of. The statistics of the Religious Court Board (Badilag) detail that 65% of the divorces occurred at the initiative of the wife (divorce lawsuit) and the remaining 35% due to divorce talaq.

The same thing is like the phenomenon of rian in the Jember Religious Court which annually decides the arrest of an average of more than 5 thousand cases. To clarify the number of divorce rates in the Jember Religious Court, the following author presents divorce data in the Jember Religious Court in the last 4 years.

Table 1: Divorce decided by type of case Divorce and Divorce Talaq

No	Types of Things		Total	Year
	Divorce Talaq	Divorce Lawsuit		
1	1820	5016	6836	2019
2	1604	4205	5809	2020
3	1544	4289	5833	2021
4	1489	4568	6057	2022

In addition to the calculation of the number of divorces in the Jember Religious Court that is interesting to study, there are findings of divorce decisions initiated by the wife (divorce lawsuit), but the panel of judges in their rulings cut off the income for wives and children. Whether the lawsuit in its petition demands rights, especially in a divorce lawsuit that does not sue, but the judge handed down a judgment in the form of income with a *verstek* decision.

The provision of *'iddah. madliyah* and *mut'ah* could previously only be requested by the wife when the husband filed for divorce. As stipulated in article 149 of the compilation of Islamic law. Previously, in divorce cases, lawsuits initiated by *isti* could not claim their rights, be it *nafakh iddah. madliyah* or *mut'ah*. Since the birth of the policy of the

Directorate General of Religious Justice Agency Number 1960 / DjA / HK.00 / 6/2021 which emphasizes that women can apply for fulfillment of their rights in divorce lawsuits.

In practice in Court, a lawsuit for divorce claiming post-divorce rights was found in the Jember Religious Court and granted by the judge, as in Decision Number 3658/Pdt.G/2022/PA. Jr. and Judgment No. 931/Pdt.G/2022/PA.Jr. In these two judgments, the Wife as Plaintiff in her petition demanded a living. There are two divorce decisions of the Jember Religious Court that cut off post-divorce income for both wife and children, although in the divorce petition the Plaintiff did not claim this, as seen in the decision of Decision Number 885/Pdt.G/2022/PA.Jr. and Decision Number 3156/Pdt.G/2023/PA.Jr.

Seeing these two rulings made the judge hand down his verdict more than the charges or commonly referred to as *ultra petitem*. Judges are basically not allowed to give judgments beyond the demands filed in a lawsuit (*ultra petitem partium*). Because this verdict is considered to have exceeded the limit of its frequency (*ultra vires*) even for good faith (good faith). Even the verdict is categorized with unlawful (illegal) and legally flawed acts.

Staring for a living 'iddah. *madliyah* and *mut'ah* for the Defendant in the judgment in which the wife (Plaintiff) did not sue him because the judge exercised *ex officio* rights or rights due to position. This right is given in order for judges to give fair and beneficial decisions to litigants (Palsari, 2021).

At first glance, the judge's decision above, both the two judgments granting the Plaintiff's claim to provide and providing income with *ex officio* rights, the judge seems to be in conflict with the existing provision, namely that the provision of income is only given to the wife if the *sumi* filed for divorce and the judge may not sentence the defendant beyond the Plaintiff's demands. It seems that only the judge in this case tried to realize the provisions of SEMA NO 3 of 2018 which emphasizes that wives can get their rights while not *nusyuz*. But more than that, the disparity in the judge's decision is an effort to protect women and children.

There are several previous studies that have points of similarity with this paper and certainly have differentiation, these studies such as those examined by Mansari & Fatahillah, (Mansari & Fatahillah, 2021), Stipulation Of 'Iddah Alimony Through The Ex Officio Rights For A Nusyuz Wife: An Analisis of Decicion Number 6/Pdt.G.2020/Ms.Lsm. The results of this study conclude in the Judgment that the provision of 'iddah by the husband is not appropriate because the wife is *nusyuz* and clearly contradicts the KHI. The judgment does not elaborate systematically and logically on the consideration of providing 'iddah bread. The juridical consequences of this ruling can be appealed by the husband. If not, then the decision is considered correct in accordance with the principle of *res judicata pro veritate habetur*. Both discuss the provision of income for ex-wives and their

differences, this study reviews the divorce decision of the Jember Religious Court with analysis of the decision using philosophical, juridical and sociological.

Saragih et al., (Saragih et al., 2022) with the title Law of Mut'ah Livelihood and 'iddah wife in the Khuluk case (Analysis of SEMA No. 3 of 2018 concerning the Provision of 'iddah and Mut'ah in divorce cases). This study concludes in determining the income for the wife of the panel of judges referring to SEMA No. 3 of 2018 which confirms that letter A in point 3 is that the husband is obliged to give naflah mut'ah, 'iddah and nusyuz senyampang wife not nusyuz. The difference is that the paper analyzes the decision of the suspension of religious courts after SEMA No. 3 of 2018 by considering three philosophical, juridical and sociological aspects and reviewing legal protection for women and children.

The article entitled Analysis of the Jember Religious Court Decision Number 456/Pdt.G/2021/PA.Jr. was written by Sianipar & Bafadhal, (2023). This study analyzes the divorce decision of the Jember Religious Court and concludes that the decision was decided *verstek* on the basis of article 19 letter e PP Number 9 of 1975 and article 116 KHI. Both analyzed the Jember Religious divorce verdict, but the difference lies in the different verdict *prodak* and this study not only analyzes the decision that is *verstek an-sich* but examines the decision that granted the Plaintiff's (wife) income request.

Based on the description of the problem, this paper reviews the divorce verdict at the Jember Religious Court. This decision is interesting because in the judge's decision punishing the Defendant to provide for a living even though the divorce lawsuit was initiated by the Plaintiff, usually the majority of judges only decided on divorce but not in the decision in this study, the judge's decision actually sentenced the Defendant to pay for his wife in the form of *iddah*, *mut'ah* and *madliyah* and child support. So that the focus of this study is on the consideration of the Jember Religious Court Judge in the post-SEMA No. 3 of 2018 suspension decision. How is the legal protection for women and children in the decision of the Jember Religious court after SEMA No. 3 of 2018. This research is a type of normative legal research. The approach to this study uses the Statute Approach and Case Approach. The technique of collecting legal material is carried out using documentation means.

RESULTS AND DISCUSSION

Legal Considerations of Judges in Deciding the Livelihood of Wife and Children in Divorce

The following will be described about the general description and legal considerations of judges in the divorce decision of the Jember Religious Court.

1. Description of divorce verdict

Decision Number 885/Pdt.G/2022/PA.Jr. In this case, the Plaintiff and the Defendant are in 2019 and have 1 (one) child, a boy, 2 years old and are in the care of

the Plaintiff. In the lawsuit, the Plaintiff's reason is because the Defendant is not responsible as the head of the household with his attitude that is often calculated to the Plaintiff, where the Defendant always brings up the Defendant's luggage to the Plaintiff's house such as chairs, beds, cabinets, and so on. Then when reminded by the Plaintiff the Defendant was angry and self-righteous, this made the Plaintiff disappointed and did not love the Defendant. So that the Plaintiff is no longer able to build a household with the Defendant.

In her divorce decree, the Plaintiff as a wife did not demand any income from the Defendant, but granted the Plaintiff's claim. This can be seen from the petitum Primair, namely 1) Granting the Plaintiff's claim; 2) Imposing talaq one ba'in from the Defendant against the Plaintiff; 3) Charge the costs of this case in accordance with applicable legal provisions. His subsidair pleaded for a just verdict.

From legal considerations, Mejlis hakim in his Amar ruling Hakim adjudicated that:

1. Declare that the Defendant has been formally and properly summoned to appear before the court, not present;
2. Grant the Plaintiff's claim with verstek;
3. Imposing talaq one ba'in sughra of the Defendant against the Plaintiff
4. Punish the Defendant to pay to the Plaintiff:
 - 1) The income of children, boys, aged 2 years is Rp.600.000.- every month until the child is 21 years old or can stand alone outside of education and health costs;
 - 2) Income during the iddah period in the amount of Rp. 1,800,000,-;
4. Charge the Plaintiff to pay the cost of the case in the amount of Rp. 595000.-;

Decision No. 3658/Pdt.G/2022/PA. Jr., Plaintiff and Defendant have been married in 2022 and are blessed with 2 (two) people, first 5 years old, second child, 1 year old. The reason why the Plaintiff filed for divorce is because the Defendant has a large enough ego nature to win alone regardless of the Plaintiff's suggestions, so since October 2021 the Defendant has left the joint residence until now.

In her divorce decree, the Plaintiff as a wife did not demand any income from the Defendant, but granted the Plaintiff's claim. This can be seen from the petitum Primair, namely:

1. Granting Plaintiff's Claim in its entirety;
2. Stating that the marriage between the Plaintiff and the Defendant broke up due to divorce,
3. Penalize the Defendant to pay to the Plaintiff:

1. Iddah income for 90 days, every day amounting to Rp. 150,000, for 3 (three) months,
2. Mut'ah money of Rp. 35,000,000,-,
3. The income of 2 children to 2 children is an adult/can take care of themselves of Rp. 600,000 (six hundred thousand rupiah) per month.
4. Sentencing the Defendant to pay all claims to the Plaintiff after this Judgment is rendered and or before taking the Divorce Deed.
5. Penalize the Defendant to pay all costs incurred in this case,

From legal considerations, Mejlis hakim in his Amar ruling Hakim adjudicated that:

- a. Declaring that the Defendant has been formally and properly summoned to appear before the court, absent;
- b. Grant the Plaintiff's claim with verstek;
- c. Dropping talaq one bain sughra of the Defendant against the Governor);
- d. Penalize the Defendant to pay to the Plaintiff in the form of:
 1. Iddah income in the amount of Rp.4,500,000.00 paid before the Defendant took the divorce certificate;
 2. Mut'ah in the amount of Rp.5,000,000.00 paid before the Defendant took the divorce certificate;
- i. Punish the Defendant to pay the income of 2 children until both children are adults or can be independent in the amount of Rp.1,200,000.00 each child in the amount of Rp.600,000.00 with an increase of 10% every turn of the year excluding education and health costs;
- ii. Charge the Plaintiff a case fee of Rp520,000.00;

Judgment No. 931/Pdt.G/2022/PA.Jr. That the Plaintiff and the Defendant are legal husband and wife since 2004 and are blessed with 4 children and all children are minors. In her divorce decree, the Plaintiff as a wife did not demand any income from the Defendant, but granted the Plaintiff's claim. This can be seen from the petitum Primair, namely:

- i. Grant the Plaintiff's Claim;
- ii. Punish the Defendant to pay the support of 4 children through the Plaintiff in the amount of Rp. 2,195,000 every month until the 4 children are adults or 21 years old;
- iii. Punish the Defendant to pay compensation to the Plaintiff from 01 May 2019 to June 2020 every month in the amount of Rp.1,650,000 after accounting for 23,100,000 in cash;
- iv. Sentencing the Defendant to pay Mut'ah Rp.20,000,000 in cash;

- v. Punish the Defendant to pay Kiswa Rp.10,000,000;
- vi. Punish the Defendant to pay and reimburse all costs incurred as a result of and for the benefit of the child's needs;
- vii. Charge the costs of this case in accordance with applicable legal provisions;
If the panel of judges who heard and tried this case thinks otherwise, ask for a fair verdict (*ex aequo et bono*).

From legal considerations, Mejlis hakim in his Amar ruling Hakim adjudicated that:

- i. Declaring that the Defendant has been formally and properly summoned to appear before the court, absent;
- ii. Granting Plaintiff's claim with *Verstek* in part;
- iii. Penalize the Defendant to pay to the Plaintiff in the form of:
 - 1. Providing for 4 children until the four children are 21 years old or can be independent at least Rp1,200,000.00 with an increase of 10% every turn of the year excluding education and health costs;
 - 2. The income of the Plaintiff's Madliyah amounted to Rp3,000,000.00;
 - 3. Rejecting Plaintiff's claim on Mut'ah and Kiswa Livelihood;
 - 4. Declaring unacceptable (*Niet Ontvankelijke Verklaard*) the Plaintiff's claim regarding punishing the Defendant to pay and reimburse all costs incurred as a result of and for the benefit of the needs of the 4 children;
 - 5. Charge the Plaintiff a case fee of IDR 870,000.00;

Decision No. 3156/Pdt.G/2023/PA. Jr That Plaintiff and Defendant are married in 2022 and have one child (3.5 months) who is currently together/cared for by Plaintiff. The Plaintiff sued for divorce because the Defendant showed drastic changes/did not care about the condition of the Plaintiff, who was bleeding and had to have a Caesarean section for delivery. Plaintiff was supposed to go to the hospital again for treatment of her uterus, but Defendant delayed treatment until the uterus smelled bad/rotted, Plaintiff and her infant child went home to parents, Defendant never came or took Plaintiff home. In addition, the Defendant is stingy and calculating.

That on the basis of the reasons as mentioned above, the Plaintiff requests the Jember Religious Court to be pleased to examine this case and pass the following verdict:
Primair:

- a. Grant the Plaintiff's claim
 - b. Imposing *talaq* one *ba'in sughra* from the Defendant against the Plaintiff.
 - c. Charge the costs of this case in accordance with applicable legal provisions.
2. Legal considerations of judges

In handing down a ruling, the Supreme Court stipulates that the judge's decision must pay attention to important aspects as considerations in his decision, these aspects are in the form of aspects of development that are philosophical, juridical, and sociological. These three aspects are an effort to realize and as the responsibility of judges in deciding to provide justice so that judges' decisions are oriented towards decisions that lead to legal justice, moral justice and community justice.

From the description of the divorce decision above when viewed from legal considerations as the provisions of the Supreme Court as a judicial institution which is hierarchically located at two levels of the Jember Religious court, it can be seen from the following description:

a. Judge's Consideration: Philosophical Aspects

In this aspect, the essence is about truth and justice. As is well known, judges are not only law enforcers but also position as givers of justice for parties who seek justice through court decisions that have legal force. In this context a philosophy of law is absolutely necessary. Manan, (Manan, 1992), for example, mentions these philosophical values contained in the mind of the law (*rechtsidee*).

The basis for the consideration of the Jember Religious Court Judges from a philosophical aspect can be seen as follows:

In the decision of Decision Number 3658 Pdt.G/2022/PA. Jr. philosophical considerations The panel of judges considered between the two litigants as a strong bond and had a *muia* and sacred purpose, namely building a household that was *sakinah*, *mawaddah* and *rahmah* as recommended by Surat Ar Rum verse 21. However, after the mediation process (*islah*) in peace efforts was not achieved, the judge saw that there were other purposes that needed to be in the decision, namely divorce and protection of wives and children. This is where two conflicting societies come together but quarrel or divorce for the good of both. However, the wife is still given protection for living expenses and children.

Islam divorce is considered as something reprehensible, even though in the condition that husband and wife no longer love and love each other and on the contrary there are disputes, quarrels and relationships between the Plaintiff and the Defendant, then divorce is something that is permissible As the teachings of Islamic law contained in the book of Fqh Sunnah Juz II, that:

Imam Malik argues that wives have the right to seek divorce from a judge if a reason is found that the wife is suffering by her husband so that the wife is unable to continue and cannot live with her husband. Like a husband who is light-handed (hitting), hurts by berating by doing *mungkar* either because of his actions or words. If the charges have been proven on the basis of evidence or

the husband admits to the act and the wife is completely unable to maintain the household, and the judge is unable to advise her, then the judge has the right to decide the talaq of one bain husband.

The panel of judges from the philosophical aspect of this decision also considered as Kitab Al-Anwar Juz II page 55:

If he (the Defendant) refuses to attend or hides or his place of residence is unknown, then the case can be decided based on evidence.

Here it can be seen from the consideration of the Jember Religious Court judges still adhering to conservative jurisprudence opinions in taking the basis of Islamic law in their decisions.

In Judgment No. 3658/Pdt.G/2022/PA. Jr. philosophical considerations appear in the judge's consideration that reconciles the Plaintiff and the Defendant, but if it is maintained, it invites continuous misery and distress in life which will actually result in damage both outwardly and mentally. As a step to cover the door of mudharat as the essential purpose in Islamic law as formulated in the rules (لِح المصا و جلب سد) (درء المفا) (attaining maslahat and rejecting mafsadat).

In this philosophical aspect, the judge's consideration was on the opinion of Islamic jurist Sayyid Sabiq in the Book of Fiqhu as Sunnah, Juz II, that if the wife sues her husband for divorce because the husband is blagging his wife like he is beating, berating him, his words are rude, behaving viciously like he gambles and so on so as to create a rift in the household, then the wife's sag is allowed to demand divorce from the judge and if the madhorot is proven while the two husband and wife cannot be reconciled So the judge dropped talaq one ba'in

Regarding the judge's decision regarding the income of iddah, philosophical considerations are as the opinion of Fiqh scholars in the Book of Iqna juz II that it is mandatory to be given to women who experience iddah raj'i, in the form of shelter and bread.

For the subsistence of mut'ah the balance of his philosophy is seen from the balance of the panel of judges based on Surat Al Ahzab: Please them with gifts and release them well.

In the Book of Bughyatul Mustarsyidin: It is obligatory mut'ah on the husband to his wife who has been, whether she is rejected by ba'in or raj'i and has expired her iddah. Shaykh Wahbah az Zuhaili argues in his book Fiqh Al-Islami wa adillatuhu juz VII: The giving of Mut'ah so that the wife is comforted in her heart, can reduce the sadness of divorce talaq, and to foster the desire to get along again as husband and wife, if the talaq is not Ba'in Kubra.

As for the obligation to provide for the child by his father, his philosophical consideration is also based on the Hadith narrated by Abu Hurairah in the Book of Muhadzdzab Juz II: that a father is obliged to provide for his child as stipulated in the Hadith of the Holy Prophet (peace be upon him) narrated by Abu Hurairah(ra) that someone came to Rosulullah and said: O Rosulullah, I have one dinar. The Prophet said: Use it in your own afakizim. The man said again: I have another dinar: The Prophet said: Use it for your son's bread.

In the decision of Decision Number 931/Pdt.G/2022/PA. Jr. the philosophical consideration is that the panel of judges looks at the side of sharia or Islamic law, the obligation to provide a living is based on the legal basis as affirmed in the Qur'an surah Al-Baqarah verse 233:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۗ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۗ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ

It is the duty of the father to feed and clothe the mothers in a ma'ruf manner. A person is not burdened but according to the degree of his ability. Let not a mother suffer afflictions for her child and a father for his child.

The panel of judges considered it necessary to present the opinion of Islamic jurists in Kitab al-Um and take into consideration in this Judgment that it is obligatory on the father to guarantee the benefit of his young child both in terms of breastfeeding, his bread, his clothing and his care.

In Judgment No. 3156/Pdt.G/2023/PA. Jr. the philosophical consideration is that the panel of judges considers between the two litigants as a strong bond and has a muia and sacred purpose, namely building a household that is sakinah, mawaddah and rahmah as recommended by Surat Ar Rum verse 21. And in Kitab Al-Anwar Juz II page 55: If he (the Defendant) refuses to attend or hide or his residence is unknown, then the case can be decided on the basis of evidence".

a. b) Judge's Consideration: Juridical Aspect

The law oversees the equilibrium between human rights and societal duties, embodying justice in communal living. Those aspiring for a just society advocate for laws grounded in principles of fairness. Legal enforcement entails understanding and selecting relevant legislation, with judges assessing its fairness, utility, and legal certainty.

In a specific case (Decision 885/Pdt.G/2022/PA. Jr.), the judge awarded custody to the mother, obligating the ex-husband to support the child. This decision, rooted in various legal sources, mandated financial support, including mut'ah and iddah.

Another case (Judgment 3658/Pdt.G/2022/PA. Jr.) compelled the defendant to pay iddah income, mut'ah, and child support based on legal precedents and articles in the Compilation of Islamic Law.

Similarly, in Decision No. 931/Pdt.G/2022/PA. Jr., the judge ordered support for four children, with incremental payments, rejecting claims for mut'ah and kiswa bread. Legal considerations included articles from the Compilation of Islamic Law and prior court rulings.

In Decision No. 3156/Pdt.G/2023/PA. Jr., the defendant was obligated to provide livelihood during iddah and child support, aligning with legal provisions and court regulations.

The court justified these decisions by referencing relevant legal articles and regulations, emphasizing the compatibility of iddah and child support payments with women's rights protection, as outlined in various legal documents.

c) Judge's consideration: Sociological aspects

Decisions that contain sociological considerations are decisions that are in harmony with the laws that live in society. Lubis, (Lubis, 1989) said that this consideration reflects the needs of the community who feel the need for a solution as an instrument to provide benefits.

This aspect emphasizes the value of benefit to society. The judge in making a decision in his consideration must pay attention to whether or not the party is given the burden of responsibility for living and consideration must be based on existing evidence.

The sociological aspect is useful for examining social background such as education, living environment and work, and knowing the causes of divorce (Aryani & Lindawati, 2022).

In the decision of Decision Number 885 Pdt.G/2022/PA. Jr. sociological considerations appear to be in the judge's judgment that the Defendant is burdened with maintenance and education costs and livelihood. Because the child is in the care of the Plaintiff (wife). Considering the condition of relatively young children in general, it certainly requires costs to meet the needs of life, including costs for food, health, care and clothing benefits. Therefore the Plaintiff as the mother and the Defendant as the biological father of the child, both remain obliged to nurture and educate him solely on the basis of the interests of the child, but nevertheless the father (Defendant) shall be responsible for all costs of maintenance, education and subsistence according to his ability.

In the decision of Decision Number 885 Pdt.G/2022/PA. Jr. The judge considering the Defendant's income as odd labor, it is very appropriate if the

Defendant is sentenced to pay the Plaintiff a minimum monthly child support of Rp 600,000. The judge also considered that the Defendant worked as an odd laborer and the Defendant used to provide Rp.20.000,/day to the Plaintiff, so it was appropriate for the Defendant to provide iddah for three months in the amount of Rp.1,800,000.00.

It seems that from this sociological aspect, the judge has given wise and fair legal considerations which provide obligations for the Defendant (husband) for education, maintenance and livelihood costs adjusted to the profession as odd laborers. This also the judge has considered the legal impact, if too large a fee burden given by the judge it will burden the Defendant.

In addition, consideration of the sociological aspects of decision Number 3658 Pdt.G/2022/PA. Jr. can be seen from the consideration in providing a living to the Defendant. As in the posita, the Plaintiff asked for the support of his wife and children with details as one of the petitums, namely punishing the Defendant to pay the Plaintiff in the form of Iddah for 90 days, every day in the amount of Rp. 150,000, - (one hundred fifty thousand rupiah) for 3 (three) months, Mut'ah Money in the amount of Rp. 35,000,000, - (thirty-five million rupiah), and the income of 2 children until the 2 children are adults / can take care of themselves each amounting to Rp. 600,000 (six hundred thousand rupiah) per month.

In providing this income, the panel of judges considered the ability of the Defendant as a private employee with an income of Rp. 3,500,000,- every month as Plaintiff described. Taking into consideration this in accordance with the feasibility by taking into account the evidence of witnesses submitted by the Plaintiff, the panel of judges determined Iddah's income in the amount of Rp1,500,000.00 (one million five hundred thousand rupiah) per month for 3 months = $3 \times \text{Rp}1,500,000.00 = \text{Rp}4,500,000.00$ (four million five hundred thousand rupiah) paid before the Defendant took the divorce certificate.

Regarding Mut'ah's claim in the form of Rp. 35,000,000 (thirty-five million rupiah), the panel of judges considered that the amount of the claim burdened the Defendant as a Private Employee only had an income of 3,500,000.00 (three million five hundred thousand rupiah), per month, so in accordance with the eligibility by taking into account the evidence of witnesses submitted by the Plaintiff, the panel of judges determined the amount of Mut'ah in accordance with the eligibility, The Defendant was sentenced to pay Mut'ah in the form of money to the Plaintiff in the amount of Rp5,000,000.00 (five million rupiah) paid before the Defendant took the divorce certificate.

As for child support, the panel of judges determined the Defendant to provide for the two children in the amount of Rp. 1,200,000.00 (one million two hundred thousand rupiah) every month or each child in the amount of Rp. 600,000.00 (six hundred thousand rupiah) every month until the two children were adults (21 years old)

In the decision of Decision Number 931 Pdt.G/2022/PA. Jr. his sociological considerations appear to be in the judge's judgment and his ruling. As in the *posita* and *petitum* of the lawsuit, the Defendant asked the Defendant to pay the support of 4 children through the Plaintiff in the amount of Rp. 2,195,000 every month until the 4 children were adults or 21 years old. In deciding this case, the panel of judges in its ruling. Sentencing the Defendant to pay child support of Rp. 2,195,000, this appears to be a sociological consideration incarnated by the judge where in determining the amount of income in accordance with the concrete ability based on the Defendant's income as an Optical Employee whose income is unknown, the panel of judges determined the Defendant's income using the Regional Minimum Wage (UMR) in Jember approximately Rp. 2,700,000.00 therefore it is necessary to consider the amount Income with the amount of burden of obligations and needs which are broadly divided into three parts, namely the needs for themselves, the needs for children and the needs for other than themselves and children, therefore from this concept of thinking children get a portion of one-third part of the amount of income.

After measuring the amount of real income after dividing it into three parts as mentioned above, it can be measured and known the ratio of the amount of the Plaintiff's claim to the amount of real income from the Defendant. With this sociological balance, the panel of judges believes that the Defendant is appropriate and able to be sentenced to pay the Plaintiff a minimum of Rp1,200,000.00 every month until the four children are adults/21 years old.

In addition to the lawsuit regarding the livelihood of 4 children, the Plaintiff also sued the income owed (*Madliyah*) for the plaintiff, in burdening the income of this *madliyah* the panel of judges saw and adjusted to the ability of the Defendant, and the intended ability was in accordance with the amount of income and which proved to be a standard of value that was used as a basis for determining the burden of living. The Plaintiff was receiving Rp. 450,000.00 per month from the Defendant (formerly a Farmer) while they were still living together. After four months of separation before the divorce, during which the Defendant did not provide for the Plaintiff, the judges used the Minimum Wage Regional (UMR) in Jember, approximately Rp. 2,700,000,-, to determine the Defendant's income. The court ordered the Defendant to pay the Plaintiff's *Madliyah* income of Rp. 750,000,- per month for the 4-month period, totaling Rp. 3,000,000.00.

In Decision Number 3156/Pdt.G/2022/PA, sociological considerations played a significant role. The judges observed the lack of harmony between the Plaintiff and Defendant, indicating an irreconcilable breakdown in their marriage. The decision deemed divorce fair and beneficial for both parties.

Regarding child support, the court considered the Defendant's income as self-employed and mandated a monthly payment of at least Rp. 600,000,- for the child's living needs until the child turns 21 or this decision becomes legally permanent (BHT).

The Defendant was also sentenced to pay iddah income of Rp. 3,000,000 (three million rupiah) based on witness testimony. Sociological aspects, emphasizing the value system in people's lives, were highlighted in line with Sema No. 3 of 2018, which allows wives to seek support as long as they are not nusyuz. These sociological considerations were crucial in ensuring justice for the litigants and were a key factor in the judges' decision-making process.

Analysis of the Jember Religious Court Divorce Verdict: Searching for Post SEMA Implementation No. 3 of 2018

In the judgment of the Jember Religious Court described above, the judge decided to grant the Plaintiff's request, namely to impose talaq one ba'in sughra of the Defendant on the Plaintiff (Prasasti & Irawan, 2023), (Supangat & Auliana, 2023), (Mahbubah, n.d.), (Trulyana, 2023). In deciding the divorce of marriage between the Plaintiff and the Defendant, the panel of judges has really considered the verdict (Mahmudah, 2019). There are three considerations of judges, namely philosophical, juridical and sociological considerations. This consideration is used because deciding on divorce has huge legal implications so it must be really careful (Sulthonudin & Musthofa, 2019).

This is in accordance with the provisions of the Supreme Court Circular No. 3 of 2018 that regarding divorce on the grounds of broken marriage (broken marriage) "judges should consider adequately and carefully in adjudicating divorce cases, because divorce will end the sacred institution of marriage, change the legal status from halal to haram, have a broad impact on the structure of society and concern the responsibilities of the afterlife, Therefore, divorce can only be carried out if the marriage has broken (broken marriage) with indicators that have been clearly proven".

Providing for wives and children in the decision of the Jember Religious court which is the object of study in this thesis varies. There are judgments that punish the Defendant to pay iddah and mut'ah bread, there are also only grants iddah and child support. In the positive aspect in the divorce lawsuit with the judge's decision also varied, there was a decision that indeed since in the lawsuit the Plaintiff demanded the income of the Defendant and the Defendant did not demand a living but cut off the income. However, in general, these rulings already reflect the provisions of SEMA No. 3 of 2018.

In Sema No. 3 of 2018 in the fourth part, there is a provision that confirms the obligations of husbands due to divorce against wives who are not nusyuz. Accommodating Perma Number 3 of 2017 concerning Guidelines for adjudicating women's cases facing the law, the wife in a divorce case can be given mut'ah and iddah as long as it is not proven to be nusyuz.

The divorce decisions in this study the judge determined the Defendant to pay for his wife and children even though this decision was a divorce lawsuit filed by the Plaintiff (wife). As mafhum understands, the provisions of marriage legislation in Indonesia only require post-divorce income to be demanded if divorce talaq.

As the philosophical aspect of the birth of SEMA No. 3 of 2018 as a form of the State guarantees the rights of everyone and is obliged to protect, promote, and fulfill these rights from discriminatory behavior. From the juridical aspect, the existence of sema is a guideline for adjudicating women's cases facing the law that can demand a living as long as they are not nusyuz. In the sociological aspect, to meet the needs of society, especially women and children who are vulnerable to discrimination.

Departing from these three aspects, the judge's decision stipulates the obligation of Livelihood for the Defendant, both mut'ah and iddah as long as it is not proven to be nusyuz and child support. Both in the judgment that since in the divorce petition petitum did not ask for a living as in Decision Number 885/Pdt.G/2022/PA.Jr. and Decision Number 3156/Pdt.G/2023/PA.Jr. and in the divorce lawsuit which in its petition demanded naflah as in decision 3658/Pdt.G/2022/PA. Jr. and Judgment No. 931/Pdt.G/2022/PA.Jr. Regarding the amount of income that the Defendant must pay, the judge considered it adjusted to the Defendant's ability. This is done to achieve a sense of justice and propriety that is aligned with the economic ability of the husband and the needs of the wife / or child.

Looking at the judge's decision in the judgment as described above, it appears that the judge in deciding the income considers justice and benefit, so that the decision does not burden the Defendant and fulfills the rights of his wife and children as he is entitled. This already reflects the provisions of SEMA No. 3 of 2018 that judges determine that madliyah bread, iddah bread, mut'ah and child support must consider a sense of justice and propriety by exploring the facts of the husband's economic ability and the facts of the basic needs of life of the wife / or child.

Legal Protection of Women and Children's Rights After Divorce

Legal protection for women in law enforcement whose relationship is related to efforts to fulfill women's rights vis a vis with the law, both in the context of civil and criminal law. Law enforcement is linear with the existence of law enforcement officials (Sunarso et al., 2022). The specification regarding legal protection for women in the Court, in this context there are two points, namely in the form of protection in the process of examination

and awarding decisions. Protection in these two dimensions cannot be separated from the actions of law enforcers in providing protection for women.

In the context of divorce, for example, judges as executors of legislation must really pay attention to women's rights. Judges who have a central and decisive position in providing protection to women. In relation to legal protection for women, this sub-study reviews the decision of the religious court judge who is the object of this research study as described in the previous description.

In this Jember religious divorce verdict in the context of legal protection for children, it can be observed from the consideration and judgment. As in Decision Number 885/Pdt.G/2022/PA. Jr. sentenced the Defendant to pay the Plaintiff in the form of child support, amounting to Rp.600,000, - every month until the child is 21 years old or can stand alone outside of education and health expenses. Income during the iddah period is Rp. 1.800.000,- (one million eight hundred thousand rupiah).

In judgment 3658/Pdt.G/2022/PA. Jr. told the judge to sentence the Defendant to pay the Plaintiff in the form of: Iddah in the amount of Rp. 4,500,000 and Mut'ah in the amount of Rp. 5,000,000, - both of which were paid before the Defendant took the divorce certificate. As well as punishing the defendant to pay the income of 2 children until the two children are adults (aged 21 years) or can be independent in the amount of Rp. 1,200,000, - each child in the amount of Rp. 600,000, - with an increase of 10% every turn of the year excluding education and health costs.

In decision No. 931/Pdt.G/2022/PA. Jr. the panel of judges sentenced the Defendant to pay the Plaintiff in the form of 4 children until the four children are 21 years old or can be independent at least Rp.1,200,000, - with an increase of 10% every turn of the year excluding education and health costs. The income of Madliyah Plaintiff amounted to Rp.3,000,000.00 (three million rupiah). Decision No. 3156/Pdt.G/2022/PA. Jr. sentenced the Defendant to pay the Plaintiff a living during the Iddah period in the amount of Rp.3,000,000,-. A child's income is Rp. 600,000 every month until the child is an adult with an increase of Rp. 10% at the beginning of each year.

Seeing these two rulings made the judge hand down his verdict more than the charges or commonly referred to as *ultra petitum*. normatively, this ruling is considered to have exceeded the limit of its ability (*ultra vires*) even for good faith. Even the verdict is categorized with unlawful (illegal) and legally flawed acts. However, it seems that the judge in deciding the income *ex of officio*, this judge emphasizes justice and legal efficacy more than legal certainty normatively.

In the author's observation, all bailout decisions as analyzed in this paper already contain the value of legal certainty. As according to Rebuch that legal certainty must be in accordance with positive law, in this divorce decision it is in accordance with positive laws

such as IHL and Marriage law. In addition, according to Gustav. R. the law is based on facts or the law established is certain, that is, by the existence of information. The Jember Religious divorce decision is in accordance with the value of legal certainty. On the side of legal efficacy, the decision of the judge who examined the divorce case has fulfilled the benefits, because it is in accordance with the criteria of expediency, which has provided happiness or satisfaction for the parties, especially the Plaintiff. The implementation of the law or law enforcement in the Jember Religious Divorce Decree has provided benefits or uses for the parties. And in terms of justice, the verdict in the origin of this child already contains the value of justice, that is, the wife and children born from a legal marriage deserve their rights. The state through this divorce decree has given what is the right of its citizens, such as protection, security, the right to life equally, this is in Aristotle's concept of justice entering into distributive justice. The existence of the decision in the author's statement has provided good benefits to the parties, especially for the Plaintiff (isti), especially for the benefit of children.

CONCLUSION

The judge's consideration of the Jember Religious Court in the post-SEMA No. 3 of 2018 suspension decision by looking at the evidence/reasons proven to be legal facts. Legal Basis such as the application of law to proven facts. By considering three aspects, namely the first philosophical, juridical, and sociological considerations that emphasize benefits for both parties as well as the appropriateness of the husband's economic ability and the fact of the basic needs of life of the wife / or child. The legal protection for women and children in the decision of the Jember Religious Court After SEMA No. 3 of 2018 can be seen from several considerations of the panel of judges and the verdict that sentenced the Defendant to pay for both the support of children and ex-wives. All of these rulings already contain three legal ideals such as Gustav Radbruch's ideas, namely legal certainty, justice and expediency. In providing protection for women and children, the panel of judges emphasizes more on justice and expediency than the certainty of legal claims. The form of legal protection for the rights of women and children in the divorce decision of the Jember Religious Court is the right to be given mut'ah, iddah, madhiyah. The legal protection for children is the right to get decent living expenses to be able to develop and live according to their talents and interests.

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