

# Law Protection for Post Divorced Women Through Law Enforcement with a Gender Perspective

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**ABSTRACT--***The woman protection has been guaranteed by the state through the principle of equality before the law without discrimination. Women's access to religious courts has a lot to do with divorce cases that indirect contact with women's rights after divorce in form of iddah and mut'ah. In reality, law enforcement in divorce cases, judges' decisions have not been gender perspective, the problem is how legal protection for women in resolving divorce cases through judges' decisions And how legal protection for women after divorce through law enforcement with a gender perspective according to PERMA Number 3 of 2017. This research method is a normative juridical research supported by empirical juridical. This study uses the rule of law theory, as a grand theory and Positivism theory as a middle range theory and a theory of legal protection as an applied theory and as a reinforcing theory supported by responsive theory and masalah mursalah theory. The legal materials used are primary, secondary, tertiary legal materials and field data as a complement. Based on research result, the state has guaranteed women with the principle of equality before the law. The perspective of the protection of women in the aftermath of divorce in Article 149 Compilation of Islamic Law does not accommodate the needs and interests of women which are only intended for Talak Divorce, but the judge needs to be responsive to consider the interests of women with gender equality and the benefit of women that make PERMA Number 3 of 2017 as an legal umbrella that concerning Guidelines for Judging the cases of women Confronting the Law , so that law enforcement has a gender perspective for the protection of women.*

**Keywords:** *law protection, post divorced women, through law enforcement, gender perspective*

## I. INTRODUCTION

The goal of the Indonesian state to protect all of Indonesia's blood spills, as in the Preamble of the 1945 Constitution of the Republic of Indonesia (UUD 1945). Philosophically, State recognizes the existence of human rights and ensure the protection of Human Rights, especially for its citizens, including women, in Article 28D (1) of the 1945 Constitution states "Everyone has the right to recognition, security, protection, and certainty the same law and the same

treatment before the law "means that every citizen, both male and female, wants justice in the law, it also means that the same legal protection ,there must be no discrimination.

So the aspect before the law with the realization of equality and justice is an aspect that is agreed by all parties as a basic human right. In the Universal Declaration of Human Rights (Duham) it is stated in Article 7 as follows [1]: "All people are equal before the law and are entitled to the same legal protection without discrimination. All are entitled to equal protection against any form of discrimination which is contrary to deklarasi and against any incitement top no such discrimination ". Every citizen, regardless of his background has the right to receive fair and equal legal services, in this sense law enforcement that is sensitive and responsive to the existence and needs of women especially as responsive as the existence of marginalized groups into an inevitable[2].

Women's access to the Religious Courts has a lot that relate with divorce cases which are directly related to the rights of women after divorce in the form of iddah and mut'ah livelihoods. Women who are dealing with the law in divorce cases approach the highest rank in filing for divorce, as an illustration of the submission of divorce to the Semarang Religious Court which was received for the last 2 (two) years , the annual report outlines as follows [3]:

Table 1. Divorce Cases in PA Semarang

Num ber	Year	Case entry		Amount
		Talak	Divorce	
1	2017	805	2.141	2.946
2	2018	560	1.539	2.099
Amount		1.365	3.680	5.045

The number of filing for divorce is from 2017 to 2018, indicating that divorce is more dominant than talak. The high number of divorce is triggered due to the lack of commitment of husband and wife in maintaining harmony in the household according to the purpose of marriage. The occurrence of household conflicts in the form of disputes and quarrels that continue until the treatment of domestic violence (domestic violence) is caused by communication between husband and wife who are no longer in harmony.

The rise of cases of violence against women in the private sphere of victims tends not to cause offense to complaint to the criminal domain because women as wives are ashamed of making family disgrace so that the husband of the perpetrators of domestic violence is free from the criminal process. In 2018 there were 406,178 cases of domestic violence, Violence Against Women (KTP) increased from 14% last year. Whereas domestic violence against wives or KTI (violence against wives) is the highest data reported in the last five years while only 184 cases entered criminal records in PN records or only 3.6% because women victims tend to settle them with divorce [4].

In law enforcement through the pattern of judges' decisions, women in divorce cases do not get a living after divorce while the causes for filing for divorce are due to mistakes and acts of domestic violence, while for women after *Talak*, there are post-*talak* rights.

Problem that occurs naturally incompatible with the objectives of the state in terms of providing protection to the citizens without any discrimination before the law. Therefore, it is necessary to do research on legal protection for women in the resolution of contested divorce cases through the verdict and how the legal protection for women in post-divorce through the enforcement of a gender perspective according to PERMA No. 3 of 2017.

## II. RESEARCH METHOD

The research method used by researchers is *normative juridical* research [5] based on research that conducted on existing laws in the form of a statutory approach, although the research was conducted because of seeing the legal vacuum, but the legal vacuum can be known, because there are legal norms that require further regulation in positive law. This research is focused on legal materials and divorce verdict documents in fulfilling post-divorce living in Semarang Religious Court.

The results of this study are descriptive analysis which is the procedure or resolution of the research problem by delaying or expressing law enforcement in the judge's decision in a divorce case related to post-divorce living in the form of iddah and mut'ah.

## III. DISCUSSION

### A. Legal provisions for women in settling divorce cases through a judge's decision

As a constitutional state, the consequences of submission to the principle of equality before the law are guaranteed by the state. Epistemologically and axiologically law enforcement carried out by guarding, protecting and delivering the law so that it remains upright in line with the aims of the law.

Women have been given the right to file for divorce [6]. Divorce rights accountability can be considered as a legal protection of women in concretizing women rights inherent in her and loaded with human values, as well as the right to equality and justice, the right to take legal actions including the right to determine the continuation of the marriage or dissolve marriage through divorce to the Religious Courts [7].

Divorce for women is not easy to do with the achievement of justice because of the stereotypical view of women who propose for divorce as "nusyuz" women [8] even though the facts proven in the trial are that the husband does not fulfill the obligation to support even do domestic violence against his wife.

In the case for divorce, the judge granted the divorce only without the obligation of the husband to provide for his ex-wife the living due to divorce. Different from *Talak* case in the decision to grant divorce also contains the husband's obligation to provide for the wife's living due to divorce in the form of iddah and mut'ah maintenance [9], whether prosecuted or not, but the judge will provide ex officio fulfillment of his living

Women do not get an income living after the divorce in the form of iddah and mut'ah, because judges hold the normative text, it is suitable to *positivism* theory according to Hans Kelsen [10], in the context that law is identical to laws or regulations, it means that the nature of law is a written law that does not accept ethical, sociological and other elements [11]. Whereas in the eyes of positivism there is no other law except the command authorities (*law is a command from the lawgivers*). The tendency of judges with law enforcement through judges' decisions with the *legal justice* paradigm has guaranteed protection for women after divorce.

### *B. Legal protection for women after divorce through law enforcement with a gender perspective according to PERMA Number 3 of 2017*

Religious justice is an effective means that needs to realize access and control over material and non material rights that are gender justice. In this context, religious judges as central actors play an important role, and not only act as law enforcement and justice officers but can also be agents of legal change to overcome gender discrimination in each of their decisions so as to provide legal protection for women.

Women in filing for divorce cannot obtain post-divorce rights because the negative labeling "nusyuz" for women should have switched with a gender-specific understanding if filing for divorce is due to the domestic violence of the female husband's position cannot be categorized as a nusyuz (disobedient) wife so that legal substance needs to be more aspirational with the experience and interests of women who so far have not taken into account the impact of discrimination Empirically there are still obstacles in the legal structure. to answer any related legal vacuum due to the living fulfillment contested divorce dikare na kan existing law does not set

In responding to the needs of women as the most vulnerable group in facing access to justice, a legal reform has been carried out by the Supreme Court (MA) to fill the legal vacuum in matters not regulated by the law [12].by making a legal breakthrough through the issuance of PERMA Number 3 of 2017 concerning "Guidelines for Judging Women's Cases Against the Law". The purpose of the issuance of PERMA No. 3 2017 on July 11, 2017 is to encourage judges in carrying out their litigation duties to pay attention to the interests and needs of women so that law enforcement has a gender perspective .

This can be examined from the principle and purpose of this PERMA which contains philosophical understanding as in Article 1 number 1 regulated on the nomenclature of the existence of women in conflict with the law, women who are complicit with the law, namely women as victims, women as witnesses, or women as parties, sedangkan in civil matters of religion, women's status in the form;

- a. Can be a party as in a marriage case related to divorce.
- b. Can be a witness on trial whose case is under the authority of the Religious Court.

The principles and objectives of PERMA 3 of 2017 Article 2 are to encourage judges to try cases

of women dealing with law based on the principles of: a. Appreciation for human dignity and status , b. Non-discrimination , c. Gender Equality , d. Equality before the law , e. Justice , f. Utilization , g. Legal certainty

Thus it is important for the judges as the key decision - making in the trial for divorce , to understand the principles of access to justice by responding to the interests and needs of women for the creation of justice. Judges, as part of law enforcement in Indonesia, are important actors who support women's access to justice.

The law enforcers rely on their legal considerations not only on the aspect of legislation in prosecuting divorce cases because written law cannot resolve all problems in society [13]. That is why a responsive judge is needed to provide progressive and holistic meaning to construct legal reasoning with gender perspective. For women who file for divorce due to husband's mistake in law enforcement through a judge's decision, there is a burden on the ex-husband's obligation to provide post divorce liability in the form of iddah and mut'ah towards his ex-wife in accordance with Perma Number 3 of 2017 concerning Guidelines of Judging for Woman who are dealing with the law so that it can provide protection for women after divorce due to law enforcement with a gender perspective.

## IV. CONCLUSION

1. Legal provisions for women are the realization of equality before the law without discrimination in achieving equality and justice. The state provides protection for women with the right to divorce as a form of female glory as a wife. The termination of marriage because of divorce can occur with *talak* or divorce suit. In practice, if women file for divorce, they tend to legitimize women as nusyuz, eventhough this cannot be categorized as nusyuz because it is a form of husband's mistake. Streiatuve views result women to be marginalized in obtaining post divorce rights in the form of iddah and mut'ah as stated in Article 149 letters (a) and (b) Compilation of Islamic Law (KHI) which is intended for women after *talak*. In deciding the case for divorce, the judge tends to consider the legal justice paradigm that adheres to the legal text so that law enforcement through the decision of the judge has not been gender perspective because it does not provide guarantees of protection for women after divorce.
2. Legal protection for women after divorce through law enforcement in decisions should have a gender perspective. Judges in their consideration put forward legal reasoning with gender sensitive in their litigation tasks based on the principle of

respect for human dignity, non-discrimination, equality before the law, gender equality, justice, usefulness and legal certainty so that women after a divorce receive a post-divorce liability as a husband's obligation. Thus, the protection of women has been given in accordance with the demands of Perma Number 3 of 2017 concerning Guidelines for Judging for women in conflict with the law.

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- [8]. Etymologically, nushuz comes from the Arabic nasyaza , yansyizu or yansyuzu, which means "high ground" and can also mean "something hard is above the valley". By referring to the language books, it can be concluded that the word nasyaza has several meanings, including: exalting, opposing, refusing , disobedient, opposing, transgressing, disrupting, hateful, angry, disagreeing, disagreeing, leaving, reducing, troublesome, unsettling, dishonest, disparaging, avoiding, arrogant, distorted and others. Shaleh Ghania , If husband and wife disagree over how to overcome it , Darul Bilnis-yati lil-Nasri wat-Tauzi ', Riyadh, Ed 1, p. 25.
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