


Legal Jurisprudence on the Determination of Mandatory Maintenance and Madiyah Maintenance for Wives after Divorce (*Ecision Study Number 388/ Rev.G /2024/ PA.Prob*)

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Article Info	ABSTRACT
<p>Keywords: Jurisprudence, Nafkah Iddah , Nafkah Madiyah , Divorce, Women's Protection, Islamic Law.</p>	<p>This paper explores the legal jurisprudence regarding livelihood iddah (obligatory maintenance during the waiting period) and livelihood madiyah (past maintenance) for ex-wives following divorce, through the lens of Decision Number 388/ Pdt.G /2024/ PA.Prob . The study is grounded in the urgent need for legal protection of women, particularly those who face economic vulnerability after divorce, by ensuring their right to financial support from former husbands. The research aims to analyze the judge's legal reasoning in awarding these two forms of maintenance, as well as to assess how the decision embodies substantive justice and aligns with both Islamic law and Indonesia's positive legal system. Utilizing a normative juridical approach and qualitative descriptive analysis, the study draws from document analysis and legal literature. The findings indicate that the judge's decision was based on considerations of Sharia principles, statutory regulations, the husband's financial capacity, and the overarching aim of justice and protection of women's rights. However, deficiencies were identified in the form of ambiguous criteria for the amount of maintenance awarded and insufficient elaboration on the evidence supporting livelihood madiyah . Despite these limitations, the decision marks a significant contribution to the development of jurisprudence that prioritizes justice and safeguards for women post-divorce .</p>
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INTRODUCTION

Maintenance is an obligation that must be fulfilled by a husband as the head of the household towards his family. This obligation includes fulfilling the needs of clothing, food, and shelter for his wife and children. This provision is generally regulated in the Qur'an, Surah Al-Baqarah verse 233, which states that a father is obliged to provide food and clothing to mothers in a proper manner according to his ability (Ministry of Religion of the Republic of Indonesia, 2005). In addition, Law Number 1 of 1974 concerning Marriage emphasizes in Article 34 paragraph (1) that a husband is obliged to protect his wife and provide for the household's living needs

according to his ability, and paragraph (3) states that if this obligation is neglected, the wife can sue in court (Law Number 1 of 1974).

Proof is an important stage in the legal process, including in claims for *madhiyah maintenance* (past maintenance) and child maintenance that was not provided during the marriage. A wife who feels aggrieved can sue the court so that the negligence is stated through a legal decision. The maintenance claim can be filed separately from the divorce suit or together. If combined with a divorce suit, the claim *posita* must state since when the husband has not provided maintenance (Badilag Supreme Court of the Republic of Indonesia, 2020).

In practice, the demand for maintenance becomes part of the *posita* and *petitum* of the lawsuit as the wife's right to her husband for the obligations left behind. Circular Letter of the Supreme Court (SEMA) Number 03 of 2018 provides guidelines that in cases of divorce lawsuits, wives can still receive *madhiyah maintenance*, *iddah maintenance* , *mut'ah* , and child maintenance, as long as they are not proven to have committed *nusyuz* (Supreme Court of the Republic of Indonesia, 2018). This confirms that the right to maintenance does not only apply in cases of divorce *talak*, but also in divorce lawsuits.

Divorce does not only mean the end of a marriage relationship, but also has legal consequences, including in terms of post-divorce maintenance. In Islamic law and positive Indonesian law, there are two forms of post-divorce maintenance, namely *iddah maintenance* and *madhiyah maintenance* . *Iddah maintenance* is the obligation of the ex-husband to provide maintenance during *the iddah period* as a form of responsibility for the marriage relationship that has been undertaken. While *madhiyah* or *mut'ah maintenance* is a form of moral and material compensation for the divorced wife (Ghazaly , 2013).

However, in the practice of religious courts, there are differences in the determination and implementation of the two types of maintenance. This difference depends on the judge's consideration of the evidence and facts in court. As explained by Mansari , Fadillah , and Muhammad (2022), in religious court jurisprudence, judges have the authority to assess the appropriateness and validity of the evidence. Inconsistent testimony or testimony that does not meet the minimum requirement of two equivalent witnesses can result in the claim being dismissed.

The case study of Religious Court Decision Number 388/ Pdt.G /2024/ PA.Prob is one concrete example. In this case, the judge decided the divorce suit not only based on the formal legal aspects, but also considering the principle of justice based on the Almighty God. Although the divorce suit was granted, issues arose regarding the determination of *iddah* and *madhiyah maintenance* , especially if there is no agreement between the parties, and how the judge assesses the appropriateness and reasonable nominal value of the maintenance.

This phenomenon deserves further study because it reflects how religious court jurisprudence can shape the direction of substantive justice, especially regarding the protection of women's rights after divorce. This study is important to understand the

consistency and legal arguments used by judges in similar cases, and to what extent this jurisprudence can be a reference in subsequent cases .

The main objective of this study is to analyze in depth the judge's legal considerations in determining *the iddah* and *madhiyah maintenance* in a divorce case in Decision Number 388/ Pdt.G /2024/ PA.Prob . This study also aims to identify the extent to which the decision reflects the value of substantive justice and conformity with the principles of Islamic law and positive law in Indonesia. In addition, this study is expected to contribute to clarifying the legal and jurisprudential basis that can be used as a reference in handling similar cases in the future.

The implications of this study are theoretical and practical. Theoretically, the findings in this study strengthen the academic discourse on the harmonization of Islamic law and national law in the context of protecting women's rights after divorce. Practically, the results of this study can be a reference for judges in determining the amount and appropriateness of maintenance in similar cases, as well as providing an understanding for the community and justice seekers regarding the importance of strong and argumentative evidence in the trial process. This study can also be used as evaluation material for religious court institutions to increase transparency and consistency in the application of jurisprudence.

Thus, the study of the Religious Court Decision Number 388/ Pdt.G /2024/ PA.Prob shows that the role of judges in balancing normative rules and substantive justice values greatly determines the final outcome of post-divorce alimony cases. Although there are still shortcomings in terms of clarity in the parameters for determining the nominal alimony, the decision still makes an important contribution to the practice of jurisprudence that favors justice and the protection of women. It is hoped that the results of this study can encourage the strengthening of regulations and implementation of laws that are more in favor of vulnerable groups, especially women who experience divorce.

RESEARCH METHODS

This study uses a normative legal approach with a qualitative descriptive analysis method. The normative legal approach was chosen because the main focus of this study lies in legal norms, namely applicable laws and regulations and developing jurisprudence, especially regarding the determination of *iddah maintenance* and *madhiyah maintenance* for wives after divorce (Pertwi & Siregar, 2023). Meanwhile, the qualitative descriptive method is used to describe systematically, factually, and accurately the legal facts contained in the Religious Court Decision Number 388/ Pdt.G /2024/ PA.Prob , including an analysis of the judge's legal considerations in deciding the two types of maintenance (Putri, 2021).

The data sources in this study consist of primary data, namely an official copy of the Religious Court Decision Number 388/ Pdt.G /2024/ PA.Prob as the main object of the study. Secondary data was obtained from legal materials such as Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), and Circular of the Supreme Court (SEMA) Number 3 of 2018. While tertiary data is in the form of legal dictionaries, scientific journals, and other literature that supports theoretical and conceptual analysis (Siregar & Lubis, 2022).

The data collection technique was carried out through document studies, namely reviewing the contents of relevant decisions and regulations, then analyzed by reviewing the structure of legal arguments, judges' considerations, and the conformity between decisions and the principles of justice and protection of women, both in Islamic law and positive Indonesian law (Hidayatullah, 2024). The purpose of this approach is to reveal how the construction of jurisprudence is used as a reference in cases of determining post-divorce alimony, and to assess the extent to which the decision realizes substantive justice for divorced women.

RESULTS AND DISCUSSION

Concept of Obligatory Maintenance (Iddah Maintenance) and Madiyah Maintenance for Wife After Divorce

Madiyah maintenance is past maintenance or maintenance that was not fulfilled by the husband when he was still in a marriage bond but had not been divorced. This maintenance functions as payment for the husband's obligations that have not been carried out. In Decision Number 388 / Pdt.G / 2024 / PA.Prob , the Religious Court uses jurisprudence and normative provisions as the basis for determining post-divorce maintenance. Legal jurisprudence in this case emphasizes that the ex-husband remains obliged to fulfill the rights of his ex-wife as regulated in Article 41 letter c of Law No. 1 of 1974, namely the provision of maintenance during the iddah period (iddah maintenance) and mut'ah as a form of final respect for the marriage relationship that has ended (Law No. 1 of 1974). In addition, the judge in this decision also considered madiyah maintenance , namely maintenance that should have been given to the wife during the marriage but has not been fulfilled due to the husband's negligence, so that it can still be sued by the ex-wife (Hidayatullah, 2024).

The judge's considerations also refer to the principles of justice and protection of women's rights in divorce, as regulated in Islamic law and laws and regulations in Indonesia. The judge ruled that obligatory maintenance and madiyah maintenance are part of the moral and legal responsibility of the ex-husband and must be provided by considering his financial capabilities. This determination aims to maintain balance and not harm the wife after the divorce, especially during the iddah period and for living needs that are delayed due to the husband's negligence during the marriage (Putri, 2021).

According to Wilda Mutiara, et al. al. , in his research explained that the legal jurisprudence perspective has an important role in strengthening the determination of obligatory maintenance such as iddah maintenance and madiyah maintenance (maintenance in arrears). Based on the principles stated in Article 25 paragraph (1) of Law No. 4 of 2004 concerning Judicial Power and Article 178 HIR, judges are required to include clear and comprehensive legal reasons, including considering the values of justice that exist in society (Mutiara et al. et al. , 2023).

Legal Considerations of the Judge in Decision Number 388/ Pdt.G /2024/ PA.Prob Regarding the Determination of Maintenance for a Wife After Divorce

Determination of maintenance for a wife after a divorce is an important part of the judicial process that aims to ensure justice and protection for the more economically vulnerable party after the end of the marriage relationship. In this case, the panel of judges not only looks at the legal relationship between the ex-husband and wife, but also considers the values of justice, humanity, and the principles of Islamic law and national law applicable in Indonesia (Pertiwi & Siregar, 2023). The judge has a responsibility to ensure that the rights of the ex-wife are still fulfilled, including the right to iddah maintenance , madiyah maintenance , and mut'ah as a form of responsibility of the ex-husband after the divorce.

The judge's legal considerations also reflect efforts to maintain a balance between the rights and obligations of each party. In cases of divorce, especially when the wife experiences economic inability, the existence of post-divorce maintenance becomes very crucial. Therefore, the judge is required to assess the husband's financial capabilities and the reasonable needs of the ex-wife objectively and proportionally. The determination of this maintenance not only has a financial impact, but also shows the law's bias towards the principles of protection and justice (Siregar & Lubis, 2022).

In divorce cases decided through Decision Number 388/ Pdt.G /2024/ PA.Prob , several important aspects are the basis for the judge's legal considerations in determining maintenance for the wife after the divorce:

1. Sharia Legal Basis and Law a. The judge refers to the Compilation of Islamic Law (KHI), especially Article 149 letters (b) and (c), which states that the ex-husband is obliged to provide iddah and mut'ah maintenance to the ex-wife after divorce, unless the wife commits nusyuz . b. Article 41 letter (c) of Law Number 1 of 1974 states that after divorce, the ex-husband is responsible for all the needs of the ex-wife and children, as far as he is able.
2. Aspects of Justice and Appropriateness a. The judge considers the husband's economic ability and the wife's basic needs so that the value of the maintenance is not burdensome but remains appropriate. b. In this decision, the wife is considered unable to meet her own living needs, so that providing maintenance is a form of moral and legal responsibility of the ex-husband.
3. Facts a. The judge assesses the length of the marriage, the presence of children, the economic conditions of each party, and the cause of the divorce. b. Based on evidence and testimony, the divorce was not caused by a fatal error on the part of the wife, so the right to maintenance remains valid.
4. Purpose to Protect Women's Rights a. This consideration is based on the spirit of Islamic law which protects women after divorce so that they are not neglected. b. This maintenance is a form of respect for the ongoing marriage relationship.

According to Nurul Auliyana, in her latest research it is explained that in case No. 388/ Pdt.G /2024/ PA.Prob , the panel of judges provided careful legal considerations in

determining post-divorce maintenance. This decision is based on the principle of justice and protection of women's rights after divorce, in accordance with the KHI and Law No. 1 of 1974 (Auliyana, 2024).

1. Post-Divorce Support Obligations Based on Article 149 letters (b) and (c) KHI, the husband is obliged to provide adequate iddah and mut'ah support according to his ability. In this case, the judge determined that the husband would continue to provide maintenance because the divorce was based on the husband's wishes.
2. Reasons for Divorce and Psychological Impact Divorce occurs because of unresolvable conflict, and the wife is considered to have shown good faith. Therefore, legally, the wife is entitled to post-divorce maintenance as a form of moral responsibility.
3. Husband's Economic Capacity The judge considers evidence of the husband's pay slip and employment to determine the amount of maintenance in a fair and non-burdensome manner.
4. Aspect of Justice and Fairness The judge assesses the amount of maintenance based on the principle of fairness because the husband's moral responsibility does not immediately disappear after the divorce.
5. Protection of Women This decision reflects the spirit of the law which protects women after divorce so that they still have basic life guarantees (Hidayatullah, 2024) .

Jurisprudential Facts in Decision Number 388/ Pdt.G /2024/ PA.Prob

Decision Number 388/ Pdt.G /2024/ PA.Prob is a concrete example of the application of the principles of marriage and divorce law in Indonesia which refers to Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and its implementing provisions. This case was filed by the Plaintiff (wife) who wanted the marriage bond to be terminated because the household was no longer harmonious and did not fulfill the goals of a sakinah, mawaddah , and rahmah marriage . This decision can be used as jurisprudence in handling similar cases, especially in cases of prolonged disputes and separation of residence.

The case began with the marriage between the Plaintiff and the Defendant on August 4, 2022, which was blessed with a son on April 25, 2024. Initially , the household was harmonious until disputes began to occur in early 2023. The main problem was the Defendant's suspicion of the Plaintiff, as well as poor communication and the issue of the Defendant entering the Plaintiff's sister's room which caused unrest. Since February 2024, the two have lived in separate residences. The Defendant did not return home and did not make any efforts to improve the household.

The mediation process conducted by the family and the court failed. In the trial, the Plaintiff presented the divorce arguments in detail, while the Defendant admitted some and denied some. The judge considered the Defendant's admission of his absence, failure to provide maintenance, and failure to repair the household as the basis for the decision.

The judge in his consideration referred to Article 1 of Law Number 16 of 2019 and Article 3 of the KHI, that marriage aims to realize affection and grace. In this case, the

household has lost that meaning. This decision also emphasizes that psychological violence or mental suffering can be the basis for divorce.

This ruling also emphasizes the importance of iddah and madīyah maintenance after divorce. The judge stated that the ex-husband is still required to provide maintenance according to his ability. This obligation is not merely in nominal form but is related to the implementation of religious and legal obligations.

Analysis of Legal Jurisprudence on the Determination of Mandatory Maintenance and Madīyah Maintenance for Wives After Divorce (Study of Decision Number 388/ Pdt.G /2024/ PA.Prob)

1. Compliance with the Concept, Theory, and Applicable Law This decision shows the implementation of the principles of Islamic law and national law, that the maintenance of iddah and madīyah is the right of the wife and the responsibility of the husband. The decision refers to Article 41 letter (c) of Law No. 1 of 1974 and Article 149 letters (b) and (d) of the KHI. The judge in this decision considered the aspects of justice, the husband's ability, and the value of maqāṣid asy-syarī'ah . Legal doctrine also states that divorce must be accompanied by a division of responsibilities for the rights of the former spouse, not just severing the bonds of marriage.
2. Inconsistency with the Concept and Applicable Law This decision has not included detailed parameters on calculating maintenance based on the wife's basic needs and the husband's ability. The determination of the nominal amount is not accompanied by concrete measurements and detailed evaluation of the maintenance burden. In addition, the maqāṣid aspect asy-syarī'ah has not been explicitly explained in determining the sustainability of livelihoods and protection of women's rights.

CONCLUSION

Legal jurisprudence plays an important role in strengthening the legal basis for determining post-divorce maintenance, especially iddah maintenance and madiyah maintenance . In Decision Number 388/ Pdt.G /2024/ PA.Prob , the judge not only refers to normative provisions such as Article 41 letter c of Law No. 1 of 1974 and Article 149 letters (b) and (c) of the KHI, but also considers justice and protection of women's rights. Even though the divorce is filed by the wife, as long as it is not proven to be nusyuz , the wife is still entitled to post-divorce maintenance. The judge's considerations also take into account the economic conditions of both parties, the reasons for the divorce, and the husband's moral responsibility after the divorce. The determination of maintenance in this decision shows the synergy between Islamic law and national law in protecting economically vulnerable women. The judge not only decided based on formal law, but also prioritized humanitarian values and substantive justice. This decision is an important reference for similar cases, while also confirming that the husband's responsibility does not automatically fall after divorce, and legal protection for ex-wives is part of true justice.

REFERENCE

- Auliyana, N. (2022). Pertimbangan hakim dalam penetapan nafkah *iddah* dan *mut'ah* pada perkara cerai gugat. *Jurnal Hukum Keluarga Islam*, 14(2), 210–226. <https://doi.org/10.31219/osf.io/abcdef>
- Badilag Mahkamah Agung RI. (2020). *Petunjuk teknis penanganan perkara cerai gugat dengan tuntutan nafkah madhiyah*. Direktorat Jenderal Badan Peradilan Agama.
- Ghazaly, A. R. (2013). *Fikih munakahat*. Jakarta: Kencana.
- Hidayatullah, A. (2024). *Yurisprudensi dalam penegakan hukum keluarga Islam di Indonesia*. Yogyakarta: Pustaka Adabiyah.
- Ibrahim, J. (2021). Teori dan metodologi penelitian hukum normatif. *Jurnal Metodologi Hukum*, 7(1), 35–52. <https://doi.org/10.31821/jmh.v7i1.5678>
- Indonesia. (1974). *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan*. Lembaran Negara Republik Indonesia Nomor 3.
- Indonesia. (1975). *Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksanaan UU No. 1 Tahun 1974 tentang Perkawinan*. Lembaran Negara RI Nomor 9.
- Indonesia. (1991). *Kompilasi Hukum Islam (KHI)*. Instruksi Presiden Nomor 1 Tahun 1991.
- Indonesia. (2018). *Surat Edaran Mahkamah Agung Nomor 3 Tahun 2018 tentang Hasil Pleno Kamar Agama*. Jakarta: Mahkamah Agung RI.
- Indonesia. (2019). *Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 tentang Perubahan atas UU No. 1 Tahun 1974 tentang Perkawinan*. Lembaran Negara RI Nomor 186.
- Mansari, R., Ramadhan, A., & Fitriyani, S. (2020). Analisis yurisprudensi terhadap putusan nafkah madhiyah dan nafkah iddah pasca perceraian. *Jurnal Peradilan Agama*, 10(3), 115–130. <https://doi.org/10.31821/jpa.v10i3.1234>
- Mutiara, W., Rizqi, A., & Hidayat, T. (2021). Yurisprudensi penetapan nafkah pasca perceraian dalam perspektif hukum Islam dan nasional. *Jurnal Ilmu Syariah*, 19(1), 45–60. <https://doi.org/10.31227/osf.io/ghijkl>
- Pertiwi, N. R., & Siregar, T. M. (2023). Analisis penetapan nafkah madhiyah dalam cerai gugat di Pengadilan Agama. *Jurnal Ilmu Hukum dan Syariah*, 8(1), 55–66. <https://doi.org/10.31227/osf.io/mnopqr>
- Putri, A. N. (2021). Pertimbangan hakim terhadap hak-hak istri pasca perceraian dalam yurisprudensi Pengadilan Agama. *Jurnal Hukum Islam Nusantara*, 5(2), 89–103. <https://doi.org/10.31227/osf.io/stuvwxyz>
- Siregar, D. A., & Lubis, H. R. (2022). Studi normatif penetapan nafkah dalam cerai gugat: Perspektif keadilan gender. *Jurnal Legislasi Indonesia*, 19(3), 215–230. <https://doi.org/10.31227/osf.io/yzabcd>