



The Judges' Legal Consideration on Divorce of *Nushūz* Cases at the Kupang High Religious Court: Gender Perspective

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Abstract: The gender sensitivity of judges towards women in court is crucial to ensure that judgments provide a sense of justice and accommodate the rights of wives after divorce. This article aims to analyze judges' considerations from philosophical, juridical, and sociological aspects in divorce judgments due to *nushūz* (disobedience) from a gender perspective, addressing two main questions: 1) how judges use a gender perspective in deciding divorce cases due to *nushūz*, and 2) what factors influence judges' decisions in divorce cases due to *nushūz* from a gender perspective. This research employs qualitative research methods, which is a case study design, with juridical and gender approaches. The primary data source is derived from the rulings of the Religious High Court of Kupang No. 009/Pdt.G/2015/PTA.Kp obtained from the Supreme Court of the Republic of Indonesia's website, and judge interviews as supporting data, which were analyzed using content analysis. The research findings indicate that from a gender perspective, judges exhibit gender bias in categorizing *nushūz* as if *nushūz* can only be committed by wives, whereas *nushūz* can be committed by both husbands and wives. Judges' interpretations of *nushūz* are still influenced by the content of the law, the culture of the law, and its structure of the law. This study implies that judges should undergo gender-based training or workshops organized by judicial institutions or universities to enhance their gender sensitivity in deciding legal cases, especially *nushūz* cases.

Keywords: Judge's considerations, *nushūz*, religious court, gender perspective

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Abstrak: *Sensitivitas gender hakim terhadap perempuan di persidangan sangat penting agar putusan dapat memberih rasa keadilan dan mengakomodir hak-hak istri pasca perceraian. Artikel ini bertujuan untuk menganalisis pertimbangan hakim dari aspek filosofis, yuridis, dan sosiologis pada putusan perkara perceraian akibat nushūz dalam perspektif gender, dengan mengangkat dua pertanyaan pokok. 1) bagaimana hakim menggunakan perspektif gender dalam memutus perkara perceraian akibat nushūz; dan 2) faktor apa saja yang mempengaruhi putusan hakim dalam perkara perceraian akibat nushūz dalam perspektif gender. Penelitian ini menggunakan jenis penelitian kualitatif, desain studi kasus, dengan pendekatan yuridis dan gender. Sumber data utama diambil dari putusan Pengadilan Tinggi Agama Kupang No.009/ Pdt.G /2015/ PTA.Kp yang diperoleh dari website Mahkamah Agung RI dan wawancara hakim sebagai data pendukung, data dianalisis dengan menggunakan conten analysis. Temuan penelitian menunjukkan bahwa dari perspektif gender, hakim mengalami bias gender dalam mengkategorikan nushūz, seolah-olah nushūz hanya dapat dilakukan oleh istri, padahal nushūz dapat saja dilakukan oleh suami dan istri. Interpretasi hakim tentang nushūz masih dipengaruhi oleh materi hukum, budaya hukum, dan struktur hukumnya. Penelitian ini mengimplikasikan bahwa para hakim seharusnya dapat mengikuti pelatihan atau workshop berbasis gender baik yang didakan oleh institusi pengadilan atau Perguruan Tinggi untuk meningkatkan sensitivitas gender mereka dalam memutuskan sebuah perkara hukum, terutama perkara nushūz.*

Kata Kunci: *Pertimbangan hakim, nushūz, pengadilan agama, perspektif gender*

Introduction

Gender perspective training among judges has not left a mark on their legal considerations.¹ This is reflected in the judges' decisions, which often exhibit gender bias when categorizing *nushūz* (marital discord).² One of the reasons for this is the lingering influence of conservative jurists' opinions and patriarchal cultural influences.³ In recent years, studies about *nusyus* have

¹Ani Nursalikah, "MA Latih Hakim Pahami Perspektif Gender (Supreme Court Trains Judges to Understand Gender Perspective)" *Republika, co.id*, Accessed, on 18 July, 2020. "Mahkamah Agung Latih Hakim Agar Memahami Perspektif Gender," *Tempo.com*. Accessed, on 18 July, 2020.

²Euis Nurlelawati and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Court of Indonesia", *Al-Jami'ah*, 51, no. 2 (2013), p. 248. Atun Wardatun and Bianca J. Smit, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna: Journal of Islamic Studies* 24, No. 2 (2020).

³Ahmad Jalaluddin, "Budaya Hukum Bias Gender Hakim Pengadilan Agama dalam Perkara Cerai Talak," *Muwazah*, 7, no. 2, 2015, p. 197. Erwati Aziz, et. al., "Why are Women

attracted the attentions of the local and global researchers especially in Indonesia. As per the views of classical scholars and modern thinkers on *nushūz* within families, modern thought aligns more with the principles of equality and justice taught in the Qur'an, making *nushūz* not limited to wives but also applicable to husbands.⁴ In line with what Musdah Mulia has stated, *nushūz* can originate from both spouses.⁵ Supported by Nur Rofiah, *nushūz* should not only signify a wife's defiance against her husband but also the defiance of either spouse against the commitment of marriage to maintain peace of mind (*sakinah*).⁶ Therefore, there is a need for gender justice in various aspects of judges' decisions.⁷

Despite various studies on divorce and marital discord (*nushūz*), research related to judges' considerations in *nushūz* cases at the High Religious Court from a gender perspective remains limited. Existing research has only focused on the reinterpretation of the concept of *nushūz* through the *maqashid as-shariah* approach by Jasser Auda, suggesting that including *nushūz* for women as an effort to protect and enhance women's fundamental rights may need to incorporate the concept of *nushūz* by husbands into Article 84 of the Islamic Marriage Law (*Kompilasi Hukum Islam/KHI*). This is to ensure that the principles of equality and justice become essential aspects in redefining the concept of *nushūz*.⁸ Furthermore, *nushūz* from the perspective of the gender cosmological theory of Sachiko Murata indicates that the conservative concept of *nushūz* is influenced by patriarchal culture. Some experts in Islamic interpretation interpret *nushūz* as infidelity and bad behavior only from wives, even though in contemporary interpretations, *nushūz* can occur in both wives and husbands.⁹ A wife should not neglect her obligations to her husband even if

Subordinated? The Misrepresentation of the Qur'an in Indonesian Discourse and Practice," *Journal of International Women's Studies*, 6, no. 1 (2020), p. 238.

⁴Alamsyah, "Rekonstruksi Konsep *Nushūz* dalam Perspektif Feminis (Reconstruction of the Concept of *Nushūz* from a Feminist Perspective)," *Al-Adalah*, 15, no. 2 (2018), p. 293.

⁵Musdah Mulia, *Ensiklopedia Muslimah Reformis, Pokok-Pokok Pemikiran untuk Reinterpretasi dan Aksi*, Jakarta: Dian Rakyat, 2019), p. 513.

⁶Nur Rofiah "Memaknai Perceraian Perkara Halal tapi Paling Dibenci," *Ngaji KGI*, 17 February 2021, p. 2.

⁷Mansari and Moriyanti, "Judge Sensitivity to Post-Divorce Wife's Maintenance," *Gender Equality: Internasional Journal of Child and Gender Studies*, 5, no. 1 (2019), p. 43, Alef Mursyahada Rahmah, et. al., "Perspektif dan Sikap Hakim dalam Memutus Perkara Mut'ah dan Nafkah Iddah di Pengadilan Agama Purwokerto, Banyumas, Purbalingga," *Prosiding Seminar Nasional dan Call for Paper: Pengembangan Sumber Daya Pedesaan dan Kearifan Lokal Berkelanjutan VI*, Purwokerto, 24-25 November 2016, p. 1.

⁸Muhammad Habib Adi Putra and Umi Sumbulan, "Memaknai Kembali Konsep *Nushūz* dalam Kompilasi Hukum Islam Perspektif Gender dan *Maqashid Syariah* Jasser Auda," *EGALITA: Jurnal Kesetaraan dan Keadilan Gender* 15, no. 1 (2020), p. 42-43.

⁹Nely Sama Kamalia, "Konsep *Nushūz* Perspektif teori Kosmologi Gender Sachiko Murata," *Jurnal Hukum Islam dan Studi Keluarga* 3 no. 2 (2020), p. 54. Ikhwanuddin Harahap, "Women's Position in Patriarchal Kinship System," *Jurnal Ilmiah Peuradeun* 8, No. 1 (2021).

he has displayed *nushūz* because there is no such directive in QS. An-Nisa: 128.¹⁰

Regarding the implementation of the judgment in cases of *nushūz* (marital discord) according to Islamic family law in the State of Johor, Malaysia, at the Sharia Court, it is made in accordance with Islamic jurisprudence. *Nushūz* is categorized as leaving the house without the husband's permission, refusing to have sex with the husband, and not obeying the husband.¹¹ However, in Indonesia, the judge's consideration in *nushūz* cases resulting from household violence in the Religious High Court is still influenced by a patriarchal culture that considers a wife as *nushūz* if she leaves the shared home without her husband's permission, which can lead to the misinterpretation of religious permission for a husband to physically harm his wife.¹² Existing studies have not accommodated the judge's considerations in *nushūz* cases from a gender perspective. Therefore, this research will analyze the judge's considerations in a more in-depth manner from philosophical, legal, and sociological perspectives when categorizing *nushūz* from a gender perspective.

Therefore, this research aims to complement existing studies by introducing three aspects of a judge's considerations in deciding divorce cases caused by *nushūz*: philosophical, juridical, and sociological aspects from a gender perspective. The philosophical aspect emphasizes truth and justice, the juridical aspect is based on applicable law, and the sociological aspect considers cultural values within society. Consequently, this research poses two research questions. First, how do judges at the Religious High Court in Kupang decide *nushūz* cases from a gender equality perspective? Second, what factors influence judges at the Religious High Court in Kupang when deciding *nushūz* cases from a gender equality perspective? The findings of these questions are expected to contribute new knowledge to readers about how judges at the Religious High Court make decisions regarding *nushūz* cases from a gender perspective and the factors influencing them.

This research employs Mansour Fakih's gender theory to analyze the judge's considerations in uncovering and deeply exploring gender justice values in divorce judgments resulting from *nushūz* at the Religious High Court in Kupang. Gender justice represents a system and structure where both men and women become victims of this system, particularly within family life. The

¹⁰Misran and Maya Sari, "Neglect of the Wife's Obligations due to the Husband's *Nushūz*: A Study of Imam Al-Thabari's Interpretation of QS Al-Nisa: 128," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 2 no. 2 (2018), p. 381.

¹¹Saifuddin Sa'dan, "Procedures for Determining *Nushūz* Case Decisions: Analysis of Islamic Family Law in the State of Johor," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 2, no. 1 (2018), p. 2017.

¹²Fitriyani, "Putusan Perkara Nusyūz Akibat Kekerasan Dalam Rumah Tangga (KDRT): Kajian Sosiologi Hukum," *Al Izzah: Journal of Research Results*, 17, no. 1 (2022), p. 36.

presence of gender injustice is marked by the gender role that assesses women as inferior to men. Manifestations of gender injustice can be caused by gender assumptions such as marginalization, subordination, stereotypes, violence, and a double burden.¹³ Thus, it can be determined whether the judgments contain gender justice values or are solely based on administrative duties and legal certainty.

This research employs a qualitative case study design with both juridical and gender approaches. The juridical approach is used to recognize consistency between constitutional law and other legal principles, while the gender approach involves comparing decisions to assess gender justice and injustice. The primary data source is drawn from judgments of the Religious High Court in Kupang, numbered 009/Pdt.G/2015/PTA.Kp. Data collection processes involve gathering court decisions from the website of the Supreme Court of Indonesia and conducting interviews with judges as supplementary data. The research utilizes content analysis,¹⁴ with the following steps: (1) identifying the legal considerations used by the panel of judges in making decisions, (2) examining the judge's considerations deemed to contain philosophical, juridical, and sociological aspects, (3) analyzing the judge's considerations from philosophical, juridical, and sociological aspects from a gender perspective.

Judges Position Against *Nushūz*

Before discussing the judge's considerations in the decision of divorce cases caused by *nushūz*, the following will describe the case description of *nushūz* that happened at the Kupang Religious High Court in decision number 009/Pdt.G/2015/PTA.Kp, along with the judge's consideration and analysis of gender perspective.

1. Case Description

The panel of judges of the Kupang Religious High Court, after reading and studying the case file and the original copy of the decision of the First Level Judges Council dated 7 October 2015, Number 23/Pdt.G/2015/PA.Kp granted the husband's divorce request. The Panel of Judges at the Appellate Level

¹³Mansoer Fakhri, "*Menggeser Konsepsi Gender dan Transformasi Sosial*," (Yogyakarta: Pustaka Pelajar, 1996), p. 12. Agus Hermanto, "Teori Gender dalam Mewujudkan Kesetaraan: Menggagas Fikih Baru, *Ahkam: Jurnal Hukum Islam* 5, no. 2 (2017), p. 213. Jawad Syed, "Reconstruction of Gender in Islamic Thought: Iqbal's Vision of Equal Opportunity," *Women's Studies International Forum*, 32, no. 6, 2009, p. 435–44. Rachel Rinaldo, "Muslim Women, Moral Visions: Globalization and Gender Controversies in Indonesia," *Qualitative Sociology* 34, no. 4 (2011). Ella S. Prihatini, 2019. "Women Who Win in Indonesia: The Impact of Age, Experience, and List Position." *Women's Studies International Forum* 7, no. 2 (2019), p. 40–46.

¹⁴Eriyanto, *Analisis Isi: Pengantar Metodologi untuk Penelitian Komunikasi dan Ilmu Sosial Lainnya*, Jakarta: Kencana, 2011. Henri Subiakto, "*Analisis Isi Siaran Berita Nasional Televisi Republik Indonesia*," (FISIP UNAIR: Surabaya, 1990), p. 165.

believes that what is considered in the decision of the Panel of Judges at the First Level is correct and can be fully approved by the Panel of Judges at the Appellate Level. However, The Panel of Judges of the First Level overrides the husband's obligation to provide *iddah* for his wife.

The Panel of Judges at the Appellate Level needs to improve by adding considerations to its decision because they do not agree with the considerations of the First Instance Panel of Judges. Categorizing *nushūz* of wife because the wife left home and bring all her stuff without any permission from her husband so that the wife has been deemed to have neglected her obligations. This is evidenced by the husband's confession and witness testimony that the wife has left the residence without her husband's permission, and the wife is no longer serving her husband's needs such as cooking. Therefore, The Panel of Judges of the First Level believes that based on these considerations, the wife is proven to have committed *nushūz* which resulted in the loss of the right to obtain *iddah*. According to this information, the wife acknowledged and confirmed that she had left the house due to the following reasons:

- 1) The wife has been verbally divorced by her husband.
- 2) The wife has been kicked out by her husband from their house
- 3) The husband has married to another woman, and it is suspected that he has a child from that woman.

Before the wife left the house, the wife received threats to be killed by her husband. Because he was afraid of the threat, so the wife called her mother (Ny. SC) to come to pick her up. After saying goodbye to his sister-in-law then the wife left the house. The parents of the husband also often interfere in their children's household affairs, and it makes his daughter-in-law feel uncomfortable. The accusation against the wife carrying out the obligations alleged by the husband in the divorce letter is not true.

Based on these facts, it turns out that the wife's departure from home is not without reason. The wife cannot survive in one household because she has been verbally divorced by her husband. Even the wife is threatened with death if she doesn't leave the house, and the husband is considered to have a relationship with another woman. Therefore, the Panel of Judges at the Appellate Level will study the judge's considerations in the Kupang Religious High Court Case Decision as follows:

2. Considerations of Judges of the Kupang Religious High Court

Three aspects are used by judges in considering the law at the Kupang Religious High Court, namely: philosophical aspects (legal justice), juridical aspects (legal certainty), and sociological aspects (legal benefits). The three aspects mentioned above align with Ahmad Rifai's theory. The philosophical aspect centers on justice, the juridical aspect is primarily based on applicable

laws, and the sociological aspect considers the cultural values that exist within society.¹⁵

a. Philosophical Considerations

The basic philosophical considerations used by the Kupang Religious High Court judges in making decisions on divorce cases due to *nushūz* can be seen as follows:

The judges of the Religious High Court in defining *nushūz* refer to Abd. Al-'Adzim Ma'ani and Ahmad al-Ghundur's; namely leaving the obligations of husband and wife. *Nushūz* from the wife's side, for instance, left the house without her husband's permission. According to a hadith narrated by Ibn Umar, he said that a woman came to the Messenger of Allah and asked him: "O Messenger of Allah! What is the wife's duty to her husband?" The Messenger of Allah (PBUH) said, "Don't give anything from the house to charity except with the permission of her husband. If she does, then for the husband a reward and the wife a sin. He repeated his question: "O Messenger of Allah! What is the wife's obligation to her husband?" So, the Messenger of Allah replied: "She is not allowed to leave her house unless she has permission from her husband, and she is not allowed to fast according to the Sunnah except with the permission of her husband.

The authors assess the legal basis used from the Prophet's hadith previously is very textual and the opinion of the judges are conservative. When the argument is examined in perspective of *maqashid syariah*, it is still very textual, and contain gender biases in deciding the cases. The panel of judges do not put men and women equally, so that only one party can categorize *nushūz* in this case the women without considering the causative factors such as marginalizing the women.

Musdah Mulia said that it is unfair and inappropriate to position women compared to men in *nushūz*, due to the interpretation that men are more dominant than women. For instance, women who leave the house without their husband's permission are categorized *nushūz* because it is considered a violation of the existing *sharia*, on the contrary, this does not apply to men because it gets legitimacy from religious law.¹⁶

It should be noted that in the Qur'an, family disharmony is also in the form of *i'radh* and *syiqaq*. In Linguistics *i'radh* means turn away, obstruct, expose, and insinuate. Therefore, *i'radh* is defined as the turning of the husband or wife from their partner.¹⁷ Meanwhile, *syiqaq* means that disputes in the

¹⁵Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, Cet. 2; Jakarta: Sinar Grafika, 2021, p. 125.

¹⁶Musdah Mulia, *Ensiklopedia Muslimah Reformis, Pokok-Pokok Pemikiran untuk Reinterpretasi dan Aksi*, Jakarta: Dian Rakyat, 2019), p. 513.

¹⁷Muhammad Sharur, *al-Kitab wa Al-Qur'an: Qira'ah*, Beirut: Unknown Publisher, n.d.), p. 622.

context of the relationship can no longer be maintained and have been exposed outside the family environment. The three forms of disharmony have the potential to be carried out by a husband or wife because the word of *nushūz* in the Qur'an appears twice such as in QS. An-Nisa [4]: 34 and 128, the first verse names women as perpetrators of *nushūz*, and the second verse mentions men as perpetrators *nushūz*.

Some forms of *nushūz* by the husband are being rude to his wife, not having sex and not wanting to give his wife's rights. *Nushūz* what a husband does to his wife can end up with the husband committing violence against his wife, this is due to misinterpreting the contents in QS. An-Nisa [4]: 34 explains that the husband as the leader in the house is allowed to beat the wife who is *nushūz*. Consequently, the fact is that currently there is a lot of news about domestic violence, such as physical, psychological, economic, and neglect of the household by husbands.¹⁸ Whereas what should be done in dealing with a wife who conducts *nushūz* is to follow the steps described in QS. An-Nisa [4]: 34 namely advising/communicating, separating from the bed and the last step is beating.

It is understood that hitting to resolve conflicts in the household should be avoided. Even if it is chosen, it should not hurt, but as a form of the importance of changing one and could not be done repeatedly. When hitting is proven unsuccessful to change the wife's attitude, the husband should find other ways. Dealing with a wife who *nushūz* should be in the form of advice, communication, and separate beds. Those ways can still be accepted and justified. However, the act of beating as a solution, should require reinterpretation due to the many acts of violence against women or wives which are often carried out using the legitimacy of texts whose meanings are no longer acceptable at present.¹⁹

In Indonesia, it appears that the concept of *nushūz* is still influenced by patriarchal culture and discrimination against women. It is proven by Article 84 of the Compilation of Islamic Law which only mentions the concept of *nushūz* of the wife "when a woman cannot fulfill her obligations as a wife, it is considered *nushūz*. However, there is no provision for husbands to be considered *nushūz* when they cannot fulfill their obligations to their wives. This of course shows ambivalence and injustice in law, so the paradigm about *nushūz* needs to be interpreted under the principles of equality and justice.²⁰

¹⁸Tutik Handayani, "Eksistensi Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga dalam Aktualisasi Konsep Nushūz Fiqh Madani," *Journal of Law and Sharia* 3, no. 1 (2012), p. 77.

¹⁹Muhammad Husein, *Fikih Perempuan Refleksi Kiyai atas Wacana Agama dan Gender*, (Yogyakarta: LKiS, 2001), p. 11.

²⁰Nely Sama Kamalia, "The Concept of Nushūz from the Perspective of Sachiko Murata's Gender Cosmology Theory," *Journal of Islamic Law and Family Studies* 3, no. 2

b. Juridicial Considerations

The basis for the judge's consideration in the decision of the divorce case due to *nushūz* in the aspect of juridical will be explained as follows: Considerations related to the *iddah* living of the panel of judges at the appellate level, for benefit and justice, the husband is required to pay the *iddah* in the amount of money IDR 4.500.000.

That cost must be paid by someone for his or her dependents such as food, clothing, and other main needs including secondary needs such as household furniture. The scholars define *iddah* as a waiting time for the chastity of a wife who has been left dead or divorced by her husband, before that period ended, women are prohibited from marrying.²¹ The law is contained in Article 149 (b) The Compilation of Islamic Law: "When the marriage breaks up due to divorce, the ex-husband is obligated to: provide a living, food and other needs to the ex-wife during the *iddah* period, unless the ex-wife has been sentenced to divorce *ba'in* or *nushūz* and is not pregnant."²²

No.009/Pdt.G/2015/PTA.Kp is a consideration by applying *ex-officio* (the right or authority of judges because of their position) because even though the wife, in this case, is categorized as having committed *nushūz*, the judge still obliges the ex-husband to pay the *iddah*. One of the reasons for the judge is because basically, a living is the husband's obligation, including *iddah* living which aims to bring benefits (*jalbu manfa'atin*) and included in the *al-Dharuriyat*, more precisely on the aspect of protecting the soul for the wife who has been left due to the divorce.²³

The judge's next consideration is to assess the divorce case, including the field of marital disputes, then follow the law No. 7 year 1989-chapter 89 verse (1) which has been amended by law No. 3 the year 2006 and last amended by law No. 50 the year 2009, then the cost of the case at the appeal level is charged to the Appellant for IDR 150.000,00.

(2020), p. 55., Muhammad Habib Adi Putra and Umi Sumbulah, "Memaknai Kembali Konsep Nushūz dalam Kompilasi Hukum Islam Perspektif Gender dan *Maqashid Syari'ah* Jasser Auda" *Egalita: Journal of Gender Equality and Justice* 15, no. 1 (2020), p. 43.

²¹Devi Yulianti et al., "Pembebanan Mut'ah dan Nafkah 'Iddah pada Perkara Cerai Talak dengan Putusan Verstek," *Mahkamah: Jurnal Kajian Hukum Islam* 5, no. 2 (2020), p. 292. Mursyid Djawas, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi," *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). Hazar Kusmayanti, et.al., "The Settlement of Disputes Regarding Division of Joint Property After A Divorce in The Central Aceh Regency," *Jurnal Ilmiah Islam Futura* 21, No. 1 (2021).

²²Article 149, paragraph (b) "Kompilasi Hukum Isl (the Compilation of Islamic Law).

²³Muhammad Aqwam Thariq, "*Hak Ex Officio* Hakim: Pertimbangan Hukum Hakim terhadap Pembebanan Nafkah Iddah dan Mut'ah dalam Perkara Cerai Talak Verstek Perspektif *Maqashid*," *Sakina: Journal of Family Studies* 3, no. 2 (2019), p. 1. Fajri M. Kasim, et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, No. 2 (2022).

From the juridical aspect, the judge's consideration at the appellate level is by the value of legal certainty. As juridical normative law which is considered that in principle the purpose of the law is to create legal certainty²⁴ by charging the Appellant to pay the court fees in the amount IDR 150.000,00.

As it is said by Gustav Radbruch and Satjipto Raharjo that good law does not only contain assurance legal but also justice and benefits for the community.²⁵ It was also reinforced by Waber who said that the legal administration of Qadhi-Justice makes law bound by sacred tradition and often a very formalistic interpretation, Even Mark E Cammach highlights Religious Court judges look almost exclusively based on the legal authority issued by the state. This study contradicts the results of the study Stjin Cornelis Van found that the Religious Courts in Indonesia are gender responsive.²⁶

c. Sociological Considerations

The considerations by the panel of judges can be studied and analyzed from the sociological aspect as follows: The consideration of the panel of judges at the appeal level sentenced the husband to give *mut'ah* to his ex-wife as to pay the goodness and obedience of the wife during marriage. They have been married for four years and gave birth and took care of the child, the child is 2.6 years old. Therefore, the Panel of Judges at the Appellate Level determines the amount of *mut'ah* that must be paid by the husband is about IDR 10.000.000,00.

The judge's consideration in imposing *mut'ah* is based on the social conditions of the parties and is considered not contrary to the law as long as the things requested by the judge are still closely related to the case being handled. Besides that, in this case, the judge has the freedom to use his rights or ex-officio right of judges, to keep punishing the husband to give *mut'ah* to his wife who has been divorced, even though, in the decision at the Kupang Religious High Court the wife has been categorized as *nushūz* because she has left the house without her husband's permission.

Confirmed by Khatijah Yahyah, judge of the Sengkang Religious Court: "A wife who is treated by means of *muasyarah bil ma'ruf* and then leaves the house together without the permission of her husband can be categorized as having committed *nushūz*. However, if the wife leaves the house because her husband has treated her inappropriately, in this case being expelled and even threatened with death, it cannot be categorized as a wife committing *nushūz*, in

²⁴Lili Rasjidi and Ira Rasjidi, *Dasar-Dasar Filsafat dan Teori Hukum* (Bandung: Citra Aditya Bakti, 2001), p. 42.

²⁵Heather Leawoods, *Gustav Radhruch: An Oextraordinary Legal Philosopher*, in <http://law.wustl.edu/journal/2/p4891leawoods.pdf> Accessed, on 17 July, 2020.

²⁶Stijn Cornelis Van Huis, *Islamic Court and Women's Divorce Right in Indonesia: The Case of Cianjur and Bulukumba*, Disertasi Universitas Leiden Tahun 2015, p. 67.

this case it is the husband who has committed domestic violence against his wife.”

In accordance with existing social realities and to create justice based on legal values in society, the judge at the appellate level can be considered appropriate in giving a decision, by setting the amount of *mut'ah* to be paid by the husband as much as IDR 10.000.000,00. The determination of the amount of living for the ex-husband is adjusted according to the ability of the husband.²⁷

d. Analysis of Gender Perspective Case Decisions

After examining and reviewing the considerations of the Kupang Religious High Court judges from the philosophical, juridical, and sociological aspects, it is time to look at it from a gender perspective. The considerations of the judge at the first level and on appeal, only judge the aspect of the wife's *nushūz*, and ignores the husband's *nushūz*. According to the chronology of the cases submitted to the court which became the reason for the divorce, the wife had left the house. However, the wife's left is not without reason, she has been verbally divorced by her husband, has been kicked out of the house, threatened with death, and the husband is suspected to marry another woman (*sirri*), and even having children from his marriage. In this case, it is the husband who has committed *nushūz*; however, in fact, the decision of the court of first instance and the appeal decided by allowing the husband to make a vow of divorce *raj'i* to the wife by accusation that the wife had committed *nushūz*. From a gender perspective, wives have experienced marginalization and subordination.²⁸

The judge's consideration from the juridical aspect, the appellant pays the cost of the case is considered following the procedure in court and can be judged to be appropriate and is related to the burden on the husband to pay the *iddah's* cost according to the husband's ability. Judges are quite gender-sensitive in using *ex officio's* rights (rights due to their position as judges).²⁹

Furthermore, the judge's consideration from the sociological aspect, the panel of judges charged the ex-husband to pay *mut'ah* even though in the philosophical aspect the wife was considered as *nushūz*. However, the judge still

²⁷Riyan Ramdani dan Firda Nisa Syafithri, “Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah dan Mut'ah dalam Perkara Perceraian di Pengadilan Agama,” *ADLIYA: Jurnal Hukum dan Kemanusiaan* 15, no. 1 (2021), p. 38.

²⁸Fadhliya Fadhliya, “The Legal Reasoning of Judges Behind Determination of Marriage Itsbat Proposal for Siri Marriage Cases (A Study at the Shariyya Court of Banda Aceh),” *Media Syar'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 23, No. 2 (2021). Zia Thahira and Dwini Handayani, “The Impact of Mother's Gender Preference on Children's Cognitive Ability in Indonesia,” *Jurnal Ilmiah Peuradeun* 11, No. 3 (2023). Mansour Fakhri, *Menggeser Konsep Gender dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 1996), p. 12.

²⁹Mansari and Moriyanti, “Sensitivitas Hakim Terhadap Perlindungan Nafkah Pasca Perceraian,” *Gender Equality: International Journal of Child Gender Studies* 5, no. 1 (2019), p. 43.

charges the husband to pay mut'ah as a benefit for both parties as much as IDR 10.000.000,00 as a gift to comfort the heart of the wife who has been divorced.³⁰

Gender sensitivity of the judge is the ability of the judge to understand, feel, and think about the gaps between men and women in court.³¹ Having such a practice will make it more likely that judges will grant women the rights they should get after divorce. On the other hand, if the judge does not have a sense of gender sensitivity, there is a greater possibility that the wife's rights after divorce will be ignored.³²

To see the judge's protection for women after divorce due to *nushūz*, two indicators are used, namely: *First*, the judge's efforts to realize the wife's livelihood, both *iddah* livelihood and previous livelihood. *Second*, the form of realization of post-support is determined in the decision. Based on the results of the author's analysis of the considerations used by the judge in making decisions regarding divorce due to the wife's *nushūz* shows that in general the judge's gender sensitivity indicator in the first point has been realized by the Kupang PTA judge in case Number. 009/Pdt.G/2015/PTA.Kp The judge's efforts to realize the wife's *iddah* and past support are by using *ex officio* rights.³³

Furthermore, the indicator used to assess the gender sensitivity of judges towards women is related to the settlement of income after the judge's decision is made. In general, this has been conducted by the judge by postponing the divorce vow process for the husband if he has not paid all his obligations as stated in the decision of the panel of judges. In order to create gender equality in legal areas, the Supreme Court of the Republic of Indonesia has issued the regulation No. 3 of 2017 concerning Guidelines for Trying Women's Cases in Conflict with the Law.

Factors Affecting Judges' Considerations in Court from Gender Perspective

The gender unfair factor in the consideration of the judge's decision is influenced by three legal aspects, namely: content of law, culture of law, and structure of law.

In terms of the legal structure aspect, gender inequality is indicated by the low level of gender sensitivity within law enforcement agencies, such as

³⁰Devi Yulianti, et.al., "Pembebanan Mut'ah dan Nafkah 'Iddah..", p. 290. Syifa Fachrunisa, et.al., "Judges' Perspectives on the Determination of the Amount of Mut'ah, Childbirth Costs, and Child Sustainance in Divorce Cases (The Study on the Court's Decision Number 808/Pdt.G/2021/Pa. Kab. Kdr)," *El-USrah: Jurnal Hukum Keluarga* 6, No. 1 (2023).

³¹Musdah Mulia, ed. *Keadilan dan Kesetaraan Gender Perspektif Islam*, Tim Pemberdayaan Perempuan Bidang Agama Departemen Agama Republik Indonesia, Jakarta: Rineka Cipta, 2009, p. 21.

³²Fitriyani, *Perspektif Keadilan Gender Pertimbangan Hakim dalam Putusan Perkara Nushūz*, Jakarta: Publika Indonesia Utama, 2022, p. 217.

³³Mansari dan Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Istri Pasca Perceraian," *Gender Equality: Internasional Journal of Child and Gender Studies* 5, no. 1 (2019), p. 47.

among the police, prosecutors, and judges. Concerning the legal content aspect, legal materials such as laws, regulations, and presidential decrees still do not incorporate gender-biased values. In the realm of legal culture, it is still heavily influenced by patriarchal values, which subsequently receive strong legitimacy through religious interpretations.³⁴

1) Structure of Law

The legal structure concerns law-implementing institutions, the authority of institutions and personnel (law enforcement officers).³⁵ Gender inequality in the legal structure is marked by the low level of gender sensitivity in law enforcement, especially among the police, prosecutors and judges.³⁶ It means that the main problem of the correlation between men and women lies in the unbalanced legal system and structure. An example of a case in the decision of the Kupang Religious High Court No. 009/Pdt.G/2015/PTA.Kp, judges are still gender biased in categorizing wife's *nushūz*. A wife who leaves home is considered *nushūz*, even though the wife's leaves from the house is not without reason. The wife has been verbally divorced, has been expelled and threatened with death, and her husband has married with another woman.

Therefore, in the field of legal structure, it takes courage to emigrate for law enforcers from a textual legal way of thinking to progressive law to present substantive justice.

2) Content of Law

Legal material which includes legal substance is contained in the laws and regulations. The legal material contained in Law no. 1 of 1974 concerning Marriage and the Compilation of Islamic Law, which is often a source of reference for judges, is still limited. Some of the articles still contain patriarchal values that are gender-biased.³⁷ As contained in Article 31 paragraph (1) of Law no. 1 of 1974 in conjunction with 16 of 2019 concerning Marriage "The husband is the head of the house and the wife is the subordinate"³⁸ It can be understood that the husband is in the public sector while the wife is in the domestic sector which causes inequality in the household which tends to be gender-biased.

³⁴Musdah Mulia, *Ensiklopedia Muslimah Reformis, Pokok-Pokok Pemikiran untuk Reinterpretasi dan Aksi*, Jakarta: Dian Rakyat, 2019), p. 348.

³⁵Lutfil Ansori, "Reformasi Penegak Hukum Perspektif Hukum Progresif, *Jurnal Yuridis* 4, no. 2 (2017), p. 150.

³⁶Musdah Mulia, *Ensiklopedia Muslimah Reformis...* " p. 348.

³⁷Zulkifli Ismail, "Kesetaraan Gender Ditinjau dari Sudut Pandang Normatif dan Sosiologis," *SASI* 1, 26, no. 2 (2020), p. 156.

³⁸Article 31, paragraph (3) of Law No. 1 of 1974 on Marriage.

The Compilation of Islamic Law is the onli article that regulates the wife's *nushūz*, is article 84 paragraph (1) to paragraph (4)

- (1) A wife is considered to be *nushūz* when she does not want to carry out her obligations as referred to in Article 83 paragraph (1) except for valid reasons.
- (2) As long as the wife is in a state of *nushūz*, the husband's obligations to his wife in Article 80 paragraph (4) letters a and b do not apply except for the benefit of their children.
- (3) The husband's obligations in paragraph (2) above is applied after the wife is not in the condition of *nushūz* anymore.
- (4) Provisions regarding the presence or absence of *nushūz* from the wife must be based on valid evidence.³⁹

Several articles of *nushūz* in the Compilation of Islamic Law possibly provide opportunities for husbands to carry out arbitrary acts, because there are legal justifications that strengthen it. The husband seems to have absolute rights and can use his right to accuse his wife of committing *nushūz*. In classical books, it is said that *nushūz* is a woman who is suspected of leaving her obligations as a wife because of her hatred for her husband, such as leaving the house without her husband's permission and opposing her husband arrogantly.⁴⁰ In accordance with the case description contained in the decision of the Kupang Religious High Court No. 009/Pdt.G/2015/PTA.Kp that the wife is categorized as having committed *nushūz* because she has left the house they live in together.

3) Culture of Law

Legal culture concerns legal behavior in a society. Aspects of legal culture are still strongly influenced by patriarchal values, then get strong legitimacy from religious interpretations.⁴¹ The religious interpretation consists of two factors: *First*, lack knowledge and understanding of the community about religious values that explain the role and position of women; *Second*, there are still many interpretations of religious teachings that are detrimental to the position and role of women.⁴²

According to the decision of the Kupang Religious High Court, which was examined by the authors, the wife was categorized as having committed *nushūz* because she had left the house without her husband's permission. The

³⁹Presidential Decree No. 1 of 1991, Compilation of Islamic Law, Article 84.

⁴⁰Study of "Kitab Kuning" (FK3), *Wajah Baru Relasi Suami-Istri: Telaah Kitab "Uqud al-Lujjayn*, Yogyakarta: LKiS, 2001), p. 98.

⁴¹Habib Shulton Asnawi et al., *Hak Asasi Manusia di Indonesia; Kajian Terhadap Hak-hak Pendidikan Kaum Perempuan di Indonesia*, in Ni'matul Huda dan Suparman Marzuki (ed.), Yogyakarta: Graduate School of Law UII and UII Press, 2011), p. 139.

⁴²Musdah Mulia, *Ensiklopedia Muslimah Reformis...*, p. 350.

wife left the house because her husband had divorced her verbally, expelled even threatened her with death, and the husband has married another woman through *sirri* way and even has children from his (*sirri*) marriage. Then the judge's consideration can be assessed on the decision of the Kupang Religious High Court No. 009/Pdt.G/2015/PTA.Kp still subordinates women and ignores the values of gender equality.

This is in accordance with the gender construction that has existed so far, especially in Indonesia, which still places men as superior parties and holders of authority, while women as inferior parties, and sometimes become victims of exploitation. Women are conventionally understood as domestic working to take care of children and families who are treated as wives and mothers. Therefore, it is hoped that law enforcement officers will be able to provide an assessment based on sociological considerations to act so that the sense of justice in society can be fulfilled, especially for women.

Conclusion

The results of this study indicate that when giving legal considerations in divorce cases because of the wife's *nushūz*, the judge is less gender-sensitive in taking the legal basis regarding the wife's *nushūz* category, as contained in the judge's considerations on the philosophical aspect, the judge uses textual hadith and the opinion of the fuqaha who are still conservative. For gender bias, judges have not used the opinion of contemporary scholars who are more humanist in categorizing a wife's *nushūz*. The considerations used by the judge in the decision of the *nushūz* case at the Kupang Religious High Court have three aspects, namely: 1) philosophical aspect (legal justice), 2) juridical aspect (legal certainty), and 3) sociological aspect (legal benefits). Three factors cause gender inequality, namely: 1) Structure of law, 2) Content of law, and 3) Culture of law. As the implication, this research is expected that the Supreme Court of the Republic of Indonesia as the highest authority that oversees the Religious High Court, as a place to seek justice for litigants, and judges who are authorized to decide cases pay more attention to the values of gender justice in making decisions, especially related to family law issues, especially the problem of *nushūz*. The limitation of the study is that it only analyzes one case related to the wife's *nushūz* who left the house without her husband's permission so that she does not have the authority to generalize all judges are less gender sensitive. This paper has not discussed gender justice in categorizing a husband's *nushūz*. Subsequent research will discuss gender justice in the decision of divorce cases due to *nushūz* at the Religious High Court in Indonesia, and further studies are needed to accommodate more cases and use combined methods in addition to obtaining more comprehensive results as well as more targeted policies.

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References

Journals and Books

- Abdul Kodir, Faqihuddin, *Qira'ah Mubadalah, Tafsir Untuk Keadilan Gender dalam Islam*, Cet. I; Yogyakarta: IRCiSoD, 2019.
- Adi Putra, Muhammad Habib and Umi Sumbulah, "Memaknai Kembali Konsep Nushūz dalam Kompilasi Hukum Islam Perspektif Gender dan *Maqashid Syari'ah* Jasser Auda," *Jurnal Kesetaraan dan Keadilan Gender* 15, no. 1 (2020), doi.org/10.18860/egalita.v15i1.10179.
- Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, Jakarta: Sinar Grafika, 2011.
- Ansori, Lutfil, "Reformasi Penegak Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2017), doi.org/10.35586/.v4i2.244.
- Asnawi, Habib Shulton, et.al., *Hak Asasi Manusia di Indonesia; Kajian Terhadap Hak-hak Pendidikan Kaum Perempuan di Indonesia, dalam Ni'matul Huda dan Suparman Marzuki* (ed.) Yogyakarta: Pascasarjana FH UII dan FH UII Press, 2011.
- Aziz, Erwati, et.al., "Why are Women Subordinated? The Misrepresentation of the Qur'an in Indonesian Discourse and Practice", *Journal of International Women's Studies*, 6, no. 1 (2020).
- Cammack, Mark E., "*The Indonesia Islamic Judiciary*," In *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. R. Michael Feener and Mark E. Cammack, Massachusetts: Islamic Legal Studies Program Harvard Law School Harvard University Press, 2007.
- Eriyanto, *Analisis Isi: Pengantar Metodologi untuk Penelitian Komunikasi dan Ilmu Sosial Lainnya*, Jakarta: Kencana, 2011.
- Djawas, Mursyid, et.al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi," *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021). DOI: 10.15408/ajis.v21i1.20870.
- Fadhliya Fadhliya, "The Legal Reasoning of Judges Behind Determination of Marriage Itsbat Proposal for Siri Marriage Cases (A Study at the Shariyya Court of Banda Aceh)," *Media Syar'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 23, No. 2 (2021). DOI: <http://dx.doi.org/10.22373/jms.v23i2.9386>.
- Fachrunisa, Syifa, et.al., "Judges' Perspectives on the Determination of the Amount of Mut'ah, Childbirth Costs, and Child Sustenance in Divorce

Fitriyani, et. al.

DOI: 10.22373/sjhc.v7i3.14425

- Cases (The Study on the Court's Decision Number 808/Pdt.G/2021/Pa. Kab. Kdr),” *El-Usrah: Jurnal Hukum Keluarga* 6, No. 1 (2023). DOI: <http://dx.doi.org/10.22373/ujhk.v6i1.15537>.
- Fakih, Mansour, *Menggeser Konsepsi Gender dan Transformasi Sosial*, Yogyakarta: Pustaka Pelajar, 1996.
- Fakih, Mansour, *Analisis Gender dan Transformasi Sosial*, Cet. III; Yogyakarta: LKAJ, 1999.
- Fitriyani, “Putusan Perkara Nusyūz Akibat Kekerasan dalam Rumah Tangga (KDRT): Kajian Sosiologi Hukum,” *Al Izzah: Jurnal Hasil-Hasil Penelitian* 17, no. 1 (2022). Doi.org/10.31332/ai.v0i0.3849
- Fitriyani, *Perspektif Keadilan Gender: Pertimbangan Hakim dalam Putusan Perkara Nushūz*, Jakarta: Publica Indonesia Utama, 2022.
- Handayani, Tutik, “Eksistensi Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga dalam Aktualisasi Konsep Nushūz Fiqh Madani,” *Jurnal Hukum dan Syariah* 3, no. 1 (2012).
- Hermanto, Agus, “Teori Gender dalam Mewujudkan Kesetaraan: Menggagas Fikih Baru,” *Ahkam: Jurnal Hukum Islam* 5, no. 2 (2017). doi.org/10.21274/ahkam.2017.5.2.209-232
- Husein, Muhammad, *Fikih Perempuan Refleksi Kiyai atas Wacana Agama dan Gender*, Yogyakarta: LkiS, 2001.
- Harahap, Ikhwanuddin, “Women's Position in Patriarchal Kinship System,” *Jurnal Ilmiah Peuradeun* 8, No. 1 (2021). DOI: <https://doi.org/10.26811/peuradeun.v8i1.340>.
- Ismail, Zulkifli, “Kesetaraan Gender Ditinjau dari Sudut Pandang Normatif dan Sosiologis,” *SASI* 26, no. 2 (2020).
- Kajian Kitab Kuning (FK3), *Wajah Baru Relasi Suami-Istri: Telaah Kitab “Uqud al-Lujjāyn*, Cet. 1, Yogyakarta: LKiS, (2001).
- Kasim, Fajri M., et.al., “The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective,” *Ahkam: Jurnal Ilmu Syariah* 22, No. 2 (2022). DOI: 10.15408/ajis.v22i2.28747.
- Kusmayanti, Hazar, et.al., The Settlement of Disputes Regarding Division of Joint Property After A Divorce In The Central Aceh Regency,” *Jurnal Ilmiah Islam Futura* 21, No. 1 (2021). DOI: <http://dx.doi.org/10.22373/jiif.v21i2.6599>.
- Law No. 1 of 1974 on Marriage. Presidential Decree No. 1 of 1991, Compilation of Islamic Law.
- Leawoods, Heather, *Gustav Radhruch: An Oextraordinary Legal Philosopher*, in <http://law.wustl.edu/journal/2/p4891leawoods.pdf> Accessed, on 17 July, 2020.
- “Mahkamah Agung Latih Hakim Agar Memahami Perspektif Gender” *Tempo.com*. Accessed, on 18 July 2020.

Fitriyani, et. al.

DOI: 10.22373/sjhc.v7i3.14425

- Mansari and Moriyanti, "Sensitivitas Hakim Terhadap Perlindungan Nafkah Istri Pasca Perceraian," *Gender Equality: International Journal of Child and Gender Studies*, 5, no. 1 (2019). doi:10.22373/equality.v5i1.5377.
- Marzuki, Peter Mahmud, *Penelitian Hukum*, Jakarta: Kencana, 2017.
- Mas, Marwan, "Penguatan Argumentasi Fakta-Fakta Persidangan dan Teori Hukum dalam Putusan Hakim," *Jurnal Yudisial* 5, no. 3 (2012).
- Misran and Maya Sari, "Neglect of the Wife's Obligations due to the Husband's Nushūz (Study of the Interpretation of Imam Al-Thabari on QS Al-Nisa: 128)", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 2 no. 2 (2018) doi.org/10.22373/sjhc.v2i2.4742.
- Mosse, Julia Cever, *Gender dan Pembangunan*, Yogyakarta: Rifka Annisa Women's Crisis Center dan Pustaka Pelajar, (1996).
- Mufidah, *Pengarusutamaan Gender pada Basis Keagamaan, Pendekatan Islam, Struktural dan Konstruksi Sosial*, Malang: UIN Malang Perss, (2009).
- Mulia, Musdah ed., *Keadilan dan Kesetaraan Gender Perspektif Islam*, Jakarta: Rineka Cipta, 2009.
- Mulia, Musdah, *Ensiklopedia Muslimah Reformis, Pokok-Pokok Pemikiran Untuk Reinterpretasi dan Aksi*, Jakarta: Dian Rakyat, (2019).
- Nursalikhah, Ani, "MA Latih Hakim Pahami Perspektif Gender (Supreme Court Trains Judges to Understand Gender Perspectives)", *Republika, co.id*, Accessed, on 18 July 2020.
- Nurlelawati Euis, and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Court of Indonesia," *Al-Jami'ah*, 51, no. 2 (2013).
- Prihatini, Ella S, "Women Who Win in Indonesia: The Impact of Age, Experience, and List Position," *Women's Studies International Forum*, 7, no. 2 (2019).
- Ramdani, Riyan and Firda Nisa Syafithri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah dan Mut'ah dalam Perkara Perceraian di Pengadilan Agama," *ADLIYA: Jurnal Hukum dan Kemanusiaan* 15, no. 1 (2021), doi: 10.15575/adliya.v15i1.11874.
- Ramli, Mohd Anuar, "Gender Analysis in Islamic Jurisprudence," *Journal of Fiqh*, no. 9 (2012).
- Rasjidi, Lili and Ira Rasjidi, *Dasar-Dasar Filsafat dan Teori Hukum*, Bandung: Citra Aditya Bakti, (2001).
- Rifai, Ahmad, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, Jakarta: Sinar Grafika, (2011).
- Rinaldo, Rachel, "Muslim Women, Moral Visions: Globalization and Gender Controversies in Indonesia," *Qualitative Sociology* 34, no. 4 (2011).
- Rofiah, Nur, "Memaknai Perceraian Perkara Halal tapi Paling Dibenci", *Ngaji KGI*, 17 Februari (2021).
- Sharur, Muhammad, *al-Kitab wa Al-Qur'an: Qira'ah Muasirah*, Bairut: ttp, n.d.

Fitriyani, et. al.

DOI: 10.22373/sjhk.v7i3.14425

- Shihab, M. Quraish, *Tafsir al-Misbah; Pesan, Kesan dan Keserasian Al-Qur'an*, Jakarta: Lentera Hati, 2012.
- Subiakto, Henri, *Analisis Isi Siaran Berita Nasional Televisi Republik Indonesia*, FISIP UNAIR: Surabaya, 1990.
- Syed, Jawad, "Reconstruction of Gender in Islamic Thought: Iqbal's Vision of Equal Opportunity," *Women's Studies International Forum*, 32, no. 6 (2009).
- Thariq, Muhammad Aqwan, "*Hak Ex Officio* Hakim: Pertimbangan Hukum Hakim terhadap Pembebanan Nafkah Iddah dan Mut'ah dalam Perkara Cerai Talak Verstek Perspektif *Maqashid Syariah*," *Sakina: Journal of Family Studies* 3, no. 2 (2019).
- Thahira, Zia, and Dwini Handayani, "The Impact of Mother's Gender Preference on Children's Cognitive Ability in Indonesia," *Jurnal Ilmiah Peuradeun* 11, No. 3 (2023). DOI: <https://doi.org/10.26811/peuradeun.v11i3.1008>.
- Turner, Bryan S., *Sosiologi Islam: Suatu Telaah Analitis atas Tesa Sosiologi Weber*, translated by G. A. Ticoalu, Jakarta: Rajawali, 1992.
- Van Huis, Stijn Cornelis, *Islamic Court and Women's Divorce Right in Indonesia: The Case of Cianjur and Bulukumba*, Disertasi Universitas Leiden (2015).
- Wantu, Fance M, "Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan dalam Putusan Hakim di Peradilan Perdata," *Jurnal Dinamika Hukum* 12, no. 3 (2012).
- Wardatun, Atun, and Bianca J. Smit, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna: Journal of Islamic Studies* 24, No. 2 (2020). DOI: <https://doi.org/10.20414/ujs.v24i2.416>.
- Yulianti, Devi et.al., "Pembebanan Mut'ah dan Nafkah 'Iddah pada Perkara Cerai Talak dengan Putusan Verstek," *Mahkamah: Jurnal Kajian Hukum Islam* 5, no. 2, (2020). doi:10.24235/mahkamah.v5i2.7285.