

Jurisprudential Implications for the Right of Mut'ah in Divorce at the Wife's Initiative

Zahrotul Habibah ^{1*}, M. Su'udi Ali ², Ilma Maulana Ahmad ³

¹ Sunan Kalijaga State Islamic University, Yogyakarta, Indonesia. Email: zahrotulhabibah3@gmail.com

² Postgraduate Program, State Islamic University of Madura, Indonesia. Email: oditelagasumekar@gmail.com

³ Sunan Kalijaga State Islamic University, Yogyakarta, Indonesia. Email: ahmadmaulana3120@gmail.com

|| Submitted: Juni 12, 2025 || Accepted: Oktober 17, 2025 || Published: Desember 20, 2025 ||

Abstract :

This research aims to examine the role of jurisprudence in fulfilling the right to mut'ah in divorce cases initiated by the wife, particularly in the context of family law reform. The issue is significant because the obligation to provide mut'ah has traditionally been subjectively limited to divorces initiated by the husband, creating normative constraints for wives who file for divorce. This study employs a juridical-normative research design, using legislative and case approaches to analyze court decisions and legal norms governing mut'ah. The findings demonstrate that jurisprudence plays a strategic role as a legal precedent, a mechanism for filling normative gaps, and a driver of progressive interpretation in family law. The analysis reveals that mut'ah rights may still be granted in wife-initiated divorces when the wife is proven not to be in a state of nusyuz. Furthermore, the study identifies two practical strategies used by wives to obtain mut'ah before the Religious Court, namely by explicitly claiming it in the petitem and through mutual agreement achieved in mediation proceedings. The research contributes to strengthening normative access to mut'ah rights and provides.

Keywords: Mut'ah Rights, Jurisprudence in Family Law, Divorce Initiated by Wife

1. Introduction

Islamic law aims to uphold justice in every aspect of life, including marriage. Not only does Islam regulate marriage practices, but it also addresses the dynamics of divorce to avoid potential harm¹. From a functional perspective, divorce can be a confirmation of the dissolution of the marital bond, leading to consequences regarding the fulfillment of rights and obligations between both parties, namely the former husband and wife². The impact of divorce discussed in this article is the obligation of mut'ah for the husband as a form of remembrance, appreciation, and a way to reduce the psychological and economic burdens faced by the wife after divorce³. Although the authority to divorce is the prerogative of men as heads of families, women still have the right to file for divorce through religious court procedures. In fact, divorces are now predominantly initiated by wives. Data released by the Central Statistics Agency on marriages and divorces by province (incidents) in 2024 states that there were 308,965 divorce lawsuits, while divorce by talak was recorded at 85,652 out of a total of 1,478,302

¹ Abidin Nurdin et al., "The Goal of Islamic Law for Human Benefit: Application of Fiqhiyah Rules in the Field of Economics and Family Law," *El-Usrah: Journal of Family Law* 5, no. 1 (2022), 52-53, <https://doi.org/10.22373/ujhk.v5i1.14665>.

² Muhammad Syaifuddin and Sri Turatmiyah, *Divorce Law* (East Jakarta: Sinar Grafika, 2022), 16.

³ Nadila Ulandari, Salsa Mayzahra, and Suhaila Mumtazah, "Analysis of Mut 'ah Rights in Divorce Filed by the Wife," *Landraad: Journal of Sharia & Business Law* 4, no. 1 (2025), 3, <https://doi.org/https://doi.org/10.59342/jl.v4i1>.

marriages⁴. From this social fact, it is beginning to appear that the authority to divorce has become more balanced, but the sources of divorce conflicts are also becoming more diverse. Some of these sources can even be detrimental to the wife, such as violations of rights, neglect, violence, or injustice that causes psychological abuse.⁵

The high number of divorce cases has opened up debate regarding the limitation of mut'ah rights. The main issue is that Law Number 1 of 1974 concerning marriage does not accommodate mut'ah rights and has resulted in a legal vacuum (*rechtsvacuum*). The legal fact actually appears in the Compilation of Islamic Law (KHI) Article (149), which explicitly regulates the obligation of the former husband to provide appropriate mut'ah to his former wife unless it has been interfered with. The next provision on mut'ah is mentioned in Article (158), which states that the above obligation of mut'ah is only required if the divorce is initiated by the husband.⁶ Implicitly, this article can be interpreted as a subjective restriction of the right to mut'ah, with the result that a wife who files for divorce is not entitled to mut'ah. This rule creates a gender justice gap and leads to inconsistent court rulings because the regulation has not been accommodated. Nevertheless, wives continue to file for divorce as a mechanism to obtain protection from domestic violence, and divorce becomes an option to obtain freedom.⁷

The disharmony between social facts and prevailing norms requires legal system stability. In this case, jurisprudence has an important position in connecting decisions in lower courts. Therefore, this article studies jurisprudence related to marriage practices. The focus of this paper is formulated to answer questions about the role of jurisprudence as a precedent for family law reform and its implications for mut'ah rights in divorces initiated by wives. To measure and fill the research gap, a literature review was conducted using the keywords jurisprudence and mut'ah, which revealed that there had been discussions on similar themes. The role of jurisprudence was discussed by Rasdiyanah in relation to the implications of family law reform, and by Ida Arifin who examined the role of jurisprudence in Supreme Court decisions⁸.

The similarity of the above objects does not mean duplication because some of them correlate jurisprudence in a broad and non-specific role on family law issues and even mut'ah rights issues. This is in contrast to this article, which narrows the discussion to a jurisprudential study of mut'ah rights. Research on mut'ah rights has also been discussed from the perspective of Islamic law and positive law by Wawan et al. Their findings concluded that the provisions on mut'ah alimony in divorce cases do not yet have clear rules.⁹ From this article, it is clear that further research is needed. This article complements the shortcomings of previous research by presenting the implications of judges' decisions in the reform of family law.

Based on what has been described above, this article aims to conduct a jurisprudential study to describe its implications in family law issues related to mut'ah rights. The urgency of this article is not

⁴Central Statistics Agency, "Marriage and Divorce by Province (Incidence) 2024,"., <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMyMwMDAw/nikah-dan-cerai-menurut-provinsi-kejadian-.html?year=2024>.

⁵ Silvia Dwi Kartika, Harmona Daulay, and Ria Manurung, "Divorce Lawsuit as a Resistance Strategy for Female Victims of Domestic Violence in Medan, Binjai, and Deli Serdang," *Malikussaleh Journal of Social and Political Sciences (JSPM)* 6, no. 1 (2025), 105, <https://doi.org/10.29103/jspm.v6i2.21793>.

⁶ "Compilation of Islamic Law in Indonesia" (1991).

⁷ Sri Ayu, Andari Putri, and Qadir Gassing, "Domestic Violence as a Ground for Divorce in the Sungguminasa Religious Court," *Al-Ubudiyah: Journal of Islamic Education and Studies* 5, no. 1 (2024): 116, <https://doi.org/https://doi.org/10.55623/au.v5i1.261>.

⁸ Ryan Fani et al., "The Position of Criminal Case Jurisprudence in Indonesia in Connection with the Concept of Binding Force of Precedent in the Common Law System," *CENDEKIA: Journal of Law, Social & Humanities* 3, no. 1 (2025): 997–1007, <https://doi.org/https://doi.org/10.5281/zenodo.14890279>.

⁹ Wawan Iransyah et al., "Islamic Legal Analysis of the Provisions of Mut'ah Maintenance in Divorce Cases Under Positive Law in Indonesia," *Ulumuddin: Journal of Islamic Sciences* 15, no. 2 (2025): 482, <https://doi.org/https://doi.org/10.47200/ulumuddin.v15i2.2915>.

only to present the jurisprudential implications but also to explain the framework of the practice of norms in accessing mut'ah rights in religious courts. This section is taken from a study of divorce rulings at the Sidoarjo Religious Court, one of the courts in East Java that granted mut'ah rights in 2024. The theoretical contribution of this paper can serve as a reference for family law reform, while in practical terms, it is useful as a strategy for fulfilling mut'ah rights for women who need justice .

2. Method

This study uses a qualitative method with a legal-normative research model, which is applied to examine in depth the practice of granting mut'ah rights in divorce cases filed by wives. The approaches used in this study are the statute approach and the case approach, which enable researchers to examine the relationship between written legal norms and their application in court decisions. The object of the research focuses on jurisprudence or religious court decisions, because mut'ah rights in divorce cases have not been explicitly accommodated in marriage law norms. The case analysed specifically is the decision of the Sidoarjo Religious Court which granted mut'ah rights to wives in divorce cases. This ruling was chosen because it represents progressive judicial practice and provides comprehensive legal considerations in determining mut'ah outside the general normative construct. The type of research used is doctrinal legal research, utilising primary data in the form of legislation, the Compilation of Islamic Law, Supreme Court Circular Letters, Supreme Court Regulations, and relevant jurisprudence.

This research is also supported by secondary data sourced from other religious court decisions and academic literature in the form of scientific articles and books on Islamic family law. The sources of information in this study come from legal documents and court decisions, so it does not directly involve respondents or informants. Court decisions were treated as the main source for tracing patterns of judicial considerations and practices in granting mut'ah rights in divorce cases. The research process was carried out in several stages. The first stage was data collection, which was done by inventorying legal norms and judicial practices related to mut'ah. The next stage was data reduction, which was carried out using source triangulation techniques to ensure the relevance and consistency between norms and rulings. Next, the data was analysed using descriptive-analytical techniques, by describing the judges' legal considerations and relating them to the principles of Islamic family law and developments in jurisprudence. In the final stage, the results of the analysis were interpreted and systematised to answer the research questions.

3. Results and Discussion

3.1. Jurisprudential Position in Family Law

The existence of jurisprudence has an important position because it reflects the process of discovering the law by judges from unclear issues. The term jurisprudence comes from the Latin word *yurisprudentia*, which means knowledge of law (*rechtsgeleerdheid*). Meanwhile, in French, this term is called *jurisprudence*, which refers to final decisions or judicial practices. Terminologically, jurisprudence refers to decisions or legal products produced by judicial institutions that can be used as a reference for judges in lower courts to decide similar cases¹⁰. Thus, jurisprudence serves as a source of law that provides guidance and has moral binding force for other judges in handing down similar decisions. The concise meaning of jurisprudence in the KBBI (Big Indonesian Dictionary) is legal teachings through the judiciary or a collection of judges' decisions¹¹. Another definition in legal review is a collection of previous judges' decisions that are used as a reference in resolving similar cases, especially when an issue is not clearly regulated in the law.

¹⁰ Islamiyati Islamiyati et al., "The Existence of Supreme Court (MA) Jurisprudence in Enforcing Indonesian Islamic Family Law," *Law, Development and Justice Review* 3, no. 1 (2020), 9. <https://doi.org/10.14710/ldjr.v3i1.7349>.

¹¹ "Big Indonesian Dictionary Online," <https://kbbi.kemendikbud.go.id/> , accessed January 15, 2024, <https://kbbi.kemendikbud.go.id/>.

This practice has been known since Ancient Roman times and continues to develop in various legal systems around the world. In Indonesia, jurisprudence has been recognized as a formal source of law since the enactment of Law No. 14 of 1985 on the Supreme Court¹². The legal basis for jurisprudence is written in Article (5) paragraph (1) of Law No. 48 of 2009 concerning Judicial Authority¹³, which essentially instructs judges to accept, adjudicate, and decide cases, and instructs judges to explore, follow, and understand progressive legal values and justice. Therefore, judges must not only adhere to the text of the law, but also pay attention to the laws that are developing in society. One of the judicial powers of judges is to interpret and explain the law as consideration in their decisions. However, not all court decisions can be classified as jurisprudence. A ruling can be called jurisprudence if it reflects justice and is upheld by the Supreme Court¹⁴.

Therefore, jurisprudence in Indonesia has a more limited scope, namely sourced from rulings issued by the Supreme Court of the Republic of Indonesia as the highest judicial institution with the above characteristics. In practice, jurisprudence in Indonesia has a more limited scope, namely originating from decisions issued by the Supreme Court of the Republic of Indonesia as the highest judicial institution with the above characteristics. According to Paulus' notes based on research by the National Law Development Agency (BPHN) in 1994/1995, jurisprudence can be accepted as a source of law for the following reasons¹⁵:

- 1) Judges have an obligation to determine and decide on cases submitted even if there are no rules governing them;
- 2) courts have the function of renewing and developing the law by creating new sources of law;
- 3) there is merit in seeking and upholding justice.

The position of jurisprudence is related to religious courts and contributions to the renewal of family law, one of which is to provide clarity on the provisions of alimony and mut'ah for women after divorce. The termination of marriage does not mean the end of rights and obligations, but rather gives rise to new legal consequences, namely the obligation for the former husband to fulfill the rights of his former wife, including the right to mut'ah. The term mut'ah comes from the Arabic word mata'a, or al-matā', which means something that is used for pleasure. Mut'ah is also interpreted as property given by the former husband to the former wife as a form of consolation or compensation for the divorce¹⁶. Thus, the essence of mut'ah is a memento, a consolation, and/or provisions for a new life for the former wife.

The legal basis for mut'ah in Islam is found in Surah Al-Baqarah Verse (241), which obliges the former husband to give mut'ah to his former wife in a reasonable manner¹⁷.

In addition, mut'ah is regulated in KHI Article (149) and obliges the former husband to give appropriate mut'ah in the form of objects or money, unless the wife has never had sexual relations. This provision does not apply concretely because classical fiqh scholars differ on the obligation of mut'ah. The Maliki school of thought considers it not obligatory, but rather a form of kindness according to the husband's ability based on the meaning of haqqan 'alal muttaqīn in Surah Al-Baqarah Verse (241). Conversely, the Hanafi, Shafi'i, and Hambali schools of thought require mut'ah as a consequence of divorce; the Hanafi

¹² Anugrahdwij, "Understanding Jurisprudence Law and Its History," Postgraduate Program, University of Muhammadiyah North Sumatra (UMSU), 2023, <https://pascasarjana.umsu.ac.id/mengenal-hukum-yurisprudensi-dan-sejarahny/>.

¹³ "Law Number 48 of 2009 concerning Judicial Power".

¹⁴ Adi Rizka Permana, "The Role of Jurisprudence in Building National Law in Indonesia," *Khazanah Multidisciplinary* 2, no. 2 (2021), 77–78, <https://doi.org/10.15575/kl.v2i2.13166>.

¹⁵ Paulus Effendie Lotulung, *The Role of Jurisprudence as a Source of Law* (Jakarta: National Legal Development Agency, Ministry of Justice and Human Rights, Republic of Indonesia, 1998), 6-7.

¹⁶ A Zahri, "Formula for Determining the Amount of Mut'ah and the Time of Submission," Banyuwangi Religious Court, 2023, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/rumus-menetapkan-besar-mut-ah-dan-waktu-menyerahkannya>.

¹⁷ *Qur'an Asy-Syifaa: Memorizing Translation, and Colored Tajweed Tikrar Method*, I (Bandung: Sygma Creative Meia Corp, 2018).

school requires it for wives who have not been consumed and whose dowry has not been determined, while the Shafi'i school requires it only if the divorce was initiated by the husband¹⁸. This opinion is then accommodated by KHI Article (158) as a condition for the obligation of mut'ah to the former husband, first; the dowry has not been determined after the husband and wife have had sexual relations, second; the divorce was initiated by the husband. If these two conditions are not met, Article (159) states that the wife's right to mut'ah is considered sunnah, and Article (160) continues with the amount of mut'ah being adjusted according to the appropriateness and ability of the husband¹⁹. Meanwhile, in this case, the Marriage Law does not discuss the right to mut'ah in its articles, so judges in religious courts refer more to the KHI as a source, so that divorce initiated by the wife or a divorce suit filed by the wife does not meet the requirements for obtaining the right to mut'ah.

This condition raises contradictions in terms of gender justice and individual rights because it indirectly maintains male dominance in determining the fate of marriage and its legal consequences. Divorce initiated by the wife through khulu' cannot be categorized as an act of nusyuz, so Islamic family law must uphold the principles of justice, benefit, and protection of the aggrieved party, regardless of who initiated the divorce²⁰. One of the efforts to reform family law is through laws made by judges, such as jurisprudence Number 02 K/AG/2002 dated December 6, 2003, which states that judges can impose obligations on former husbands in the form of mut'ah and idah for former wives even without a counterclaim. Then, jurisprudence Number 137 K/AG/2007 dated February 6, 2007, states that a wife's divorce suit is not always punished as nusyuz. Therefore, the judge has the ex officio right to punish the husband by ordering him to provide idah maintenance to his ex-wife on the grounds that the wife must undergo the idah period.

3.2. The Urgency and Relevance of Jurisprudence

Case law is an important instrument in the process of legal reform in Indonesia. Legitimacy in case law, which aims to respond to legal vacuums, has implications for the affirmation of existing norms. This function underlies the importance of jurisprudence in the family law system²¹. As issues in family law continue to evolve, existing laws will continue to face challenges of renewal because the law is adaptive, and a slow response will lead to legal gaps, making jurisprudence still relevant. One of the important roles of jurisprudence in legal reform is its ability to respond to new issues that arise in society. Jurisprudence also plays a role in maintaining the harmony of regulations with developments. However, jurisprudence is not free from implementation challenges, as important and potential decisions are not fully followed as legal considerations by lower courts. Nevertheless, jurisprudence remains relevant because it is also useful for refining the judicial system.

Jurisprudence is closely related to the ability of judges to consider decisions. Judges' decisions become a means of legal reform because they have the authority to create judge-made law when there is a legal vacuum²². Jurisprudence functions as an interpretation of the law to be in line with the civil law system by integrating customary law and the Islamic legal system²³. This system requires correlated interpretations, so that repeated decisions by judges in high courts become part of legal reference

¹⁸ Wahbah Az-Zuhaili, Budi Permadi, and Abdul Hayyie Al-Kattani, *Islamic Fiqh Wa Adillatuhu / Wahbah Az-Zuhaili; Translator, Abdul Hayyie Al-Kattani, et al;*, ed. Budi Permadi, Complete Edition (Jakarta: Gema Insani, 2011), 285.

¹⁹ Compilation of Islamic Law in Indonesia.

²⁰ Najichah and Alfian Qodri, "Implications of Divorce Initiatives on Wives' Right to Maintenance," *Journal of Islamic Studies and Humanities* 5, no. 1 (2020), 54.

²¹ Idamatus Solehah, "The Relevance of Jurisprudence as an Instrument for Legal Reform in Indonesia," *YUDHISTIRA: Journal of Jurisprudence, Law and Justice* 2, no. 3 (2024), 52. <https://doi.org/10.59966/yudhistira.v2i3.1675>.

²² Sitti Nurkhaerah, *Optimizing Jurisprudence as a Source of Islamic Law* (Yogyakarta: Pesantren Anwarul Qur'an, 2022), 29.

²³ Najichah, "Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions," *Walisono Law Review (Walrev)* 4, no. 2 (2022), 236-237. <https://doi.org/10.21580/walrev.2022.4.2.13407>.

requirements. Thus, the laws created by judges function as jurisprudence and guidelines for lower court judges because their decisions have successfully interpreted legal gaps .

Another role can also be seen in the formation of family law reforms, where jurisprudence has successfully mediated legal gaps and provided clarity on the rights of wives and the obligations of husbands in matters of alimony after divorce initiated by the wife. Jurisprudence Number 137 K/AG/2007 explicitly considers the wife's right to alimony even if the divorce stems from her lawsuit. This jurisprudence bridges the gap with Supreme Court Circular Letter (Sema) Number 3 of 2018²⁴. The jurisprudence opens up a progressive legal discourse, so that in addition to the Sema, there is also Supreme Court Regulation (Perma) Number 3 of 2017 concerning guidelines for adjudicating cases involving women facing the law. The Perma serves as a generally applicable guideline for all judges in deciding cases, including family law cases. Perma serves as a guideline for judges to provide progressive and gender-equitable considerations, explore legal values, and provide non-discriminatory protection as stated in Article (6)²⁵. This regulation serves as a basis for judges to ensure that the law is not subjective and discriminatory, even if the divorce is initiated by the husband through talak or by the wife through a lawsuit.

3.3. The Role of Jurisprudence Number 137 K/AG/2007 on Divorce on the Wife's Initiative in Obtaining Mut'ah Rights

The role of jurisprudence is significant in filling regulatory gaps, as implied by jurisprudence No. 137 K/AG/2007 as one of the references for family law because since the date of the decision on February 6, 2008, judges have formulated a legal principle stating that a wife who files for divorce is not automatically punished for nusyuz²⁶. If she is not proven to have committed nusyuz, the husband is still obliged to provide idah maintenance because the ex-wife must undergo the istibra' process, which is also in the husband's interest. Based on its nature and position, jurisprudence is divided into four types, namely: fixed jurisprudence, non-fixed jurisprudence, semi-juridical jurisprudence, and administrative jurisprudence. Fixed jurisprudence serves as a guideline for judges in deciding similar cases, while non-fixed jurisprudence is not used as a reference because it is not applied consistently. Semi-jurisprudence applies specifically to petitioners, such as in determining the status of a child, while administrative jurisprudence takes the form of a Supreme Court Circular Letter (SEMA) that is only binding internally within the judiciary²⁷.

SEMA is different from jurisprudence and is an internal policy of the Supreme Court that serves to provide guidance to judges in the administration of justice. Meanwhile, jurisprudence is a court decision that serves as a legal guideline for similar cases to maintain consistency and fairness. However, SEMA can contain jurisprudence to be used as a reference. SEMA Number 03 of 2018 concerning the Results of the Religious Chamber Plenary Session is increasingly binding. This circular letter explains that a wife whose files for divorce are still entitled to idah and mut'ah alimony, as long as she is not proven to have committed nusyuz. This provision reinforces the previous formulation in SEMA Number 07 of 2012, which states that the granting of post-divorce rights such as madhiyah alimony, iddah alimony, mut'ah, and child support does not depend on who filed the lawsuit, but on whether or not there was fault that caused the divorce. The position of jurisprudence is related to religious courts and contributions to the renewal of family law, one of which is in providing clarity on the provision of mut'ah for women after divorce. The implications of jurisprudence Number 137 K/AG/2007 in granting mut'ah rights to wives

²⁴ "Circular Letter Number 2018 Concerning the Implementation of the Formulation of the Results of the 2018 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Courts" (2018).

²⁵ "Supreme Court Regulation of the Republic of Indonesia Number 3 of 2017 Concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law" (2017).

²⁶ "Jurisprudence of the Supreme Court of the Republic of Indonesia 2008".

²⁷ "Jurisprudence," Ambon High Religious Court, Accessed October 6, 2025, <https://www.pta-ambon.go.id/peraturan-kebijakan-undang-undang-surat-edaran/yurisprudence>.

who file for divorce from their husbands were manifested by the Sidoarjo religious court judge in 2024 in settling a divorce case initiated by the wife with decision Number 4367/Pdt.G/2024/PA.Sda and also decision Number 4697/Pdt.G/2024/PA.Sda. These two decisions are concrete evidence that judges do not take mut'ah rights lightly, even if the divorce is filed by a woman.

Women's agencies in divorces that do not occur due to nusyuz are considered to have mut'ah rights, as in case No. 4367/Pdt.G/2024/PA.Sda, which was considered by the judge. The wife's petition did not include a mut'ah claim, but the discussion of mut'ah occurred during the mediation process, which was partially successful due to the divorce. This situation also shows that Perma No. 1 of 2016 concerning mediation procedures in court can assist in the resolution of family disputes in religious courts. During mediation, the husband agreed to provide mut'ah in the amount of Rp. 5,000,000 (five million rupiah), which must be paid before the divorce is finalized. The agreement between the two was then ratified by the judge in the verdict²⁸. This means that this verdict serves as an example that the wife's initiative to file for divorce does not preclude her right to receive mut'ah. The second mut'ah right was obtained by the wife through decision Number 4697/Pdt.G/2024/PA.Sda. The case was filed by the wife, who claimed a mut'ah right of Rp. 20,000,000 (twenty million rupiah). Mediation was attempted but could not be carried out because the defendant never attended the trial. However, the case continued without the defendant's presence based on legal considerations under Article (125) Paragraph (1) HIR, then referring to the opinion of the fiqh expert in the book *Ahkamul Qur'an juz II* page 405. In addition, this case was also considered to have sufficient evidence, so the judge ruled that the mut'ah claim was dismissed because the wife was not proven to be nusyuz based on the legal basis of Sema No. 3 of 2018, therefore, the wife was entitled to receive mut'ah.

The amount of mut'ah was determined by the panel of judges with reference to the opinion of Muhammad Abu Zahro in the book *Al-Ahwal Asy-Syakhsyiah* on page 334. The judge quoted the opinion that the value of mut'ah from the ex-husband is equivalent to one year's maintenance for the ex-wife, starting from the end of the idah. Therefore, the panel of judges granted the plaintiff's claim for mut'ah in the amount of IDR 15,000,000 (fifteen million rupiah), because the former husband worked as a village secretary with a monthly salary of IDR 8,000,000 (eight million rupiah). This lawsuit was partially granted and partially rejected. The judge ruled and issued a verdict granting mut'ah through the lawsuit filed by the wife²⁹. From these two verdicts, the author concludes that the right to mut'ah of an ex-wife in a divorce filed by herself can be considered and considered by the judge by taking into account three things; first, it is proven that there was no nusyuz. Second there is a claim filed by the woman herself. At the end of this paper, the author observes that jurisprudence appears to have successfully reconstructed marriage law. Third, there is an agreement on the consequences of the termination of the marriage, such as child support, idah alimony, and mut'ah.

4. Conclusion

Based on an analysis of jurisprudence and the legal framework under review, this study concludes that a wife who files for divorce retains her right to mut'ah as long as she is not proven to have committed nusyuz. The restriction of the right to mut'ah in the Compilation of Islamic Law, which is only linked to divorce by the husband, is no longer adequate to address the complexity of contemporary domestic conflicts. In this context, jurisprudence plays a strategic role as an instrument of family law reform, particularly through Supreme Court Decision No. 137/K/AG/2007, which emphasises that divorce by lawsuit does not automatically negate the wife's economic rights. This jurisprudence fills a normative void and is reinforced by the Supreme Court's policy through regulations and judicial guidelines, thereby opening up space for judges to determine mut'ah in a more fair and contextual manner. This study also confirms that access to mut'ah rights in divorce by lawsuit can be pursued through two main

²⁸ Directory of Decisions et al., "Case Number: 4367/Pdt.G 2024/PA.Sda," 2024.

²⁹ Directory of Decisions et al., "Case Number: 4697/Pdt.G 2024/PA.Sda," 2024.

mechanisms, namely filing a mut'ah claim in the petition or through an agreement between the parties in the mediation process. These two mechanisms show that the protection of mut'ah rights does not only depend on the initiative of the judge, but also on the legal strategy used by the wife, as long as there are no elements of nusyuz that have been proven legally. As a practical recommendation, this study encourages judges in religious courts to consistently use jurisprudence as a reference in deciding divorce cases, in order to guarantee substantive justice and legal certainty for women after divorce. In addition, it is necessary to strengthen the understanding of the judicial apparatus regarding the function of jurisprudence in the reform of Islamic family law. For further research development, it is recommended that an empirical study be conducted on religious court decisions in various regions to assess the level of consistency in the application of jurisprudence in fulfilling mut'ah rights in divorce cases filed by wives.

Declarations

Author Contribution Statement

This article was written in collaboration with Zahrotul Habibah, the first author, who formulated the concept, developed the research framework, determined the research methods to be used, and wrote the initial draft of the manuscript. The second author, M. Su'udi Ali, provided opinions and suggestions, verified the data, and assisted with data analysis. The third author, Ilma Maulana Ahmad, contributed to the data validation phase, such as checking data availability, reviewing the literature, and assisting with proofreading the manuscript before submission.

Funding Statement

This research did not receive any specific grants from any funding agencies in the public, commercial, or non-profit sectors. If an organization provided non-monetary support (eg, they provided facilities, survey samples, etc.), please mention that the organization supported the research.

Data Availability Statement

The data underlying the research findings can be accessed through the corresponding author upon reasonable request.

Declaration of Interests Statement

The authors declare that they have no financial conflicts of interest or personal relationships that could influence the results reported in this paper. Alternatively, the authors declare the following financial conflicts of interest/personal relationships, which could be considered potential conflicts of interest .

Additional Information

Any questions or requests regarding the research material can be submitted to zahrotulhabibah3@gmail.com.

ORCID

Zahrotul Habibah  <https://orcid.org/0009-0003-1214-7675>

M. Su'udi Ali  <https://orcid.org/0009-0009-5718-8220>

Ilma Maulana Ahmad  <https://orcid.org/0009-0008-1137-5074>

References

Regulations:

Compilation of Islamic Law in Indonesia (1991).
 Law Number 48 of 2009 concerning Judicial Power.
 Jurisprudence of the Supreme Court of the Republic of Indonesia 2008.
 Circular Letter Number 2018 Concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for the Courts (2018).
Qur'an Asy-Syifaa': Memorization, Translation, and Colored Tajweed, Tikrar Method . I. Bandung: Sygma Creative Meia Corp, 2018.

Book:

Az-Zuhaili, Wahbah, Budi Permadi, and Abdul Hayyie Al-Kattani. *Islamic Fiqh Wa Adillatuhu / Wahbah Az-Zuhaili; Translator: Abdul Hayyie Al-Kattani, et al.*; Edited by Budi Permadi. Complete Edition. Jakarta: Gema Insani, 2011.
 Lotulung, Paulus Effendie. *The Role of Jurisprudence as a Source of Law* . Jakarta: National Legal Development Agency, Ministry of Justice and Human Rights, Republic of Indonesia, 1998.
 Nurkhaerah, Sitti. *Optimizing Jurisprudence as a Source of Islamic Law* . Yogyakarta: Pesantren Anwarul Qur'an, 2022.
 Syaifuddin, Muhammad, and Sri Turatmiyah. *Divorce Law* . East Jakarta: Sinar Grafika, 2022.
 Widiarty, Wiwik Sri. *Textbook of Legal Research Methods* . Yogyakarta: Publika Globa Media, 2024.

Journal Article:

Ayu, Sri, Andari Putri, and Qadir Gassing. "Domestic Violence as a Ground for Divorce in the Sungguminasa Religious Court." *Al-Ubudiyyah: Journal of Islamic Education and Studies* 5, no. 1 (2024): 103–16. <https://doi.org/https://doi.org/10.55623/au.v5i1.261>.
 Holili, M. Yunus, and Winarto Winarto. "The Position of Jurisprudence as a Source of Law in Indonesia as an Adherent to the Civil Law System." *COMSERVA: Journal of Research and Community Service* 3, no. 09 (2024): 3718–26. <https://doi.org/10.59141/comserva.v3i09.1140>.
 Iransyah, Wawan, Nia Maulina, Rahmat Hidayat, and Irwan. "Islamic Legal Analysis of the Provisions of Mut'ah Maintenance in Divorce Cases Under Positive Law in Indonesia." *Ulumuddin: Journal of Islamic Sciences* 15, no. 2 (2025): 471–86. <https://doi.org/https://doi.org/10.47200/ulumuddin.v15i2.2915>.
 Islamiyati, Islamiyati, Ery Agus Priyono, Dewi Hendrawati, and Achmad Arief Budiman. "The Existence of Supreme Court (MA) Jurisprudence in Enforcing Indonesian Islamic Family Law." *Law, Development and Justice Review* 3, no. 1 (2020): 1–14. <https://doi.org/10.14710/ldjr.v3i1.7349>.
 Junaedi. "The Role and Existence of Jurisprudence in the Indonesian Legal System." *Lex Laguens: Journal of Law and Justice Studies* 1 (2023): 1–16. <https://doi.org/https://doi.org/10.08221/lexlaguens.v1i1.1>.
 Kartika, Silvia Dwi, Harmona Daulay, and Ria Manurung. "Divorce Lawsuits as a Resistance Strategy for Female Victims of Domestic Violence in Medan, Binjai, and Deli Serdang." *Malikussaleh Journal of Social and Political Sciences (JSPM)* 6, no. 1 (2025). <https://doi.org/10.29103/jspm.v6i2.21793>.
 Nahrowi, and Muhammad Ali Murtadlo. "The Dynamics of Jurisprudence as a Source of Law in the Indonesian Legal System." *Legisia Journal* 16, no. 2 (2024). <https://doi.org/https://doi.org/10.58350/legisia.v16i2.515>.
 Najichah. "Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions." *Walisono Law Review (Walrev)* 4, no. 2 (2022): 221–56. <https://doi.org/10.21580/walrev.2022.4.2.13407>.
 Najichah, and Alfian Qodri. "Implications of Divorce Initiatives on Wives' Maintenance Rights." *Journal of Islamic Studies and Humanities* 5, no. 1 (2020): 42–60. <https://doi.org/http://dx.doi.org/10.21580/jish.v5i1.6960>.
 Nurdin, Abidin, Bustami Usman, Fauzan Samad, and Makmunzir Mukhtar. "The Purpose of Islamic Law for the Benefit of Humanity: Application of Fiqhiyah Principles in the Field of Economics and Family Law." *El-Usrah: Journal of Family Law* 5, no. 1 (2022): 41–55. <https://doi.org/10.22373/ujhk.v5i1.14665>.

- Permana, Adi Rizka. "The Role of Jurisprudence in Building National Law in Indonesia." *Khazanah Multidisiplin* 2, no. 2 (2021): 70–84. <https://doi.org/10.15575/kl.v2i2.13166>.
- Ryan Fani, Ari Wibowo, Ferdian Rinaldi, and Acep Muhammad Rizki. "The Jurisprudential Position of Criminal Cases in Indonesia in Connection with the Concept of Binding Force of Precedent in the Common Law System." *CENDEKIA: Journal of Law, Social & Humanities* 3, no. 1 (2025): 997–1007. <https://doi.org/https://doi.org/10.5281/zenodo.14890279>.
- Solehah, Idamatus. "The Relevance of Jurisprudence as an Instrument for Legal Reform in Indonesia." *YUDHISTIRA: Journal of Jurisprudence, Law and Justice* 2, no. 3 (2024): 50–58. <https://doi.org/10.59966/yudhistira.v2i3.1675>.
- Ulandari, Nadila, Salsa Mayzahra, and Suhaila Mumtazah. "Analysis of Mut'ah Rights in Divorce Filed by the Wife." *Landraad: Journal of Sharia & Business Law* 4, no. 1 (2025): 1–16. <https://doi.org/https://doi.org/10.59342/jl.v4i1>.

Website:

- Anugrahdwi. "Understanding Jurisprudence Law and Its History." Postgraduate Program, University of Muhammadiyah North Sumatra (UMSU), 2023. <https://pascasarjana.umsu.ac.id/mengenal-hukum-yurisprudensi-dan-sejarahny/>.
- Decision, Directory, Supreme Court, Republic of Indonesia, Choirul Hamsyah, MH Advocates, and Advocate Ai. "Case Number: 4697/Pdt.G 2024/PA.Sda," 2024.
- Decisions, Directory, Supreme Court, Republic of Indonesia, Septiyo Rizal Alhabib, and SH Advocate. "Case Number: 4367/Pdt.G 2024/PA.Sda," 2024.
- Big Indonesian Dictionary Online. Accessed January 15, 2024. <https://kbbi.kemendikbud.go.id/>.
- Ambon High Religious Court. "Jurisprudence," nd <https://www.pta-ambon.go.id/peraturan-kebijakan-undang-undang-surat-edaran/yurisprudence>.
- Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 Concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law (2017). <http://urj.uin-malang.ac.id/index.php/jfs/article/view/488%0Ahttp://urj.uin-malang.ac.id/index.php/jfs/article/download/488/363>.
- Statistics, Central Agency. "Marriage and Divorce by Province (Incidence) 2024," <https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMyMwMDAw/nikah-dan-cerai-menurut-provinsi-kejadian-.html?year=2024>.
- Zahri, A. "Formula for Determining the Amount of Mut'ah and the Time of Submission." Banyuwangi Religious Court, 2023. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/rumus-menetapkan-besar-mut-ah-dan-waktu-menyerahkannya>.