

Optimization Of The Convention On Elimination Of All Forms Of Discrimination Against Women In Divorce Cases In Indonesia

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Abstrak

Setelah ratifikasi konvensi penghapusan segala bentuk diskriminasi terhadap perempuan (CEDAW), isu kesetaraan perempuan dan anti diskriminasi terhadap perempuan Indonesia masih belum optimal. Indonesia berusaha untuk mencapai kesetaraan perempuan dan penghapusan diskriminasi terhadap perempuan dalam peraturan perkawinan. Namun, banyak hal masih dapat dikritisi oleh para pemikir terkait keselarasan antara hukum dan realitas yang berkembang di Masyarakat. Peneliti menggunakan metode kualitatif dalam penelitian ini, dengan pengumpulan data berdasarkan prinsip-prinsip fenomenologi yang didasarkan pada Putusan Pengadilan Agama. Artikel ini mencoba memberikan gambaran lengkap mengenai isu penting yang belum tertuang dalam hukum itu sendiri pasca ratifikasi CEDAW dengan undang-undang nomor 7 tahun 1984 dan melihat sejauh mana optimalisasi perancangan peraturan perundang-undangan dan pengembangan parameter berbasis CEDAW. Melalui artikel ini, pembaca dapat mengetahui capaian optimalisasi implementasi Konvensi penghapusan segala bentuk diskriminasi terhadap perempuan akibat gugatan perceraian. Seperti penegasan terhadap hak-hak perempuan dan diskriminasi pasca perceraian masih menjadi catatan penting, khususnya hak ekonomi yang seringkali tidak seimbang.

Abstract

After the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the issue of women's equality and anti-discrimination against Indonesian women has not been optimal. Indonesia tries to achieve women's equality and eliminate discrimination against women in marriage regulations. However, many things can still be criticized by thinkers regarding the harmony between the law and the reality that is developing in society. The researchers use a qualitative method in this article, with data collection based on phenomenological principles based on the ruling of the Religious Court. This article attempts to provide a complete overview of an important issue that has yet to be addressed in the law itself after the ratification of CEDAW with Law Number 7 of 1984 and to see how far the optimization of the design of laws and regulations and the development of indicators/parameters based on CEDAW. Through this article, readers can be aware of the achievement of optimizing the implementation of the Convention on Eliminating all forms of Discrimination against women due to divorce lawsuits. Asserting women's rights and addressing post-divorce discrimination remain important issues, particularly regarding economic rights, which are often unequal.

Keywords: CEDAW, Discrimination Against Women, Divorce Lawsuit, Post-Divorce Rights

INTRODUCTION

Since the Universal Declaration of Human Rights (UDHR) was enacted in 1948, it has explicitly stated the basic principles of humanity that are established and upheld by all people on earth: the maintenance of human dignity and honour.(Nurdin & Athahira, 2022) The problem is that issues of race, class, gender and power in everyday life destroy the essence of human rights.(Wijaksono & Ichsan, 2022) Article 1 of the Universal Declaration of Human Rights states that all humans are born free and have equal dignity and rights.(Fadhilah et al., 2021) They are endowed with reason and conscience and must treat one another brotherly. Indonesia, which also declared itself an independent and sovereign country, in the preamble to the 1945 Constitution, stated that independence is the right of all nations and that colonialism throughout the world must be abolished because it is contrary to humanity and justice.(Bitan et al., 2022)

Indonesia is committed to protecting Human Rights (HAM) in all areas of life. In Law Number 39 of 1999 concerning Human Rights, HAM is a set of rights inherent in the nature and existence of humans as creatures of God Almighty and His gifts, and these rights are respected by the state, laws, Government, and all protected humanity.(Supriyanto, 2014) The reality is that there has been no significant progress in achieving equal respect for the dignity of women in society. The state does not take human rights and women's rights issues seriously, and issues such as systematic gender-based violence, political rights, and labour rights are often violated. Although the trafficking of women and children is still a problem, various forms of human rights violations are still not a focus of attention by the state.

To guarantee women's fundamental rights, the UN established the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, ratified by Indonesia through the Republic of Indonesia and became Law Number 1 of 1984. The Women's Political Rights Law 1953 was ratified in Law No. 68 of 1968.(Maryam, 2012) All ratified conventions protect women in the fight against discrimination, exploitation and human rights violations.

After the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as CEDAW) with Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women by the Indonesian Government in 1984, questions often arise as to why, in its implementation, there are still many discriminatory and gender-based injustices experienced by women everywhere and the state's attitude to protecting women is not yet optimal. CEDAW explicitly mandates ratifying countries to adopt principles and provisions to eliminate disparities, subordination, and acts of discrimination based on sex, which are detrimental to women not only in the civil, political, economic, social, and cultural fields but also in the public and private spheres (Afifah, 2017) but also includes actions in policies and legislation.

CEDAW contains three main principles: First, the Principle of Substantive Equality. This principle is also known as the corrective approach. Its primary concern is to ensure that the law corrects existing inequalities and gives effect to the results by guaranteeing substantive equality of opportunity, access and benefits for women. Second, the Principle of Non-Discrimination. Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, based on equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Based on the recommendation of the UN, violence against women was also added. Third, the Principle of State Obligations.(Chandrawaty, 2020)

In addition, the principle of state obligations also means that the state is the leading actor with commitments and responsibilities. The state in the human rights system has no rights at all and is only given the obligation or responsibility to fulfil the rights guaranteed in human rights instruments. In this context, the state has three obligations: the obligation to respect, the obligation to protect, and the obligation to fulfil.(Wasiati, 2022) The critical point of this Convention is that in addition to defining discrimination, it also includes non-discriminatory actions, which are breakthroughs in improving the conditions of women (corrective actions) in the form of temporary special measures or, also known as affirmative action to accelerate de facto equality to achieve substantive equality and protection of women's health/reproductive functions.(Nahari, 2022)

On July 24, 1984 through Law Number 7 of 1984, Indonesia ratified the principles of CEDAW as part of the country's national law. This means that CEDAW has been made a

formal source of law and has a clear legal position, including Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2003 concerning the Elimination of Domestic Violence, Law Number 13 of 2003 concerning Manpower, Law Number 21 of 2007 concerning Eradication of Trafficking in Persons.(Suri et al., 2020) Related to women's rights that have been guaranteed by CEDAW in Indonesia are First, equal rights in choosing a name, family, profession, and position. Second, equal rights in ownership, management of property. Third, the right to proper reproductive health services, including free services for mothers from pregnancy to breastfeeding.(Siahaan & Fitriani, 2021)

The state has attempted to guarantee human rights by ratifying several international conventions. Society has also seen the enactment of several laws on human rights and women's rights. The same applies to family law, which affects many women's rights. Indonesia has attempted to achieve women's equality and eliminate discrimination against women in marriage regulations. However, thinkers still have much to criticize regarding the harmonization of law with the realities of developing society. Indonesian Muslims have several favourable laws regulating marriage, namely Law Number 1 of 1974, supported by the KHI (Compilation of Islamic Law) and the procedures of Law Number 1 and all administrative laws 7 of 1989.(Khalim et al., 2024) The Indonesian Marriage Law aims to create universal marriage laws for all Indonesians.(Iqbal & Rabiah, 2020) The birth of Law Number 1 of 1974 embodies the Pancasila philosophy and the ideals of national legal development. It also provides a legal basis for marriage that considers its principles and becomes its guideline.

In addition, this law is also a response to family law reform to achieve the goals of legal reform: legal integration, improving the status of women, and resolving problems in a dynamic society. One of the themes that researchers raise is divorce. Legal regulations for divorce are still often questioned in some circles. Divorce gives rise to several economic and social rights for women who ultimately hold the title of widow.

RESEARCH METHOD

Researchers used qualitative research with a case study type.(Rosidah et al., 2023) In data collection, researchers used documentation from various existing documents related to phenomenological principles through the verdict of the Religious Court in Indonesia. For data analysis, researchers conducted multiple readings and studies of books, scientific journals, and other related documents.(Kusumastuti & Khoiron, 2021)

Researchers used this research procedure in several ways, namely (1) choosing a current topic that is the core of the nation's problems; (2) exploring information related to divorce and various things that were relevant to it; (3) determining the focus of research based on the topic being discussed; (4) collecting data sources through various document sources; (5) preparing the presentation of data from the results of documents to be analyzed; and (6) concluding and compiling an analysis of the research results systematically.(Moleong, 2014)

In this article, the researchers used positive and Islamic legal theories as the primary references in arguing. These two theories were chosen because the researcher collaborated with both to produce more comprehensive results. However, favourable and Islamic laws were still Indonesia's main decision-making points.

RESULT AND DISCUSSION

Positive Legal Divorce Process in Indonesia

Divorce has been part for married couples take to end the turmoil that occurs in the household, which is expected to obtain new happiness after the divorce. Divorce occurs in a

marriage and can be caused by not having children, a relationship that is no longer harmonious, and not obtaining peace and tranquillity. So, there is no other way except by divorce to expect happiness in the future.

According to Law Number 1 of 1974, Article 38 of Law Number 1 of 1974 stipulates that divorce is divided into three categories: death, divorce, and court decisions.(Muhsin & Wahid, 2021) The dissolution of a marriage due to the death of one of the parties does not cause a problem because the dissolution of the marriage is based on the decision of God and not on the will of the couple or one of the parties. Divorce is a private matter that does not require government intervention, but to avoid arbitrariness and legal certainty, divorce must go through a judicial institution.(Fakhria, 2018)

In addition to the legal structure of the Marriage Law above, the KHI provides more detailed provisions regarding divorce's basis, procedures, and legal consequences in Articles 113 to 162. For example, Article 113 is the same as Article 38 of the Marriage Law. Article 114 regarding the dissolution of marriage due to divorce can arise due to divorce or the act of talak. Article 115 highlights Article 39 of the Marriage Law, which discusses explicitly the KHI's concerns regarding Muslims. Divorce can only occur in a religious court if the religious court has attempted to reconcile the parties but failed. It is different from the reasons for divorce. The explanation is contained in Article 19 of PP Number 9 of 1975 in conjunction with Article 116 of the KHI. Marriage law in Indonesia has two types of divorce procedures: First, divorce. A divorce is based on the husband's will. Second, talak. A talak against the wife. The law distinguishes between divorce at the will of the husband and divorce at the wife's will because the uniqueness of Islamic law and procedures requires it.(Handayani, 2022)

Suppose there is no more extended compatibility between a man and a woman in a physical and mental marriage to form a happy household and family. In that case, this can be used as a legitimate reason to file a divorce suit in court.(Sarwono, 2024) The wife filed for divorce and submitted an application to the Religious Court to request the dissolution of the marriage between the plaintiff and the defendant.(Azizah, 2012) The effort to obtain a contested divorce is controversial as it relates to the rules of procedure regulated in the Divorce Procedure Law. The process of considering a divorce suit is contradictory because the suit is hostile, and the parties consist of two people with the same legal status.

A lawsuit is a divorce caused by a lawsuit filed in advance by one of the parties to the court, and the divorce occurs with a court decision.(Wirawan, 2020) Law Number 1 of 1974 and Government Regulation Number 9 of 1975 concerning how to file a lawsuit require that there must be court intervention, which in this case is a religious court for a lawsuit filed by a married wife, according to Islam. It is because a Muslim husband does not need a lawsuit, as mentioned earlier, to divorce his wife.

The procedures for divorce cases are regulated in Articles 20 to 36 of the Implementing Regulations, namely Government Regulation Number 9 of 1975, which, in essence, can be summarized as follows: (1) Filing a lawsuit. (2) Summons. (3) Trial. (4) Peace. (5) Decision.(Ulul, 2023) Immediately after the divorce is decided, the Religious Court Clerk submits a copy of the decision letter to the parties or their attorneys by extracting the marriage certificate from each of the concerned husband and wife. The parties or their attorneys then bring the letter to the Marriage Registration Office (PPN) in the area where the wife lives and obtain an extract from the Divorce Register (KBPC).(Akmal, 2012)

In a Khulu' divorce, the legal settlement ends with a talak divorce process. The initial process follows the divorce process, but the case settlement ends with the talak divorce process.(Amrina, 2022) In conventional jurisprudence, although the claims of the Qur'an and

Hadith are not explained, the issue of divorce is considered limited to men only. In Islam, even *khulu'*, women who try to run away, are deemed to admit it. The legal basis for the permissibility of the Qur'an is the Word of Allah in the letter Al-Baqarah verse 29.

Regarding *khulu'*, its legal status is ratified by the state through laws and other regulations, for example in the KHI, it is stated in article 132, paragraph 1 that "A divorce suit is filed by the wife or her attorney at the Religious Court, whose jurisdiction covers the plaintiff's place of residence unless the wife leaves the joint residence without her husband's permission." (Fakhria, 2018) It is the basis that can be used as a basis so that women can sue for various forms of abuse and oppression experienced both physically and psychologically. This divorce guarantees that women have the same rights as men in the institution of marriage and are free from the pressures faced by wives.

Regarding the *iwad* or ransom for a wife who wants to file for divorce, it has not been proven true. Based on the hadith narrated by Ibn Abbas about the wife of Tsabit bin Qais who asked for a divorce and filed for divorce from the Prophet. When a wife is left alone for several months and is not even given physical and emotional support, this is the abuse and violence that is often experienced by many women who file for divorce. The plaintiff's wife must bear the legal and compensation costs listed in the *wash*. It does not make sense if the woman asks for a divorce for reasons such as violence by her husband, neglect, absence for at least six months, or inability to support herself. Therefore, the existence of *Khulu'* which should be able to free women from all obstacles, still causes problems. These problems include several rules in the *Iwad* that have not been considered. KHI regulation states that women cannot obtain the rights that arise in divorce, such as obtaining these rights.

Women's Rights in Divorce Lawsuits in Indonesia

Divorce disputes should provide many rights to women after divorce. The most crucial economic right that cannot be ignored is the right to community property. Community property is property acquired during marriage. According to the provisions of the Marriage Law, if a divorce occurs, the husband and wife are each entitled to half of the joint property as long as no other agreement is specified in the marriage. In a divorce by *talak* and divorce by lawsuit, there are imbalances or differences in post-divorce rights, especially in the financial rights received by the wife. In a divorce by *talak*, Marriage Law Number 1 of 1974 and the KHI regulate in detail the rights that can be obtained by the respondent, namely the wife. (Nasriah et al., 2021)

In article 149, KHI stipulates that a former husband must: (1) Give appropriate *mut'ah* to his ex-wife, either in the form of money or objects, material unless the ex-wife is *qobla dukhul*. (2) Providing maintenance, dowry and *kiswah* to the ex-wife during *iddah* unless the ex-wife has been sentenced to *talak ba'in* or *nusyuz* and is not pregnant. (3) Pay off the dowry still owed in whole and half of *qobla dukhul*. (4) Providing *hadhanah* costs for children who have not reached age 21. (Heniyatun et al., 2020) On the other hand, in cases of contested divorce, the wife does not have full rights to obtain the rights mentioned above after the divorce. In this case, the wife may accept with certain conditions that the defendant is not a dependent because the defendant is obliged to support her in the divorce, and the wife is not *nusyuz* as stated in article 152. (Marzon, 2022)

Islamic law introduces two additional elements to divorce. First, *mahr* is an essential part of marriage in Islam. Issues regarding *mahr* at the time of divorce include the possibility of recovering the unpaid *mahr* from the husband, returning it to the husband, or releasing the wife from the unpaid *mahr*. What happens to the *mahr* depends on the circumstances of the divorce and the specific law governing the dissolution of the marriage. Second, *mata'a* is variously interpreted as a gift to heal grief and as a way to provide long-term support to the

divorced woman. In addition to mahr and *mata'ah*, there are issues related to the economic status of women after divorce, namely their income during the *iddah* period. The statement states that the money paid to women during the waiting period is considered part of their livelihood (*nafkah*) as wives. (Schacht, 2019)

Family law in Islamic countries can be divided into three categories based on the rules regarding women's rights after divorce (economic perspective): First, laws that guarantee women's rights. Namely, laws regarding the payment of mahr and *mata'ah* rules. There is no maximum term or specific form of *mata'ah* specified. Alternatively, in divorce cases, the possibility of compensation by the perpetrator is recognized (a system that is not based on Islamic law). This law occurs in Tunisia, Morocco, Turkey, and several other countries. Second, laws that can protect women's rights regulate the payment of mahr and *mata'ah*, but set limits on the form or amount of *mata'ah*, which is only possible after divorce. This law occurs in Egypt and Sudan. Third, laws that are discriminatory against women are laws that regulate the payment of mahr, namely not recognizing the concept of *mata'ah*. This law occurs in Sri Lanka, Bangladesh, and Pakistan. (Firdawaty, 2017)

Regarding post-divorce maintenance, in all legal systems that require a waiting period after divorce (whether based on Islamic law or otherwise), men are obliged to provide for women during the waiting period or *iddah*. Suppose the woman takes the initiative to divorce or is deemed guilty or she is involved in a sexual relationship outside of marriage. In that case, the right to maintenance during this period can be lost. It also occurs in the case of *mata'ah*. The wife's position in a divorce greatly influences the granting of *mata'ah*. *Mata'ah* can only be granted if the woman is deemed innocent or divorced for unjust reasons. It is different from the dowry that has been agreed upon, both in Islamic law and in law, to be obligatory to be given to the wife after the divorce, both the innocent wife and the "disobedient" (*nusyuz*) wife. (Schneider, 2014)

The thing that needs to be noted from the explanation that has been outlined is the condition of a wife who deserves these financial rights. The policies that have been implemented can provide many benefits for divorced wives. However, the requirement that there be no fault of the wife or the divorce initiative that is not from the wife limits the space to obtain financial rights after divorce. In this case, almost all family laws in Muslim countries give judges authority to determine whether a wife deserves these rights. So, the goal of raising the status and rights of women also depends on the *ijtihad* of judges who have the authority to decide civil cases (family law) in court. (Rosyadi, 2022)

Discrimination Against Women as the Background for Divorce Lawsuits in Indonesian Religious Courts

To understand the background of divorce cases that occur in Indonesia, researchers need to provide an explanation of several samples of divorce decisions in Indonesian Religious Courts, including:

a. Divorce Decision of Temanggung Religious Court (Dated January 11, 2024)

At the beginning of the marriage, the household relationship between Plaintiff and Defendant was good and harmonious; however, since June 2021, the household situation of Plaintiff and Defendant began to become disharmonious due to frequent disputes and quarrels.

The quarrel was caused by: (1) Defendant has never provided maintenance to Plaintiff since June 2021 until now. The defendant last provided maintenance to the Plaintiff in May 2021 for IDR 1,000,000. (2) The Defendant always committed domestic violence against the plaintiff every time they fought. (3) It peaked in December 2022, and there was a quarrel over the same problem. Then, Plaintiff and Defendant lived separately. (4)

The Plaintiff left the defendant and went home to the plaintiff's parents' house in Dusun Xxxxx RT 002 RW 004 Desa Xxxxx, for approximately 11 months. (5) The family has tried to reconcile but has not succeeded. (6) The household conditions of the Plaintiff and Defendant have resulted in the plaintiff no longer being able to continue her marriage with the defendant. It means that the purpose of marriage, namely forming a happy, peaceful, and compassionate family based on the Almighty God, has not been achieved. Therefore, the plaintiff has decided that the marriage between the plaintiff and the defendant is better off ending due to divorce (Vide Article 116 letter (f) Compilation of Islamic Law in conjunction with Article 19 letter (f) PP No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning Marriage).

b. Divorce Decision Sued by Temanggung Religious Court (Dated January 18, 2024)

The Plaintiff and Defendant's household relationship was good and harmonious at the beginning of the marriage. However, since 2008, the Plaintiff and Defendant's household began to falter due to quarrels caused by: (1) Economic problems. The defendant rarely supported the plaintiff because the defendant's income was for the defendant's benefit. (2) The Defendant often committed violence against the plaintiff (hitting, kicking, slapping). (3) The Defendant often got drunk and brought home several other women, resulting in quarrels. (4) That as a result of the quarrel since May 2022, Plaintiff and Defendant have been living apart until now for approximately 1 (one) year and 6 (six) months. The plaintiff left the defendant to live in the plaintiff's parents' house in xxxxxxx village, Wonobojo District, Temanggung Regency. (5) The family has tried to reconcile but has not succeeded. (6) With the household conditions of Plaintiff and Defendant as they are, the quarrels that occurred between Plaintiff and Defendant resulted in plaintiff feeling very tortured both physically and mentally and was no longer able to continue her marriage with defendant, so the purpose of the marriage was not achieved. Therefore, the plaintiff decided that the marriage between the Plaintiff and Defendant would be better off ending due to divorce (Vide Article 116 letter (f) Compilation of Islamic Law in conjunction with Article 19 letter (f) PP No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning Marriage).

c. Divorce Decision of Temanggung Religious Court (Dated January 15, 2024)

The Plaintiff and Defendant's household relationship was good and harmonious at the beginning of the marriage. However, since November 2021, the Plaintiff and Defendant's household conditions began to be disharmonious because of frequent disputes and quarrels. It was caused by: (1) The Defendant was having an affair with another woman. (2) The Defendant has often played online gambling since 2017. (3) It peaked in November 2022 when there was an argument over the same problem. Then, Plaintiff and Defendant lived separately. The defendant left the plaintiff and returned to the defendant's parents' house in Kulon Progo Regency, Yogyakarta for approximately 1 year. (4) The family had tried to reconcile but were unsuccessful. (5) The Plaintiff and Defendant's household conditions resulted in the plaintiff no longer being able to continue her marriage with the defendant, so the marriage's purpose was not achieved. Therefore, the plaintiff thinks that it would be better for the marriage between the plaintiff and the defendant to end due to divorce (Vide Article 116 letter (f) Compilation of Islamic Law in conjunction with Article 19 letter (f) PP No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning Marriage).

From the three divorce cases above, the researcher sees that the background of the divorce lawsuits of wives against their husbands has the same form of discrimination against

women. The wives who should receive financial security often ends up harming her, both physically and mentally. Meanwhile, the religious court judge's decision does not compensate the wives in her divorce lawsuit; she must bear the legal costs. In the end, the wife, as a woman who sues her husband, has an additional new burden in her life, so to sue for unpleasant treatment against the wife, she must go through the realm of criminal law with strong evidence and witnesses, as well as quite expensive legal costs. The law and positive law that apply as an implication of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Indonesia are not yet optimal.

Reflections on Indonesian Women's Financial Rights

The Qur'an takes a clear stance against gender discrimination. The values contained in the Qur'an reject existing discriminatory practices and lead to fairer treatment for women in general. (Fatihaturrohman & Ichsan, 2019) Of course, some observers agree that Islam was one of the first religions in the world to respect women and stipulate that women should be treated as sovereign human beings. (Musa, 2014)

In the previous explanation, Indonesia participated in ratifying the Universal Declaration of Human Rights (UDHR), which led to the birth of Law Number 39 of 1999 concerning Human Rights. The UDHR states that both adult men and women have equal rights in marriage. This right is not limited to the time of marriage but also applies in the event of divorce. (Istrianty & Priambada, 2015)

Regarding divorce, the marriage law in Indonesia gives women the same right to escape from marriage through the divorce process. It can be seen as an attempt to reinterpret the normative language that previously gave men the power to divorce and to provide equal rights for both parties, albeit through different procedures. At least, the values in the Universal Declaration of Human Rights are fulfilled by guaranteeing the rights of divorced and widowed women to a certain standard of living. The emergence of several rights for women, especially economic rights after divorce, provides hope for women to obtain the right to a decent living after divorcing their husbands. Article 25 of the Universal Declaration of Human Rights states that a person has the right to a standard of living adequate for the health and well-being of themselves and their family. (Ihwan et al., 2022)

Article 16(c) of the Convention on the Elimination of Discrimination against Women establishes equal rights and obligations during and after divorce. It is also reinforced by the Human Rights Law Number 39 of 1999 from ratifying the Universal Declaration of Human Rights in 1948. This law states that after the dissolution of a marriage, women have equal rights in all matters relating to living together. Like her ex-husband, she has property, so her children's rights are limited by law. (Putra, 2009)

The problem is the difference in quantity obtained between women who divorce based on their initiative (lawful divorce) and divorce based on the husband's will (talak divorce). Lawful divorce is considered a form of disobedience carried out by the wife to free herself from the bonds of marriage. So, there are several rights that are reduced or not given as their rights when divorced at the will of the husband. In reality, sometimes lawful divorce occurs due to problems not always caused by the wife, such as infidelity from the husband and neglect of the household, or mafqud, namely a husband whose whereabouts are unknown after more than two years.

The formal settlement of disputes in Religious Courts requires the defendants to include all demands regarding divorce, including financial rights, in the lawsuit filed. However, in reality, women focus more on divorce demands without considering the rights that should be obtained. What is expected is the wisdom of the judge as the case decider who has ex-officio rights to be wiser in considering the rights and obligations that both parties should receive. In

addition, the *ijtihad* of judges to decide cases in court based on demands and evidence also dramatically determines the fate of women's rights, especially in financial matters that the plaintiff less considers. Judges, who are also one of the pillars of marriage law, should no longer use charismatic and rigid decisions in determining the verdict but rational and by reality. (Waluyo, 2020)

Post-divorce rights are an effort to empower women's dignity and honour. Initially owned by men, the authority to divorce or divorce began to be interpreted as equal rights between husband and wife. Both have the same opportunity to end the marriage. However, regarding post-divorce rights, especially financial rights for women, there is still a problem due to the imbalance in the number of rights obtained when a wife divorces at her will or her husband's will. This hinders the effective implementation of CEDAW.

Analysis of Judges' Ex-officio Rights on Women's Financial Rights

Rights and authority in Latin use the term "*Ius*" in Dutch use the term "*Rect*" or "*Droit*" in French. In the book "*Inlending tot de studie van het Nederlands Recht*", L. J. van Apeldoorn said that rights are laws connected to a person or a particular legal subject and thus become a power. Meanwhile, *ex-officio*, according to Sudarsono, means because of office or because of office. Furthermore, *ex officio* rights come from Latin, *ambtshalve* in Dutch, which means because of his position, not based on a letter of determination or appointment, nor a request. (Fanani, 2017)

The role of religious courts in divorce cases is not merely to administer or record the occurrence of a divorce between two people who have been bound in marriage marked by the issuance of a divorce certificate. However, if the divorce cannot be avoided, the religious court must provide the fairest decision without harming either party. It also includes several rights that the wife deserves as one of the parties concerned in a divorce case, such as receiving a decision that stipulates *madhiah*, child support, and division of joint property. At this point, Islamic law must be based on revelation and reason, as in the epistemology of Ibn Rushd, to benefit society in general. (Ibad & Khalim, 2022)

To realize the above intention, the Supreme Court has given an order as written in Book II, which clearly states that religious courts can *ex officio* determine the obligation of *iddah* maintenance on a husband for his wife, as long as the wife is not proven to have committed *nusyuz*, and determine the obligation of *mut'ah*. (Dyana & Shidiq, 2019) It is reinforced by Article 41 (c) of the Marriage Law, which states that the court can require the ex-husband to provide living costs and/or determine certain obligations for his ex-wife.

In addition, other efforts that judges can take are to provide sufficient advice and information to the parties, which does not violate the principle that judges must be passive because the parties have determined the scope or extent of the main points of the dispute. Judges only supervise so that the parties implement the regulations stipulated by law. Judges have the right to advise both parties on the case, indicate legal efforts, and provide information to them (Article 132 HIR/156 RBg). It is expected that judges, as wise people, are active in solving problems because what is intended by judicial power in Article 24 of the 1945 Constitution is the power of an independent State to organize trials to uphold law and justice based on Pancasila for the implementation of the Constitution of the Republic of Indonesia. (Hantoro et al., 2017)

The court must provide equal opportunity to the applicant and the respondent in defending and fighting for their rights (equal access rule), including being fair in giving legal enlightenment due to divorce due to *talaq* to the parties. The applicant is often guided in filing the application, but this is not the case for the respondent. For justice, the respondent must also receive equal treatment when the respondent is a layperson in the legal context; the

judge can help obtain his rights by providing sufficient advice and information so that the respondent can claim his rights. The parties must receive the same material legal standards (equal uniformity) and equal protection for their rights by the provisions of material law (equal protection of the law). (Sik, 2016)

Judges can give a financial punishment verdict to the parties considered guilty or *nusyuz* (either husband or wife) according to the minutes received, the trial process, witness statements and the parties. It can be said that the result of a decision in a case in court is the judge's *ijtihad* based on the applicable marriage law and other sources. Before the ratification of the KHI, judges in Indonesian religious courts decided legal cases brought before them mainly based on "classical fiqh texts" as authoritative manuals. Since 1974, judges have been able to rely on classical case law when resolving marriage cases. Therefore, judges' decisions are heavily influenced by their affiliations and beliefs, and their subjective preferences mainly determine what they believe to be the truth. (Jaenudin, 2017) This situation creates ambiguity. The same applies when deciding what rights a wife should receive after a divorce.

Regarding the rights of women sued for divorce or divorce by *talaq*, it can be facilitated by the Circular of the Supreme Court (SEMA) No. 5 of 2021 on the Legal Decision of the Religious Chamber Concerning the law. To fulfil the principle of the best interest of the child (The best interest of the child) and the implementation of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law, against the burden of child support, the wife can file a request for a seizure of the husband's property as a guarantee for the fulfilment of child support and the object of the guarantee is described in detail in the *posita* and *petitum* of the lawsuit, both in the Convention, reconvention or separate lawsuit. However, not all people know this kind of information because of the lack of socialization of the Circular to the community, so that what happens is that women tend to be the disadvantaged party because they tend to accept any decision from the court, even though it is not beneficial for women.

The goal of family law reform, namely improving the status of women, is still an essential debate because marriage law and the institutions responsible have not achieved this primary goal in their implementation. Meanwhile, the legal considerations available to judges in court in resolving cases are regulations rationalized by the state in the form of laws and articles interpreted according to reality. The measurement of human rights is often very formal, based on a constitution and exclusive laws. It does not happen automatically and depends on political and economic power to realize human rights. (Anwar et al., 2024) Creating national and international instruments to uphold and protect human rights is not enough. To implement this, serious efforts are needed from the ruling elite and national governments.

Regarding the rights of women sued for divorce or divorce by *talaq*, it can be facilitated by the Circular of the Supreme Court (SEMA) No. 5 of 2021 on the Legal Decision of the Religious Chamber Concerning the law. To fulfil the principle of the best interest of the child and the implementation of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Facing the Law regarding the burden of child support, the wife can file a request for a seizure of the husband's property as a guarantee for the fulfilment of child support and the object of the guarantee is described in detail in the *posita* and *petitum* of the lawsuit, both in the Convention, reconvention or separate lawsuit. However, not all people know this kind of information because of the lack of socialization of the Circular to the community, so what happens is that women tend to be the disadvantaged party because they tend to accept any decision from the court.

CONCLUSION

Post-divorce rights are an effort to increase the dignity and value of women. The power of divorce or divorce, which was previously only held by men, is now interpreted as equality between men and women. Both have the same opportunity to end the marriage. However, when it comes to post-divorce rights, especially women's economic rights, this is still a problem because if a woman divorces against her will or her husband's will, then the series of rights becomes unbalanced and often causes new problems for women's lives. It is undoubtedly what makes the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Indonesia less than optimal to date. For this reason, the Government needs to carry out a follow-up Convention that gives rise to a new Law that is more optimal in protecting and fulfilling women's rights.

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