Syakhshiyyah
Jurnal Hukum Keluarga Islam

Volume 6, Issue 2, July–December 2026
Syakhshiyyah: Journal of Islamic Family Law
P-ISSN 3032-212X; E-ISSN 2986-5409

Harmonizing *Fiqh* and Positive Law to Advance Gender Justice in Wife-Initiated Divorce: An Analysis of Supreme Court Decision No. 137 K/AG/2007

Harmonisasi Fikih dan Hukum Positif untuk Mewujudkan Keadilan Gender dalam Perceraian atas Inisiatif Istri: Analisis Putusan Mahkamah Agung Nomor 137 K/AG/2007

Helmi Yusuf
UIN Syarif Hidayatullah Jakarta, Indonesia
helmi.yusuf@uinjkt.ac.id

Kamarusdiana
UIN Syarif Hidayatullah Jakarta, Indonesia
kamarusdiana@uinjkt.ac.id

Allan Muhammad
Darussalam Gontor University, Ponorogo, Indonesia
allanmuhammad28@gmail.com

Article History:

DOI: https://doi.org/10.32332/qqpf0b02
Copyright ©2026 Author

Received:16-08-2026	Revised:08-09-2026	Accepted: 07-10-2026	Published: 15-11-2026

Abstract: This research examines the harmonization of *fiqh* and Indonesian positive law in protecting women's post-divorce rights, particularly in cases of divorce by petition, through an analysis of Supreme Court Decision No. 137 K/AG/2007. This study aims to identify the distinctions and common ground between *fiqh* and Indonesian positive law regarding divorce by petition, nusyuz, iddah maintenance, and mut'ah, as well as to evaluate the aforementioned ruling from a gender justice perspective. This study adopts a normative legal research design using statutory, conceptual, and case approaches. The primary legal sources comprise Supreme Court Decision No. 137 K/AG/2007, Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law. Secondary sources include classical and contemporary *fiqh* literature and relevant scholarly articles. The research findings indicate that, from the perspective of *fiqh*, a divorce initiated by the wife cannot automatically be equated with *nusyuz* because the forfeiture of post-divorce rights depends on legal conditions and the proven existence of *nusyuz* behavior. From the perspective of positive law, the ruling establishes that a wife's right to iddah maintenance cannot be denied solely on the basis of her status as the plaintiff;

the forfeiture of this right requires evidence of *nusyuz*. Mut'ah is also examined as part of the broader framework of women's post-divorce economic protection under Indonesian Islamic family law. This harmonization supports gender justice by preventing the loss of women's economic rights simply because they file for divorce.

Keywords: *Fiqh* of Divorce; Indonesian Positive Law; Gender Justice; Divorce by Petition; Nusyuz.

Abstrak: Penelitian ini mengkaji harmonisasi *fiqh* dan hukum positif Indonesia dalam melindungi hak-hak perempuan pasca-perceraian, khususnya dalam kasus perceraian atas permohonan, melalui analisis Putusan Mahkamah Agung Nomor 137 K/AG/2007. Penelitian ini bertujuan untuk mengidentifikasi perbedaan dan kesamaan antara *fiqh* dan hukum positif Indonesia terkait perceraian atas permohonan, *nusyuz*, nafkah *iddah*, dan *mut'ah*, serta mengevaluasi putusan tersebut dari perspektif keadilan gender. Penelitian ini menggunakan desain penelitian hukum normatif dengan pendekatan yuridis, konseptual, dan kasus. Sumber hukum utama meliputi Putusan Mahkamah Agung No. 137 K/AG/2007, Undang-Undang No. 1 Tahun 1974 tentang Perkawinan, Peraturan Pemerintah No. 9 Tahun 1975, dan Kitab Undang-Undang Syariat Islam. Sumber sekunder meliputi literatur *fiqh* klasik dan kontemporer serta artikel ilmiah yang relevan. Temuan penelitian menunjukkan bahwa, dari perspektif *fiqh*, perceraian yang diajukan oleh istri tidak dapat secara otomatis disamakan dengan *nusyuz* karena hilangnya hak-hak pasca-perceraian bergantung pada syarat-syarat hukum dan adanya bukti perilaku *nusyuz*. Dari perspektif hukum positif, putusan tersebut menetapkan bahwa hak istri atas nafkah *iddah* tidak dapat dicabut semata-mata berdasarkan statusnya sebagai penggugat; pencabutan hak ini memerlukan bukti adanya *nusyuz*. *Mut'ah* juga dikaji sebagai bagian dari kerangka yang lebih luas mengenai perlindungan ekonomi perempuan pasca-perceraian berdasarkan hukum keluarga Islam Indonesia. Harmonisasi ini mendukung keadilan gender dengan mencegah hilangnya hak-hak ekonomi perempuan hanya karena mereka mengajukan gugatan cerai.

Kata kunci: Fiqh Perceraian; Hukum Positif Indonesia; Keadilan Gender; Perceraian atas Permohonan; Nusyuz.

A. INTRODUCTION

Divorce in Islamic family law not only results in the legal termination of the marital relationship but also gives rise to further consequences regarding the rights and obligations of the parties, particularly concerning the protection of women following divorce.[1] Two particularly important post-divorce entitlements are iddah

[1] Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010).

maintenance and mut'ah. In *Fiqh*, *iddah* maintenance is understood as the husband's obligation to provide for his former wife's basic needs during the waiting period following divorce, while *mut'ah* is regarded as a gesture of respect and moral compensation for the termination of the marital relationship. Wahbah az-Zuhaili emphasizes that *iddah* maintenance serves to protect women's dignity and provide a sense of security during the transitional period after divorce.[2] This concept is also related to a general principle in Islamic law that a divorced woman remains entitled to proper treatment and must not be left in a socially or economically vulnerable state.[3]

Normatively, Islamic law and Indonesian positive law have established a foundation for the protection of women's rights following divorce.[4] In the context of positive law, Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975 provide the legal framework governing the legal consequences of divorce, including specific obligations that may be imposed on the former husband.[5] In addition, the Compilation of Islamic Law also regulates the obligation to provide *iddah* and *mut'ah* support in divorce cases, specifically as part of the protection afforded to former wives after the marriage ends.[6] Thus, at the normative level (das Sollen), women undergoing the iddah period should receive adequate economic and legal protection.[7]

However, in the practice of religious courts, a serious issue arises when these rights clash with the legal construct of *"nusyuz*," particularly in cases of divorce

[2] Wahbah Az-Zuhaili, *Fiqih Islam Wa Adilatuhu*, Vol. 9, trans. Abdul Hayyie Al-Kattani (Jakarta: Gema Insani, 2021), 156.

[3] Az-Zuhaili, *Fiqh Islam Wa Adilatuhu*, 123.

[4] John R. Bowen, **Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning** (Cambridge: Cambridge University Press, 2003), 200.

[5] Republic of Indonesia, "Law No. 1 of 1974 on Marriage," preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1974; Republic of Indonesia, "Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage," preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1975.

[6] Republic of Indonesia, "Compilation of Islamic Law," Article 149, preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1991; Republic of Indonesia, "Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law," preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1991.

[7] Abd Rahman Dahlan et al., "Women's Post-Divorce Rights in Malaysian and Indonesian Court Decisions," *Ahkam: Journal of Sharia Studies* 23, no. 1 (2023): 191–212, https://doi.org/https://doi.org/10.15408/ajis.v23i1.27967.

initiated by the wife. A wife who files for divorce is often perceived as disobedient or as the cause of the marriage's dissolution, potentially causing her to lose her right to *iddah* maintenance and *mut'ah*. In reality, in many cases, a wife's filing for divorce does not necessarily stem from her disobedience but may be caused by more complex domestic issues, such as failure to provide financial support, prolonged conflict, neglect, or the breakdown of marital harmony.[8] Amir Syarifuddin explains that Islamic marriage law in Indonesia cannot be separated from the interaction between *fiqh* munakahat and positive law. Therefore, its application must consider both religious norms and the demands of justice in society.[9]

The high divorce rate in Indonesia—particularly those initiated by wives—highlights the importance of reconceptualizing the protection of women's economic rights in divorce proceedings. According to data from the Central Statistics Agency (BPS), there were 394,608 divorce cases recorded in Indonesia throughout 2024, of which 308,956 cases (78.3%) were divorce cases initiated by the wife. The high rate of divorce in Indonesia, particularly the prevalence of wife-initiated divorce, highlights the importance of protecting women's economic rights following the dissolution of marriage.[10] According to the Supreme Court's 2025 Annual Report, religious courts received 517,597 divorce cases, comprising 401,948 cases of divorce by petition and 115,649 cases of divorce by talak. This figure indicates that approximately 77.7% of reported divorce cases were initiated by wives. The predominance of divorce by petition underscores the importance of ensuring that women's post-divorce economic rights are not denied merely because they initiate legal proceedings. Thus, approximately 77.7% of the divorce cases filed in the religious court system that year were cases of divorce by petition.[11] The predominance of divorce by petition indicates that discussions regarding women's

[8] Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce," *Islamic Law and Society* 20, no. 3 (2013): 242–71, https://doi.org/10.1163/15685195-0010A0003.

[9] Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and the Marriage Law* (Jakarta: Kencana, 2006), 78.

[10] "KAMISTERY: Love vs. Reality - News and Press Releases - Pasuruan Regency Central Statistics Agency," Pasuruan Regency Central Statistics Agency, accessed September 7, 2026, https://pasuruankab.bps.go.id/id/news/2025/11/07/782/---kamistery--cinta-vs-realita.html.

[11] Supreme Court of the Republic of Indonesia, *2025 Annual Report* (Jakarta, Indonesia: Supreme Court of the Republic of Indonesia, 2025).

economic rights after divorce cannot be treated as a marginal issue. On the contrary, matters concerning iddah maintenance, mut'ah, and the legal construction of " -nusyuz" are directly linked to access to justice for the majority of women who utilize the divorce mechanism within the religious court system.[12]

It is in this context that Supreme Court of the Republic of Indonesia Decision No. 137 K/AG/2007 holds significant importance. The decision affirms that a wife who files for divorce cannot automatically be categorized as nusyuz. Consequently, her right to iddah maintenance cannot be denied solely on the basis of her procedural status as the plaintiff, particularly in the absence of evidence establishing nusyuz. Although the decision does not directly address mut'ah, its reasoning remains relevant to the broader discussion of women's economic rights following divorce.[13] This stance reflects a more progressive interpretation of the law, as the Supreme Court does not merely consider the wife's procedural status as the plaintiff but also prioritizes the burden of proof as the primary basis for determining whether a woman's rights are forfeited following a divorce. Thus, this ruling can be understood as a correction to the tendency in legal practice to oversimplify a wife's filing for divorce as a form of disobedience.[14]

A number of previous studies have discussed *iddah* maintenance and *mut'ah* from various perspectives. Khairilina, for example, specifically addressed the provision of *iddah* maintenance to a wife who files for divorce by analyzing Supreme Court Decision No. 137 K/AG/2007.[15] Heniyatun, Puji Sulistyaningsih, and Siti Anisah also highlight the provision *of mut'ah* and *iddah* maintenance in divorce

[12] "Marriages and Divorces by Province (Incidents), 2025 - Statistical Tables - Central Bureau of Statistics of Indonesia," accessed April 26, 2026, https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/marriage-and-divorce-by-province--incidents---2021.html?year=2021; Supreme Court of the Republic of Indonesia, "Divorce Case Statistics 2022," preprint, Jakarta, Indonesia: Supreme Court of the Republic of Indonesia, 2022.

[13] "JDIH SUPREME COURT OF THE REPUBLIC OF INDONESIA," accessed April 26, 2026, https://jdih.mahkamahagung.go.id/legal-product/137kag2007/detail.

[14] Lilik Andar Yuni and Akhmad Haries, "Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?," *Mazahib: Journal of Islamic Legal Thought* 23, no. 2 (2024): 595–630, https://doi.org/https://doi.org/10.21093/mj.v23i2.7958.

[15] Khairilina, "Provision of Iddah Maintenance to a Wife Filing for Divorce: An Analysis of Supreme Court Decision No. 137K/AG/2007," *Jurnal Tahqiqa: Scientific Journal of Islamic Legal Thought* 15, no. 2 (2021): 1–15, https://doi.org/http://jurnal.stisalhilalsigli.ac.id/index.php/tahqiqa/article/view/3/3.

cases initiated by the wife, emphasizing that these rights are not merely related to legal obligations but also have social and justice dimensions.[16] Meanwhile, Rizki Putra Pratama, Zuraidah Azkia, and A'dawiyah Bt Ismail compared the imposition of *iddah* maintenance and *mut'ah* in divorce cases in Indonesia and Malaysia, thereby demonstrating variations in the application of Islamic family law across different regions.[17]

Other studies also show that the issue of post-divorce alimony cannot be understood solely through the lens of legal texts but must be examined in the context of gender relations, court practices, and the enforcement of rulings. Nida Rafiqa Izzati, for example, highlights the practice of post-divorce *mut'ah* in relation to gender hierarchies within the religious court system.[18] Muhammad Ridwan emphasizes the problem of enforcing religious court rulings regarding *iddah* and *mut'ah* maintenance, demonstrating that the recognition of rights in court rulings does not always correspond to the actual fulfillment of those rights.[19] This perspective aligns with the research by John L. Esposito and Natana J. DeLong-Bas, who observe that Muslim family law often serves as a crucial arena for discussing the relationship between religious norms, social structures, and women's rights.[20]

Nevertheless, an area of academic inquiry that still needs to be strengthened is the analysis of Supreme Court Decision No. 137 K/AG/2007 as a progressive precedent in reconstructing the relationship between divorce by petition, *nusyuz*, *iddah* maintenance, and *mut'ah*. Previous studies have generally examined the status of iddah maintenance within Indonesian positive law. However, limited attention has been given to the role of Supreme Court jurisprudence in bridging

[16] Heniyatun, Puji Sulistyaningsih, and Siti Anisah, "The Provision of Mut'ah and Iddah Maintenance in Divorce Cases," *Profetika: Journal of Islamic Studies* 21, no. 1 (2020): 39–59, https://doi.org/https://doi.org/10.23917/profetika.v21i1.11647.

[17] Rizki Putra Pratama, Zuraidah Azkia, and A'Dawiyah Bt Ismail, "The Imposition of Iddah Maintenance and Mut'ah in Divorce Cases: A Review of Islamic Law in Indonesia and Malaysia," *Usroh: Journal of Islamic Family Law* 7, nos. 11–26 (2023), https://doi.org/10.19109/ujhki.v7i1.17738.

[18] Nida Rafiqa Izzati, "Post-Divorce Mut'ah: The Reinforcement of Gender Hierarchies in the Practice of Religious Courts," *Usraty: Journal of Islamic Family Law* 3, no. 1 (2025): 75–86, https://doi.org/https://doi.org/10.30983/usraty.v3i1.8844.

[19] Uhammad Ridwan, "Enforcement of Religious Court Rulings Regarding Iddah and Mut'ah Alimony," *USM Law Review* 1, no. 2 (2018): 224–47, https://doi.org/10.26623/julr.v1i2.2255.

[20] John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law*, 2nd ed. (Syracuse, NY: Syracuse University Press, 2001), 205.

classical *fiqh*, national legislation, and the principle of women's protection. In fact, within the context of Indonesian Islamic family law, jurisprudence can serve as a vital bridge when normative texts do not fully address concrete problems in judicial practice.[21]

This article takes the position that *iddah* maintenance and *mut'ah* should be interpreted not only as normative obligations in *fiqh* but also as instruments of legal protection for women following divorce. This interpretation is crucial because Islamic family law in Indonesia exists at the intersection of *fiqh* norms, statutory regulations, the Compilation of Islamic Law, and jurisprudential practice. Within this framework, Supreme Court Decision No. 137 K/AG/2007 should be understood not merely as an individual ruling but also as a judicial precedent that contributes to the development of Indonesian Islamic family law. This decision demonstrates that a wife's status as the plaintiff in a divorce case does not automatically nullify her economic rights following the divorce, as *nusyuz* must be proven concretely—not merely assumed based on the wife's procedural position as the plaintiff.[22]

Based on this background, this article examines the harmonization of Islamic jurisprudence and Indonesian positive law in protecting women's rights in wife-initiated divorce cases, with Supreme Court Decision No. 137 K/AG/2007 as its primary object of analysis. This study adopts a prescriptive-analytical normative legal research design to examine the legal norms governing iddah maintenance, mut'ah, nusyuz, and divorce by petition, as well as their application in the Supreme Court's legal reasoning.[23] The research employs three approaches: the statutory approach, the case approach, and the conceptual approach. In addition, a gender justice framework is used to identify potential forms of marginalization, subordination, and stereotyping of women within the legal constructs of divorce by petition and nusyuz.[24] Primary legal materials comprise Supreme Court Decision No. 137 K/AG/2007, Law No. 1 of 1974 on Marriage, Government Regulation No. 9

[21] Neng Djubaedah, Sulaikin Lubis, and Farida Prihatini, *Islamic Marriage Law in Indonesia* (Jakarta: Hecca Mitra Utama, 2005), 98; Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and the Marriage Law*, 170.

[22] "JDIH SUPREME COURT OF THE REPUBLIC OF INDONESIA."

[23] Peter Mahmud Marzuki, *Legal Research*, 16th ed. (Jakarta: Kencana, 2021), 133–58.

[24] Mansour Fakih, *Gender Analysis and Social Transformation*, 15th ed. (Yogyakarta: INSIST Press, 2016).

of 1975, the Compilation of Islamic Law, and relevant Supreme Court regulations.[25] Secondary legal materials include classical and contemporary fiqh literature, books on Islamic family law, and national and international scholarly articles addressing divorce, nusyuz, women's post-divorce rights, and gender justice. These materials were collected through library research and document analysis, then examined qualitatively using legal interpretation and comparative analysis of the legal frameworks found in fiqh, Indonesian positive law, and the Supreme Court's legal reasoning. Through this analysis, the study seeks to identify the differences and common ground between the fiqh concept of nusyuz and Indonesian positive law, as well as to assess the extent to which their harmonization in Supreme Court Decision No. 137 K/AG/2007 contributes to gender justice for women in wife-initiated divorce cases.

B. RESULTS AND DISCUSSION

Supreme Court Decision No. 137 K/AG/2007 and the Status of Women in Divorce Cases

Supreme Court Decision No. 137 K/AG/2007 concerns a divorce case filed by Maswanih binti H. Asmawi as the Petitioner in Cassation—originally the Plaintiff/Appellant—and Jahrudin bin H. Sapi'i as the Respondent in Cassation—originally the Defendant/Appellee. The parties were married on November 20, 1984, and had three children during their marriage. Based on the facts set forth in the decision, since 2001 the parties' marital life had been marked by disharmony characterized by disputes and arguments. During these disputes, the Respondent was alleged to have frequently used abusive language and threatened the Plaintiff with sharp weapons that could endanger the safety of the Plaintiff and the children. Furthermore, for approximately two years prior to the filing of the lawsuit, the Defendant failed to provide financial support to the Plaintiff. These circumstances compelled the Plaintiff to work to help meet the household's needs and ultimately led her to file for divorce in the Bekasi Religious Court.[26] These facts are significant

[25] Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and the Marriage Law*, 201; "JDIH SUPREME COURT OF THE REPUBLIC OF INDONESIA."

[26] Supreme Court of the Republic of Indonesia, *Case Law of the Supreme Court of the Republic of Indonesia for the Year 2008* (Jakarta: Supreme Court of the Republic of Indonesia, 2008), 225–29.

because they demonstrate that a wife's initiative to seek divorce does not occur in a vacuum but is linked to her concrete experiences within the marriage. Studies on women in the Religious Courts also indicate that women utilize the courts not merely to end a marriage but as a legal mechanism to resolve marital issues and advocate for their interests as legal subjects.[27]

At the first instance, the Bekasi Religious Court, through Decision No. 688/Pdt.G/2005/PA.Bks dated August 25, 2005, granted the petition and issued a first-degree irrevocable divorce (talak satu *bā'in ṣughrā)* from the Defendant to the Plaintiff. That decision was subsequently overturned by the Bandung High Religious Court through Decision No. 112/Pdt.G/2006/PTA.Bdg dated November 28, 2006, which declared the Plaintiff's lawsuit inadmissible (*niet ontvankelijk verklaard*). At the cassation level, the Supreme Court overturned the decision of the Bandung High Religious Court and adjudicated the case itself. The Supreme Court granted the Plaintiff's claim, pronounced a first *bā'in ṣughrā* divorce, ordered the Defendant to provide iddah maintenance to the Plaintiff in the amount of Rp1,000,000.00, and imposed an obligation to provide maintenance for the three children of at least Rp500,000.00 per month until they reach adulthood.[28] This ruling subsequently garnered attention in academic circles as it became an important reference regarding the award of iddah maintenance in divorce cases initiated by the wife.[29]

The most significant consideration in this ruling lies in how the Supreme Court distinguished the wife's status as the party filing for divorce from the concept *of nusyuz*. The Supreme Court established the legal principle (a wife who files for divorce is not automatically deemed to be *in a state of nusyuz*). When *nusyuz* is not proven, the judge may, *ex officio*, order the former husband to pay iddah maintenance because the wife must still undergo the iddah period one of the purposes of which is *istibrā'* and this also concerns the interests of the former

[27] Nurlaelawati, "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce"; Mohamad Abdun Nasir, "Islamic Law and the Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia," *Asian Journal of Social Science* 44, nos. 1–2 (2016): 78–103, https://doi.org/https://doi.org/10.1163/15685314-04401006.

[28] Supreme Court of the Republic of Indonesia, *Case Law of the Supreme Court of the Republic of Indonesia, 2008*, 225–29.

[29] Khairilina, "Provision of Iddah Maintenance to a Wife Filing for Divorce: An Analysis of Supreme Court Decision No. 137K/AG/2007."

husband.[30] Under this framework, the exercise of the procedural right to file for divorce is not automatically considered evidence of a breach of marital obligations by the wife. In a broader context, the judge's authority and discretion indeed play a crucial role in bridging family law norms with the need to protect women.[31]

Women's presence in such cases is therefore not merely seen as recipients of the legal consequences of divorce, but as active legal subjects who utilize the judicial system to exit a marital relationship that, according to the facts of the case, has been marked by neglect of spousal support, disputes, and threats to their safety. This perspective aligns with the findings of Euis Nurlaelawati, which indicate that the increasing use of Religious Courts by women demonstrates the capacity of Indonesian Muslim women to act as *legal actors*, even as they continue to face social and legal constructs that may limit their position.[32] Mohamad Abdun Nasir also views *judicial divorce* as a space that women can utilize to respond to imbalanced marital relationships.[33] Thus, the significance of Decision No. 137 K/AG/2007 extends beyond the award of iddah maintenance; it also lies in the recognition that a woman's decision to seek divorce through the courts does not, in and of itself, deprive her of her legal status and rights.

Supreme Court Decision No. 137 K/AG/2007 from the Perspective of *Fiqh*

From the perspective of *fiqh*, the main issue in Supreme Court Decision No. 137 K/AG/2007 concerns the relationship between wife-initiated divorce, *nusyuz*, and the right to maintenance during the *iddah* period. The Qur'an provides the basis for the protection of women during the iddah period, including through Surah al-Ṭalāq [65]: 1 and 6, which regulate the waiting period, place of residence, and the prohibition against causing hardship to a divorced woman. Surah al-Baqarah [2]:

[30] Supreme Court of the Republic of Indonesia, *Case Law of the Supreme Court of the Republic of Indonesia, 2008*, 229.

[31] Ramadhita, Ali Mahrus, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslim Divorces in Indonesia," *Cogent Social Sciences* 9, no. 1 (2023), https://doi.org/10.1080/23311886.2023.2206347; Dahlan et al., "Women's Post-Divorce Rights in Malaysian and Indonesian Court Decisions."

[32] Nurlaelawati, "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce."

[33] Nasir, "Islamic Law and the Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia."

228 also affirms the existence of the iddah period, while Surah al-Baqarah [2]: 236 and 241 serve as the normative basis for the provision *of mut'ah* to women following the dissolution of marriage. Within the *fiqh* framework, iddah maintenance is therefore related not only to the dissolution of the marital bond but also to the legal status of women during the transitional period following divorce. Wahbah az-Zuhaili explains that the impact of divorce on maintenance varies depending on the form of divorce and the woman's circumstances,[34] while 'Abd al-Raḥmān al-Jazīrī points out differences of opinion among the schools of jurisprudence regarding the scope of maintenance for women during the iddah, particularly in the case of *bā'in* divorce.[35] Contemporary discourse on women's rights following divorce also continues to regard iddah maintenance as one of the important consequences of the dissolution of marriage.[36]

Decision No. 137 K/AG/2007 granted a first *bā'in ṣughrā* divorce; therefore, the provision of iddah maintenance to the Plaintiff must be interpreted within the context of these differing *fiqh* perspectives. In the case of a *raj'ī* divorce, the obligation to provide maintenance and housing is relatively widely accepted because the legal marital relationship has not yet fully ended. As for women undergoing the iddah period due to a *bā'in* divorce, scholars differ in their opinions regarding the right to maintenance and housing, especially if the woman is not pregnant.[37] This difference relates, among other things, to the interpretation of QS. al-Ṭalāq [65]: 6 and the hadith of Fāṭimah bint Qays regarding the maintenance of a woman who has been granted *a bā'in divorce*.[38] Thus, from *a fiqh*, the Supreme Court's ruling should not be positioned as the sole interpretation accepted by all schools of thought, but rather as a legal option that finds justification within the spectrum of *fiqh*, regarding the economic protection of women during the iddah.[39]

A more fundamental issue is the relationship between divorce initiated by the wife and *nusyuz*. In the *fiqh* concept of *nusyuz* is not synonymous with a wife's desire

[34] Az-Zuhaili, *Islamic Jurisprudence and Its Evidence*, 123.
[35] 'Abd al-Rahman Al-Jaziri, *Al-Fiqh 'ala al-Madzahib al-Arba'ah* (Kudus: Menara Kudus, 2008), 245.
[36] Dahlan et al., "Women's Post-Divorce Rights in Malaysian and Indonesian Court Decisions."
[37] Az-Zuhaili, *Islamic Jurisprudence and Its Evidence*, 156.
[38] Al-Jaziri, *Islamic Jurisprudence According to the Four Schools of Thought*, 245.
[39] Sayyid Sabiq, *Fiqh al-Sunnah*, Vol. 5 (Jakarta: Republika Penerbit, 2018), 89.

to end the marriage. *Nusyuz* is a category of behavior related to the violation of marital obligations without a justifiable reason. Therefore, a woman's status as the party filing for divorce is not, in and of itself, sufficient to establish *nusyuz*. The Qur'an does not even apply the concept of *nusyuz* exclusively to women. Surah al-Nisā' [4]:34 discusses a wife's *nusyuz*, while Surah al-Nisā' [4]:128 explicitly uses the same term for a husband. Research by Atun Wardatun and Bianca J. Smith indicates that an interpretation of *nusyuz* directed solely at wives risks overlooking the fact that husbands can also neglect their marital obligations.[40] This finding aligns with the study by Fitriyani et al., which indicates that gender bias still exists in the construction *of nusyuz* within the judicial system.[41] Muhammad Habib Adi Putra and Umi Sumbulah also argue for the need to reinterpret the concept *of nusyuz* in the KHI so that the relationship between the rights and obligations of husbands and wives is interpreted more equitably.[42]

From this perspective, the Supreme Court's *ratio decidendi*—which requires proof *of nusyuz* before the right to iddah maintenance is revoked—aligns with the *fiqh* principle ofwhich holds that a legal consequence must be concretely linked to its legal cause. The wife's status as the plaintiff constitutes a procedural position ( ), whereas *nusyuz* is a substantive category requiring an assessment of marital conduct. Equating the two would transform the exercise of the right to access the courts into a form of presumed defiance, even though a divorce petition may arise from the husband's failure to fulfill his obligations. Sayyid Sabiq also frames the issues of maintenance and the consequences of divorce in relation to the specific causes and circumstances underlying the dissolution of the marriage.[43] Contemporary studies on divorce initiated by the wife and a husband's *nusyuz*

[40] Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna* 24, no. 2 (2020): 266–95, https://doi.org/https://doi.org/10.20414/ujis.v24i2.416.

[41] Fitriyani et al., "The Judges' Legal Considerations on Divorce in Nushūz Cases at the Kupang High Religious Court: A Gender Perspective," *Samarah: Journal of Family Law and Islamic Law* 7, no. 3 (2023): 1971–89, https://doi.org/10.22373/sjhk.v7i3.14425.

[42] Muhammad Habib Adi Putra and Umi Sumbulah, "Reinterpreting the Concept of Nusyuz in the Compilation of Islamic Law from a Gender Perspective and Jasser Auda's Maqashid al-Sharia," *Egalita: Journal of Gender Equality and Justice* 15, no. 1 (2020): 42–60, https://doi.org/10.18860/egalita.v15i1.10179.

[43] Sabiq, *Fiqh al-Sunnah*, Vol. 5, 89.

further reinforce the view that the party initiating the divorce cannot automatically be equated with the party committing a violation within the marriage.[44] Thus, from the perspective of *fiqh*, the strength of the Supreme Court's ruling lies in its rejection of the assumption that every wife who requests a divorce is a woman who *is nusyuz*.

Meanwhile, *mut'ah* must be interpreted with greater caution in this ruling. Supreme Court Decision No. 137 K/AG/2007 specifically grants iddah maintenance and does not mention *mut'ah* in its ruling.[45] Therefore, *mut'ah* should not be construed as a right directly granted by this decision. However, from a *fiqh* perspective, *mut'ah* remains relevant in the analysis of post-divorce protection for women because Quranic verses al-Baqarah [2]: 236 and 241 contain the principle of providing appropriate support to divorced women. Subsequent developments in judicial practice have linked iddah maintenance and *mut'ah* as part of the economic consequences of divorce, as demonstrated by the research of Heniyatun, Puji Sulistyaningsih, and Siti Anisah.[46] A study by Nida Rafiqa Izzati also indicates that *mut'ah* remains a significant issue in the relationship between post-divorce economic protection and gender construction within the Religious Courts.[47]

Supreme Court Decision No. 137 K/AG/2007 from the Perspective of Indonesian Positive Law

From the perspective of Indonesian positive law, Supreme Court Decision No. 137 K/AG/2007 illustrates the interplay between the provisions of the Marriage Law, the Compilation of Islamic Law, and the judge's discretion in providing protection to a former wife. Article 41(c) of Law No. 1 of 1974 on Marriage grants the court the authority to require a former husband to provide maintenance and/or to impose certain obligations on a former wife. On the other hand, Article 149 of the Compilation of Islamic Law (KHI) governs the consequences of the dissolution of

[44] Wardatun and Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage."

[45] Supreme Court of the Republic of Indonesia, *Case Law of the Supreme Court of the Republic of Indonesia, 2008*, 225–29.

[46] Heniyatun, Sulistyaningsih, and Anisah, "The Granting of Mut'ah and Iddah Maintenance in Divorce Cases."

[47] Izzati, "Post-Divorce Mut'ah: The Reinforcement of Gender Hierarchies in the Practice of Religious Courts."

marriage "due to divorce (talak)," including the obligation to provide *mut'ah*, maintenance (nafkah), *housing (maskan)*, and *clothing (kiswah)* during the iddah period under specified conditions. Article 152 of the KHI further stipulates that a former wife is entitled to receive iddah maintenance from her former husband unless she *is nusyuz*.[48] This provision demonstrates that nusyuz, rather than the mere procedural status of being the plaintiff, is a crucial factor in determining entitlement to iddah maintenance. This regulation must also be viewed within the context of the development of Indonesia's Islamic family law system, which integrates statutory norms with the institutions of the Religious Courts.[49]

Decision No. 137 K/AG/2007 can be understood as a form of judicial interpretation, as the normative formulation of the Indonesian Islamic Family Law (KHI) had not yet explicitly provided a comprehensive framework regarding the economic rights of a former wife in a divorce initiated by the husband. The Supreme Court did not merely interpret Article 149 of the KHI literally based on who initiated the divorce, but linked it to Article 41 of the Marriage Law as well as the concrete fact that the wife was not proven to *be nusyuz*. This approach demonstrates a shift from a purely formal interpretation toward a more substantive consideration. In Indonesian Islamic family law, the relationship between *fiqh*, the KHI, and judicial practice does not always operate mechanically. Euis Nurlaelawati points out that judges in the Religious Courts have historically navigated a dynamic relationship between the KHI and *fiqh* literature when adjudicating specific family matters.[50] Cammack and Feener also note that the Religious Courts have evolved as a judicial institution that bridges Islamic legal traditions with the national legal framework.[51] Recent developments even indicate that the reform of Indonesian family law is

[48] Republic of Indonesia, "Law No. 1 of 1974 on Marriage"; Republic of Indonesia, "Compilation of Islamic Law," Article 149.

[49] Mark E. Cammack and R. Michael Feener, "The Islamic Legal System in Indonesia," *Pacific Rim Law & Policy Journal* 21, no. 1 (2012): 13–42, https://doi.org/10.4324/9781315251738.

[50] Nurlaelawati, *Modernization, Tradition, and Identity: The Compilation of Islamic Law and Legal Practice in the Indonesian Religious Courts*, 131–60.

[51] Cammack and Feener, "The Islamic Legal System in Indonesia."

taking place not only through legislation but also, significantly, through Supreme Court rulings and guidelines.[52]

The significance of these rulings becomes even more apparent when viewed within the context of judicial policy developments after 2007. The Supreme Court issued PERMA No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in the Legal System, which establishes respect for human dignity, nondiscrimination, gender equality, equality before the law, justice, public interest, and legal certainty as the principles for adjudicating cases involving women.[53] This regulation requires judges to identify unequal treatment and ensure women's access to justice. Thus, the orientation previously evident in Decision No. 137 K/AG/2007 gained a more explicit institutional framework a decade later. This development aligns with academic attention to the importance of gender sensitivity in judges' deliberations within the Religious Courts.[54]

Subsequent developments were further solidified through the Religious Chamber's Guidelines in SEMA No. 3 of 2018. These guidelines state that, in accordance with PERMA No. 3 of 2017, a wife in a divorce case may be granted *mut'ah* and iddah maintenance provided she is not proven *to be nusyuz*.[55] This ruling is significant because it expands the scope of protection established in Decision No. 137 K/AG/2007. While the 2007 decision directly granted iddah maintenance, SEMA No. 3 of 2018 explicitly combines iddah maintenance and mut'ah in cases of divorce by petition. A study by Wirastri and van Huis indicates that Supreme Court guidelines and judicial decisions serve as crucial channels for reforming Islamic family law following a stagnation in legislative changes.[56] A study

[52] Theresia Dyah Wirastri and Stijn Cornelis van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *Ahkam: Journal of Sharia Studies* 24, no. 2 (2024): 215–32, https://doi.org/10.15408/ajis.v24i2.38424.

[53] Supreme Court of the Republic of Indonesia, *Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law, Specifically Articles 2–4* (Jakarta: Supreme Court of the Republic of Indonesia, 2017).

[54] Euis Nurlaelawati and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia," *Al-Jāmi'ah: Journal of Islamic Studies* 51, no. 2 (2013): 247–78, https://doi.org/10.14421/ajis.2013.512.247-278.

[55] Supreme Court of the Republic of Indonesia, *Supreme Court Circular No. 3 of 2018, Religious Chamber Guidelines, Point III.A.3* (Jakarta: Supreme Court of the Republic of Indonesia, 2018).

[56] Wirastri and Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms."

by Dahlan et al. also highlights the significance of Indonesian judges' *ex officio* authority in granting post-divorce rights to women.[57]

However, the existence of legal norms does not in and of itself guarantee the realization of women's rights. Research by Lilik Andar Yuni and Akhmad Haries on the practices of the Religious Courts indicates that the fulfillment of women's post-divorce rights still faces challenges, including *default* judgments, women's limited knowledge of their rights, differing interpretations of *"nusyuz*," and judges' insufficient gender sensitivity.[58] A study by Stijn van Huis also indicates that women may find themselves in a weak bargaining position when advocating for the fulfillment of post-divorce alimony, particularly when court rulings clash with social realities and legal pluralism outside the courtroom.[59] A study on the protection of women and children after divorce in the Aceh Sharia Court also highlights the importance of the role of judges and the legal structure in ensuring that rights recognized by law are truly realized.[60]

The Intersection of *Fiqh* (and Positive Law) in the Protection of Women's Economic Rights

The harmonization of *fiqh* and positive law in Decision No. 137 K/AG/2007 should not be understood as a merging of the two normative systems into a single, identical provision. *Fiqh* and positive law have different starting points. *Fiqh* addresses issues such as iddah maintenance, *mut'ah*, divorce (talak), and *nusyuz* based on a normative framework developed through the Qur'an, hadith, and the ijtihad of the fuqaha, whereas positive law situates these matters within the structure of legislation, procedural law, rules of evidence, and the institutional authority of judges. However, both can converge on the same goal: ensuring that the

[57] Dahlan et al., "Women's Post-Divorce Rights in Malaysian and Indonesian Court Decisions."

[58] Yuni and Haries, "Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?"

[59] Stijn Cornelis van Huis, "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance," *Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2024): 1–26, https://doi.org/10.54828/ijsls.2024v4n1.4.

[60] Fajri M. Kasim et al., "The Protection of Women and Children After Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Journal of Sharia Studies* 22, no. 2 (2022): 411–32, https://doi.org/https://doi.org/10.15408/ajis.v22i2.28747.

legal consequences of divorce are determined based on actual circumstances and do not result in unjustified harm to either party. Amir Syarifuddin explains that Indonesian Islamic marriage law has essentially evolved through the interaction between *fiqh* of marriage and national marriage law.[61] Euis Nurlaelawati highlights a similar dialogue between the KHI, *fiqh* texts, and court practice.[62] Bowen even points out that the issue of equality in divorce in Indonesia cannot be understood solely through normative texts but must be viewed in light of how the law is interpreted and applied by judicial institutions.[63]

The first point of harmonization lies in the concept *of nusyuz*. The Supreme Court does not eliminate the concept of nusyuz, which is recognized in both *fiqh* and the KHI. Rather, *nusyuz* is retained as a factor that can influence the right to alimony. What has changed is the method of determining its existence. A woman's status as the plaintiff cannot automatically serve as evidence *of nusyuz*; there must be facts demonstrating a breach of marital obligations. This construction integrates the substantive concept of nusyuz in *fiqh* with the principle of burden of proof in positive law. Wardatun and Smith highlight the importance of interpreting *nusyuz* reciprocally and not attributing it solely to women.[64] The study by Fitriyani et al. also demonstrates that bias in the categorization *of nusyuz* has the potential to affect the ability of court rulings to achieve gender justice.[65] Therefore, a reinterpretation *of nusyuz* within a framework of equality is relevant to the development of Indonesian Islamic family law.[66]

A second point of harmonization is evident in the economic protection of women through iddah maintenance. From the perspective of *fiqh*, maintenance during the iddah is related to the legal consequences of divorce and the

[61] Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and the Marriage Law*, 78.

[62] Nurlaelawati, *"Modernization, Tradition, and Identity: The Compilation of Islamic Law and Legal Practice in Indonesian Religious Courts"*, 131–60.

[63] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, 200–228.

[64] Wardatun and Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage."

[65] Fitriyani et al., "Judges' Legal Considerations on Divorce in Nushūz Cases at the Kupang High Religious Court: A Gender Perspective."

[66] Putra and Sumbulah, "Reinterpreting the Concept of Nushūz in the Compilation of Islamic Law from a Gender Perspective and According to Jasser Auda's Maqashid al-Shari'ah."

circumstances of the former wife; from the perspective of positive law, Article 41(c) of the Marriage Law provides judges with the discretion to determine post-divorce obligations. Decision No. 137 K/AG/2007 reconciled these two frameworks by requiring the former husband to pay iddah maintenance when there is no evidence *of nusyuz*. Subsequent judicial developments, particularly SEMA No. 3 of 2018, further strengthened the framework for protecting women's post-divorce economic rights, including the provision of mut'ah in accordance with the applicable legal conditions. A study by Dahlan et al. demonstrates that iddah maintenance and *mut'ah* constitute key components of women's economic rights following divorce within the practice of Islamic family law.[67] Ramdani and Syafitri also show that the determination of iddah maintenance and *mut'ah* requires judges to make concrete assessments of the parties' circumstances.[68] Meanwhile, van Huis highlights that such normative recognition must be accompanied by the ability of court rulings to genuinely strengthen women's positions after divorce.[69]

From a gender justice perspective, this construction is significant because equating a divorce by petition with *nusyuz* can result in a disproportionate legal burden on women. Mansour Fakih explains that gender injustice can manifest in the form of marginalization, subordination, stereotypes, violence, or unequal burdens.[70] In the context of divorce by petition, the assumption that a woman who files for divorce is a "disobedient" wife is a form of stereotyping that has the potential to produce economic consequences when this stigma is used to deny iddah maintenance. Ramadhita, Mahrus Ali, and Syabbul Bachri demonstrate that Muslim divorce procedures in Indonesia can still give rise to gender inequality and that judicial discretion is necessary to protect women's rights when formal rules result in an unbalanced situation.[71] From a broader perspective, Jawad Syed emphasizes

[67] Dahlan et al., "Women's Post-Divorce Rights in Malaysian and Indonesian Court Decisions."

[68] Riyan Ramdani and Firda Nisa Syafitri, "Determining the Amounts of Madhiyah, Iddah, and Mut'ah Alimony in Divorce Cases in Religious Courts," *Adliya: Journal of Law and Humanity* 15, no. 1 (2021): 37–50, https://doi.org/https://doi.org/10.15575/adliya.v15i1.11874.

[69] Huis, "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance."

[70] Fakih, *Gender Analysis and Social Transformation*, 12–23.

[71] Ramadhita, Mahrus, and Syabbul, "Gender Inequality and Judicial Discretion in Muslim Divorces in Indonesia."

that the construction of gender equality in Muslim societies needs to be developed through a framework that also engages with Islamic legal and ethical thought.[72]

Decision No. 137 K/AG/2007 can be viewed as responsive to this issue because the Supreme Court does not view women solely in terms of their domestic roles, but rather as legal subjects with the right to access the courts. This approach is consistent with Nurlaelawati's research on women as legal actors in the Religious Courts.[73] Nasir's research shows that *judicial divorce* can serve as a means for women to confront dominant power dynamics within marriage.[74] Van Huis's study on women's right to divorce also demonstrates that Indonesia's Islamic courts possess transformative potential in reshaping social norms and creating space for the fulfillment of women's rights, although the outcomes are not always consistent.[75]

Nevertheless, describing this ruling as having a gender justice perspective does not mean that the entire framework of Decision No. 137 K/AG/2007 has resolved the issue of women's rights following divorce. The ruling's disposition directly addresses only iddah maintenance and child support, not *mut'ah*. Furthermore, the amount of iddah maintenance set also indicates that judicial protection of women's economic rights still requires further development regarding standards of adequacy and the effectiveness of its implementation. Research on the amount of post-divorce alimony shows that the determination of the specific amount remains highly dependent on considerations of the economic conditions and concrete circumstances of the parties.[76] Contemporary studies also show that the existence of the KHI, PERMA, SEMA, and case law does not always guarantee the

[72] Jawad Syed, "Reconstruction of Gender in Islamic Thought: Iqbal's Vision of Equal Opportunity," **Women's Studies International Forum** 32, no. 6 (2009): 435–44, https://doi.org/https://doi.org/10.1016/j.wsif.2009.09.005.

[73] Nurlaelawati, "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce."

[74] Nasir, "Islamic Law and the Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia."

[75] Stijn Cornelis van Huis, *Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba* (Leiden: Leiden University, 2015).

[76] Ramdani and Syafitri, "Determining the Amount of Madhiyah, Iddah, and Mut'ah Alimony in Divorce Cases in Religious Courts."

fulfillment of women's rights in court practice.[77] In fact, studies on *mut'ah* indicate that the granting of post-divorce economic rights itself needs to be continually scrutinized so that its implementation does not inadvertently reproduce gender hierarchies.[78]

Thus, the harmonization of *fiqh* and positive law in Supreme Court Decision No. 137 K/AG/2007 operates through three layers. First, the law retains *fiqh* categories such as iddah, *nusyuz*, and the obligation to provide maintenance. Second, these categories are applied through principles of positive law, including the burden of proof, the judge's *ex officio* authority, and the protection of rights. Third, their application is directed toward substantive justice by preventing women from losing their economic rights simply because they exercise their right to file for divorce. Developments through PERMA No. 3 of 2017 and SEMA No. 3 of 2018 subsequently reinforced this direction by making gender equality and the fulfillment of iddah and *mut'ah* maintenance obligations more explicit components of judicial practice.[79] These developments are consistent with the trend of reform in family law through the policies and judicial activism of the Supreme Court.[80] Thus, Decision No. 137 K/AG/2007 remains relevant not merely as an older ruling on iddah maintenance, but as part of the evolving process of Indonesian Islamic family law toward more substantive protection for women.[81]

C. CONCLUSION

Supreme Court Decision No. 137 K/AG/2007 affirms that a wife who files for divorce cannot automatically be categorized as nusyuz. In this case, the wife emerges as a legal subject who exercises her right to seek judicial dissolution of a

[77] Yuni and Haries, "Protection of Women's Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?"

[78] Izzati, "Post-Divorce Mut'ah: The Reinforcement of Gender Hierarchies in the Practice of Religious Courts."

[79] Supreme Court of the Republic of Indonesia, *PERMA No. 3 of 2017* (Jakarta: Supreme Court of the Republic of Indonesia, 2017); Supreme Court of the Republic of Indonesia, *SEMA No. 3 of 2018, Religious Chamber Ruling, Point III.A.3* (Jakarta: Supreme Court of the Republic of Indonesia, 2018).

[80] Wirastri and Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms."

[81] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, 200–228; Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, 181–216.

marriage characterized by conflict, neglect of maintenance obligations, and threats to her safety. The Supreme Court distinguishes between the wife's procedural status as a plaintiff and *nusyuz* as a category of behavior that must be proven; thus, the absence of evidence of *nusyuz* serves as the basis for the award of iddah maintenance.

From the perspective of *fiqh*, this ruling remains within an interpretive framework that allows for the protection of women during the iddah period, despite differences of opinion among scholars regarding maintenance in cases of *talak bā'in*. Meanwhile, under positive law, this ruling is grounded in the Marriage Law and the Compilation of Islamic Law, and is further reinforced by PERMA No. 3 of 2017 and SEMA No. 3 of 2018, which provide a clearer legal framework for the granting of iddah maintenance and mut'ah to the wife in a divorce by petition, provided that nusyuz is not proven.

Thus, the common ground between *fiqh* and positive law lies in the recognition that nusyuz must be established through concrete evidence and cannot be presumed merely because a woman files for divorce. This harmonization strengthens gender justice by preventing the loss of women's economic rights due to stereotypes surrounding divorce initiated by the wife. The relevance of Supreme Court Decision No. 137 K/AG/2007, therefore, lies not only in the provision of iddah maintenance but also in its contribution to the development of Indonesian Islamic family law that is more responsive to the protection of women's rights.

D. AI USAGE STATEMENT

The author acknowledges the use of generative AI-assisted tools, including ChatGPT (OpenAI), Grammarly AI, and DeepL, during the preparation of this manuscript. These tools were used solely for English language editing, grammatical correction, sentence structure refinement, translation, and enhancing the overall clarity and readability of the manuscript. The use of these tools did not influence the research methodology, substantive analysis, interpretation of findings, or scholarly conclusions. All AI-assisted outputs were carefully reviewed, verified, and revised by the author. The author assumes full responsibility for the accuracy, originality, academic integrity, and final content of the manuscript.

REFERENCES

Al-Jaziri, ‘Abd al-Rahman. *Al-Fiqh ‘ala al-Madzahib al-Arba‘ah*. Kudus: Menara Kudus, 2008.

Az-Zuhaili, Wahbah. *Fiqih Islam Wa Adilatuhu*. Vol. 9. Translated by Abdul Hayyie Al-Kattani. Jakarta: Gema Insani, 2021.

Pasuruan Regency Central Statistics Agency. “KAMISTERY: Love vs. Reality - News and Press Releases - Pasuruan Regency Central Statistics Agency.” Accessed September 7, 2026. https://pasuruankab.bps.go.id/id/news/2025/11/07/782/---kamistery--cinta-vs-realita.html.

Bowen, John R. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. Cambridge: Cambridge University Press, 2003.

Cammack, Mark E., and R. Michael Feener. “The Islamic Legal System in Indonesia.” *Pacific Rim Law & Policy Journal* 21, no. 1 (2012): 13–42. https://doi.org/10.4324/9781315251738.

Dahlan, Abd Rahman, Fathinuddin, Azizah, Nur Rohim Yunus, Aliyeva Patimat Shapiulayevna, and Yunasril Ali. “Women’s Post-Divorce Rights in Malaysian and Indonesian Court Decisions.” *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 191–212. https://doi.org/https://doi.org/10.15408/ajis.v23i1.27967

Djubaedah, Neng, Sulaikin Lubis, and Farida Prihatini. *Islamic Marriage Law in Indonesia*. Jakarta: Hecca Mitra Utama, 2005.

Esposito, John L., and Natana J. DeLong-Bas. **Women in Muslim Family Law**. 2nd ed. Syracuse, NY: Syracuse University Press, 2001.

Fakih, Mansour. *Gender Analysis and Social Transformation*. 15th ed. Yogyakarta: INSIST Press, 2016.

Fitriyani, Asep Saepudin Jahar, Zaitunah Subhan, and Rosdiana. “The Judges’ Legal Considerations on Divorce in Nushūz Cases at the Kupang High Religious Court: A Gender Perspective.” **Samarah: Journal of Family Law and Islamic Law** 7, no. 3 (2023): 1971–89. https://doi.org/10.22373/sjhk.v7i3.14425

Heniyatun, Puji Sulistyaningsih, and Siti Anisah. “The Granting of Mut’ah and Iddah Maintenance in Divorce Cases Initiated by the Wife.” *Profetika: Journal of Islamic Studies* 21, no. 1 (2020): 39–59. https://doi.org/https://doi.org/10.23917/profetika.v21i1.11647.

Huis, Stijn Cornelis van. *Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba*. Leiden: Leiden University, 2015.

———. "The Shadow of Legal Pluralism in Indonesian Islamic Courts: Child and Spousal Maintenance." *Indonesian Journal of Socio-Legal Studies* 4, no. 1 (2024): 1–26. https://doi.org/10.54828/ijsls.2024v4n1.4.

Izzati, Nida Rafiqa. "Post-Divorce Mut'ah: The Reinforcement of Gender Hierarchies in the Practice of Religious Courts." *Usraty: Journal of Islamic Family Law* 3, no. 1 (2025): 75–86. https://doi.org/https://doi.org/10.30983/usraty.v3i1.8844.

"JDIH SUPREME COURT OF THE REPUBLIC OF INDONESIA." Accessed April 26, 2026. https://jdih.mahkamahagung.go.id/legal-product/137kag2007/detail.

Kasim, Fajri M., Abidin Nurdin, Salman Abdul Muthalib, Samsinar Syarifuddin, and Munawwarah Samad. "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective." *Ahkam: Journal of Sharia Studies* 22, no. 2 (2022): 411–32. https://doi.org/https://doi.org/10.15408/ajis.v22i2.28747.

Khairilina. "Provision of Iddah Maintenance to a Wife Filing for Divorce: An Analysis of Supreme Court Decision No. 137K/AG/2007." *Jurnal Tahqiqa: Journal of Islamic Legal Thought* 15, no. 2 (2021): 1–15. https://doi.org/http://jurnal.stisalhilalsigli.ac.id/index.php/tahqiqa/article/view/3/3.

Supreme Court of the Republic of Indonesia. *Annual Report 2025*. Jakarta, Indonesia: Supreme Court of the Republic of Indonesia, 2025.

———. *Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law, Specifically Articles 2–4*. Jakarta: Supreme Court of the Republic of Indonesia, 2017.

———. *PERMA No. 3 of 2017*. Jakarta: Supreme Court of the Republic of Indonesia, 2017.

———. *SEMA No. 3 of 2018, Statement of the Religious Chamber, Point III.A.3*. Jakarta: Supreme Court of the Republic of Indonesia, 2018.

———. "2022 Divorce Case Statistics." Preprint, Jakarta, Indonesia: Supreme Court of the Republic of Indonesia, 2022.

———. *Supreme Court Circular Letter No. 3 of 2018, Rulings of the Religious Chamber, Point III.A.3*. Jakarta: Supreme Court of the Republic of Indonesia, 2018.

———. *Case Law of the Supreme Court of the Republic of Indonesia, 2008*. Jakarta: Supreme Court of the Republic of Indonesia, 2008.

Marzuki, Peter Mahmud. *Legal Research*. 16th ed. Jakarta: Kencana, 2021.

Nasir, Mohamad Abdun. "Islamic Law and the Paradox of Domination and Resistance: Women's Judicial Divorce in Lombok, Indonesia." *Asian Journal of Social Science* 44, nos. 1–2 (2016): 78–103. https://doi.org/https://doi.org/10.1163/15685314-04401006.

"Marriages and Divorces by Province (Incidents), 2025—Statistical Table—Indonesian Central Statistics Agency." Accessed April 26, 2026. https://www.bps.go.id/id/statistics-table/3/VkhwVUszTXJPVmQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-provinsi--kejadian---2021.html?year=2021.

Nurlaelawati, Euis. *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*. Amsterdam: Amsterdam University Press, 2010.

———. "Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce." *Islamic Law and Society* 20, no. 3 (2013): 242–71. https://doi.org/10.1163/15685195-0010A0003.

Nurlaelawati, Euis, and Arskal Salim. "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia." *Al-Jāmi'ah: Journal of Islamic Studies* 51, no. 2 (2013): 247–78. https://doi.org/10.14421/ajis.2013.512.247-278.

Pratama, Rizki Putra, Zuraidah Azkia, and A'Dawiyah Bt Ismail. "The Imposition of Iddah and Mut'ah Maintenance in Divorce Cases: A Review of Islamic Law in Indonesia and Malaysia." *Usroh: Journal of Islamic Family Law* 7, nos. 11–26 (2023). https://doi.org/10.19109/ujhki.v7i1.17738.

Putra, Muhammad Habib Adi, and Umi Sumbulah. "Reinterpreting the Concept of Nusyuz in the Compilation of Islamic Law from the Perspectives of Gender and Maqashid al-Shari'ah According to Jasser Auda." *Egalita: Journal of Gender Equality and Justice* 15, no. 1 (2020): 42–60. https://doi.org/10.18860/egalita.v15i1.10179.

Ramadhita, Ali Mahrus, and Bachri Syabbul. "Gender Inequality and Judicial Discretion in Muslim Divorces in Indonesia." *Cogent Social Sciences* 9, no. 1 (2023). https://doi.org/10.1080/23311886.2023.2206347.

Ramdani, Riyan, and Firda Nisa Syafitri. "Determination of the Amounts of Madhiyah, Iddah, and Mut'ah Alimony in Divorce Cases in Religious Courts." *Adliya: Journal of Law and Humanity* 15, no. 1 (2021): 37–50. https://doi.org/https://doi.org/10.15575/adliya.v15i1.11874.

Republic of Indonesia. "Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law." Preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1991.

———. "Compilation of Islamic Law." Article 149. Preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1991.

———. “Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage.” Preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1975.

———. “Law No. 1 of 1974 on Marriage.” Preprint, Jakarta, Indonesia: Government of the Republic of Indonesia, 1974.

Ridwan, Uhammad. “Enforcement of Religious Court Rulings Regarding Iddah Maintenance, Mut’ah.” *USM Law Review* 1, no. 2 (2018): 224–47. https://doi.org/10.26623/julr.v1i2.2255.

Sabiq, Sayyid. *Fiqh Sunnah*. Vol. 5. Jakarta: Republika Penerbit, 2018.

Syarifuddin, Amir. *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and the Marriage Law*. Jakarta: Kencana, 2006.

Syed, Jawad. “Reconstruction of Gender in Islamic Thought: Iqbal’s Vision of Equal Opportunity.” **Women’s Studies International Forum** 32, no. 6 (2009): 435–44. https://doi.org/https://doi.org/10.1016/j.wsif.2009.09.005.

Wardatun, Atun, and Bianca J. Smith. “Woman-Initiated Divorce and Feminist *Fiqh* in Indonesia: Narrating Male Acts of Nushūz in Marriage.” *Ulumuna* 24, no. 2 (2020): 266–95. https://doi.org/https://doi.org/10.20414/ujis.v24i2.416.

Wirastri, Theresia Dyah, and Stijn Cornelis van Huis. “The State of Indonesia’s Marriage Law: 50 Years of Statutory and Judicial Reforms.” *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32. https://doi.org/10.15408/ajis.v24i2.38424.

Yuni, Lilik Andar, and Akhmad Haries. “Protection of Women’s Rights After Divorce in Religious Courts: What Makes This Mission Difficult to Achieve?” *Mazahib: Journal of Islamic Legal Thought* 23, no. 2 (2024): 595–630. https://doi.org/https://doi.org/10.21093/mj.v23i2.7958.