

Conceptualization of Jurimetry on the Determination of Women's Rights After Divorce

Rizky Silvia Putri¹

¹UIN Raden Intan Lampung, Lampung, Indonesia. Email: rizkysilviaputri@radenintan.ac.id

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ABSTRACT

Divorce in Indonesia in 2020-2022 has always increased in number. Related to divorce, Islamic law, since its inception, has raised many values of humanity and justice, especially towards women, so that it regulates in such a way that divorce does not give rise to injustice, especially towards women. Women's rights after divorce have been regulated in several laws and regulations. The embodiment of these regulations is then stated by the judges in their decisions. Even though it has been regulated in such a way, there are still problems in resolving disputes over women's rights after divorce, namely, regarding the method used by judges in determining the amount of women's rights after divorce. So it is important to examine a theory that can provide certainty and accuracy in determining the amount of women's rights after divorce. The theory in question is jurimetry. The problems in this study are first, what are the rights of women after divorce? Second, what is the concept of jurimetry in determining women's rights after divorce? This type of research is library research or a literature study. Women's rights after divorce include iddah, mut'ah, and past livelihoods. The study of the use of jurimetry using variables based on legal norms makes this method fulfill the concept of distributive justice and also procedural justice. Distributive justice is fulfilled because, in imposing post-divorce obligations, the judge also looks at the role and services of each party in the household, whether during the marriage, each husband or wife has carried out their obligations, so that when a divorce occurs, each party can obtain their rights. As for the fulfillment of procedural justice because the judge, in formulating a decision based on jurisprudence, in addition to having to apply the correct procedural procedures, also provides clear legal considerations based on statutory regulations.

Keywords: Jurimetry, Women's Rights, Divorce.

I. Introduction

Divorce in Indonesia in 2020-2022 has always increased in number; in 2020, there were 291,677, in 2021, there were 447,743, and in 2022, there were 448,126. Divorce is the severance of the physical and spiritual bond between husband and wife which results in the end of the family relationship between husband and wife. Regarding divorce, Islamic law, since its inception, has raised many values of humanity and justice, especially towards women, so that it regulates in such a way that divorce does not give rise to injustice, especially towards women. Women's rights after divorce have been regulated in several laws and regulations, Supreme Court Regulations (PERMA), Supreme Court Circulars (SEMA), and in the court case resolution guideline. The embodiment of these rules is then stated by the judges in their decisions, whether the inclusion is based on the reconvention from the wife who is on the side of the Respondent in the divorce case, or based

on the judge's ex officio in the divorce case, where the wife is the Plaintiff. Although it has been regulated in such a way, there are still problems in resolving disputes over women's rights after the divorce. One of the problems is about the method used by the judge in determining the amount of iddah maintenance (including food, kiswah, and maskan), mut'ah, and past maintenance. Court decisions are often found where, in their legal considerations, the judge does not clarify the method used in determining the amount of maintenance and mut'ah, so that the origin of the nominal rupiah determined in their decision is unknown. Based on these problems, it is important to examine a theory that can provide certainty and accuracy in determining the amount of women's rights after divorce. The term "appropriateness and appropriateness," which has been used as a basis for judges in determining the extent of women's rights after divorce, needs to be concretized in a mathematical calculation based on empirical data. The theory in question is Jurimetrics. The use of this jurimetric analysis method is one of the policy recommendations in the judicial field as in the Policy Brief on Guarantees of Protection of the Rights of Women and Children After Divorce of the Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia which is stated in the Decree of the Director General of Religious Courts Number 1959 of 2021 concerning the Implementation of the Policy Brief on Guarantees of Protection of the Rights of Women and Children After Divorce.

II. Research Method

This type of research is library research,[4] which is research to obtain information by reading documents and theories that are related to the title or problem.[5] There are also sources of information used, namely, secondary information. Secondary information is information obtained from materials such as documents, posts, daily, web, or information obtained indirectly by researchers, either orally or in writing.[6] The nature of this research is normative juridical, normative, and legal research is legal research based on literature, research that is intended for written rules or documents, as well as secondary information, as the basis for its research. This research uses an information analysis method that involves carrying out information structuring on the information obtained to obtain its objectives, namely, conclusions. On the other hand, the analysis that the author uses is a qualitative analysis, which is a grouping of information for the aspects studied and is finally taken without using statistical figures.

III. Results and Discussion

3.1. Jury

Lee Loevinger, who originated the idea of using jurimetry in legal inquiry, defines jurimetry as:

"...a designation for the activities involving scientific investigation of legal problems"

As the originator of the idea of jurimetry, Lee Loevinger realized that it was quite difficult to formulate a complete and precise definition of the scope of jurimetry. According to Loevinger, jurisprudence is a legal investigation activity involving scientific methods. The use of scientific methods can include the use of mathematical methods such as mathematical logic, calculus, and others. Kees van Noortwijk and Richard de Mulder, as quoted by M. Natsir Asnawi, explained that in applying jurimetry to a case, the Judge must go through several stages as follows:

a. Choose a domain

Choosing a domain is to determine the domain or subject of the problem to be analyzed. In the examination of the case, the judge will identify the subject matter of the case. In relation to women's rights after divorce, the domain sought is "the amount of rights that are decent/appropriate and fair". This determination of feasibility and fairness refers to existing laws and regulations.

b. Retrieve cases

This stage is understood as an activity to collect the facts of events in the trial based on what is postulated by the parties. The facts of the event are important to explore because they will greatly affect the factors that affect the amount of women's maintenance after divorce. In procedural law, this stage can be analogous to the constatating stage of the case. This stage is carried out with evidence from the parties, so that the facts obtained are not in the form of conjectures, but facts based on evidence.

c. Read cases

After collecting the facts of the existing events, the next stage is to examine these facts one by one and then build an initial concept regarding the position, legal relationship, and legal consequences for the litigants. An analogy in procedural law that corresponds to this stage is the qualification stage, which is to determine which facts have legal implications in the case being examined. For example, in the dispute over the alimony lawsuit, there are facts that explain that during the marriage, the wife had a lot of debt to her neighbors, causing quarrels in the household. Such a fact has no legal relationship with the determination of the amount of iddah maintenance, so that the facts of events that need to be considered further are only facts that actually have a legal relationship with the issue to be sought.

d. Define legal item

After finding the legal facts, the next stage is to determine the legal issues to be adjudicated. For example, in a lawsuit for iddah maintenance, the legal issues to be tried are "feasibility/propriety" and "justice" in determining iddah maintenance for women. This stage can be said to be a further deepening of the domain that has been determined at the beginning. For example, in determining the amount of iddah and madhiyah maintenance, the domain is the amount of decent and fair maintenance. So in this stage, it must be narrowed down to the question "how to determine eligibility in terms of alimony? How can a decent alimony remain fair to both parties?" From such questions, judges have begun to develop the concept of feasibility/propriety and justice in determining the amount of alimony for women. "Worthy/proper" and "fair" in terms of iddah alimony or madhiyah alimony can be understood as a determination of the amount of alimony that considers the real needs of the wife as the subject of alimony, but still pays attention to the fact of the husband's ability as the subject of alimony.

e. Build a list of factors

One of the crucial stages in the application of jurimetry is at this stage, where the judge researches, maps, and determines what factors or variables can affect the amount of women's rights after divorce. In determining what variables can be used as the basis for calculation, judges need to refer to existing laws and regulations, so that the variables can also be legally accounted for. For example, in determining iddah alimony, factors that can affect the iddah alimony based on laws and regulations are whether or not the wife is nusyuz, the wife's real needs, the length of time the wife will undergo the iddah period, and the fact of the husband's ability. Another example, in determining madhiyah alimony, the variables that may be considered by the judge are the length of time the husband does not provide his mandatory alimony to his wife, the minimum alimony that the wife is entitled to receive, and the reason behind the absence of alimony to the wife. Although this stage is in the fifth of the six stages that must be passed, the judge must have understood what prerequisites and variables can affect the amount of alimony for women from before starting the examination of the case. This is intended so that when the judge is examining the case in stages 2, 3, and 4 as mentioned above, it has led to the discovery of relevant data that will be used as the basis for calculating the amount of women's rights in question.

f. Process data

The final stage of the application of jurimetry is to process existing data by correlating factors or variables that affect the amount of women's rights after divorce. This stage can be said to be the core of the use of jurimetry, because in this stage, a Judge must be able to sort out and determine the influence of a variable on the size of women's rights that are decent and fair. The above steps show that the application of jurisprudence can go hand in hand and synergize with the provisions of the trial procedure law. Thus, the

application of jurimetry in the process of formulating justice is in accordance with the concept of procedural justice, which is one of the frameworks in this study. Furthermore, by understanding these steps, Judges can apply jurimetric theory in handling each case. In principle, jurimetry is a quantitative analysis model applied to a legal situation, deed, and phenomenon, including the legal consequences of a legal act or event, to produce a more accurate and tested conclusion.

3.2. Women's Rights after Divorce

One of the rights of women after divorce in Indonesia is regulated in Article 41 letter c of Law Number 1 of 1974 concerning Marriage, whose content is not amended by Law Number 16 of 2019, which states: "The consequences of the breakup of marriage due to divorce are: c. The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife." Furthermore, Article 149 of the Compilation of Islamic Law describes the rights of women/wives due to divorce as follows: "If the marriage is broken up due to talaq, then the ex-husband is obliged to: a. give proper mut'ah to his ex-wife, either in the form of money or in kind, unless the ex-wife is qobla al dukhul; b. giving alimony, maskan, and kiswah to the ex-wife during iddah, unless the ex-wife has been sentenced to talaq ba'in or nusyuz and is not pregnant; c. paying off the dowry that is still owed in full, and half of it if qobla al dukhul; d. Giving hadhanah fees for her children who have not reached the age of 21 years. In addition to these two rules, several Supreme Court jurisprudences have also regulated the existence of the right to alimony that is not paid by the husband during marriage, which is commonly referred to as past alimony (madhiyah). In summary, the rights of women after divorce that are the obligation of the husband are mut'ah, maintenance (iddah), including maskan and kiswah, dowry, alimony owed, and child support.

3.3. Jurimetry on determining women's rights after divorce

Jurimetrics focuses on the procedure for resolving a legal problem. Thus, the desired decision is not a philosophical, ethical, aesthetic, or theological decision, but rather a technical, methodical, and scientific answer is needed, although it is still based on existing norms. The applying jurimetrics in calculating the amount of women's rights after divorce, a Judge needs to concretize the provisions in laws and regulations or other relevant regulations. This is done so that a Judge can map out what things can affect the amount of women's rights after divorce, or even what things can affect whether or not a woman is entitled to receive rights after divorce. How important a clear calculation method is in determining the amount of women's rights after divorce refers to the understanding that, in Islamic law, there are many legal rules that are full of mathematical numbers. It can even be said that the relationship between Islam and numbers is an inseparable necessity, in family law it is certainly not unfamiliar with the provisions of the maximum number of divorces of three times, the calculation of the iddah period for women, the maximum limit on the number of wives for a man, and the inheritance portion that has been detailed in such a way. Such signs show that Islam highly prioritizes legal certainty. Furthermore, this spirit is accommodated by the Science of Usul fiqh, as a science that studies the procedures for the formation and determination of law. In ushul fiqh, the term 'illat hukum is known, namely something that is the basis for the formation of law, which is clear (zahir) and measurable (mundabit), and its existence determines the existence or absence of the law itself. Furthermore, Abdul Wahab Khallaf, in his book, states that all sharia laws are built based on their 'illat', not based on their wisdom.

To determine the amount of women's rights after divorce must meet the criteria that are appropriate and fair, namely appropriate for the woman by considering her real needs, and fair for the man by considering the proportionality of his abilities. The following is the use of jurimetry in determining the amount of women's rights after divorce:

a. Iddah maintenance

In determining the amount of iddah maintenance that is feasible and fair, it is necessary to determine in advance what prerequisites and variables can affect the size of the iddah maintenance (build a list of factors). The determination of variables is based on legal norms, from various laws and regulations, and

applicable Islamic legal doctrines. The following are the prerequisites and variables that determine the amount of iddah alimony for a wife:

1) Prerequisites

- a) If a divorce occurs between a married couple, while the husband and wife have never done dukhul (sexual intercourse) at all, then the wife is not entitled to receive iddah alimony because the iddah period does not apply to a woman who is divorced between herself and her husband qabla al-dukhul.
- b) Whether or not the wife is nusyuz, the norm in Article 152 of the Compilation of Islamic Law states that the ex-wife has the right to receive iddah maintenance from her ex-husband unless the wife is nusyuz. However, as previously mentioned, the wife's nusyuz behavior that completely revokes the wife's right to iddah maintenance is when the husband has carried out his obligations to his wife, but the wife continues to disobey her husband. Whereas in cases where the wife is nusyuz, but the wife's nusyuz was initiated by her husband's nusyuz behavior, namely the husband is reluctant to carry out his obligations to his wife such as being reluctant to provide maintenance or not providing a comfortable place for her to live, then the wife's nusyuz caused by this does not immediately revoke all her rights to iddah maintenance. For example, a wife leaves the house because she works without her husband's permission, but this is done because the husband is reluctant to provide maintenance to her, and also does not give his wife permission to leave the house. In such cases, if the wife does not earn her own living, it will cause harm to her; then her leaving the house to earn a living should not be seen as nusyuz, which immediately invalidates her right to earn a living from her husband, including iddah living. As for the level of maintenance that is still the wife's right, the judge must examine it carefully by looking at the wife's nusyuz level compared to her husband's nusyuz attitude.

2) Determinants

The following are things that can be used as variables by the Judge in determining the amount of iddah alimony for a woman, namely:

- a) The duration of the iddah period, in determining the appropriate iddah period, the Judge in the trial must seek facts regarding the iddah period that a woman will undergo.
- b) The wife's real needs, it must be underlined first, that the wife's real needs in determining the iddah maintenance do not only calculate the wife's food needs (tha'am), but also the needs of a place to live (maskan), and also clothing (kiswah). So, when it is called iddah maintenance, what is meant is the daily food, kiswah, and maskan at the same time. The urgency of considering the wife's real needs returns to the domain that is the target of the use of jurimetry, namely, the feasibility of providing iddah maintenance to the wife. In determining the level of the wife's real needs, the Judge can obtain data by seeking facts about the wife's real needs through a case examination.
- c) Facts about the husband's (financial) ability, so that the amount of iddah maintenance determined by the court not only meets the criteria of being feasible, but must also be fair, then one of the variables that must be considered is the fact of the husband's financial ability. Facts about the husband's financial ability can be obtained in court through evidence. The determination of the iddah living allowance that can be used as a guideline is by referring to the value of the City/District Minimum Wage each month in the local area multiplied by 3 (three) months. This is then stated in the following formula:

$$\mu = \alpha \times 3 \text{ moon}$$

Information:

μ = The value of iddah alimony

α = City/Regency Minimum Wage every month in the local area

b. Mut'ah

Mut'ah Scholars have different opinions regarding the amount of mut'ah that a wife who is divorced by her husband is entitled to receive. In Indonesia, various regulations regarding mut'ah that are often juxtaposed with the regulation of iddah maintenance and madhiyah maintenance always refer to "appropriateness/suitability" and "factual ability of the husband". However, the Supreme Court Jurisprudence has determined the amount of mut'ah to be equivalent to one year's maintenance as stated in Decision Number 548 K/AG/2010 dated December 17, 2010. Directory of Decisions of the Supreme Court of the Republic of Indonesia, "Decision Number 548/K/AG/2010. The jurisprudence cites the opinion of Abu Zahra in the book al-Ahwal al-Syakhsyiyah, which states.

إذا كانت الطلاق بعد الدخول بغير رضاها تكون لها متعة هي نفقة سنة

"If the divorce occurs after dukhul and the divorce is without the wife's willingness, then the wife is entitled to mut'ah, which is (worth) of one year's alimony"

Regarding the Jurisprudence, the researcher thinks that in determining the amount of mut'ah which is equivalent to one year's living expenses, it must remain consistent in the domain of "eligibility/appropriateness" and "factual ability of the husband" as regulated in Article 160 of the Compilation of Islamic Law. The formula offered by M. Natsir Asnawi in his book is as follows:

$$m = 20\% \times n \times l$$

Information:

m: The value of decent and fair mut'ah

n: Husband's net income per month

l: Length of marriage/length of time husband and wife live together in one house

The figure of 20% is influenced by the presence or absence of the wife's descendants. If the wife has given birth to offspring for her husband, then the multiplier coefficient is 20%. Meanwhile, if the wife does not give birth to offspring for her husband, then the multiplier coefficient is changed to 10%.

c. Nafka Madhya

1) Prerequisites

- a) Tamkin of a wife to her husband, tamkin in language means settling down. In terms of perfect tamkin, it means that the wife has volunteered herself to serve her husband, in this context, namely, having sexual intercourse (dukhul). The meaning of this wife's tamkin is that the husband and wife have lived in one house, and there is a possibility for the husband to have sexual intercourse with his wife. So, even though the husband and wife are married, if the wife is not yet living with her husband, then the wife is not entitled to receive maintenance.
- b) No nusyuz, the wife has the right to receive maintenance after the tamkin. However, if during the course of her household the wife commits nusyuz to her husband, then from that moment on the wife is not entitled to receive maintenance.

2) Main variables

After the prerequisites for obtaining alimony have been met, it is necessary to determine the variables in determining the amount of madhiyah alimony that the wife is entitled to, which are as follows:

- a) The real needs of the wife.
- b) Husband's factual abilities.
- c) Length of time of alimony owed

From the three variables above, the same formula can be used for the calculation of iddah alimony as previously described. The difference in determination is only in the length of maintenance that the husband neglects. The length of the neglected alimony period is a factor in multiplying the cost of living that the husband must pay to his wife.

3) Additional variables

In calculating the amount of past alimony, the judge is very likely to consider other variables in addition to the variables mentioned above. Another variable in question is the specific condition of each case, which is very likely to differ from one case to another. Among these additional variables, inter alia:

- a) The wife works/does not work during the neglect of maintenance, If at any time the husband neglects his maintenance towards his wife, the wife can still sue for madhiyah maintenance, but it is very possible that the main motive in suing for maintenance is not because the wife becomes homeless and her needs are not met while the husband does not provide maintenance, but rather the lawsuit is simply to demand a husband's responsibility to his wife. In such cases, the amount of madhiyah maintenance charged does not have to be fully calculated based on the wife's real needs because the wife has been able to meet her own needs.
- b) Whether or not there is a marriage agreement regarding family finances, generally in the division of household tasks, the husband is obliged to earn a living for the family, while the wife is obliged to manage matters of a domestic nature in the household. However, in a household, there may be a marriage agreement whose contents are about family financial arrangements. The family financial arrangement agreement certainly has a big influence in the case of the wife demanding madhiyah maintenance, because what must be calculated is no longer related to the wife's real needs, but the amount of costs neglected based on the marriage agreement, or it may even be that the wife cannot demand madhiyah maintenance from her husband.

IV. Conclusion

Determining the amount of women's rights after divorce, which was originally based only on the subjectivity of the judge, can be made more objective by formulating legal considerations that involve mathematical and measurable calculations. A legal consideration model that prioritizes rationality is a must, where the decision is the judge's crown that describes how the judge thinks in resolving a legal problem faced. Moreover, with the existence of legal considerations based on clear rationality and empirical data, the decision can be better understood even by people who are not familiar with the law, so that justice in the judge's decision can be felt more and does not seem to be only in the judge's imagination. A review of the use of jurimetry that uses variables based on legal norms, makes this method fulfill the concept of distributive justice and also procedural justice. Distributive justice is fulfilled because, in imposing obligations after divorce, the judge also looks at the role and services of each party in the household, whether during the marriage, each husband or wife has carried out their obligations, so that when a divorce occurs, each party can obtain their rights. The fulfillment of procedural justice is because the judge, in formulating a decision based on jurisprudence, in addition to having to apply the correct procedural procedures, also provides clear legal considerations based on laws and regulations. Likewise, with the fulfillment of post-divorce rights and obligations by each husband and wife, the divorce that is carried out can be categorized as a good divorce because the divorce is carried out accompanied by the fulfillment of post-divorce rights by the couple.

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