

### Factors of Unfulfilled Rights of Wife and Children as Consequences of Divorce in Religious Court Decisions

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**Keywords:**

*Divorce decree;  
Divorce; Victims  
of divorce;  
Rights of the  
former wife;  
Rights of the  
child.*

**Abstract:** *PERMA Number 3 of 2017 serves as a guideline for judges in adjudicating cases involving women and can be used as a legal basis for providing protection to children who are victims of divorce. The problem discussed in this research is the implementation of PERMA in the Baturaja Religious Court. The aim of this study is to examine the issue of the non-fulfillment of the rights of the wife and children as a consequence of divorce in court decisions. A qualitative research approach with a field study design was chosen for this study. The research was conducted at the Baturaja Religious Court. The data used consisted of primary data and secondary data. Data analysis was divided into three parts: data reduction, data display, and conclusions. The research findings indicate that the implementation of PERMA Number 3 of 2017 regarding the rights of the wife and children as a consequence of divorce in the Baturaja Religious Court has not been fully implemented. This is due to several factors, such as the economic instability of the father, remarriage of the parents, psychological factors that prevent the former husband from meeting their children, and the ability of the mother to provide for the child's welfare.*

**DOI:**

10.19109/nurani.v%v  
i%i.16644

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**Introduction**

Women and children are often victims in divorce cases (Endrawan, 2019; FH, 2022; Musawwamah, 2013). Women, who are considered the weaker party, often feel that their rights are not fully fulfilled during and even after the court proceedings and judgments. Similarly, children often suffer as victims of their parents' divorce. As a result of their parents' divorce, many of their rights, such as financial support, residence, education, and more, are often unfulfilled (Syarifuddin et al., 2016).

Despite being addressed in various laws and regulations that emphasize the rights of women and children, in practice, many women and children who are victims of divorce still face challenges in meeting their daily needs (Hasbullah, 2022; Saragih, 2018). Furthermore, Religious Courts often render divorce cases where the wife does not receive financial support as a consequence of the divorce (Fadly, 2022). This raises concerns about the necessity of legal certainty in the decisions of Religious Courts that are not

biased towards women. If a wife wants to pursue a case involving her husband's wrongdoing, she is often constrained by the cost of living.

A number of laws have been enacted in Indonesia to eliminate discrimination against women. However, discrimination still prevails, especially during court proceedings. Hundreds of court decisions, interviews, and focus group discussions (FGDs) were used in the research on the handling of criminal cases involving women conducted by MAPPI FHUI in collaboration with LBH Apik Jakarta. As a result, it was found that cases involving women who have violated the law are handled unfairly. This injustice includes discriminatory practices and gender stereotypes (Mursidah, 2018).

The Supreme Court issued Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trial Proceedings of Cases Involving Women Engaging in Unlawful Acts as a result of these events. The creation of this regulation was warmly appreciated by the Institute for Criminal Justice Reform (ICJR), which praised it as a breakthrough. Currently, there is no law or regulation that specifically regulates the content covered by this regulation, especially in the Criminal Procedure Code (KUHAP). Although this regulation governs the procedures for judges in handling criminal and civil cases involving women more comprehensively, its existence is still important, particularly in the religious court environment and for women facing legal issues.

According to ICJR, Supreme Court Regulation Number 3 is intended to comprehensively define power relationships and provide guidance to judges in considering power relationships when adjudicating cases involving women. The existence of this regulation, according to ICJR, can also serve as a strong impetus for the formulation of progressive policies that accommodate the rights of victims, especially women, and anticipate interpretations of criminal provisions that truly harm victims (IJRS, 2021).

This regulation can also be a strong catalyst for the adoption of progressive policies that protect the rights of victims, especially women. Children who are victims of divorce will benefit from Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trial Proceedings of Cases Involving Women Engaging in Unlawful Acts because this regulation not only addresses women but also children as victims of their parents' divorce.

Supreme Court Regulation (PERMA) is one of the legal products of the Supreme Court that is created and contains provisions related to procedural law. The fact that PERMA plays an important role in case resolution as a form of public service demonstrates its importance in the administration of justice in Indonesia. The implementation of Supreme Court Regulation Number 3 of 2017 concerning guidelines for adjudicating cases involving women facing the law, which relates to the rights of wives and children as a result of divorce in the Religious Court of Baturaja, is what draws attention for the discussion of this issue.

The research will focus on examining the implementation of Supreme Court Regulation No. 3 of 2017 regarding the rights of wives and children as a result of divorce in the Religious Court of Baturaja. The study aims to

investigate the factors that influence the implementation of the regulation and contribute to the non-fulfillment of the rights of former wives and children who are victims of divorce in the court's rulings. The objective of this research is to examine the factors that contribute to the non-fulfillment of the rights of former wives and children who are victims of divorce in the court's rulings in the Religious Court of Baturaja.

### Research Method

This research is a qualitative study conducted through field research. The location of the study is the Religious Court of Baturaja. The data used consists of primary data obtained directly from the Religious Court of Baturaja and secondary data obtained from documentary studies, such as legislation, journals, books, and other relevant sources. Data collection is carried out through interviews and documentation. Primary data is collected through interviews with the judges of the Religious Court of Baturaja. The social constructionist approach is employed in conducting the interviews, using a semi-structured format (Hartono, 2018). Secondary data is collected through documentary studies. Data analysis is performed through data reduction, data display, and drawing conclusions (Fadli, 2021).

### Discussion and Results

#### **The implementation of PERMA No. 3 of 2017 concerning the rights of wives and children as a consequence of divorce in the Religious Court of Baturaja**

Based on the data obtained from the Annual Report of the Religious Court of Baturaja, there have been a considerable number of cases received and decided upon in the past three years (2019-2021). In 2019, there were 642 cases received, while in 2020, there were 720 cases, and in 2021, there were 793 cases. Among these cases, there were 117 cases of divorce by thalak in 2019, 96 cases in 2020, and 117 cases in 2021. Furthermore, there were 451 cases of divorce by gugat in 2019, 409 cases in 2020, and 445 cases in 2021 (Source: Clerk of the Religious Court of Baturaja, 2021). For detailed data, please refer to Table 1 below:

**Table 1**  
Report of Cases in the Religious Court of Baturaja from 2019-2021

No	Type of Cases	Years		
		2019	2020	2021
1	Carryover from Previous Year	68	596	613
2	Received Cases	642	720	793
3	Total	710	1316	1352
4	Withdrawn	52	42	42
5	Poligamy Permit			1
6	Marriage Prevention			
7	Rejection of Marriage by PPN			
8	Annulment of Marriage			
9	Neglect of Spousal Duties			
10	Divorce by Talak	117	96	117

11	Contested Divorce	451	409	445
12	Shared Property	2	3	1
13	Child Custody	1	1	
14	Child Maintenance by the Mother			
15	Rights of Former Wife/Husband			
16	Confirmation of Paternity		7	
17	Revocation of Guardian Authority			
18	Guardianship/Adoption of Child	3	1	6
19	Appointment of Another Guardian			
20	Compensation against Guardian			
21	Child Legitimacy			
22	Rejection of Mixed Marriage			
23	Marriage Confirmation	34	34	37
24	Marriage Permission			
25	Marriage Dispensation	23	50	71
26	Wali Adhol	1	1	
27	Inheritance			2
28	Wills			
29	Gifts			
30	Endowments (Waqf)			
31	Charitable Donations (Sadaqah)			
32	P3HP/Determination of Heirs	4	3	3
33	Others			
34	Islamic Economics	1		
35	Rejected	5	1	5
36	Not Accepted	1	3	8
37	Dropped	9	5	5
38	Removed from the Register		0	1
39	Total Cases Decided	707	700	749
40	Remaining Cases at the End of the Year	3	604	602
41	Appeal	0	2	0
42	Cassation	0	0	0
43	Judicial Review	0	0	0
44	Rejection of Marriage by PPN (Religious Affairs Office)	0	0	-

(Source: Religious Court of Baturaja, 2021).

The data presented in Table 1 above is displayed in its entirety to provide a comprehensive overview of the cases received by the Religious Court of Baturaja. Divorce by talak and contested divorce cases dominate the cases received and decided upon by the Religious Court of Baturaja. Divorce cases involve women as either the petitioner or the respondent.

As previously mentioned, PERMA No. 3 of 2017 is one of the regulations that judges must adhere to when resolving divorce cases, particularly those concerning women's rights in the Religious Court, as in this specific case. Women facing legal issues are defined as those in conflict with the law, women who are victims of the law, women who are legal witnesses, or women involved in legal cases, according to Article 1, Paragraph 1 of PERMA No. 3 of 2017, which provides guidelines for adjudicating cases involving women facing legal issues.

PERMA No. 3 of 2017 serves as a reference for judges in advocating for the rights of children who are victims of their parents' divorce, as well as protecting mothers who are facing legal issues. This is because children are fundamentally closer to women in terms of legal and sociological relationships (Mahsun, 2020). This regulation can be used as a legal foundation to protect children affected by divorce, provide legal certainty regarding which parent is appointed as the custodian of hadhanah, and establish legal responsibility for child maintenance. It also serves as a guideline for women facing legal issues (Choiri, 2017).

Based on several judgments reviewed by the researcher, there were no mentions of PERMA No. 3 of 2017 in the considerations of the panel of judges. According to an interview with Mr. Drs. Jamaludin, S.H., a judge at the Religious Court of Baturaja, "*The purpose of enacting this PERMA is gender equality and protecting women's rights following divorce... Why is PERMA not included in legal considerations? It's because the rights of wives are already regulated in the Qur'an, the Compilation of Islamic Law (KHI), and the Marriage Law, so PERMA is no longer necessary.*" However, in practice, PERMA No. 3 of 2017 is still used as a guideline in adjudicating cases involving women facing legal issues (Jamaludin, 2022).

The issuance of PERMA No. 3 of 2017 does not immediately provide a comprehensive solution to the possible issues that courts may face when deciding cases related to the rights of women and children resulting from divorce. The panel of judges considers PERMA 3 of 2017 as a breath of fresh air for the legal protection of women's and children's rights. On the other hand, PERMA 3 of 2017 is seen as less than ideal in protecting the rights of women and children affected by divorce.

Regardless of the strengths and weaknesses of the implementation of PERMA No. 3 of 2017 or the differences in opinions among judges in the Religious Court regarding this regulation, it must still be followed as a legal standard for judges in the Religious Court. Of course, the Religious Court of Baturaja fulfills this function, as it not only adheres to the provisions of the law but also abides by PERMA, which binds the judges in their decision-making process. Legal scholars argue that the legal considerations in these judgments bring fresh perspectives to national legal research. Whether PERMA can be followed in the same case or if there are different views or new interpretations, there is no doubt that PERMA poses a challenge for judges in Indonesia.

From a juridical perspective, PERMA No. 3 of 2017 requires attention to ensure its proper functioning as intended. Soerjono Soekanto offers a fundamental standard for the law to be applied and function effectively if it aligns with legal, sociological, and philosophical norms (Soekanto & Abdullah, 1987).

Therefore, the existence of PERMA No. 3 of 2017 will certainly have implications for the effectiveness of fulfilling the rights of women and children as a result of divorce, particularly in the Religious Court of Baturaja. This aligns with the theory of legal effectiveness, which states that peace efforts undertaken throughout the legal proceedings, including the examination phase, especially the optimization of mediation before the

substantive hearing, should ultimately strive to find a sense of justice for all parties involved (a win-win solution).

In practice, the treatment of women seeking justice by the Religious Court of Baturaja aligns with the provisions outlined in PERMA No. 3 of 2017. This regulation mandates that in every case involving disputes concerning women, the panel of judges must apply appropriate principles, starting with treating women equally before the law, promoting gender equality, and prioritizing justice, benefit, and legal certainty without discrimination. Women often file divorce lawsuits in real cases at the Religious Court (Jamaludin, 2022).

As a result, even though the plaintiff in this case is a woman, the panel of judges handling the case does not act arbitrarily in examining and deciding on the matter. Judges usually consider gender equality and non-discrimination when reviewing the case by assessing the factual evidence presented in the proceedings. Moreover, in practice, the panel of judges adjudicating cases involving women will not demean or make blameful claims against women. Considering that judges are always expected to prioritize the interests of justice for all parties involved, such conduct would be unethical (Supriadi, 2019).

Meanwhile, the Religious Court of Baturaja will consider the psychological impact experienced by the victims, the physical and psychological powerlessness of the victims, power dynamics that render the victims or witnesses helpless, and the history of violence by the perpetrator against the victims. Judges will never act in a way that demeans women in legal trouble, blames them, or intimidates them. Judges also must refrain from making statements or expressing opinions that contain gender stereotypes. Instead, judges should remain impartial and prioritize the principle of equality before the law. In fact, judges always offer assistance and support if the women facing legal issues have physical or psychological obstacles (Jamaludin, 2022).

Judges must comply with the directives of legislation to ensure justice, such as demands for restitution, compensation, damages, and assistance to women facing legal issues (victims) due to criminal acts committed against them by others.

Therefore, the Religious Court of Baturaja will continue to develop and reassess its approach to implementing PERMA No. 3 of 2017. There is still much to be done regarding the understanding of procedural law in dealing with women facing legal issues. The infrastructure and facilities supporting the effective implementation of PERMA need to be improved as well (Zulkifli, 2022).

### **Factors Influencing the Implementation of PERMA No. 3 of 2017 Regarding the Rights of Wives and Children as a Result of Divorce in the Religious Court of Baturaja**

As previously outlined, it is evident that there is still a significant loss of rights for wives due to divorce, whether through divorce applications or divorce lawsuits, in the Religious Court. The rights of wives include mut'ah (temporary marriage), iddah maintenance, post-divorce maintenance, and

child maintenance, all of which pertain to the women. Women who initiate or seek divorce from their husbands are often deemed nusyuz (disobedient) or in violation of their marital obligations in the decisions rendered by the Religious Court in divorce cases (particularly in divorce cases filed by the wife). This hinders them from obtaining their rights such as iddah maintenance and mut'ah, resulting in injustice for women (Komnas Perempuan, 2021)

According to the theoretical framework, positive law (legislation) must serve as the foundation for the justice upheld by judges in their rulings, as positive legislation represents the legitimate sovereignty of the people and possesses legal force. Therefore, judges cannot decide in contradiction to or deviate from what has been stipulated by positive law, nor can they seek other sources of law when it has already been regulated by positive law. This type of justice is justice in terms of legality, which is more concerned with how the law is applied rather than the actual provisions themselves.

The justice rendered by judges cannot be separated from court decisions. According to Hans Kelsen, justice is a characteristic associated with the execution of positive commands rather than their content (Nurbaeti & Suzanalisa, 2011; Rizhan, 2020; Ruman, 2012). Justice involves upholding the correct provisions and faithfully adhering to them (Imran, 2019).

However, the reality is that parents or fathers of the child often fail to comply with legally binding court decisions. Non-compliance can occur due to various factors. For instance, the factors that lead a father to neglect his financial obligations towards his child, despite a court ruling, can be observed in the following explanation:

#### 1. Economic Factor

The financial support for children who are victims of their parents' divorce is important to be ensured because the children are innocent in their parents' divorce and are unaware of everything that is happening. By considering Indonesian laws, Islamic Sharia, and various customary elements, it is evident that fathers often have the responsibility to provide child support after divorce. Moreover, when relating to the conditions and circumstances of Indonesian society, it is typically the father (the husband) who bears the responsibility of supporting the family financially, as men generally work. If a mother or wife works, it is usually seen as supplementary income and not her primary responsibility (Sipahutar et al., 2016).

Based on an interview with Judge Mr. Weri Edwardo, it is stated that:

*there are court rulings in the Religious Court that impose the obligation on fathers to pay child support. However, despite the court's decision regarding child support issued by the Palembang Religious Court, in reality, not all fathers comply with the court's ruling regarding child support (Jamaludin, 2022).*

Furthermore, the author interviewed another judge who stated that the father, as the parent, does not have a steady job and therefore

cannot provide for his child. As a result, the father does not comply with the legally binding court decision (Edwardo, 2022).

Thus, one of the factors contributing to the reluctance of fathers to comply with court decisions is the economic factor, as many fathers have low incomes or even no income due to unemployment.

## 2. Parents Remarrying Factors

Parents who have divorced have the right to remarry someone else. In this case, it is usually the father who is responsible for providing financial support to his children from the previous marriage that becomes an issue. This is because he has additional responsibilities to financially support his new family. This may not be a problem for parents who are financially well-off, unlike parents with low income (Sipahutar et al., 2016).

This explanation aligns with the information received by the author from a judge at the Baturaja Religious Court on October 12, 2022, who stated that "one of the reasons a father does not fulfill the court's decision, specifically regarding providing child support, is because he has remarried. Therefore, he has financial responsibilities not only towards his children from the previous marriage but also towards his new family. As a result, he faces difficulties in implementing the court's decision" (Khairuddin, 2022).

In this case, the dominant factor is the parents remarrying. However, this factor is closely related to the economic factor. Therefore, it can be said that the factor of parents remarrying correlates with the economic factor..

## 3. Psychological Factors

Many factors can trigger divorce between husbands and wives and even strain their relationship after the divorce. The strained relationship between the ex-spouses can have an impact on the relationship between the children and their parents. Parents, as the custodians of the children, may not allow their ex-spouse to meet the children. This psychological factor usually occurs in women, where they feel hurt and pressured during their marriage with their ex-husband, leading them to withhold access to the children. In such situations, the ex-husband may refuse to provide child support (Sipahutar et al., 2016).

The judge at the Baturaja Religious Court mentioned that psychological aspects are experienced not only by the mother but also by the father and their children. The psychological aspect affecting the father is the fear that if he provides child support, it will be used by his ex-wife for purposes other than the well-being of the children. As for the psychological aspect experienced by the children, it is their inability to accept their parents' divorce. This could be due to the father's history of violence towards the mother or even towards the children themselves, the father's infidelity, or the father's remarriage while still being with the mother (Khairuddin, 2022).



4. The factor of the mother's ability to provide child support

In contemporary times, many women work and have their own income without having to rely on their husbands (Tuwu, 2018). In fact, there are cases where the wife's income is greater than the husband's (Utamidewi, 2017). Consequently, if a divorce occurs, such women do not face difficulties in meeting their children's needs, especially in terms of child support. Another factor contributing to the mother's ability to provide child support after divorce is that she comes from a financially well-off family (Sipahutar et al., 2016).

This aligns with the statement made by the judge at the Baturaja Religious Court, stating that women do not have to rely on child support from their ex-husbands because they have sufficient income to support their children. Furthermore, women from financially stable families can receive assistance from their parents in providing for their children (Khairuddin, 2022).

After a divorce, the court can order the former husband to pay the living expenses of the ex-wife or establish the obligations of the former wife. As parents, they still have the responsibility to raise and educate their child, and the court's decision regarding child custody is solely based on the best interests of the child. If the father is proven to be unable to fulfill his commitment, the court may order the mother to share the responsibility. The father is responsible for all allowances and educational expenses of the child (Khairuddin et al., 2020; Ridwan, 2018; Siregar, 2015).

Until the child reaches adulthood and is capable of taking care of themselves or until they reach the age of 21, the father is responsible for paying all the hadlanah (child support) and maintenance expenses according to his ability. The court will make decisions in case of disagreements regarding hadlanah and child support. Although the parents' marriage has ended, they still have the obligation to raise their children and meet their needs (Khair, 2020).

The court has the authority to transfer the right of hadlanah if the holder of the right cannot ensure the physical and mental well-being of the child. Until the child reaches adulthood and is capable of taking care of themselves (21 years old), the father is responsible for paying all the expenses for hadlanah and child support according to his ability.

Regarding the obligation of nafkah (financial support) and hadlanah, if either the father or the mother feels disadvantaged due to a violation of the hadlanah obligation, they can file a lawsuit in the Religious Court to compel the negligent party to fulfill their obligations (Manan, 2005). This is because parents have the duty and responsibility to nurture, support, educate, and protect their children, to foster their growth according to their abilities, talents, and interests, and to prevent child marriages.

The well-being of the child is the primary concern of the parents, who have the task of raising and educating their children in such a way that they can grow into intelligent, healthy, loyal individuals to their parents, with good morals, devout to the Almighty God, and willing and able to uphold the aspirations of the nation based on Pancasila. The judge may decide to withdraw parental authority from a parent who is proven to disregard their

obligations. The loss of parental rights does not exempt parents from their responsibility to support and educate their children according to their needs..

### Conclusion

The full implementation of Supreme Court Regulation (PERMA) No. 3 of 2017 regarding the rights of wives and children following divorce in the Baturaja Religious Court has not been fully realized, despite the efforts made by the panel of judges to apply relevant principles such as treating women equally before the law, gender equality, and emphasizing justice, benefit, and legal certainty without discrimination. Factors influencing the implementation of PERMA No. 3 of 2017 regarding the rights of wives and children following divorce in the Baturaja Religious Court include: the economic factor of less financially stable fathers, the factor of remarriage by parents, psychological factors that may cause the mother, as the custodial parent, to deny visitation rights to the former spouse, and the factor of financially capable mothers who can provide for their children without any issues.

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