



WOMEN'S POST-DIVORCE RIGHTS IN MALAYSIAN AND INDONESIAN'S COURT DECISIONS

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Abstrak: Indonesia dan Malaysia adalah negara mayoritas berpenduduk muslim dan bermazhab Syafi'i. Keduanya memiliki persamaan berkaitan dengan hak-hak isteri dalam perceraian. Penelitian ini bertujuan untuk mengetahui hak-hak isteri dalam perceraian berdasarkan putusan-putusan Pengadilan Agama di Indonesia, dalam hal ini Pengadilan Agama Jakarta Selatan dan Mahkamah Syariah di Malaysia. Kurun waktu objek penelitian ini dibatasi tahun 2014-2016. Metode penelitian yang digunakan adalah metode kualitatif dengan pendekatan komparatif dan pendekatan perundang-undangan. Hasil penelitian menyatakan bahwa hak-hak yang dapat diterima isteri dalam perceraian yaitu hak nafkah *'iddah*, *mut'ah* dan *hadānah*. Namun dalam kenyataan, putusan pengadilan tentang hak-hak isteri dalam perceraian di Indonesia dan Malaysia terjadi perbedaan. Perbedaan putusan tersebut terjadi dalam hal isteri pada proses persidangan tidak memohon atau menuntut hak-haknya kepada majelis hakim. Di Indonesia, hakim memiliki hak *ex officio*. Hakim memberi hak-hak isteri, meskipun isteri tidak menuntut hak-haknya selama temohon selalu hadir dalam persidangan. Di Malaysia, hak-hak isteri harus diminta kepada majelis hakim oleh isteri, karena perceraian merupakan permohonan dan kesepakatan antara para pihak.

Kata kunci: hak-hak isteri; pengadilan agama; mahkamah syariah; hak *ex officio*

Abstract: Indonesia and Malaysia are predominantly Muslim and belong to the Shafii school of thought. Both have similarities concerning the rights of the wife in divorce. This study examines the fulfilment of post-divorce rights for women based on the decisions of the Religious Courts in Indonesia and Malaysia. The period for this research object is limited to 2014-2016. The research used a qualitative method with comparative and case approaches. This study finds that, legally, a wife can receive post-divorce rights, including *'iddah*, *mut'ah* and *ḥaḍānah*. However, the Indonesian and Malaysian courts' decisions regarding women's post-divorce rights differ depending on whether the women request the fulfilment of their rights in their petitions. In Indonesia, judges can use their ex-officio rights to grant women their rights even without their requests. In Malaysia, on the other hand, the wives must state their demands in their petitions.

Keywords: wife's rights; religious courts; sharia court; ex officio rights

Introduction

Indonesia and Malaysia have essentially similar Islamic marriage laws, including measures guaranteeing the rights of ex-wives following divorce, which conform with *fiqh* regulations. As is well known, Indonesian and Malaysian *fiqh* adheres to the Syafi'iyah school of thought (Harisudin & Choriri, 2021; Jayasuriya, 1982; Jones, 2021; Mohamad, 2011; Mohamad, 2016). However, as this study will explain, the application of the ex-rights wives varies significantly.

One of the effects of divorce is the emergence of rights and responsibilities of ex-husbands and ex-wives. In the Muslim world, in addition to being governed by traditional *fiqh*, this issue also receives specific consideration in Marriage Law stipulated by every state. This is demonstrated in one of thirteen modern Muslim Family Law components (Mahmood, 1987).

In Indonesia, Marriage Law No. 1 of 1974 and the Compilation of Islamic Law regulate the wife's rights in divorce as *mut'ah* maintenance, *maskan* (housing), and *kiswah* (clothing). The amount and value of *maskan* and *kiswah* are determined by the husband's decency and ability, based on his salary. If the maintenance is unpaid, the woman may petition the Islamic (Religious) court against the husband's negligence in fulfilling this obligation. According to Article 149 of the Compilation of Islamic Law (KHI), '*iddah* and *mut'ah* maintenance are the results of divorce; hence, they become mandatory when a divorce happens. '*Iddah* maintenance is the obligatory payment upon the husband to his wife during her '*iddah* (post-divorce waiting period, which is three menstrual cycles) period in the case of *ṭalāq raj'ī* or revocable repudiation. On the other hand, *mut'ah* is consolatory gift from the ex-husband to ex-wife. However, this legislation does not specify the timeline for payment of debts deriving from a divorce (Ali et al., 2021; Husni et al., 2015).

In Malaysia, the Islamic Family Law Enactment of 1984 governs the rights of spouses in the event of divorce. In the case of a divorce initiated by a husband or *ṭalāq*, there are two stipulations regarding '*iddah* maintenance. First, in line with a shari'a rule, the Court may require a man to pay his wife or ex-wife alimony unless she commits *nushūz* (violation against marital duties). Second, the wife has the right to earn a living (*nafaqah*) until the end of the '*iddah* unless the

ex-wife commits adultery with someone else. Third, the ex-wife has a right to accommodation, namely the right to live in her ex-husband's house. This right will be lost if the *'iddah* period has expired and the ex-wife is married to someone else. The husband can file a lawsuit so that the house is returned to him (*Islamic Family Law Enactment 1984*).

When the husband is unwilling to divorce his wife by *ṭalāq* voluntarily, both parties have consented to divorce by *khulū'*. It means divorce by redemption, in which the wife requests the husband to pronounce the divorce and pay him compensation. In this case, the Court may order the husband to divorce his wife by ransom or *khulū'*, and the divorce will be considered *ṭalāq ba'in suḡhrā*. It refers to divorce without possible reconciliation unless the husband and wife make a new marriage contract (*'aqd*) even though they are still in the *'iddah* period. If each party cannot agree on the ransom price, the Court can estimate the amount of ransom that must be paid in line with sharia and consider each party's position and capabilities (Kharlie, 2011).

In general, fulfilling post-divorce rights for women is a part of legal reform in Islamic family law in various Muslim countries (Moosa, 2013; Shahid, 2018). However, ensuring that women obtain their rights remains an issue. The enforceability of the court decisions is still in question. In the case of Indonesia, for example, the court decisions granting women their post-divorce rights face non coercive issues (Huis, 2010). In the meantime, many women have chosen not to fight for their rights as they have limited access their legal rights (Abdullah et al., 2010). Furthermore, Nurlaelawati (2018) argues that women in Indonesia can have their post-divorce rights highly depending on judges' sensitivity to protect women's rights. Similarly, Shahid (2018), in the context of Pakistan and Iran, argues that women's vulnerability in obtaining their rights is caused by a relatively influential patriarchal culture in the judiciary, which affects judges' decisions.

Empirically, among the reasons for the importance of post-divorce maintenance is that in many divorce cases, women become the custodial parents of their children. However, they are often in a vulnerable financial situations after divorce, as women most often become the primary caregiver during the marriage, while the primary wage earners are the husbands. With such a socio-economic configuration, proper support, including legal support, becomes important (Raday, 2019).

This paper aims to compare the fulfillment of post-divorce rights for women in the Indonesian Religious Courts and the Malaysian Sharia Court court decisions. This comparison is useful to see the progressiveness of the Islamic judiciary in dealing with women-related issues and how Islamic law is implemented in two different contexts.

Method

This study employs a normative legal analysis involving studies on legal materials, such as court decisions, laws and regulations, as well as other secondary materials. Before analyzing the decisions produced by Indonesian Religious Courts and Malaysian Sharia Courts, the authors consider the statute approach to compare the existing laws and regulations pertaining to divorce and post-divorce rights for women in both countries. As for the court decisions, this study uses the court decisions from the South Jakarta Religious Court and the Sharia Court of the Federal Territory of Kuala Lumpur. Both are located in the capital cities of Indonesia and Malaysia, respectively.

Rights of a Wife After Divorce in *Fiqh*

Before analyzing the rights of the woman after divorce according to the decisions of the Religious Courts in Indonesia and the Sharia Court in Malaysia, it is necessary to examine the nature of divorce in the Religious Courts in Indonesia and the Sharia Court in Malaysia (Jamaluddin et al., 2021; Zainab et al., 2014; Zakaria et al., 2020; Jones, 2021). This is, then, examined by considering *fiqh* perspectives. As mentioned, the wife's rights after the divorce consists of '*iddah*, *mut'ah* (consolatory gifts), *ḥadānah* (child maintenance), *maskan* (housing), and *kiswah* (clothing) (Asari et al., 2017; Sulaiman & Yunus, 2016; Turatmiyah et al., 2019).

***Iddah* Maintenance**

Experts generally classify the post-divorce wife's maintenance rights into the following categories, depending on the divorce form: first, the maintenance rights of the woman in *talāq raj'ī* (divorce with possible reconciliation before the ending of the wife's '*iddah* period). The majority of scholars agree that a wife who is divorced with *talāq*

raj'ī retains her maintenance and housing rights during her *'iddah* period, regardless of whether she is pregnant or not because she is still under marriage regulations (al-Mawardi, 1999).

The second is the wife's right in *ṭalāq ba'īn* (irrevocable divorce). Scholars have different opinions regarding the maintenance of a wife in *ṭalāq ba'īn*. Malikiyyah (al-Ashbaḥī, 1442), Syafi'iyah (al-Syarbini, n.d.) and some Hanabilah scholars (Qudamah, n.d.) and Ibnu Mundzir (al-Jaburi, 2001) believe that a woman who is divorced by *ṭalāq ba'īn* is only entitled to a place to live without other kinds of support. However, if pregnant, she has the right to *nafaqah* (maintenance) and a place to live. Furthermore, the wife who asks for *khulū'* applies to her *al-mabtūtah* (*ṭalāq ba'īn*), where she is entitled to housing even though she is not pregnant. This is based on the Quran, surah al-Talaq (65) verse 6, which explains that there is an obligation to provide maintenance to wives even though they have been divorced.

A woman, who has been divorced three times (*ṭalāq ba'īn*) and is not pregnant, is entitled to a place to live but not entitled to maintenance and clothing because she cannot be reconciled and cannot obtain inheritance rights from her ex-husband. However, if she is pregnant, she has the right to receive maintenance, clothing, and a place to live until the end of her *'iddah* period (al-Qurthubi, 1993). According to Hanafiyah scholars, divorced women are entitled to a means of subsistence and a place to live until the end of their *'iddah* period. According to Hanafiyah scholars, the maintenance and living space (*al-suknā*) are material rights to which a wife is entitled as a result of their marriage. Similarly, *'iddah* is also a right in a marriage (wife). This aligns with the verse specifying that a divorced woman in *ṭalāq ba'īn* is entitled to a place of living and maintenance (al-Sarakhasi, 2001).

The third is the wife's claim to alimony upon divorce with no *'iddah* period, i.e., before the husband and wife have consummated the marriage (*jimā'*). Most experts say that a divorced wife without an *'iddah* period is not allowed to work and has the right to a place to live (al-Qurthubi, 1992). In addition, with divorce, the marriage bond between the parties has ended, and the conditions that led to the wife's obligation to receive maintenance have also evaporated (al-Kasani, 1996).

The Right of *Mut'ah*

The term *mut'ah* is derived from the Arabic word *matā'*, which implies everything that may be enjoyed and used. The right of *mut'ah* is a gift from a husband to his wife as compensation or consolation for their divorce. According to al-Syarbaini, *mut'ah* refers to the number of assets a husband must transfer to his divorced wife through *ṭalāq* or a comparable procedure (al-Syarbaini, n.d.). According to Imam Taqiy al-Din (al-Husaini, n.d.), *mut'ah* is a term for property for the wife because the husband has divorced her.

Islam stipulates that every divorced woman has the right to *mut'ah*, except for three things: divorced women who curse their husbands (*li'ān*), women who ask for *khulū'*, and divorced women who have never had sexual intercourse with their husbands. In addition, there is no limit to the amount of *mut'ah* that must be given. It is only adjusted to the level of the husband's ability and can comfort the wife who was hurt by the divorce (Anas, n.d.).

Scholars have different opinions about *mut'ah*. Ibn (Rusyd, 1969)), Ibn Hazm and al-Tabari believe that every divorced wife must get *mut'ah*, whether she has had intercourse with her husband or not, and whether or not the amount of dowry has been determined. This opinion is based on the generality of the Quran 2: 236. While Maliki scholars believe *mut'ah* is a sunnah for every divorced wife in all circumstances because the sentence *haqqan 'ala al-muhsinin*, which is found at the end of the Quran surah al-Baqarah, 236 means a capable person. So, people who cannot afford to provide *mut'ah* are omitted. Thus, the injunctions in the verses of *mut'ah* are *amr mandūb* (*sunnah* matter). The end of the verse also indicates that the providing *mut'ah* is an act of someone who wants to do good and virtue. The characterization of actions as *ihsān* does not mean obligatory.

Imam Abu Hanifah believes that *mut'ah* is compulsory for a person who divorces his wife before intercourse, and the dowry has not been determined. It is mentioned in Q.S. al-Ahzab, 33: 49. In addition to these circumstances, *mut'ah* sunnah is given. As for the divorced wife, *qabla dukhul* (before the marriage is consummated), but the dowry has been determined, and the husband provides half of the dowry. Imam al-Syafi'i, in his *qawl jadid* (new position) and Imam Ahmad

bin Hambal, in one history, argues that *mut'ah* must be given to every divorced wife except for the wife who has not had intercourse with her husband but has already determined the dowry. The basis for this opinion is in Q.S. al-Baqarah, 2: 237 and 241.

The Right of *Ḥadānah*

Ḥadānah etymologically means *al-janb*, which means beside (Manzur, n.d.), or it could also mean placing something near the ribs, such as carrying or putting something on the lap (Effendi, 2010). Terminologically, *ḥadānah*, according to al-Zahabi, is providing young children to educate and improve their personalities by people who have the right to educate them at a certain age which they cannot do on their own (Zahabi, n.d.). Most Ulama agree that when a divorce occurs, child custody goes to the mother as long as the child is not yet *mumayyiz* (able to differentiate between wrong and right).

Women's Post-Divorce Rights in Indonesian Law

The wife's rights in divorce are regulated in Article 41 letter c Law Number 1 of 1974 on Marriage, stating that the Court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife. Likewise, Government Regulation Number 9 of 1975 in Article 24 paragraph (2) letter A confirms that during a divorce lawsuit, at the request of the plaintiff or defendant, the Court can determine the maintenance that the husband must bear. Furthermore, the Compilation of Islamic Law (KHI) regulates the rights of ex-wives in more detail in Articles 149, 152, 158, 159 and 160. Meanwhile, the rights of *ḥadānah* are also explicitly regulated in Article 41 of Marriage Law and in Articles 105, 112 and 156 KHI.

Article 149 of the KHI emphasizes that when a marriage is broken up due to divorce, the ex-husband must provide as follows: a) a proper *mut'ah* to his ex-wife, either in money or goods, unless the marriage was unconsummated (*qabla al-dukhūl*); b) maintenance, *maskan* (housing) and *kiswa* (clothing) to the ex-wife while during 'iddah period, unless the ex-wife has been divorced with *talāq ba'in* or committed *nushūz* and is not pregnant; c) pay off the unpaid dowry in full and a half if the marriage is unconsummated (*qabla*

al-dukkhūl); d) *ḥaḍānah* costs for their children who have not reached the age of 21.

Article 152 of the KHI states that ex-wives can receive *'iddah* maintenance from their ex-husbands, except when the wife committed *nushūz*. Meanwhile, the *mut'ah* provisions are regulated in Article 158 of the KHI, where the ex-husband must give the *mut'ah* if the dowry has not been determined after the marriage is consummated and the husband is filing for divorce. Furthermore, Article 159 reaffirmed that the ex-husband grants *mut'ah sunnah* without conditions in Article 158. Regarding the amount of *mut'ah*, Article 160 of the KHI states that the amount of *mut'ah* is adjusted to the appropriateness and ability of the husband. As for *ḥaḍānah* rights, especially for children who are not yet *mumayyiz* (mature according to Islamic law) or not yet 12 years old, they are the rights of their mothers. Meanwhile, if the child is *mumayyiz*, then the child can choose to live with his mother or father.

Women's Post-Divorce Rights in Malaysian Law

Divorce that occurs in the household has several impacts. Some related to the rights of the wife in a divorce, including *'iddah*, *mut'ah*, and *ḥaḍānah*, as stipulated in AUUKI WWP 1984 (Deed of the 1984 Islamic Family Law [Federal Territory]) contained in Articles (*sections*) 56 to 71. Provisions regarding child support are regulated in Articles 72 to Article 80 AUUKI WWP 1984. Then, Articles 81 to 87 are related to *ḥaḍānah* rights.

Article 56 AUUKI WWP 1984 explains that *mut'ah* provides *sagu hati* (consolation gift) for a divorced wife. The gift is at the wife's request and based on the consideration of the Court in accordance with sharia. Giving *mut'ah* also ensures that the husband initiates the divorce. Article 57 regulates the dowry, which must not be returned to the husband after a divorce. Article 58 governs the distribution of joint assets. This Article confirms that the Court has the authority to divide the assets or goods owned by the former husband and wife during the marriage. The distribution of joint assets must consider the role of each party in getting it and calculate the amount of debt and the need for child expenses in a divorce.

The Court has the right to order a husband to pay maintenance to his wife or ex-wife unless the wife commits *nushūz*. The *nushūz* category, in this case, consists of three attitudes: the wife avoids her husband, the wife leaves her husband's house, and the wife is against her husband's will. *Nushūz* also includes when the wife is reluctant to follow her husband to one place or another. If the wife repents and does not repeat her mistakes, she is not classified as *nushūz* (Akta Undang Undang Keluarga Islam/Wilayah-Wilayah Persekutuan, 1984)

Article 60 AUUKI WWP 1984 contains the authority of the Court to determine a living cost for a certain person based on *maṣlahah* (common good). Regarding the amount of maintenance received by the ex-wife, Article 61 AUUKI WWP 1984 emphasizes that the Court must consider the ex-husband's ability or income and the ex-wife's needs. To ensure that the husband gives the rights of his divorced wife, AUUKI WWP 1984 in Article 62 confirms that the Court can order the ex-husband to provide collateral for assets to fulfil the rights of his ex-wife (Akta Undang Undang Keluarga Islam/Wilayah-Wilayah Persekutuan, 1984)

Article 63 regulates an agreement to pay maintenance with money or other assets in the future as a demand for maintenance that the Court has approved with certain conditions. Meanwhile, Articles 64 and 65 regulate the time for giving maintenance to ex-wives; The ex-wife has the right to receive maintenance under the order of the Court unless there are several reasons which result in the cessation of maintenance for the ex-wife. Among these causes is the death of one of the parties, or the *nushūz* committed by the wife when they reconciled or *rujū'*.

The Court can change the maintenance order if, at a later date, there is a request from the ex-husband or ex-wife with the consideration that there is a real mistake or a discrepancy in facts or changes in circumstances. Likewise, the Court has the authority to change the subsistence agreement between the ex-husband and ex-wife if, at any point in time, a change in terms of circumstances has taken effect, regardless of the conflicting designation in the agreement (Akta Undang Undang Keluarga Islam/Wilayah-Wilayah Persekutuan, 1984).

An ex-wife can sue her ex-husband if he does not provide for her maintenance because he owes the living to her. In fact, Article

69 AUUKI WWP Paragraph 1 states when the ex-wife can prove the arrears of the living, then the ex-husband dies before paying off his debts (derived from dependents), the ex-wife gets the right to her inheritance with the amount following the debts of her ex-husband. Concerning the right of residence for the wife, Article 71 AUUKI WWP emphasizes that the ex-wife has the right to live at the house the couple stayed during their marriage as long as the ex-husband does not find another suitable place to live for his ex-wife. The right of residence is valid until the *'iddah* period expires, the child custody period expires, the ex-wife has remarried, or the ex-wife has committed an act of open infatuation (*fahīshah*).

Articles 81-87 AUUKI WWP regulate the wife's right to obtain child custody (*ḥadānah*) in *ṭalāq*, especially for the wife who is considered appropriate by the Court to get this right. The child's age under the mother's responsibility at the time of the divorce is when the child is seven years old for the boy and nine years for the girl. If there is a request from the mother to increase the duration of custody, the Court can determine the age of 9 years for boys and 11 years for girls. After that, the custody is handed over to the father. When the child reaches the age of *mumayyiz*, he or she can choose to live with his mother or father (Faizin et al., 2020).

Women's Post-Divorce Rights in Judges' Decisions of the South Jakarta Religious Court

The rights received by the ex-wife after the divorce decision vary greatly. This is due to several reasons, including the consideration of the panel of judges and the law. In 2010, the Supreme Court stipulated a jurisprudence based on the Supreme Court Decision No. 276 K/AG/2010 that gives the wife post-divorce rights in a divorce initiated by the husband (*cerai talak*). However, subsequent judges did not follow this jurisprudence as befits a jurisprudence. When divorce occurs at the wife's request, it is as if the wife is always the victim of her demands for divorce. More than that, in general, the wife suing for divorce does not expect much from her position but is only given *ṭalāq ba'īn sughrā* and gets custody of her child (Hamzani et al., 2021); (Lon & Widyawati, 2021); (Rais & Muyassar, 2022).

Ex-wife's Rights in *Khulū'* Decision

This study uses the South Jakarta Religious Court's decisions in the period 2014-2016 after the divorce due to *khulū'* to get an overview of the fulfilment of ex-wives' rights. The overview can be seen in the following table.

Table 1. Ex-Wife's Rights in *Khulū'* Divorce at the South Jakarta Religious Court in 2014-2016

Case Number	<i>Haḍānah</i>	<i>'iddah maintenance</i>	<i>Mut'ah</i>	Others
1321/Pdt.G/2014/PA.JS	Yes	-	-	-
1445/Pdt.G/2014/PA.JS	Yes	-	-	-
0717/Pdt.G/2016/PA.JS	Yes	-	-	-
2787/Pdt.G/2016/PA.JS	Yes	-	-	-
1470/Pdt.G/2016/PA.JS	Yes	Yes	Yes	Distribution of Joint Assets
Amount	5	1	1	1

The table above shows eleven *khulū'* cases in the South Jakarta Religious Court in 2014-2016. In six decisions, the judges did not grant the women their post-divorce rights at all, except for in *ṭalāq ba'in suhbrā* decisions. Only five decisions gave *ḥaḍānah* rights, one gave maintenance rights, one gave *mut'ah* rights, and one gave joint property rights. In particular, only decision Number 1470/Pdt.G/2016/PA.JS granted the wife several rights among the eleven choices. This happened because, before the divorce, the plaintiff and the defendant had made a joint agreement before the notary, which among other things, the husband gave the wife several rights when the divorce occurred and was decided by the panel of judges. The agreement was then approved and became one of the judge's decisions.

Ex-wives' Rights in *Cerai Talak* Decision

The wife's rights in divorce by the husband's repudiation have been regulated formally in Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law. In addition, the judge also has ex-officio rights to determine the ex-wife's rights (Rosdiana & Nasution,

2020; Subchi, 2020). The *ex-officio* rights are the rights of judges to use their authority in deciding a case to create justice.

Concerning *ex-officio* rights to the panel of judges at the Indonesian Religious Courts, Article 41 letter (c) of Law Number 1 of 1974 states that the Court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife. The word “may” contained in Article 41 letter (c) above gives judges discretionary rights so that judges apply it in *ex-officio*, even without being based on a lawsuit.

Some argue that the mentioned Article 41 is purely material law because it concerns obligations and rights, so its application must be based on a lawsuit and defended according to formal legal provisions. Thus, it may not conflict with the provisions of Article 178 HIR or 189 R.Bg, especially paragraphs (2) and (3), stating that the judge is obliged to hear all parts of the claim; Judges are prohibited from passing decisions on cases that are not prosecuted or giving more than what is required.

The rights of the wife in divorce are written in law. Therefore, based on the purpose of creating the common good, legal protection, and the mandate of the statutes, judges can use their *ex-officio* rights to determine the rights of ex-wives in divorce. However, if the wife is absent from the court, the judges take *verstek* (default judgment). Based on the latest Supreme Court Regulation (PERMA) of 2018, judges granting the rights to wives is prohibited because she disobeys the court to attend the hearings. However, when the wife takes legal action (*verzet*), there is a possibility that she will get her rights as long as she applies to the court (Jarkasih, 2019).

Table 2. Wife's Rights in Divorce Due to *Cerai Talak* at the South Jakarta Religious Court in 2014-2016

Case Number	<i>Hadānah</i>	<i>'iddah income</i>	<i>Mut'ab</i>	Others
1235/Pdt.G/2014/PA.JS.	-	IDR 3,000,000	IDR 500,000	-
0927/Pdt.G/2014/PA.JS.	-	IDR 1,500,000	IDR 500,000	-
2765/Pdt.G/2014/PA.JS.	-	IDR 600,000	IDR 400,000	-
2514/Pdt.G/2014/PA.JS.	-	-	-	-

Case Number	<i>Haḍānah</i>	<i>'iddah</i> <i>income</i>	<i>Mut'ah</i>	Others
2040/Pdt.G/2015/PA.JS.	Yes	IDR 3,000,000	IDR 500,000	-
2230/Pdt.G/2015/PA.JS.	-	IDR 1,500,000	IDR 500,000	-
3650/Pdt.G/2015/PA.JS.	Yes	IDR 6,000,000	IDR 10,000,000	Arrear past maintenance IDR 18,000,000
2131/Pdt.G/2015/PA.JS.	-	-	-	-
565/Pdt.G/2016/PA.JS.	-	IDR 4,500,000	IDR 2,000,000	-
1165/Pdt.G/2016/PA.JS.	-	IDR 1,500,000	IDR 500,000	-
849/Pdt.G/2016/PA.JS.	-	IDR 15,000,000	5 Gram	<i>'iddah</i> maintenance and <i>mut'ah</i> are handed over at the time of reading the divorce pronouncement
Amount	2	9	9	1

In divorce cases, as shown in Table 2, more than eleven cases were decided by the South Jakarta Religious Court in 2014-2016. In Decision Number 849/Pdt.G/2016/PA.JS, the panel of judges believed, based on Article 58 of Law Number 7 of 1989 on Religious Courts amended by Law Number 3 of 2006, that to ensure the creation of justice and balance between *cerai talak* and the fulfilment of the rights of the wife in a divorce, the applicant must pay off the *'iddah* and *mut'ah* maintenance at the time of divorce pronouncement. In order for an ex-wife to receive her divorce rights, the action performed by the panel of judges is an illustration of legal certainty.

Ex-wife's Post-Divorce in the Sharia Court of the Federal Territory of Kuala Lumpur's Decisions

There are many types of divorce at the Sharia Court in the Kuala Lumpur federal region mentioned in the AUUKI WWP (Deed of the

Associated Territory Islamic Family Law). However, most wives who filed lawsuits at the Kuala Lumpur Regional Sharia Court appealed to the panel of judges to use Article 47, namely divorce by *talāq* (initiated by the husband). On the other hand, others use Article 52 relating to the *fasakh* of marriage (dissolution of marriage with the application made by the wife).

Ex-wives' Rights in *Khulū* Decisions

Even though some wives submit requests for *fasakh* from their husbands to the Court, the panel of judges always takes the initiative to change the recommendation from *fasakh* to *khulū* or ransom divorce based on consideration and mutual agreement between the parties and the panel of judges. The policy is adopted typically because the case does not merit a *fasakh* ruling.

Table 3. Ex-wives' Post-Divorce Rights as a Result of *Khulū*' at the Sharia Court of the Federal Territory of Kuala Lumpur in 2014-2016

Case Number	<i>Haḍānah</i>	<i>'iddah income</i>	<i>Mut'ah</i>	Others
14008-056-0682-2014	-	-	-	Payment made to the husband of RM 5,000
14005-056-0739-2014	-	-	-	Payment made to the husband of RM 30,000
14001-055-0951-2012 & 14001-056-0890-2014	-	-	-	Payment made to the husband of RM 2,000 (shift from <i>fasakh</i> to <i>khulū</i>)
14008-056-0887-2014	-	-	-	Payment made to the husband of RM 2,000
14008-014-0677-2014 & 14008-056-0083-2015	-	-	-	Payment made to the husband of RM 50 (shift from <i>fasakh</i> to <i>khulū</i>)
14008-056-0814-2015	-	-	-	Payment made to the husband of RM 1,000
14005-056-0331-2015	-	-	-	Payment made to the husband of RM 501
14003-056-0400-2015	-	-	-	Payment made to the husband of RM 13,000

Case Number	<i>Haḍānah</i>	<i>'iddah</i> <i>income</i>	<i>Mut'ah</i>	Others
14003-014-0919-2016 & 14003-056-1263-2016	-	-	-	Payment made to the husband of RM 1,000 (shift from <i>fasakh</i> to <i>khulū'</i>)
14003-014-0976-2016 & 14003-056-1272-2016	-	-	-	Payment made to the husband of RM 1,000 (shift from <i>fasakh</i> to <i>khulū'</i>)
14002-014-0273-2016 & 14002-056-0602-2016	-	-	-	Payment made to the husband of RM 8,000 (shift from <i>fasakh</i> to <i>khulū'</i>)
Amount	-	-	-	11

In Table 3, eleven divorce applications in Kuala Lumpur Regional Sharia Court were decided. Six of them were originally filed as *khulū'* divorce applications. Meanwhile, the petition for the other five cases, including the application case number: 14008-014-0677-2014 & 14008-056-0083-2015, 14003-014-0919-2016 & 14003-056-1263-2016, 14003-014-0976-2016 & 14003-056-1272-2016, 14002-014-0273-2016 & 14002-056-0602-2016, and 14008-014-0039-2016 & 14008-056-0039, were originally a request for *fasakh* marriage filed by the plaintiff (wives). However, as the trial proceeded, the proposal was changed to *khulū'*.

As a result of changing the application from *fasakh* to *khulū'*, the rights gained by a wife in a divorce will change from the application, the legal provisions used when registering her divorce and, of course, the final judgement.

Ex-wife's Rights in *Talāq* Decision

In Malaysia, Sharia Court Judges do not have similar ex-officio rights enjoyed by Religious Court Judges in Indonesia. The inference is that judges at the Malaysian Sharia Court are relatively passive in assessing the post-divorce rights of the wife. Under Article 47 of the AUUKI WWP (Deed of the Law on Islamic Families in Associated Areas) of 1984, if a divorced wife wishes to receive her rights, she must first petition the Court.

Table 4. Ex-wife's Rights in *Talāq* Divorce at the Sharia Court of the Kuala Lumpur Federal Area in 2014-2016

Case Number	<i>Ḥaḍānah</i>	<i>'Iddah Maintenance</i>	<i>Mut'ah</i>	Others
14003-024-0194-2014 & 14003-023-0195-2014	Yes	RM 1,200	RM 5,000	Past living RM 21,600
14001-021-0708-2014, 14001-016-0709-2014 & 14001-055-0607-2014	-	RM 6,000	RM 9,000	-
14008-024-0128-2014, 14008-021-0129-2014, 14008-055-0112-2014 & 14008-016-0131-2014	Yes	RM 900	RM 1,000	-
14008-055-0153-2015, 14008-024-0214-2015, 14008-016-0213-2015 & 14008-021-0215-2015	Yes	RM 600	RM 200	-
14001-055-0091-2015, 14001-021-0300-2015, 14001-016-0301-2015 & 14001-024-0302-2015	Yes	RM 3,300	RM 3,998	-
14003-055-0604-2015 & 14003-021-0648-2015	-	RM 5,400	-	-
14004-016-0598-2016, 14004-021-0597-2016 & 14004-055-0214-2016	-	RM 1,500	RM 10,000	-
14007-055-0856-2016, 14007-016-0940-2016, 14007-021-0941-2016, 14007-024-0942-2016	Yes	RM 9,000	RM 20,000	-
14009-016-0115-2016 & 14009-021-0116-2016	-	RM 3,000	RM 15,300	-
Amount	5	9	8	1

In eleven divorce cases, the judges awarded five applicants with *ḥaḍānah* rights, nine applications with *'iddah* maintenance rights, eight with *mut'ah* rights, and one with past unpaid maintenance (*naḥkah madiyyah*) rights, as shown in the table above. The judges decided the rights of the divorced wives because the wives actively submitted requests for their post-divorce rights, including *ḥaḍānah* rights, *'iddah* maintenance rights, and *Mut'ah* rights. In other words, if the wives did not petition the Court, the judges would not grant these rights in their ruling.

Differences in Fulfilling Women's Post-Divorce Rights in Indonesian and Malaysian Islamic Courts

Following are the differences in the rights of women in divorce in the Decisions of the Indonesian Religious Court and Malaysian Sharia Court:

First, the Rights of *ḥaḍānah*. *Ḥaḍānah* is a right that the wife should receive, especially when the child is underage or immature. This is applied in both *ṭalāq* and *khulū'*. However, the Malaysian Sharia Court's decisions have not accommodated this right when the divorce occurs due to *ṭalāq* or *khulū'*. In contrast, the decisions in the Indonesian Religious Courts have relatively accommodated the right of *ḥaḍānah* for wives in divorce, including the consequences of *khulū'*. In the Sharia Court's decisions, the wife's right of *ḥaḍānah* is not included. Although in practice, the panel of judges will grant this right because it is already attached to the wives as long as the child has not reached the age of *mumayyiz*.

Second, imposition of *Khulū'* (Divorce by Redemption) Fee.

Khulū' or *tebus ṭalāq* refers to a divorce initiated by the wife. The fall of one *talaq ba'in suhbra* is imposed at the time of this divorce. In the Indonesian context, it is referred to as a divorce and there is no provision in the judgement requiring the wife to pay compensation money to the husband. This differs from Malaysia, where the wife must pay her husband compensation if she requests a divorce through a panel of judges. The board of judges determines the amount paid by the wife based on the length of the marriage, the dowry, the wife's abilities, and her standard of living while still married.

Third, determination of *'Iddah* and *Mut'ah Maintenance*. In cases of divorce owing to *khulū'* in both Indonesia and Malaysia, it is known that the wife does not have the right to support *'iddah* and *mut'ah* based on the preceding judgements. Regarding husband-initiated divorce cases, Indonesia and Malaysia reach different conclusions. In Indonesia, judges grant this right to women in their judgements regardless of whether they seek it. To get *'iddah* and *mut'ah* maintenance rights in Malaysia, the ex-wives must apply to the panel of judges. If the ex-wives do not request it, they will not receive it. This is because judges in Indonesia have the ex-officio right to grant women's rights in divorce, whereas judges in Malaysia do not (Mappiase, 2015).

Four, execution of the Women's Rights Following the Decisions. The essential item following a judge's ruling, particularly regarding granting rights to the ex-wife, in both the Indonesian Religious Court and the Malaysian Sharia court, is that the decision is carried out as instructed. The Malaysian Sharia Court has a unique institution, the Bahagian Sokongan Keluarga (Family Support Division), to fulfil post-divorce rights. In the meantime, no institution in Indonesia is responsible for ensuring the fulfillment of these rights. The ex-wife must petition the Court separately to ensure that her ex-husband obeys the judgment, particularly regarding her rights not provided following the Court's ruling.

Conclusion

This study concludes that there are differences in fulfilling post-divorce rights for women in *kbulū'* cases in the Indonesian Religious Court and Malaysian Sharia court decisions. In the case of Malaysia, a woman is forced to pay a certain amount of money as a ransom for herself if she asks her husband to divorce her. On the other hand, this kind of compensation is not required in Indonesia. Instead, the judges can order the husband to pay for his wife's post-divorce alimony with their ex-officio rights. This means that the judges assess the case and decide whether to grant the wife her rights even without her request in the petition.

The ex-officio rights are inapplicable in Malaysia for similar cases. In other words, the judges cannot grant post-divorce rights unless the wife mentions it in her petition. Another difference is that Malaysia has an institution called the Family Support Agency (BSK), specifically tasked with carrying out the judge's decision to fulfill the wife's rights in the event of a divorce. This institution guarantees that the judge's decision is carried out to determine the wife's rights. However, this institution does not yet exist in Indonesia. Therefore, the enforceability of post-divorce rights-related decisions is questionable.

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