

# Husband's Nusyuz in Female-Initiated Divorce: A Mubadalah Perspective

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**Abstract:** Many people believe that Nusyuz (marital disobedience) is only committed by wives against their husbands, overlooking the possibility of Nusyuz by husbands towards their wives. Similarly, the judges at the Banyuwangi Religious Court often interpret divorce cases initiated by wives as a sign of the wife's Nusyuz, even when the divorce is caused by the husband's Nusyuz. This forms the background of this research. The focus and aim of this study are to analyze the judges' perspectives at the Banyuwangi Religious Court regarding the consideration of a husband's Nusyuz, the status of a husband's Nusyuz in divorce cases heard at the court, and to evaluate the judges' views on Nusyuz through the lens of *mubadalah* (reciprocity in marriage). This empirical juridical research adopts a qualitative approach, utilizing interviews with judges at the Banyuwangi Religious Court. The data used in this study includes primary, secondary, and tertiary sources. The research findings reveal that: (1) The majority of judges at the Banyuwangi Religious Court consider a husband's Nusyuz primarily through the concept of *taklik talak* (conditional divorce). (2) In divorce cases at the Banyuwangi Religious Court, judges often deny post-divorce rights to wives, assuming that a wife who files for divorce is guilty of Nusyuz. As a result, they do not grant post-divorce entitlements such as *mut'ah* (compensation) and *iddah* (waiting period) maintenance. Although most judges at the Banyuwangi Religious Court understand the concept of Nusyuz from a *mubadalah* perspective, they have yet to fully implement it in practice.

**Keywords:** Husband's Nusyuz, Divorce by Women, *Mubadalah*

**Abstrak:** Banyak orang beranggapan bahwa Nusyuz (pembangkangan dalam pernikahan) hanya dilakukan oleh istri terhadap suami, dan mengabaikan kemungkinan Nusyuz yang dilakukan oleh suami terhadap istri. Begitu pula, para hakim di Pengadilan Agama Banyuwangi sering menafsirkan kasus perceraian yang diajukan oleh istri sebagai tanda Nusyuz istri, meskipun perceraian tersebut disebabkan oleh Nusyuz suami. Hal inilah yang menjadi latar belakang penelitian ini. Fokus dan tujuan penelitian ini adalah untuk menganalisis pandangan hakim di Pengadilan Agama Banyuwangi terkait pertimbangan Nusyuz suami, status Nusyuz suami dalam kasus perceraian yang diperiksa di pengadilan, serta mengevaluasi pandangan hakim tentang Nusyuz dari perspektif *mubadalah* (resiprositas dalam pernikahan). Penelitian ini merupakan penelitian yuridis empiris dengan pendekatan kualitatif, menggunakan wawancara dengan para hakim di Pengadilan Agama Banyuwangi. Data yang digunakan dalam penelitian ini mencakup data primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa: (1) Mayoritas hakim di Pengadilan Agama Banyuwangi mempertimbangkan Nusyuz suami berdasarkan konsep *taklik talak* (perceraian bersyarat). (2) Dalam kasus perceraian di Pengadilan Agama Banyuwangi, hakim sering menolak hak-hak pasca perceraian bagi istri, dengan asumsi bahwa istri yang mengajukan perceraian termasuk dalam Nusyuz istri. Akibatnya, mereka tidak memberikan hak-hak pasca perceraian seperti *mut'ah* (kompensasi) dan nafkah *iddah* (masa tunggu). Meskipun sebagian besar hakim di Pengadilan Agama Banyuwangi memahami konsep Nusyuz dari perspektif *mubadalah*, mereka belum sepenuhnya mampu menerapkannya dalam praktik.

**Kata kunci:** Nusyuz Suami, Perceraian oleh Istri, *Mubadalah*

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## Introduction

In Islamic marriage, the rights and obligations of both husband and wife are clearly delineated, as emphasized in the Qur'an, specifically in Surah Al-Baqarah verse 228, which states that "And women have rights similar to those against them in a just manner, and men are a degree above them" (Yudhiani et al., 2019).<sup>1</sup> This verse establishes the framework for understanding the dynamics of marital relationships in Islam, highlighting that while both partners have rights and obligations, the husband holds a degree of authority over the wife. This hierarchical structure can lead to disharmony in the household if either party neglects their responsibilities, resulting in what is termed "Nusyuz," which refers to disobedience or neglect of marital duties.

Nusyuz is often more commonly associated with wives, as societal perceptions tend to focus on women's roles within the marriage.<sup>2</sup> Research indicates that the implications of a wife's Nusyuz can be significant, particularly in cases where conflicts arise due to the husband's controlling behavior, such as forbidding the wife from working.<sup>3</sup> This dynamic can lead to significant marital strife, as illustrated in various studies that discuss cases where a wife's refusal to comply with her husband's demands results in her leaving the marital home.<sup>4</sup> Similarly, research highlights

instances where a wife's Nusyuz is linked to her lack of transparency with her husband and her failure to fulfill her obligations, ultimately leading to divorce.<sup>5</sup>

However, it is crucial to recognize that nusyuz is not solely a female issue; husbands can also exhibit nusyuz by failing to meet their obligations, such as providing financial support or engaging in abusive behavior. The Compilation of Islamic Law outlines that a husband who neglects his duties can also be deemed nusyuz, although there is less societal awareness of this phenomenon.<sup>6</sup> Judges in religious courts have noted that a husband's indifference or abusive behavior constitutes nusyuz, yet societal narratives often overlook these aspects, focusing instead on the wife's actions. This imbalance in perception contributes to the stigma surrounding women's nusyuz while neglecting the husband's responsibilities.

The prevalence of divorce cases related to nusyuz is significant, with many cases in Indonesian religious courts stemming from husbands who abandon their wives or fail to provide for them.<sup>7</sup> The data from various religious courts indicates a rising number of divorce cases attributed to husbands' neglect, highlighting the need for greater awareness of both parties' obligations in a marriage.<sup>8</sup> Furthermore, the legal

<sup>1</sup> Walan Yudhiani and others, 'The Urgency of Pre-Married Education to Prevent Increasing of Divorce in Padang, West Sumatra', 2019, doi:10.2991/icoie-18.2019.74.

<sup>2</sup> Surjanti Surjanti and Bambang Slamet Eko S, 'The Importance of Economic Factors as the Cause of Divorce in the Tulungagung Religious Court', *Journal Research of Social Science Economics and Management*, 2023, doi:10.59141/jrssem.v2i08.398.

<sup>3</sup> A Jauhar Fuad and others, 'Islah Reconciliation in the Iddah Period as Resolution of Divorce Based on Sigmund Freud's Perspective', *International Journal of Social Service and Research*, 2023, doi:10.46799/ijssr.v3i3.291.

<sup>4</sup> Abdul Qodir, Hardian Iskandar, and Dodi Jaya

Wardana, 'A Living Claim as an Alternative to Solving Divorce Case in the Bojonegoro', 2023, doi:10.61543/equ.v1i2.10.

<sup>5</sup> Budi Hermono and others, 'Juridical Review of Determination of Marriage Certificate in Divorce Applications in Decision No. 5361 Rev. G/2022/Pa. Badg', 2023, doi:10.2991/978-2-38476-152-4\_143.

<sup>6</sup> Ali Imron, 'Memahami Konsep Perceraian Dalam Hukum Keluarga', *Buana Gender Jurnal Studi Gender Dan Anak*, 2016, doi:10.22515/bg.v1i1.66.

<sup>7</sup> Fitri Rafianti and None M Hary Angga Pratama Sinaga, 'Nusyuz as the Cause of Domestic Violence: A Comparative Study of Islamic Law and Criminal Law', *International Journal of Law Environment and Natural Resources*, 2023, doi:10.51749/injurlens.v3i1.45.

<sup>8</sup> Awal Liza, Silfia Hanani, and Nofiard Nofiard, 'Reflection of Islamic Law on Living Al-Hijr When Baganyi in the Community Nagari Canduang Koto

framework surrounding nusyuz, as articulated in the Compilation of Islamic Law, emphasizes that both husbands and wives can be held accountable for their actions, yet the enforcement of these laws often disproportionately affects women.<sup>9</sup>

While the concept of nusyuz is often associated with wives, it is essential to acknowledge that husbands can also be guilty of neglecting their marital duties. The societal focus on women's nusyuz can obscure the complexities of marital obligations and the shared responsibility of both partners. A more balanced understanding of nusyuz, supported by legal frameworks and societal awareness, is necessary to foster healthier marital relationships and reduce the incidence of divorce.

There are several opinions of Judges in the Religious Courts saying that, "Husband's Nusyuz is there, not only wife's Nusyuz. A husband who does not do his obligations such as being indifferent, arrogant, or miserly is husband's Nusyuz to wife. But there are those who think that if a wife sues her husband, it is included in the category of a wife who sues Nusyuz".<sup>10</sup>

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cases are contested at the Banyuwangi Religious Court based on husbands who have been away for a long time who do not know where they have been for more than a year, husbands who do not provide a living for their wives, or husbands who commit violence in their household. It is husband's Nusyuz that occurs among the community, but many people still do not know about its husband's Nusyuz.

*Husband's Nusyuz is the attitude of the husband who abandons his obligations, acts hard on his wife, does not have good intercourse with her, does not provide maintenance and is indifferent to his wife.<sup>12</sup> Husbands who commit violence, insult, speak harshly to their wives, but their wives are obedient and not disobedient to them are included husband's Nusyuz to wife.*

There is data showing that there are many divorce cases coming in and breaking up in 2022. The cases entered in 2022 are numbered 4073 and the divorce case is justified because the husband left his wife and did not provide for him. The author is interested in discussing the views of the judges at the Banyuwangi Religious Court regarding divorce cases being contested because husbands leave their wives or husbands who do not provide a living.

The focus of the discussion of this research lies in the judge's view of husband's Nusyuz, this study will also interview judges at the Banyuwangi Religious Court which will then be analyzed using perspective *Mubadalah*. Benefits in this study by providing additional insight into the husband's Nusyuz, especially into the husband's negligence in doing his obligations. The practical benefits of this research are so that people, especially husbands, can know and consider Nusyuz,

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Laweh', 2023, doi:10.30983/gic.vii1.134.

<sup>9</sup> Eva Meizara Puspita Dewi, 'The Meaning of Divorce for Wives (The Marriage Age 20 Years and Above)', *Jurnal Psikologi Pendidikan Dan Konseling Jurnal Kajian Psikologi Pendidikan Dan Bimbingan Konseling*, 2017, doi:10.26858/jpkk.voio.3068.

<sup>10</sup> Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 3 Agustus 2022)

<sup>11</sup> Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 3 Agustus 2022)

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<sup>12</sup> M. Abdul Mujieb dkk, *Kamus Istilah Fiqih* (Jakarta: Pustaka Firdaus, 1994), 251

that *Nusyuz* is not only for the wife but for the husband as well, and it is hoped that the wife will still get the rights after the divorce.

### Literature Review

In recent years, the concept of *nusyuz*, particularly in the context of Islamic law, has garnered significant academic attention. Several studies have explored the criteria, consequences, and resolutions of *nusyuz*, particularly focusing on the husband's role. Aisyah Nurlia, Nilla Nargis, and Elly Nurlaili's research in the *\*Pactum Law Journal\** delves into the criteria for husband's *nusyuz* according to Islamic law, the resultant effects on wives, and the legal remedies available. Their findings highlight that while there is a consensus on the criteria for *nusyuz*, the legal consequences and remedies differ significantly among various studies, including the one at hand which emphasizes the judges' perspectives in the context of *mubadalah*, a reciprocal interpretation of gender roles in marital relationships.<sup>13</sup>

Mohamad Ikrom's thesis from the Jember State Islamic Institute further complements this discourse by examining the concept of *nusyuz* through Islamic marriage law. Ikrom's normative approach contrasts with the empirical methods employed in the current study, which focuses on the practical implications of *nusyuz* as perceived by judges. This divergence in methodology underscores the multifaceted nature of *nusyuz*, where theoretical frameworks can yield different insights into the same phenomenon.<sup>14</sup>

Similarly, Hesti Wulandari's thesis at Syarif Hidayatullah State Islamic University discusses the definitions and criteria of *nusyuz*, but from a dual perspective of Islamic and positive law, thereby enriching the dialogue surrounding the legal interpretations of *nusyuz*.<sup>15</sup>

In the realm of gender perspectives, Badarudin's research at UIN Raden Intan explores *nusyuz* through the lenses of Islamic law and gender, emphasizing the implications of gender roles in the understanding of *nusyuz*. This contrasts with the current study's focus on *mubadalah*, which seeks to balance the roles and responsibilities of both spouses in a marriage. Kawakib's thesis also contributes to this discourse by analyzing the views of Wahbah Al-Zuhaili on *nusyuz* and gender, further illustrating the diverse interpretations of *nusyuz* across different scholarly works.<sup>16</sup>

Moreover, Saibatul Hamdi's comparative study on the views of Imam Syafi'i and Hanafi regarding *nusyuz* provides a historical context that is essential for understanding contemporary interpretations. This comparative approach highlights the evolution of thought surrounding *nusyuz* and its implications for marital harmony, which is a critical aspect of the current study that employs empirical methods to assess modern judicial perspectives.<sup>17</sup>

The theoretical framework surrounding *nusyuz* is well-established, with the Quranic verses in Surah An-Nisa providing foundational insights into the obligations of both husbands and wives. The interpretations of these verses, particularly

<sup>13</sup> Khoirotin Nisa, Muslih Muslih, and Abu Hapsin, 'Rereading the Concept of *Nusyuz* in Islamic Marriage Law With *Qira'ah Mubadalah*', *Analisa Journal of Social Science and Religion*, 2020, doi:10.18784/analisa.v5i02.1176.

<sup>14</sup> Mohamad Ikrom, 'Kiai Pesantren Dan Pemikirannya Tentang *Nusyuz* (Studi Kasus Di Kabupaten Jember)', *Humanika*, 2019,

doi:10.21831/hum.v17i1.23122.

<sup>15</sup> Nisa, Muslih, and Hapsin.

<sup>16</sup> Dian Wahyu Ningsih, 'Gender Justice Analysis on Husband *Nusyuz*', *Al-Ihkam Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhshiyah Fakultas Syariah Iain Mataram*, 2020, doi:10.20414/alihkam.v12i2.3093.

<sup>17</sup> Ningsih.

regarding the consequences of *nusyuz*, reveal a complex interplay of religious obligations and personal conduct. For instance, the Quran advises reconciliation and peace-making as primary responses to concerns about *nusyuz*, which aligns with the findings of various studies that advocate for mediation and conflict resolution within marital contexts.<sup>18</sup>

The literature on *nusyuz* presents a rich tapestry of interpretations and methodologies, ranging from normative legal analyses to empirical studies. The current research contributes to this body of knowledge by focusing on the judges' perspectives within the framework of *mubadalah*, thereby offering a contemporary lens through which to understand the implications of *nusyuz* in marital relationships.

## Methods

This research uses empirical juridical research. Approach this research is a qualitative approach method because it presents the data obtained in the form of descriptive data. The primary data obtained was obtained directly through interviews with judges at the Banyuwangi Religious Court, The primary data obtained from decisions, The Marriage Law No.1 of 1974, The Compilation of Islamic Law (KHI), Government Regulation (PP) No.9 of 1975, The Law No.7 of 1989, The Supreme Court Circulation Letter (SEMA) No.3 of 2018, the Qur'an, Hadist, journals, articles, and legal books. Data processing techniques are the methods used to obtain the required information data. The stages used in data processing are editing, verification, analysis, conclusion.

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<sup>18</sup> Ibnu Izzah, 'Nusyuz and Its Solutions in Compilation of Islamic Law From the Perspective of the Al-Quran', *Jurnal Al-Dustur*, 2021, doi:10.30863/jad.v4i1.1420.

## Results and Discussion

### The Judge's View of Husband's *Nusyuz* perspective *Mubadalah*

The Judges view of the definition husband's *nusyuz* in the divorce by Women case at the Banyuwangi Religious Court. Husband's *nusyuz* is known from Mr. Hayat, one of the Judges at the Banyuwangi Religious Court, namely the attitude of a husband who is indifferent and negligent towards his wife, does not carry out his obligations as the head of the family, cannot protect his wife, does not provide a living both physically and spiritually, and allows his wife when his wife makes a mistake.<sup>19</sup> Meanwhile, Ms. Zaenah, as one of the Judges at the Banyuwangi Religious Court, has a different opinion on the definition husband's *nusyuz*. He explained about husband's *nusyuz*, namely the husband's negligence in carrying out his obligations, not providing a living for his wife, leaving his wife, and not taking care of his wife which is the reason for the divorce being contested, this cannot be said *nusyuz*. If the wife sues for divorce from her husband, then it is considered *nusyuz* is his wife.<sup>20</sup>

It can be concluded that the Judges at Banyuwangi Religious Court defines about husband's *nusyuz* as the husband's negligence in carrying out his obligations, in terms of providing for both physically and spiritually, leaving his wife when his wife makes a mistake, not nurturing and often leaving his wife without guilt. But there is one Judge who argues that when the wife sues her husband for divorce it becomes wife's *nusyuz*. This is the reason why there are still many people who do not know about the considering of husband's *nusyuz*.

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<sup>19</sup> Drs. H. M. Hayat, S.H., M.H., Interview, (Banyuwangi, 28 Juli 2022)

<sup>20</sup> Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 03 Agustus 2022)

The Judges views on reference sources husband's *nusyuz* in the divorce by Women case at the Banyuwangi Religious Court. According to Mr. Hayat, Mrs. Zaenah, and Mr. Hafiz as Judges at the Banyuwangi Religious Court, they argued that they made *taklik talak* as their reference source in knowing about husband's *nusyuz*.

It can be concluded the Judges at Banyuwangi Religious Court consider the source of reference husband's *nusyuz* of contents *taklik talak*. Content of *taklik talak*, namely:<sup>21</sup>

- a. Abandoned his wife for two years straight,
- b. Does not provide obligatory maintenance to his wife for three months,
- c. Hurting the body or body of the wife and allowing or not caring about his wife for six months or more.

In perspective *mubadalah*, *nusyuz* is the opposite of obedience. *Nusyuz* and obedience is reciprocal because husband and wife are required to have a joint commitment to bring all the goodness that exists in the household (*Jalbu al-mashalih*) and avoid all evil from him (*dar'u al-mafasid*). This commitment is referred to in the perspective of obedience in religion. The opposite of obedient is what makes *nusyuz* interpreted as a negative action in *mubadalah* or reciprocity between husband and wife, which can make the bond of husband and wife weaken and the household is far from the situation *sakinah*, *mawaddah*, and *rahmah*. *Nusyuz* can be done by the wife or husband.

In Qs. An-Nisa' verse 128 explains about husband's *nusyuz* to wife. *Nusyuz* This is

interpreted as turning away, reluctant, or no longer paying attention to his wife. It could be because her husband is no longer interested or has started to have an interest in other women. If using perspective. Then the explanation regarding husband's *nusyuz* is a worry in a *mubadalah* married couples, where there are parties who feel uncomfortable, are reluctant or will turn to the other. Either done by the wife or done by the husband. The verse invites them both to make peace, to return to their original commitment as a couple who love and care for each other.

In the verse explains from perspective *mubadalah*, that *nusyuz* applies to both parties. Under these conditions, Allah SWT recommends that the two of them reconcile, so that they can return to their shared commitment as partners who love and strengthen one another. This paragraph also applies to husband's *nusyuz* and wife. These verses can become norms and principles in considering other verses, such as in Qs. An-Nisa' verse 34 explains about wife's *nusyuz* to husband. So, when the wife's *nusyuz* husband cannot directly hit his wife.

Because the essence of management *nusyuz* in the Qur'an is how to restore the husband and wife relationship to its original state, which loves and cares for one another. Hitting is a treatment that is far from the word recommended in the Qur'an. Because of this, many commentators consider beating a wife to be immoral or contrary to noble character. So, in a married couple, what must be strengthened is commitment and obedience to all things that are good for the family and distanced from defiance towards that commitment. Obedience is obedience and disobedience is *nusyuz*.<sup>22</sup>

<sup>21</sup> Drs. H. Nur Mujib, MH., "Ketika Suami Melanggar Taklik Talak" *pa-jakartaselatan*, 04 Oktober 2018 <https://www.pa-jakartaselatan.go.id/artikel/260-ketika-suami-melanggar-taklik-talak#:~:text=Taklik%20talak%20menurut%20ketentuan%20opasal,pada%20masa%20yang%20akan%20datang%E2%80%9D>

<sup>22</sup> Kodir, *Qira'ah Mubadalah*, 411

## The Judge's View of Status Husband's Nusyuz on The Divorce by Women Case at Banyuwangi Religious Court Perspective Mubadalah

The Judges view of the right of the wife because husband's *nusyuz* in the divorce by women case at Banyuwangi Religious Court. Mr. Hayat is of the opinion regarding the wife's rights, that there are post-divorce wife rights to be contested. The wife's rights are obtained in other forms of rights, such as children's rights or the post-divorce husband's obligations are still notified to his wife. However, most divorced wives do not ask for post-divorce rights because many husbands do not come to court, making it difficult to discuss post-divorce wife rights.<sup>23</sup> Meanwhile Mr. Hafiz is of the opinion regarding the wife's rights that even though regulations allow it and judges have ex-officio rights<sup>24</sup>, this matter must still be in accordance with the assembly itself which determines it.<sup>25</sup> Mr. Hafiz also believes that the wife's rights can be given if it is in accordance with the existing agreement between the husband and wife.<sup>26</sup> According to Ms. Zaenah, if it accommodates The Supreme Court Circulation Letter (SEMA) No.3 of 2018, the assembly can provide a

*mut'ah*, and alimony *iddah* and punish the defendant to pay it before the defendant takes the divorce certificate. But the problem is that it will be difficult to execute if there is no agreement. This must be included in the *posita* and *petitum* of the lawsuit by asking for a providing *mut'ah* and alimony *iddah* because if not, it cannot be implemented.<sup>27</sup>

It can be concluded according to the Banyuwangi Religious Court judge that the post-divorce wife's rights are due husband's *nusyuz* is still given and there are regulations regarding allowing to give the wife's rights. However, these regulations still must follow the determination of the assembly itself. Most wives also do not ask for post-divorce rights because their husbands do not come to the Religious Courts, so it is very difficult to discuss post-divorce wife rights. And the conclusion from Ms. Zaenah regarding the wife's rights is also of the opinion that it can be granted, but difficult to execute if there is no agreement.

There are several cases of contested divorce where the wife does not get her rights after suing for divorce, even though the wife who is suing is because of her husband's *nusyuz*. In the Divorce by Women Case Number 1841/Pdt.G/2023/PA.Bwi explained that since November 2020, between the plaintiff and the plaintiff, there has been a conflict of irresponsibility for providing a living, with the defendant supporting only 20,000 a day. The accused is also lazy and when counseled by the plaintiff, is outraged, and refuses to change his attitude, so the plaintiff works as a home assistant to provide for her family. That causes the plaintiffs to leave their residences by December 2020. And when the decision was made, the plaintiff did not get a

<sup>23</sup> Drs. H. M. Hayat, S.H., M.H., Interview, (Banyuwangi, 28 Juli 2022)

<sup>24</sup> The ex-officio right is a right that is owned by a judge because of his position to grant the rights owned by the ex-wife, even though these rights are not contained in the demands or requests from the wife in a divorce. Sumber : Bayu A Wicaksono, S.H., "Hak Ex Officio Hakim Sebagai Perwujudan Perlindungan Hukum Terhadap Perempuan Dalam Perkara Perceraian," *badilag.mahkamahagung*, 19 Juli 2022,

<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hak-ex-officio-hakim-sebagai-perwujudan-perlindungan-hukum-terhadap-perempuan-dalam-perkara-perceraian#:~:text=Demi%20kepentingan%20pemenuhan%20hak%20hak,pemberian%20hak%20Dhak%20eko nomi%20perempuan>

<sup>25</sup> Drs. Hafiz, M.H., Interview, (Banyuwangi, 03 Agustus 2022)

<sup>26</sup> Drs. Hafiz, M.H., Interview, (Malang, 11 April 2023)

<sup>27</sup> Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 03 Agustus 2022)

providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1913/Pdt.G/2023/PA.Bwi explained that since August 2021 there have been continuous arguments due to the defendant as the head of the less responsible family. Her temperamental, lazy, and rarely shopper to plaintiffs. Sometimes the defendants make a living for 300,000 a month, which is less than what the family needs, so it is still helped by the plaintiff's family to provide for the household. It causes the plaintiffs to leave their homes on December 2021. And when the verdict has been determined the plaintiff does not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1917/Pdt.G/2023/PA.Bwi explained that since January 2022 there have been frequent clashes between plaintiffs and defendants caused by the irresponsibility of providing a living and able only to provide 700,000 per month, so as to provide for the needs of the plaintiffs working as traders. The defendant was also not open on financial matters, and by January 2022 the accused said the word "talak" to the plaintiffs and had been known by their domestic assistants. It causes the plaintiffs to leave their homes on January 2015. And when the verdict has been determined the plaintiff does not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1499/Pdt.G/2023/PA.Bwi explains that May 2022 of the plaintiffs and defendants often clash because of lack of compatibility and often disagree, the defendants do not provide a living, the lazy, joinistic defendants. As a result, on August 2022 plaintiffs left the settlement together. And when the verdict has been determined the plaintiff does not get a providing *mut'ah*,

and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1762/Pdt.G/2023/PA.Bwi explained that August 2021 between the plaintiff and the accused often quarreled over the lack of role model, because of the heavy consumption and drug dealing. The accused also did not provide a living to the plaintiff, often even asking the plaintiff to send money because the defendants are in custody. The result of August 2022 plaintiffs left the residence together and had split up. And when the decision was made, the plaintiff did not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1757/Pdt.G/2023/PA.Bwi explained that December 2022 between the plaintiff and the accused often quarreled because the accused did not provide support to the plaintiff and had a mental disposition. The result of February 2023 plaintiffs and defendants had been separated from their beds for about three months. And when the decision was made, the plaintiff did not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1151/Pdt.G/2023/PA.Bwi explained that October 2022 between the plaintiff and the accused often quarreled, where the plaintiff received severe treatment from the accused, basking and strangling the plaintiff. Consequently, the plaintiffs left the residence together and had been separated for about four months. And when the decision was made, the plaintiff did not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

It can be concluded from the several cases above, that the wife's rights after the divorce are not sued and the wife still has to pay the full costs of the case. The reason why the wife sues her husband is because



the husband did it *nusyuz* against her and because of this, the husband should continue to carry out his obligations to provide maintenance after the divorce is contested. Because it is contained in the Supreme Court Circular Letter No. 3 of 2018 point 3 concerning husband's obligations due to divorce to wives who do not *nusyuz* accommodate Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Trying Cases Against Women Confronting the Law which contains that, in a divorce case, the wife can be providing *mut'ah*, and alimony *iddah* as long as not doing *nusyuz*.<sup>28</sup> And this is also explained in The Compilation of Islamic Law article 152 that, ex-wife has the right to earn alimony *Iddah* from her ex-husband except him *nusyuz*.<sup>29</sup>

In response to SEMA no. 3 of 2018 relating to Article 149 letter b Compilation of Islamic Law that the husband is obliged to provide maintenance, dowry and *kiswah* to ex-wife during inside *iddah* unless the ex-wife has been divorced not or *nusyuz* and not pregnant. It can be concluded that the wife can earn a providing *mut'ah*, and alimony *iddah* when the wife is not *nusyuz* and submit this matter in the divorce decision to be contested, so that the Judges at Religious Court can decide in accordance with the agreement. And according to Undang-Undang, the wife can file for divorce from her husband and claim the rights of the wife after the divorce. However, the chances of success are slim, and it rarely happens. In addition, there is an opinion that if the wife files a lawsuit, it means she is *nusyuz*. So, he is not entitled to post-divorce rights.<sup>30</sup>

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<sup>28</sup> Point 3 SEMA No.3 Tahun 2018 mengakomodir PERMA No.3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum

<sup>29</sup> Pasal 152 Kompilasi Hukum Islam tentang Akibat Putusnya Perkawinan

<sup>30</sup> M. Khusnul Khuluq, "Perlindungan Hak-Hak

## Conclusion

The Judges at Banyuwangi Religious Court consider husband's *nusyuz* as the husband's negligence in carrying out his obligations in providing a living both physically and spiritually, leaving his wife when his wife makes a mistake, not nurturing and often leaving his wife without guilt. The Judges at Banyuwangi Religious Court consider include in husband's *nusyuz*, which is the contents of taklik talak. The Judges also established a legal basis for the husband's *nusyuz* that was included in the divorce by women case is also found in taklik talak.

The Judges at Banyuwangi Religious Court have not applied the husband's *nusyuz* contained in the divorce case to be given the rights of the wife after the divorce. Even though it is contained in Point 3 of SEMA No.3 of 2018 accommodating the Supreme Court Regulation (PERMA) No.3 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law which contains that, "Wives in divorce cases can be given *iddah* and *mut'ah* bread, as long as it is not proven *nusyuz*", but the Judges at Banyuwangi Religious Court in granting this right, they must still follow the determination of the panel itself. For the application of divorce cases in granting post-divorce wives rights, they have not carried it out properly.

## Credit Authorship Contribution

Ifada Azka Ahyu: Conceptualization, Methodology, Investigation, Writing - Original Draft, and Supervision. Jamilah: Methodology, Data Collection, and Writing - Review & Editing. Yusmita: Formal Analysis,

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### Declaration of Competing Interest

The authors declare no competing interests related to this study. No financial or personal conflicts of interest are present.

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