

GENDER EQUALITY IN RELIGIOUS COURT DECISIONS: A STUDY OF ALIMONY AND THE STATUS OF MAFQUD HUSBANDS FROM AN ISLAMIC FAMILY LAW PERSPECTIVE

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Abstract

The rising rate of female-initiated divorce in Indonesia highlights women's vulnerability due to neglected fundamental rights, specifically alimony, and the prevalence of mafqud (missing) husbands. This situation forces wives into a dilemma of legal uncertainty and structural economic burdens. This study aims to analyse the implementation of gender equality principles in Religious Court decisions concerning the protection of wives' economic rights in cases involving mafqud (missing) husbands, while also examining the consistency of legal application in judicial practice. The research employs a normative-juridical method, using statutory, conceptual, and case-study approaches, analysing three specific Religious Court decisions: PA Kendal (2023), PA Kaimana (2021), and PA Merauke (2011). The results indicate significant legal disparities in the adjudication of similar cases. Some courts maintain a formalistic approach that merely provides legal certainty regarding divorce status without restoring the wife's economic rights. Conversely, other courts have begun adopting a substantive justice approach by granting iddah maintenance (nafkah iddah) and consolatory gifts (mut'ah). This inconsistency suggests that legal protection for women remains a potential "geographic lottery," heavily dependent on the judicial paradigm within each jurisdiction. Furthermore, this study finds that the success of mediation in divorce cases cannot be measured solely through quantitative metrics, as women often hold weak economic bargaining power during family negotiations. The issuance of Supreme Court Circular (SEMA) No. 1 of 2022 provides a legal basis for judges to exercise ex officio authority in determining maintenance, even in the husband's absence (in absentia). This study concludes that the transformation of gender-responsive Islamic family law requires standardised application of norms and enhanced judicial sensitivity to ensure that the economic rights of women in mafqud cases are protected consistently and equitably across all Religious Courts in Indonesia.

Keywords: Gender Equality; Alimony; Mafqud Husband; Religious Court; Islamic Family Law.

INTRODUCTION

Religious courts hold a strategic position within the Indonesian judicial system, specifically in resolving Islamic family law disputes, such as marriage, divorce, child custody, and the fulfilment of economic rights within the household. In exercising its function, the religious judiciary does not merely act as an adjudicative body but also bears moral and social responsibilities to realise a balanced synergy of justice, utility, and

legal certainty. (Norhartijah & Kurniawan, 2025). Within family law cases, women often occupy a more vulnerable position compared to men. This vulnerability stems not only from economic factors but also from patriarchal social constructions that continue to influence power relations within the household. Studies indicate that women in family disputes frequently face unequal access to economic resources, limited bargaining power in marital relationships, and social stigma associated with divorce.



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* Received: 05 February 2026, Received in revised form: 13 March 2026, Accepted: 29 April 2026

Doi: 10.3376/jch.v10i2.1325

(Holden & Nurlaelawati, 2019; Nurlaelawati, 2016). Consequently, women are at higher risk of experiencing injustice during the dispute resolution process, particularly regarding divorce and the fulfilment of post-marital economic rights.

From an Islamic family law perspective, the husband-wife relationship is predicated on the principle of balance between rights and obligations. Husbands are obliged to provide maintenance (*nafkah*)—both material and spiritual—and ensure family welfare, while wives hold the right to protection and a decent standard of living (Yani, 2024). This principle reflects the primary objective of Islamic marriage: to establish a family characterised by *sakinah* (tranquillity), *mawaddah* (love), and *rahmah* (mercy). However, in social practice, the fulfilment of these obligations often deviates from the ideals envisioned by legal norms and religious teachings. This discrepancy is reflected in data from the Indonesian Central Bureau of Statistics (BPS Indonesia, 2025), which reported that as of 2024, the number of contested divorces (*cerai gugat*) filed by wives reached 308,956 cases (approximately 77% of total divorces), while divorces initiated by husbands (*cerai talak*) numbered around 85,652. The rising divorce rate underscores the complexity of economic issues and spousal abandonment as significant drivers for women seeking judicial dissolution of marriage. Research further demonstrates that women often face economic precarity post-divorce, particularly when former husbands fail to fulfil court-ordered maintenance obligations (Karmilah, 2023; Saputra, 2025).

A concrete manifestation of divorce related to abandonment and economic uncertainty is the condition of *mafqud*, where a husband leaves his wife without a word, or his whereabouts remain unknown for a specific duration. (Mamduh & Khalil, 2025). In this situation, the wife faces a dual burden: legal uncertainty regarding her marital status and the loss of access to material and spiritual maintenance. The *mafqud* status often creates complex legal dilemmas: while the wife requires legal certainty regarding her status, she simultaneously incurs economic losses due to the husband's unfulfilled maintenance obligations. (Hartati & Yunus, 2022).

In judicial practice, judges often face a dilemma when handling *mafqud*-related divorces. Judicial approaches are not uniform, potentially leading to disparate outcomes regarding the protection of the wife's economic rights. On one hand, judges must provide legal certainty by granting divorce petitions if abandonment is proven. On the other hand, the fulfilment of economic rights is frequently neglected, especially when the husband is absent (in absentia), leading judges to prioritise the dissolution of the marital bond over the imposition of maintenance obligations.

A significant development in strengthening women's rights within the religious judiciary is the issuance of Supreme Court Circular (SEMA) Number 1 of 2022. This policy encourages consistent legal application and substantive protection of women's rights. Through this SEMA, the Supreme Court affirms that judges in divorce cases may determine the husband's obligation to pay

past maintenance (*nafkah madiyah*), *iddah* maintenance, and *mut'ah* (consolatory gifts), even in *verstek* (default) judgments where the husband is absent. This reflects a paradigm shift from formalistic justice to substantive justice, which is more responsive to women's rights.

Nevertheless, the implementation of SEMA No. 1 of 2022 faces various hurdles. In *mafqud* cases, judges often prioritise the "formal" status of divorce, while maintenance orders remain inconsistent. Furthermore, the execution of such orders is difficult when the husband's location is unknown, rendering the wife's normative economic rights effectively unenforceable. From a gender perspective, this indicates that *mafqud* divorces are not merely about the end of a legal union but are intrinsically linked to post-divorce economic vulnerability. Women often bear the "double burden" of domestic and financial responsibility for themselves and their children (Ramadhita, 2022). Thus, maintenance in divorce cases is not just a formal legal matter but an issue of social justice and protection for vulnerable groups within the family structure.

Previous studies have examined *mafqud* through various lenses, including compliance with *fiqh* schools of thought. (Dimiyati, 2024) or the alignment of judicial decisions with Indonesian positive law (Harahap et al., 2025). Others have analysed the issue from the perspective of *maqashid syariah* (Mamduh & Khalil, 2025). However, a gap remains between the normative framework providing for economic protection and the inconsistent judicial implementation in *mafqud* cases. While

SEMA No. 1 of 2022 provides a progressive basis for maintenance orders, disparities in judicial interpretation persist. This study, therefore, aims to analyse judicial considerations in determining the legal status of *mafqud* husbands, compare patterns across Religious Court decisions, and assess the extent to which gender equality and substantive justice are reflected in the protection of wives' economic rights.

RESEARCH METHOD

This study constitutes normative legal research (doctrinal research) that utilises statutory, conceptual, and case-study approaches. The statutory approach is employed to analyze the legal framework governing divorce due to the husband's unknown whereabouts (*mafqud*), specifically under Law No. 1 of 1974 concerning Marriage (as amended by Law No. 16 of 2019), Government Regulation No. 9 of 1975, the Compilation of Islamic Law (KHI), and Supreme Court Circular (SEMA) No. 1 of 2022 regarding the protection of women's economic rights.

The conceptual approach is applied to elucidate the constructs of maintenance (*nafkah*), *mafqud*, and gender equality principles within Islamic family law. Meanwhile, the case study approach involves a detailed analysis of several Religious Court decisions regarding contested divorces (*cerai gugat*) involving *mafqud* husbands, namely: *Religious Court Decision of Kaimana Number 1/Pdt.G/2021/PA.Kmn*; *Religious Court Decision of Kendal Number 2447/Pdt.G/2023/PA.Kdl*; and *Religious Court Decision of Merauke Number 20/Pdt.G/2011/PA.Mrk*. Research data were derived from primary legal

materials, including prevailing statutes and court decisions, as well as secondary legal materials, such as academic books, journal articles, and previous research. The data were analysed qualitatively by examining the judges' legal reasoning (*ratio decidendi*) to evaluate the extent to which gender equality principles and substantive justice are reflected in the practices of the Religious Courts.

RESULTS AND DISCUSSION

The Dynamics of Women's Rights Protection: From the KHI to SEMA No. 1 of 2022

The development of Islamic family law in Indonesia reflects an evolutionary paradigm shift from normative-procedural protection toward a more responsive and substantive framework. This dynamic demonstrates how legal instruments serve to address the challenges of fulfilling women's economic rights, particularly in navigating the complexities of *mafqud* (missing) husband cases, which create marital status uncertainty and risk neglecting the wife's economic entitlements.

Conceptually, Indonesian Islamic family law is built upon the principles of justice and balance (*tawazun*), aligning with the fundamental objectives of Islamic law (*maqāṣid al-syarī'ah*) in safeguarding the soul (*ḥifẓ al-nafs*), honour (*ḥifẓ al-'ird*), and property (*ḥifẓ al-māl*) (Aliyah et al., 2025). Islam brought a significant transformation in the recognition of women's rights, moving from the pre-Islamic era of discrimination toward a status of equal legal subjects (Wani et al., 2025). This transformation is accommodated in Law No. 1 of 1974 jo. Law No. 16 of 2019 and the KHI, which

regulate the balanced standing of husband and wife. However, although Article 116(b) of the KHI recognises abandonment as grounds for divorce, this protection remains defensive, granting the right to separate without ensuring the proactive restoration of the wife's economic rights (Seff et al., 2025). This condition signifies a gap between legal normativity and contemporary social reality.

In judicial practice before 2022, despite strong regulatory foundations, implementation was often hindered by procedural rigidity. Judges tended to be passive in *verstek* (default) proceedings, especially concerning *mafqud* husbands, citing difficulties in execution. Gender bias in divorce law frequently emerged due to legal-political dynamics that limited women's agency, resulting in the court providing "half-justice": the marital status is dissolved, yet economic rights remain neglected. (Ramadhita, 2022). Structural barriers, such as women's subordination and patriarchal interpretations of theological texts, forced wives abandoned by *mafqud* husbands to bear the economic burden alone without tangible state protection (S. Rahmawati, 2020).

Supreme Court Circular (SEMA) Number 1 of 2022 on the Implementation of the 2022 Supreme Court Chamber Plenary Meeting Results as Guidelines for the Performance of Judicial Duties It serves as a significant turning point in the realisation of gender-based substantive justice. This regulation strengthens the judge's *ex officio authority to determine iddah maintenance and mut'ah (consolatory gifts)*, even in the husband's absence. SEMA No. 1/2022 functions as a

bridge between the idealism of protecting women and their actual financial needs; thus, the husband's absence (*mafqud*) is no longer a procedural excuse to ignore maintenance obligations. Gender equality initiatives in Islamic law must address institutional challenges through strategic solutions that ensure women's rights are not sidelined by judicial bureaucratic rigidity. (Iffan et al., 2024). Post-SEMA progressive rulings by Religious Courts demonstrate an accelerated reform of family law in Indonesia, ensuring that women's economic rights remain protected amidst the uncertainty of the husband's status. (Daulay et al., 2025). Legal protection for wives in the context of an abandoned husband must be a primary priority to prevent broader harm (*mudharat*) (D. Rahmawati et al., 2023).

Reflecting on these dynamics, the primary challenge is no longer a normative void but rather the courage of implementation at the practical level. SEMA No. 1 of 2022 has dismantled procedural patriarchal barriers that previously disadvantaged women. The implementation of gender justice now heavily relies on judicial sensitivity in adjudicating cases, as mandated by Supreme Court Regulation (PERMA) Number 3 of 2017 on Guidelines for Adjudicating Women's Cases Facing the Law. Nevertheless, distributive justice must remain a reference point so that the post-divorce distribution of economic rights is based on the wife's actual contribution and needs (Ramadhan et al., 2025). True justice is now measured not only by the legality of the divorce but by the extent to which the decision restores the dignity and economic sovereignty of women. This transformation demands that

judges possess a strong gender perspective so that Islamic family law in Indonesia truly becomes a protector for the vulnerable.

Nonetheless, in divorce cases involving *mafqud* husbands, the main challenge lies not only in the judicial determination of maintenance but also in the practical enforcement of such decisions. In many instances, while judges may stipulate the amount of *iddah* maintenance, *mut'ah*, or past maintenance (*nafkah madiyah*) in the ruling (*amar putusan*), the realisation of these obligations often reaches a stalemate because the husband's whereabouts are unknown or no party can be held directly accountable. Furthermore, the issue of court fees remains a dilemma; in *mafqud* conditions, the burden of costs is often borne by the wife as the plaintiff, despite her being in a more economically vulnerable position.

In this context, SEMA No. 1 of 2022 can be understood as the Supreme Court's effort to overcome this deadlock by adopting a more progressive approach to legal protection. This circular provides guidelines for judges to establish maintenance obligations even when the case is decided through *verstek* or when the husband is absent. Consequently, the husband's absence is no longer treated as a procedural justification for overlooking maintenance but is affirmed as a legal responsibility that must be emphasised in the court's decision. This approach indicates that a judgment's function is not merely formal dispute resolution but also an instrument to safeguard women's economic rights in vulnerable situations.

Moreover, the circular reinforces the judge's *ex officio* power in divorce

proceedings. Traditionally, judges in contested divorces tended to be passive, deciding only based on the claims filed by the parties. This approach often disadvantaged women, particularly when wives did not explicitly include maintenance claims due to limited legal knowledge or social pressure. Therefore, under SEMA No. 1 of 2022, judges are encouraged to determine maintenance obligations—such as *iddah*, *mut'ah*, and *madiyah*—even if not explicitly requested in the prayer for relief (*petitum*). In this regard, the application of the *ultra petita* principle is justified as a form of protection for the more vulnerable party in a family relationship, ensuring that court decisions are oriented toward substantive justice rather than mere legal certainty.

However, the effectiveness of such protection remains contingent upon the factual circumstances of each case, particularly regarding the possibility of execution. If a missing husband still possesses identifiable assets, the court could, in theory, allow execution by the seizure or sale of property to fulfil the court-ordered maintenance. Conversely, if no assets are available for execution, the ruling on maintenance risks is merely declaratory. This situation illustrates that while the normative framework under SEMA No. 1 of 2022 has strengthened the protection of women's rights, implementation challenges in judicial practice still require institutional innovation and judicial sensitivity to ensure that the goal of substantive justice is truly realised.

Gender Equality in Judicial Practice: A Comparative Analysis of Decisions from the Religious Courts of Kendal and Kaimana

The phenomenon of divorce due to a *mafqud* (missing husband) highlights significant challenges for religious courts in ensuring women's rights, particularly regarding financial support and legal certainty. In practice, the protection of abandoned wives is shaped not only by Islamic legal norms codified in the Compilation of Islamic Law (KHI) and SEMA Nomor 1 Tahun 2022, but also by judges' interpretive approaches and their sensitivity to gender issues. This study analyses three decisions: *Religious Court Decision of Kaimana Number 1/Pdt.G/2021/PA.Kmn*; *Religious Court Decision of Kendal Number 2447/Pdt.G/2023/PA.Kdl*; and *Religious Court Decision of Merauke Number 20/Pdt.G/2011/PA.Mrk*. —The latter serves as a historical comparison to demonstrate significant variations in applying gender equality principles and protecting the wife's economic interests.

1. Analysis of the Kendal Religious Court Decision (No. 2447/Pdt.G/2023/PA.Kdl)

The *Religious Court Decision of Kendal Number 2447/Pdt.G/2023/PA.Kdl* (2023) It is a clear manifestation of upholding substantive justice that transcends conventional legal formalism in cases involving *mafqud* (missing) husbands. In its legal reasoning, the Panel of Judges did not merely focus on the fulfilment of the material divorce requirements stipulated in Article 116(b) of the Compilation of Islamic Law (KHI) in conjunction with Article 19(b) of

Government Regulation No. 9 of 1975. Instead, the court made a significant legal breakthrough by exercising *ex officio* authority to determine *iddah* maintenance and *mut'ah* (consolatory gifts), even though the Plaintiff did not request these. This proactive measure reflects what Aliyah et al. (2025) described as "judicial sensitivity," where the court plays an active role in dismantling structural barriers that often leave women in states of post-divorce economic vulnerability. The judges in this case understood that, within unequal power relations, a husband's physical absence should not serve as a legal justification for waiving his financial responsibilities. Consequently, the use of *ex officio* rights becomes a vital instrument for protecting the fundamental rights of women guaranteed under Articles 149 and 158 of the KHI.

Furthermore, gender responsiveness in this decision is evident from the judges' courage to implement Supreme Court Circular (SEMA) No. 1 of 2022 as an economic protection mechanism in *verstek* (default) proceedings. The Kendal Religious Court judges addressed the execution deadlock common in *mafqud* cases by imposing concrete obligations—specifically, ordering the Defendant to pay *iddah* maintenance and *mut'ah* (based on customary amounts aligned with minimum decent living standards), which must be settled before or at the time the Divorce Certificate is collected. This execution mechanism ensures that the wife's economic rights are not merely symbolic on paper but are enforceable in law. This aligns with Ramadhita et al. (2023) view that family burdens must be distributed fairly to protect vulnerable

parties through distributive justice, as gender bias often arises when procedural certainty is prioritised over the restoration of a wife's rights. The Kendal judges reaffirmed that the fulfilment of economic rights is an inseparable part of distributive justice, echoing Ramadhan et al. (2025) who argue that family burden-sharing must protect the weaker party. By mandating maintenance payments through a measurable mechanism, the court provides not only status certainty but also guarantees the wife's economic sovereignty, preventing her from falling into post-divorce poverty.

Moreover, the obligation to pay maintenance in this decision does not stop at the mere determination of a nominal amount. The Panel of Judges explicitly required that the maintenance obligation be met before the Defendant could collect the Divorce Certificate from the court. This mechanism holds profound significance in religious judicial practice, as it serves as a form of real execution of maintenance obligations. By making maintenance fulfilment an administrative prerequisite for the issuance of a divorce certificate, the court indirectly creates legal pressure to ensure that economic obligations are genuinely fulfilled. This approach avoids what is often termed "symbolic justice"—a situation where the court grants maintenance rights on paper but fails to provide an effective mechanism to ensure the wife actually receives them. Therefore, the Kendal decision provides not only legal certainty regarding divorce status but also offers a concrete model of economic protection for women abandoned by *mafqud* husbands.

Philosophically, this decision is rooted in the principles of *Maqashid Syariah*, particularly in safeguarding property (*hifz al-mal*) and the soul (*hifz al-nafs*) for the abandoned woman and children. Hardani & Asmiwati (2018) emphasise that a husband disappearing without a word is a form of irresponsible injustice (*zalim*), necessitating the court's presence as a protector. Through the *maslahah mursalah* (public interest) approach, the Kendal judges corrected a patriarchal culture that often ignores the facts of economic abandonment in judicial considerations. The legal transformation demonstrated by the Kendal Religious Court confirms the argument of Daulay et al. (2025) that progressive court decisions are the key to national family law reform. This ruling is not merely a dispute resolution but a juridical statement that women's economic sovereignty is a substantive priority that must be upheld amidst the uncertainty of a husband's whereabouts.

2. Analysis of the Kaimana Religious Court Decision (No. 1/Pdt.G/2021/PA.Kmn)

In contrast to the Kendal decision, the Kaimana Religious Court Decision Number 1/Pdt.G/2021/PA.Kmn reflects a judicial approach with formalistic and "gender-blind" tendencies. (*Religious Court Decision of Kaimana Number 1/Pdt.G/2021/PA.Kmn*, 2021). Here, the judges' primary focus was on legal certainty regarding marital status rather than on the substantive restoration of the wife's economic rights. Although the trial facts revealed the husband's *mafqud* status and his failure to fulfil alimony obligations for approximately two

consecutive years, the Panel of Judges limited their consideration to the fulfilment of the formal divorce requirements under Article 116 (g) of the KHI jo. Article 19 (f) of Government Regulation No. 9 of 1975. This approach is identified as a consequence of "procedural legal rigidity" that remains historically gender-biased, where judges tend to be passive and treat the wife merely as a procedural object (Ramadhita, 2022). Consequently, although the divorce petition was granted via *verstek* (default judgment), the ruling delivered only "half-justice"—legal freedom in status but financial destitution due to the absence of proactive measures to ensure adequate *madhiyah*, *iddah*, and *mut'ah* alimony.

Juridically, while the Kaimana Decision cited Articles 149 and 158 of the KHI as the basis for fulfilling post-divorce rights, the Panel of Judges' interpretation was normative-minimalist and lacked a strict mechanism for execution. In this case, the judges granted the divorce because the husband had been *mafqud* for two years. Yet, the determination of *iddah* and *mut'ah* alimony remained symbolic without considering real economic value. Unlike the approach in PA Kendal, the Kaimana Religious Court did not make the payment of alimony a mandatory prerequisite (precondition) to be fulfilled before the divorce pledge (*ikrar talak*) or the issuance of the Divorce Certificate. As a result, the fulfilment of the wife's economic rights became contingent and highly dependent on the husband's initiative—an impossible condition to meet when the husband's whereabouts are unknown. This situation confirms that

injustice in legal application often acts as a significant barrier to women's rights, even when those rights are recognised in legal texts (Yani, 2024).

Furthermore, this decision is deemed to have ignored the "double burden" borne by the wife during the two-year *mafqud* waiting period. Social reality shows that the wife not only loses financial support but also must shoulder domestic and economic responsibilities alone, factors that are often marginalised in traditionally and rigidly applied Islamic legal frameworks. (Seff et al., 2025). The judges in PA Kaimana appeared trapped in fulfilling the formal aspect of status certainty under Article 116 (g) of the KHI, failing to exercise gender sensitivity to restore the wife's material losses through more progressive *ex officio* rights. This reinforces the view that without binding enforcement mechanisms in verdicts, the protection of women's economic rights in *ghaib* (absence) cases remains a hollow norm, failing to achieve substantive justice. (Ramadhita, 2022). Consequently, this ruling allows the wife to remain within a circle of structural vulnerability—legally free but alienated from the economic protection the state should guarantee.

From the perspective of *Maqashid al-Sharia*, this decision failed to implement the principle of property preservation (*hifz al-mal*) for the vulnerable party. Abandonment by a *mafqud* husband is a form of structural injustice (*zulm*) that judges should correct through gender-responsive rulings. (Hardani & Asmiwati, 2018). The lack of progressive *ex officio* authority in this decision indicates that the legal transformation expected through instruments such as Supreme Court

Regulation (PERMA) No. 3 of 2017 has not been uniformly internalised across all judicial levels. This confirms the argument that without judicial gender sensitivity, even progressive regulations will remain trapped in administrative formalism that ignores substantive justice. (Daulay et al., 2025). Ultimately, the Kaimana Decision serves as evidence that legally valid procedures can still perpetuate women's economic vulnerability if not accompanied by a structural commitment to women's rights.

3. Analysis of the Merauke Religious Court Decision (No. 20/Pdt.G/2011/PA.Mrk)

The Merauke Religious Court Decision Number 20/Pdt.G/2011/PA.Mrk provides a crucial historical perspective in understanding the evolution of women's rights protection, illustrating a period when judicial practice was still heavily constrained by rigid legal formalism. (*Religious Court Decision of Merauke Number 20/Pdt.G/2011/PA.Mrk*, 2011). In this case, the Panel of Judges granted the wife's divorce petition against her *mafqud* husband, relying on the breach of *taklik talak* (marriage agreement) as regulated in Article 116 (g) of the KHI, and issued a *verstek* (default) judgment under Article 125 of the HIR. However, the primary orientation of this ruling was purely procedural—aiming solely to provide legal certainty regarding status—without addressing substantive economic protection. This is evident from the determination of *iwadh* (compensation money) at a mere Rp10,000. This symbolic figure indicates that the justice provided was highly minimalist and failed to consider the long-term economic

impact on a wife abandoned without maintenance for years. (Hardani & Asmiwati, 2018).

The *iwadh* (compensation) amount of IDR 10,000 was essentially not a result of the judge's economic consideration. Still, rather a symbolic figure traditionally stated in the *sighat taklik talak* (marriage breach of contract) pronounced by the husband during the marriage ceremony. Consequently, judges at that time basically only reaffirmed the administrative provisions stipulated in the *taklik talak*, without conducting a deeper analysis regarding the economic losses suffered by the wife due to such abandonment. This condition demonstrates that the judicial orientation during that period was still heavily influenced by a legal formalism approach, in which judges felt it sufficient to ensure the fulfilment of administrative requirements for a *taklik talak* breach without exercising *ex officio* authority to consider other sources of economic protection for the wife, such as *nafkah madhiyah* (past maintenance) or post-divorce compensation.

The "gender-blind" condition in this decision confirms the analysis that, before progressive legal reforms, judges tended to be passive and acted merely as the "mouth of the law" (*bouche de la loi*) (Ramadhita, 2022). At that time, the PA Merauke judges focused their evidentiary weighing on the husband's disappearance. Still, they neglected to restore the wife's economic rights, such as *madhiyah* maintenance or post-divorce allowances. Such judicial practices perpetuate women's structural vulnerability because of the lack of judicial impartiality in breaking the cycle of poverty caused by

spousal abandonment. (Cholil & Sudirman, 2019). The absence of reinforcing instruments like SEMA No. 1 of 2022 during that era caused the wife's economic rights to be "forgotten" behind the veil of administrative divorce procedures, where the state intervened only to dissolve the marital bond but remained absent in guaranteeing the Plaintiff's livelihood.

Theologically and juridically, this decision reflects the application of Islamic family law that was still trapped in a traditional paradigm. It has been noted that the KHI framework is often applied without considering the socio-economic realities of women who fall victim to abandonment. (Seff et al., 2025). Although this ruling is valid under positive law, from the perspective of *Maqashid al-Sharia*, it failed to achieve a complete *maslahah* (public interest) by allowing the wife to bear the economic burden alone post-verdict. This historical comparison reinforces the argument that the transformation of Islamic family law toward substantive justice heavily depends on a shift in the judicial paradigm. (Daulay et al., 2025). The PA Merauke decision serves as authentic evidence that without gender sensitivity and regulatory support such as SEMA 1/2022, the religious court remains merely an institution for dissolving marriages, incapable of equitably restoring the human and economic rights of women.

Judicial Disparity and Gender Justice Implications in Mafqud Decisions

From the perspective of contemporary legal theory, the differing approaches can be understood through the concepts of formal equality and

substantive equality within gender and legal studies. Formal equality emphasises identical procedural treatment before the law, for instance, by granting a wife the right to file for divorce and obtain a new legal status post-dissolution. However, this approach often fails to address the structural inequalities experienced by women. Conversely, substantive equality seeks to ensure that the law not only provides formal rights but also restores the social and economic conditions of the disadvantaged party. In the context of this study, the decisions of the Religious Court Decision of Kaimana (2021) and the Religious Court Decision of Merauke (2011) can be categorised as applications of formal equality, as the courts only provided certainty regarding divorce status without restoring the wife's economic losses. In contrast, the *Religious Court Decision of Kendal* (2023) reflects a substantive equality approach, as the judges not only adjudicated the divorce but also actively ensured the restoration of women's economic rights through maintenance determination mechanisms with legal enforceability.

A comparative analysis of the decisions from *Religious Court Decision of Kaimana Number 1/Pdt.G/2021/PA.Kmn*; *Religious Court Decision of Kendal Number 2447/Pdt.G/2023/PA.Kdl*; and *Religious Court Decision of Merauke Number 20/Pdt.G/2011/PA.Mrk* reveals a disparity that cannot be dismissed merely as a common difference in judicial opinion. This disparity fundamentally constitutes an inconsistent application of the law, a failure to apply legal norms consistently to cases with similar characteristics.

Regarding the protection of women's economic rights, this inconsistency carries serious implications for the principle of *equality before the law*, as women facing identical legal situations receive differing levels of protection depending on the court's jurisdiction. If a wife in Kendal receives economic restoration through maintenance orders while a wife in a similar case in Kaimana does not, then legal protection for women in *mafqud* cases risks becoming what legal scholars call a “geographic lottery of justice,” where the outcome of legal protection depends heavily on the court's location.

In this regard, the issuance of SEMA No. 1 of 2022 can be understood as an institutional effort by the Supreme Court to standardise religious judicial practice in divorce cases involving *mafqud* husbands. The circular affirms that judges possess *ex officio* authority to determine maintenance for women even in the husband's absence. Consequently, the primary issue in judicial practice no longer lies in a lack of regulation, but rather in the level of compliance and consistency among judges across various regions in implementing these guidelines. When some courts adopt a progressive approach, as seen in the Kendal PA decision, while others maintain a narrow procedural view, the Supreme Court's goal of legal standardisation remains unfulfilled.

This phenomenon can be explained through Lawrence M. Friedman's Legal System Theory, which divides the legal system into three main elements: structure, substance, and legal culture. In protecting women's rights in *mafqud* cases, the *substance* is already available through various legal instruments such as the Compilation of Islamic Law (KHI),

PERMA No. 3 of 2017 on Guidelines for Adjudicating Women's Cases Facing the Law, and SEMA No. 1 of 2022. The *structure* is also established through the existence of the Religious Courts. However, the *legal culture*—related to judges' paradigm, gender sensitivity, and orientation toward justice—still shows uneven development. When some judges still view *mafqud* cases merely as administrative matters to terminate marital status, the potential for substantive protection within legal norms remains unrealised in practice.

Sociologically, this inconsistency brings serious implications for women's post-divorce economic resilience. In courts still applying a procedural approach, wives tend to be treated as administrative objects, receiving "minimalist justice": they gain freedom from the marital bond but must bear the economic burden alone because their rights to *nafkah madhiyah*, *iddah*, and *mut'ah* remain unfulfilled. This demonstrates that injustice does not always arise from a lack of legal norms, but from non-uniform application in those norms. Conversely, the practice at Kendal PA shows that Religious Courts have the potential to function as a social correction mechanism capable of restoring the imbalance of economic relations between husband and wife through the progressive use of *ex officio* authority.

Ultimately, the findings of this study confirm that divorce due to a *mafqud* husband cannot be viewed solely as an administrative matter of dissolving a marriage, but also as an issue of social and economic protection for abandoned women. Within the framework of *maqāsid al-syarī'ah*, the protection of

property (*ḥifẓ al-māl*) and the soul (*ḥifẓ al-nafs*) demands that judges act not merely as procedural implementers but as guarantors of substantive justice for vulnerable parties. Therefore, the standardisation of *ex officio* authority, as mandated in SEMA No. 1 of 2022, is crucial so that the protection of women's economic rights in *mafqud* cases no longer depends on subjective judicial variations across regions but becomes a consistent judicial practice throughout all Religious Courts in Indonesia.

Wife's Economic Sovereignty in Gender-Responsive Islamic Family Law

The economic sovereignty of the wife is a central pillar in achieving substantive justice within religious courts. A comparative analysis of judicial practices in Kaimana, Merauke, and Kendal indicates that the transformation of Islamic family law in Indonesia must move beyond mere formal norms toward gender-responsive instruments to empower women. This critical reflection emphasises that the wife's economic rights must serve as a form of legal protection that is not merely symbolic but tangible in judicial practice.

1. Transformation of Maintenance: From Symbolic Obligation to Empowerment Instrument

In the classical perspective of Islamic family law, maintenance (*nafkah*) is often understood as a logical consequence of the husband's leadership (*qiwamah*), making it inherently paternalistic and symbolic. However, modern judicial practice is beginning to show a shift, particularly through the enforcement of Article 149 of the KHI, where *iddah* and

mut'ah maintenance are no longer viewed as voluntary gifts but as measurable legal obligations. At PA Kendal, for instance, the determination of maintenance upfront before the divorce pledge is an effort to mitigate the risk of sudden poverty for women post-divorce. Progressive rulings in religious courts have accelerated changes in Indonesian Islamic family law, turning post-divorce allowances into instruments of substantive justice. (Daulay et al., 2025). Furthermore, the recognition of past maintenance (*madhiyah*) reaffirms that the wife's economic rights remain valid despite conflicts and must not be ignored without financial consequences. These findings align with the view that patriarchal social norms still pose a major barrier for women in claiming their rights, necessitating the law's intervention to affirm the wife's status as an economically sovereign legal subject. (Yani, 2024).

2. The Dilemma of Access to Justice and the Existence of Mafqud Husbands

The case of a *mafqud* husband demands that judges transform from passive mediators into protectors of fundamental rights concerning human dignity (*hifz al-nafs*) and the survival (*hifz al-mal*) of women. At the Merauke Religious Court, the application of Article 116 (g) of the KHI and Article 125 of the HIR regarding *verstek* (default judgment) serves as a vital instrument to prevent wives from being trapped in a "suspended" marital status (*istri gantung*) that undermines their economic sovereignty. The symbolic nominal *iwadh* (compensation money) reaffirms the wife's legal power to sever a bond that

disadvantages her. A husband's disappearance without notice is a form of injustice (*zulm*) that exacerbates a woman's economic position (Hardani & Asmiwati, 2018). The implementation of a judge's *ex officio* rights, as mandated by SEMA No. 1 of 2022, serves as a manifestation of tangible *maslahah* (public interest), ensuring the protection of women's economic rights even in the husband's absence. This aligns with the principle that jurisprudence regarding *mafqud* husbands must integrate the principles of justice and legal utility to protect women left without maintenance or status certainty (Harahap et al., 2025).

3. The Paradox of Reconciliation: Gender Burden in Mediation

Critical reflection also emerges within mediation practices, as observed in the Kendal Religious Court. The withdrawal of a lawsuit in favour of reconciliation is frequently viewed as an indicator of successful mediation in judicial statistics. However, from a gender-responsive legal perspective, the success of mediation should not be measured solely quantitatively—such as by the number of cases successfully reconciled—but also qualitatively, specifically the extent to which the reconciliation genuinely guarantees the restoration of a woman's economic rights. In many instances, women may choose to withdraw their lawsuits not because the conflict has been resolved fairly, but due to a weak economic bargaining position.

This phenomenon can be explained by the concept of "Bargaining in the Shadow of the Law," which suggests that negotiation in family disputes is often influenced by the parties' perceptions of

the likely outcome in court. In situations where a woman is economically dependent on her husband, the mediation process may produce compromises that do not fully reflect the wife's best interests. In other words, a woman may "concede" in mediation not because the agreement is equitable, but due to limited bargaining power within unbalanced social and economic structures. Therefore, Cholil & Sudirman (2019) emphasise that Islamic family law reform must ensure that mediation does not merely maintain formal family integrity but also guarantees the protection of women's economic rights to prevent them from falling back into structural dependency.

4. The Three Pillars of the Wife's Economic Sovereignty

Based on the analysis of this study, the economic sovereignty of a wife within religious judicial practice requires three primary pillars: first, certainty of execution, where the fulfillment of economic rights becomes an integral part of the divorce decree; second, procedural ease, ensuring that a husband's *mafqud* (missing) status does not hinder the wife from obtaining legal protection; and third, judicial responsiveness, through the exercise of *ex-officio* authority to uphold women's economic rights.

In this context, the application of the principles regulated in Supreme Court Regulation (PERMA) No. 3 of 2017 becomes paramount. This regulation provides an ethical and methodological framework for judges to adjudicate cases with a gender perspective, including consideration of women's economic vulnerability throughout the legal process. Thus, if SEMA No. 1 of 2022 serves as a

technical instrument that strengthens the judge's authority to determine maintenance (*nafkah*), then PERMA No. 3 of 2017 can be understood as the "normative spirit" guiding judges in resolving cases with a gender-sensitive approach.

Hartati & Yunus (2022) assert that the lack of status clarity and weak protection for wives in cases of missing husbands (*suami ghaib*) must be terminated through a progressive legal approach. Consequently, a wife's economic sovereignty is not merely a matter of nominal currency but concerns a woman's bargaining position before the law. Gender-responsive Islamic family law must ensure that, whether in maintaining a marriage or during the divorce process, women's economic rights are recognised as part of human rights within the family sphere and as a foundation for their dignity and social independence.

CONCLUSION

Based on the normative-judicial and comparative analysis of the Religious Court decisions in Kendal, Kaimana, and Merauke, this study concludes the following key points:

1. The fulfilment of *iddah* maintenance, *mut'ah*, and *nafkah madhiyah* (past maintenance) in religious judicial practice has evolved into a legal obligation that functions as economic protection for women post-divorce. Under Supreme Court Circular (SEMA) No. 1 of 2022, judges possess *ex officio* authority to establish these rights even when the husband's status is *mafqud* (missing).

2. There exists a disparity in rulings among the Religious Courts (Kendal, Kaimana, and Merauke), indicating inconsistent legal application. This inconsistency potentially undermines the principle of equality before the law regarding the protection of women's rights.
3. The successful resolution of cases, including through mediation, does not yet fully reflect substantive justice, as it remains influenced by the imbalance of economic and social positions between husband and wife.
4. The protection of women in *mafqud* cases requires synergy between legal substance, judicial structure, and legal culture. While Supreme Court Regulation (PERMA) No. 3 of 2017 and SEMA No. 1 of 2022 are vital instruments, their effective implementation depends heavily on judicial consistency.

Based on these findings, institutional measures are required to ensure that the protection of women's economic rights in divorce cases—particularly those involving *mafqud* husbands—can be applied consistently across all Religious Courts in Indonesia. The Supreme Court needs to strengthen socialisation and oversight mechanisms regarding the implementation of SEMA No. 1 of 2022 to ensure that the judge's *ex officio* authority in determining maintenance is not merely normative but becomes a standard practice in religious judicial decisions. Furthermore, the integration of principles stipulated in **Supreme Court Regulation No. 3 of 2017** should be reinforced through continuous judicial training to enhance **gender sensitivity** in adjudicating family cases. Consequently,

the religious judiciary will function not only as an institution that dissolves marital status but also as a social protection mechanism capable of ensuring that women undergoing divorce do not fall into economic vulnerability due to the husband's absence or negligence in fulfilling his obligations.

BIBLIOGRAPHY

- Aliyah, V. F., Muhlashin, F. A., Rabbani, A. Z., Wahyudi, I., & Syamsiah, S. (2025). Implementasi Keadilan Gender dalam Putusan Pengadilan Violita. *Jurnal Penelitian Dan Pengkajian Ilmiah*, 2(7), 1052–1063. <https://doi.org/10.62335/cendekia.v2i7.1466>
- BPS Indonesia. (2025). Nikah dan Cerai Menurut Provinsi 2020-2024. <https://www.bps.go.id/id/statistics-table/3/VkhwVUuszTXJPMQ2ZFRKamNIZG9RMVo2VEdsbVVUMDKjMyMwMDAw/nikah-dan-cerai-menurut-provinsi--kejadian-.html?year=2024>
- Cholil, M., & Sudirman, S. (2019). Gender Equality in Islamic Family Law: Breaking the Chain of Domestic Violence to Achieve Harmonious Family. *Kafa'ah Journal*, 9(2), 131–146. <https://doi.org/10.15548/jk.v9i2.270>
- Daulay, S., Arfa, F. A., & Turnip, I. R. S. (2025). Transformasi Hukum Keluarga Islam Melalui Putusan Pengadilan Agama. *Fatih: Journal of Contemporary Research*, 02(01), 577–586.
- Dimiyati, Y. (2024). Relevansi Pemikiran Imam Syafi'i tentang Mafqud Terhadap Perceraian Ghaib (Studi Kasus di Pengadilan Agama Jombang). *Al-Mawaddah: Jurnal Studi Islam Dan Hukum Keluarga (Ahwal Al-Syakhsyiyah)*, 1(1), 1–11.

- <https://doi.org/10.61181/al-mawaddah.v1i1.398>
- Harahap, H. T., Sukiati, S., & Harahap, M. Y. (2025). Yurisprudensi Hukum Mafqud Sebagai Alasan Gugatan Cerai Melalui Putusan Pengadilan (Putusan Nomor 0027 / Pdt . G / 2016 / PA . Srog). *INNOVATIVE: Journal Of Social Science Research*, 5(9), 88–110. <https://doi.org/10.31004/innovative.v5i4.20046>
- Hardani, S., & Asmiwati. (2018). Perkara Mafqud di Pengadilan Agama di Provinsi Riau dalam Perspektif Keadilan Gander. *Marwah: Jurnal Perempuan, Agama Dan Jender*, 17(2), 133–150. <https://doi.org//10.24014/marwah.v17i2.4810>
- Hartati, M., & Yunus, M. (2022). Upaya Hukum dan Perlindungan terhadap Istri dalam Perkara Suami Mafqud. *Jurnal Riset Hukum Keluarga Islam*, 2(2), 67–70. <https://doi.org/10.29313/jrhki.vi.1183>
- Holden, L., & Nurlaelawati, E. (2019). Nilai-Nilai Budaya dan Keadilan bagi Perempuan di Pengadilan Agama Indonesia: Praktik Terbaik (L. Holden & E. Nurlaelawati (eds.)). SUKA-Press.
- Iffan, A., Mustafid, M., Arizal, H., SY, H. C., Algifari, M. F., & Pradana, S. A. (2024). Transforming Gender Equality Initiatives : Evaluating Strategic Solutions and Institutional Challenges in International Legal Resolution and Islamic Law. *Diktum: Jurnal Syariah Dan Hukum*, 22(1), 36–44. <https://doi.org/10.35905/diktum.v22i1.8480>
- Karmilah, M. (2023). Perlindungan Hak Perempuan Terhadap Nafakah Iddah Talak Bain (Studi Kritis atas Undang-Undang Perkawinan dan Kompilasi Hukum Islam) [UIN Sunan Kalihaga Yogyakarta]. <https://digilib.uin-suka.ac.id/id/eprint/63369/>
- Mamduh, M. S., & Khalil, A. W. (2025). Batasan Suami Mafqud dalam Kompilasi Hukum Islam Perspektif Maqashid Al-Usroh Jamaluddin ‘Attiyyah (Analisis Putusan Nomor: 401/PDT.G/2024/PA.JBG). *Jurnal Multidisiplin Ilmu Akademik*, 2(2), 321–334. <https://doi.org/10.61722/jmia.v2i2.4347>
- Norhartijah, N., & Kurniawan, C. S. (2025). Reforming Islamic Family Law in Southeast Asia : A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam. Introduction. This report provides a comprehensive analysis of the reform trajectories within Islamic family law across three key Southeast Asian countries. *ASEAN Journal of Islamic Studies and Civilisation (AJISC)*, 02(1), 1–25. <https://journals.fasya.uinib.org/index.php/sakena/article/view/863>
- Nurlaelawati, E. (2016). Hukum Keluarga Islam ala Negara: Penafsiran dan Debat atas Dasar Hukum Kompilasi Hukum Islam di Kalangan Otoritas Agama dan Para Ahli Hukum. *Asy-Syir’ah: Jurnal Ilmu Syari’ah dan Hukum*, 50(1), 199–222. <https://doi.org/10.14421/ajish.v50i1.170>
- Rahmawati, D., Trigiyatno, A. M. I. F., Arifudin, M., Arifudin, M., & Aland, A. O. (2023). Unveiling Legal and Religious Divergence : Abandoned Husband Divorce in Indonesian and Syrian Contexts. *Diktum: Jurnal Syariah Dan Hukum*, 21(2), 159–168. <https://doi.org/10.35905/diktum.v21i2.5764>

- Rahmawati, S. (2020). Mainstreaming of Gender Equality in Islamic Family Law: Opportunities and Challenges. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 4(2), 360–374. <https://doi.org/10.22373/sjkh.v4i2.8110>
- Ramadhan, T., Ismail, H., Khotimah, K., Maulana, M. R., & Durin, R. (2025). Distributive Justice in the Perspective of Islamic Law and Its Implementation in Shared Property Disputes. *Al Hairy: Islamic of Law*, 1(1), 11–23. <https://doi.org/10.64344/hry.v1i1.12>
- Ramadhita, R. (2022). Bias Gender dalam Hukum Acara Perceraian di Indonesia: Latar Belakang, Dampak, dan Solusinya. *De Jure: Jurnal Hukum Dan Syar'iah*, 14(1), 1–20. <https://doi.org/10.18860/j-fsh.v14i1.15966>
- Ramadhita, R., Ali, M., & Syabbul, B. (2023). Gender inequality and judicial discretion in Muslims divorce in Indonesia. *Cogent Social Sciences*, 9(1), 1–15. <https://doi.org/10.1080/23311886.2023.2206347>
- Religious Court Decision of Kaimana Number 1/Pdt.G/2021/PA.Kmn, (2021).
- Religious Court Decision of Kendal Number 2447/Pdt.G/2023/PA.Kdl, (2023).
- Religious Court Decision of Merauke Number 20/Pdt.G/2011/PA.Mrk, (2011).
- Saputra, E. (2025). Mendesain Ulang Keadilan: Reformasi Hukum Perceraian dalam Sistem Peradilan Agama. *JIMU: Jurnal Ilmiah Multi Disiplin*, 3(3), 1688–1707. <https://doi.org/10.70656/tonji.v2i1.364>
- Seff, N., Hidayat, M., Nurliana, N., Elrais, T. E., & Rosyid, M. (2025). Islamic Family Law and Women ' s Rights in Indonesia: Between Normativity, Reform, and Social Realities. *ASEAN Journal of Islamic Studies and Civilisation (AJISC)*, 02(2), 237–256. <https://doi.org/10.62976/ajisc.v1i1.1430>
- Supreme Court Circular (SEMA) Number 1 of 2022 on the Implementation of the 2022 Supreme Court Chamber Plenary Meeting Results as Guidelines for the Performance of Judicial Duties, (2022).
- Supreme Court Regulation (PERMA) Number 3 of 2017 on Guidelines for Adjudicating Women's Cases Facing the Law, (2017).
- Wani, W., Arfa, F. A., & Turnip, I. R. S. (2025). Kesetaraan Gender dalam Hukum Keluarga Islam dan Hukum Positif. *Hidayah: Cendekia Pendidikan Islam Dan Hukum Syariah*, 2(2), 191–205. <https://doi.org/10.61132/hidayah.v2i2.940>
- Yani, N. (2024). Hak dan Nafkah Istri dalam Hukum Islam: Analisis Konsep Kesetaraan Gender. *Posita: Jurnal Hukum Keluarga Islam*, 02(02), 95–106. <https://doi.org/10.52029/pjhki.v2i2.233>