



## Safeguarding Women's Rights in Divorce in Absentia: The Role of Ex Officio Judicial Powers in Iddah Maintenance

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**Abstract:** This study is motivated by the increasing number of divorce cases involving the absence of the wife, which raises significant concerns regarding the protection of women's rights, particularly in relation to the fulfillment of iddah maintenance. In judicial practice, such absence frequently results in the non-fulfillment of these rights, thus necessitating legal innovation. This research examines the exercise of ex officio judicial authority to impose iddah maintenance in cases involving an absent wife, analyzed from the perspective of *maṣlahah*. Adopting a descriptive qualitative approach, the study analyses Decision No. 5573/Pdt.G/2023/PA.Sbr, which illustrates the court's proactive role in safeguarding the wife's rights notwithstanding her absence from the proceedings. This approach is consistent with the principle of *maṣlahah*, particularly in prioritizing primary necessities (*darūriyyāt*). The findings indicate that ex officio authority is a vital instrument for addressing gaps in formal law and realizing substantive justice. In practice, this research provides a normative basis for standardizing the application of ex officio authority in default cases, with a view to reducing the neglect of women's financial rights. It further offers strategic recommendations for the Supreme Court to develop technical guidelines requiring consideration of the wife's rights in all divorce decisions involving absent parties. By institutionalizing progressive judicial reasoning, this study contributes to strengthening a system of religious justice that is responsive to women's rights and oriented towards the public welfare.

**Keywords:** Ex officio Authority; Iddah Maintenance; Women's Rights.

**Abstrak:** Penelitian ini dilatarbelakangi oleh meningkatnya perkara cerai talak dengan kondisi istri ghā'ib yang menimbulkan problem perlindungan hak perempuan, khususnya pemenuhan nafkah iddah. Dalam praktik peradilan, ketidakhadiran istri sering kali berimplikasi pada tidak terpenuhinya hak tersebut, sehingga diperlukan terobosan hukum. Penelitian ini mengkaji eksistensi kewenangan *ex officio* hakim dalam pembebanan nafkah iddah pada kasus cerai talak istri ghā'ib melalui perspektif *maṣlahah*. Menggunakan metode kualitatif deskriptif, penelitian ini menelaah Putusan Nomor 5573/Pdt.G/2023/PA.Sbr yang menunjukkan peran aktif hakim dalam melindungi hak istri meskipun tanpa kehadirannya di persidangan. Pendekatan ini selaras dengan prinsip masalah yang mengedepankan perlindungan *darūriyyāt*. Hasil penelitian menunjukkan bahwa kewenangan *ex officio* hakim merupakan instrumen vital untuk mengisi kekosongan



hukum formal guna mewujudkan keadilan substantif. Secara praktis, penelitian ini memberikan landasan normatif bagi hakim untuk menstandarisasi penerapan kewenangan *ex officio* dalam perkara *verstek* guna meminimalisir pengabaian hak finansial perempuan. Selain itu, temuan ini menjadi rekomendasi strategis bagi Mahkamah Agung untuk menyusun pedoman teknis yang mewajibkan pertimbangan hak istri dalam setiap putusan cerai *ghā'ib*. Dengan melembagakan penalaran hukum progresif, studi ini berkontribusi pada penguatan sistem peradilan agama yang responsif terhadap hak-hak perempuan dan berorientasi pada kemaslahatan publik.

**Kata Kunci:** Kewenangan *ex officio*; Nafkah Iddah; Hak-hak Perempuan.

## Introduction

Divorce (*ṭalāq*) constitutes a form of divorce initiated by the husband as petitioner before the Religious Court, the judicial body vested with authority to adjudicate Islamic family law matters in Indonesia. Within the framework of Islamic law as codified in the Compilation of Islamic Law (Kompilasi Hukum Islam, or KHI), the process of *ṭalāq* extends beyond the mere pronouncement of the divorce formula, encompassing a series of legal obligations that must be fulfilled before the divorce is judicially validated.<sup>1</sup> Pursuant to Articles 149 and 152 of the KHI,<sup>2</sup> the husband, as petitioner, is under a legal obligation to provide iddah maintenance and *mut'ah* to his wife, as respondent. These provisions constitute the wife's economic entitlements during the iddah period. They must be discharged to safeguard her welfare and dignity, notwithstanding that the divorce proceedings have not yet been formally concluded or the *ṭalāq* pronounced before the court.<sup>3</sup>

Within the Indonesian legal system, the procedure for designating a respondent as absent or of unknown whereabouts is explicitly regulated under Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 on Marriage. Article 27(1) of the Regulation provides that, where the address or whereabouts of the respondent in divorce proceedings are unknown or cannot be ascertained, service of process shall be effected by posting the summons on the official notice board of the competent court.<sup>4</sup>

Furthermore, to ensure due process in cases involving an absent respondent, the court is required to effect service of summons through public notification in the mass media, such as newspapers or other electronic platforms, on two occasions at intervals of one month, thereby affording the respondent a reasonable opportunity to attend the hearing. Where, notwithstanding such measures, the respondent fails

<sup>1</sup> Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 242–71, <https://doi.org/10.1163/15685195-0010A0003>.

<sup>2</sup> Supreme Court of Indonesia, "Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya," Perpustakaan Nasional RI, 2011.

<sup>3</sup> N. Harun, "The role of religious courts in protecting the rights of women and children through favourable decisions after divorce," *Serumpun International Conference Proceedings* 2, no. 11 (2025): 10; Anisa Nur Kanifah and Lukman Santoso, "Pemenuhan Hak Anak Pasca Perceraian Perspektif Hukum Positif Dan Teori Tujuan Hukum Gustav Radbruch," *Al-Syakhsyiyah: Journal of Law and Family Studies* 6, no. 1 (2024), <https://doi.org/10.21154/syakhsyiyah.v6i1.9128>.

<sup>4</sup> Law No. 1 of 1974 on Marriage, <http://peraturan.bpk.go.id/details/47406/uu-no-1-tahun-1974>.

to appear, and their whereabouts remain unascertained, the court may legally designate the respondent as absent. This procedure is grounded in Article 27(1) of Government Regulation No. 9 of 1975, which regulates the summoning of a defendant or respondent in divorce proceedings where their address is unknown.<sup>5</sup> In such circumstances, service is effected by posting the statement of claim on the official notice board of the court and by public announcement in newspapers or other media designated by the President of the Court.

Such a ruling enables the Religious Court to proceed with the examination of the case and to render a default judgment in the absence of the respondent. In the context of divorce proceedings, notwithstanding that the respondent is deemed absent or of unknown whereabouts, the court remains under an obligation to safeguard their legal rights. This includes, inter alia, the ex officio determination by the judge of iddah maintenance, to which the wife is entitled under the applicable provisions of Islamic family law.<sup>6</sup> This procedural framework ensures that divorce proceedings are not unduly impeded solely by the unknown whereabouts of one of the parties, while simultaneously upholding the protection of rights and the realization of justice for all parties, in accordance with the fundamental principles of Indonesian law.

The role of the judge in divorce proceedings is both strategic and indispensable in upholding justice and safeguarding the rights of the parties, particularly those of the wife, which are at times overlooked. Within the judicial system, especially in the domain of Islamic family law, the judge does not merely adjudicate based on the parties' submissions, but also exercises a distinct authority known as ex officio power.<sup>7</sup> Derived from the Latin expression meaning "by virtue of one's office", ex officio authority is inherently attached to the judicial office itself. It empowers the judge to perform judicial functions and to render decisions independently, without the necessity of a prior application or request from the parties concerned.<sup>8</sup>

In the exercise of this authority, the judge may impose legal obligations, including requiring the husband to provide maintenance during the iddah period, notwithstanding the wife's absence from the proceedings or the absence of an explicit claim on her part. According to him, ex officio authority serves as a crucial

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<sup>5</sup> Government regulation of the republic of indonesia no. 9 of 1975 concerning The implementation of law no. 1 of 1974 on marriage, <http://peraturan.bpk.go.id/Details/67678/pp-no-9-tahun-1975>.

<sup>6</sup> Akhmad Farid Mawardi Sufyan and Kamil Strzepak, "Gender Equality and Divorce: Legal Guarantees of Women's Rights and Their Misuse in Traditional Muslim Communities," *Journal of Indonesian Constitutional Law* 2, no. 3 (2025): 428–51, <https://doi.org/10.71239/jicl.v2i3.196>.

<sup>7</sup> Matthias Klingler, "Labor Supply Response of Women across the Divorce Process and the Moderating Role of Children," *Advances in Life Course Research* 65 (September 2025): 100694, <https://doi.org/10.1016/j.alcr.2025.100694>; Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (2021): 135–54, <https://doi.org/10.18326/ijtihad.v21i2.135-154>.

<sup>8</sup> Zuman Malaka, "Hak Ex Officio Hakim Dan Kesetaraan Gender Dalam Perceraian Di Pengadilan Agama," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 28, no. 1 (2025): 121–34, <https://doi.org/10.15642/alqanun.2025.28.1.121-134>.

instrument for safeguarding the wife's rights, which might otherwise be neglected if the court relied solely on the parties' submissions. In this manner, judges can discharge their judicial functions more comprehensively and equitably, thereby ensuring the protection of women's rights within the framework of Islamic family law. This is particularly significant in cases of default divorce (*talāq verstek*), which is unilateral and therefore susceptible to causing injustice.<sup>9</sup>

In essence, *ex officio* authority reinforces the role of the judge as a guardian of the parties' rights, directed towards the attainment of both legal and social justice, particularly in relation to *iddah* maintenance, which constitutes a fundamental post-divorce obligation of the husband. Accordingly, the function of the courts and the duties of judges extend beyond the mere resolution of disputes, encompassing an active responsibility to ensure that the wife's economic and human rights are effectively protected throughout the transitional period following divorce, even when she is absent from the proceedings.<sup>10</sup>

In practice, Indonesian Religious Courts' divorce decisions involving absent wives exhibit notable variations in judicial approach. Some rulings strictly enforce the obligation of *iddah* maintenance, whereas others ignore it despite similar factual circumstances. The decision of the Sumber Religious Court (Pengadilan Agama Sumber) in Case No. 5573/Pdt.G/2023/PA.Sbr exemplifies a proactive approach, in which the judges imposed *iddah* maintenance *ex officio* notwithstanding the wife's absence and unknown whereabouts, thereby safeguarding her post-divorce rights. By contrast, in cases such as Decision No. 402/Pdt.G/2025/PA.Ktbm,<sup>11</sup> Decision No. 486/Pdt.G/2025/PA.Ktbm,<sup>12</sup> Decision No. 18/Pdt.G/2025/PA.LBJ,<sup>13</sup> and Decision No. 550/Pdt.G/2024/PA.Bjm, the courts limited their rulings to granting divorce by default without imposing maintenance requirements, despite the surprising circumstances.

This inconsistency creates a substantive gap in the enforcement of Islamic family law. The absence of *iddah* maintenance in cases involving an absent wife risks

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<sup>9</sup> Asni Asni and Muhammad Iqbal, "Women Judging Women: Gender Sensitivity in the Decisions of Divorce Cases of Indonesian Religious Courts," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2026): 588–615, <https://doi.org/10.19105/al-lhkam.v20i2.18999>; Shofiatul Jannah et al., "Implementation of Post-Divorce Alimony Policies from a Gender Justice Perspective: A Comparative Legal Study of Indonesia, Malaysia, and Brunei Darussalam," *Ulumuna* 29, no. 2 (2025): 959–89, <https://doi.org/10.20414/ujs.v29i2.1762>; Muhammad Aqwam Thariq, "Hak Ex Officio Hakim: Pertimbangan Hukum Hakim Terhadap Pembebanan Nafkah Iddah Dan Mut'ah Dalam Perkara Cerai Talak Vrestek Perspektif Maqashid Syariah (Kasus Di Pengadilan Agama Kabupaten Malang)," *Sakina: Journal of Family Studies* 3, no. 2 (2019), <https://urj.uin-malang.ac.id/index.php/jfs/article/view/264>.

<sup>10</sup> Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court"; Muhammad Fauzi Arifin and Lukman Santoso, "Implementasi Metode Rehtvinding Hakim Terhadap Pencabutan Surat Penolakan Pekawinan Dalam Masa Iddah," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 18, no. 1 (2018): 29–46, <https://doi.org/10.30631/alrisalah.v18i1.168>.

<sup>11</sup> Kotabumi Religious Court, "Sistem Informasi Perkara Pengadilan," Pengadilan Agama Kotabumi, 2025, <https://sipp.pa-kotabumi.go.id/>.

<sup>12</sup> Kotabumi Religious Court, "Sistem Informasi Perkara Pengadilan."

<sup>13</sup> Labuan Bajo Religious Court, "Sistem Informasi Perkara Pengadilan," Pengadilan Agama Labuan Bajo, 2025, <https://sipp.pn-labuanbajo.go.id/>.

economic vulnerability, contrary to the objectives of shariah (*maqāṣid al-sharī'ah*), particularly the protection of life and property. This diverges from Supreme Court Circular Letter (Surat Edaran Mahkamah Agung, SEMA) No. 5 of 2021,<sup>14</sup> which mandates the inclusion of maintenance in all divorce decrees, including default judgments. In practice, however, decisions often remain procedurally formalistic.<sup>15</sup> This highlights the importance of a progressive judiciary utilizing ex officio authority and *maṣlahah* to address normative gaps, ensure substantive justice, and strengthen protection of women's rights in divorce cases involving absent respondents.

Previous studies have addressed related issues from different perspectives. For example, research conducted by Thariq<sup>16</sup> examined the factors considered by judges in determining iddah maintenance in *ṭalāq* cases decided in absentia, employing an empirical method at the Religious Court of Malang Regency and utilizing *maqāṣid al-sharī'ah* as the principal analytical framework. Similarly, Jannah's empirical study examined judges' rationales in determining iddah maintenance in divorce by petition cases.<sup>17</sup> In contrast, the present study focuses on the exercise of judges' ex officio authority in *ṭalāq* divorce decisions rendered by default due to the respondent's absence. It further distinguishes itself by employing the analytical framework of *maṣlahah* to interpret such judicial decisions.

On this basis, the present study examines judges' ex officio authority to impose iddah maintenance in divorce cases involving an absent respondent, analyzing it from the perspective of *maṣlahah*. It seeks to elucidate how judges reconcile positive legal norms with social realities and the demands of substantive justice in safeguarding women's rights in divorce proceedings.

## Method

This research adopts a qualitative approach within a normative legal framework. Primary data consist of authoritative legal materials, notably the Decision of the Religious Court Sumber No. 5573/Pdt.G/2023/PA.Sbr as the principal case study, alongside relevant regulatory instruments, including Law No. 48 of 2009 on Judicial Power, Supreme Court Circular Letter (SEMA) No. 5 of 2021 on the Granting of Post-Divorce Rights to Women, and SEMA No. 2 of 2022 concerning Certainty of Payment and the Protection of Women's Rights in Divorce by Petition and *ṭalāq*. Secondary data are derived from academic literature,

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<sup>14</sup> "JDIH MAHKAMAH AGUNG RI," Mahkamah Agung RI, 2021, <https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-5-tahun-2021/detail>.

<sup>15</sup> Ihat Istirahat, "Rekonstruksi Peran Hakim dalam Mewujudkan Keadilan Substantif di Pengadilan Indonesia," *YUDHISTIRA: Jurnal Yurisprudensi, Hukum dan Peradilan* 1, no. 2 (2023): 44–51, <https://doi.org/10.59966/yudhistira.v1i2.1704>.

<sup>16</sup> Thariq, "Hak Ex Officio Hakim."

<sup>17</sup> Miftahul Jannah, "Ratio Decidendi Hakim Terhadap Pemberian Nafkah Dalam Cerai Gugat Perspektif Teori Masalah Mursalah (Studi Putusan Nomor 801/Pdt.G/2022/PA.Clg)" (Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/52869>.

including journal articles, legal textbooks, and prior studies. Data were collected through an in-depth doctrinal and library-based analysis of documentary sources to examine the scope of ex officio judicial authority and the protection of women's rights in default divorce cases.

### **The Concept of *Maṣlaḥah* in al-Ghazali's Perspective**

Imam al-Ghazali, whose full name is Abu Hamid Muhammad ibn Muhammad al-Ghazali al-Tusi al-Shafi'i, was born in 1058 CE (450 AH) in Tus, Khurasan, Persia (Iran). He is widely recognized as a pre-eminent scholar, theologian, jurist, philosopher, and Sufi, noted for his ability to synthesize reason, revelation, and spirituality within a coherent intellectual framework. From an early age, al-Ghazali displayed exceptional intellectual aptitude and a profound commitment to learning, pursuing his studies across major centers of scholarship in Persia and Baghdad.<sup>18</sup> He later served as a leading professor at the Nizamiyyah Madrasa in Baghdad, where he produced a substantial body of influential works spanning fiqh, *kalam* (theology), philosophy, and Sufism. His scholarship has had a lasting impact on the development of Islamic intellectual traditions, particularly in theology and spirituality. After a life devoted to teaching, writing, and spiritual practice, al-Ghazali passed away in 1111 CE (505 AH) in his native city of Tus.<sup>19</sup>

Al-Ghazali conceptualized *maṣlaḥah* as a form of public interest for which no specific scriptural text exists either to affirm or to negate it, provided that it remains consistent with the objectives of Shari'ah and does not contravene definitive textual evidence.<sup>20</sup> Such public interest may serve as a basis for legal determination insofar as it fulfills the essential criteria of the maqāṣid al-sharīah and corresponds to recognized levels of necessity, particularly *ḍarūriyyāt* (essentials) and *ḥājiyyāt* (complementary needs). As a doctrinal concept within the discipline of ushul al-fiqh, *maṣlaḥah* originates prominently from the thought of Imam al-Ghazali.<sup>21</sup> Linguistically, the term denotes the pursuit of benefit and the prevention of harm. In legal terms, it refers to efforts to preserve the fundamental objectives of Islamic law, namely the protection of religion, life, intellect, lineage, and property.<sup>22</sup>

According to al-Ghazali, *maṣlaḥah*, in terms of its normative force, constitutes a rationally and religiously grounded good. In al-Mustashfa and his other works, he further

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<sup>18</sup> W. Montgomery Watt, *Muslim Intellectual: A Study of Al-Ghazali* (Edinburgh University Press, 1971), <https://www.ghazali.org/articles/watt.htm>.

<sup>19</sup> Watt, *Muslim Intellectual: A Study of Al-Ghazali*.

<sup>20</sup> Abu Hamid Ibn Muhammad Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1 (Jakarta: Pustaka Al-Kautsar, 2022); Nur Asiah Kudaedah, "Maslahah Menurut Konsep Al-Ghazali," *Diktum: Jurnal Syariah Dan Hukum* 18, no. 1 (July 2020): 118–28, <https://doi.org/10.35905/diktum.v18i1.663>.

<sup>21</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1.

<sup>22</sup> M. Najich Syamsuddini, "Konsep Al-Maslahat Al-Mursalat Menurut Imam Al-Ghazali Dan Imam Malik (Studi Eksklusif Dan Inklusif)," *Al Yasini : Jurnal Keislaman, Sosial, Hukum Dan Pendidikan* 7, no. 1 (2022): 103, <https://doi.org/10.55102/alyasini.v7i2.4691>; Jihan Al Layyinah et al., "Tinjauan Maslahah Mursalat terhadap Penentuan Perwalian Anak di Luar Nikah (Studi Kasus Kantor Urusan Agama Sidumukti Kota Salatiga)," *Samawa : Jurnal Hukum Keluarga Islam* 6, no. 1 (2026): 92–110.

explains that *maṣlaḥah* may be considered as valid even in the absence of explicit textual support, provided that it is neither affirmed nor prohibited by the scriptural sources.<sup>23</sup> In this sense, such *maṣlaḥah* is not specifically recognized by the texts, yet they do not invalidate it. Accordingly, *maṣlaḥah* may serve as a basis for legal reasoning in Islamic law only insofar as it remains consistent with, and does not contradict, the objectives of shariah (*maqāṣid al-sharīah*).<sup>24</sup>

In al-Mustashfa, al-Ghazali elaborates that *maṣlaḥah*, which may serve as a basis for legal determination, must satisfy several essential conditions. First, it must correspond to the fundamental objectives of shariah (*al-darūriyyāt al-khams*), which are the protection of religion (*ḥifẓ al-din*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-‘aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-mal*). Second, it must not conflict with authoritative textual sources, including the Qur’an, hadith, or scholarly consensus (*ijma’*). Thirdly, the *maṣlaḥah* invoked must maintain matters of primary necessity (*darūriyyāt*) or secondary need (*hajiyyat*) that approximate the level of necessity. Finally, its evidentiary quality must be either definitive (*qath’iyyah*) or based on a strong presumption (*dzanniyyah*) approaching certainty, rather than merely supplementary (*tahsiniyyah*), unless supported by sufficient legal evidence.

Thus, according to al-Ghazali, *maṣlaḥah* constitutes a principle of public interest that may be taken into consideration in the formulation of Islamic legal rulings in the absence of explicit textual evidence either supporting or rejecting it, provided that it remains consistent with the objectives of shariah (*maqāṣid al-sharīah*) and does not contravene other established provisions of Islamic law.

### Divorce in Absentia and Legal Issues

The phenomenon of divorce in absentia, whereby the respondent is deemed to be of unknown whereabouts, within the practice of the Indonesian Religious Courts, reflects the sociological complexities of family life intertwined with procedural legal constraints. An examination of case dynamics, particularly in Decision No. 5573/Pdt.G/2023/PA.Sbr indicates that such “absence” commonly arises from a breakdown in communication following domestic conflict that has reached an irreconcilable stage. Empirically, this condition is often precipitated by the wife’s departure from the marital residence without leaving a traceable address, which in many instances constitutes an attempt to escape an unhealthy domestic environment or severe marital discord (*shiqāq*).<sup>25</sup> However, field realities also reveal certain anomalies linked to patterns of economic mobility. In several cases, wives who are working abroad as migrant laborers with their husbands’ consent

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<sup>23</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1.

<sup>24</sup> Kudaedah, “Maslahah Menurut Konsep Al-Ghazali”; Syarif Hidayatullah, “Maslahah Mursalah Menurut Al-Ghazali,” *Al-Mizan: Jurnal Hukum Dan Ekonomi Islam* 2, no. 1 (February 2018): 115–63, <https://doi.org/10.33511/almizan.v2n1.115-163>.

<sup>25</sup> Hamdan Arief Hanif et al., “Nusyuz and Syiqaq in Islamic Law : Concept, Impact, and Methods of Settlement,” *Vrispraak: International Journal of Law* 7, no. 2 (2023): 9–15, <https://doi.org/10.59689/vris.v7i2.1150>.

subsequently discover that their marital status has been unilaterally dissolved through the unseen mechanism upon their return to Indonesia.<sup>26</sup>

This issue is further compounded by administrative weaknesses at the village or sub-district level in the issuance of certificates of absence.<sup>27</sup> The relative ease with which such certificates, testing that an individual's address is unknown, may be obtained often results in them being treated as primary evidence in judicial proceedings, without adequate substantive verification by local authorities.<sup>28</sup> Consequently, the certificate of absence of risks functions as a mere administrative formality that legitimates proceedings in the absence of the opposing party, not without standing that the wife's whereabouts may, in fact, be ascertainable through inter-agency coordination or by reference to existing migrant worker protection databases.<sup>29</sup>

From a strategic perspective, there are not infrequent indications that the petitioner (the husband) may deliberately manipulate information to render the wife's whereabouts ostentatiously unknown, thus enabling the proceedings to continue in her absence.<sup>30</sup> The underlying motivation is typically to avoid direct court involvement and to minimize potential challenges or counterclaims regarding post-divorce financial entitlements that the wife might otherwise advance.<sup>31</sup> This unilateral litigation strategy effectively constrains the wife's opportunity to present a defense, with the result that procedural mechanisms, such as service by public summons, risk functioning not as safeguards of due process but as instruments that undermine access to substantive justice.

In judicial proceedings, judges are required to adopt a rigorous, critical approach to evidence concerning an absent spouse to prevent potential abuse of legal process. The development of judicial discourse regarding the imposition of *iddah* maintenance in such circumstances represents a normative response to the

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<sup>26</sup> Robiatin Adawiyah, "Kondisi psikologis istri yang ditinggal suami mencari nafkah ke luar negeri (studi kasus pada Ibu Rumah Tangga di Desa Bandarsono Kecamatan Nibung Hangus Kabupaten Batu Bara)" (undergraduate, UIN Syekh Ali Hasan Ahmad Addary Padangsidempuan, 2023), <https://etd.uinsyahada.ac.id/8366/>.

<sup>27</sup> Luthfi Kalbu Adi, "Implikasi Penolakan Penerbitan Surat Keterangan Ghaib Terhadap Hak Pencari Keadilan di Pengadilan Agama Purwokerto," *JATIJAJAR LAW REVIEW* 4, no. 2 (2025): 101, <https://doi.org/10.26753/jlr.v4i2.1866>.

<sup>28</sup> Eka Ristianawati, "Problematisasi Cerai Ghaib Dan Upaya Hukumnya," *Jurnal Syntax Admiration* 5, no. 8 (2024): 2938-48, <https://doi.org/10.46799/jsa.v5i8.1388>.

<sup>29</sup> Yuliana Fitria et al., *Problematisasi Panggilan Ghaib Dalam Perkara Perceraian Melalui Radio Di Era Digitalisasi Pada Pengadilan Agama Amuntai*, 2025; Abdullah Abdullah et al., "Criticizing the Muslim Divorce Tradition in Lombok: An Effort to Control the Women's Rights," *Justicia Islamica* 19, no. 1 (2022): 57-73, <https://doi.org/10.21154/justicia.v19i1.3168>.

<sup>30</sup> Dewinda Ari Fitriyani and Indah Purbasari, "Putusan Verstek Terhadap Perkara Cerai Gugat Suami Ghaib Di Pengadilan Agama Surabaya: (Putusan Nomor 1301/Pdt.G/2024/PA.Sby)," *Referendum: Jurnal Hukum Perdata Dan Pidana* 1, no. 4 (2024): 34-41, <https://doi.org/10.62383/referendum.v1i4.254>.

<sup>31</sup> Sarah A. Crabtree and Steven M. Harris, "The Lived Experience of Ambiguous Marital Separation: A Phenomenological Study," *Journal of Marital and Family Therapy* 46, no. 3 (2020): 385-98, <https://doi.org/10.1111/jmft.12419>; Jolanta Sondaite and Lina Butkute, "A Case Study of Protracted Conflictual Divorce," *Journal of Aggression, Conflict and Peace Research* 18, no. 1 (2026): 37-49, <https://doi.org/10.1108/JACPR-05-2025-1018>.

resulting imbalance of power. In several progressive decisions, courts have held that, in the absence of substantial evidence of *nushūz* (disobedience) on the part of the wife, an issue that is inherently difficult to establish in her absence, the right to *iddah* maintenance remains a non-derogable legal entitlement. Accordingly, the husband remains under an obligation to fulfill this duty in accordance with Article 149 of the Compilation of Islamic Law.<sup>32</sup>

In legal terms, the status of *nushūz* (a wife's disobedience) constitutes a claim that must be established through cogent and substantial evidence within the adversarial process of judicial proceedings.<sup>33</sup> Where the wife is absent, particularly in circumstances deliberately engineered by the husband, establishing *nushūz* becomes inherently problematic. This is due to the inability to uphold the principle of *audi et alteram partem*, as the court is deprived of the opportunity to hear both parties.<sup>34</sup> As a result, the judge is unable to ascertain whether the wife's departure was attributable to wrongful conduct or, conversely, to the husband's prior failure to fulfill his marital obligations. From a socio-legal perspective, the deliberate rendering of the wife as "absent" may function as a strategy to foreclose the possibility of defense, thereby reducing any allegation of *nushūz* to a unilateral and unsubstantiated claim. In the absence of the wife's testimony or counter-evidence (*tegenbewijs*), the court is not legally justified in presuming the existence of disobedience.<sup>35</sup>

The rigid application of civil procedural law in its strictest form often constitutes a significant impediment to the realization of distributive justice for women in cases of divorce by default. Where judges adhere exclusively to a formalistic interpretation of procedural rules, grounded in a passive adjudicative approach in which decisions are confined to the parties' submissions, the absence of a counterclaim (reconvention) from an absent wife may result in the non-award of maintenance.<sup>36</sup> Such a legalistic orientation creates a structural gap in justice, whereby the wife's entitlement to *iddah* maintenance is effectively negated by procedural constraints arising from her unknown whereabouts. In this context, procedural law risks losing its ability to function as an instrument of justice. Instead, it operates as a bureaucratic barrier that enables the husband to evade his legal obligations.<sup>37</sup>

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<sup>32</sup> Patimah et al., "Pertimbangan Hakim Dalam Menetapkan Nafkah Terhadap Istri Pasca Perceraian," *Al-Qadau* 10, no. 2 (2023): 112–20; Thariq, "Hak Ex Officio Hakim."

<sup>33</sup> Aprina Chintya, "Interpretasi Hakim Pengadilan Agama Di Riau Tentang Konsep Nusyuz Dalam Perkawinan," *Tapis : Jurnal Penelitian Ilmiah* 2, no. 2 (2018): 202, <https://doi.org/10.32332/tapis.v2i2.1158>.

<sup>34</sup> Mardi Candra et al., "The Religious Court Trial Of Wali Adhal Cases In The Indonesian Legal System: A Legal Analysis," *Jurnal Hukum Dan Peradilan* 12, no. 1 (2023): 77, <https://doi.org/10.25216/jhp.12.1.2023.77-96>.

<sup>35</sup> Lilik Andaryuni, "Putusan Verstek Dalam Cerai Gugat Karena Pelanggaran Taklik Talak Di Pengadilan Agama Samarinda," *Istinbath* 16, no. 1 (2017): 224–40, <https://doi.org/10.20414/ijhi.v16i1.109>.

<sup>36</sup> Ali Zia Husnul Labib, "Implementasi Gugatan Re-Rekonvensi Di Pengadilan Agama Prespektif Masalahah Najamuddin Al-Tufi" (Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/52879>.

<sup>37</sup> Antonius Bangun Silitonga, "Konstruksi Hukum Perubahan Surat Tuntutan Dalam Replik" (doctoral, Universitas Hasanuddin Makassar, 2025), <https://repository.unhas.ac.id/id/eprint/54905/>.

The exercise of ex officio judicial powers functions as a corrective mechanism to the limitations inherent in civil procedural law. In circumstances where the wife is absent and unable to represent her interests, the judge assumes a more active role, both legally and ethically, to ensure the fulfillment of the husband's financial obligations.<sup>38</sup> This approach reflects a shift from a purely procedural conception of justice to one grounded in substantive justice, in which the judge is not merely a passive "mouthpiece of the law" but a proactive agent in safeguarding women's rights. In this context, ex officio authority serves to prevent such rights from being undermined by an "absent" status that may be situational or, in certain cases, deliberately constructed.<sup>39</sup>

The physical absence of the wife from judicial proceedings must not be construed as a basis for the forfeiture of substantive rights guaranteed by law; accordingly, the judge's ex officio authority functions as an instrument for maintaining the balance of rights and obligations between the parties.<sup>40</sup> In such circumstances, this authority operates as a legal safeguard for a party who is effectively unable to represent her interests before the court. By ordering the provisions of iddah maintenance notwithstanding the wife's absence, the judge assumes a gatekeeping role in the administration of justice, ensuring that divorce proceedings are not utilized as a means of unilaterally evading economic responsibilities. This approach is consistent with the spirit of SEMA No. 3 of 2018, which affirms that the judicial function extends beyond acting as a mere mouthpiece of the law to embodying the enforcement of primary (*darūriyyāt*) values of public interest, particularly in upholding the dignity and rights of women within the evolving landscape of Islamic family law in Indonesia.

To ensure the effective protection of such rights, the enforcement of *iddah* maintenance determined ex officio may be integrated into the procedural framework for the issuance of divorce certificates by the Religious Court. In practice, this may take the form of a policy whereby the husband's (petitioner's) divorce certificate is withheld until he has discharged his obligations to provide iddah and mut'ah maintenance as ordered by the court. Where the wife, previously absent, afterward appears to obtain a copy of the judgment or her divorce certificate, the court may release to her the financial entitlements deposited by the husband.<sup>41</sup> This mechanism not only enhances legal certainty but also serves as an effective means

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<sup>38</sup> Ita Puspitasari Hidayati, "Implementasi Hak-Hak Perempuan Pada Cerai Gugat Di Pengadilan Agama Jepara" (masters, Universitas Islam Sultan Agung Semarang, 2025), <https://repository.unissula.ac.id/41669/>.

<sup>39</sup> Muhammad Amzad and Endrik Safudin, "Hak Ex Officio Hakim dan Permasalahan Nusyuz dalam Perkara Cerai Talak: Studi Putusan Nomor 878/Pdt.G/Pa.Kab.Kdr," *Jurnal Antologi Hukum* 3, no. 2 (2023): 317-34, <https://doi.org/10.21154/antologihukum.v3i2.2596>.

<sup>40</sup> Alya Putri Salsabila, "Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak Istri Pasca Cerai Talak (Studi Kasus Di Pengadilan Agama Semarang Kelas I-A)" (undergraduate, Universitas Islam Sultan Agung, 2025), <https://repository.unissula.ac.id/44560/>.

<sup>41</sup> Sheila Fakhria, "Cerai Gugat Dan Implikasinya Terhadap Hak-Hak Finansial Perempuan," *Legitima: Jurnal Hukum Keluarga Islam* 1, no. 1 (2019): 91-119, <https://doi.org/10.33367/legitima.v1i1.648>.

of enforcement, ensuring compliance with maintenance obligations even when the wife is absent during the proceedings.

### **The Ex Officio Powers of Judges in Determining Iddah Maintenance in Cases of Divorce in Absentia**

The term *ex officio* denotes the powers vested in a judge by virtue of their judicial office, rather than arising from any specific request, motion, or appointment by the parties to the proceedings.<sup>42</sup> Such authority enables the judge to determine matters or impose obligations that have not been expressly advanced in the pleadings. Accordingly, *ex officio* powers provide the judicial scope to take the necessary legal measures to secure decisions that realize justice and serve the public interest, while ensuring the protection of litigants' rights, particularly when the parties have not fully articulated relevant legal considerations.<sup>43</sup>

The legal basis for the exercise of *ex officio* judicial authority in Indonesia is grounded in several statutory provisions, including Article 24(1) of the 1945 Constitution, Article 5(1) of Law No. 48 of 2009 on Judicial Power, Article 178(1) of the *Herziene Indonesisch Reglement (HIR)*/Article 189(1) of the *Rechtsreglement voor de Buitengewesten (RBg)*, and Article 58 of Law No. 7 of 1989, as amended. In practice within the Religious Courts, this authority enables judges to determine, grant, or impose rights and obligations that have not been expressly advanced by the parties, provided that such measures are directed towards the realization of justice, the protection of the rights of women and children, and the effective enforcement of judicial decisions.<sup>44</sup>

From a legal perspective, the exercise of *ex officio* powers must satisfy several fundamental conditions: it must be grounded in a clear legal basis, remain within the applicable legal framework, and be directed towards the realization of justice and the rule of law.<sup>45</sup> Furthermore, the application of such powers does not contravene the principle of *ultra petitum partium*, provided that the decision remains aligned with the substance of the principal claim. By exercising *ex officio* authority, judges may assume a more proactive role in developing Islamic law, extending legal considerations beyond those expressly advanced by the parties. This, in turn, may contribute to the efficiency and simplification of judicial

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<sup>42</sup> Ghea Sakira et al., "Penerapan Hak Ex Officio Hakim Dalam Melindungi Hak Istri," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 2 (2024): 188–201, <https://doi.org/10.24042/el-izdiwaj.v5i2.21534>.

<sup>43</sup> Anwar Fauzi, "Batasan Ex Officio Hakim Dalam Mengadili Perempuan Berhadapan Dengan Hukum," *Pengadilan Agama Tual*, 2025, <https://www.pa-tual.go.id/info-lainnya/berita-terkini/1181-batasan-ex-officio-hakim-dalam-mengadili-perempuan-berhadapan-dengan-hukum>.

<sup>44</sup> Mustofa, "Hak Ex Officio Hakim Dalam Melindungi Hak-Hak Perempuan Yang Berhadapan Dengan Hukum (Sebagai Pihak) Berdasarkan Peraturan Mahkamah Agung RI Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum," *Direktorat Jenderal Badan Peradilan Agama MA RI, Mahkamah Agung RI*, May 9, 2020, <https://badilag.mahkamahagung.go.id/artikel/hak-ex-officio-hakim-dalam-melindungi-hak-hak-perempuan-oleh-musthofa-s-h-i-m-h-8-5>.

<sup>45</sup> Nurul Izzati and Aldy Darmawan, "Implementasi Pemanggilan Perkara Cerai Ghaib Di Pengadilan Agama Pariaman Kelas I B," *Sakena : Jurnal Hukum Keluarga* 7, no. 2 (2022): 115–30.

proceedings while maintaining the principles of legal protection and substantive justice.<sup>46</sup>

SEMA No. 5 of 2021 establishes the mandatory obligation for judges of the Religious Courts to include provisions relating to spousal maintenance in all divorce decrees, including those rendered by default or in the absence of a party, to prevent a lacuna in post-divorce rights.<sup>47</sup> This directive arises from the Supreme Court's observation that several prior decisions had failed to give effect to Article 152 of the Compilation of Islamic Law concerning iddah maintenance. According to SEMA No. 5 of 2021, it functions as a binding guideline requiring judges, *ex officio*, to impose maintenance obligations proportionately, having regard to the husband's financial capacity and the wife's needs.<sup>48</sup>

In this study, the author identifies a distinctive case involving a judicial determination in a divorce by default (*ṭalāq verstek*), in which the respondent was deemed to be unseen by the court. In Islamic and Indonesian family law, *ghā'ib* denotes a situation in which a person's whereabouts are unknown and their status—whether living or deceased—cannot be ascertained. In classical fiqh, this condition is often referred to as *mafqud*, referring to a person who has disappeared without a trace, thereby creating uncertainty about their legal status and rights. In the context of divorce proceedings, such as divorce talak *ghā'ib*, this designation applies to a spouse who cannot be reached through formal legal channels.<sup>49</sup>

In cases of this nature, including Decision No. 5573/Pdt.G/2023/PA.Sbr, the application of SEMA No. 5 of 2021 supports the imposition of iddah maintenance, notwithstanding the wife's absence, emphasizing substantive protection that is not contingent upon the petitioner's claim. However, in other cases, such as Decision No. 402/Pdt.G/2025/PA.Ktbm and Decision No. 550/Pdt.G/2024/PA.Bjm, the absence of maintenance orders reflects inconsistency in judicial practice, with courts adhering rigidly to procedural formalism in default judgments without invoking SEMA in pursuit of public welfare. This inconsistency diminishes SEMA's effectiveness as an instrument for harmonizing Shari'ah principles with national legal frameworks.<sup>50</sup>

According to Wahbah al-Zuhaili,<sup>51</sup> a contemporary scholar of Islamic jurisprudence, *ghā'ib* denotes a husband or wife who is missing, with their

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<sup>46</sup> Azizah et al., "Application of Ex Officio Rights Based on Gender Justice in Divorce Lawsuit in Surabaya Religious Court, Indonesia," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 8, no. 2 (2023): 187–202, <https://doi.org/10.25217/jm.v8i2.4075>.

<sup>47</sup> Supreme Court of Indonesia, "JDIH Mahkamah Agung RI."

<sup>48</sup> Ayu Cahyani et al., "Pelaksanaan Hak Ex Officio Hakim Atas Nafkah Iddah, Mut'ah, Hadlonah Dan Madhiyah Dalam Perkara Cerai Gugat Ditinjau Dari Perma Nomor 3 Tahun 2017: Analisis Putusan No.2675/Pdt.G/2023/PA.Kab.Kdr," *Mandub : Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 3 (2024): 226–46, <https://doi.org/10.59059/mandub.v2i3.1391>.

<sup>49</sup> Wahbah Al-Zuhaili, *Al-Fiqh al-Islam Wa Adillatuhu* (Dar Al-Fikr, 2006).

<sup>50</sup> Aulia Alya and Zainuddin Zainuddin, "Analisis Putusan Pengadilan Agama Nomor 2429/Pdt.G/2023/PA.Mdn Tentang Nafkah Iddah Dan Mut'ah Oleh Suami Kepada Isteri Dalam Perkara Cerai Talak," *UNES* (Semarang) 6, no. 3 (2024), <https://review-unes.com/index.php/law/article/view/1691>.

<sup>51</sup> Al-Zuhaili, *Al-Fiqh al-Islam Wa Adillatuhu*, 718.

whereabouts and legal status remaining unknown. This condition gives rise to significant legal challenges, as the absence of the concerned party impedes the fulfillment of marital rights and obligations, including the provision of maintenance during the *iddah* period. In a similar vein, the Directorate General of the Religious Courts under the Supreme Court of Indonesia defines a supernatural divorce petition as one filed when the respondent's address and whereabouts are unknown at the time of submission.<sup>52</sup>

From the standpoint of Indonesian law, Law No. 7 of 1989 on the Religious Courts<sup>53</sup> and Government Regulation No. 9 of 1975<sup>54</sup> established the procedural framework for divorce by default, permitting a petition to be filed at the petitioner's place of residence where the respondent's whereabouts cannot be ascertained, with a view to ensuring legal protection for the wife's rights. In summary, *ghā'ib* in Islamic family law denotes the prolonged or permanent physical absence of a spouse whose whereabouts cannot be ascertained, necessitating specific legal mechanisms to safeguard the absent spouse's rights and obligations.<sup>55</sup>

In Decision No. 5573/Pdt.G/2023/PA.Sbr, the court actively exercised its *ex officio* authority to protect the absent wife's rights. The judges held that, notwithstanding her absence and unknown whereabouts, the husband, as petitioner, remained under a legal obligation to provide *iddah* maintenance. This determination was grounded in considerations derived from Islamic jurisprudence, national legislation, and applicable regulatory frameworks governing Islamic family law.<sup>56</sup> The court expressly imposed the obligation on the petitioner and emphasized that it must be discharged before the formal pronouncement of the divorce.

Based on the Decision of the Religious Court Sumber in Case No. 5573/Pdt.G/2023/PA.Sbr, the court determined the *iddah* maintenance at IDR4,500,000 (four million five hundred thousand rupiah) for three months, equivalent to IDR1,500,000 per month, payable by the petitioner to the respondent. This amount was not arbitrarily fixed but was established through judicial fact-finding concerning the petitioner's socio-economic circumstances. The court found the sum reasonable and commensurate with the petitioner's financial capacity, as evidenced by his stable income, which was deemed sufficient to meet this obligation without compromising his basic needs.

The determination reflects the application of the principle of proportionality within Islamic family law. The court sought to balance the absent wife's right to a reasonable standard of maintenance with the need to avoid imposing undue

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<sup>52</sup> Missel Lucky Doni Lee and Wiwin Yulianingsih, "Perceraian Ghaib Menurut Hukum Perkawinan Di Indonesia," *Legal Spirit* 8, no. 3 (2024): 645–60, <https://doi.org/10.31328/lv8i3.5596>.

<sup>53</sup> Law No. 7 of 1989 on Religious Courts, <http://peraturan.bpk.go.id/Details/46804/uu-no-7-tahun-1989>.

<sup>54</sup> Government Regulation No. 9 of 1975 Concerning the Implementation of Law No. 1 of 1974 on Marriage, <http://peraturan.bpk.go.id/Details/67678/pp-no-9-tahun-1975>.

<sup>55</sup> Lee and Yulianingsih, "Perceraian Ghaib Menurut Hukum Perkawinan Di Indonesia."

<sup>56</sup> Izzati and Darmawan, "Implementasi Pemanggilan Perkara Cerai Ghaib Di Pengadilan Agama Pariaman Kelas I B."

hardship (*mashaqqah*) on the husband. In light of the petitioner's stable employment and regular income, the amount awarded was considered modest yet equitable, reflecting both the legal and moral responsibilities of a former husband.<sup>57</sup> Furthermore, the determination of this amount is significant from the perspective of substantive justice, as it illustrates that the exercise of ex officio powers is not punitive but is directed towards the realization of distributive justice.<sup>58</sup> Having regard to inflation and the prevailing cost of living within the jurisdiction of the Religious Court Sumber, the sum of IDR4,500,000 may be understood as ensuring the protection of women's rights at the level of *darūriyyāt* (primary necessities). The court's decision to align the petitioner's financial capacity with the respondent's entitlements demonstrates conformity with the principle of *maṣlahah*, whereby the welfare of the absent wife is secured without imposing undue financial hardship upon the husband.

Decision No. 5573/Pdt.G/2023/PA.Sbr may be regarded as a significant judicial precedent, offering an important point of reference for judges in other Religious Courts. As a doctrinal development, the ruling embodies principles that extend beyond mere dispute resolution, affirming that a wife's physical absence from court proceedings must not entail the forfeiture of her fundamental rights. The court's willingness to award maintenance in circumstances of absence reflects a progressive judicial approach, positioning the judiciary not solely as an adjudicative body but as a guarantor of rights protection for parties who are effectively unable to represent themselves. If consistently followed in subsequent decisions, this reasoning has the potential to establish a robust standard of legal protection, particularly for migrant workers and women who are structurally marginalized from access to legal processes and information.

A closer examination of the judgment demonstrates the pivotal role of ex officio powers as an instrument for the realization of distributive justice.<sup>59</sup> In this case, the court adopted a rigorous legal approach, ensuring that the absence of a counterclaim did not impede the fulfillment of the wife's rights. The court's reasoning was grounded in the principle that the husband's obligation to provide *iddah* maintenance arises as a direct legal consequence of the exercise of the right to divorce and is therefore inherent in every such case. Through the exercise of its ex officio authority, the court intervened to address the imbalance of power between

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<sup>57</sup> Riyan Ramdani dan Firda Nisa Syafitri, "Penentuan Besaran Nafkah Madhiyah, Nafkah Iddah dan Mut'ah dalam Perkara Perceraian di Pengadilan Agama," *ADLIYA: Jurnal Hukum dan Kemanusiaan* 15, no. 1 (2021): 37–50, <https://doi.org/10.15575/adliya.v15i1.11874>.

<sup>58</sup> Noha El-Bassiouny and Donia Hisham El-Naggar, "An Islamic 'Theory of Justice' Commentary on Consumer Well-Being," *Management & Sustainability: An Arab Review* 4, no. 1 (2025): 74–80, <https://doi.org/10.1108/MSAR-02-2024-0006>.

<sup>59</sup> Ainun Reihannanda et al., "Pelaksanaan Teori Keadilan Distributif Aristoteles Dihubungkan Dengan Keadilan Bagi Ibu Hamil Dan Menyusui Sebagai Narapidana," *Triwangsa Hukum* 2, no. 01 (2022), <https://journal.unpas.ac.id/index.php/triwangsa/article/view/6490>.

the parties, ensuring that the husband continued to bear financial responsibility as a necessary consequence of his decision to dissolve the marriage.

Furthermore, the exercise of *ex officio* powers in this judgment is both appropriate and justified, as the court transcended the passive formalism of civil procedure. It recognized that, in cases involving an absent spouse, a purely procedural approach carries a significant risk of injustice. Accordingly, the determination of *iddah* maintenance *ex officio* constitutes a concrete expression of judicial discretion exercised responsibly, drawing upon the values of substantive justice embedded within society and aligned with the objectives of shariah (*maqāsid al-sharīah*).<sup>60</sup> This approach affirms that, within the dynamics of Islamic family law in Indonesia, the judge serves as an active legal actor in ensuring that technical procedural constraints do not undermine women's rights.<sup>61</sup>

This reasoning marks a departure from more formalistic practices observed in other cases, in which petitioners are not required to fulfill maintenance obligations towards respondents deemed unseen, thereby neglecting considerations of substantive justice. By contrast, in Case No. 5573/Pdt.G/2023/PA.Sbr, the court's reasoning reflects a synthesis of *fiqh* principles, national legal provisions, and the objectives of Shari'ah, prioritizing the protection of women rendered vulnerable by their absence.

### **Public Interest and Women's Right to *Iddah* Maintenance in Divorce in Absentia**

From a theoretical perspective, the judicial determination may be understood through al-Ghazali's conception of *maṣlahah*.<sup>62</sup> The imposition of *iddah* maintenance upon the husband is not merely a formal legal requirement but also reflects the realization of public interest as embodied in the objectives of shariah, namely the protection of religion, life, intellect, lineage, and property. In this context, the provision of *iddah* maintenance constitutes a form of economic and social protection that reinforces the safeguarding of the wife's life and property.

Such a determination does not conflict with authoritative textual sources (*nash*); rather, it addresses a normative lacuna in circumstances where explicit provisions concerning the rights of an absent wife are not clearly articulated,

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<sup>60</sup> Syamsuddini, "Konsep Al-Maslahat Al-Mursalat Menurut Imam Al-Ghazali Dan Imam Malik (Studi Eksklusif Dan Inklusif)"; Abdul Mun'im Saleh et al., "Eksistensi Teori Maslahah Dan Persinggungannya Dengan Utilitarianisme Dalam Pemikiran Ilmu Hukum," *Nagari Perdikan: Journal of Law and Policy Studies* 1, no. 1 (2024): 1–14, <https://doi.org/10.71155/by71ar69>.

<sup>61</sup> Jannah, "Ratio Decidendi Hakim Terhadap Pemberian Nafkah Dalam Cerai Gugat Perspektif Teori Maslahat Mursalat (Studi Putusan Nomor 801/Pdt.G/2022/PA.Clg)"; Sukron Ma'mun and Ibnu Akbar Maliki, "A Socio-Historical Study of Women's Rights Advocacy in Islamic Legal Construction," *Journal of Southeast Asian Human Rights* 7, no. 1 (2023): 1, <https://doi.org/10.19184/jseahr.v7i1.39156>.

<sup>62</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1.

provided that it remains consistent with the objectives of Shari'ah (*maqāṣid al-sharīah*) and the level of primary necessity (*ḍarūriyyāt*).<sup>63</sup>

From the perspective of al-Ghazali's theory of *maṣlaḥah*,<sup>64</sup> the court's decision to determine *iddah* maintenance at IDR4,500,000 may be understood as substantively fulfilling the higher objectives of Shari'ah<sup>65</sup> as follows; first, about the protection of life (*ḥifẓ al-nafs*), the court recognises that divorce, especially in cases involving an absent wife, often associated with economic vulnerability, such as that experienced by migrant workers, may pose a risk to the woman's physical well-being. By ensuring maintenance during the three-month *iddah* period, the court establishes an essential economic safeguard. This measure mitigates the risk of *mashaqqah* (undue hardship)<sup>66</sup> or material deprivation following the dissolution of the marriage, thereby securing the wife's fundamental right to a dignified standard of living.

Second, in relation to the protection of intellect (*ḥifẓ al-'aql*),<sup>67</sup> the legal and economic uncertainty arising from divorce in absentia may give rise to psychological distress and mental strain, exacerbated by social pressures. A judicial determination that provides certainty regarding financial entitlements through the exercise of ex officio authority may serve a stabilizing function (*tuma'ninat al-qulub*), offering reassurance to the wife.<sup>68</sup> In this way, the court affirms the continued presence of legal protection, thereby reducing the risk of psychological harm that could adversely affect her mental well-being during the *iddah* period.

Third, with respect to the protection of lineage (*ḥifẓ al-nasl*),<sup>69</sup> although the maintenance award is directed to the wife during the *iddah* period, its effects indirectly extend to the welfare of any children. From a socio-legal perspective, a mother's well-being is closely correlated with the quality of child-rearing. By preserving the wife's economic stability through judicially ordered maintenance, the risk of neglect or developmental disruption arising from post-divorce deprivation may be mitigated, thereby supporting the continuity of a materially and morally secure generation.

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<sup>63</sup> Rüdiger Lohlker, "Fiqh Reconsidered: Indigenization and Universalization of Islamic Law in Indonesia," *Interdisciplinary Journal for Religion and Transformation in Contemporary Society* 7, no. 1 (2021): 188–208, <https://doi.org/10.30965/23642807-bja10011>; Ma'mun and Maliki, "A Socio-Historical Study of Women's Rights Advocacy in Islamic Legal Construction."

<sup>64</sup> Loumia Ferhat, "Al-Ghazālī's Heart as a Medium of Light: Illumination and the Soteriological Process," *Journal of Islamic Ethics* 4, nos. 1–2 (2020): 201–22, <https://doi.org/10.1163/24685542-12340050>.

<sup>65</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1; Saleh et al., "Eksistensi Teori Masalah Dan Persinggungannya Dengan Utilitarianisme Dalam Pemikiran Ilmu Hukum"; Kudaedah, "MASLAHAH MENURUT KONSEP AL-GHAZALI."

<sup>66</sup> Muhammad Siddiq bin Ahmad Al-Burnu, *Al-Wajiz Fi Idhah Qawaid al-Fiqh al-Kuliyyah* (Muassasah Ar-Risalah, 1983), 129.

<sup>67</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1.

<sup>68</sup> Lohlker, "Fiqh Reconsidered."

<sup>69</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1.

Fourth, in relation to the preservation of property (*ḥifẓ al-mal*),<sup>70</sup> this aspect is most explicitly reflected in the ruling. The court emphasized that iddah maintenance constitutes a legal obligation owed by the husband following divorce. Determining an amount proportionate to his financial capacity demonstrates a considered effort to ensure that the wife's economic rights are not extinguished by her absence from the proceedings. In this way, the ruling serves to prevent potential economic exploitation or the husband's evasion of financial responsibilities.

Fifth, regarding the protection of religion (*ḥifẓ al-din*),<sup>71</sup> the imposition of maintenance ex officio reflects an effort to preserve the integrity of Islamic law within its institutional application. Islamic teachings emphasize that divorce must be effected in a defined manner (*taṣrīḥ bi iḥsān*). Where a court permits a husband to dissolve the marriage without fulfilling his attendant obligations, there is a risk that Islamic law may be perceived as unjust. By upholding the rights of an absent party, the court contributes to the preservation of the moral authority and dignity of religion, ensuring that legal processes remain aligned with the ethical imperatives of shariah and that the parties continue to observe their respective rights and obligations.

An analysis of the exercise of ex officio judicial authority in Decision No. 5573/Pdt.G/2023/PA.Sbr gains further normative support when situated within the framework of SEMA No. 2 of 2022,<sup>72</sup> which concerns the Summary of the Plenary Session of the Supreme Court Chambers. This instrument reflects a progressive judicial commitment to addressing the neglect of women's post-divorce rights, particularly by integrating the husband's financial obligations into the administrative process for issuing divorce certificates. From the perspective of SEMA No. 2 of 2022, the determination of iddah maintenance for an absent wife is no longer merely discretionary. Still, it constitutes an expression of the court's obligation to ensure that every divorce by *ṭalāq* is accompanied by the effective fulfillment of women's rights.

SEMA No. 2 of 2022 further stipulates that, in *ṭalāq* cases, the provision of *iddah* maintenance and *mut'ah* constitutes a legal consequence that must be satisfied before the issuance of the divorce certificate to the husband. In circumstances where the wife is absent or cannot be located, this policy serves as a safeguard of substantive justice, requiring judges not to permit such absence to serve as a means of evading legal responsibility. By determining maintenance ex officio in accordance with these standards, judges perform a crucial supervisory

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<sup>70</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1.

<sup>71</sup> Al-Ghazali, *Al-Mustasfa Rujukan Utama Ushul Fikih (Terjemahan Oleh Masturi Irham Dan Malik Supar)*, vol. 1.

<sup>72</sup> SEMA No. 2 of 2022 concerning guidelines and the harmonization of perspectives on judicial procedures, procedural law, and case administration for all Religious Courts within the jurisdiction of the Padang High Religious Court, <https://jdih.mahkamahagung.go.id/legal-product/surat-edaran-no-2-tahun-2022-tentang-rumusan-hasil-diskusi-hukum-dan-bedah-berkas-pengadilan-agama-sewilayah-pengadilan-tinggi-agama-padang/detail>.

function, ensuring that women's rights, though beyond direct communication, are preserved within the court's legal framework and effectively secured.

Furthermore, the integration of ex officio authority with SEMA No. 2 of 2022 in this decision demonstrates a clear alignment between the protection of women's rights and the principle of legal certainty. The Circular underscores that courts must no longer adopt a passive stance where there are indications of neglect of an ex-wife's economic entitlements. In cases involving an absent spouse, the judicial determination of maintenance serves as an effective mechanism for preserving rights, requiring the husband to deposit the prescribed amount with the court or through an approved mechanism before obtaining formal legal recognition of his post-divorce status. This reflects a broader shift in judicial practice, whereby the Religious Courts move beyond mere dispute resolution towards actively ensuring the restoration of women's rights in the context of unilateral divorce.

This analysis confirms that the court's approach in Decision No. 5573/Pdt.G/2023/PA.Sbr exceeds the minimum standards of procedural fairness and advances towards the realization of higher legal objectives. By applying the framework established under SEMA No. 2 of 2022, the court ensures that the status of unseen no longer serves as a justification for the economic marginalization of women following divorce. Rather, it reinforces the judiciary's role as a representative safeguard for absent parties, upholding the principle of primary necessity (*ḍarūriyyāt*).<sup>73</sup> The implementation of this regulatory framework significantly reduces opportunities for legal exploitation, while simultaneously strengthening the protection of women's dignity within an increasingly gender-responsive system of Islamic family law in Indonesia.<sup>74</sup>

This analysis demonstrates the variation in judicial approaches to divorce cases involving an absent wife. In some cases, courts decline to order iddah maintenance when the wife is absent. In contrast, in others, greater emphasis is placed on safeguarding her rights through the exercise of ex officio authority, grounded in both Islamic jurisprudential principles and national legal provisions governing Islamic family law. The decision in Case No. 5573/Pdt.G/2023/PA.Sbr, in which the divorce was granted by default due to the wife being deemed unseen, may serve as an important point of reference for judges in adjudicating similar cases, particularly in reinforcing the protection of women's rights within such proceedings.

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<sup>73</sup> Mohammad Rasikhul Islam Islam, "Pembagian Maqashid al-Syari'ah berdasarkan pengaruhnya terhadap umat manusia (Dharuriyyat, Hajiyyat dan Tahsiniyat)," *CLJ: Celestial Law Journal* 2, no. 1 (2024): 93-105; Budi Sastra Panjaitan et al., "Revitalizing Sharia Advocates: Reforming the Law on Advocates in Strengthening the Role of Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 485-504, <https://doi.org/10.29240/jhi.v9i2.10875>.

<sup>74</sup> See also case in Malaysia Aurangzaib Alamgir, "Islam and Women's Rights: Discourses in Malaysia," *Procedia - Social and Behavioral Sciences* 114 (February 2014): 872-76, <https://doi.org/10.1016/j.sbspro.2013.12.800>.

Based on the foregoing analysis, this study proposes a model for protecting wives' rights in cases involving an absent spouse by standardizing ex officio judicial authority. This approach redefines judges as active protectors of rights rather than passive adjudicators. As indicated in **Table 1**, the primary constraint lies not in the absence of legal norms but in judges' willingness to adopt progressive interpretations. By integrating al-Ghazali's concept of *maṣlahah* within the framework of Supreme Court Circular Letter (SEMA) No. 2 of 2022, courts can ensure the fulfillment of wives' rights even where communication is not possible.<sup>75</sup>

**Table 1.** Identification of Problems and the Model of Judicial Intervention in Cases Involving an Absent Party (*ghā'ib*)

Dimension	Existing Condition (Problem)	Ex Officio Intervention Model (Solution)	Outcome
<b>Procedural</b>	The absent wife is deemed to have forfeited her right to respond; entitlement to <i>iddah</i> maintenance is often neglected due to the absence of a counterclaim ( <i>reconvention</i> ).	The judge exercises <i>ex officio</i> authority, pursuant to Supreme Court Circular Letter (SEMA) No. 2 of 2022, to determine maintenance automatically.	The realization of procedural justice for the absent party, namely the Respondent (wife).
<b>Economic</b>	Economic exploitation arises where the husband is effectively released from post-divorce financial obligations.	The determination of <i>iddah</i> maintenance in an amount proportionate to the husband's financial capacity, as an obligation to be fulfilled before the pronouncement of divorce ( <i>talāq</i> ).	The preservation of <i>ḥifẓ al-mal</i> (protection of property) for the wife.
<b>Administrative</b>	Divorce certificates are issued to the husband without certainty regarding the fulfillment of the wife's financial rights.	The issuance of the divorce certificate is withheld until the husband deposits the <i>iddah</i> maintenance through the court's designated account (escrow mechanism).	Assurance of effective and immediate enforcement of judicial decisions.
<b>Sociological</b>	The condition of an absent wife, often a migrant worker, requires enhanced legal protection to prevent post-divorce structural impoverishment. Her absence from proceedings risks the neglect of financial rights, thereby undermining economic stability.	The state, through the judiciary, assumes an active role as protector of vulnerable parties' interests.	The realization of social protection and <i>ḥifẓ al-nafs</i> (protection of life).

The proposed model for protecting the rights of wives in cases involving an absent spouse, through the exercise of ex officio judicial authority, constitutes not

<sup>75</sup> Religious Court of Indonesia, "SEMA No. 2 Tahun 2022."

merely a procedural option but a normative and legal imperative to realize substantive justice. It integrates al-Ghazali's doctrine of *maṣlaḥah* at the level of *ḍarūriyyāt* with the progressive framework of Supreme Court Circular Letter (SEMA) No. 2 of 2022,<sup>76</sup> thereby establishing a multi-layered system of protection for absent parties.

Its effectiveness depends upon a judicial shift from passive adjudication to a form of principled activism responsive to women's socio-economic vulnerability, particularly among migrant workers. The institutionalization of mechanisms, such as withholding the issuance of divorce certificates until financial obligations are fulfilled, positions the Religious Courts not only as forums for dissolving marriages but also as guarantors of rights. This model offers a standardized approach for closing avenues of legal evasion, while reinforcing the integrity of Islamic family law in Indonesia as a system grounded in justice and the protection of women's rights.

## Conclusion

This study concludes that the exercise of ex officio judicial authority to impose iddah maintenance in cases involving an absent spouse constitutes a crucial mechanism for achieving substantive justice within the Religious Courts. Empirically, such cases often reflect broader sociological dynamics, including labor migration and, at times, deliberate attempts to evade post-divorce obligations. A purely formalistic and passive judicial approach risks exacerbating injustice against women. Decision No. 5573/Pdt.G/2023/PA.Sbr demonstrates that courts can protect absent parties by determining maintenance proportionate to the husband's financial capacity while preventing legal abuse.

Theoretically, this approach aligns with the framework of *maqāṣid al-sharīah*, particularly in safeguarding essential public interests (*al-ḍarūriyyāt al-khams*), including the protection of life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-mal*), lineage (*ḥifẓ al-nasl*), and religion (*ḥifẓ al-din*). Neglecting such rights on procedural grounds contradicts the objectives of *sharīah*. Furthermore, Supreme Court Circular Letters Nos. 3 of 2018 and 2 of 2022 provide a strong normative basis for proactive judicial intervention. Integrating ex officio maintenance into the administrative process for issuing divorce certificates provides an effective enforcement mechanism, ensuring the timely fulfillment of women's rights and strengthening justice within Islamic family law in Indonesia.

This study is confined to a socio-legal and normative analysis within a single judicial locus. Future research should undertake comparative, multi-court studies to evaluate the consistency and effectiveness of ex officio enforcement across the Religious Courts, particularly under the latest SEMA. It should also explore

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<sup>76</sup> SEMA No. 2 of 2022 regarding guidelines and the harmonization of perspectives on judicial procedures, procedural law, and case administration for all Religious Courts within the jurisdiction of the Padang High Religious Court.

integrating court information systems with cross-border population databases to more accurately identify absent spouses. Such measures would shift legal protection from a reactive to a preventive and systemic model, thus enhancing the resilience and integrity of Islamic family law in Indonesia amid evolving global dynamics.

### Generative AI Usage Statement

In the preparation of this manuscript, Rita Latassaaqia, Sukron Ma'mun, and Fitrat Umirov used generative artificial intelligence (AI) tools exclusively for limited editorial assistance, specifically for grammar correction and the refinement of transliteration. These AI tools were used to improve linguistic accuracy, readability, sentence structure, and consistency in the transliteration of Arabic terms in accordance with academic writing conventions. The use of generative AI is purely supportive and does not contribute to the development of research ideas, data collection, analysis, interpretation, or the formulation of study conclusions. All substantive academic content, arguments, and scientific interpretations were developed independently and reviewed entirely by the authors. The authors remain fully responsible for the integrity, originality, and accuracy of the manuscript. This disclosure is provided as part of the authors' commitment to transparency and ethical academic writing practices regarding the limited use of AI-assisted technology in scientific publications.

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