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Protection of Women's Rights in Divorce Lawsuits (Cerai Gugat) from the Perspective of Maqasid Asy-Syari'ah (Implementation of SEMA Number 3 of 2018 at the Mahkamah Syar'iyah Blangkejeren)

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ABSTRACT

This article examines the protection of women's rights in divorce lawsuits (cerai gugat) at the Syar'iyah Court of Blangkejeren through an analysis of the implementation of Supreme Court Circular Letter (SEMA) Number 3 of 2018 using Jasser Auda's maqasid al-sharī'ah framework. This study is motivated by the persistent inadequacy in fulfilling women's post-divorce rights due to structural, cultural, and procedural barriers. Employing qualitative field research, data were collected through interviews with court officials and women divorce litigants, analysis of court decisions from 2018 to September 2025, and document review. The findings indicate that although SEMA 3/2018 has encouraged gender-sensitive judicial practices, the protection of women's rights remains suboptimal. Key obstacles include limited legal awareness, inadequate legal assistance, difficulties in proving domestic violence, patriarchal culture, and weak enforcement of post-divorce maintenance. From the maqasid al-sharī'ah perspective, protecting women's rights in divorce cases represents the realization of the objectives of safeguarding life, intellect, lineage, property, and human dignity. This study concludes that integrating contemporary judicial regulations with a maqasid-oriented approach is essential to achieving substantive justice and gender-responsive Islamic family law.

Kata Kunci:
Perlindungan Perempuan,
Cerai Gugat,
SEMA Nomor 3 Tahun 2018,
Maqasid Asy-Syarī'ah.

ABSTRAK

Artikel ini mengkaji efektivitas perlindungan hak-hak perempuan dalam perkara cerai gugat di Mahkamah Syar'iyah Blangkejeren melalui analisis implementasi SEMA Nomor 3 Tahun 2018 dengan pendekatan maqasid asy-syarī'ah Jasser Auda. Berangkat dari fakta masih lemahnya pemenuhan hak perempuan pascaperceraian, penelitian ini menggunakan metode penelitian lapangan kualitatif dengan teknik wawancara, analisis putusan pengadilan (2018–2025), dan studi dokumentasi. Temuan penelitian menunjukkan bahwa meskipun SEMA 3/2018 telah mendorong praktik peradilan yang lebih sensitif gender, perlindungan hak perempuan belum sepenuhnya efektif akibat hambatan struktural dan kultural, termasuk budaya patriarki, keterbatasan pendampingan hukum, serta lemahnya eksekusi putusan nafkah. Dengan menggunakan kerangka maqasid asy-syarī'ah yang bersifat sistemik dan kontekstual, penelitian ini menegaskan bahwa perlindungan perempuan dalam cerai gugat bukan sekadar kebijakan administratif, melainkan manifestasi tujuan syariat dalam menjaga martabat dan kemaslahatan manusia. Artikel ini menawarkan kontribusi konseptual berupa integrasi regulasi yudisial modern dan pendekatan maqasid sebagai model ideal penegakan hukum keluarga Islam yang berkeadilan dan responsif gender.

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INTRODUCTION

According to research data, out of every 10 marriages that take place in Indonesia, 4 marriages end in divorce. And 3 out of every 4 of those divorce cases are initiated by the wife.[1] To provide protection arising from divorce, the state has

[1] "No Title," 2025, https://kinsatker.badilag.net/.

essentially been present to provide protection for women, particularly within the context of divorce.[2]

Through the Supreme Court, the state has sought to respond to this condition by issuing SEMA Number 3 of 2015, SEMA Number 3 of 2018, and SEMA Number 2 of 2019. These regulations affirm the obligation of judges to guarantee proceedings that are fair, free from discrimination, and oriented toward the protection of vulnerable groups. Nevertheless, the effectiveness of the implementation of this policy in divorce lawsuit cases still requires in-depth empirical study.

On the other hand, contemporary Islamic legal discourse emphasizes the importance of the maqasid asy-syarī'ah approach as an analytical framework that places the objectives of the law above a merely legalistic approach. Jasser Auda offers a maqasid paradigm that is systemic, open, and contextual, making it relevant for assessing the practice of religious courts in responding to issues of gender justice. Based on this background, this article aims to analyze the implementation of the protection of women's rights in divorce lawsuit cases at the Mahkamah Syar'iyah Blangkejeren and to assess it through the perspective of *maqasid asy-syari'ah*.

This paper seeks to answer 2 questions that form the problem formulation of this paper, namely: how is the protection of women's rights implemented in divorce lawsuit cases at the Mahkamah Syar'iyah Blangkejeren? And, how does *maqasid asy-syari'ah* view the provisions on the protection of women in divorce lawsuit cases within Supreme Court of the Republic of Indonesia Circular Letter Number 3 of 2018?

RESEARCH METHOD

This research is a qualitative study using a field method with interviews as primary data. Secondary data are based on an analysis of court decisions (2018–

[2] H. Arso Sastroatmodjo & H.A. Wasit Awlawi, *Hukum Perkawinan Di Indonesia* (Jakarta: Bulan Bintang, 1975).

2025), and documentary study characterized by the scholarly setting, humans as the instrument, qualitative as the method, and induction as the data analysis; the data collected will therefore be presented descriptively.[3] Through a literature study, this paper aims to examine the extent to which the norms contained in Supreme Court of the Republic of Indonesia Circular Letter Number 3 of 2018, which states that the Plaintiff in a divorce lawsuit case may bring claims for rights arising from the divorce have been applied, as well as to examine how Jasser Auda's version of *maqasid asy-syari'ah* views that norm.

RESULT AND DISCUSSION

A. The Problem of Divorce and the Fulfillment of the Resulting Rights in Indonesian Family Law

Terminologically, the word *perceraian* (divorce) is derived from the root word *cerai*. According to the Great Dictionary of the Indonesian Language (KBBI), *cerai* means: 1) to separate; 2) to sever the relationship as husband and wife.[4] Etymologically, as explained by Ibn Manzur in Lisan al-'Arab, the word *ṭalāq* means to release or to leave.[5] This term derives from the word *al-iṭlāq*, meaning to free or to let go.[6] In religious terminology, *ṭalāq* is understood as the act of releasing the bond of marriage, or the ending of the relationship between husband and wife.[7]

In the book *Mir'at al-Ṭullab*, As-Singkili states that *ṭalāq* linguistically means to unravel a tether. Meanwhile, according to *syara'* (Islamic law), *ṭalāq* means to unravel the marriage contract by way of the pronouncement of *ṭalāq* and the like.[8]

The Marriage Law uses the term "dissolution of marriage" to refer to the ending of the relationship between husband and wife between a man and a woman.[9] Divorce is one of the factors causing the dissolution of marriage, in

[3] Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT Remaja Rosdakarya, 2018).
[4] Badan Pengembangan dan Pembinaan Bahasa, "No Title," n.d., https://kbbi.web.id/cerai.
[5] Jamal al-Din muhammad bin Mukram Ibn Manzur, *Lisan Al-Arab* (Damaskus: Dar al Fikr, 1992).
[6] Ibn Manzur.
[7] Ibn Manzur.
[8] Peunoh Daly, *Hukum Nikah, Talak, Rujuk Dalam Naskah Mir'at Al-Tullab* (Jakarta: IAIN Syarif Hidayatullah, 1982).
[9] Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia, Antara Fiqh Munakahat Dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2007).

addition to death and a court decision.[10] This is affirmed in Article 38 of the Marriage Law, which states that a marriage may be dissolved due to: (a) death, (b) divorce, and (c) a court decision. From this provision it is clear that the dissolution of marriage due to divorce (letter b) carries a different meaning from the dissolution of marriage due to a court decision (letter c).[11]

Marriage law in Indonesia, through Law Number 7 of 1989 on Religious Courts as amended by Law Number 3 of 2006 and further amended by Law Number 50 of 2009, also introduces two other types of divorce, namely *cerai ṭalāq* (talak divorce) and *cerai gugat* (divorce at the wife's initiative).

Cerai ṭalāq is one of the mechanisms recognized under Islamic law for ending the marital bond. In a *cerai ṭalāq* case, the husband holds the position of the petitioner.[12] Meanwhile, *cerai gugat* is a divorce filed by the wife, petitioning the Religious Court/Mahkamah Syar'iyah for her marriage to her husband to be dissolved through a court decision.[13]

The principle of fulfilling women's rights after divorce has been recognized since the very beginning of Islam. This principle is set out, among other places, in Surah Aṭ-Ṭalāq verse 6, which affirms the husband's obligation to provide maintenance to his former wife during the iddah period. As for *mut'ah* (consolatory gift), the husband's obligation is explained in Surah Al-Baqarah verse 241 and Surah Al-Ahzab verse 49. However, in the practice of that era, the fulfillment of these rights was still carried out in a simple manner and adapted to the social conditions of the society of the time.

In Indonesia, the state has essentially provided protection for women's rights after divorce through various statutory provisions. The author notes that there are

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[10] Muhammad Khambali, *Hukum Perkawinan (Kajian Perceraian Dengan Alasan KDRT)* (Yogyakarta: Deepublish, 2017).

[11] Awlawi, *Hukum Perkawinan Di Indonesia*.

[12] Khambali, *Hukum Perkawinan (Kajian Perceraian Dengan Alasan KDRT)*.

[13] Direktorat Jendral Badan Peradilan Agama Mahkamah Agung RI, *Pedoman Pelaksanaan Tugas Dan Administrasi Peradilan Agama (Buku II)* (Jakarta: Direktorat Jendral Badan Peradilan Agama Mahkamah Agung RI, 2014).

9 rights arising from talak held by women, consisting of: iddah maintenance, *mut'ah*, unpaid dower, child custody/*hadhanah*, arrears of maintenance owed to the wife, arrears of maintenance owed to the child and child maintenance after the parents' divorce, joint marital property, and one-third of the salary of a husband holding status as a civil servant.

Although various statutory regulations have provided guarantees of protection for women and regulate their rights after divorce, these provisions have not yet been fully able to foster awareness among former husbands to fulfill their obligations voluntarily. This condition becomes even more concerning when the divorce occurs at the initiative of the wife, known as *cerai gugat*.

This gap can be seen from data on the fulfillment of rights arising from talak, comparing *Cerai Gugat* and *Cerai Ṭalāq* within the Religious Judiciary. Over the past five years, there have been 14.7% of *cerai ṭalāq* decisions that imposed iddah maintenance. Meanwhile, among *cerai gugat* decisions, only 2.4% of decisions imposed iddah maintenance, even though the number of such cases is more than three times that of *cerai ṭalāq*.[14]

According to Ahmad Syahrus Sikti, women face **internal** obstacles in claiming their post-divorce rights, such as limited knowledge, economic constraints, being preoccupied with other matters, low willingness to defend their rights, as well as fear resulting from intimidation by the former husband or his family. In addition, there are **external** obstacles in the form of the absence of good faith or financial capacity on the part of the husband, the husband's efforts to avoid his obligations, the remoteness of access to the court, lack of community support, laws that are not yet gender-responsive, and lengthy trial proceedings.[15]

Understanding of the normative provisions concerning rights arising from talak has not yet fully made things easier for women. Although statutory regulations explicitly guarantee these rights, technical obstacles are still frequently encountered in *cerai gugat* cases.

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[14] "No Title."

[15] Ahmad Syahrus Sikti, *Hukum Perlindungan Perempuan (Konsep Dan Teori), Jilid I* (Yogyakarta: UII Press, 2020).

Rights arising from talak that have been decided by a judge, even when the former husband has been ordered to fulfill them, remain difficult to obtain if there is no awareness on the part of the former husband to carry them out voluntarily. Therefore, a philosophical interpretation of the existing provisions is needed so that ease in the fulfillment of these rights can be realized.

The clause "paid before the defendant collects the divorce certificate" in SEMA No. 2/2019 reflects a philosophy that sides with procedural justice, making it easier for women to obtain their rights after talak as an obligation of the husband, without having to wait for a request or a litigation process.

Based on this philosophical meaning, the clause "*paid before the defendant collects the divorce certificate*" should serve as a basis for judges to make legal breakthroughs in their decisions. A judge may add a dictum that explicitly authorizes the official who issues the divorce certificate to withhold delivery of the divorce certificate to the former husband until he has genuinely carried out his obligation to fulfill the rights arising from talak as determined by the court.[16] In this way, legal certainty and protection for the former wife can be more fully guaranteed.

Breakthroughs in the operative part of a decision that facilitate the fulfillment of a party's rights do not fall within the category of *ultra petita*, but rather constitute protection and legal certainty. A judge may set an additional *ex officio* order to ensure that execution or administrative follow-up is effective and efficient, in accordance with the Religious Courts Law and the Judicial Power Law.[17]

This breakthrough measure is also a manifestation of the fulfillment of the principles that must guide judges in examining cases involving women, as established by the Supreme Court, namely: respect for human dignity and worth,

[16] Under Supreme Court Regulation Number 7 of 2015, the official authorized to issue a divorce certificate or other court product is the court registrar. (*Peraturan Mahkamah Agung Nomor 7 Tahun 2015 Tentang Organisasi Dan Tata Kerja Kepaniteraan Dan Kesekretariatan*, n.d.)

[17] A. Mukti Arto, *Penemuan Hukum Islam Demi Mewujudkan Keadilan Buku Kesatu: Membangun Sistem Peradilan Berbasis Perlindungan Hukum Dan Keadilan* (Yogyakarta: Pustaka Pelajar, 2017).

non-discrimination, gender equality, equality before the law, justice, expediency, and legal certainty.[18]

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B. The Fulfillment of Rights Arising from Divorce in Divorce Lawsuit (Cerai Gugat) Cases at the Mahkamah Syar'iyah Blangkejeren

The Mahkamah Syar'iyah Blangkejeren is a court institution under the Supreme Court, functioning to exercise judicial power (*judicial power*) and forming part of the framework of the integrated system for the exercise of judicial power (*integrated justice system*) that exists in Indonesia.[19]

The Mahkamah Syar'iyah in Aceh, including the Mahkamah Syar'iyah Blangkejeren, is part of the religious courts within Indonesia's national judicial system, not a special court.[20] The Mahkamah Syar'iyah has a strong juridical basis and is aligned with national statutory regulations. Its existence is in keeping with the purpose of the judiciary to uphold law and justice within the state's legal system.[21]

Based on the explanation of Article 49 paragraph (2) of the Religious Courts Law, in conjunction with the provisions of Law Number 1 of 1974 on Marriage, the

[18] PERMA No. 3 Tahun 2017.

[19] Cik Basir, "Kedudukan, Kewenangan Dan Prospek Mahkamah Syar'iyah Sebagai Judicial Power," MAHKAMAH AGUNG REPUBLIK INDONESIA: DIREKTORAT JENDERAL BADAN PERADILAN AGAMA, 2013, https://badilag.mahkamahagung.go.id/artikel/kedudukan-kewenangan-dan-prospek-mahkamah-syariyah-sebagai-judicial-power-oleh-drs-cik-basir-sh-mhi-227.

[20] Pusat Pengkajian Hukum Islam dan Masyarakat Madani, *Kompilasi Hukum Ekonomi Syariah. Edisi Revisi* (Jakarta: Kencana, 2018).

[21] Rifyal Ka'bah, *Penegakan Syariat Islam Di Indonesia (Cet. 2)* (Jakarta Timur: Rifyal Ka'bah Foundation Publisher, 2016).

fulfillment of rights arising from talak is an absolute jurisdiction of the religious courts, within which the Mahkamah Syar'iyah Blangkejeren is included.[22]

The fulfillment of women's rights in *cerai gugat* cases at the Mahkamah Syar'iyah Blangkejeren is relatively similar to the national practice. In the period from 2017 to September 2025, of the nine types of rights that may be sued for, only five have ever been decided, namely: iddah maintenance, *mut'ah*, child custody, child maintenance, and *nafkah maḍiyah* (arrears of maintenance), while the other rights have never been decided.

For the right to iddah maintenance, the Mahkamah Syar'iyah Blangkejeren only issued its first decision in the second year since Supreme Court Circular Letter Number 3 of 2018 was published, with 1 decision. Over the past 6 years, the fulfillment of iddah maintenance in *cerai gugat* cases has fluctuated, with the highest level of fulfillment occurring in 2024, reaching 46.7 percent of 90 cases. And when averaged over the past 6 years, the rate of fulfillment of women's rights in *cerai gugat* cases at the Mahkamah Syar'iyah Blangkejeren reaches only 25.54 percent.

In addition to being unsatisfactory in terms of quantity, the fulfillment of iddah maintenance in *cerai gugat* cases at the Mahkamah Syar'iyah Blangkejeren is likewise *no better* in terms of quality. In terms of quality, the amount of maintenance imposed by judges on defendants is relatively small. On average, every woman granted iddah maintenance by a judge through a decision in a *cerai gugat* case at the Mahkamah Syar'iyah Blangkejeren receives only Rp2,168,000.00 in maintenance for the duration of the iddah period, with the lowest amount being Rp650,000.00 and the highest being Rp9,000,000.00.

When compared with data from the Central Statistics Agency (BPS) of Gayo Lues Regency, which states that the average monthly basic needs per capita in the Gayo Lues Regency area in 2024 amounted to Rp1,416,468.00 (one million four hundred sixteen thousand four hundred sixty-eight rupiah), the average amount of

[22] M. Yahya Harahap, *Hukum Acara Perdata; Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*, ed. Tarmizi, II (Jakarta: Sinar Grafika Offset, 2017).

iddah maintenance set by judges Rp2,168,000.00 is still far below the average that would be required over the three-month iddah period, which, when accumulated, amounts to Rp4,249,404.00.

In fact, the fulfillment of maintenance during the iddah period is an obligation of the former husband. Responsibility for maintenance does not apply only while the marital bond is still ongoing, but also remains attached at the time divorce occurs. A wife who has separated from her husband remains entitled to receive maintenance from her former husband throughout the iddah period, because during that period she remains bound by a prohibition on marrying another man.

Regarding *mut'ah*, when compared with the fulfillment of iddah maintenance, the fulfillment of *mut'ah* is even less satisfactory. It was only in 2021 that there was 1 *cerai gugat* decision ordering the husband to fulfill *mut'ah* to the Plaintiff as the wife. Since Supreme Court Circular Letter Number 3 of 2018, there have been only 19 decisions by Mahkamah Syar'iyah Blangkejeren judges that impose *mut'ah* on the husband. Ironically, in terms of quality, that *mut'ah* can also be said to be inadequate, as it consists merely of a set of prayer equipment or money worth Rp1,500,000.00.

If the giving of *mut'ah* is intended to console the woman and ease the pain arising from the separation,[23] and, according to Amran Suadi, *mut'ah* even constitutes respect for the rights of the former wife as well as moral and financial support after the ending of the marital bond,[24] then that value is not commensurate with the sacrifices made by the plaintiff in serving her husband rom managing domestic affairs and the children, to even helping to earn a living.

Although the determination of child custody has been present in *cerai gugat* decisions at the Mahkamah Syar'iyah Blangkejeren since 2019, the number remains insignificant. Of 510 *cerai gugat* decisions since 2019 through September 2025, only 119 decisions granted child custody to the Plaintiff, or only 23.3 percent.

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[23] Wahbah Az-Zuhaili, *Terjemahan Fiqih Islam Wa Adillatuhu (Jilid 10)* (Jawa Barat: Gema Insani, 2010).

[24] Amran Suadi and Muchlis, *Hukum Perlindungan Hak Perempuan Pasca Perceraian: Kaidah, Pertimbangan, Dan Penerapan Hukum Pada Putusan Pengadilan* (Jakarta: Kencana Prenadamedia Group, 2025).

The author acknowledges that among those 510 decisions, there were couples with no children, or cases where, at the time the divorce took place, the children were already in the husband's care. However, according to the author's research through the Case Tracking Information System, these two conditions do not account for even 30 percent of those 510 decisions.

In fact, the determination of child custody for divorced parents is beneficial in providing legal certainty and identity for the child, serving as a basis for valid changes to civil registration documents, guaranteeing access to public services and social protection for children, and strengthening the synchronization of data among government agencies. And if there is no such determination, it will create new difficulties for the woman raising her children.

Regarding child maintenance, in addition to the first decision only coming three years after Supreme Court Circular Letter Number 3 of 2018 was issued, the number is also very small there have been only 46 *cerai gugat* decisions ordering the father to fulfill maintenance for children in the mother's care, whereas it has previously been explained that there are 119 decisions establishing the mother as the holder of child custody.

Based on the author's research, there are 365 *cerai gugat* case decisions since 2018 involving children, with a total of 579 children, at the Mahkamah Syar'iyah Blangkejeren. 479 children are in the mother's care, and the rest are in the father's care. If the 46 *cerai gugat* decisions ordering the father to pay child maintenance are subtracted, there remain 324 mothers whether or not they have been formally designated as holders of child custody who must bear the maintenance of 524 children with no state guarantee compelling the father to pay child maintenance through the mother in Gayo Lues Regency.

No different from the 4 rights mentioned previously, the fulfillment of *nafkah maḍiyah* in *cerai gugat* cases at the Mahkamah Syar'iyah Blangkejeren reflects a deep irony. In the period from 2017 through September 2025, there has been only 1 *cerai gugat* decision ordering the husband to pay maintenance that had been neglected.

In 2024 alone, out of 94 divorce decisions, 80 of them were *cerai gugat* cases. Some of the causes cited as grounds for divorce include: 2 decisions caused by gambling, 14 decisions caused by one party leaving the other, 4 decisions caused by domestic violence, and 28 decisions caused by economic factors. Furthermore, if these causes of divorce are analyzed, they lead to the neglect of the wife. In addition, there remain 45 divorce decisions with disputes and quarrels cited as the cause, which disputes and quarrels may well have been rooted in the husband's negligence in fulfilling the family's maintenance needs.

In the context of divorce, even though the relationship between husband and wife has ended, the obligation of maintenance does not simply disappear; the husband still bears responsibility for fulfilling *nafkah maḍiyah* for his former wife and children.[25] And if one proceeds from the causes of divorce set out above, then a great deal of *nafkah maḍiyah* goes unclaimed at the Mahkamah Syar'iyah Blangkejeren.

The implementation of Supreme Court Circular Letter Number 3 of 2018 at the Mahkamah Syar'iyah Blangkejeren shows that there is a serious effort on the part of the religious court institution to ensure the fulfillment of women's rights after divorce, particularly in *cerai gugat* cases. This serious effort can be seen in the policy of the leadership of the Mahkamah Syar'iyah Blangkejeren to ensure that all women who are prospective plaintiffs in *cerai gugat* cases are aware of their rights.[26]

The paradigm of the judges of the Mahkamah Syar'iyah Blangkejeren has, in essence, complemented the serious efforts of the leadership of the Mahkamah Syar'iyah Blangkejeren in implementing that Supreme Court Circular Letter Number 3 of 2018. Judge Alimal Yusro Siregar, for example, stated that, with the existence of Supreme Court Circular Letter Number 3 of 2018, in *cerai gugat* cases a judge is obligated to accommodate claims for the wife's rights should a divorce

[25] Suadi and Muchlis.

[26] Taufik Rahayu Syam, "Apel Pagi Mahkamah Syar'iyah Blangkejeren, Ketua Tekankan Pelayanan Terbaik Untuk Masyarakat," ms-aceh.go.id, 2026, https://ms-aceh.go.id/apel-pagi-mahkamah-syariyah-blangkejeren-ketua-tekankan-pelayanan-terbaik-untuk-masyarakat/.

occur. This statement is juridically correct and constitutes an important breakthrough in Islamic family law in Indonesia.[27]

With the data presented above, it must be acknowledged that the implementation of Supreme Court Circular Letter Number 3 of 2018 is not yet fully optimal, because various obstacles remain.

Of the various obstacles that exist, the author classifies them into two aspects, namely: first, internal aspects, which include difficulties in the execution of decisions, limited resources and facilities within the Mahkamah Syar'iyah Blangkejeren, insufficient dissemination of Supreme Court Circular Letter Number 3 of 2018, the absence of criminal sanctions for defendants who fail to fulfill their obligations, and a lack of synergy among institutions.[28] Second, external aspects, which include the community's legal awareness, local social and cultural obstacles, the economic capacity of the male party, limited budgets for legal assistance for poor women, and the defendant's absence from the trial (*Verstek*).

C. A Review of Jasser Auda's Maqāṣid Asy-Syarī'ah on the Fulfillment of Women's Rights in Divorce Lawsuit (Cerai Gugat) Cases

According to Jasser Auda, maqāṣid al-syarī'ah is the fundamental principle and objective of Islamic law that explains the wisdom behind legal provisions, such as social welfare and consciousness of the divine. Maqāṣid functions to direct the law to open or close certain means in order to safeguard human reason and life, grounded in universal moral values such as justice, human dignity, freedom, ease, and social solidarity. Thus, maqāṣid becomes the link between Islamic law and contemporary issues such as human rights, development, and civilization.[29]

From this it can be seen that Jasser Auda's *maqāṣid* thought views Islamic law as a system that is purposive, open, comprehensive, and oriented toward human

[27] Dewi Muniarti and Siti Maryam Qurotul Aini, "Analisis Surat Edaran Mahkamah Agung No. 3 Tahun 2018 Tentang Hak Nafkah Iddah Bagi Istri Cerai Gugat," *USRATUNA: Jurnal Hukum Keluarga Islam* 8, no. 1 (2024): 72–90, https://doi.org/10.65356/usratuna.v8i1.706.

[28] Syam, "Apel Pagi Mahkamah Syar'iyah Blangkejeren, Ketua Tekankan Pelayanan Terbaik Untuk Masyarakat."

[29] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law* (Virginia: IIIT Press, 2008).

welfare. Thus, the granting of women's rights in *cerai gugat* cases has moved beyond the boundaries of the relative norms of classical fiqh to achieve the broader objectives of the shari'ah.

1. **Cognitive Nature of the System (The Cognitive Nature of the Islamic Legal System)**

According to Jasser Auda, fiqh is the result of human cognition and understanding that is dynamic and purpose-oriented (maqāṣid asy-syarī'ah), rather than static divine law, such that a distinction must be drawn between shari'ah, fiqh, and fatwa.[30] This cognitive approach encourages a contextual and holistic understanding of Islamic law, including in interpreting the concept of *nusyuz* (marital disobedience), which is no longer understood textually and one-sidedly against the wife, but rather takes into account the social and psychological context and the dynamics of the modern household.[31]

The classical fiqh understanding of *nusyuz*, which arose from Arab patriarchal culture, is not entirely relevant to the current Indonesian context, such that a gender-just reconceptualization is needed, applicable to both husband and wife alike.[32] In *cerai gugat* cases, a migration in the understanding of the text that guarantees the fulfillment of women's rights becomes a necessity, as reflected in the non-literal, contextual interpretation of the judges of the Mahkamah Syar'iyah Blangkejeren, supported by SEMA Number 3 of 2018 as a cognitive instrument for protecting women's rights in accordance with the social realities of the local community.

2. **Wholeness (The Integrity of the Islamic Legal System)**

Jasser Auda criticizes the view of Muslim modernists who take partial and individualistic approaches to Islamic law. According to him, fuqaha (jurists) have

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[30] Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah (Terj. Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach)* (Jakarta: Mizan, 2015).

[31] Muhammad Habib Adi Putra and Umi Sumbulah, "Memaknai Kembali Konsep Nusyuz Dalam Kompilasi Hukum Islam Perspektif Gender & Maqashid Syariah Jasser Auda," *Egalita: Jurnal Kesetaraan Dan Keadilan Gender* 15, no. 1 (2020): 42–60, https://doi.org/https://doi.org/10.18860/egalita.v15i1.10179.

[32] Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah (Terj. Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach)*.

thus far only used cause-and-effect theory in formulating law. Auda therefore proposes that the "principle of holism," as explained in systems philosophy, can play a role in contemporary reform proposals, not only in Islamic law, but also in Islamic theology (Ilmu Kalam).[33]

The classical fiqh understanding of *nusyuz* was influenced by the Arab social context at the time of the revelation of QS. an-Nisa (4): 34, in which agrarian conditions and warfare positioned men as the bearers of maintenance and the primary actors in public life. This situation formed a patriarchal culture that gave rise to the assumption that men are stronger, while women are considered weak.[34]

With the feature of *Wholeness* formulated by Jasser Auda within his concept of *Maqāṣid al-syarī'ah*, a new direction emerges in the fulfillment of women's rights in *cerai gugat* cases namely, one that demands the granting of rights in an interconnected manner, going beyond mere procedural formality, obligating the courts to consider social-cultural conditions, comprehensiveness in the examination of *cerai gugat* cases, and the protection of all the objectives of the shari'ah (*dharuriyyat*).

3. Openness

According to Jasser Auda, reform of Islamic law is made possible through openness to philosophy as part of Usul Fiqh, which is dynamic and develops in step with advances in knowledge.[35] Within Maqāṣid Systems Theory, openness means Islamic law that is progressive, adaptive, and responsive to social change and contemporary justice. In the context of *cerai gugat*, this openness requires judges to interpret and apply the law flexibly and contextually, giving attention to the realities faced by women, modern regulations such as SEMA Number 3 of 2018, a multidisciplinary approach, procedural protection for women, the renewal of maqāṣid, and the principle of gender justice.

[33] Auda.
[34] Auda.
[35] Auda.

4. Multi-Dimensionality

Islamic law, as a system, is multidimensional in nature, consisting of various interrelated parts and dimensions, with the concept of "rank" representing the variety of dimensions and "level" representing the proportional degree within each dimension.[36]

This multidimensional feature is relevant to the fulfillment of women's rights in *cerai gugat* cases, because women's rights encompass social, economic, psychological, legal, cultural, and humanitarian aspects. This approach requires that judges not be textualist, but rather take into account social realities, psychological and economic conditions, as well as power relations within the family, so that decisions become more just and humane. The multidimensional approach also strengthens the implementation of SEMA Number 3 of 2018, which is oriented toward the protection of women, because it encourages substantive rather than merely formal decisions, so that women obtain not only divorce status but also their economic rights.

5. Purposefulness

According to Jasser Auda, the realization of maqāṣid is the primary yardstick for the validity of Islamic law, which must be drawn directly from the Qur'an and Hadith, oriented toward the welfare of society, the protection of the family, human dignity, and basic rights.[37]

The modern maqāṣid approach shifts the focus from mere preservation toward the development and fulfillment of human rights as the primary public interest. In the context of *cerai gugat*, the concept of purposefulness affirms that the fulfillment of women's rights is a shari'ah objective aimed at preventing injustice, reducing vulnerability, safeguarding dignity, and realizing social justice. Auda's maqāṣid functions as a critical testing tool for judges' decisions, so that they are not

[36] Putra and Sumbulah, "Memaknai Kembali Konsep Nusyuz Dalam Kompilasi Hukum Islam Perspektif Gender & Maqashid Syariah Jasser Auda."

[37] Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah (Terj. Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach)*.

merely formally valid, but also just and beneficial, without replacing positive law, but rather ensuring substantive justice within Islam.

Maqāsid al-Syarī'ah, according to Jasser Auda, can be used as a critical testing tool for assessing the fulfillment of women's rights in *cerai gugat* cases. This approach emphasizes the substantive objectives of the shari'ah such as the protection of religion, life, intellect, lineage, and property such that every judge's decision can be evaluated not only formally, but also in terms of justice and benefit. With this framework, the gap between rigid procedural law and the actual protection of women's rights can be identified, while also assessing the effectiveness of judicial discretion in ensuring that these rights are fulfilled. Auda's maqāṣid does not replace formal law, but functions as a critical lens to ensure that divorce decisions genuinely reflect the principle of substantive justice within Islam.

Technically, the objectives of the shari'ah within the context of fulfilling women's rights in *cerai gugat* are directly related to the following: the objective of protecting religion (*hifẓ al-dīn*) is to safeguard religion through substantive justice, protecting women's dignity and ensuring that Islamic law functions as a mercy (*rahmah*). The objective of protecting intellect (*hifẓ al-'aql*) is achieved by making divorce law an instrument that is rational, just, and liberates human beings from structural pressures, so that the intellect may function fully and with dignity. The objective of protecting life (*hifẓ al-nafs*) is achieved by making divorce law a means of protecting the life, welfare, and psychological recovery of women and children. The objective of protecting lineage (*hifẓ al-nasl*) is to guarantee the protection of the continuity of generations, the welfare of children, and the stability of their upbringing, rather than serving as a mechanism that abandons offspring. The objective of protecting property (*hifẓ al-māl*) is to serve as an instrument for the protection of economic justice, the prevention of structural impoverishment, and the protection of fair access to resources, rather than as a means of shedding responsibility.

The feature of purposefulness within Auda's concept of maqāṣid calls for progressive interpretation. Judges must not interpret the grounds for divorce narrowly. Grounds such as domestic violence, neglect, or the failure to provide maintenance must be accepted as strong grounds. In addition, judges must prioritize the elimination of harm. The author observes that, from Auda's perspective, the fulfillment of women's rights in *cerai gugat* cases is a direct part of the shari'ah's objective of safeguarding the dignity, rights, and welfare of human beings, particularly with respect to vulnerable groups.

Although Auda's *maqāṣid* offers a flexible framework and emphasizes substantive justice, this approach has limitations when compared with classical *maqāṣid* or positive law. Auda relies heavily on judicial discretion, such that its implementation may vary from case to case, and women's rights sometimes remain neglected in the absence of concrete guidance. Therefore, this theory is more appropriately used as a critical evaluative tool to complement positive law and classical *maqāṣid*, rather than as a sole guide in decision-making.

CONCLUSION

This research concludes that the Mahkamah Syar'iyah Blangkejeren has implemented Supreme Court Circular Letter Number 3 of 2018 concerning the fulfillment of women's rights in *cerai gugat* cases. However, its implementation is not yet optimal, because internal and external obstacles remain. Although the court has disseminated information on women's rights and ensured that claims for such rights do not hinder the divorce process, external factors beyond the court's authority make many women reluctant to file cumulative claims within a divorce lawsuit.

The fulfillment of women's rights in *cerai gugat* cases, as regulated under SEMA Number 3 of 2018, is in keeping with the principles of maqāṣid asy-syarī'ah. According to Jasser Auda, the fulfillment of these rights is part of the shari'ah's objective of protecting the dignity, rights, and welfare of women as a vulnerable group. The fulfillment of women's rights must be carried out justly and rationally,

comprehensively, oriented toward protection, with rights that are mutually interconnected, and in a manner that is progressive and adaptive.

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