



Disparity in Judges' Considerations in Divorce Suits Due to Lack of Support (Study of Decisions No. 130/Pdt.G/2026/PA.Wsb and No. 95/Pdt.G/2026/PA.Wsb)

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Abstract: This study examines the disparity of judges' legal reasoning in divorce lawsuits due to lack of maintenance, focusing on Decision Number 130/Pdt.G/2026/PA.Wsb and Decision Number 95/Pdt.G/2026/PA.Wsb at the Religious Court of Wonosobo. The problem addressed is the inconsistency in interpreting the element of "failure to provide maintenance," which leads to different legal constructions despite similar grounds of claim. This research employs a qualitative method with a normative juridical approach using secondary data, including court decisions, statutory regulations, and relevant literature. The analysis uses a comparative descriptive method based on the theory of legal certainty, justice, and expediency. The findings reveal that both decisions consider philosophical, juridical, and sociological aspects; however, they differ in legal reasoning. Decision Number 130 emphasizes the violation of taklik talak and applies khulu' with compensation, while Decision Number 95 focuses on continuous marital conflict and results in talak ba'in sughra. These differences indicate that judges exercise discretionary power in interpreting legal norms based on factual circumstances, particularly regarding the duration and impact of neglect. Consequently, such disparities affect legal certainty and the level of protection afforded to wives. The study concludes that clearer parameters are needed in assessing "failure to provide maintenance" to ensure consistency, fairness, and stronger legal protection within the religious court system.

Abstrak: Penelitian ini mengkaji perbedaan penalaran hukum hakim dalam perkara perceraian karena tidak adanya nafkah, dengan fokus pada Putusan Nomor 130/Pdt.G/2026/PA.Wsb dan Putusan Nomor 95/Pdt.G/2026/PA.Wsb di Pengadilan Agama Wonosobo. Permasalahan yang dibahas adalah inkonsistensi dalam menafsirkan unsur "kegagalan memberikan nafkah," yang menyebabkan konstruksi hukum yang berbeda meskipun dasar klaimnya serupa. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis normatif menggunakan data sekunder, termasuk putusan pengadilan, peraturan perundang-undangan, dan literatur terkait. Analisis menggunakan metode deskriptif komparatif berdasarkan teori kepastian hukum, keadilan, dan kepraktisan. Temuan menunjukkan bahwa kedua putusan tersebut mempertimbangkan aspek filosofis, yuridis, dan sosiologis; namun, keduanya berbeda dalam penalaran hukum. Putusan Nomor 130 menekankan pelanggaran taklik talak dan menerapkan khulu' dengan kompensasi, sedangkan Putusan Nomor 95 berfokus pada konflik perkawinan yang berkelanjutan dan menghasilkan talak ba'in sughra. Perbedaan ini menunjukkan bahwa hakim menggunakan kewenangan diskresioner dalam menafsirkan norma hukum berdasarkan keadaan faktual, khususnya mengenai durasi dan dampak pengabaian. Akibatnya, perbedaan tersebut memengaruhi kepastian hukum dan tingkat perlindungan yang diberikan kepada istri. Studi ini menyimpulkan bahwa diperlukan parameter yang

lebih jelas dalam menilai "kegagalan memberikan nafkah" untuk memastikan konsistensi, keadilan, dan perlindungan hukum yang lebih kuat dalam sistem pengadilan agama.

Kata kunci: decision disparity, failure to provide maintenance, legal reasoning, taklik talak, legal certainty

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Introduction

Divorce cases filed due to lack of support are one of the most dominant types of cases in religious courts. (Dharmawan et al., 2023) Although the obligation to provide husband's support has been expressly regulated in the Marriage Law and the Compilation of Islamic Law, its application in judicial practice does not always show a uniform pattern because judges have discretion in assessing whether the element of not being supported is fulfilled. (Mardi & Fatmariza, 2021). Differences in how to assess the husband's economic condition, the duration of neglect, and its impact on the sustainability of the household can give rise to variations in legal considerations and have the potential to cause differences in the construction of legal considerations by judges in deciding cases that have relatively similar grounds for lawsuits. (Anwar, 2021) This phenomenon is evident in Decisions Number 95/Pdt.G/2026/PA.Wsb and Number 130/Pdt.G/2026/PA.Wsb at the Wonosobo Religious Court, both based on the argument of non-fulfillment of maintenance obligations, but resulting in different legal considerations and rulings. This difference indicates an academic issue regarding the basis of the judge's legal considerations in interpreting and applying the element of "not being supported" in divorce cases.

The phenomenon of disparity in judicial considerations in divorce cases due to lack of support is important to examine from a socio-legal perspective. In judicial practice, judges not only apply legal norms textually but also assess the facts revealed in court, such as the economic conditions of the parties and the duration of neglect of support. These differences in factual assessments can influence the construction of the legal considerations used by judges. If cases with relatively similar grounds for litigation result in different legal considerations without clear parameters, this can raise issues of legal certainty. Therefore, analyzing judicial considerations is crucial for understanding how judges interpret and apply the norm of support obligations in religious court practice. (Mahmudah, 2019).

A number of studies show that economic problems and neglect of livelihood are important factors in divorce. (Ragil Widodo, 2022) found that economic inability is often the basis for divorce suits in religious courts, whereas (Wahyuddin & Kusuma, 2023) emphasizes that social factors and family relationship dynamics also influence domestic disputes. Normative research by (Ramdani & Syafitri, 2021) explains that the obligation to provide for the family in the Compilation of Islamic Law is the husband's obligation, but there is no clear quantitative limit regarding the negligence of providing for the family. In practice, (Muhammad Helmi, 2022) shows that judges tend to use a casuistic approach in assessing neglect of maintenance. In addition, (Galuh Widitya Qomaro, 2021) emphasizes the importance of considering the socio-economic conditions of the parties in the process of proving divorce cases.

Although various studies have addressed the causes of divorce and the obligation of child support, most have focused on normative legal analysis or general social factors of divorce. Studies specifically comparing two decisions in the same court to examine differences in the construction of judges' reasoning are still limited. Therefore, there is scope for research to analyze disparities in judges' reasoning by comparing two divorce decisions that have similar grounds but result in different legal considerations. This analysis is crucial for

understanding how judges interpret the norm of child support obligations in the context of the social facts that emerge in court.

Analysis Components	Decision 130/Pdt.G/2026/PA.Wsb	Decision 95/Pdt.G/2026/PA.Wsb
Subject of Case	Plaintiff: Wife (46 years old), elementary school education. Defendant: Husband (54 years old), elementary school education.	Plaintiff: Wife (40 years old), junior high school education. Defendant: Husband (40 years old), junior high school education.
The Facts	Married 29 Nov 2017. Economic problems started in 2020. The defendant left without permission since the end of 2021 (separated for ±4 years) without news/support.	Married December 7, 2017. Conflict began in early 2023 due to lack of physical and spiritual support. Separated since June 2025 (approximately 7 months).
Petitum (Demand)	1. Grant the lawsuit. 2. Declare that the Defendant violated the talak clauses 2 & 4. 3. Imposing one khul'i divorce with an iwadh of Rp. 10,000.-.	1. Grant the lawsuit. 2. Imposing one ba'in sughra divorce from the Defendant to the Plaintiff.
Philosophical Aspects	QS based. Al-Baqarah:229; justice is associated with violations of the divorce agreement	QS based. Ar-Rum:21; Justice is associated with benefit and avoidance of harm
Legal Aspects	Article 39 Law no. 1 of 1974 and Article 116 letter (g) KHI (violation of the divorce agreement)	Article 39 of Law No. 1 of 1974 and Article 116 letter (f) of the Indonesian Criminal Code (ongoing disputes)
Sociological Aspects	Emphasis on wife neglect (not being given a living and being left for a long time)	Emphasis on ongoing domestic conflict
Legal Considerations (Positive)	Article 125 paragraph (1) HIR (verstek). Absolute competence of Law 7/1989 & relative Article 73 paragraph (1) of the Religious Courts Law.	Article 125 paragraph (1) HIR (default). Conditions for suing for divorce Article 19 PP No. 9 of 1975.
Legal Considerations (Islam)	Article 116 letter (g) KHI relates to violations of taklik talak.	Article 116 letter (f) KHI concerns continuous disputes and quarrels.
Legal Arguments Used by Judges	1. Al-Qur'an Surah Al-Baqarah verse 229 (about khul'i and iwadh). 2. Fiqhiyyah rule: "Al-Muslimuna 'ala syuruthihim" (Muslims are bound by their promises). 3. Book of Fathul Mu'in: Regarding the validity of talak khul'i. 4. Verstek proposition: Ahkamul Qur'an II: 45 5. dalil ta'lik talak Syarqowi 'ala Tahrir juz II p. 302	1. Al-Qur'an Surah Ar-Rum verse 21 (the goal of marriage is sakinah, mawaddah, warahmah). 2. Book of Sunnah Jurisprudence Juz II p. 290: A wife may demand a divorce if she receives painful treatment (idrar). 3. Hadith of the Prophet: "La dharara wala dhirara" (You must not harm yourself/others).

Verdict	Granted the lawsuit, declared a violation of the divorce agreement, and imposed one khul'i divorce with an iwadh of Rp. 10,000.-.	Granted the lawsuit in verstek and imposed one ba'in sughra divorce.
Main Focus	Emphasis is placed on the aspect of the promise (taklik talak) which was broken by the husband because he left his wife without support or news.	The emphasis on the breakup of the household due to economic disputes and inner sustenance which triggers constant quarrels.
Key Differences	Focus on violation of maintenance obligations and marriage agreement (taklik talak); verdict: talak khul'i.	Focus on continuous marital conflict due to economic neglect; verdict: talak ba'in sughra.

In the perspective of legal certainty, justice, and benefit, judges in deciding divorce cases due to lack of support are not only guided by the provisions of laws and regulations to provide legal certainty for the parties, but also consider the aspect of justice by assessing whether the husband has fulfilled his obligation to provide support and whether the parties' household can still be maintained. In addition, from the perspective of benefit, divorce decisions are seen as a solution that provides benefits for the parties when household conflicts have been going on for a long time and the goals of marriage can no longer be achieved, so that divorce becomes the last resort to end the problems that occur (Damayanti & Haniyah, 2021) Therefore, analysis of court decisions not only looks at the legal basis used by the judge, but also the social factors that influence his legal considerations.

This study aims to analyze the construction of the judge's legal considerations in the Wonosobo Regency Religious Court Decisions Number 130/Pdt.G/2026/PA.Wsb and Decision Number 95/Pdt.G/2026/PA.Wsb regarding a divorce lawsuit case. In addition, this study also aims to identify the philosophical, juridical, and sociological factors that influence the judge's considerations in both decisions. Through a comparative analysis of the two decisions, this study is expected to provide an understanding of the implications of differences in judges' considerations for legal certainty and the protection of wives' rights in divorce cases within the religious courts. This difference indicates an academic issue regarding the basis of the judge's legal considerations in interpreting and applying the element of "not being supported" in divorce cases. The study of this disparity is important because differences in judicial decisions on similar cases can affect legal certainty, consistency of judicial decisions, and public perceptions of justice in the Religious Courts.

Method

This research is a qualitative research with a normative juridical approach. The research data source uses secondary data. The secondary data used are primary legal materials consisting of copies of judge's decisions regarding divorce due to lack of support decided by the Wonosobo Religious Court, namely Decision Number 95/Pdt.G/2026/PA.Wsb and Decision Number 130/Pdt.G/2026/PA.Wsb, other secondary materials such as scientific journals and related laws and regulations. The data analysis technique used in this study uses a comparative analytical descriptive method that comprehensively explains the results of the decisions that have been analyzed. The theory used in this study is the theory of legal certainty, justice and usefulness. The comparison was carried out by analyzing the legal facts and judges' considerations in each decision sequentially to identify similarities and differences in the application of law.

Results and Discussion

To comprehensively understand the similarities and differences between the judges' considerations in Decisions Number 130/Pdt.G/2026/PA.Wsb and Number 95/Pdt.G/2026/PA.Wsb, a comparison is first presented in tabular form. This presentation aims to clarify the case construction and juxtapose the philosophical, legal, and sociological aspects of the two decisions.

Based on the data presented in the table above, it can be seen that in making decisions, judges are not only guided by applicable legal provisions, but also consider philosophical, juridical and sociological aspects in order to realize justice, legal certainty and benefit.

Basis for Consideration of Philosophical, Legal and Sociological Aspects in Decisions

The Supreme Court of the Republic of Indonesia, as the highest judicial authority overseeing general courts, religious courts, military courts, and state administrative courts, emphasizes that judges' decisions must consider philosophical, legal, and sociological aspects. Through these considerations, judges' decisions are expected to realize legal justice, moral justice, and social justice for the community. In practice, the legal aspect serves as the primary basis, guided by applicable laws and regulations. Judges, as implementers of the law, must understand the legal provisions relating to the cases being examined and assess whether their application can provide justice, benefit, and legal certainty, because one of the main objectives of law is to create justice (Mahmudah, 2019).

Regarding the philosophical aspect, it is an aspect that is based on substantive truth and justice, where judges are not only fixated on limited regulatory texts, but must also make legal discoveries to adapt to the reality of the wife's need for maintenance (Muhammad Helmi, 2022). Meanwhile, the sociological aspect takes into account the cultural values that exist in society ((Sulistiani & Nurrachim, 2021). Philosophical and sociological aspects require extensive experience and knowledge, as well as wisdom capable of adapting to the dynamics of social change and the complexity of domestic problems faced by neglected parties in society. Clearly, their implementation is very difficult because they are not tied to a system. The inclusion of these three elements is intended to ensure that decisions are considered fair and accepted by society (Saputra & Rosman, 2021).

The Principles of Legal Certainty, Justice and Benefit in Judges' Decisions

In making a decision, the judge needs to consider the balance between legal certainty, justice, and utility. These three principles are fundamental principles in assessing the quality of a decision. Gustav in his book explains that law has three basic values of law, namely: (1) Justice (Gerechtigkeit), (2) Legal Certainty (Rechtssicherheit), (3) Expediency/Purposiveness (Zweckmäßigkeit), utility or social purpose of law. (Radbruch, 1950) Legal certainty demands that decisions be based on clear legal norms and applied consistently to similar cases. Meanwhile, the principle of justice requires a proportional assessment of the parties' circumstances to avoid inequality in the protection of rights. The principle of utility emphasizes that decisions not only fulfill formal legal requirements but also provide tangible benefits for dispute resolution and the social life of a diverse society with diverse backgrounds. (Muhammad Helmi, 2022).

In judicial practice, these three principles must be applied in a balanced manner. Judges not only act as textual implementers of the law, but also as legal interpreters who consider the facts of the trial and the circumstances of the parties. Therefore, in divorce cases, for example, judges need to assess whether the application of legal norms reflects a sense of justice and benefits the parties. Emphasizing the principle of justice means judges also need to consider the prevailing laws of society, such as customs and unwritten norms. (Widowati & Herliana, 2021) Meanwhile, the emphasis on the principle of utility leads to consideration of tangible benefits for society, including social and economic aspects. Thus, law is understood

not only as a rule to be implemented, but also as a means to provide goodness and benefits to humanity.

Description of Court Decisions in Case Numbers 130/Pdt.G/2026/PA.Wsb and 95/Pdt.G/2026/PA.Wsb

In a court decision, the judge's considerations generally consist of two parts: the facts of the case and the legal considerations. The facts of the case contain a description of the facts revealed during the trial, such as the chronology of events, the parties' arguments, and the evidence presented. While the legal considerations contain the judge's analysis of these facts based on applicable legal provisions as the basis for issuing the decision. (Mertokusumo, 2009) In this section, the author explains the considerations regarding the facts of the case. The facts of the case contain a brief and coherent explanation of the course of the case, from the settlement efforts, the arguments of the lawsuit, the defendant's response, the rebuttal and duplication, to the evidence, witness statements, and the parties' conclusions. This section also shows how the judge assessed the facts and events presented by the parties during the trial. (Mukti Arto, 2011).

When compared, Decisions No. 130/Pdt.G/2026/PA.Wsb and No. 95/Pdt.G/2026/PA.Wsb are both divorce cases filed by the wife against her husband at the Wonosobo Religious Court. However, there are significant differences in the construction of the case and the basis of the arguments put forward by the plaintiffs in each case.

In Decision Number 130/Pdt.G/2026/PA.Wsb, the case is presented in more detail and systematically. The plaintiff explains chronologically that the marriage, which began in 2017, initially ran smoothly, although no children were born. However, starting in mid-2020, the marriage began to experience discord, triggered by economic problems and the defendant's failure to fulfill his child support obligations. These problems escalated into ongoing disputes and arguments, until the defendant finally left the plaintiff at the end of 2021 without providing any support or news.

The important fact in this case is that there was a violation of the *sighat taklik talak* by the defendant, which was explicitly used as the basis for the lawsuit by the plaintiff. The plaintiff argued that the defendant's actions in not providing maintenance and leaving his wife for a long period of time fulfilled the elements of a violation of the *taklik talak* as regulated in Article 116 letter (g) of the Compilation of Islamic Law. Therefore, the petition of the lawsuit not only asks for divorce, but also requests that the court declare that the defendant has violated the *talak taklik* and impose a *one-khul'i talak* with certain *iwad*.

In contrast, in Decision Number 95/Pdt.G/2026/PA.Wsb, the case is presented in a more general form and does not specifically outline violations of certain legal norms such as *taklik talak*. The plaintiff in this case emphasizes the existence of continuous disputes and quarrels in the household, which caused the relationship between the plaintiff and defendant to become disharmonious. This long-standing conflict is considered to have eliminated the purpose of marriage, namely the realization of a household that is *sakinah, mawaddah, and rahmah*.

Furthermore, case No. 95/Pdt.G/2026/PA.Wsb also explains that the parties have separated and various attempts at reconciliation have been unsuccessful. However, there is no clear description of the specific violation, such as the explicit failure to provide maintenance, as the primary legal basis for the lawsuit. Thus, the basis for the lawsuit rests more on the grounds of ongoing disputes and quarrels, as is common in religious court practice.

From Based on this comparison, it can be concluded that the main difference between the two cases lies in the legal argumentation used by the plaintiffs. Decision Number 130/Pdt.G/2026/PA.Wsb shows a more normative approach by emphasizing the violation of *taklik talak* as the legal basis for divorce, while Decision Number 95/Pdt.G/2026/PA.Wsb reflects a more sociological approach by emphasizing the fact of household disharmony due to prolonged disputes.

These differences in case construction ultimately also impact how judges construct legal reasoning. In cases based on a violation of the taklik talak (divorce agreement), judges tend to assess the fulfillment of the normative elements agreed upon in the sighthat taklik. Meanwhile, in cases based on ongoing disputes, judges place more emphasis on empirical facts regarding the condition of the household and the possibility of maintaining the marriage.

Thus, these two decisions demonstrate the variety of approaches in religious court practice, both normative and sociological, in assessing and deciding divorce cases based on lack of support. This variation also reflects the judge's discretion in assessing the facts and law to reach a just decision appropriate to the specific circumstances of the parties.

Comparative Analysis of Philosophical, Legal, and Sociological Aspects in Judges' Considerations in Decisions Number 130/Pdt.G/2026/PA.Wsb and 95/Pdt.G/2026/PA.Wsb

After law is discovered and applied to a legal event, judges are required to render decisions by proportionally considering three aspects: philosophical, legal, and sociological. Therefore, this comparative analysis was conducted to examine the application of these three aspects in two divorce decisions.

1. Philosophical Aspects

In both decisions, the philosophical aspects are based on the value of justice in Islamic law, derived from the Quran and the opinions of Islamic scholars. In Decision Number 130/Pdt.G/2026/PA.Wsb, the judge based his considerations on the concept of khul'i, as stated by Allah SWT in Surah Al-Baqarah verse 229: It means: *If you fear that they (husband and wife) will not be able to carry out the laws of Allah, then there is no sin on either of them if the wife gives a payment to redeem herself.*

This verse explains that if domestic life cannot be maintained and it is feared that it will not be able to carry out God's provisions, then divorce can be carried out, including through khul'i with a ransom (iwadh) from the wife. This provision shows that Islam provides a fair solution for husbands and wives when the household can no longer be maintained, so that divorce is carried out to avoid greater harm. (Az-Zuhayli, 1991). In addition, it is strengthened by the opinion of scholars in the book al-Muhadzdzab: *If a woman hates her husband because of his ugly appearance, or his poor treatment, and she is afraid that she will not be able to fulfill her husband's rights, then it is permissible for her to apply for khuluk by paying compensation or ransom.*(Al-Syairazi, 1992).

Meanwhile, in Decision Number 95/Pdt.G/2026/PA.Wsb, the judge emphasized the purpose of marriage in Islam as stated in QS Ar-Rum verse 21: It means: *And among His signs (greatness) is that He created partners for you from your own kind so that you would be inclined and feel at ease (sakinah) with them, and He created between you feelings of love (mawaddah) and affection (rahmah). Indeed, in that there are truly signs (of Allah's greatness) for a people who think.*(Al-Qur'an, Ministry of Religion of the Republic of Indonesia, 2019).

This verse explains that the purpose of marriage is to create peace and affection in married life. However, if this goal cannot be achieved and instead causes suffering for one of the parties, divorce can be a justifiable solution under Islamic law.(Law No. 1 of 1974, Article 1). And supported by the doctrine in Fiqh Sunnah: *That a wife may sue the judge for divorce if she claims that she has always received painful treatment from her husband so that this can hinder the continuation of the husband-wife relationship between the two of them.* (Sabiq, n.d., p. 290).

A wife can file for divorce with a judge if she experiences hurtful treatment or faces circumstances that hinder the continuation of the marital relationship. In this case, the Defendant's inability to fulfill his maintenance obligations, coupled with ongoing disputes, were sufficient grounds for the Plaintiff to file for divorce. *And it is said that women are not allowed to divorce themselves before reporting to the judge because the judge is obliged to warn him (husband) with a decision in accordance with his ijtihad such as censuring (the crime), imprisoning him (husband), and the like. If he (husband) repeats the act of hurting her (wife), then the judge has the right to decide on divorce from him (husband).*(Asy-Syinqiti, 2015).

Thus, both decisions reflect the value of justice, but Decision Number 130 places more emphasis on violations of taklik talak and khul'i, while Decision Number 95 emphasizes the failure of the purpose of marriage. The difference in philosophical approaches also has implications for the form of the judgment rendered. In Decision Number 130/Pdt.G/2026/PA.Wsb, the emphasis on the violation of taklik talak and the concept of khul'i led the court to grant a khul'i divorce accompanied by the payment of iwadh by the wife. This reflects the view that the dissolution of marriage was primarily caused by the husband's failure to fulfill obligations explicitly stipulated in the marriage agreement (Sholichah et al., 2025). In contrast, Decision Number 95/Pdt.G/2026/PA.Wsb focused on the failure to achieve the objectives of marriage, namely sakinah, mawaddah, and rahmah, as evidenced by continuous disputes and economic neglect. Consequently, the court granted a ba'in sughra divorce, emphasizing the irreparable breakdown of the marital relationship rather than the violation of a specific marital covenant. Thus, the differing philosophical foundations influenced not only the judges' reasoning but also the legal classification and consequences of the divorce imposed.

2. Legal Aspects

In relation to the judge's considerations that pay attention to the legal aspects and reflect the principle of legal certainty, the author conducted an analysis of Decision Number 130/Pdt.G/2026/PA.Wsb and Decision Number 95/Pdt.G/2026/PA.Wsb in the case of divorce lawsuit after dukhul. In both cases, the panel of judges based their legal considerations on the provisions of applicable laws and regulations, especially Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law.

In Decision Number 130/Pdt.G/2026/PA.Wsb, the panel of judges considered that the plaintiff's lawsuit had sufficient legal grounds as regulated in Article 39 paragraph (2) of Law Number 1 of 1974 in conjunction with Article 116 letter (g) of the Compilation of Islamic Law. This provision stipulates that divorce can occur if there is a violation of the sighat taklik talak. Based on the facts revealed in the trial, the defendant was proven to have violated sighat taklik talak numbers 2 and 4 as indicated by the plaintiff, while the plaintiff stated that he was not willing to accept this treatment and had paid iwadh of IDR 10,000.00. By fulfilling these elements, the panel of judges concluded that the conditions for a divorce to fall one khul'i had been fulfilled legally and administratively.

Meanwhile, in Decision Number 95/Pdt.G/2026/PA.Wsb, the panel of judges also stated that the plaintiff's lawsuit had fulfilled the legal reasons based on Article 39 paragraph (2) of Law Number 1 of 1974. However, in contrast to the previous case, the legal basis used was more focused on Article 116 letter (f) of the Compilation of Islamic Law which regulates disputes and quarrels that occur continuously. In addition, the judge also considered the provisions of Article 119 paragraph (2) letter (c) of the Compilation of Islamic Law, which is the basis for imposing a divorce of one ba'in sughra, with the consideration that the plaintiff had never been sentenced to divorce before.

Thus, although both cases stem from the issue of failure to fulfill the obligation to provide for the family, there are differences in the legal construction used by the judges. In Decision Number 130/Pdt.G/2026/PA.Wsb, the legal basis for consideration is focused on the violation of the taklik talak (divorce agreement) as a form of breach of the marriage agreement, while in Decision Number 95/Pdt.G/2026/PA.Wsb, the emphasis is more on the conditions of prolonged domestic disputes and disharmony.

The judges' reasoning in both cases demonstrates that the legal aspect serves not only as a formal legal basis but also as an instrument for qualifying legal facts within relevant norms. This confirms that judges play an active role in determining the most appropriate legal norms to apply to the concrete events occurring in court.

Therefore, it can be concluded that both decisions meet the principle of legal certainty because they are based on clear statutory provisions and are systematically applied. However, the differences in the use of legal basis indicate the judge's room for interpretation and

discretion in constructing legal considerations, which ultimately results in differences in the types of decisions rendered.

3. Sociological Aspects

Decision Number 130/Pdt.G/2026/PA.Wsb and Decision Number 95/Pdt.G/2026/PA.Wsb show that the panel of judges in both cases considered the social conditions of the parties as the basis for issuing their decisions. In Decision Number 130/Pdt.G/2026/PA.Wsb, the panel of judges considered the fact that the defendant never returned to the plaintiff, did not provide mandatory maintenance, and did not pay attention to the plaintiff's situation for a considerable period of time. In addition, the defendant was also proven to have violated the *sighat taklik talak* (divorce) pronounced after the marriage contract, and the plaintiff expressed her unwillingness to receive such treatment. Based on these conditions, the judges considered that the parties' household could no longer be maintained. Therefore, divorce was seen as the most appropriate solution to end the plaintiff's suffering and avoid greater harm.

This consideration is also strengthened by the doctrine of Islamic law as stated in the book Syarqowi 'ala Tahrir, which states that a divorce that is conditional on a condition will fall if the condition is met. In this case, the defendant's violation of the *sighat taklik talak* is the basis that strengthens the grounds for divorce. In addition, the judge also based his considerations on positive legal provisions, namely Article 39 paragraph (2) of Law Number 1 of 1974, Article 19 letter f of Government Regulation Number 9 of 1975, and Article 116 letter f of the Compilation of Islamic Law.

Meanwhile, in Decision Number 95/Pdt.G/2026/PA.Wsb, the panel of judges considered that the household between the plaintiff and defendant had been filled with disputes and quarrels caused by, among other things, the failure to fulfill the obligation of maintenance and the defendant's failure to carry out his responsibilities as a husband. As a result of these conditions, the household relationship became disharmonious and the goal of marriage to form a family that is *sakinah, mawaddah, and rahmah* could not be achieved.

Judges too considered that the ongoing disputes had caused harm to the parties and there was no hope of living in harmony again. Therefore, divorce was seen as the most appropriate solution. This consideration was reinforced by the doctrine in the Fiqh Sunnah Book which stated that if harm and prolonged conflict occurred in a household that could not be resolved, then divorce could be used as a solution. In addition, the judge also referred to the provisions of Article 39 paragraph (2) of Law Number 1 of 1974 in conjunction with Article 19 letter f of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter f of the Compilation of Islamic Law.

Thus, both decisions demonstrate that the judges considered sociological aspects by assessing the concrete conditions of the parties' households. However, there are differences in the focus of the considerations. In Decision Number 130/Pdt.G/2026/PA.Wsb, the sociological considerations focused more on the wife's long-term neglect without any support or communication. Meanwhile, in Decision Number 95/Pdt.G/2026/PA.Wsb, the sociological considerations focused more on the ongoing conflicts and quarrels within the household.

These differences indicate that in the first case, divorce is seen as a solution to a broken marriage, while in the second case, divorce is seen as a solution to a disharmonious relationship (conflicting marriage). Nevertheless, both decisions essentially fulfill the principle of mutual benefit, as they provide a solution to untenable marital conflict and prevent the parties from causing greater harm.

By Therefore, it can be concluded that the judges' considerations regarding the sociological aspects of both cases were not solely oriented towards the application of legal norms, but also took into account the social realities faced by the parties. This indicates that the decisions rendered not only provide legal certainty but also benefit and justice for the parties in their social lives.

The sociological assessment of the duration of maintenance neglect is also supported by the opinions of classical Islamic jurists. The Maliki school holds that a wife may petition for judicial dissolution (*tafriq*) when the husband fails to provide maintenance and such neglect causes hardship (*darar*) to her life (Trigiyatno & Sutrisno, 2022). Similarly, Ibn Qudamah explains that if a husband neglects his maintenance obligations and the neglect causes harm to the wife, a judge may dissolve the marriage to eliminate such harm (Sholichah et al., 2025).

In the context of the present cases, the four-year abandonment in Decision Number 130/Pdt.G/2026/PA.Wsb reflects a more severe and prolonged form of neglect than the approximately seven-month neglect in Decision Number 95/Pdt.G/2026/PA.Wsb. This difference in duration reasonably influenced the judges' assessment of the level of harm suffered by the wives and contributed to the differing emphasis in their sociological considerations.

Comparative Analysis of Decision Number 130/Pdt.G/2026/PA.Wsb and Decision Number 95/Pdt.G/2026/PA.Wsb

Based on the analysis of Decision Number 130/Pdt.G/2026/PA.Wsb and Decision Number 95/Pdt.G/2026/PA.Wsb, it is known that both cases are divorce cases filed by the wife against her husband at the Wonosobo Religious Court. Both cases began with economic problems that resulted in the husband's failure to fulfill his maintenance obligations, thus giving rise to conflict in the household. However, the social backgrounds of the parties differ, both in terms of age and education level, which also reflects the social conditions underlying the dynamics of their household life.

Differences are also evident in the nature of the conflict. In Decision Number 130/Pdt.G/2026/PA.Wsb, the Defendant left the Plaintiff without permission at the end of 2021 and failed to provide maintenance for approximately four years. Meanwhile, in Decision Number 95/Pdt.G/2026/PA.Wsb, the conflict took the form of ongoing disputes and arguments due to the failure to provide for physical and spiritual support, ultimately leading to the parties living separately for approximately seven months. Both cases were decided by default because the Defendant failed to appear in court despite being legally and properly summoned, regardless of whether or not there was a reason for his absence.

FromIn terms of legal considerations and verdicts, the two cases also show differences. In Decision Number 130/Pdt.G/2026/PA.Wsb, the judge used Article 116 letter (g) of the Compilation of Islamic Law regarding violations of taklik talak and imposed a divorce of one khul'i with iwadh of Rp10,000. Meanwhile, in Decision Number 95/Pdt.G/2026/PA.Wsb, the judge used Article 116 letter (f) of the Compilation of Islamic Law regarding continuous disputes and quarrels and imposed a divorce of one ba'in sughra. This shows that the judge not only considers the normative legal aspects, but also the social conditions and facts that occur in the household life of the parties, even though both started from a quarrel.

The differences in the judges' considerations in these two decisions indicate that the application of legal norms regarding the obligation to provide support in divorce cases is not solely based on the normative provisions contained in statutory regulations, but is also heavily influenced by the judge's assessment of the social facts revealed in court. This situation demonstrates the judge's discretionary power in assessing the level of violation of a husband's obligations to his wife. On the one hand, this discretion allows the judge to achieve substantive justice based on the concrete circumstances of the parties, but on the other hand, it also has the potential to lead to variations in decisions that could affect the level of legal certainty for justice seekers in the religious courts.

Implications of Differences in Judges' Considerations on Legal Certainty and Protection of Wives' Rights in Divorce Cases in Religious Courts

The differences in the judges' considerations in Decisions No. 130/Pdt.G/2026/PA.Wsb and No. 95/Pdt.G/2026/PA.Wsb indicate variations in the application of legal norms to divorce cases based on lack of support. These variations not only

impact the form of the decision but also have significant implications for legal certainty and the protection of wives' rights in religious court practice in general, particularly in the Wonosobo Religious Court.

From a legal certainty perspective, differences in judges' considerations reflect that the application of legal norms, particularly regarding grounds for divorce due to lack of support, does not yet have fully uniform parameters. In Decision Number 130/Pdt.G/2026/PA.Wsb, the judge qualifies the fact of neglecting support as a violation of *sighat taklik talak* which implies the imposition of a divorce of one *khul'i* with *iwadh*. Meanwhile, in Decision Number 95/Pdt.G/2026/PA.Wsb, relatively similar facts are qualified as continuous disputes and quarrels, resulting in a decision of one *ba'in sughra* divorce. This difference shows that the same legal norm can be interpreted differently depending on the construction of the facts and the approach used by the judge in assessing and viewing the conditions in the field.

This situation has implications for potential legal uncertainty, especially for justice seekers facing cases with similar characteristics. The absence of clear standards regarding the definition of "not supported," whether in terms of duration, intensity, or impact on the household, opens up wide room for interpretation for judges. On the one hand, this provides flexibility in achieving substantive justice, but on the other hand, it can lead to disparities in decisions that have the potential to reduce legal predictability. Furthermore, from the perspective of protecting wives' rights, differences in judges' considerations also have important implications. In Decision Number 130/Pdt.G/2026/PA.Wsb, the recognition of violations of the *taklik talak* (divorce agreement) provides a stronger position for the wife as the injured party. This violation not only serves as grounds for divorce but also confirms the husband's breach of the marriage agreement, thus gaining stronger legitimacy for the wife's right to terminate the marriage. Furthermore, the *khul'i* mechanism accompanied by *iwadh* indicates more specific legal consequences for such violations.

In contrast, in Decision Number 95/Pdt.G/2026/PA.Wsb, protection of a wife's rights is based more on acknowledging the state of household disharmony resulting from prolonged disputes. While still providing a path for a wife to obtain a divorce, this approach does not explicitly emphasize violations of a husband's obligations in a structured form such as a *taklik talak* (religious divorce). As a result, the legal protection of a wife's rights tends to be general and based on social conditions, rather than on specific normative violations specified in the Law or the Compilation of Islamic Law (KHI).

Furthermore, the different types of divorce imposed also have implications for the wife's rights after the divorce. In Decision Number 130/Pdt.G/2026/PA.Wsb, the imposition of *khul'i* divorce with *iwadh* indicates that the wife provides compensation in exchange for the dissolution of the marriage, reflecting a consensual mechanism of separation and resulting in specific financial consequences for the wife. In contrast, the *ba'in sughra* divorce granted in Decision Number 95/Pdt.G/2026/PA.Wsb does not involve *iwadh* and is based on a judicial determination that the marital relationship has irretrievably broken down. Consequently, the legal and economic implications arising from the dissolution of the marriage differ between the two forms of divorce, particularly regarding the financial consequences borne by the wife and the legal basis for terminating the marital relationship. Thus, differences in judges' considerations not only impact the formal aspects of the decision, but also the substance of the legal protection received by the wife. This shows that the effectiveness of protecting the wife's rights in divorce cases depends heavily on how the judge qualifies the facts and chooses the legal basis used in his or her considerations. Such inconsistencies underscore a broader judicial challenge wherein the conceptualization of child welfare and financial liability remains subject to significant interpretative variance, often at the expense of equitable outcomes (Situngkir & Nurbaiti, 2025).

Conclusion

The judges' considerations in the two analyzed decisions took into account legal, philosophical, and sociological aspects that reflect the principles of legal certainty, justice, and expediency in deciding divorce cases. The judges based their considerations on the trial facts, evidence presented by the parties, and applicable statutory provisions. Generally, the two decisions share similarities in the use of legal basis and method of consideration. However, there are differences in the assessment of the facts and the strength of the evidence presented by the parties, resulting in different legal considerations and rulings. The parties' inharmonious household conditions, frequent disputes, and the failure to achieve the goals of marriage were the main reasons the judges granted the divorce petitions. The differences in the judges' considerations in the two decisions indicate that the application of the ground for divorce due to lack of support in religious court practice is strongly influenced by the judges' assessment of the facts revealed in the trial, such as the duration of neglect of support, the intensity of domestic conflict, and the form of violation of the husband's obligations. Therefore, to enhance legal certainty and consistency in judicial decisions, it is necessary to develop and disseminate clearer parameters for assessing maintenance neglect in divorce cases, particularly regarding the duration, intensity, and impact of non-support on the sustainability of the marital relationship.

References

- Al-Qur'an. (2019). Al-Qur'an and its translation. Ministry of Religion of the Republic of Indonesia.
- Al-Jaziri, A. R. (2003). *Al-fiqh 'ala al-madhab al-arba'ah* (Vol. 4). Beirut, Lebanon: Dar al-Kutub al-'Ilmiyyah.
- Al-Syarqawi, (nd). *Hasyiyah al-Syarqawi 'ala al-Tahrir* (Juz II). Dar al-Kutub al-'Ilmiyyah.
- Al-Syairazi, (1992). *Al-Muhadzdzab fi fiqh al-Imam al-Syafi'i* (Juz II). Dar al-Qalam.
- Anwar, AS (2021). Judges' progressiveness in determining the burden of divorce on husbands and wives after the divorce. *Al-Ahkam Journal of Sharia and Legal Sciences*, 6(1), 1. <https://doi.org/10.22515/alahkam.v6i1.2952>
- Arto, M. (2011). Civil case practice in religious courts. Student Library.
- Asy-Syinqiti, M. b. A. (2015). *Lawami'ud durar fi hatki astaril mukhtashar* (Juz VI). Dar Ridhwan.
- Damayanti, M., & Haniyah, S. (2021). The role of judges regarding ex-officio rights in divorce cases due to domestic violence (KDRT) in the district court and religious court of Purwokerto. *Al-Ahkam Journal of Sharia and Legal Sciences*, 5(2). <https://doi.org/10.22515/alahkam.v5i2.2771>
- Dharmawan, IF, & Wijayanto, E. (2023). Lawsuit for madliyah alimony in divorce cases: Case study of case number 744/Pdt.G/2020/PA.Btl. Maqasid, 12(2). <https://doi.org/10.30651/mqsd.v12i2.19520>
- Helmi, M. (2022). The discovery of divorce law by judges in religious courts based on the post-positivist paradigm. *Asy-Syari'ah*, 23(2), 261. <https://doi.org/10.15575/as.v23i2.15001>
- Mahmudah, N. (2019). Sociological aspects in court decisions in divorce cases. *NIZHAM*, 7(1).
- Mardi, O., & Fatmariza. (2021). Factors causing the neglect of children's rights after divorce. *Jurnal Ius Constituendum*, 6(1), 182. <https://doi.org/10.26623/jic.v6i1.3282>
- Mertokusumo, S. (2009). Indonesian civil procedure law. Liberty.
- Qomaro, GW (2021). The agency of Bangkalan Religious Court judges in fulfilling wives' rights after divorce. *Jurnal Kajian Hukum Islam*, 6(1), 63. <https://doi.org/10.24235/mahkamah.v6i1.7455>
- Radbruch, G. (1950). Legal philosophy (K. Wilk, Trans.). Harvard University Press.
- Ramdani, R., & Syafitri, FN (2021). Determining the amount of madiyah maintenance, iddah maintenance, and mut'ah maintenance in divorce cases in religious courts. *Adliya Journal of Law and Humanity*, 15(1), 37. <https://doi.org/10.15575/adliya.v15i1.11874>
- Sabiq, S. (nd). *Fiqh al-sunnah* (Juz II). Dar al-Fikr.
- Saputra, MY, & Rosman, E. (2021). Judges' considerations regarding the determination of the

- nominal iddah and mut'ah of life in an epistemological perspective. *Al Hurriyah Journal of Islamic Law*, 6(1), 25. <https://doi.org/10.30983/alhurriyah.v6i1.4018>
- Sholichah, MA, Solikin, A., & Mustofa, I. (2025). Eksplorasi Kewenangan Hakim Terhadap Suami yang Lalai dalam Nafkah Istri Perspektif Ibnu Qudamah. *Jurnal Riset Hukum Keluarga Islam*, 1–8. <https://doi.org/10.29313/jrhki.v5i1.6396>
- Situngkir, DE, & Nurbaiti, N. (2025). Analisis Hukum Hak Perlindungan Anak Pasca Perceraian (Studi Kasus: Keputusan No. 3/Pdt.G/2025/PTA.Smd). *Jurnal Hukum dan Ekonomi*, 4 (2), 153–164. <https://doi.org/10.56347/jle.v4i2.331>
- Sulistiani, SL, & Nurrachmi, I. (2021). Women's financial rights in the family according to Islamic family law in Indonesia. *Musawa Journal of Gender and Islamic Studies*, 20(2), 175. <https://doi.org/10.14421/musawa.2021.202.175-185>
- Trigiyatno, A., & Sutrisno, S. (2022). Dharar Sebagai Alasan Gugatan Cerai dalam Fiqih dan Perundang-undangan Beberapa Negara Muslim: Studi di Indonesia, Bahrain, Sudan, Qatar, dan Maroko. *Al-ISTINBATH Jurnal Hukum Islam*, 7 (1), 205–205. <https://doi.org/10.29240/jhi.v7i1.3368>
- Wahyuddin, & Kusuma, R. (2023). Strengthening the judge's precautionary principle in resolving divorce applications due to the wife's nusyuz. *Collegium Studiosum Journal*, 6(1), 155. <https://doi.org/10.56301/csj.v6i1.835>
- Widodo, R. (2022). Analysis of the provision of alimony to ex-wives in a case study of the Tangerang District Court decision number: 927/PDT.G/2017/PN.TNG. *The Digest Journal of Jurisprudence and Legisprudence*, 3(1), 1. <https://doi.org/10.15294/digest.v3i1.56829>
- Widowati, C., & Herliana. (2021). Sociological school of thought in the discovery of just law by judges. *Journal of Law & Development*, 51(2), 262. <https://doi.org/10.21143/jhp.vol51.no2.3050>
- Zuhayli, W. az-. (1991). *Tafsir al-munir* (Vol. 2). Dar al-Fikr.