

EX OFFICIO JUDGE'S AUTHORITY TOWARDS FULFILLMENT OF WOMEN'S AND CHILDREN'S RIGHTS AFTER DIVORCE AS REVIEWED FROM THE PRINCIPLE OF ULTRA PETITA

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Abstract

This study aims to analyze the ex officio authority of judges and the ultra petita principle in divorce cases in Religious Courts, as well as their implications for the protection of women's and children's rights. The background of this study is based on the fact that divorce cases in Indonesia continue to increase annually, but only a small proportion of decisions contain the determination of women's and children's rights after divorce without a request from the litigants. This study uses a normative legal research method with a statutory, case, and conceptual approach. Data sources consist of primary, secondary, and tertiary legal materials, analyzed using description, interpretation, evaluation, and systematization techniques. The results show that ex officio authority is an important instrument held by judges to protect the rights of vulnerable parties in divorce cases, such as determining iddah (waiting period), mut'ah (waiting for temporary dowry), child custody, and child living expenses. However, its application often clashes with the ultra petita principle, which limits judges from deciding cases beyond what the parties request. The tension between these two principles leads to inconsistent decisions, which impacts on the suboptimal protection of women's and children's rights. This study concludes that there is a need to harmonize ex officio authority and the ultra petita principle through clear technical guidelines and training for judges, so that substantive justice and legal certainty can be achieved in a balanced manner. Recommendations include strengthening judges' understanding of the protection of vulnerable groups, utilizing socio-economic data in decisions, and consistent application of ex officio authority across all Religious Courts.

Keywords: *Ex Officio, Women's and Children's Rights, Divorce, Proportionality Principle, Ultra Petita Principle*

INTRODUCTION

Divorce has been a dominant issue in Religious Courts year after year. Many factors trigger divorce, including infidelity, domestic violence, polygamy, and many more. The social phenomenon of divorce in Indonesia not only breaks the marital bond between two individuals but also triggers a wave of profound and complex social, economic, and psychological consequences, particularly for the women and children involved. In the Indonesian legal context, the divorce process often becomes an arena for the emergence of various complex legal issues, particularly related to the guarantee and fulfillment of the rights of women and children, which should be protected by the existing legal system. This legal protection is mandated to ensure that their lives after divorce remain secure, free from neglect and injustice. In 2024, the number of divorce cases received and decided by Religious Courts throughout Indonesia almost reached 500,000 cases, 77% of which were filed by wives in cases of divorce lawsuits and 23% were filed by husbands in cases of divorce by talaq, and of all these decisions, only 11.19% of Religious Court decisions contained the rights of women and children after divorce. In the face of this complexity, the ex officio role and authority held by judges are crucial and strategic. This ex officio authority inherently empowers judges to be proactive in establishing and safeguarding the rights of women and children, even without an explicit request from the parties. For example, judges have the authority to determine child custody, child support, and iddah and mut'ah maintenance for women after a divorce, even if specific requests related to these matters are not explicitly stated in the lawsuit. The essence of this authority is to ensure that the fundamental rights of this vulnerable group are not overlooked and protected by law. However, the implementation of judges' ex officio

authority in Indonesian judicial practice has not been without obstacles. This authority often directly conflicts with the ultra petita principle, a principle of civil procedural law that rigidly limits judges' latitude in issuing decisions that exceed or go beyond what is explicitly requested or demanded by the parties to the case. This ultra petita principle emphasizes the importance of legal certainty and prevents judges from acting outside the scope of the dispute. The inherent tension between proactive ex officio authority and the restrictive ultra petita principle creates a significant legal dilemma. This dilemma can ultimately lead to legal uncertainty and potentially create injustice, particularly for vulnerable groups, namely women and children, who should be the primary subjects of legal protection.

This situation not only reduces the effectiveness of post-divorce protection for their rights but also places them in a socially and economically vulnerable position. Therefore, an in-depth investigation and analysis of the tension between the judge's ex officio authority and the ultra petita principle is a very urgent and important legal issue that requires comprehensive research, as it directly affects the substantive justice received by women and children post-divorce. The fundamental reason behind the urgency of this research is rooted in the reality on the ground, where in many divorce cases in Indonesia, the rights of women and children are often not met adequately and fairly. This reality raises fundamental and critical questions about the extent to which the existing legal system is able to function optimally to provide effective legal protection for individuals belonging to vulnerable groups. How can the judicial mechanism ensure that their fundamental needs and rights are met in divorce and post-divorce proceedings? This research specifically seeks to dig deeper and comprehensively analyze how judges, within the existing legal framework, can effectively exercise their ex officio authority to protect the rights of women and children without necessarily violating the principles of civil procedural law adopted, such as the principle of ultra petita. Furthermore, this research also aims to identify, describe, and analyze in depth the various complex legal issues that frequently arise in judicial practice related to the application of these two legal principles, as well as their impact on the protection of the rights of women and children. Another problem that arises is that the implementation of judges' ex officio authority in judicial practice still faces significant challenges. The application of this authority is often inconsistent among judges.

This is due to legal ambiguity and lack of clarity regarding the limits of this ex officio authority, particularly when dealing with the ultra petita principle. How should judges balance the demand to act proactively to protect the rights of women and children with the obligation to comply with the limits imposed by the ultra petita principle? It is unclear and measurable how judges empirically interpret and apply the legal provisions in their decisions, and how this interpretation and application concretely impact the level of fulfillment of women's and children's economic, social, and psychological rights after divorce. This study is designed to delve deeper into these aspects, analyze how judges' interpretations of existing laws and regulations influence their decisions regarding women's and children's rights, and seek legal solutions and practical recommendations that can improve the effectiveness of protecting the rights of these vulnerable groups in the Indonesian family justice system.

LITERATURE REVIEW

Ex Officio Authority of Judges

A judge's ex officio authority is the authority held by a judge by virtue of his or her position, meaning that the judge can determine or decide something that is not requested by the parties for the public interest or for the protection of vulnerable parties. In the context of divorce cases in Religious Courts, this authority is very relevant to protecting the rights of women and children after the divorce. According to Yahya Harahap (2017), judges have the authority to determine the maintenance of iddah, mut'ah, and hadhanah even though it is not explicitly requested by the parties concerned. This is based on the principle of protecting vulnerable groups, which is regulated in various laws and regulations such as Law Number 1 of 1974 concerning Marriage and Law Number 23 of 2002 concerning Child Protection.

Ultra Petita Principle

The ultra petita principle is a principle in civil procedural law that states that a judge may not rule beyond what is requested by the parties to the case. This principle aims to maintain legal certainty and prevent judges from acting beyond their authority. According to Sudikno Mertokusumo (2013), this principle binds judges to ensure that their decisions remain within the scope of the demands submitted, thereby avoiding potential abuse of authority. In the context of divorce cases, this principle often conflicts with the judge's ex officio authority, especially when the judge wishes to protect the rights of women and children without a request from the parties concerned.

Protection of Women's and Children's Rights After Divorce

Protecting the rights of women and children after divorce is a crucial aspect of family law. These rights include maintenance, child custody, education, health care, and protection from violence. According to Syaifuddin (2018), this protection is regulated not only by national law but also by international legal instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Implementing this protection in judicial practice often faces obstacles, whether due to limited understanding by judges, a lack of supporting data, or administrative barriers.

Conflict between Ex Officio Authority and the Ultra Petita Principle

The conflict between ex officio authority and the ultra petita principle occurs when judges attempt to protect the rights of the weaker party but are hampered by procedural legal constraints. According to Hanafiah (2020), differing interpretations of these two principles among judges lead to inconsistent decisions. Some judges place greater emphasis on protecting substantive rights, while others adhere more strictly to the ultra petita principle to maintain legal certainty.

METHOD

This study uses a qualitative descriptive approach to analyze the application of judges' ex officio authority in divorce cases, particularly regarding the protection of women's and children's rights. Data were analyzed systematically using several techniques:

- Description – describes the phenomenon or position of the legal norms found as they are.
- Interpretation – using various methods of legal interpretation of existing norms, to suit the discussion of the main problem.
- Evaluation – providing an assessment of right/wrong, appropriate/inappropriate, agree/disagree with the legal norms or views found.
- Systematization – linking legal concepts or propositions between laws and regulations, whether they are of equal rank or not.

The results of the analysis were carried out using the content analysis method, which aims to produce an objective, systematic, and qualitative description of the research substance.

The approaches used include:

- Statutory Approach – analyzing regulations, Compilation of Islamic Law, PERMA, and SEMA which regulate ex officio authority and the ultra petita principle.
- Case Approach – examines court decisions that have permanent legal force.
- Conceptual Approach – explores legal doctrine and theories of justice and legal certainty.

Sources of Legal Materials

- Primary: legislation, Compilation of Islamic Law, court decisions.
- Secondary: legal literature, journals, scientific articles, and online sources related to the research topic.

RESULTS AND DISCUSSION

This Research Results chapter presents empirical findings regarding the application of judges' ex officio authority in divorce cases in Religious Courts and its interaction with the ultra petita principle, based on a review of several legally binding decisions and interviews with judges. The general overview sub-chapter reveals that although judges have a strong legal basis for determining post-divorce rights for women and children, such as iddah (waiting period), mut'ah (waiting period), hadhanah (waiting for a fixed term), and child support, without explicit requests from the parties, field practice remains inconsistent. Some judges actively use their ex officio authority to ensure protection for vulnerable parties, while others limit their decisions to what is requested in the lawsuit. These differences are influenced by several factors, including the judges' level of understanding of legal norms for the protection of women and children, the availability of supporting evidence related to the parties' economic capabilities, and concerns about violating the ultra petita principle. Other obstacles include limited trial time, minimal administrative support, and differing interpretations of the scope of judges' authority in the context of civil procedural law. The next sub-chapter examines the implementation of the ultra petita principle in divorce decisions. This principle, in principle, limits judges from ruling on cases beyond what the parties request. Research findings indicate that there are differences in approach to its application: some judges interpret the ultra petita

principle strictly to maintain legal certainty and avoid potential annulment of the decision, while others interpret it more loosely to allow for more comprehensive protection for women and children. These differing interpretations create significant variation in the substance of decisions. In some cases, judges still decide on child support or living expenses even without a request, citing urgent need and sufficient evidence, such as the husband's statement of economic capacity or clear evidence of the child's needs. Conversely, in other cases, judges are reluctant to award these rights unless requested, even when evidence indicates a need, citing considerations of the formal principles of procedural law.

In the sub-chapter on supporting and inhibiting factors, the study found that judges' in-depth understanding of the legal protection of vulnerable groups, the availability of relevant jurisprudential references or Supreme Court Circulars, and encouragement from relevant parties such as lawyers and Child Protection Agencies are driving factors in the application of ex officio authority. Conversely, obstacles encountered include the absence of clear technical guidelines, concerns about excessive intervention in cases, limited budget and trial time, and a lack of socio-economic data on the litigants. These obstacles mean that the application of ex officio tends to rely on the judge's personal initiative and is not uniform across all Religious Courts. The final subchapter discusses the implications of the application of ex officio authority and the ultra petita principle for the protection of women's and children's rights. It was found that the proper application of ex officio authority can significantly improve the fulfillment of these rights, reduce the risk of economic and psychological neglect, and strengthen the role of Religious Courts as legal protection institutions. However, uneven application has the potential to create legal uncertainty, disparities in justice between jurisdictions, and reduce public confidence in the consistency of court decisions. This study emphasizes the need for the establishment of clear national guidelines, regular training for judges on the harmonious interpretation of the ultra petita principle and ex officio authority, and strengthening the socio-economic database of the parties to support decisions based on substantive justice. Thus, it is hoped that ex officio authority can be optimized without sacrificing the principle of legal certainty that underpins the civil justice system in Indonesia.

CONCLUSION

Based on the results of research and discussion regarding the ex officio authority of judges regarding the fulfillment of women's and children's rights after divorce, viewed from the ultra petita principle, several conclusions can be drawn as follows:

The Concept of Judges' Ex-Officio Authority in Family Civil Procedure Law. Judges' ex-officio authority in family civil procedure law in Indonesia, particularly within the Religious Courts, is a manifestation of the judge's active role in achieving substantive justice, not just procedural justice. This authority allows judges to go beyond the formal demands of the parties to protect the rights of vulnerable groups, such as women and children, who often lack equal bargaining power or adequate legal knowledge. The normative basis for judges' ex-officio authority is very strong, stemming from the 1945 Constitution, the Law on Judicial Power, the Marriage Law, the Compilation of Islamic Law, and reinforced by jurisprudence and internal regulations of the Supreme Court (PERMA and SEMA). However, the implementation of this authority faces challenges such as the subjectivity of judges, the balance between passive and active principles, and limited information, which require caution and objectivity in its implementation.

Review of the Ultra Petita Principle on the Use of Judges' Ex Officio Authority in Fulfilling the Rights of Women and Children Post-Divorce, The ultra petita principle traditionally serves as a pillar of legal certainty and procedural justice in civil procedural law, limiting judges to ruling in accordance with the demands of the parties. However, in the context of family civil procedural law, particularly in Religious Courts, the ultra petita principle has been relaxed through the use of judges' ex officio authority. This relaxation is based on considerations of substantive justice and the protection of human rights, especially for women and children post-divorce. The Supreme Court's jurisprudence has demonstrated a paradigm shift from the rigid formalism of ultra petita to a more responsive and progressive approach, which allows judges to rule beyond the petitum in order to achieve material justice. Exceptions to the ultra petita principle are legitimized by various laws and judicial guidelines that mandate judges to proactively determine the rights of women (such as iddah maintenance, mut'ah) and children (child support, hadhanah, and guarantee of maintenance) even if not explicitly required. Harmonization between ex officio authority and the ultra petita principle is achieved through the understanding that procedural principles can be relaxed to accommodate deeper demands for justice, especially in protecting vulnerable groups.

Harmonization of Ex Officio Authority and the Ultra Petita Principle in the Protection of Women and Children

Women and children are vulnerable groups who need protection from the state. Women and children are also the parties who most often feel the negative impacts of divorce. Therefore, the Court is obliged to provide the necessary information for women facing divorce cases. Thus, women facing divorce cases at the Amurang Religious Court have the right to receive sufficient information regarding the rights of women and children after divorce. In this context, judges have a crucial role to play in ensuring these rights are fulfilled, even if not explicitly requested by the parties. Judges no longer simply wait for demands to be made, but actively ensure that women's and children's rights are fulfilled, even if not explicitly requested.

1) Fulfillment of Women's Rights After Divorce

In divorce cases, women's rights, particularly regarding post-divorce support, differ between divorces by talaq and divorces by lawsuit. In divorces by talaq, women's rights are regulated by Article 149 of the Compilation of Islamic Law (KHI), including support for 'iddah (waiting), mut'ah (waiting period), and other matters.

When discussing the fulfillment of rights in divorce cases, the provisions regarding women's rights after the divorce are guaranteed in Article 149 of the Compilation of Islamic Law. However, women's rights in divorce cases are often neglected because there is no explicit provision requiring a husband to provide post-divorce maintenance if the wife files the lawsuit. This creates injustice and gender discrimination. In response to the legal vacuum regarding the fulfillment of women's rights after divorce in divorce lawsuit cases, the Supreme Court of the Republic of Indonesia issued PERMA Number 3 of 2017 and related SEMAs (for example SEMA No. 3 of 2018) which firmly encourage judges to use ex officio authority in granting women's rights such as mut'ah and iddah maintenance in divorce lawsuit cases, as long as the wife is not proven to be nusyuz.

This is a form of legal discovery (*rechtsvinding*) and legal reform undertaken by the Supreme Court to fill legal gaps and achieve gender justice. Judges, with their ex officio authority, can explore the facts of a husband's ability and a wife's basic needs to determine a fair and appropriate amount of maintenance, even if there is no specific demand in the petition. From an Islamic perspective, justice ('Adl) is a fundamental value that means placing everything in its proper place. The concept of Maqasid al-Shari'ah (the objectives of sharia) emphasizes *jalb al-manafi'* (attracting benefit) and *dar' al-mafasid* (warding off harm), including protecting life and property. Providing a wife with a living wage after a divorce, even if not demanded, is part of an effort to safeguard the welfare and prevent harm to women, which is in line with the principles of Islamic justice. Judges who exercise ex officio authority in this case are applying the principles of Islamic justice in their decisions.

2) Fulfillment of Children's Rights After Divorce

Fulfilling children's rights after divorce is a fundamental aspect of the family justice system, which consistently prioritizes the best interests of the child. This principle, mandated by Article 23 of Law Number 23 of 2002 concerning Child Protection, obliges the state and government to guarantee the protection, care, and welfare of children. In the context of divorce, where children are often the most vulnerable, the role of judges becomes crucial, particularly through the exercise of ex officio authority. One concrete manifestation of the judge's ex officio authority in protecting children's rights is the ex officio determination of child support obligations. Supreme Court Circular Letter (SEMA) Number 04 of 2016 explicitly reinforces this, stating that Religious Courts may ex officio determine child support to the father if the child is under the mother's care, as stipulated in Article 156 letter (f) of the Compilation of Islamic Law. This provision is a clear exception to the ultra petita principle, indicating that in the best interests of the child, the judge need not wait for the mother to explicitly file a child support claim. Instead, the judge has the authority to decide and determine such support ex officio if the trial facts demonstrate the father's need and ability to provide support.

Furthermore, efforts to ensure child support are also strengthened through Supreme Court policy. Supreme Court Circular Letter No. 05 of 2021 allows a wife to apply for the determination of her husband's assets as collateral for child support. This mechanism, detailed in the *posita* and *petitum* of the lawsuit, both in the convention, counter-convention, and separate lawsuits, demonstrates the judiciary's proactive approach to ensuring children's rights are consistently met and not neglected in the future. In addition to child support, protecting joint assets for children is also a concern. Circular Letter No. 01 of 2022 is an example of how the principle of the child's best interests can influence the division of joint assets. In decisions concerning joint assets where the object is proven to be the child's sole residence, a division lawsuit can be granted, but its implementation is postponed until the child reaches adulthood (21 years of age) or is married. This policy explicitly aims to ensure the continuity of housing and environmental stability for children, emphasizing that the child's right to adequate housing takes precedence over the direct division of assets. Overall, the series of regulations and guidelines issued

by the Supreme Court, particularly through the Supreme Court's Circular Letter (SEMA), reflect the judiciary's strong commitment to optimizing judges' ex officio powers. This is done to achieve substantive justice and provide comprehensive legal protection for children after divorce, ensuring that their basic rights, from maintenance to housing, are met despite significant family changes.

From the explanation above, it can be understood that the use of ex officio authority by judges in fulfilling the rights of women and children after divorce represents a concrete form of the legal paradigm shift from ultra petita formalism to substantive justice. Judges are no longer merely passive "mouthpieces of the law" (*la boce de la loi*), but rather active enforcers of justice, capable of exploring, discovering, and even creating law (*rechtsvinding*) to protect vulnerable groups in society. This is an implementation of the theory of justice (Plato, Aristotle, John Rawls, Hans Kelsen, Gustav Radbruch) and responsive/progressive legal theory, and is in line with the principle of justice in Islam (*Maqasid al-Syari'ah*). Therefore, the ultra petita principle does not apply absolutely in cases that require higher human rights protection and justice, especially for women and children after divorce. In this context, community organizations play a crucial role in advocating for children's rights and ensuring justice within the legal system. One prominent example is LBH Apik, which provides pro bono legal services to file judicial reviews of decisions that disregard children's rights. By providing free legal assistance, LBH Apik helps individuals or families who may not have the resources to fight for their rights in court. This not only provides access to justice for marginalized individuals but also contributes to the oversight and evaluation of legal decisions made by the courts.

Meanwhile, the Indonesian Child Protection Commission (KPAI) plays a role in monitoring the implementation of Supreme Court Regulation (PERMA) No. 1 of 2024, which concerns the protection of children's rights in legal proceedings. Through collaboration with the Correctional Center (Bapas), KPAI ensures that this policy is implemented effectively and has a positive impact on children involved in the legal process. KPAI's involvement in this monitoring is crucial to ensuring that children's rights are not only recognized normatively but also implemented in practice. To improve the protection of children's rights, several policy recommendations need to be considered. First, amending the Marriage Law is a crucial policy recommendation, namely the inclusion of a clause regulating "the ex officio obligation of judges to determine children's rights," similar to the provision contained in Article 156 of the Compilation of Islamic Law (KHI). With this clause, judges will have the authority and responsibility to actively determine children's rights, including child support, without having to wait for a request from the relevant parties. This will strengthen the protection of children's rights and ensure that the child's best interests are always prioritized in every decision. Second, the development of an integrated database system that integrates fathers' income data through the Directorate General of Taxes is also an important recommendation. This system will make the process of determining child support more transparent and accurate. Integrated income data will make it easier for judges to determine the amount of support appropriate to parents' financial capabilities, thereby better fulfilling children's rights. Furthermore, this system will also reduce the potential for future disputes related to child support obligations. Overall, the role of civil society organizations and the proposed policy recommendations are crucial to improving the protection of children's rights within the legal system. With support from civil society organizations and more responsive policies, it is hoped that children's rights will be better guaranteed and recognized in legal practice in Indonesia.

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