LAPORAN TUGAS AKHIR

Ex Officio Authority of Judges in Divorce Suit Decisions: An Analyis of Article 41 of Law Number 1 of 1974 on Marriage in the Pamekasan Religious Court

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PRODI HUKUM KELUARGA ISLAM
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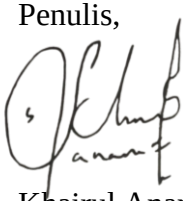
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Ex Officio Authority of Judges in Divorce Suit Decisions: An Analyis of Article 41 of Law Number 1 of 1974 on Marriage in the Pamekasan Religious Court

ABSTRACT

The protection of women's and children's financial rights after divorce remains a significant issue within the Indonesian Religious Court system. Article 41 of Law Number 1 of 1974 on Marriage normatively obliges the father to bear responsibility for the maintenance and education of children and provides a legal basis for financial obligations toward a former wife. However, in judicial practice, divorce litigation (cerai gugat) decisions often do not consistently stipulate iddah maintenance, mut'ah, and child support within the operative part of the judgment. This inconsistency indicates a gap between the normative construction of Article 41 and its practical implementation in court decisions. This study aims to analyze the obligation of judges' ex officio authority in divorce litigation decisions and evaluate its implementation at the Religious Court of Pamekasan. The research employs a normative–empirical legal approach through statutory analysis and case study examination of three final and binding divorce judgments issued by the Religious Court of Pamekasan. The findings reveal that variations in the application of ex officio authority are influenced by interpretations of the ultra petita principle, evidentiary considerations, and judicial sensitivity toward the protection of women and children. Drawing on vulnerability theory, this study argues that ex officio authority should be interpreted not merely as judicial discretion but as a juridical obligation inherent in the judicial function. This research contributes to strengthening the doctrinal

understanding of judges' ex officio authority as a mechanism to ensure substantive justice and improve legal protection for women and children after divorce.application of this authority is therefore essential to strengthen legal protection for women and children after divorce.

Keywords: *ex officio authority, divorce litigation, Article 41 Marriage Law, legal protection, substantive justice.*

ABSTRACT

Perlindungan terhadap hak finansial perempuan dan anak pasca perceraian masih menjadi persoalan penting dalam praktik peradilan agama di Indonesia. Secara normatif, Pasal 41 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan menegaskan tanggung jawab ayah terhadap pemeliharaan dan pendidikan anak serta memberikan dasar hukum bagi kewajiban finansial terhadap bekas istri. Namun dalam praktik peradilan, putusan cerai gugat tidak selalu secara konsisten mencantumkan penetapan nafkah iddah, mut'ah, dan nafkah anak dalam amar putusan. Kondisi ini menunjukkan adanya kesenjangan antara konstruksi normatif Pasal 41 dengan implementasinya dalam praktik peradilan. Penelitian ini bertujuan untuk menganalisis kewajiban kewenangan *ex officio* hakim dalam putusan cerai gugat serta mengevaluasi penerapannya di Pengadilan Agama Pamekasan. Penelitian ini menggunakan pendekatan hukum normatif-empiris melalui analisis peraturan perundang-undangan dan studi kasus terhadap tiga putusan cerai gugat yang telah berkekuatan hukum tetap di Pengadilan Agama Pamekasan. Hasil penelitian menunjukkan bahwa variasi penerapan kewenangan *ex officio* hakim dipengaruhi oleh penafsiran terhadap asas *ultra petita*, pertimbangan pembuktian, serta sensitivitas hakim terhadap perlindungan perempuan dan anak. Berdasarkan perspektif *vulnerability theory*, penelitian ini berargumen bahwa

kewenangan *ex officio* tidak semata merupakan diskresi hakim, melainkan kewajiban yuridis yang melekat pada fungsi peradilan sebagai representasi negara dalam mewujudkan keadilan substantif. Penelitian ini berkontribusi dalam memperkuat pemahaman doktrinal mengenai kewenangan *ex officio* hakim sebagai mekanisme perlindungan hukum bagi perempuan dan anak pasca perceraian.

Kata Kunci: ex officio, cerai gugat, Pasal 41 UU Perkawinan, perlindungan hukum, keadilan substantif.

INTRODUCTION

Divorce in Indonesia shows continuing trend increased, with dominance case divorced lawsuit filed by the wife in the neighborhood Religious Courts. This phenomenon is not only reflect change gender relations in Indonesian Muslim families, but also shows increasing awareness law women 's right to terminate marriage that no longer provides welfare (Eko Saputra, 2025; Maimun, 2019) . However thus, the height number divorced sue Not yet fully followed by optimal protection of rights financial wife and children after divorce. Even though Article 41 of Law Number 1 of 1974 concerning Marriage is imperative confirm not quite enough father's responsibility for care and education child as well as open room obligation financially towards the former wife. In perspective protection law, this norm should be is ex lege and does not depend on the existence or absence of demands in the petitum (Rasida, 2025). In empirical judicial practice, this issue becomes a concrete problem because many divorce lawsuit decisions do not explicitly stipulate iddah maintenance, *mut'ah*, or child support in the operative part

of the judgment, thereby creating legal uncertainty for women and children as parties who are structurally more vulnerable in post-divorce relations.

Theoretically, the authority **ex officio** judge understood as instrument corrective to stiffness principle *ultra petita partium* in civil procedural law. Judges, within the framework of law progressive, not just become a " mouthpiece" law ", but rather must actively guarantee realization justice substantive, in particular for vulnerable groups (Sahara & Raharjo, 2022) . A number of study confirm that in this case divorce, the use of ex officio is not exceedance authority, but rather obligation juridical to enforce rights normative women and children (Hasanah & Wisri, 2021) (Ibrahim, 2022; Rifai, 2021). However, in practice, it is still found the judge to be acting passive and reluctant set iddah, mut'ah, or subsistence living child if not explicitly requested by the plaintiff. This situation demonstrates a tension between the *ultra petita partium* principle in civil procedural law and the obligation of legal protection toward vulnerable parties, raising the debate as to whether the use of *ex officio* authority constitutes judicial discretion or a normative duty inherent in the judicial function.

The gap between imperative norms and practice the judiciary is seen in a number of decision divorced sued at the Pamekasan Religious Court, including Decision Number 1205/Pdt.G/2025/PA.PMK, 1514/Pdt.G/2023/PA.PMK, and 1630/Pdt.G/2024/PA.PMK, which shows variations in application ex officio authority. Some decisions explicitly set living child, while part other only cut off main divorce without amar about right financial wife. This phenomenon strengthens existence *normative–practical gap,* namely

asynchrony between order normative Article 41 of the Marriage Law and its implementation in practice religious courts. (Jamil & Nur et al, 2022). These variations in judicial decisions indicate that *ex officio* authority has not been consistently implemented by judges, resulting in disparities in legal protection for women and children in divorce litigation cases.

Study regarding ex officio judges have widely practiced. (Ibrahim and Nasrullah, 2022) in *Samarah: Journal of Family Law and Islamic Law* confirm that ex officio authority in cases divorce is form protection law against wives, but its implementation often limited by worries violate ultra petita principle. This research provides base normatively important, but more focused on divorce and not specifically study obligation imperative of Article 41 of the Marriage Law in the context of divorced sue. Thus, the study still places *ex officio* authority within the framework of judicial discretion and has not empirically analyzed how its application varies in divorce litigation decisions.

Temporary that, (Sakira, 2024) in *El- Izdiwaj* study ex officio application as instrument protection right post-divorce wife. The result show that the judge has room progressive to establish rights financial without demands explicit. However the study did not analyze right children comprehensively based on Article 41 of the Marriage Law. On the other hand others, (Nurhayati, 2021) in *Al-Ahwal* emphasize importance perspective protection women and children in the decision divorce, but Not yet place ex officio as obligation juridical nature imperative. In other words, previous studies largely discuss the normative dimension of protecting women and children but have not integrated normative analysis with empirical examination of variations in judicial decisions.

In contrast to previous studies, this article places ex officio not just as authority the judge's discretion, but rather as **obligation juridical imperatives** attached to the position of judge based on Article 41 of Law No. 1 of 1974. This research also specifically study practice implementation the obligation in the decision divorced sue at the Pamekasan Religious Court through case approach. Thus, the novelty This research is based on integration analysis normative – imperative Article 41 with empirical studies court decisions, as well as ex officio affirmation as obligation constitutional in guaranteeing justice substantive. Theoretically, this research is positioned within the framework of progressive legal theory and vulnerability theory, which view the state represented by judges as having an active responsibility to protect vulnerable groups through judicial decisions.

This study aims to analyze ex officio obligations of judges in decisions divorced sue based on Article 41 of Law Number 1 of 1974 concerning Marriage and evaluate its implementation in practice at the Pamekasan Religious Court in order to assess consistency protection rights financial wife and children after divorce.

This article argues that the judge's ex officio authority in the case divorced sue is not choice discretionary, but rather obligation juridical nature imperative. The uselessness of ex officio in determining right financial wife and children is form neglect of mandate normative Article 41 of the Marriage Law and is contrary to the principle justice substantive as well as *the best interest of the child*. Therefore that, the judge is obliged to interpret law in a progressive manner and oriented towards protecting vulnerable groups, as emphasized in legal theory progressive (Progresif & Aulia, 2018)

This research is theoretically important to strengthen construction doctrinal that ex officio the judge in the case divorce is obligation law, not just right position. Practically, the results This research is expected become recommendation normative for Religious Court judges to be consistent set rights financial wife and children in every decision divorced sue, so that the Religious Court does not only ensure certainty law, but also presents justice substantive responsive to protection women and children.

RESEARCH METHOD

This research is a study law normative-empirical (*socio-legal research*), namely research that examines law as a written norm at a time as practices that are alive in court decisions (Rifa'i, 2023) . Normatively, this study examines Article 41 of Law Number 1 of 1974 concerning Marriage as an imperative norm that regulates not quite enough father's responsibility for care and education child and possible liabilities financially towards the former wife. Empirically, this study analyzes implementation obligation *ex officio* judge in the decision divorced sued at the Pamekasan Religious Court. This approach was chosen Because allows researchers identify gap between legal norms that are imperative and practice judicial development in the field (Fathurrohmah, 2022) .

The approach used covering approach legislation, approach conceptual, and case approach. legislation used to study construction normative Article 41 of Law Number 1 of 1974, Compilation of Islamic Law, as well as regulations Supreme Court relating to the authority of judges in cases divorce (Ahmad et al., 2024) . Approach conceptual used to analyze doctrine *ex officio,* principle *ultra petita partium,* protection theory law, and draft justice

substantive in perspective law progressive (Hadjon, 1987; Rahardjo, 2008). The case approach is carried out by examining in depth a number of decision divorced sue at the Pamekasan Religious Court to see consistency and variety implementation authority *ex officio* in amar decision (Ibrahim & Nasrullah, 2022).

Research location is at the Pamekasan Religious Court with the object study in the form of decision divorced the lawsuit that has been powerful law fixed (*inkracht van gewijsde*). That is 1205/Pdt.G/2025/PA.PMK, 1514/Pdt.G/2023/PA.PMK, and 1630/Pdt.G/2024/PA.PMK. Election the decision was based on considerations existence variations in amar decision regarding the determination living iddah, mut'ah, and living children, so that relevant to test consistency implementation of Article 41 of the Marriage Law as an imperative norm.

sources in this study consist of on material primary law, material law secondary, and empirical data. Primary legal materials include Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law, Circular Letter Supreme Court Number 2 of 2019, as well as copy official decision divorced the lawsuit that became object research. Legal materials secondary obtained from reputable journals national and international issues that discuss authority *ex officio,* judicial activism, as well protection right women and children in cases divorce (Ibrahim & Nasrullah, 2022; Rifai, 2021). In addition, this study also uses literature methodology study law and legal theory progressive as runway conceptual (Ibrahim, 2006; Rahardjo, 2008). If required, empirical data can be strengthened through interview limited to judges or court officials to confirm

consideration law in its use or non- use authority *ex officio* (A. Abdullah, 2020) .

Data collection techniques are carried out through document studies of court decisions to identify amar decisions related to rights financial wife and children, as well as literature studies to obtain runway relevant theoretical and conceptual data. Data analysis was conducted qualitatively-descriptively by interpreting the norms of Article 41 of the Marriage Law, classifying amar decision based on whether or not there is determination right financial, as well as compare between norms and practices in order to find existence *normative–practical gap*. Analysis results Then interpreted using protection theory law and law progressive to assess whether the authority *ex officio* has executed as obligation imperative or still understood as judicial discretion (Hadjon, 1987; Rahardjo, 2008).

Data validity is guaranteed through technique triangulation sources, namely by comparing legal norms written, the judge's considerations in the decision, and view doctrinal in literature scientific (Soekanto, 2014). This approach ensures that the resulting analysis is not only nature textual, but also contextual and argumentative, so that capable give contribution theoretical and practical aspects of strengthening obligation *ex officio* judge in the case divorced sue.

FINDINGS AND DISCUSSION

Findings

The results of this research show that in practice divorce lawsuit decisions at the Pamekasan Religious Court demonstrate variations in the inclusion of post-divorce financial rights. Based on the analysis of Decision Number 1205/Pdt.G/2025/PA.PMK, 1514/Pdt.G/2023/PA.PMK, and 1630/Pdt.G/2024/PA.PMK, it was found that not all decisions explicitly stipulate iddah maintenance, mut'ah, and child support in the operative part of the judgment. In several cases, the panel of judges only granted the divorce and declared the dissolution of marriage without determining the husband's financial obligations toward his former wife and children, even though Article 41 of Law Number 1 of 1974 concerning Marriage regulates the father's responsibility for child maintenance and provides the possibility of financial obligations toward the former wife. This situation indicates a discrepancy between the normative mandate of Article 41 of the Marriage Law and its implementation in judicial practice. This fact shows that the ex officio authority of judges has not been consistently applied as an imperative obligation in divorce litigation cases.

This study found differences in the implementation of judges' ex officio authority in several divorce lawsuit decisions at the Pamekasan Religious Court. In one of the decision, the panel of judges actively determines living child although not formulated in detail in the petitum lawsuit, with consideration protection of interests best child. However, in the decision otherwise, the judge did not use such authority and only focus on the main point case divorce. This difference shows that use authority *ex officio* Still understood as room individual discretion of the judge, not as obligation juridical matters attached to the

position as can be interpreted from the norms of Article 41 of the Marriage Law. From the perspective of judicial authority theory, judges are not merely passive adjudicators but also actors responsible for ensuring the effective implementation of legal norms to achieve substantive justice. This variation indicates existence inconsistency potential practices cause uncertainty law and disparity protection right between One case by case other.

Table 1 : Findings Study Implementation of the Judge's *Ex Officio* Authority in Divorce Decisions at the Pamekasan Religious Court

No	Nomor	Pencantuman Nafkah Iddah & Mut'ah	Pencantuman Nafkah Anak	Rujukan Eksplisit Pasal 41 UU No. 1 Tahun 1974	Pola Penerapan Officio	Keterangan Temuan
1	205/Pdt.	Tidak dicantumkan eksplisi	Dicantumkar	Dirujuk secara imp	Parsial	Hakim menetapkan nafkah anak tetapi tidak menetapkan nafkah iddah dan mut'ah
2	514/Pdt.	Tidak dicantumkan	Tidak dicantu	Tidak dirujuk secar	Tidak digunakan	Amar hanya memutus pokok perceraian tanpa hak finansial
3	630/Pdt.	Dicantumkan	Dicantumkar	Dirujuk secara eksp	Digunakan secara ak	Hakim menetapkan hak finansial meskipun tidak seluruhnya dimohonkan dalam petitum

In part analyzed decisions, considerations the law explicitly referring to the provisions of Article 41 of Law

Number 1 of 1974 and the Compilation of Islamic Law as base normative determination obligation living child. However, in the decision otherwise, reference to Article 41 is not explicitly included in the considerations. law, The absence of explicit reference to Article 41 indicates that not all panels of judges use this provision as a central normative argument in their legal reasoning. although the substance of the norm is relevant to the case being examined. The absence of references This explicitly shows that not all panels of judges make Article 41 as base argumentation normative in amar decision, so that show existence difference construction reasoning law between judges in understanding obligation post- divorce finances.

Results study identify a number of factors that influence judges in using or not using authority *ex officio*. First, consideration of principles *ultra petita partium* Still become factor dominant, where some judges are careful not to rule exceed the claims filed by the plaintiff. Second, the aspect evidence in court participate influence, especially regarding ability husband's economy and needs real children. In some matter, absence proof about husband's income becomes reasons for not setting a specific nominal amount of maintenance. Third, considerations ability husband's economy becomes important variables in determining whether or not there is determination living as well as magnitude. Fourth, perspective protection women and children also play a role, *these factors show that the application of ex officio authority is influenced not only by written legal norms but also by judicial interpretation, evidentiary considerations, and the judge's commitment to substantive justice*, especially in decisions that are progressive set living children to ensure sustainability post-divorce maintenance. These factors indicate that use

authority *ex officio* not only influenced by legal norms written, but also by consideration procedural, evidentiary, and judges' sensitivity to principles justice substantive and interests best child.

Table 2: Analysis of Influencing Factors Use of *Ex Officio* Authority

Faktor	Indikasi dalam Putusan	Dampak terhadap Amar Putusan
Asas *Ultra Petita Partium*	Hakim berhati-hati memutus di luar petitum	Tidak ditetapkannya nafkah jika tidak dimohonkan
Pembuktian	Tidak ada bukti rinci penghasilan suami	Tidak ditentukan nominal nafkah secara spesifik
Kemampuan Ekonomi Suami	Dipertimbangkan dalam menentukan besaran nafkah	Penetapan nafkah bersifat proporsional
Perlindungan Perempuan & Anak	Pertimbangan kepentingan terbaik anak	Hakim menetapkan nafkah anak meskipun tidak dirinci dalam gugatan

Overall, the results This research strengthens existence *normative–practical gap* between construction the imperative of Article 41 of the Marriage Law and its implementation in practice religious courts. Although legal norms give sufficient basis strong for judges to actively determine right financial wife and children, practice at the Pamekasan Religious Court shows that authority *ex officio* Not yet fully understood and implemented as obligation consistent law. This finding becomes important basis for

further discussion regarding urgency affirmation doctrinal that authority *ex officio* in the case divorced sue is obligation juridical, not just choice judicial discretion.

Discussion

Non-Inclusion of the Right to Maintenance and Inconsistency of the Decision

Analysis of divorce lawsuit decisions at the Pamekasan Religious Court shows that not all judgments explicitly include provisions on iddah maintenance, mut'ah, and child support in the operative part of the judgment. According to Soerjono Soekanto, court decisions in practice often emphasize the formal resolution of disputes without fully considering the broader legal consequences regulated by law. (Soekanto, 2014; Delzanty & Taupiqqurrahman, 2025) . Normatively, Article 41 of Law Number 1 of 1974 concerning Marriage establishes that the father bears responsibility for the maintenance and education of children after divorce. This provision therefore contains an **imperative legal obligation,** not merely a declarative guideline. Consequently, divorce judgments should not only terminate the marital relationship but must also determine the legal consequences arising from the dissolution of marriage.This is in line with research (Nurhayati 2021) which shows that in many decision divorced sue in religious court, even though right financial wife and children legally relevant, it is the judge's obligation to determine it Not yet running optimally (Ramadhani, 2026) .

Within the framework of progressive legal theory, law should not merely be viewed as a written norm but as an instrument to achieve substantive justice in society

(Rahardjo, 2008; Lorenza & Mulyadi, 2026) . From this perspective, the omission of maintenance provisions in divorce judgments reflects a gap between the normative construction of Article 41 and its practical application in judicial decision-making. If the judge only cut off main divorce without set right financial matters attached to Article 41, then the decision has the potential ignore principle justice substantive and protection of vulnerable parties such as women and children, even though law set it as not quite enough answered the father. This study found that This practice gives rise to disparity between decision One case by case others, so that give effect uncertainty law for seeker justice (Saputra, E. 2025; DWI, M. 2025).

Ex Officio Rights Between Decisions

A comparison of the analyzed decisions demonstrates variations in the use of ex officio authority by judges. In some cases, judges actively determine child support even though it was not explicitly requested in the petitum, However, in other decisions the judges did not exercise the same authority and only granted the divorce claim. This variation indicates that judicial interpretation of **ex officio authority** differs among judges, resulting in inconsistent outcomes across similar cases. Methodologically, the term **"inconsistency"** refers to disparities in judicial reasoning and outcomes in cases that share similar legal circumstances, which may lead to unequal protection of rights. This phenomenon is consistent with the findings (Rifai 2021) which state that implementation authority *ex officio* in the system religious courts still understood differently by the panel of judges, often influenced by custom judicial and perception on principle *ultra petita partium (* Hafizh, A. 2024; *Kurniasih,* D. 2018).

The concept of judicial activism in family law emphasizes that judges are not merely mechanical appliers of legal rules but are responsible for ensuring the protection of normative rights, particularly for vulnerable parties (Tate, 1995). In Islamic family law, **women and children are often considered vulnerable parties in divorce proceedings.** Therefore, the exercise of ex officio authority becomes an important judicial instrument to guarantee their legal protection. When the judge does not utilize authority *ex officio* even though the legal norms allow and even mandate the obligation to guarantee right children and wife, then the role of the judge as agent justice substantive become less than optimal (Pramassari et al., 2025) . Therefore, variations in this implementation indicate that judge's interpretation of authority *ex officio* often depends on understanding individual, not on understanding consistent juridical.

Normative References in Legal Considerations

Furthermore related to consideration the judge's law which sometimes refers explicitly to Article 41 of the Marriage Law and sometimes does not. In decisions that refer to normative, judges tend to show awareness that these provisions are base juridical for obligation post-divorce maintenance. However, when reference to Article 41 is not explicitly stated, this indicates approach reasoning laws that are more specific textual and procedural, as well as not enough notice context comprehensive protection law (Wibowo, A. 2025).

This is in accordance with the opinion (Syamsul Maarif 2020) that the application of norms in court decisions must be notice context social and goals broader law, especially in civil law close -knit family in relation to rights human rights. References explicit to the norm not

only form formal obedience, but also constitutes indicator that judges understand and use norms optimally in the context protection rights of interested parties (Uno et al., 2021) . Nothingness references explicit can cause weakness argumentative which has implications for quality decisions and legitimacy judicial in general.

Factors Influencing the Use of *Ex Officio Authority*

Several factors influence judges in exercising ex officio authority, including the ultra petita partium principle, evidentiary considerations, the husband's economic capacity, and the protection of women and children (Sukma, 2018) . The ultra petita partium principle is often interpreted narrowly as a prohibition for judges from deciding beyond the parties' claims, However, in family law disputes, strict adherence to procedural principles may conflict with the need to ensure **substantive justice**, particularly when the rights of women and children are at stake. so that the judge becomes reluctant set right financial which is not explicitly requested in the petitum. However, (R. Abdullah & Khairuddin, 2009) confirm that in context law family, this principle should not prevent judges from set normative rights attached, especially If this is necessary for fulfillment justice substantive.

Evidentiary limitations, particularly regarding the husband's economic capacity, are often used as reasons for limiting the determination of maintenance obligations. Nevertheless, the existence of financial obligations should not depend solely on evidentiary limitations, since Article 41 establishes the father's responsibility as a legal obligation following divorce. According to research (Haq et al., nd) (Setyowati 2022), judge in the case family often too much relies on formal evidence and ignores actual

material considerations relevant to ensure minimum needs of wife and children. Meanwhile that aspect ability husband's economy indeed relevant to determine big small livelihood, but not to determine whether or not there is this obligation, because Article 41 of the Marriage Law has put draft not quite enough answer as obligations that must be fulfilled filled by father (Noviyanti, 2025) (Noviyanti, 2024).

In addition, the judge's sensitivity to protection women and children proven become important variables that drive use authority *ex officio*. This is in line with legal theory right basic, which places protection right child as priority main in the case family where interests best child become gauge measuring main (Fineman, 2010). When the judge considers holistically aspect social, economic and protection rights, use authority *ex officio* tend to be more progressive and consistent with the goals protection laws mandated by law (Pramassari et al., 2025) .

Integrative Discussion

Overall, the findings demonstrate the existence of a normative–practical gap between Article 41 of the Marriage Law and judicial practice at the Pamekasan Religious Court. This gap arises because ex officio authority is often interpreted as discretionary power rather than **a juridical obligation inherent in the judicial function**. From a doctrinal perspective, ex officio authority should therefore be reconstructed as an **official duty of judges in divorce litigation cases,** particularly when the rights of women and children are involved. This inconsistency shows that although runway normative Enough strong, understanding juridical judge regarding obligations *ex officio* Still influenced by factors procedural, evidentiary, and sensitivity to aspects social. This

discussion emphasizes that interpretation and application authority *ex officio* must seen No as just room discretion, but as obligation juridical rights attached to the position of judge in order to guarantee justice substantive and protection right Woman as well as children, according to the purpose law family national. (Prianto & Ambarwati, 2025)

Non-inclusion living iddah, mut'ah, and living child in amar decision divorced the lawsuit at the Pamekasan Religious Court shows existence problem conceptual in understanding character normative Article 41 of Law Number 1 of 1974 concerning Marriage. Systematically, these provisions not only nature declarative, but contain order imperative that consequence law divorce must accompanied by arrangement not quite enough responsibility towards children and possible obligations towards former wife. Thus, when amar decision only load granting lawsuit divorced without set consequence financially, then construction laws that are formed become partial and potential ignore dimensions protection social from law family. In the perspective of systems theory law, this condition shows existence asynchrony between structure (judge as apparatus enforcer law), substance (norms of Article 41), and legal culture (method judge's view of ex officio authority). (Friedman, 2024) Decisions that do not include rights the financial in the end only finish formal aspects of termination marriage, but Not yet fully finish consequence the law comprehensively. This has implications for the birth of new burden for ex- wife and children, who must return go through effort other laws to obtain rights that should be established all at once in one verdict.

Variation implementation ex officio authority between decision the more show that practice justice still very dependent on subjectivity and orientation judicial decision of each judge. In a progressive decision, the judge positions himself as *guardian of justice* who actively ensures fulfillment right child even though it is not explicitly requested. (Idary et al., 2024) In contrast, in a more restrictive decision, the judge limits oneself in the petitum and avoid the possibility of being considered violate principle *ultra petita par* (Aman, 2025) *tium.* However, in the context law family, this principle cannot be understood rigidly as in the case civil normal, because there is interest public and the interests of vulnerable parties that must be protected. When ex officio authority is understood solely as choice discretionary, then what happens is disparity protection law : children in one case get guarantee livelihood, while children in other cases do not, though condition normative similar. This disparity is not only cause uncertainty law, but also has the potential violate principle *equality before the law,* because equal rights treated different consequence difference judge's interpretation (Ashari, 2024) . Because that, is necessary construction more assertive doctrine that ex officio authority in cases divorced sue is part from obligation position (official duty), no just right optional.

Differences in references explicit consideration of Article 41 of the Marriage Law in the consideration the law also shows variation quality argumentation juridical between decision. A decision that explicitly base the ruling in Article 41 and the Compilation of Islamic Law shows existence awareness normative that obligation living is consequence law direct from divorce (BPK Regulation, 1991) (Mahmudah, 2019) . On the other hand, when the

norm is not explicitly referred to, the argument law become not enough comprehensive and tends to nature procedural.

In the theory of reasoning law, reference normative No only problem formality, but is form legitimacy rationale that strengthens binding power of the decision. The absence of references explicit can cause impression that determination (or non- determination) of maintenance just consideration factual solely, not order normative law. The impact is the quality of reasoning in decisions become not enough transparent and difficult made into precedent argumentative for case similar in the future. In term long, this practice can weaken consistency jurisprudence and inhibit formation standard uniform protection in the environment religious courts.

Factors that influence use ex officio authority shows that the judge is in a tug of war between compliance procedural and demands justice substantive. *Ultra petita principle partium* often understood literally as prohibition absolute deciding outside the petitum, even though it is in law family there is dimensions protection that allows exceptions in the interest of best children. (Aman, 2025) Likewise, the aspect proof about ability husband's economy often made into reasons for not setting the nominal maintenan Thus, divorce decisions should not merely declare the dissolution of marriage but must also determine the legal consequences related to post-divorce financial responsibilities. ce, even though in principle the obligation remains there is. In this context, the judge should be able to use approach more progressive proof, for example by considering standard minimum needs of children or using estimate proportional based on condition social economics revealed at the trial. Considerations

ability economy of course relevant to determine quantity, but not to negate obligation That itself. In addition, the judge's sensitivity to the perspective protection women and children proven become factor determinant. The judge who has orientation protection right basic tend to be more active in using ex officio authority, because look at divorce No just termination relation private, but also events laws that have an impact social wide.

In an integrative manner, all This finding confirms existence gap between construction normative Article 41 of the Marriage Law and its implementation In practice, the Pamekasan Religious Court. Normatively, the obligation post- divorce maintenance is consequence laws that are inherent and independent entirely at the request of the party. However, in practice, its implementation Still fluctuating and influenced by the individual interpretation of judges. This gap shows the need strengthening doctrine that ex officio authority in cases divorced suing is an obligation juridical inherent in the function judiciary in law family. This affirmation can be done through guidelines technical justice, strengthening training perspective protection children and women, as well as formation consistent jurisprudence. Thus, the decision divorce no longer stops at the declaration break up marriage, but also comprehensively ensure sustainability rights financially vulnerable parties. This approach is in line with the objectives law family national, namely create justice substantive, certainty law and protection right human rights, especially for child as the most affected subjects from incident divorce.

CONCLUSION

An analysis of divorce decisions filed at the Pamekasan Religious Court shows that the judge's *ex officio* authority has not been consistently applied in every case. Not all decisions explicitly stipulate iddah maintenance and mut'ah compensation, and child support in the ruling, even though Article 41 of Law Number 1 of 1974 concerning Marriage provides a clear normative basis for a father's responsibility for the care and education of children, as well as potential obligations toward his ex-wife. This situation demonstrates a gap between imperative legal norms and their implementation in judicial practice. This gap indicates that the normative construction of Article 41 has not been fully internalized as a binding judicial obligation in divorce litigation cases.

A comparison of the analyzed decisions also shows variations in the use of judges' ex officio authority. In some cases case, the judge actively determines financial rights while in other cases the decision is limited to granting the divorce without determining post-divorce financial obligations. This variation shows that authority *ex officio is still interpreted within the framework of individual judicial discretion,* not as obligation juridical matters attached to the position. Such interpretation leads to disparities in legal protection and creates potential legal uncertainty for parties in similar cases. As a result, there appears disparity protection potential laws cause uncertainty and injustice for the parties.

Judicial reasoning in the operative part of the judgment further confirms these dynamics. In decisions that explicitly refer to Article 41 of the Marriage Law, the legal reasoning tends to be more systematic and demonstrates normative awareness regarding post-divorce financial obligations. On the other hand, in a decision that does not include references explicitly, the obligation

does not appear to be positioned as an imperative norm. Factors such as the interpretation of the ultra petita partium principle, evidentiary limitations, the husband's economic capacity, and judicial sensitivity toward the protection of women and children significantly influence the application of ex officio authority in practice.

Overall, this study confirms that judges' ex officio authority in divorce litigation should be understood as an imperative juridical obligation rather than merely a discretionary judicial power. From a doctrinal perspective, this study contributes to the reconstruction of ex officio authority as an official judicial duty in family law disputes, particularly when the rights of women and children are involved. Strengthening the implementation of Article 41 of the Marriage Law requires clearer doctrinal guidance and institutional commitment to ensure that post-divorce financial obligations are consistently determined in judicial decisions. Therefore, it is recommended that the Supreme Court develop more explicit judicial guidelines for Religious Court judges regarding the application of ex officio authority in divorce cases, particularly concerning the determination of iddah maintenance, mut'ah, and child support. This affirmation ensures that divorce decisions do not merely determine the legal status of marriage but also guarantee the consistent protection of the financial rights of wives and children. Thus, strengthening doctrinal understanding and ensuring consistent implementation of Article 41 of the Marriage Law are essential to achieve substantive justice in the practice of Religious Courts.

This study therefore contributes to the doctrinal development of Indonesian family law by positioning judges' ex officio authority as an official duty to ensure post-divorce protection for women and children.

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1. Mengabulkan gugatan Penggugat untuk sebagian;
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   3.1. Menetapkan Penggugat sebagai Pemegang hak asuh anak (hadhanah) atas anak yang bernama XXX, Lahir di Pamekasan, tanggal 07 Januari 2018 dengan tetap memberikan akses kepada Ayah kandungnya untuk bertemu, berinteraksi, dan membawa anak tersebut pada waktu tertentu dengan izin Penggugat;
4. Menghukum Tergugat untuk membayar kepada Penggugat Mut'ah berupa uang sejumlah Rp500.000,00 (lima ratus ribu rupiah);
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10% setiap tahun sampai anak tersebut dewasa dan/atau telah berumur 21 tahun dan/ atau telah kawin di luar biaya pendidikan dan kesehatan;

Tahun 1989 sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009, biaya perkara ini dibebankan kepada Penggugat;

Mengingat Pasal 49 Undang-Undang Nomor 7 Tahun 1989 sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009 dan ketentuan hukum lain serta hukum syar'i yang berkaitan dengan perkara ini;

Amar Putusan

MENGADILI:

1. Menyatakan Tergugat yang telah dipanggil secara resmi dan patut untuk menghadap persidangan tidak hadir;
2. Mengabulkan gugatan Penggugat secara verstek;
3. Menjatuhkan talak satu ba'in sughra Tergugat **(Tergugat)** terhadap Penggugat **(Penggugat)**;
4. Membebankan kepada Penggugat untuk membayar biaya perkara sejumlah Rp. 306.000,00 (Tiga ratus enam ribu rupiah);

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Penutup

Demikian putusan ini dijatuhkan dalam sidang permusyawaratan Majelis Hakim Pengadilan Agama Pamekasan yang dilaksanakan pada hari Selasa tanggal 24 Desember 2024 Masehi bertepatan dengan tanggal 22 Jumadil Akhir 1446 Hijriyah oleh Ismail, S.Ag., M.H.I. sebagai Ketua Majelis, Dra. Hj. Nurul Qalbi, M.H.E.S. dan Dra. Hj. Farhanah, M.H., masing-masing sebagai Hakim Anggota, putusan tersebut diucapkan pada hari itu juga dalam sidang terbuka untuk umum oleh Ketua Majelis beserta para Hakim Anggota tersebut, dan didampingi oleh Jamaliyah, S.Ag. sebagai Panitera Pengganti, dengan dihadiri oleh Penggugat tanpa hadirnya Tergugat secara elektronik.

Ketua Majelis,

ttd

Ismail, S.Ag., M.H.I.

Hakim Anggota,

ttd	ttd
Dra. Hj. Nurul Qalbi, M.H.E.S.	**Dra. Hj. Farhanah, M.H.**

Panitera Pengganti,

ttd