



*The Digest: Journal of Jurisprudence and Legisprudence* (2022) **3(1)** 1-14  
ISSN (Print) 2746-2110 | ISSN (Online) 2746-0371  
DOI: <https://doi.org/10.15294/digest.v3i1.56829>  
Published by the Faculty of Law, Universitas Negeri Semarang, Indonesia  
Available online at <https://journal.unnes.ac.id/sju/index.php/digest/index>  
Online since June 30, 2022

# **Analysis of Alimony Provision for Former Wives in the Case Study of Tangerang District Court Decision Number: 927/PDT. G/2017/PN. TNG**

Analisa Pemberian Tunjangan Bagi Mantan Istri Dalam Studi Kasus  
Putusan Pengadilan Negeri Tangerang Nomor:  
927/PDT.G/2017/PN.TNG

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## **ABSTRACT**

The allocation of post-divorce financial support to the ex-wife presents an intriguing topic, exemplified in the Tangerang District Court Decision Number: 927/Pdt.G/2017/PN.Tng, a case involving civil disputes arising from a divorce. The court ruled that the Reconviction Defendant/Convention Plaintiff must provide a monthly allowance of Rp. 17,500,000,- (seventeen million five hundred thousand rupiah) to the Reconviction Plaintiff/Convention Defendant until the latter

**Submitted:** 26/11/2021 **Reviewed:** 28/02/2022 **Revised:** 23/04/2022 **Accepted:** 11/06/2022



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remarries. Employing normative research methods with a normative juridical approach, the author observes that the judge, while referencing Article 41 of Law No.1 of 1974, failed to provide any legal reasoning in the judgment. This lack of legal reasoning suggests the panel lacked a sound legal basis, undermining the application of Article 41(c) of Law No.1 of 1974 regarding Marriage, which is non-imperative. Therefore, the importance of prudence, justice, and a robust legal foundation in rendering decisions is highlighted to prevent the issuance of frivolous or ambiguous judgments that could complicate the execution of court decisions.

**KEYWORDS:** Livelihood, Ex-Wife, Post-Divorce

### **ABSTRAK**

Pemberian nafkah kepada mantan istri setelah perceraian menjadi topik menarik untuk dibahas, salah satunya seperti dalam putusan Pengadilan Negeri Tangerang Nomor: 927/Pdt.G/2017/PN.Tng mengenai perkara perdata gugatan perceraian. Putusan tersebut menyatakan: "Menyatakan Defenden Rekonvensi/Penggugat Konvensi dihukum memberikan nafkah bulanan kepada Penggugat Rekonvensi/Pemohon Konvensi sebesar Rp. 17.500.000,- (tujuh belas juta lima ratus ribu rupiah) hingga Penggugat Rekonvensi/Pemohon Konvensi menikah lagi". Peneliti menggunakan metode penelitian normatif dengan pendekatan yuridis normatif. Dalam pertimbangan hukumnya, hakim merujuk pada ketentuan Pasal 41 Undang-Undang Nomor 1 Tahun 1974, namun tanpa memberikan alasan hukum apapun. Hal ini menunjukkan bahwa Majelis Hakim tidak memiliki alasan hukum yang kuat terkait fakta perkara *a quo* yang menjadi dasar penerapan Pasal 41 huruf c Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan yang bersifat tidak imperatif. Oleh karena itu, diperlukan kebijaksanaan, keadilan, dan dasar hukum yang kokoh dalam mengambil keputusan agar tidak menghasilkan putusan yang tidak beralasan atau bahkan ambigu, yang dapat mempersulit pelaksanaan putusan pengadilan.

**KATA KUNCI:** Nafkah, Bekas Istri, Pasca Bercerai

## I. INTRODUCTION

Marriage marks the formation of a significant new family chapter in the human journey. This sacred union represents the coming together of individuals, a divine connection marked by profound devotion. Anthony Giddens underscores the family's pivotal role in civil society, highlighting its immense influence in societal shaping.<sup>1</sup> The aspiration for a harmonious and thriving family life is universal, making the decision to marry a collective endeavor to construct a united, resilient household. Despite these aspirations, some encounter persistent challenges within their matrimonial journey, leading to unresolved issues and, in some cases, the critical decision of divorce.

Consequently, the issue of meeting the financial needs of the ex-wife post-divorce frequently emerges as a contentious matter between former spouses. In numerous instances of divorce, husbands find it challenging to comply with court decisions, often exceeding their financial capacity. This raises concerns, particularly when court mandates stipulate indefinite monthly support for ex-wives without clear or specified timeframes.<sup>2</sup>

Similarly, the intricacies of post-divorce financial support are highlighted in the Tangerang District Court Decision Number: 927 / PDT. G/2017/PN. TNG. The case involves a divorcing couple where the judge's ruling mandates the husband to provide a monthly income of Rp. 17,500,000 (seventeen million five hundred thousand rupiah) to

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<sup>1</sup> Anthony Giddens, "The global revolution in family and personal life." *Family in transition* 13 (2005): 26-31. See also Andi Hidayat Anugrah Ilahi, "The Evaluation of Early Marriage Law Renewal in Indonesia." *Unnes Law Journal* 7, no. 1 (2021): 129-152; Arsal, Thriwaty. "Woman's Position in Undocumented Marriages." *Komunitas* 6, no. 1 (2014): 26-37.

<sup>2</sup> See Hasanatul Jannah, "Kompetensi Hukum Pemenuhan Nafkah Istri Pasca Perceraian." *De Jure Jurnal Syariah dan Hukum* 2, no. 1 (2010); Nasriah Nasriah, Dachran S. Busthami, and Hamza Baharuddin. "Perlindungan Hukum Hak-Hak Istri Pasca Perceraian." *Journal of Lex Philosophy (JLP)* 2, no. 1 (2021): 15-31; Jaka Sandara, and Ikhwan Ikhwan. "Penetapan Nafkah Mantan Istri dalam Masa Iddah di Pengadilan Agama Sungai Penuh." *Jurnal AL-AHKAM* 11.2 (2020): 15-24.

the wife until her remarriage. This decision raises numerous questions about the criteria judges utilize to make such determinations.

Furthermore, it prompts inquiries into the rationale behind requiring post-divorce financial contributions from husbands for the sustenance of former spouses, especially when the marital relationship has ceased to exist. From a broader perspective, engaging in discussions and delving deeper into legal issues is crucial, recognizing law as a product of power intricately intertwined with will, interests, and the very foundations of power itself. This realization underscores the genesis of legal challenges, which may be deemed fair or unjust, beneficial or detrimental, and satisfactory or unsatisfactory, impacting both individuals and society at large.

To comprehend the intricacies of legal matters, one must acknowledge the dynamic interplay of various factors within the legal system. The concept of fairness, for instance, is subjective and can be shaped by diverse influences, ranging from cultural norms to societal expectations. In this context, the determination of what constitutes a just legal outcome becomes a complex endeavor. Moreover, the interests at play, whether individual or collective, often shape legal proceedings and decisions. The multidimensionality of these interests underscores the need for a nuanced understanding of power dynamics within legal frameworks. This involves recognizing how certain groups or individuals may wield influence to mold legal outcomes in their favor. The foundations of power, which include historical, social, and economic dimensions, form the bedrock of legal systems. The evolution of laws reflects societal shifts, economic structures, and power imbalances. By examining these foundational elements, one can unravel the intricate tapestry of legal problems and assess their implications for justice and equality.<sup>3</sup>

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<sup>3</sup> See Bagir Manan, Ali Abdurahman, and Mei Susanto. "Pembangunan Hukum Nasional Yang Religius: Konsepsi dan Tantangan dalam Negara Berdasarkan

Particularly noteworthy is the obligation imposed on non-Muslim husbands to financially support their ex-wives post-divorce until remarriage. The author is keen to explore the fairness and legal rationale behind this obligation for non-Muslims. The decision rendered by the Tangerang District Court (Case Number: 927/PDT.G/2017/PN.TNG) serves as a focal point for this inquiry, raising questions about the underlying principles and legal reasoning that govern such post-divorce financial responsibilities.

## **II. ALIMONY PROVISION FOR FORMER WIVES IN THE CASE STUDY OF TANGERANG DISTRICT COURT DECISION NUMBER: 927/PDT. G/2017/PN. TNG**

Marriage in Indonesia is governed by Law Number 1 of 1974 concerning marriage. Article 1, paragraph 2, defines marriage as: "*The spiritual bond between a man and a woman as a husband and wife, intending to establish a family, a joyful, and enduring home, founded on the oneness of the Almighty God.*" This legal definition encapsulates the profound significance of marriage in Indonesia. It emphasizes the spiritual connection between a man and a woman, uniting them in the roles of husband and wife. The primary purpose of this union is to form a family characterized by happiness and permanence, all under the auspices of the One True God. The wording reflects the cultural and religious values embedded in Indonesian society, emphasizing the

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Pancasila." *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 176-195. See also Gerald Allan Cohen, *Rescuing justice and equality*. (Harvard University Press, 2008).

sacred nature of the marital bond and its integral role in the establishment of a harmonious and lasting household.<sup>4</sup>

Marriage encompasses not only a physical union but also a profound mental and spiritual connection. Nevertheless, contemporary circumstances reveal an increasing number of marriages concluding in divorce due to various issues and challenges within the household.<sup>5</sup> Therefore, after a divorce, new challenges emerge, particularly concerning the financial support for ex-wives.

In the case under discussion, the court ruled that the husband (the Plaintiff) is obligated to financially support the wife (the Defendant) after the divorce until she remarries. This decision is specifically outlined in the judgment of the Tangerang District Court, Case Number: 927/PDT.G/2017/PN.TNG.

In the counterclaim:

1. Partially granting the counterclaim of the counterclaim plaintiff/counterclaim defendant;
2. Imposing an obligation on the counterclaim defendant/conventional plaintiff to provide monthly financial support to the counterclaim plaintiff/conventional defendant in the amount of Rp. 17,500,000 (seventeen million five hundred thousand rupiah) until the counterclaim plaintiff/conventional defendant remarries;

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<sup>4</sup> See Nirwan Nazaruddin, "Sakinah, Mawaddah Wa Rahmah Sebagai Tujuan Pernikahan: Tinjauan Dalil dan Perbandingannya dengan Tujuan Lainnya Berdasarkan Hadits Shahih." *Jurnal Asy-Syukriyyah* 21, no. 2 (2020): 164-174; Moh Faizur Rohman, "Implikasi putusan Mahkamah Konstitusi nomor 69/PUU/XIII/2015 tentang perjanjian perkawinan terhadap tujuan perkawinan." *al-Daulah: Jurnal Hukum dan Perundangan Islam* 7, no. 1 (2017): 1-27; Akhmad Munawar, "Sahnya Perkawinan Menurut Hukum Positif Yang Berlaku di Indonesia." *Al-Adl: Jurnal Hukum* 7, no. 13 (2015).

<sup>5</sup> Aminur Nuruddin, and Azhari Akmal Tarigan. "Hukum Perdata Islam di Indonesia", In Abdul Halim." *Ijtihad Kontemporer: Kajian Terhadap Beberapa Aspek Hukum Keluarga Indonesia*, (Jakarta: Kencana Prenada Media Group, 2004).

3. Dismissing the counterclaim of the counterclaim plaintiff/conventional defendant for any other relief sought.

Before delving into the court's decision, the authors initially examine the legal considerations made by the judge in rendering the verdict. Through the author's analysis, it becomes apparent that the judge, in applying and adjudicating the law, deviates from the prescribed procedural norms. The aspects of the analysis encompass:

The Judges' considerations immediately reflect a subjective judgment as they interpret the demand for post-divorce income outlined in the Plaintiff's answer and petitem as a legal consideration in the reconvention. Contrary to procedural norms, the formulation of the Plaintiff's answer does not include a reconvention claim. According to procedural law, if the Defendant asserts a reconvention claim in the answer, the Plaintiff in the Suspension becomes a Defendant in the reconvention. This grants the Defendant in the reconvention the right to provide a response and/or rebuttal to the propositions of the reconvention claim, followed by the Reconvention Plaintiff's right to submit a response (replics) to the Reconvention Defendant's answer. Subsequently, during the evidence stage, each party is entitled to submit evidence supporting their arguments, including documentary evidence and witness testimonies.

Upon examining the systematic structure of the Plaintiff's answer, it is evident that no reconvention claim was presented against the Defendant in the case at hand. Similarly, in the Defendant's replica, there is no indication of a response to a reconvention claim. Consequently, the Judges' subjective interpretation of the Plaintiff's demand for post-divorce income as a reconvention claim against the Defendant has significant repercussions on the Plaintiff's legal rights. The Defendant is unable to exercise their rights in compliance with procedural norms, specifically in providing responses and rebuttals to what the Panel of

Judges perceives as a reconvention claim filed by the Plaintiff. This misinterpretation hampers the Defendant's ability to present a detailed response to the supposed reconvention lawsuit.

Regarding the legal considerations outlined in paragraph 2 on page 30 of the panel of judges' decision, which states, "*considering, that on the claim for reconciliation, the Reconciliation Defendant/Convention Plaintiff also filed a response which is basically as follows... etc.*," is also an erroneous consideration. The response submitted by the Defendant was not directed at the Plaintiff's reconciliation claim but rather served as a replica or response to the Plaintiff's answer in the compensation.

In legal consideration in the reconvention in paragraph 3 pages 31 to 32 which states that "*Considering, that further against the petitum of the lawsuit of the Reconvention Plaintiff / Convention Defendant regarding the claim to punish the Reconvention Defendant / Penalty Plaintiff provides monthly income to the Reconvention Plaintiff / Convention Defendant in the amount of Rp. 25,080,829.95,- ..... etc.*", the panel of judges used the provisions of article 41 of Law No. 1 of 1974 concerning Marriage whose formulation reads as follows:

*"The consequences of the breakup of marriage due to divorce are:*

- a. Both mother and father are still obliged to maintain and educate their children, solely based on the interests of the child; where there is a dispute as to the possession of the children the Court renders its judgment;*
- b. The father is responsible for all necessary maintenance and education costs of the child; If the father is in fact unable to fulfill such obligations, the Court may determine that the mother bears the costs.*
- c. The court may oblige the ex-husband to provide subsistence expenses and/or determine some liability for the ex-wife."*



The authors disagree with this consideration because the Judge, in his legal analysis in the reconvention, relies on the provisions of Article 41 of Law No. 1 of 1974 concerning Marriage, specifically regarding the obligation of a husband to provide living expenses for his ex-wife. Within the text of Article 41, particularly in point c, there is the term "may" placed before "oblige." The inclusion of the term "may" implies that the provisions of Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage are not mandatory. Consequently, it suggests that these provisions do not need to be applied in every divorce case.

Even though the provisions of Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage are not mandatory, the Panel of Judges promptly applies these provisions in the present case without providing any legal justification in its considerations. The absence of legal reasoning regarding why the provisions of Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage are applied to the Plaintiff raises concerns about the lack of a legal basis for the decision. This lack of legal reasoning undermines the credibility of the Panel of Judges, as they failed to establish a connection between the factual circumstances and the application of Article 41 letter (c).<sup>6</sup>

The judge's legal consideration lacks specificity as it fails to identify the specific provisions of Article 41 in Law No. 1 of 1974 concerning Marriage referred to by the Panel of Judges. Article 41 encompasses distinct provisions in letters a, b, and c, each addressing different matters. Unfortunately, the judge's legal reasoning merely alludes to Article 41 without specifying the relevant letter. This ambiguity raises

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<sup>6</sup> See also Nani Soewondo, "The Indonesian marriage law and its implementing regulation." *Archipel* 13, no. 1 (1977): 283-294; Mark Cammack, Lawrence A. Young, and Tim Heaton. "Legislating Social Change in an Islamic Society-Indonesia's Marriage Law." *The American Journal of Comparative Law* 44, no. 1 (1996): 45-73; June S. Katz, and Ronald S. Katz. "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural and Legal Systems." *The American Journal of Comparative Law* 23, no. 4 (1975): 653-681; Xavier Nugraha, Risdiana Izzaty, and Annida Aqiila Putri. "Reconstruction of Minimum Age for Marriage as a Form of Legal Protection for Women (Analysis of Constitutional Court Decision No. 22/PUU-XV/2017)." *Lex Scientia Law Review* 3, no. 1 (2019): 40-54.

concerns about the precision of the legal basis for the decision, as it overlooks the need to specify the exact provisions applied to the case.

The Panel of Judges, both in legal considerations (page 32) and the verdict in the reconvention (line 2), asserts that the Appellant is obligated and penalized to provide a monthly income to the Appellant in the amount of Rp. 17,500,000 (seventeen million five hundred thousand rupiah) until the Appellant remarries. This judgment contradicts and deviates from the provisions of Article 41 of Law No. 1 of 1974 concerning Marriage, which the Panel of Judges utilizes as a legal basis in their considerations. Notably, Article 41, particularly in letter c, does not specify that the obligations of the former husband to the ex-wife must persist until the ex-wife remarries.

Hence, the legal rationale of the Panel of Judges, which employs or interprets the provisions of Article 41 of Law No. 1 of 1974 concerning Marriage, is flawed and lacks a legal foundation. Even if the issue of living expenses raised by the Defendant in their response is construed as a reconvention claim –*quod non*– it is incumbent upon the Defendant to substantiate the arguments of the claim. However, the Defendant failed to present distinct evidence pertaining to the cost of living demanded, as noted in the judge's consideration in paragraph 2 on page 30, which states:

"Considering, that the Reconvention Plaintiff / Convention Defendant in proving the arguments of his claim did not present separate evidence, but referred to the evidence presented in the convention suit, and vice versa the Reconvention Defendant / Convention Plaintiff still refers to the evidence presented in his convention claim"

The Defendant failed to produce distinct evidence regarding the requested living expenses, which were not explicitly formulated as a separate reconvention claim. However, despite this, the Panel of Judges

granted the Defendant's living expense request, drawing reference from evidence submitted by the Plaintiff. This evidence, found on pages 4 to 8, as outlined in the legal considerations on pages 31 to 32, states "*.....Against this claim, the panel of judges considered that as per the evidence letters (T.Rk/P.K-4, T.Rk/P.K-5, T.Rk/P.K-6, T.Rk/P.K-7, and T.Rk/P.K-8) the Reconciliation Defendant/Penalty Plaintiff had sent money in October 2017 ..... etc.*" In contrast, the evidence presented by the Plaintiff aimed to substantiate the accuracy of the Plaintiff's rebuttal to the Defendant's response, which asserted that the Plaintiff did not contribute to the Defendant's living expenses, and that the Defendant independently covered these expenses. Through the Plaintiff's evidence (P-4 to P-8), it becomes evident that the Defendant's claim, stating that the Plaintiff did not provide financial support and the Defendant managed their living expenses independently, is inaccurate.

### **III. CONCLUSION**

Finally, this study concluded that in this case, the Panel of Judges directed the Plaintiff to provide a monthly income of Rp. 17,500,000 to the Defendant until the latter remarries, relying on the provisions of article 41 letter (c) of Law No.1 of 1974. However, the panel did not offer a clear and detailed explanation for determining this ongoing financial obligation until remarriage. The author contends that the chosen legal basis lacks relevance and appropriateness, as the specified article does not mandate post-divorce support until remarriage. The author recommends that in rendering decisions, Judges should comprehensively consider all aspects, encompassing legal principles, ethical standards, and fairness. This approach aims to prevent post-divorce resolutions from inadvertently generating new issues and causing undue harm to either party.

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