



Considerations of Religious Court Judges in Determining Iddah and Mut'ah Post-Divorce Support

Haeratun

Universitas Mataram

Corresponding Author: Haeratun boharihaeratun@gmail.com

ARTICLE INFO

Keywords: Divorce, Divorce Lawsuit, Iddah Living, Mut'ah

Received : 25, December

Revised : 22, January

Accepted: 23, February

©2024 Haeratun: This is an open-access article distributed under the terms of the [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

The main problem of this research is the view of Islamic law regarding the payment of iddah and mut'ah maintenance for wives who are divorced by their husbands and how religious court judges consider in determining the iddah and mut'ah maintenance of wives after divorce. This research is a type of empirical or non-doctrinal legal research. The results of this research show that Islamic law relating to iddah and mut'ah livelihoods has its legal basis in article 149 letters and b and article 151 KHI. Giving mut'ah is the implementation of Allah SWT's command. To husbands to always associate their wives with the principle of *imsakum bil ma'ruf aw tasrihum bi ihhsan* (maintaining the marriage bond with kindness or letting go with kindness). The judge determines the amount of iddah and mut'ah support by considering justice and propriety and adapting it to the economic capacity of the ex-husband and the basic needs of the ex-wife and children.

INTRODUCTION

Marriage is a worship that can mature humans in undergoing spiritual experiences to get closer to Allah SWT. Married couples can motivate each other to improve the quality of worship and build a household full of Islamic values and give birth to offspring who have good morals. In human life, marriage is a natural process that is based on more than just the legally acknowledged biological needs of men and women. Islamic marriage law incorporates a number of fundamental components of a psychological and spiritual character, such as humanity, truth, and inner and outer existence. In addition, marriage is founded on Islamic principles, specifically those that apply faith and devotion to Allah and serve as the cornerstone of domestic life. Apart from that, marriage is also based on religion, namely religious aspects which are the main basis of household life by implementing faith and devotion to Allah. Faith, Islam and Ikhlas are some basic understandings which are based on three whole that a person needs to have before implementing them. In life, marriage has a very important meaning and position, because marriage can form a bond of social relations between people of different genders and officially within a complete family. In the common law system, often known as "customary law," marriage is the joining of a man and a woman to form a family that is conducted in accordance with religious and customary practices, involving the families of both parties. Meanwhile, marriage according to Islam is worship and sunnatullah, namely according to the qudrat and iradat of Allah SWT. At the time of the creation of this world. The Sunnah of the Apostle is a tradition established by the Apostle for himself and his people.

The purpose of human life is to seek happiness, and one of the means to obtain happiness is a marriage that is sakinah, mawaddah, and rahmah. Marriage is a legal and ethical means to fulfill human biological needs so that they are able to maintain offspring and save themselves from promiscuous sex. No less important, marriage has a sociological function which can unite two families which often have different socio-cultural backgrounds such as differences in social status, ethnicity, culture and customs.

In Article 1 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Marriage, namely the physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and happy family (household). Eternal based on the Almighty Godhead. Thus, marriage is a contract whose entire aspect is contained in the word tazwij or nikah and is a sacred ceremonial greeting.

Maintaining the continuity of household life and preserving it is not an easy thing to do. There are several factors that become obstacles and obstacles in realizing the noble goals of marriage, including; psychological, biological, cultural, economic factors and so on. Islamic law is the law that regulates various problems found in this life. A household whose integrity can no longer be maintained, due to continuous disputes and quarrels (*syiqoq*), whether caused by a husband who is irresponsible towards his wife and family, a wife who is disobedient or *nusyuz* and cannot be advised, and several other very

serious problems. It is difficult to find a solution, so Islamic law provides a way out. Islam provides an alternative through divorce (talak) as a sharia method and can only be used as a last resort (emergency). Divorce is a halal matter but is hated by Allah SWT. Rasulullah SAW strictly prohibited divorce, because divorce is not only the husband and wife who are harmed, if both have children, it is the child who really feels the impact, such as the loss of togetherness and even complete love from both parents.

The severance of a marriage bond is the end of the relationship between a man and a woman who live as legal husband and wife. In Law Number 7 of 1989 concerning Religious Courts, one of the authorities of the Religious Courts is to examine, decide and resolve cases at the first level for people who are Muslim, such as marriage cases. In filing a marriage case, there are two cases that fall under the authority of the Religious Court, namely divorce for divorce and divorce for lawsuit. Divorce talak is an initiative for divorce from the husband's side, and in the contents of the petitum his request for divorce is imposed on his wife. Meanwhile, a contested divorce is a petition submitted by the wife containing a petitum requesting the Religious Court to dissolve the marriage. In Article 144 of the Compilation of Islamic Law, divorce can occur due to divorce from the husband or wife who filed the lawsuit. The Religious Court must attempt and be unsuccessful in mediating a settlement between the parties before the judge's ruling in a trial there may be used to proceed with the divorce.

The judge as a mediator who will reconcile and decide the case must listen to both parties. The parties to the lawsuit must be present at the trial, so that they receive equal treatment and justice. This is in line with the demands and moral teachings of Islam where judges have the principle of obligation to reconcile the parties. The judge, as the party who has the responsibility to judge the parties, should listen to both parties in court without distinguishing between the two, so that the decision issued does not harm either party that is the importance of the judge's position in the trial. The court judge's decision essentially has 3 powers including; first, binding power (*bindende kracht*) means that the judge's decision can bind the parties involved in the case. Second, the strength of the evidence (*bewijzende kracht*), namely that the judge's decision has obtained certainty regarding something contained in the decision. The judge's decision can be used as proof of truth. Third, the power of execution (*executoriale kracht*), namely the power to carry out something that has been determined in the decision by force by several State instruments.

The issue of dissolution of marital relations is regulated in Article 38 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 concerning Marriage, that marriages can be dissolved due to death, divorce and court decisions. Furthermore, Article 39 point 1 of the Marriage Law states that "Divorce can only be carried out in front of a court hearing after the court has tried and failed to reconcile the parties." In Article 39 it can be understood that the dissolution of a marriage occurs if the vow of divorce is made in front of a trial at a competent religious court. If the divorce occurs

against the husband's will (divorce talak), the husband's obligations towards his wife include paying maintenance, both iddah and mut'ah.

In Article 116 of the Compilation of Islamic Law, one of the reasons a wife files for divorce is because of domestic violence or the husband's negligence in fulfilling his obligations, so that the wife demands maintenance rights from the husband. Initially, iddah and mut'ah maintenance was only given to ex-wives whose husbands had divorced them as regulated in Article 149 of the Compilation of Islamic Law. If the wife files a lawsuit against her husband, then he is not given the right to ask for iddah and mut'ah maintenance. The Supreme Court made a legal breakthrough by making regulations in Supreme Court Circular Letter Number 3 of 2018 regarding maintenance, the husband's obligation as a result of divorce for the wife as long as it is not proven nusyuz, to be given iddah and mut'ah maintenance.

In Article 149 of the Compilation of Islamic Law, letters a and b, it is explained that the husband is obliged to provide adequate mut'ah support to his ex-wife, in the form of money/objects, except if the ex-wife is divorced qobla dukhul, providing maintenance, food and kiswah to the ex-wife. Wife during the iddah period, unless the ex-wife has been sentenced to divorce or nusyuz and is not pregnant. In Article 151, during the iddah time, the ex-wife has a duty to look after herself, decline marriage proposals, and avoid getting married to someone else.

As for the provisions in iddah and mut'ah, every man who wants to divorce his wife is obliged to give a different nominal amount, because Islamic law and Positive law do not regulate the nominal amount that must be paid by men. Therefore, the judge can determine how much support the couple must pay. Judges are state bailiffs who are authorized by law to resolve cases and carry out law enforcement processes. Based on the background information provided above, the researcher is interested in learning about Islamic law's perspectives on the payment of Iddah and Mut'ah support to wives who have been divorced by their husbands, as well as the factors that religious court judges take into account when deciding whether to grant a wife's request for Iddah and mut'ah support following a divorce. Because of his position, the judge has the power to decide what duties to the husband should be fulfilled in order to uphold justice and benefit all parties, particularly to protect the wife's life following a divorce even in the event that she chooses not to file a claim.

THEORETICAL REVIEW

In this research, there are several theories that researchers use as analytical tools, including:

1. Theory of Free and Independent Judiciary Power (Independence of Judiciary)

Independent judicial power is the freedom of the courts to carry out their judicial duties. This kind of freedom is identical to the freedom formulated in legislation, namely the freedom to exercise judicial authority.

The administration of justice in a rule of law state is aimed at meeting the demands of justice seekers based on the legal awareness and ideals of society, including that the costs for justice seekers be as low

as possible, the resolution of cases is simpler and faster and they are resolved completely through legal channels. This is closely related to the belief that the law applies to all members of society and that the dignity and worth of every individual is the same and equal in life and before a judge.

In carrying out their functions, judges are obliged to maintain the independence of the judiciary as the holder of the judiciary. The independence of judicial power must be manifested in the attitude of judges who decide and examine cases handled. Interference in judicial affairs by other parties outside judicial authority is not permitted. Even though outside of judicial power there are still legislative and executive powers, which play a role in realizing national goals, in law enforcement, it is not permissible to influence each other but must play a role, to trigger and spur the movement of law in accordance with legal ideas in certain time, place and circumstances by carrying out the legal mission, namely realizing the values as referred to by Gustav Radbruch in the form of justice, certainty and benefit.

2. Theory of Justice

According to Gustav Radbruch, law is the bearer of the value of justice which is a measure of whether a legal system is fair or unfair. Furthermore, the foundation of law as law is the value of justice. Justice is therefore both normative and foundational for law. Dignified positive laws are all based on justice. According to Radbruch, one of the elements of the legal concept must be justice. Another component is finality and certainty. Justice and law are two sides of the same coin. If law is defined as a form and justice as material, then the value of justice is material that needs to be included into the legal form. Justice has normative and constitutive qualities for law since law is a form that must safeguard the value of justice. Since justice serves as the transcendental precondition for all dignified law, it is normative for law. Justice serves as both the standard for a good legal system and the moral cornerstone of the law. Stated differently, fairness is the cornerstone of law; without justice, a rule cannot legitimately be referred to as a law. This is consistent with Rawls' assertion that, regardless of a law's goodness and effectiveness, it must be replaced if it is unjust.

If a legal system is unjust, then the unjust legal system can only be determined by a special institution, namely a court appointed for that purpose. If in the court's opinion it turns out that there is an unfair legal system, then the law must be viewed as not law and not valid. In practice, the court does not have the authority to declare a legal provision invalid because the legal provision is unfair. However, this authority may be exercised by the Courts (especially the Constitutional Court and the Supreme Court) on a limited basis, only for reasons of legal certainty, namely that a legal provision does not conflict with legal provisions of a higher nature or hierarchy.

Justice is not the goal of law because the law must be able to realize justice or in other words, the concretization of justice is carried out through the law. Thus, a concrete understanding of justice can be seen from an

understanding of the law. Just as justice is subjective which is realized by law which is also subjective, law is a social instrument that follows the development of society.

METHODOLOGY

This research is non-doctrinal research or empirical legal research with a socio-legal approach. This approach works to find correct answers by proving the truth sought in or from several social facts that have legal meaning. As for non-doctrinal research (socio legal research), namely law as a social institution is always related to other social variables. Therefore, law cannot be studied only through a series of laws (law in books), but must also be studied how law works in practice (law in action), its historical background, its relationship with the soul of society or nation and so on. The approach method used in this research is the socio-legal approach, which is an approach in legal research that is focused on studying legal phenomena from a social science perspective. Apart from that, researchers also use a statutory approach or statute approach, a conceptual approach and a case approach. The issues that will be discussed relate to the view of Islamic law regarding the payment of iddah and mut'ah maintenance for wives who are divorced by their husbands and the considerations of religious court judges in determining the iddah and mut'ah maintenance of wives after divorce. The data source in this research uses primary legal material in the form of Marriage Law Number 1 of 1974 Jo. Law number 16 of 2019 concerning marriage, presidential instruction number 1 of 1991 concerning KHI, law number 7 of 1989 Jo. Law no. 3 of 2006 Jo. Law number 50 of 2009 concerning religious justice and SEMA number 1 of 2017 concerning the implementation of the formulation of the results of the plenary meeting of the supreme court chamber in 2017 as a guideline for carrying out duties for the judiciary in divorce and divorce cases. Secondary legal materials in this research are various materials that are closely related to primary legal materials in the form of the Koran, Al-Hadith, textbooks, journals and others. Apart from that, primary legal materials were also obtained directly from respondents or informants

RESEARCH RESULTS AND DISCUSSION

1. Views of Islamic Law Regarding Payment of Iddah and Mut'ah Support for Wives Divorced by Their Husbands

This practice of iddah living has been going on since the time of the Prophet Muhammad. This practice is based on the Al-Qur'an Surah At-Thalaq verse 7 which means: "Let the person who has the freedom to provide a living according to his ability, and the person who has limited sustenance, should provide a living from the wealth that Allah has given him. Allah does not burden a person except (according to) what Allah gives him. Allah will give you spaciousness after narrowness."

The verse explains that a husband should provide for his wife and children according to his ability, so as to give them space, if he is a person who has space. Imam Syafi'i and his companions said, "Maintenance must be

determined and limited, Hakim and mufti do not need to carry out ijtihad in this matter. So, what is taken into consideration in this case is the condition of a husband, whether he is rich or poor. The wife's condition and her adequacy do not need to be considered. Divorce or talak raj'i (talak 1 and 2) has not yet resulted in the dissolution of the marriage in the true sense. Therefore, a wife who has been divorced by her husband during the iddah period is still seen as the wife of her husband who has rights and obligations even though they are no longer full. There are several opinions of scholars regarding the law of paying iddah living, including:

- a) Women who have been divorced by raj'i have the right to receive a living and a place to live based on the consensus of the ulama. Her status is still a wife in accordance with the word of Allah SWT QS. Al-Baqarah (2):228 which means: "And the wives who are divorced (must) restrain themselves (wait) three times the quru'. It is not permissible for them to hide what Allah created in their wombs, if they believe in Allah and the Last Day. And their husbands have more right to return to them in that (period), if they want improvement. And they (women) have rights balanced with their obligations in an appropriate manner. But husbands have advantages over them. Allah is all-mighty and all-wise.";
- b) A woman is divorced while she is pregnant. If the woman who is divorced is pregnant, she is obliged to provide various types of income according to the agreement of the ulama. Based on Qs.At-Thalak verse 6 which means: "Place them (wives) where you live according to your ability and do not cause trouble for them to narrow their (hearts). And if they (wives who have been divorced) are pregnant, then give them their living until they give birth, then if they breastfeed your (children) then give them the reward, and discuss (everything) among you. Well, and if you encounter difficulties, then another woman may breastfeed (the child) for him." From the explanation of this verse, Allah SWT. Suggests to husbands who divorce their wives to provide a place to live, a living to make life easier for their wives, especially when the wife is pregnant. ;
- c) Women undergoing talak ba'in are not pregnant. As for women who are undergoing iddah talak ba'in and are not pregnant, the ulama have different opinions regarding their livelihood. According to the Hanafi School of thought, if the wife is not pregnant, then she is obliged to provide various types of support, as a result of being delayed during the iddah period for the sake of the husband's rights. This support is

considered a debt and is counted from the time the divorce is imposed. The obligation to provide for the wife does not disappear simply because of the wife's consent or because of a court decision. According to the Hambali School, living expenses are not required for her, nor is there a place to live because Fatimah bint Qais was divorced by her husband with triple divorce, the Prophet Muhammad SAW. Did not determine for him a living and a place to live. Meanwhile, the Maliki and Syafi'i schools say that only a place to live is required for them, in accordance with the word of Allah SWT. In the letter At-Thalak verse 6 which means: "Place them (the wives) where you live according to your ability and do not make it difficult for them to narrow their (hearts)". It is mandatory for the wife to stay at home even if the wife is pregnant or not. It is not obligatory for him to make a living in the form of food and clothing based on the explanation of Allah SWT. In his word which means: "If they (wives who have been divorced) are pregnant, then provide for them until they give birth." Understanding this verse shows that it is not mandatory to provide maintenance for a wife who is not pregnant;

- d) According to some scholars, a wife who is carrying out iddah due to the death of her husband, regarding the right to support the iddah of the ex-wife in the state of iddah due to the death of her husband, does not have the right to support or residence, considering that the assets inherited from her husband have now become the rights of the heirs, including the wife and their children. ;
- e) A wife who is performing Iddah as a result of a marriage that is doubtful, a wife who is undergoing an Iddah period due to a broken marriage or one that contains doubts, then there is no support for her according to the majority of ulama. Because there is no support for him in a broken marriage, therefore there is no support for him while he is undergoing his iddah period. The Maliki School obliges the person who agrees to fulfill the wife's rights if she is pregnant because the wife is restrained by the husband. If the wife is not pregnant, or the marriage is in fasakh or in li'an, then it is only obligatory for her to live in the place where the wife lives;
- f) The wife is the cause of divorce/khuluk, in the case of nusyuz, the school of thought scholars agree that a wife who is nusyuz has no right to maintenance, but they have different opinions regarding the limits of nusyuz which results in loss of

maintenance. According to the Maliki school of thought, a woman who separates herself from her husband by talak khuluk does not have the right to receive maintenance unless she is pregnant. And every woman who divorces because of li'an cannot claim maintenance from her husband, even if she is pregnant.

Quoted from the book *al-Ahwal as-Syakhshiyah Fi as-Syari'ah al-Islamiyah*, it is explained that it is not obligatory to earn a living in iddah for three types of women. First, a woman whose marriage broke up because her husband died. Second, the woman is the cause of the divorce. Third, women who marry in an invalid contract (*syubhat*). Regarding the levels in the provision of this iddah living, there are no definite provisions on the levels. However, school of thought scholars agree that maintenance for the wife is obligatory, which includes three types, namely; clothing, food and shelter. They also agree on the size of the maintenance depending on the circumstances of both parties. If the husband and wife are well off, then the living that must be provided is the living of the person who can afford it, if they cannot afford it, then the living must be adjusted accordingly. So, what is meant by the level of the wife's ability and inability is the level of her family's ability or not, namely the level of family life.

Fulfilling the wife's needs (food, clothing and shelter) must be adjusted to current developments and local customs, of course in addition to her husband's capabilities. In each place, this is enforced according to the habits of the people, and cannot be replaced with another unless there is consent, according to the time and place, condition and person concerned, taking into account the husband's condition, whether rich or poor.

In Article 149 KHI it is explained that if the marriage breaks up due to divorce, the ex-husband can be obliged to do several things. In point b, it is stated that one of the husband's obligations is to provide food, food and *kiswah* to his ex-wife during the iddah period unless the ex-wife has been sentenced to talak ba'in or *nusyuz* and is not pregnant. The husband has this obligation because their marriage broke up due to talak, in this case talak *raj'i*, where in talak *raj'i* the husband still has the right to reconcile. Because in fact, they are still a legal husband and wife until the wife's iddah period has expired.

The provisions regarding reconciliation can be seen in Article 151 of the KHI which explains that the ex-wife, while in iddah, is obliged to look after herself, must not accept another man's proposal and must not marry another person. This article explains that the one who has the most rights to her is her ex-husband, when the ex-husband and wife want to reconcile, they are allowed to reconcile.

Apart from being able to see the uterus, the iddah period is also useful as a consideration period for the ex-husband whether to return (reconcile) or continue to divorce. For this reason, the husband is obliged to pay maintenance during the iddah period because the wife is suspended (dependent) and cannot accept another man's proposal because the husband still has the right to

reconcile, but the husband's obligation to provide iddah maintenance will be terminated when the ex-wife is nusyuz. The exact size of the iddah living or its level in regulations in Indonesia is not found. However, in PP no. 9 of 1975 and Law on Religious Courts Number 7 of 1989 as amended by Law Number 3 of 2006 and Law Number 50 of 2009, it is explained that during the course of a divorce lawsuit based on the petition of the applicant or respondent, the court can determine the amount of maintenance that must be borne by the husband.

Based on the regulations regarding iddah maintenance, there are no specific guidelines for determining the amount or amount that will be borne by the husband. In this case, the judge will look for a middle way so that the maintenance that will be charged to the husband can meet the needs of his ex-wife, and not be too burdensome for the ex-husband.

Meanwhile, giving mut'ah is the implementation of Allah SWT's command. To husbands to always associate their wives with the principle of *imsakum bil ma'ruf aw tasrihum bi ihsan* (maintaining the marriage bond with kindness or letting go with virtue). Therefore, even if the marriage relationship is forced to be terminated, good treatment must be maintained, good relations with the ex-wife and her family as far as possible, in addition to carrying out the mut'ah with sincerity and courtesy, without showing the slightest anger, let alone insults. And harassment. The mut'ah referred to is clothing or property given by the husband to a divorced wife in excess of the dowry or in exchange for the dowry as in the case of a *mufawwidhah* woman to comfort the woman's heart, and to compensate for the pain caused by separation.

The legal basis for Mut'ah is found in the Word of Allah SWT. QS Al-Baqarah verse 236 which means: "There is no sin for you, if you divorce your wives who have not been touched (interfered) or whose dowry has not been determined. And you should give mut'ah, to those who are able according to their ability and to those who are not able according to their ability, namely giving in an appropriate way, which is an obligation for those who do good." In Surah Al-Baqarah verse 241 which means: "To divorced women (their husbands should give mut'ah according to what is right, as an obligation for those who are pious." It is also found in Surah Al-Ahzab verse 49 which means: "O you who believe, if you marry believing women, then divorce them before you interfere with them, then there is no iddah period for them that you need to take into account. But give them mut'ah and let them go in the best way possible."

According to Imam Ath-thabari, what Allah SWT means by his word that divorced women should be given mut'ah by their husbands is something that can please the wife, whether in the form of clothes, servants' property, or anything else that can comfort her heart? Several verses relating to mut'ah as mentioned above require husbands to be obliged to provide mut'ah, in addition to maintenance, to the wife they are divorcing. This is also acknowledged by Ibn Qudamah. In line with this, according to several narrations conveyed by Hanafiyah scholars, Imam Ahmad bin Hanbal is of the opinion that mut'ah is obligatory for all wives who are divorced, without considering the type of

dowry and divorce. This opinion is based on Zahir's meaning from Surah Al-Baqarah verse 241 and Surah Al-Ahzab verse 49.

By considering various narrations which they thought were mutawatir, which differed from that opinion, they compromised the zahir wishes of the verse with these narrations. They concluded that the basic law of mut'ah is Sunnah. The same opinion was also expressed by Imam Malik, Abu' Ubaidillah, qadhi Syuraih and others. According to Malikiyyah scholars, the only wives who are entitled to mut'ah are those whose dowry is mahr al-mitsl and are divorced qabla ad-dukhul.

Wives whose dowry is mahr al-musamma, who are divorced bakda ad-dukhul or whose divorce is at the wife's initiative, such as khulu' and fasakh, as well as divorce because of li'an, are not entitled to mut'ah. According to Imam al-Turmuzy, Atha' and al-Nakha'iy, women who are in khulu' still have the right to receive mut'ah. And according to the ahl-al-ra'y ulama, women who are li'an also still have the right to receive mut'ah. Meanwhile, some Malikiyyah scholars, such as Ibn Shihab, still maintain that all women who are divorced anywhere on earth have the right to mut'ah.

Provisions regarding mut'ah are also regulated in positive law in Indonesia. As in Article 41 letter (c) of Law Number 1 of 1974 as amended by Law Number 16 of 2019. This article explains that a husband can be charged with an obligation after a divorce. These obligations are explained in more detail in the Compilation of Islamic Law (KHI) Article 149 which states the obligations that can be imposed on an ex-husband. In point (a), it is explained that when a divorce occurs due to divorce, the ex-husband is obliged to provide appropriate mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is divorced qabla al-dukhul. In the Compilation of Islamic Law, it is explained in Article 158 that the husband is obliged to provide mut'ah if; the dowry has not yet been determined for the ba'da dukhul wife and the divorce is at the husband's will.

Based on Article 158 paragraph (b), if the divorce originates from the wife's initiative through khulu', the husband is not obliged to pay mut'ah to his ex-wife. The husband is obliged to provide mut'ah if the conditions contained in KHI Article 158 exist. If there are no provisions mentioned in Article 158 KHI, then the husband is not obliged to give mut'ah to his ex-wife, the law is for husbands to give mut'ah. If Article 158 KHI is not fulfilled, it becomes Sunnah, as stated in Article 159 KHI, namely mut 'ah sunnah is given by the ex-husband without the conditions in Article 158 KHI.

There is no text that states the amount of mut'ah that must be given to the ex-husband. In QS Al-Baqarah verse 236 there is no mention of the maximum and minimum limit of mut'ah that a husband must give to his wife. Likewise, in statutory regulations there are no specific guidelines governing the size of mut'ah. However, Article 160 KHI explains that the size of mut'ah is determined based on the husband's ability. So the size of the mut'ah depends on the husband's ability. This requires the judge's ijthad in determining the amount based on several facts revealed at trial. If there is a dispute between

husband and wife regarding the level of mut'ah, then the judge assesses it based on the results of his ijtihad according to the appropriateness of the conditions by taking into account the condition of the husband and wife, as stated by the Hanafi school of thought, namely rich, poor, lineage and character. This opinion is based on the words of Allah SWT QS. Al-Baqarah verse 236 which means: "And you should give a mut'ah (gift) to those who are capable according to their abilities and those who are poor according to their abilities (also)."

One of the conditions given by this verse regarding mut'ah is propriety. It can be seen from the statement that states that, people who are capable according to their abilities and people who are poor according to their abilities (also), namely giving according to what is appropriate. With this statement, there are three elements of propriety that must be considered in giving mut'ah, namely: First, propriety or appropriateness based on the husband's abilities, and based on the verse above. This means that a rich husband does not deserve to give the same amount of mut'ah as a husband who belongs to the poor group or vice versa; Second, it is proper or appropriate for the wife, meaning that a wife who is used to living a sufficient or luxurious lifestyle when she was married to her husband or previous family, is not worthy of receiving a small amount of mut'ah. Therefore, the wife's condition is used as the basis for determining the mut'ah; third, it is proper or appropriate according to the customs that apply in the environment where they live. This needs attention, at least to avoid social inequality between the wife who was given mut'ah and the people around her.

2. Religious Court Judges' Considerations in Determining Wife's Iddah and Mut'ah Support After Divorce

Judges as the incarnation of the law and as judge made law, have obligations not only aimed at carrying out judicial functions, but furthermore, judges are required to be able to resolve social problems so that judges should listen to the sense of justice expressed by the community. The judge's decision must consider all aspects of a juridical, sociological and philosophical nature, so that the judge's decision can fulfill the objectives of the law itself, namely legal certainty, justice and expediency. The juridical aspect is the first and main aspect based on the law. Must understand the law by looking for laws related to the case at hand. Judges must assess whether the law is fair, useful or provides legal certainty if enforced, because one of the objectives of the law is to create justice.

In applying the law, judges do not simply apply the legal text, but rather apply the essence of the law to each case they face so that the goals and functions of the law can be achieved. The essence of law is the spirit of legal regulations which causes the law to come to life and function as expected. The text of legal regulations is a physical body, namely the place where the essence (spirit) of the law resides. A legal text without the spirit of the law will be a dead law. The spirit of law without legal text becomes empty. Judges are obliged to reformulate legal texts to accommodate the spirit of the law through their decisions.

The philosophical aspect is an aspect that is based on truth and justice. Meanwhile, the sociological aspect considers the cultural values that live in society. Philosophical and sociological aspects, their application really requires extensive experience and knowledge as well as policies that are able to follow neglected values in society. Meanwhile, its implementation is very difficult because it does not follow the principle of legality and is not tied to the system. The inclusion of these three elements does nothing but ensure that the decision is considered fair and accepted by the community.

Basically, a judge cannot make decisions that are not requested, however, a judge has *ex officio* rights which are used in divorce and divorce cases relating to the provision of *iddah* maintenance, child support and *mut'ah* as long as the wife is not *nusyuz*. In divorce cases, the *ex officio* right aims to provide legal protection and justice for the wife's rights. The judge's *ex officio* right is used when the wife does not know her rights after the divorce. In realizing legal certainty, justice and expediency in determining *iddah* and *mut'ah* income, there are several factors that are taken into consideration by some judges, including:

1. The husband's ability to pay *iddah* and *mut'ah* maintenance to his ex-wife by looking at her work background, this becomes the judge's guide in determining *iddah* and *mut'ah* maintenance based on the opinion of the majority of *fiqh* scholars as previously explained, especially *mut'ah* based on Article 160 KHI which explains that the size of *mut'ah* is determined according to the husband's ability. As for *iddah* income, it must be done in a virtuous way, namely good deeds that are interactive in nature, meaning that they are not only felt by the perpetrator but are also felt by other people who interact with them, in this case husband and wife. For the husband to charge something according to his ability.
2. The wife's adequate living needs, whether they are adequate or not, can be determined by the amount of living habits that the husband provides for the wife while they are still together or can also be measured from the adequate standard of living in the area where the wife lives.
3. Age of marriage, this is one of the judge's barometers in determining the level of *mut'ah*. The longer the marriage, the greater the size of the *mut'ah*, because the longer the marriage, the longer the wife will carry out her role as a wife who plays a role in taking care of her husband and children as well as the mental burdens suffered by the wife. Meanwhile, the purpose of *mut'ah* is giving to comfort the heart of a divorced wife.

4. The size of the dowry or dowry at the time of the marriage contract (equivalent to the mitsil dowry). The value of the mut'ah may be greater than the dowry, but it should not be less than the dowry, but this goes back to paying attention to the facts at trial regarding the husband's abilities. In determining the iddah income, we don't look at that factor.
5. The value of fault or the cause of problems in the household resulting in divorce is also one of the judges' concerns in determining mut'ah. If in the judge's opinion many mistakes were made by the husband, it is likely that the mut'ah will be greater.
6. Facts at trial regarding whether a wife is nusyuz or not, as regulated in fiqh and Article 152 KHI. It is absolutely necessary for the panel of judges to weigh proportionally because basically it is very difficult to declare a wife nusyuz, especially in divorce cases based on the letter F, because each other is sometimes both the cause of the commotion. Nusyuz for wives is also difficult to implement, because the behavior of husbands cannot be used as a measure due to neglect of income, neglect and violence committed by husbands, which triggers wives to disobey their husbands in a decent manner. This applies to determining iddah living, because a wife's nusyuz is not related to whether a wife is nusyuz or not.
7. Agreements outside of court, it is not uncommon for an agreement to occur between the Petitioner and the Respondent regarding the amount of iddah and mut'ah support so that in such cases the judge considers it based on the agreement between the Petitioner and the Respondent and this will be fairer in making a decision.

The provision of iddah and mut'ah maintenance in its implementation is not illusory or cannot be implemented, that is, in contested divorce cases, the presence of the husband as defendant must be taken into account. The presence of the defendant is very important at the trial in examining the husband's income and ability to provide iddah and mut'ah support, this is the basis for the judge's consideration in determining the amount of iddah and mut'ah support, taking into account the husband's ability and the spending money that can be provided and taking into account a decent standard of living for the plaintiff.

The basis of the decision which is not illusory is that the determination of iddah and mut'ah maintenance in a lawsuit or khuluk divorce case must be based on the presence of the defendant, and the judge in determining iddah and mut'ah maintenance must consider the husband's income and abilities, and it is hoped that the decision will be carried out voluntarily by the defendant. The

judge cannot ex officio sentence the defendant to provide iddah and mut'ah support to the plaintiff, if the defendant is not present at the contested divorce case.

The implementation of the decision regarding the provision of iddah and mut'ah maintenance is carried out outside the court, and the defendant carries out the decision voluntarily. Even though the reading of the decision was attended by the plaintiff and the defendant, the implementation of the decision in granting iddah and mut'ah maintenance in contested divorce cases still has problems in its implementation. Because there is no instrument that can force the defendant to carry out the decision, such as in divorce cases.

SEMA No. 1 of 2017 on 19 December 2017 concerning the implementation of the formulation of the results of the plenary meeting of the Supreme Court chamber in 2017 as a guideline for the implementation of duties for the judiciary in divorce cases in its decision which is stated with the sentence paid before pronouncing the vow of divorce. The divorce vow can be carried out if the wife does not mind if the husband does not pay his obligations at that time. So, the implementation of the divorce decision in divorce can be carried out through a vow of divorce. In a lawsuit or khuluk divorce case, if there is no request for execution from the losing party or the defendant, then the decision is deemed to have been carried out voluntarily by the defendant, because in a lawsuit divorce case no one can force the defendant to pay iddah and mut'ah maintenance. Which has been decided. The plaintiff can take legal action if the decision is not implemented voluntarily by the defendant, namely by submitting a request for execution of a sum of money to the head of the religious court that decided the case.

Execution is a forced effort to carry out a decision. If the losing party is not willing to carry out the decision voluntarily, then a new execution can be carried out (article 200 paragraph (11) HIR and article 207 RBg, related to decisions that have permanent legal force. The plaintiff can submit a request for execution in the form of a sum of money and make one of the assets of the respondent for execution is confiscated, the party requesting the execution must ensure that the asset of the respondent truly and definitely belongs to the respondent and that the asset is not in the hands of a third party or is not being used as collateral for a debt with the relevant bank or financial institution, because that is the item that will later be used to pay iddah and mut'ah allowances that were not paid by the defendant to the plaintiff.

CONCLUSIONS

Based on the discussion above, it can be concluded that a wife who is divorced by her husband must be given iddah and mut'ah maintenance. By providing iddah and mut'ah support during the iddah period, the ex-wife's life is guaranteed until she can remarry or can support herself after the end of the iddah period and mut'ah is given to comfort the heart of the wife who has been divorced. There are no standard rules governing how judges formulate the

amount of iddah and mut'ah living both in the texts of the Qur'an and al-Hadith and in positive law... but there are only keywords given, namely the husband's ability and the wife's suitability. So the determination of the amount of iddah and mut'ah maintenance is completely left to the judge's *ijtihad* while still taking into account the value of the husband's abilities and the wife's suitability.

The judge's consideration in determining iddah and mut'ah maintenance by the court can be granted if there is a demand from the wife. However, if the wife does not sue the judge then she is given her rights because the judge's position is *ex officio* by the state to determine the iddah and mut'ah living as a form of state protection for its citizens through the judge's decision.

ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

REFERENCES

Abdul Djamali, *Hukum Islam (Berdasarkan Ketentuan Kurikulum Konsorsium Ilmu Hukum)*, Mandar Maju, Bandung 2002

Abdul Rohman Ghozali, *Fiqh Munakahat*, Prenada Media Group, Jakarta, 2012

Abdur Rahman L Doi, *Perkawinan Dalam Syariat Islam*, Rineka Cipta Jakarta, 1992

Abdurrahman, *Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam*, Edisi 1, Cet V, Banjarmasin, Akademika Pressindo, 2016

Abu Abdullah Muhammad bin Ahmad al-Anshari al-Qurthuby, *al-Jami' al-Ahkam al-Qur'an*, Juz 18 Jilid 9, Beirut, 1995

Abu Ja'far Muhammad bin Jarir Ath-Thabari, *Tafsir Ath-Thabari*, Jilid 2, Darussalam, Bandung, 2007

Ahmad Mujahidin, *Pembaharuan Hukum Acara Peradilan Agama*, Bogor, Ghalia Indonesia, 2012

Ahmad Rifa'I, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2011

Amir Syarifuddin, *Hukum Perdata Islam di Indonesia*, Jakarta, Prenada Media, 2006

- Andi Suherman, Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan, *Jurnal Hukum* 1, no.1, Makasar, UMI, 2019
- Erfani Alian Abdullah, *Hukum Perceraian Islam Kontemporer*, Yogyakarta, Deepublish, 2006
- Imam Asy-Sya'rani, *Al-Mizan Al-Kubra, Dar al-Fikr*, Beirut, 1995
- Kurnia Munir dan Zulfahmi Alwi, Tinjauan Hukum Islam Terhadap Pengaruh Perkawinan Dengan Pertimbangan Strata Sosial Pada Masyarakat Sulawesi Selatan, *Qadauna*, Vol.2 No.3, 2021
- M. Yahya Harahap, *Kedudukan dan Kewenangan Acara Peradilan Agama*, Sinar Grafika, 2005
- M.A. Tihami dan Sohari Sahrani, *Fikih Munakahat, Kajian Fikih Nikah Lengkap*, PT. Raja Grafindo Persada, Jakarta, 2014
- Muhammad Baqir al-Habsyi, *Fikih Praktis Menurut Al-Qur'an dan Al-Hadits*, Mizan, Bandung, 2002
- Muhammad Jawad Mughniyyah, *Al-Akhwat Al-Syakhsiiyyah, Ala Al-Mazahib Al-Khamsah*, Muassasah al-Sadiq, 2015
- Muhammad Muhyial-Din Abdul Hamid, *Al-Ahwal As-Syakhsiiyyah Fi As-Syari'ah Al-Islamiyyah*, Dar al-Kitab al-Arabi, Beirut, 1401 H/1989 M
- Muhammad Saleh Ridwan, *Perkawinan Di Bawah Umur, Jurnal Al-Qadau, Peradilan Dan Hukum Keluarga Islam* 2 No.1, 2015
- Mukti Arto, *Penemuan Hukum Islam Demi Mewujudkan Keadilan, Membangun Sistem Peradilan Berbasis Perlindungan Hukum Dan Keadilan*, Yogyakarta, Pustaka Pelajar, 2017
- Sayyid Sabiq, *Fikih Sunnah Jilid 2*, Darussalam Bandung, 2003
- Wahbah Az-Zuhaili, *Terjemah Fiqh Islam Wa Adillatuhu*, Jilid 9, Gema Insani, Darul Fikir, Jakarta, 2011

Haeratun

Wahbah Zuhaili, *Terjemahan Fiqh Islam WA Adillatuhu*, Alih Bahasa Masdar Helmy, Jilid 9

Zubair ahmad, *Relasi suami Isteri Dalam Islam*, UIN Syahid Jakarta, 2004