

Charges of Mut'ah and Nafkah Iddah in Divorce Cases Based on Justice Values

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Abstract. *The aim of the research is to analyze the provisions on mut'ah and iddah living in the provisions of Islamic law and the forms of lawsuits regarding mut'ah and iddah living in justice-based divorce cases at the Cilacap Religious Court. In this research the author uses an empirical legal research approach or sociological legal research. Empirical legal research or sociological legal research, namely research conducted on primary data or data obtained directly from sources. The research results show that the provisions governing mut'ah and iddah living in Islamic law come from the Koran, hadith and the opinions of ulama. forms of lawsuits regarding the imposition of mut'ah and iddah living in divorce cases at the Cilacap Religious Court, in divorce cases talak can be included in the husband's petition for divorce talak, it can also be included in the counterclaim (rekonpensi) and the judge can also use his ex officio right to impose mut'ah and iddah maintenance on the husband. Then, in divorce, the wife's lawsuit in her lawsuit can be summed up with demands for mut'ah and iddah maintenance, while the judge's ex officio right only applies to demands for iddah maintenance.*

Keywords: *Divorce; Iddah; Justice; Living; Mut'ah.*

1. Introduction

In the Qur'an it is stated that living in pairs, living in a soul mate is the instinct of all creatures of Allah SWT. including humans. From creatures created by Allah SWT. in pairs this is Allah SWT. created humans to reproduce and continue from generation to generation.¹

The relationship between a man and a woman is a requirement that has been created by Allah SWT. and to make the relationship legal, a marriage contract is required. In essence, every Muslim man can marry the woman he likes, but this principle is not absolute because there must be limits.² Islam regulates humans to live in pairs through marriage, the provisions of which are formulated in the rules mentioned in the marriage law. The purpose of marriage in Islam is to fulfill religious instructions by establishing a harmonious, prosperous and happy family.

¹ Abdul Rahman Ghazali, *Fiqh Munakahat*, Kencana, Jakarta, 2008, page. 12-13.

² Mohammad Daud Ali, *Hukum Islam dan Peradilan Agama*, Cet. 2, Raja Grafindo Persada, Jakarta, 2022, page. 5.

Humans are basically called to live in pairs and try to find the meaning of their lives in marriage. There are people who think that marriage limits freedom, but the majority of people state that marriage guarantees a peaceful life, this is in accordance with the rules in Article 1 of Law Number 16 of 2019 concerning Marriage which states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.³ So marriage is a religious union, because the legal effect is to bind a man and a woman in a physical and spiritual bond as husband and wife with a sacred purpose based on the belief in the Almighty God.

Marriage is very important for human life, both individuals and groups. In a legal way, relations between men and women become honorable according to their position, and the household is built in peace, peace and full of love between husband and wife. A marriage between a man and a woman creates a physical and spiritual relationship between them and society and a relationship with the assets obtained before or during the marriage.⁴

Islam itself justifies and permits divorce if this is the last resort and is considered better and opens up the possibility of divorce, either by means of divorce or by means of fasakh in order to uphold the principles of human independence and freedom. Islamic scholars throughout the ages have agreed that someone should not give divorce arbitrarily. Apart from the fact that divorce will be detrimental to the household itself, especially for children, sometimes or even not infrequently divorce has a negative impact on society at large and for quite a long time. It is within this framework that Islamic marriage laws were enacted in various Islamic worlds with the aim of, among other things, making divorce difficult.⁵

As is known in Islam, giving divorce is the husband's absolute right, but Islam provides a way for wives to carry out divorce using the khulu' method, namely breaking up the marriage according to the wife's wishes while the husband does not wish to do so.⁶ If a divorce occurs, the rights of the husband and wife are the same in terminating the marriage. They have the same rights, namely submitting a request or lawsuit to the Religious Court.⁷

In statutory regulations, the court may not refuse to examine and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and decide on it.⁸

³ Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan.

⁴ Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, UII Press, Yogyakarta, 2000, page. 1.

⁵ Muhammad Amin Suma, *Hukum Keluarga Islam di Dunia Islam*, Cet. I, Raja Grafindo Persada, Jakarta, 2004, page. 161.

⁶ Amir Syarifudin, 2011, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Kencana, Jakarta, page. 197.

⁷ Abdul Manan, 2008, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, Kencana, Jakarta, page. 385.

⁸ Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama

A judge is obliged to explore, follow and understand the legal values and sense of justice that exist in society.⁹ Judges are not only legal mouthpieces, they also have the responsibility to always dig deeper into the law, interpreting the law by connecting legal facts in the trial process which can then be seen and studied from the perspective of applicable law and the values of justice that live in society. so as to produce a decision that is worthy of justice.¹⁰

Then in the Supreme Court Circular Letter Number 1 of 2017 concerning the Implementation of the Formulation of the Results of the 2017 Supreme Court Chamber Plenary Meeting as Guidelines for Implementing Duties for the Court point C number 1, it mentions women's rights after divorce, payment of obligations resulting from divorce, especially iddah living, mut' ah and madliyah maintenance is paid before the pronouncement of the divorce vow. Furthermore, in the Supreme Court Circular Letter Number 2 of 2019 concerning the Implementation of the Formulation of the Results of the 2019 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court point C number 1 letter b, it is stated that the payment of the husband's obligations to the wife after divorce is paid before the Defendant takes the divorce certificate.

Research conducted by Hidayati Taruna Huda with the title Iddah Belief Demands That Are not Under The Husband's Capabilities in Palangka Raya City The research results show: The exwife demands a living that does not follow the ex-husband's capabilities in Palangka Raya, according to the theory of responsibility. The ex-husband has fulfilled his obligations. Benefits occur from providing idah maintenance according to the ex-husband's capabilities as specified in the decision. Ex-husbands in Palangka Raya respond to their wives' demands regarding income with honesty and openness. The ex-husband showed a social attitude by promising to pay part of Idah's maintenance, although not in full. This attitude is important to maintain good relations and avoid chapter prejudice in the future between husband and wife who have divorced.¹¹

The aim of the research is to analyze the provisions on mut'ah and iddah living in the provisions of Islamic law and the forms of lawsuits regarding mut'ah and iddah living in justice-based divorce cases at the Cilacap Religious Court.

2. Research Methods

In this research the author uses an empirical legal research approach or sociological legal research. Empirical legal research or sociological legal research, namely research conducted on

⁹ Undang-Undang Nomor 4 Tahun 2004 Tentang Kekuasaan Kehakiman Pasal 28

¹⁰ Hasanul Mulkan, Peranan Hakim Dalam Persidangan Perkara Pidana Sebagai Upaya Penegakan Hukum Pidana, *Jurnal Hukum Samudra Keadilan*, Vol 16 No 2 (2021): page 25

¹¹ Huda, H. T., Helim, A., & Norhadi, M. Iddah Belief Demands That Are not Under The Husband's Capability in Palangka Raya City. *Mir'ah: Family Law and Legal Culture*, 1(1), 2024, page. 1–13.

primary data or data obtained directly from sources.¹² The approach method used is the statutory approach. This approach is carried out by reviewing all laws and regulations related to the legal issue being handled.¹³

3. Results and Discussion

3.1. the provisions on mut'ah and iddah living in the provisions of Islamic law

Mut'ah is a gift from a husband to his ex-wife who is divorced, unless the ex-wife is qabla dukhul, either in the form of goods or money, the amount of the mut'ah is adjusted to suitability, the length of time the husband and wife have been married and is also adjusted to the husband's ability.¹⁴

According to the Shafi'i school of thought, mut'ah must be given to ex-wives who are divorced if the divorce comes from the husband, except for wives whose dowry has been determined and divorced before intercourse. Most scholars also agree. Mut'ah is obligatory for divorced wives if the wife has not been married and has not received a dowry, while mut'ah for divorced wives other than that is something that is recommended, this opinion is expressed by the Hanafi and Hanbali schools of thought.

In the Compilation of Islamic Law, it is explained that mut'ah is a gift from a former husband to a wife who has been given a divorce in the form of objects or money and other things.¹⁵ Mut'ah is regulated by the Compilation of Islamic Law Article 149 letter (a), Article 158, Article 159 and Article 160. Mut'ah is also regulated in the Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 concerning the Enforcement of Book II Guidelines for the Implementation of Duties and Administration of Religious Courts, 2013 Revised Edition.

Based on the provisions mentioned above, the husband's obligation to provide mut'ah to his ex-wife is the result of divorce or divorce filed by the husband, whereas if the divorce is proposed by the wife,¹⁶ The obligation to provide mut'ah is not regulated. The level of mut'ah is not explained in Islamic teachings, to determine the level of mut'ah it is returned to the judge by means of ijtihad. Shafi'iyah scholars are of the opinion that the size of mut'ah does not have a certain size, but it is sunnah to be no less than 30 dirhams or the same amount. The size does not exceed the mitsil dowry and it is sunnah not to exceed half of the mitsil dowry. In this

¹² Sukardi, *Metode Penelitian Pendidikan, Kompetensi dan Prakteknya*, Bumi Aksara, Jakarta, 2004, page. 33

¹³ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Prenadamedia Group, Jakarta, 2008, page. 133

¹⁴ Interview with Religious Court Judge Cilacap Drs.AF Maftukhin, MH

¹⁵ Kompilasi Hukum Islam Indonesia Pasal 1 huruf (j)

¹⁶ Aliah, K. I., Sultan, L., & Fatimah, F. Implikasi Dalam Pemberian Nafkah Iddah Dan Mut'ah Pada Perkara Cerai Talak Di Pengadilan Agama Makassar Kelas Ia. *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 8(2), 2021, page 99-116.

opinion, it is explained that when making *ijtihad* regarding the size of the *mut'ah* burden, it is explained that the judge should also look at the husband's condition, whether it is easy or difficult, rich or poor.

Iddah support is a gift from the husband to his ex-wife during the waiting period (*iddah*) in the form of living, *kiswah* (clothing), shelter and other living necessities.¹⁷ The obligation to provide *iddah* support to ex-wives is regulated in the Compilation of Indonesian Islamic Law: Article 149 letter (b): if the marriage breaks up due to *talak*, the former husband is obliged to provide support and *kiswah* to the ex-wife during *iddah*, unless the ex-wife has been sentenced to *talaq ba' in* or *nusyuz* and not pregnant. Article 152: The ex-wife has the right to receive *iddah* maintenance from her ex-husband unless he is *nusyuz*.

Based on the provisions above, in cases of *talak* divorce or contested divorce, the Judge of the Religious Court/*Syar'iyah* Court can *ex officio* determine the obligation of *iddah* maintenance towards the husband as long as the wife is not proven to be *nusyuz*.

Regarding the level of *iddah* living, there are no provisions that regulate it, either in the Koran, *hadith* or in positive law in Indonesia. However, this can be equated with the level of support that must be provided by the husband when he is still married. Because there are no provisions that specifically regulate the level of *iddah* income, there are differences of opinion among jurists.¹⁸

3.2. Form of Lawsuit Concerning Mut'ah and Iddah Support in Divorce Cases at the Cilacap Religious Court

According to the provisions of the applicable legislation, the dissolution of a marriage relationship results in legal consequences, namely the respective rights and obligations for the ex-husband and ex-wife. One of the rights and obligations of ex-husbands and ex-wives that must be fulfilled is the fulfillment of the wife's rights after divorce, in this case specifically for the ex-wife's *mut'ah* and *iddah* maintenance rights. This provision of *mut'ah* is an implementation of Allah SWT's command to husbands to always associate with their wives according to the principle of *imsak bil ma'ruf au tasrih bil ihsan* (maintaining the marriage bond with kindness or letting go (divorcing) with virtue). Therefore, even if the marriage relationship is forced to be terminated, good treatment must be maintained, and good relations with the ex-wife and her family should be maintained wherever possible, in addition to carrying out the *mut'ah* with sincerity and courtesy without showing the slightest anger, let alone insults and reproaches.

¹⁷ Interview with Religious Court Judge Cilacap Drs. H. Suharto, MH.

¹⁸ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia (Antara Fiqh Munakahat dan UU Perkawinan)*, Prenada Media, Jakarta, 2007, page. 170

These legal consequences must be implemented based on the court's decision so that it will have legal force. It would be better if claims regarding mut'ah and iddah maintenance are resolved at the same time as the divorce case so that it does not become a problem in the future.¹⁹ From the results of interviews with several judges at the Cilacap Religious Court, information was obtained regarding the forms of mut'ah lawsuits and iddah maintenance in talak and contested divorce cases. In the case of talak divorce, in the husband's application for talak divorce, no one has ever stated his willingness to provide mut'ah and iddah maintenance to his ex-wife.

In response to this, the ex-wife can request her rights in the form of mut'ah and iddah maintenance by filing a counterclaim (counterclaim) which is filed at the same time as submitting an answer to the divorce petition. If the wife does not file a claim for maintenance in the counterclaim, then in the interests of justice the judge can use his ex officio right to impose maintenance on the husband.

In contested divorce cases, there are no provisions governing the wife's rights after divorce, especially mut'ah and iddah maintenance. However, the wife in her lawsuit can be accused of demands for mut'ah and iddah maintenance and the panel of judges can grant the demands for mut'ah and iddah maintenance in their decision as long as the wife is not proven to have committed nusyuz. This is based on the Circular Letter of the Supreme Court of the Republic of Indonesia Number 3 of 2018 concerning the Implementation of the Formulation of the Results of the 2018 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court, in the legal formulation for religious chambers letter A number 3 which states: "Accommodating Perma Number 3 of 2017 regarding the Guidelines for Adjudicating Women in Conflict with the Law, a wife in a contested divorce case can be given mut'ah and iddah maintenance as long as she is not proven nusyuz."²⁰

At the Cilacap Religious Court, to date no one has filed a lawsuit for divorce which has been cumulated with demands for mut'ah and iddah maintenance. The absence of anyone filing a lawsuit for divorce which is cumulated with demands for mut'ah and iddah maintenance could occur for several reasons such as: The wife's ignorance of the rights she will get after the divorce; The wife's unwillingness to claim these rights is because it is considered complicated and takes up more thought and energy, and some are because they think the husband is incapable of enforcing the wife's rights. So, when the wife files for divorce, she is only limited to wanting a divorce, there are no demands regarding post-divorce rights.

¹⁹ Rizki Putra Pratama, *Pembebanan Nafkah Iddah Dan Mut'ah Dalam Perkara Cerai Gugat Dalam Tinjauan Hukum Islam Di Indonesia Dan Malaysia*, *Usroh Jurnal Hukum Keluarga Islam*, Vol 7 No 1, Juni 2023, page 11-25

²⁰ Interview with Religious Court Judge Drs. Noor Shofa, SH. MH.

4. Conclusion

The obligation to provide mut'ah is obligatory if a dowry has not been determined for the wife's ba'da dukhul and the divorce is at the husband's will, it is considered sunnah if these two provisions are not met. Meanwhile, the definition of iddah living is something given by the husband to the wife to fulfill the wife's living needs in the form of food, clothing and shelter expenses during the wife's iddah period. The form of imposition of mut'ah and iddah maintenance in a talak divorce case, the husband never states his willingness in the application for talak divorce, so that the wife can ask for mut'ah and iddah maintenance in a counterclaim (rekonpensi) or it could be that the wife does not ask but the judge can use it. ex officio right to charge mut'ah and iddah maintenance to the husband. Meanwhile, the burden of mut'ah and iddah maintenance in a contested divorce case, the wife can request this right by including it in her divorce complaint, however, from interviews with several judges at the Cilacap Religious Court, there has never been a divorce lawsuit that has been cumulated with a request for mut'ah and iddah maintenance. The panel of judges can also use their ex officio rights, but only for iddah income, while mut'ah is not regulated.

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