

## Claims of Economic Rights of Wives in Divorce Cases According to the Compilation of Islamic Law in the Biak Religious Court Islamic Family Law

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### ABSTRACT

This study used a qualitative type of legal research. His approach is through Normative Theological, Juridical Normative and Sociological approaches. Data collection techniques through interviews and documentation. Data processing and analysis techniques use qualitative methods. The way the wife claims her economic rights (Mut'ah, Nafkah iddah and Nafkah Madhiyah) in divorce cases in the Biak Religious Court is cumulated in divorce cases or reconvention lawsuits are filed in talaq divorce cases. Especially for Hadhanah cases, a separate child custody lawsuit can be filed. Factors that prevent the wife from being able to prosecute her optimally in the Biak Religious Court are caused by 3 things, namely: The ability of the husband because he does not work, the wife's demands are too high because the wife's lifestyle / prestige is high and there is no evidence of letters or witnesses explaining the amount of the husband's income so that the husband's income cannot be proven by the wife. The impact of the wife's unfulfilled economic rights is that the husband's arbitrariness occurs and is very detrimental to the wife in undergoing the mass of iddah because she is burdened with the necessities of life.

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## INTRODUCTION

A special evidence that shows that fathers are obliged to provide for their children is to refer to the case of Hindun with her husband, Abu Sufyan. Abu Sufyan did not provide enough support for Hindun and his son. Then he complained to the Prophet Muhammad PBUH. The Prophet PBUH's advice was, "Take Abu Sufyan's wealth that is sufficient for you and your son properly" (HR. Al-Bukhori 5364 and Muslim 1714).

The protection of women's and children's rights is one of the priorities of the Supreme Court's legal reforms. This commitment is shown by the establishment of the Working Group on Women & Children which is the driving force for the issuance of Perma Number 3 of 2017 and Perma Number 5 of 2019. The wife's rights if sued for divorce from her husband's talaq are essentially to get rights in the form of iddah alimony, mut'ah alimony, madhiyah alimony, and child alimony.

When a divorce occurs, according to the provisions of Article 149 of the KHI it is stated: "If the marriage is broken up due to talaq, then the ex-husband is obliged: a. to give proper mut'ah to his ex-wife, either in the form of money or property, unless the ex-wife is qobla al dukhul; b. Providing maintenance, maskan and kiswah to the ex-wife during iddah, unless the ex-wife has been sentenced to talak balin or nusyur and is not pregnant; c. to pay off the dowry that is still owed in full, and half if qobla al dukhul; d. provide hadhanah fees for their children who have not reached the age of 21.

And according to the provisions of Article 152 of the KHI, it is stated that "The ex-wife is entitled to receive iddah maintenance from her ex-husband unless he is nusyuz." That is why

Regarding joint property, according to the provisions of Article 97 of the KHI it is stated "Widows or divorced widowers are each entitled to one half of the joint property as long as it is not otherwise specified in the marriage agreement." That is why

In addition, wives are also entitled to Madhiyah alimony (past alimony), which is previous alimony that was neglected or not carried out by the ex-husband to the ex-wife when both were still legally married. And the wife also has the right to get the right of Hadhanah (child maintenance), which is the right to maintain a child who is not mumayyiz (visible in his mental function) or is not yet 12 years old, or a child who is 12 years old or older but chooses to be raised by his mother.

One example of a divorce case decided by the Biak Religious Court is the case decision Number 20/Pdt.G/2021/PA. Bik. dated May 5, 2021 which has permanent legal force, where the case was filed by the wife as a Plaintiff against the husband as the Defendant with a decision that basically only grants the divorce lawsuit and does not contain related to the wife's economic rights in the divorce case.

Then how do the wives demand their economic rights in divorce cases applied at the Biak Religious Court, what factors hinder or affect the wife from being able to claim her economic rights to the maximum in divorce cases at the Biak Religious Court, and what is the impact of the wife's economic rights that are not fulfilled in divorce cases at the Biak Religious Court.

From these three main issues, the researcher raised this thesis research with the title Demands of Wives Economic Rights in Divorce Cases According to the Compilation of Islamic Law at the Biak Religious Court.

## METHOD

This study used a qualitative type of legal research. His approach is through Normative Theological, Juridical Normative and Sociological approaches. Data collection techniques through interviews and documentation. Data processing and analysis techniques use qualitative methods.

## RESULT AND DISCUSSION

### Analysis of how wives demand their economic rights in divorce cases applied at the Biak Religious Court

In the case of divorce talak (divorce filed by the husband), the claim of Mut'ah, iddah and madhiyah alimony, child custody and child support can be agreed through mediation. If the demands are not successfully agreed through mediation, then the wife through her answer at the trial can file a counterclaim / reconvention. In the case of divorce lawsuit (divorce filed by the wife) Mut'ah claims, iddah and madhiyah alimony, child custody and child support can be accumulated in the divorce lawsuit. The claim of Mut'ah, alimony of iddah and alimony of madhiyah cannot be filed in a separate lawsuit, but must be filed through a lawsuit of reconvention against the application for divorce of talaq, or accumulated in a lawsuit divorce case. Especially for child custody and child support cases, the lawsuit can be filed on its own after the husband and wife are legally divorced / get a divorce certificate.

In the past, the claims of mut'ah, alimony, iddah and madhiyah alimony could only be filed through a reconvention lawsuit in the case of divorce talak. However, currently, the claim can be filed by the wife in a divorce lawsuit case with the record that the wife is not in a state of nusyuz (durhaka).

The husband's obligation to give his wife's rights if they already live in the same room and watha', not because there has been a marriage contract. This obligation becomes extinct if the wife is nusyuz (disobedient) to her husband.

A husband who divorces his wife, if he knows the rights of the divorced wife and has a sense of responsibility, then without being sued the ex-husband will fulfill all his obligations to the divorced wife and to her children. If both husband and wife know the rights of the divorced wife and each has a sense of responsibility, then the problems that arise due to their divorce will also be resolved in a courtesy (good) way and peace and peace of mind will be realized even though they are divorced.

The husband's obligation when divorcing his wife is to meet the needs of his wife, among them: the wife has the right to receive protection and be given everything for domestic life according to the husband's ability as long as the wife undergoes the iddah period. The wife is entitled to alimony, kiswah, place of residence, household expenses, treatment costs and medical expenses for the wife during the iddah period. The wife's rights can be claimed after the existence of a perfect tamkin from her wife while still bound by marriage / marriage. However, the wife can release her husband from his obligations to her for the obligations of her ex-husband. The things that can be demanded by the wife are void or void if the wife is nusyuz or does not want to carry out her obligations. The wife should also not complicate or burden her husband in the matter of fulfilling her economic needs after her divorce, always encourage the husband to carry out his obligations to the maximum according to the husband's ability, the wife is pleased and grateful

for what the husband is able to give, always be frugal in using the rights that the husband has given her. Islamic sharia tells husbands when divorcing their wives to treat her well, that is, to let her go or let her live alone until the end of her iddah period and he does not refer to his wife.

In addition, if after divorce it turns out that the children are in the care of the wife, then ideally the husband must remain responsible for carrying out his obligations as a father to fulfill the rights of his children in accordance with the provisions of Article 26 of Law Number 23 of 2002 which has been amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely: a. nurturing, nurturing, educating, and protecting the child. b. Growing and developing children according to their abilities, talents, and interests. c. prevent marriage from occurring at the age of the child. and d. provide character education and inculcate ethical values in children.

A wife who has divorced from her husband still gets rights from her ex-husband during the iddah period because during the iddah period she is not allowed to marry another man, but the rights for the wife are not perfect as they are during the marital relationship. The form of rights received depends on the form of divorce he is experiencing. As for the rights of a divorced wife in the form of talaq raj'i, the rights she receives are full as they were before the divorce, both in the form of expenses, food, clothing and shelter. As for the rights of a divorced wife in the form of talak ba'in sugro or ba'in kubro, she has the right to a place of residence if she is not pregnant. When she is pregnant, in addition to getting a place to live, she also gets a living during her pregnancy. This is the opinion of many scholars.

Islam's Politic Rect (procedural law) upholds that law and justice are not contrary to revelation, but rather are in accordance with what He conveys and are an inseparable part of His Shari'a. Strategies for the benefit of mankind are the substance of justice of Allah and His Messenger.

Ibn Qayyim said that Islamic jurists are obliged to free themselves from the confusion and static attitude and be bound to certain notions for the sake of humanity. They must put forward new developments that are indispensable in the form of legal rules in the form of constitutions, property laws, legal actualization in the form of court decisions and their implementation, as well as laws and regulations related to domestic and foreign affairs. As long as the rule has a clear foundation of postulates from the Qur'an and the Sunnah of the Prophet and from the points of upright thought of Islamic legal experts. After being sure of what they have gained, they must choose justice. They must realize that justice is the goal of Allah's sharia, therefore they are obliged to accept the indications and implications that lead them closer to justice.

The husband's confession at the trial that the wife was reluctant to return to the joint residence after the husband had tried to pick her up and invite her to return home indicated that the wife showed a nusyuz attitude, so that the husband was no longer obliged to take care of and provide for his wife.

What requires a husband to provide for his wife is if they already live in the same room and watha', not because there has been a marriage contract. This obligation becomes a loss from the husband if his wife is nusyuz (disobedient) to him. Maintenance during the iddah period A woman who is in the period of iddah roj'i is entitled to maintenance from her husband, whether she is pregnant or not. A woman who is in iddah because of talak ba'in, fasakh or her husband dies and is not pregnant does not get iddah maintenance, but if she is pregnant then she must get maintenance from her ex-husband according to Q.S. Talaq 65:6, except for a pregnant woman who has iddah the death of her husband, she does not get maintenance. Based on the hadith, it is also based on the hadith that a pregnant woman whose husband dies does not have a livelihood for her. Likewise, pregnant women because watha' subhat do not receive iddah support. The amount of alimony of women who are in iddah is as much as is usually given when they are not divorced.

If a husband turns out to be poor either by his own confession or by witnesses, then his wife can fasakh nikah, the way is that the wife concerned must complain about the matter to the judge then the judge investigates as necessary and gives 3 days to her husband, after a period of 3 days it turns out that her husband is still incapable then the judge fasakh their marriage. What is meant by "wife fasakh nikah" is that the wife performs fasakh with the permission of the judge.

When the husband is unable to provide for his wife, then what can be used as an alternative is the maintenance of relatives. It is the duty of their sons and daughters who are able to provide for their parents, grandparents, and parents who are unable to provide for their children and girls despite religious differences between them. The condition is that the person who is obliged to provide for maintenance is able and those who are entitled to receive it are unable or do not have a decent income, while those who are unable and unwilling to work while a job is definitely available, then their parents are not obliged to provide support to them.

Providing maintenance to a wife who is obedient to her husband is obligatory according to the husband's ability. If the husband is a rich person, then he is obliged to provide for 2 mud of staple food that is common in the area and must buy side dishes and clothes that are customary, and if the husband is classified as a person who is not able to afford it, then he is obliged to provide maintenance as much as 1 mud of staple food that is in accordance with the conditions of the area and must provide side dishes and clothes that are appropriate for him. And if the husband is classified as a moderate person, then his wife's maintenance is 1.5 mud and must provide simple (moderate) side dishes and clothing. If the wife is fit to be

given a servant (maid), then the husband is obliged to find her, and if a husband is unable to provide for his wife, then the wife has the right to ask for fasakh (divorce) and if a husband is unable to give the dowry before collecting it, then the wife has the right to ask for fasakh nikah. The wife has the right to earn a living from her husband to protect her soul, purity and religion and to meet her life needs.

To answer the first question we can refer to the provisions of the law, either positive law or Islamic law. There are at least three basic rights for women that are still the obligation of husbands when divorce occurs. The three rights are mut'ah, iddah and madhiyah maintenance.

Mut'ah is the gift of material from the husband to the divorced wife, with the aim of pleasing the wife and to compensate for the pain caused by the divorce. While iddah maintenance is alimony in the form of food, clothing, and shelter, which the husband gives to his wife during the time of iddah who is divorced in the form of talaq raj'i.

Madhiyah alimony is alimony that has passed over time, which has not been paid by the husband when in the marriage bond, when there is a divorce the wife is allowed to claim the alimony. Madhiyah alimony is a term used in the decision of the Religious Court to determine past alimony.

These three rights are also protected by laws and regulations, such as in Law no. 1 of 1974 concerning Marriage article 41 letter c, which states that "the court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife."

In the Compilation of Islamic Law article 149 it is also stated that if the marriage is broken up due to talaq divorce, then there are four obligations that must be borne by the husband. First, mut'ah that is suitable for the ex-wife, can be in the form of money or goods, in this case mut'ah may not be paid if the divorce occurs before the relationship between husband and wife. Second, providing iddah sustenance, which is providing money for shopping, clothing, and housing within the period of iddah. Third, pay off the dowry that has not been paid in full, but if the divorce occurs before the marital relationship, it is enough to pay half. Fourth, providing hadhanah fees for their children who have not reached the age of 21.

The exception to the second point is about iddah maintenance, the husband's obligation can be terminated if the wife is sentenced to talaq bain or the wife performs nusyuz and is not pregnant. This means that the husband is only obliged to pay mut'ah, pay off the dowry if he is still owed, and the cost of hadhanah for the child.

To protect the three rights that have been lost, the Supreme Court has actually issued a Supreme Court circular letter No. 3 of 2018, perfecting what has been stated in the Supreme Court Circular Letter No. 07 of 2012 which states that "Judges in determining madhiyah alimony, iddah alimony, mut'ah and child alimony, must consider a sense of justice and propriety by exploring the facts of the husband's economic ability and the facts of the basic needs of the wife or children."

An important note is that with SEMA No. 3 of 2018, the wife is entitled to mut'ah and alimony in a lawsuit divorce case provided that she is not proven nusyuz. Because in the previous rule, the three rights could only be obtained through talaq divorce.

Therefore, after this rule, women's rights after divorce can be obtained either through divorce talaq, namely a divorce application from the husband or a lawsuit divorce filed by the wife on the condition that the wife does not perform nusyuz.

To strengthen the safety net in protecting women's rights before the law, the Supreme Court also issued Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Front of the Law. The regulation contains various guidelines for judges in examining cases involving women as their parties. The process of examining cases involving women must truly prioritize gender justice and eliminate discrimination against women.

Not only that, in 2021 the Directorate General of the Religious Justice Agency issued a decree Number 1690/DJA/HK.00/6/2021 concerning the Guarantee of the Fulfillment of the Rights of Women and Children After Divorce. In the letter, there is an appeal that must be considered by every Religious Court in providing services to women.

Among the appeals is first, ensuring the availability of information about women's and children's rights through various media. Second, ensuring that information officers at the PTSP court understand the rights of women and children, so that they are able to provide information clearly. Third, strictly select postbakum officers who serve in court, and ensure that these officers know about the rights of women and children so that they are able to provide information to justice seekers. Fourth, provide a blank/lawsuit form that includes demands for women's and children's rights. Fifth, rearrange the layout of the post office in accordance with the decision of the Director General Number 1403.b/DJA/SK/OT.01.3/8/2018. Sixth, requiring all judges to apply all rules related to ensuring the fulfillment of the rights of women and children after divorce. Seventh, cooperate with relevant institutions to ensure the implementation of the content of the Religious Court's decision which includes the rights of women and children.

For the enactment of Islamic law in Indonesia, there must be clear laws that can be implemented by law enforcement officials and the community. Islamic law is a teaching of God that must be obeyed by mankind and its obedience is worship as well as an indication of one's faith. As an implementation, every

implementer of Islamic law is rewarded, while every violator is threatened with torture. In practice, Islamic law is always in contact with society. The lawmakers never change or give tolerance in terms of the process of determining the law of its illegality. Lawmakers realize that the law is not elastic and sky-high. When a law is born, the most important thing is how to make it obey and implement it with full awareness.

Law makers are well aware that it is quite risky if the determination of something that is prohibited is enforced at once for the community, but it must be done gradually. This reflects on the episode of prohibition of *riba* and *khamr*. Islamic law functions as a means of social control or control. Through this controlling function or social control, the purpose of Islamic law (*Maqashid Sharia*) will be achieved, which is to bring or create benefits and avoid harm.

There are two types of emphasis in the application of Islamic law, namely aimed at the personal aspect and the deed aspect. The personal aspect (person / person) will theoretically be more dominant in the civil field, while the deed aspect is more dominant in the field of Islamic crime.

Islamic law greatly develops the birth of consciousness in believing human beings. Through the emphasis on understanding Islamic Law, moral awareness will be integrated with social awareness.

In terms of digging and seeking the law for problems that do not have a *nash*, Muslims must adhere to the principle of thinking and acting for the realization of the purpose of the law, namely the benefit and welfare of servants in this world and in the hereafter. Thinking activities should adhere to the principles of Islamic law, namely: 1. Eliminating pettiness, 2. Not increasing burdens and 3. Taking the path of phasing (*tadarruj*). If public awareness of Islamic law is high, they will support Islamic law. If there is a relationship between sinful feelings and evil deeds, then the law will be strong, so what must first be improved is religious awareness. Imam Shafi'i said: knowledge without charity is like a tree that does not bear fruit, but do not forget that we have the law of *dharuri* as long as the situation is not possible to implement the teachings of Islam in *kaffah*.

The implementation of a legal provision begins with acceptance accompanied by belief, not because of coercion. In this process, it is necessary to be patient and not to allow acts that deviate from the *sharia*. The Prophet PBUH said that if we cannot change a situation with our hands, then it is enough to use our mouth, and if we cannot even use our mouths, it is enough with our hearts.

Laws that are personal as long as they are agreed by interested parties can be implemented. The application of public law that concerns other parties requires patience and perseverance to cultivate it first so that coercion does not occur, therefore we should not blame those who do not understand the existence of the law. The birth of the law is intended to uphold justice so that those who are not yet aware and understand will definitely ignore it. Juridical validity cannot be used as a legal guarantee that it will be carried out if it is not accompanied by efforts to cultivate it. This is a challenge to educate Muslims by first understanding Islamic law to the wider community.

### **The wife's demands are too high**

In addition to the legal tools, the experience and expertise of the Judge are needed to ensure the fulfillment of the rights of the wife and children, the Judge is expected to be able to accurately explore the husband's work and income conditions. In addition, the Judge must also know the variables of the cost of living component in an area in the present and future, the size of being able and *ma'ruf* in providing maintenance is absolutely an indicator of the amount of nominal value that must be given by the husband as maintenance for his former wife and children. The punishment of obligations that are too large and far above income will certainly make the husband run away from his responsibilities, on the contrary, the small value of the maintenance obligation will be detrimental to the ex-wife and children because it is not enough to cover his living needs.

All of the above laws and regulations basically strengthen women's position before the law in order to get a fair examination process without discrimination, so that they are able to get their full rights. However, if you look at the practice in the community, these rights have not been fully fulfilled. Why demikan?

If analyzed, there are at least two factors. First, many women do not have knowledge of these rights, so they do not ask for these rights when divorce occurs. Second, the woman knew about these rights, but could not or could not get them from her husband, this was because the divorce occurred outside the Court.

For this reason, in order for women's rights to be fulfilled, in addition to the various legal rules described above, it is necessary to build awareness from various parties. First, of course, the woman should be aware and understand that she has certain rights that can be demanded when divorcing her husband. Second, *Itikad* is good from the husband, as the head of the household, he should understand his obligations to his wife both when he is still a legal wife, or when divorced.

Second, support from law enforcers, in this case judges by giving fair verdicts and accommodating women's rights, advocates by providing legal assistance and assistance as best as possible to those who need their professional services, especially women, and various court employees who can provide the best

information or services so that the parties can get justice and their rights in full.

Definitively, Nusyuz is interpreted as the wife's iniquity towards her husband in terms of carrying out what Allah obliges her to do. In the discussion of the wife's obligations to her husband, it has been explained several things that a wife must do towards her husband such as: speaking meekly and not harshly in front of her husband, doing what the husband tells her to do and leaving what her husband forbids as long as it does not violate religious norms, asking permission from the husband when he is going to travel out of the house, taking care of his husband, the husband's property and his property and others that are determined by religion. Nusyuz is unlawful because it violates something that has been established by religion through the Qur'an and the hadith of the prophet in relation to Allah, the perpetrator is entitled to sin from Allah and in relation to husband and household is a violation of the life of husband and wife. For this act, the perpetrator received threats, including losing her rights as a wife during the nusyuz period. However, the nusyuz does not by itself break the marriage bond. When the wife shows a nusyuz attitude and vice versa the husband shows an attitude of turning away from his wife in the sense that the husband begins to be unhappy with his wife for certain reasons, then the solution is to carry out Suluh or negotiations to achieve peace.

Islamic law obliges every man who wants to divorce his wife to provide mut'ah, iddah sustenance and ensure the survival of his children. This obligation is also obligatory for the husband to protect his wife and provide everything for the needs of domestic life, including mut'ah maintenance, iddah maintenance if divorced and so does child support.

Mut'ah is compensation given by a man to his ex-wife for the breakdown of the marriage bond between the two. Meanwhile, iddah maintenance is an obligation of a man to his ex-wife during the iddah period, considering that his ex-wife cannot accept a proposal or marry someone else because she has to undergo a waiting period. Iddah is related to the interests of the husband, whose purpose is *lil isbibr*' (based on the decision of the Supreme Court of the Republic of Indonesia Number 137 K/AG/2007 dated September 19, 2007), while child support is the obligation of a father to meet all the needs of his child's life to support the growth and development of his child. In determining the rate or amount of mut'ah, iddah alimony and child support, Islamic law and positive law do not provide detailed and applicable guidance for the Judge who is faced with this case. Islamic law and positive law only provide general guidance. The general guidance in Islamic law is based on the principle of Ma'ruf, while in positive law it is based on the principle of propriety and the principle of justice.

The above conditions have caused the emergence of very diverse patterns in several judges' decisions related to the determination of the amount of mut'ah, wife alimony and child support even though all of the judge's decisions are based on the principles of propriety and the principle of ma'ruf, but in the effort to concretize the principle of propriety and the principle of ma'ruf does not use applicable and logical methods, and even tends to be speculative. intuitive and subjective. This is considering speculative and intuitive considerations even though they are considered "proper" and "fair" for the opposing party, because there is no rationalization in the considerations contained in the judge's decision.

A just and rational law requires a measurable method in determining the level of mut'ah, iddah alimony and child alimony. Judges must have a rational method in concretizing the principle of ma'ruf and the principle of propriety. Thus, the main purpose of the law to uphold justice can be realized in the judge's decision, fair for the husband as the burdened party, fair for the wife as the party who receives the rights and fair for the children as the party who has the right to grow and develop properly.

Based on Q.S. Al-Baqarah 2:236 it is emphasized that in determining the number of mut'ahs, one must pay attention to the factual ability of the male side. If he is a capable person, then the mut'ah given must be according to his ability, but if he is an incapable person, then the amount of mut'ah given must be adjusted to his ability.

In addition, to ensure that a man does not issue excessive mut'ah to his ex-wife so as to burden his factual ability, the Qur'an emphasizes that the principle of ma'ruf must be a benchmark. The principle of Ma'ruf here can be based on the maintenance that he usually gives to his wife before the end of the second marriage and the habit of providing maintenance is usually adjusted to the factual ability of the husband. This is based on the guidance of Q.S At-Talaq 65:7.

The determination of the amount of mut'ah, iddah alimony and child support that is not accompanied by rational consideration will cause irregularities which in the end impropriety and injustice will be felt by the sentenced party to pay mut'ah, iddah alimony and child support.

In a mut'ah case for example: The first step taken by the Judge is to ascertain how much the amount of real income of the husband the instrument used by the Judge in determining the real income of the husband is proof. After the husband's real income becomes a legal fact. The second step is for the Judge to conduct a review of the legal facts which covers several aspects, including when a wife must be given mut'ah. The instrument used by the Judge in this review is the relevant legal provisions related to mut'ah. The legal provisions here can be in the form of Islamic law and positive law. The third step is to determine the law for mut'ah that a husband must give to his wife. The instrument used here is a proportional method whose implementation and operationalization sequentially begins with the application of the proportional

method in determining the amount of mut'ah, then continues with the amount of iddah alimony and ends with the amount of child alimony.

The same pattern can also be carried out by Judges in adjudicating cases of iddah and child support. These steps can be used as a guide by the Judge to find legal facts, examine the legal facts in accordance with relevant legal provisions and then determine the law. The application of the proportional method in determining the amount of mut'ah, iddah alimony and child support is one of the Judge's efforts to obtain the amount or level of mut'ah, wife alimony and child support that is closer to the criteria of the principle, propriety of the principle of justice and the principle of ma'ruf in a way that is easy to understand and simple according to the husband's real ability.

The law is rational in nature so that the determination of the amount of mut'ah, iddah alimony and child alimony should be measurable and rational as well. The proportional method is a simple method that can be used by the Judge in determining the amount of mut'ah alimony, alimony, and child support objectively and tested. Applying a proportional method in determining mut'ah, wife alimony and child support is feasible by taking three steps, namely: 1. Legal facts to identify how much of the husband's real ability, 2. Legal norms to find out the basis of norms that are used as a basis in determining mut'ah, iddah alimony and child support, and 3. Legal consequences to determine how much obligation to an ex-husband or a father must be given to the ex-wife and his children with using head counts within his family members. The results of the proportional calculation are determined using a simple mathematical distribution pattern. The final result of the method of applying the proportional method produces a measurable and rational amount of mut'ah, wife alimony and child support in accordance with the real ability of the ex-husband or a father who is believed to be able to approach the criteria of the principle of propriety, the principle of justice and the principle of ma'ruf.

Maintaining and providing for children is an obligation that must be given by parents to their children. Neglecting responsibility means not fulfilling their obligations as parents and mandatory maintenance includes clothing, food and shelter. It has been explained in the Qur'an that the responsibility for the maintenance and upbringing (hadonah) of children is an obligation borne by both parents and for the provision of child support is charged to the father either when the parents are still living in harmony or in a state of separation and divorce until the children are adults and independent. For children under the age of 12 years, the mother who has the right to maintain and take care of the child unless the mother dies, can be replaced by the father.

Based on the guidance of Q.S. Al-Baqarah 2:233 Allah SWT has affirmed the right to breastfeed for the child and the obligation of the mother to breastfeed him and the obligation for the father to provide for the mother who breastfeeds the child is the father himself, without the participation of the mother and others. This is understood because fathers are obliged to provide for their children, not together with anyone, their needs, whether they are in a condition of divorce or divorced.

### **Proof doesn't support**

The law was imposed after convincing evidence was found. If not, then what is heard is the testimony of the Defendant or the Defendant under oath. Based on the hadith of the Prophet PBUH narrated by Imam Bukhari and Muslim from Ibn Abbas, the Prophet said: If man is always approved of his demands, he will certainly demand the blood of others and his property. And therefore, the oath is imposed on the Defendant or the Defendant. In examining the trial and settling of civil cases, the Prophet PBUH imposed proof on the Plaintiff and an oath to the Defendant. He has never applied such a proof event in a criminal case. What is called evidence is everything that explains the truth in the form of words, deeds, and attributes.

The scholars have agreed that the Judge should not give a law unless there is evidence that establishes the right and they also agree that confession, testimony, oath and returning the oath are arguments according to the sharia that can be held by the Judge in deciding the case and establishing the law, but they differ in their opinion about giving the law based on qorinah, which are the signs that the Judge understands that shows the truth.

The Prophet Muhammad PBUH said "al-bayyinatu 'alal mudda'i" meaning the obligations of the plaintiff to submit something that can explain the truth of his lawsuit, if it is clear that the truth is clear by a way of various ways, then it is decided that the lawsuit is accepted.

Shrewd judges and rulers always find the truth by premonition and signs, so if the truth is real, they will not win the testimony or confession that violates it.

If the Judge does not understand the signs and circumstances that are the evidence and does not know the qorinahs in the form of situations and sayings, then the Judge has taken away many people's rights, while people in general can know their mistakes.

Indeed, those who follow jurisprudence and judges at all times, there is no doubt that he has adhered to the qorinahs regarding all rights. That is the point that is required by the shari'a and in accordance with the intention of shari'i regarding upholding justice among humans and handing over rights to those who have and clean nature from damage.

Fathers are obliged to provide for their wives, according to the needs of life that they need, either in the form of food or clothing. With this alimony, it is hoped that mothers can fulfill their obligations perfectly. It is obligatory for fathers to provide sustenance and clothing according to their ability both in good times and in difficult times, therefore mothers should not demand sustenance that exceeds the limit of their needs, they should only ask according to their needs because Allah will also not burden his servants with anything that they are not strong enough to bear.

Allah also forbids the existence of madharatan experienced by both mother and father due to the presence of a child. A father is not allowed to breastfeed his child to someone else as long as the mother herself is willing to breastfeed her child, just as it is forbidden to separate the child from his mother by breastfeeding his child to someone else. If the mother cannot breastfeed her child and then the child is breastfed to someone else while the mother continues to take care of her child, then it is allowed for the child to be breastfed to someone else. Allah forbids fathers to be miserly in providing support for the child's breastfeeding expenses when the child is cared for by his mother. Fathers should not trouble their wives because of the existence of the child, nor should wives trouble their fathers with the existence of the child. The wife should not trouble her husband by asking for alimony demands that exceed her ability because through these alimony demands it is possible for the mother to demand her father to provide a lot of alimony that exceeds his needs when the child is in the mother's care. A mother should not prohibit her father from seeing the child and playing with him when the child is under his mother's care. The point is that both parents should not trouble each other with the existence of their child. A divorced husband and a divorced wife should not be bothering each other.

In Morocco, a divorce decree is issued after an interlocutory ruling that burdens the husband to pay the rights of his wife and children as a result of the divorce. After the burden of divorce is actually paid, the court will issue a decision to allow the husband to impose talaq raj'i. In Morocco, the amount of mut'ah considers the element of ta'asuf or the arbitrariness of the husband in exercising his right of talaq against his wife. The more proven the element of ta'asuf, the greater the mut'ah charged to the husband. In Morocco, talaq is the husband's authority over his wife, but talaq is done arbitrarily by the husband, the husband will be burdened with mut'ah that exceeds the usual maintenance, even the amount of mut'ah can reach as much as the wife's maintenance for 2 years. In this case, women's right to a sense of justice is highly regarded by family law in Morocco. After the good times have passed, the Moroccan Court will hold another session to ensure the final talaq, which is talaq that cannot be referred to except with a new marriage contract.

### **Analysis of the impact of unfulfilled economic rights of wives in divorce cases at the Biak Religious Court**

The existence of negligence to provide maintenance can result in the party who is obliged to provide for it to become abandoned. This problem often occurs among people who lack knowledge about how to obtain a right. Usually, the party who is abandoned has the right to only hand over his fate to the pity of the party who has the obligation. As a result, not a few children are abandoned, left alone by their fathers without any defense. Legal remedies through law enforcement agencies only concentrate on the return of the wronged rights, without considering the elements of the crime that has been committed by the party who neglected his obligations. A person's negligence to provide maintenance to the party he is obliged to provide is a crime if his negligence has caused harm to the person who is obliged to be supported.

The husband must protect his wife and provide for her. Husbands are prohibited excessively in punishing their wives for simply wanting to hurt them, because these acts are considered unjust acts of tyranny (persecution) that are not allowed at all. Allah will punish those who violate His laws, because His Shari'ah is based on wisdom and aspects of benefit for humans.

A husband who is mentally aqaa to his wife should not refer to her with the intention of giving dignity because then the husband will persecute his wife. Whoever does this, he has indeed committed dhalim to himself (Q.S. Al-Baqarah 2:231). From this verse, Allah explains the obligation to treat a divorced woman well. Allah forbids us to do things that trouble them as the ignorant have done to a woman who is divorced by her husband in order to prevent her from marrying another man. The intention of divorcing his wife in a ma'ruf way is to let his wife complete her iddah period. In this case, the husband is required to give the wife the opportunity to exercise her rights. The husband must not hurt her either with words or deeds. The husband should also not extend his iddah period, namely by referring him back and then divorcing him again. The meaning of wealth is to make it difficult. Husbands who trouble their wives when they are divorced, then in essence the distress will also befall their husbands as well.

The purpose of the revelation of Allah's laws to believers is so that their hearts become calm, gain benefits in this world and obtain forgiveness in the hereafter. These laws of Allah should be conveyed to Muslims so that they are known and then with full determination and willingness to practice them.

Providing maintenance for breastfeeding costs is obligatory/charged to husbands who have divorced their wives due to talaq raj'i. As for women who are waiting for their iddah period because of talaq ba'in,



there are differences of opinion among the mujtahid regarding the obligation of the husband to provide maintenance for the cost of breastfeeding and iddah maintenance. Some scholars state that the husband is obliged to provide both maintenance at the same time, while others state that the husband is not obliged to provide maintenance for breastfeeding expenses if he has provided iddah support. Based on Q.S. Al-Baqarah 2:232 indicates that a woman who is divorced by her husband is not entitled to the cost of breastfeeding her child as long as she has received the cost of iddah maintenance. From this verse it only indicates that there is an obligation for husbands to provide iddah maintenance to their ex-wives until they complete their iddah period.

The existence of children is an infinite gift from Allah SWT, therefore parents must be able to maintain the survival of their children, especially when they have not yet reached puberty. Every child born into this world certainly cannot choose whose child they want to be. When biased, every child certainly wants to be born from a good, wealthy, authoritative family and so on. Children who cannot be properly protected are biased due to the fault of their parents, the surrounding environment or the existing legal system that makes the child unable to get his rights. Often children are not protected their rights because their parents' marriage is not recorded, their marriage is not proven or because their parents' marriage is considered invalid so that the impact of the child's status is not as a legitimate child which is the consequence that the child only has a civil relationship with his mother and his mother's family, meaning that the child does not have a legal relationship with his father as intended in Article 42 and Article 43 of Law Number 1 of 1974 about marriage and Article 100 of the Compilation of Islamic Law.

A wife who undergoes iddah roj'iyah, If she is obedient or good to her husband, then she is entitled to a place to live, clothes and shopping money from her ex-husband, but if she is disobedient, then she is not entitled to anything.

A woman who undergoes iddah talaq ba'in, if she is not pregnant, she is only entitled to a place to live but if she is pregnant, then she is also entitled to alimony.

Furthermore, both ex-husbands and ex-wives must pay attention to the welfare of the child. If the child is still in the womb, then the mother must take good care of it. Likewise, when a child breastfeeds to his mother, even if it is possible for another woman to breastfeed the child, if, for example, the mother is reluctant or bothered until the child can stand on her own, then the responsibility for maintenance remains the father's obligation.

Regarding the consequences of the breakup of this marriage, it has been constructed in the Compilation of Islamic Law Articles 149 to 162. If Lian occurs, the marriage is broken forever and the child conceived is given to his mother while the husband is free from the obligation to provide support.

Of the six stages, the religious court's decision on post-divorce rights faces obstacles in the 6th stage. According to Stijn Van Huis's research, many decisions about divorce are ignored by ex-husbands, as a result of which widows find it difficult to ask their ex-husbands to pay their rights after the divorce. Widows can request an execution through an execution application, but it requires cost, time and effort that may not be balanced with the rights that the widow will receive. This is where there are barriers to access to justice for widows to obtain their rights after divorce due to the lack of a mechanism for implementing the decision.

Case Decision Number 51/Pdt.g/2013/PA. Tkl has offered a mechanism to ensure the implementation of the judgment related to post-divorce rights which in the judgment punishes the husband to pay post-divorce rights totaling Rp.10,000,000 (ten million rupiah) to the wife before the pronouncement of the talaq pledge is carried out and stipulates that if the husband does not fulfill the judgment until 6 months have passed since the date of the testimony hearing of the talaq pledge, Therefore, the decision has no legal force, unless the wife declares her willingness to be sentenced to talaq even though the husband has not fulfilled the obligations of post-divorce rights. The decision is based on legal considerations to realize a good divorce (tasrihun bi ihsan) in accordance with Q.S. Al-Baqarah 2:229. A good divorce can be realized by providing guarantees and protection of post-divorce rights for wives and children, which in this case were considered by the panel of judges to be weak parties because of their circumstances and position, especially in relation to a number of procedural law norms that in certain contexts are considered to have not provided sufficient protection for the legal interests of wives and children.

The panel of judges considered the fact that the implementation of most of the decisions on iddah, mut'ah and child support which is set in a certain amount is always constrained if the husband does not have good faith to fulfill it, because the legal interests of the wife and children do not receive meaningful guarantees and protection through legal remedies for execution which is in the form of the execution of the payment of a sum of money so that in practice in addition to taking a long time it also requires costs can even exceed the nominal rights of the wife and children requested in the execution. The verdict in the decision seems indecisive with the clause "unless the wife expresses her willingness to be sentenced even though the husband has not fulfilled the obligations of post-divorce rights". Such a clause does not need to be contained in the amar because in addition to causing indecisiveness in the amar, the wife's willingness is certainly more due to compulsion and the wife prefers to immediately end the unhappy marital relationship.

The verdict handed down by the panel of judges of the Takalar PA on December 19, 2013 has sought to realize access to justice by offering a mechanism for the implementation of decisions on divorce rights. Thus, access to religious courts for wives is reciprocal with the protection of post-divorce rights for widows. Amar, who sentenced the husband to fulfill his obligations before talaq, can also be found in the cassation decision number 84 K/AG/2009 dated April 17, 2009.

There are several parameters that can be used to see the problem of gender injustice in society. These parameters include 6 aspects, namely: discrimination, stereotypes, domination or subordination, marginalization, double multiborin and violence. In this case, sharia emphasizes more substantive justice and leaves the procedure for achieving it to state authorities to make those in accordance with the best interests of society.

If there is a *maslahah* (benefit, goodness, benefit) that is in accordance with Islamic principles and the goals of Sharia, fulfilling the needs or reality of human life, whether it is mentioned by the *nash* to be achieved, or mentioned by the *nash* to be avoided, or there is no information at all of the *nash* either that commands to be achieved or that prohibits to be avoided, then that is the *maqosidus* of sharia which must be taken into consideration, footed and applied in an interpretation of *nash* (*Istidlal*) or to solve any legal problem without going through *nash* (*Ijtihad*).

If the marriage relationship can no longer be maintained and if it is continued, it will also face harm, then Islam opens the door to divorce. Thus, basically divorce or talaq is something that is not liked which in *Ushul Fiqh* terms is called *makruh*. The wisdom of allowing talaq is because the dynamics of domestic life sometimes lead to something that is contrary to the purpose of establishing the household. In this situation, if the marriage is continued, it will cause problems for both parties and the people around them. In order to reject the occurrence of further *madharat*, it is better to pursue divorce in the form of talaq. Thus, talaq in Islam is only for a purpose of benefit.

Regarding the husband who is reluctant to fulfill the rights of the wife he is burdened with, then the husband can be given *ta'zir*. Where the crime is not stated by Allah or the Prophet regarding its sanctions or threats in the world, then the determination of the law is left to the *ijtihad* of the scholars whose provisions are regulated by the ruler through the legislative institution to be carried out by the judges in the court. Punishment in this form is called *ta'zir* punishment.

The basis of this *ta'zir* punishment is the *ijtihad* of the scholars who generally refer to the *hadith* of the Prophet *laa dzororo walaa dziroro*, which means: there should be no damage to a person and no one should do damage to others. The *hadith* is then formulated in the rule of *adz-dzororu yuzaalu*, which means: every destructive evil must be avoided. The Prophet's general *hadith* has been used as a foothold by the Prophet's Caliphs and companions afterwards in establishing the law of *ta'zir* against crimes that cannot be included in the category of *qisos*, *diyat* or *hudud* punishment.

## CONCLUSION

In the Biak Religious Court, a wife can claim her post-divorce rights through several legal mechanisms. For *mut'ah* and *iddah* maintenance, a reconvention lawsuit is filed in cases of talaq divorce when mediation reports do not yield an agreement, or in a lawsuit divorce where the wife demands *mut'ah* and *iddah* alimony from the husband in accordance with SEMA No. 3 of 2018, provided she is not proven to be *nusyuz*. Similarly, for *madhiyah* alimony, a reconvention lawsuit is submitted in talaq divorce cases lacking mediation agreements or is accumulated in a lawsuit divorce through a claim against the husband. In terms of *hadhanah* (child custody), a wife may file a reconvention lawsuit in divorce proceedings, submit a custody claim jointly with a divorce case, or pursue it separately. However, there are three key obstacles in fulfilling these rights: the husband's inability to provide due to unemployment, the wife's high demands influenced by lifestyle or prestige, and the difficulty in proving the husband's income due to lack of documentation or witnesses. If the wife's rights are not granted, it can lead to the husband's arbitrary use of divorce without consequence, significantly disadvantage the wife during her *iddah* period—when she cannot leave home or accept new proposals—and leave her unsupported in meeting her daily needs.

## IMPLICATIONS AND RECOMMENDATIONS

The researcher did not obtain information directly from the litigant to be interviewed because the party involved in the divorce case must keep their identity secret. The researcher recommended to the Biak Religious Court and related stakeholders, that regulations related to the confidentiality of data of parties involved in divorce cases be excluded for development in the field of science and scientific research, so that the researcher can then dig up information directly from the litigant while keeping his identity secret when the results of his research are published.

This research discusses the Demands of Wife's Economic Rights in Divorce Cases According to the Compilation of Islamic Law at the Biak Religious Court. The researcher gave recommendations to the campus or the Director of the Postgraduate Program of IAIN Fattahul Muluk Papua so that this research

would be a teaching material to improve the competence of students of the Islamic Family Law study program about the rights of wives in divorce cases.

This research is not perfect. The researcher recommends other researchers to expand their reach and deepen similar research, so that this research can develop more varied and interactive.

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