

FULFILLMENT OF WOMEN'S RIGHTS AFTER DIVORCE IN RELIGIOUS COURTS AS PROTECTION FOR VULNERABLE GROUPS: AN ISLAMIC LAW AND GENDER JUSTICE PERSPECTIVE

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Abstract: Marriage creates reciprocal rights and obligations between husband and wife, including the husband's obligation to provide maintenance in the form of living expenses, clothing (kiswah), and housing (maskan). However, marital disputes may lead to divorce as a last resort when reconciliation can no longer be achieved. In Indonesia, divorce is regulated under Law Number 1 of 1974 concerning Marriage, which defines marriage as a physical and spiritual bond aimed at forming a happy and enduring family based on belief in God Almighty. Following the issuance of Supreme Court Regulation (PERMA) concerning the implementation of women's rights after divorce, judges may order the payment of iddah maintenance, mut'ah, and outstanding maintenance (nafkah madliyah) before the pronouncement of the divorce oath. This provision is intended to strengthen legal protection for women after divorce. Nevertheless, the implementation of post-divorce rights remains inconsistent. In practice, some court decisions have not fully reflected the principles of justice and legal protection for women, resulting in unequal fulfillment of their rights. Therefore, a more comprehensive approach is needed to ensure that post-divorce legal protection effectively promotes justice, legal certainty, and welfare, particularly for women as a vulnerable party in divorce proceedings.

Keywords: Rights, Women, Divorce, Islam, Justice.

Abstrak: Perkawinan menciptakan hak dan kewajiban timbal balik antara suami dan istri, termasuk kewajiban suami untuk memberikan nafkah berupa biaya hidup, pakaian (kiswah), dan tempat tinggal (maskan). Namun, perselisihan perkawinan dapat berujung pada perceraian sebagai upaya terakhir ketika rekonsiliasi tidak lagi dapat dicapai. Di Indonesia, perceraian diatur dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, yang mendefinisikan perkawinan sebagai ikatan fisik dan spiritual yang bertujuan membentuk keluarga bahagia dan langgeng berdasarkan kepercayaan kepada Tuhan Yang Maha Esa. Menyusul diterbitkannya Peraturan Mahkamah Agung (PERMA) tentang pelaksanaan hak-hak perempuan setelah perceraian, hakim dapat memerintahkan pembayaran nafkah iddah, mut'ah, dan nafkah tertunggak (nafkah madliyah) sebelum pengucapan sumpah cerai. Ketentuan ini dimaksudkan untuk memperkuat perlindungan hukum bagi perempuan setelah perceraian. Meskipun demikian, pelaksanaan hak-hak pasca-perceraian masih belum konsisten. Dalam praktiknya, beberapa keputusan pengadilan belum sepenuhnya mencerminkan prinsip-prinsip keadilan dan perlindungan hukum bagi perempuan, sehingga mengakibatkan pemenuhan hak-hak mereka yang tidak setara. Oleh karena itu, diperlukan pendekatan yang lebih komprehensif untuk memastikan bahwa perlindungan hukum pasca perceraian secara efektif mendorong keadilan, kepastian hukum, dan kesejahteraan, khususnya bagi perempuan sebagai pihak yang rentan dalam proses perceraian.

Kata Kunci: Hak, Perempuan, Perceraian, Islam, Keadilan

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INTRODUCTION

Islamic law establishes a balance of rights and obligations for the legal actions of individuals who enter into marriage. Marriage itself is not merely the union of two human partners, but rather a sacred covenant in the name of Allah SWT. The intention is for both partners to build a harmonious, peaceful home filled with love and affection (Saebani, 2013). From an Islamic perspective, the most important thing in the marital relationship between a husband and wife is the maintenance of morality and chastity as fully and effectively as possible (Ahmed, 1994).

The rights of husband and wife are protected by law in the event of divorce. However, in material terms, the court ruled that the husband must pay iddah maintenance to his divorced ex-wife (Hammad, 2014). Islamic jurisprudence scholars agree that a woman undergoing the iddah period of a raj'i divorce has the right to maintenance after the iddah period, including housing and alimony. However, scholars disagree on the issue of divorce (bain divorce), which relates to the rights of husband and wife protected by divorce. The courts have substantively determined that a husband must pay maintenance during the iddah period to his ex-wife after the divorce. There are two types of divorce: bain divorce and raj'i divorce (Tiyah Hasanah, 2020). As stated in Article 149 letter b of the KHI and Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage, differences of opinion between the imams of the schools of thought regarding the maintenance of the iddah period for divorce must be reconsidered.

Law No. 1 of 1974 on Marriage does not explicitly explain the existence of this exception. However, if examined from a gender perspective, Islam is present in its regulations in Article 149 letter (b) of the Compilation of Islamic Law, its benefits should be considered because the Compilation of Islamic Law is a positive law born from the ijihad of scholars. With this injustice, it seems to have appeared in droves with the existence of Article 119 paragraph 2 of the Compilation of Islamic Law which states "Every divorce imposed by a Religious Court is a Divorce Bain". Divorce ba'in sughra is a divorce that eliminates the rights of the ex-wife from her ex-husband, but does not eliminate the right to remarry to her ex-wife. In deciding cases, Religious Court Judges refer to positive law, namely Law Number 1 of 1974 concerning Marriage which has been amended to Law Number 16 of 2019 and the Compilation of Islamic Law, including in Article 38 which reads: "Marriage can be terminated due to (a) death, (b) divorce, and (c) court decisions." Then in Article 39 paragraph (1) it states: "Divorce can only be carried out before a Court Hearing after the Court concerned has tried and failed to reconcile the two parties."

This is also stated in KHI article 114 which reads: "The dissolution of a marriage due to divorce can occur due to talaq or based on a divorce suit." Then article 115 reads: "Divorce can only be carried out before a Religious Court hearing after the Religious Court has tried and failed to reconcile the two parties." This means that from this article it can be understood that divorce can occur and fall due to death, either the death of the husband or wife, divorce (application by the husband and lawsuit by the wife).

As a husband and father, he is obligated to cover the living expenses of his wife and children. These living expenses are provided in the form of alimony, clothing (kiswah), and housing (maskan). This obligation to provide alimony applies not only during the marriage but also until the husband and wife divorce. This provision is reinforced by Article 41 of Law No. 1 of 1974, as amended by Law No. 16 of 2019, and Article 149 (b) of the Compilation of Islamic Law (KHI). After a divorce, a wife is entitled to Mut'ah (mutual support), Iddah (iddah) maintenance, and Hadhanah (maintenance) maintenance. These rights must be granted by the ex-husband to his ex-wife after the divorce, whether by divorce or divorce proceedings. This is in accordance with Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Facing the Law in conjunction with Supreme Court Circular Letter No. 3 of 2018 concerning the

Implementation of the Formulation of the Results of the 2019 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Courts. Prior to PERMA No. 3 of 2017 and SEMA No. 3 of 2018, claims for maintenance were only submitted during divorce proceedings. However, with these regulations, women's rights after divorce are reaffirmed, and can also be filed in divorce proceedings filed by the wife.

METHODS

A study cannot be said to be research if it does not have a research method because the aim of research is to reveal a truth systematically, methodologically and consistently (Koto, 2022). In terms of its nature, this research is descriptive and analytical, describing all symptoms and facts and analyzing current problems. Descriptive research is research that merely describes the condition of an object or event without any intention of drawing general conclusions. This study employs a normative legal research method, which examines law as a system of norms governing social relations and legal conduct. Normative legal research focuses on legal principles, statutory regulations, legal doctrines, and judicial decisions to analyze legal issues systematically and comprehensively (Soekanto & Mamudji, 2018; Marzuki, 2021). This method is considered appropriate because the central issue of this study concerns the legal protection of women's rights after divorce within the framework of Islamic family law and gender justice.

RESULT AND DISCUSSION

According to Article 38 of Law No. 1 of 1974, 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 One Almighty God. Therefore, divorce is the severing of the physical and spiritual bond between husband and wife, resulting in the end of the family relationship. Furthermore, Article 39 of Law No. 1 of 1974 contains a mandatory provision that divorce can only be carried out before a court hearing after the relevant court has attempted to reconcile the two parties (Muhammad Saifudin, 2013).

According to Subekti, divorce is the termination of a marriage due to a judge's decision or the demands of one of the parties to the marriage. Therefore, according to Subekti, divorce is the termination of a marriage due to a judge's decision or the demands of one of the parties to the marriage. Divorce ends the marriage between husband and wife (Hamid, 2018). However, the subject did not articulate the belief that the termination of a marriage is due to death, or what is commonly referred to as a divorce by death. Therefore, Article 38 of Law Number 1 of 1974, as explained above, provides a broader definition of divorce than the subject's definition (Zulkifli, 2025). From the background and purpose of divorce, it can be understood that in carrying out the life of husband and wife. Of course, things are not always peaceful and peaceful, but sometimes there are misunderstandings between husband and wife or one party neglects their obligations, doesn't trust each other and so on. In tense situations like this, sometimes it can be resolved, so that both parties become good again, but sometimes the misunderstanding becomes complicated, cannot be reconciled and there are continuous arguments between husband and wife. If such a marriage continues, then the formation of a peaceful and peaceful household as desired by religion will not be achieved. Apart from that, it is also feared that divisions between husband and wife will result in divisions between the two parties (Mulyadi, 2021).

Therefore, to prevent further family breakdown, Islam requires divorce as a last resort for couples who have failed to build a household. Although divorce is permitted, Islam still views it as contrary to the principles of Islamic law (Sirait, 2017). As emphasized by the Prophet Muhammad SAW in a hadith narrated by Abu Daud and declared authentic by Al Hakim, namely: "The halal thing that Allah hates most is divorce." For those who give divorce without reason, Rasulullah SAW said in a hadith narrated by an-Nasa'i and Ibn Hibban, namely "Are you the one who causes one of you to play with the law of Allah, he said: Indeed I have cheated on my wife and indeed I have referred to her.

There are several consequences that arise after a divorce occurs. This is explained in Article 41 of Law No. 1 of 1974 concerning Marriage amended in Law No. 16 of 2019 that the consequences of a marriage breaking up due to divorce are: First, "Both the mother and father remain obliged to care for and educate their children, solely based on the interests of the child; if there is a dispute regarding control of the children, the Court will make its decision." Second, "The father is responsible for all maintenance and education costs required by the child; if the father is in fact unable to fulfill these obligations, the Court may determine that the mother will also bear these costs." Third, "The Court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife." In the above article, it can be understood that a husband who divorces his wife is obliged to provide adequate maintenance to his ex-wife during the iddah period, as well as pay off the dowry, the ta'lik talak agreement and other agreements. This is in accordance with Islamic law.

In article 149 of the Compilation of Islamic Law, it is explained in more detail regarding the consequences of breaking up a marriage that the ex-husband is obliged to: First, "Give appropriate mut'ah (something) to his ex-wife, whether in the form of money or objects, unless the ex-wife is qobla aldukhul". Second, "Provide living, food and kiswah (shelter and clothing) to the ex-wife during the iddah, unless the ex-wife has been sentenced to talak ba'in or nusyuz and is not pregnant." Third, "Pay off the dowry that is still owed in full and half if qabla al-dukhul." Fourth, "Provide hadhanah (child maintenance) costs for children who have not reached the age of 21 years."

Meanwhile, in article 156 of the Compilation of Islamic Law, the consequences of the dissolution of a marriage are explained as follows: First, "Children who have not yet mumayyiz have the right to receive hadhanah from their mother, unless the mother has died, then their position is replaced by: (a) Women in a straight line up from the mother, (b) Father, (c) Women in a straight line up from the father, (d) Sisters of the child concerned, (e) Women who are blood relatives along the side line from the mother, (f) Women blood relatives along the father's line." Second, "Children who are mumayyiz have the right to choose whether to receive hadhanah from their father or mother." Third, "If the hadhanah holder turns out to be unable to guarantee the physical and spiritual safety of the child, even though the costs of living and hadhanah have been covered, then at the request of the relative concerned the Religious Court can transfer the hadhanah rights to another relative who also has hadhanah rights." Fourth, "All the costs of the child's gift and child support are borne by the father according to his ability, at least until the child is an adult and can take care of himself (21 years)." Fifth, "If there is a dispute regarding the child's maintenance and support, the Religious Court will make its decision based on points (1), (2), (3) and (4)." Sixth, "The Court may also, taking into account the father's ability, determine the amount of costs for the maintenance and education of children who do not live with him."

The rights of women and children after divorce were previously explained in Law No. 1 of 1974 concerning Marriage and also in the Compilation of Islamic Law, as explained previously. In Religious Courts, these rights were previously only submitted through reconvention by the

woman. It is very rare and almost never found to file a petition for women's and children's rights after divorce in the divorce petition position in the Religious Court. This is due to the difficulty in executing the provision of maintenance if the husband's address is unknown, and many women also feel that adding a request for maintenance to the divorce petition position will further hinder the speed of the divorce process. Therefore, the Supreme Court reaffirmed the rules for granting women's and children's rights after divorce in Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law.

The powers and authorities of the Religious Court and the High Religious Court, as well as other powers and authorities related to the life of society in the field of worship and Islamic law, are regulated in Article 49 of Qanun Number 10 of 2002 concerning Islamic Sharia Courts, which gives the Religious Courts the authority to examine, decide, and resolve cases at the first level and the appeal level: Al-Ahwa Al-Syakhshiyah, Mu'amalah and jinayah. The court's authority includes relative and absolute authority in civil procedural law.

The Religious Court prioritizes services to justice seekers through a one-stop integrated service (PTSP), a service that is integrated in one service system, starting from information services, registration services, payment services, court product collection services supported by sophisticated technology and information, legal aid posts, BRI Bank, Postal Services, Posbakum, Posbakum, and independent Posbakum as well as advocate rooms and provides great convenience in finding information and service flows at the Religious Court.

Religious courts pay special attention to the empowerment of women, who are often perceived as disadvantaged and under the control of men in the family. Patriarchal culture persists in Indonesian society. This patriarchal culture is evident in various aspects of social life, such as economics, education, politics, and law. This culture has led to various social problems that hinder women's freedom and violate their inherent rights. Although Indonesia is a country governed by the rule of law, these social problems cannot be resolved through existing legal frameworks. The reason for this remains a long-standing debate, namely the perception that women's professions are too domestic. Consequently, gender-based law enforcement remains very weak. Therefore, the role of social workers is crucial in situations like this to ensure prompt resolution.

Women's rights are human rights that must be protected. These women's rights can be found in various legal systems, including legal instruments and their implementation tools at the national and regional levels. This is not evident in the UUP, the Civil Code, and the KHI in Indonesia. Women's protection is also a major concern throughout the world. Since 1965, various international institutions under the auspices of the United Nations (UN) have created more than 20 international legal instruments related to women's issues. One of these is the Convention on the Elimination of All Forms of Discrimination Against Women or the CEDAW Convention, which aims to provide opportunities for women to obtain their rights as human beings on an equal footing with men. This Convention contains three main principles of women's rights that have been internationally agreed upon: the principle of substantive equality that views men and women as equals, the principle of non-discrimination, and the principle that the state is responsible for ensuring equality.

However, in the case of a divorce lawsuit, the wife does not have full rights to obtain post-divorce rights as mentioned above. However, they can receive these rights on the condition that they do not receive mut'ah maintenance, because mut'ah maintenance is given to the defendant in a divorce, and the wife is not considered nusyuz, as stated in article 152. In terms of post-divorce maintenance, the man is obliged to provide for the woman during the waiting period or iddah in

any legal system that requires a waiting period after divorce, whether in Islamic law or other systems. (Joint Property, Mut'ah Maintenance) However, the right to maintenance during this period can be lost if the woman asks for a divorce, is found guilty, or engages in sexual relations outside of marriage. Likewise with mata'ah, the granting of mata'ah can only be done if the wife is innocent or the divorce is unjust. The wife's position in the divorce greatly influences the granting of mata'ah (Sodiqin, 2014).

In practice, within the judicial sphere, in resolving cases handled by court officials, such as judges and clerks, each of them has professional ethics in carrying out their duties. The Supreme Court issued a code of conduct for judges, which states the basic principles of the Code of Ethics and Code of Conduct for Judges, which are then implemented in ten rules of conduct, one of which is that judges must act fairly. Judges, in carrying out their judicial duties, are prohibited from showing partiality, discriminating against a race, gender, religion, age, or socioeconomic status, or based on close relationships with justice seekers or parties involved in the judicial process, either through words or actions. (Mustofa, 2013).

A judge is obliged to refer to and apply the principles of human dignity, non-discrimination, gender equality, uniformity before the law, justice, and legal certainty. Then, when adjudicating cases concerning women, judges are expected to identify situations of unequal treatment that result in discrimination against women and guarantee women's rights to equal access to justice. To address this, the Supreme Court issued PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law, although this PERMA more broadly regulates judges in adjudicating civil cases involving women, because their presence is very necessary, especially in the trial of women in conflict with the law.

Supreme Court Regulation No. 3 of 2017 marks a significant step forward in the Indonesian judiciary, with the expectation that it will become the norm for judges and all court personnel when dealing with cases involving women. Therefore, this Supreme Court Regulation also covers cases under the jurisdiction of the Religious Courts, which largely involve women, particularly divorce cases, which are a common type of case accepted and rejected by the Religious Courts.

In examining and adjudicating divorce proceedings, every judge is obligated to possess and acquire knowledge of gender equality and justice for women involved in divorce proceedings. It is not uncommon for these women to have their interests and rights ignored by the judges overseeing their cases. When adjudicating divorce cases, judges must have a comprehensive understanding of the principles of gender justice, which have not yet been fully embraced by the legal system. Unfortunately, this crucial aspect is often overlooked by judges when examining and adjudicating cases of women in conflict with the law.

CONCLUSION

Divorce According to Law According to Article 38 of Law Number 1 of 1974, 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 based on the One Almighty God. Therefore, to avoid the increasingly common occurrence of family disintegration, Islam mandates divorce as a last resort for married couples who have failed to build a household. Following the issuance of the Supreme Court Regulation, payments due to the ex-husband, specifically maintenance for the iddah (iddah), mut'ah (waiting for temporary dowry), and past maintenance/madliyah (waiting for temporary dowry) can be included in the judgment with the phrase "maintenance for iddah, mut'ah, and past maintenance/madliyah are paid before the declaration of divorce." Unlike a claim for maintenance, which is filed by the defendant after the divorce certificate has been finalized or is unrelated to the divorce suit, enforcement of the judgment, i.e., the exercise of rights, can be

carried out outside of court, and the defendant may do so voluntarily. In practice, post-divorce protection for women has not fully protected the rights stipulated in the laws and regulations that serve as guidelines for judges in cases. This is evidenced by the existence of court decisions that still favor one party. Therefore, justice and the benefit of post-divorce protection need to be considered from many aspects, especially for women.

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