

RIGHTS AND OBLIGATIONS OF A HUSBAND AS A CIVIL SERVANT TO HIS EX-WIFE AFTER DIVORCE ACCORDING TO INDONESIAN LAW

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ABSTRACT

This research was normative legal research in nature so the first stage that the authors did was collecting books and writings that were relevant to this research title to gather data and theory based on the problems of this research. These data were expected able to identify problems and explain the focus of the discussion. The discussion focused on material analysis related to the rights and obligations of a husband as a civil servant to his ex-wife after divorce according to Indonesian Law. Therefore, the objectives of this research are to find out 1) the rights and obligations of a husband as a civil servant to his ex-wife after divorce according to Indonesia Law, 2) the form of the implementation of rights and obligations of a husband as a civil servant itself, and 3) factors inhibiting the implementation of the rights and obligations. The method used to uncover and explain the problems was content analysis with normative, literal-historic, and empirical approaches. These approaches aimed to investigate the existence of the regulation of rights and obligations and to understand the true meaning of rights and obligations and whether the function of law has met a sense of justice, certainty, and benefits. The results revealed that the rights and obligations of a civil servant to his ex-wife have been regulated in the Indonesian Marriage Law which is under Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage and other related regulations such as the Compilation of Islamic Law. These rights and obligations are inherent in legal subjects, especially for civil servants, which must be carried out by the husband and respected by both parties. These rights consist of the right to *hadhanah* living, *mut'ah* living, *iddah* living, and *madhiyah* living.

Keywords: Right and Obligation, Indonesian Law

INTRODUCTION

1. Background Research

Marriage is a sacred thing and is also a religious commandment. The purposes of the marriage are to have offspring and create a happy, prosperous, safe, peaceful household, and full of love.¹ Marriage creates rights and obligations for both wife and husband. The rights and obligations that exist before divorce arise from the marriage contract. These rights and obligations are contained in the provisions of the Qur'an which indicate the rights and obligations of husband and wife:²

- 1) The Qur'an Surah An-Nisa' verse 19 and the translation is (more and

¹ Sirman Dahwal, *Hukum Perkawinan Beda Agama Dalam Teori Dan Praktiknya Di Indonesia [Inter-religious Marriage Laws in the Theory and Practice in Indonesia]*, Mandar Maju, Bandung, 2016, p. 87.

² KN. Sofyan Hasan, *Dasar-dasar Memahami Hukum Islam di Indonesia [The Foundation of Understanding Islamic Law in Indonesia]*, Usaha Nasional, Surabaya, 1994, p. 118.

less): "... *And treat them (your wife) fairly ...*".

- 2) The Qur'an Surah An-Nisa' verse 34 and the translation is (more and less): "... *the righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them*"
- 3) Surah Ar-Rum verse 21 and the translation is (more and less): "*And one of his signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Surely in this, are signs for people who reflect*"

In addition to rights, the obligations of a husband for his family are regulated in the Qur'an Surah An-Nisa verse 34 and the translation is below (more and less):³

"Men are the caretakers of women, as Allah provisioned men over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with. And if

³ The Qur'an Surah An-Nisa' verse 34.

you sense ill-conduct from your women, advise them 'first', if they persist, 'do not share their beds, but if they still persist,' then discipline them 'gently'.² But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great”

Meanwhile, the obligations of a husband to provide a living place for his wife is regulated in the Qur'an Surah Al-Talak (65) verse 6 and the translation is (more and less):⁴

”Lodge them (wife) where you dwell according to your means”.

The official marriage based on the marriage law will give rise to legal consequences:⁵ (1) the relationship between husband and wife; (2) marital assets; dan (3) the relationship between parents and children.

A marriage built by a husband and wife always craves and desires permanence and

harmony until death does them part. However, this hope often cannot be achieved due to several factors, including differences and conflicts that arise and cannot be resolved together by the husband and wife. This conflict leads to separation or divorce.

A divorce between husband and wife is regulated in Article 39 paragraph (1) of the Marriage Law, which states that: “*Divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties*”.

In other words, a divorce is the final step after carrying out mediation or peace efforts by the judge do not find common ground between the wife and the husband so a legal divorce stage is carried out in front of a court and decided by the judge.

Divorce is something that Allah SWT hates in Islam, but it is not prohibited for certain reasons. Divorce is a legal action

⁴ The Qur'an Surah Al-Talak verse 6

⁵ Mulyadi, *Hukum Perkawinan Indonesia [Indonesian Marriage Law]*, Badan Penerbit Universitas Diponegoro Semarang, 2008, p. 41.

that is justified by religion in emergency situations, as the Prophet said that a halal action that is the most hated by Allah SWT is *talaq*.⁶ It is also stated in the following quote:

“There is nothing that Allah has made lawful for, but which He hates apart from talaq”. (H.R. Abu Dawud r.a).

The definition of *talaq* as cited in Beni Ahmad Saybani’s book entitled *Fiqh Munakahat 2* [The Marriage Law in Islam], states that *talaq* in the religious (Islam) term means releasing the marriage bond/contract or dissolving the marriage relationship. This statement means dissolving the relationship between husband and wife so that the marriage or divorce ends.⁷ Dissolution of marriage or divorce can only be carried out

in front of a court under the provisions of the laws and legal regulations regulated by the State. Marriage and divorce are regulated in the Marriage Law, adhering to *the Principle of Open Monogamy*.

A divorce that occurs can have an impact on the social life of children and both husband and wife who are divorcing. Divorce often creates hostility between the two parties and the lack of children's rights and the husband's perceived obligations are often not fulfilled or even reduced in carrying out his obligations to fulfill the rights to support his children and wife. So, when it is seen from the legal function aspect, justice, certainty, and legal benefits are not achieved.

Regarding the husband's obligations in fulfilling the maintenance of his wife or ex-wife, it is regulated clearly and in detail in Article 41 of the Marriage Law, which states that:

⁶ Sayyid Sabiq, *Fikih Sunnah 8 [Sunnah Fiqh 8]*, Translator: Drs. Mohammad Thalib, PT. Alma’arif, Bandung, 1997, p. 12.

⁷ Beni Ahmad Saybani, *Fiqh Munakahat 2* [The Marriage Law in Islam], CV Pustaka Setia, Bandung, 2010, p. 55.

“The consequences of breaking up a marriage due to divorce are:

- a. Both mother and father are still obliged to care for and educate their children, based solely on the child's interests; if there is a dispute regarding control of children, the Court makes its decision;*
- b. The father is responsible for all maintenance and education costs required by the child; If the father is unable to fulfill these obligations, the court can determine that the mother will also bear the costs;*
- c. The court can require the ex-husband to provide living expenses and/or determine obligations for the ex-wife.”*

Furthermore, Article 41 c of the Marriage Law indicates that the Court through a judge's decision can include points regarding the husband's obligation to provide living expenses and/or determine obligations for the ex-wife he is divorcing, even though these

provisions are not clear and detailed.

Provisions for providing maintenance to ex-wives for those who are Muslim are regulated in the Compilation of Islamic Law (KHI) Article 149, which states that as a result of the dissolution of the marriage due to talaq, the husband is obliged to:

- a. Give proper mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is *qabla ad dukhul*.
- b. Providing living, *maskan* (residence), and *kiswah* (clothes) to the ex-wife during the 'iddah period, unless the ex-wife has been sentenced to talaq bain or nusyuz and is not pregnant.
- c. Pay off the *dowry* that is still owed in full, or half if *qabla ad dukhul*.
- d. Providing gift fees for children who have not yet reached the age of 21 years.

In our country, Indonesia, further regulations regarding the rights and obligations, (if the husband or wife is a Civil Servant), are specifically regulated under the provisions of Article 8 of Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 as follows:

1. If a divorce occurs at the will of a male Civil Servant, he is obliged to hand over part of his salary to support his ex-wife and children.
2. The distribution of salaries as intended in paragraph (1) is one-third for the male civil servant concerned, one-third for his ex-wife, and one-third for his children;
3. If there are no children from the marriage, then the portion of the salary that a male Civil Servant

must provide to his ex-wife is half of her salary;

4. If the divorce occurs according to the wife's wishes, then she is not entitled to a share of her ex-husband's income;
5. The provisions as intended in paragraph (4) do not apply if the wife asks for a divorce because she is married;
6. If the ex-wife of the Civil Servant concerned remarries, then her right to a portion of her ex-husband's salary will be extinguished from the date of her remarriage.

The provisions of Article 8 paragraph (4) of Government Regulation Number 10 of 1983 were supplemented by Government Regulation of the Republic of Indonesia Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and

Divorce Permits for Civil Servants, that is amending the provisions of Article 8 as follows:

- a. Between the old paragraph (3) and paragraph (4) a paragraph was inserted which was made into the new paragraph (4), which states as follows:

"(4) The distribution of salary to the ex-wife is not given if the reason for the divorce is because the wife committed adultery, and/or the wife committed cruelty or serious abuse both physically and mentally against the husband, and/or the wife became a drunkard, addict, and gambler who is difficult to cure, and/or the wife has left her husband for two consecutive years without her husband's permission and a valid reason or for other reasons beyond her ability".

- b. The provisions of the old paragraph (4) are then made into the provisions of the new paragraph (5).
- c. Change the provisions of the old paragraph (5) and then make it into a new paragraph (6) so that it states as follows:

"(6) The provisions as referred to in paragraph (5) do not apply, if the wife asks for divorce because she is in love, and/or the husband commits adultery, and/or the husband commits cruelty or serious abuse both physically and mentally against the wife, and/or the husband becomes a drunkard, and intractable gamblers, and/or the husband has left his wife for two consecutive years without the wife's permission and a valid reason or for other reasons beyond his ability".

- d. The provisions of the old paragraph (6) are then made into the provisions of the new paragraph (7).

Providing maintenance to an ex-wife is a decision made by a judge with various considerations and referring to various provisions and regulations. In a divorce due to the wife's wishes, the judge may decide not to oblige the husband to provide maintenance to his ex-wife. For example, it can be seen in the Lamongan Religious Court Decision Number 1110/Pdt.G/2012/PA.Lmg. The

plaintiff (wife) sued for divorce from her husband as the Defendant because of the lack of support provided by the husband to his wife. The judge's decision, in this case, granted the Plaintiff's lawsuit and imposed a divorce of one *ba'in sughro* on the Plaintiff and did not punish the Defendant to support the Plaintiff. Apart from that, there are also court decisions that refer to the Compilation of Islamic Law and other regulations, where the judge punished the ex-husband for providing support to his ex-wife after the divorce even though the divorce was according to the wife's wishes, as can be seen in the Ruling of the Samarinda High Religious Court 12 /Pdt.G/2012/PTA.Smd. The plaintiff (wife) sued for divorce from her husband as the defendant. For more than 2 (two) years, the defendant has not provided support to the Plaintiff, the defendant often utters dirty words at the Plaintiff even though

he is a teacher, and when the defendant quarrels with the Plaintiff he often threatens the Plaintiff with a sharp weapon. The judge finally sentenced the defendant to provide living and education costs to his three children and wife. The judge also sentenced the defendant to pay living during the iddah period to the Plaintiff amounting to Rp. 30 million and to pay mut'ah to the Plaintiff amounting to Rp. 50 million. This decision was upheld at the appeal level.⁸ From the description above, it is necessary to study the rights and obligations of husbands towards ex-wives after divorce according to Indonesian law.

⁸ Hukum Online, *Bolehkah Tidak Menafkahi Mantan Isteri Pasca Bercerai* [May not Provide a Living to an Ex-wife after divorce?] <http://www.hukumonline.com/klinik/detail/lt5039b10572c4a/bolehkah-tidak-menafkahi-mantan-isteri-pasca-bercerai>. retrieved on February 23, 2017 at 19.30 Indonesian Western Time.

Research Problems

1. What are the rights and obligations of a husband as a Civil Servant to his ex-wife after divorce according to Indonesian law?
2. How is the implementation of the rights and obligations of a husband as a Civil Servant towards his ex-wife after divorce according to Indonesian law?
3. What factors inhibit the granting of the rights and obligations of a husband as a Civil Servant to an ex-wife after divorce according to Indonesian law?

3. The Objectives and Significances of the Research

a. Objectives

- a. To know and understand the rights and obligations of a husband as a Civil servant to his ex-wife after divorce according to Indonesian Law.

- b. To know and understand the implementation of rights and obligations of a husband as a Civil Servant to ex-wife after divorce according to Indonesian Law.
- c. To know and understand factors that the granting of the rights and obligations of a husband as a Civil Servant to his wife after divorce according to Indonesian law.

b. Significances

- a. To provide insights into the development of law science in general and Indonesian marriage law in particular.
- b. To give inputs to society and government regarding the rights and obligations of a husband to an ex-wife after divorce according to Indonesian law.

RESEARCH METHODOLOGY

This research was a normative law in nature so the first stage that the authors did was collecting relevant books and references with the title to gather data and theories that were needed according to the research problems. The collected data were expected to identify problems and explain the scope of the research. The discussion was directed to analyze the materials that were related to the rights and obligations of a Civil Servant to ex-wife after divorce according to Indonesian law as a variable of the foundation of thinking. Therefore, the focus of the discussion was aimed to find out answers: (1) the rights and obligations and (2) the forms of the implementation of rights and obligations of a husband as a Civil Servant, whether it has fulfilled the legal functions of justice, certainty, and usefulness at the same time.

For the data analysis, the method used to uncover and explain

the problems was content analysis with normative, literal-historic, and empirical approaches. This method was used not only to know the existence of regulatory provisions established by the state relating to rights and obligations but also to understand the meaning contained in regulations arrangements or arguments that can be expressed in their implementation at the same time. Meanwhile, the current moral condition of national communities in the world, including our country Indonesia, needed to be taken into consideration, because after all good laws were laws that were rooted in the history of a nation's society; and were a reflection of the will of society itself, especially within the territory of the Unitary State of the Republic of Indonesia which was based on the law (*rechtstaat*)

RESULTS AND DISCUSSION

1. Rights and Obligations of a Husband as a Civil Servant (PNS) to His Ex-Wife

The husband's obligations in providing for his wife or ex-wife are regulated clearly and in detail in Article 41 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, stating that: “The consequences of breaking up a marriage due to divorce are:

- a. Both mother and father are still obliged to care for and educate their children, based solely on the child's interests; if there is a dispute regarding control of children, the Court makes its decision;
- b. The father is responsible for all maintenance and education costs required by the child; If the father is unable to fulfill these obligations, the court can determine that the mother will also bear the costs;
- c. The court can require the ex-husband to provide living expenses and/or determine obligations for the ex-wife.”

Point c in Article 41 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 above states that the Court

through a Judge's Decision can include points regarding the husband's obligation to provide living expenses and/or determine an obligation for a former wife who is divorced, even though this provision is not clearly and in detail explained. Husband's obligations for Muslims and Civil Servants, apart from the provisions in point c Article 41 of Law Number 1 of 1974, which has been amended by Law Number 16 of 2019 (henceforth the Marriage Law) have another provision that regulates the ex-husband's obligation to provide living costs to his ex-wife.

Provisions for providing maintenance to ex-wives for those who are Muslim are regulated in the Compilation of Islamic Law (KHI – *Kompilasi Hukum Islam*) Article 149 which states that as a result of the dissolution of the marriage due to divorce, the husband is obliged to:

1. Give proper mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is *qabla ad dukhul*.
 2. Providing a living, *maskan* (house), and *kiswah* (clothes) to the ex-wife during the 'iddah period, unless the ex-wife has been given a *talaq bain* or *nusyuz* and is not pregnant.
 3. Pay off the *dowry* that is still owed in full, or half if it is *qabla ad dukhul*.
 4. Providing *hadanah* living for children who have not yet reached the age of 21 years.
- In our country, Indonesia, further regulations regarding the rights and obligations if the husband or wife is a Civil Servant, are under the provisions of Article 8 of Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 as follows;
- a. If a divorce occurs at the will of a male civil servant, he is obliged to hand over part of his salary to support his ex-wife and children.
 - b. The distribution of salaries as intended in paragraph (1) is one-third for the male civil servant concerned, one-third for his ex-wife, and one-third for his children;
 - c. If there are no children from the marriage, then the share of the salary that a male Civil Servant must give to his ex-wife is half of his salary;
 - d. If the divorce occurs according to the wife's wishes, then she is not entitled to a share of her ex-husband's income;
 - e. The provisions as intended in paragraph (4) do not apply if the wife asks for a divorce because she is married;
 - f. If the former wife of the Civil Servant in question remarries, then her right to a portion of her ex-husband's salary will be extinguished

from the date of her remarriage.

Regulations regarding the provisions of Article 8 paragraph (4) of Government Regulation Number 10 of 1983 were supplemented by Government Regulation of the Republic of Indonesia Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, those are changing paragraphs (3) and the old paragraph (4) a paragraph is inserted which is made into the new paragraph (4), which states the following:

- a. "(4) The distribution of salary to the ex-wife is not given if the reason for the divorce is because the wife committed adultery, and/or the wife committed cruelty or serious abuse both physically and mentally against the husband, and/or the wife became a drunkard, addict, and gambler who is difficult to cure, and/or the wife has left her husband. for two

consecutive years without the husband's permission and without a valid reason or for other reasons beyond his ability".

- b. The provisions of the old paragraph (4) are then made into the provisions of the new paragraph (5).
- c. Change the provisions of the old paragraph (5) and then make it into a new paragraph (6) so that it states as follows:
- d. "(6) The provisions as intended in paragraph (5) do not apply if the wife asks for divorce because she is being married, and/or the husband commits adultery, and/or the husband commits cruelty or serious abuse both physically and mentally against the wife, and/or the husband becomes a drunkard, and intractable gamblers, and/or the husband has left his wife for two consecutive years without the wife's permission and a valid reason or for other reasons beyond his ability".
- e. The provisions of the old paragraph (6) are then made into the provisions of the new paragraph (7).

2. The Implementation of the Rights and Obligations of Husbands of Civil Servants

The husband has responsibility for a decent life for his (former) wife. Providing a living to an ex-wife is an obligation that must be fulfilled by the husband, considering that the wife is the party who is often the victim of divorce. Providing a living by a husband to his ex-wife is also something that has been regulated and determined in Islamic law.

Providing a living from a husband to an ex-wife is something that is mandatory and has been regulated in the Qur'an. This is the basis for the judge's consideration in ordering a husband as a Civil Servant to carry out his obligations in providing support to his ex-wife in the form of providing *iddah* support. The *iddah support* is given after witnessing the divorce vow made by the husband because basically, the *iddah* period falls after the

husband pronounces divorce on his wife. In divorce cases, a talaq divorce becomes a decision that has permanent legal force (*incracht*) after the husband reads the vow of divorce. Meanwhile, *mut'ah* is a gift from a husband to a former wife who has been divorced in the form of money or objects.

The judge as the holder of full power in ordering the parties, has the policy and implementation of providing maintenance. Providing a living for the wife before the divorce vow is read is a separate policy for the judges. This policy was implemented as a step to enforce the law and fight for the wife's rights which must be fulfilled by her ex-husband. Apart from upholding the law and fighting for the wife's rights, the order to provide maintenance which is carried out before the divorce vow is

read is based on the legal principles of Religious Court Procedural Law that the trial is carried out for the sake of justice. The justice (*justtigheid*) referred to is fighting for a sense of justice for the ex-wife to obtain her rights where the living received is not commensurate with the cost of the execution. What has permanent legal force in a talaq divorce case is the reading of the divorce vow.

The reading of the talaq divorce was carried out after a judge read the decision as regulated in Article 66 paragraph (1) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, which states: "A Muslim husband who is going to divorce his wife submits a request to the Court to hold a hearing to witness the divorce vow."

After the divorce vow is read, the ex-wife is entitled to receive a living as requested as stated in Article 66 paragraph (5) of Law Number 50 of 2009 concerning Religious Courts, which states: "Requests regarding child control, child support, wife support, and joint property with the husband "The wife can be submitted together with the divorce petition for divorce or after the vow of divorce has been read."

Mut'ah and *iddah* living are the husband's obligations to his ex-wife who has been divorced. Meanwhile, *madhiyah* living is an obligation for ex-husbands who did not provide livings during the marriage period. This is an attitude that should be taken by the husband because, in the case of divorce, divorce, the husband wants to divorce or break up.

Referring to the living needs of the ex-wife who is currently undergoing *iddah*, the husband divorcing his wife must pay a certain amount of money as a form of living, *kiswah*, and *maskan* as stated in Article 149 letter (b) of the Islamic Law Compilation. This gift is obligatory with or without a request from the wife except for *madhiyah* living. The request referred to in a talaq divorce case is that the wife files a lawsuit for reconvention related to mut'ah, *iddah* maintenance, and *madhiyah* living. The husband's obligation to provide a living includes several things:

- a. Living children until they are adults or independent;
- b. Providing a living during the *iddah* period for 3 months

In cases of talaq divorce filed by a husband as a Civil Servant, the obligation to provide a living to the wife is the same as the general obligations of husbands who apply for talaq divorce.

Based on the jurisprudence regarding divorce cases in the Religious Courts, it is stated that the giving of 1/2 part of the Defendant's salary to the Plaintiff as regulated in Article 8 of Government Regulation Number 10 of 1983 was amended by Government Regulation Number 45 of 1990 concerning Polygamy Permits for Civil Servants regarding Civil Servant Discipline Regulations. , is not a Religious Court Procedural Law, because the award of 1/2 of the Defendant's salary to the Plaintiff is a State Administrative Official's Decision.” (MARI Decision

Number 11 K/AG/2001 Dated on July 10th, 2003).

However, to accommodate the wife's interests and create a sense of justice, through his decision the judge provides the mut'ah that the husband must give to the wife. This is based on the judge's consideration of a wife's sense of justice and the imposition of responsibilities on her husband who is a Civil Servant.

To carry out his obligations, the husband must immediately carry out all obligations as decided by the judge. If these obligations are not carried out, then the Defendant can apply for execution to the Religious Court. The application for execution is registered with the clerk to be followed up and executed for negligence in fulfilling the civil servant husband's obligations to his ex-wife.

The implementation of the obligations of the husband as a civil servant in providing a living to his wife in talaq divorce cases through the decision of the Religious Court, overall went smoothly, in deciding on the provision of living, the judge took into account the economy of the Plaintiff, in this case, the husband.

In practice, legally there are no regulations that require payment of a living to ex-wife in cash. If the husband is unable to pay the entire obligation to provide a living, then he asks the court for relief so that it can be paid in installments. This is permitted due to other considerations because a living is usually paid periodically for a certain period.

According to the author's analysis, the implementation of the obligations of the husband as a civil servant in

providing a living to his ex-wife in the case of divorce and divorce through the decision of the Religious Court, if viewed according to the theory of responsibility, where responsibility is mandatory, to bear, obliged to bear the burden, obliged to fulfill all the consequences that arise. Arising from actions, willingness to serve, and willingness to sacrifice for the interests of other parties, the decision regarding the implementation of the obligations of a husband as a civil servant in providing a living to his wife in a talaq divorce case reflects the theory of responsibility carried out by the husband, where the husband fulfills his responsibility in providing good living paying *mut'ah* and *iddah* living.

Apart from analyzing the husband's responsibilities, the author also analyzes the

application of the amount of *mut'ah* and *iddah* income to the wife. In the judge's decision regarding the obligation of the husband as a civil servant, he did not include or decide on the husband's obligation to pay 1/2 of his salary to his wife. This is based on the consideration that there are no governing regulations and the 1/2 salary rule is a decision of the Administrative Court. However, to provide a sense of justice to the wife, with the judge's consideration based on the results of interviews and data obtained by the author, the judge increased the *mut'ah* by 3x what it should have been. If viewed according to the aim of decision theory according to Achmad Ali, then the decisions taken by the judge reflect decision theory, where the decision is to provide benefits to all mankind where the aim of

realizing this benefit is under the general principles of the Qur'an:

- a. *Al-asl fi al-manafi al-hall wa fi al-mudar al man'u* (everything that is beneficial is permitted and everything that is detrimental is prohibited);
- b. *La darara wa la dirar* (do not cause harm and do not become a victim of harm);
- c. *Ad-darar yuzal* (the danger must be eliminated).

Apart from analyzing the judge's decision regarding the amount of maintenance received by the wife using Achmad Ali's decision theory, according to the author's analysis, the judge's decision by not applying 1/2 of the salary as the husband's obligation to support his ex-wife but by providing *mut'ah* 3 times what it should be is under Bentham's decision theory and contains the basic principles of Jeremy

Bentham's instructions as follows:

- 1) The objective of the law is that law can provide a happiness guarantee to individuals. The utility principle of Bentham is "the greatest happiness of the greatest number". Even though a divorce decision is not a decision that can provide happiness, there will be victims in this decision, especially children, the imposition of the husband's obligation to provide for his wife is something that can provide guarantees that the ex-wife and children can still enjoy and live their lives due to the obligation of a husband as a civil servant imposed by the judge through a ruling to pay his wife's maintenance.

2) To actualize individual and community happiness, the legislation must achieve four objectives. Therefore, The judge's decision towards the implementation of the husband's obligations who works as a civil servant in providing a living to his wife in a talaq divorce case has included four matters:

a. To provide subsistence living

The matter of providing subsistence living was stated in the judge's decision. It can be seen from the announcement of the verdict by a judge that states that the judge imposes an obligation on

the husband to provide living support to the wife after the divorce. It was done to provide protection and ensure the life of the ex-wife and especially the living needs of children resulting from divorce.

b. To provide an abundance living

The announcement of the verdict by a judge did not regulate clearly about providing an abundance living. However, based on the results of the authors' analysis of the talaq divorce case, the

judge still paid attention to the aspect of the husband's obligation to provide support for his ex-wife. It is in line with the theory of obligation as regulated in Article 33 paragraph (1) of Law Number 16 of 2019 concerning Marriage: "The husband is obliged to protect his wife and provide all the necessities of household life according to his ability".

c. *To provide security*

The matter of providing

security was also stated in the judge's decision. The implementation of the ex-wife's maintenance payment by the husband was carried out after a decision had been made because the decision had executorial power, that is the power to be executed or enforced. This power exists based on the Head of Decision which states "For the sake of justice based on Belief in One Almighty God." If this statement is not

stated, the execution of a decision given by a judge cannot be carried out as regulated in Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power in conjunction with Article 57 paragraph (1) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. It does not mean that the court prohibits the husband from

paying his obligations before there is a valid decision, but logically a person does not know how much must be paid before there is a definite decision. A decision that can be executed is any decision that has obtained permanent legal force and is punitive (condemnatoir). Regarding talaq divorce decisions regarding divorce, the contents of the Convention Decision regarding divorce vows,

the execution is by opening a hearing to witness the divorce vows. Meanwhile, the contents of the Reconvension Decision are executed by executing the payment of a sum of money as regulated in Articles 197-200 HIR/and Articles 208-218 RBg. Thus, the Convention Decision and Reconvension Decision can be understood as the content of the decision, each of which stands alone. If there is no clause linking

the two contents of the decision, then they both remain independent. Therefore, failure to comply with the contents of the Reconvension Decision cannot prevent the implementation of the contents of the Convention Decision.

- d. To attain equity
The matter of attaining equity is stated in the decision in which the decision given by a judge aims to attain equity in terms of a sense of justice for every party.

As aforementioned, the implementation of a husband's obligation who works as a civil servant in providing a living to his ex-wife in a talaq divorce case has been run well. It was because the judge had considered the economic condition of the plaintiff (a husband).

Based on the results of the analysis that had been carried out by authors, the implementation of a husband as a civil servant in providing a living to his ex-wife has reflected that the implementation of the responsibility and the appropriate decision theories taken by judges has run based on the expectation. Consequently, both parties were able to get their rights and obligations as well as to carry out their responsibilities in full.

4. Factors Inhibiting the Implementation of a Husband's Rights and Obligations

Two factors were inhibiting the implementation of rights and obligations of a husband as a civil servant to his ex-wife. They are as follows:

a. Internal Factors

The internal factor arose from the husband himself. It was influenced by some factors, including:

- 1) A husband's educational background.

The higher the education, the higher the level of obedience and obedience to the law, so that the process of implementing the *mut'ah* of a husband against his ex-wife could be carried out well. Conversely, the lower the level of education, the lower the level of compliance with the law and this was what caused the implementation of the *mut'ah* of a husband hampered.

- 2) The background to divorce

If in a divorce there is a mistake made by the wife, this will result in the husband's reluctance to give *mut'ah* to his ex-wife.

3) The husband's character and sense of responsibility.

If the husband has a harsh character and does not have a sense of responsibility, then this is the cause of the judge's decision not being implemented regarding the husband's obligation to provide support to his ex-wife.

b. External Factors

The external factors arose from outside of the husband or from the character and behavior of the husband and other external factors. Some factors that caused the judge's decision of a husband's obligation to provide a living to his ex-wife

not run based on the decision were as follows:

1) The economic situation of the husband was on the up and down condition so he was not able to provide a living for his ex-wife;

2) A wife who did not want to receive her ex-husband's living, this was because the living provided was not under what was determined;

3) The factor of lack of control or supervision from the court.

CLOSING

The first conclusion of the research problem is related to the regulations of the rights and obligations of a husband as a civil servant to his ex-wife regulated in the National Marriage Law regulations through Marriage Law Number 1 of 1974 which has been amended by Law Number 16 of 2019, as well as Government Regulation Number 45 of 2019.

1990 as amended by Government Regulation Number 10 of 1983, as well as the Islamic Law Compilation INPRES No. 1 of 1991. The second conclusion is, that in the divorce case at the Religious Court, the implementation of the obligations of the husband as a Civil Servant in providing a living for his ex-wife has gone smoothly, with the husband carrying out his obligations well. This is proven by the absence of a request for execution of the decision submitted by the wife even though the judge's decision does not contain provisions for giving 1/2 part of the Defendant's salary to the Plaintiff. The inhibiting factors in providing maintenance to ex-wives in talaq divorce cases through Religious Court Decisions are generally influenced by two factors; internal factors and external factors.

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