



Providing *Nafkah Mut'ah* for Wives in Lawsuits of Divorce According to Islamic Law and Indonesian Legislation

Titin Triana^{1*}, Suhar², Ishaq³

¹Pascasarjana UIN Sultan Thaha Saifuddin Jambi, titintriana004@gmail.com

² UIN Sultan Thaha Saifuddin Jambi, suhar@uinjambi.ac.id

³ UIN Sultan Thaha Saifuddin Jambi, ishaq@uinjambi.ac.id

* Correspondence Author

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Abstract

This article discusses the phenomenon of responsibility in granting *mut'ah* to a divorce suit filed by the wife, both from the perspective of Islamic law and the perspective of legislation in Indonesia. The main problem studied is how Islamic law and legislation in Indonesia regulate the granting of *mut'ah* to a divorce suit filed by the wife? This article comes from qualitative literature research which observes the phenomenon of court decisions regarding responsibility for granting *mut'ah*. The research found that based on the provisions of Chapter 149 of the Compilation of Islamic Law (KHI), in divorce cases that are contested in trials at the Religious Courts, the judge does not punish husbands who commit *mut'ah* and undergo iddah. The obligation to provide *mut'ah* and iddah is only given by husbands who divorce their wives as mandated in article 39 of PP No.9 of 1975 jo. Chapter 149 letter (b) Compilation of Islamic Law (KHI).

Abstrak

Artikel ini membahas tentang fenomena tanggung jawab dalam pemberian *mut'ah* kepada gugatan cerai yang diajukan oleh pihak istri, baik dari segi Hukum Islam dan maupun perspektif perundang-undangan di Indonesia. Permasalahan utama yang dikaji adalah bagaimana Hukum Islam dan Perundang-undangan di Indonesia mengatur tentang pemberian *mut'ah* kepada gugatan cerai yang diajukan oleh pihak istri? Artikel ini berasal dari penelitian kualitatif literatur yang mengamati fenomena putusan pengadilan terkait tanggungjawab pemberian *mut'ah*. Penelitian menemukan bahwa Berdasarkan ketentuan Bab 149 Kompilasi Hukum Islam (KHI), dalam perkara perceraian yang digugat dalam persidangan di Pengadilan Agama, Hakim tidak menghukum suami yang melakukan *mut'ah* dan menjalani iddah. Kewajiban memberikan *mut'ah* dan iddah hanya diberikan oleh suami yang menceraikan istrinya sebagaimana diamanatkan dalam pasal 39 PP No.9 Tahun 1975 jo. Bab 149 huruf (b) Kompilasi Hukum Islam (KHI).

A. Introduction

Marriage is living together between a man and a woman who meet certain conditions. In the Marriage Law Number 01 of 1974 concerning Marriage in Chapter 1 it states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One Supreme God. and the creation of harmony in the household that is *sakinah, mawaddah wa rahmah* is the dream of

everyone in the household.¹ In the relationship between husband and wife, it is not uncommon for constant disputes and quarrels to occur as well as for other reasons. Conflicts between husbands and wives are caused by many things, both originating from the wife, and the final settlement can be carried out in the Religious Courts where the husband can file for divorce. Likewise, when the source of conflict is the husband, the wife can also file for divorce in accordance with the provisions of Chapter 132 of the Compilation of Islamic Law (KHI). This is in line with the Shari'a, although it places more emphasis on peace (Islam) between the two disputing parties.² However, the last step that results in divorce in any form is a form of action that is not liked by Allah, as the Prophet said.³

Divorce in fiqh terms is called divorce or furqoh, which means breaking the bond and canceling the agreement. According to Law Number 01 of 1974 concerning Marriage, it is the end of a marriage that has been fostered by a husband and wife caused by several things such as death and a court decision. In this case divorce is seen as the end of marital instability where the husband and wife then live separately and are officially recognized by applicable law. Dissolution of marriage is regulated in Chapter 38 to Chapter 41 of Law Number 01 of 1974 concerning Marriage. According to Chapter 38 of Law Number 01 of 1974 and Chapter 112 of Presidential Instruction Number 01 of 1991 concerning Compilation of Islamic Law (KHI), there are three types of marriage breakdown, namely due to death and divorce.⁴ Dissolution of marriage due to death is the end of a marriage caused by one of the parties, namely the husband or death. While the breakup of a marriage due to divorce can occur due to two things, namely divorce and based on a divorce lawsuit.

However, every event of divorce certainly has an impact, both on the husband, assets or responsibilities afterwards, as stipulated in Chapter 41 of Law Number 01 of 1974 concerning Marriage and Chapter 149 of Presidential Decree Number 01 of 1991.⁵ There are two consequences of breaking up a marriage, which are caused by divorce and divorce. If the divorce is due to a divorce application for divorce, then the divorced person gets iddah and *mut'ah* maintenance, as stated in Chapter 149 of the Compilation of Islamic Law (KHI), it states that if a marriage is broken up due to divorce, then the ex-husband is obliged to provide a proper *mut'ah* to the former, whether in the form of money or goods, except for the former qobla al -dukhul provides maintenance, food and kiswah to the former during the iddah period, unless the former has been sentenced to divorce ba'in or nusyuz and is not pregnant; pay off the dowry that is still owed in full and in half if the qobla al-dukhul provides hadhanah costs for their children who have not reached the age of 21 years.⁶ Meanwhile, if the divorce suit is filed by the wife, the wife will not get iddah and *mut'ah* maintenance.

Based on the Compilation of Islamic Law (KHI) Chapter 149 it is stated that as a result of the breakup of a marriage due to divorce, the husband is obliged to (a) give a proper *mut'ah* to his wife, either in the form of money or objects, unless the ex-wife is Qabla al dukhul, (b) give maintenance of maskan (place to live) and kiswah (clothing) for the ex-wife during the iddah period, unless the former wife has been sentenced to good divorce or nusyuz and is not pregnant, (c) paying off the dowry that is still owed in full, or half if qabla ad dukhul, (d) provide the cost of havinganah for their

¹ Soemiyati, *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan* (Yogyakarta: Liberty, 2007), 138.

² Kementerian Agama RI Direktorat Jenderal Bimbingan Masyarakat Islam Direktorat Bina KUA dan Keluarga Sakinah, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Kemenag RI, 2018), 64.

³ The stages of resolving domestic conflicts have actually been explained in the Koran starting from advice, separating beds, sanctions, arranging arbitration, asking for advice from the Marriage and Divorce Advisory Board and even filing a lawsuit at the Religious Court. Steps for resolving internal family conflicts are firmly and clearly contained in the Al-Qur'an Surah an-Nisa verse 34-35.

⁴ Kementerian Agama RI, *Kompilasi Hukum Islam*, 57.

⁵ Kementerian Agama RI, *Kompilasi Hukum Islam*, 57.

⁶ Kementerian Agama RI, *Kompilasi Hukum Islam*, 57.

children who have not reached the age of 21 years.⁷ If you look closely at the two provisions, there are differences. In Chapter 41 of Law Number. 01 of 1974 regulates the consequences of breaking up a marriage due to divorce, both divorce and divorce, while Chapter 149 of the Compilation of Islamic Law (KHI) regulates the legal consequences of a divorce filed by the husband (divorce divorce) only. Based on the provisions of Chapter 149 of the Compilation of Islamic Law (KHI) that in generally contested divorce cases in trials at the Religious Courts, Judges do not punish husbands for giving *mut'ah* and living iddah.⁸

Based on the background above, some of the issues that will be discussed in this chapter include (1) what is the urgency of giving *mutah* to the wife in a contested divorce in the perspective of Islamic law, (2) what are the provisions for granting *mutah* *Mut'ah* support to wife in a contested divorce according to Indonesian law, and (3) any problems regarding the regulation of *mutah* support to wife in a contested divorce according to the Perspective of Islamic Law and Marriage Law in Indonesia. Theoretical framework

B. Theoretical Framework

1. Livelihood *Mut'ah*

The word *Mut'ah* with dhammah mim (*Mut'ah*) or kasrah (mit'ah) is the root word for Al-mata, which is something that is liked. This means that the material handed over by the husband to the wife is separated from her life with several conditions.⁹ In the Big Indonesian Dictionary, the word *mut'ah* is defined as something (either in the form of money or goods) that is given by a husband to his divorced wife as a consolation for his ex-wife's heart.¹⁰ According to Muhammad al-Khatib asy-Syarbaini, *mut'ah* is a gift from (former) husband to (former) wife as a result of a divorce, where the wife is divorced by the husband. *Mut'ah* can be in the form of jewelry/objects, or money. *Mut'ah* must be given by the ex-husband on condition that no dowry has been set for the wife of ba'ad al-dukhul and divorce is at the will of the husband.¹¹ Definitively, the meaning of *mut'ah* is a number of assets that must be handed over to the wife who has been divorced by means of divorce or a method similar to that. *Mut'ah* or eye in syara' is property given to women who are forcibly divorced because of the pain of divorce.

The definition of *mut'ah* in Indonesian in the Big Indonesian Dictionary is explained as something (money, goods and so on) that is given by a husband to his divorced wife as a provision for life (comforter for the heart) of his ex-wife.¹² *Mutah* is everything that a husband gives to his wife after separation, such as clothing or something equivalent to it. As stated in Surah Al-Baqarah: 241-242 which means:

"To divorced women (should be given by their husbands) *mut'ah* according to what is ma'ruf, as an obligation for pious people. Thus Allah explains to His verses (His laws) so that you understand them.

⁷Kementerian Agama RI, *Kompilasi Hukum Islam*, 57.

⁸Kementerian Agama RI, *Kompilasi Hukum Islam*, 73.

⁹ Abdul Aziz Muhammad Azzam dan Abdul Wahhab Sayyed Hawwas, *Fiqh Munakahat Khitbah, Nikah dan Talak* (Jakarta : Amzah, 2011) 207.

¹⁰ Depertemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia* (Jakarta : PT.Penerbitan dan Pencetakan Balai Pustaka, 2001), 768.

¹¹ Maliano Perdana, "Studi Analisis Istinbath Hukum Imam Malik Tentang *Mut'ah* Bagi Wanita Yang Telah Ditalak" (Tesis, Universitas Walisongo, Semarang, 2015), 39.

¹² Depertemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, 945.

Mutah in Positive Law, has been regulated as in Chapter 41 (c) of Law Number 01 of 1974 concerning Marriage, in that chapter it is explained that the husband can be charged with an obligation after the divorce. Regarding this obligation, it is explained in more detail in the Compilation of Islamic Law (KHI) in Chapter 149 it is explained regarding the obligations imposed on ex-husbands. In point (a) it is explained that when a divorce occurs because of divorce the ex-husband is obliged to give a proper *mut'ah* to his ex-wife, either in the form of money or objects. Unless the ex-wife is *qabla al-dukhul*. Based on Chapter 158 (b), if the divorce originates from the will of the wife by way of *khulu'*, then the husband is not obliged to pay *mut'ah* to his ex-wife. The husband is obliged to give *mut'ah* if the conditions contained in the Compilation of Islamic Law (KHI) Chapter 158 are fulfilled. If there are no provisions mentioned in the Compilation of Islamic Law (KHI), then it is not obligatory to give mutah to his ex-wife.

The husband's law gives *mut'ah* when the provisions in the Compilation of Islamic Law (KHI) Chapter 158 are not fulfilled, it becomes a sunnah, as stated in the Compilation of Islamic Law (KHI) Chapter 159 "*Mut'ah sunnat* is given by the ex-husband without these conditions in chapter 158." Regarding the size of the *mut'ah* imposed on ex-husbands, there are no specific guidelines in statutory regulations. However, in Chapter 160 of the Compilation of Islamic Law (KHI) it is explained that the size of a *mut'ah* is determined based on the ability of the husband, so the size of the *mut'ah* depends on his ability.

The problem regarding mutah departs from Q.S. al-Baqarah verse 241, that it is people who are pious who are obliged to give *mut'ah* to their ex-wife. Scholars of the Mazhab of thought differ on this matter, whether the gift is sunnah or obligatory. The Hanafi Mazhab, the Shafi'i Mazhab and the Hambali Mazhab say that giving *mut'ah* is legally obligatory on the basis of the obligation to give *mut'ah*. The Hanafi Mazhab argues that *mut'ah* is obligatory for every husband who divorces his wife before having intercourse with her and has not yet mentioned dowry, the Maliki Mazhab argues that *mut'ah* is sunnah for every woman who is divorced, the Shafi'i Mazhab says that *mut'ah* is mandatory for every divorced woman whether divorce before or after intercourse. Except for a woman who is divorced before having intercourse, the dowry has been determined for her. Meanwhile, the Hambali Mazhab believes that the husband is obliged to give *mut'ah* to the wife who is married to *tafwidh* and divorced before having sex and before determining the dowry. The cause of the difference of opinion of the scholars of the four Mazhabs regarding the granting of *mut'ah* is due to differences in *istinbath* method.

a. Hanafi Mazhab.

According to the Hanafi Mazhab, the law of *mut'ah* is obligatory when the separation is caused by the husband. *Mut'ah* is given before mixing or seclusion properly, and when the mention of the dowry is incorrect at the time of the marriage contract in accordance with the word of Allah SWT in Surah Al-Baqarah 236) which means:

"There is no obligation to pay (dowry) on you, if you divorce your wives before you mix with them and before you determine the dowry. And you should give a *mut'ah* (gift) to them. People who are able according to their abilities and people who are poor according to their abilities (also) are gifts according to what is appropriate. That is the condition for those who do good.

Among them there are also exceptions to widows before mixing whose dowry has been mentioned. They do not oblige *mut'ah* because it is sufficient to pay half the dowry. This is a good opinion, because the mandatory half dowry in such circumstances can compensate for the loss caused by divorce to the woman. So there is no need for another replacement decision in addition

to what has been required by the Shari'a.¹³ Likewise, women who emancipate themselves and those who are equal to them are not entitled to *mut'ah*. Because *mut'ah* is obligatory in religion to support the wife's needs, both morally and materially. This will be seen if the divorce comes from the husband, not the wife who asks for it and gives it up, and not from herself.¹⁴

Allah SWT indeed requires *mut'ah* for divorced women, however Allah SWT does not determine the size and only explains that the *mut'ah* should be according to what is right, in accordance with the conditions of the husband, be it rich or poor. Allah SWT says in Surah Al-Baqarah: 236 which means:

"There is no obligation to pay (dowry) on you, if you divorce your wives before you mix with them and before you determine the dowry. And you should give a *mut'ah* (gift) to them. People who are able according to their abilities and people who are poor according to their abilities (also), namely giving according to what is appropriate. That is the condition for those who do good."¹⁵

It is permissible to add from half the dowry, according to the word of Allah in Surah Al-Baqarah 237 which means:

"If you divorce your wives before you mix with them, when in fact you have already determined the dowry, then pay half of the dowry that you have determined."¹⁶

b. Maliki Mazhab of thought.

In Surah Al Baqarah 237, the word of Allah SWT which means:

"If you divorce your wives before you mix with them, when in fact you have determined the dowry, then pay half of the dowry that you have determined."

Among them there are also exceptions to widows before mixing whose dowry has been mentioned. They do not oblige *mut'ah* because it is sufficient to pay half the dowry. This is a good opinion, because the mandatory half dowry in such circumstances can compensate for the loss caused by divorce to the woman. So there is no need for another replacement decision in addition to what has been required by the Shari'a.¹⁷ In the opinion of the Maliki Mazhab of thought, states that what is considered the condition of men is in accordance with the reality of this verse. Others are of the opinion that the mutah that must be considered is that of the wife. As for the sunnah, it is the husband's side.

c. Shafi'i Mazhab of thought

As for the Shafi'i Mazhab, it is of the opinion that the amount is returned to the judge, namely by considering the condition of the husband and the characteristics of the wife in the dowry-matsal. In accordance with the word of Allah SWT, "And you should give a *mut'ah* (gift) to them. People who are able according to their abilities and people who are poor according to their abilities (also)". The second thing, giving *mut'ah* must be accompanied by good (maruf), in accordance with the word of Allah SWT, "To divorced women (should be given by their husbands) *mut'ah* according to what is good". Another opinion only recognizes the condition of the woman, because the *mut'ah* is no different as a substitute for dowry. It is said that mutah has no size, but what is required is at least

¹³ Abdul Majid Muhamud Mathlub, *Panduan Hukum Keluarga Sakinah* (Solo: Era intermedia, 2005), 239.

¹⁴ Mathlub, *Panduan Hukum Keluarga Sakinah*, 514.

¹⁵ Departemen Agama Republik Indonesia, *Al-Qur'an dan Terjemahannya* (Jakarta: Depag RI, 1965), 58.

¹⁶ Departemen Agama Republik Indonesia, *Al-Qur'an dan Terjemahannya*, 58.

¹⁷ Mathlub, *Panduan Hukum Keluarga Sakinah*, 239.

capital assets. It can also be used as dowry. The difference is that the dowry occurs by agreement, the size of which is what has been determined.

d. Hanbali Mazhab

According to the Hanbali Mazhab of thought, that *mut'ah* is either obligatory or sunnah, the level is in accordance with the condition of the husband, in accordance with the word of Allah SWT which means:

"And you should give a *mut'ah* (compensation) to them People who are able according to their abilities and people who are poor according to their abilities (Al-Baqarah: 236).¹⁸

So it's not based on the condition of the wife. Because in that case it would not be stated that people who are capable according to their abilities and poor people according to their abilities too.

2. Divorce Lawsuit in Indonesia

In Chapter 34 of Law Number 01 of 1974 concerning Marriage it is stated that a marriage can be broken up due to three things, namely death, divorce and a court decision.¹⁹ If one of the parties wants to file for divorce, the plaintiff must submit it to the Religious Court. This is as explained in Chapter 40 of Law Number 01 of 1974 concerning Marriage.²⁰ In this understanding, that divorce can be considered valid if it has been decided by the Court. Even then, if the court has tried to make peace between the two parties, but to no avail. Islamic law in Indonesia stipulates that the right to divorce is not a monopoly right of men. This can be seen from the Law of the Republic of Indonesia Number 07 of 1989 concerning Religious Courts, amendments to Law of the Republic of Indonesia Number 03 of 2006, then amendments to Law of the Republic of Indonesia Number 50 of 2009.

Hammudah Abd al-Ati wrote a book entitled "The Family Structure in Islam". court proceedings. From the four parts above, it shows that the rights are the same if the two husband and wife cannot be reconciled. According to M. Djamil Latief in his book, Various Divorce Laws in Indonesia, that women have an equal and balanced position in terms of divorce. Women have the right to file for divorce against their husbands, if the husband has done things that are not justified by law, for example committing domestic violence (domestic violence), drunkenness and others. As stipulated in the Republic of Indonesia Law Number 07 of 1989, amendments to the Republic of Indonesia Law Number 50 of 2009 concerning Religious Courts, specifically Chapter 73 paragraph 1 reads:

"A lawsuit for divorce is filed by the wife or her attorney to the Court whose jurisdiction includes: the place of residence, unless the Plaintiff deliberately leaves the joint without the Defendant's permission."²¹

Crucial issues include the position of the Religious Courts in deciding marriages. There are four issues that can be discussed.²²

- a. The divorce was carried out by the parties themselves. In this case by saying the vow of divorce by the husband. The court only functions to witness and provide information about the occurrence of a divorce.
- b. Divorce with court settlement must be made before a court hearing held for that

¹⁸ Departemen Agama Republik Indonesia, *Al-Qur'an dan Terjemahannya*, 58.

¹⁹ Soemiyati, *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan* (Yogyakarta: Liberty, 2007), 18.

²⁰ Soemiyati, *Hukum Perkawinan Islam*, 21.

²¹ JDIH BPK, Undang-undang (UU) Nomor 50 Tahun 2009 tentang Perubahan Kedua atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama, 78; <https://peraturan.bpk.go.id/Details/38795/uu-no-50-tahun-2009>.

²² Amiur Nuruddin dan Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia* (Jakarta: Kencana, 2004), 235.

purpose.

- c. Implicitly it can be said that a divorce is declared valid if it is carried out after obtaining permission from the Court.
- d. Divorce is considered to have occurred since divorce was pronounced by the husband in front of the court hearing.²³

In the Marriage Law Number 01 of 1974 Chapter 39 paragraph 1 reads:

"Divorce can only be carried out before the trial court concerned tries and does not succeed in reconciling the two parties."²⁴

Dissolution of the marriage bond can occur due to behavioral factors on the part of the husband and wife that are bad or one of them acts cruelly towards the other, the couple who cannot live in harmony as a complete family. So in this case syiqaq is more likely to occur, even though this event will still depend on both parties. Divorce will definitely occur when one party feels it is impossible to maintain the marriage bond and is forced to break it off. A contested divorce is a wife who takes the initiative to divorce her husband for various reasons. In classical fiqh literature, it gives more space for men to be positioned as parties who have the exclusive right to divorce their wives. In contrast, when a husband takes the initiative to divorce his wife, it is legally called a talak divorce. The two terms talak divorce and contested divorce are contained in RI Law Number 7 of 1989 concerning Religious Courts which has been amended to become RI Law Number 03 of 2006 and then amended RI Law Number 50 of 2009.. So what is meant by a contested divorce is that the wife or her representative filed a divorce suit against the husband to the local Religious Court.²⁵

The traumatic impact of divorce is usually greater than the impact of death because before and after divorce pain and emotional pressure have arisen and result in social disgrace and even difficulties and self-complications after a divorce. There are five stages of adjustment after divorce, namely:

- a. The stage of denial that there is a divorce.
- b. The stage of anger arising where each individual does not want to be seen by the other.
- c. Stage of effort not to divorce on the grounds of consideration of their children.
- d. The stage of experiencing mental depression when knowing the overall impact of divorce on the family.
- e. Consent stage for divorce.²⁶

Another impact of contested divorce is the problem of changing status and role. Changing the status of a wife to a widow, especially because of divorce, is much more difficult for society to accept. This happens because there is an assumption that says that a wife who leaves the marriage relationship (for whatever reason) is a woman who fails to maintain the integrity of her household and fails to fulfill her responsibilities and brings shame to the family. As a result, many women become depressed and blame themselves for all the events that have occurred and believe themselves to be failed women.

C. Research Methods

²³ Nuruddin dan Tarigan, *Hukum Perdata Islam*, 236.

²⁴ Soemiyati, *Hukum Perkawinan Islam*, 19.

²⁵ Darliana, *Cerai Gugat Perspektif Perundang-undangan di Indonesia* (Makassar: Pascasarjana UIN Alauddin, 2014), 8.

²⁶ Hurloch E.B, *Psikologi Perkembangan: Suatu Pendekatan Sepanjang Rentang Kehidupan* (Jakarta: Erlangga, 1999), 309.

This study uses a library research approach that originates from the opinions of jurists and laws in Indonesia. Source of data consists of primary and secondary data. Primary data consists of State Legislation, Compilation of Islamic Law, as well as legislation issued by ministries. Secondary data sources consist of materials related to primary legal materials and can help analyze and understand primary legal materials. Books or legal books are part of the secondary sources. Data collection in library research is sourced from books, laws and journals, reviewing archives or literature studies collected from secondary legal materials. The data that has been collected by means of a literature study is then analyzed using qualitative methods supported by deductive logical thinking, as an answer to all the legal issues that exist in this study. Data analysis in this study was carried out qualitatively, where the discussion and results of this study were described in words based on the data obtained. The collected data will be analyzed by finding and determining the relationship between the data obtained from the research and the issues raised in this study.

D. Research Results and Discussion

1. The Urgency of Providing *Mut'ah* to the wife in a contested divorce in the Perspective of Islamic Law

Scholars of the Mazhab of thought differ on the granting of mutah, whether it is sunnah or obligatory. The Hanafi Mazhab, the Shafi'i Mazhab and the Hambali Mazhab say that giving *mut'ah* is legally obligatory on the basis of the obligation to give *mut'ah*. The Hanafi Mazhab argues that *mut'ah* is obligatory for every husband who divorces his wife before having intercourse with her and has not yet mentioned dowry, the Maliki Mazhab argues that *mut'ah* is sunnah for every woman who is divorced, the Shafi'i Mazhab says that *mut'ah* is mandatory for every divorced woman whether divorce before or after intercourse. Except for a woman who is divorced before having intercourse, the dowry has been determined for her. Meanwhile, the Hambali Mazhab believes that the husband is obliged to give *mut'ah* to the wife who is married to tafwidh and divorced before having sex and before determining the dowry. The cause of the difference in opinion of the scholars of the four Mazhab regarding the granting of *mut'ah* is due to differences in the method of istinbath.

a. Hanafi Madhhab

The founder of the Hanafi Mazhab was born in Kufa in 80 AH/699. His full name is Abu Hanifah An-Nukman bin Thabit bin Zulfi At-Tamimi. Among his books are: *al-Mu'su'ah, li Makhārij* and *Fiqh Akbar*. He died in 150 AH/767 AD and was buried in Khizra.²⁷ According to the Hanafi Mazhab, the law of *mut'ah* is obligatory when the separation is caused by the husband. *Mut'ah* is given before mixing or seclusion properly, and when the mention of the dowry is not correct at the time of the marriage contract in accordance with the word of Allah SWT in Surah Al-Baqarah 236

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفِرُّضُوا لَهُنَّ فَرِيَضَةً ۝ وَمَتَّعُوهُنَّ عَلَى الْمُوْسِعِ قَدْرُهُ، وَعَلَى الْمُفْتَرِ قَدْرُهُ،
مَتَّعًا بِالْمَعْرُوفِ ۝ حَقًا عَلَى الْمُحْسِنِينَ

There is no blame if you divorce women before the marriage is consummated or the dowry is settled. But give them a 'suitable' compensation—the rich according to his means and the poor according to his. A reasonable compensation is an obligation on the good-doers.

The Hanafi mazhab argues that this *mut'ah* is passed on to the widow after mixing or seclusion properly and the husband has mentioned the dowry to her. In circumstances like this, such as letting go properly at the time of divorce. As it is passed down to the widow, if the dowry is mentioned at the time of the marriage contract, because she is gathered with a matsal dowry which

²⁷ Muhammad Jawad Mughniyah, *Fiqih Lima Mazhab*, Trans. Masykur A.B, Alif Muhammad and Idris Al-Kaff (Jakarta: Penerbit Lentera, 2007), xxv.

means similar to her. Some jurists are of the opinion that it is obligatory to do *mut'ah* to widows in all circumstances. Among them there are also exceptions to widows before mixing whose dowry has been mentioned. They do not oblige *mut'ah* because it is sufficient to pay half the dowry. This is a good opinion, because the mandatory half dowry in such circumstances can compensate for the loss caused by divorce to the woman. So there is no need for another replacement decision in addition to what has been required by the Shari'a.²⁸

b. Maliki Mazhab of thought

The founder of the Maliki Mazhab, Imam Malik bin Anas, was born in Medina in 93 H. Among his books is *al-Muaththa'*, which is a book of hadith and fiqh. Imam Malik died at the age of 86 in 179 H/795 AD.

In Surah Al Baqarah 237, the word of Allah SWT:

وَإِنْ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرِضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفٌ مَا فَرِضْتُمُ إِلَّا أَنْ يَعْفُوَا أَوْ يَعْفُوا الَّذِي يُبَدِّهِ عُقْدَةُ النِّكَاحِ وَإِنْ تَعْفُوا أَفْرَبُ لِلثَّقَوْيِ لَا تَنْسَوْا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ يُمَا تَعْمَلُونَ بَصِيرٌ

"If you divorce your wives before you mix with them, when in fact you have determined the dowry, then pay half of the dowry that you have determined."

Among them there are also exceptions to widows before mixing whose dowry has been mentioned. They do not oblige *mut'ah* because it is sufficient to pay half the dowry. This is a good opinion, because the mandatory half dowry in such circumstances can compensate for the loss caused by divorce to the woman. So there is no need for another replacement decision in addition to what has been required by the Shari'a.²⁹ In the opinion of the Maliki Mazhab of thought, states that what is considered the condition of men is in accordance with the reality of this verse. Others are of the opinion that the mutah that must be considered is that of the wife. As for the sunnah, it is the husband's side.

c. Shafi'i Mazhab of thought

The founder of the Shafi'i Mazhab is Shafi'I is Muhammad bin Idris Asy-Syafi'I al-Quraishi. He was born in Gazzah in 1050 H, among his books are *Kitab al-Um*, *Amali Kubro*, *Book of Treatises*, *Usul Al-Fiqih* and introduced *Qaul Jadi>d* as a new Mazhab of thought. Imam Shafi'i died in 204 H/820 AD in Egypt. As for the Shafi'i Mazhab, it is of the opinion that the amount is returned to the judge, namely by considering the condition of the husband and the characteristics of the wife in the dowry-matsal. In accordance with the word of Allah SWT, "And you should give a *mut'ah* (gift) to them. People who are able according to their abilities and people who are poor according to their abilities (also) ". The second thing, giving *mut'ah* must be accompanied by good (maruf), in accordance with the word of Allah SWT, "To divorced women (should be given by their husbands) *mut'ah* according to what is good".

d. Hanbali Mazhab

The founder of the Hambali Mazhab was Abu Abdullah Ahmad bin Muhammad bi Hambal bin Hilal al-Syaibani. He was born in Baghdad in 164H/780. His essay *KITab Hadith* which is famous by the name *Musnad Ahmad Hambali*. Imam Ahmad Hambali died in Baghdad in 241 H/855 AD to be exact. According to the Hambali Mazhab of thought, that *mut'ah* is either obligatory or sunnah, the

²⁸ Mathlub, *Panduan Hukum Keluarga Sakinah*, 239.

²⁹ Mathlub, *Panduan Hukum Keluarga Sakinah*, 239.

level is in accordance with the condition of the husband, in accordance with the word of Allah SWT which means:

"And you should give a *mut'ah* (gift) to those who are able according to their abilities and those who are poor according to their abilities (also)" (Al-Baqarah: 236):

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفِرُّضُوا لَهُنَّ فَرِيَضَةً ۝ وَمَتَّعُوهُنَّ عَلَى الْمُوْسِعِ قَدْرُهُ ۝ وَعَلَى الْمُفْتَرِ قَدْرُهُ ۝ مَتَّعُوا بِالْمَعْرُوفِ ۝ حَقًا عَلَى الْمُحْسِنِينَ

"There is no blame if you divorce women before the marriage is consummated or the dowry is settled. But give them a 'suitable' compensation—the rich according to his means and the poor according to his. A reasonable compensation is an obligation on the good-doers.

So it's not based on the condition of the wife. Because in that case it would not be stated that people who are capable according to their abilities and poor people according to their abilities too. We all know that a woman who has been divorced according to religious law still has an iddah period. Viewed from the perspective of maqashid al-Syari'ah, an ex-wife during the iddah period must be provided with alimony because without alimony, the ex-wife will be in a dangerous condition. Associated with dharuriyat al-khamsah (five basic maslaha), mashlahah in the protection of the ex-wife is hifz al-nafs (care for the soul), where the soul is one of the dharuriyat al-khamsah which must be maintained. The obligation to protect the soul has started since in the womb in the form of maintaining the results of sperm and ovum fertilization even before fertilization with the shari'a of marriage and the prohibition of adultery.³⁰

This life protection continues with the parents' obligation to take care of the child from birth until independence for men or until marriage for women. For a woman, after marriage, management shifts to her husband and after a divorce, the husband should not be free from responsibility until the end of the iddah period. In the Encyclopedia of Islamic Law, maintenance is living expenses (money) income or provisions for daily living or also means expenses that are usually used for people who are their responsibility.³¹ Some other jurists are of the opinion that *mut'ah* is only obligatory to be given to women who are divorced after having intercourse with her. In addition, for women who are divorced but have not had intercourse with him and the dowry is not determined. Women who are divorced before having intercourse and are divorced but the dowry has been determined are only entitled to half the dowry that has been determined, without getting a *mut'ah*.

2. Provisions for Providing *Mut'ah* Support to Wives in Claiming Divorce According to Indonesian Laws and Regulations.
 - a. RI Law Number 07 of 1989, amendment to RI Law Number 50 of 2009 concerning Religious Courts.

Based on Law Number 07 of 1989 concerning the Religious Courts, one of its powers is to adjudicate divorce cases consisting of talak divorce and contested divorce. In divorce cases, Chapter 140 of the Compilation of Islamic Law (KHI) requires the ex-husband to provide *mut'ah*, madiyah, iddah, and child maintenance. So far, the statutory regulations have not regulated the position of a living claim if the type of case is divorce, except for what has been explained in SEMA Number 3 of 2018 Results of the Plenary Session of the Religious Chamber. Living is an obligation that must be

³⁰ Yusuf Hamid al-Alim, *Al-Maqashid, al-Ammah li al-Syari'at al-Islamiyah* (Riyadh: Al-Dar al-Alamiyah li al-Kitib al-Islami, 1994), 272.

³¹ Depertemen Agama RI, *Ensiklopedia Hukum Islam* (Jakarta: PT.Ikhtiyar Qolbi, 2008), 97.

fulfilled by the husband to be given to his wife and children. The law regulates it as in firman Allah SWT in Q.S Al Thalaq verse 7:

لَيُنْفِقُ ذُو سَعْةٍ مِّنْ سَعْتِهِ وَمَنْ قَدِرَ عَلَيْهِ رِزْقَهُ فَلْيُنْفِقْ مِمَّا أَنْهَا لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا أَتَاهَا سِيَّجَعْ اللَّهُ بَعْدَ عَسْرٍ يُسْرًا

"Let people who are able to provide a living according to his ability. And the person whose sustenance is narrowed should provide a living and the wealth that Allah has given him. Allah does not bear a burden on a person but only what Allah gives him. Allah will later give spaciousness after the narrowness ".³²

In the hadith it is stated, which means "Take (from your husband's property) what is sufficient for you and your children in a good way.³³ Things that must be understood are related to the consequences of divorce cases as stipulated in Chapter 41 letter c of Law Number 1 of 1974 concerning Marriage states:

"The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife."³⁴

If the marriage is broken up due to divorce, the ex-husband must:

- 1) Giving a proper *mut'ah* to his ex-wife, either in the form of money or goods, unless the ex-wife is *qabla al dukhul*;
- 2) Providing maintenance, food and kiswah to the ex-wife during iddah, unless the ex-wife has been divorced *ba'in* or *nusyuz* and is not pregnant;
- 3) Pay off the dowry that is still owed in full, and half if *qobla al-dukhl*;
- 4) Providing hadhanah costs for their children who have not reached the age of 21 years.

These two legal bases are binding in divorce cases and the obligation to provide iddah, *mut'ah*, *madiyah* and child maintenance. This tends to be discriminatory for contested divorce cases where the laws and regulations do not regulate the same consequences as divorce cases. We all know that a woman who has been divorced according to religious law still has an iddah period. Viewed from the perspective of *maqashid al-Syari'ah*, an ex-wife during the iddah period must be provided with alimony because without alimony, the ex-wife will be in a dangerous condition. Associated with *dharuriyat al-khamsah* (five basic *maslaha*), *mashlahah* in the protection of the ex-wife is *hifz al-nafs* (care for the soul), where the soul is one of the *dharuriyat al-khamsah* which must be maintained. The obligation to protect the soul has started since in the womb in the form of maintaining the results of sperm and ovum fertilization even before fertilization with the *shari'a* of marriage and the prohibition of adultery.³⁵

In this case the judge is required to provide a consideration of the legal vacuum that occurs. Supreme Court Circular Letter (SEMA) No. 03 of 2018 Results of the Plenary of the Chamber of Religion in point 2 states that, *madhiyah* maintenance, iddah maintenance, *mut'ah* and children's maintenance complete the formulation of the Supreme Chamber in SEMA Number 07 of 2012 number 16 so that it reads:

³² Q.S At-Thalaq/ 2:7

³³ HR Bukhari dan Muslim.

³⁴ JDIH BPK, "Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan," <https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974>.

³⁵ Al-Alim, *Al-Maqashid*, 272.

"Judges in determining madhiyah, iddah, *mut'ah* and child maintenance must consider a sense of justice and decency by exploring the facts of the husband's economic capacity and the facts of the basic needs of the wife and/or children.³⁶

To accommodate Perma Number 3 of 2017 concerning Guidelines for Trialing Women's Cases Confronting the law, in point 3 of the Supreme Court Circular Letter (SEMA) Number. 03 of 2018 results of the Plenary of the Religious Chamber, the wife in a divorce case can be given madhiyah maintenance, iddah maintenance, *mut'ah* and child maintenance as long as they are not nusyuz. So based on the Supreme Court Regulation, it does not rule out the possibility that in a divorce case the plaintiff (wife) can file a claim for madhiyah maintenance, iddah maintenance, *mut'ah* and child maintenance as long as they are not nusyuz. In response to the Supreme Court Circular Letter (SEMA) No. 3 of 2018 relating to Chapter 149 letter b Compilation of Islamic Law reads:

"If the marriage is broken up due to divorce, the ex-husband is obliged to provide maintenance, family and boarding houses for the ex-wife while in iddah, unless the ex-wife has been divorced ba'in or nusyuz and is not pregnant.

What needs to be underlined is that "..... unless the ex-wife has been sentenced to divorce ba'in....." This sentence certainly requires redefinition in relation to divorce ba'in. So that the Panel of Judges in deciding a divorce case against a lawsuit by accumulating maintenance demands can pay attention to the position of the type of divorce imposed by the Panel of Judges.

There are 6 types of divorce applications in the form of divorce:

- 1) First or third divorce Raj'i two that the husband imposes on his wife, in this case the husband has the right to reconcile as long as the wife is madal during the iddah period;
- 2) Talak Ba'in Shugraa is a divorce that cannot be reconciled, so if you want to return to live with your ex-husband and ex-wife you have to enter into a new marriage contract. Occurs in the following circumstances:
 - 3) Divorce that occurs qabla al dukhul;
 - 4) Divorce by ransom or khuluk;
 - 5) Talak handed down by the Religious Court;
 - 6) Talak Ba'in Kubra is a divorce that occurs for the third time and cannot be reconciled and cannot be re-married unless the marriage is carried out after the ex-wife has married someone else.

Of the three types of divorce, ex-wives still bear the iddah period unless qabla al dukhul occurs. For the implementation of the Supreme Court Circular Letter (SEMA) relating to demands for living iddah, there are differences of opinion in interpreting talak ba'in shugraa with ransom or khuluk. However, what often applies in practice is that the wife files for divorce because of the condition of the husband which causes the divorce case to be submitted to the Religious Court as stated in Chapter 116 of the Compilation of Islamic Law (KHI), so that the meaning of the following hadith is:

"From Fatima bin Qays, she said: "I met the Prophet SAW, and explained that I was a child from the Khalid family, My husband, Si Fulan, sent someone to me to convey his divorce, I demanded from his family my right to maintenance and shelter. They did not grant it. They explained to Rasulullah SAW that "Her husband has divorced three times", Fatima said again:

³⁶ JDIH MA, "Surat Edaran Mahkamah Agung No. 03 Tahun 2018 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2018 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan," <https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-3-tahun-2018/detail>.

"Rasulullah SAW said: "The right to maintenance and residence only belongs to a woman if her husband still has the right to refer to her". (Narrated by al-Nasa'iy)" ³⁷

The scholars agree that a woman who is divorced by *raj'i* has the right to get an *iddah* and a place to live. Regarding women who are divorced *ba'in*, the scholars agree that if the woman is pregnant, then she has the right to get a living and a place to live. ³⁸ As for women who are divorced *ba'in* while not pregnant, the scholars are divided into three opinions as follows:

- 1) *Syafi'iyyah*³⁹ and *Malikiyah* are of the opinion that women who are divorced *ba'in* while not pregnant only get the right to live and do not get the right to support. The existence of a place to live for a wife who has been divorced *ba'in* is based on the *zahir-zahir* verse six of Surah al-Thalaq, namely the sentence *askinuhunna* (give them a place to live). As for the absence of the right to maintenance for a wife who has been sentenced to divorce *ba'in*, this is because the order to provide maintenance is related to pregnancy so that if she is not pregnant there is no obligation to provide maintenance. ⁴⁰
- 2) *Hanabilah*⁴¹ and *Zahiriyyah* are of the opinion that they are not entitled to a living and a place to live. The basis for this opinion is the *zahir* hadith narrated by al-Nasa'i above which says that Fatima bint Qais had been divorced three times by her husband. Then the Apostle SAW said to her (Fatimah) that you have no right to support her (her husband), this opinion is also the opinion of Ibn Abbas, Jabir bin Abdillah, some *tabi'in* and Ishaq.
- 3) *Hanafiyah*⁴² is of the opinion that a wife who is divorced *ba'in* still gets a living and a place to live. The basis of this opinion is the *zahir* hadith verse 6 of sura al-Thalaq. *Hanafiyah* argues that in Surah al-Thalaq verse six in a *zahir* manner there is an order regarding the obligation to provide a place to live, namely in the sentence *askinuhunna* (give them a place to live) and the divorced wife is obliged to spend the *iddah* mass at her husband's house, the wife who is divorced *ba'in* will be locked up in her husband's house because her husband still has rights to her in the form of certainty about whether or not fertilization has occurred in the womb, so it is only natural that the woman is obliged to earn a living.

In terms of maintenance that must be fulfilled by ex-husbands for ex-wives and their children, they are as follows:

- 1) *Madiyah* alimony is past maintenance that is not always connected with a divorce divorce case, in which case the wife can file a claim for *madiyah* maintenance when her husband files a divorce divorce case by filing a counterclaim;
- 2) Living *iddah* as the rationale that in divorce cases contested is the fact that after the verdict, the ex-wife underwent an *iddah* period. So that the concept of living *iddah* as explained in the Qur'an is used as the same *illat* for divorce cases.

³⁷ Ahmad bin Syu'aib Abu 'Abd al-Rahman al-Nasa'I, *Sunan al-Nasa'iy-al-Mujtabi*, (Halab: Maktab al-Mathbu'at al-Islamiyah, 1986), Juz 6.. 144. See also, Ahmad bin al-Husain bin 'Ali bin Musa Abu Bakar al-Baihaqi, *Sunan al-Baihaqi al-Kubra* (Makkah al-Mukarramah: Matabah Dar al-Baz, 1994), Juz, 474. Muhammad bin 'Ali bin Muhammad al-Syaukani, *Nail al-Authar min Ahadits Said al-Akhbar Syarh Muntaqa al-Akhbar* (t.t.p : Idarah al-Thaba'ah al-Minbarah, t.th.), Juz 7, 103, 108, Ali bin 'Umar Abu al-Hasan al-Daruqutjni, *Sunan al-Daruqutnly* (Beirut : Dar al-Ma'rifah, 1996), Juz 4, 22.

³⁸ Al-Zuhaili, *Fiqh al-Islami wa Adillatuh*, 63.

³⁹ Idris al-Syafii'I, *al Umm*, 237.

⁴⁰ al-Zuhaili, *Tafsir al-Munir*, 674.

⁴¹ Muwaffiq al-Din Ibnu Qusamah, *al-Mugny* (Kuwait: Dar 'Alim al-Kutub, 1997), juz 11, 606.

⁴² Abu Bakar bin Mas'ud al-Kasany, *Al-Bada'i' al-Shana'I'* (Beirut: Daral-Kutub all-Miyyah, 2010), Juz 4, 16)

- 3) The concept of living for *mut'ah* is that a divorced wife feels suffering because she has to separate from her husband. In order to minimize the suffering or feeling of sadness, it is obligatory for the ex-husband to provide *mut'ah* as a means of relieving grief. However, some opinions state that if the filing is the wife who is in the divorce case, then the *mut'ah* maintenance is considered non-existent. By seeing the absence of suffering experienced by the wife.
- 4) The child's livelihood falls when the divorce occurs. What does not rule out is that it is permissible in a divorce case to file a claim for the maintenance of the child.

b. Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law (KHI)

The issuance of Presidential Decree No. 01 of 1991 concerning the Compilation of Islamic Law (KHI) is a new chapter for women who have so far been confined to the actions and decisions of their husbands which sometimes seem arbitrary in their treatment, giving space to the birth of the Compilation of Islamic Law (KHI), but which provides space with the permissibility of filing for divorce from a party known as the term for contested divorce as contained in Chapter 132 of the Compilation of Islamic Law (KHI), although since then there has been a significant spike in divorce cases initiated by women. Chapter 132 paragraph (1) Compilation of Islamic Law (KHI): "that a divorce suit is filed by the wife or her attorney at the Religious Court whose jurisdiction covers the plaintiff's residence unless the wife leaves the joint residence without permission"

In the Compilation of Islamic Law (KHI) in Chapter 158 that the husband is obliged to give *mut'ah* if (a) the dowry has not been set for the wife of *ba'ad al dikhul*, and (b) the divorce is at the will of the husband. The conditions for granting *mutah* are regulated in Chapter 158 of the Compilation of Islamic Law (KHI), namely; (a) the dowry has not been set for the wife, (b) the divorce is at the will of the husband. Chapter 159 of the Compilation of Islamic Law (KHI) states that circumcision *mut'ah* is given by the ex-husband without these conditions in chapter 158 of the Islamic Law Compilation (KHI). *Mut'ah* must be given by the ex-husband on the condition that the dowry has not been set for the wife *ba'da ad dikhul* (has had intercourse with husband and wife) and divorce is at the will of the husband. However, the provisions of Chapter 158 are not fulfilled, the ex-husband sunnat gives *mut'ah* to the ex-wife, meaning that even though the dowry has been set for the wife, *ba'da ad dikhul* and divorce is at the will of the wife and the husband should give *mut'ah* to the ex-wife as a consolation medicine ex-wife as a result of divorce.⁴³

The granting of *mut'ah* given by ex-husbands to ex-wives is guided by Chapter 160 of the Compilation of Islamic Law (KHI) which states that the amount of *mut'ah* given is in accordance with the propriety and ability of the husband taking into account that divorce is at the will of the husband and wife who have accompanied and served against her husband during a long marriage.⁴⁴ Imam Syafi'i is of the opinion that *mut'ah* is obligatory for every divorced wife when the dissolution of marriage comes from the husband's side, except for the wife whose dowry has been determined for her and is divorced before intercourse.⁴⁵ The husband's obligation to provide *iddah* maintenance to his divorced wife refers to Chapter 149 letter (b) of the Compilation of Islamic Law (KHI) which states that as a result of the breakup of a marriage due to divorce, the husband is obliged to provide maintenance, *maskan* (place to live) and *kiswah* (clothing) to the former wife during the *iddah* period, unless the ex-wife has been subject to *takaj ba'in* or *nusyuz* and is not

⁴³ Kementerian Agama RI, *Kompilasi Hukum Islam*, 79.

⁴⁴ Kementerian Agama RI, *Kompilasi Hukum Islam*, 79.

⁴⁵ Heniyatun Heniyatun, Puji Sulistyaningsih, Siti Anisah, "Pemberian Mut'ah dan Nafkah Iddah dalam Perkara Cerai Gugat," *Profetika: Jurnal Studi Islam* 21, No. 1 (2020), <https://journals.ums.ac.id/index.php/profetika/chapter/view/11647>.

pregnant. The obligation to provide iddah maintenance is emphasized again in Chapter 152 of the Compilation of Islamic Law (KHI) which states that ex-wives are entitled to receive iddah maintenance from their ex-husband except for ianusyuz.⁴⁶

Provisions for waiting time are regulated in Chapter 153 of the Compilation of Islamic Law (KHI). The husband's obligation to provide iddah will fall if the wife is declared nusyuz.⁴⁷ Arrangements regarding nusyuz in Positive Law are regulated in Chapter 84 of the Compilation of Islamic Law (KHI):

- 1) The wife is considered nuzyuz if she no longer wants to carry out the obligations referred to in Chapter 83 paragraph (1) except for valid reasons.
- 2) As long as the wife is in nusyuz, the husband's obligations towards his wife referred to in Chapter 80 paragraph (4) letters a and b do not apply except for matters in the interests of their children.
- 3) The husband's obligation referred to in paragraph (2) above applies again after the wife is not nusyuz.
- 4) Provisions regarding the presence or absence of a nusyuz and a wife must be based on valid evidence.
- 5) The wife's obligations as stated in Chapter 83 of the Compilation of Islamic Law (KHI) are:
- 6) The main obligation for a wife is to be physically and mentally devoted to her husband in what is justified by Islamic law.
- 7) The wife organizes and manages daily household needs as well as possible.⁴⁸

Islam also regulates the husband's obligation to provide iddah maintenance, Allah says in the Al-Qur'an Surah Ath-Thalaq verse 7, which means: and people (husbands) whose sustenance is narrowed, should provide maintenance from the wealth that Allah has given him". The husband who has embraced his ex-wife may enter into a new marriage contract with his ex-wife with the usual pillars and conditions of the marriage contract. Divorce due to talak ba'in the wife does not get a living during the iddah period. This is in accordance with the opinion of Syafi'i Hambali and Maliki that women those who are in the iddah talak ba'in period and are not pregnant are not entitled to receive groceries, clothing and housing. But the husband is still obligated in terms of living for the maintenance and education of children.⁴⁹ The provisions in Chapter 149 of the Compilation of Islamic Law (KHI) are in accordance with Islamic law which adopts Shafi'i's opinion. The majority of Indonesian people adhere to the Syafi'iyyah Mazhab of thought, which holds that the husband's obligation to provide iddah maintenance to his ex-wife only applies to ra'ji divorce. Ra'ji divorce is divorce at the will of the husband and the husband has the right of reconciliation during the iddah period. This opinion is based on Amad's history. and An-Nasa'i namely "Women who have the right to receive a living and a place to live (house) from her ex-husband if the ex-husband has the right to refer to her".⁵⁰

The Hanafi Mazhab of thought believes that women also have the right to receive food, clothing and shelter. Hanafi's opinion is based on QS. At-Thalaq verse 6 which means "Place them (wives) where you live according to your ability and don't bother them to narrow their (hearts)".⁵¹ The

⁴⁶ Kementerian Agama RI, *Kompilasi Hukum Islam*, 73-74.

⁴⁷ Kementerian Agama RI, *Kompilasi Hukum Islam*, 74.

⁴⁸ Kementerian Agama RI, *Kompilasi Hukum Islam*, 42-45.

⁴⁹ Heniyatun, Sulistyaningsih, dan Anisah, "Pemberian Mut'ah," 23.

⁵⁰ Kementerian Agama RI, *Kompilasi Hukum Islam*, 73.

⁵¹ Heniyatun, Sulistyaningsih, dan Anisah, "Pemberian Mut'ah," 23.

most fundamental thing that must be understood is related to the consequences of divorce cases as stipulated in Chapter 41 letter (c) of Law Number 01 of 1974 concerning Marriage which states that the Court may oblige the ex-husband to provide living expenses and/or determine an obligation for his ex-wife.⁵² Iddah income is the income of the wife or husband during the iddah period after the divorce. Iddah income is given to ensure the wife's life during the iddah period. The provision of iddah maintenance in the Islamic Law Compilation (KHI) Chapter 149 (b) seems unfair because it does not reflect protection for the wife after the divorce. The wife does not get a living during the iddah period, while the wife stays alone or with their children and bound by the terms of iddah. This situation illustrates that the wife is not supported but has to wait end of iddah period. Judging from maqasid syari'ah, guaranteeing the wife's life after divorce is termed the theory of hifz an-nafs or guarding the soul. The human soul in the Law of Allah SWT is highly glorified, so it must be maintained, maintained and its sanctity must not be destroyed.

3. Problems regarding Mutah support arrangements for wives in contested divorces according to the Perspective of Islamic Law and Marriage Legislation in Indonesia

We all know that a woman who has been divorced according to religious law still has an iddah period. Viewed from the perspective of maqashid al-Syari'ah, an ex-wife during the iddah period must be provided with alimony because without alimony, the ex-wife will be in a dangerous condition. Associated with dharuriyat al-khamsah (five basic maslaha), mashlahah in the protection of the ex-wife is hifz al-nafs (care for the soul), where the soul is one of the dharuriyat al-khamsah which must be maintained. The obligation to protect the soul has started since in the womb in the form of maintaining the results of sperm and ovum fertilization even before fertilization with the shari'a of marriage and the prohibition of adultery.⁵³ Regarding this divorce lawsuit, the law states in Chapter 73 paragraph (1) of Law Number 07 of 1989 concerning the Religious Courts: "that the divorce lawsuit is filed by the wife or her attorney to the court whose jurisdiction covers the plaintiff's residence, unless the plaintiff deliberately leave the joint residence without the defendant's permission", Chapter 132 paragraph (1) Compilation of Islamic Law (KHI): "that the divorce suit is filed by the wife or her attorney at the Religious Court whose jurisdiction covers the plaintiff's residence unless the wife leaves the joint residence without permission"⁵⁴.

a. Supreme Court Circular (SEMA) Number 03 of 2018 and Supreme Court Circular (SEMA) Number 02 of 2019.

The various issues that arise above against women have been responded to by the Supreme Court where the Supreme Court has prepared regulations as guidelines in trying women, namely by presenting the Supreme Court Regulation (PERMA) Number 03 of 2017, Supreme Court Circular Letter (SEMA) Number 01 of 2017 then stated again in the Supreme Court Circular Letter (SEMA) Number 02 of 2019 which points to giving rights to women. In this case the judge is required to provide a consideration of the legal vacuum that occurs. Circular Letter of the Supreme Court (SEMA) Number 03 of 2018 Results of the Plenary Session of the Religious Chamber at point 2 states that, madhiyah maintenance, iddah maintenance, *mut'ah* and child maintenance complete the formulation of the Supreme Chamber in the Supreme Court Circular Letter (SEMA) Number 07 of 2012 number 16 so it reads:

⁵² Soemiyati, *Hukum Perkawinan Islam*, 183.

⁵³ Al-Alim, *Al-Maqashid*, 272.

⁵⁴ Kementerian Agama RI, *Kompilasi Hukum Islam*, 73.

"Judges in determining madhiyah, iddah, *mut'ah* and child maintenance must consider a sense of justice and decency by exploring the facts of the husband's economic capacity and the facts of the basic needs of the wife and/or children.⁵⁵

To accommodate Supreme Court Regulation (PERMA) Number 03 of 2017 concerning Guidelines for Trying Women's Cases Confronting the law, then in point 3 of the Supreme Court Circular Letter (SEMA) Number 03 of 2018 results of the Plenary Session of the Religious Chamber, the wife in a divorce case can be given madhiyah maintenance, iddah, *mut'ah* and child maintenance as long as they are not nusyuz. So based on the Supreme Court Regulation (PERMA), it does not rule out the possibility that in a divorce case the plaintiff (wife) can file a claim for madhiyah maintenance, iddah maintenance, *mut'ah* and child maintenance as long as they are not nusyuz. So far, statutory regulations have not regulated the position of claims for maintenance if the type of case is divorce, except for what has been explained in the Supreme Court Circular Letter (SEMA) Number 3 of 2018 Results of the Plenary Session of the Religious Chamber. In the Supreme Court Circular Letter (SEMA) Number. 03 of 2018 at point 2 states that, madhiyah maintenance, iddah maintenance, *mut'ah* and child maintenance complete the formulation of the Supreme Chamber in the Supreme Court Circular Letter (SEMA) Number 07 of 2012 number 16 so that it reads:

"Judges in determining madhiyah, iddah, *mut'ah* and child maintenance must consider a sense of justice and decency by exploring the facts of the husband's economic capacity and the facts of the basic needs of the wife and/or children.⁵⁶

b. Supreme Court (MA) Decision No. 137/K/AG/2007

Unlike the Compilation of Islamic Law (KHI) Chapter 149 (b), the Supreme Court (MA) through its decision in case number 137/K/AG/2007 granted the wife's request to earn iddah after the divorce even though the wife sued the husband. Judging from the maqasid shari'ah in the decision of the Supreme Court (MA) in the case of iddah maintenance can protect the soul and safety of the wife's soul during the iddah period protected and this provision can provide protection to the wife during the iddah period with the aim of Islamic Law and be open to problems that exist in public.

E. Conclusion

The law of paying *mut'ah*, Allah SWT requires eyes for every divorced woman as in the Qur'an Al-Baqarah 341-342. However, the text is general in nature. Some jurists are of the opinion that the text is common for every divorced woman, even for women who are divorced before having sexual intercourse but the dowry has been determined. For this woman, it is obligatory to do *mut'ah* in addition to the specified half of the dowry. Ibn Hazm considered that *mut'ah* must be given to women who free themselves (*muftadiyat*). The granting of *mut'ah* given by ex-husbands to ex-wives is guided by Chapter 160 of the Compilation of Islamic Law (KHI) which states that the amount of *mut'ah* given is in accordance with the propriety and ability of the husband taking into account that divorce is at the will of the husband and wife who have accompanied and served against her husband during a long marriage. Women in their relationships during and after marriage are often in a disadvantageous position, one of which is with regard to violence in the economic field, Indonesian laws and regulations have regulated and accommodated women's rights post-divorce which are manifested in the form of naflah *mut'ah*, masks, kiswah and hadhanah, which are currently being implemented, women's legal awareness in demanding their rights is very minimal,

⁵⁵ JDIH MA, "Surat Edaran Mahkamah Agung No. 03 Tahun 2018.

⁵⁶ JDIH MA, "Surat Edaran Mahkamah Agung No. 03 Tahun 2018.

so that claims for these rights often go unnoticed by lawsuits filed in divorce cases filed by a woman against her husband.

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