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Implementation Of Nafkah Iddah And Mut'ah In Divorce Cases In The Surabaya Religious Court

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Abstract:

Divorce cases are still common in Indonesia, such as filing for divorce at the Surabaya Religious Court, which is recorded in thousands of cases each year, both divorces filed by the husband and contested divorces filed by the wife. When a divorce occurs between a husband and wife, the marital relationship between the two will break up, besides that, of course, there will be several rights and obligations that each party must fulfil As a legal result of the divorce case, there will be an obligation to provide post-divorce maintenance for the ex-wife. This research was made to be able to analyze the implementation of post-divorce maintenance, which includes iddah maintenance and mut'ah maintenance for wives in the Surabaya Religious Court. The method used in this research is empirical juridical, and data collection is carried out by interviewing the Judge of the Surabaya Religious Court. The results of the study are needed to be able to see the implementation of the implementation of the provision of iddah alimony and mut'ah alimony to wives in the Surabaya Religious Court, which has differences in the implementation of the fulfillment of alimony from divorce and contested divorce. Often, in the implementation process, there are obstacles that can hinder the process. The purpose of this research is also to be able to see the obstacles in the fulfillment of post-divorce maintenance in the Surabaya Religious Court, as well as the efforts made by the Surabaya Religious Court.

Keywords: Divorce Cases; Iddah and Mut'ah Alimony; Wife's Rights

A. INTRODUCTION

A marriage has a very noble goal, namely, to form a harmonious, lasting, and eternal family based on the Almighty God. Therefore, it is important to regulate the rights and obligations between husband and wife. If these rights and obligations are

carried out properly, a sakinah, mawaddah, and rahmah family will be achieved. Conversely, an imbalance in carrying out rights and obligations can lead to quarrels that lead to problems in the household. Divorce can even occur if the married couple cannot maintain their household, which is caused by many problems that they cannot face (Yulianti et al., 2020). Marriages are made to last a lifetime until death separates or until one of the partners dies. However, under certain conditions, some factors can lead to divorce, namely, if the marriage continues, it will cause many problems in the future. In this case, Islam allows divorce as a last resort after unsuccessful attempts to maintain the household as husband and wife.

There are several forms of divorce based on who wants the marriage to break up, namely:

a) Dissolution of marriage due to the will of Allah through the death of one of the spouses. When one of the spouses dies, the marriage automatically ends.
b) Dissolution of marriage due to the will of the husband, which is expressed in certain words. In this case, the divorce is called talak.
c) Dissolution of marriage due to the wife's will, which is caused by certain reasons that make the wife feel that the marriage should end, even though the husband does not want it. If the wife expresses her wish in a certain way and the husband agrees, then the husband will pronounce a talak to end the marriage. This type of divorce is called khuluk.
d) The breakup of marriage due to the decision of the judge, who acts as a third party after assessing the situation of the husband and/or wife and deciding that the marital relationship cannot continue. (Heniyatun et al., 2020)

Divorce can be carried out by a husband or wife by filing a divorce suit at the Religious Court for Muslims. As stipulated in Article 49, paragraph 1 of Law Number 7 of 1989 concerning Religious Courts, which explains that the Religious Courts have the duty and authority to examine, decide, and resolve cases at the first level between people who are Muslims in the field of marriage. If the person filing for divorce is the husband, it is called a divorce, while if the person filing for divorce is the wife, it is called a contested divorce.

When a divorce occurs between husband and wife, the marital relationship between the two will break up; besides that, of course, there will be several rights and obligations that must be fulfilled by each party, namely from the husband and wife. Like the wife, after a divorce between husband and wife, a divorced woman or wife is required to undergo a waiting period called the iddah period. The application of the 'iddah period for divorced women is always associated with ascertaining whether the woman is pregnant or not, or in other words, to determine the state of her uterus. So it is natural that the 'iddah period only applies to women. (Daud Muhsin & Azhari, 2023) The legal consequences of divorce also give rise to obligations as stipulated in Article 41 of Law Number 1 Year 1974, which include the following:

a) Both mother and father must care for and educate the children, focusing on the interests of the child. In the event of a dispute over child custody, the court will make a decision.

b) The father is responsible for all the costs of maintaining and educating the children. If the father is unable to fulfill this obligation, the court may determine that the mother shall bear these costs.
c) The court may decide that the former husband should provide living expenses and/or impose certain obligations on the former wife.

The former husband has an obligation that must be carried out is to provide living expenses, which in this case is the provision of iddah maintenance and mut'ah maintenance to the former wife. The husband's obligation to provide iddah maintenance to the divorced wife refers to Article 149 letter (b) KHI, which states that after divorce due to divorce, the husband is obliged to provide maintenance, such as housing and clothing, to the former wife during the iddah period. In line with the provisions of Article 149 of the KHI, the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 also states that in cases of divorce and contested divorce, Religious Court judges can determine the obligation of iddah maintenance to the husband, as long as the wife is not proven to have committed nusyuz. Another obligation that must be given to the former wife is Nafkah Mut'ah, which is a gift given by the former husband to the divorced wife, in the form of objects, money, or other forms, to maintain good relations between the former husband and wife and their families. Nafkah Mut'ah is regulated in Article 149 letter (a), Article 158, Article 159, and Article 160 of the Compilation of Islamic Law (KHI). Although the marriage cannot be maintained, this provision aims to end the divorce in a good way. (Titin Triana et al., n.d.)

The religious court also plays an important role in making regulations related to the implementation of providing maintenance to the wife in this divorce, so that the parties do not feel disadvantaged. So the Religious Court must have its own provisions regarding the implementation of the payment of Iddah and Mut'ah alimony that must be paid by the husband as a result of his divorce, such as related to the time of payment, or the nominal alimony given, because in this case, it also needs to be considered such as divorce cases that have reached the verdict stage and husbands who have said the pledge of divorce, but have not paid alimony. This can also be detrimental to the wife, because she will be denied her right to receive maintenance from her ex-husband. Based on the description of the problems that the author conveys above, the author wants to further analyze the implementation of providing Nafkah for ex-wives with the title "Implementation Of The Giving Of Nafkah Iddah And Nafkah Mut'ah To Wife In Divorce Cases In The Surabaya Religious Court".

B. METHOD

The type of research that will be used in this research is empirical legal research, or empirical juridical. Empirical legal research is a study that sees law as real behavior in practice, which reflects unwritten social phenomena and is experienced by individuals in social life. The research approach used is statutory, namely an approach by analyzes various rules and regulations relevant to the legal issues under study. There is also a case approach, an approach that is carried out by examining court decisions that have permanent legal force and are relevant to the issue at hand. The data sources in empirical

juridical research consist of primary data and secondary data. The data collection technique is carried out in 2 (two) ways, namely the library research method and the field research method which will be carried out at the Surabaya Religious Court, then the data that has been obtained is analyzed using the descriptive analysis method, after taking the stages in the research using a predetermined method. The results of this research are presented in the form of legal writing and followed by a drawing of conclusions.

C. RESULTS AND DISCUSSION

1. *Implementation of the Provision of Nafkah Iddah and Mut'ah to the Wife in Divorce Cases at the Surabaya Religious Court*

Filing for divorce can be done by the husband or wife if the household can no longer be maintained. If the filing is made by the husband, it is called a divorce, and if the filing is made by the wife, it is called a divorce. (Sulalah, Anis, 2023) The difference in filing procedures between a divorce and a divorce in the Religious Court shows that each type of case has different legal implications. Therefore, a divorce between husband and wife will certainly have legal consequences. One of the legal consequences of divorce due to divorce is that the court can determine the obligation for the former husband to provide maintenance or establish other responsibilities towards the former wife. (Herman et al., 2023).

Maintenance covers a range of basic needs, such as food, clothing, shelter, education, health care, and other needs that support survival. The obligation to provide maintenance as the primary responsibility of the husband towards his wife and children is found in many traditions, cultures, and religious teachings, especially in Islam, to ensure a decent family life. (Pokhrel, 2024) The husband's obligation after divorce is stated in the Compilation of Islamic Law Article 81, paragraph 1, which states that "the husband is obliged to provide housing for his wife and children, or for a former wife who is still in the iddah period." This provision emphasizes that the husband's responsibility towards his divorced wife remains in effect as long as the iddah period has not ended. The obligation becomes binding when it has been stipulated in the ruling of the Religious Court, and the husband cannot ignore it.

The husband's obligation to provide iddah maintenance to his divorced wife is based on the provisions of Article 149, letter (b) of the Compilation of Islamic Law (KHI). The article states that in the event of a divorce due to divorce, the husband is obliged to provide maintenance, housing (maskan), and clothing (kiswah) for the former wife during the iddah period, unless the divorce is a ba'in divorce or if the wife is in a state of nusyuz and is not pregnant. This provision is clarified in Article 152 KHI, which states that the former wife is entitled to receive iddah maintenance from her former husband, unless she is in a state of nusyuz. Nafkah iddah itself is a form of fulfillment of the necessities of life provided by the husband to the wife during the post-divorce waiting period.

The role of the judiciary in this case becomes very important to ensure that women's rights are truly fulfilled. One breakthrough can be seen in the Surabaya Religious Court, which innovated through cooperation with the Surabaya City Government. This cooperation includes a clause in the verdict that requires the payment of iddah, mut'ah, and child maintenance as an administrative requirement, to strengthen legal protection for women and children after divorce, especially in Divorce cases.

In the Surabaya Religious Court, there are several stages in the process of filing a divorce case, which include:

1. The applicant registers a divorce petition with the Surabaya Religious Court.
2. The petitioner and the respondent are summoned to appear at the first hearing, and the judge attempts to reconcile the two parties
3. The judge required both parties to undergo mediation first.
4. If mediation remains unsuccessful, the hearing is continued with the reading of the petition, the answer to the petition
5. Then followed by evidence from each party, and continued with the reading of conclusions.
6. If the petition is granted and the verdict is legally binding, the Court shall set a date for the witnessing of the pledge of divorce.
7. Before the execution of the Pledge of Talak, the husband is obliged to pay the post-divorce maintenance obligations as stipulated in the verdict.
8. The court summons the Petitioner and the Respondent to perform the pledge of talak. If the husband or his proxy does not perform the pledge of divorce within 6 months of the determination of the witnessing session, the legal force of the decision shall be lost, and the divorce cannot be filed again based on the same grounds.
9. After the pledge of divorce decree is pronounced, the clerk must provide a Deed of Divorce as evidence, no later than 7 days after the determination of the pledge of divorce.

The Surabaya Religious Court, regarding the implementation of post-divorce maintenance, has made an MOU with the Surabaya City Government, which requires the applicant to pay shortly before the applicant pronounces the vow of divorce. If, during the specified period, the applicant does not pay the iddah and mut'ah maintenance, the applicant will not be served in matters relating to state administration, such as renewal of identity cards and other state documents, and this is stated in the decision, which binds the parties to comply with the order. So the Surabaya Religious Court also has 2 filters in forcing the applicant to immediately carry out his obligation to pay maintenance to his wife after divorce, namely through the MOU with the Surabaya City government and from the rules in Perma No. 3 of 2017.

In relation to the filing of a case of Divorce filed by the wife at the Surabaya Religious Court, according to the source. as an Associate Principal Judge at the Court, the provision of post-divorce maintenance in the Surabaya Religious Court is based on

Perma Number 3 of 2017, to provide protection and rights for women and children after divorce, even though it is a contested divorce. The judge can punish the defendant (husband) to provide iddah and mut'ah maintenance as long as the wife is not proven to be a nusyuz (disobedient) wife. So from this perma, even though the divorce is filed by the wife, the husband still must provide the wife's rights in the form of nafkah iddah and nafkah mut'ah.

In the Surabaya Religious Court, there are several stages in the process of filing a Plaintiff's Divorce case, starting from the registration stage until the decision is declared valid and legally binding, which include:

1. Filing a lawsuit

   The wife, as the party filing for divorce (Plaintiff), first registers a lawsuit with the Religious Court according to the domicile area.

2. Summoning the Parties

   After the lawsuit is registered, the Court will summon the Plaintiff and Defendant to attend the trial.

3. Peace Efforts (First Session)

   At the first session, the judge is obliged to seek peace between the husband and wife. Both parties are required to be present in person (based on Article 82 of Law No. 7 of 1989).

4. Mediation

   The judge will order the two parties to undergo mediation first

5. Examination of the Subject Matter

   If mediation is unsuccessful, the trial continues with the examination of case material. This process includes the reading of the lawsuit, the Defendant's response, and the stages of answering.

6. Submission of evidence by each party and Submission of conclusions.
7. Court Decision

   If the judge grants the claim, the Defendant has the right to appeal if they object.

8. Issuance of a Deed of Divorce

After the verdict is declared legally binding, the Registrar of the Religious Court / Sharia Court will issue a Deed of Divorce as legal proof of the breakdown of the marriage relationship.

The difference in the payment of post-divorce alimony in divorce and contested divorce is that if in divorce the divorce is paid before the payment of the pledge of divorce, while in contested divorce the Iddah and Mut'ah alimony must be paid shortly before the parties take the divorce certificate, so if the alimony is not paid then the divorce certificate will not be given. Another difference is that in a divorce, the divorcee has the right to reconcile, but in a contested divorce, reconciliation is no longer possible, even though the husband has paid his maintenance, so he must enter into another contract so that the marriage is recognized again. The Surabaya Religious Court also has a regulation that requires parties, such as husbands, to carry out their obligations to provide post-divorce maintenance by working with the Surabaya City Government, not to serve in the preparation of any documents and any public services before the husband's obligations are carried out.

2. ***Obstacles to the Implementation of Providing Nafkah Iddah and Nafkah Mut'ah to Wives in Divorce Cases in the Surabaya Religious Court.***

In the divorce process that takes place in the Religious Court, there is a wife's right to iddah maintenance guaranteed by legislation and the principles of Sharia law. The provision of iddah and mut'ah maintenance is intended as a form of economic protection for the wife during the post-divorce transition period. During the iddah period, the wife is not allowed to marry another man and still has financial needs that must be met by the former husband, because legally she is still considered a wife. Therefore, the ex-wife is entitled to receive iddah maintenance and mut'ah as a form of respect and remembrance from the husband. The Religious Courts, in this case, have an important role in ensuring that women's post-divorce rights, including iddah maintenance and mut'ah, are fulfilled. When these obligations are not carried out, it can lead to injustice for the divorced wife. Therefore, the fulfillment of women's rights after divorce must be a serious concern so that they are not neglected.

The Surabaya Religious Court also often experiences various complicated obstacles related to the implementation of the provision of iddah and mut'ah maintenance in divorce cases, which often hampers the process of providing iddah and mut'ah maintenance as the wife's right after divorce. According to a resource person, as an Associate Principal Judge of the Surabaya Religious Court, some of the obstacles in the Surabaya Religious Court include:

1. Absence of the parties concerned

   Parties who are often absent from the trial process will certainly hamper the course of the trial and the implementation of the decision, so that former wives often do not receive their rights promptly, even in some cases, do not receive them at all.

2. Low level of legal understanding

   The low level of legal understanding, especially among ex-husbands, is also a major barrier. Many of them do not know or ignore the legal obligations that must be fulfilled by Islamic teachings and statutory provisions. As a result, many ex-wives do not receive their fair share of rights after divorce, which worsens their social and economic conditions after the breakdown of the marriage.

3. Husband does not pay maintenance

   Filing divorce cases, both divorce and contested divorce in religious courts, there are still many husbands who sometimes do not pay maintenance after the divorce even though they are threatened with not getting a divorce certificate, especially in contested divorce cases Regarding this, of course, the wife will be disadvantaged because she will not get iddah maintenance and mut'ah maintenance to continue her life (Putri & Ahmad, 2024).

Therefore, from the above obstacles, an appropriate solution is needed to overcome these problems, which of course need to be supported by coordination between institutions and active community involvement. Such coordination can ensure that the right to iddah and mut'ah maintenance can be realized as mandated by Islamic law and applicable regulations. The Religious Court, in this case, as the place where the case is filed, can help overcome existing problems, so that these obstacles or problems can be reduced.

Surabaya Religious Court, in this case, has made efforts to minimize these obstacles. The form of effort from the Surabaya Religious Court is by making regulations that are quite binding for the litigants. The regulation aims to be able to require the parties, namely the husband, to immediately pay their obligations, by coordinating with the Surabaya City Government to make an MOU with Number 100.3.7.1/3859/436.1.2/2023 dated June 26, 2023, where article 5 point 2 letter (f) in the addendum states one of the duties and responsibilities of the Surabaya City Government to intervene and monitor families of divorce victims based on divorce data from the Surabaya Religious Court.

The regulation agreed that the Surabaya Religious Court could include in its judgment an order to the Surabaya City Government to provide public services. These services are mainly related to changes in the identity of Family Cards and Identity Cards, licensing and other public services, after the Defendant has fulfilled the rights of women and children in accordance with the Surabaya Religious Court's decision. Until the former husband fulfills his obligations, the Surabaya City Government will not provide any public services.

The Surabaya Religious Court is committed to ensuring the protection of women's and children's rights after divorce, as well as ensuring that there is real support for women in living life after divorce. Consistently, every divorce verdict contains an obligation to fulfill the former husband's maintenance, including iddah and mut'ah maintenance, to ensure that the former wife's rights are fully met. Surabaya Religious Court has established a Memorandum of Understanding with the Surabaya City Government since 2022 to strengthen coordination in the enforcement of post-divorce rights as a form of protection for divorced women.

From this collaboration, a service innovation called RAHMA (Ramah Hak Perempuan dan Anak) was born, which is based on the judge's decision. In this program, if the ex-husband has not carried out the obligations stated in the court decision, such as paying post-divorce maintenance, the Surabaya City Government can delay the provision of public services to the person concerned. This delay applies until the former husband fulfills his obligations to the former wife. To resume the public service process, the former husband is required to confirm to the Surabaya Religious Court that he has implemented the contents of the decision.

The readiness of the Surabaya Religious Court can be seen from this cooperation, as to is able to help protect the community. This policy is not only a breakthrough in the family justice system, but also an instrument of moral and legal protection for women so that their rights are not neglected. In addition, the Surabaya Religious Court has been active in improving the legal literacy of the community through the provision of easily accessible information and consultation services. Through these steps, the court strengthens its role as an institution that not only functions to adjudicate cases but also contributes significantly to creating social justice for the community.

D. CONCLUSION

The provision of post-divorce maintenance in the Surabaya Religious Court, in its implementation, has encouraged the parties, especially in this case the husband, to be able to carry out their obligations to provide post-divorce maintenance. Surabaya Religious Court has established a Memorandum of Understanding (MoU) with the Surabaya City Government. The MoU strongly supports women or wives who have divorced their husbands to get the right to maintenance as they should. In this case, the husband, as a divorce applicant, is required to pay iddah and mut'ah maintenance before saying the pledge of divorce. If within a predetermined period of time he does not fulfill these obligations, then his application for public administration services, such as renewal of ID cards and other state documents, will be suspended, and if it exceeds a period of 6 months, then the application will be considered void. Similarly, in a divorce petition filed by the wife, the husband is still required to

pay post-divorce maintenance to the wife so that the husband can collect the divorce certificate from the Religious Court.

The Surabaya Religious Court also faces obstacles in the implementation of the fulfillment of iddah maintenance and mut'ah maintenance. The obstacles faced are, first, the absence of the parties to the trial, especially from the former husband, who must provide maintenance. Second, the lack of understanding of the law among ex-husbands is another inhibiting factor. Many of them do not know or deliberately ignore the obligations that have been determined based on Islamic law and applicable laws and regulations. Third, some ex-husbands are reluctant to pay maintenance even though they know that this can hamper administrative processes, such as the issuance of divorce certificates.

Therefore, the Surabaya Religious Court has made an effort to overcome these obstacles. The Surabaya Religious Court has built cooperation through a Memorandum of Understanding with the Surabaya City Government to strengthen synergy in ensuring the fulfillment of women's rights after divorce. This collaboration gave birth to a service innovation called RAHMA (Friendly Rights of Women and Children), which is based on the verdict of the panel of judges. Through this program, if the ex-husband has not fulfilled the obligations stipulated in the court decision, such as post-divorce maintenance payments, the Surabaya City Government has the authority to delay the provision of public administration services to the person concerned. The delay applies until the former husband fulfills his obligations to the former wife.

Suggestions for the Surabaya Religious Court need to expand socialization efforts regarding rights and obligations related to post-divorce maintenance, especially those aimed at former husbands. More thorough legal education will encourage awareness and compliance with obligations that have been regulated by law. For the community, it is important to be able to increase legal awareness regarding the fulfillment of post-divorce rights and obligations. And can comply with all existing legal regulations,

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