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### Fulfilment of Wife's Rights in Divorce Cases: A Case Study at Mahkamah Syar'iyah Suka Makmue

<sup>1</sup> Muhammad Zakirul Fuad, <sup>2</sup> Ilyas Yunus, <sup>3</sup> Teuku Ahmad Yani

<sup>1</sup> Student, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

<sup>2,3</sup> Lecturers, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Corresponding Author: **Muhammad Zakirul Fuad**

#### Abstract

The calculation of alimony for the former husband is based on his financial capacity, as stated in Inpres No. 1 of 1991 regarding Islamic Law Compilation, Act No.1 of 1974, and SEMA No. 3 of 2018, by the decision made in the Pleno Religio point 2, which serves as a supplement to SEMA No. 7 of 2012, and Article 149 letter b of KHI. According to Article 8 (3) letter (c) of PERMA No. 3 of 2017, in the event of a divorce, the payment for mut'ah and iddah is made simultaneously with the pronouncement of the divorce by the petitioner. Before essence, the ongoing dispute before the Shariah Court of Suka Makmue mostly focuses on divorce matters. However, in the event of a divorce, the claimant's wife has the right to assert all of her entitlements, including the ability to demand anything she desires from the financial resources of iddah and kiswah. A wife has the legal right to seek custody of her children, assert ownership over joint property, claim entitlement to spousal support, and demand payment of any outstanding marital allowances

owed by her husband. These rights can be asserted as long as the wife does not engage in nusyuz. The research method employed in this study is the Yuridis empirical research method. This study aims to elucidate the realization of spousal rights during divorce proceedings in the Court of Syar'iyah Suka Makmue. According to the study, the rights of wives after divorcing are determined by the Decision of the President of the Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 letter a. This decision states that the Court of Religion/Shariah Court has the authority to impose financial support on the husband unless the wife is proven to have committed nusyuz (Article 41 letter (c) of the decree of the President of the Supreme Court of the Republic of Indonesia). The husband is required to provide financial support to his wife even after divorce, but this obligation ends if the wife engages in *nusyuz*.

**Keywords:** Mediation Implementation, Case Settlement, Divorce

#### Introduction

The purpose of marriage according to Islam is to fulfill religious guidelines to establish a harmonious, prosperous, and happy family <sup>[1]</sup>. The purpose of marriage, which is commonly known to the Muslims, is to have legitimate offspring for the generations to come through marriage. It is to have a happy family, full of peace and compassion.

Things in a household are not always going smoothly, as everybody expects, so divorce is not always the last choice to solve problems in the household. In this case, divorce is seen as the end of marital instability so the spouse prefers to separate.

In the Compilation of Islamic Law (hereinafter KHI) Article 114, a divorce may result from divorce and based on divorce lawsuits. Talak is a husband's pledge before a religious court which is one of the reasons for divorce. Whereas the divorce proceeding is brought by the wife or by her husband to the court of religion <sup>[2]</sup>.

Divorce can only be made in the presence of the Sharia court after the Sharia court has tried and failed to reconcile both sides <sup>[3]</sup>. In Aceh, the religious courts are referred to as the Syar'iyah courts. In the sense that the Shari'iyah court is authorized to settle matters under the authority of the Religious Court, one of them is the divorce, including divorce claims.

Divorce proceedings are divorce claims brought by the wife or her husband to the religious court of the jurisdiction of which is the place of residence of the plaintiff unless the wife leaves the same place without her husband's permission <sup>[4]</sup>. If a wife leaves her home without her husband's permission, the lawsuit shall be brought before the court of the jurisdiction of the place where her husband lives. The right to seek the dissolution of this marriage in Islamic law is called Khulu' divorce at the will of the

wife, while the husband does not want. *Khulu'* is a divorce that occurs in the form of reducing the number of divorces and can no longer be referred to, it is based on Article 161 of the Compilation of the Islamic Law which reads "Divorce by the way of *khulu'* reduced and cannot be referenced" *Khulu'* means that the wife dismissed the marriage by paying damages of return mahar to the husband.

The problems that often arise in the process of filing a divorce claim are that the plaintiff does not understand the claims that can be brought in his claim, so in the trial process the judge often suggests to the claimant to include those claims which are his right to be filed in the divorce lawsuit. Where a judge has an ex-officio right, that is the right of the judge to decide a matter that does not exist in the claim or the court's authority in deciding a matter.

In the process of divorce, both divorce proceedings and divorce claims while the wife does not do *nusyuz*, the wife still has other rights such as livelihood, *mut'ah*, maskan livelihoods, and *kisswah* (during the time of *Iddah*). These rights are often forgotten by the wife as the plaintiff when filing the divorce claim, so she loses her rights that later day can open up the opportunity against the emergence of new conflicts. It can be on the determination of the amount of livelihood against the former spouse adjusted according to the ability of the spouse as Impres No. 1 Year 1991 about KHI, Act No. 1, 1974, and SEMA No. 3, 2018 Religious Plenary Outcome point 2 as the completion of SEMA No. 7, 2012 number 16 and Article 149 letter b KHI. In the case of divorce (Article 8 number (3) letter (c) PERMA No. 3 year 2017) the livelihoods of *mut'ah* and *iddah* are paid at the same time divorce declaration when spoken by the Applicant.

Secondly, the judge's consideration of determining the level of living is based on: <sup>[5]</sup> A wife does not commit any abomination, nor the economic condition of her husband, nor reasonable consideration of the needs of each of them.

Based on the preliminary data obtained from the results of the investigation at the Mahkamah Syar'iyah Suka Makmue Nagan Raya cases of divorce lawsuits continued to increase every year. The average divorce and divorce cases from 2019 to 2022 have increased the number of divorces.

Generally speaking, the divorce claims that have been filed so far are only about divorce. However, in the case of divorce, the claimant's wife can claim all her rights even the wife can demand whatever she wants from the livelihoods of *iddah* and *kisswah*. A wife can claim the custody of her children, the joint property, the right to a marriage or a past living, and a wife can demand a marital allowance that her husband has not paid. Such rights can be claimed as long as the wife is not *nusyuz*. The purpose of this research is to explain the fulfillment of the rights of spouses after the divorce was sued by the Shariah Court of Suka Makmue.

### Research Method

This type of research is Juridical empirical research, that is, a study conducting comparative studies by performing observations and local direct interviews of the research, to complement this research is also carried out bibliographic investigation such as studying several premises related to the problems studied which are secondary material in this research. The method of sampling is based on the ability to take samples in terms of time, location, and cost. As for the samples taken and the estimated portion of the population that represents the entire population, the respondents and

informants are involved <sup>[6]</sup>. It is intended to obtain clarity about the Implementation of Mediation in the Settlement of Divorce Matters at Mahkamah Syariah Suka Makmue.

### Results and Discussions

Divorce litigation is one of the absolute jurisdictions of the Religious Court. When divorce occurs on the request of the husband to the Religious Court the *talak* (divorce brought by the husband) falls on his wife is *talak raj'i* that is thrown by a husband to a wife who has been beaten, when the wife in the time of *iddah* then the ex-husband can return to his wife. In other words, this *talak Raja'i* are *talak* that the former husband can go back to his ex-wife who does not use the accusations of a new marriage, new dowry, and testimony. *Talak Raj'i* can't take away the rights of the husband over his wife, nor the right of the wife over her husband.

Divorce is the dissolution of the inherent bond between husband and wife, resulting in a marital relationship, and the resulting legal consequences of both rights and obligations. One of the rights and obligations arising from divorce is the obligation of the ex-husband to give some rights to his ex-wife and his child. The acquired rights of women and children after divorce are laid down in Act No. 1 of 1974 on Marriage, and the Compilation of Islamic Law.

There are three (three) basic rights for a woman who is still a husband's duty when a divorce occurs due to divorce, among others:

1. Gift called *mut'ah*, the gifts of a husband to a divorced wife, to please her, and to repay the pain of divorce.
2. Gift of *iddah*, the living, the food, the clothing, and the lodging, which the husband shall give to his wife in the days of divorce *raj'i*.
3. Gift of *madhiyah*, It is permissible for the spouse to claim the living which has passed, which the husband did not pay when he was married, when the wife was divorced. *Nafkah madhiyah* is a term used in the judgment of the Religious Court to determine the past livelihoods.

These rights are protected by the rule of law, such as the Act No. 1 of 1974 on Marriage, Article 41 (c), which states that "the court may order the former spouse to pay the cost of subsistence and/or determine a liability for the former wife." Article 194 of the Compilation of Islamic Law states that if a marriage is broken up due to divorce, then there are four obligations to the husband. First, the *mut'ah* that is worthy of the ex-wife may be money or goods, in this case, the *mut'ah* may not be paid if the divorce occurred before the marriage. Second, to give a living, that is to give money for shopping, clothes, and housing in the term, but the obligation of the husband can disappear if the wife is convicted of *talak bain* or the wife has committed *nusyuz* and in the condition of not being pregnant. Thirdly, pay the unpaid wages in full, but it's enough to pay half if the divorce comes before the marriage. Fourthly, to give a gift to his children who have not reached age 21.

As a form of protection for the fulfillment of women's rights, the Supreme Court has issued a Supreme Court Decree No. 3, 2018, supplementing what has been contained in the High Court Declaration No. 07, 2012 stating that "The judge in determining the livelihoods, the living allowance, the *mut'ah* and the child's living, must take into account the sense of justice and consistency by digging out the facts of

the economic ability of the husband and the fact of the basic needs of the wife or child."

It is important to note that with the existence of SEMA No. 3 of 2018, the wife is entitled to *mut'ah*, livelihood, and past livelihoods in divorce proceedings provided she is not proven *nusyuz*. Because in the previous rule, the three rights can only be obtained through divorce. "*Nusyuz* is the disobedience of a wife to her obligations in a marriage which causes a dispute in the household.

Not all divorce claims filed by the wife are a form of *nusyuz* of the wife's wife, but the divorce claim can be caused by the fault of her husband which should in certain cases be felt necessary for the wife to obtain her rights like the subsistence after divorce is filed. As by the Shariah Court Judge Suka Makmue, "The reason a wife divorces is due to domestic violence by her husband" [7]. Berdasarkan hal inilah, nilai keadilan dalam perkara cerai gugat masih dirasa tidak sesuai dengan asas keadilan hukum.

Women's rights as a result of a divorce claim are blurred in nature, in other words, the husband is not obliged to give a living after a court ruling. In the case of a divorce, a woman's living shall be granted based on the judgment of the divorce judge on the grounds of a lawsuit by the wife.

In some of the divorce cases that have been tried in the Syar'iyah Court Likes Makmue, the women only want a divorce by not expecting the livelihoods of the men after the divorce is resolved in the court. This has resulted in a loss for women, as the arrangement on the fulfillment of women's rights after divorce has been regulated and protected by SEMA No. 3, 2018 although it is not mandatory but can still be pursued by women through a lawsuit brought to the judges' assembly.

As explained by the Sharia Court Judge Suka Makmue "In some divorce cases, the wife only wants to break up with her husband, because she is no longer comfortable and the husband does not meet all needs. But normatively, the wife now has the right to obtain the subsistence with a record entered in the petition petition".

"The Supreme Court stressed that women's rights should be protected in the case of a divorce in a lawsuit," said Hakim Suka Makmue in an interview session. "When a woman files a claim to divorce to the court, according to Sema No. 3 of 2018, the woman can file a claim by claiming *Iddah's* livelihood, *Mutah's* living, and past livelihoods through her lawsuit. Whether or not a woman's complaint is satisfied, the judge's judgment is based on the setting of the matter, the testimony, and the evidence that has been made before the court.

As time passes, the inventors of law or judges are charged to consider the injustice of law that is occurring. On November 27, 2019, the Supreme Court issued SEMA No. 2 of 2019 on the Implementation of the Formulars of the Plenary Meeting of the Chamber of the High Court of 2019 as a Guideline for the Execution of Duties for the Court. Based on SEMA no. 2, of 2019, on the Employment of the Results of the plenary meeting of the House of the Court of 2019, as the Guidelines for the execution of duties of the Tribunal, the Religious Court/Shariah Court may oblige a husband to pay a living to his wife in a divorce case by adding a sentence of the obligation to pay such a living in the order of the judgment.

The payment is made by the husband before taking the divorce from the court. This means that the court postpones the divorce of the ex-husband until the former husband pays

the subsistence to his ex-wife. SEMA No. 2 of 2019 on the implementation of the Resolution of the Plenary Meeting of the Chamber of the Supreme Court of 2019 as the Guidelines for the Execution of the Duties of the Court is a legal breakthrough made by the High Court in the enforcement of justice. This SEMA has a positive impact on the realization of women's rights as well as protecting women in the event of legal divorce.

SEMA No. 2, 2019 on the implementation of the Resolution of the Plenary Meeting of the Chamber of the Supreme Court of 2019 as guidelines for the performance of the duties of the court is considered to contain the value of justice. It can be seen that, the existence of charges processed from the payment of subsistence by the ex-husband to the wife.

According to the meaning of justice, the provision of livelihoods from husband to wife after divorce, divorce or divorce is one of the forms of realization of justice. When a divorce occurs, the livelihood becomes the resource for the divorced wife to reorganize her life. The duty and authority of the religious court is to determine the livelihood of a wife divorced by her husband in a series of civil matters resulting from a divorce. This issue has been regulated in the legislative Regulations No. 14, 1970, Act No. 1, 1974, Government Regulation No. 9 of 1975, Law No.14 of 1985, Act no. 7 of 1989 and print No. 1, of 1991, on the compilation of the Islamic Law Compilation.

The education of the people and their lack of understanding of the rights and duties of husbands and wives at the time of weddings give an awareness of the attitude when husbands are not asked to give livelihoods to their wives. In this case, the judges of the congregation judge more often and decide in the judgment of the husband against whom his wife is compelled.

It is a guarantee and an expression of the responsibility of the husband to his wife until the divorce occurs. The realization of the value of justice on livelihoods can be seen that when the separation occurs, the wife will feel the impact even more than most wives do not have income in the sense of only as the mother of the household.

When a marriage is dissolved because of divorce, the husband is obliged to give his wife a living, because, during the time after the divorce, the wife may not marry another man. However, the duty is not as full as it is in the marriage. The husband's duty to provide a living for his wife after divorce is not dependent on the terms of the wife's marriage but on the form of the husband's divorce.

Considering the importance of living for the wife, given that the psychological wife is more fragile after the divorce, it is very appropriate in the system of marriage law in Indonesia if the husband divorces his wife, then the husband must pay a sum of money in the form of subsistence, masks and charges.

Besides, when the marriage certificate is legally pronounced, then the freedom of a wife becomes not like she is when single. In addition to the obligation of the wife to be loyal to her husband by the provisions of the law of Islam, the wife is obliged to voluntarily surrender herself to the husband to be treated as a wife. The right of a husband to restrict his wife's household is a consequence of the husband's position as head of the household, and the duty of the wife to give her loyalty is a result of her position as a wife. On this basis, the husband is obliged to provide for his wife after the divorce.

If it is not fulfilled by the husband, it becomes a debt. It is not only during the marriage that a husband loses his living but also after the divorce. However, if the marriage is dissolved by divorce, it is not usually followed by the obligation of the husband to pay the living to the wife who has been divorced because of the provisions of Article 149 (b) the wife shall not receive the living, the mask, and the gift when the wife has been convicted of divorce of *ba'in sughra*.

With the development of thought on this issue, the provision of livelihoods from the husband to the wife after the divorce is considered to be of the utmost importance. After the publication of SEMA No. 2 of 2019 on the Implementation of the Formulars of the Plenary Meeting of the Chamber of the Supreme Court of 2019 as guidelines for the execution of the duties of the Court, it is stipulated in point C number 1 letter b which contains the value of justice that the living as a duty of the husband to the wife after the divorce of the marriage due to the claimed divorce.

This SEMA is worthy to be applied by the judge of the Religious Court/Sharia Court Suka Makmue given other provisions such as the decision of the President of the Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 letter a which reads: "The Religious Tribunal/Sharial Court may ex officio establish the obligation of subsistence against the husband, as long as his wife is not proven to have committed a *nusyuz* (Article 41 letter (c) Marriage Act), in the examination of divorce claims" According to the Order of the Speaker of the High Court of Indonesia number: KMa/032 / SK/IV / 2006 letter and above, it can be concluded that the husband can be compelled to give subsistence to his wife even if the marriage is broken because of the divorce claim, but that obligation will fall or disappear when the wife does so as *nusyuz*.

### Conclusion

Following the release of SEMA No. 2 of 2019, which provides guidelines for the execution of the duties of the Supreme Court, it is specified in point C number 1 letter b that the husband must provide financial support to his wife after the dissolution of their marriage through divorce. The application of this SEMA is justified for use by the judge of the Religious Court/Sharia Court Suka Makmue, by other provisions such as the decision of the President of the Supreme Court of the Republic of Indonesia No.: KMA/032/SK/IV/2006 letter a. This decision states that the Religious Court/Sharia Court has the authority to independently determine the financial responsibility of the husband, as long as it is not proven that the wife has committed *nusyuz* (Article 41 letter (c) of the Marriage Law), in the examination of a divorce claim. According to the ruling of the President of the Supreme Court of the Republic of Indonesia, the husband may be obligated to provide financial support to his wife, even in the event of divorce. However, this duty will be waived or cease to exist if the woman no longer requires it of *nusyuz*.

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