

## JUDGE'S EX OFFICIO RIGHTS TO A FAIR VERSTEK DIVORCE DECISION AT THE PALOPO RELIGIOUS COURT

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### Abstract

Judges have the authority to hear and decide divorce cases, which are delegated to them in Court autonomously and without influence from outside parties in accordance with applicable regulations. This research aimed to reveal the use of the Judge's ex officio rights regarding fair divorce decisions at the Palopo Religious Court. This research was empirical, using a normative and juridical approach. The data collection techniques used interviews, observation, and documentation. The data analysis technique was carried out in three steps, namely reduction, presentation, and drawing conclusions. The research results showed that the use of ex officio rights by the Judge of Palopo Religious Court regarding the verstek decision in a fair talaq divorce case was the determination of a decision outside the appellant's petitum by the Judge by determining the level of living for the ex-wife due to the woman's lack of awareness to demand her rights after the divorce as evidenced by her absence at the trial, which is based on limitations. The execution of the Palopo Religious Court regarding the provision of mut'ah and iddah living in Decision number 25/Pdt.G/2023/PA.Plp was on consignment. The perspective of Islamic law regarding women's rights after divorce in decision number 25/Pdt.G/2023/PA.Plp and decision number 7/Pdt.G/2023/PA.Plp at the Palopo Religious Court was the provision of iddah, mut'ah, madhiyah, hadhanah and dowry owed to the ex-wife, according to the limitations.

**Keywords:** Judge's Ex Officio; Vestek Divorce; Fair; Palopo Religious Court

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### INTRODUCTION

The principle of making divorce difficult is contained in Law Number 1 of 1974 concerning Marriage, as regulated in Article 1 paragraph (1) of the Marriage Law, which aims to form an eternal and happy family based on Belief in the One and Only God. Thus,

marriage basically lasts until the death of one of them, between husband or wife, however, certain circumstances require divorce, namely harm occurs if the marriage continues.<sup>1</sup> The living conditions that must be faced practically prove that many incidents lead to the destruction of a household,<sup>2</sup> because it cannot be overcome any longer, then divorce occurs. Even though divorce is a lawful act, Allah Almighty hates it.<sup>3</sup>

The Judge, as an official who is given the authority to try cases, is delegated to them during the trial so that the Judge's task is to decide the case in the trial. The cases delegated to them must be free, independent, and not influenced by any party. This is based on Article 3, Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power.<sup>4</sup> Before deciding a case, the Judge will ask their conscience whether the decision is fair and beneficial to the parties involved or vice versa. Thus, the Judge's decision reflects the means of justice for society.<sup>5</sup>

Divorce causes women to have the status of widows whose fate is determined by the Judge's decision. After divorce, a woman's life experiences significant changes, especially the cost of living.<sup>6</sup> Not to mention the social status amid community life so that Judges, because of their position, in determining a divorce decision, must avoid acts of discrimination or fulfill women's rights after a divorce occurs.<sup>7</sup> This is because the position of Judge is a functional position because it has certain positions, duties, responsibilities, authority, and rights, one of which is *ex officio* rights (due to the position). The Judge's *ex officio* right is the right that the Judge has to decide on a case that is not in

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<sup>1</sup> Anita Marwing, "Perlindungan Hak-Hak Perempuan Pasca Perceraian (Studi Terhadap Putusan Pengadilan Agama Palopo)," *Palita: Journal of Social Religion Research* 1, no. 1 (2018): 45-62.

<sup>2</sup> Abdul Majid Khon, *Fiqh Munakahat* (Jakarta: Amzah, 2012).

<sup>3</sup> Nur Taufiq, *Fiqh Rumah Tangga* (Depok: Elsas, 2012).

<sup>4</sup> Lili Rasjidi, *Dasar-Dasar Filsafat Dan Teori Hukum* (Bandung: Pustaka Setia, 2004).

<sup>5</sup> Danie Setiawan, "Hak Ex Officio Hakim Dalam Menetapkan Kewajiban Suami Terhadap Isteri Dalam Perkara Cerai Talak," *University Of Bengkulu Law Journal* 7, no. 1 (2022): 45-53, <https://doi.org/https://doi.org/10.33369/ubelaj.7.1.45-53>.

<sup>6</sup> Andi Muhammad Akmal and Mulham Jaki Asti, "PROBLEMATIKA NIKAH SIRI, NIKAH ONLINE DAN TALAK SIRI SERTA IMPLIKASI HUKUMNYA DALAM FIKIH NIKAH," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 21, no. 1 (2021): 45-59.

<sup>7</sup> Nuzulia Febri Hidayati, "Rekonstruksi Hukum 'Iddah Dan Ihdad Dalam Kompilasi Hukum Islam (KHI)," *Mazahibuna*, July 2019, <https://doi.org/10.24252/MH.V1I1.9663>.

demand. This right is fully within the authority of a trial judge in deciding cases, one of which is talaq divorce cases.<sup>8</sup>

The Judge decides on a talaq divorce case because the *ex officio* right can realize justice, benefit, and legal certainty based on Article 41 letter c, Law No. 1 of 1974. This article states that the Court determines the obligation for the ex-husband to provide living expenses such as *iddah* living,<sup>9</sup> *mut'ah*, dowry owed, *madhiyah* living, and child living costs (*hadhanah*). Thus, based on Article 41 letter c, a judge's decision in a divorce case can exceed the petition stipulated because of his position and the presence of these regulations as a form of protection for women from injustice. Therefore, judges as adjudicators are able to appear as guarantors of women's justice as a whole (total justice) because of the lack of awareness of women to demand their rights to be proven by *verstek*.<sup>10</sup>

A *verstek* talaq divorce case is a statement that the defendant was not present at the first hearing. If on the next trial day (second trial) after the postponement, the defendant is still not present, the panel of judges will still hand down a *verstek* decision because in essence the defendant has never been present<sup>11</sup> so that the material legal protection of women's rights has been accommodated in the laws and regulations in Indonesia. However, in practice, women's legal awareness in demanding these rights is still lacking, so protection in the legal process, especially in religious courts, also regulates legal instruments. This is to protect women's rights, which is implemented by having *ex officio* rights attached to judges to examine and decide divorce cases, but still pay attention to the limitations on the use of *ex officio* rights.<sup>12</sup> For example, the divorce case decision Number 25/Pdt.G/2023/PA.Plp.

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<sup>8</sup> Simorangkir, *Kamus Hukum* (Jakarta: Sinar Grafika, 2010).

<sup>9</sup> Muhammad Arafah et al., "Illat and Wisdom in Use Ultrasonography (USG) during Iddah Period," *Mazahibuna: Jurnal Perbandingan Mazhab* 4, no. 1 (2023): 79-98, <https://doi.org/10.24252/mh.vi.35405>.

<sup>10</sup> Dian Saputra Saputra, Jamaluddin Jamaluddin, and Yulia Yulia, "Perlindungan Hak Perempuan Dan Anak Dalam Putusan *Verstek* Di Mahkamah Syar'iyah IDI," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 9, no. 2 (2021): 1-24, <https://doi.org/https://doi.org/10.29103/sjp.v9i2.4799>.

<sup>11</sup> Abdul Kadir Muhammad, *Hukum Acara Perdata Indonesia* (Bandung: Citra Aditya Bakti, 2000).

<sup>12</sup> Bayu A Wicaksono, "Hak Ex Officio Hakim Sebagai Perwujudan Perlindungan Hukum Terhadap Perempuan Dalam Perkara Perceraian," *Pengadilan Agama Kuala Pembuang, Diakses Pada* 17 (2022).

The decision in the talaq divorce case Number 25/Pdt.G/2023/PA.Plp stated that the husband filed for talaq divorce against his wife because the respondent often got angry and spoke harshly to the appellant, even though it was only a trivial matter, the respondent could not respect the appellant as a husband. The respondent never listened to the advice given by the appellant, so in the petitum, the appellant wanted the Judge to determine a *raj'i* divorce decision against his wife.<sup>13</sup>

Based on the assessment of evidence and facts revealed in the trial, the panel of judges has found the legal facts in this case. In essence, the household conditions of the appellant and respondent were initially harmonious, but since around the beginning of October 2017 there have been continuous disputes and arguments of such a nature. The cause of the dispute and quarrel between the appellant and respondent is that the respondent often gets angry and speaks harshly to the appellant, even if it is only a trivial matter. The appellant and respondent have separated from their residences since around the beginning of January 2021, and during that time, the two of them did not communicate like husband and wife and did not care about each other. The appellant was determined to divorce because he did not want to get along with the respondent. The cause of the dispute and quarrel between the appellant and the respondent is that the respondent often gets angry and speaks harshly to the appellant, even if it is only a trivial matter. The appellant and respondent have separated from their residences since around the beginning of January 2021, and during that time, the two of them did not communicate like husband and wife and did not care about each other. The appellant was determined to divorce because he did not want to get along with the respondent.<sup>14</sup>

Based on the facts that occurred during the trial, the Judge's decision in case Number 25/Pdt.G/2023/PA.Plp stated that the respondent, who had been officially summoned and was fit to appear at the trial was not present, granted the appellant's request in verstek, gave permission to the applicant to impose one *raj'i* talak on the respondent before the Palopo Religious Court session, sentenced the applicant to pay in cash the costs resulting from talak to the respondent before the vow of talaq was pronounced in front of the Palopo Religious Court, namely *mut'ah* in the form of money amounting to IDR

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<sup>13</sup> Pengadilan Agama Palopo, Putusan nomor 25/Pdt.G/2023/PA.Plp

<sup>14</sup> Pengadilan Agama Palopo, Putusan nomor 25/Pdt.G/2023/PA.Plp.

1,000,000.00 (one million rupiah), *iddah* living for 3 (three) months amounting to IDR 3,000,000.00 (three million rupiah) charges the appellant to pay court costs in the amount of IDR 670,000.00 (six hundred and seventy thousand rupiah).<sup>15</sup> The payment of costs resulting from talaq against the appellant is carried out to provide protection for women's rights after divorce because women are parties in conflict with the law based on Article 1 of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Judging Women's Cases in Conflict with the Law.<sup>16</sup>

In Decision Number 25/Pdt.G/2023/PA.Plp, Judge gave permission to the appellant to give divorce to his wife, and the Judge used the *ex officio* right to determine the level of mut'ah and *iddah* living for the ex-wife so that women's rights after divorce in the event the economy is well accommodated. However, in decision number 7/Pdt.G/2023/PA.PIP, the Judge did not use his *ex officio* right. Based on these problems, this research aimed to examine the Judge's *ex officio* rights regarding fair divorce decisions at the Palopo Religious Court.

## **METHOD**

This research used empirical legal research. In order to support this empirical legal research, a normative approach and a statutory approach were used. The data collection techniques were carried out using interviews, observation and documentation. The data analysis technique was carried out in three steps, namely data reduction for agencies related to the Judge's *ex officio* rights regarding a fair divorce decision at the Palopo Religious Court, data display or presentation of research data, and drawing conclusions to answer the problems of this research.

## **RESULT AND DISCUSSION**

### **1. The Use of Judge's Ex Officio Rights of Palopo Religious Court in Verstek decision on a fair talaq divorce case**

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<sup>15</sup> Pengadilan Agama Palopo, Putusan nomor 25/Pdt.G/2023/PA.Plp

<sup>16</sup> Rika Saraswati et al., "Pelaksanaan Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum (Studi Kasus Perkara No. Pol: Bp/01/I/2020/Reskrim Di Pengadilan Negeri Purwodadi)" (Fakultas Hukum dan Komunikasi, 2020).

Talaq divorce is one of the causes of marriage breaking up because of the husband's vows, which is delivered before the Palopo Religious Court.<sup>17</sup> Women's legal awareness in demanding their rights in the Palopo Religious Court is very minimal. This is proven by the respondent's absence from the trial. The Judge has *ex officio* rights so that the Judge's decision accommodates women's rights after divorce, which are realized in the form of providing *mut'ah* and *iddah* levels of living.

The application of *ex officio* rights must be accountable, one of which indicates that *ex officio* rights must be able to be withdrawn or based on a formal norm in certain laws, including in its application to talaq divorce cases at the Palopo Religious Court. Based on applicable positive law, the legal basis for implementing the Judge's *ex officio* rights at the Palopo Religious Court is found in several legal references, namely:

- a. Article 41 letter c of the Marriage Law states that the Court can oblige the ex-husband to provide living expenses and/or determine obligations for the ex-wife. This article is the legal basis for judges because their position can decide more than what is demanded, even if the parties demand nothing. The word can be interpreted *ex officio* to give room to the Judge to determine *mut'ah* and *iddah*.
- b. Article 24 paragraph (2) letter a Government Regulation Number 9 of 1975. This article states that during a divorce lawsuit, at the request of the plaintiff or defendant, the Court can determine the living that must be borne by the husband. In line with the Marriage Law, Government Regulation Number 9 of 1975 also confirms the Judge's right to hand down a different decision from the *petitum* and *posita* in a lawsuit.<sup>18</sup>
- c. Article 149 letter a and b of the Islamic Law Compilation (ILC). This article regulates the consequences of divorce because of talaq, where if the marriage breaks up because of divorce, the ex-husband is obliged to:
  - 1) Give proper *mut'ah* to his ex-wife, whether in the form of money or objects, unless the ex-wife is *qobla al dukhul* (sexual intercourse has never occurred).

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<sup>17</sup> Republik Indonesia, *Kompilasi Hukum Islam*, Pasal 117.

<sup>18</sup> Wicaksono, "Hak Ex Officio Hakim Sebagai Perwujudan Perlindungan Hukum Terhadap Perempuan Dalam Perkara Perceraian."

- 2) Provide livelihood, *maskan* and *kiswah* to the ex-wife during the *iddah*, unless the ex-wife has been given *talaq ba'in* or *nusyuz* and is not pregnant.
- d. Article 152 of the Islamic Law Compilation (ILC) reaffirms that an ex-wife has the right to receive *iddah* living from her ex-husband unless he is *nusyuz*.
- e. Decree of the Chairman of Supreme Court of the Republic of Indonesia Number: KMA/032/SK/IV/2006 concerning the Implementation of Book II of Guidelines for the Implementation of Court Duties and Administration (2020 Revised Edition) in point 7 (seven) stated that Religious Courts can *ex officio* determine the obligation of *iddah* living over the husband for his wife, as long as the wife is not proven to have committed *nusyuz* and stipulates *mutah* obligations (Article 41 letter c of Law Number 1 of 1974 in conjunction with Article 149 letters a and b of the Islamic Law Compilation (ILC)).
- f. Circular Letter of the Chairman of Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court in letter C of the Legal Formula of the Religious Chamber point 5, which regulates that the Religious Court can *ex officio* determine child support for the father if in fact, the child is under the care of his mother, as regulated in Article 156 letter (f) ILC.<sup>19</sup>

In order to guarantee that Judges use their *ex officio* rights in a fair and beneficial manner, statutory provisions have also provided limitations or restrictions on the use of *ex officio* rights, including:

- a. The wife agrees not to be given these rights. Based on Article 5 of Law Number 14 of 1970 jo. Law Number 4 of 2004 concerning Judicial Power emphasizes that Judges only help those seeking justice and try to overcome all obstacles and obstacles to the creation of justice. If we look at the explanation of the article, the Judge cannot use *ex officio* rights to protect the rights of an ex-wife after a statement from the wife that she has given up her rights. In practice, this willingness or

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<sup>19</sup> Wicaksono.

refusal must be stated expressly by the wife, either verbally at the hearing or in a letter, whether in the lawsuit, statement or conclusion.

- b. The wife is in a state of *qabla ad-dukhul*. In Article 149 (a) of the Islamic Law Compilation (ILC), it is stated that if a marriage breaks up due to divorce, the ex-husband is obliged to provide appropriate *mut'ah* to his ex-wife in the form of money or objects, except for *qabla al dukhul*. Thus, based on this article, the Judge's *ex officio* rights at the Religious Courts cannot be used to protect the ex-wife's rights.<sup>20</sup>
- c. The wife is declared *nusyuz* by the Judge. *Nusyuz* means a wife who disobeys her husband, and also means disobedient. This means that a wife commits an act against her husband without a reason that is acceptable by sharia, so that based on Article 152 ILC, the wife does not receive *iddah'* support. In Article 80 of the ILC, it is explained that the husband's obligations in the form of the obligation to provide a living, provide a place to live for the wife, household costs, care and medical costs for the wife apply from the moment the wife's perfect income is established. These obligations become invalid if the wife becomes *nusyuz*. Furthermore, Article 84 of the ILC also explains that as long as the wife is in a state of *nusyuz*, the husband's obligations towards his wife, as mentioned above, are null and void except those relating to matters for the benefit of their children. In this point, Article 84 of the ILC only prohibits granting rights *ex officio* to the wife, but does not apply to children, so even if the wife is declared *nusyuz*, the rights of the children can still be imposed *ex officio* by the Judge.
- d. The granting of women's rights after divorce is adjusted to the husband's capabilities as regulated in Article 34, paragraph 1 of the Marriage Law.<sup>21</sup>

Based on the explanation above, the use of *ex officio* rights by Palopo Religious Court Judges in determining women's rights after divorce and divorce is not *ultra vires* because it is based on the rules above. A judge's decision becomes *ultra vires* if it determines a decision that becomes a new lawsuit, for example determining child custody rights as regulated in Supreme Court Circular Letter Number 3 of 2018. The rules above provide

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<sup>20</sup> Wicaksono.

<sup>21</sup> Wicaksono.



legal certainty in the use of the Judge's *ex officio* rights in accordance with the theory of legal objectives put forward by Gustav Radbruch, namely the existence of rules in legislation.

The Judge's considerations in determining the level of living are divided into two parts, namely general considerations and special considerations. The general considerations for granting *ex officio* by the Judge are the ex-husband's economic condition and the marriage's length. Meanwhile, a special consideration is the provision of *iddah* living with consideration of Article 152 of the Islamic Law Compilation, which states that the wife has the right to receive *iddah* living from her ex-husband unless the wife is *nusyuz* and *qabla al dukhul*. *Mut'ah* living with consideration, Article 149 letter a of the Islamic Law Compilation states that if a marriage breaks up due to talaq, the ex-husband is obliged to provide appropriate *mut'ah* to his ex-wife, either in the form of money or objects unless the ex-wife is *qabla dukhul*.<sup>22</sup>

The application of *ex officio* rights by the Judge is casuistic. This means that not all talaq divorce cases that go to the Palopo Religious Court can be decided *ex officio* with complete levels of living (*mut'ah*, *iddah*, *hadhanah*). For example, in decision number 25/Pdt.G/2023/PA, looking at the facts that occurred in a case.Plp, the Judge only granted *ex officio* rights, namely the *mut'ah* living rate to the respondent in the form of IDR 1,000,000 in cash and the *iddah* living rate for 3 (three) months in the amount of IDR 3,000,000.<sup>23</sup>

Based on the Decision Number 7/Pdt. G/2023/PA.Plp, the Judge does not use his *ex officio* right to determine the level of alimony because of the ex-husband's economic condition. In accordance with Article 34, paragraph 1, women's rights after divorce are adjusted to the economic conditions of their ex-husband. The above regulations provide legal certainty in granting women's rights in accordance with the theory of legal objectives put forward by Gustav Radbruch, namely the existence of rules in legislation. The adjustment of economic conditions by providing women's rights after divorce reflects a sense of justice and expediency in accordance with Gustav Radbruch's legal theory.

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<sup>22</sup> Merita Selvina, Hakim Pengadilan Agama Palopo, Wawancara, Palopo, 1 September 2023.

<sup>23</sup> Bastian, Panitera Muda Hukum Pengadilan Agama Palopo, Putusan nomor 25/Pdt.G/ 2023/PA.Plp.

## 2. The Execution of Palopo Religious Court regarding the Provision of *mut'ah* and *iddah* living in Decision Number 25/Pdt.G/2023/PA.Plp

The Judges at the Palopo Religious Court, guarantee the payment of *iddah* and *mut'ah* living in talaq divorce cases; the husband has an obligation to provide a living to his wife. The husband can carry out the procedure for paying *'iddah* and *mut'ah* living in cash directly when the divorce vow is pronounced at the trial. The husband makes This cash payment in front of the Judge and Registrar. Then, the money is handed over to the clerk to calculate the amount of *'iddah* and *mut'ah* living so that there are no mistakes and in accordance with the payment stated in the Judge's decision. After that, the prospective ex-wife receives a certain amount of money for *'iddah* and *mut'ah* living payments. If the payment has been completed, then the vow of divorce can only be said before the Judge.<sup>24</sup>

The second is in installments. The installments in question mean that the reading of the divorce vow is postponed, and then the husband pays off his obligations during the suspension period. The procedure for paying *'iddah* and *mut'ah* living in installments can be carried out if the prospective ex-husband requests a postponement before the Judge regarding the payment of *'iddah* and *mut'ah* living. The reading of the divorce vow is also suspended with the suspension of *'iddah* and *mut'ah* living payments. This suspension is carried out for 6 months. During the suspension period, the prospective ex-husband is required to pay *'iddah* and *mut'ah* living in accordance with a predetermined amount.

The payment in installments over 6 months can be made 5 times. This installment payment is made directly to the prospective ex-wife or through the prospective ex-wife's account. After reaching the 6 month suspension period for the divorce vow, the divorce vow trial can be held. At the divorce vow hearing, the Judge can ask and provide evidence about the *'iddah* and *mut'ah* living payments made by the husband during the last 6 months. The proof can be done through the wife's confession or with a photocopy of the prospective ex-wife's account, which proves that the prospective ex-husband has made *'iddah* and *mut'ah* maintenance payments. Apart from these two types of *'iddah* and

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<sup>24</sup> Hariri Ocviani Arma, "Pembayaran Nafkah 'Iddah Dan Mut'Ah Dalam Perkara Cerai Talak Di Pengadilan Agama," *Sakena: Jurnal Hukum Keluarga* 7, no. 2 (2022): 156–69.

mut'ah income payment procedures, this can be done by entrusting money to a third party (consignment).

This consignment method can be carried out if the prospective ex-wife is not present during the divorce vow reading process. The deposit of the money by a third party is entrusted to the clerk. After the consignment is made, the 'iddah living payment money is given by the Court to the ex-wife directly through the clerk by summoning the ex-wife.<sup>25</sup>

The maximum limit is in accordance with Article 70 paragraph (6) of the Religious Courts Law Number 50 of 2009, which states that if the husband, within a period of 6 (six) months after the date of the hearing for the divorce vow, does not appear in person, or does not send a representative even though he has received a valid or proper summons, then the force of the decision will be extinguished and the divorce cannot be filed again based on the same reasons. Then, the provisions of letter C number 1 of the Religious Chamber Formulation in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2017 concerning the Implementation of the Formulation of the Results of the 2017 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court states that the payment of obligations resulting from divorce such as iddah living, mut'ah living, madiyah living can be included in the decision with the sentence that it is paid before the pronouncement of the divorce vow.

The payment of mut'ah and iddah living in decision number 25/Pdt.G/2023/PA.Plp is on consignment because the ex-wife is not present during the divorce vow reading process. The deposit of the money by a third party is entrusted to the clerk. After the consignment is made, the money for payment of 'iddah and mut'ah living is given by the Court to the ex-wife directly through the clerk by summoning the ex-wife.

Based on the explanation above, the payment of mut'ah and iddah living, which is the wife's right from her husband, is carried out in front of a court before the divorce vow, so the husband is not released from his obligations.<sup>26</sup> If, after 6 months, the husband is

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<sup>25</sup> Arma.

<sup>26</sup> Abdi Wijaya and Riska, "An Evaluation of Marriage Dowry Using Digital Money from the Perspective of the Four Madhhabs," *PAREWA SARAQ: Journal of Islamic Law and Fatwa Review* 1, no. 1 (2022): 48-58, <https://ejournal.sulselmui.com/index.php/PS/article/view/5>.

still not ready to carry out his obligations as imposed on him in the decision to provide *iddah* and *mut'ah* support to his wife. If that happens, the decision will be void, and the husband's right to vow divorce will be void. There is a rule that the divorce vow is pronounced after paying off the wife's post-divorce rights with a grace period of 6 (six) months from the date of the divorce vow hearing in accordance with Gustav Radbruch's theory regarding the objectives of the law, namely certainty, justice, and expediency.

### **3. Islamic Law Perspective on Women's Rights after Divorce in Decision Number 25/Pdt.G/2023/Pdt.Plp and Decision Number 7/Pdt.G/2023/PA.Plp at the Palopo Religious Court**

In Decision Number 25/Pdt.G/2023/Pdt.Plp, the decision to provide *mut'ah* living to the ex-wife in the amount of IDR 1,000,000.00 (one million rupiah) is in accordance with the ex-husband's capabilities. This is proven by the applicant's statement to provide *mut'ah* living so that Decision number 25/Pdt.G/2023/Pdt.Plp is in accordance with Imam Syafi' 's opinion. Giving *mut'ah*, in his *qaul Jadid*, Imam Syafi' believes that *mut'ah* must be given to every woman (wife) who has been divorced and has been interfered with and is in accordance with the husband's economic conditions based on QS al-Baqarah verse 236. Meanwhile, in Decision number 7/Pdt.G/2023/Pdt.Plp, the Judge does not provide *mut'ah* living because economic conditions made it impossible to pay *mut'ah* based on QS. al-Baqarah verse 236 as follows:

“There is no blame on you if you divorce women when you have not touched them or appointed for them a portion, and make provision for them, the wealthy according to his means and the straightened in circumstances according to his means, a provision according to usage; (this is) a duty on the doers of good (to others).”<sup>27</sup>

In Decision number 25/Pdt.G/2023/Pdt.Plp, the decision provides *iddah* living for 3 (three) months in the amount of IDR 3,000,000.00 (three million rupiah). Providing *iddah* living for 3 months is in accordance with the opinion of the Imam mazhab. He stated that when giving *iddah* to an ex-wife in a state of *ba'da al dukhul*, and the divorced wife is still menstruating, then the *iddah* is three times *quru'*. This is based on the word of Allah SWT in QS. al-Baqarah verse 228 as follows:

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<sup>27</sup> Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019), <https://lajnah.kemenag.go.id/unduh/category/3-terjemah-al-qur-an-tahun-2019>.

“Divorced women should hold back (wait) three times quru”<sup>28</sup>

According to M. Quraish Shihab, based on the editorial of the verse above, women who have been mixed with their husbands, then divorced, and at that time she was not pregnant, have three sacred iddah periods or three months of waiting period.<sup>29</sup> The provision of iddah living is adjusted to the husband's capabilities, based on QS at-Thalaq verse 7 as follows:

“Let the man of wealth provide according to his means. As for the one with limited resources, let him provide according to whatever Allah has given him. Allah does not require of any soul beyond what He has given it. After hardship, Allah will bring about ease.”<sup>30</sup>

According to M. Quraish Shihab, based on the editorial of the verse above, those who are capable should be able to have a lot of sustenance to provide for their wife and children to the extent of their ability. In this way, he should give so that his wife also has the freedom and freedom to shop.<sup>31</sup> Thus, the provision of iddah support for 3 (three) months in the amount of IDR 3,000,000.00 (three million rupiah) in Decision number 25/Pdt.G/2023/Pdt.Plp is in accordance with the ex-husband's capabilities. This is proven by the applicant's statement to provide iddah living. Meanwhile, in Decision number 7/Pdt.G/2023/Pdt.Plp, the Judge does not provide iddah living due to economic conditions that made it impossible to pay iddah living based on QS. at-Thalaq verse 7.

## CONCLUSION

The use of ex officio rights by the Judge of Palopo Religious Court regarding the verstek decision in a fair talaq divorce case is the determination of a decision outside the appellant's petitum by the Judge by determining the level of living provided after the divorce due to the woman's lack of awareness to demand her rights after the divorce as evidenced by her absence at the trial, which is based on limitations or restrictions. The execution of the Palopo Religious Court regarding the provision of mut'ah and iddah living in Decision Number 25/Pdt.G/2023/PA.Plp is on consignment because the ex-

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<sup>28</sup> Kementerian Agama RI.

<sup>29</sup> M. Quraish Shihab, *Tafsir Al – Mishbah (Pesan, Kesan Dan Keserasian Al-Qur'an)* (Jakarta: Lentera Hati, 2002).

<sup>30</sup> Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya*.

<sup>31</sup> Shihab, *Tafsir Al – Mishbah (Pesan, Kesan Dan Keserasian Al-Qur'an)*.

wife is not present at the hearing for the reading of the divorce vow. The deposit of the money by a third party is entrusted to the clerk. After the consignment is made, the money for payment of 'iddah and mut'ah living is given by the Court to the ex-wife directly through the clerk by summoning the ex-wife. The perspective of Islamic law on women's rights after divorce in decision number 25/Pdt.G/2023/Pdt.Plp and Decision number 7/Pdt.G/2023/PA.Plp at the Palopo Religious Court is as follows. The Decision 25/Pdt.G/2023/Pdt.Plp is in accordance with Imam Syafi' 's opinion. Giving mut'ah, in his qaul Jadid, Imam Syafi' believes that mut'ah must be given to every woman (wife) who has been divorced and has been interfered with and is in accordance with the husband's economic conditions based on QS al-Baqarah verse 236. Meanwhile, in Decision number 7/Pdt.G/2023/Pdt.Plp, the Judge does not provide mut'ah living due to economic conditions that made it impossible to pay mut'ah based on QS. al-Baqarah verse 236.

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