

The Level Living of Wife's Iddah According to The Judge's Ijtihad Makassar Religious Court Class 1A

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Abstract: The aims of this study are: 1) to find out the legal basis for ijtihad judges at the Makassar Religious Court Class 1A in determining the level of post-divorce wife iddah. (2) to find out the difference between the level of iddah of a career wife and a non-career wife. 3) to find out the judge's efforts in ensuring the implementation of a decision. This type of research is classified as field research (*Descriptive Qualitative Field Research*) and uses a formal juridical approach, sociological empirical and sharia approach. The data source of this research is Makassar Religious Court Judge Class 1A. Furthermore, the data collection methods used were literature review, observation, and interviews. Then there are three stages of data management and analysis, namely, data collection, data processing and drawing conclusions from the research results. The results of this study indicate that 1) In the study of determining the amount of iddah of the wife to be given to the wife, the panel of judges used the Qur'an and hadith, as well as SEMA No. 7 of 2012 which was later refined by SEMA No. 3 of 2018 as the legal basis for the criteria for determining the amount of the wife's iddah. 2) As for the problem of a wife who has a career or has a job status, it is very necessary to be made a judge as one of the factors in determining the amount of the iddah living value. 3) And the efforts made by the judge to ensure the implementation of a decision, namely the postponement of the pronouncement of the divorce pledge and the detention of the husband's divorce certificate in the case of a contested divorce. The implications of this research are 1) For judges, presumably they can make the status of the wife as one of the factors to determine a decision and maximize the efforts made so that the decision can be carried out by the husband, especially in cases of divorce and litigation and the imposition of iddah maintenance on the husband for the result of a divorce. 2) For the community, one of the consequences of a divorce is that the husband is obliged to provide iddah to his wife as stated in article 149 of the Presidential Instruction on the Compilation of Islamic Law. 3) For further researchers, if you are interested in conducting similar research, it would be better to use a different research method, as well as conduct research related to other factors that are considered capable of providing other views in terms of determining the level of iddah living.

Keywords: Nafkah Iddah; Ijtihad Hakim; Career and Non -Career Women



I. INTRODUCTION

The problem of ending a relationship in a household in Indonesia, according to Law no. 1 of 1947 in Article 38 concerning Marriage, that a marriage can end due to death, divorce, and court decisions. "Divorce can only be carried out before a court hearing after the court concerned has tried and failed to reconcile the two parties". According to Article 39 paragraph 1 of the Law concerning Marriage.¹ Based on the quote from article 39, we can all know that if the utterance of a husband's vow of divorce against his wife is not carried out in an authorized religious court in the form of a trial, a person cannot end a marital relationship.

Divorce in the Big Indonesian Dictionary (KBBI) is separation, breaking up as a wife, divorce. Divorce is Separation or Divorce.² Divorce by itself will strengthen the fear and worry in the lives of those who live in it. And, to protect the rights of citizens in the face of divorce, the Legislation has established a number of protections for citizens in the event of a divorce. It is at this time that the wife begins the ex-husband's iddah, with the intention of providing mut'ah and iddah as ex-husband to the wife, which is symbolized by divorce in the form of objects or money.

In accordance with the Inpres Compilation of Islamic Law (KHI) Article 149: "*If the marriage is dissolved due to divorce, then the ex -husband must: (a). give mut`ah-wife³ worthy to his ex, either in the form of money or things, unless the ex -wife is qobla al dukhul; (b). giving alimony, maskan⁴ and kiswah⁵ to the ex -wife during the iddah, unless the ex -wife has been divorced ba'in⁶ or nusyuz⁷ and is not pregnant "*.⁸

In Islam, after the divorce process, a husband is obliged to provide iddah⁹

¹ Law No. 1 of 1974 Article 39 paragraph 1 Concerning Marriage.

² Development Team of the Language Center Dictionary, *Great Indonesian Dictionary, Edition III* (Cet. II; Jakarta: Balai Pustaka, 2002), h. 163-164.

³ Nafkah mut'ah is a gift from the husband to his wife as compensation or consolation because he has been divorced. (see the book Abdul Aziz Muhammad Azzam and Abdul Wahhab Sayyed Hawwas, *Al-Usroh Wa Ahkamuha Fi Tashri'i Al-Islami*, translated by Abdul Majid Khon, *Fiqh Munakahat* (Cet.I; Jakarta: Amzah, 2009), h. 207.

⁴ Maskan: A place to live. The husband's obligation, among others, to provide a place to live for his wife, as well as for a wife who is divorced, but her period has not expired. (See the book Muh. Abdul Mujieb, et al. *Dictionary of Fiqh Terms* (Jakarta: Pustaka Firdaus, paint. IV, January 2010), h. 202).

⁵ Covering: clothing, fine tapestries bearing the verses of the Qur'an beautifully, which is the top of the Kaaba at the Masjid al-Haram, Makkah. the covering lid 'bah was installed from the time of Prophet Isma'il until the time of Prophet Muhammad SAW. Every 10th Dzulhijjah every year the Kiswah cloth is replaced. Usually, the container is cut into pieces to be distributed to the pilgrims. (see the book Muh. Abdul Mujieb, et al. *Dictionary of Fiqh Terms*, h. 168).

⁶ Talak ba'in is a talaq that cannot be referred to except after marrying someone else. A ba'in talaq is a talaq that is seen to have the influence produced. (see <https://infokua.com/talak-bain/> accessed November 21, 2021).

⁷ Nusyuz is disobeying all her obligations to her husband. (see Qalyubi, *Dictionary of Fiqh Juz III*

(td), h. 300.

⁸ Inpres RI Compilation of Islamic Law (KHI) Article 149.

⁹ Iddah means the amount or calculation, i.e. a woman spends days waiting for the time after parting with her husband so that she is not allowed to marry, except after the end of those days. (see the book Totok Jumantoro, Samsul Munir Amin, *Usul Fiqh Science Dictionary* (td), h. 100).

maintenance as a religious obligation. However, after a divorce, the provision of mut'ah and iddah alimony is often used as a measure of the gender sensitivity of judges in resolving divorce cases. Previously, the provision of mut'ah alimony was *ghairu muakkadah*¹⁰ (non-impractical), then changed to *muakkadah*¹¹ (semi imprative). As a result, in each case of divorce, the husband is obliged to pay monetary compensation to the authorities after the divorce.¹²

In accordance with the provisions of the divorce legislation, the ex-husband has been set to be responsible for providing living expenses for the wife, this is reinforced in article 41 letter (c) of Marriage Law No. 1 of 1974 on the consequences of dissolution due to divorce: "The court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife".¹³ Provisions on iddah maintenance have also been discussed as contained in QS al-Baqarah /2: 241

وَالْمُطَلَّاتِ مَتَاعٌ بِمَا عَرُوفٍ حَقًّا عَلَى الْمُتَّقِينَ

Translation:

"To women who are divorced (should be given by her husband) mut'ah according to what is ma'ruf, as an obligation for the pious".¹⁴

Asbabun Nuzul:

Narrated by Ibn Jarir from Ibn Zaid. When this verse was revealed, a man said: If I want to do good then I will do it, if not then I will not do it, then God revealed this verse 241.¹⁵

Tafsir:

Divorced women have the right to receive gifts in the form of clothing and alimony in a way that is well-known and good according to the Shari'ah, as an obligation on those who fear and reverence God in carrying out His commands and avoiding His prohibitions.¹⁶

Based on the verse above, we can conclude that even though a wife is divorced by her husband, she still has the right to earn a living born to meet her daily needs until the time determined by the judge's decision. The provision of iddah maintenance after the divorce process given by the husband to the wife aims to prevent the wife from suffering because she has not been able to meet the needs of her own life.

More specifically, the husband who gives divorce to his wife has the obligation as stated in the Presidential Instruction on the Compilation of Islamic Law (KHI) article 147

¹⁰ Ghairu Mu'akkadah is a sunnah that is not confirmed or recommended by the Prophet SAW. (see the book Muh. Abdul Mujieb, et al. *Dictionary of Fiqh Terms*, h. 84).

¹¹ Mu'akkadah: Sunnah that is important or obligatory. It means sunnah worship that is always done by the Prophet Muhammad SAW, such as' ied prayers, Tahajjud prayers, Witr prayers, congregational prayers, financing the establishment of mosques/ Madrasahs/ General Hospitals, etc. (see the book Muh. Abdul Mujieb, et al. *Dictionary of Fiqh Terms*, h. 336).

¹² Arskal Salim, *For the Sake of Justice and Equality Documentation of the Gender Sensitivity Program of Religious Judges in Indonesia* (2009), h. 65.

¹³ Law Number 1 of 1974 Article 41 Concerning Marriage.

¹⁴ Ministry of Religion, *Al-Qur'an and Translation* (Depok: al-Huda, 2015), h. 42.

¹⁵ <https://risalahmuslim.id/quran/al-baqarah/2-241/> (accessed on 30 September 2021).

¹⁶ <https://binbaz.or.id/tafsir-al-muyasar-surat-al-baqoroh-241-245/> (accessed on 30 September 2021).

which states that if the marriage is broken up due to divorce, the former husband is obliged to:

1. Giving a proper mut'ah¹⁷ to his ex-wife, either in the form of money or goods, unless the ex-wife is qabla dukhul.
2. Giving a living, food and kiswah to the ex-wife during the iddah, unless the ex-wife has been sentenced to talak ba'in or nusyuz and is not pregnant.
3. Pay off the dowry that is still owed in full, and half if the qobla is dukhul.
4. Provide hadhanah costs¹⁸ for their children who have not yet reached the age of 21 years.¹⁹

Several laws and Islamic teachings state that the wife is obliged to earn mut'ah and iddah income from a husband who harms her. However, it is not stated how much the mut'ah and iddah income levels must be accepted by the wife after being divorced. This is also one of the many obstacles faced by the Religious Courts, especially in the Makassar Religious Courts in determining the amount of iddah income that will be given to the wife after the divorce.

From 2018 to 2020, the Makassar Religious Court Class 1A experienced an increase in verstek decisions, especially in the divorce event. In 2020 there have been around 725 divorce cases and 452 divorce cases. In 2020, there were around 62.345 percent of cases that were verstek and 37,655 percent of the decisions that were not verstek. The Makassar Religious Court Class 1A, in this case the judge has an important role to lighten the burden on the wife (the respondent) to receive a living during her iddah period and has the authority to determine the iddah income that must be given by the husband to his divorced wife.²⁰

Based on the conversation above, the author wants to know more about the causes of determining the level of iddah living in the middle of the examination by the Makassar Religious Court Judge. Therefore, the author will conduct a study entitled "The Level Living of Wife's Iddah According to The Judge's Ijtihad Makassar Religious Court Class 1a".

II. THEORETICAL REVIEW

Writing a thesis requires the application of various theories from various fields or disciplines that are relevant to the research process. Before conducting the research, the author conducted a survey of various scientific theories related to the topic being discussed. There are several studies that have relevance to the author's title as follows:

1. Izzad Dien, *Implementation of Iddah Support Payments in Divorce Divorce Cases in Verstek Decisions: A Study at the Makassar Religious Court*, 2019. This research

¹⁷ Nafkah Mut'ah: A gift from a husband to his wife when divorcing her. The law is obligatory if the divorce is at the will of the husband. (see the book Muh. Abdul Mujieb, et al. *Dictionary of Fiqh Terms*, h. 232).

¹⁸ Hadhanah comes from the word Al-Hadhn which means to join, stay, and maintain. The fuqaha define Hadhanah as caring for a small boy or girl or a person who lacks reason who cannot tell the difference. Hadhanah is the right of the child from the mother, wages for raising children, and others related to hadhanah. (Totok Jumentoro, Samsul Munir Amin, *Dictionary of Ushul Fiqh*, h. 73).

¹⁹ RI Presidential Instruction on the Compilation of Islamic Law (KHI) Article 149.

²⁰ Income Level Izzad Dien, *Implementation of Iddah Support Payments in Divorce Divorce Cases in Verstek Decisions: Studies at the Makassar Religious Court* (Makassar: Thesis, 2021), h. 5.

helps Makassar Religious Court Judges in determining the payment of iddah living with the point of view of paying attention to the factors of both parties, then explained in detail reviewing case limitation. The difference between what the author wants to write is about the legal principles of certain judges in giving the level of iddah maintenance to wives, who are career women and housewives.

2. Thesis Rahmiyani Annas, *Iddah and Mut'ah Lives in Divorce Cases at the Makassar Religious Court*, 2012. The research limits the issue of providing mut'ah and iddah support in divorce cases in the Religious Courts and the implementation of Judges regarding the burden of living borne by the husband. The difference that the researcher will discuss is that the author wants to know that in determining the level of iddah income for a wife as a career woman, it is the same as determining the level of her iddah living with a wife in general.
3. Thesis Futichatus Samiah, *The Realization of the Implementation of Iddah in Divorce Cases at the South Jakarta Religious Courts*, 2012. The researcher only focuses on procedures and the realization of the implementation of iddah living. The difference with what the author wants to examine in this thesis is to focus on the factors that form the basis of the judge's *ijtihad* in determining the level of iddah living for his wife as a career woman and housewife.
4. Journal of Devi Yulianti, R. Agus Abikusna, Akhmad Shodikin, *Imposition of Mut'ah and Iddah In Divorce Cases with Verstek Decisions*, 2015. In this journal, researchers focus their research on judges' considerations in imposing mut'ah and iddah expenses in divorce cases. with the Verstek decision which then determines the relevance of the decision to Article 178 paragraph (3) of the HIR. The difference with what the author will examine is that in this thesis the author tries to explore the judge's considerations in determining the level of iddah income that must be given to his wife as a career woman and housewife.
5. Journal of Nurtasdiq, *Implementation of Iddah Lives at the Watampone Religious Court*, 2019. In this journal the author focuses on the focus of his discussion on legal status and determining the amount of iddah income that must be given to a wife in general. The difference in the thesis that the author will examine is that the author focuses on determining the iddah living for a wife as a career woman and a housewife.
6. Journal of Muhammad Fauzan, *Maqasid Nafkah Iddah and Women's Protection*, 2016. This study has similarities with what the author wants to study regarding the virtues of a wife who must be given iddah after being divorced by her husband. However, the difference between what the author will examine is how to determine the level of the iddah income if the wife being divorced is a career woman.
7. Moh's book. Ali Wafa, *Marriage Law in Indonesia A Study in Islamic Law and Material Law*, 2018. In this book, the similarities that researchers have with research related to the concept of iddah regulated in the Presidential Instruction on the Compilation of Islamic Law in Indonesia. The significant differences that the researchers studied focused on how to determine the level of iddah income for the wife as a career woman.
8. Vivi Kurniawati's book, *Peeling Out the Women's Iddah Period*, 2019. In this book the author explains about how a period of iddah in Islam and its legal basis is similar to that of researchers discussing a few problems related to this study. However, the difference between this study and the book is related to the determination of the wife's iddah level.

9. Maharati Marfuah's book, *The Law of Jurisprudence Regarding Livelihood*, 2020. In this book, it has similarities with the author's research in the scope of giving a living to wives, both wives as career women and wives as housewives. However, in the research that the author examines, there is a significant difference with the discussion of the book, namely in terms of the provision of a living studied by this researcher related to the income that must be given by the husband to his divorced wife.

III. RESEARCH METHODOLOGY

The research methodology employed in this study involves the utilization of empirical legal research, specifically focusing on unwritten legal research related to community members' behavior in societal interactions. This falls under the category of field research, particularly descriptive qualitative field research, which explores human behavior in specific circumstances, whether at the individual or group level. The study aims to provide a precise description of data obtained through both written and oral sources, including interviews and observations of community behavior. The research was conducted at the Makassar Religious Court Class 1A, located on Perintis Kemerdekaan Street, Km, Daya, Biringkanaya District, Makassar City. This choice of location is motivated by the uniqueness of the research topic, which had not been previously explored by other researchers, thereby aiming to achieve more optimal research outcomes. The research methodology encompasses three approaches: the formal juridical approach, the empirical sociological approach, and the Sharia approach. Data collection methods include interviews and documentation, while data processing and analysis involve editing, classification, verification, analysis, and drawing conclusions from the collected data.

IV. RESULTS AND DISCUSSION

a. *Legal basis of Determination of Judges in Determining the Alimony Rate of Iddah*

In deciding a case, the panel of judges basically refers to the Qur'an, hadith, and the rules of law that apply in Indonesia. In addition, the judge is also very concerned about various things such as facts or evidence in the trial as a support to obtain a concrete decision. Judges in adjudicating a case are not allowed to side with one of the litigants, but in certain conditions, judges use *ex officio* rights to protect women's rights after divorce, such as their right to receive *iddah*. This *ex officio* right is the authority, independence, and at the same time the responsibility given by the state to judges to take concrete legal actions in court in examining, adjudicating, and resolving cases without having to request.

Providing *iddah* for a divorced wife is one of the husband's obligations under Islamic law. It is explained in QS al-Talaq/65: 6-7 that the husband is obliged to provide a living and fulfill all the needs of his divorced wife until her *iddah* period ends according to her ability. This is also explained in the Presidential Instruction on Compilation of Islamic Law Article 149 that regarding the issue of ending a household relationship, the husband is obliged to provide *iddah* to his wife as long as she is not sentenced to *talak ba'in* or *nusyuz* and is not pregnant. However, because there is no nominal which is the benchmark for the value of the *iddah* living both in the Qur'an and in the Compilation of Islamic Law, it only explains the obligation to provide such a living. then the judge is required to *ijtihad* to determine the amount of the *iddah* living value which is not contained in the legal source that guides the judge to decide the case. However, the results of the judge's *ijtihad* do not apply in general but only apply to the cases he was handling at that time.

In accordance with the results of intensive interviews with two key informants conducted at the Makassar Religious Court Class 1A, namely Drs. Muhammad Yunus and Drs. Faisal, MH, who are both senior judges at the Makassar Religious Court Class 1A,

related the legal basis used by judges in *ijtihad* to determine the amount of the wife's *iddah*.

Interview with resource person Drs. Muh. Yunus which was held on Tuesday, December 21, 2021, which reaped several results regarding the legal basis for determining the level of the wife's *nakah iddah*. According to Drs. Muhammad Yunus, in determining the level of the wife's *iddah*, the panel of judges first looks at the condition of the wife as long as she lives with her husband, then considers how much her husband earns. After the data has been collected, the panel of judges will determine how much will be charged to the husband to pay for his wife's *iddah*. In accordance with the propriety and ability of the husband based on what has been regulated in Islamic law and the Compilation of Islamic Law.²¹

From the results of an interview with Drs. Muhammad Yunus explained that the panel of judges used the Qur'an and hadith as the main legal basis in determining the maintenance of the wife's *iddah* and also referred to article 149 letter (b) of the Compilation of Islamic Law on the husband's obligation to provide *iddah* maintenance to the divorced wife. As for the hadith used by the judges as a legal basis in determining the maintenance of the wife's *iddah*, namely:

أَخْبَرَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ الْحَكَمِ قَالَ حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ قَالَ حَدَّثَنَا شُعْبَةُ عَنْ أَبِي بَكْرٍ بْنِ أَبِي الْجَهْمِ قَالَ
دَخَلْتُ أَنَا وَأَبُو سَلَمَةَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ فَأَلَّتْ طَلْفَنِي زَوْجِي فَلَمْ يَجْعَلْ لِي سَكْنَى وَلَا نَفَقَةً فَأَلَّتْ فَوَضَعَ لِي
عَشْرَةَ أَقْفِزَةٍ عِنْدَ ابْنِ عَمِّ لَهْ حَمْسَةَ شَعِيرٍ وَحَمْسَةَ تَمْرٍ فَأَتَيْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ لَهُ ذَلِكَ
فَقَالَ صَدَقَ وَأَمَرَنِي أَنْ أَخْتَدَّ فِي بَيْتِ فُلَانٍ وَكَانَ زَوْجَهَا طَلَقَهَا طَلَاقًا بَائِنًا

Meaning:

"It has been narrated to us that Ahmad bin Abdullah bin Al Hakam said; has narrated to us Muhammad bin Ja'far said; has narrated to us Syu'bah from Abu Bakr bin Abu Al Jahm said; Abu Salamah and I met Fatimah bint Qais and she said, "My husband has divorced me and has not given me shelter and sustenance. Then he gave me ten qafiz which was on his uncle's son, namely five qafiz of wheat and five qafiz of dates. Then I came to the Messenger of Allah sallallaahu 'alaihi wa sallam. 'alaihi wasallam and I said that to him. He also said: ' It is true '. And he ordered me to perform iddah at the house of Fulan.' Her husband had divorced her with a triple divorce." (Narrated by Sunan an-Nisa'i No. 3495)²²

From the explanation of the hadith above, it can be concluded that in the provision of *iddah*, one must adjust the ability of the husband and the appropriateness of the needs of the wife so that it does not burden one party.

In the next interview with Drs. Faisal, MH which was conducted on Thursday, December 23, 2021. Provide further explanation regarding the legal basis used by the panel of judges in determining the level of the wife's *iddah*. From the interview, Drs. Faisal, MH explained that there are two conditions in determining the amount of the wife's *iddah*. First, if the divorce is due to divorce, then it refers to Article 41 letter (c) of Law Number 1 of 1974 concerning Marriage. j. Article 149 letter (a), article 152 and article

²¹ Interactive Interview with Senior Judge of Makassar Religious Court Class 1A Drs. Muh. Yunus, M.H. on December 21, 2021.

²² Al-Nasa'i, *Sunan al-Nasa'i: Volume VI* (Lebanon: Dar al-Fikr, 2005), h. 144-145.

133 paragraph 1 and 2 letter (b) of the Compilation of Islamic Law. Then there is the criteria for determining the amount of iddah living as stated in SEMA No. 7 of 2012. The criteria referred to in SEMA No. 7 of 2012 are, looking at the husband's ability, propriety, length of marriage, and the husband's income which is under take home pay. Next Drs. Faisal, MH explained further about SEMA No. 3 of 2018 concerning the improvement of SEMA No. 7 of 2012 which reads, in determining the amount of iddah living, one must pay attention to the sense of justice and propriety, explore the facts of the husband's economic capacity and the facts of the basic needs of the wife's life.²³ This opinion is in line with the judge's considerations in the copy of the case decision Number 32/Pdt.G/2021/PA.Mks which in this case is a divorce case and has legal consequences that must be borne by the husband as a result of a divorce. Likewise, the judge's consideration in the copy of the case decision Number 428/Pdt.G/2021/PA. Mks and a copy of the case decision Number 741/Pdt.G/2019/PA.Mks. Second, accommodate PERMA No. 3 of 2017 concerning guidelines for adjudicating women's cases in conflict with the law. If the divorce is due to a divorce, the wife can be given iddah as long as it is not proven nusyuz, this is stated in SEMA No. 3 of 2018. In addition, Drs. Faisal, MH also mentioned several books that he used to add to his legal basis in ijthad related to the problem of determining the amount of the wife's iddah living value, including:

1. I'anatut Thalibin juz IV

"If the wife refuses to move places with her husband, then it is not obligatory on the husband. to provide a living."

2. Kitab Al Muhadzdzab juz II

"If the husband divorces his wife after dukhul by talak raj'i, then the wife is entitled to a place to live and earn during the iddah."

3. Kitab Al Iqna 'juz II

"Must be given to women who experience iddah raj'i, namely a place to live and earn a living."

4. Kitab Al Fiqhu 'ala Madzahibil Arba 'ah juz IV

"Indeed, iddah is obligatory on a husband for his wife who has been divorced by the raj'i, whether free or slave. What is meant by sustenance is what is related to food, clothing and shelter."

5. Kitab Qalyubijuz IV

"Live and clothing are obligatory for the husband who divorced his pregnant wife because of the word of Allah: 'And if they (the wives who have been divorced are pregnant, then give them their livelihood until they give birth'

a) *the right for the woman. wife by reason of her pregnancy. In another qau for her pregnancy.*

b) *QS al-Thalaq verse 6.*

From the explanation above the author draws conclusions that can provide an explanation of the legal basis used by the judge in determining the amount of iddah living to be given to the wife as one of the consequences of a divorce in accordance with field conditions, namely that with regard to the capacity of a judge at the Makassar Religious

²³ Interactive Interview with Senior Judge of Makassar Religious Court Class 1A Drs. Faisal, MH on December 23, 2021.

Court Class 1A as a mujtahid has not been fulfilled, however, because judges are assigned by the state to resolve a case, when the judge does not find a law that serves as a guide in deciding cases in existing legal sources, then the judge will have the right to decide the case by using the results of his thoughts with certain considerations that are in line with the provisions of Islamic law. In addition, looking at the legal sources used by judges, both in the Qur'an and the Compilation of Islamic Law and the Circular of the Supreme Court (SEMA), there is a synchronization between the three sources in determining the amount of the iddah living value to be given to the wife. The three of them explained that in determining the value of the wife's iddah, one must pay attention to decency and justice for both parties.

However, what is a problem and has not been looked at by the judge in the settlement of this iddah living is that the judge only determines the legal basis for the wife in general. While we know that not all social and economic status of society, especially a wife is the same, there are wives who have professions (career women) and there are also wives who are only housewives (non-career). So that this is also something that the judge needs to pay attention to in determining the value of the wife's iddah to achieve justice, not only justice between husband and wife, but also for justice between career wives and non-career wives.

b. Differences in Determination of Iddah Levels of Wives of Career Women and Non-Careers

In interactive interviews with the two resource persons who are judges at the Makassar Religious Court Class 1A, both of them gave the same answer regarding the determination of the amount of iddah living to be given to the wife. According to them, even though the wife is a career woman or non-career, there is no difference in determining the amount of iddah that will be given. The provision of iddah maintenance still refers to the Qur'an and hadith as a husband's obligation in the event of a divorce. And look at SEMA No. 7 of 2012 and SEMA No. 3 of 2018 in determining the criteria for the amount of iddah living to be given to the wife. The opinions of the two sources are in line with the judge's considerations in a copy of the case decision Number 821/Pdt.G/2019/PA.Mks which in this case the woman in the case has a job (career woman) but in the consideration of the panel of judges does not at all consider her work status as a woman.

Career in determining the amount of iddah living that must be paid by the ex-husband. In addition, the copy of the case decision Number 1361/Pdt.G/2021/PA.Mks and the copy of the case decision Number 1387/Pdt.G/2021/PA.Mks also did not find the wife's employment status as one of the criteria for determining the amount of iddah living. However, in determining the amount of the wife's iddah, both in the case of talak and divorce, both are based on the criteria contained in SEMA No. 7 of 2012 which was later refined in SEMA No. 3 of 2018, which in this case is the criteria for determining the amount of the iddah living value, namely paying attention to the sense of justice and propriety, exploring the facts of the husband's economic ability and the facts of the basic needs of the wife's life, and seeing the length of a husband and wife relationship that exists between them. So it can be concluded that according to the judges at the Makassar Religious Court Class 1A, the employment status of a woman is not the basis for determining in considering the value of the amount of iddah living. From the four criteria mentioned in SEMA No. 3 which is then linked to the judge's considerations in the decision described above, it can be concluded that:

1. Justice and propriety

Judging from the wife's demands regarding the issue of living that must be paid by

the husband, then when the husband has determine the amount he is capable of, the judge will compare the wife's demands with the husband's income obtained from her work then look back at the amount of the gift and whether it is appropriate and fair for both parties.

2. Husband's economic

Ability Regarding the husband's ability, the judge basically determines the amount of the cost of living for the wife based on the husband's ability, namely by looking at the husband's work. Based on this, the judge can estimate how much the husband's monthly income will be, which will later become the judge's benchmark in calculating the amount of income that should be given to his wife. In addition, by looking at the husband's income, the judge with confidence and ability will determine the level according to the principle of fit and proper according to the judge himself.

3. Wife's living needs

Seeing from the daily living expenses of the wife while still married, the judge can find out how much the wife's living needs should be obtained by the wife at the time of post-divorce.

4. Length of household relationship

By knowing the age of marriage in a litigation, the judge can consider giving the wife's iddah a living by using the judge's own humanity. This is a form of gratitude to the wife for her dedication to her husband during marriage, whether it is taking care of the needs of her husband's life, taking care of the household, taking care of his children, and so on.

Judging from the explanation of the criteria contained in SEMA No. 3 of 2018 is very concerned about justice for both litigants and ensures that no one will be harmed from the resulting decision. Therefore, the judges use these criteria as their guidelines in determining the amount of income that will be given to the wife. It is true that in the criteria described in SEMA No. 3 of 2018 is very concerned about justice for married couples. However, on the other hand, when judges only use these criteria as a guideline for adjudicating cases of determining iddah maintenance in general, according to the researcher's own observations, this will cause injustice to the wives. Moreover, the circumstances of the divorced wives are not the same, some are divorced but the wife is a career woman and there are also divorced wives in the condition that the wife is only a housewife.

From these circumstances, it can be seen that with a wife who is left in her condition as a career woman, she will automatically have mental and self-preparedness when separating from her husband with her own income. In contrast to the wife who is left in a state only as a housewife (non-career) where the wife does not have mental readiness and does not have her own livelihood and only hopes for a living from the results of her husband's work. This situation should also be one of the judges' considerations in determining the amount of the iddah living value to be given to the wife.

From the results of the previous interview, it was concluded that the judge at the Makassar Religious Court Class 1A in determining the amount of the iddah living value did not distinguish between a career wife and a non-career wife regarding the criteria used as a guide in determining the level of the living. The judges of the Makassar Religious Court Class 1A in determining the amount of the wife's iddah income are only

Based on justice and propriety as stated in SEMA No. 3 of 2018. So, without realizing it, many wives have experienced injustice regarding the issue of determining the amount of the iddah living. For example, when there is a divorce between the divorced

wife in a state as a career woman and the wife in a non-career state. Then came the decision that the iddah allowance given to a wife with a career is greater in value than the value of the iddah allowance given to a non-career wife. This is where it can be seen the injustice that occurs between the wife and the wife when they do not make the work or status of a wife as one of the factors in determining the amount of the iddah living value.

Therefore, in determining the value of the wife's iddah living, it is very important to make the status of a wife as one of the determining factors for the amount of iddah living that will be charged to her husband. So that not only justice between husband and wife can be achieved, but justice for wives and wives can also be fulfilled in receiving their rights as a result of divorce.

c. Judges' Efforts in Ensuring the Implementation of a Decision

One of the issues that surfaced in the context of the decision of the Religious Courts and the protection of the rights of the wife was regarding the power of execution of decisions based on the principles of simplicity, speed and low cost. Indeed, in the last period, there have been a number of problems in the execution of the expenses imposed on the husband. In general, the implementation of talak divorce decisions accompanied by the imposition of iddah expenses on the husband in the Religious Courts is realized in two ways, namely voluntary implementation and implementation of the decision with an execution mechanism by the court. Basically, the provision of the right of iddah is given voluntarily by the husband to his wife. However, if the husband refuses to give the wife's rights, an application for execution by the wife can be submitted. This request is very important for the wife to do because the provision of iddah is not included in the decision because divorce has not occurred. So that when there is no request for execution, the court cannot carry out the execution by force. The request for execution is usually in the form of a counterclaim or a counter-convention submitted by the wife, which then the judge includes the re-convention in his stipulation.

In the legislation there are no provisions regarding the time limit for the payment of iddah living. However, from the results of interactive interviews with the two resource persons who are judges of the Makassar Religious Court Class 1A, it is explained that the affairs of the divorce pledge and the burden of the obligation to pay the iddah must be treated as interrelated legal events as well. Initially, a husband must be declared to have divorced his wife before he is burdened or punished for paying the iddah. However, in the case of the execution of the decision on the payment of the iddah payment, in this case, it will be more difficult to carry out if the execution is carried out after the pronouncement of the divorce pledge. This is because most husbands after saying the vow of divorce they do not carry out their obligations to pay the iddah. This way of fulfilling the wife's rights to a living like this is not in line with the will to protect and ensure the fulfillment of their rights accurately and quickly, moreover there is an adage in the law which states that a pending justice is injustice itself.

So according to Drs. Muhammad Yunus. In our interactive interview on Tuesday, December 21, 2021, we said that the panel of judges of religious courts generally recommends that the iddah payment be made first to the wife who wants to divorce while taking the vows of divorce. Furthermore, when the husband turns out to be unable to pay the iddah living, the judge will postpone the pronouncement of the divorce pledge and give a time limit of 6 (six) months to complete the payment of the iddah. Regarding the determination of the additional time limit, it has been regulated in Presidential Instruction No. 1 of 1991 article 131 paragraph 4 of the Compilation of Islamic Law concerning the dissemination of compilations of Islamic law.

Drs. Faisal, MH then explained further during our interview on Thursday,

December 23, 2021 that in giving this time limit there are also two situations, the first is when the case is a divorce, then when a husband is still unable to pay the iddah maintenance during the time limit. that has been given, the legal consequence is the annulment of the decision on the divorce pledge permit which initially had legal force. And secondly, when the case is a divorce, the legal consequences that will apply to the husband are the detention of the divorce certificate. The implementation of the payment of iddah living before the divorce pledge has been carried out by several courts since the Supreme Court issued a regulation, namely Supreme Court Regulation Number 3 of 2017 which is an amendment to the Circular Letter of the Supreme Court Number 3 of 2015 in letter C in casu iddah, mut'ah and madliyah, with the aim of guaranteeing the rights of a wife who has been divorced by her husband to obtain her rights for the consequences of a divorce.

From the explanations of these sources, we can conclude that the judge has provided legal remedies in the form of canceling the divorce permit and the detention of the divorce certificate for the husband in ensuring the implementation of a decision as a result of the divorce, as well as maintaining the wife's right to be paid shortly before the pronouncement of the divorce pledge. The method of carrying out the payment of iddah maintenance which was carried out before the divorce pledge was also a very useful latest formulation to protect the rights of the wife where previously the payment of the wife's rights was paid after the pronouncement of the divorce vow, it is undeniable that there were many problems that later arose as a result of the incident. It is like a husband who is free of responsibility for the payment of his iddah.

If then the wife asks for the right to support her iddah by asking the court to execute, there will be costs incurred and sometimes the costs for carrying out the execution are not cheap. So many wives then do not carry out the execution because the cost is quite expensive. Thus, the postponement of the talak pledge in divorce cases and the detention of the divorce certificate in divorce cases will be the mainstay steps for the Religious Courts that are most effective in maintaining the wife's rights in order to fulfill a sense of justice. According to the researcher himself, the efforts made by the judge aim to maintain the benefit where the wife's rights are fulfilled in the form of iddah maintenance and avoid harm in the form of husband's denial to fulfill the wife's rights and deny her obligations.

V. CONCLUSION

Based on the results of the data analysis and discussion that has been described in previous chapters, it can be concluded that in determining the amount of iddah income to be given to the wife by the husband, the panel of judges has several legal bases used in determining the criteria for determining the amount of the wife's iddah. including the Qur'an and hadith, SEMA No. 7 of 2012 which was later refined by SEMA No. 3 of 2018. Then regarding the determination of the value of the wife's iddah living, the panel of judges needs to consider the status of a wife to be one of the determining factors for the amount of iddah living that will be charged to the husband. So that not only justice between husband and wife can be achieved but justice for wife and wife can be fulfilled. As for the efforts made by the judge in ensuring the implementation of a decision, namely the postponement of the divorce pledge and the detention of the divorce certificate as an effort made by the judge in ensuring the implementation of a decision, it is a mainstay step for the Religious Courts which is the most effective in maintaining the rights of the wife in order to fulfill a sense of justice. . As well as maintaining the benefit where the wife's rights are fulfilled in the form of iddah living and avoiding harm in the form of husband's denial to fulfill his wife's rights and denying her obligations.

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