

Rights And Obligations Of Civil Servant Husbands To Ex-Wives After Divorce According To Indonesian Law

Sirman Dahwal¹, Idwal²

¹University of Bengkulu, Indonesia. Email: Sirmandahwal18@gmail.com

²Fatmawati Sukarno State Islamic University Bengkulu, Indonesia. Email: idwal@mail.uinfasbengkulu.ac.id

Abstract

This research is normative legal research, so the first step that the author takes is to collect books and writings that are relevant to the title to obtain the necessary data and theories according to the problem. With the data that has been collected, it is hoped that it will be able to identify problems as well as explain them which is the focus of the discussion. The discussion was directed to the analysis of the material regarding the rights and obligations of Civil Servants (PNS) to their ex-wives after divorce according to Indonesian law. Of course, the focus of the discussion is directed to find answers: (1) What are the rights and obligations of the husband of a Civil Servant to his wife after divorce according to Indonesian law, (2) How to implement the rights and obligations of the husband of the Civil Servant, and (3) The factors that hinder the implementation of these rights and obligations. The method used in expressing and explaining problems is by using *the content analysis* method, with a normative, literal-historical approach and supported by an empirical approach. The purpose is not only to find out the provisions of the rules related to rights and obligations, but also to understand the true meaning of rights and obligations whether it is a legal function that meets the sense of justice, certainty, and benefits. The results of the discussion stated that the rights and obligations of Civil Servants (PNS) to their wives have been regulated in Indonesian marriage law in accordance with Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage and other related regulations such as the Compilation of Islamic Law. These rights and obligations are inherent in the subject of law, especially for Civil Servants (PNS), which must be carried out by the husband and respected by both parties. These rights consist of the right to nafkah hadhanah, nafkah mut'ah, nafkah iddah, and nafkah madhiyah.

Keywords: Rights and Obligations, Indonesian Law

INTRODUCTION

Marriage is a sacred thing, and it is also one of the religious commandments. A marriage has a purpose, where the purpose of the marriage is to have offspring, create a happy, prosperous, safe and peaceful household, full of affection.¹ Marriage too give rise to rights and obligations to husband and wife. The rights and obligations that exist before divorce arise from the existence of a marriage contract. These rights and obligations are contained in the The provisions of the Qur'an that show the rights and obligations of husband and wife are:²

- 1) The Qur'an Surah An-Nisa' verse 19 which means (more or less): *"And associate with your wives with makruf"*.
- 2) The Qur'an Surah An-Nisa' verse 34 means (approximately): *"... The pious Anita is the one who obeys Allah and preserves herself"*.
- 3) Surah Ar-Rum verse 21 which means (approximately): *"And among His verses He created for you wives of your own kind, so that you may feel comfortable with him, and He made among you mawadah and mercy. Indeed, in such a thing there are signs for the thinkers."*

In addition to rights, the husband's responsibility towards the family is regulated in the Qur'an Surah An-Nisa' verse 34:³

"The men are the leaders of the women, because Allah has given some of them (men) more than others (women), and because they (men) have provided for some of their wealth. Therefore, a righteous woman is one who is obedient to Allah and takes care of herself when her husband is not around, because Allah has taken care of (them). The women whose nusyuz you are worried about, then advise them and separate them in their beds, and beat them. Then if they obey you, then do not look for a way to trouble them. Indeed, Allah is Exalted and Exalted."

Meanwhile, the husband's obligation to provide a place for his wife is regulated in the Qur'an Surah Al-Talak (65) verse 6:⁴

"Give your wife a place where you live according to your ability".

A marriage that is legal according to the marriage law will have legal consequences, namely:⁵ (1) the existence of a relationship between husband and wife; (2) the occurrence of property in marriage; and (3) the emergence of a relationship between parents and children. Marriages built by husband and wife always crave and want permanence and harmony until death separates. However, this is often not achieved due to several factors, including

¹ Sirman Dahwal, *Interfaith Marriage Law in Theory and Practice in Indonesia*, Mandar Maju, Bandung, 2016, p. 87.

² KN. Sofyan Hasan, *The Basics of Understanding Islamic Law in Indonesia*, National Business, Surabaya, 1994, p. 118.

³ Al-Qur'an Surah An-Nisa' verse 34.

⁴ Al-Qur'an Surah Al-Talak verse 6

⁵ Mulyadi, *Indonesian Marriage Law*, Publishing Board of Diponegoro University Semarang, 2008, p. 41.

differences and conflicts that hit and cannot be overcome together by husband and wife. These conflicts lead to separation or divorce.

Divorce between husband and wife is regulated in Article 39 paragraph (1) of the Marriage Law, which states that: "*Divorce can only be carried out in front of the Court session after the Court concerned has tried and failed to reconcile both parties*". Divorce is a final step after through mediation or reconciliation efforts by the judge does not find a common ground between the wife and the husband so that a legal divorce stage is carried out in front of the court and decided by the judge.

Divorce is something that Allah SWT hates in Islam, but it is not forbidden for certain reasons. Divorce is a legal action that is justified by religion in an emergency, as the Prophet PBUH said that the halal act that Allah SWT hates the most is *thalaq*.⁶ In another sentence it is stated:

"There is nothing that is lawful of Allah, but he hates it other than thalaq". (H.R. Abu Dawud r.a).

The definition of *thalaq* quoted from Beni Ahmad Saybani in his book *Fiqh Munakahat* 2, states that *thalaq* in religious terms means to release the marriage bond or the dissolution of the marital relationship. Letting go of the marriage bond means dissolving the marital relationship so that the marriage or divorce ends.⁷ Divorce or divorce can only be done in front of the court in accordance with the provisions of laws and legal regulations regulated by the State. Marriage and divorce are regulated in the Marriage Law, adhering to the Principle of Open Monogamy.

Divorce that occurs can have an impact on the social life of the child and both parties of the divorced husband and wife. Divorce often causes hostility between both parties and the lack of children's rights and husband's obligations are often unfulfilled or even reduced in carrying out his obligations to fulfill the right to child and wife support. So that from the aspect of the legal function of justice, certainty, and legal benefits are not achieved.

Regarding the husband's obligations in fulfilling the maintenance of his wife or ex-wife, it is clearly and detailed regulated in Article 41 of the Marriage Law, which states that:

"The consequences of marriage breakdown due to divorce are:

- a. Both the mother or the father is still obliged to maintain and educate his children, solely based on the interests of the child; if there is a dispute regarding the custody of the children, the Court gives its decision;*
- b. The father is responsible for all necessary maintenance and education costs for the child; if the father is in fact unable to fulfill the obligation, the Court may determine that the mother is also responsible for the costs;*
- c. The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife."*

Furthermore, Article 41 c of the Marriage Law indicates that the Court through a judge's decision can contain details about the husband's obligation to provide living expenses and/or

⁶ Sayyid Sabiq, *Fiqh Sunnah* 8, Translingual: Drs. Mohammad Thalib, PT. Alma'arif, Bandung, 1997, p. 12.

⁷ Beni Ahmad Saybani, *Fiqh Munakahat* 2, CV Pustaka Setia, Bandung, 2010, p.55.

determine an obligation for his divorced ex-wife, even though these provisions are not clear and detailed.

The provisions for providing alimony to ex-wives for Muslims are regulated in the Compilation of Islamic Law (KHI) Article 149, which states that as a result of the breakdown of marriage due to *thalak*, the husband must:

- a. Giving proper *mut'ah* to his ex-wife, either in the form of money or objects, unless the ex-wife is *qabla ad dukhul*.
- b. Providing *maintenance*, *maskan* (shelter) and *kiswah* (clothing) to the ex-wife during *the time of 'iddah*, unless the ex-wife has been sentenced to *thalak bain* or *nusyuz* and is not pregnant.
- c. Paying off the *dowry* that is still owed in full, or half if *it is qabla ad dukhul*.
- d. Provide *hadanah* fees for children who have not reached the age of 21.

In our country Indonesia, further arrangements regarding the rights and obligations if the husband or wife is a Civil Servant (PNS), are specifically regulated in accordance with the provisions of Article 8 of Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 as follows:

1. If the divorce occurs at the will of a male Civil Servant, then he is obliged to hand over part of his salary for the livelihood of his ex-wife and children.
2. The salary distribution as intended in paragraph (1) is one-third for the male civil servant concerned, one-third for his ex-wife, and one-third for his child;
3. If there are no children from the marriage, then the part of the salary that must be included by the male Civil Servant to his ex-wife is half of his salary;
4. If the divorce occurs at the will of the wife, then she is not entitled to a share of the income of her former husband;
5. The provisions as intended in paragraph (4) do not apply, if the wife asks for a divorce because she is honeyed;
6. If the ex-wife of the Civil Servant concerned remarries, her right to her ex-husband's share of salary will be erased from the moment she remarries.

The provisions of Article 8 paragraph (4) of Government Regulation No. 10 of 1983 are supplemented by Government Regulation of the Republic of Indonesia No. 45 of 1990 concerning Amendments to Government Regulation No. 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, namely amending the provisions of Article 8 as follows:

- a. Between paragraph (3) and paragraph (4) of the old paragraph is inserted which is made into new paragraph (4), which states as follows:

"(4) The distribution of salary to the ex-wife shall not be given if the reason for the divorce is due to the wife committing adultery, and or the wife commits cruelty or severe persecution either natural or mental against the husband, and or the wife becomes a drunkard, stuffer, and gambler who is difficult to cure, and or the wife has left her husband for two consecutive years without the husband's permission and without a valid reason or for any other reason beyond her ability".
- b. The provisions of paragraph (4) of the old paragraph (4) are then made into new provisions of paragraph (5).
- c. Amend the provisions of the old paragraph (5) and then make it a new paragraph (6) so that it states as follows:

"(6) The provisions as intended in paragraph (5) shall not apply, if the wife requests a divorce because she is honeyed, and/or the husband commits adultery, and or the husband commits cruelty or severe persecution either natural or mental against the wife, and or the husband becomes a drunkard, stuffer, and gambler who is difficult to cure, and or the husband has left his wife for two consecutive years without the wife's permission and without a valid reason or for any other reason beyond his ability".

- d. The provisions of paragraph (6) of the old paragraph (6) are then made into new provisions of paragraph (7).

The provision of alimony to the ex-wife is a decision decided by the judge with various considerations and refers to various provisions and regulations. Divorce is due to the wife's will, the judge may decide not to require the husband to provide support to his ex-wife. For example, it can be seen in the Decision of the Lamongan Religious Court Number 1110/Pdt.G/2012/PA.Lmg. The plaintiff (wife) sued for divorce from her husband as the Defendant on the grounds of lack of maintenance given by the husband to his wife. The judge's decision in this case granted the Plaintiff's lawsuit and imposed *a talaq of one ba'in sughro* of the Defendant against the Plaintiff and did not punish the Defendant to provide for the Plaintiff. In addition, there is also a Court decision that refers to the Compilation of Islamic Law and other regulations, where the judge sentences the ex-husband to provide alimony to his ex-wife after divorce even though the divorce is his wife's will, as can be seen in the Decision of the Samarinda High Court of Religion 12/Pdt.G/2012/PTA. Smd. The plaintiff (wife) sued for divorce from her husband as the Defendant. The Defendant for more than 2 (two) years has not provided maintenance to the Plaintiff, the Defendant often hurls dirty words at the Plaintiff even though he is a teacher, and the Defendant when fighting with the Plaintiff often threatens the Plaintiff with sharp weapons. The judge finally sentenced the Defendant to provide maintenance/maintenance and education costs to his three children and wife. The judge also sentenced the Defendant to pay alimony during *the iddah period* to the Plaintiff in the amount of Rp 30 million and to pay *mut'ah* to the Plaintiff in the amount of Rp 50 million. This decision was upheld at the Appeal level.⁸

From the description above, it is necessary to study in depth the rights and obligations of the husband to the ex-wife after divorce according to Indonesian law. The question to be examined is how to implement the rights and obligations of the husband of a Civil Servant (PNS) to the ex-wife after divorce according to Indonesian law and what factors are obstacles to the granting of the rights and obligations of the husband of the Civil Servant (PNS) to the ex-wife after divorce according to Indonesian law.

METHOD

This research is a normative legal research, so the first step that the author takes is to collect books and writings that are relevant to the title to obtain the necessary data and theories according to the problem. With the data that has been collected, it is hoped that it will be able to identify problems as well as explain them which is the focus of the discussion.

⁸ Online Law, *Is It Okay Not to Provide for Ex-Wife After Divorce* <http://www.hukumonline.com/klinik/detail/lt5039b10572c4a/bolehkah-tidak-menafkahi-mantan-isteri-pasca-bercerai>. accessed on February 23, 2017 at 19.30 WIB.

The discussion was directed to the analysis of material related to the rights and obligations of Civil Servants (PNS) to ex-wives after divorce according to Indonesian law which is a *variable* basis for thinking. Of course, the focus of the discussion is directed to find answers: (1) What are these rights and obligations, (2) How to implement the rights and obligations of the husband of the Civil Servant (PNS), whether it has fulfilled its legal functions of justice, certainty, and benefits at the same time.

For data processing, the method that will be used in expressing and explaining problems is to use the content *analysis method*, with a normative, literal-historical approach and supported by an empirical approach. The purpose is not only to know the provisions of rules formed by the state related to rights and obligations, but also to understand the meaning contained through regulations or arrangements or postulates that can be revealed in their application at once. In the meantime, the morality condition of the people of nations in the world, including our country Indonesia today, needs to be considered, because after all, a good law is a law that is rooted in the history of the society of a nation; is a reflection of the will of the people themselves, especially in the territory of the Unitary State of the Republic of Indonesia (NKRI) which is based on law (*rechtstaat*).

RESULTS AND DISCUSSION

1. Rights and Obligations of Civil Servant (PNS) Husbands to Ex-Wives

The husband's obligation in fulfilling the maintenance of his wife or ex-wife is clearly and detailed in Article 41 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, stating that:

"The consequences of marriage breakdown due to divorce are:

- a. Both the mother or the father is still obliged to maintain and educate his children, solely based on the interests of the child; if there is a dispute regarding the custody of the children, the Court gives its decision;
- b. The father is responsible for all necessary maintenance and education costs for the child; if the father is in fact unable to fulfill the obligation, the Court may determine that the mother is also responsible for the costs;
- c. The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife."

Point c in Article 41 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 above broadcasts that the Court through a Judge's Decision can contain details about the husband's obligation to provide living expenses and/or determine an obligation for his divorced ex-wife, even though these provisions are not clearly and in detail explained. The husband's obligations for Muslims and Civil Servants (PNS), in addition to the provisions in point c of Article 41 of Law Number 1 of 1974, have other provisions that regulate the obligation of the ex-husband in providing living expenses to the ex-wife.

The provisions for providing alimony to ex-wives for Muslims are regulated in the Compilation of Islamic Law (KHI) Article 149 states that due to the breakdown of marriage due to *talaq*, the husband must:

1. Giving proper *mut'ah* to his ex-wife, either in the form of money or objects, unless the ex-wife is *qabla ad dukhul*.
2. Providing *alimony*, *maskan* (shelter) and *kiswah* (clothing) to the ex-wife during *the time of 'iddah*, unless the ex-wife has been sentenced *to talak bain* or *nusyuz* and is not pregnant.
3. Paying off the *dowry* that is still owed in full, or half if *it is qabla ad dukhul*.
4. Provide *hadanah* fees for children who have not reached the age of 21.

In our country Indonesia, further arrangements regarding the rights and obligations if the husband or wife is a Civil Servant (PNS), then in accordance with the provisions of Article 8 of Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 as follows:

- a. If the divorce occurs at the will of a male Civil Servant, then he is obliged to hand over part of his salary for the livelihood of his ex-wife and children.
- b. The salary distribution as intended in paragraph (1) is one-third for the male civil servant concerned, one-third for his ex-wife, and one-third for his child;
- c. If there are no children from the marriage, then the part of the salary that must be included by the male Civil Servant to his ex-wife is half of his salary;
- d. If the divorce occurs at the will of the wife, then she is not entitled to a share of the income of her former husband;
- e. The provisions as intended in paragraph (4) do not apply, if the wife asks for a divorce because she is honeyed;
- f. If the ex-wife of the Civil Servant concerned remarries, her right to her ex-husband's share of salary will be erased from the moment she remarries.

The Regulation regarding the provisions of Article 8 paragraph (4) of Government Regulation Number 10 of 1983 is supplemented by Government Regulation of the Republic of Indonesia Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, namely changing between paragraphs (3) and paragraph (4) the old inserted one paragraph which is made into paragraph (4) new, which states as follows:

- a. "(4) The distribution of salary to the ex-wife shall not be given if the reason for the divorce is due to the wife committing adultery, and or the wife commits cruelty or severe persecution either natural or mental against the husband, and or the wife becomes a drunkard, stuffer, and gambler who is difficult to cure, and or the wife has left her husband for two consecutive years without the husband's permission and without a valid reason or for any other reason beyond her ability".
- b. The provisions of paragraph (4) of the old paragraph (4) are then made into new provisions of paragraph (5).
- c. Amend the provisions of the old paragraph (5) and then make it a new paragraph (6) so that it states as follows:
- d. "(6) The provisions as intended in paragraph (5) shall not apply, if the wife requests a divorce because she is honeyed, and/or the husband commits adultery, and or the husband commits cruelty or severe persecution either natural or mental against the wife, and or the husband becomes a drunkard, stuffer, and gambler who is difficult to cure, and or the husband has left his wife

for two consecutive years without the wife's permission and without a valid reason or for any other reason beyond his ability".

- e. The provisions of paragraph (6) of the old paragraph (6) are then made into new provisions of paragraph (7).

2. Implementation of the Rights and Obligations of Civil Servants' Husbands

The husband has a responsibility for a decent life for his (former) wife. Providing alimony to the ex-wife is an obligation that must be fulfilled by the husband, where with the consideration that the wife is the party who is often the victim in divorce. The provision of maintenance by the husband to the ex-wife is also a matter that has been regulated and determined in Islamic Law.

The provision of maintenance from the husband to the ex-wife is obligatory and has been regulated in the Qur'an. This is the basis for the judge's consideration to order the husband of a Civil Servant (PNS) to carry out his obligations in providing alimony to his ex-wife in the form of providing *iddah alimony*. *Iddah alimony* is given after the testimony of the talaq pledge made by the husband because basically the *iddah* period falls after the husband imposes talaq on his wife. In the case of divorce talaq, the decision with permanent legal force (*incracht*) is after the husband reads the talaq vow. Meanwhile, *mut'ah* is a gift from the husband to an ex-wife who has been sentenced to talaq either in the form of money or objects.

The judge as the holder of full power in ordering the party, has the policy and implementation of the provision of alimony. The provision of alimony by the wife before the reading of the talaq pledge is a separate policy of the judges. The policy was carried out as a step to enforce the law and fight for the rights of wives that must be fulfilled by ex-husbands. In addition to upholding the law and fighting for the rights of the wife, the order to provide alimony that is carried out before the reading of the talaq pledge is to take the legal basis from the Principles of Procedural Law of Religious Courts that justice is carried out for the sake of justice. Justice (*justtigheid*) in question is to fight for a sense of justice to the ex-wife to get her rights where the alimony received is not proportional to the cost of execution. What becomes the permanent legal force in the talaq divorce case is the reading of the talaq pledge. The reading of the talak pledge was carried out after the judge read the verdict as stipulated in Article 66 paragraph (1) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, which states: "A Muslim husband who is going to divorce his wife submits an application to the Court to hold a hearing to witness the talaq vow".

After the talaq pledge is read, the ex-wife is entitled to receive alimony as requested as requested as in Article 66 paragraph (5) of Law Number 50 of 2009 concerning Religious Courts, which states: "Applications regarding child custody, child support, spousal support, and marital property can be submitted together with the application for divorce or after the talaq pledge is read".

Mut'ah and alimony *of iddah* are the obligations of the husband to the divorced ex-wife. Meanwhile, *madhiyah* alimony is an obligation for ex-husbands who do not provide alimony during the marriage period. This is an attitude that should be done by the husband because in a divorce case the husband wants to divorce or break up.

Referring to the importance of alimony for the ex-wife who is undergoing the *iddah* period, the husband divorcing his wife must pay a sum of money as a form of providing *alimony*, *kiswah*, and *maskan* as contained in Article 149 letter (b) of the KHI. This gift is obligatory with or without the request of the wife except for *madhiyah alimony*. The request referred to in the talaq divorce case is that the wife files a reconvention lawsuit related to *mut'ah*, *iddah alimony*, and *madhiyah alimony*. The husband's obligation to provide maintenance includes several things, namely:

- a. Provide for children until adulthood or independently;
- b. Provide for the *iddah* period for 3 months.

In the case of talaq divorce filed by the husband of a Civil Servant (PNS), the obligation in providing alimony to the wife is the same as the obligation in general for husbands who file for divorce talaq. Based on the Jurisprudence on divorce cases in the Religious Court, it is stated that the granting of 1/2 part of the Defendant's salary to the Plaintiff as stipulated in Article 8 of Government Regulation Number 10 of 1983 amended by Government Regulation Number 45 of 1990 concerning Polygamy Permits for Civil Servants regarding Civil Servant Disciplinary Regulations, is not a Procedural Law of Religious Courts, because the provision of 1/2 of the Defendant's salary to the Plaintiff is a Decision of the Administrative Officer State". (MARI Decision No. 11 K/AG/2001 dated July 10, 2003).

However, to accommodate the interests of the wife and create a sense of justice, through his decision, the judge gives *mut'ah* that the husband must give to the wife. This is based on the judge's consideration of the wife's sense of justice and the imposition of responsibility on her husband who is a Civil Servant (PNS). For the implementation of obligations, the husband must immediately carry out all obligations as decided by the judge. If this obligation is not carried out, then the Defendant can submit an execution to the Religious Court. The execution submission is registered with the registrar for further follow-up and execution for negligence in fulfilling the obligations of the Civil Servant husband to the ex-wife.

The implementation of the obligation of the husband of a Civil Servant in providing maintenance to his wife in a divorce case through the decision of the Religious Court, as a whole, went smoothly, where in deciding on the provision of alimony, the judge considered the economy of the Plaintiff, in this case the husband. In practice, there is no rule that requires the payment of alimony to the ex-wife in cash. If the husband is unable to pay the entire obligation to provide his maintenance, then he asks the Court for leniency so that it can be paid in installments, this is allowed because of other considerations because alimony is usually paid periodically for a certain period of time.

According to the author's analysis, the implementation of the obligation of the husband of a Civil Servant in providing maintenance to the ex-wife in the case of divorce talaq through the decision of the Religious Court if reviewed according to the theory of responsibility, where the responsibility is to bear, to bear the burden, to fulfill all consequences arising from the act, willing to serve, and willing to sacrifice for the benefit of other parties, Therefore, the decision related to the implementation of the obligation of the Civil Servant husband in providing maintenance to the wife in the case of talaq divorce has reflected the theory of responsibility carried out by the husband, where the husband fulfills his responsibility in providing alimony, both paying *mut'ah* and *iddah maintenance*.

In addition to analyzing the responsibility of the husband, the author also analyzes the application of the amount of *mut'ah* and *iddah alimony* to the wife. In the judge's decision on the husband's obligations, the civil servant did not include or decide the obligation of the husband to pay 1/2 of the salary he had to the wife. This is based on the consideration that there is no regulation and the rule of 1/2 salary is a decision of the Administrative Court. However, in order to give a sense of justice to the wife, with the judge's consideration based on the results of the interview and the data obtained by the author, the judge increased *the mut'ah* by 3 times what it should be. If viewed according to the purpose of the theory of decision according to Achmad Ali, then the decision taken by the judge has reflected the theory of decision, where the decision is to provide benefits to all mankind where the purpose of realizing this benefit is in accordance with the general principles of the Qur'an, namely:

- a. *Al-asl fi al-manafi al-hall wa fi al-mudar al man'u* (everything that is beneficial is permissible and everything that is harmful is forbidden);
- b. *La darara wa la dirar* (do not cause harm and do not be a victim of harm);
- c. *Ad-darar yuzal* (danger should be eliminated).

In addition to analyzing the judge's decision regarding the amount of alimony received by the wife using the theory of Achmad Ali's decision, according to the author's analysis the judge's decision by not applying 1/2 salary as the husband's obligation in the maintenance of his ex-wife but giving *mut'ah* as much as 3x what should have been in accordance with Bentham's theory of decision and containing the basic principles of Jeremy Bentham's teachings are as follows:

- 1) The purpose of the law is that the law can provide a guarantee of happiness to new individuals of the multitude. Bentham's principle of utility mentions "*the greatest heppines of the greatest number*". Although a divorce decision is not a decision that can bring happiness, where there will be victims in the decision, especially children, but the imposition of the husband's obligation to provide for his wife is something that can provide a guarantee that the ex-wife and children can still enjoy and live their lives with the obligation of the husband of a civil servant charged by the judge through a decision to pay the wife's maintenance.
- 2) To realize the happiness of individuals and society, the legislation must achieve four objectives, so in the judge's decision on the implementation of the obligation of the husband of a Civil Servant in providing maintenance to his wife in a case of divorce talak has contained four elements, namely:

a. *To provide subsistence*

The element *to provide subsistence* is contained in the judge's decision, this can be seen from the verdict which states that the judge charges the husband to provide living support to his wife after divorce. This is done with the aim of providing protection and ensuring the life of the ex-wife and especially the children's living needs due to divorce.

b. *To provide abundance*

The judge's decision does not clearly regulate the provision of abundant food, but according to the author's analysis, in the decision in the talaq divorce case, the judge still pays attention to the aspect of the obligation to provide maintenance of the husband for the ex-wife. This is in line with the theory of

obligation regulated in Article 33 paragraph (1) of Law Number 16 of 2019 concerning Marriage which states: "Husbands are obliged to protect their wives and provide everything for the needs of domestic life according to their abilities".

c. *To provide security*

The element of providing this protection is also contained in the judge's decision, where the payment of alimony by the husband is carried out after there is a decision, because the decision has executory power, namely the power to be carried out or implemented. This power exists based on the Chief Decision which states "For the sake of justice based on the One Godhead." If these words are not included, then the decision handed down by the judge cannot be executed as contained in Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power and Article 57 paragraph (1) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. This does not mean that the Court prohibits the husband from paying his obligations before there is a valid decision, but logically one does not know how much to pay before there is a definite decision. An executable decision is any decision that has acquired permanent legal force and is punitive (*condemnatoir*). Regarding the talaq divorce verdict, the content of the Convention Decision on the talaq pledge is to open a talak pledge testimony hearing. Meanwhile, the content of the Reconvention Decision is executed by way of the execution of the payment of a sum of money as stipulated in Articles 197-200 of the HIR and Articles 208-218 of the RBg. Thus, the Decision of the Convention and the Decision of the Reconvention can be understood as the content of the decision that each stands alone, if there is no clause that links the two contents of the decision, then both remain independent. Therefore, the non-fulfillment of the content of the Reconvention Decision cannot hinder the implementation of the content of the Convention Decision.

d. *To attain equity*

The element of *attain equity* is contained in the verdict where the verdict given by the judge aims to achieve an equal sense of justice for each party.

Based on the above description, the implementation of the obligation of the Civil Servant's husband in providing maintenance to the ex-wife in the case of talaq divorce has gone smoothly, where in deciding the judge has considered the Plaintiff's economy in this case the husband. According to the author's analysis, the implementation of the obligations of the Civil Servant husband in providing maintenance to the ex-wife has reflected the application of a theory of responsibility and the theory of the right decision taken by the judge, so that both parties can obtain their respective rights and obligations and carry out their responsibilities in full.

4. Factors Inhibiting the Implementation of Husband's Rights and Obligations

Regarding the factors that hinder the implementation of the rights and obligations of the Civil Servant husband (PNS) to his ex-wife, there are 2 types, including:

a. Internal Factors

Internal factors are factors that arise from the husband, which can be influenced by several factors, including:

- 1) Education owned by the husband. The higher the education, the higher the level of obedience and compliance with the law, so that the process of implementing the husband's *mut'ah* against the ex-wife can be carried out properly, and vice versa, the lower the level of education, the lower the level of compliance with the law and this causes the implementation of the husband's *mut'ah* to be hampered.
- 2) The background of divorce, where if the divorce occurs there is a mistake made by the wife, then this results in the husband's reluctance to give *mut'ah* to the ex-wife.
- 3) The nature and sense of responsibility of the husband. If the husband has a harsh nature and does not have a sense of responsibility, then this is the cause of the judge's decision not to implement the husband's obligation to provide maintenance to the ex-wife.

b. External Factors

External factors are factors outside of the husband or factors that come from traits and habits as well as other external factors. Some of the external factors that result in the judge's decision on the husband's obligation to provide maintenance to the ex-wife are:

- 1) The economic situation of the husband that experiences ups and downs that results in the husband being unable to provide for his wife;
- 2) A wife who does not want to receive alimony from her ex-husband, this is because the alimony given is not in accordance with what is determined;
- 3) Factors of lack of control or supervision from the court.

CONCLUSION

Based on the research conducted, it can be concluded first that the regulation of the rights and obligations of the husband of a Civil Servant (PNS) to his ex-wife is regulated in the regulations of the National Marriage Law through the Marriage Law Number 1 of 1974 which has been amended by Law Number 16 of 2019, as well as Government Regulation Number 45 of 1990 as amended by Government Regulation Number 10 of 1983, and Compilation of Islamic Law INPRES No. 1 of 1991.

Regarding the talaq divorce case at the Religious Court, the implementation of the obligation of the Civil Servant (PNS) husband in providing maintenance to the ex-wife has run smoothly, where the husband carries out his obligations properly. This is evidenced by the absence of a submission for the execution of the judgment submitted by the wife even though the judge's decision does not contain a provision for giving 1/2 of the Defendant's salary to the Plaintiff. That the factors that hinder the provision of alimony to the ex-wife in the divorce case through the Religious Court Decision are generally influenced by two factors, namely internal factors and external factors.

REFERENCES

- Abdurrahman Ghazaly, *Fikih Munakahat*, East Jakarta: Prenada Media, 2003.
- Abu al- Qasim al Husain bin Muhammad, *Al-Mufradat fi Gharib Al-Qur'an*, tt.
- Abu Malik Kamal bin Sayyid Salim, *Sunnah Fiqh for Women*, Asep Soban (Translator), Cet. I, Jakarta: Al-I'tishon Cahaya Umat, 2007
- Ahmad Warsan Munawir, *Al-Munawar Dictionary*, Surabaya: Progressive Library, 197.
- Al-Jâziriyy, *Al Fiqh 'ala al-Madzahib al-Arba'ah*, Beirut: Dar al Fikr, tt, Jilid IV.
- A Gani Abdullah, *Religious Justice After Law No. 7 of 1989, "Paper"*, Unreadable Publisher, 1995.
- Anwar Sitompul, *Some Issues Concerning Procedural Law of Religious Courts and Marriage Law*, Jakarta: Ind Hill co, without year.
- , *Authority and Procedure at the Religious Court*, Jakarta: Balitbang Department of Religion, 1996.
- Atabik Ali and A. Zuhdi Muhdor, *Contemporary Arabic-Indonesian Dictionary*, Yogyakarta: Multi Karya Grafika, 2003.
- Beni Ahmad Saybani, *Fiqh Munakahat 2*, Bandung: CV Pustaka Setia, 2010.
- Department of Education and Culture, *Second Edition of the Great Dictionary of Indonesian Language*, Jakarta: Balai Pustaka, 1995.
- Department of Religion of the Republic of Indonesia, *Wisdom of the Ministry of Religion from Time to Time*, Jakarta: Balitbang Department of Religion, 1996.
- Department of Religion of the Republic of Indonesia, *Memories of the Centenary of the Religious Court*, Jakarta: Balitbang Department of Religion, 1996.
- Harijah Damis, *Uncovering Women's Rights*, Palopo: Two. F Publisher, 2009.
- H. Bustanul Arifin, *The Religious Court We Dream*, Jakarta: Raja Grafindo Persada, 1994.
- H. Taufiq, *Religious Justice Law, "Paper"*, was presented at the Coordination Meeting of Religious Courts in Java, Jakarta, February 24, 1990.
- H.Z.A. Noeh and H.A. Basith Adnan, *A Brief History of the Islamic Religious Court in Indonesia*, Surabaya: Bina Ilmu, 1983.
- , *Hakim Agama Dari Masa ke Masa, "Paper"* in the Book of Essays of IKAHA ONE SKETCH OF THE JOURNEY, Jakarta: LB IKAHA, 1995.
- H. Roihan A Rasyid, *Procedural Law of Religious Courts*, Jakarta: Raja Grafindo Persada, Jakarta: 1994.
- Ichtiyanto, S.A., *Islamic Law and National Law*, Jakarta: Ind Hill co, 1990.
- Ismail Sunny, *Pancasila Democracy Mechanism*, Jakarta: New Script, without year.
- KN Sofyan Hasan, *The Basics of Understanding Islamic Law in Indonesia*, Surabaya: National Business, 1994.
- Mohammad Daud Ali, *History of the Development of Islamic Law in Indonesia, "Paper"*, presented at the Education of Senior Judges of the Third Batch of Religious Courts, Ciawi Bogor, 1993.
- M. Idris Ramulyo, *Some Problems Concerning Procedural Law of Religious Justice and Marriage Law*, Jakarta: Ind Hill co, without year.
- M. Yahya Harahap, *The Role of Religious Court Judges After Law No. 7 of 1989 and Presidential Instruction No. 1 of 1991, "Paper"* delivered at the MARI Judicial Technical Training, Jakarta, January 1, 1993.

Mukhtar Zamzami, "Family Law Reform in the Political Perspective of Islamic Law in Indonesia", *"Journal of the Law and Justice Pulpit No 68 February 2009"*, PPHIM.

Mulyadi, *Indonesian Marriage Law*, Semarang: Diponegoro University Publishing Board, 2008.

Numazli, *Livelihood in an Interdisciplinary Approach*, Journal of Law.

Notosusanto, *Religious Justice Organization*, Illegible Publisher, 1980.

Sa'ad Yusuf Abu Azis, *Practical Fiqh Series I Nikah*, Solo: Fatiha, 2010.

Sukarto, *Reviewing Indonesian Customary Law*, Illegible Publisher, without year.

Sayyid Sabiq, *Fiqh Sunnah 8*, Translingual: Drs. Muhammad Thalib, Bandung: PT Alma'arif, 1997.

Sayuthi Thalib, *Receptio A Contrario*, Jakarta: Bina Aksara, 1985.

Sirman Dahwal, *The Law of Interfaith Marriage in Theory and Practice in Indonesia*, Bandung: Mandar Maju, 2016.

-----, *Comparative Marriage Law*, Bandung: Mandar Maju, 2017.

-----, *The Aspired Indonesian Heritage Law*, Bandung: Mandar Maju, 2020.

-----, *Indonesian Islamic Law (Its Existence and Development in the National Legal System)*, Bandung: Mandar Maju, 2021.

Siti Zulaeka, *Analysis of the Implementation of Alimony of Ex-Wives Due to Talak Divorce (Case Study at the Semarang Religious Court in 2015)*, "Thesis", Semarang: Walisongo State Islamic University, 2016.

Sudarsono, *Principles of Islamic Law*, Jakarta: Rineka Cipta, 2001.

Shaykh Muhammad Ash-Syarif, *40 Hadith of Women Flower Potpourri Hadith of Fiqh and Morals*, Ummul Qura', 2013.

Syamsuhadi Irsyad, *Certain Articles in Law No. 7 of 1989 concerning Religious Justice*, "Paper", delivered at the UNISULA Semarang Lecturer Job Training, September 13, 1993.

Tihami and Sohari Sahrani, *Fiqh Munakahat: A Study of Complete Fiqh Nikah*, Cet.II, Jakarta: Raja Grafindo Persada, 2010.

Padmo Wahyono, *The Culture of Islamic Law in the Perspective of Law Formation in the Future*, "Paper in a collection of essays on the Prospect of Islamic Law in the Framework of National Legal Development in Indonesia", Jakarta: PP-IKAHA, 1996.

Zainudin Ali, *Islamic Civil Law in Indonesia*, Cet. I, Jakarta: Sinar Grafika, 2006.

Z. Asyikin Koesoemaatmadja, *Legal Politics in Indonesia*, UI Law Postgraduate Lecture Material, Jakarta: 1994.