

Juridical Review of Inconsistency in The Implementation of Nafkah Iddah in Religious Court Rulings

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Abstract

In divorce cases involving talak ba'in sughra, providing iddah maintenance for ex-wives is still a controversial issue in legal practice. SEMA Number 2 of 2019 emphasizes that even if a wife is divorced through talak ba'in, she is entitled to iddah maintenance by prioritizing humanitarian considerations. However, irregularities arose due to differences in interpretation among judges, some of whom adhered firmly to Article 149 letter B and Article 119 of the Compilation of Islamic Law, which stipulates that a divorced wife is not entitled to iddah maintenance. This inconsistency results in wives' rights not being enforced evenly, thus compromising justice. This research uses normative juridical methods to analyze the application of law and legal interpretation regarding maintaining iddah. This underlines the critical role of the judge in determining the extent of the wife's right to iddah maintenance after divorce. To reduce this gap, there is an urgent need for the Supreme Court and high courts to align their interpretations. Achieving consensus regarding the implementation of SEMA Number 2 of 2019 across all judicial bodies will ensure consistent and fair treatment of wives who earn iddah income, align legal practices with humanitarian principles, and safeguard women's rights in the divorce process.

Keywords

divorce; divorce ba'in sughra; Iddah livelihood

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1. INTRODUCTION

A marriage can end due to divorce, the death of a partner, or due to a court decision, as regulated in Article 38 of the Marriage Law. (Hadi, 2012) According to Presidential Instruction Number 1 of 1991 (KHI), divorce is divided into "divorce during life" and "divorce due to death." Divorce due to death usually does not involve dissolution under customary or state law. (Ashari & Fatimatuzzahro, 2022) Divorce is a divorce initiated by the husband in a written request in a religious court through an oath read out in a religious court session, and a husband must be prepared for all the legal consequences. In contrast, a contested divorce is initiated by a wife against her husband—a court whose decision has permanent legal force and all its legal consequences. The consequences of divorce, as regulated in Article 41 of the Marriage Law, include joint property, child custody (*hadhanah*), provision of *iddah*



maintenance (*talak raj'i*), and marital status. (Rufaida, 2021) Payment for *iddah* maintenance is made before the oath, based on Supreme Court Regulation Number 3 of 2017 article (1), which can be included in the decision with the sentence "paid before the pronouncement of the talaq." (Ramdani & Syafitri, 2021)

Regulations on providing *iddah* maintenance to wives who file for divorce in Indonesia are not clearly defined. However, judges often refer to Supreme Court Regulation Number 3 of 2017 on Guidelines for Prosecuting Women in Conflict with the Law. This regulation states that if a divorce occurs due to *talak ba'in* (initiated by the wife), the ex-wife is entitled to *iddah* maintenance, including housing, clothing, and daily needs. This aligns with the legal objectives of upholding justice, ensuring certainty, and providing benefits to the weaker party. (Aviva, 2023) These aspects are the actual goals of legal products that apply in society. This provision is generally different from the provisions in the Compilation of Islamic Law Article 119 and Article 149 KHI, which state the consequences of *talak*, namely *iddah* living, shelter, and clothing for the ex-wife during the *iddah* period unless the ex-wife has been divorced by *talak ba'in* and disobedience while not being pregnant in the case of *talak ba'in sughra*.

The juridical review of the inconsistencies in the application of *iddah* maintenance in court decisions considers data on Islamic divorce cases in which *talak ba'in sughra* was pronounced by the Religious Courts in Indonesia. Data shows that there has been a significant decrease in the number of divorce cases in 2023, namely 463,654 cases, compared to the previous year of 516,344 cases, based on the Central Statistics Agency (BPS) report released on February 28, 2024. (Kemenag, 2023.) Specifically, based on decision directory data, Islamic divorce cases where *talak ba'in sughra* is pronounced have also decreased, recorded at 409,272 cases in 2023, down from 427,638 cases in 2022 and 429,953 cases in 2021, based on data from the Directory Religious Court Decisions in Indonesia. (Direktori Putusan, 2024.)

This data shows a change in divorce cases, especially in *talak ba'in sughra* cases. The decreasing number of cases provides an essential background for research regarding the consistency of implementing *iddah* maintenance in court decisions. This shows that even though the number of divorce cases has decreased, there is still a need for consistency and fairness in the application of the law regarding the maintenance of *iddah* for wives who have pronounced *talaq ba'in sughra*. This exciting case underlies the importance of examining inconsistencies in applying SEMA articles and regulations in court decisions, especially regarding the maintenance of *iddah*.

The difference in decisions in Case Number 0375/Pdt.G/2017/PA.Pkl and Case Number 24/Pdt.G/2021/PA.Lbj highlights the ambiguity in applying the rules for maintaining *iddah* in the Indonesian Religious Courts. Although the first group rejects the maintenance of *iddah* based on the Compilation of Islamic Law, the second group strengthens this by citing Supreme Court Regulation Number 3 of 2017 and SEMA Number 2 of 2019. This gap underscores the lack of clarity and consistency

in legal interpretation, thus creating challenges for women. Seek their rights, especially in divorce cases involving *talak ba'in sughra*. This research aims to investigate the factors that contribute to this gap, evaluate its conformity with existing laws, and propose measures to ensure uniformity in *iddah* maintenance decisions across courts in Indonesia. By analyzing various court decisions and legal frameworks, this research provides insight into improving judicial practices and increasing legal certainty for all parties involved in the divorce process. Ultimately, it aims to contribute to a fairer and more consistent application of *iddah* maintenance laws in religious courts in Indonesia. Thus, it is hoped that this research can make a significant contribution and provide recommendations for the Supreme Court and Religious Courts to achieve consistency and fairness in applying the law on maintaining *iddah*.

2. METHODS

This research method combines descriptive and analytical approaches to explore inconsistencies in the application of *iddah* in the administration of religious justice. A descriptive approach is used to describe in detail relevant legal concepts such as life divorce and death divorce, as well as legal regulations governing *iddah* arrangements in the context of marriage in Indonesia. (Rusandi & Rusli 2020.) This research employs an analytical approach to examine trials involving women convicted of *talaq ba'in sughra*, aiming to ensure legal consistency in Islamic divorce cases and identify decision-making patterns. Secondary data sources include legal literature, official documents, and court decisions. A comprehensive literature review and comparative study were conducted to analyze *iddah* maintenance practices in Religious Courts, revealing judges' mindsets and potential for uniformity. Data analysis involved examining court decisions and judges' arguments to address inconsistencies in *iddah* maintenance applications. The normative juridical and analytical descriptive approaches were chosen for their relevance, enabling an understanding of the legal framework and judicial interpretations. This combination aims to enhance fairness and consistency in Indonesia's justice system regarding *iddah* maintenance for women.

3. DISCUSSION

3.1. Arrangements for Providing *Iddah* Alimony in *Talak ba'in sughra* According to Articles 119 (c) and 149 of the Compilation of Islamic Law in Divorce Cases

Regarding the consequences of divorce, it is stated in Article 41 letter (c) of Law Number 1 of 1974 concerning marriage that one of the consequences of divorce is that the court can require the ex-husband to provide costs and determine obligations. (Munazah, et.al, 2022) Divorce can have implications for separation or termination of the legal relationship between the groom and the bride, giving rise to obligations for both the wife and the husband. (Dahwadin, 2020) Islamic law regulates that a person

who divorces his wife is still allowed to return (reconcile) within a certain period.

The decision to file a divorce suit by a wife against her husband is a step full of risks and consequences that must be considered carefully because the applicable law does not explicitly mention the consequences of a divorce suit. The Marriage Law in Indonesia does not explicitly mention the consequences of divorce. A divorce suit is filed in court following Article 40 of Law Number 1 of 1974, and it is confirmed in the Compilation of Islamic Law Article 119 that divorce can only be carried out in front of a religious court after the religious court has tried it to reconcile the two parties. Arrangements that refer to the principle of "*making divorce difficult*" often aim to encourage couples experiencing marital conflict to resolve their problems peacefully and maintain the marital bond. (Chandra, 2021) In divorce cases in religious courts, the wife or husband does not want their household to be whole again but instead seeks a fair solution following the needs and interests of each party. (Irman, 2022)

What the wife wants to achieve in the divorce case process is the end of the relationship which a divorce decision by the religious court marks. If we look at whether it can be said or not, talak is divided into two, namely talak raj'i and talak ba'in. Talaq raj'i is a statement of divorce from a husband to his wife that certain words in the divorce letter have signaled. (Iman & Joni, 2022) *Talak ba'in* is a divorce by a husband against his wife without the right of reconciliation to return to his ex-wife. A husband who wants to refer back to his ex-wife must make a new contract that meets the harmony requirements of a new marriage. (Kemenag, 2023)

Talak ba'in is divided into *talak ba'in sughra* and *talak ba'in kubra*. *Talak ba'in kubra* occurs when a husband divorces his wife three times in different periods, prohibiting remarriage unless the wife marries and divorces someone first. *Talak ba'in sughra* ends the right of reconciliation but allows remarriage. According to Article 119(c) of the Compilation of Islamic Law, *talaq ba'in sughra* occurs in cases such as (Ilmas, 2022)

a) Divorce before having intimate relations (qobla Al duhul); no *iddah* is required. b) Reconciliation is prohibited After one or two divorces where the *iddah* period ends. c) Talak khuluk, initiated by the wife with a ransom to the husband. d) Divorce ordered by a judge at the wife's request for reasons such as the husband's disappearance.

After the marriage contract occurs, there are consequences regarding the rights and obligations between husband and wife. These obligations take the form of material and non-material rights. These material rights are in the form of a dowry or livelihood, good relations, and good treatment. Meanwhile, living is all the wife's needs, including food, shelter, and health services. A husband should provide support. This obligation does not disappear if the husband neglects his wife and the wife is still in the *iddah* period. A divorced wife still has the rights of her ex-husband because, during the *iddah* period, the wife is not allowed to marry someone else. (T. Hasanah, 2020)

The provisions for providing *iddah* maintenance in the Compilation of Islamic Law occur when the marriage contract is valid. A valid marriage contract will give rise to rights and residence for the wife or ex-wife as stated in Article 81 of the Compilation of Islamic Law, which states that a husband must provide for his wife and children or his ex-wife. (Hasanah & Abbas, 2021) During the *iddah* period, the residence must be sufficient for the *iddah* period. In marriage, *iddah* talqin, or *iddah* death, the occupant must protect his wife and children from interference by other parties.

The Compilation of Islamic Law does not explain in detail how much a wife's income depends on her husband's abilities. This is stated in Article 80, paragraph (2). The husband's obligation to provide *iddah* support to his divorced wife refers to Article 149 letter (b) KHI. (Tasdiq, 2020) The obligation to provide *iddah* maintenance is confirmed in Article 152 of the Compilation of Islamic Law (after this referred to as KHI), which states that an ex-wife has the right to receive *iddah* maintenance from her husband's archives unless she is *nusyuz*. (Pratama & Prasetya, 2023) *Iddah* support is support provided by the husband during the specified waiting period due to divorce. Provisions related to waiting times are regulated in Article 153 of the Compilation of Islamic Law (KHI). The husband's obligation to provide *iddah* support will end if the wife is declared disobedient (*nusyuz*) and disobedient to her husband's or wife's obligations.

The Compilation of Islamic Law does not detail the wife's rights during the *iddah* period in a divorce initiated by the wife, giving rise to various interpretations. The Supreme Court issued SEMA Number 3 of 2018 to ensure legal certainty, expediency, and justice. This guideline aligns with Perma Number 3 of 2017, which mandates that husbands provide *mut'ah* and *iddah* support to wives in contested divorces unless proven *nusyuz*. This regulation aims to create legal certainty, justice, and benefits for women, and overcome the obstacles they face in demanding their rights. (Faridah, 2020)

Providing *iddah* maintenance to wives in divorce cases, based on SEMA Number 3 of 2018 and 2 of 2019, is crucial for legal certainty, benefit, and justice. The compilation of Islamic law is unclear regarding the rights of wives during the *iddah* period, giving rise to inconsistencies in interpretation. SEMA Number 3 of 2018 mandates husbands to provide *iddah* allowances to wives who are not proven *nusyuz*, in line with Perma Number 3 of 2017 which protects women's rights in legal conflicts. This rule guarantees that religious courts provide economic protection to wives during the *iddah* period.

For example, a religious court decision referring to SEMA guarantees adequate *iddah* allowance even if the wife files for divorce, as long as there is no *nusyuz*. This shows the Supreme Court's commitment to a fair judicial system, protecting the rights of divorced wives and reducing the potential for injustice in enforcing Islamic divorce law.

3.2. Implementation of *Iddah* Supports Decision Number 0375/Pdt.G/2017/PA.Pkl and Number 24/Pdt.G/2021/PA.Lbj in Divorce Cases

In Decision Number 0375/Pdt.G/2017/PA.Pkl submitted to the Pekalongan Religious Court that a wife sued for divorce from her civil servant husband. (Rahmawati & Pranomo, 2017) Their marriage, which had two children, initially flourished but turned sour due to financial secrecy and domestic violence, including threats of divorce. The wife, facing financial difficulties and violence, eventually left home and filed for divorce. The court granted the partial divorce, imposed talaq *ba'in sughra* on the wife, decided on child custody and maintenance, and ordered the husband to pay educational costs.

Decision 0375/Pdt.G/2017/PA.Pkl is the judge's consideration regarding whether or not *iddah* maintenance is appropriate for a wife sentenced to *sughra* talak. This case has gone through mediation procedures by both the mediator and the panel of judges but failed. The case was filed by the plaintiff, who is located at the Pekalongan Religious Court, based on Article 49 paragraph (1) Letter (a) and Article 73 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 1989 2006 and Law Number 50 of 2009 concerning the Authority of Religious Courts.

The plaintiff argued that he often received physical violence from the defendant, so that the plaintiff did not live in the same house. The panel of judges thought that the household between those with the most substantial morals had broken up in such a way that it was no longer harmonious and challenging to reconcile in order to realize the goal of a *sakinah, mawadah, and warahmah* marriage as regulated in Article 1 of Law Number 1 of 1974, Article 3 of the Legal Compilation Islam. (Tim Hukumonline, 2024.)

Considering that the husband often commits violence and, in the last 6 months, the two of them separated from their house, the lawsuit is reasonable and not against the law so that it can be sentenced to talaq *ba'in sughra*.

Case Decision Number 24/Pdt.G/2021/PA.Lbj Eer, the plaintiff who takes care of the household, filed a divorce suit at the Labuan Bajo Religious Court against Ryan, a businessman. They married in Karawang and were blessed with 2 children. The marriage was sued again in 2021 due to frequent slaps, accusations of cheating, and violence by the defendant, so the plaintiff had to leave the house for 7 months. Based on these reasons, he then asked the panel of judges to hand down a preliminary decision containing the plaintiff's request to settle all of his claims, sentence *Bain sughra* to talaq, and sentence him to *iddah* maintenance. Meanwhile, the subsidiary petition contains drugs that give the panel of judges the feeling that if they have different opinions, they ask for the fairest possible decision (*ex aequo et bono*). The result of the panel of judges' decision based on this case was to grant the entire lawsuit and impose talaq on talaq *ba'in sughra*, pay *iddah* maintenance, ordered by the clerk to withhold the divorce certificate.

In this case, the judge carefully considered the facts revealed in the divorce lawsuit, including domestic violence and the injustice experienced by the plaintiff when her husband left the house for 7 months without providing support. Based on applicable law, the judge granted the divorce request based on *talak ba'in sughra* following Article 39 of Law Number 1 of 1974 concerning marriage. The judge also considered granting the plaintiff an *iddah* allowance for 3 months following fair minimum allowances and living needs. This decision is based on the rules of Islamic law and related national regulations, as well as the principles of justice and benefits regulated by applicable laws and jurisprudence.

3.3. Analysis of Decision Number 0375/Pdt.G/2017/PA.Pkl and Number 24/Pdt.G/2021/PA.Lbj in Providing Iddah Allowances to Wives

Based on Decision Number 0375/Pdt.G/2017/PA.Pkl and Number 24/Pdt.G/2021/PA.Lbj in providing *iddah* support to wives who were sentenced to *talaq ba'in sughra*, the difference in results are highlighted in the decision in the same case. The similarity between the two cases is proven in the case of the wife, who often experiences domestic violence because of her husband's temperamental attitude. The defendant admitted before the panel of judges that he could no longer stand being mistreated by his husband and that if the marriage continued, his wife would be significantly harmed. In fact, during marriage, the wife does not rebel (*nusyuz*). *Nusyuz* is usually attached to a wife who is disobedient to her husband. A husband can also be said to be *nusyuz* if the elements are fulfilled, for example, neglecting his obligations, leaving the house, and committing domestic violence. (Yonata, 2020)

Based on two *talak* decisions submitted by a wife, it is called *talak talak* or *khuluk*. The Panel of Judges believes that what is meant by *nusyuz* is the non-compliance of one of the partners with what must be obeyed within the framework of the rights and obligations of each partner, which arise as a result of the marriage and matrimonial bond. The turning away of one partner towards the other partner. (Heniyatun, *et.al.*, 2020)

Proof that the wife was not *nusyuz* can be seen in Decision Number 0375/Pdt.G/2017/PA.Pkl that previously, the marriage was harmonious, but over time the husband changed because the defendant was not open about finances. The plaintiff was only given IDR 50,000/month. This was not comparable to her husband's job as an ASN, so the plaintiff always asked her neighbors and family for help with child expenses compared to Decision Number 24/Pdt.G/2021/PA.Lbj that both of them constantly quarreled about finances, and ultimately, the defendant hit the plaintiff, resulting in the defendant leaving the house since the two had been separated for 7 (seven) months. Based on this description, it is not proven that *Nusyuz's* wife.

Based on case law decisions number 24/Pdt.G/PA.LBj and 0375/pdt/PKL, it is revealed that there are differences in the interpretation and application of the law regarding not being intended for women

in Islamic divorce. These differences highlight the different approaches taken by judges in determining women's rights during the *iddah* period. If viewed using a comparative method based on two decisions, it appears that there is a *nusyuz* interpretation where, based on case 24/Pdt.G/2021/pa.lbj, the court assumes that it is based explicitly on the wife's initiative to hand over the deposit and use rights. This is the basis for receiving or providing *iddah* support.

Meanwhile, in case 0375/Pdt.G/2017/ Pa, the street vendors used it as the basis for refusing *Iddah's* income. Based on the implementation of decision 24 of 2021 by researchers, the court is in line with SEMA Number 3 of 2018, which emphasizes protecting women's rights in divorce cases. Islamic law guarantees justice for wives, unlike case 0375/Pdt.G/2017/Pa.Pkl seems less affected by the protection efforts in SEMA Number 3 of 2018 in conjunction with SEMA Number 2 2019 concerning women in conflict with the law. It is inclined towards a conservative interpretation of Article 119 letter (c) and Article 152 of the compilation of Islamic law, which prioritizes and protects the husband's rights so that the obligation to provide *iddah* maintenance is waived. If we look at the implications for women's rights, based on the decision in case number 24/Pdt.G/2021/Pa/LBj, it provides a precedent for guaranteeing financial security during the *iddah* period. Facts encourage a sense of fairness and consistency. Meanwhile, in contrast to case 0375/Pdt.G/2017/Pa, the variability of Pkl in court decisions depends on the judge's interpretation, which can cause protection for women not to be met so that the rules are not in line with their implementation.

The comparison between these cases emphasizes the impact of judicial interpretation on enforcing the right to *iddah*. Based on the first decision, namely the case with decision 24/Pdt.G/2021/PA.lbj, reflects a more productive and protective income for women in the divorce process, which kills financial and emotional stability during the *iddah* period. Meanwhile, the case has decision 0375/Pdt.G/2017/PA. Suggests a more precise and potentially unfair interpretation that could harm women's rights. These differences emphasize the need for more precise guidelines and more uniform application of the law to protect women's rights in decision-making rather than based on interpretations that lead to differences in outcomes.

The position of equality that can be compared to analyze the case lies in the primary petition, which contains "The defendant asks the panel of judges to grant the demand regarding the provision of *iddah* living," as well as an additional petition which states that if the honorable panel of judges examining this case has a different opinion, please request a decision that is as fair as possible. justice (*ex aequo et bono*). The concept of *ex aequo et bono* is based on justice, which is used as a guide in the dispute resolution process. (Trakman, 2008) The concept of *ex aequo et bono* is a legal term in Latin that means following what is considered right and good. *Ex aequo et bono* refers to the judge's authority to make decisions not based on the law but on what is considered fair. (Soenarto, 2009)

Ex aequo et bono is often negatively stereotyped and misunderstood. People assume that judges make decisions based on what is said to be "fair" and "good" so that they act outside or against the law. (Yudkivska, 2022) Based on two lawsuits filed by the wife in the divorce case in a subsidiary petition requested by the *plaintiff ex aequo et bono*, where the judge had a different opinion, they were asked to make the fairest decision possible. This *ex aequo et bono* becomes a bridge for the wife to obtain the right to *iddah* maintenance even though it is contrary to 119 C and 149 KHI, which state that a wife who is sentenced to *talak ba'in sughra* does not receive *iddah* maintenance. Judges can use *ex officio* rights based on *ex aequo et bono* rights (if requested in a subsidiary petition) based on feasibility or appropriateness (opportunity). (Lapian, L. G, 2012) Eligibility or propriety is given if it is still within the framework of the primary petition's spirit and the lawsuit's arguments. The limitation of *ex aequo et bono* is that it does not violate Article 178 paragraph (3) HIR, which contains the provision that judges are prohibited from deciding outside the demands (*petitum*) or deciding what is not demanded by the plaintiff. (Zainal, 2022)

Decision difference between Decision Number 0375/Pdt.G/2017/PA.Pkl and Decision Number 24/Pdt.G/2021/PA.Lbj shows significant differences in interpreting *iddah* maintenance rights in divorce cases. Decision Number 0375/Pdt.G/2017/PA.Pkl, based on Article 119 paragraph (2) Letter (c) and Article 149 letter (b) of the Compilation of Islamic Law (KHI), rejects the request for maintenance of *iddah* for a wife who has been sentenced to *talaq ba'in sughra* in divorce cases, stating that they are not entitled to such alimony. On the other hand, Decision Number 24/Pdt.G/2021/PA.Lbj is guided by Supreme Court jurisprudence, which emphasizes that post-divorce obligations must ensure a fair and adequate minimum standard of living, in line with SEMA Number 2 of 2019 and Supreme Court Regulation Number 3 of 2019 2017. This guideline emphasizes that even if the wife files for divorce (*talaq ba'in*), she is entitled to *iddah* maintenance.

This gap arises partly because of the *ex officio* authority of judges, which allows them to make decisions independently without any unique demands from the parties involved, a more common practice in civil divorce cases. (Setiawan, 2022)

To address these inconsistencies, there is a need for judicial institutions to harmonize interpretations, ensuring fair treatment of women seeking *iddah* income after divorce. Clarity of legal provisions and consistent implementation of SEMA Number 2 of 2019 at all levels of the judiciary will mitigate disparities and consistently uphold women's rights in the divorce process. In addition, ongoing judicial training on gender-sensitive issues and women's rights in divorce can increase the capacity of judges to hear cases fairly and sensitively to the needs of all parties involved. (Aswar, 2022) Judges have the freedom to make decisions that can concretely prevent women from becoming victims of economic violence after divorce. The role of judges is to protect the interests and welfare of parties vulnerable to injustice, such as women.

Based on these two decisions, the author agrees more with decision number 24/pdt. G/2021/pa. Lbj because in both lawsuits, the wife filed for divorce because the wife could no longer stand it and was unable to live with her husband. Looking at the positive arguments in the two lawsuits, it is revealed that the wife has reasons for divorce because of the husband's attitude, actions, and behavior, who often commits domestic violence and does not provide support for his wife.

Decision 24/pdt. G/2021/pa. LBJ and Number 0375/Pdt.G/2017/PA.Pkl does not prove that a wife is disobedient or against her husband, so she is not categorized as a *nusyuz* wife. So, it is normal for this divorce to occur, and it is okay if the husband is punished for paying *iddah* to his wife during her *iddah* period. Based on the subsidiary petite, the plaintiff asked the judge to include *ex aequo et bono*, where the judge must think as somewhat as possible in carrying out his duties.

The law is the basis for judges to decide every case, but if a law prevents a judge from acting reasonably, the judge may use *ijtihad*. Based on Decision 24/PDT.G/2021/PA. LBJ, in deciding the case was correct, which includes the wife's right to receive *iddah* maintenance based on SEMA Number 2 of 2019 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law, in this case, the judge, in carrying out his duties decides the case somewhat by taking into account the benefits for the rights of women who have lost the backbone of their family, even though it is contrary to Articles 119 letter (c) and 149 letters (b) which state that a wife who is sentenced to *talak ba'in sughra* and performs *nusyuz* then her husband is not obliged to provide *iddah* maintenance. The Compilation of Islamic Law is used as a guideline for internally binding judges, meaning that religious court judges use it as a guideline in deciding cases that are internal and binding laws that bind all courts in Indonesia. (Ajidin, 2022)

SEMA Number 2 of 2019 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law is an internal guideline for Supreme Court judges in carrying out *iddah* maintenance for ex-wives. Supreme Court Circular Letter (SEMA) Number 2 of 2019 concerning Guidelines for Trying Women's Cases in Conflict with the Law is not only intended to provide legal certainty regarding Article 119 letter (c) of the Compilation of Islamic Law (KHI) but also aims to provide justice and benefit for women, especially wives, file for divorce because of the suffering they experience because of their husband's attitude.(Handayani dkk., 2019)

Applying the judge's *ex officio* rights manifests the judge's commitment to upholding the integrity of the values of justice and the benefit of the law for all parties. The justice and usefulness of this law cover cases of women in conflict with the law. (Arto, 2005) The judge's considerations based on SEMA Number 2 of 2019 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law are viewed from internal implementation but look at justice. Article 119 letter c of the Compilation of Islamic Law, which is binding inside and out with Sema Number 2 of 2019, not only provides legal certainty in

Article 119 letter c of the Compilation of Islamic Law, for wives in disputed divorce cases but must apply the principles of justice and expediency. Sema Number 2 of 2019 concerning Providing *Iddah* Allowances is used as a guideline for internal judges at the Supreme Court regarding the law on granting *Iddah* allowances.

The efficacy of law is always associated with the theory of Utilitarianism known as (The greatest happiness of the most significant number) put forward by Jeremy Bentham. Jeremy Bentham was an English philosopher, economist, and theoretical jurist. (Pratiwi, 2022) The basic concept of Utilitarianism theory, according to Gilbert, is generally straightforward, namely how to maximize the usefulness of action so that from this process, we can get the protection that will affect prospects, enjoy benefits, benefits, happiness, and enjoyment. (Vacura, 2020)

The process of maximizing utility is expected to be a way to prevent the emergence of pain, evil, and suffering based on principles that give rise to unhappiness. (Schofield, 2003) Providing *iddah* living in terms of benefits theory is a solution that eases the burden and suffering after divorce because, in the 2 (two) lawsuits, the wife is a housewife who only depends on her husband to support her children. Providing *iddah* maintenance to wives convicted of *talaq ba'in sughra* and divorce cases protects the rights of women who are vulnerable to injustice by ensuring that wives do not suffer financially and are given protection for three months or three months and cannot marry after divorce.

Judges who apply *ex officio* rights based on *ex aequo et bono* aim to protect women after divorce, where wives are not allowed to marry or associate with other men within 3 menstrual periods as regulated in Supreme Court regulation Number 3 of 2017 concerning guidelines for adjudicating women's cases. *Ex officio* rights based on the principle of *ex aequo et bono* prioritize moral conditions that produce prosperity by providing equal freedom to all parties, especially those less fortunate. (Wibowo, 2011). This is also in line with the theory of justice put forward by Robert Nozick, which emphasizes the protection of fundamental rights, including the right to own something, thereby creating the basic and core foundation for upholding justice in society. (Suadi, 2020)

Justice and benefit in a contested divorce is the fulfillment of the rights of a wife whose husband divorces her because the wife will lose the figure of the head of the family, whose role, in this case, is to provide support for the wife and children.(Khoirin Winta & Harjono, 2024) The wife's rights given after divorce in the form of *iddah* maintenance, madliyah maintenance, maskan, kiswah, and child support can be realized by having *ex officio* rights based on the principle of *ex aequo et bono*, where the judge must pay attention to the sense of justice and expediency. This is stated in decision 24/pdt.G/2021/pa.Lbj, and guarantees women's rights in divorce cases and a good quality of life worthy of being a citizen following the 1945 Constitution.

Diverse divorce decisions, as seen in cases 24/Pdt.G/2021/PA.Lbj and 0375/Pdt.G/2017/PA.Pkl has significant social and legal implications for women. Varied interpretations create uncertainty, anxiety, and frustration, undermining fairness and exacerbating gender inequality. Divorced women, especially initiators, face societal stigma, viewed as selfish or irresponsible. Legally, inconsistent rulings undermine the system's fairness and reliability, complicating law enforcement and hindering women's rights, such as *iddah* maintenance post-divorce. Ensuring that divorce decisions prioritize fairness and women's rights is crucial to reducing legal uncertainty, bridging gender gaps, and combating social stigma.

4. CONCLUSION

Divorce decisions are diverse, as seen in cases 24/Pdt.G/2021/PA.Lbj and 0375/Pdt.G/2017/PA.Pkl highlights differing interpretations of *iddah* maintenance rights, leading to legal uncertainty, gender inequality, and social stigma for women. While Articles 119(2)(c) and 149(b) of the KHI state that wives in talaq ba'in sughra are not entitled to *iddah* maintenance, recent decisions often consider SEMA Number 2 of 2019, which allows for fair and adequate living needs for women. This discrepancy shows that outcomes depend on judges' interpretations, influenced by divorce reasons and case specifics. Despite judges' *ex officio* rights, SEMA Number 2 of 2019 and Supreme Court Regulation Number 3 of 2017 have not uniformly impacted society. Judges must consider wives' circumstances to ensure fairness and clarity from the Supreme Court on the ambiguous concept of *nusyuz* is essential. Harmonizing interpretations of *iddah* maintenance in talaq ba'in sughra cases is crucial. Aligning with SEMA Number 2 of 2019 can ensure consistent legal certainty, and collaboration between the Supreme Court and the Ministry of Religion is vital to unify legal interpretations and ensure fair outcomes.

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