

**JUDGE'S CONSIDERATION OF POST-DIVORCE RIGHTS (*'IDDAH*
AND MUT'AH) FROM THE PERSPECTIVE OF *MASLAHAH MURSALAH*
AT THE RELIGIOUS COURT OF LUMAJANG**

THESIS

BY:

AMALIATUS SHOLIKHAH

SIN 19210182



ISLAMIC FAMILY LAW DEPARTMENT

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled :

JUDGE'S CONSIDERATION OF POST-DIVORCE RIGHT (*'IDDAH AND MUT'AH*) FROM THE PERSPECTIVE OF *MASLAHAH MURSALAH* AT THE RELIGIOUS COURT OF LUMAJANG

It is truly a writer's original work that can be legally justified. If this thesis is proven to result from duplication or plagiarism from another scientific work, it is the precondition of the degree will be stated as legally invalid

Malang, 21 June 2023

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**JUDGE'S CONSIDERATION OF POST-DIVORCE RIGHT (*'IDDAH AND
MUT'AH*) FROM THE PERSPECTIVE OF *MASLAHAH MURSALAH* AT
THE RELIGIOUS COURT OF LUMAJANG**

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JUDGE'S CONSIDERATION OF POST-DIVORCE RIGHTS (*'IDDAH AND MUT'AH*) FROM THE PERSPECTIVE OF *MASLAHAH MURSALAH* AT THE RELIGIOUS COURT OF LUMAJANG

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MOTTO

وَلِلْمُطَلَّاتِ مَتْعٌ بِالْمَعْرُوفِ ۖ حَقًّا عَلَى الْمُتَّقِينَ

“Dan kepada wanita-wanita yang diceraikan (hendaklah diberikan oleh suaminya) mut'ah menurut cara yang ma'ruf, sebagai suatu kewajiban bagi orang-orang yang bertaqwa”

"And for divorced women (should be given by their husbands) mut'ah in a way that is ma'ruf, as an obligation for people who are pious"

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From all the teaching, advice, guidance, and helps of services for us to finish this thesis, then with all humanity, the writer will express the gratitude which is unequaled to:

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9. The oversized family of Ma'had Al-Jami'ah Al-'Aly and all the teachers in it, may the author get all his blessings.
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With the completion of this thesis report, we hope that the knowledge we have gained during our studies can provide the benefits of living in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for forgiveness, criticism, and suggestions from all parties for future improvement efforts.

Malang, 17 May 2023

Writer,

Amaliatus Sholikhah

SIN 19210182

TRANSLITERATION GUIDANCE

The Latin Arabic Transliteration Guidelines result from a joint decision (SKB) of the Minister of Religion and the Minister of Education and Culture of The Republic of Indonesia. Number: 158 of 1987 and Number 0543b/U/1987.

A. Consonant

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

| Arab Letters | Name | Lattin Letters | Name |
|--------------|------|----------------|-------------------------|
| ا | Alif | Not Symbolized | Not Symbolized |
| ب | Ba | B | Be |
| ت | Ta | T | Te |
| ث | S/a | Š | Es (with the dot above) |
| ج | Jim | J | Je |
| ح | Ha | Ĥ | Ha (with the dot above) |
| خ | Kha | Kh | Ka and Ha |
| د | Dal | D | De |

| | | | |
|---|------|----|--------------------------|
| ذ | Z/al | Ẓ | Zet (with the dot above) |
| ر | Ra | R | Er |
| ز | Zai | Z | Zet |
| س | Sin | S | Es |
| ش | Syin | Sy | Es and Ye |
| ص | Shad | Ṣ | Es (with the dot below) |
| ض | Dhad | Ḍ | De (with the dot below) |
| ط | Tha | Ṭ | Te (with the dot below) |
| ظ | Za | Ẓ | Zet (with the dot below) |
| ع | ‘Ain | ‘ | Apostrof backward |
| غ | Gain | G | Ge |
| ف | Fa | F | Ef |
| ق | Qaf | Q | Qi |

| | | | |
|-------|--------|---|----------|
| ك | Kaf | K | Ka |
| ل | Lam | L | El |
| م | Mim | M | Em |
| ن | Nun | N | En |
| و | Wau | W | We |
| هـ | Ha | H | Ha |
| ء / أ | Hamzah | ‘ | Apostrof |
| ي | Ya | Y | Ye |

Hamzah (ء) (which is located at the beginning of the word, follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (‘).

B. Vocal.

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophonic and multi vowels or diphthongs. For the single Arabic vowel whose symbol is a sign or vowel, the transliteration is as follows:

| Sign | Name | Latin Letters | Name |
|------|--------|---------------|------|
| أ | Fathah | A | A |
| إ | Kasrah | I | I |

| | | | |
|----|---------|---|---|
| اُ | Dhammah | U | U |
|----|---------|---|---|

Arabic double vowel whose symbol is a combination of vowels and letters, the transliteration is a combination of letters, namely:

| Sign | Name | Latin Letters | Name |
|-------|----------------|---------------|---------|
| ي & َ | Fathah and ya | Ai | A and I |
| و & َ | Fathah and wau | Au | A and U |

Example:

كَيْفَ : *kaifa*

حَوْلَ : *hauḷa*

C. Maddah

Maddah or long vowels whose symbols are vowels and letters, transliteration in the form of letters and signs, namely:

| Harakat and Letters | Name | Letters and Sign | Name |
|---------------------|--------------------------|------------------|-------------------------|
| ي / ا & َ | Fathah and alif or ya | ā | a and the line above |

| | | | |
|-------|-------------------|---|-------------------------|
| ي & ِ | Kasrah and ya | ī | i and the line above |
| و & ُ | Dammah and wau | ū | u and the line above |

Example:

مَاتَ : *māta*

رَامَ : *rāma*

قِيلَ : *qīla*

يَمُوتُ : *yamūtu*

D. Ta' marbutah

There are two transliterations for ta' marbutah, namely ta' marbutah, which live or get the letters fathah, kasrah, and dammah. The transliteration is [t]. While ta' marbutah dies or gets a sukun harakat, the transliteration is [h].

If the word ending with ta' marbutah is followed by a word that uses the article al- and the reading of the word is separate, then ta' marbutah is transliterated with [h].

المَدِينَةُ : *al-madinah*

E. Syaddah (tasydid)

Syaddah or tasydid in the Arabic writing system is denoted by a tasydid sign (ّ). This transliteration is symbolized by repetition letters (double consonants) marked with a syaddah. Example:

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haqq*

If the letter I, there is tasydid at the end of a word, preceded by the letter kasrah. It is transliterated like the letter maddah (i). Example:

عَلِيٍّ : *'Ali (not 'Aliyy or 'Aly)*

عَرَبِيٍّ : *'Arabi (not 'Arabiyy or 'Araby)*

F. Sandang word

Sandang words in the Arabic writing system are denoted by letters (alif lam ma'arifah). In this transliteration guide, the article is transliterated as usual, al-, when it is followed by the letter syamsiah and the letter qamariah. The report does not follow the sound of the direct letter that follows it. The article is written

separately from the word that follows it and is connected by a horizontal line (-).

Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (not *az-zalزالah*)

الفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-bilādu*

G. Hamzah

The rule for transliterating the letter hamzah into an apostrophe (‘) only applies to hamzah in the middle and end of the word. However, if hamzah is at the beginning of a word, it is not symbolized because it is an alif in Arabic. Example:

تَأْمُرُونَ : *ta’ murūna*

سَيِّءٌ : *syai’ un*

أُمِرْتُ : *umirtu*

H. Writing Arabic words commonly used in Indonesian

Transliterated Arabic words, terms, or sentences are words, terms, or sentences that have not been standardized in Indonesian. Words, terms, or sentences that are commonplace and become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. For example, the word Al-Qur'an (from the Qur'an), *Sunnah*, *khusus*, and *umum*. However, if these words are part of a series of Arabic texts, they must be transliterated. Example:

Fī zilāl al-Qur'an

Al-Sunnah qabl al-tadwīn

Al-'Ibārat bi 'umūm al-lafz bi khuṣūṣ al-sabab

1. *Lafz al-jalalah*

The word Allah which is preceded by a particle such as a letter jarr and other letters or is located as a mudlaf ilaih (nominal phrase), is transliterated without the letter hamzah. As for the ta' marbutah at the end of the word that is attributed to al-jalalah, it is transliterated with the letter [t]. Example:

دِينُ اللَّهِ : dinullah

رَحْمَةُ اللَّهِ : rahmatillah

2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration these letters are subject to provisions regarding the

use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a personal name preceded by an article (al-), then what is written in capital letters remains the initial letter of the unique character, not the initial note of the report. If it is located at the beginning of the sentence, then the letter A of the paper uses a capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the article al-, both when written in the text and the reference notes (CK, DP, CKD, and DR). Example:

وما محمد إلا رسول : Wa mâ Muhammadun illâ Rasûl

إن أول بيت وضع للناس : Inna Awwala baitin wuđi'a linnâsi

شهر رمضان الذي أنزل فيه القرآن : 'Syahru Ramađân al-lażī unzila fih

al-Qur'an

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ABSTRAK

Amaliatus Sholikhah, 19210182, 2023. Pertimbangan Hakim atas Penentuan Nafkah Akibat Perceraian Perspektif Masalah Mursalah. Skripsi. Program Studi Hukum Keluarga Islam. Fakultas Syari'ah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Jamilah, MA.

Kata Kunci: Nafkah Setelah Perceraian, Cerai Talak, *Maslahah Mursalah*

Tidak adanya peraturan yang jelas mengenai penentuan besaran nafkah baik dalam hukum positif maupun hukum islam mengakibatkan pertimbangan hakim sangat dibutuhkan keadilannya. Dalam beberapa putusan hakim di Pengadilan Agama Lumajang terdapat berbagai macam perbedaan hakim dalam mempertimbangkannya. Tentu saja hal ini untuk mencapai kemaslahatan bersama dan keadilan bagi masing-masing pihak. Pertimbangan hakim dalam menetapkan nafkah akibat perceraian merupakan salah satu upaya untuk melindungi hak-hak perempuan dan juga didalamnya terdapat unsur melaksanakan perintah agama dengan metode ijtihad.

Adapun tujuan penelitian ini yaitu: 1) Untuk mengetahui dasar hukum hakim dalam menentukan nafkah akibat perceraian. 2) Untuk mengetahui langkah hakim dalam menentukan perbedaan nafkah akibat perceraian. 3) Untuk mengetahui status penentuan nafkah akibat perceraian menurut *maslahah mursalah*.

Penelitian ini menggunakan jenis penelitian *field research* (penelitian lapangan) yang bersifat empiris, dengan pendekatan deskriptif kualitatif. Metode pengumpulan data melalui wawancara hakim Pengadilan Agama Lumajang dan studi dokumen terkait penelitian. Untuk prosedur pengolahan data menggunakan teknik edit, klasifikasi, verifikasi, analisis, dan kesimpulan.

Hasil penelitian ini yaitu dasar hukum hakim menentukan nafkah akibat perceraian yaitu karena adanya tuntutan dari pihak dan juga ketentuan yang terdapat dalam Pasal 149 Kompilasi Hukum Islam. Adapun yang menjadi langkah hakim dalam menentapkannya adalah dengan mempertimbangkan fakta ekonomi pihak dan juga melihat dari kebaikan istrinya selama mereka berumah tangga. Penentuan nafkah akibat perceraian ini merupakan suatu masalah yang menduduki tingkat masalah dharuriyat yang mencakup kebutuhan sehari-hari.

ABSTRACT

Amaliatus Sholikhah, 19210182, 2023. Judge's Consideration on Post-Divorce Rights (*Nafaqāt*) in Perspective of *Maslahah Mursalah*. Thesis. Islamic Family Law Department. Syariah Faculty. State Islamic University Maulana Malik Ibrahim Malang. Supervisor: Jamilah, MA.

Keywords: Post-Divorce Financial Support, Talak Divorce, *Maslahah Mursalah*

The absence of clear regulations regarding determining the amount of living in both positive and Islamic law has resulted in the Judge's Consideration being needed for justice. There were differences in judges' considerations in several judges' decisions at the Lumajang Religious Court. Of course, this is to achieve mutual benefit and justice for each party. The Judge's Consideration in determining a living as a result of divorce is one of the efforts to protect women's rights. Also, it includes elements of carrying out religious orders using the *ijtihad* method.

The objectives of this study are: 1) To determine the legal basis of judges in determining income due to divorce. 2) To determine the judge's steps in determining the difference in income due to divorce. 3) To find out the status of determining alimony as a result of divorce according to *maslahah mursalah*.

This research uses empirical field research with a qualitative descriptive approach. Methods of data collection through interviews with judges of the Religious Court of Lumajang and study of documents related to research. For data processing procedures using editing techniques, classification, verification, analysis, and conclusions.

The results of this study are that the legal basis for judges determining maintenance due to divorce is due to demands from the parties and is also provision contained in Article 149 of the Compilation of Islamic Law. As for the judge's steps in determining it, it is by considering the economic facts of the parties and also looking at the goodness of his wife while they were married. The determination to live due to this divorce is a *maslahah* that occupies the *maslahah dharuriyat* level, including daily needs.

ملخص البحث

عملية الصالحة. رقم القيد. 2023.19210182. نظر القاضي في الدعم المالي بعد الطلاق (نفقات) من منظور مصلحة مرسله. بحث جامعي. قسم الأحوال الشخصية، كلية الشريعة جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج : المشرفة: جميلة، الماجستر.

عدم وجود نظام واضح بشأن تحديد مقدار المعيشة في كل من الشريعة الوضعية والشريعة الإسلامية إلى ضرورة أخذ القاضي بعين الاعتبار للعدالة. كانت هناك اختلافات في اعتبارات القضاة في قرارات العديد من القضاة في المحكمة الدينية لوماجانج. طبعاً هذا لتحقيق المنفعة المتبادلة والعدالة لكل طرف يعتبر اعتبار القاضي في تقرير المعيشة نتيجة الطلاق أحد الجهود المبذولة لحماية حقوق المرأة. كما يتضمن عناصر تنفيذ الأوامر الدينية بطريقة الاجتهاد.

أهداف هذه الدراسة هي: (١) تحديد الأساس القانوني للقضاة في تحديد الدخل الناتج عن الطلاق (٢) تحديد خطوات القاضي في تحديد فرق الدخل بسبب الطلاق. (٣) معرفة حالة تحديد النفقة بالطلاق بمصلحة مرسله.

يستخدم هذا البحث البحث الميداني التجريبي بمنهج وصفي نوعي طرق جمع البيانات من خلال المقابلات مع قضاة المحكمة الشرعية لوماجانج ودراسة الوثائق المتعلقة بالبحث لإجراءات معالجة البيانات باستخدام تقنيات التحرير والتصنيف والتحقق والتحليل والاستنتاجات.

نتائج هذه الدراسة هي أن الأساس القانوني للقضاة الذين يقررون النفقة بسبب الطلاق يرجع إلى مطالب من الطرفين وهو موجود أيضاً في المادة ١٤٩ من مجمع الشريعة الإسلامية. أما خطوات القاضي في تحديدها ، فهي من خلال النظر في الحقائق الاقتصادية للطرفين وكذلك النظر في صلاح زوجته أثناء الزواج. والإصرار على العيش بسبب هذا الطلاق هو مصلحة تحتل مستوى المصالح الدرعية ، بما في ذلك الحاجات اليومية.

CHAPTER I

INTRODUCTION

A. Research Background

In the association between husband and wife, it is not uncommon for constant disputes and quarrels to occur, as well as other causes which sometimes lead to a situation that causes a marriage to no longer be maintained. At the same time, the peaceful efforts made by both parties and the family do not bring results—maximum so that the way out must be taken is none other than divorce. Divorce in Islam is not a prohibition but a last resort if there is disharmony. Sayyid Sabiq argued that Islam only gives divorce rights to husbands because it is men who have a more patient character when dealing with household problems so that when something happens to his wife, the husband is not hasty in divorcing her¹.

Article 9, paragraph (1) of the Marriage Law contains provisions that divorce can only be carried out before a court hearing after the Court concerned tries to reconcile the two parties but is unsuccessful. Divorce that is carried out before a court hearing must contain sufficiently strong reasons, according to the law, that the husband and wife cannot get along again. The grounds for the divorce are contained in Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law (UU No. 1 of 1974) and Article 116 KHI.

¹ Sachiko Murata, *The Tao Of Islam*, (Bandung:Mizan, 1999) 232

The judge can grant the divorce application on the consideration of the benefit of the parties, who are expected to be able to save themselves from material and immaterial losses if the marriage continues. In a divorce, legal consequences arise that must be considered by the parties. This legal consequence is explained in Article 41 letter (c) of Law Number 1 of 1974 concerning marriage which states that the Court may oblige the ex-husband to provide maintenance or determine other obligations for the ex-wife. According to Article 149 of the Compilation of Islamic Law, the ex-husband must provide mut'ah and iddah maintenance if a marriage is broken up due to divorce. Article 152 of the Compilation of Islamic Law states that due to the breakup of a marriage due to divorce, the ex-husband must provide maintenance to his ex-wife during the *iddah period*.

To grant the request for divorce by the judge, the husband is required to pay madliyah maintenance, iddah maintenance, and mut'ah to the divorced wife. It follows the provisions of Article 34, paragraph (1) of Law Number 1 of 1974, in conjunction with Article 80, paragraph (4), Compilation of Islamic Law. In this case, the wife has the right to receive the maintenance given by her ex-husband because of a valid marriage contract, the wife is bound by all her rights, and it is forbidden to marry someone else. This bond causes the wife to be unable to earn a living for herself.

The problem in determining a living due to divorce here is that there are no strict rules in positive or Islamic law. Article 160 of the

Compilation of Islamic Law only explains that the amount of mut'ah is adjusted according to the propriety of the husband. Meanwhile, in the Supreme Court Circular Letter Number 3 of 2018, judges in determining income due to divorce consider a sense of justice and decency by exploring the facts of the husband's economic capacity and the basic needs of the wife and children. In addition to considering the husband's justice, the judge also considers the fairness of the wife regarding the protection of rights due to divorce.

In several divorce case decisions taken by researchers at the research site, there are significant differences regarding the amount. Some are not even given at all. Of course, this is a judge's decision taken following several considerations. In handling divorce cases, judges are given the authority to determine the level of cost of living expenses and consider the side of fairness, benefit, and legal certainty for the parties.

Based on the things described above and the various reasons stated, I am interested in discussing and researching further regarding the considerations and legal steps of judges in determining a living due to divorce in the Lumajang area, namely at the Religious Court of Lumajang into a scientific paper entitled "Judge's Consideration on Post-Divorce Financial Support (*nafaqāt*) in The Perspective of *Maslahah Mursalah* (Study at The Religious Court Of Lumajang)

B. Scope of Problem

Because of the breadth of the problem, it is necessary to define the problem so that the discussion is directed and not widespread so that it is easier for the reader to understand the content and intent of the discussion in this study. In this study, the limitation of the problem is directed only at the summit of iddah and mut'ah income among several incomes due to divorce in the case of talak divorce in 2022. And also, following the study's title, which mentions studies at the Lumajang Regency Religious Courts, this study will only examine the considerations of judges in the Religious Court of Lumajang regarding the determination of post-divorce financial support.

C. Statement of Problem

For this research to be systematic, the researcher used several problem formulations in this thesis, namely:

1. What are the judges' legal bases in determining post-divorce rights?
2. How the judge steps in considering the difference in post-divorce rights?
3. What is the status of post-divorce rights from the *masalah mursalah* perspective?

D. Objective Of Research

Based on the problem formulation that has been described previously, it can be seen that some of the objectives of this research are:

1. To identify the judges' legal bases in determining post-divorce rights
2. To examine the judge's steps in considering the difference in post-divorce rights
3. To analyze the status of post-divorce rights from the perspective of *maslahah mursalah*

E. Benefits Of Research

The results of this study are expected to provide benefits, which in this case, the researcher divided into two perspectives, namely the first from a theoretical perspective and the second from a practical perspective with the following explanation:

1. Theoretical benefits

This research is expected to add helpful insight for developing legal arrangements and increase scientific sense in theory about determining a living due to divorce so that a divorced wife still gets her rights.

2. Practical benefits

- a. For institution / further studies

This research is expected to provide information to the public and initial data for other researchers who are also interested in

this field and become a reminder or guide for judges to determine a living due to divorce.

b. For researcher

This research is expected to develop knowledge and add experience for the researcher, especially in determining a living due to divorce by judges.

F. Structure of Discussion

This thesis research is divided into 5 (five) chapters. The composition of the chapters, along with an overview of the material written in each of these chapters, will systematically be stated as follows :

CHAPTER I. An introduction that generally contains the background of the problem that describes the existence of legal facts as an important reason for conducting research. Based on the description of the knowledge, identification and issues will be researched and discussed; next is a literature review, research objectives, and the benefits of research results and systematic discussion. The description of this chapter is continued by explaining the systematics of the debate. The formulation of the problem is in the form of questions which are then answered in the research objectives. The benefits of research are divided into two kinds, namely theoretical benefits and practical benefits.

CHAPTER II. Describes a literature review which is the basis for concluding research, which includes the description of previous research related to the themes raised by the researchers and a theoretical framework

in the form of an overview, understanding, and rules related to providing care to Judge's Consideration on determining a living due to divorce. It is expected to support efforts to analyze to answer the problems that have been formulated. Previous research contains information about the research carried out by previous researchers, both in books that have been published and still in the form of dissertations, theses, and journals that have not been published. At the same time, the literature review describes the conceptual basis used by researchers.

CHAPTER III. Describe the research method. This chapter describes the research methods used by researchers, which are related to the type of research chosen by the researcher, the research approach, the research location, the reasons for selecting the research location, types and sources of data, data collection methods, and research data processing methods. So it can be seen that this chapter is intended to explain the methodological references in finding and analyzing data in the thesis.

CHAPTER IV. Describes the study's results and discuss the data obtained to answer the formulation of the problem in this study.

CHAPTER V. This last chapter contains a conclusion and suggestion. The decision is a brief answer to the proposed problem formulation and has been analyzed in Chapter IV based on the conclusion of the research results. Proposals are recommended for developing this thesis research regarding the fulfillment judge's consideration of determining a living due to divorce. With the conclusion, the reader will

more easily understand the line of discussion intended by the researcher, and suggestions serve to understand the shortcomings and weaknesses in conducting research that can be used for improvement for future researchers.

G. Operational Definition

To avoid misunderstanding the title of this research, the words that may be misinterpreted or difficult to understand will be explained. The title of this thesis is “Judge’s Consideration on Determining Post-Divorce Financial Support (Study at The Religious Court of Lumajang).” So, the words that must be clarified and understood correctly are as follows :

Judge’s consideration: there are two words in this sentence: Judge and Consideration. A judge is a person who hears cases. At the same time, consideration, according to Big Indonesian Dictionary, is the ability to carry out calculations and considerations before determining or doing a job. The Judge’s Consideration is very important in determining the outcome of the judge’s decision, which contains legal certainty and justice and benefits the parties.

In this study, what is meant is the Consideration of the Judge of the Religious Court of Lumajang

Post-Divorce Rights : is the fulfillment of all the needs that are dependent on a person, whether in the form of clothing, food, or shelter. It is called maintenance or *nafaqāt* because the conditions that are borne are consumptive goods that quickly run out according to what they need. In

this case, the post-divorce financial support is the income the husband gives to his divorced wife.

Divorce: divorce is the breaking up of marriage ties. Divorce based on a judge's decision in the concept of fiqh, termed *tafriq*, is revoking the marital status of husband and wife based on a judge's decision based on the demands or requests of one party based on a specific reason. The divorce referred to in this study is a divorce filed by the husband (*talaq* divorce)

Maslahah Mursalah: something that is not explained by *syara'* in the form of particular texts. The principle of *maslahah mursalah* is taking advantage and rejecting the harm of something with the aim of *syara'* as for the goals of *syara'* that must be achieved, namely preserving the mind, soul, lust, lineage, and wealth.

CHAPTER II

LITERATURE REVIEW

A. Previous Research

The previous research section will discuss the studies carried out by previous researchers that are closely related to the theme or title the researcher is researching. In this section, the researcher describes the similarities and differences in the research that will be carried out with previous research. The search for differences and similarities aims to find the originality and update the study the researcher will do. The literature in the form of theses and journals related to the above titles include :

1. Mochamad Balya Sibromullisi. *"Kebijakan Hakim Pengadilan Agama Probolinggo Dalam Menetapkan Pembayaran Nafkah Iddah dan Mut'ah Terhadap Istri Sebelum Ikrar Talak"*.

Thesis research by Mochamad Balya Sibromullisi, a Student of Islamic Family Law in the UIN Maulana Malik Ibrahim Malang, uses an empirical research type with the research object being at the Religion Court of Probolinggo. This study aims to reveal the background of the Probolinggo Religion Court Judge's Policy in determining the payment of iddah and mut'ah expenses made before the divorce pledge. The approach used in this research is qualitative. While the data collection method uses interviews (interviews) and documentation².

² Mochamad Balya Sibromulissi, *Kebijakan Hakim Pengadilan Agama Probolinggo Dalam Menetapkan Pembayaran Nafkah Iddah dan Mut'ah Terhadap Istri Sebelum Ikrar Talak*. UIN Malang thesis, 2013

The similarity with this study is that they both discuss the maintenance given to divorced wives, which involves the judge's decision. The difference with this study is the research's location and the judge's strategy in determining a living due to the divorce.

2. Ana Sofiatul Fitri. "*Pandangan Hakim Terhadap Penentuan Nafkah Akibat Perceraian (Studi di Pengadilan Agama Kota Malang dan Pengadilan Agama Kabupaten Malang)*".

Thesis research by Ana Sofiatul Fitri, a Postgraduate Student of Islamic Family Law at the UIN Maulana Malik Ibrahim Malang, uses an empirical research type with the object of research being at the Religion Court of Malang City and Religion Court of Malang Regency. This study aims to know and understand the views and legal steps of judges in determining a living due to divorce and also to find out and analyze the factors that the judge considers in choosing a living due to divorce. The approach used in this research is qualitative. While the data collection method uses interviews (interviews) and documentation³. The similarity of these studies is that they both discuss the income due to divorce, the differences found in the research location, and the distribution of existing livelihoods.

3. Siti Zulaekah. "*Analisis Pelaksanaan Pemberian Nafkah Mantan Istri Akibat Cerai Talak (Studi Kasus di Pengadilan Agama Semarang Tahun 2015)*."

³ Ana Sofiatul Fitri, *Pandangan Hakim Terhadap Penentuan Nafkah Akibat Perceraian (Studi di Pengadilan Agama Kota Malang dan Pengadilan Agama Kabupaten Malang)*. UIN Malang thesis,

Thesis research by Siti Zulaekah, a Student of Islamic Family Law in the UIN Walisongo Semarang, uses an empirical research type with the research object being at the Religion Court of Semarang. This study aims to find out the basis for the judgment of the Religion Court of Semarang in ordering the provision of a living ex-wife due to divorce and also to find out how the implementation of the contents of the judge's decision Religion Court of Semarang on the provision of a living ex-wife due to divorce. The approach used in this research is qualitative. While the data collection method uses interviews (interviews) and documentation⁴. The similarity of this research is that they both discuss living due to divorce, and the difference is in the research location. The focus of this research is more on the implementation of the decision contents.

4. Riyan Ramdani and Firda Nisa Syahfitri. "*Penentuan Besaran Nafkah Madliyah, Nafkah Iddah dan Mut'ah Dalam Perkara Perceraian di Pengadilan Agama*"

The journal article by Riyan Ramdani and Firda Nisa Syahfitri, who are students in UIN Sunan Gunung Djati Bandung, uses normative juridical research to examine the laws and regulations relating to the determination of the amount of *madhiyah*, *iddah*, and *mut'ah*⁵. The

⁴ Siti Zulaekah, *Analisis Pelaksanaan Pemberian Nafkah Mantan Istri Akibat Cerai Talak (Studi Kasus di Pengadilan Agama Semarang Tahun 2015)*, UIN Walisongo thesis, 2015

⁵ Riyan Ramdani and friend, *Penentuan Besaran Nafkah Madliyah, Nafkah Iddah dan Mut'ah Dalam Perkara Perceraian di Pengadilan Agama*. Adliya:Journal of Law and Humanity Vol 15 No 1

similarity with this study is that both discuss the decision to live due to divorce.

| Number | Researcher / Research Title | Equality | Difference |
|--------|---|--------------------------------|---|
| 1 | Mochamad Balya Sibromulissi / Kebijakan Hakim Pengadilan Agama Probolinggo Dalam Menetapkan Pembayaran Nafkah Iddah dan Mut'ah Terhadap Istri Sebelum Ikrar Talak | Discuss living due to divorce. | <ul style="list-style-type: none"> - research sites - the judge's policy in determining a residing due to divorce |
| 2 | Ana Sofiatul Fitri / Pandangan Hakim Terhadap Penentuan Nafkah Akibat Perceraian (Studi di Pengadilan Agama Kota Malang dan Pengadilan Agama Kabupaten Malang | Discuss living due to divorce | <ul style="list-style-type: none"> - research sites - factors behind the judge's consideration in determining a living due to divorce. - This study will discuss the income due to divorce, namely iddah and mut'ah expenses, while the previous research discussed all payments due to divorce. |
| 3 | Siti Zulaekah / Analisis Pelaksanaan Pemberian Nafkah Mantan Istri Akibat Cerai Talak (Studi Kasus di Pengadilan Agama Semarang Tahun 2015) | Discuss living due to divorce. | <ul style="list-style-type: none"> - research sites - this study will discuss the judge's determination of a living due to divorce, while previous research discusses the implementation of the judge's decision regarding the provision of a living due to divorce |

| | | | |
|----|--|--|--|
| 4. | Riyan Ramdani and Firda Nisa Syahfitri / Penentuan Besaran Nafkah Madliyah, Nafkah Iddah dan Mut'ah Dalam Perkara Perceraian di Pengadilan Agama | Discuss the determination of a living due to divorce | <ul style="list-style-type: none"> - this research uses empirical research, while previous research uses normative juridical research - this study will be discussed the income due to divorce, namely iddah and mut'ah expenses, while in the last analysis, the discussion was about all payments due to divorce |
|----|--|--|--|

1.1 previous research table

B. THEORETICAL FRAMEWORK

1. Post-Divorce Financial Support

a. Definition of post-divorce financial support (*nafaqāt*)

Etymologically, *nafaqāt* is absorption from "*al-infaq*," which means "to issue." This word is commonly used in actions with virtue as "*israf*," which is the opposite of the word - it is widely used in evil⁶. As for *nafaqāt* in terminology, it is fulfilling all the needs dependent on a person in clothing, food, and shelter. According to the Shafi'i, a *nafaqāt* is food that has been prepared determined for a wife and her maid, who become the husband's dependents and primary lineage or lineage secondary such as posterity, enslaved people, and pets with levels of adequate. It

⁶ Syaikh Sulaiman Al-Jamal, Hasyiyah Jamal 'ala Syarh Minhaj Juz 4 (Dar Al-Fikr), 487

means that this understanding is only specific to food and does not include side dishes, clothes, or residence.

b. The legal basis for the wife's *nafaqāt*

The law of giving *nafaqāt* to the wife is obligatory, either in clothing, food, or shelter. These obligations are due to a valid marriage contract and the continuity of having fun with his wife. Even though his wife is rich and has a high income, the husband is still obliged to pay a living to his wife, be it Muslim or non-Muslim⁷. Several arguments indicate the obligation to provide for the wife, including:

1) Surah An-Nisa verse 34

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ
أَمْوَالِهِمْ ؕ

*'the men are the leaders of the women, because Allah has made some of them (men) superior to others (women), and because they (men) have spent part of their wealth.'*⁸

2) Surah Al-Baqarah verse 233

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ؕ لَا تُكَلِّفُ نَفْسٌ إِلَّا وُسْعَهَا ؕ

⁷ Muhammad Ya'qub Thalib Ubaidi, "Ahkam An-Nafaqah Az-Zaujiyah", translated by M. Ashim, *Nafkah Istri: Hukum Menafkahi Istri Dalam Perspektif Islam* (Jakarta: Darus Sunnah Press, 2007), 46-

⁸ Departemen Agama RI al-Qur'an dan Terjemahnya : Juz 1-30

*'and the duty of the father to provide for them and clothe them in a proper manner. a person is not burdened more than he can bear'*⁹

3) Hadith history of Muslim number 1218

وَأَهْنِ عَلَيْكُمْ رِزْقَهُنَّ وَكَسُوهُنَّ بِالْمَعْرُوفِ

'and their right (wives) over you is to provide for them and dress them in a good way'.

c. Mandatory *nafaqāt* conditions

Fiqh experts have different opinions regarding the stipulation of the mandatory requirements for a wife's maintenance which are mapped into two arguments, namely:

- 1) According to Hanafiah, Syafi'iyah, and Hanabilah, mandatory requirements for a living for the wife, among others: a woman who is mature or who can have sex, has completely surrendered herself to her husband unless there is a syara' obstacle, based on a valid marriage contract
- 2) According to Malikiyah mapped again into two categories: for women who have had sexual intercourse and for women who have not had intercourse¹⁰

2. 'Iddah

⁹ Departemen Agama RI al-Qur'an dan Terjemahnya : Juz 1-30, 89

¹⁰ Abdul Aziz Muhammad Azzam dan Abdul Wahhab Sayyed Hawwas, "Al-Usroh Wa Ahkamuha Fi Tasyri'i Al-Islami", diterjemahkan Abdul Majid Khon, Fiqh Munakahat (Cet.I; Jakarta: Amzah, 2009), 214 – 215.

'Iddah comes from the Arabic word *'adda*, which means count.¹¹ The word count is the waiting period of a woman who makes iddah for the passage of time.¹² Definition iddah in the book of Fiqh is a waiting period that is going through by a woman to find out clean uterus or for worship. Therefore a woman whose husband has divorced in Court settles their case so that they can remarry to know the cleanliness of the womb or to carry out the commands of Allah SWT. A woman who was divorced by her husband in any form, divorced or divorced, dead, pregnant or not pregnant, and still menstruating or not menstruating, it is obligatory to undergo the iddah period. As for the purpose and wisdom, it is obligatory iddah to know that it is clean the womb of a woman from the seed left by her ex-husband, for *ta'abbud* (fulfilling the will of Allah) and so that husband who has divorced his wife thinks to come back and realize that action not good and regrets his action.

The legal basis for carrying out the obligation to perform the pilgrimage is found in Surah Al-Baqarah verse 228 :

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۚ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ
فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنْنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ

¹¹ Al-Maktabah Al-Syarkiyah, Al-Munjid, 490.

¹² Abu Malik Kamal Ibn Sayyid Salim, Fikih Sunnah Wanita, (Jakarta: Qisthi Press, 2013), 607.

أَرَادُوا إِصْلَاحًا ۚ وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۚ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ

حَكِيمٌ

*“The divorced women should hold back (wait) three times quru’. It is not permissible for them to hide what Allah created in their wombs if they believe in Allah and the Hereafter. And her husbands have the right to refer to her during that waiting period if they (husbands) wish to make peace. And women have equal rights with their obligations in a way that is ma’ruf. However, husbands have one degree of superiority over their wives. And Allah is Mighty, Most Wise.”*¹³

A wife who has been divorced from her husband still gets the rights from her ex-husband while still in the period of iddah because, at that time, a wife did not may leave the house and also may not accept the proposal of others.¹⁴ A wife who has been divorced from her husband will get rights divided into three, namely :

- 1) A wife who divorced her husband in the form of talaq *raj’iy*, has the right to be full acceptance and will get the things needed for his survival, be it clothes, food, and shelter.

¹³ Departemen Agama RI, Al-Qur’an Dan Terjemahnya, 36.

¹⁴ Abu Malik Kamal bin As-Sayyid Salim, “Shahih Fiqh As-Sunnah Wa Adillatuhu Wa Taudhiah Madzahib Al-A’immah”, diterjemahkan Khairul Amru Harahap, Shahih Fikih Sunnah (Cet.I; Jakarta: Pustaka Azzam, 2007), 499

- 2) A wife is divorced by her husband in the form of talaq bain: if the wife is not pregnant, she is only entitled to a place to live. If she is pregnant, she is entitled to a place to live and provide for her baby if the child is attributed to a mentally disabled husband.
- 3) Iddah due to death: a wife who undergoes iddah due to the end of her husband is entitled to a place to live if there is a fundamental property in the form of a place to live. This opinion is supported by a hadith which states that the Prophet Muhammad ordered Furaiah bint Malik (sister of Abu Said Al-Khudri) when her husband was killed to stay in her husband's house until the end of her iddah period. She underwent iddah for four months and ten days¹⁵.

3. Mut'ah

Definitively, the meaning of mut'ah is "several assets that the husband must hand over to his wife whom he divorced during his lifetime employing divorce or in a similar manner." In the extensive Indonesian dictionary, mut'ah is something (money, goods, etc.) that a husband gives to his divorced wife as a living provision (consolation of the heart) of his ex-wife.¹⁶

Giving mut'ah is an order Allah SWT to the husband to always associate his wife with the principle of *imsak bil ma'ruf aw tashiru bil*

¹⁵ Imam A-Romli, *Nihayatul Muhtaj ila Syarh Manhaj Juz 7* (Dar Al-Fik), 153

¹⁶ Sulaiman Rasjid, *Fiqh Islam*, Cet. 62 (Bandung: Sinar Baru Algensindo, 2013), 397

ihsan (maintaining marital ties with goodness or release/divorce with virtue). This recommendation has a purpose, namely if the marriage relationship had to be terminated, then a good relationship between the ex-wife and his family must be maintained and maintained even though they have to give mut'ah, the gift must be made with sincerity and politely without showing anger contempt or contempt for the ex-wife.

In principle, the obligatory mut'ah divorce is divorce, not death divorce. If the divorce was passed before intercourse and required half the dowry, then mut'ah does not apply. Whereas if it does not affect the dowry obligation of a penny, then it is obliged to mut'ah.

If the divorce is dropped after intercourse, then mut'ah is obligated. In summary, mut'ah is mandatory for every divorce from the husband, not because of the wife. If the divorce is from the wife, then mut'ah is not compulsory.

As for the assets that must be issued to give mut'ah, it is according to the agreement of both parties. In addition, there is an opinion that mut'ah should not be less than the property used as a dowry. Sunnah, mut'ah is not less than 30 dirhams. If the two parties contradict each other in determining the mut'ah, then the judge has the right to decide.

4. Talak Divorce

According to the language, divorce means untied. Meanwhile, according to the term, divorce is to release the bond of marriage or eliminate the ties of marriage at the time or in the future after iddah with specific speech. Whereas divorce, according to classical fiqh, is ending marriage ties, according to fiqh scholars, the husband has the right to divorce¹⁷ So, divorce, according to Islamic law, is eliminating the marriage bond so that after the loss of the marital bond, the wife is no longer lawful for the husband.

The meaning of divorce according to positive law in Indonesia itself is contained in article 117 of the Compilation of Islamic Law, which reads: “Talak is a husband’s vow before a court hearing Religion is one of the reasons for breaking up the marriage, in the manner as referred to in articles 129, 130, and 131”¹⁸.

a. Various kinds of divorce

- 1) *Raj’i*, Raj’i divorce is a divorce where the husband still has the right to refer back to his wife. After the divorce, it was dropped with certain pronunciations, and the wife had been hooked up.

¹⁷ Tutik Hamidah, *Fiqh Perempuan Berwawasan Keadilan Gender*, (UIN Maliki Press), 2011, 127

¹⁸ *Kompilasi Hukum Islam*, revisi edition batch IV, Bandung: Nuansa Aulia, 2012

2) *Ba'in* divorce is a divorce that separates the same once husband and wife relationship. *Ba'in* divorce is divided into two, namely *ba'in sughra* and *ba'in kubra*.

- Law of Divorce

Scholars differ on the law of divorce. The correct opinion is that it is *makruh* if no intention caused it because divorce means *kufr* to favor God.

- Due to Divorce

The bond broken because the husband mentally abused his wife has legal consequences based on Article 149 of the Compilation of Islamic Law. Then the ex-husband must :

- 1) Giving proper *mut'ah* to the ex-wife
- 2) Provide a living, food, and a place to live and clothes to the ex-wife during the *iddah*, except ex-wife was sentenced to divorce *ba'in* or *nusyuz* and in a non-pregnant state.
- 3) Pay off the dowry still owed in full and in half when *qabla dukhul*.
- 4) Provide *hadlanah* (childcare) fees for children who have not reached age 21.

5. Masalah Mursalah

a. The understanding of *masalah mursalah*

Maslahah Mursalah comes from two words, namely *Maslahah* and *Mursalah*. *Maslahah* comes from the Arabic word: benefit, benefit, good, good, goodness, use, or usefulness. The word *maslahah* is often contrasted with the word *al-mafsadah* which means damage. *Maslahah* is intended as a way that produces excellence. Al-Khawarizmi defines *maslahah* as "maintaining the objectives of Islamic law by rejecting truth/corruption/things that are detrimental to creatures (humans)."

Furthermore, the word *mursalah* means *mutlaqah*, which means detached or free. If the phrase *maslahah* and *mursalah* are juxtaposed as *mausuf traits*, then what is intended is, regardless of whether or not it is permissible to do so, *maslahah mursalah* can be interpreted as something that aims to do well even though there is no information indicating permissibility or prohibition to do so.

In the determination of Islamic law, *maslahah mursalah* can be understood as a legal *istinbath* method based on the benefit which does not receive particular legality from texts regarding its validity, or there is no argument that expressly and clearly states its invalidity. The birth of the law is always expected to benefit the people and prevent the emergence of evil. For this reason, the *maslahah mursalah* method is needed to respond to new things whose provisions are not found in the texts or did not occur when the Prophet lived because of significant changes in time. So as not

to create a legal vacuum, damage, and even difficulties for mankind.

b. Maslahah Mursalah's conditions

Humans have their views about what is considered good or beneficial for them. So maslahat is relative. According to Wahbah Zuhaili, something can be said to be maslahah if it aims to preserve the five objectives of the shari'ah (maqashid shari'ah). The conditions put forward by Imam Syatibi are:

- 1) The benefit used as the basis for the maslahah mursalah proposition is maslahah not mentioned by syara.' Still, no argument justifies or rejects it and aligns with what the syara' wants to achieve.
- 2) Maslahah used as a consideration for determining the law, is considered logical.
- 3) The maslahahs taken into consideration in determining the law are the dharuriyah and hajiyyah maslahahs.
- 4) Maslahah can perfect life and eliminate the difficulties or pettiness of life that Syara' really doesn't want.

Thus, according to Al-Ghazali in his book *al-Mankhul*, maslahah that can be used as evidence is maslahah that is in line with or has relevance to the establishment of Islamic Law and maslahah that does not conflict with the Quran, Sunnah, or Ijma'. According to al-Ghazali, it can be accepted as the argument for

establishing Islamic Law, even though no specific statement shows this *maslahah*. Thus, according to al-Ghazali, *maslahah mursalah*, which can be accepted or used as an argument for Islamic Law, must fulfill two conditions:

- 1) *Maslahah*, in line with the determination of Islamic Law
- 2) *Maslahah* does not conflict with the Qur'an, Sunnah, or Ijma'.

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c. **Miscellaneous Maslahah**

In terms of the strength of establishing law, *maslahah* is divided into three types, namely:

- 1) *Maslahah Dharuriyah*

Dharuriyah is a matter that is the place where human life is established, which, if abandoned, then life is ruined, corruption is rampant, slander and great destruction arise. *Maslahah dharuriyah* means *maslahah*, whose existence is needed by human life, meaning that human life is meaningless if the five principles do not exist. All efforts to directly guarantee or lead to the existence of these five principles are good at the *dharuriy* level.

- 2) *Maslahah Hajiyyah*

Maslahah hajiyyah is the benefit that the level of human life needs for him is not at the *dharuriy* level. The nature of the

¹⁹ Al-Ghazali, *al Mankhul min Ta'liqat Ushul*, (Damsyiq: Dar al Fikr, 1980) h 370

needs of hajiyyah is to eliminate difficulties so that by using *maslahah mursalah*, one's life becomes lighter.

3) *Maslahah Tahsiniyah*

Maslahah tahsiniyah is a *maslahah* whose human need for it does not reach the level of *dharuri*, nor does it get the story of pilgrimage. But these needs must be met to give perfection and beauty to human life.

d. The Urgency of *Maslahah Mursalah* as an *Ijtihad* Method

Along with the times, human needs will be more varied, including the need for law. As social beings, humans need direction as a tool that can provide benefits and keep bad things away from themselves. Seeing the need for this law, scholars will always prioritize the law in the text. However, if the law only stops there, no provisions in the text legitimize, justify, or reject a matter that humans are disputing. So there will be a lot of human benefits that will be neglected, and the goals of the *Shari'a*, which want to help humanity, will not be realized.

Thus, *maslahah mursalah* is very much needed in today's modern, sophisticated society because if we stick to the agreed-upon propositions, then the rules of the game in religion will experience rigidity, freezing, and even experience prolonged stagnation throughout the ages. The principle of *maslahah* in the context of *maslahah mursalah* has been applied by classical

(orthodox), modern, and contemporary scholars. An example is the construction of prisons which is not contained in the Koran and was never practiced at the time of the Prophet, either to justify (justify) or to prohibit it. When the situation and conditions then require it, with predictable benefits, it is appropriate that Islamic law can accommodate it if humans need it. On this basis, Umar ibn Khattab, for the first time, institutionalized the institution. Even so, the territorial boundaries, scope, and coverage of *maslahah mursalah* must be clear and firm, not to penetrate the limits and area of matters of worship or monotheism where the interference of reason (*ratio*) is unacceptable because reason cannot reach it.

Meanwhile, outside of matters of worship, although some still have unknown legal reasons, they are generally rational. Therefore, values can be applied in determining good and evil. Thus the application of *maslahah mursalah* as a source of Islamic law can be said to be valid.

CHAPTER III

RESEARCH METHOD

The research method is scientific to get samples or data for specific purposes and uses. Research methods must be included in the research to find out how a process during the research to find out how a process is carried out so that it can achieve the desired research objectives or results. The research method is a scientific method carried out for investigation in a certain way to obtain scientific truth.

A. Type of Research

In terms of place, this research is included in the type of empirical research where researchers go directly to the research location. Viewed from data mining, this research contains qualitative research because it seeks to understand human behavior regarding the framework of thinking and acting. This research is descriptive because this research is expected to obtain a comprehensive and systematic picture of judges' views and legal steps in determining a living from divorce cases.

B. Research approach

The research approach that the researcher uses in this study is qualitative. Qualitative is an approach to understanding phenomena experienced by the research subject, such as behavior, perceptions,

motivations, and actions, by describing in the form of words and language in a particular natural context²⁰

C. Location of Research

This research was located at the Religious Court of Lumajang Class IA, located in the area of Jl. Soekarno Hatta No.11 Sukodono, Lumajang Regency, East Java. According to the Central Statistic Agency, the location was chosen because no one researched this discussion at the Religious Court of Lumajang, including the high divorce rate in East Java.

D. Data Sources

The source of data is significant in a study. What is meant by the authority of data in a study is the subject where the data is obtained. The source of data is the most vital part of the research²¹. Data sources are divided into primary data sources and secondary data sources.

1) Primary data

Primary data is obtained from the source, observed, and recorded for the first time²². This preliminary data was obtained from interviews with judges at the Lumajang Regency Religion Court, they are :

- Drs. H. Mohammad Hafidz Bula M.H
- Drs. Ase Saepudin H

²⁰ Lexy J. Moleong. *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2011), 26

²¹ Suharsini Arikunto, *Prosedur Penelitian Ilmiah: Suatu Pendekatan dan Praktik*, (Jakarta: Rineka Cipta, 2002), 29

²² Marzuki, *Metodologi Riset*, (Yogyakarta: Adipura, 2002), 55

- Drs. H. Junaidi, M.H

2) Secondary data

Secondary data is a library containing primary legal materials or literature closely related to research. This secondary legal material takes from books, journals, Qur'an, and the hadith about living due to divorce. The results of works from the legal community, such as previous research, are also secondary materials.

E. Method of collecting data

The data collection method is a process that will determine whether or not the research is good or not. So, data collection activities must be designed properly and systematically so that the data collected follows the research problem. One of the primary keys in conducting qualitative research is how a researcher records data in field notes. The data collection techniques used are:

1) Interview

An interview is one method of collecting data to obtain information by asking direct informants. Interview results are determined by several factors that interact and affect the flow of information. These factors are the interviewers, the informants, the research topic in the questions list, and the interview situation. In this research, the researcher will select the correct informant to be interviewed, trying to get information from the informant orally by face-to-face with the person.

2) Documentation

Documentation is a record of events that have passed. This documentation technique is intended to complement the data from the interviews and how to obtain data by tracking and studying data from documents to obtain legal or other materials relevant to the problem to be answered in this research.

F. Data Processing Technique

Data processing is to analyze the data with specific methods and ways that apply to research. Data processing is related to data analysis: systematically searching and compiling data obtained from interviews, field notes, and documentation. Data processing is done after all the data is collected. This method is used to assemble each data obtained and combine the data to become research data that is neatly arranged. Several steps in processing the data are as follows :

1) Editing

Editing is the process of re-examining records, files, and information collected by data seekers. Editing is done by checking or selecting the data that has been collected. In this research, the researcher will edit the records of the interviews with the judges of the Religion Court of Lumajang Regency to determine whether the data is sufficient to answer the study's problems.

2) Classification

Classification is grouping data from observation and interviews. In this case, the researcher grouped all primary and secondary data. From all the data obtained, read, studied in depth, and then classified according to needs.

3) Verification

Verification is the process of checking the information obtained from the field so that the validity of the data can be recognized in research. In this case, the researcher rechecked the results of the written interview with the researcher's recording. Verification is done by listening and re-matching the data that has been obtained.

4) Data analysis

Data analysis is the process of simplifying words into a form that is easier to read by organizing and sorting data into patterns, categories, and fundamental units of description so that themes can be found and working hypotheses can be formulated. Data analysis in this study was conducted after examining, classifying, and verifying data. Data analysis was used to present the data again in easy-to-understand words. In this study, the data that must be analyzed are the result of interviews with judges in the Religion Court of Lumajang Regency about their consideration on determining a living due to divorce.

5) The Conclusion

The conclusion is the final stage of data processing. The researcher does this by concluding the data from interviews with Judges that have been processed. Then the results and data analysis that has been carried out are completed answers to the formulation of the problem.

CHAPTER IV

DISCUSSION OF RESEARCH FINDINGS

A. Research Object Background

1. The jurisdiction of The Religious Court of Lumajang

Lumajang Regency is one of the areas in the southern part of East Java Province. The area of this Regency is 1,790.90 km², with a population of 1,104,759 people. The Lumajang Regency area is divided into 21 districts and 198 villages. To the west, Lumajang is bordered by Malang Regency and to the north by Probolinggo Regency. While on the east side, it is bordered by Jember Regency and on the south by the Indian Ocean²³.

The jurisdiction area of the Lumajang Religious Court covers all areas of Lumajang Regency, which consists of 21 Districts and 198 Villages as follows:

²³ <https://lumajangkab.go.id/main/gambaran#:~:text=Wilayah%20Kabupaten%20ini%20adalah%201.790,utara%20berbatasan%20dengan%20Kabupaten%20Probolinggo>. Diakses pada 10 Nov. 22

- | | |
|------------------|------------------|
| 1) Lumajang | 12) Randuagung |
| 2) Sumbersuko | 13) Kedungjajang |
| 3) Sukodono | 14) Klakah |
| 4) Padang | 15) Jatiroto |
| 5) Senduro | 16) Yosowilangun |
| 6) Pasrujambe | 17) Ranuyoso |
| 7) Tempeh | 18) Gucialit |
| 8) Pasirian | 19) Candipuro |
| 9) Kunir | 20) Tempursari |
| 10) Pronojiwo | 21) Tekung |
| 11) Rowokangkung | |

2. Vision and Mission of the Religious Court of Lumajang

The Vision of the Lumajang Religious Court “The Realization of the Great Lumajang Religious Court²⁴. To achieve this vision, the following missions have been determined:

- 1) Maintaining Independence and Community Trust in the Religious Court of Lumajang.
- 2) They provide fair legal services to the Religious Court of Lumajang justice seekers.

²⁴ <https://new.pa-lumajang.go.id/tentang-pengaduan/profil-institusi/visi-misi-motto> diakses pada 10 Nov. 22

- 3) They are improving the quality of leadership in the Religious Court of Lumajang.
- 4) Increase credibility and transparency in the Religious Court of Lumajang.

3. Duties and Functions of the Religious Court of Lumajang.

The primary duties of the Religious Courts are following the provisions of Article 2 jo. Article 49 of Law Number 7 of 1989 concerning the Religion Courts is to examine, decide, and settle some instances between people who are Muslim in the fields of marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah, and sharia economics.²⁵

In addition to the main tasks referred to above, the Religious Courts of Lumajang have the following functions, among others:

- 1) The function of adjudicating, namely receiving, examining, adjudicating, and resolving cases that fall under the authority of the Religion Court at the first level (vide: Article 49 of Law Number 50 of 2009).
- 2) The function of guidance, namely providing direction, advice, and instructions to structural and functional officials under their ranks, both regarding judicial techniques, administration of justice, as well as general/equipment administration, finance, staffing, and

²⁵ <https://web.pa-lumajang.go.id/profil-pengadilan/tugas-pokok-dan-fungsi-pengadilan> diakses pada 11 Nov. 22

development. (vide: Article 53 paragraph (1, 2, 4, 5) Law Number 50 of 2009 jo. KMA Number KMA/080/VIII/2006)

- 3) The function of supervision, namely carrying out inherent control over the implementation of the duties and behavior of judges, clerks, secretaries, substitute clerks, and bailiffs/substitute bailiffs under their ranks so that justice is carried out carefully and fairly (vide: Article 53 paragraphs (1, 2, 4, and 5) Act No. 50 of 2009) and on the implementation of general secretarial administration and development (vide: KMA Number KMA/080/VIII/2006)
- 4) If requested, The function of advice is to provide consideration and advice on Islamic law to government agencies in their jurisdiction. (vide: Article 52 paragraph (1) Law Number 50 of 2009)
- 5) The function of administrative, namely administering justice (technical and trial) and general administration (personnel, finance, and available/equipment) (vide: KMA Number KMA/080/VIII/2006)

Another function is coordinating the implementation of reckoning and ruyat tasks with other relevant agencies such as MORA, MUI, Islamic organizations, and others. (vide: Article 52 A Law Number 50 of 2009). Finally, carry out legal counseling services, research/research services, and so on and provide the broadest possible access for the public in an era of openness and transparency of judicial information, as long as it is stipulated in the Decree of the Chief Justice of the

Supreme Court of the Republic of Indonesia Number 144/KMA/SK/I/2011 concerning Guidelines Information Services in the Court as a substitute for the Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number: 144/KMA/SK/VIII/2007 concerning Information Disclosure in the Religion Court²⁶

4. Organizational Structure of Religion Court of Lumajang



Gambar 1.

Organization Structure Religious Court of Lumajang

²⁶ <https://web.pa-lumajang.go.id/profil-pengadilan/tugas-pokok-dan-fungsi-pengadilan> diakses pada 11 Nov. 22

B. Data Exposure and Data Analysis

Every marriage in indonesia can be considered dissolved if the judges has rendered his decision in the Court. In tis case, the dissolution of marriage proposed by the husband is called talak divorce. In the cases of talak divorce the husband is charged with paying an amount of maintainace to his wife in accordance with the rules that apply to the law. Regarding the amount there is no provision that explains it. It is the discretion of the judge to determine as will be discussed below.

In this case, the researcher met directly with the informants, namely several judges at the Religious Court of Lumajang, to conduct interviews regarding the judge's considerations in determining the living expenses due to divorce. Here the researcher makes six decisions in the case of deciding alimony as a result of divorce, which will be a sample of the judge's considerations as follows:

| No | Case Number | Judges | Work of the parties | 'Iddah | Mut'ah |
|----|-------------------------|--------------------------------|---------------------|-----------|------------|
| 1. | 913/Pdt.G/2022/PA. Lmj | Drs. Mohammad Hafizh Bula, M.H | xxx | 1.500.000 | 500.000 |
| 2. | 1406/Pdt.G/2022/PA. Lmj | Drs. Ase Saepudin H | xxx | 4.500.000 | - |
| 3. | 2153/Pdt.G/2022/PA. Lmj | | xxx | 1.000.000 | 500.000 |
| 4. | 2492/Pdt.G/2022/PA. Lmj | Drs. H. Junaidi, M.H | xxx | 600.000 | 100.000 |
| 5. | 1250/Pdt.G/2022/PA. Lmj | | xxx | 9.000.000 | 10.000.000 |

1.2 Samples of case decisions

1. The Legal Bases of Religious Court of Lumajang Judges in Determining Post-Divorce Rights

To find out the legal basis for judges determining iddah and mut'ah living as a result of divorce, researchers have conducted interviews with judges at the Lumajang Religious Court. According to Drs. Mohammad Hafizh Bula, M.H, the legal basis for the judge's considering post-divorce financial support, in this case, is as follows:

"If we use the Islamic Law Compilation as the legal basis, there is Book II of the 1974 Law and Government Regulation Number 9 of 1975. It is written and implied there that if there is a divorce for the maintenance of 'iddah and mut'ah, it is a gift from husband to wife as we usually know in a divorce filed by the husband."²⁷

According to him, the legal basis for determining maintenance as a result of divorce is contained in the Compilation of Islamic Law, more precisely in article 149 KHI which explains that if a marriage is broken up due to divorce, the ex-husband is obliged to: (a) give proper mut'ah to his ex-wife in the form of money or objects, except for the ex-wife before dukhul., (b) provide maintenance, maskan and kiswah to the ex-wife during the 'iddah period, unless the ex-wife has been divorced ba'in or nusyuz and is not pregnant. Drs. Mohammad Hafizh Bula M.H also added:

"There are two things that can have legal consequences for the provision of living 'iddah and mut'ah. The first is a claim from the party. If the wife files for divorce, the wife has the right to demand iddah and mut'ah maintenance. Then the second ex-officio. Even though a wife does not sue, if the judge judges it out of compassion and humanity, the ex-officio Judge can punish the husband for giving iddah or mut'ah alms.

²⁷ Drs. Mohammad Hafizh Bula M.H , Wawancara, 15 Nov 2022

Determination of living due to divorce, according to Drs. Mohammad Hafizh Bula M.H, also based on the wife's demands in filing for divorce and also through ex-officio judges. Regarding the legal basis for determining income due to divorce, Mr. Drs. Ase Saepudin H also said almost the same thing:

*"When the party sues, the husband will automatically receive a claim that must be paid when the wife files a lawsuit, that is the first. Secondly, there is the term 'iddah, mut'ah maintenance which is based on Article 149 KHI."*²⁸

From the two judges above, it can be concluded that the legal basis for determining maintenance due to divorce is the demands of the plaintiff and several articles in the Compilation of Islamic Law and Law Number 1 of 1974.

2. The judge's steps in considering the difference in post-divorce rights

To find out the reasons for differences in judges in determining income due to divorce, researchers conducted interviews with judges at the Lumajang Religious Court, Drs. H. Junaidi, M.H, said that:

*"In the matter of maintenance, we can see whether it is nusyuz or not, unless there is a willingness on the part of the husband to provide 'iddah maintenance, but mostly where they agree to be mediated so that it is determined in the decision, that's mostly it. Unless they disagree in mediation, the assembly will determine, according to the examination, meaning the husband's ability, the husband's income, then the husband's habit of providing maintenance to the wife while they were still together, then how much is appropriate because someone's income is different. There are differences between the assemblies in determining the living."*²⁹

²⁸ Drs. Ase Saepudin H, Wawancara, 15 Nov 2022

²⁹ Drs. H. Junaidi, M.H, Wawancara, 15 Nov 2022

According to Mr. Drs. H. Junaidi, M.H, the reason for the difference in judges in determining the living as a result of a divorce is whether or not nusyuz is involved, the length of time both parties have lived in the household, as well as the income of the husband who is, in this case, the accused. He also said that in determining the living, it also looks at the habit of how much the husband provides for his wife when they are still together in the household

Drs. Mohammad Hafizh Bula, M.H, also explained the reasons for differences in the determination of post-divorce financial support, according to his statement:

*"The benchmark is from the ability of the husband, his job. If, for example, he has a large salary, we can grant him a large amount. But if the husband's salary is small, for example, the husband doesn't have any salary. Then we use the minimum regional income standard. It's also impossible that he doesn't have a job. It's impossible for him not to be able to eat. It's probably at least 400 thousand per month if it's normal. We use statistics at least per month."*³⁰

According to Drs. Mohammad Hafizh Bula, M.H., the reason for the difference in judges in determining the living as a result of divorce is the husband's ability, in this case, regarding his work and income. Suppose the husband doesn't have a job and salary at all, then according to Drs. Mohammad Hafizh Bula, M.H. uses minimal statistics for the parties' area.

³⁰ Drs. Mohammad Hafizh Bula M.H , Wawancara, 15 Nov 2022

As for the steps or ways of the judges of the Lumajang Religious Court determining the living as a result of divorce, Mr. Drs. Mohammad Hafizh Bula, M.H as the Judge, said that:

"We will see if he is nusyuz or not. If he is nusyuz, then we don't give him a living. If he is not nusyuz, then we decide we give it. Regarding the amount, it depends on the ability of the husband. Is it appropriate or not? Is it appropriate or not for us to burden husbands who can't afford it, so it's in vain."

According to his statement above, the judge's primary step in determining the living as a result of a divorce is seen from the perspective of whether the wife is nusyuz. If the wife, during her marriage to the husband who is going to divorce her, is found to have been nusyuz, maintenance will not be given. Conversely, if the wife behaves well and is not nusyuz, the judge can determine the husband's care for her.

Drs. H. Junaidi, M.H also provided information about the judge's steps in determining the nafaqat here, namely:

"Even though, for example, a living is not asked for, but for the benefit here, the judge has the ex-officio right to determine all the post-divorce living expenses, including the children's living expenses. It can also be seen that her husband has the ability, but he is reluctant. Yes, the assembly here should protect women's and children's rights. Mainly to see the knowledge of the husband."³¹

According to her statement, the judge's decision will decide whether the husband wants to provide alimony. In this case, the guidelines for judges in exercising ex-officio rights are contained in the conclusion of the Chief Justice of the Supreme Court of the Republic of Indonesia

³¹ Drs. H. Junaidi, M.H, Wawancara, 15 Nov 2022

Number: KMA/032/SK/IV/2006 concerning the application of Book II Guidelines for the Implementation of Duties and Administration of the Religious Courts, determined as follows: "Religious Court/ The Syar'iyah Court can ex officio determine the obligation to support the husband's iddah for his wife, as long as the wife is not proven to have committed nusyuz and determines the responsibility of mut'ah. This decision of the Supreme Court is an administrative decision that is individual and concrete in nature, in contrast to general and abstract regulations (applicability is addressed to anyone known for the formulation of general rules).³² In this issue regarding the ex officio right that a judge has in determining the husband's obligations to his wife in divorce cases, in which a husband can still have obligations towards his wife (support), the scale of this obligation for the husband is decided and considered by the judge based on his conscience and see the facts that occurred in a case.

Furthermore, to determine the living due to divorce, the judge also sees the husband's ability in terms of economics. The husband is able or not giving it to the wife. Although the ex-wife did not file a conflict of Iddah, the judge still had the right to determine and decide to give it because it was feared that if the living were not given, it would bring a description for the ex-wife when a divorce occurred. Although Article 189 paragraph (3) of the RBG explained, "Judges are required to try all lawsuits and prohibited from imposing decisions on cases that are not

³² Bambang Sutiyo, *Upaya Mewujudkan Hukum Yang Pasti dan Berkeadilan*. (Yogyakarta, UII Press, 2012) h 6

demanded or grant more than those sued." Because of the privileges the judge possesses because of his position, the considerations initially limited by the applicable judge rules are permitted because of the ex-office rights owned by the judge.

As for Drs. Ase Saepudin H provides information about the steps of the judge in determining post-divorce financial support as follows :

*"See his abilities, also prosecuted or not because everyone's character is different. The effectiveness of the decision must be implemented. The verdict is ineffective if it is charged, but the husband does not want to give it meaningfully. Suppose it is helpful for everything in determining this living. Especially seeing the ship, whether his wife needs it or not. "*³³

According to his statement, the most crucial thing in the judge's step here is to see the husband's ability. The judge has to look at both parties' conditions because everyone's character is different. He said that if it was not considered carefully, it was feared that there was fraud or exaggerated so that it would harm each other. He also sees the husband's ability to provide a living here as the effectiveness of implementing the decision. If the wife demands more, but the husband cannot provide a living, this is considered ineffective. According to him, determining this living is also helpful for all parties.

Furthermore, according to him, the consideration is the goodness of his wife. If, as long as they are married, the wife is good and obedient to her husband, then due to the divorce, the husband has the right to provide

³³ Drs. Ase Saepudin H, Wawancara, 15 Nov 2022

a living even when they are still married. It is a form of respect for women.

In the decision 1406/Pdt.G/2022/PA. Lmj, who became one of the samples above, Drs. Ase Saepudin H, one of the judges, decided that there was no mut'ah maintenance in it. In this case, he provides information:

"Because she didn't ask, because she wasn't asked, her husband didn't want to give it. Suppose you don't want to give it, fine. The judge must determine if the wife asks but the husband does not want to give. Because of that Consideration, you have to use a job."

According to his narrative, if the wife does not ask for mut'ah maintenance in a case like that in the sample, the husband may not give it because both are willing. If the wife asks for the care, but the husband doesn't want to give it, the judge will determine it here. The judge must adequately consider the condition of the husband. Considering it, the main thing is the husband's job because it is from this husband's work that one can see his ability to provide for his ex-wife economically. It must be considered carefully and correctly to achieve the common good.

3. The status of post-divorce rights in the perspective of *maslahah mursalah*

Article 41 letter c of Law Number 1 of 1974 states that a judge can oblige or charge a former husband to provide maintenance expenses or determine an obligation for his divorced wife. And they are also considering that the judge has ex officio rights regarding whether the

living should be given or not. It is a form of respecting and protecting women's rights after divorce.

These rules provide benefits for one party and both so they can carry out their rights and obligations properly. It also aligns with the regulations from the Al-Quran texts regarding providing post-divorce support to ex-wives, namely iddah and mut'ah maintenance contained in Surah Al-Baqarah verse 241.

In the example case number 913/Pdt.G/2022/PA.Lmj, the Judge considers determining the living level due to a talak divorce. In determining the level of these costs, the judge looks at it from the side of both parties. It is hoped that what the judge determines can benefit the parties. This consideration is one of the efforts to achieve benefit and will be more awake in the maintenance of maqashid sharia, namely:

a. Keep Religion

In this case, the judge determines that the provision of maintenance to the wife by the husband is in terms of maintaining religion because this is a religious order and is contained in the *Qur'an*

b. Guard the Soul

This provision of maintenance is one of the efforts to protect the soul because the judge gives what is the right of the wife to fulfill her life needs after divorcing her husband.

c. Keep Sense

Therefore, in case number 913/Pdt.G/ 2022/PA.Lmj is included in the level of *dharuriyat*, namely, maintaining the soul. Even if, judging from its nature, it is only temporary. Still, if it is accumulated between iddah and mut'ah maintenance, everything can be used for capital efforts to provide for the needs of the ex-wife's life in the future.

When viewed from the terms of *maslahah*, the judge's decision and even the consideration is a benefit that we can follow as a legal basis. We can analyze this against the conditions put forward by Imam Syatibi, which the author will describe in tabular form as follows:

| No | Maslahah conditions, according to Imam Syatibi's version | Judge's consideration on post-divorce financial Support |
|----|--|---|
| 1. | In line with what the syara' wants to achieve. | In syara' it is not regulated as to what the judge considers in determining the maintenance of a wife whose husband divorces her, especially regarding the appropriate amount. However, syara' governs the obligation of a husband who divorces his wife to provide a living and for entertainment. |
| 2. | Logical | In this case, of course, the judge will give reasonable consideration regarding the decision, which is adjusted to the economic conditions of both parties so that the judge will decide as somewhat as possible and can be accepted by reason and facts. |
| 3. | <i>Dharuriyah</i> and <i>hajiyyah maslahahs</i> | The Judge's Consideration of determining the living as a result of divorce is <i>maslahah dharuriyah</i> because it includes being able to |

| | | |
|----|---|---|
| | | meet daily needs during the <i>iddah</i> period |
| 4. | Can perfect life and eliminate the difficulties | Husband and wife who have a good marriage, then if they are separated, they should be on good terms too. Providing maintenance as a result of divorce by the husband is a form of attitude to maintain good relations with the ex-wife and the family that was cut off. It will give the impression of honor and a sense of responsibility as a husband at the end of their relationship. Of course, this will eliminate difficulties for wives undergoing the <i>iddah</i> period, especially if they have children. |

1.3 *maslahah mursalah*'s analysis by Imam Syatibi

Based on the analysis above, the authors believe that the Judge's Consideration of the determination of income as a result of divorce is a benefit. This analysis is in line with the judge's assessment which states that all the judge's considerations and decisions prioritize the benefit of both parties. It makes protecting their rights and carrying out obligations more accessible for each other.

CHAPTER V

CLOSING

A. Conclusion

1. The legal basis of the judge in determining the living as a result of divorce is when there is a claim from the party filing for divorce. If, in this case, the wife demands alimony because of the divorce, the husband must provide it. However, if there is no demand, the judge has the right to determine it because of the ex officio rights owned by looking at the economic facts of each party. Then the basis is contained in Article 149 of the Compilation of Islamic Law.
2. Because the difference in judges in determining the living as a result of divorce looks at whether the wife is nusyuz, the length of time the two parties have had a husband-and-wife relationship, and the husband's income demanded by his wife. In this case, you can also see the daily habit of earning a living when they were still together. The judge's steps in determining the residency due to divorce are the first to look at the condition of the wife's nusyuz or not. Next, look at the husband's income or his economic situation. In this case, the judge needs to consider both parties' economic facts to implement the decision's effectiveness which will be determined later.
3. The Judge's Consideration of post-divorce financial support as a result of divorce is critical to benefit the litigants and prevent harm to each

other. Therefore this is included in the *maslahah dharuriyah* because it includes being able to meet daily needs during the *iddah* period.

B. Suggestion

1. Judge

- a. Judges are expected to be more careful in deciding cases related to the wife's rights in divorce cases and should not only consider economic factors but also consider the psychological factors of both parties, especially the wife.
- b. Even though judges can decide cases that are not asked for, the judge should give reasons for consideration to the community so that it does not appear to choose at will.

2. Public

The husband (plaintiff) should pay more attention to the wife's sufficient, proper, and fulfilling life after the divorce. The wife (defendant) is expected to know more about her rights if her husband divorces her, and when she asks for her rights, she should see her husband's condition.

3. Further Researcher

For future researchers, if they want to research with the same theme and discussion, they should look for different informants and perspectives so that they seem newer, more innovative, and more complete.

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APPENDIXES

Appendix 1: Research Approval Letter


PENGADILAN AGAMA LUMAJANG
 Jalan Soekarno Hatta No. 11 Sukodono – Lumajang
 Telp. / Fax. (0334) 8781874
 Email : pa.lumajang@gmail.com
 LUMAJANG – 67352

SURAT KETERANGAN TELAH MELAKUKAN PENELITIAN
 Nomor : W.13-AB/Hk.05/3149/11/2022

Yang bertanda tangan dibawah ini :

Nama : H. TEGUH SANTOSO, S.H
 Jabatan : Panitera Muda Hukum Pengadilan Agama Lumajang.
 Alamat Kantor : Jl. Soekarno-Hatta Nomor 11 Sukodono Lumajang

Dengan ini menerangkan bahwa Mahasiswa yang identitasnya :

Nama : Amaliatus Sholikhah
 NIM : 19210182
 Program Studi : Fakultas Syari'ah/Hukum Keluarga Islam Universitas
 Islam Negeri Maulana Malik Ibrahim Malang
 Jenjang : Strata 1 / S1

Telah selesai melakukan Penelitian di Kantor Pengadilan Agama Lumajang, selama 3 (tiga) hari terhitung mulai tanggal 11 November 2022 sampai dengan tanggal 15 November 2022 untuk memperoleh data dalam rangka penyusunan Skripsi yang berjudul ***Judge's Consideration on Determining A Living Due to Divorse (Study at The Religion Court of Lumajang Regency)***

Demikian surat keterangan ini dibuat dan diberikan kepada yang bersangkutan untuk dipergunakan sebagaimana mestinya

Lumajang, 15 November 2022
 An. Panitera
 Panitera Muda Hukum

H. TEGUH SANTOSO, S.H.
 NIP. 196808141992031001

Appendix 2: Interview Photos

a. Interview with the Judge Drs. Ase Saepudin H



b. Interview with the Judge Drs. Mohammad Hafizh Bula, M.H



c. Interview with the Judge Drs. H. Junaidi, M.H.





PUTUSAN

Nomor 913/Pdt.G/2022/PA.Lmj

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Agama Lumajang yang memeriksa dan mengadili perkara tertentu pada tingkat pertama dalam sidang Majelis telah menjatuhkan putusan sebagai berikut dalam perkara Cerai Talak antara:

PEMOHON, umur 42 tahun, agama Islam, pendidikan SD, pekerjaan xxxxxxxxxx, tempat kediaman di KABUPATEN LUMAJANG, sebagai **Pemohon**;

Melawan:

TERMOHON, umur 37 tahun, agama Islam, pendidikan SLTP, pekerjaan xxxxxxxx xxxxx xxxxxx, tempat kediaman di KABUPATEN LUMAJANG, sebagai **Termohon**;

Pengadilan Agama tersebut;

Telah membaca dan mempelajari berkas perkara;

Telah mendengar keterangan Pemohon dan Termohon;

Telah memeriksa alat-alat bukti di persidangan;

DUDUK PERKARA

Menimbang, bahwa Pemohon dengan surat permohonannya tertanggal 30 Maret 2022 yang telah terdaftar di Kepaniteraan Pengadilan Agama Lumajang dengan register perkara Nomor 913/Pdt.G/2022/PA.Lmj, mengemukakan dalil-dalil sebagai berikut:

1. Bahwa pada tanggal 11 Juni 2015, Pemohon dengan Termohon melangsungkan pernikahan yang dicatat oleh Pegawai Pencatat Nikah Kantor Urusan Agama Kecamatan Sukodono Kabupaten Lumajang (Kutipan Akta Nikah Nomor : 252/033/VI/2015 berdasarkan surat keterangan dari KUA Kecamatan Sukodono Kabupaten Lumajang Nomor: B-108/Kua.13.05.02/PW.01/3/2022 tanggal 29 Maret 2022);

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2. Bahwa setelah pernikahan tersebut Pemohon dengan Termohon bertempat tinggal di rumah orangtua Termohon hingga Januari 2022. Selama pernikahan tersebut Pemohon dengan Termohon telah hidup rukun sebagaimana layaknya suami istri dan dikaruniai 1 orang anak bernama Rivaldy Eka Prasetya Wahyono, umur 6 tahun ikut Tergugat;
3. Bahwa semula rumah tangga Pemohon dan Termohon rukun baik akan tetapi kurang lebih sejak bulan November tahun 2021 ketentraman rumah tangga Pemohon dengan Termohon mulai goyah, setelah antara Pemohon dengan Termohon terus menerus terjadi perselisihan dan pertengkaran yang penyebabnya antara lain :
 - a. Termohon seringkali menuntut nafkah lebih di luar kemampuan Pemohon;
4. Bahwa puncak perselisihan dan pertengkaran antara Pemohon dengan Termohon tersebut terjadi kurang lebih pada bulan Januari tahun 2022, yang akibatnya Pemohon pergi meninggalkan Termohon dan pulang ke rumah orangtua Pemohon sendiri dengan alamat sebagaimana tersebut di atas sehingga pisah tempat tinggal selama 2 bulan hingga sekarang dan selama itu tidak ada hubungan lagi baik lahir maupun batin;
5. Bahwa hal tersebut diatas Pemohon sudah tidak tahan lagi dengan rumah tangganya hingga kemudian mengajukan Permohonan ini;
6. Bahwa Pemohon sanggup membayar seluruh biaya yang timbul akibat perkara ini;

Bahwa berdasarkan dalil-dalil tersebut di atas, Pemohon mohon kepada Ketua Pengadilan Agama Lumajang cq. Majelis Hakim untuk memeriksa dan mengadili perkara ini dan selanjutnya dapat memutuskan sebagai berikut:

Primair :

1. Mengabulkan permohonan Pemohon;
2. Memberi ijin kepada Pemohon untuk mengucapkan talak terhadap Termohon dihadapan sidang Pengadilan Agama Lumajang;
3. Menetapkan biaya perkara sesuai dengan peraturan yang berlaku;

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Subsidair :

Atau menjatuhkan putusan lain yang seadil-adilnya;

Bahwa selanjutnya Majelis Hakim telah berusaha maksimal untuk mendamaikan kedua belah pihak berperkara, dengan menasehati Pemohon dan Termohon agar bersedia rukun kembali dan tidak melakukan perceraian, namun tidak berhasil. Begitu pula telah dilakukan upaya mediasi diluar persidangan, dengan menunjuk : Dr. H. M. Agus Syaifullah, S.H., M.H., sebagai Mediator. Namun dari laporannya tertanggal 06 April 2022, telah berhasil mencapai kesepakatan sebagian sebagaimana termuat dalam berita acara persidangan ;

Bahwa selanjutnya pemeriksaan perkara ini dimulai dengan membacakan surat permohonan Pemohon tersebut, yang isinya tetap dipertahankan oleh Pemohon ;

Bahwa terhadap permohonan Pemohon tersebut, Termohon telah mengajukan jawaban secara lisan yang pada pokoknya sebagai berikut :

DALAM KONVENSI

- ☐ Bahwa Termohon tidak membantah seluruh dalil-dalil permohonan Pemohon;
- ☐ Bahwa memang benar rumah tangga Pemohon dan Termohon sejak bulan November tahun 2021 sering terjadi perselisihan dan pertengkaran namun tidak benar disebabkan karena Termohon menuntut nafkah karena Termohon bekerja sendiri;
- ☐ Bahwa Termohon tidak keberatan bercerai dengan Pemohon

DALAM REKONVENSI

- ☐ Bahwa Termohon menuntut hak-haknya sesuai dengan kesepakatan yang telah disepakati antara Pemohon dan Termohon di hadapan mediator yaitu :
 1. Nafkah iddah sebesar Rp1.500. 000,00 (satu juta lima ratus ribu rupiah) ;
 2. Mut'ah sebesar Rp500.000,00 (lima ratus ribu rupiah);

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3. Nafkah anak sebesar Rp500.000,00 (empat ratus ribu rupiah) per bulan
4. Hak asuh anak ada pada Termohon selaku ibu kandung nya, jika sudah dewasa anak berhak untuk memilih akan ikut Pemohon dan Termohon ;
5. Biaya pendidikan dan kesehatan anak ditanggung oleh Pemohon dan dibantu Termohon ;

Bahwa terhadap jawaban Termohon dan sekaligus Gugatan Rekonvensi sebagaimana tersebut, Pemohon mengajukan Replik dan jawaban Rekonvensi secara lisan yang pada pokoknya sebagai berikut :

DALAM KONVENSI

1. Bahwa Pemohon tetap dalam Permohonan Pemohon dan tidak mau rukun kembali dengan Termohon;

DALAM REKONVENSI

Bahwa Pemohon dalam Konvensi/Tergugat dalam Rekonvensi sanggup memenuhi hak-hak Termohon/Penggugat dalam rekonvensi sebagaimana yang telah terjadi kesepakatan di hadapan mediator;

Bahwa untuk menguatkan dalil-dalil permohonannya, Pemohon tersebut telah mengajukan bukti-bukti sebagai berikut :

Bukti-bukti Surat :

1. Fotocopy Kartu Tanda Penduduk atas nama Heru Wahyoni NIK 3508102806790007, tanggal 02-2-2022 dengan meterai cukup dan sesuai dengan aslinya (P.1);
2. Fotocopy Kutipan Akta Nikah Nomor 0252/033VI/2015 tanggal 11 Juni 2015 yang dikeluarkan oleh Kantor Urusan Agama Kecamatan Sukodono, Kabupaten Ludes dengan meterai cukup dan sesuai dengan aslinya (P.2);

Saksi-saksi :

1. SAKSI 1 umur 43 tahun, agama Islam, pekerjaan xxxxxx, tempat kediaman di Jalan Darungan, Desa Bulukubung, RT 020/RW005 Desa

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Kalisemut Kecamatan Padang, Kabupaten Lumajang bawah sumpah memberikan keterangan yang pada pokoknya sebagai berikut

- ☐ Bahwa saksi kenal Pemohon dan Termohon karena saksi adalah tetangga Pemohon;
- ☐ Bahwa setelah menikah Pemohon dan Termohon bertempat tinggal di rumahorang tuāTermohon selama 7 tahun dan telah dikaruniai seorang anak;
- ☐ Bahwa Sejak bulanNovember tahun 201 Pemohon dan Termohon sudah mulai terjadi perselisihan ;
- ☐ Bahwasaat ini Pemohon dan Termohon sudah pisah rumah sejak Januari 202dan selama itu tidak pernah ada hubungan lagi
- ☐ Bahwa saksi mengetahui sendiri hal tersebut karena saya melihat sendiri pertengkarnya
- ☐ Bahwa saksi mengetahui antara Pemohon dan Termohon telah terjadi perselisihan dan pertengkaran yang disebabkanTermohon menuntut nafkah lebih dari Pemohon;
- ☐ Bahwa pihak keluarga sudah berusaha menasehati Pemohon supaya rukun kembali dengan Termohon, namun tidak berhasil ;

2. SAKSD, umur 50 tahun, agama Islam, pekerjaan Swasta, tempat kediaman di Jl. Pakelan RT 016/RW006 Desa Tanggung Kecamatan Padang Kabupaten Lumajadibawah sumpah memberikan keterangan yang pada pokoknya sebagai berikut

- ☐ Bahwa saksi kenal Pemohon dan Termohon karena saksi adalah tetangga Pemohon;
- ☐ Bahwa setelah menikah Pemohon dan Termohon bertempat tinggal di rumahorang tuāTermohon selama 7 tahun;
- ☐ Bahwa saksi tahantara Pemohon dan Termohon adalah suami istri dan telah dikaruniaiorang anak
- ☐ Bahwasaat ini Pemohon dan Termohon sudah pisah rumah sejak Januari 202dan selama itu tidak pernah ada hubungan lagi
- ☐ Bahwa saksi mengetahui sendiri hal tersebut karena saya melihat sendiri pertengkarnya

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☐ Bahwa saksi mengetahui antara Pemohon dan Termohon telah terjadi perselisihan dan pertengkaran yang disebabkan Pemohon merasa nafkah dari Termohon tidak cukup;

☐ Bahwa pihak keluarga sudah berusaha menasehati Pemohon supaya rukun kembali dengan Termohon, namun tidak berhasil ;

Bahwa selanjutnya Pemohon menyampaikan tidak ada lagi bukti yang akan diajukan dan menyampaikan kesimpulan bahwa Pemohon tetap pada permohonan talaknya dan menyatakan tetap pada kesanggupannya atas gugatan rekonsvansi yang diajukan oleh Termohon konvensi / Penggugat Rekonsvansi;

Bahwa Termohon tidak mengajukan bukti apapun walau telah diberikan kesempatan untuk itu serta tidak juga mengajukan kesimpulan;

Bahwa untuk mempersingkat uraian dalam putusan ini, Majelis Hakim cukup menunjuk pada hal-hal sebagaimana tertuang dalam berita acara sidang ini sebagai satu kesatuan yang tidak dapat dipisahkan, yang selanjutnya dianggap termuat dalam putusan ini ;

PERTIMBANGAN HUKUM

DALAM KONVENSI

Menimbang, bahwa maksud dan tujuan permohonan Pemohon adalah sebagaimana diuraikan di atas ;

Menimbang, bahwa pada persidangan yang telah ditetapkan, Pemohon dan Termohon secara inperson datang menghadap di persidangan ;

Menimbang, bahwa selanjutnya Majelis Hakim telah cukup berusaha mendamaikan kedua belah pihak berperkara, baik dalam persidangan dengan menasehati Pemohon dan Termohon, agar bersedia rukun kembali dan tidak melakukan perceraian, maupun melalui upaya mediasi diluar persidangan, dengan menunjuk Dr. H. M. Agus Syaifullah, S.H., sebagai Mediator untuk memenuhi maksud PERMA Nomor 1 Tahun 2016, namun upaya-upaya tersebut ternyata tidak berhasil ;

Menimbang, meskipun upaya untuk mendamaikan Pemohon dan Termohon tidak berhasil namun telah terjadi kesepakatan antara pemohon dan

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termohon sebagaimana telah termuat dalam jawab jinawab dan berita acara sidang;

Menimbang, bahwa permohonan Pemohon pada pokoknya mohon diberi ijin untuk menjatuhkan talak satu raj'i terhadap Termohon dengan alasan bahwa sejak bulan November tahun 2021 yang Pemohon dan Termohon rumah tangganya sering terjadi perselisihan dan pertengkaran di sebabkan Termohon seringkali menuntut nafkah lebih di luar kemampuan Pemohon, sehingga sejak saat itu antara Pemohon dan Termohon telah terjadi pisah rumah, maka berdasarkan keadaan tersebut Pemohon merasa sudah tidak sanggup membangun mahlilai rumah tangga bersama Termohon dan mengajukan permohonan talak ini ;

Menimbang, bahwa atas permohonan Pemohon tersebut, Termohon memberikan jawaban pada pokoknya sebagai berikut :

Menimbang, bahwa atas permohonan Pemohon tersebut, Termohon memberikan jawaban pada pokoknya sebagai berikut :

DALAM KONVENSİ

- ☐ Bahwa Termohon tidak membantah seluruh dalil-dalil permohonan Pemohon;
- ☐ Bahwa memang benar rumah tangga Pemohon dan Termohon sejak bulan November tahun 2021 sering terjadi perselisihan dan pertengkaran namun tidak benar disebabkan karena Termohon menuntut nafkah karena Termohon bekerja sendiri;
- ☐ Bahwa Termohon tidak keberatan bercerai dengan Pemohon

DALAM REKONVENSİ

- ☐ Bahwa Termohon menuntut hak-haknya sesuai dengan kesepakatan yang telah disepakati antara Pemohon dan Termohon di hadapan mediator yaitu :
 1. Nafkah iddah sebesar Rp1.500. 000,00 (satu juta lima ratus ribu rupiah) ;
 2. Mut'ah sebesar Rp500.000,00 (lima ratus ribu rupiah);
 3. Nafkah anak sebesar Rp500. 000,00 (empat ratus ribu rupiah) per bulan

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4. Hak asuh anak ada pada Termohon selaku ibu kandung nya, jika sudah dewasa anak berhak untuk memilih akan ikut Pemohon dan Termohon ;
5. Biaya pendidikan dan kesehatan anak ditanggung oleh Pemohon dan dibantu Termohon ;

Menimbang Bahwa terhadap jawaban Termohon sebagaimana tersebut di atas, Pemohon telah menyampaikan Replik yang pada pokoknya sebagai berikut :

DALAM KONVENSI

- ☐ Bahwa Pemohon tetap dalam Permohonan Pemohon dan tidak mau rukun kembali dengan Termohon;

DALAM KONVENSI

- ☐ Bahwa Pemohon dalam Konvensi/Tergugat dalam Rekonvensi akan memenuhi hak-hak Termohon sebagaimana telah terjadi kesepakatan di hadapan mediator, bahwa untuk menguatkan dalil-dalil permohonannya, Pemohon tersebut telah mengajukan bukti-bukti sebagai berikut :

Menimbang Bahwa terhadap replik Pemohon sebagaimana tersebut di atas, Termohon tidak menyapaikan duplik;

Menimbang Bahwa untuk meneguhkan dalil-dalil permohonannya, Pemohon telah mengajukan alat bukti surat yakni P.1 dan P.2, serta dua orang saksi;

Menimbang, bahwa bukti P.1 berupa fotokopi Kartu Tanda Penduduk atas nama Pemohon yang dikeluarkan oleh pejabat yang berwenang, bermeterai cukup dan ternyata sesuai dengan aslinya, yang isinya menerangkan bahwa Pemohon adalah beragama Islam, sehingga bukti tersebut telah memenuhi syarat formil dan materiil, oleh karena itu bukti tersebut dapat diterima sebagai alat bukti dan mempunyai nilai pembuktian;

Menimbang, bahwa berdasarkan bukti P.1 tersebut telah terbukti bahwa Pemohon beragama Islam dan perkawinannya bidang perkawinan serta Termohon bertempat tinggal di wilayah hukum Pengadilan Agama Lumajang, dengan demikian berdasarkan Pasal 49 huruf (a) dan Pasal 66 ayat (1) dan (2) Undang-undang Nomor 7 Tahun 1989 tentang Peradilan Agama sebagaimana

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diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009, maka perkara a quo merupakan kewenangan relatif Pengadilan Agama Lumajang ;

Menimbang, bahwa bukti P.2 berupa fotokopi akta nikah atas nama Pemohon dan Termohon, bermeterai cukup dan cocok dengan aslinya, isi bukti tersebut menjelaskan mengenai pelaksanaan pernikahan Pemohon dan Termohon, sehingga bukti tersebut telah memenuhi syarat formil dan materiil, oleh karena itu bukti tersebut dapat diterima sebagai alat bukti dan mempunyai nilai pembuktian ;

Menimbang, bahwa berdasarkan bukti P.2 tersebut yang merupakan akta otentik, maka bukti tersebut mempunyai kekuatan pembuktian yang sempurna dan mengikat, oleh karena itu telah terbukti bahwa Pemohon dan Termohon telah terikat oleh pernikahan yang sah;

Menimbang, bahwa oleh karena dalil-dalil permohonan Pemohon tersebut didasarkan atas terjadinya perselisihan dan pertengkaran antara Pemohon dengan Termohon, maka untuk memperoleh putusannya Majelis Hakim harus mendengar keterangan dari saksi-saksi keluarga/orang dekat Pemohon dan Termohon, sebagaimana yang dikehendaki oleh pasal 22 ayat (2) Peraturan Pemerintah Nomor 9 Tahun 1975, jo pasal 76 ayat (1) Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama ;

Menimbang, bahwa saksi 1 dan saksi 2 Pemohon, sudah dewasa dan sudah disumpah, sehingga memenuhi syarat formal sebagaimana diatur dalam Pasal 145 ayat 1 angka 3e dan Pasal 147 HIR;

Menimbang, bahwa keterangan saksi 1 dan saksi 2 Pemohon sebagaimana terurai dalam duduk perkara di atas bersesuaian antara satu dengan yang lain oleh karena itu keterangan dua orang saksi tersebut memenuhi Pasal 171 dan Pasal 172 HIR;

Menimbang, bahwa berdasarkan dalil-dalil permohonan Pemohon, jawaban Termohon serta bukti-bukti yang diajukan Pemohon dan Termohon tersebut, Majelis Hakim memperoleh fakta-fakta yang telah dikonstatir sebagai berikut:

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1. Bahwa Pemohon dan Termohon adalah suami istri sah dan telah dikaruniai satu orang anak;
2. Bahwa rumah tangga Pemohon dan Termohon akhir-akhir ini tidak harmonis, sering terjadi perselisihan dan pertengkaran yang sulit dirukunkan kembali hingga terjadi pisah rumah selama kurang lebih lima bulan ;
3. Bahwa yang menjadi sebab pertengkaran Pemohon dan Termohon adalah karena Termohon seringkali menuntut nafkah lebih di luar kemampuan Pemohon
4. Bahwa upaya damai terhadap konflik rumah tangga Pemohon dengan Termohon telah dilakukan oleh mediator serta majelis hakim yang menyidangkan perkara ini, namun tidak berhasil ;

Menimbang, bahwa dari fakta-fakta tersebut di atas, Majelis Hakim berpendapat bahwa rumah tangga antara Pemohon dengan Termohon sudah pecah (broken married), dengan telah terpecahnya hati antar keduanya, tidak adanya rasa saling mencintai, saling menyayangi dan saling mempercayai satu sama lainnya hingga terjadinya perpindahan tempat tinggal antara Pemohon dan Termohon dan nampaknya rumah tangga tersebut sulit untuk dirukunkan / disatukan kembali seperti semula. Sehingga tujuan perkawinan untuk membentuk rumah tangga yang sakinah, mawaddah warramah sebagaimana yang dikehendaki oleh Al-qur'an surta ar-Rum ayat 21, dan juga pasal 1 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, sulit terwujud, oleh karena itu apabila kondisi perkawinan yang demikian tidak dicarikan penyelesaiannya maka akan menambah mudhorot bagi kehidupan lahir bathin Pemohon dan Termohon, maka perceraian merupakan jalan terakhir yang perlu ditempuh, sesuai dengan kaidah fiqihyah yang berbunyi :

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Artinya : Mencegah hal-hal yang negatif lebih didahulukan daripada mengejar hal-hal yang positif ;

Menimbang bahwa berdasarkan bukti-bukti tersebut di atas dan keterangan saksi keluarga sebagaimana maksud pasal 22 (2) Peraturan Pemerintah No. 9 tahun 1975, majelis hakim berkesimpulan bahwa dalil

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permohonan ikrar talak pemohon telah terbukti dan memenuhi maksud pasal 19 huruf f Peraturan Pemerintah No. 9 tahun 1975 jo pasal 116 huruf f Kompilasi Hukum Islam yang merupakan salah satu alasan perceraian, oleh karenanya berdasarkan ketentuan Pasal 39 ayat (2) Undang-Undang No. 1 tahun 1974 jo Pasal 70 ayat (1) Undang-Undang Nomor 7 tahun 1989, permohonan tersebut dapat dikabulkan, sedang untuk perceraian mana sesuai dengan hak dan permohonan Pemohon, Majelis Hakim perlu menetapkan dengan mengizinkan Pemohon mengucapkan Ikrar talak terhadap Termohon di hadapan sidang Pengadilan Agama Lumajang ;

Menimbang, bahwa selama perkawinan Pemohon dan Termohon telah bergaul layaknya suami isteri (ba'dad dukhul), dan tidak pernah bercerai, maka berdasarkan pasal 118 Kompilasi Hukum Islam talak yang dijatuhkan Pemohon atas diri Termohon adalah talak satu raj'i

Menimbang, bahwa berdasarkan pada pertimbangan-pertimbangan tersebut di atas, maka Majelis Hakim berkesimpulan bahwa permohonan Pemohon cukup beralasan maka petitum angka 2 dalam permohonan Pemohon patut dikabulkan, dengan memberi ijin kepada Pemohon untuk menjatuhkan talak satu raj'i terhadap Termohon di depan sidang Pengadilan Agama Lumajang, sebagaimana dimaksud dalam pasal 70 Undang-Undang Nomor 7 Tahun 1989 dan pasal 117 Kompilasi Hukum Islam ;

DALAM REKONVENSII

Menimbang, bahwa maksud dan tujuan gugatan Rekonvensi Penggugat adalah sebagaimana terurai di atas ;

Menimbang, bahwa selanjutnya dalam rekonvensi ini semula Termohon disebut sebagai Penggugat (dalam Rekonvensi), sedangkan Pemohon disebut sebagai Tergugat (dalam Rekonvensi);

Menimbang, bahwa apa-apa yang telah dipertimbangkan dalam Konvensi, merupakan satu kesatuan yang tidak terpisahkan dalam Rekonvensi ini sepanjang ada relevansinya;

Menimbang bahwa sebelum Majelis mempertimbangkan pokok gugatan rekonvensi, Majelis berpendapat terlebih dahulu mempertimbangkan syarat formil gugatan rekonvensi;

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Menimbang bahwa oleh karena gugatan rekonvensi Penggugat telah memenuhi maksud Pasal 132 HIR, yakni diajukan pada tahap jawaban, maka Majelis berpendapat, oleh karena gugatan rekonvensi a quo telah memenuhi syarat formil, maka Majelis menyatakan gugatan rekonvensi a quo dapat diterima;

Menimbang, bahwa Penggugat dalam jawabannya dan duplik serta kesimpulannya, disamping menjawab pokok perkaranya, juga telah mengajukan gugatan Rekonvensi yang oleh majelis hakim disimpulkan sebagai berikut :

1. Nafkah iddah sebesar Rp1.500. 000,00 (satu juta lima ratus ribu rupiah) ;
2. Mut'ah sebesar Rp500.000,00 (lima ratus ribu rupiah);
3. Nafkah anak sebesar Rp500. 000,00 (empat ratus ribu rupiah) per bulan
4. Hak asuh anak ada pada Termohon selaku ibu kandung nya, jika sudah dewasa anak berhak untuk memilih akan ikut Pemohon dan Termohon ;
5. Biaya pendidikan dan kesehatan anak ditanggung oleh Pemohon dan dibantu Termohon ;

Menimbang bahwa nafkah hadhonah atas anak tersebut sebagaimana dictum angka 4 yang wajib diberikan oleh Pemohon kepada Termohon adalah sejak putusan ini dibacakan hingga anak-anak tersebut dewasa atau berumur 21 tahun, dengan kenaikan sebesar 10% setiap tahunnya;

Menimbang, bahwa untuk menjamin kepastian pelaksanaan pembayarannya, maka Majelis perlu menghukum Pemohon agar melaksanakan pembayaran sebagaimana pada dictum nomor 2 dan 3 tersebut dibayarkan sesaat sebelum ikrar talak dijatuhkan. Pertimbangan Majelis di dasarkan atas rasa keadilan dan juga dalam rangka tercapainya kepastian hukum dan memenuhi *prinsip sederhana, cepat, dan biaya ringan* sebagaimana diamanatkan oleh Pasal 2 ayat (4) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman;

DALAM KONVENSI DAN REKONVENSI

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Menimbang, bahwa berdasarkan pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama, yang telah diubah dengan Undang-Undang Nomor 3 Tahun 2006, dan perubahan yang ke dua dengan Undang-Undang Nomor 50 Tahun 2009, maka semua biaya perkara ini harus dibebankan kepada Pemohon Konvensi/Tergugat Rekonvensi ;

Memperhatikan segala ketentuan perundang-undangan yang berlaku, serta hukum syara' yang berkaitan dengan perkara ini ;

M E N G A D I L I

DALAM KONVENSI

1. Mengabulkan permohonan Pemohon ;
2. Memberi ijin kepada Pemohon (PEMOHON) untuk menjatuhkan talak satu raj'i terhadap Termohon (TERMOHON) di depan sidang Pengadilan Agama Lumajang ;

DALAM REKONVENSI

1. Mengabulkan gugatan Penggugat seluruhnya;
2. Menghukum Tergugat untuk membayar kepada Penggugat Nafkah iddah sebesar Rp. 1.500. 000,- (satu juta lima ratus ribu rupiah) ;
3. Menghukum Tergugat untuk membayar kepada Penggugat Mut'ah sebesar Rp. 500.000,- (lima ratus ribu rupiah) ;
4. Menghukum Tergugat untuk membayar kepada Penggugat Nafkah anak sebesar 500.000,- (lima ratus ribu rupiah) perbulan ;
5. Menetapkan Hak asuh anak diberikan kepada Termohon/Penggugat Rekonvensi selaku ibu kandung nya, jika sudah dewasa anak berhak untuk memilih akan ikut Pemohon dan Termohon ;
6. Menetapkan Biaya pendidikan dan kesehatan anak ditanggung oleh Pemohon/Tergugat rekonvensi dan dibantu Termohon/Penggugat rekonvensi ;

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7. Menghukum Pemohon agar melaksanakan pembayaran sebagaimana pada dictum nomor 2 dan 3 tersebut dibayarkan sesaat sebelum ikrar talak dijatuhkan ;

DALAM KONVENSI DAN REKONVENSI

Membebaskan kepada Pemohon Konvensi/Tergugat Rekonvensi untuk membayar biaya perkara sebesar Rp. 585.000,00 (lima ratus delapan puluh lima ribu rupiah)

Demikianlah diputuskan dalam musyawarah Majelis Hakim Pengadilan Agama Lumajang pada hari Rabu tanggal 11 Mei 2022 Masehi bertepatan dengan tanggal 10 Syawal 1443y oleh Drs. H. Muhammad Zainuri, M.H. sebagai Ketua Majelis, Drs. Muhammad Hafizh Bula, M.H., dan Junaidi, M.H. masing-masing sebagai Hakim Anggota, putusan tersebut diucapkan pada hari itu juga dalam sidang terbuka untuk umum oleh Ketua Majelis beserta para Hakim Anggota tersebut, dan didampingkan oleh Ambar Budi Utomo, S.H. sebagai Panitera Pengganti, tanpa dihadiri oleh Pemohon Konvensi /Tergugat Rekonvensi dan Termohon Konvensi/Penggugat Rekonvensi;

Hakim Anggota

Ketua Majelis ,

Drs. Mohammad Hafizh Bula, M.H.
Hakim Anggota

Drs. A. Junaidi, M.H.I

Panitera Pengganti,

Ambar Budi Utomo, S.H.

Perincian biaya :

- Pendaftaran : Rp30.000,00
- ATK Perkara : Rp75.000,00

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- Panggilan : Rp440.000,00
 - Biaya PNBP Pihak Rp20.000,00
 - Redaksi : Rp10.000,00
 - Meterai : Rp10.000,00
- J u m l a h : Rp 585.000,00
(lima ratus delapan puluh lima ribu)rupiah

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CURRICULUM VITAE



PERSONAL INFORMATION

| | |
|-----------------------------|---|
| Name | Amaliatus Sholikhah |
| SIN | 19210182 |
| Place, Date of Birth | Lumajang, January 12 nd 2001 |
| Address | Dusun Kedung Pakis RT 08 / RW01 Desa Pasirian, Kecamatan Pasirian, Kabupaten Lumajang, Jawa Timur, 67372. |
| Phone Number | +62 857-4930-8412 |
| Email | amaliatush12@gmail.com |
| Religion | Islam |
| Gender | Female |

FORMAL EDUCATION

| No | School/Institute | Major | Period |
|-----------|---|--------------------|---------------|
| 1. | TK Muslimat NU Nurul Islam Bades | - | 2005-2007 |
| 2. | MI Nurul Islam 02 Bades | - | 2007-2013 |
| 3. | MTs NU Nurul Islam Bades | - | 2013-2016 |
| 4. | MAN 1 Kota Malang | Religion | 2016-2019 |
| 5. | Strata 1 (S-1) UIN Maulana Malik Ibrahim Malang | Islamic Family Law | 2019-2023 |
| 6. | Strata 1 (S-1) Ma'had Aly Zamachsyari | Fiqh Nisa' | 2020-2023 |

NON FORMAL EDUCATION

| No | School/Institute | Major | Period |
|-----------|---|--------------|---------------|
| 1. | Pondok Pesantren Ar-Rohmah Putri Bades – Lumajang | - | 2013-2016 |
| 2. | Ma'had Darul Hikmah MAN 1 Kota Malang | - | 2016-2019 |
| 3. | Ma'had Sunan Ampel Al-Aly | - | 2019-2020 |
| 4. | Ma'had Al-Jami'ah Al-Aly | - | 2020-Now |