

# Analysis of Iddah Maintenance Provision for Divorce Lawsuit in Sema Number 3 of 2018 of the Maslahah Mursalah Perspective

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## Abstract

*SEMA Number 3 of 2018 in the Legal Formulation of the Religious Chamber Point A Number 3, states that a wife in a divorce case can be sued for iddah as long as it is not proven that she can receive nusyuz even though in Islamic law it is stated that iddah maintenance cannot be given because of divorce on the wife's initiative. This provision can be a legal protection for wives who need post-divorce support. However, in practice there are still many decisions that do not accommodate this. Therefore, it is necessary to review whether the provisions of iddah and mut'ah maintenance in the case of divorce lawsuit are maslahah? Therefore, this study will analyze the terms of living iddah in the formulation of SEMA No. 3 of 2018 with the maslahah mursalah approach. It can be understood that the imposition of iddah and mut'ah as a form of protection for the wife in a contested divorce, when reviewing the suitability (munasib) between the benefits referred to by Maqasid as-Syariah as a form of protection for the wife in a divorce, is part of the maslahah daruriyyah. In this case it is to protect the soul (Hifzh an-Nafs) from limitations in meeting the necessities of life, especially food for wives who are undergoing their iddah period.*

**Keywords:** Iddah maintenance, divorce lawsuit, *Maslahah Mursalah*

## A. Introduction

The occurrence of divorce between husband and wife certainly brings legal consequences for each party. There are rights and obligations that must be fulfilled, especially the right to the wife in the form of post-divorce support. As stated in Article 149 letters a and b of the Compilation of Islamic Law, the husband must carry out his responsibilities or obligations in the form of providing iddah maintenance (Syaiful, 2017, p.14). provisions for this imposition are also regulated in Law no. 1 of 1974.<sup>1</sup>

In the Compilation of Islamic Law, the obligation to provide iddah maintenance only applies to talaq divorce imposed by husbands on wives. However, it does not give the obligation to provide iddah in divorce cases filed by the wife against the husband. Thus, in practice the wife who files for divorce to the Religious Court does not get iddah and *mut'ah* from her ex-husband. Of course

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<sup>1</sup> Law Number 1 of 1974 concerning Marriage, Article 41 letter c.

this becomes problematic which is then assumed to be gender inequality between men and women.

In connection with the demand for equality, the Supreme Court (MA) then issued PERMA (Supreme Court Regulation) No. 3 of 2017 concerning guidelines for trying cases of women facing the law. Then in 2018 the Supreme Court followed up on PERMA Number 3 of 2017 concerning Guidelines for Trying Cases of Women Confronting the Law by issuing SEMA (Supreme Court Circular Letter) No. 3 of 2018, especially the section on the Legal Formulation of the Religious Chamber Point A Number 3, which accommodates PERMA Number 3 of 2017, that the wife in a contested divorce case can be given *mut'ah* and living iddah as long as it is not proven to be *nusyuz*.

With the issuance of the above regulation, it should be a guideline for judges in deciding divorce cases, especially in contested divorce cases since the enactment of this regulation. However, based on observations through the Supreme Court Ruling Directory page, researchers still found a divorce case decision to be sued in 2022 (after the issuance of SEMA No. 3 of 2018), namely in Decision Number 107/Pdt.G/2022/PA.Btl, in adjudicating This divorce case is considered to have ignored SEMA Number 3 of 2018 ([mahkamahagung.go.id](http://mahkamahagung.go.id)., 2021). In his decision, the judge only granted the lawsuit by imposing a *ba'in sughro* defendant on the plaintiff and charging the plaintiff with court costs. Meanwhile, in the principal case, there was no indication of *nusyuz* by the wife against her husband. In addition, the plaintiff's attorney even filed a living claim in his petitem. So it is interesting to study regarding the urgency of the SEMA provisions in terms of the theory of *masalah mursalah*, bearing in mind that there are still several decisions that ignore the consideration of living iddah in cases of contested divorce.

## **B. Results and Discussion**

### **1. Iddah Maintenance in The Islamic Law Studies**

Compilation of Islamic Law (KHI) states that the husband's obligation to his wife as a legal result of the dissolution of marriage due to divorce is:<sup>2</sup>

- 1) Giving proper *mut'ah* to his ex-wife, whether in the form of money or goods, unless the ex-wife is *qabla ad dukhul*.
- 2) Providing maintenance, maskan (place to live) and *kiswah* (clothing) to the ex-wife during the iddah period, unless the ex-wife has been divorced *ba'in* or *nusyuz* and is not pregnant.
- 3) Pay off the dowry that is still owed in full, or half if *qabla ad dukhul*.
- 4) Gives the cost of *hadanah* for their children who have not reached the age of 21 years.

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<sup>2</sup> Compilation of Islamic Law, Article 149.

Period iddah for women differs depending on the type of marriage. Types iddah for a woman is: First, iddah because divorce raj (divorced permanent possible party man for return to his wife). Second, because iddah talak ba'in (divorced which involves husband as much as three times or *khulu'*). Third, iddah During pregnancy. Fourth, iddah because her husband died (Zuhaili, 2010, p.53).

Daruquthni narrated the hadith of Fatimah bint Qais when she was divorced three times, that Rasulullah SAW decided the case by not having a place to live or a living for him. He said:

إنما النفقة و السكنى لمن تملك الرجعة.

"Truly a living and a place to live for people who have reconciliation" (al-Husaini, 2016, p. 235-236).

In the history of Abu Daud there is an editorial:

و لا نفقة لك إلا أن تكون حاملا

"There is no maintenance for you unless you are pregnant "(al-Husaini, 2016, p. 235-236).

Fuqaha *have* different opinions regarding iddah maintenance for wives who divorce ba'in. According to Hanafi the wife still has the right to receive iddah maintenance whether she is pregnant or not. On condition that the wife does not leave the husband's residence during the time of iddah. Maliki is of the opinion that if you only get a place to live unless you are pregnant, then you can earn a living. Meanwhile, Syafi'i and Hanbali argue that a wife is not entitled to a living and a place to live except when she is pregnant (Mughniah, 2011, p. 402). Scholars' Syafi'iyah are of the opinion that there is no subsistence iddah for taking the basis of the hadith regarding the case of Fatimah Bint Qais above. Although basically it is a Sunday Hadith which does not reach the degree of mutawatir, apart from that Syafi'iyah also uses *Mafhum Mukhalafah* from Qs. at-Thalaq Verse 6 (Hasanah, 2020, p. 117).

## **2. Implementation of SEMA provisions Number 3 of 2018 in Legal Considerations**

Supreme Court Circular is a form of regulation issued by the Supreme Court. The provisions behind the formation of SEMA are Article 12 paragraph (3) of Law no. 1 of 1950 which explains that the Supreme Court has the right to give warnings, reprimands and instructions deemed necessary to judges and courts, either in a separate letter or in a circular letter. From these provisions it can be

understood that circular letters are a form of supervision of judges.<sup>3</sup> However, regulations formed by the Supreme Court certainly cannot be equated with regulations formed by the legislature. The Supreme Court can only form regulations if the law is unclear or does not regulate (Cahyadi, 2014, p. 4).

SEMA when viewed from the subject of its users can be classified in policy rules (*beleidsregel*). Products that are stipulations in nature, the contents may not contain normative material that is regulatory in nature, therefore they are not referred to as regulations (*regels, regulations, legislations*). *beleidsregels* are a form of policy regulation that cannot be categorized as an ordinary form of legislation. Parts of this category are Presidential Instructions, circulars containing certain policies, program designs, and project terms of reference (Asshiddiqie, 2014, p. 14). Policy regulations like this are generally not legally binding directly, but have legal relevance (Cahyadi, 2014, p. 4).

As for SEMA Number 3 of 2018 concerning the Enforcement of the Formulation of the Results of the 2018 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court, the Supreme Court regulates more strictly regarding the post-divorce wife's rights in contested divorce cases, as follows.

Accommodating PERMA Number 3 of 2017 concerning Guidelines for trying cases of women dealing with the law, the wife in a contested divorce case can be given *mut'ah* and iddah maintenance as long as it is not proven to be *nusyuz*.

Basically this provision has not been clearly stated in other regulations. It's just that in SEMA Number 3 of 2018 it states that the provisions of Iddah and *Mut'ah* in divorce cases are to accommodate gender equality in PERMA Number 3 of 2017. So that a wife who is hereinafter referred to as Plaintiff can be given Iddah and *Mut'ah* as long as not proven *nusyuz*. Whereas previously the judge accommodated the demand for maintenance in a divorce to be sued in his decision *ex officio* without any clear regulations governing it.

The application of the provisions of the Supreme Court Circular Letter is basically not absolutely applied in every legal consideration in the divorce decision. The fact is in decision No. 107/Pdt. G/ 2022/PA. Btl. in the Bantul Religious Court did not implement the SEMA provisions even though the wife was not proven to be *nusyuz* on the grounds of the Defendant's (husband) economic considerations, the judge in this case explained that the inclusion of SEMA was indeed not absolutely binding for judges, so if needed as a legal umbrella to accommodate provisions subsistence must be applied. The nature of this absoluteness means that there is no sanction for the judge. Because actually

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<sup>3</sup> Law Number 1 of 1950 concerning Composition, Powers, and Courts of the Supreme Court of Indonesia, Article 12 paragraph (3).

this SEMA is material and not formal in nature, while material law is part of the considerations that can be explored by judges (Zailan, 2022).<sup>4</sup>

### 3. Maslahah Mursalah as a Perspective

From an etymological perspective, the word *maslahah* is a form of *masdar* (*adverb*) derived from *fi'il* (*verb*), namely *صلح* (*saluha*). As for the form, besides the word *maslahah* form *adverb*, it is also a *noun* (*mufrad*, singular) of the word *masâlih* (*jama'*, plural). The word *maslahah* has been absorbed into Indonesian to become *maslahat*, as well as the word *benefits* and *benefits* (Rosyadi, 2013, p. 80).

As for terminology, there are several definitions of *maslahah* put forward by *ushul fiqh* scholars, these definitions more or less contain the same essence. Imam al-Ghazali, argued that in principle *maslahah* goals *syara'*. Imam al-Ghazali stated:

المصلحة ما لم يشهد له من الشرع بالبطلان ولا بالاعتبار نص  
معين

“Maslahah al-Mursalah is that there is no evidence for it from *syara'* in the form of a particular text” (Hidayatullah, 2013, p. 116).

This definition means that *tasryi'* law is not intended except for the benefit of society. So that nothing else aims to bring benefits and eliminate harm. A person's problems do not cover the whole of life, but only in one particular time and place in accordance with the problems faced by society, so that they continue to experience renewal. It could be that something that is worth *maslahah* at one time can be harmful at another (Hidayatullah, 2013, p. 116).

As for al-Ghazali in his book *al-Mustashfa*, mentions *maslahah mursalah* with the term *istislah* (*استصلاح*). According to al-Ghazali, if what is meant by *maslahah mursalah* is *istislah* which aims to maintain one of the five objectives of Islamic law, namely preserving religion, soul, mind, lineage and property, then there is no way to refuse it. Then al-Ghazali requires three *maslahah* that can be seen as *Maslahah Mursalah*, namely: 1) Must be *qat'i*; 2) Must be *kulli*; and 3) Not contrary to the Qur'an and Sunnah (Hidayatullah, 2013, p. 128).

Key use theorem in Maslahah Mursalah is harmony (*al-munâsib*) Among benefits which contained in problem new with draft *maqashid asy-syarî'ah* which no looked in a manner direct in text. issues which not yet could be confirmed are justified or denied and including benefit which will be decided with Maslahah Mursalah is related to the problem of Muamalat, no worship. Reason Ash-Syâtibî uses Maslahah Mursalah as technique for setting law for problem Muamalat is that

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<sup>4</sup> Interview with Drs. Abd. Halim Zailani, Chairman of the Bantul Religious Court, Bantul, Yogyakarta, June 2, 2022

problem Muamalat could reduce Becomes rationality whereas problem Ubudiyah no could reduce Becomes rationality (Rosyadi, 2013, p. 9).

#### **4. Analysis Of Iddah Maintenance Provision For Divorce Lawsuit Of The Maslahah Mursalah Perspective**

scope of social change that affects all aspects of life, makes modernist movements in Islam try to find a foundation or foothold that can help them adapt to changing existing conditions (Zuhri, 2009, p. 341). Therefore there are reforms in Islamic law.

Important to understand that building base thinking jurisprudence is utility according to utility, humanity universal or justice social. Every proposal ijihad, good supported nash nor no, capable ensure benefit people man in eye Islam is people that alone Da Sahal Mahfudh emphasize maslaha in process taking decision. In a number of books he wrote, like the book about jurisprudence social, he often sees approach maslahah as the aspect most important in process taking decisions (Zuhri, 2009, p. 350).

There is divorce benefits intended to avoid arbitrariness in divorce and to ensure fulfillment rights for wife and child consequence divorce. Thereby also \_ not there is divorce which violates principle ethics and moral, as well as no there is action arbitrarily to the couple. It is in these circumstances that the rule of law is required which is regulated in the law governing marriage which is made by the state authorities and must be carried out (Zuhri, 2009, p. 480).

Indonesia, which has experienced changes in civilization like other Islamic countries, certainly has an impact on *Mashlah* . One of the changes that occurred was the transition of the kinship system from a large family to a small family (nuclear family). This change in the kinship system has an impact on women's protection in the event of divorce. In the extended family system, when a divorce occurs, the ex-wife and children join the extended family, and even the living expenses must be borne by the extended family. When divorce occurs in a small family relationship system, ex-wives and children can be neglected, especially if the woman only works as a housewife, in this case post-divorce income is an urgent need for women during the iddah period (Zuhri, 2009, p. 79 ).

If we review the parallels (*munasib*) between the benefits referred to by the *Maqasid as-Syariah*, the authors find the imposition of iddah subsistence to former husbands as a form of wife protection in a contested divorce is part of the *maslahah daruriyyat* (Harahap, 2014, p. 180). In this case it is to protect one's soul (*Hifzh an-Nafs*) from being limited to fulfilling life's needs, especially food for wives who are undergoing the *iddah period*. For a woman, after marriage, management shifts to her husband and after a divorce, the husband should not be free from responsibility until the end of the iddah period. In addition, the provision of post-divorce support is supported by the generality of paragraph 6 Qs. at-Thalaq. The wife's economic limitations if she is only a housewife or has a

job that is not enough to meet her needs as in the case of decision Number 107/Pdt.G/2022/PA.Btl, a wife is only a laborer while she is undergoing an iddah period making a living after the divorce as an important support for life.

### C. Conclusion

The shift in the family system in Indonesia has had a major impact on the provision of iddah income, because when divorce occurs in a small family kinship system, ex-wives and children can be neglected, especially when the wife only works as a housewife so that post-divorce support is an emergency need for the wife during the iddah period. so that the provisions for the maintenance of iddah for divorce are contested as regulated in SEMA No. 3 of 2018, when looking at the alignment (*munasib*) between the benefits meant by the *Maqasid as-Syariah* it is a form of protection for the wife including part of the *maslaha daruriyyah*. In this case it is to protect one's soul (*Hifzh an-Nafs*) from the limitations of fulfilling life's needs, especially food for wives who are undergoing an *iddah period*. Because an ex-wife when divorced by her husband is not supported (during the iddah period) while she lives alone or with her children and is bound by the iddah provisions.

### REFERENCES

- Al-Husaini, Taqiyudin Abu Bakar bin Muhammad, *Kifayatul Akhyar*, Translated by Rahmatullah Ngimaduddin, 1st printing. Solo: al-Qowam, 2016.
- Asshiddiqie, Jimly, *Regarding Law* (Depok: Rajawali Pers, 2014).
- Cahyadi, Irwan Adi, "The Position of the Supreme Court Circular Letter (SEMA) in Positive Law in Indonesia," Ministry of Education and Culture, University Brawijaya (2014)
- Harahap, Zul Anwar Ajim "The Concept of Maqasid Al-Syariah as the Basis for Determination and Its Application in Islamic Law According to 'Izzuddin Bin 'Abd Al-Salam (W.660 H)," *Tazkir*, Vol. 9, No. (July - December 2014)
- Mahmudah, Umi. "Metode statistika: Step by step." *Pekalongan: Penerbit NEM* (2020).
- Mughniah, Muhammad Jawad, *Fiqh of Five Schools*, translated by Masykur AB, et al., Jakarta: Lentera, 2011.
- Rosyadi, Imron "Asy-Syâtibî's Thoughts About Maslahah Mursalah," *PROFETIKA Journal of Islamic Studies*, Vol. 14, No. 1 (2013).
- Syaiful, Annas "The Payment Period for Iddah and Mut'ah in Divorce Divorce Cases (An Implementation of Procedural Law in a Religious Court)", *Al-Ahwâl*, Vol 10:1, 2017.
- Zuhaili, Wahbah, *Fiqh Imam Syafi'i Juz 3*, Translated by M.Afifi and Abdul Hafiz, 1st printing, Jakarta: al-Mahira, 2010.
- Zuhri, Saifuddin "Maslahah as a Source of Law and Its Implications for Liberalization in Renewal of Islamic Law in Indonesia," *Asy-Syir'ah Journal*, Vol. 43, no. II, (2009).
- Law Number 1 of 1974 concerning Marriage.

Law No. 1 of 1950 concerning the Composition, Powers and Courts of the Supreme Court of Indonesia.

Law Number 7 of 1989 concerning Religious Courts.

Government Regulation no. 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage.

SEMA Number 3 of 2018 concerning Enforcement of the Formulation of the Results of the 2018 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court..

[Bantul Religious Court \(pa-bantul.go.id\)](http://pa-bantul.go.id), access 23 February 2022