

Legal Certainty on the Rights of Ex-Wife Post Divorce (Case Study of Religious Court Decisions North Jakarta Number: 299/Pdt.G/2021/Pa.Ju)

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ABSTRACT

The fulfillment of a wife's livelihood does not only apply in marriage, but also after divorce. The problem is that there are often many divorce cases where the rights of ex-wives (iddah and mut'ah) are not fulfilled even though the decision requires them to be paid. This is like what happened in the North Jakarta Religious Court Decision Case Number: 299/Pdt.G/2021/Pa.Ju, so the problem arises how is the legal certainty of the rights of ex-wife after divorce to the rights of iddah and mut'ah money? and what are the legal remedies if the iddah and mut'ah payments are not carried out in accordance with the North Jakarta Court Decision Number: 299/PDT.G/2020/PA.JU? The research method used is normative juridical with a case and legislation approach. Based on the analytical study that the ruling in the divorce case in the North Jakarta Religious Court Decision Number 299/PDT.G/2021/PA.JU regarding the rights of the wife after the divorce to the rights of iddah and mut'ah money, has not provided legal certainty, especially in certainty of execution of the judge's decision. This is because the ruling that requires the ex-husband to pay the iddah and mut'ah money has not been received before the divorce pledge is made, causing legal uncertainty, especially for divorced wives. Legal remedies that can be taken by the ex-wife if the iddah and mut'ah payments are not carried out according to the court's decision, the means that can be done is to apply for execution at the religious court.

Keywords: Legal certainty, wife's rights, post-divorce

1. INTRODUCTION

1.1. Background

Humans are social creatures who in their lives are always dependent and need each other with other humans or what Aristotle calls the zoon politicon.[1] In addition, as a normal human being, of course, you have a desire or desire to have a relationship with the opposite sex in a marriage bond and form a household in the hope of getting happiness as stated in the provisions of Article 1 of Law Number 16 of 2019 concerning amendments to Law Number 1 1974 concerning Marriage (hereinafter referred to or abbreviated as the Marriage Law).[2]

Living a household life is like navigating an ark in a wide ocean, where waves and storms often come and go. The husband as the captain, the wife as the crew and the children as passengers, all of whom are sheltered in one ark, must be able to pass all the obstacles and obstacles that plagued them in order to achieve a marriage goal.

Juridically, marriage is an outer and inner bond between two people of different sexes who unite themselves into a single relationship as husband and wife whose ultimate goal

is to form a happy and eternal family based on the One Godhead. Thus, marriage is an engagement based on religious values or beliefs, because the legal consequences are binding on both parties, namely men and women in one physical and spiritual bond as husband and wife who have sacred and noble goals because they are based on God. Such a Supreme Being means having a close relationship with religion or spirituality, so that marriage does not only have an outward or physical element, but also an inner or spiritual element.[3]

To achieve the purpose of marriage as described in Article 1 of the Marriage Law, in that case it is easy to happen or even a lot of happy lives. Many factors cause unhappiness in a household, including one of the parties being dishonest which causes the couple to have disagreements which in turn lead to quarrels. It's also because one of the parties is possessive or too jealous, on the other hand, the partner does not like to be jealous, which sometimes also causes disharmony.

Meanwhile, even in domestic life sometimes it is found that both husband and wife are complaining and complaining to other people or to their closest family after their household due to the fulfillment of the rights that must be obtained or the non-performance of obligations of one party or for other

reasons resulting in a incident. As a result, there is no possibility that the decision will end the marriage bond or divorce.

In the view of Islam, one of the actions that are lawful but is hated by Allah is divorce.[4] While in positive law, divorce is regulated in Article 38 and Article 39 of the Marriage Law and further in its implementing provisions, namely Articles 14 to 18 and Articles 20 to 36 36 of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law (hereinafter abbreviated as Implementing Regulations of the Marriage Act), which includes divorce talak and divorce lawsuits. Divorce is divorced through a religious court at the initiative of the husband to divorce the wife, on the contrary, divorce comes from the initiative of the wife who is suing the husband.[5] By looking at the divorce rules mentioned above, both parties have the right to determine a marriage through talak and sued divorce, and it can also be understood that the regulation of marriage law has positioned women as objects of divorce from their husbands, and vice versa as the subject or initiator of a divorce.

As a result of a divorce does not release the rights or obligations of each party that must be resolved, because after the divorce there are still ex-wife rights such as the right to support during the iddah period, namely the waiting period after the divorce falls, and paying mut'ah, namely giving something in the form of money or jewelry to cheer up after the divorce which is the obligation of the ex-husband to the ex-wife which must be given in accordance with a court decision.

In reality, it is often found in divorce cases that have been decided by the religious court and have permanent legal force, the rights of ex-wife women are often neglected in the sense that they do not or have not yet received their rights.[6] Whereas in the decision of the religious court it has decided the obligation of the ex-husband to the ex-wife to pay iddah and mut'ah. Meanwhile, in the Circular Letter of the Supreme Court (SEMA) Number 1 of 2017 concerning Guidelines for the Implementation of Duties for the Court which is the implementation of the Regulation of the Supreme Court (PERMA) No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law, and as a form of legal protection for women's rights after divorce, the maintenance during Iddah and Mut'ah is immediately paid before the divorce pledge is made.[7]

According to the ex-wife whose status is the defendant in the divorce case, that in the decision of the North Jakarta Religious Court Number: 299/PDT.G/2021/PA.JU which was decided on February 24, 2021, she has not received the money for the iddah and mut'ah periods. as well as other obligations such as paying for children's support, education costs and health costs until adulthood from her ex-husband.[8] Whereas there was an agreement between the Petitioner and the Respondent in terms of iddah living in the amount of Rp. 1.500.000,- (one million five hundred thousand rupiah) during the period of iddah and mut'ah in the form of money in the amount of Rp. 130,000, - (one

hundred and thirty thousand rupiah),^[9] which then in the judge's decision accumulated since the trial process was carried out until the decision was determined the iddah money was Rp. 5,000,000 (five million rupiah) and mut'ah money was Rp. 1.000.000,- (one million rupiah).[10]

After the divorce the custody of the four children was with the Defendant, where the condition of the children was neglected to find food by singing on the streets. In addition, the Defendant's ignorance of the mechanism for requesting his rights as stated in the religious court's decision, while the religious court's ruling does not provide a time limit mechanism for granting ex-wife rights and what if the ex-husband does not give iddah money, mut'ah and the child's livelihood.

In connection with the decision of the religious court regarding talak divorce which contains the decision to impose the obligation to pay mut'ah and iddah without a time limit for giving it in terms of how long and how long and if the ex-husband has not given it to his ex-wife, how is the execution effort. This is often a problem and this is also asked by the Defendant, if the ex-husband does not carry out the verdict as a form of violation or denial of the agreement that is his obligation and how to ask for these rights. This condition is certainly a new problem that arises because there is no clarity and certainty about it in the decision of the case.

1.2. Problem

1. How is the legal certainty regarding the rights of the ex-wife after the divorce to the rights of iddah and mut'ah money?
2. What are the legal remedies if the iddah and mut'ah payments are not carried out in accordance with the North Jakarta Court Decision Number: 299/PDT.G/2020/PA.JU?

1.3. Research Method

The method used in this research is normative juridical with descriptive analytical research. The type of data used is secondary data which is divided into primary legal materials, secondary legal materials and tertiary legal materials. This study emphasizes data collection techniques with literature studies and data processing techniques by selecting secondary data by classifying certain data classifications. The approach used is a case approach and a statutory approach. The data analysis technique used is qualitative analysis.

2. ANALYSIS

2.1. Divorce Cases, Decisions of the North Jakarta Religious Court Number 299/PDT.G/2021/PA.JU

Getting happiness in a household in a marital bond is a dream for every married couple. However, marriages that have been built on a foundation of love and affection sometimes meet various trials. Marriages that have been carried out with the establishment of domestic relations are not as smooth as expected without any problems, disputes, and family quarrels that ultimately lead to separation or divorce. Based on the reality in the household, it becomes a valuable lesson for every married couple that domestic relations are not in harmony and in line with what is the dream of life.

Sometimes divorce is a condition that must be chosen if the marital relationship with a partner cannot be maintained even though sometimes children become victims and often problems arise over the struggle for joint property and child custody. Marriage law and KHI have set up a mechanism when a husband and wife want to end a marriage, namely through a lawsuit mechanism in court. If it is the husband who files for divorce, it is called talak divorce, whereas if the wife who files the lawsuit is called divorced, the religious court can also determine the living expenses during the trial process which are borne by the husband at the request of the defendant and the plaintiff.

Iddah and mut'ah are the rights of the ex-wife who is divorced by the husband and is obliged to pay for it. Moreover, if the decision of the religious court contains a provision that the ex-husband must pay the Iddah and mut'ah money, then the rights of the ex-wife should be granted.

One of the court decisions that has contained a decision that requires the husband in divorce cases to pay Iddah and mut'ah money to his ex-wife, namely the divorce case, the decision of the North Jakarta Religious Court Number 299/PDT.G/2021/PA.JU between husband and wife. wife of Husayn bin Jacob and Sumarni bint Sukarmito. The two husband and wife couples have been married since 2006 at the Cilincing Religious Affairs Office, North Jakarta and have been blessed with 4 (four) children.

At first, their marriage went well and harmoniously like a married couple. However, in the course of time in 2015, the marital relationship between the two began to arise disputes and frequent quarrels that never ended and were difficult to reconcile between the two. Some of the factors that trigger disputes based on the husband's statement include:

1. First, the wife is unruly and always distrusts her husband so that the husband feels no longer valued as the head of the household in the family.
2. Second, parties often accuse their husbands of having a relationship with another ideal woman (WIL) without clear reasons and evidence.

In the petition it is stated that the husband has actually tried to maintain the household by giving advice and suggestions

to his wife so that she can change her attitude but still cannot change. The family also tried to reconcile but could not be reconciled. Therefore, the husband has finally decided to divorce his wife.

That the peak of the rift between the husband and the wife occurred around 2017, which resulted in the husband leaving his wife and child in the house they lived in. During that time, the husband no longer had a physical or spiritual relationship. Based on these reasons, the husband has dismissed the hope of creating a harmonious and peaceful living atmosphere in the household, with such a situation that the husband is no longer compatible in fostering a household and there is no hope and is no longer able to continue living married with his wife.

Based on the argument above, the plaintiff asks the judge of the religious court to grant his wife's application for divorce. With the divorce lawsuit, the religious court before deciding on a divorce case there is a mediation mechanism. However, mediation did not succeed in reconciling the two. After the mediation process failed, the next step was the North Jakarta Religious Court judge continued the process of reading the application letter submitted by the husband regarding the divorce trial which was declared closed.

The defendant, in this case the wife, has submitted an oral answer which basically justifies the arguments for the application submitted by the husband as the plaintiff and does not object to divorce from her husband. However, the wife requested that the results of the mediation be included in this decision. The husband has submitted a replica which basically remains with his original application and still wants to divorce his wife and the husband agrees that the results of the mediation are included in this decision.

To strengthen the arguments put forward, the plaintiff has submitted several pieces of evidence in the form of: Photocopy of Copy of Duplicate Marriage Certificate No. V-063/KUA.09.4.2/PW.01/07/2020 dated July 01, 2020 issued by the Office of Religious Affairs, Tanjung Periok District, North Jakarta, which has been given sufficient stamp duty. The Plaintiff also presented 2 (two) witnesses who explained the conditions or events that he knew related to the household between the Plaintiff and the Defendant.

2.2. Legal Considerations and Judges' Decisions

In the process of proceeding in court, before the judge decides the case, it will always be preceded by giving legal considerations on the case at hand. Legal considerations by judges are important things to know so that they can see what things or legal facts are revealed in the trial process which will become legal considerations in handling a case, which then from the legal considerations the judge makes a decision regarding acceptance or rejection of the divorce application.

In this case, some of the legal considerations are that the judge saw a quote from the marriage certificate which proves that both parties are a legal husband and wife couple and have never been divorced so that the husband is a qualified party in this case (*persona standy in iudicio*). In

addition, based on the provisions of Article 130 HIR jo. Article 65 of Law Number 7 of 1989 concerning the Religious Courts which has been amended by Law Number 3 of 2006 and Law Number 50 of 2009, the Panel of Judges has tried as much as possible to advise the two couples to get back together, but to no avail. or fail.

Based on the report of the Mediator, Mr. Syakhrudin, it turned out that the mediation of both parties was declared unsuccessful. 1 of 2016 is deemed to have been fulfilled. Likewise with the Plaintiff who filed a divorce application against the Defendant based on the reason that between the Plaintiff and the Defendant since the beginning of their marriage there have often been continuous disputes and quarrels and currently they have been separated from home since June 2019 until now for the reasons as described above.

That it turns out that the Defendant in his answer can be concluded to acknowledge the arguments of the Plaintiff's application as long as there have been disputes and quarrels between the two and have been separated from their homes since June 2019. The Defendants acknowledge that there were disputes and quarrels that occurred between the Defendants and the Plaintiffs, then the acknowledgment is perfect evidence in the aquo case and basically the Plaintiff is not charged with mandatory evidence.

However, in order to comply with the provisions of Article 22 paragraph (2) of Government Regulation Number 9 of 1975, to find out the extent of the household condition of the Plaintiff and Defendant, the Plaintiff and Defendant were ordered to present witnesses or people closest to both parties. The plaintiff has submitted 2 (two) witnesses who gave information about the family relationship of the two couples which corroborates the facts of the trial.

Based on these facts, it has been proven that the Plaintiff and the Defendant are not in harmony in the household so that there is no hope of living in harmony in the household, which is in line with the reasons for divorce as regulated in Article 19 letters (b) and (f). Government Regulation Number 9 of 1975, Article 116 letters (b) and (f) KHI, so that the Plaintiff and Defendant's household has been broken, which can be seen from the separation of the Plaintiff's and Defendant's homes since October 2018 until now they have never been united again.

That the indication of the breakup of the household can be seen in terms of the answer between the Plaintiff and the Defendant where each party blames each other without realizing their shortcomings in maintaining domestic life. Meanwhile, the household situation as described above is far from the true nature and purpose of marriage as described in Article 1 of the Marriage Law jo. Article 3 KHI, where the marriage is aimed at realizing a *sakinah*, *mawaddah* and *rahmah* household life, therefore maintaining the domestic bond between the Plaintiff and the Defendant will no longer be beneficial.

Based on what has been considered above, the Panel of Judges concluded that the Plaintiff's and Defendant's household had no hope of being able to be maintained again (*Onheer baar tweespalt*) because it had been broken up in such a way (marriage breakdown), then in accordance with the provisions of Article 39 of the Marriage Law. If Article

19 letter (b) and (f) Government Regulation No. 9/1975, Article 116 letter (b) and (f) Compilation of Islamic Law, there are valid reasons for the Plaintiff to divorce the Defendant.

Based on the considerations above, the Plaintiff's request to make a vow of divorce to the Defendant should be granted. Because there has been an agreement between the Plaintiff and the Defendant regarding the consequences of divorce and it turns out that the aquo agreement does not justify the unlawful and forbids the lawful, then the panel will include the aquo agreement in this ruling.

In accordance with the provisions of Article 89 of Law Number 7 of 1989, the Petitioner is charged with paying the costs of this case. With due observance of all applicable laws and regulations and sharia law relating to this case. Because this case is in the field of marriage, then in accordance with Article 89 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts, the costs of cases in both conventions and reconventions are borne by the Convention Applicants/Reconvention Defendants. All articles in the legislation and Islamic law relating to this case.

Based on the overall legal considerations above, in the end the judges of the South Jakarta Religious Court in handling the divorce application case, North Jakarta Religious Court Decision Number 299/PDT.G/2021/PA.JU, decided to try:

1. Granting the Plaintiff's application;
2. Give permission to Plaintiff Husen bin Yakub to pledge 1 (one) *raj'i* divorce against Defendant Sumarni bint Sukirmanto before the North Jakarta Religious Court trial after this decision has permanent legal force.
3. Determined that his 4 (four) children were in the care or *hadhanah* of the Defendant on the condition that it should not prevent the Petitioner from meeting the child.
4. Punish the Plaintiff to pay the child's maintenance as referred to in dictum number 3 (three) above to the Defendant a minimum of Rp. 1.500,000- (one million five hundred rupiah) excluding education and health costs until the child is an adult or independent.
5. Punish the Plaintiff to pay the consequences of the divorce to the Defendant in the form of:
 - a. The income during the *iddah* period is IDR 5,000,000 (five million rupiah).
 - b. *Mut'ah* the Respondent in the amount of Rp. 1.000.000,- (one million rupiah).
6. To punish the Plaintiff for the consequences of the divorce as referred to in number 5 (five) above to the Defendant before the divorce pledge is made.
7. Charges the Petitioner to pay the cost of this case in the amount of Rp. 520,000, - (five hundred and twenty thousand rupiah).

Thus this decision was handed down in the Assembly's deliberation meeting which was held on Wednesday, February 24, 2021 AD, coinciding with the 12th *Rajab* 1442 *Hijri*, by us Drs. Sohel, SH. as Chairman of the Assembly, Drs. Zainal Arifin, S.H., M.H and Drs. Amri, S.H., M.H. each as a Member Judge, the decision is pronounced in a

session open to the public on the same day, by the Chairman of the Assembly accompanied by a Member Judge and assisted by Windarti, SH. as Substitute Registrar and attended by the Plaintiff and the Defendant.

2.3. Legal Certainty on the Rights of the Ex-Wife After Divorce to the Rights of Iddah and Mut'ah Money

Humans as social beings who always interact and establish relationships with other human beings, including establishing relationships as legal husband and wife couples in a marriage bond. A person who is already bound by marriage each has equal rights and responsibilities. The husband is obliged to provide for the family and the wife manages household affairs and educates the children properly. However, in reality, a marital relationship encounters many obstacles and household problems which sometimes become the cause of disharmony in family relationships which ultimately lead to divorce.

In various cases of court decisions that handle divorce cases, both divorced and divorced, disharmony and the occurrence of protracted disputes and not finding a settlement point are the main factors causing divorce. In the end, the consequences of the divorce will have a negative impact on the relationship between husband and wife. Especially if you have children, the problems that often arise after divorce are the issue of the wife's livelihood (iddah and mut'ah) and children, joint property (gono gini) and child custody rights.

Among the obligations of the husband after the divorce which is the focus of this research is the obligation to pay iddah and mut'ah which is not carried out by the husband even though the court's decision has determined it. This obligation has been regulated in the Marriage Law and the Compilation of Islamic Law, this means that the emergence of the obligation to pay iddah and mut'ah is due to the occurrence of divorce. If there is no divorce, then there is no obligation for the husband to pay for iddah and mut'ah.

In the case of talak divorce in the decision of the North Jakarta Religious Court Number 299/PDT.G/2021/PA.JU, the husband who has divorced his wife does not carry out the court's decision, namely paying iddah and mut'ah. In the ruling, it is also explained that the iddah and mut'ah payments are given before the divorce pledge is made.

In this regard, Hardinal as a high judge at the Banten Religious High Court in an article stated that the reluctance of the husband to carry out the contents of the decision in the form of iddah and mut'ah legally did not prevent the husband's pledge (pronunciation) of divorce in court, because divorce and the payment of mut'ah and iddah are seen as independent, separate or non-attached obligations. As explained above, that the emergence of the obligation to pay iddah and mut'ah money is due to the occurrence of divorce. If there is no divorce, then there is no obligation to pay iddah and mut'ah.[11]

Herdinal also emphasized that there is a legal "vacuum" in this regard, because the payment of mut'ah and iddah is an obligation for the husband who will impose divorce on his

wife. If it is an obligation, it means a necessity, it cannot be not and must be carried out. Where the obligation is implicit in the element of coercion, the connotation of being obliged to be rewarded if it is done and sinful if it is not done. The settlement of divorce cases is regulated specifically (lex specialis) in proceedings in the Religious Courts, therefore technically the implementation of the decision must also follow special rules. This special rule is still vacuum, because the technicalities of iddah and mut'ah payments cannot refer to or be applied in line with the provisions of the general Civil Procedure Code, because the main elements in HIR and RBg are "the losing parties" and are reluctant, negligent or unwilling to implement them. decision voluntarily. Whereas in the imposition of iddah and mut'ah "no party is said to have lost and won", but the imposition is a "syar'i obligation" which must be fulfilled when the husband drops divorce on his wife in cash and carry, meaning between the imposition of divorce and payment of iddah and mut'ah is an inherent (coherent) obligation. What's more, this was imposed by the panel of judges ex officio, there was absolutely no element of winning and losing parties. Therefore, the trial of the divorce pledge must be postponed if the husband has not paid his obligations in the form of iddah and mut'ah, at least it is postponed for within the stipulated time limit for the divorce pledge as stated in the statement of summons for the divorce vow trial, which is for 6 (six) months. If it is not postponed, in the sense that the husband is still given permission to declare divorce to his wife without fulfilling the obligations of iddah and mut'ah, it means that the wife is classified as the "oppressed" party (treated unfairly).[11] In addition, what is even more concerning is the ignorance of the ex-wife not knowing that after being divorced, she still has the rights of her ex-husband. This is as stated by Sumarni as the ex-wife of the Plaintiff, that after the divorce decision was decided on February 24, 2021 and the verdict stated that the ex-wife got the right to iddah and mut'ah money, but until now it has been almost 4 (four) months longer. these rights have not been received.[13]

When the researcher came to his house and asked that these rights could actually be asked for his ex-husband, but he also did not know how and the legal mechanism to obtain or fight for his rights. Moreover, the two of them have not lived together for a long time and it is difficult to find a place to live. As a result of the wife's ignorance of her rights, it becomes a vulnerable cause for the wife to accept losses in matters of post-divorce livelihood.

Basically, both the Marriage Law and the Compilation of Islamic Law have regulated the rights of divorced wives. There are still obligations of ex-husbands to ex-wives who have been divorced, but the problem is that many of these rights are unknown to wives, so that ex-husbands easily underestimate their obligations to provide rights that should be received by their ex-wife.

Iddah and mut'ah are the rights of the ex-wife and are the obligations of the ex-husband after the divorce that must be given for a living (during the divorce process) as stipulated in the marriage law,[13] giving mut'ah, living during the iddah, paying off the dowry owed, and pay for the life of their children.[14] In accordance with the decision of the

North Jakarta Religious Court Number 299/PDT.G/2021/PA.JU specifically for the wife's rights, the judge has decided and ordered to punish the ex-husband due to divorce to pay the ex-wife in the form of:

1. The income during the iddah period is IDR 5,000,000 (five million rupiah);
2. Mut'ah in the form of money in the amount of Rp. 1,000,000, - (one million rupiah).

However, as explained above, the ex-wife's rights to iddah and mut'ah money have not been received. According to Sumarni's statement, since the judge decided on the divorce, there has been no further notification regarding this matter. The judge informed that since this decision was made, their status is not husband and wife anymore. The judge also informed that later he would get a copy of the decision and a divorce certificate which would be sent by post.[12]

Based on this information, it shows that the judge in carrying out his duties only decides on divorce cases and notifies about the status of the husband-and-wife relationship after the court decision is determined. The judge carries out legal provisions that have been normatively "regulated in the Marriage Law, namely the court may oblige the ex-husband to provide living expenses and/or determine an obligation for the ex-wife." 'ah, as stipulated in the Compilation of Islamic Law.

In response to this problem, according to Gunawan Djajaputra, many of the iddah and mut'ah payments were not carried out even though the ruling stated that. Paying the iddah and mut'ah money that has been stipulated in the decision of the religious court is a must because it has been regulated by law. However, what must be considered is looking at the condition of the ability of the ex-husband if he is able to provide iddah and mut'ah money as stated in the verdict. In addition, there are no sanctions for parties who do not carry out the ruling regarding the payment of iddah and mut'ah money. This is a legal problem because the ruling does not have the power of execution, resulting in the rights of the ex-wife not obtaining legal certainty from the statutory provisions and the ruling.[15]

On one hand, many ex-wives do not know that there are actually rights that must be received from their ex-husbands after a divorce, and on the other hand, they do not know the legal mechanism to sue if their ex-husbands are not granted their rights. So, it is in line with Gunawan Djajaputra's opinion that the decisions of the religious and state courts that handle divorce cases and in their rulings contain the obligation to pay the ex-husband's iddah and mut'ah money to the ex-wife have no execution power. That the ruling is like a "paper tiger", seems fierce but in its execution, it is difficult to carry out.[15]

Based on the entire explanation of the description above, the legal certainty of the rights of the ex-wife after the divorce to the rights of iddah and mut'ah money is problematic in the certainty of the execution of the judge's decision. This is in line with the legal certainty theory put forward by Bagir Manan that there are several components of legal certainty (*rechtzekerheid*, legal certainty), namely the certainty of the rule of law that is applied, the certainty of the legal process both in law enforcement and legal services, certainty of the

authority to determine or make a decision. law, certainty of time in every legal process, and certainty of implementation such as certainty of execution of judge's decisions or decisions of state administration.[16]

The judge's decision which cannot be executed is because the husband's whereabouts are not known so that the obligation to pay iddah and mut'ah has not been carried out, causing legal uncertainty, especially for divorced wives. Even if an attempt was made to apply for an execution to the court and it was successful, in this case the results would not be comparable because the value being pursued with the time allotted and the costs incurred were not symmetrical. Moreover, the condition of the ex-wife who was divorced was in a state of distress and lay against the legal bureaucracy in court. Only surrender and waiting for uncertain hopes for goodness and the ex-husband's willingness to fulfill their rights as stipulated in the court's decision.

2.4. Legal Efforts If Iddah and Mut'ah Payments Are Not Implemented in Accordance with Court Decisions

Legal efforts are part of the legal process for litigants to obtain justice and legal certainty. In the divorce case against the decision of the North Jakarta Religious Court Number 299/PDT.G/2021/PA.JU which stipulates that the ex-wife has the right to receive iddah and mut'ah money which must be given by her ex-husband. However, the ex-wife's rights have not been accepted, even though the decision also explained before the divorce pledge was made, the obligation had to be paid.

Therefore, according to Gunawan Djajaputra, in order to guarantee legal certainty for the ex-wife, a legal remedy is needed so that the ex-wife can file a new lawsuit to the religious court to demand the rights that have been regulated by law and based on the court's decision in order to get her ex-wife. husband pays for his rights. So, legal remedies that can be taken are requests for execution, so that the ex-wife gets legal certainty.[15]

Execution is the process of carrying out court decisions that have permanent legal force. The execution of the North Jakarta Religious Court Decision Number 299/PDT.G/2021/PA.JU related to the payment of iddah and mut'ah living expenses. If the husband does not pay or is reluctant to fulfill his obligations, then the legal remedy that his wife can take is by submitting a request for execution to the Head of the Religious Court.

If in the trial the divorce vow is carried out even though the husband has not paid the iddah and mut'ah as stipulated in the decision, on the grounds that the obligation can be paid after the divorce pledge, even if the ex-husband has not fulfilled it, there is indeed a mechanism for the ex-wife to be able to apply for execution. to the court so that the ex-husband fulfills the said iddah and mut'ah obligations. However, in the case of the decision of the North Jakarta Religious Court Number 299/PDT.G/2021/PA.JU where the amount of iddah and mut'ah money is only Rp. 6,000,000,- (six million rupiah) if an execution request is

made what is being submitted to the court is not effective enough, it is actually a material and time burden because it has to pay for administration and other needs, while the condition of the ex-wife who is divorced is not legal and economically difficult.

In practice, this is not easy so it is a legal uncertainty to be implemented, because the husband after dropping the divorce easily avoids and it is likely that not fulfilling his obligations may occur, because the ex-husband can immediately leave, remarry without waiting for the former's iddah period the wife is finished, and the marriage is not impossible in another area where the address is unknown to the ex-wife. If such a possibility occurs, then the iddah and mut'ah that are awaited and expected by the ex-wife, as a consolation and cover for needs during the iddah (mourning period) due to a minor death in the husband's divorce will certainly be farther away, because the ex-husband is no longer in place. Moreover, it continues with the process of confiscation and auction by the court of movable (non-permanent) property of the executor which in fact must first be identified by the ex-wife herself. Besides being complicated, it also requires a long process and time, plus the costs are certainly not small.

The difficulty of executing iddah and mut'ah payments in divorce cases, then other legal remedies that need to be taken are the role of judges to study more deeply related to the articles in the marriage law and compilation of Islamic law as well as legal provisions in religious courts in handling cases such as this. It takes creativity, judges are always required to be judge made law so that they can realize the pillars of justice, especially for those who are oppressed (ex-wives whose rights are best), and one thing that needs to be known is one of the objectives of the presence of Law Number 7 1989 concerning the Religious Courts, which is to protect women (wives).

As a legal effort by the government in overcoming this problem, The Supreme Court has issued SEMA Number 1 of 2017 dated December 19, 2019 concerning the Enforcement of the Results of the 2017 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court, letter C Sub-Room Legal Formulation. Religion point 1 reads: In the context of implementing Perma Number 3 of 2017 concerning Guidelines for Adjudicating Women Facing the Law to provide legal protection for women's rights after divorce, the payment of obligations due to divorce, especially iddah, mut'ah, and madliyah expenses can be paid. included in the verdict with the sentence paid before the utterance of the divorce vows.

With the Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2017 as mentioned above, the technical dualism in the application of the payment of the husband's obligation to divorce his wife, especially the iddah, mut'ah, and madliyah expenses can be said to be resolved by referring to the instructions of the Supreme Court of the Republic of Indonesia, it's just that the nominal amount needs to be considered more proportionally by the Panel of Judges in determining protective rights for women when dealing with the law.

3. CLOSING

3.1. Conclusion

- a. The verdict in the divorce case in the North Jakarta Religious Court Decision Number 299/PDT.G/2021/PA.JU related to the post-divorce wife's rights to the rights of iddah and mut'ah money, has not provided legal certainty, especially on the certainty of execution of the decision judge. This is because the ruling that requires the ex-husband to pay the iddah and mut'ah money has not been received before the divorce pledge is made, causing legal uncertainty, especially for divorced wives.
- b. Legal remedies that can be taken by the ex-wife if the iddah and mut'ah payments are not carried out in accordance with the court's decision, the means that can be done is to apply for execution at the religious court. In practice, the execution of iddah and mut'ah payments is not easy, so other legal remedies that can be taken by the judiciary are the creativity of judges to study more deeply related to existing legal provisions so that judgments are obtained that are fair and with legal certainty. The government through the Supreme Court has also made legal efforts, namely issuing SEMA Number 1 of 2017 concerning Guidelines for the Implementation of Duties for the Court which is the implementation of PERMA Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law, and as a form of legal protection for women's rights. women's rights after divorce, then the maintenance during Iddah and Mut'ah is immediately paid before the divorce vows are made.

3.2. Suggestion

- a. For married couples, it is necessary to understand and be aware of the rights and obligations of each in a marital relationship. In the event of a divorce, the husband knows his obligations that there are rights of the ex-wife after the divorce, and vice versa, the ex-wife knows that the rights that have not been received can demand an application for execution to the religious court.
- b. Judges of religious courts in handling divorce cases should be able to anticipate considering that in many cases it is difficult to execute iddah and mut'ah money, the judge needs to require the payment of iddah and mut'ah money to the ex-wife before the divorce pledge is made.

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