

JUDGE'S CONSIDERATION OF NOMINAL DETERMINATION LIVING IDDAH AND MUT'AH IN EPISTEMOLOGICAL REVIEW

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Abstract

Determination of iddah and mut'ah living is a manifestation of one of the cases that must be resolved by a judge who comes to him by bringing justice to the parties. Of course, this cannot be separated from how a judge deeply examines the existing problems with his considerations. The purpose of this study is to find out how the judge's considerations in determining the nominal iddah and mut'ah income for the wife whose husband divorces in a case, then how is the judge's consideration in determining the nominal iddah and mut'ah income when viewed epistemologically. The research method that the author does is to use empirical normative research methods with a qualitative approach. Based on the research results that the author did, there are at least 7 (seven) things that the judge can consider in determining the nominal iddah and mut'ah living. But what if, in a case, all the things considered are in one case? Of course, a judge must choose his considerations, which should come first, the interests of the wife or husband. Therefore, it takes wisdom and wisdom from a judge in deciding while still realizing a sense of justice for the parties.

Keywords: *Justice, Judge, Livelihood*

Abstrak

Penentuan nafkah iddah dan mut'ah merupakan wujud dari salah satu perkara yang harus diselesaikan seorang hakim yang datang padanya dengan mewujudkan keadilan kepada para pihak. Hal ini, tentu, tidak terlepas dari bagaimana seorang hakim mengkaji lebih dalam terkait permasalahan yang ada dengan pertimbangan-pertimbangannya. Tujuan dari penelitian ini adalah untuk mengetahui bagaimana pertimbangan hakim dalam menentukan nominal nafkah iddah dan mut'ah bagi istri yang diceraiakan suaminya pada suatu kasus. Kemudian bagaimana tinjauan epistemologi terkait dengan pertimbangan hakim dalam menentukan nominal nafkah iddah dan mut'ah. Adapun metode penelitian yang penulis lakukan adalah dengan menggunakan metode penelitian normatif empiris dengan pendekatan kualitatif. Berdasarkan hasil penelitian yang penulis lakukan, setidaknya ada 7 (tujuh) hal yang dapat dijadikan pertimbangan hakim dalam menentukan nominal nafkah iddah dan mut'ah. Namun bagaimana bila semua hal yang dipertimbangkan tersebut ada dalam satu kasus, tentu seorang hakim harus mampu memilih pertimbangannya, mana yang harus didahulukan, kepentingan istri atau suami. Oleh karena

itu, memang dibutuhkan kearifan dan kebijaksanaan dari seorang hakim dalam menjatuhkan putusan dengan tetap menjunjung rasa keadilan bagi para pihak.

Kata Kunci: Keadilan, Hakim, Nafkah

INTRODUCTION

According to Plato, justice is beyond the capabilities of ordinary human beings, where this condition can only be achieved by living the Law and the laws and regulations made by experts.¹ According to W.J.S Poerwadarminto, the definition of justice is a condition that is neither one-sided nor balanced that should not be decided arbitrarily.²

Law is very closely related to justice, and there is even an opinion that the Law should be combined with justice to mean the Law truly. In this case, the purpose of the Law is to achieve a sense of justice in society. Even M. Agus Santoso said that a legal system and the judiciary could not be formed without regard to justice because fairness includes the essential understanding of a legal system and the judiciary. Therefore justice must be guided by certain general principles. These principles concern the interests of a nation and a state, which is a belief that lives in society about life because the purpose of the state and the Law is to achieve the greatest happiness for everyone.³

Law is only a means, while the intended purpose of the Law is justice. Furthermore, Bisma Siregar said why the purpose of the Law should be sacrificed to realize a means only while the purpose of the Law is not achieved.⁴ It means that the purpose of the Law here is more emphasized than the Law itself. The Court is tasked with delivering justice to an event brought against him. Therefore, it is necessary to wisdom a judge when seeking the justice side of the facts that exist and weighed with the Law.⁵

One of the problems raised in the Court, especially the religious Court, is the demand for iddah and mut'ah for wives who their husband's divorce. This is also following the mandate of the Supreme Court Regulation Number 3 of 2017, where women's rights must be protected. However, it turns out that the problems do not only get there. What if the husband cannot meet the nominal amount demanded by the wife when it is proven that the husband has neglected his obligations as the head of the household.

Previously, a journal discussed this issue with the title "*Determination of The Income*

¹ <https://pengertiandefinisi.com/pengertian-keadilan-dan-jenis-jenisnya-menurut-para-ahli> diakses pada tanggal 22 Desember 2020

² Ibid.

³ M. Agus Santoso, *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*, (Jakarta : Kencana, 2014), 91.

⁴ Bisma Siregar, *Rasa Keadilan*, (Surabaya : Bina Ilmu, 1996), 7.

⁵ Amran Suadi, *Filsafat Keadilan Biological Justice dan Praktiknya dalam Putusan Hakim*, Cet. I, (Jakarta : Kencana, Jakarta, 2020), 26.

Of Iddah and Mut'ah by Judges on Divorce in the Salatiga Religious Court (Study of Divorce Verdict 2017" written by Muhlifa Nur Prahandika. This paper examines how judges in the Salatiga Religious Court consider the level of living iddah and mut'ah, focusing on divorce rulings in 2017.

Then there is also a journal with the title "*Giving Mut'ah and Nafkah Iddah Income Divorce and Lawsuit Cases,*" written by Heniyatun and friends. The journal discusses how exactly giving of *mut'ah* and living *iddah* income with a focus on divorce cases. Then there is also a journal entitled "*Imposition of Mut'ah and Living Iddah On Divorce Cases with Verstek Decisions,*" written by Devi Yulianti and friends. This study examines the imposition of *mut'ah* and *iddah* that focuses more on the *verstek* decisions, namely the decisions that the Respondent (wife) was never present at the trial process.

The three journals are different from the research we are doing, namely "*Judges Considerations in Determining the Nominal Iddah and Mut'ah Income from an Epistemological Review.*" This study reveals judges' consideration in determining the nominal living *iddah* and *mut'ah*, supported by empirical data to know more epistemologically.

This is based on the many considerations of judges in one case. Then which consideration takes precedence, even between first-rate judges and appeals only, there are differences in judgment and weighing. So this is what makes it interesting to be studied more in-depth, especially if researched with a philosophical approach.

The research methodology conducted by the author, in this case, uses normative-empirical research methods with the category judicial case studies. Due to conflict, the approach of legal case studies is the determination of the nominal living iddah and mut'ah related to the conflict that occurs between husband and wife, so it takes a good judge's consideration to decide. Therefore, the formulation of the problem here is as follows: (1) How are the judges considered in determining the nominal living of iddah and mut'ah for divorced wives? And (2) How is the epistemological review related to the judge's consideration in determining the nominal living of iddah and mut'ah?

The purpose of this study is as follows: (1) To understand the determination made by the judge related to the nominal living iddah and mut'ah for divorced wives; (2) To understand how epistemologically a judge considers everything in determining the nominal living of iddah and mut'ah.

The presence of an epistemological perspective for reading, understand, and analyze the judges' considerations in determining the nominal iddah and mut'ah is very important for the following reasons:

1. In this case, one of the parties in the case is a woman. Law explicitly protects women who face Law.
2. The Supreme Court, in this context specifically (less specialize), stipulates Perma No.3 of 2017 concerning Guidelines for Adjudicating Women's Cases against the Law.

3. In general, provisions of Perma No.3 of 2017, point (1) states that "Women facing the Law are women who conflict with the Law, women as victims, women as witnesses as parties.
4. Perma No.3 of 2017 concerning guidelines for Adjudicating women's cases against the Law as *lex specialis* has principles that must be enforced by judges, namely (a) appreciation for human dignity and dignity, (b) non-discrimination, (c) gender equality, (d) equality before the Law, (e) justice, (f) legal benefits, (g) legal certainly.
5. Epistemology as a knife analysis in this article normatively aims to interpret judges' consideration in finding the truth scientifically and empirically to interpret/find meaning in society's real cases/ events. Both normatively and empirically, the epistemological dimension will bridge between text and context. It will fill the legal void if the judge has not found the Rule of Law in writing the legislation. In this context, it can also be said that epistemology itself is a perspective or knife analysis, and on the other hand, as a method in discovering the Law.

DISCUSSION

Legal Basis for Determining The Nominal Living of Iddah and Mut'ah

Etymologically, living moves because it is shared or given to others and makes the

person's life run smoothly.⁶ Living is the wife's right to the husband due to the occurrence of a valid marriage contract. In the Qur'an and hadith, there is no rule about the nominal living strictly, both the minimum and maximum amount that the husband must give to his wife. But in verses 6 and 7 of Surah At-Talaq, only gives a general description that the expendable is given to the wife according to the proper. The meaning of proper is sufficient for the wife's needs and according to the husband's income.

In the hadith, it is mentioned which means "From Aisha RA. Hindun bint 'Utbah once asked, "O Rasulullah, *Abu Sufyan is a miser. He would not give me a living, so I had to take from him without this knowledge.*" Rasulullah SAW said: "Take what is sufficient for you and your son in a good manner." (HR. Ahmad, Bukhari, Muslim, Abu Dawud and Nasa'i)

Based on the hadith, it can be seen that the amount of living is measured according to the needs of the wife, with a good size for each party without overriding the habits that apply to the wife's family. Therefore, the nominal amount of living differs according to the circumstances, place, and time. Then the scholars agreed that the wife whose husband divorces apply and can be exercised if the wife does not know *nusyuz*. The scholars conclude the understanding of compensation rights and obligations according to the word of Allah in the Qur'an Surah An-Nisa verse 34, where the scholars stipulate that the obedience of the wife is mandatory and is the right of the husband,

⁶ Mardani. *Hukum Perkawinan Islam di Dunia Islam Modern*, (Yogyakarta: Graha Ilmu. 2011).

more emphatically as explained in the verse that authorizes the husband to punish his wife to improve his behavior to obey the husband. However, the scholars have differed concerning the limitations of a wife nusyuz that led to the loss of the right to a living.

Concerning *mut'ah*, there is also in Q.S Al-Baqarah verses 236-237 and 241, but as explained, there is no clear determination of the nominal or the degree of a gift by the husband-wife he will divorce.

According to the positive Law that applies in Indonesia, where it regulates the living of *iddah* and *mut'ah* for divorced wives in the following provisions:

1) Compilation of Islamic Law

Article 149 reads, "If the marriage breaks up due to divorce, then the ex-husband must: a) give a proper *mut'ah* to his ex-wife, either in the form of money or objects, except the ex-wife *qobla al-dukhul*; b) provide a **living, food, and kiswah** to the ex-wife during her **iddah**, unless the ex-wife has been sentenced to *talak ba'in* or nusyuz and is not pregnant; c) pay off the dowry that is still owed entirely, and a half when *qobla al dukhul*; d) provide hadhanah costs for children who have not reached the age of 21 years."

Article 152 reads, "Ex-wives are entitled to a **living iddah** from their ex-husband unless she is nusyuz."

Article 158 reads, "**The ex-husband must** give *mut'ah* on the condition that: (a) has not been determined dowry for the wife *ba'da al dukhul*; (b) the divorce is against the will of the husband."

Article 159, which reads "**Mut'ah Sunnat** given by the ex-husband without the conditions mentioned in Article 158"

Article 160 reads, "The amount of **mut'ah** is adjusted to the propriety and ability of the husband."

2) Law No.1 of 1974 as amended by Law No.16 of 2019 on marriage

Article 41 reads: "The result of the breakup of marriage due to divorce is"

a. Whether the mother or father remains obliged to nurture and educate their children, solely based on the child's interests if there is a dispute regarding children's mastery, the Court decides.

b. The father is responsible for all maintenance and education costs required of the child. If the father cannot oblige, the Court can determine that the mother is also responsible for the cost.

c. The Court can require the ex-husband to provide the cost of living or determine an obligation for the ex-wife."

The Essence of Justice

Justice is the most important purpose.⁷ Of the Law, K.H. Hasyim Muzadi, in a lecture,

⁷ Darji Darmodiharjo dan Sidharta, *Pokok-Pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, (Jakarta : Gramedia Pustaka Utama, 2008), 155.

said that the essence of the Law is justice; without justice, then the Law no longer exists. This is in line with what Bisma Siregar stated that to uphold justice must sacrifice legal certainty.⁸ I will sacrifice the Law. The Law is only a means while the purpose intended by the Law is justice, then why should the purpose of the Law should be sacrificed only because to realize a means only while the purpose of the Law is not achieved.⁹

The nature of justice is an assessment of treatment or act of reviewing it with a norm that, according to the subjective view (subjective for the benefit of his group, group, and so on), exceeds other norms. In this case, there are two parties involved, namely the treating parties and the parties receiving treatment: parents and children, employers and workers, judges and *justiliabelen*, the government and its citizens, and creditors and debtors.

What exactly is justice? So on this occasion, the author, as quoted from Dr. Drs. H. Amran Suadi, H.H, M.Hum, M.M, that justice is sometimes temporary, subjective, and individual.¹⁰ Therefore, justice in law enforcement is a human struggle that evolves following rhythm, age, and space. That is why justice cannot stand alone but is largely

determined by the influence around the events to be given that justice.

The implementation of justice in each case examined by the judge is strongly influenced by the factors around the events to be given. Therefore, there is no common cause in adjudicating and giving justice because of differences in facts and influence on events that occur in every case handled.¹¹

Aristoteles placed justice as the most important value of the Law in defending the common good.¹² This is because justice is the feasibility of human action or fairness in human action.

Supreme Court Justice Amran Suadi quotes a word from Henry Campbell Black, saying that justice is the constant and perpetual disposition of legal dispute to render every man his due. It means justice is fixed and eternal in the matter of Law or legal decisions to give to everyone what is rightful. Therefore, the problem of justice is not easy to formulate or determine because in the practice of Law, because different things happen, both because of different places (*locus*) and time (*Tempus*), then the perception of justice becomes different.¹³

According to the view of Islamic Law, justice is the ideal of the Law that must always be established in every aspect of life; this is

⁸ Bismar Siregar, *Rasa Keadilan...7*.

⁹ Darji Darmodiharjo dan Sidharta, *Pokok-Pokok Filsafat Hukum*, 156.

¹⁰ Muhammad Erwin, *Filsafat Hukum, Refleksi kritis terhadap hukum dan hukum Indonesia*, (Jakarta : Rajawali Press, 2015), 291.

¹¹ Amran Suadi, *Filsafat Keadilan Biological Justice dan Praktikanya dalam Putusan Hakim*, 23

¹² Andre Ata Ujan, *Filsafat Hukum Membangun Hukum dan Membela Keadilan*, Kanisius, (Yogyakarta, 2009, t, th), 48.

¹³ Amran Suadi, *Filsafat Keadilan Biological Justice dan Praktikanya dalam Putusan Hakim*, 23-26.

reflected in the five purposes of the Law itself, namely to maintain the benefits of religion, maintain the benefit of the soul, maintain the benefit of the property, and preserve the benefit of the descendants.¹⁴

Epistemology As a Form of Review Related to the Consideration of Judges in Determining Nominal Living Iddah and Mut'ah

Epistemology, according to Dagobert D. Runes is one of the branches of philosophy that examines the source of knowledge, the structure of knowledge, its methods, and the validity of knowledge.¹⁵ Meanwhile, according to Saudi, epistemology means obtaining knowledge, sources of knowledge, the scope of knowledge.¹⁶ So, we can understand the epistemological review of judges' consideration in determining the living *iddah* and *mut'ah*. Here means examining how a judge considers the nominal living *iddah* and *mut'ah* for divorced wives and certainly does not deviate from the sense of justice in society.

In studying the philosophy of justice, determining the nominal living of *iddah* and *mut'ah* is not an easy issue. It requires deepening and spiritual experience in solving cases and also with thoughtful considerations. It is not uncommon to defend or hate one

party simply because his behavior and behavior in Court can make a judge's judgment falter and be unfair.

Once the facts are found in the field in a case, it must be analyzed whether it meets the sense of justice for the parties. This is important to grow public trust in the Law that will eventually color the Indonesian judiciary to be more authoritative. All of that is based on the purpose of the Law itself: to provide justice so that it can be achieved conditions and an orderly atmosphere in society and property of protected legal subjects, including the state in position as the subject of Law.¹⁷

Judge As Enforcer of Justice

Judges as executors of duties in the field of Law have a central position in applying the Law. The judge is required to be fair, but he must also be able to interpret the Law in real-time according to the needs and development that occur during the life of the justice seeker community by considering aspects of justice.¹⁸ Through his rulings, a judge not only applies the Law that is in the text of the Law (the judge as a mouthpiece of the Law), but he also makes legal reforms when faced with the issues presented to him and has not been regulated in the Law or there have

¹⁴ Yusup Hidayat, *Penyelesaian Sengketa Ekonomi Syariah di Indonesia*, (Jakarta : Prenada Media Group, 2020), 193-194.

¹⁵ <https://sabdakhairuss.blogspot.com/pengertian-epistemologi.html> diakses pada tanggal 14 Januari 2021.

¹⁶ Suaedi, *Pengantar Filsafat Ilmu* (Bogor: IPB Press, 2016), hal. 91.

¹⁷ Herman Bakir, *Filsafat Hukum, Desain dan Arsitektur Kesejarahan*, (Bandung : Refika Aditama, 2009), 368.

¹⁸ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Prenada Media Grup, 2008), 278-285. Shidarta, *Karakteristik Penalaran Hukum Dalam Konteks Keindonesiaan* (Bandung: CV. Utomo, 2009), 164-166

been rules but is considered irrelevant to the circumstances and conditions.¹⁹

Judges have the authority to diverge from existing written legal provisions but are considered outdated to no longer create justice during public life. In-Law, this way is called *contra legem*. In using this *contra legem*, a judge must meet his legal considerations clearly and sharply by considering various aspects of the Law.

In the study of legal philosophy, it is said that if a law is contrary to the principle of justice, then the Law is no longer normative and can no longer be called Law. The rule will only become Law if it is fair,²⁰ while fair itself, according to Murtada Mutahhari, a Modern Muslim thinker, as quoted by Nurcholish Madjid, there are four basic understandings; first: it contains a sense of consideration or a balanced state and not limp. Second, justice has the meaning of equality and the absence of discrimination of any kind. Third, the understanding of justice is not intact when it does not pay attention to its meaning as it gives attention to personal rights and the use of rights to anyone who is entitled. Fourth, God's justice in the form of his mercy is bestowing grace on something or someone at the same level with his willingness to accept his existence and his growth towards perfection.²¹

¹⁹ Bagir Manan, "Hakim sebagai Pembaharu Hukum" dalam *Varia Peradilan Majalah Hukum Tahun Ke XXII No. 254 Januari 2007*, Jakarta: Ikatan Hakim Indonesia, 2007, 9-13.

²⁰ Theo Huijber, *Filsafat Hukum*, (Yogyakarta: Kanisius, 1995), 71.

²¹ Nurcholish Madjid, *Islam Doktrin dan Peradaban; Sebuah Telaah Kritis Tentang Masalah Keimanan*,

Judge's Consideration in Determining Nominal Living Iddah, and Mut'ah

In terms of determining the nominal living *iddah* and *mut'ah* by the judge, there are at least seven considerations of judges that are used as the basis in a particular case, namely as follows: 1) Agreement between the two parties; 2) The husband's ability is seen from his income, based on the principle of worthiness and propriety; 3) The ability/awareness of the husband to fulfill the obligation to spend *iddah* or *mut'ah* as a result of divorce; 4) Daily living expenses that are commonly spent while still in the family; 5) The wife's claim against the husband; 6) The duration of the relationship or the length of the wife's devotion to the husband; 7) The giving of *mut'ah* in the form of a living for 12 (twelve) months, it is based on the opinion of the Expert in Islamic Law Author of the Book of *al-abwal al-shabsyiyah* in page 334.²²

Based on the results of the study, then we can know that determining the level or nominal of the living *iddah* and *mut'ah* for the wife to divorced is not without consideration or arbitrary judgement. In the experience of the author during his time as a first-level judge at the Maninjau Religious Court and has discussed with the leadership at the Maninjau Religious Court regarding the determination of

Kemanusiaan dan Kemodernan (Jakarta: Paramadina, 2000), 513.

²² Muhlifa Nur Prahandika, *Penetapan Kadar Nafkah Iddah dan Mut'ah Oleh Hakim Pada Cerai Talak di Pengadilan Agama Salatiga (Studi Putusan Cerai Talak 2017)*", *Hukum Keluarga Islam*, 2018

the nominal living *iddah* and *mut'ah*, it is not much different from what is considered by the judge in the Salatiga Religious Court as has been researched by Muhlifa Nur Prahandika as a student at IAIN Salatiga.

But for the author, the best consideration in settling a case is to continue to direct peace and voluntary separation between the wife and husband. Still, if it can not also, it will be measured to advance the husband's ability to provide for the wife. However, there is no specific benchmark to determine the nominal so that each judge may have a slight, nominal difference such as one Rp 500,000.00 (five hundred thousand rupiahs) the other Rp. 600,000.00 (six hundred thousand rupiahs), the difference of one hundred thousand to two hundred thousand is normal because there is no standard, only later will be agreed by the Panel Panel of judges on a particular case.

Determination of Nominal Living Iddah and Mut'ah by Judges Reviewed Epistemologically

Judges as law enforcement and justice seekers must pay attention and explore the sense of justice that lives in society, so that it should not be fixated only on the sound of the Law alone or jurisprudence, but should still pay attention to the time, locus, and stimulus that affect a case. This is how important men's area which in religious language is called by the perpetrator's intention.²³ Of the act itself, the judge needs to explore the case that he tried

correctly and earnestly. He can resolve the case quickly and immediately decide.²⁴

The judge's decision must be like a body watered by the blood of justice as the metabolism of life, so it is felt that the judge's decision becomes a comprehensive justice reviewed from various angles of stimulus elements. So that making the Law felt can protect those who are entitled and right. Justice is always casuistic or individual because justice cannot be given equal, even if the case is similar. That's why nothing is the same.²⁵

This is important for a judge who will determine the nominal amount of *iddah* and *mut'ah* for divorced wives because each case is different and under different circumstances. Each husband's abilities are different, as well as the needs of each wife in her household are different. So each case in the nominal determination must also be different and determine which one considers first.

As explained above, there are at least 7 (seven) considerations made by a judge as a benchmark in determining the nominal living *iddah* and *mut'ah*. However, it turns out that in implementation, sometimes there are differences between first-rate judges, even there are often differences between first-rate judges and appeal judges as well as with Supreme Court justices in handling cases related to nominal living *iddah* and *mut'ah* when found facts that are all included in the benchmark of consideration. If something like

²³ Amran Suadi, *Filsafat Keadilan Biological Justice dan Praktikanya dalam Putusan Hakim*, 201

²⁴ Ibid.

²⁵ Mukti Arto, *Penemuan Hukum Islam Demi Menwujudkan Hukum Islam*, Buku Kesatu, (Yogyakarta : Pustaka Pelajar, 2017), 39.

this happens, then which consideration should take precedence.

As a form of illustration, the author will try to describe an example in case number 42/Pdt.G/2019/PA. Min where on the first level the wife does not make a living *iddah* and *mut'ab*,²⁶ But when the appeal level of the wife proposes the breadth of *iddah* and *mut'ab* as in the memory of her appeal, she stated that because the wife does not sue in the first-degree Court, she does not understand it. Therefore, the wife demanded a living of Rp 100,000.00 (one hundred thousand rupiahs) every day so that the total amounted to Rp 9,000,000.00 (nine million rupiahs). *Mut'ab* amounted to Rp 30.000.000,00 (thirty million rupiahs).²⁷

In his consideration on the appeal case number 40/Pdt.G/2019/PTA.Pdg, the high judge, stated that **the wife's side is in a state of not nusyuz**; therefore, the wife is entitled to a living *iddah*. Furthermore, for the nominal living *iddah*, the PanelPanel of judges PTA Padang considers the **income of the husband and the sense of justice and decency**. The PanelPanel of judges PTA Padang set the living *iddah* to be paid by the husband to the wife in Rp. 2,250,000.00 (two million two hundred and fifty thousand rupiah).²⁸ In this case, if divided monthly, then we will know that from Rp. 2,250,000.00 for three months, which means a

month of Rp. 750,000.00 (seven hundred and fifty thousand rupiah). The facts found in the trial at the first-level Court have proven that the husband's net income is **above one million rupiahs** as evidenced by salary allowance, income certificate of the husband, and receipt of KPR-BTN payment husband and the testimony of two witnesses.²⁹

Related to *Mut'ab*, the PanelPanel of judges of PTA Padang gave its consideration, namely as article 149 letter a KHI that is if the marriage breaks up because of divorce, then the ex-husband must: "give a decent *mut'ah* to his ex-wife either in the form of money or objects unless the ex-wife *qabla al dukhul* while adjusting from **the husband's ability and sense of justice and decency** the directly determine how much nominal *mut'ah* is which amounts to Rp. 10,000,000.00 (ten million rupiah).³⁰ Both nominal determinations, both *iddah* and *mut'ab*, are considered to have exceeded the husband's ability. In terms of living *iddah*, the amount is 2/3 of the husband's net income. Furthermore, *mut'ab* was ten times the net income that her husband earned for a month.

Then the case file was brought to the cassation level. The Supreme Court decided to *mut'ab* to Rp. 18,000,000.00 (eighteen million rupiahs) at the cassation level with the following considerations:³¹

²⁶ lihat berkas perkara Pengadilan Agama Maninjau nomor 42/Pdt.G /2019/PA.Min.

²⁷ Putusan Banding no 40/Pdt.G/2019/PTA.Pdg, 8.

²⁸ Ibid, 9

²⁹ Putusan Tingkat Pertama nomor 42/Pdt.G /2019/PA.Min, 20.

³⁰ Putusan Banding no 40/Pdt.G/2019/PTA.Pdg, 10.

³¹ Putusan Kasasi no. 923 K/Ag/2019, 3.

Considering, that in determining *mut'ah* should pay attention to **the length of the marriage and the breadth of iddah**, where the marriage of the Applicant and the Respondent is carried out in 2000, in feasibility and propriety for a divorced wife, at least given a ***mut'ah* living of 12 (twelve) times the amount of iddah per month**. (where the specified iddah amounted to Rp. 2,250,000.00 (two million two hundred and fifty thousand rupiahs) for three months.

Based on the illustration of the case presented, the author argues, although the considerations used as a benchmark in the determination of nominal between judges either in the first level, appeal, or cassation have been the same or agreed, in the implementation in the field sometimes differs in the determination of nominal living *iddah* and *mut'ah* of a case, when many facts must be considered in the determination of the nominal of the living, then which considerations should take precedence.

This is what a judge takes seriously in considering to determine the nominal living of *iddah* and *mut'ah*. Of course, this is inseparable from a sense of justice for both sides. Therefore, epistemologically, a judge must be able to explore every case, not only see from the surface, even it takes a high spiritual value to determine the importance of giving birth to considerations that have a sense of justice for all parties.

In this case, the author argues as from the example of the case that has been explained that what is used as the basis of consideration is the ability of the husband but still sees from the interests of the wife, therefore the Panel of judges at the cassation level grants the wife's demands by exceeding a little more than the ability of the husband, where epistemologically the tribunal considers that it is fair that the husband is charged *iddah* 2/3 of the husband's income for a month, the for *mut'ah* as a souvenir during the marriage with the wife from 2000 to 2019 with the provision of the *mut'ah* at least 12 times the living *iddah* for a month, then the Panel of Judges cassation level argues to meet the sense of justice when charging *mut'ah* to the husband amounting to Rp. 18,000,000.00 (eighteen million rupiah). The nominal is approximately 18 times the husband's net income for a month. But what the author needs to emphasize here is that not all cases are equally considered, many aspects and factors that affect a case, so it takes the seriousness of a judge to determine which consideration he will use. It is expected that such considerations will give birth to a fair verdict following the mandate of the Law.

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