



The Obligation of the Husband as a Civil Servant in the Provision of the Living to the Ex-Wife Is Reviewed from Law Number 1 of 1974 and Islamic Law

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Abstract

This research aims to analyze the obligation of the husband with the civil servants in the provision after divorce under Islamic law and the positive law of Indonesia. This method of research is normative research with a statutory approach, conceptual approach and legal comparative approach. There is a difference in the provisions of the after divorce, in Islamic law after the divorced there is a period of Iddah, which is determined that the former wife is given a living until the end of her iddah in Mut'ah form or the gift given by the husband to the wife who has divorced While especially for civil servants is determined also the provision of salary to the ex-wife until the former wife remarried in accordance with Article 8 of government Regulation number 10 of 1983 concerning marriage and divorce permit for civil servants. The rules governing divorce of civil servants are not in accordance with Islamic law which requires only until the time of provision of the living until the end of Iddah. The wife who has been divorced and has ended the bonds of a husband, then she does not have any relationship nor with anyone. Then it is impossible that someone who has been dissent is still obliged to provide a living to someone who also has no formal relationship or association.

Keywords: *Provision of the Living; Divorce; Civil Servants*

Introduction

The survival of a marriage is determined by various factors. One of the contributing factors is the success of achieving the goal of marriage, which is become a happy and eternal family based on Almighty God. However, not all marriages succeed in achieving their goals. This is due to the many problems that arise in the life of marriage, so sometimes it causes a disharmony between the husband and wife. Then it causes the end of marriage. And in Law number 1 of 1974 has also asserted that the break-up of marriage is caused by three reasons namely, death, divorce, and because of the judgment of judges.

With this divorce will cause legal consequences, either for the husband or wife who is left, child or for the property in marriage. From the consequences of the law, it is often a dispute for the parties is about the property in marriage that is tangible property together.¹

In order to implement *Jo* Law number 1 of 1974 number 16 of 2019, especially for Indonesian citizen group that status of civil servants, by the Government on 21 April 1983 has been enacted government Regulation number 10 of 1983 on marriage permit and divorce for civil servants. Then it was changed with government Regulation number. 45 of 1990 on amendment to government Regulation number 10 of 1983 on marriage clearance and divorce for civil servants.

The divorce of civil servants will cause a legal consequences in accordance with the provisions of Article 8 government Regulation number 10 of 1983 namely the granting of rights in the form of distribution of salary to his ex-wife until his ex-wife remarried. In this regard, in the compilation of Islamic law Article 149 letter "b" stated "*when the marriage broke out because of the Talak, then the former husband obliged: to give a living, Maskan and Kiswah to the former wife during the 'Iddah unless the former wife has been sentenced to Ba'in or Nusyuz and in the case of does not pregnant*". From the above conditions it is obvious for the husband who has divorced his wife is obliged to provide shelter, or to allow his wife to reside at his home until the 'Iddah period expired.²

As a Muslim is obliged to obey to what is prescribed in the teaching of Islamic law about the provision of the living after the divorce, but as a civil servant also must be subject to the prevailing regulations in Indonesia. From the explanation above there is a conflict of legal norms between Islamic law and government Regulation Number 10 of 1983 on marriage and divorce permit for civil servants *Jo* government Regulation number 45 of 1990 in terms of time and the amount of the gift of the husband to his ex-wife.

Methodology

This method of research uses a normative legal research methods because it examines the provisions of the relevant legislation on the provision of a living to ex-wife.

Discussion

Provision of a living in Islamic Law

Due to divorce, the husband is obliged to provide a living to his ex-wife during Iddah period. The term itself means shopping life (money) income, husband is obliged to give to his wife, Rizki (income), provision of daily living and said iddah means the waiting period for the woman who is divorced by her ex-husband, so the living iddah same also means a living given by the ex-husband after the occurrence of divorce. So that referred to a living Iddah or a living divorce is the allowance given by a man to his ex-wife based on a court ruling that completed their divorce.³

The wife divorced by her husband still has the rights that can be asked to the husband who divorcing. Islam governs the rights that the ex-wife can obtain during 'Iddah for the purpose of the wife not to be displaced by divorce. The intended living include:

¹ K. Wantjik Saleh, *Hukum Perkawinan Indonesia*, Ghalia Indonesia, Jakarta, 1980, p. 40.

² Muhammad Daud Ali, *Asas-Asas Hukum Islam Tentang Perkawinan*, cet. 6, PT. Raja Grafindo, Jakarta, p. 125.

³ Depdikbud, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, 1996, p. 667.

- a. **Mut'ah**
In Islam, Mut'ah is known as the gift of a husband to a divorced wife. The provision of Mut'ah is given according to ability. The purpose of this living Mut'ah is as a comforter and a tribute to the wife that her husband had pierced. The gift is expected to entertain or delight the hearts of the wives who have been divorced and can become a living provision for the ex-wife, and to cleanse the hearts of women and eliminate the fears of the male on her.⁴
- b. **A Living of Kiswah or clothing**
A living Kiswah, means a living in the form of clothing. *Kiswah* is a husband's obligation to his wife. The clothing in question is all the needs that are closely related to the limbs. The husband is obliged to give his wife a living in the form of clothing to seal his loins and various needs of her inner necessity besides the clothes.
- c. **A Maskanah Living (Residential)**
For the ideal family or household, the residence is an important target to be gained because the existence of a place of residence serves to give the wife and children a sense of safety, comfort and tranquility.
- d. **Unpaid rights on Mahar**
If it turns out that the Mahar has not been paid but there has been a divorce in which the husband who filed for divorces, then the husband still obliged to pay off the Mahar. This decree is contained in the KHI (*Compilation of Islamic Law*) Article 149 C which reads "*Pay off the Mahar which is still owed, and half when Qobla ad-Dukhul.*"

Provision of a Living by Civil Servants

Civil servants are those who after fulfilling the conditions specified in the prevailing laws and regulations, appointed by the competent officer and assigned a duty in a State Department or other duties of the state stipulated based on a statutory regulation and paid in accordance with the prevailing laws and regulations.

As an element of state apparatus, the servant of the state, and the public servant of civil servants in carrying out their duties is expected not to be disturbed by the business of household or family life. Civil servants must comply with certain obligations in the event of marriage, more than one wife, and or intend to commit a divorce.

In the context with the living ex-wife of Civil Servant, that civil servants as an element of state officials, state servants, and public servants are expected to be good examples for society in behavior, action, and adherence to prevailing laws and regulations.⁵

Government Regulation number 10 of 1983 on marriage clearance and divorce for civil servants is a regulation that will be effective from the date of revaluation, i.e. April 21st, 1983 and specifically applicable for civil servants without prejudice to the provisions set out in Law number 1 of 1974 on marriage. This rule is felt to be enforced with the consideration of civil servants as an element of state apparatus is obliged to provide a good example to his subordinates and be an example as a good citizen in the community, including in organizing family life and in order to improve the discipline of civil servants in conducting marriages and divorce.

Furthermore, in its development, in order to further enhance and enforce the discipline of civil servants as well as provide legal certainty and a sense of justice, it is deemed necessary to change some provisions in Government Regulation number 10 of 1983 on marriage and divorce permit for civil

⁴ Abd. Rahman Ghazaly, *Fiqh Munakahat*, Cet. II, Kencana, Jakarta, 2003, p. 92-93.

⁵ Harmon Harun, *Himpunan UU Kepegawaian*, PT Raja Grafindo Persada, Jakarta, 2002-2004, p. 2-3.

servants. On 6th September 1990, government regulation number 45 of 1990 on amendment of government regulation number 10 of 1983 on marriage permit and divorce for civil servants.

Determination of the obligation to provide livelihood costs by the husband to the former wife and children, arranged in article 8 government regulation number 10 of 1983 *Jo.* Government regulation number 45 of 1990, as follows:

- a. If a divorce occurs on the will of a man's civil servants then he is obliged to handed some of his salary for the livelihood of his ex-wife and children.
- b. The salary division as referred to in paragraph (a) is a third for the male civil servant concerned, a third for his ex-wife, and a third for his or her child or children.
- c. If from the marriage there is no child then the salary that must be submitted by the male civil servants to his ex-wife is half of his salary
- d. If the divorce occurs on the will of the wife, then she is not entitled to the producer part of her ex-husband.
- e. The provisions referred to in paragraph (d) do not apply, if the wife asks for divorce due to honey.
- f. If the ex-wife of civil servants concerned to marry again, then the right to the salary of the ex-husband become erased when she began to marry again.

Provisions of article 8 government regulation number 10 of 1983 about the marriage permit and divorce for civil servants this is spelled out in the circular of the Head of Personnel Administration (BAKN) number 08/SE/1983 in part III (DIVORCE) figures 19 to 28 as follows:

1. If the divorce occurs on the will of the male civil servants, then he is obliged to handed some of his salary for the livelihood of his ex-wife and children, with the following provisions:
 - a. If the child follows the ex-wife, the salary division is determined as follows:
 - 1) A third salary for the male civil servants concerned;
 - 2) A third salary for his ex-wife;
 - 3) A third salary for his son to be sent to his ex-wife.
 - b. If the marriage does not produce a child, then the salary is divided into two, which are half for the male civil servants concerned and half for his ex-wife.
 - c. If the child follows the man's civil servant concerned, the salary division shall be stipulated as follows:
 - 1) A third salary for the male civil servants concerned;
 - 2) A third salary for his ex-wife;
 - 3) A third salary for the child to be sent to the male civil servants concerned.
 - d. If a part of the child follows the male civil servants concerned and partly follows the former wife, then $\frac{1}{3}$ (*one-third*) salary to be the right of the child is divided by the number of children, for example:

A civil servant divorced man with his wife. At the time of divorce they have 3 (*three*) children, who 1 (*one*) person follows the male civil servants concerned and that 2 (*two*) people follow his ex-wife. In such cases, the salary that is the right of the child is divided as follows:

- a) $\frac{1}{3}$ (*one-third*) of $\frac{1}{3}$ (*one-third*) salary = $\frac{1}{9}$ (*one-ninth*) salary will be given to the civil servants concerned;
- b) $\frac{2}{3}$ (*two-third*) of $\frac{1}{3}$ (*a third*) salary = $\frac{2}{9}$ (*two-ninth*) salary will be sent to his ex-wife.

2. The right to the salary portion as such shall not apply if the divorce occurs in the will of the wife concerned, except that the wife in question asks for divorce, or in other words, when the wife asks for the divorce, then after the divorce occurs, the ex-wife is entitled to the salary.
3. If the former wife is in marriage again, then the salary is terminated from the next month of the former wife who is concerned to marry again.
4. If the former wife is in marriage again, all children join the ex-wife, then $1/3$ (*one third*) remains the right of the child to be sent to the ex-wife.
5. If at the time of divorce some children follow the civil servant in question and some follow the ex-wife and she marry again and the child still follow her, then the salary that is the right of the child, still will be delivered to the ex-wife.
6. If the child is 21 (*twenty one*) years old, or 25 (*twenty-five*) years if the child is still in school, who has/had married, or has had his own income, the salary portion payment for him is discontinued.
7. The portion of the salary terminated for the payment as such is paid to the male civil servants concerned.
8. If the civil servant of the man who had divorced his wife and then married again with another woman and then divorced, then the former wife is entitled to receive:
 - a) $1/3$ (*one-third*) of $1/3$ (*a third*) salary = $1/9$ (*one-ninth*) salary of the civil servant concerned, if the child follows the male civil servants concerned;
 - b) $2/3$ (*two-third*) of $1/3$ (*a third*) salary = $2/9$ (*two-ninth*) salary of the civil servants concerned, if the child follows his ex-wife.
 - c) If some children follow the male civil servants concerned and some children follow the former wife, then $1/3$ (*one-third*) of the $1/3$ (*one third*) salary that the child has rights to, divided by the number of children.
9. The Division of salary above, shall be the obligation of each officer concerned, or any other officer appointed by him and who signed the salary list is the civil servants concerned.
10. If the divorce occurs in the same will with the husband and wife, then the salary division shall be governed as follows:
 - a. If the marriage does not produce a child, then the husband's salary division is determined by mutual agreement;
 - b. By not reducing the provisions of the letter (a) above, then:
 - 1) If all the children follow the former wife, then $1/3$ (*a third*) the salary of the civil servant concerned is for the child to be delivered to his ex-wife;
 - 2) If some children follow the male civil servants concerned and partially follow his ex-wife, then $1/3$ (*one-third*) the salary that the child has to share is divided by the number of children.

The above has been explained about the provision of the living. From the explanation there is a comparison of the living in the ex-wife after the divorce in accordance with Islamic law and also based on government Regulation number 45 of 1990 on amendment to government regulation number 10 of 1983 on marriage clearance and divorce for civil servants. One of the comparisons is the difference in the length of time for the former wife after divorce, in Islamic law there is a provision of the 'Iddah period for ex-wife, during the period of the 'iddah husband obliged to provide a living to his former wife until the 'Iddah ended, while in government Regulation number 45 of 1990 on amendment to government Regulation number 10 of 1983 on marriage and divorce permit for civil servants determined that the status of a civil servant who commits a divorce with his wife is obliged to give his salary for his ex-wife until his ex-wife remarried with another man.

In relation to a living discussion of ex-wife for civil servants, then the rule must bring benefits and keep harm (*mudharat*) which in fact is maintaining the purpose of establishing the law. The ruling should remain in the corridor of Islamic sharia.

When looking at the rules relating to the marriage of the post-divorce that occurred until the ex-wife remarried the rules will eliminate the benefits in worldly life and do not contain aspects of nurturing religion and also maintaining wealth. The aspect of preserving religion is that the decree is contrary to the Islamic law that exists where Islamic law only limits the living to a divorced wife until iddah period of ex-wife end. While the aspect of maintaining property is a violation of the rights and obligations of husband and wife about the living. The emergence of rights and obligations for husband and wife due to a valid bond relationship. The provision of the living as stipulated in article 8 Government Regulation number 10 of 1983 is of course violating the rights and obligations of husband and wife. The wife who has been divorced and has ended the bonds of a husband, so she does not have any relationship nor with anyone. Then it is impossible that someone who has been dissent is still obliged to provide a living to someone who also has no formal relationship or association.

Although the original purpose of this rule is to suppress the divorce rate for civil servants and to protect the wife from the mischief and brutality of the husband, but it does not mean that the above problems will disappear. This will underestimate and eliminate the provision in Islam regarding the limitation of the living for the divorced wife, until the time of his age ends.

The provision for the ex-wife of civil servants is also judged to bring good to the wife because to help the ex-wife who does not have income and protect the wife from husband's sake. However, the decree does not bring good to the husband because there was still an obligation to the ex-husband of the ex-wife who had broken up. If the husband still bears the living of the ex-wife, then it will appear immorality. Immorality which emerged that is the right to be given a husband to a new and legitimate wife in a bond is also given to someone who has no relation.

Conclusion

According to Islamic law due to divorce, husband is obliged to provide a living to his ex-wife only until the time of his iddah ends. The living during the 'Iddah is a mut'ah or gift or reward given by the husband to the wife who has been divorced, a living or a residence, a living rawah or clothing, and an unpaid dowry. While in accordance with the provisions of Article 8 government Regulation number 45 of 1990 on amendment to government Regulation number 10 of 1983 on marriage clearance and divorce for civil servants. It was determined that the divorced civil servants are also obliged to give a living in the form of his salary to the wife who has divorced until the wife remarried with another person. The rules governing divorce of civil servants are not in accordance with Islamic law which requires only until the time of 'Iddah. The wife who has been divorced and has ended the relation of a husband, so she does not have any relationship nor with anyone. Then it is impossible that someone who has been dissent is still obliged to provide a living to someone who also has no formal relationship or association.

Suggestion

Provisions of Article 8 government Regulation number 45 year 1990 on amendment to government Regulation number 10 of 1983 on marriage and divorce permit for civil servants who determines that the salary of husband who is in the status of civil servants is done until the ex-wife remarried with another person should be adapted to Islamic law.

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Compilation of Islamic Law.

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