

## **Implications of the Inability to Pay *Iddah* Maintenance and *Madiyah* Maintenance in the Case of a Petition for Divorce (Analysis of PERMA No.3 of 2017 and SEMA No. 2 of 2019)**

\*Sayyid Al-Umam Sitepu<sup>1</sup>, Fauziah Lubis<sup>2</sup>

<sup>1,2</sup>) Universitas Islam Negeri Sumatera Utara, Indonesia

\*umamsayed@gmail.com

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### **Abstract**

The purpose of this paper is to evaluate the direct implications for women, especially wives, if their rights in divorce are not fulfilled. This evaluation is based on the principle that women have equal rights under the law, as regulated in SEMA No. 2 of 2019 concerning the protection of women in the legal system. This research will explain in detail the implications for women if they do not obtain their rights after divorce, such as *iddah* maintenance and *madhiyah* maintenance in cases of contested divorce. The study employs a qualitative method with an empirical juridical approach. Primary data sources include interviews with legal experts and affected individuals, while secondary data sources encompass relevant legal documents and literature. The conclusion of this research is that women have the right to obtain their rights after divorce, including *iddah* and *madhiyah* maintenance, even in cases of contested divorce, in accordance with the relevant SEMA. Failure to obtain these rights results in various legal and negative implications for women, both long and short term.

**Keywords: Divorce Sue, Implication, Living Iddah, Living Madhiyah, Women**



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### **INTRODUCTION**

Women's rights after divorce include several important aspects that must be fulfilled to ensure justice and well-being for divorced women. One of the main rights is *iddah* maintenance. In Islamic law, women are entitled to receive maintenance during the *iddah* period, which is the waiting period after divorce, which includes basic needs such as food, clothing, and shelter. This is regulated in the Compilation of Islamic Law (KHI) Article 149 letter (a) which states the husband's obligation to provide living, *maskan* (residence), and *kiswah* (clothing) during the *iddah* period. In addition, women are also entitled to living *madhiyah* or post-divorce living to ensure their survival after the *iddah* period ends, as stipulated in KHI Article 149 letter (d) which requires husbands to provide living *madhiyah* according to their abilities (Pradikta et al., 2023).

Child custody or *hadhanah* is also an important concern, where in Islamic law, the mother usually has the main right to care for children who have not reached a certain age (*baligh*), including maintenance for the needs of the child. Marriage Law No. 1 Year 1974 Article 41 stipulates that both parents remain obliged to maintain and educate their children, despite divorce (Firdawaty et al., 2023). Women who are divorced without clear reasons are also entitled to receive *mut'ah*, which is a gift from the husband as a form of respect and comfort, as regulated in KHI Article 149 letter (b). In addition, *gono-gini* property or joint property obtained

during marriage must be divided fairly between husband and wife. Marriage Law No. 1 Year 1974 Article 37 states that the division of gono-gini property is carried out according to their respective laws, namely religious law, customary law, or based on a marriage agreement. (Khoirul Rozikin et al., 2024)

When divorce in a household occurs, of course, there are rights and obligations inherent in this legal event. A wife who will be divorced by her husband or file a divorce lawsuit is entitled to get her rights after the divorce. In principle, the instruments of women's legal protection mentioned above must be expressly requested in a divorce lawsuit, but in the implementation in the field that women's legal awareness in demanding their rights is minimal, so that often the demands for these rights escape the lawsuit. On the other hand, women often suffer further due to economic incapacity caused by the loss of economic resources that have been obtained from their husbands after divorce. So that unwanted implications will arise with the non-fulfilment of these things. (Lubis & Mas, 2020) Among them are suffering in terms of maintenance that she had expected from her husband (for housewives).

From Komnas HAM Report 2020 Many divorced women do not receive iddah and madhiyah maintenance as stipulated in the law. A report from Komnas Perempuan in 2020 revealed that around 60% of divorced women did not receive the maintenance they should have received. From the 2018 University of Indonesia Faculty of Law Research on the Provision of Mut'ah The right to mut'ah for women who are divorced without a clear reason is often ignored. Most women are unaware of this right or their husbands are unwilling to provide mut'ah. UNICEF Indonesia 2019 Study on Child Custody Although the law gives mothers the primary right to care for children who have not reached puberty, in practice many women experience obstacles in obtaining child custody. Cases of custody disputes often drag on in court.

Because it often happens in divorce cases, especially contested divorce, many of the women do not get their rights, including iddah maintenance, madiyah maintenance, maskan and others. Which is contradictory to what is stated in the Law and KHI, especially the latest, namely PERMA No. 3 of 2017 concerning women dealing with the law with its guidelines on SEMA No. 2 of 2019 which states that women who are dealing with the law, especially in divorce cases, have rights in the eyes of the law. (Lubis & Mas, 2020) There is no difference in treatment with men to obtain their opportunities and rights as human beings. Then the implications for women if their rights after divorce are not fulfilled, be it iddah maintenance or masdhiyah maintenance by their husbands, can be very diverse. (Iman et al., 2023) Among the most prominent are financial difficulties, loss of housing, feelings of insecurity, mental health, chronic stress, depression, or other health problems, so based on the above problems, the author is interested in examining the above in a paper with the title "Implications of the Inability to Pay Iddah Maintenance and Madiyah Maintenance in the Plaintiff's Divorce Application Case (Analysis of Perma No.3 of 2017 and Sema No.2). Year 2017 and Sema No. 2 Year 2019)".

From the above research, here are three recent studies that discuss the implications of the inability to pay iddah maintenance and madhiyah maintenance in cases of divorce petitions: The first study is "Payment of Iddah and Mut'ah Maintenance in a Contested Divorce Case: Study of Case Decision Number 0076/Pdt.G/2017/PA. Mgl" conducted by Rabbani Lubis in 2020. This study examines the legal considerations of judges in providing iddah and mut'ah

maintenance in a divorce case. The results show that the judge based his decision on Article 41 letter (c) of Law No. 1 of 1974 and Article 149 letters (a) and (b) of the Compilation of Islamic Law (KHI), as well as the jurisprudence of the Supreme Court. Although there are provisions that deviate from Article 149 KHI, the judge used a legal discovery approach to provide iddah maintenance even though the divorce was filed by a wife who was not proven to be nusyuz. The weakness of this decision is that there is no instrument to force the defendant to pay maintenance voluntarily outside the trial. This article is available at Walisongo Repository.

The second research is "Provision of Mut'ah and Iddah Maintenance in Plaintiff's Divorce Cases" written by Abda et al. in 2023. This article discusses how the provision of iddah alimony and mut'ah is used in cases of contested divorce. It found that judges often use a progressive approach in awarding maintenance to wives who sue for divorce, considering relevant social and juridical conditions. These decisions often accommodate the interests of wives who are left without financial support after divorce, although there are not always instruments that compel ex-husbands to pay such maintenance. This article was published in UMS Journals.

The third research is "Imposition of Iddah Maintenance, Mut'ah Maintenance, and Madhiyah Maintenance in a Contested Divorce Case (Analysis of Decision Number 97/Pdt.G/2020/PA. Mtp)" conducted by Lisnawati in 2023. This study examines the decision of the Martapura Religious Court which imposes iddah, mut'ah, and madhiyah maintenance on the husband in a case of contested divorce. The judge used the legal basis which includes Article 41 letter (c) of Law No. 1 Year 1974 and Article 149 letters (a) and (b) KHI. This decision also considered Perma No. 3 of 2017 and SEMA No. 2 of 2019 which emphasise the protection of women's rights in divorce cases (Mahmudah et al., 2022). In the judgement, the defendant who had abandoned the plaintiff for nine months was obliged to pay the outstanding maintenance, even though it was the wife who sued for divorce. This paper is available at UIN Antasari.

These three studies provide deep insights into the complexities of implementing women's rights after divorce in Indonesia and highlight the need for more effective instruments to ensure the fulfilment of these rights. The three studies mentioned above, and this article have several similarities, including a focus on living iddah and living madhiyah in the context of contested divorce, the use of the same legal basis such as Article 41 letter (c) of Law No. 1 Year 1974 and Article 149 KHI, and highlighting the importance of protecting women's rights after divorce, including the right to living. However, there are also some differences. Rabbani Lubis' research (2020) emphasises more on the legal considerations of judges in providing iddah and mut'ah maintenance, while Abda et al. (2023) focused on the progressive approach of judges in providing iddah and mut'ah maintenance. Lisnawati (2023) examines a specific decision of the Martapura Religious Court that imposes iddah, mut'ah and madhiyah maintenance on the husband. This article, on the other hand, highlights the implications of the inability to pay iddah and madhiyah maintenance by analysing PERMA No. 3 of 2017 and SEMA No. 2 of 2019.

In addition, this article specifically discusses the inability to pay maintenance and its impact on the contested divorce process, as well as introducing recent legal instruments that were not explicitly discussed in previous research. Previous research lacked in-depth analyses of the inability to pay maintenance and its implications in contested divorce proceedings, as well as lacked discussion of recent legal instruments such as PERMA No. 3 of 2017 and SEMA

No. 2 of 2019. This article offers a more specific analysis of the implications of the inability to pay iddah and madhiyah maintenance, which has not been widely discussed in previous research, and uses recent legal instruments to understand the impact on women's rights in divorce.

Implications of Inability to Pay Iddah and Madhiyah Maintenance in Cases of Petition for Divorce (Analysis of PERMA No. 3 of 2017 and SEMA No. 2 of 2019) This article aims to examine the implications of inability to pay iddah and madhiyah maintenance in the context of cases of petition for divorce, using PERMA No. 3 of 2017 and SEMA No. 2 of 2019 as the basis for analysis. The study focuses on how the financial incapacity of the former husband affects the divorce process and the protection of women's rights, as well as efforts to ensure the fulfilment of maintenance obligations through existing legal instruments.

## **RESEARCH METHODS**

This research uses a qualitative method to analyse in depth various aspects related to the implications of the inability to pay iddah maintenance and madhiyah maintenance in a contested divorce case. The main purpose of using qualitative methods is to gain a deep understanding of social reality from the perspective of the participants, namely the parties involved in the divorce case. Qualitative analysis is carried out to describe and interpret social phenomena without involving numbers, but rather focus on in-depth and detailed descriptions of the research focus. In this context, this research aims to explore a deeper understanding of how the former husband's financial inability to pay maintenance affects the divorce process and the protection of women's rights.

The approach used in this research is descriptive qualitative, in which data is obtained in the form of written or spoken words from the participants observed. Primary data sources in this research include files of divorce case decisions, interviews with relevant parties such as judges, clerks, and parties to the divorce. Secondary data sources came from legal documents such as PERMA No. 3 of 2017 and SEMA No. 2 of 2019, as well as relevant literature. Data collection was carried out through examination of divorce case decision files, in-depth interviews with key informants such as judges with experience handling divorce cases, and literature review.

Data analysis was conducted by classifying data based on its character and quality. The analytical technique used in this research involves the interpretation of data obtained from the field, such as the implications of the inability to pay iddah maintenance before the reading of the pledge of divorce and the judge's policy process in resolving cases of gugat divorce due to the inability of the applicant to pay iddah maintenance. The data was analysed using interpretative theory which focuses on interpretation and in-depth understanding of the data that has been collected. The results of this analysis were then used to develop an accurate and factual description of the characteristics and factors influencing divorce cases.

This article is a descriptive qualitative research article that aims to provide a factual and accurate description of the implications of the inability to pay living iddah and living madhiyah in the context of divorce cases, with in-depth analysis using the latest legal instruments such as PERMA No. 3 of 2017 and SEMA No. 2 of 2019.

## RESULTS AND DISCUSSION

Article 41 of Law No. 1/1974 on Marriage section (c) empowers the court to determine the obligation for the former husband to provide living expenses and/or to determine the obligation for the former wife. However, the law does not explicitly state whether this obligation only applies in cases of divorce (where the husband files for divorce) or also in cases of contested divorce. The provisions in this article are general and can be applied in both divorce and contested divorce cases.

In Government Regulation No. 9 of 1975 which explains Law No. 1 of 1975 concerning Marriage, Article 24 paragraph (2) letter (a) states that during divorce proceedings, the Court may determine the husband's obligation to provide maintenance at the request of the Plaintiff or Defendant. In line with Law No 1 of 1974 concerning Marriage, Government Regulation No 9 of 1975 also contains a general article, even in this article can be demanded by the wife, whether she is the Plaintiff or the Defendant. Thus, the content of this article is more specifically determined about the ability of women to claim their rights after divorce, even though the divorce is due to the wife's wishes (*cerai gugat*).

The Supreme Court of the Republic of Indonesia, as a guide for the lower judicial institutions, issued SEMA No 3 of 2018. In the section relating to Religious Chambers Point (3), it is stated that in the case of a contested divorce, the wife can be given *mut'ah* and *iddah* maintenance if the wife is not proven to have committed *nusyuz*. The provisions contained in this Supreme Court Circular Letter are not new rules, but already exist in higher legislation. Because in its implementation there is no uniformity or differences in interpretation of the rules of the Law, the Supreme Court issued a Circular Letter to be guided by all judicial bodies under it.

As a refinement of the formulation of the Religious Chamber in SEMA No. 3 of 2018, the Supreme Court then issued SEMA No. 2 of 2019. In this circular letter, it is stated that for women's lawsuits regarding women's rights after divorce, if granted by the Panel of Judges examining the case, then in the verdict the sentence can be added "which was paid before the Defendant took the divorce certificate". This aims to protect women's rights after divorce. And the former husband cannot get his divorce certificate before paying the obligations as stated in the decision.

Women's rights after divorce include *iddah* maintenance, *madiyah* maintenance and *mut'ah*. Therefore, women are also entitled to past maintenance that the husband failed to pay when they were still living together in marriage. Not only in Indonesia, in several countries, such as Singapore, Yemen, Marocco, and Turkey and Brunei, also apply the right for women. The determination and nominal number of rights that women will receive depends on the divorce filed, whether the husband files or the wife, whether the woman sues for her rights or not, the economic capacity of the husband, and no less important the confidence of the judge.

So that the obligation to provide maintenance related to the wife also applies if there is a divorce between the husband if the wife is still in the *iddah* period, which is a period or waiting time for a woman who is divorced by her husband whether due to death or also due to divorce alive and has been determined by Islamic law. Where the *iddah* period aims to cleanse the uterus for the wife from the possibility of seeds from her former husband, so that there is no mixing

of nasab between the previous husband and his new husband, which causes doubts about the nasab of the child to be born. (Munir & Baharuddin, 2023)

Although there are different views among scholars, as in the case of divorce, women who perform *khulu'* are also required to undergo *'iddah*. The aim is to ensure that there is no foetus or pregnancy in the woman's womb. The scholars' views on this matter vary. Most scholars (Shafi'iyah, Hanafiyyah, Malikiyyah, and Hanabilah) are of the opinion that the *'iddah* for a woman who does *khulu'* is the same as the *'iddah* for a divorced woman, which is three menstrual cycles. This is based on the Qur'anic verse Surah Al-Baqarah verse 228 which states, "Women who are divorced should refrain (wait) three times *quru'*". Since *khulu'* is also a separation between husband and wife after the marriage (*dukhlul*), the *'iddah* is also three menstrual cycles like any separation other than *khulu'*. (Hisyam & Abou-Bakr, 2023)

In addition, as explained in Article 80 paragraph (4) letter a, which confirms that the husband is responsible for providing maintenance in accordance with his income, also emphasises that even though the husband provides maintenance according to his ability, it is still an obligation for him to provide for his children and wife that he should not neglect. Therefore, the husband is expected to do everything in his power to provide adequate maintenance for them. This is also regulated in Article 34 paragraph (1) of Law No. 1 of 1974 concerning Marriage.

In Indonesian positive law, provisions related to maintenance are regulated in various laws and regulations, and the obligation is not cancelled even if the husband and wife have divorced. In fact, the *nafaq* that is not given by the husband to the wife, when a divorce occurs, remains a debt owed by the husband to the wife.

In the case of divorce, the payment of *nafaq* is made by the husband before the vow of divorce is pronounced before the Religious Court. However, in the case of a *gugat* divorce, in accordance with SEMA No. 2 of 2019, in the formulation of the Religious Chamber Number (1) letter (b), to provide legal protection for women's rights after divorce, the provision of payment of the husband's obligation to the wife's rights after divorce in the case of a *gugat* divorce may be accompanied by the additional sentence "which must be paid before the Defendant takes the divorce certificate". Since in a *gugat* divorce no declaration of divorce is made, in the case of a *talak* divorce, the husband must pay living *iddah*, *mut'ah*, and living *madhiyah* to the wife before the divorce proceedings are officially conducted. However, in a different situation, based on Article 149 letter (b) of the Compilation of Islamic Law, the husband's obligation to provide these benefits to the divorced wife will be cancelled if the wife is proven to have committed a violation (*nusyuz*).

According to one of the judges of the Religious Court, Mrs. Dr. Helmilawati, S.H.I., M.A. explained about the criteria for wives who are entitled to obtain their rights after divorce in the case of contested divorce that if the criteria are the same as divorce, the first is not *nusyuz* which is the most important. the second is the husband's ability to pay because we have to differentiate. If he is divorced from divorce, the husband is present, he can be heard, we can know his ability, what his job is, it will be different from the contested divorce, not necessarily the husband is present, so it is important for the judge or for the court to know what the husband's job is. Now if the woman or the wife can prove, for example, that her husband has a job that has a steady

income, for example, a civil servant, then it will be easier to apply or can be given rights or the divorce market, but if for example the wife is not able to prove that her husband has a job and income then actually in this condition it is difficult to apply because she does not know, because the proof will also ultimately prove that her husband has a job because he has no job no income even though it is an obligation but it will be a futile decision because it will not be implemented either, so it is important that the criteria must have the ability to pay.

Regarding *nusyuz*, there are three levels and actions that the husband must take in responding to his wife, namely: When signs of offending behaviour are visible, the husband has the right to give her advice. After the offending behaviour becomes clear, the husband has the right to sleep separately from his wife. If the offending behaviour still occurs, the husband has the right to take physical action. However, this action should be done with discretion, avoiding causing injury, avoiding the face area and other potentially dangerous parts of the body, because the purpose of the action is not to hurt, but to provide learning (*ta'zir*).

### **Implications for Women Due to the Inability to Pay *Iddah* and *Madhiyah* Maintenance in Divorce Cases**

SEMA No. 2 of 2019 is a Circular Letter of the Supreme Court of the Republic of Indonesia that emphasises the importance of adequate legal protection for women in the justice system. The Circular focuses on several key aspects, including the protection of women who are victims of violence, both domestic and sexual violence. It also emphasises the need to protect women's human rights and encourage their empowerment through appropriate legal mechanisms. Fair and non-discriminatory law enforcement is also central to the implementation of this SEMA, with the aim of ensuring that women have equal access to the justice system and that gender perspectives are more strongly integrated into legal decision-making processes. SEMA No. 2/2019 is a significant step towards creating a more inclusive and equal legal environment for women in Indonesia.

Islamic law states that marriage has the purpose of realising a family life that is *sakinah*, *mawaddah* and *rahmah*. This principle is used as a basis for what is referred to as the purpose of marriage in accordance with Islamic sharia. This is in line with what is mentioned in KHI article 1 regarding marriage to obey the commands of Allah SWT. (Ridwan 2018) If reviewed based on the marriage law and KHI, the conclusion is that the purpose of marriage is to fulfil religious instructions so that a prosperous, happy and harmonious family is formed. (Khitam 2020) The purpose of marriage according to Imam Al Ghazali is to obtain and continue offspring, fulfilment of human needs in channeling affection and lust, fulfilment of religious obligations, self-preservation from evil and immorality, the growth of seriousness as a person who has responsibility for rights and obligations and the acquisition of halal property, and the creation of a safe community civilisation based on love and affection. (Yulianti et al., 2020)

On the way, fostering a household is often faced with conditions and situations not with that the household must be finished or *Kandas* in the middle of the journey. (Tasdiq 2020) The separation or breakup of the husband-and-wife relationship in a condition is unavoidable, which in the end the ideals of building and forming a *sakinah mawaddah warohmah* family are not delivered. (Heniyatun and Anisah 2020) Even the irony is that children who should have a

comfortable home under the protection and love of both parents also bear how painful and bitter the implications or impacts of the divorce of their parents.(Fitri Rahmiyani Annas, 1989)

It is not uncommon for a household to experience disputes that cause a rift because one of the husbands or wives is negligent of the rights and obligations of each other.(Fuadi et al., 2020) The rights and obligations consist of three forms, namely the rights and obligations of the husband (articles 80-82 KHI), the rights and obligations of the wife (articles 82-84 KHI), and joint rights and obligations (articles 30-34 of Law No. 1 Year 1974). Therefore, if the obligations of both husband and wife have been fulfilled, whether it is a personal obligation or a joint obligation, undoubtedly the marital relationship will be established in harmony and the goals and ideals of marriage will be the formation of a household that is sakinah muat two mahs will be achieved. vice versa, when the husband or wife, or even both of them commit insubordination or neglect of their obligations, the family or household that has been built will fail and fall apart and in the end a divorce will occur.(Ismail & Khotamin, 2017)

Although Islam allows divorce in the household, as stated earlier, it is something that is hated by Allah and His Messenger, even though it is allowed. So that to avoid divorce, if in family life disputes and quarrels, Islam recommends that hakam be sent, namely a messenger from the woman's side, to negotiate to achieve peace. (Fadhlullah and Asni 2021) In the Qur'an Surah An- Nisa verse 35 Allah says:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا ۗ إِن يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا ۗ إِنَّا اللَّهُ كَانٌ عَلِيمًا حَبِيرًا

Meaning: *“And if you fear a dispute between them, then send a peacemaker from the man's family and a peacemaker from the woman's family. If the two (peacemakers) intend to make amends, surely Allah will help the husband and wife. Indeed, Allah is All-Seeing, All-Knowing”*.

Divorce is the separation of the marriage bond through a judge's decision or the request of one of the parties involved in the marriage.(Hermanto & Ismail, 2020) It is considered an exceptional event, being a significant social and juridical issue in many regions.(Wathani et al., 2022) A marriage can end in three ways: death, divorce, or a court decision (Article 38 of Law No. 1 1974). Divorce can only be executed before the court after attempts at reconciliation between the two parties have been unsuccessful (Article 65 of Law No. 3 of 2006). Divorce can only be filed before the Religious Court after attempts at reconciliation between the two parties have been unsuccessful. A marriage can be ended through divorce only if a petition for divorce is filed with the court. This happened after mediation efforts by the court failed. Then, the court will make a decision on the divorce petition.(Firdawaty et al., 2023)

There is a difference between talak and cerai gugat. Talak refers to the husband applying for the termination of the marriage relationship, while cerai gugat (Khulu') is the wife suing for the termination of the marriage relationship (based on article 39 paragraph (2) of the Marriage Law).(Ramdani and Syafithri 2021) In divorce, a Muslim husband asks the court to witness the pledge of talak in a trial.(Razali et al., 2020)Based on this article, we can conclude that the definition of another story is a method carried out or originating from the husband who then wishes to apply to the court to be given permission to say the pledge of talak.(Al Pani et al., 2023)



In addition to divorce, a plaintiff's divorce is when the wife or her representative files a lawsuit with the court in the jurisdiction where the plaintiff resides, unless without the permission of the defendant, the plaintiff intentionally leaves the common residence. In Arabic, the process of filing for divorce is known as Al-Khulu (الخل), which is a combination of the letter "kha" with a dhommah mark and the letter "lam" without a mark. In Indonesia, divorce can occur through khulu' (redemption of divorce) or a divorce judgement by a judge. In addition, there is also the term talak bain sughra, which includes divorce before conjugal relations occur, divorce with the payment of a ransom (khulu), and divorce granted by the Religious Court (KHI Article 119 paragraph 2). The three types of divorce above, even though in legal language they are referred to as divorce, can be filed by women in a divorce case. (Zakaria, 2020)

In addition to those mentioned above, there is also the term "khulu". The word "khulu" is used to describe the meaning of breaking the bond between husband and wife with a majazi meaning. However, according to Shari'ah, scholars define Khulu' as a separation between husband and wife through the consent of both and with the payment of the wife to her husband. In addition to the word "khulu", scholars also use words such as fidyah, shulh, and mubaraah. (Ariyani and Patimah 2021) Although they have the same meaning, they differ in the amount of *iwadh* or compensation used. Scholars use the words fidyah, shulh, and mubara'ah to mean the same thing as the word "khulu" if the compensation for the breakdown of the marital relationship is the entire money given at the time of marriage, half of that money, fidyah, or mubaraah if the compensation is greater than the money received. (Jannah, 2010)

In Indonesian civil law, khulu' is known as a form of divorce that occurs when the wife makes a request by providing payment to the husband and with his consent. Khulu' occurs due to a violation of the taklik talak agreed upon during the marriage (Asnawi., 2023). This must be based on the grounds for divorce stipulated in Article 116 of the Compilation of Islamic Law. (Hidayat, 2024)

SEMA No. 4 of 2014, Religious Chamber formulation number 4, states that a petition for divorce may be accepted if there is evidence to show that the household has been subject to division or divorce. Factors that may indicate this include: 1. Failed attempts to settle amicably. 2. Good communication has started to break down. 3. Separation of beds or shared living quarters. 4. Other circumstances revealed during the trial, such as domestic violence, infidelity, and so on.

Therefore, in addition to the reasons mentioned in Article 19 of PP No. 9 of 1975 concerning the Explanation of Law No. 1 of 1974 concerning Marriage as well as Article 116 of KHI, the indicator of broken marriage as contained in SEMA of the Republic of Indonesia Number 4 of 2014 can be used as a reason for divorce. In addition, women cannot file for divorce. Divorce should not occur without clear and real reasons. This provision also aims to maintain the dignity of marriage so that actions do not occur at will and make it easier for a divorce to occur.

## CONCLUSION

In Law No. 3 of 2006 on Religious Courts, Article 65 states that the dissolution of marriage or divorce can only take place in front of a panel of judges during a court trial after

the relevant court has attempted and failed to reconcile the two parties. Government Regulation No. 9 of 1975 on the Explanation of Law No. 1 of 1974 on Marriage and KHI, Law No. 7 of 1989 on Religious Courts, as amended by Law No. 3 of 2006, and the Second Amendment to Law No. 50 of 2009, expressly allow women to file for divorce.

Article 73 paragraph 1 of Law No. 7 of 1989 explains that a complaint for divorce is a petition filed by the wife or her representative to the court whose jurisdiction covers the plaintiff's place of residence. This is an exception if the plaintiff deliberately leaves the joint residence without the permission of the party being sued.

This article shows that the inability of a former husband to pay iddah and madhiyah maintenance in a case of divorce has significant implications for women. Firstly, it can lead to serious financial hardship, homelessness and feelings of insecurity. Secondly, this financial and emotional distress can lead to mental health problems, including chronic stress and depression. Article 41 of Law No. 1 Year 1974 and KHI Article 149 emphasise that women's rights after divorce must be fulfilled, but in practice, many women do not get their rights. PERMA No. 3 of 2017 and SEMA No. 2 of 2019 provide important guidelines for the legal protection of women in divorce, but their implementation still faces challenges in the field. This study emphasises the need for more effective legal instruments to ensure women's rights after divorce are fulfilled, as well as the importance of legal awareness among women so that they can claim their rights to the fullest in the divorce process.

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