

RESEARCH ARTICLE

The Epistemology of Justice in Analyzing Judges' Considerations for Determining the Amount of *Iddah* and *Mut'ah* Alimony

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Abstract

The essence of law is to serve justice, not merely to formalize violence. When people come to court, they are not only seeking a verdict, but also demanding true justice. This shows that the role of the court is to deliver justice, not just to apply the law rigidly. A judge cannot simply be the "mouthpiece of the law" (*la bouche de la loi*). He must be able to explore and embody the sense of justice that exists in society in each of his decisions. This study examines how judges decide the amount of *iddah* and *Mut'ah* alimony for divorced wives, a crucial issue in the realization of justice. The aim is to analyze the judges' considerations in determining the amount of alimony, as well as to explore its epistemological basis in the philosophy of justice. Using a qualitative normative-empirical research method, it was found that there are at least seven factors that judges consider. However, when all these factors are present in a single case, judges must be wise in prioritizing the interests of the wife or husband. This requires wisdom and prudence from judges so that the verdict truly reflects a sense of justice for both parties.

Keyword: Islamic Law, Justice, *Iddah*, *Mut'ah*, Alimony.

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INTRODUCTION

According to Plato, justice is more than just following rules; it is a form of active participation by citizens in contributing ideas for the good of the state. These ideas form the philosophical basis for law. Therefore, for Plato, justice is realized when society obeys laws made by philosophers or wise experts. On the other hand, Aristotle saw justice as balance. This balance is measured in two ways. First, **numerical equality**, where all individuals are treated equally regardless of differences. Second, **proportional equality**, where the treatment a person receives is proportional to their contribution (Rhiti, 2011, pp. 240–241).

Law and justice cannot be separated. For law to have meaning, it must be based on justice, because its main purpose is to create a sense of fairness within society. According to M. Agus

Santoso, justice is at the core of the legal and judicial systems. Therefore, the principles of justice must reflect the community's beliefs about what is fair and in line with the interests of the nation and state, in order to achieve the happiness of every individual (Santoso, 2014, p. 91).

The law is only a tool, while its main objective is justice. Bisma Siregar even questioned why the noble objectives of the law should be sacrificed for the sake of formalities, if justice is not achieved (Siregar, 1996, p. 7). This means that the objectives of the law are far more important than the law itself. Therefore, the courts have a crucial role in delivering justice. A judge must be wise in balancing facts with the law, ensuring that justice is truly realized in every decision (Suadi, 2020, p. 26).

In every divorce case in a religious court, one of the crucial issues that often arises is the demand for *iddah* and *mut'ah* alimony for the wife. This is in line with the mandate of Supreme Court Regulation Number 3 of 2017, which specifically aims to protect women's rights. However, this is where the problem lies: what if the husband, who is clearly proven to be negligent, does not have the financial ability to meet the amount demanded by his wife? This situation creates a dilemma, because the wife's right to receive alimony conflicts with the husband's economic reality. The challenge for judges is to find a fair solution that not only fulfills legal requirements but also considers the financial realities of the parties.

Previously, there was a journal that discussed this issue entitled "*Determination of the Amount of Iddah and Mut'ah Maintenance by Judges in Divorce Cases at the Salatiga Religious Court (Study of Divorce Decisions in 2017)*" written by Muhlifa Nur Prahandika, which stated that there are several things that can be taken into consideration, such as 1) The existence of an agreement between the two parties; 2) The husband's ability based on his income, based on the principles of fairness and propriety; 3) The husband's ability/awareness to fulfill his obligations of *iddah* and *mut'ah* maintenance as a result of divorce; 4) The daily living expenses that were usually spent while still married; 5) The wife's demands on the husband; 6) The length of the marriage or the length of the wife's service to the husband; 7) The provision of *mut'ah* in the form of maintenance for 12 (twelve) months (monthly *iddah* maintenance), but it turns out that the journal does not answer the question of what happens if in a case there are facts that all fall under the above considerations, which consideration takes precedence.

The difference in opinion between judges at the first instance and appeal levels in assessing and weighing a case is the main reason for conducting this study. The author is interested in examining this issue in depth, especially from the perspective of the philosophy of justice. This study uses a qualitative approach. The author will analyze primary data from books and related literature, as well as explore various relevant previous studies.

The main focus of this research is to answer two key questions: *first*, how does a judge consider the amount of *iddah* and *mut'ah* alimony for a divorced wife, and *second*, how does the epistemology, or knowledge base, of a judge work when making such decisions. The purpose of this study is to comprehensively understand the process of judicial decision-making regarding alimony amounts and to explore the philosophical basis behind these considerations.

It is hoped that the results of this study will provide insight for law enforcement officials, especially judges in the Religious Court. With a deeper understanding, they are expected to be able to make decisions that are fairer to both parties, taking into account all the facts revealed at the trial. In addition, this study is also expected to be a useful source of knowledge for all parties, including the author himself.

RESEARCH METHODS

This research uses a qualitative approach by combining two methods: normative and empirical. The normative approach will be the basis for analyzing theory and legal principles. We will review various literature, ranging from classical Islamic jurisprudence to positive law in Indonesia, to understand the principles governing *iddah* and *mut'ah* alimony. Furthermore, an empirical approach will be applied to observe practices in the field. We will analyze judges' decisions in the Religious Court to see how legal theory is applied in real cases. Case studies will be used as illustrations to highlight the differences in judges' considerations at various levels of the judiciary. All collected data will be analyzed qualitatively and descriptively. We will describe and interpret how judges balance various factors, such as the husband's financial capacity, the wife's demands, and the principle of justice, in their decisions. The main objective of this methodology is to present a comprehensive picture of the complexity of determining alimony and to make a practical contribution to realizing a more just judiciary in Indonesia.

FINDINGS AND DISCUSSION

Legal Basis for Determining the Amount of Iddah and Mut'ah Alimony

Etymologically, alimony is a provision intended to help a person live comfortably (Mardani, 2011). In a valid marriage, alimony is the wife's right that must be fulfilled by the husband. Neither the Qur'an nor the Hadith explicitly regulate the amount of alimony. However, Surah At-Talaq verses 6-7 provide guidelines that alimony must be given appropriately, in accordance with the wife's needs and the husband's financial capabilities.

This is reinforced by a hadith narrated by Aisha, may Allah be pleased with her, in which the Prophet Muhammad, peace be upon him, allowed Hindun bint Utbah to take maintenance from

her husband, Abu Sufyan, secretly. The Prophet said, "Take what is sufficient for you and your child in a good manner." This hadith indicates that the amount of alimony is measured based on the wife's needs, taking into account family customs, and adjusted to the conditions, place, and time.

Scholars agree that the right to maintenance for a divorced wife remains valid, unless she is considered disobedient (*nusyuz*). Based on the understanding of compensation for rights and obligations in Q.S. An-Nisa verse 34, scholars have determined that the obedience of the wife is the obligation and right of the husband. However, there are differences of opinion among scholars regarding the limits of *nusyuz* behavior that cause the wife's right to maintenance to be forfeited.

Meanwhile, regarding *mut'ah*, the Qur'an also mentions it in Surah Al-Baqarah verses 236-237 and 241, but does not provide clear nominal limits. This is similar to maintenance, where the amount is left to discretion.

Positive law in Indonesia also regulates this matter specifically. Article 149 of **the Compilation of Islamic Law (KHI)** requires the former husband to provide adequate *mut'ah* and *iddah* maintenance to his former wife, unless she is *nusyuz* or *talak ba'in*. Articles 152 and 158 of the KHI further affirm the wife's right to *iddah* maintenance and *mut'ah*, while Article 160 states that the amount of *mut'ah* is adjusted according to the appropriateness and ability of the husband.

In addition, **Law No. 1 of 1974** on Marriage (as amended by Law No. 16 of 2019) Article 41 also emphasizes that the termination of marriage due to divorce does not eliminate the father's obligation to finance the maintenance and education of the children. The court may even require the former husband to provide living expenses to the former wife.

The Essence of Justice

Justice is the lifeblood of law. Without justice, law is merely a series of words – words without meaning. Legal philosophers Darji Darmodiharjo and Sidharta assert that justice is the most fundamental goal of law (Darmodiharjo & Sidharta, 2008). This view is in line with the thinking of K.H. Hasyim Muzadi, who argues that law that loses justice is essentially dead.

In fact, Bismar Siregar, a prominent legal figure, went so far as to say, "If upholding justice requires sacrificing legal certainty, then I will sacrifice the law" (Siregar, n.d.). This statement shows that the law is merely a tool. Why should we sacrifice the goal for the sake of a tool, when the goal itself is not achieved?

Justice is not merely a concept, but a subjective assessment. It can differ depending on who is involved: parents and children, employers and workers, judges and litigants, or even the government and its citizens.

Supreme Court Justice Amran Suadi argues that justice is temporary, subjective, and individual (Suadi, n.d.). This opinion emphasizes that justice is not a standalone entity. It evolves along with space, time, and social dynamics (Erwin, 2015). This explains why no two cases can be tried in exactly the same way, because each case has different facts and influences (Suadi, n.d.).

Aristotle, an ancient Greek philosopher, placed justice as the highest value in law, which serves to defend the common interest (Ujan, 2009). For him, justice is "the appropriateness of human actions." Similarly, Henry Campbell Black defines justice as "a constant and eternal tendency... to give everyone their due" (Suadi, n.d.). However, due to differences in place and time, perceptions of justice can also differ.

In Islamic law, justice is an ideal that must be upheld in every aspect of life. This is reflected in the five main objectives of Islamic law, namely to protect religion, life, reason, lineage, and property (Hidayat, 2020). These five objectives are essentially manifestations of the universal principle of justice.

Ultimately, justice is not an easy concept to define. It is a dynamic struggle that requires law enforcers to not only focus on the text, but also dare to sacrifice legal certainty in order to realize substantive justice that is truly felt by the community.

Judges as Enforcers of Justice

The position of judges in the modern legal system is not limited to being passive "mouthpieces of the law." As key actors in law enforcement, judges have a central role that demands more than just applying legal texts (Shidarta, 2009). Judges are required to be able to interpret laws contextually and in real time, so that the law remains relevant to social dynamics and is able to deliver justice to those who seek it.

Through their decisions, judges actually **renew the law**. When faced with cases that are not clearly regulated in the law, or when existing rules are considered obsolete, judges have an obligation to fill these legal gaps (Manan, 2007). This is the essence of the progressive function of judges, rather than merely an administrative one.

In the field of legal science, judges are even given the authority to deviate from written legal provisions that are no longer relevant. This method is known as *contra legem*. However, *contra legem* cannot be used indiscriminately. Judges must provide strong, sharp legal considerations and take various aspects into account to ensure that such deviations are made solely for the sake of justice.

This is in line with the principle of legal philosophy which states that laws that contradict justice can no longer be called laws. According to Theo Huijber, regulations will only become laws

if they are fair (Huijber, 1995). In other words, justice is the main barometer of the validity of a rule.

So, what exactly is the meaning of justice? According to Murtada Mutahhari, a modern Muslim thinker, justice has four basic meanings that are relevant to the legal and social context:

1. **Balance and Harmony:** Justice is a state of balance and not lopsidedness. This means that every element in a system including the law must be in its proper place to create harmony.
2. **Equality and Anti-Discrimination:** Justice implies equality, where there is no discrimination of any kind. The law must be applied equally to everyone, regardless of social status, race, or beliefs.
3. **Fulfillment of Rights:** Justice is not complete without the granting of rights to those who are entitled to them. In the legal context, this means that everyone involved in a case must receive a verdict that is in accordance with their rights.
4. **Universal Justice:** Justice can also be viewed from a broader perspective, such as God's justice bestowed upon all creatures (Madjid, 2000). In this context, justice is about providing opportunities for every entity to develop and achieve its perfection.

Thus, the role of a judge is a complex challenge. They must not only understand the text of the law, but also respond to social realities with the courage to renew the law for the sake of relevant and contextual justice. This is what makes judges the true pillars of justice.

Judges in Determining the Amount of Iddah and Mut'ah

After the divorce gavel falls, the issue of rights and obligations does not immediately end. One of the crucial issues that must be decided by the judge is the determination of the nominal amount of iddah and mut'ah alimony, two financial rights that the husband must fulfill to his ex-wife. However, how does a judge actually determine a fair and appropriate amount? Is there a definite benchmark?

An interesting study by Muhlifa Nur Prahandika from IAIN Salatiga in his thesis entitled "Determination of the Amount of Iddah and Mut'ah Alimony by Judges in Divorce Cases at the Salatiga Religious Court (Study of Divorce Decisions in 2017)" reveals several reasons behind the judges' decisions. These findings provide a window into the complex deliberation process behind the bench (Prahandika, 2017).

According to the study, there are at least seven main factors that judges consider in determining the amount of iddah and mut'ah alimony. These factors show that judges do not act arbitrarily, but rather consider many aspects to reach a fair decision.

Consideration	Description
Agreement Between Both Parties	If the husband and wife reach an agreement, the judge will prioritize this. This is the best approach because it reflects willingness and deliberation.
Husband's Ability (Income)	Based on the husband's income, viewed from feasibility and appropriateness. Judge determines an amount that does not burden the husband, but also does not harm the wife.
Husband's Ability (Awareness)	Looks at the extent to which the husband is aware of his obligations.
Daily Living Expenses	The judge considers the living expenses that the wife usually incurs during the marriage.
Wife's Claims	The amount claimed by the wife is one of the considerations in the judge's decision.
Length of Marriage	The length of the wife's service is an important factor, because the longer the marriage, the greater the mut'ah rights that should be given as a form of appreciation.
Legal Expert Opinion	The support of expert opinion, such as the determination of mut'ah for 12 months, is also an important reference.

Based on the practical experience of judges at the Maninjau Religious Court, the process of determining the amount of iddah and mut'ah is not much different from the findings of research in Salatiga. The first priority **is always to encourage the parties to reconcile and reach an agreement voluntarily**. However, if reconciliation is not achieved, the judge will first assess the husband's financial capacity.

Nevertheless, there is no standard nominal amount. Differences between one decision and another, for example, a difference of RP 100,000 or RP 200,000, are normal. The final nominal amount will be agreed upon by the panel of judges examining the case, while still considering factors of feasibility and ability.

Thus, the judge's decision regarding iddah and mut'ah alimony is not random. It is the result of careful consideration, which integrates various aspects ranging from agreement, financial capacity, to the wife's devotion in order to achieve substantive justice for both parties after divorce.

The Determination of the Amount of Iddah and Mut'ah Alimony by The Judge is Reviewed Epistemologically

As law enforcers, judges have a vital role in providing justice, which cannot be based solely on the letter of the law. Instead, judges must be sensitive to the sense of justice that exists in society, taking into account various factors such as the intent (*mens rea*) of the parties, as well as the time

and place in which a case occurred (Suadi, n.d.). This requires judges to thoroughly examine each case, rather than simply focusing on speed of resolution.

In the context of determining the amount of iddah and mut'ah alimony, this process becomes very crucial. The epistemological approach, which is the way of obtaining knowledge in a judge's consideration, means finding out how judges obtain the basis for their decisions so that they do not deviate from the sense of justice (Suaedi, 2016).

Determining the nominal amount of iddah and mut'ah alimony is not an easy matter. It requires sharp and deep consideration. After the facts on the ground have been revealed, the judge must analyze whether the decision to be taken meets the sense of justice for all parties. This is important to maintain public trust in the judiciary. The judge's decision must be as if "infused with the blood of justice," which sides with the truth and protects the entitled party (Bakir, 2009).

Justice is casuistic or individual in nature, meaning that each case is unique and cannot be treated exactly the same (Arto, 2017). Although there are seven considerations that judges generally use, their application in the field can vary, even among judges at different levels of the judiciary. This often leads to different decisions at the first instance, appeal, and cassation levels. So, which consideration should take precedence?

An intriguing illustration can be observed in the decision of Case Number 42/Pdt.G/2019/PA.Min. Initially, the wife refrained from demanding iddah and mut'ah alimony in the court of first instance due to her lack of knowledge. However, upon appeal, she filed a claim for iddah alimony amounting to Rp9.000.000 and mut'ah alimony amounting to Rp30.000.000 (Appeal Decision No. 40/Pdt.G/2019/PTA.Pdg).

The panel of judges at the Padang Religious High Court (PTA) granted part of the claim. They set the iddah allowance at Rp2.250.000 and the mut'ah at Rp10.000.000. However, based on the facts presented at the first level of trial, the husband's income was proven to be above one million rupiah (First Level Decision No. 42/Pdt.G/2019/PA.Min). The amount determined by the PTA was considered quite large, namely two-thirds of the husband's net income for iddah alimony and ten times that amount for mut'ah.

However, at the cassation level, the Supreme Court judge granted the mut'ah to be Rp18.000.000 (Cassation Decision No. 923 K/Ag/2019). The cassation judge considered the length of the marriage and argued that the minimum mut'ah amount should be 12 times the monthly iddah allowance, which was then adjusted to approximately 18 times the husband's net income.

From the illustration of the above case, it can be seen that in determining the amount of alimony, the main consideration is **the husband's ability**, but still taking into account **the interests of the wife**. The judges at the cassation level, in this example, chose to increase the amount of

mut'ah, considering that for the sake of fairness, mut'ah must be proportional to the length of the wife's service.

Although the amount set slightly exceeded the husband's financial capacity, the cassation panel of judges considered it fair to award appropriate mut'ah as a memento of a long marriage. However, it is important to remember that this decision cannot be used as a benchmark for all cases, as each case requires different considerations. Ultimately, the sincerity of the judges in considering the facts and sense of justice is the key to reaching a wise and fair decision for all parties.

CONCLUSION

In the realm of Islamic family law, the determination of iddah and mut'ah after divorce is not merely a legal formality, but a struggle to achieve substantive justice. Although the Qur'an, Hadith, and positive law (KHI) have provided a basis, all agree that the amount must be adjusted to the needs of the wife, the ability of the husband, and propriety. This means there is no fixed amount.

Ultimately, the role of the judge is crucial. A judge cannot simply stick to the text of the law but must be a proactive enforcer of justice. Judges must explore the facts, be sensitive to the sense of justice in society, and even dare to reform the law if existing rules are outdated.

Case studies show that judges' decisions can differ at each level of the court system. However, these differences do not mean legal uncertainty, but rather reflect the complexity of finding a balance between the husband's ability and the wife's rights. The judge's decision is the result of careful consideration, which combines various factors, from the settlement agreement to the length of the marriage, in order to ensure that each party receives their rights fairly.

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