



Wife's Right to Property After Divorce: An Examination of Islamic Law and Legislation in Religious Court Decisions in Yogyakarta City

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Abstract

Indonesia as a sovereign state pays great attention to the rights of its citizens, especially in the context of marriage between men and women, through Islamic family law. Although there are still many divorce cases, the Religious Court as a judicial institution that handles family matters for Islamic citizens, plays an important role in positioning women fairly. However, the importance of wise, intelligent, honest and highly ethical judges cannot be ignored. Judges must be able to understand and apply the law with justice to all litigants, especially in divorce cases where women's rights are often neglected. Research into court decisions is important to see the extent to which judges consider women's interests in their decisions, especially in the context of post-divorce rights that have been formulated in Indonesian Islamic family law. The focus of this research is the wife's rights to post-divorce property as regulated in the legislation, as well as the extent to which these legal products are in accordance with the principles of gender justice. This research uses a qualitative approach with a field study at the Yogyakarta Religious Court. Data were collected and analyzed descriptively analytically, describing events related to court decisions. The gender approach was used to analyze the written law as well as what was decided by the judge in the court process. The results show that the rights obtained by women after divorce in Indonesian Islamic family law, such as the right to mut'ah, the right to maintenance, the right to refuse reconciliation, the right to hadlanah, and the right to joint property, are not discriminated against based on gender. There are no signs of marginalization, subordination, double workload, negative labeling, or violence against woman in Indonesian Islamic family law.

Keywords: Wife's Rights, Divorce, Property, Court Decision, Law.

Introduction

Indonesia as a state of law through the preamble of the 1945 Constitution states that independence is the right of all nations so that

colonialism in the world must be abolished because it is not in accordance with humanity and justice.¹ The Indonesian Constitution also guarantees *equality* for its citizens before the *law*. The guarantee of equality is explicitly stated in Articles 27 and 28 D (1) of the 1945 Constitution.

"All citizens shall be equal before the law and the government and shall uphold the law and the government with no exceptions; Every citizen shall have the right to a decent job and livelihood. (Article 27) Everyone has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law. Every person shall have the right to be free from discriminatory treatment on any grounds and shall have the right to protection against such discriminatory treatment. (Article 28)"

The above article explicitly positions all citizens, both men and women, as equal before the law and guaranteed by the law. Formally juridically, Indonesian women have actually obtained the same rights and gained equal recognition before the law. Even since 1984 through Law No. 7 of 1984 Indonesia has ratified the *International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.²

Islamic law essentially pays great attention to, and gives an honorable position to women. The core principle of Islam is "equality between people", so there is no difference between men and women. However, the fiqh books of the classical and medieval periods show the inferiority of men to women. This is due to the author's understanding in interpreting the verses of the Qur'an, as well as social conditions, customs that at that time were still in a patriarchal culture.³

Islamic family law is one of the Islamic laws formalized and enforced in the Indonesian legal order. Namely with the birth of Marriage Law Number 1 of 1974 and the Compilation of Islamic Law.⁴ It is actually the main demand that has long been fought for, especially by the Indonesian women's movement.⁵ Because before this marriage law existed, the fate of wives was often ignored by husbands. Men used the right to divorce arbitrarily, as a result the woman suffered the most, the consequences of such divorce in addition to being an inner and moral blow to women, also burdensome for her

¹ See the Preamble of the 1945 Constitution, first paragraph.

² Arskal Halim, dkk., *Demi Keadilan: Dokumentasi Program Sensitivitas Jender Hakim Agama di Indonesia*, (Jakarta: Puskum HAM UIN Jakarta & Asia Foundation, 2009), pp. 66

³ Muhammad Quraish Shihab, "Konsep Wanita menurut Quran, Hadits, dan Sumber-sumber Ajaran Islam", dalam *Wanita Islam Indonesia dalam Kajian Tekstual dan Kontekstuan*, (Jakarta: INIS, 1993), pp.3-4.

⁴ Azyumardi Azra, *The Indonesian Marriage Law of 1974 an Institutionalization Shari'ah for Social Changes, in Shari'ah and Politic in Modern Indonesia* (Singapore: ISEAS, 2003), pp. 85.

⁵ Bustanul Arifin, *Pelembagaan Hukum Islam di Indonesia, Akar, Sejarah, Hambatan dan Prospeknya* (Jakarta: Rajawali Press, 1996), pp. 117-118.

life, she must make a living for herself and her children, because her ex-husband just left her.⁶ Divorce is an act that tends to be disliked (*makrūh*) by Allah SWT. However, it cannot be denied that divorce is a social reality and a necessity that does exist in husband-wife relationships.⁷

Based on the different types of filing, it also has an impact on the differences in the rights obtained by women after divorce. If the divorce is filed by the husband, then the former husband is obliged to provide *mut`ah*⁸, provide *nafkah*, *maskan* and *kiswah* to the former wife during *iddah*, pay off the dowry that is still owed in full, and half if *qobla al dukhul*, gono-gini rights, and *hadhanah* rights.⁹ It is different if the divorce is filed by the wife (*ceraai gugat* and *khuluk*).¹⁰ In the concept of classical fiqh, if the divorce is filed at the initiative of the wife, then the wife is not entitled to receive *iddah*, *mut`ah*, *maskan* and *kiswah*. The wife is considered to have willingly relinquished all her rights for the sake of the divorce.¹¹ This classical fiqh concept is still inherent in Islamic family law in Indonesia.¹² The principle that is still used in interpreting divorce is the absolute right of the husband. The husband is in control of divorce, in exchange for the obligation to provide maintenance.

Then, the problem is what if the divorce is filed by the wife because her husband has neglected his obligations, polygamy without the wife's permission, and even committed domestic violence?

⁶Arso Sastroatmodjo dan Wasit Aulawi, *Hukum Perkawinan di Indonesia* (Jakarta: Bulan Bintang, 1975), pp. 39.

⁷ Article 114 of the Compilation of Islamic Law "The dissolution of marriage caused by divorce can occur due to divorce or based on a divorce suit."

⁸ *Mutah* is a gift from the former husband to the wife, who has been divorced, in the form of objects or money and other things. Article 1 (j) of the Compilation of Islamic Law

⁹ See Article 149 of the Compilation of Islamic Law; "If the marriage is dissolved due to divorce, the former husband is obliged to: Provide decent *mut`ah* to his former wife, either in the form of money or objects, unless the former wife is *qobla al dukhul*; Provide *nafkah*, *maskan* and *kiswah* to the former wife during the *iddah*, unless the former wife has been divorced *ba'in* or *nusyuz* and is not pregnant; Pay off the dowry that is still owed in full, and half if *qobla al dukhul*; Provide *hadhanah* costs for his children who have not reached the age of 21 years." See also Article 66 paragraph (5) of the divorce chapter of Law No. 7 of 1989 concerning Religious Courts.

¹⁰ Boedi Abdullah dan Beni Ahmad Saebani, *Perkawinan Perceraian Keluarga Muslim*, (Bandung: Pustaka Setia, 2013), pp.203.

¹¹ Supriatna, dkk, *Fiqh Munakahat II Dilengkapi dengan UU No.1/1974 dan Kompilasi Hukum Islam*, (Yogyakarta: Bidang Akademik UIN Sunan Kalijaga, 2008), pp.52.

¹² Article 149 (b) of the Compilation of Islamic Law mentions the exception to the former husband's provision of *nafkah* to the former wife when the former wife has been divorced *ba'in* or *nusyuz*. Because the result of *khuluk* is the fall of divorce *ba'in shughraa* (article 119 paragraph (2) b Compilation of Islamic Law). So it can be interpreted that if the marriage breaks up because of *khuluk*, the husband is not obliged to pay *iddah* maintenance. Article 78 of the divorce chapter of Law No. 7 of 1989 concerning Religious Courts states that if the divorce is filed by the wife, she is only entitled to get the right to *khadhanah* and joint property.

Supreme Court Jurisprudence No.137 K/AG/2007 and Decision No. 276K/AG/2010 provide a good reform in providing women's rights in the case of a contested divorce. The decision states that wives who sue their husbands for divorce are not always convicted of *nusyuz*. Even though the divorce suit is filed by the wife but it is not proven that the wife has committed *nusyuz*, then *ex officio* the husband can be punished to provide iddah maintenance to his wife, on the grounds that the former wife must undergo an iddah period, the purpose of which is, among others, to *istibra'* which also concerns the interests of the husband.¹³

The decision of the judge tried to elevate women's rights in the matter of divorce. The principle of impartiality¹⁴ by prioritizing gender sensitivity¹⁵ in the application of law involving women is expected to be able to raise the equality of rights between husband and wife, because there is an influence of the social conditions that surround it. Contested divorce filed by wives is the most common case in almost all Religious Courts (PA). For example, in the 2014 report of the Yogyakarta City Religious Court stated that the case of a contested divorce occupied the first position with a percentage of 63.35% of a total of 503 cases, while the divorce case amounted to 23.3% of a total of 185 cases.¹⁶

It is in this realm that research into court decisions is important to see how judges as decision makers empathize with women whose rights are often neglected, especially in divorce cases. From the above background, this research focuses on the following problem formulation: What are the wife's rights to post-divorce property contained in the legislation? Is the legal product on the wife's right to property in accordance with the principles of gender justice?

Method

This research is categorized as qualitative *research* with *field research*¹⁷, namely data searches conducted at Religious Court Yogyakarta City. This research was conducted by searching, collecting and analyzing decisions of the Yogyakarta City Religious Court in cases of contested divorce in the 2013-2014 timeframe. In addition, it is supported by intensive

¹³ http://pa-tbkarimun.go.id/Yurisprudensi/137_K_AG_2007.pdf accessed on November 17, 2014.

¹⁴The principle of impartiality is impartial, providing equal treatment to the litigants in the trial process by the judge.

¹⁵ Musdah Mulia, dkk., *Keadilan dan Kesetaraan Jender (Prespektif Islam)* (http: Tim Perbedayaan Perempuan Bidang Agama, 2001), pp.126.

¹⁶ <http://www.pa-yogyakarta.net/v2/index.php/2014-09-15-07-06-01/laporan-tahunan> accessed on January 17, 2016.

¹⁷ Dudung Abdurrahman, *Pengantar Metodologi Penelitian dan Penulisan Karya Ilmiah* (Yogyakarta: IKFA PRESS, 1998), pp. 20-21.

interviews with Judges at the Religious Court. This research is descriptive analytic, namely research by collecting data that describes an event and all things related to it based on the facts and phenomena found in the decision.¹⁸ The approach used in this research is a gender approach, which is a research that analyzes the law both written in the book (*Law As it is Written in the Book*) and legal products decided by the judge through the *judicial process* (*law it is decided by the judge through judicial process*)¹⁹ to find out what is produced in the decision is in accordance or not with the principles of gender justice.²⁰ This is in accordance with the opinion of Suerjono Soekanto who included research on court decisions in the normative research group, when viewed from the point of view of the principles contained in the decision or synchronization of the decision with the applicable laws and regulations, and the research is not related to the effectiveness of the decision in the community which is the realm of sociological research.²¹ The method of data collection that will be carried out is *library research* and *field research*. In addition to analyzing the decision, the author will conduct *interviews* with Religious Court judges.

Mut'ah in Fiqh Law

The word mut'ah comes from the Arabic word *matâ'*, which means anything that can be enjoyed and utilized, such as food, clothing, household furniture, and so on. Then, into fiqh terms it is intended as a gift from the husband to the wife as a result of divorce, as a "consolation" or "compensation".²² The provision of *mut'ah* is an implementation of Allah's command to husbands to always treat their wives with the principle: *imsak bi ma'ruf aw tasrih bi ihsan* (i.e. maintaining marital ties with kindness or releasing (divorcing) with virtue). Therefore, even if the marital relationship has to be severed, good treatment must be maintained, good relations with the ex-wife and her family should be maintained as much as possible, in addition to giving mut'ah with sincerity and courtesy, without the slightest indignation, let alone humiliation and harassment.²³ This is based on the words of Allah:

¹⁸ M.Subana dan Sudrajat, *Dasar-dasar Penelitian Ilmiah* (Jakarta: CV.Pustaka Setia) pp. 26.

¹⁹ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2006), pp. 118.

²⁰ Cholid Narbuko, H Abu ahmad, *Metodelogi Penelitian*, (Jakarta: Bumi Angsara, 2002), pp. 23.

²¹ Soerjono Soekanto, *Metode Penelitian Hukum Normatif*, (Jakarta: Universitas Indonesia, 1987), pp. 51.

²² Muhammad Bagir al-Habsyi, *Fiqh Praktis Menurut al-Qur'an as-Sunnah dan Pendapat Ulama'*, pp, 230. See also, Kamal Muchtar, *Asas-asas Hukum Islam tentang Perkawinan* (Jakarta: Bulan Bintang, 1974). pp, 237.

²³ *Ibid.*

وللمطلقات متاعٌ بالمعروفٍ حقاً على المتقين²⁴

"For the divorced wives there should be a gift in the form of mut'ah in a proper manner, which is the right of the pious".

The Maalikis are of the opinion that *mut'ah* is sunnah because the word *haqqan 'alal muttaqin* at the end of verse 241 of Surah al-Baqarah indicates that it is not obligatory. The Hanafis are of the view that *mut'ah* is obligatory for a man who has divorced his wife and has not had sexual intercourse with her, and the mahr has not been determined. Imam Shafi'i and most of the scholars agree that *mut'ah* is only for divorces that are initiated by the husband, such as *divorce*, unless the amount of the mahr has been determined and the divorce is before intercourse.²⁵

Mut'ah in Legislation

Article 1 letter j KHI explains that *mut'ah* is a gift from the former husband to the wife, who is sentenced to divorce in the form of objects or money and others. However, in order to fulfill the principle of benefit and ease in implementing the decision, the determination of *mut'ah* should be in the form of objects not money, for example a house, land or other objects, so as not to complicate the execution of the Religious Court's decision.²⁶ In Indonesian marriage law, *mut'ah* must be given if the marriage breaks up due to divorce or the initiative of the husband, either in the form of money or objects, unless the former wife is *qabla al dukhul*.²⁷ Furthermore, *mut'ah* is emphasized in Article 158, that *mut'ah* must be given by the ex-husband with the following conditions: 1) The mahr has not been determined for the wife *ba'da al dukhul* and 2) The divorce was at the will of the husband. *Mut'ah* sunnat given by the former husband without the conditions mentioned in article 158.²⁸ While the amount of *mut'ah* is at the discretion of the judge, the judge decides according to the propriety and ability of the husband.²⁹

²⁴ Al-Baqarah (2): 241

²⁵ Abu al-Walid Muhammad bi Ahmad bin Muhammad Ibn Rushd, *Bidāya al-Mujtahid wa Nihāyatul Muqtasid*, (Surabaya: Hidayah, t.t), pp. 73.

²⁶ Supreme Court of the Republic of Indonesia Directorate General of Religious Courts, *Guidelines for the Implementation of Duties and Administration of Religious Courts Book II*, pp. 148.

²⁷ Article 149 letter a KHI "provides decent *mut'ah* to his former wife, either in the form of money or objects, unless the former wife is *qabla al dukhul*."

²⁸ Article 159 KHI

²⁹ Article 160 KHI

Iddah Maintenance in Fiqh

Nafkah iddah comes from two words nafkah and iddah. Nafkah comes from Arabic (ينفق - نفقة-نفق) which means cost, spending, spending money.³⁰ Nafkah means what a husband gives to his wife and children in the form of food, clothing, shelter and the like.³¹ According to the Big Indonesian Dictionary (KBBI) nafkah is shopping for life done by the husband.³² Sayyid Sabiq defines nafkah as providing for the wife's needs such as food, shelter, servants, and medicine, even though the wife is rich. Because nafkah is something that is mandatory for husbands to wives.³³ Djamaan Nur gives the definition of nafkah as something that a person gives to his wife, relatives, and to his property to fulfill their basic needs.³⁴

Iddah comes from the Arabic word (عدّ - يعدّ - عِدّة) which means "to count" or "count".³⁵ It is so called because iddah generally involves the number of *quru'* and months, and it can also mean something that the woman counts, or the woman in iddah waits for the passage of time.³⁶ It can also mean something that is counted by the woman, and she stays in it for a number of days and periods.³⁷ As-Sayyid Sabiq defines 'iddah as the name for a period during which the former wife waits and is not allowed to marry after the death of her husband or after a divorce from her husband.³⁸

From the various definitions above, it can be concluded that iddah maintenance is the provision or provision of the wife's needs in the waiting period and prevents her from getting married after the death of the husband or after the breakup of the marriage. During this waiting period, the wife (ex-wife) gets maintenance during her iddah. This is in line with Surah at-Thalaq verse 1 and verse 6.

Issue of Iddah Alimony Rights

Regarding the provision of iddah maintenance after the termination of marriage, there are differences of opinion among the fiqh experts. The difference of opinion is based on the classification of the type of divorce imposed on the wife and the pregnancy of the former wife.

³⁰ Ahmad Warso Munawir, *Al-Munawir: Arabic-Indonesian Dictionary*, (Surabaya: Progressive Library, 1997), pp. 1449.

³¹ Abu Malik Kamal bin As-Sayid Salim, *Sahih Fikih Sunnah*, Volume 3, translated by Khairul Amru Harahap and Faisal Saleh, (Jakarta: Azzam Center, 2007), pp. 314. 314.

³² Department of National Education, *Kamus Besar Bahasa Indonesia (KBBI)*, (Jakarta: PT Gramedia Pustaka Utama, 2008), pp.947.

³³ Sayyid Sābiq, *Fiqh al-Sunnah*, Volume 7, translated by Moh. Talib (Bandung: al-Ma'arif, 1997). p.81.

³⁴ Djamaan Nur, *Fiqh Munakahat*, (Semarang: CV. Toha Putra, cet. I, 1993), pp. 101.

³⁵ Ahmad Warso Munawir, *Al-Munawir: Arabic-Indonesian Dictionary*, pp. 89

³⁶ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, pp. 303.

³⁷ Ali Yusuf As-Subki, *Fiqh Keluarga: Pedoman Berkeluarga dalam Islam*, alih bahasa: Nur Khozin, (Jakarta: Amzah, 2012), pp.248.

³⁸ Sayyid Sābiq, *Fiqh al-Sunnah*, Volume 8, pp. 140.

- a) For wives who are divorced raj'i whether pregnant or not: The fuqaha' are unanimous in their opinion that a wife who has been divorced is entitled to the full amount of maintenance that she received before the divorce, whether that maintenance is in the form of food, clothing and housing.³⁹
- b) For a wife whose marriage is terminated by a ba'in divorce, either ba'in sughra or ba'in kubra and she is pregnant: The jurists agree that she is entitled to nafaqah and housing, based on the ruling of Surah at-Thalaq (65) verse 6.⁴⁰
- c) As for the wife whose marriage was terminated by a ba'in divorce, either ba'in sughra or ba'in kubra and she is not pregnant: The fuqaha' differed on this point. The *first opinion* is that some of the fuqaha', including Umar, Ibu Umar, Ibn Mas'ud, Ibn Abbas, Imam Malik and Imam ash-Shafi'i, are of the view that the former wife is only entitled to a place to live, but not to maintenance (food and clothing).⁴¹ The reason why the husband is not obliged to provide for the wife after divorce bain according to Imam ash-Shafi'i is because there is no sexual intercourse (*istimtaâ*).⁴² The *second opinion* is according to 'Ali, Jabir, Atha', Dawud ad-Dhahiri and the common opinion among the Hanbalis. The ex-wife is not entitled to maintenance or housing, because the marriage has been completely broken and there is no pregnancy that the husband must pay for.⁴³ The *third opinion*, according to Abu Hanifah, al-Tsawriy, al-Hasan, Ibn Shubrumah, is that the ex-wife is entitled to maintenance and housing. This opinion is based on the interpretation of Surah at-Thalaq (65) verse 6, that the verse obliges the husband to provide housing, so it is automatically obliged to provide maintenance.⁴⁴
- d) For a wife whose husband dies and she is pregnant, the scholars agree that she is entitled to maintenance and housing. But if she is not pregnant, the scholars differ. Imam Abu Hanifah, Malik and ash-Shafi'i are of the opinion that the wife in the 'iddah of death is entitled to housing on the basis of the generality of Surah al-Baqarah verse 240 which instructs the wife to observe 'iddah in the husband's house:⁴⁵

³⁹ Sayyid Sābiq, *Fiqh al-Sunnah*, Volume 7, pp. 90. Amir Syarifuddin, *Islamic Marriage Law in Indonesia*, pp. 322.

⁴⁰ *Ibid*

⁴¹ *Ibid*, pp. 91.

⁴² Khoiruddin Nasution, *Hukum Perkawinan I*, (Yogyakarta: ACAdemia+TAZZAFA, 2013), pp.189.

⁴³ Sayyid Sābiq, *Fiqh al-Sunnah*, Volume 7, pp. 91

⁴⁴ *Ibid*.

⁴⁵ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, pp. 323.

As for maintenance in the Compilation of Islamic Law, that during the iddah period the former wife is obliged to protect herself, not accept proposals and not marry other men.⁴⁶ During the iddah period, the wife is also entitled to iddah maintenance from the former husband.⁴⁷ However, not all ex-wives can receive iddah maintenance, because the legislation states that if the wife has been sentenced to *divorce ba'in* or *nusyuz*, the wife is not entitled to iddah maintenance.⁴⁸

Madliyah Maintenance

Nafkah in Arabic means spending, what is meant by spending here is meeting the needs of food, shelter, household help, medical treatment for the wife, if he is a father.

وعلى المولود له رزقهن وكسوتهن بالمعروف لا تكلف نفس إلا وسعها⁴⁹

Meaning: "And it is the duty of the father to feed and clothe the mother in a manner that is just. A person is not burdened except according to his ability."

Madliyah, derived from the word ماضي in Arabic means past or previous. And mentioned in an Indonesian dictionary that the word "past" has two meanings namely: 1) past, past, and 2) more, very.⁵⁰ So it can be concluded that madliyah nafkah is the cost of the wife's needs (nafkah) which should be given to the wife during the marriage period as an obligation of the husband after the marriage contract, but by the husband the nafkah is not given to the wife. So the husband has a debt that must be paid to the wife when there is a breakup of the marriage. As we know that the implementation of the marriage contract creates rights and obligations between husband and wife.⁵¹ Among the most solid obligations of the husband towards his wife is the obligation to provide maintenance, both in the form of food, clothing (*kiswah*), and shelter.⁵²

In the Marriage law states as follows :

⁴⁶ Article 151 KHI "The ex-wife during the iddah period, must protect herself, not accept proposals and not marry other men."

⁴⁷ Article 152 KHI "The former wife is entitled to iddah maintenance from her former husband unless she is nusyuz"

⁴⁸ Article 149 letter b "Providing maintenance and kiswah to the former wife during the iddah, unless the former wife has been divorced ba'in or nusyuz and is not pregnant."

⁴⁹ Al-Baqarah (2): 233

⁵⁰ Hartono, *Kamus Praktis Bahasa Indonesia*, (Jakarta:Rineka Cipta, 1996), pp. 60

⁵¹ Idris Ramulyo, *Hukum Perkawinan Islam (Suatu Analisis UU No 1 Tahun 1974 dan KHI)*, (Bumi Aksara, 1996), pp. 187

⁵² Article 80 (4) KHI

"(1) The husband is obliged to protect his wife and provide all the necessities of household life in accordance with his ability. (2) The wife is obliged to manage the household as well as possible (3) If the husband or wife neglects their obligations, each of them can file a lawsuit with the Court."⁵³

If nafkah is not fulfilled by the husband, then the wife can file a counterclaim or in a lawsuit that has been filed by the wife because of the husband's negligence in not supporting her after the marriage occurred.⁵⁴ Nafkah *madliyah* is calculated based on how long the husband does not fulfill the wife's maintenance during the running of their household.⁵⁵ The amount of nafkah *madliyah* by the Majlis judge is considered in accordance with the husband's ability to provide nafkah *madliyah*. The husband's ability is seen from the type of work and regular income earned and the husband's own ability as in article 80 KHI.

Statistical Data on Divorce Cases at the Yogyakarta City Religious Court

Divorce is a case that dominates the courtrooms of Religious Courts in Indonesia, including the Yogyakarta Religious Court. In 2015, Plaintiff's Divorce cases occupied the first position with a percentage of 63.61% (a total of 493 cases), while Divorce cases occupied the second position with a percentage of 23.22% (a total of 180 cases). In quantity compared to 2014, the number of cases entered at the Yogyakarta Religious Court has decreased. In 2014 there were 794 cases registered, while in 2015 there were 775, resulting in a decrease of 2.39%. However, the percentage of comparison between cases of contested divorce and divorce shows an increase from year to year. Percentage of Divorce and Plaintiff Cases at the Yogyakarta City Religious Court 2013-2014⁵⁶

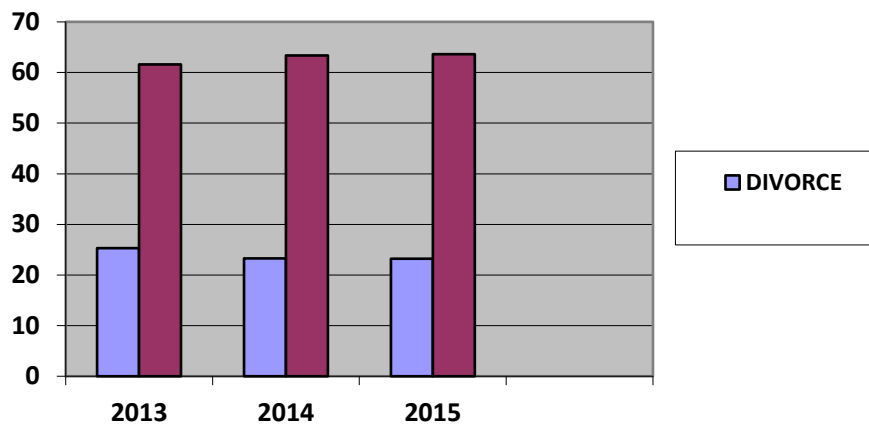
Year	Number of Cases	Divorce		Divorce	
		Total	Percentage	Total	Percentage
2013	700	190	25,3%	462	61,6%
2014	794	185	23,3%	503	63,35%
2015	775	180	23,22%	493	63,61%

⁵³ Marriage Law No. 1 Year 1974 Article 34

⁵⁴ See ketentuan beracara perkara cerai talak dan cerai gugat dalam, Mahkamah Agung Republik Indonesia Direktorat Jenderal Badan Peradilan Agama, Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama Buku II, pp. 147-149.

⁵⁵ For example, the age of marriage between husband and wife is 23 months. During that time the wife has never received any maintenance from the applicant, then the amount of *madliyah maintenance* is calculated and multiplied by the 23 months because the maintenance that has not been given is a debt owed by the husband that must be fulfilled.

⁵⁶ Annual report of Yogyakarta City Religious Court in 2013, 2014, 2015, accessed from <file:///C:/Users/acer722/Downloads/LAPTAH%.pdf> accessed on May 10, 2016 at 12.49 WIB.



Of the many divorce cases, there are various factors that cause it. Among them are issues of moral crisis, lack of responsibility, one of the parties getting a prison sentence, domestic violence, biological defects, continuous disputes caused by jealousy, forced marriage, economy, no harmony, underage marriage and so on.

Factors causing divorce in 2015 were dominated by disharmony in the household (200 cases) and lack of responsibility in 171 cases. Meanwhile, the other contributing factors were fairly evenly distributed, totaling 187 cases. The factors that cause divorce are not the sole cause in one case. Divorce cases due to factors of family disharmony, for example, family disharmony can occur as an accumulation of endless feuds (*syiqaq*) due to the husband's economic irresponsibility, laziness, no effort, long separation, and there is even an element of domestic violence (KDRT) that occurs resulting in this disharmony. This means that in one case, the cause is not single but an accumulation of many causes. But in general, divorce is an option because there is no longer any compatibility between husband and wife and no solution can be found to continue living in harmony and peace.

Factors Causing Divorce in the Religious Courts of Yogyakarta City in 2015⁵⁷

No .	Factors that Cause Divorce		Number of Cases
1	Moral Crisis		22 Cases
2	No Responsibility		171 Cases
3	Punished		3 Cases
4	Cruelty	Serious Maltreatment	10 Cases
5		Mental Cruelty	1 Case

⁵⁷ <file:///C:/Users/acer722/Downloads/LAPTAH%202015.pdf> accessed on May 10, 2016 at 12.49 pm.

6	Biological Disability	1 Case
7	Constantly at odds	Polygamy is not healthy
8		Jealous
9		Forced Marriage
10		Economy
11		Underage marriage
12		Political
13		No harmony
14		Third-party interference
15	Miscellaneous	2 Cases

Legal Products of Yogyakarta Religious Court Judges in Determining Wife's Rights to Post-Divorce Property

Seeing that divorce cases are the most common cases in the Yogyakarta City Religious Court, this study is especially interesting to see how the judge's legal products relate to the rights to wife's property in divorce cases, both divorce and contested divorce. In this sub-chapter, the researcher will select the 2015 Decision of the Yogyakarta City Religious Court that has permanent legal force using the *Probability sampling* method, which is a sampling technique that provides equal opportunities for all members of the population to be selected as samples. By specializing in *simple random techniques*, namely techniques for taking sample members randomly from the population. Because this research will see and compare how the divorce verdict filed at the initiative of the wife with the divorce verdict with the husband's initiative, it will be selected based on the classification of divorce verdicts as the initiative of the husband and contested divorce as the initiative of the wife.

Wife's Right to Property in Divorce and Plaintiff's Case

In this sub-chapter, the researcher will analyze several divorce decisions made by the Yogyakarta City Religious Court. In the decision, it will be analyzed how the implementation of the wife's rights after divorce in the decision of the divorce case at the Yogyakarta City Religious Court in 2015, whether it has fulfilled the wife's rights to property or not, and also analyzed with existing regulations. Based on data obtained from 180 divorce cases decided by the Yogyakarta City Religious Court in 2015, researchers randomly selected 5 cases to be analyzed. They are case number 26/Pdt.G/2015/PA.Smn, 0384/Pdt.G/2014/PA.Yk, 0462/Pdt.G/2015/PA.Yk, 0536/Pdt. G/2014/PA. Yk, 0044/Pdt. G/2015/PA. Yk, and 0144/Pdt. G/2015/PA.Yk.

The six divorce decisions found that women's rights to property after divorce can be categorized into two types. *First*, cases that were decided by

verdict, namely decision numbers: 0044/Pdt.G/2015/PA.Yk, 0144/Pdt.G/2015/PA.Yk, 0656/Pdt.G/2014/PA.Yk, 0661/Pdt.G/2014/PA.Yk, and 0038/Pdt.G/2015/PA.Yk. In these decisions, there is no verdict that gives women the right to property. The verdict stated that the wife's absence from the trial (wife as the defendant) was considered unwilling to defend her marital interests. The PA YK judge further explained that the wife's absence from the trial could mean that the wife had given up her rights. The court cannot oblige the husband to provide iddah and mut'ah maintenance to the ex-wife. The absence of the wife in the trial is one of the reasons that the judge cannot grant the right to the wife's property, the judge cannot give a decision that obliges the husband to give the wife post-divorce rights. While the causes of the wife's absence in the trial process include the wife's unknown whereabouts, the wife does not want to meet with the ex-husband, there are also those who think "the trial will be completed quickly if I do not attend the trial", even though if the wife does not attend the trial then her rights will be neglected. This understanding is still widely held by wives as defendants.

The second case was a contested divorce case where the wife was present at the trial. The results of the analysis of several cases found that the wife's right to property was given in the judge's ruling. The rights to property obtained by the wife include the right to iddah maintenance, mut'ah, maskan and joint property. In the verdicts that the researchers found, the plaintiff or husband in his lawsuit often ignored the wife's rights, even wanting to release his obligations as a former husband with the argument that the wife was considered to have nusyuz. However, in several decisions the judge did not fully grant the wife's counterclaim.

In a contested divorce, the law and KHI do not determine or regulate the obligations of the husband or the rights of the wife as stipulated in articles 149 and 158 of KHI. So that in PA decisions, there are still courts that do not impose husband's obligations which are rights according to Islam, namely *mut'ah nafkah*, *maskan* and *kiswah* during the *iddah* period. In cassation case No.276 k/Ag/2010, the Supreme Court has granted the wife's divorce to the husband which was combined with demands, *mut'ah*, *hadlonah* for children, and child *maintenance*, namely by charging *mut'ah in the* amount of Rp. 50,000,000. The Supreme Court's consideration, because the divorce was filed by the wife because the husband remarried another woman. In fact, the wife's loyalty is more than enough. The attitude of the Respondent who remarried is an attitude that is not commendable and very painful for a loyal wife. In Book II of the Technical Guidelines for Religious Courts, it is stipulated that if a divorce petition is filed on the grounds of cruelty or violence by the husband, the judge may *ex-officio* determine *iddah maintenance*.

Analysis of Provision of Maintenance in Cases of Divorce in Yogyakarta Religious Court Based on Jurisprudence

In the case of a contested divorce, the Yogyakarta court ruled for the former husband to impose a divorce of one *ba'in sughro* against the former wife. Talak *ba'in sughro* is a divorce that cannot be reconciled but can do a new marriage contract with her former husband even though she is in iddah, as written in Article 119 paragraph (1) KHI. The panel of judges also made a decision to order the former husband to pay mut'ah and iddah maintenance.⁵⁸

In the consideration of the decision, the judge referred to Imam Hanafi's opinion regarding the provision of *iddah* and *mut'ah alimony* Fuqaha' themselves differ in opinion regarding the provision of maintenance in divorce *ba'in*. The Hanbalis, Zhahiriyah, Ishaq and Abu Tsaur are of the opinion that she is not entitled to maintenance and housing even if she is pregnant. Their reasoning is that maintenance and housing are required in return for the husband's right of reconciliation, whereas in divorce *ba'in* the husband has no right of reconciliation, therefore there is no maintenance and no housing.⁵⁹ This is based on the Word of Allah SWT:

اسكنوهن من حيث سكنتم من وجدكم ولا تضارهن لتضييقوا عليهن وإن كن أولات حمل فأنفقوا حتي يرضعن حملهن⁶⁰

The return of the pronoun woman in the verse above returns to women who are divorced *ba'in* only, because the woman is divorced *raj'i* as already explained, which is to remain in the husband's house. The verse above explains the obligation of maintenance to a pregnant woman because her iddah is generally longer than the iddah of other women. Maintenance and housing must be given to a woman who is in iddah as a balance of her being held back from her husband so that the freedom of her womb is clear, here there is no difference between divorce *raj'i* and *ba'in*. The Malikiyah, Shafi'iyah and the majority of Salaf scholars are of the opinion that the wife is entitled to housing, whether pregnant or not and is entitled to maintenance if pregnant.

The above verse elaborates that Allah obliges to give them shelter without any excess and hangs the obligation of maintenance on the pregnant wife. Maintenance is obligatory because she is pregnant and not obligatory because she is not pregnant. (2) There is no connection between maintenance and housing, unlike the Hanbalis and the Hanafis. Residence is obligatory for

⁵⁸ Azni, Analisis Gender Terhadap Hukum Keluarga Islam Indonesia (Studi Terhadap Hak-hak Wanita Pasca Cerai) "Jurnal Ilmu Syari'ah dan Hukum (Asy-Syir'ah)", Vol. 49, No. 1, Juni 2015

⁵⁹ *Ibid.*

⁶⁰ At-Talaq (65): 6

the divorced wife so that she can wait for what is required, thus residence is obligatory for all women who are in Iddah. Meanwhile, maintenance is obligatory for her for two reasons: The husband still has the right to return to his wife in a raj'i divorce, Supporting the child for a pregnant wife.⁶¹

According to Umar ibn Khattab, Tsauri, Umar ibn Abdul Aziz, this verse explains the obligation to provide housing. If it is legally obligatory to provide housing, then it is automatically obligatory to provide maintenance, because of the obligation to provide housing in the divorce of a pregnant woman and because of the wife herself. In contrast to Umar ibn Khattab ra, Umar ibn Abdul Aziz and Sufyan Ats Tsauri, according to the opinion of the Hanbalis, Zhahiriyah, Ishaq and Abu Tsaur, they are of the opinion that she is not entitled to maintenance and housing even though she is pregnant. Umar and Aisha once rejected the hadeeth of Fatimah bint Qais which she conveyed above. Umar said: "We do not abandon the Qur'an and the Sunnah of our Prophet because of the testimony of a woman. We do not know whether she has memorized or forgotten."⁶²

From the description above, Imam Abu Hanifah's opinion that provides maintenance to women in iddah divorce ba'in, whether pregnant or not, is more in accordance with the position of women who are undergoing iddah in the former husband's house. From the results of interviews with Mr. Muh. Rusydi Thahir, Judge of the South Jakarta Religious Court stated that women who are in iddah receive maintenance and housing because they are still in the corridor of limited action. The limitation of action applies during the iddah period of the wife because she must stay in the husband's house until the iddah period expires.

Analysis of the Right to Provide Iddah Maintenance in Divorce in the Yogyakarta Religious Court According to the Law

In the decision of PA Yogyakarta No. 1445/Pdt.G/2010/PA JS, the provision of iddah maintenance by the panel of judges is also based on the decision of the Supreme Court of Indonesia No. 137/K/AG/2007 dated September 19, 2007. In the Supreme Court decision number 137/K/AG/2007 the provision of iddah maintenance is based on Article 41 letter (c) of Law No. 1 Year 1974 Jo. Article 149 KHI. Article 41 letter (c) of Law No. 1 of 1974 reads: The result of the breakdown of marriage due to divorce is: The court may require the former husband to provide livelihood expenses and/or determine an obligation for the former wife." The above article shows that

⁶¹ Abdul Aziz Azzam, & Abdul Wahhab Sayyed Hawwas. *Fiqh Munakahat (Khitbah, Nikah, dan Talak)*. (Jakarta: Amzah, 2009), pp. 335

⁶² Sayyid Sābiq, *Fiqh Sunnah*, volume 7, translated by Muhammad Talib, "Fikih Sunnah. (Bandung: Al Ma'arif, 1987), pp. 98

Religious Court judges have the right to provide livelihood expenses and determine an obligation for the former wife due to divorce.

Textually, the meaning of divorce in the article contains the meaning of divorce in general. Divorce in Article 41 letter (c) of Law No. 1 of 1974 can be interpreted as divorce or contested divorce. Based on this article, every divorce case, both divorce and contested divorce, the judge has the freedom to give a decision to the husband so that he can require the cost of livelihood or determine an obligation to the former wife. The basis for providing maintenance to the former wife in divorce cases is also strengthened by Article 149 KHI. Article 149 KHI reads: If the marriage breaks up due to divorce, the former husband is obliged:

- a. Provide a decent mut'ah to his ex-wife, either in the form of money or objects, unless the ex-wife is *qobla al dukhul*;
- b. Providing nafaq, maskan and kiswah to the former wife during the iddah, unless the former wife is sentenced to *divorce ba'in* or *nusyuz* and is not pregnant;
- c. Repay the mahr that is still owed in full, and half if *qobla al dukhul*;
- d. Providing hadlanah expenses for his children who have not reached the age of 21 years.⁶³

The article above shows that as a result of divorce, the husband is obliged to give his ex-wife a decent mut'ah, provide maintenance, maskan and kiswah during iddah, pay off the dowry that is still owed and provide *hadlanah* expenses. In article 149 letter (b) it is clear that if a *ba'in* divorce has fallen, the former husband is not obliged to provide maintenance, maskan and kiswah to the former wife during the iddah. From this article, the panel of judges in the case of contested divorce No. 1925/Pdt.G/2010/PA.Pt argued that the former wife was entitled to continue to receive maintenance and mut'ah from her former husband. This article is contrary to the decision of the panel of judges, but the judge argues that in his decision obliges the former husband to provide nafkah and mut'ah to the former wife during the iddah period as long as the former wife does not *nusyuz*. Article 113 KHI reads: Marriage can be broken because: death, divorce, and by decision of the Court

The memorization of "talak" in Article 149 KHI contains a general meaning in the sense of "divorce" in Article 113 KHI. Divorce itself can be done by way of divorce and divorce lawsuit. Furthermore, the result of divorce is the provision of iddah according to Article 153 paragraph (1) which reads: "For a wife whose marriage is broken, a waiting period or iddah applies, except *qobla al dukhul* and the marriage is broken up not because of the death of the husband."⁶⁴

⁶³ Article 149 of the Compilation of Islamic Law

⁶⁴ Article 153 of the Compilation of Islamic Law

Because there is an *iddah* obligation of the former wife after divorce due to divorce or divorce gugat, then during the *iddah* period according to Article 149 KHI letter (b) the former husband is obliged to provide *nafkah* and *mut'ah* to the former wife. In the decision of PA Yogyakarta Number 1445/Pdt.G/2010/PA JS, the provision of *iddah* maintenance by the panel of judges is also based on the decision of the Supreme Court of the Republic of Indonesia number 137/K/AG/2007 dated September 19, 2007. In the decision of the Supreme Court of the Republic of Indonesia number 137/K/AG/2007 it is stated that although this case was initially the wife who filed for a divorce, but the plaintiff after being divorced must undergo an *iddah* period, and one of the purposes of undergoing an *iddah* period is to "*istibra*".⁶⁵

Istibra' concerns the interests of the husband, then based on Article 41 letter (c) of Law No. 1 Year 1974 Jo. Article 149 KHI letter (b), the defendant is obliged to provide *nafkah*, *maskan* and *kiswah* during the *iddah* period to the plaintiff (Doc. Supreme Court Decision No. 137/K/AG/2007): From the two legislative bases presented by the panel of judges, namely Article 41 letter (c) of Law No. 1 of 1974 Jo. Article 149 KHI letter (b), Religious Court judges can provide *mut'ah* and *iddah* maintenance to the former wife in a contested divorce, but with the consideration that the former wife is not *nuzyus*. Of course in providing *mut'ah* and *iddah* maintenance must be adjusted to the work and ability of the former husband. Judges may not provide *mut'ah* and *iddah* maintenance beyond the ability of the former husband. According to the author's analysis, the decision of the Yogyakarta Religious Court No. 1445/Pdt.G/2010/PA JS, which ordered the Defendant to pay the Plaintiff *nafkah*, *maskan*, and *kiswah* during the *iddah* period was appropriate and in accordance with the provisions of the legislation and the case. This is based on the basis of legal justice that provides a guarantee of life for the former wife during the *iddah* period. The provision of *iddah* and *mut'ah* maintenance in a contested divorce in this case is in accordance with the rules of *fiqh*, namely:

الضرر يزال⁶⁶

The absence of *iddah* and *mut'ah* maintenance in a contested divorce case certainly causes harm to the ex-wife. The ex-wife certainly needs money to support herself after the divorce. If *nafkah* *iddah* and *mut'ah* are given, it can guarantee the life of the ex-wife during the *iddah* period. This is certainly

⁶⁵ *Istibra*' etymologically means seeking freedom while *syar'i* is the waiting of a woman for a certain period to ensure the freedom or emptying of the womb. In undergoing *istibra*', women are prohibited from wearing perfume and adornment, because it can attract the opposite sex (other men). Women in this *istibra*' period are also prohibited from marrying other men, so that there is no mixing of sperm (Al Mawardi: 442).

⁶⁶ Moh. Adib Bisri, *Terjemah Al Faraidul Bahiyyah*. (Kudus: Menara Kudus, 1997), pp. 23

more accommodating to the interests of women during the iddah period. In gugat divorce cases, the Religious Courts generally do not provide *iddah* maintenance to the plaintiff. The lack of *iddah* maintenance in a contested divorce is because the old tradition at the Religious Court level in contested divorce cases positioned women on the wrong side. However, decisions in the Indonesian Courts must have rational reasons for deciding cases such as this, and must pay more attention and accommodate the interests of women. Many cases of contested divorce are filed with the Religious Courts on the grounds that the woman feels victimized by her husband. For example, when the woman filing for a divorce is harmed by irresponsible treatment, domestic violence, polygamy, or other ill-treatment. This of course must be taken into consideration by the judge in giving a verdict in a case of contested divorce, so it needs to be reviewed. If women are treated adversely, it would be very natural for them to have rights related to iddah maintenance, maskan and kiswah in any context and term in a divorce case. It should be considered again that if women get the right to iddah maintenance, maskan and kiswah, it must be with a note that the wife is not *nusyuz*. With this, it is necessary to have a humanitarian approach from the judge in deciding the determination of iddah maintenance.

Conclusion

Based on the previous explanation, the authors get the following conclusions; That the rights of post-divorce wives based on the law can be seen explicitly, Islamic family law stipulates that; a). a wife who has been divorced is entitled to *mut'ah* from the former husband, b). women who are pregnant, both *raj'i divorce* and *ba'in divorce*, must be given full maintenance, while those who are not pregnant are only given residence maintenance. This maintenance is given to the wife during the iddah period, unless the former wife has committed *nusyuz*, c). The husband does have the right to divorce his wife, but for reconciliation it is the right of the wife to accept or reject her husband's reconciliation based on justified considerations, d). The husband and wife both have the right to take care of the child (*hadlanah*) as long as they meet the specified requirements, but the financing for the life of the children remains the responsibility of the husband, even though the husband and wife have divorced, and e). Joint property is the property of the husband and wife during the marriage period. In the event of divorce, according to Islamic family law in Indonesia, the property is divided equally, regardless of who worked during the marriage. Based on gender justice law, it can be concluded that the rights obtained by women after divorce such as; *mut'ah* rights, maintenance rights, rights to refuse reconciliation, *hadlanah* rights and joint property, are not gender biased. It is not found that there are elements of marginalization

(economic impoverishment), subordination (deemed unimportant), *double burden*, negative labeling (*stereotype*) and *violence* against women.

Bibliography

Abdullah, Boedi dan Beni Ahmad Saebani, *Perkawinan Perceraian Keluarga Muslim*, Bandung; Pustaka Setia, 2013.

Abdurrahman, Dudung, *Pengantar Metodologi Penelitian dan Penulisan Karya Ilmiah*, Yogyakarta; IKFA PRESS, 1998.

Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* Jakarta: PR Grafindo Persada, 2004.

An-Nasai, *Sunan an-Nasai*, jilid 6. Libanon: Beirut-Dār El-Fikr, 2005.

Arifin, Bustanul, *Pelembagaan Hukum Islam di Indonesia, Akar, Sejarah, Hambatan dan Prospeknya*, Jakarta: Rajawali Press, 1996.

Asqalani Al-, *Subul as-Salam*, Ttp: Dar al-Fikr, tt.

Azni, Analisis Gender Terhadap Hukum Keluarga Islam Indonesia (Studi Terhadap Hak-hak Wanita Pasca Cerai) "*Jurnal Ilmu Syari'ah dan Hukum (Asy-Syir'ah)*", Vol. 49, No. 1, Juni 2015

Azyumardi Azra, *The Indonesian Marriage Law of 1974 an Institutionalization Shari'ah for Social Changes, in Shari'ah and Politic in Modern Indonesia*, Singapore: ISEAS, 2003.

Azzam, Abdul Aziz, & Abdul Wahhab Sayyed Hawwas. *Fiqh Munakahat Khitbah, Nikah, dan Talak*, Jakarta: Amzah, 2009.

Bagir, Muhammad, *Fiqh Praktis*, Bandung: Mizan, 2002.

Basam, Syaikh Abdullah bin Abdurrahman Al-, *Taudhihul Ahkam Min Bulughul Maram*, Makkah: Maktabah Al-Asadi, 1423H.

Bisri, Moh. Adib, *Terjemah Al Faraidul Bahiyyah*. Kudus: Menara Kudus, 1997.

Departemen Agama Republik Indonesia, *Al-Qur'an dan Terjemahannya*, Jakarta: PT.Tahazed, 2009.

Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia (KBBI)*, Jakarta: PT Gramedia Pustaka Utama, 2008.

Direktorat Jenderal Badan Peradilan Agama, *Pedoman Pelaksanaan Tugas dan Administrasi Peradilan Agama Buku II*.

Habsyi, Muhammad Bagir al-, *Fiqh Praktis Menurut al-Qur'an as-Sunnah dan Pendapat Ulama'*.

Halim, Arskal, dkk., *Demi Keadilan: Dokumentasi Program Sensitivitas Jender Hakim Agama di Indonesia*, Jakarta: Puskum HAM UIN Jakarta & Asia Foundation, 2009.

Hartono, *Kamus Praktis Bahasa Indonesia*, Jakarta: Rineka Cipta, 1996.

http://pa-tbkarimun.go.id/Yurisprudensi/137_K_AG_2007.pdf diakses pada tanggal 17 November 2014.

<http://www.pa-yogyakarta.net/v2/index.php/2014-09-15-07-06-01/laporan-tahunan> diakses pada tanggal 17 Januari 2016.

Jaziry, Abdurrahman al-, *al-Fiqh 'ala al madzahib al-arba'ah, qism ahwal al-syahshiyyah*, Juz 4, Mesir: Dar al-Irsyad, tth.

Koentjaraningrat, *Metode-Metode Penelitian Masyarakat*, Jakarta: 1997.

Compilation of Islamic Law

M. Subana dan Sudrajat, *Dasar-dasar Penelitian Ilmiah*, Jakarta: CV.Pustaka Setia.

Marriage Act 1974

Mulia, Musdah, dkk., *Keadilan dan Kesetaraan Jender (Prespektif Islam)*, ttp: Tim Perbedayaan Perempuan Bidang Agama, 2001.

Munawir, Ahmad Warso, *Al-Munawir: Kamus Arab-Indonesia*, Surabaya: Pustaka Progresif, 1997.

Narbuko, Cholid, H Abu ahmad, *Metodologi Penelitian*, Jakarta: Bumi Angsara, 2002.

Nasution, Khoiruddin, *Hukum Perkawinan I*, Yogyakarta: ACAdemia+TAZZAFA, 2013.

Nasution, Khoiruddin, *Pengantar Studi Islam, (An Introduction into Islamic Studies)* Yogyakarta : ACAdemia + TAZZAFA, 2004.

Nur, Djamaan, *Fiqh Munakahat*, Semarang: CV. Toha Putra, cet. I, 1993.

Profil Pengadilan Agama Kota Yogyakarta diunduh dari; <http://www.pa-yogyakarta.net/> diakses tanggal 10 Mei 2016 pukul 12.49 wib.

- Qusyairi, Abu al-Hasan Muslim ibn Hajaj al-, *ṣahîh Muslim*, Kitab at-Talaq, edisi M.F. Muhyiddin al-Nawawiy, (Beirut Lebanon: Dār al-Ma'rifah, 2007 M/1428 H.
- Rahman, Abdur I, *Perkawinan dalam Syari'at Islam*, judul asli, *Syari'ah The Islamic Law*, Terjemah: Basri Iba Asghary dan Wadi Masturi, Jakarta: PT Rineka Cipta, 1992.
- Ramulyo, Idris, *Hukum Perkawinan Islam* (Suatu Analisis UU No 1 Tahun 1974 dan KHI), Bumi Aksara, 1996.
- Rosyadi, Imron, "Perlindungan Hak-Hak Perempuan Pasca Perceraian Di Indonesia (Studi Terhadap Putusan Pengadilan Agama Se-Provinsi Kepulauan Riau Dalam Menerapkan Pasal 149 KHI)", *Disertasi*, tidak diterbitkan, Yogyakarta: Paska Sarjana UIN Sunan Kalijaga, 2010.
- Rusyd, Abu al-Walid Muhammad bi Ahmad bin Muhammad Ibnu, *Bidāya al-Mujtahid wa Nihāyatul Muqtasid*, Surabaya: Hidayah, t.t.
- Sābiq, Sayid, *Fiqh al-Sunnah*, Jilid 7, alih bahasa Moh. Thalib, Bandung: al-Ma'arif, 1997.
- Sābiq, Sayid, *Fiqhu as-Sunnah*, Juz 2, Beirut: Dār al-Fikr, 1992.
- Saebani, Beni Ahmad, *Perkawinan dalam Hukum Islam dan Undang-Undang*, Bandung: Pustaka Setia, 2008.
- Salim, Abu Malik Kamal bin As-Sayid, *Shahih Fikih Sunnah*, Jilid 3, diterjemahkan oleh Khairul Amru Harahap dan Faisal Saleh, Jakarta: Pusat Azzam, 2007.
- Sastroatmodjo, Arso dan Wasit Aulawi, *Hukum Perkawinan di Indonesia*, Jakarta: Bulan Bintang, 1975.
- Shihab, Muhammad Quraish "Konsep Wanita menurut Quran, Hadits, dan Sumber-sumber Ajaran Islam", dalam *Wanita Islam Indonesia dalam Kajian Tekstual dan Kontekstuan*, Jakarta: INIS, 1993.
- Soekanto, Soerjono, *Metode Penelitian Hukum Normatif*, Jakarta: Universitas Indonesia.
- Subki, Ali Yusuf As-, *Fiqh Keluarga: Pedoman Berkeluarga dalam Islam*, alih bahasa: Nur Khozin, Jakarta: Amzah, 2012.
- Supriatna, dkk, *Fiqh Munakahat II Dilengkapi dengan UU No.1/1974 dan Kompilasi Hukum Islam*, Yogyakarta: Bidang Akademik UIN Sunan Kalijaga, 2008.

Syarifuddin, Amir, *Hukum Perkawinan Islam di Indonesia antara Fiqih Munakahat dan Undang-Undang Perkawinan*, Jakarta: Kencana, 2006.

Thalib, Sayuti, *Hukum Kekeluargaan Indonesia*, Jakarta: UI-Press, 1986.

Tihami, dkk. *Fikih Munakahat: Kajian Fikih Nikah Lengkap*. Jakarta: Rajawali Pers, 2010.