

Implementation of the Principle of Appropriateness in Determining the Amount of Iddah, Mut'ah, and Child Support for Civil Servants Based on Sema No. 3 of 2018 (Study of Supreme Court Decision Number 42 K/Ag/2024)

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Abstract

This research examines the application of the principle of appropriateness in determining post-divorce maintenance amounts for Civil Servants based on Supreme Court Circular Letter No. 3 of 2018 through a study of Supreme Court Decision Number 42 K/Ag/2024. The regulation of iddah maintenance, mut'ah, and child support in Indonesian positive law has been established in various legal instruments, but its implementation often faces challenges in determining appropriate and fair amounts. Through a normative juridical research method with a case approach, this research analyzes how the Supreme Court applies the principle of appropriateness by considering factors such as the husband's economic capacity as a civil servant, the duration of marriage, the basic needs of the former wife and children, and the principle of a year's living costs as a benchmark for iddah maintenance and mut'ah. This decision becomes an important jurisprudence that corrects lower court decisions by improving the amount of iddah maintenance from Rp7,500,000 to Rp12,000,000, mut'ah from Rp30,000,000 to Rp48,000,000, and child support from Rp2,000,000 to Rp5,000,000 per month with a 10% increase each year, reflecting a progressive approach in religious court practice that prioritizes substantive justice and protection of women's and children's rights after divorce.

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1. INTRODUCTION

Divorce is a legal event that has a significant impact not only on the divorcing couple, but also on the children born from the marriage. The legal system in Indonesia, especially in the context of Islamic law implemented through the Compilation of Islamic Law (KHI), has comprehensively regulated the legal consequences arising from divorce, including the obligation to provide post-divorce maintenance. This obligation includes iddah maintenance, mut'ah, and child maintenance that must be fulfilled by the husband towards his ex-wife and children.

In the practice of religious courts in Indonesia, determining the amount of post-divorce maintenance is often a complex debate. This is due to the various interpretations of the concepts of "husband's ability" and "wife and child needs" which are used as the basis for determining maintenance. The absence of standard provisions in determining the amount of maintenance results in disparities in judges' decisions in similar cases, which in turn can give rise to legal uncertainty and a sense of injustice for the parties to the case.

Responding to this problem, the Supreme Court of the Republic of Indonesia has issued a Circular of the Supreme Court (SEMA) Number 3 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2018 as a Guideline for the Implementation of Duties for the Court. In the SEMA, the Supreme Court provides guidelines for judges in determining the amount of post-divorce maintenance by considering the principles of propriety and justice. The principle of propriety is an important consideration that must be considered by judges to ensure that the amount of maintenance determined is not only proportional to the husband's economic ability, but also meets the basic needs of the ex-wife and children.

The application of the principle of propriety becomes increasingly relevant in the context of divorce involving husbands with certain professions, such as Civil Servants (PNS). This is because PNS have a fixed income and can be easily verified through pay slips or other official documents. Thus, the court has a more objective basis in determining the amount of support that is considered appropriate and fair according to the economic capacity of the husband who has PNS status.

Supreme Court Decision Number 42 K/Ag/2024 is a concrete example of how the highest court in Indonesia applies the principle of propriety in determining the amount of iddah, mut'ah, and child support for civil servants. In this case, the Supreme Court corrected the decision of the Surabaya High Religious Court which was deemed not to have fulfilled the sense of justice and propriety in determining the amount of post-divorce support, taking into account the husband's status as a civil servant and the length of the wife's service in the marriage which reached around 17 years.

Specifically, the Supreme Court revised the amount of iddah maintenance from IDR 7,500,000 to IDR 12,000,000 for three months, and mut'ah from IDR 30,000,000 to IDR 48,000,000. In addition, the Supreme Court also revised the amount of child maintenance from IDR 2,000,000 to IDR 5,000,000 per month with an increase of 10% each year until the child is an adult or 21 years old. The Supreme Court's considerations in determining the amount of maintenance are based on the principle of propriety that takes into account not only the husband's economic ability as a civil servant, but also the basic needs of the ex-wife and children, as well as the socio-economic context that applies in society.

In its considerations, the Supreme Court emphasized that the amount of iddah and mut'ah maintenance determined must be based on the ex-wife's annual living expenses. This shows that the court is trying to ensure that the ex-wife has sufficient economic security to continue her life after the divorce, at least for a certain period of time until she is economically independent. Meanwhile, in the context of child maintenance, the Supreme Court emphasized the importance of paying attention to the child's best interests (*the best interest of the children*) by ensuring that children's basic needs, including education and health, are met even though their parents are divorced.

Supreme Court Decision Number 42 K/Ag/2024 reflects significant developments in the practice of religious courts in Indonesia, especially in applying the principle of propriety as the basis for determining the amount of post-divorce maintenance. This decision is an important jurisprudence that can be used as a reference for religious court judges in handling similar cases in the future, while still considering the specificity and uniqueness of each case faced.

Thus, the application of the principle of propriety in determining the amount of post-divorce maintenance not only guarantees the fulfillment of the rights of the wife and children as parties who are often more vulnerable in divorce cases, but also reflects the spirit of substantive justice which is the main objective of the judicial system in Indonesia.

Through decisions that take into account the principle of propriety, the court seeks to ensure that divorce does not result in prolonged economic suffering for the ex-wife and children, while not imposing disproportionate obligations on the ex-husband.

2. METHOD

This research uses a normative legal method with a case approach (*case approach*) which focuses on the analysis of Supreme Court Decision Number 42 K/Ag/2024 as the main research object. Data collection was carried out through literature studies (*library research*) by reviewing primary sources in the form of related laws and regulations such as the Compilation of Islamic Law, the Marriage Law, and the Circular of the Supreme Court Number 3 of 2018, as well as secondary sources in the form of legal literature, scientific journals, and other relevant court decisions. Data analysis was carried out qualitatively with descriptive-analytical techniques to describe and analyze the application of the principle of propriety in determining the amount of iddah, mut'ah, and child support for Civil Servants based on legal considerations contained in the decision, then interpreted and elaborated using the theory of justice, the principle of legal certainty, and the principle of benefit to find the meaning and legal implications in the practice of religious courts in Indonesia.

3. RESEARCH RESULTS AND DISCUSSION

1. Regulation of Iddah, Mut'ah, and Child Support in Indonesian Positive Law

The Indonesian positive legal system has comprehensively regulated the obligation to provide maintenance after divorce as a logical consequence of the dissolution of the marriage bond. Regulations regarding iddah, mut'ah, and child support are spread across several legal instruments that complement each other. The main legal instruments that regulate this are Law Number 1 of 1974 concerning Marriage and its amendments in Law Number 16 of 2019, Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, and the Compilation of Islamic Law (KHI) which was enacted through Presidential Instruction Number 1 of 1991.

In the context of iddah maintenance, the regulation is specifically contained in Article 149 letter b of the Compilation of Islamic Law which states that if a marriage ends due to divorce, the ex-husband is obliged to provide maintenance, food, and *kiswah* (residence and clothing) to the ex-wife during the iddah period. This provision is reinforced by Article 152 of the KHI which confirms that an ex-wife has the right to receive iddah maintenance from her ex-husband, unless she...*nusyuz*(disobedient). The concept of iddah itself refers to a woman's waiting period after a divorce or the death of her husband, the length of which varies according to the woman's condition as regulated in Article 153 of the KHI, generally for three holy days or around 90 days.

Mut'ah maintenance is regulated in Article 149 letter a of the KHI which requires the ex-husband to provide a decent mut'ah to his ex-wife, either in the form of money or objects. Article 158 of the KHI provides conditions for a wife to receive mut'ah, namely divorce at the will of the husband and the wife is not in a condition *I swear to God*(there has been no husband and wife relationship). The amount of mut'ah is determined based on the propriety and ability of the husband as stated in Article 160 of the KHI. The basic philosophy behind granting mut'ah is as a form of appreciation and consolation for a wife who has devoted herself to the bonds of marriage, as well as a provision for starting a new life after divorce. Meanwhile, for child support, the regulation is contained in several articles, including Article 41 letter b of the Marriage Law which states that the father is responsible for all maintenance and education costs required by

the child, and if the father is unable, the court can determine that the mother also bears these costs. This provision is reinforced by Article 105 letter c of the KHI which states that in the event of a divorce, the child's maintenance costs are borne by the father. Furthermore, Article 156 letter d of the KHI states that the consequence of a marriage breaking up due to divorce is that all costs of hadhanah (maintenance) and child support become the responsibility of the father according to his ability, at least until the child is an adult and can take care of himself (21 years old).

Government Regulation Number 10 of 1983 *juncto* Government Regulation Number 45 of 1990 concerning Marriage and Divorce Permits for Civil Servants provides special regulations regarding the obligation to provide for civil servants who are divorced. Article 8 of the PP states that if a divorce occurs at the request of a male civil servant, he is required to hand over part of his salary to support his ex-wife and children, with the provision that the division is 1/3 for the male civil servant, 1/3 for his ex-wife, and 1/3 for his children. This provision shows the state's special attention to fulfilling the rights of the wives and children of divorced civil servants, considering that civil servants have a fixed income sourced from the state.

In addition to laws and regulations, the Supreme Court has also issued several Circulars that provide guidelines for judges in implementing provisions related to post-divorce maintenance. One of them is the Circular of the Supreme Court Number 3 of 2018 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber which in the religious chamber in point A.2 provides guidelines that in determining the amount of madhiyah maintenance, iddah maintenance, child maintenance, and mut'ah, judges must consider a sense of justice and propriety by exploring the facts of the husband's economic ability and the facts of the basic needs of the wife and/or children.

Positive legal regulations related to post-divorce support in Indonesia demonstrate the state's commitment to protecting the rights of women and children after divorce. However, in judicial practice, there is often a gap between normative provisions and their implementation. This is due to several factors, including the unclear parameters in determining the amount of "appropriate" or "proper" support, differences in judges' interpretations of the concepts of "husband's ability" and "wife's and children's needs", and obstacles in executing court decisions related to support obligations. Therefore, a more comprehensive and systematic approach is needed in implementing positive legal provisions related to post-divorce support, including through the application of the principle of propriety as the basis for judges' considerations in determining the amount of support.

2. Implementation of the Principle of Propriety in Determining the Amount of Maintenance for Civil Servants

The principle of propriety is one of the fundamental principles in the Indonesian legal system which functions as a moral and ethical guideline for judges in deciding cases., including in determining the amount of post-divorce maintenance. This principle emphasizes that the judge's decision must not only be in accordance with formal legal provisions, but must also reflect the values of justice that exist in society and pay attention to the balance of interests of the parties. In the context of determining the amount of maintenance for Civil Servants, the application of the principle of propriety has its own significance considering the status of Civil Servants as state apparatus with a fixed income sourced from the APBN/APBD.

The application of the principle of propriety in determining the amount of maintenance for civil servants has received legal legitimacy through the Circular Letter of the Supreme Court (SEMA) Number 3 of 2018. In the SEMA, the Supreme Court provides direction for judges that in determining the amount of maintenance for madhiyah, iddah, child maintenance, and mut'ah, judges must consider a sense of justice and propriety by exploring the facts of the husband's economic ability and the facts of the basic living needs of the wife and/or children. This direction implicitly acknowledges that a mathematical approach alone is not enough in determining the amount of maintenance, but must take into account various social, economic, and humanitarian aspects related to the context of divorce cases. In judicial practice, the application of the principle of propriety for civil servants considers several key factors. The economic ability of civil servants which can be verified through pay slips or other official documents. This provides an objective basis for judges in determining the amount of maintenance that is proportional to the income of the civil servant. Unlike other professions whose income may fluctuate or be difficult to verify, civil servants have a fixed income consisting of a basic salary and various allowances that can be calculated with certainty.

The application of the principle of propriety considers the rank or class of civil servants as an indicator of economic capacity. Civil servants with higher ranks generally have higher incomes, so they can be appropriately burdened with greater living expenses compared to civil servants with lower ranks. This reflects the principle of proportionality in determining the amount of living expenses, which emphasizes that the burden of obligations must be in accordance with the economic capacity of the person concerned.

The principle of propriety also takes into account the wife's length of service and devotion during the marriage. In cases of divorce of civil servants who have been married for a relatively long time, the court tends to give a larger amount of mut'ah as a form of appreciation for the wife's devotion that has supported her husband's career as a civil servant. This is reflected in various court decisions, including in the Supreme Court Decision Number 42 K/Ag/2024 which explicitly considers the wife's length of service for approximately 17 years as a basis for increasing the amount of mut'ah.

The application of the principle of propriety takes into account the basic needs of the ex-wife and children to ensure a decent life after the divorce. This is in line with the basic philosophy of providing post-divorce support, namely to prevent harm or unnecessary suffering experienced by the ex-wife and children due to the divorce. In the context of civil servants, relatively stable economic capacity makes it possible to determine the amount of support that is adequate to meet these basic needs.

The principle of propriety also takes into account the prevailing socio-economic context in society, including the cost of living in the area where the ex-wife and children live. Civil servants who work in areas with high costs of living, such as in big cities, can appropriately be burdened with a greater maintenance obligation compared to civil servants who work in areas with low costs of living. This reflects sensitivity to the geographic and economic context in determining the amount of maintenance.

In Government Regulation Number 10 of 1983 in conjunction with Government Regulation Number 45 of 1990, there are specific provisions regarding the distribution of civil servant salaries after divorce, namely 1/3 for male civil servants, 1/3 for their ex-wives, and 1/3 for their children. However, in practice, religious courts are not always rigidly bound by this formula. Judges tend to use this formula as a minimum

reference, and can set a higher amount if it is considered to better fulfill a sense of justice and propriety. This shows flexibility in the application of the principle of propriety, which is not solely focused on normative provisions, but also pays attention to substantive justice in each case.

Recent developments in judicial practice show a tendency to determine the amount of iddah and mut'ah maintenance based on the annual living expenses for the ex-wife. This is reflected in the Supreme Court's considerations in Decision Number 42 K/Ag/2024 which states that "the amount of iddah and mut'ah maintenance determined by *Judex Facti* is not in accordance with the provisions on imposing iddah and mut'ah maintenance based on the annual living expenses for the (former) wife." This tendency shows an effort to provide more concrete standards in the application of the principle of propriety, while at the same time providing adequate economic security for the ex-wife to continue her life after the divorce.

The application of the principle of propriety in determining the amount of living allowance for civil servants also takes into account the best interests of the child (*the best interest of the children*). This is reflected in the tendency of the court to determine the amount of child support that is sufficient to meet the child's basic needs, including education and health, taking into account the child's future growth and development. In the context of civil servants, the court often even stipulates a periodic increase clause (for example 10% per year) to anticipate the increasing needs of the child as they grow older and get more educated.

However, the application of the principle of propriety in determining the amount of maintenance for civil servants is not free from challenges and obstacles. One of the main challenges is the gap between the amount of maintenance determined in the decision and its execution in the field. In many cases, even though the court has determined the amount of maintenance that is appropriate and fair, its implementation is often hampered by the reluctance of the ex-husband to fulfill his obligations, or difficulties in the mechanism for deducting civil servant salaries for maintenance payments. This shows that the application of the principle of propriety is not only limited to the stage of determining the amount of maintenance, but must also be supported by an effective and efficient decision execution system.

3. Legal Analysis of the Supreme Court's Considerations in Determining the Amount of Maintenance in Decision Number 42 K/Ag/2024

Supreme Court Decision Number 42 K/Ag/2024 becomes *landmark decision* which emphasizes the importance of implementing the principle of propriety in determining the amount of post-divorce maintenance. This decision corrects the decision of the Surabaya High Religious Court which was considered not to fulfill the sense of justice and propriety in determining the amount of iddah, mut'ah, and child maintenance. Through a comprehensive legal analysis, several important aspects can be identified in the Supreme Court's considerations.

First, the Supreme Court recognizes the existence of the principle of propriety as a fundamental basis in determining the amount of post-divorce maintenance. This is reflected in the Supreme Court's considerations which state that "in determining the amount of iddah and mut'ah maintenance, the judge must consider a sense of justice and propriety by exploring the facts of the economic capacity of the Respondent in Cassation and the facts of the basic living needs of the wife and/or children." This consideration is in line with SEMA Number 3 of 2018 which directs judges not to solely

be guided by formal-procedural aspects, but also to pay attention to substantive-material aspects in determining the amount of maintenance.

Second, the Supreme Court applies a holistic approach in assessing the appropriateness of the amount of maintenance by considering various interrelated factors. These factors include the length of the marriage, the wife's dedication during the marriage, the husband's status as a civil servant, the basic needs of the ex-wife and children, and the prevailing socio-economic context. This holistic approach reflects a progressive legal paradigm that is not only focused on normative-textual aspects, but also pays attention to contextual-sociological aspects in the application of the law.

In its considerations regarding the amount of iddah maintenance, the Supreme Court explicitly stated that the amount set by the Surabaya High Religious Court of Rp7,500,000 for three months "did not fulfill the sense of justice and propriety". The Supreme Court then corrected it to Rp12,000,000. This correction was based on the consideration that iddah maintenance must be sufficient to cover the living needs of the ex-wife during the iddah period, taking into account the husband's status as a civil servant with a fixed income. Furthermore, the Supreme Court emphasized that the right to iddah maintenance is a right protected by law, as regulated in Article 80 paragraph (7) and Article 152 of the Compilation of Islamic Law, as long as the wife is not proven *nusyuz* (disobedient).

Likewise, in its considerations regarding the amount of mut'ah, the Supreme Court considered that the amount of Rp30,000,000 set by the Surabaya High Religious Court "did not fulfill the sense of justice and propriety, especially in relation to the fact that the Applicant for Cassation had served as a wife for approximately 17 (seventeen) years." The Supreme Court then set the amount of mut'ah at Rp48,000,000. This consideration confirms that mut'ah does not merely function as "comfort" for the ex-wife, but also as a form of appreciation for the wife's devotion and sacrifice during the marriage. Thus, the longer the marriage, the greater the mut'ah that should be given.

The third aspect that stands out in the Supreme Court's consideration is the application of the principle of "one year's living expenses" as a benchmark in determining the amount of iddah and mut'ah maintenance. The Supreme Court firmly stated that "the amount of iddah and mut'ah maintenance determined by *Judex Facti* is not in accordance with the provisions on imposing iddah and mut'ah maintenance which is based on one year's living expenses for the (former) wife." This principle provides a more concrete standard in the application of the principle of propriety, while at the same time providing adequate economic security for the ex-wife to continue her life after the divorce, at least for a period of one year. If analyzed further, the amount of Rp12,000,000 for iddah maintenance for three months is equivalent to Rp4,000,000 per month, while mut'ah of Rp48,000,000 is more or less equivalent to the cost of living for the next nine months with the same calculation. Thus, the total cost of iddah and mut'ah reaches around Rp. 60,000,000, which is sufficient to cover living costs for one year with a standard of Rp. 5,000,000 per month.

Fourth, in the context of child support, the Supreme Court emphasized the importance of paying attention to the best interests of the child (*the best interest of the children*) as the main consideration. The Supreme Court corrected the amount of child support from Rp2,000,000 per month to Rp5,000,000 per month with an additional increase of 10% each year. This consideration is based on the father's obligation to fulfill the child's needs even though the right to *hadhanah* (maintenance) lies with the mother, as regulated in Article 105 letter c of the Compilation of Islamic Law. The

Supreme Court also linked the amount of child support to efforts "to guarantee and protect children and their rights so that they can live and grow and develop properly" as intended in Article 1 paragraph (2) of Law Number 23 of 2002 concerning Child Protection. Thus, the Supreme Court not only applies the principle of propriety in the context of the relationship between former husband and wife, but also in the context of the parent-child relationship which must still be maintained after divorce.

Fifth, the Supreme Court affirms the judicial authority to correct the amount of maintenance determined by the lower court if it is deemed not to meet the sense of justice and propriety. This authority is a manifestation of the Supreme Court's function as the highest supervisor of the course of justice in all judicial environments. In carrying out this function, the Supreme Court is not bound by the nominal amount requested by the parties in their petition. This is reflected in the fact that although in the counterclaim, the Applicant (wife) demanded child maintenance of Rp6,000,000 per month, the High Religious Court only set it at Rp2,000,000 per month, and the Supreme Court corrected it to Rp5,000,000 per month. This shows that in determining the amount of maintenance, the judge prioritizes considerations of propriety and justice rather than simply granting or rejecting the demands of the parties.

Sixth, the Supreme Court linked the economic capacity of the Respondent in Cassation as a civil servant with the obligation to fulfill the maintenance. In its considerations, the Supreme Court stated that "the change in the amount of maintenance for iddah, mut'ah and child maintenance is greater than the provisions stipulated *The judge was made* in accordance with the capabilities of the Respondent in Cassation as a Civil Servant (PNS), so that it is considered to have fulfilled the sense of justice and propriety." This consideration confirms that the status as a PNS with a fixed income is a factor that is considered in determining the amount of appropriate and fair living. This is in line with the principle of proportionality in imposing obligations, which emphasizes that the burden of obligations must be in accordance with the economic capabilities of the person concerned.

Seventh, the Supreme Court affirmed the clause on payment of maintenance as a prerequisite for the implementation of the divorce vow. Although the Supreme Court did not explicitly discuss the mechanism for executing the decision regarding maintenance, in its ruling it affirmed the husband's obligation to "submit the obligation to the Plaintiff as stated in number 3 above before the pronouncement of the divorce vow is carried out." This clause is important to ensure that the obligation to provide maintenance is actually carried out, and not just a decision on paper. This mechanism is a form of legal protection for ex-wives and children, while also reflecting the principle that the right to pronounce divorce (which is the husband's prerogative in Islamic law) must be balanced with the fulfillment of the obligation to provide maintenance after the divorce.

From the analysis above, it can be concluded that the Supreme Court's considerations in Decision Number 42 K/Ag/2024 reflect a progressive legal paradigm that is not only oriented towards legal certainty, but also towards justice and benefit. The Supreme Court does not merely apply normative provisions textually, but also pays attention to the socio-economic context and values of justice that live in society. This approach is an important precedent in the practice of religious courts, especially in determining the amount of post-divorce support.

Supreme Court Decision Number 42 K/Ag/2024 also emphasizes that determining the amount of post-divorce maintenance is not just a technical-procedural issue, but

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also a substantive-material issue concerning human rights, especially the rights of women and children after divorce. Thus, this decision not only has legal implications in the context of Islamic family law in Indonesia, but also social implications in efforts to protect the rights of vulnerable groups in divorce cases.

4. CLOSURE

Based on the discussion of post-divorce maintenance regulations in Indonesian positive law, the application of the principle of propriety in determining the amount of maintenance for civil servants, and an analysis of the Supreme Court's considerations in Decision Number 42 K/Ag/2024, it can be concluded that there has been a significant development in the practice of religious courts in Indonesia which prioritizes the principle of propriety and substantive justice in determining the amount of iddah, mut'ah, and child maintenance. The Supreme Court's decision is an important jurisprudence that provides concrete parameters in the application of the principle of propriety, namely by considering the length of the marriage, the husband's status as a civil servant, the principle of a year's living expenses for the ex-wife as a benchmark for iddah and mut'ah maintenance, and the best interests of the child in determining child maintenance. This development shows the commitment of the Indonesian justice system in providing legal protection for women and children as parties who are often more vulnerable in divorce cases, while also emphasizing that the determination of the amount of maintenance should not only refer to formal-procedural aspects, but must also pay attention to substantive-material aspects that reflect justice and propriety in the socio-economic context of Indonesian society.

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