

## **Consideration of Judges in the Determination of the *Mut'ah* Living After Divorce (A study in the court of Shar'iyah Sigli, Aceh)**

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**ABSTRACT:** Article 41 letter (c) of Law Number 1 of 1974 concerning marriage explains that in case of divorce, the husband has certain obligations that must be fulfilled to his former wife. In article 149 The compilation of Islamic law is more firmly mentioned that, when the marriage broke because of Talak, then the former husband shall give to his former wife: (a) the proper *mut'ah* in the form of money or goods, (b) a living that includes a living, place and living Equipment (*Kiswah*), (c) pay off the unpaid dowry, (d) Maintenance costs for his children who have not reached the age of 21. But in the provision is not mentioned the amount and magnitude of the living part of the *Mut'ah* that should be given husband after divorce. For that, the husband's grant by the spouse after divorce is based on consideration of the judge who handles the divorce case. During this time, the Assembly of the Court of Shari'iyah judge Sigli differ in the determination of the living *mut'ah* after divorce, so it is necessary to further examined what is a balance of judges in resolving the matter against the provision of *mut'ah*. The type of research used is juridical empiris and juridical normative. The results of the study are known that the judgment of judges in determining the magnitude of the granting of *mut'ah* is based on the ability and enrichment of husbands, the confidentiality and agreement between the parties. It is advisable, for the judge to determine the magnitude of the living, if in consideration based on the ability of the husband, then the judge must thoroughly see the extent to which the husband is able to provide a living *mut'ah*, do not for reasons Psychological is no longer happy/hate to the wife, the living *mut'ah* given with a little amount, but the husband has more ability. This is for the benefit of the benefit of providing *mut'ah* for both parties.

**Keyword:** Consideration of judges, determination of the size of the living *mut'ah*, divorce, court of Shari'iyah

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Date of Submission: 06-08-2019

Date of Acceptance: 22-08-2019

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### **I. INTRODUCTION**

Each marriage aims to establish a happy and eternal family/household based on the almighty Godhead. Permanent means once the marriage is carried out, it continues not to be decided.<sup>1</sup> However, in reality often found harmony of a family can not be maintained or in the sense of the home life that has been built for a long time, arise a problem or conflict in which there is no more compatibility among both sides and the desire to live together again. Settlement of the family or by peace also did not reap the results, and the efforts of the families of both parties could not help to maintain the integrity of the family, so the last choice to be taken is divorce.

Article 41 letter c of Law Number 1 year 1974 on Marriage states that in the event of divorce due to the *talak* of the husband against his wife, the staff may instruct the tribunal to judge the matter to obliged the former husband to provide livelihood costs and/or determine the obligation of the former husband to his former wife. In Article 149 The Compilation of Islamic Law is more firmly mentioned that, when the marriage broke out because of *talak*, then the former husband is obliged to give to his former wife, (a) a decent *mut'ah* in the form of money or goods, (b) a living that includes a living, and living equipment (*kiswah*), (c) pay off the unsettled dowry, (d) maintenance costs for his children who have not reached the age of 21.

According to the provisions above, it is important to note that in case of divorce because of the husband's *talak*, the husband has a duty to the former wife. One of the obligations that must be fulfilled is the provision of *Mut'ah*. *Mut'ah* is the gift of a husband to a former wife who has been sentenced (severance) either

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<sup>1</sup> Abdulkadir Muhammad, (2011), *Indonesian civil Law*, Bandung: Citra Aditya Bakti, p. 86.

object or money. The obligation is inherent to the husband and must be fulfilled by the husband because it is the rights of the wife as a result of the law from divorce.

According to Islamic law, relating to the granting of *Mut'ah* to the former wives after the divorce, there is evidence in the Al-Quran as the word of Allah SWT in Q.S. Al-Baqarah (2) verses 241, which means: "to the women who divorced (should be given by her husband) *mut'ah* according to the *ma'ruf*, as an obligation for the people of fear." From the word of God it is obvious that a husband still has an obligation to his divorced wife. Therefore, the husband is obliged to carry out such obligations.

As for the magnitude or the amount of the living, there are also provisions or foundations of the law in the Al-Quran, namely Q. S Al-Baqarah (2) verses 236, which means: "And you shall give them a *mut'ah* (granting). People who are able to obey his abilities and those who are poor according to his ability, namely giving according to the proper, such is a provision for those who do virtue." From this verse, you can know that the amount of the living in accordance with the husband and the ability to exist.

Based on preliminary data, the number of divorce in the court of Shar'iyah Sigli year 2016 to 2019 amounted to 398 cases. From the data is known cases of divorce in the Supreme Court of Shar'iyah is relatively high. Some of the cases of divorce that has been decided by a court judge Shar'iyah Sigli, among others:

1. Case No. 47/PDT. G/2019/MS. Sgi
2. Case No. 69/PDT. G/2019/MS. Sgi
3. Case No. 133/PDT. G/2018/MS. Sgi
4. Case No. 171/PDT. G/2016/MS. Sgi
5. Case No. 115/PDT. G/2019/MS. Sgi.

Based on a number of matters above the judges of the Court of Sharia Sigli was different in fixing *mut'ah* after divorce. As for the case No. 69/PDT. G/2019/MS. Sgi, mentioned about the requirement of the request against *mut'ah* Rp. 20.000.000, with consideration of the tribunal judges sentenced the applicant to pay *mut'ah* in the form of money Rp. 1 million,-

Then in case No. 47/PDT. G/2019/MS. S.gi, based on his consideration, judges punish the applicant to pay the amount of money from Rp. 300.0000,-. Case No. 115/PDT. G/2019/MS. Sgi, mentioned the claim of the respondent about the costs of Rp. 5000.000, *mut'ah* 5 (five) *manyam* gold, *kiswah* Rp. 5000.000. The tribunal judges in consideration of establishing and combining the three, namely the living ' *Iddah*, *mut'ah* and the third *kiswah* amounted to Rp. 2 million.-(two million).

Based on the explanation above it can be understood that the judges are different procedures used in setting the living *mut'ah*. There are judges who set the special living *mut'ah* only, some combine the magnitude of which is covered with a living, and *kiswah*, and there is a determination of judges who do not impose obligations to the husband to give *mut'ah*. Later, the determination of *mut'ah* by the court Judge Shar'iyah Sigli also vary in number. Even the set was much lower in number than that of a former wife. The wife should also be considered a judge, given the living *mut'ah* can be used as capital by the wife to fulfill her needs in the future or used according to her needs. The living has great benefits for the wife and the *mut'ah* as well as a thank you from husband to wife for accompanying her during family, bearing children and other sacrifices. Therefore, you want to know further consideration of the judge of the Court of Shari'iyah Sigli in establishing the amount or number of *mut'ah* given and the procedure carried out, so that the living *mut'ah* given by the husband to the former wife Greater value of benefit.

## II. RESEARCH METHOD

The study used the combined research type of normative and juridical empirical. In discussing the issue of this research using primary data and secondary data. Primary data of data obtained directly in the field and secondary data using legal materials (primary or secondary legal material) data collection method is by literature research and field research in the form of interviews With the judge who breaks the divorce.

## III. DISCUSSION

### I. The Obligation of The Gift of *Mut'ah* by Husband to Wife after Divorce

The living has a central role in the existence of *talak* in the husband's hands. Basically, how much the obligation to be given by the husband to the wife is to be able to provide reasonable needs, including feeding, clothing, housing and so on. The principle of "adequate necessity" can be obtained from the hadith of the prophet about the establishment of a wife takes her husband's money without permission if the given living is insufficient.<sup>2</sup>

The views of the sect scholars, in the Qur'an surah An-Nisa (4) Verses 34 are among the verses of the Qur'an indicating that the man (husband) is responsible for providing the family a living. Because of the responsibility of the living provider it is among husbands the reason why husbands become household leaders.

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<sup>2</sup> A.Hamid Sarong, (2004). *Islamic marriage law in Indonesia*, Banda Aceh: Yayasan Pena, p. 104.

In the interpretation of Al-Tabari, when interpreting An-Nisa verse (4) verses 34, it is mentioned that men are the leaders of women to educate and direct women..<sup>3</sup>

This leadership is based on the reason, the man (husband) who is obliged to give the brideprices and living cost of the family. For al-Tabari the passage above emphasizes more on the position of husband as the leader in the home of the general leadership. As a family leader the husband is obliged to educate the wife, in a manner set on the next piece of verse, which in turn strikes the wife also in an attempt to carry out the obligation. Therefore, from the explanation of al-Tabari it is apparent that the obligation of the husband provides the living implications of husband as the leader of the household. Thus the living is closely related to family leadership.<sup>4</sup>

Sayid Qutub in Khairuddin Nasution in his commentary, Fi Zilal al-Qur'an, husband's duties and obligations are to provide and to give protection so that the wife can complete the task of pregnant, childbirth, and breastfeeding well and successfully.<sup>5</sup>

Article 41 of Law Number 1 of 1974 on Marriage explains that in the event of a divorce, the husband has certain obligations that must be fulfilled to his former duties, such obligations are to give livelihood costs and/or determine the obligation of a former wife. This provision was intended to allow the former Isteri who had divorced her husband not to suffer from being unable to meet her life needs. As the original sound: "The court could oblige to the former husband to provide a livelihood and/or determine obligation for a former wife."

As well, in article 158 of the Compilation of Islamic Law, *mut'ah* shall be given by the former husband on the condition, if it has not been established Mahar for wife *ba'da dukhul*, divorce is over the will of husband, and article 159, stating that the sunnah *mut'ah* given by unconditionally former spouse Article 158.

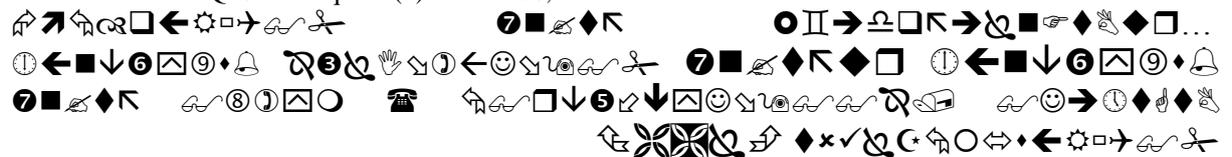
Other provisions governing *mut'ah* provision in article 149 letter A compilation of Islamic law. When the marriage broke because of *talak*, the former husband must give proper *mut'ah* to his former wife, either money, or objects except the former wife *qabl dukhul*.

Provisions of *Mut'ah* are implications arising from divorce, so there are some evidence that is the basis of the law of the provision of *mut'ah*. The first being the legality of *mut'ah* according to Islamic law is governed in some letters of the Qur'an including: Q.S. Al-Baqarah (2) verses 241, which reads:



It means: "to the women who are divorced (should be given by her husband) *mut'ah* according to the *ma'ruf*, as an obligation to those who are righteous."

Living *mut'ah* in the sense of giving husband to wife as the pleasing gift of his wife who has been divorced, as also mentioned in Q. S Al-Baqarah (2) verses 236, which reads:



Meaning: "... And you shall give them a *mut'ah*. People who are able to obey his abilities and those who are poor according to his ability, namely a proper gift. This is the provision of those who do virtue."

That is, the gift of entertainment according to each ability, in the ordinary out of the living. The gift is obligatory if it is divorced before being mixed up, and includes deeds of virtue when it is already compromised.

These obligations are inherent to the husband and must be fulfilled by the husband because it is the rights of the wife as a result of the law of the divorce and the responsibility of the living in the case of divorce, then on the provision of *mut'ah* also the word of Allah SWT, in Q.S. Al-Ahzab (33) Verse 49 which reads:



Meaning: "... Then give them the *Mut'ah*, and deliver them in the most way. "

The granting of *mut'ah* was the compensation given by the former husband to his wife. The giving is the interpretation of the responsibility and the fear of hatred and resentment in the former husband more than the granting of *mut'ah* is a reflection of a praiseworthy and thoughtful attitude.

<sup>3</sup> Khoiruddin Nasution, (2013). *Islamic marriage law in Indonesia*, Yogyakarta: Academia Tazzafa, p. 182.

<sup>4</sup> *Ibid*, p. 188.

<sup>5</sup> *Ibid*.

## II. Consideration of The Judges of The Court of Justice of the Sigli

Discussions relating to the giving of the award based on the judgment of judges can be analyzed by using justice theory. Justice is one of the most talked-about legal objectives that legal purposes are not just justice, but also legal certainty, and benefit. Ideally, the law should accommodate all three. The judge's verdict, for example, could be the Resul's third. Nevertheless there is still to say, among the three purposes of the law, justice is the most important legal purpose, even some argue is the only legal objective.<sup>6</sup>

Justice is one of the things that the court must manifest. In the opinion of some experts, fairness is one of the legal goals for the people of everyone. Justice is an integral part of the law itself. The law essentially incase justice.<sup>7</sup>

Judges' decisions are expected to be able to fulfill the sense of fairness, which is the justice felt by the parties in litigants. The justice in question can be substantial justice, not formal justice, meaning as a real justice accepted and perceived by the litigants. While formal justice is interpreted as fairness based on the law alone, which is not necessarily acceptable and fair by the parties.<sup>8</sup> Therefore, the judges in deciding the matter against the living *Mut'ah* which is the obligation of the husband must fulfill justice for both parties and consider the benefit for the life of wives after divorce.

The Constitution of the Republic of Indonesia year 1945 call the country of Indonesia is the state of law. Then authorizes the perpetrators of judicial authority, which is that the judge independently conducts the judiciary to enforce laws and justice.

There are three legal objectives that are always wanted to be realized by the judges in the its verdict, namely legal certainty, benefit, and justice. Based on the three purposes of this law, in terms of giving consideration of determining the great living the judge must look fairly and give certainty to the wife who divorced the husband.

Women in her status as wives and mothers of children have a fairly fundamental right in her home life, which is the right to obtain a welfare assurance that in this respect is a living. The handling of the living is related to the heavy burdens that women bear (pregnant, childbirth, breastfeeding and caring for children), who cannot be translated into men or husbands. Besides, there are still the duties of homemaking (managing households, serving husbands) that are dependent wives. But the consequences of divorce have caused the right and obligation for each, both wife and husband. The Qur'an puts a responsibility to the husband to give his wife, even though the wife has wealth and income.

Referring to the livelihood for the former wife, then in the marriage law in Indonesia, if the husband divorced his wife he must pay some money as a form of living, one of which is a living *mut'ah*. Article 149 letter (b) of the compilation of Islamic law. This provision is required with or without a request from the wife except on a *madhiyah* living. The request in the case of divorce is that the wife is filing a reconventions relating to *mut'ah*, a living, and a life of *madhiyah*. The ruling on divorce is usually followed by a husband's obligation to pay one of which is a living *mut'ah*.

Judges are given authority by the law of the wife's *mut'ah* burden. It means that the judge in his office has the authority to be able to determine the amount of the living *mut'ah* without filing a reconvention lawsuit

As for the fulfillment and determination of the magnitude of the birthright in the case of divorce in the court of Shari'iyah Sigli, the judge has given the following legal consideration:

1. Ruling with the number 115/PDT. G/2019/MS. Sgi, in the case of divorce between: Applicant, civil servants work. Opponent: The respondent, the work of housewives. The respondent/plaintiff Rekonpensi prosecute the respondent's rights, the claimant of the Rekonpensi in the form of: Living Expenses 2 (two) years ago, per day Rp. 50,000,-X 1 month (30 days x 1 month = 30 days x Rp. 50,000,-) amounted to Rp. 1,500,000.0-(one million five hundred Thousand rupiah) for 2 years the amount of Rp. 36 million,-(thirty Six million Rupiah). Iddah fee for 100 days x Rp. 50,000.0-amounting to Rp. 5,000,000.0-(five million rupiahs). *mut'ah* costs 5 (five) gold. Kiswah fee of Rp. 5,000,000.0-(five million rupiahs), in the decision of the applicant judges convicted to pay the living *iddah*, *mut'ah* and the third *kiswah* amounted to Rp. 2 million,-(two million) Rupiah. Hakim weighed that about the claimant's demands Reconvention of the Living *iddah*, *mut'ah*, *kiswah* tribunal judges consider the following:

Considering that against the demands of the plaintiff reconvention, the defendant reconvention in the answer states firmly objection and not able to fulfill it, because the defendant reconvention a civil servant whose income is very limited, other than that The salary received so far is minimal due to paying the Bank's credit debts. In addition, in the Replik that is added orally at the third Conference of the respondent's rights (the living *iddah*, *mut'ah* and *kiswah*) is only able to be given everything at least Rp. 2 million,-(two million) Rupiah, moreover

<sup>6</sup> Darji Darmodiharjo, Shidarta, (2014), *Principles of philosophy of law and how Indonesia's philosophy of law*, Jakarta: Gramedia Pustaka Utama, p. 153.

<sup>7</sup> Margono, (2019). *Principles of justice, benefits and legal certainty in judges' decisions*, Jakarta Timur: Sinar Grafika, p. 109.

<sup>8</sup> *Ibid*, p.110.

plaintiff reconvention in The orally delivered duplication can accept it and not object to it as important as it can be completed immediately. Therefore, the Tribunal argues fair if the defendant Reconventions were punished for the living Iddah, *mut'ah* and *kiswah* all three amounting to Rp. 2 million.-(two million) Rupiah, hence the claimant's claim to the living *iddah*, *mut'ah* and *kiswah* may be granted partially and reject the rest, whichever is in accordance with the meaning of article 149 letter B and Article 152 of the compilation of Islamic law year 1991.

2. Ruling with the number 212/PDT. G/2019/MS. Sgi in the case of divorce between: the applicant works self-employed against the respondent's job. In the judgment of the Tribunal shall weigh, that the agreement of the applicant and the respondent in the contract, that pursuant to Article 149 letter A, Article 152 and article 160 of the compilation of Islamic law, the applicant is obliged to pay to the respondent that was set As the applicant's ability, 1 (one) set Telekong prayer; In conclusion, the applicant is willing to pay (in accordance with the Mediation agreement) and the respondent is not the wife of *nusyuz* and not to be sentenced to *ba'in talak*.

3. Ruling with the number 133/PDT. G/2018/MS. Sgi in the case of divorce between: applicant, police work. Against the respondent of the work of civil servants, in the decision of the tribunal judges weigh, that against the claimant's demands reconvention related *mut'ah*, the defendant Reconvention has provided an answer at the trial which is in fact that the defendant Reconvention states will give *mut'ah*, but objections to the value as demanded by the plaintiff Reconvention, the tribunal argued in accordance with the provisions of article 149 letter (a) and article 158 Letter (b) Compilation of the Islamic law of plaintiff Reconvention shall be entitled to *mut'ah* of the defendant reconventions, therefore the demands of the plaintiff reconvention on the *mut'ah* must be granted. Considering that the *mut'ah* (entertainment) money is the right that the husband has adhered to and is an obligation for the husband except for his wife Qablaal Dukhul. Both sides of the plaintiff reconvention and defendant reconventions have been associating and having a relationship as endowed with 4 (four) children, by and apparently from the Confessor therefore the plaintiff Reconvention deserves *mut'ah*, as the Word of God Surah AI Baqarah verses 241 "and to the wives which are pierced should be given by his ex-husband a *mut'ah* in *ma'ruf* is an obligation to those who are righteous." Considering that, regarding the demands of plaintiff reconvention against *mut'ah* amount of RP 20,000 000 (twenty million rupiah) and defendant reconventions explain only able to give a certain amount of Rp. 500,000 (five hundred thousand Rupiah), that based on the sense of justice and by considering the defendant's ability to work as a police officer, the tribunal condemned the defendant reconvention by paying *mut'ah* in the form of money of Rp 1 million (one million rupiah) as stated in this verdict.

4. Ruling with the number 133/PDT. G/2018/MS. Sgi in the case of divorce between: applicant, police work. Against the respondent of the work of civil servants, in the decision of the tribunal judges weigh, that against the claimant's demands reconvention related *mut'ah*, the defendant Reconvention has provided an answer at the trial which is in fact that the defendant Reconvention states will give *mut'ah*, but objections to the value as demanded by the plaintiff Reconvention, the tribunal argued in accordance with the provisions of article 149 letter (a) and article 158 Letter (b) Compilation of the Islamic law of plaintiff Reconvention shall be entitled to *mut'ah* of the defendant reconventions, therefore the demands of the plaintiff reconvention on the *mut'ah* must be granted. Considering that the *mut'ah* (entertainment) money is the right that the husband has adhered to and is an obligation for the husband except for his wife *qabla dukhul*. Both sides of the plaintiff reconvention and defendant reconventions have been associating and having a relationship as endowed with 4 (four) children, by and apparently from the Confessor therefore the plaintiff Reconvention deserves *mut'ah*, as the Word of God Surah AI Baqarah verses 241 "and to the wives which are pierced should be given by his ex-husband a *mut'ah* in *ma'ruf* is an obligation to those who are righteous." Considering that, regarding the demands of plaintiff reconvention against *Mut'ah* amount of RP 20,000 000 (twenty million rupiah) and defendant Reconventions *Nenyatakan* only able to give a certain amount of Rp. 500,000 (five hundred thousand Rupiah), that based on the sense of justice And by considering the defendant's ability to work as a police officer, the tribunal condemned the defendant reconvention by paying *mut'ah* in the form of money of Rp 1 million (one million rupiah) as stated in this verdict.

5. Verdict with Number 372/PDT. G/2016/MS. Sgi in the case of divorce between: the applicant works the farmer against the respondent's job. Considering that in Reconventions, 1. Grant the respondent the whole request, 2. That the respondent asked to be given a contract Rp. 3 million (Figa million rupiah) and *mut'ah* amounting to Rp. 2 million-(two million rupiah). Because the application of the applicant to say the pledge of divorce against the respondent has been granted, then in accordance with the provisions of article 149 letter A and B of the compilation of Islamic law, the judges in consideration stipulates to the applicant to give *mut'ah* and the amount will be adjusted to the approprieness and fairness and ability of the applicant. Thus, the judges thus agreed to punish the applicant to submit to the respondent for the validity period of Rp. 3. 000.000-(three million rupiah) and for a living amount of Rp. 2 million-(two million rupiah).

6. Verdict with number 47/PDT. G/2019/MS. Sgi in the case of divorce between: the applicant work of farmers against the respondent the work of the housewife in the consideration of the Tribunal judges give

consideration, that it concerns the rights of the respondent as a wife to be divorced in The condition of *nusyuz* that is *mut'ah*, at the conference has been reached the said agreement between the applicant with the respondent, where the applicant claimed to give to the respondent *mut'ah* Rp. 300.000.00 (Three hundred thousand rupiah) and the respondent in the face of the Court stated can accept it, considering, that because there is already a word of agreement between the applicant and the respondent related to the living *mut'ah*, then the tribunal judges do not need to consider further, therefore the Tribunal judges should punish the applicant for Giving a living *mut'ah* to the respondent as agreed upon and will be set forth in the event of this ruling, whichever is in accordance with the provisions of article 149 letter (a) and (b), Jo. Article 152 The compilation of Islamic law. The judge punishes the applicant to give the respondent the amount of Rp. 300.000.00 (Three hundred thousand Rupiah).

According to the above, it can be noted that the judgment of judges in setting the size of the wage is based on:

1. Husband's ability and income. The judge learns in detail what the husband's work and income are being earned. Therefore, the judge gives a analysis of consideration based on justice for both parties, namely the husband gave according to his ability. In terms of giving consideration based on the ability of the husband, the judge also uses the basis of Islamic law which is the basis of *mut'ah* contained in the verses Al-Qur'an Al-Baqarah verses 241 and also the compilation of Islamic law. The text is in accordance with the purpose and objectives of the gift of *mut'ah* that it must be in accordance with the ability. *mut'ah* was not merely a wife's claim to the husband, but *mut'ah* was the gift of a husband to his divorced wife. Because it is in the regulations so that the judge can determine its number because of office (right ex-officio).

2. Decent toughness. In this case, the judges assess and consider that the amount and sum of the designated *mut'ah* can be of value. Like *mut'ah* must fulfill the sense of persistence and justice for both husband and wife, especially for wives. As a weak party, and can be used for future wives and also do not burden husbands.

3. Approval of both parties. The judge asks the agreement both parties in the proceeding. With the agreement between the applicant and the respondent relating to the determination of the amount of the granting of *mut'ah* so that the judge will be fairer in giving decisions.

As for the results of the interview with the court Judge Sigli Syar'iyah with the Father Dr. Indra Suhardi, M.Ag stated: "That in providing consideration for the determination of the living *mut'ah* for wives, judges see the ability of husband based on Work and income, because the judge also uses the basis of Islamic Law as found in the Qur'an Al-Baqarah Verse 241 This goal is considered by the judge to not be able to lose the husband in the living *mut'ah* so that the most Judge is the capacity or ability of a husband."<sup>9</sup>

As well as the results of interviews with the Father Drs. A. Aziz, S.H., M. H, also said: "That a husband's gift to wife is a form of gratitude and husband's willingness to the wife who has been accompanying and In the home and bearing his children for the provision of *mut'ah* should also be considered based on the compliance and inequality and justice for both parties. Later in the trial the judge also asked for approval to both parties to the stipulated magnitude. Based on several cases that have been decided that the economic factors and the ability of the husband to provide a living *mut'ah* greatly affect the implementation. Therefore, in any living *mut'ah* judge can not impose also husband to give in accordance with the amount of the requested wife, the judge must give fair consideration to the benefit of both parties. If the former husband has sufficient income, then the payment of *mut'ah*, can run smoothly. Conversely, if the ex-husband has little income, the payment of the living obligation *mut'ah*, sometimes difficult to implement. Therefore, the judge should see the ability and abilities of husbands according to their work and income."<sup>10</sup>

Based on the explanation above, if analyzed using the theory of justice, the judgment of the judge in establishing the living *mut'ah* must be given husband to a divorced wife (based on the ability and income of husbands, and agreement), has provided a sense of fairness for both parties. If consideration based on husband's ability is fair because not burden the husband or forcing the husband to give a certain amount to the thing he cannot afford. Then, the consideration based on the persistence also gives justice to the wife, that the amount of the given *mut'ah* also must be reasonable and worthy. Furthermore, the Agreement to provide justice for both parties shall be equally agreed upon and the form of the living *mut'ah* given.

#### IV. CONCLUSION

Based on the explanation above, it can be concluded that the judgment of judges in determine of the provision of the living after the divorce is, firstly, based on husband's ability and income, the judge learns in detail what the work husband and income earned. Therefore, the judge gives a analysis of consideration based on justice for both parties, namely the husband gave according to his ability. Secondly, a worthy sedition. In this case, the judges assess and consider that the amount and sum of the designated *mut'ah* can be of value. Like the

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<sup>9</sup> Indra Suhardi, Court Judge Shara'iyah Sigli, interview on 18 June 2019.

<sup>10</sup> A.Aziz, Judge of court Shar'iyah Sigli, interview on June 18, 2019.

*mut'ah* here must fulfill a sense of persistence and fairness for both parties. Thirdly, the deal between the two. The judge asks for an agreement between the parties in the proceeding, due to agreement between the applicant and the respondent relating to the determination of the amount of *mut'ah* and the judges will be more equitable in the decision. It is advisable, for the judge to determine the magnitude of the living, if in consideration based on the ability of the husband, then the judge must thoroughly see the extent to which the husband is able to provide a living *mut'ah*, do not for reasons Psychological is no longer happy/hate to the wife, *mut'ah* given a small amount, but the husband has more ability. This has been the benefit of granting the *mut'ah* for both parties.

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### Peraturan Perundang-Undangan

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Law No. 1 year 1974 about Marriage

Presidential Instruction No. 1 Tahun1991 about the Compilation of Islamic Law

Rini Mulyana." Consideration of Judges in the Determination of the Mut'ah Living After Divorce (A study in the court of Shar'iyah Sigli, Aceh)." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 08, 2019, pp. 65-71.