

CHAPTER

3

MANAGING RIGHTS OF *MUT'AH* AND *'IDDAH*

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3.1 INTRODUCTION

The primary goal of marriage is to cultivate a harmonious, loving, and compassionate household, as the union between husband and wife represents a sacred bond (Yanggo, 2005). However, married life does not always unfold as expected, and conflicts or incompatibilities often lead to divorce (Andrea & Awaliyah, 2022). Divorce can arise for various reasons, including financial difficulties where the husband is unable to provide adequate support, diminishing love and affection, infidelity, excessive jealousy, domestic violence, and numerous other factors that contribute to the dissolution of a marriage (Syarifuddin, 2016).

The most common solution that both spouses often choose to resolve household conflicts and disputes is separation (Rofiq, 2013). Many couples opt for informal divorces, believing that a marriage is dissolved simply by the husband drafting an unofficial divorce letter. Some also argue that, under Islamic law, a verbal pronouncement of divorce (*talaq*) by the husband to his wife is considered a valid divorce (Dahwadin et al., 2020).

In Indonesia and Malaysia, a divorce is legally recognised only when a court issues its ruling. However, the dissolution of marriage does not absolve the ex-husband of his responsibilities toward his former wife and children. Certain obligations, such as the payment of *mut'ah* and *'iddah* maintenance, must still be fulfilled and often become contentious (Rodliyah, 2014). This issue arises when, during the pronouncement of the divorce declaration in the Religious Court, the husband claims he lacks the financial means to compensate his former wife (Arma, 2022).

In the context of Islamic family law in Indonesia and Malaysia, *mut'ah* refers to a form of financial compensation or a consolation gift provided by a former husband to his divorced wife (Arma, 2022). Meanwhile, *'iddah* denotes the mandatory waiting period a Muslim woman must observe following the dissolution of her marriage, whether due to divorce or the death of her husband. The primary purpose of *'iddah* is to confirm the absence of pregnancy, uphold the sanctity of marriage, and allow time for reflection or mourning (Arma, 2022).

Despite the legal and Islamic framework supporting the rights to *mut'ah* and *'iddah* maintenance in Indonesia and Malaysia, several challenges persist in practice. The primary issue arises from the failure to provide these allowances, as many husbands assume their responsibilities end once the divorce is finalised (Syah, 2019). Consequently, an effective system is required to ensure that divorced wives receive their entitled post-divorce financial support.

Legal Project Management (LPM), which integrates project management principles into legal cases, offers a potential breakthrough in addressing the challenges of *mut'ah* and *'iddah* maintenance payments. LPM applies “traditional project management principles to legal services, ensuring a comprehensive management approach that meets and exceeds client expectations” (Quick, n.d.). This approach aligns with the role of advocates or lawyers in divorce proceedings, encompassing case filing, administrative tasks, and litigation management from initiation to resolution (Rosyadi & Hartini, 2003).

3.2 UNDERSTANDING *MUT'AH* (MAINTENANCE AFTER DIVORCE)

Mut'ah (maintenance after divorce) is prescribed in the Qur'an, the primary source of Islamic law. Surah al-Baqarah verse 241 states "Reasonable provisions must be made for divorced women—a duty on those mindful of Allah". This verse represents the application of Islamic law regarding the right to *mut'ah*. The provision of *mut'ah* by the husband to his ex-wife serves not only to offer emotional comfort following the divorce but also to provide financial support for her future needs (Ghazaly, 2003). Surah at-Thalaq verse 6 states, "Let them live where you live during their waiting period, according to your means. And do not harass them to make their stay unbearable. If they are pregnant, then maintain them until they deliver. And if they nurse your child after the divorce is finalised, compensate them and consult together courteously. But if you fail to reach an agreement, then another woman will nurse the child for the father."

According to the Hadith, the second source of Islamic law, Abu Dawood (2290) narrated that, "The Prophet (PBUH) said: The best of what you can give is the *mut'ah* to a woman who has been divorced." This narration highlights the emphasis placed by the Prophet (PBUH) on ensuring financial consideration and compassion towards women following a divorce. Similarly, An-Nasa'i (3489) narrated that, "The Prophet (PBUH) said that a woman's right to maintenance and accommodation is only valid if her husband still has the right to take her back (i.e., before a final irrevocable divorce)," underscoring the clear distinction between revocable and irrevocable divorce within Islamic jurisprudence.

Both primary sources of Islamic law, the Qur'an and Hadith, mandate that husbands who divorce their wives must provide them with accommodation and financial support, particularly if the wife is pregnant. These sources also serve as the foundation for scholars in determining that a husband remains obligated to provide maintenance after divorce. According to the Shafii school of law, several factors determine a wife's entitlement to *mut'ah*, which obligates the husband to provide it. The first factor applies when a woman is divorced before the consummation of the