

# Background and Purpose of Imposing One-Third of the Salary of a Muslim Civil Servant Husband to a Former Post-Divorce Wife

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## Abstract

Inequality in the provision of income under Article 8 PP 10/1983 Jo PP 45/1990 because the PP is strongly influenced by the current ruling authorities up to the legal product Conservative /Orthodox/elitist, law as a Political tool, Government tool, law closed because of the role and participation of small communities. In the reform era, the second provision of PP was irrelevant. The purpose is Article 8 PP10 / 1983 Jo PP45 / 1990 to prevent the divorce of civil servants and to create discriminatory law and injustice. Both of these Government Regulations (PP) are contrary to the principles of human rights, basic values of living and developing in the midst of society such as the appropriate Islamic law as ground norms, the 1945 Constitution Article 28D Jo Article 29 and the principle of modern democratic state (welfare state), the expectation of the article is for the smooth running of civil service duties, and as a means of enhancing the discipline of civil servants. However, both Articles of the two PPs substantially complicate marriage and civil servant divorce such as (UUP) because it restricts the marriage and civil servants divorce with strict requirements. The purpose of this study is to describe and analyze the background and the purpose of setting one-third of the salary of a husband to a former post-divorce wife. This present study uses the legal constructivism method with non-positivistic paradigm (ontological, epistemological and axiology where the author is a facilitator). With the socio-legal research approach, and using primary and secondary data sources, primary legal materials, secondary legal materials, and non-legal materials.

**Keywords:** Justice, Post - Divorce Income, Civil Servant, Law, Islam.

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## INTRODUCTION

The legal area of the religious court covers the regency or city where the court is located, while the legal area of the religious high court covers the province where the court is located. Basically, to determine the relative power of a religious court in a case the application is submitted to the court whose jurisdiction covers the applicant's residence. However, in the religious courts have determined the relative authority in cases such as in Law No 7 of 1989 as follows:

- Application for polygamy permits is submitted to the Religious Courts whose jurisdiction covers the residence of the applicant.
- Application of marriage dispensation for a spouse who has not attained the age of marriage (19 years for men and 16 years for women) is submitted by the parents concerned to the Religious Courts whose jurisdiction covers the residence of the applicant.

- Prevention of marriage is filed to the Religious Court whose jurisdiction covers the place of marriage.
- The request for cancellation of marriage is submitted to the Religious Court whose jurisdiction covers the place of marriage or husband or wife's residence [1].

Before 1882, the Religious Court was truly a judiciary in its true sense. However, at the beginning of 1882, Religious Courts gradually reduced the meaning and role. The peak point took place in April 1937 when the authority of the Religious Court was reduced. Hence, the practice of the Religious Court was only authorized to deal with disputes, marriage, and reconciliation matters. However, it only applies to Java, Madura, and some of South Kalimantan. Religious courts outside the area above, are still in operation as usual, until there is a Government Regulation No. 45 of 1957 which regulates the authority of Religious Court in a legislative way covering the law of marriage; inheritance; Hadanah, waqfs, grants, alms, and

Baitulmal. Thus, the Religious Courts' authority is different between those in Java, Madura, and parts of South Kalimantan with other parts of Indonesia. Although the Religious Courts in Java, Madura, and parts of South Kalimantan are not authorized to deal with the heirs, but in reality, the Religious Courts in those places still resolve the heirs with the form of the heirs of fatwa which is indeed not a court decision, and that is not binding at all [2].

That both Articles of PP Number 10 of 1983 and PP 45 of 1990 governing the marriage and divorce of civil servants in particular Article 8 of PP No. 10 of 1983 and Article 16 of PP No. 45 of 1990 did not provide legal certainty and public sense of justice, why? Because the PP cannot be executed because of "giving 1/3 of salaries, if in marriage there is a child, 1/2 part of the salary, if in the marriage has no children, the Defendant to the Plaintiff as regulated in Article 8 Government Regulation Number 10 of 1983 Jo Government Regulation Number 45 of 1990 on the Discipline of Civil Servants that the salary is divided into the following Civil Servant is divided three 1/3 of 1/3 for husband, 1/3 from 1/3 for ex-wife and 1/3 from 1/3 for children and their enemies, since the provision does not constitute the law of the Religious Court, and hence the giving of 1/2 of salaries, 1/3 of the Defendant's salary to the Plaintiff is the Decision of the State Administration Official.

(Decision of MARI number 11 K / AG / 2001 dated July 10, 2003). Therefore, when a Civil Servant (husband) divorces his wife then issued for reconciliation by his wife on the maintenance of a third of the salary, then the Religious Court will be declared at NO (Niet Ontvankelijke Verklaard) that means that there is no legal certainty over the demands of the wife, the two do not respect the sense of justice for husbands because they feel very burdensome. And contrary to moral justice because the two PPs are PP No. 10 of 1983 Jo PP number 45 of 1990 by the court decision in violation of why because based on the Supreme Court Decision of the Republic of Indonesia Number 03 K / AG / 2010 that is giving a 1/3 salary as Provision Article 8 of PP No. 10 of 1983 Jo Article 16 of PP No. 45 of 1990 is taken into account as the provisions of Article 149 Jo Article 158 of the Compilations of Islamic Law are taken into account as mut'ah and from the social justice side that Indonesia is a State-based Pancasila as Ground Norms, Article 28 D and Article 29 of the Constitution of 1945 has guaranteed for its citizens to worship in accordance with the Religion. Where the Islamic concept of maintenance to the ex-wife views that a living allowance, by a former husband to a former post-divorce wife.

The fundamental problem that becomes discourse is about the issue of justice with the law. Because the law or legislation should be fair, but in reality, it is difficult to realize. Justice could only be

understood if it is positioned as a state to be realized by law. The attempt to realize justice in the law is a dynamic process that takes much time. This effort is often also dominated by forces fighting in the general framework of political order to actualize it [3]. People may assume that justice is an idea or absolute reality, and assumes that knowledge and understanding about it can only be obtained partially and through more difficult philosophical efforts where people can assume that justice is the result of the general view of religion or philosophy about the world in general. Hence, people can define justice in one sense or other sense of view. The meaning of the law is divided into two is the meaning of justice in the attributes and the meaning of justice in action. The meaning of justice is attributable to a fair or just quantity, while the meaning of action is an act of action and to determine the right or punishment. The description in this paper is a minority of the reflective thinking that developed throughout the history of human civilization, in line with the spirit of the times, the political situation, and the growing life-and-look. To learn justice is an activity that is not light, let alone try to formulate it by the spirit of current development.

However, the difficulty does not mean that the study of justice must be excluded. For legal circles, the review of justice is the main thing, because justice is one of the objectives of the law, some even claim to be the primary goal. Studying the law without studying justice is the same as considering a body without life. This case means accepting the development of the law as a physical phenomenon without seeing the design of the spirit. In the end, it can be seen that legal studies are no different from dry and dry design studies with a touch of justice. Legal practices are drawn to specific, technological, and non-moral questions. Professionals are experts in legal matters but do not ask them about morality. This practice makes cynical sarcasm in the law in America where the motto of Equal Justice Under Law on the walls of the Supreme Court is supplemented by the words of All Who Can Afford It. Special justice is an improvement. Improvements occur because of the interaction between people and people who are volunteering.

The relationship is the result of the approval of each acquired to the midpoint or reciprocity. Therefore, justice is equality, and otherwise, injustice is inequality. Injustice occurs when one receives more than one in the relation made equally. To equate this the judge or mediator performs his task of equating by taking part in the more and giving the less precise reaching midpoint. The act of this judge is executed as a punishment. This is different in the relationship taken not on the basis of each party's voluntary. In an unrelated relationship, the non-voluntary determination of justice, which defines the midpoint as a result of the acquired, and denied. Correction action is not done solely by taking advantage of one party being given to another party in

the sense of retaliation. Someone who injures is not solved by allowing the injured person to injure the reciprocal in this context is done by exchanging a certain value to the degree of proportion. For this exchange is money used. Justice, in this case, is the midpoint of unfair treatment and is mistreated [4].

Justice and injustice are always committed to voluntary. Such voluntary include attitudes and deeds. When a person acts indiscriminately, it can not be categorized as unfair or fair, except in some special way. Conducting fairly certain action should have room to choose as a place of consideration until in the relationship between human beings there are several aspects of judging such actions, i.e., intentions, actions, tools, and result. When (1) contradiction with rational expectation, it is a misadventure, (2) when it does not conflict with reasonable expectations, but does not cause crime, it is a mistake. (3) When an action with knowledge but without consideration, is the act of injustice, and (4) a person acting by his choice, he is an unfair person and a bad person. Conducting unfair acts is not the same as unfairly doing something. It cannot be mistreated when others do not do something unjustly. Maybe someone is willing to suffer because of injustice, but no one hopes to be mistreated. Thus, justice has a broad meaning and partly justice that has been determined by nature, partly the result of human judgment (legal justice). Natural justice applies universally, whereas human-defined justice is the same in every place. Justice set by man, and this is what is meant by value. Because of the inequality, there is a class difference between universal justice and legal justice that allows the justification of legal justice. It could be all law is universal, but at a particular time, it is impossible to make a universal statement that must be true. It is so important to speak universal justice, but it is impossible to do something always right because the law in some instances is inevitable from the mistakes. At one time the law contained something universal, but then another case was not contained in the law. That is why natural equality and justice fix the mistake. That cause of injustice is a social site so it is necessary to re-examine which principles of justice can be used to shape a good society situation. Correction of injustice is done by calling people in the original position. In this primary position then the original agreement is made by the members of the community in equal measure. There are at least three conditions for humans to reach the original position, i.e., It is assumed that it is unknown, which position a particular person will achieve in the future. It does not know which talent, intelligence, health, wealth, and other social aspects. It is assumed that the principles of justice are consistently chosen to hold such choices. It is assumed that everyone likes to pursue the interests of the individual and then the public interest. This case is a natural human tendency to be observed in finding the principles of justice [5].

The law as a tool for transforming society or social engineering is nothing but the ideas that the law wants to be realized. In order to ensure the achievement of the legal function as a better society towards the right, it is required not only the availability of the law in terms of rules or regulations but also the guarantee of the incorporation of such rules into law practice, or other words, the guarantees of law enforcement well. Hence the law is not only a function of its laws but also its bureaucratic activity that in practice is a legal culture. The judge in dealing with the talaq divorce case for Civil Servants has based on the norms as described above on this part of the theory. For the seekers of justice feel comfortable and soothing that is marked by obedience to the Court's decision because the execution of the Court's verdict is the practice of worship as religion or religious obligations based on al-Qur'an and the Sunnah of the Prophet.

In Islamic law, the obligation of a husband to a wife in Thalāq is limited to providing a wife to the ex-husband by mut'ah, and to spend iddah with "Ma'ruf" in order to maintain a balance and to give a sense of fairness as in marriage a good and elegant way. In contrast, when divorced are also treated in a similar way that is a good way too. Similar to this is the opinion of Sulaiman Rasyid and Imam Malik and in the provisions of QS2: 223 & 236, QS 65 verse 07. The normative provisions attempt to protect the rights of wives in the beloved country of Indonesia, among others, during the reign of ORBA, with a legal policy regarding the establishment of PP No. 10 of 1983 Jo PP 45 of 1990, among others, in order to restrict the occurrence of divorce between Civil Servants based on the pressure at that time and the second consideration of the Second PP, among others:

Marriage is a bond between man and woman as husband and wife to form a happy and timeless family based on the Supreme Lord, therefore, divorce as far as possible should be avoided. Civil Servants are elements of state apparatus, state servants, and community servants who must be a good example for the public in behavior, action, and compliance with applicable laws and regulations, including running family life, to carry out such an obligation, the life of a Civil Servant must be supported by a harmonious, prosperous, and happy life. Then every Civil Servant in the course of duty will not be much disturbed by the problems in the family. In order to attempt to further improve and uphold the discipline of Civil Servants and to provide legal certainty and the sense of justice it is deemed necessary to amend several provisions in Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permit to Civil Servants, that if it will otherwise be considered, as breach of discipline as provision of Article 16 PP Number 45 of 1990. This means that the tightening policy of divorce among Civil Servants itself is in conflict with Pancasila and the Constitution of the

Republic of Indonesia 1945 Article 28, point B and Article 29 why this is not because of the values inherent in Pancasila and UUDNRI 1945 Article 28 B paragraph (1) Everyone has the right to form a family and to continue the offspring through legal marriage. This article is understood that there is a guarantee by the State to the Indonesian community including the Muslim community to be permitted to make marriage or divorce as a means of developing or deciding the roadblocks to live their family life. Therefore, then we find that the rules contrary to Pancasila and UUDNRI 1945 are indeed the higher Laws precedent which in this case are Pancasila and UUDNRI 1945. As Article 8 PP Number 10 years 1093 Jo PP 45 of 1990 in one party and Pancasila with the UUDNRI 1945 on the part which guarantees all citizens to practice the religious teachings of the post-partisan divorce of civil servants who are against the teachings of Islam. If the purpose of the burden of livelihood is to protect the rights of the standard woman's wife the most appropriate is as the provision of Islam that the provision of maintenance by the ex-husbands to the ex-wife is during the period of iddah according to the husband's fatigue in a manner that is as customary as the local area.

Based on the above background can be summarized some of the issues to be studied in this paper, as follows:

- How is the background of loading a third of the salary of a Muslim Civil Servant to a former post-divorce wife?
- What is the purpose of loading a third of the salary of a Muslim Civil Servant to a former post-divorce wife?

## RESEARCH METHODS

The present study uses the legal method of Constructivism with a non-positivistic paradigm (ontological, epistemological and axiology where the author is a facilitator). With a Socio-Legal research approach, and using primary and secondary data sources, primary legal materials, secondary Law materials and non-legal materials (tertiary).

## DISCUSSION

### The background of one-third of the salary of a husband who is a Muslim civil servant for a post-divorced ex-wife

Firstly, both in al-Qur`ān and in al-Hadith we have not found one verse or hadith that is burdensome to the ex-husband. Islam teaches its followers in terms of providing a living according to their ability as QS (65) verse 7. Likewise, some scholars also mention the same: The Qur'an Surah An Nisa verse 233, the duty of the father to feed and clothing to the mothers by means of Ma'ruf.

Book of Subul al-Salam Juz III page 221 Hakim Ibn Mu'awiyah al Quysairi from his father, he

said: "O Messenger of Allāh, what obligation is imposed on us against the wife?" He said: "give her food when you eat and give her clothes when you dress."

Second, in terms of providing income to ex-wives by ex-husbands, there are clear and not burdensome restrictions as stipulated in Article 149 letter (b) Jo Article 158, Compilation of Islamic Law for the provision of income, Maskan and Kiswah for ex-wives after divorce during the iddah period means that the burden on the ex-husband's income is limited by the period of the iddah, when the iddah period expires, the husband's responsibility for the ex-wife is completed after the divorce. Therefore, there is another legal certainty with Article 8 of PP Number 10 of 1983 Jo PP No. 45 of 1990 which contradicts the philosophy of establishing it, which in turn cannot be implemented by the Religious Courts because it is seen as a Decision of the State Administration including verdict number 1512 / Pdt.G / 2015 / PA.Jepr. Number 1110 / Pdt.G / 2013 / PA.Mgl. Number 405 / Pdt.G / 2005 / PA.Sm. Number 1135 / Pdt.G / 2007 / PA.Sm. Number 2103 / Pdt.G / 2007 / PA.Sm. Number 1512 / Pdt.G / 2015 / PA.Jpr. Number 2141 / Pdt.G / 2013 / PA.Srg. Number 0137 / Pdt.G / 2012 / PA.Srg. Number 0081 / Pdt.G / 2015 / PA.Sit, the verdicts state that the obligation of a former civil servant after divorce to the ex-wife is limited to the Iddah, Muta`ah, and compensation in the past if a wife is abandoned by the husband, then there is a demand for maintenance of a half-wage wife or a third of her husband's salary, then by the court the claim was declared unacceptable because it was viewed as a non-religious event of the Religious Court ie the Decision of the State Administration Official, regardless of the maintenance of the ex-husband to the ex-wife must be broken by the State Administration official or not according to the authors' opinion that a legal act that is not justified why, because the obligation to provide a living in Islam is from the marriage of the marriage contract and has occurred surrender (tahkim) and will end when the marriage is broken that is why the loading of half the salary or one-third of salary to the Civil Servant a divorce to a former wife is an act of injustice by law or by a State to a civilian Civil Servant, meaning that a Civil Servant is forced to abstain a person who has not become his wife.

Legal policy is a line of policy formally made by the state regarding the law that will be enforced, both by establishing a new law and by replacing the old law to achieve the country's goals. The law must be placed as a tool to achieve the country's goals. There are differences in scope between legal politics and legal policy, legal politics are more formal than official policies, while legal policies include official policies and other matters related to them. Therefore, the national legal policy in this study includes, at a minimum: (i) state policy about the law that will be enforced or not applied in the context of achieving state



objectives; (ii) political, social, cultural background for the birth of national legal products and (iii) factual law enforcement and enforcement. In this case PP No. 10 of 1983 Jo. PP No. 45 of 1990.

### Post-Divorce Compensation

Law tends to be static therefore the law always lags. Unlike the community, they never stop developing continuously regardless of place, time or situation. Therefore, if the law later does not adjust the development of society, then the law can never develop. Including in Indonesia, the majority population is Muslim. It is natural when there are then several laws that follow the progress of the community. As Ibn Hazm argues, the legal change was influenced by changes in time and place (Tughaiyyuril Ahkam bi Taghayyuril Azman Wal Makan). First, such marriage laws in Indonesia experienced a long history starting from the Dutch era known as the *Freijer Compendium* compiled by D.W Freijer August 3, 1828, embraced marriage and Waris Islam, in 1919 changed to (*Indische staatsreggelng*) which was a Dutch product adhering to the principle of customary law. Second, the era of 1879-1904 which was led by R. Kartini and "Rohana Kudus" in Minangkabau, Indonesian daughters, the unity of wives, real women "had banned Polygamy. The June 1931 Congress in Jakarta finally received a protest from Sarekat Wife who later received support from "Permi" in 1935. However, the Dutch still answer with the marriage ordinance that embraces the monogamy system despite loud protests from the NU, and the Indonesian Islamic Party that later the bill was revoked. As a first example, the State imposed an Islamic law like Saudi Arabia, Yemen, Bahrain, and Kuwait. Secondly, secular countries where Islamic family law is replaced by modern law like Turkey, Third, Countries which enforce the Islamic Family law include Egypt, Sudan, Jordan, Syria, Tunisia, Morocco, Algeria, Iraq, Iran, and Pakistan [6]. At the beginning of the independence of Dutch law enforcement on marriage, "Thalāq" and "Rujuk" among others Law number 22 of 1946, then in 1954 enacted Law 32 of 1954 on the patrimony of the marriage, "Thalāq" and "Rujuk" the recorder. In 1950, BP4 was born as a reaction to the underage marriage and to be included in the draft marriage law. However, it failed because of the Presidential Decree 5 July 1959. Then Tap MPRS No. XXVIII / 1966 article 1, paragraph 3, urgently needed marriage law.

In 1967 and 1968 finally failed again because one rejection faction and two factions abstain with the minister of Religion at that time KH.Moh. Dahlan. Therefore, on July 31, 1973, drafted a Law consisting of 15 Chapters and 73 Articles whose purpose was first, giving legal certainty, because the law of marriage was Judge-Made Law. Second, women's rights and expectations. Third, create the right Act of change of time. In response to the Dutch Indies Administration that violated Islamic law from the authority of the

Religious Court then Orba was born Act No. 1 of 1974 concerning the first marriage in Indonesia in response to the demands of the birth of the marriage law in the Orla period which became effective on October 1, 1975 comprising 14 Chapter 67 Article. The birth date of PP No. 10 of 1983 during the Orba period was as follows: first, the report of a second wife of Civil Servant officials whose marriage was unrecorded, they propose to set norms to protect the Wives of Civil Servants. Both the presence of PP Number 10 of 1983 was to fulfill the wishes of Mrs. Tien Suharto.

Despite all, the birth of PP number 10 in 1983 was the most robust insistence of women, in which Civil Servants as members of society became the target of PP number 10 of 1983. Because in connection with the so-called historical evidence was even perfected with PP number 45 of 1990 in response to the eagerness or anxiety of both Civil Servant officials and Tien Suharto's desire. Then why should the Civil Servant, because if we see the history of the long debate about Divorce, has begun since the time of the Dutch East Indies amongst first, the Groups of Women and Feminist Activists. Second, religionists (Religious Leader in the Orba era have had a negative reaction to the action of the judicial authority of the Religious Court. Because of the political point of view that Civil Servants can be easily regulated because there is a dependence on salary distribution under disciplinary as regulated in PP No. 1980 on the discipline of Civil Servants. That is, first, there is a forced attempt by the Government to the Civil Servant, Secondly, the strong urgency of the orthodox Islamist group to enforce the Conventional Fiqih in terms of divorce, that divorce is a private right, therefore the State does not need to interfere Third, that PP No. 10 of 1983 is unable to protect women and institutionalize State oppression, Fourth, because PP number 10 of 1983 is discriminatory as it applies only to Civil Servants, the State should stand on all groups, religions and ethnic groups. Number 10 in 1983 because the PP can be speed brakes, especially in divorce.

Normatively, PP No. 10 of 1983 Jo PP 45 of 1990, first, was to enforce Law No. 1 of 1974, that the basis of marriage in Indonesia was monogamy. Therefore, divorce should be avoided. It is as if a husband of a Civil Servant does not make a divorce if he wants his home to be permanent and happy. The hope of a nation, a permanent and happy household is a non-divorced husband's household. Secondly, Civil Servants are exemplary. Therefore the act of divorce is viewed as an act of injury against the law. Thirdly, the state views the act of divorce among Civil Servants is disturbing the duties of the Fourth, in order to increase the discipline of Civil Servants, legal certainty and fairness of justice. It is therefore understandable that the establishment of PP No. 10 of 1983 Jo PP 45 of 1990 in order to ensure the smooth functioning of the duties of a Civil Servant.

The study of this legal policy is directed at some of the focus [7] namely: (i) reviewing the framework of thinking government policymakers have used that regarding the Establishment of Article 8 PP Number 10 of 1983 Jo. Article 16 of Act No. 45 of 1990. Moreover, (ii) identify the factors that determine and/or constrain legal politics in the field of management of the State Civil Apparatus. Therefore, the determination of the imposition of maintenance by Article 8 PP Number 10 of 1983 Jo. Article 16 PP 45 of 1990, to the Male Civilian Employee to give one-third the salary to a former wife who has been disbanded by Thalāq is a grave act, which would contravene the purpose of the philosophy of the formation of the latter. Why? Since the two PPs were created by increased discipline, legal certainty, and justice. However, both Articles of PP are Article 8 PP Number 10 of 1983 and Article 16 of PP No. 45 of 1990 does not provide legal certainty and the sense of justice of society. Why? Because the PP cannot be executed because of the giving of one-third of the salary if in the marriage there is a child, one-half of the salary, if in the marriage has no child, the defendant to the plaintiff as regulated in Article 8 of Government Regulation Number 10 of 1983 is amended by Government Regulation Number 45 of 1990 concerning Disciplinary Regulation of Civil Servants and if after divorce after marriage and then divorced then later if divorced there is a child then salary of Civil Servant is divided three one third of one third to husband, one third of one third to ex-wife and one-third of one-third for their children and their children, as the provision does not constitute the law of the Religious Courts, and hence the provision of one-half salary, one-third of the Defendant's salary to the Plaintiff is the Decision of the State Administration Office. "Decision No. 11 K / AG / 2001 dated July 10, 2003} and Supreme Court Decision Number 3 K / AG / 2010 which states that giving a third salary to ex-wife of Civil Servants is considered as mutation because in the Islamic view Article 149 Jo Article 158 is quite clear about maintenance even in detail mentioned in article 149-152 of Islamic Law Compilation. Therefore when a Civil Servant (husband) divorces his wife then sued re-convenience by his wife on the maintenance of a third of the salary, then by the Religious Court will be stated at NO (Niet Ontvankelijke Verklaard) it means that there is no legal certainty over the demands of the wife, secondly does not fulfill the sense of justice for husbands because it is extremely burdensome. In contrast to the Islamic concept that the establishment of maintenance, by ex-husband to post-divorce ex-wife, first in both al-Qur`ān and al-Hadith we do not find one verse or hadith that is burdensome to ex-husband, Islam teaches his people in giving maintenance is adjusted according to its ability as Qs. (65) verse 7; Similarly, some scholars also mention the same thing: Qs 4: 233, the duty of a father is to provide food and clothing to mothers using Ma'ruf.

Second, in the case of providing compensation to ex-wife by ex-husband there is clear and unnecessary limitation as the provisions of Article 149 of the Islamic Law Compilation letter (b) 150,151,152 and 158 that the provision of maintenance, repair and intercourse to ex-divorced wife during the period of the iddah which means that the burden of maintenance for the ex-husband is limited to the period of iddah so that when the iddah is exhausted then the husband's responsibility is complete to the post-divorce ex-wife, so there is legal certainty, in another case with Article 8 PP Number 10 of 1983 Jo PP No. 45 1990 which is largely contrary to its philosophy formation, which in turn cannot be exercised by the Religious Courts because it is viewed as the Decision of the State Administration Office. The incident on the provision of one-third of the salaries of ex-husbands to the ex-divorced wife may be seen in some of the verdicts of the Religious Courts, including verdict number 1512 / Pdt.G / 2015 / PA. Jepr. Number 1110 / Pdt.G / 2013 / PA.Mgl. Number 405 / Pdt.G / 2005 / PA.Sm. Number 1135 / Pdt.G / 2007 / PA.Sm. Number 2103 / Pdt.G / 2007 / PA.Sm. Number 1512 / Pdt.G / 2015 / PA.Jpr. Number 2141 / Pdt.G / 2013 / PA.Srg. Number 0137 / Pdt.G / 2012 / PA.Srg. Number 0081 / Pdt.G / 2015 / PA.Sit

The decree states that the obligation of the ex-husband of the Civil Servant post-divorce to the ex-wife is limited to Iddah, Muta'ah's living, and a surplus if a wife is abandoned by the husband, then there is a demand for a living allowance from one-half wives or one third of the salary of the husband's salary, then by the court the claim is declared unacceptable. Because it is seen as not the law of the Religious Justice event Decision of State Administration Official, as Decision of MARI number 11 K / AG / 2001 dated July 10, 2003} and Decision of Supreme Court Number 3 K / AG / 2010 which states that giving a third salary to ex-wife of Civil Servant is considered as mut'ah because in the view of Islam Article 149 Jo Article 158 is quite clear about maintenance even in detail mentioned in article 149-152 Compilations of Islamic Law regardless of the maintenance of ex-husband to ex-wife must be broken by State Administration official or not according to writer's opinion that it is an action unjust law why, because the obligation to provide a living in Islam is from the marriage of Aqad and has occurred surrender (tahkim) and will end when the marriage breaks that is why the loading of half the salary or a third of the salary to the Civil Servant Men after divorce to ex-wife is an act of injustice by law or by Ne to civil servants, it means that a Civil Servant is forced to pay someone who has not been his wife. Legal policy is a policy line made by the state on the law to be applied, either by the establishment of a new law or with the replacement of old law to achieve the state's goals. The law should be placed as a means of achieving state goals. There is a difference in coverage between legal politics, and legal policy. Legal politics is more formal than formal policy, while legal policy includes official policies and other

related matters. Therefore, the national legal policy in this study covers, at least: (i) state policy (official line) on the law to be enforced or not enforced in order to achieve national goals; (ii) political, social, and cultural backgrounds of the birth of national law products and (iii) enforcement and enforcement of the law in fact. In this case PP Number 10 of 1983 Jo. PP No. 45 of 1990.

### **The purpose of imposing one-third of the salary of a Muslim Civil Servant to a former post-divorce wife**

In the view of Islam giving a living is a duty of the husband to wife after the Aqad followed by tamkin by a wife. Why is it because even if Aqad is married and then the wife of nusûz or in Thalâq three, then the wife does not get her right to the living of the husband. Such as referred to in the provision: Qs 30: 21 *"And of His Signs is that He has created mates for you from your own kind that you may find peace in them and He has set between you love and mercy. Surely there are Signs in this for those who reflect."* [ar Ruum / 30:21]

What was later by Ibn Kathir Rahimahullah said: "If Allāh Subhanahu Wa Ta'ala made the Bani Adam (man) all men and made their women (wives) of a type other than them, maybe from jinn or animals, then no there will be unity between them and their wives.

In fact, reluctance will occur, if the wives are not of their type. Then, among the perfection of Allāh's grace towards Bani Adam, that He created the wives of their kind, and made between them love that is love, and mercy, namely love. Because a man holds his wife, the possibility of his love for his wife, or because of his love, because he already has children from her, or because she needs a living from him, or because of the familiarity between them, or others. Therefore, the love that has grown among the husband and wife should be maintained and developed not to wither and finally disappear. From this, we know the Greatness of Shari'at Allāh Azza Wa Jalla which explains the rights and obligations of husband and wife. The same is true of the provisions:

(QS 2:233); (In such a case) it is incumbent upon him who has begotten the child to provide them (i.e. divorced women) their sustenance and clothing in a fair manner. But none shall be burdened with more than he is able to bear; neither shall a mother suffer because of her child nor shall the father be made to suffer because he has begotten him (QS; 2:241); Likewise, let there be a fair provision for the divorced women; this is an obligation on the God-fearing. (QS;65:6) ((During the waiting period) lodge them according to your means wherever you dwell, and do not harass them to make them miserable. And if they are pregnant, provide for them maintenance until they have delivered their burden. And if they suckle your offspring whom they bore you, then give them due recompense, and

graciously settle the question of compensation between yourselves by mutual understanding. But if you experience difficulty (in determining the compensation for suckling) then let another woman suckle the child.

Likewise in the hadith of His Majesty the Apostle that living is an obligation therefore the act of neglect is a sinful act;

"Mu'awiyah asked: Messenger of Allah, what is the right of the wife of one of us over him? He replied: That you should give her food when you eat, clothe her when you clothe yourself, do not strike her on the face, do not revile her or separate yourself from her except in the house. Abu Dawud said: The meaning of "do not revile her" is, as you say: "May Allah revile you" [HR Abu Dawud, no. 2142; Ibn Majah, no. 1850; Shaykh al Albani said: "Hasan shahih"]

During the Hajj Wada ', the Prophet Shallallāhu 'alaihi wa sallam preached: "Fear Allaah with regard to women, for you have taken them as a trust from Allaah....." (Muslim)

In Islam that the provision of livelihood by ex-husband to ex-wife is among others in order:

- Proof of liability from ex-husband to ex-wife in order to fulfill the physical and spiritual needs and well-being of the arbitrary act of ex-husband even has been divorced in order to protect his ex-wife.
- The provision of livelihood by ex-husband to his ex-wife is a provision, aid and honor, entertainer (pleasing the divorced wife) to his ex-wife and avoiding the cruelty Thalâq passed down by the ex-husband. Cleans the hearts of women and eliminates the worries of men's humiliation against women. Islam in terms of spending really does not obligate or give a living to a former husband whose wife Thalâq, both dowry and others, as long as the husband or ex-husband has not been in contact, and before being determined for their dowry, if the husband has been touched, then obliged to pay a whole dowry, and if the wife of Thalâq his wife before being hired then the husband must pay the dowry half and when his dowry has not been determined then, it is obligatory for the husband to pay as soon as possible. Besides as an entertainer, burdening the livelihood of the ex-husband to his ex-wife is to eliminate the feelings of resentment between ex-husband and ex-wife.
- The new divorce will take place after the iddah as Asy Syekh al-Imam Az Zahidah Muwafiq Abi Ishaq Ibrahim bin Ali Bin Yusuf Ali bin Fairuzzabadi Asy-Syairazi. The income given is due to the wife of Tamkin. Therefore she has been divorced but there is still the right of the husband to consult, and the wife has to undergo iddah period, where the wife is not in nusûz or Thalâq three;
- During the period of iddah Thalâq Raj'i, the wife had to confine herself to the ex-husbands' house

(Abu Hanifah), Because the ex-husband had performed a courtesy with his ex-wife;

- Regarding the obligation to provide a living by ex-husband to his ex-wife, among others, is to protect the rights of the wife (woman) because divorce is a painful matter for the wife (woman), protected by her rights at least reducing her suffering. Therefore, explicit Act Number 1 of 1974 on Article 41 c Jo Article 149 and 158 Compilation of Islamic Law. It has been clearly and firmly mentioned.

## CONCLUSION

Injustice in the provision of livelihood in Article 8 PP 10/1983 Jo. PP 45/1990 because PP is strongly influenced by the current ruling (authoritarian) government to produce Conservative / Orthodox / elitist legal products, the law as a Political tool, Government tool, the law is closed because of the role and participation of small communities.

In the era of the Reformation, the Second Provisions of PP were irrelevant. The purpose is Article 8 PP10 / 1983 Jo. PP45 / 1990 to prevent divorce for civil servants and to create discriminatory law, injustice, secondly, the PP is contrary to the principles of human rights, the basic values that live and develop in the midst of the community (Islamic law) that fit the foundation as ground norm, the Constitution 1945 Article 28D Jo Article 29, and the principle of the modern democratic State (welfare state) of the article's hope for the smooth running of civil service duties and as a means of enhancing civil servants discipline. However, the second chapter of PP is substantially more difficult for civil marriage and divorce as (UUP) for restricting civil marriage and divorce with strict terms.

In the case of the provision of maintenance to ex-wife by ex-husbands there is a clear and unwarranted limitation as provided in Article 149 of the Islamic Law Compilations letter (b) 150,151,152 and 158 that provides for the remuneration, Maskan and Kiswah to the ex-divorced wife during the "Iddah" meaning that the burden on maintenance of the ex-husband is limited to the period of iddah until when the iddah is exhausted then the husband's responsibilities to the ex-divorced wife. it is for legal certainty, other than Article 8 PP Number 10 of 1983 Jo PP No. 45 of 1990 which is most contrary to the philosophy of its formation. Which in turn cannot be run by the Religious Court because it is viewed as a Decision of the State Administration Office. The event of providing a one-third salary salary of a former Civil Servant to a divorced ex-wife may be seen in some of the decisions of the Religious Courts, including verdict number 1512 / Pdt.G / 2015 / PA.Jep. Number 1110 / Pdt.G / 2013 / PA.Mgl. Number 405 / Pdt.G / 2005 / PA.Sm. Number 1135 / Pdt.G / 2007 / PA.Sm. Number 2103 / Pdt.G / 2007 / PA.Sm. Number 1512 / Pdt.G / 2015 / PA.Jpr. Number 2141 / Pdt.G / 2013 / PA.Srg. Number 0137 /

Pdt.G / 2012 / PA.Srg. Number 0081 / Pdt.G / 2015 / PA.Sit

The decree states that the obligation of the ex-husband of the Civil Servant post-divorce to the ex-wife is limited to Iddah, Muta'ah's living, and a surplus if a wife is abandoned by the husband, then there is a demand for a living allowance from one-half wives or one thirdly the salary of the husband's salary, then the court of law of the claim is declared unacceptable because it is viewed as not the law of the Religious Courts of the State Administrative Decree, as the Decision of MARI number 11 K / AG / 2001 dated July 10, 2003} Supreme Court Number 3 K / AG / 2010 which states that the giving of one-third salary to ex-wife of Civil Servant is considered as mutual because in the view of Islam Article 149 Jo Article 158 is quite clear about maintenance even in detail mentioned in article 149-152 Compilations Islamic law.

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