

Islamic Law Analysis of the Pangkalan Balai Religious Court Decision Number 85/Pdt.G/2021/PA.Pkb Concerning the Pronouncement of Divorce (Ṭalāq) to a Wife During Menstruation

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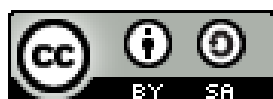
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Abstract

Analysis of Islamic Law on the Decision of the Pangkalan Balai Religious Court Regarding the Pledge of Divorce to Wives in Menstruation Conditions. Marriage is an inner and outer bond between a man and a woman as husband and wife which aims to form a happy and eternal family based on God Almighty. Divorce is a form of breaking up a marriage. This happened in decision number 85/Pdt.G/2021/PA.Pkb which explained that there was a divorce on the grounds of one raj'i divorce. That at the time the petitioner made his declaration of divorce, the respondent was present at the trial and it was known that his condition was menstruating and he was prepared to pass the divorce. The judge informed that this case was included in the bid'i divorce. This study aims to explain how the decision process of the panel of judges regarding the pledge of divorce to the wife in a state of menstruation and to explain how the law of the pledge of divorce to the wife is in a state of menstruation at the Pangkalan Balai Religious Court decision number 85/Pdt.G/2021/PA.Pkb. This research is a field research (field research) with qualitative methods. There are two sources of data used, namely primary data sources, namely decision number 85/Pdt.G/2021/PA.Pkb and secondary data sources, namely the results of interviews with judges handling decisions number 85/Pdt.G/2021/PA.Pkb. Data collection techniques used are interviews, documentation, and literature. The data analysis technique used is a qualitative descriptive method that uses deductive conclusions. The result of this research is the bid'i divorce pledge process and is basically the same as the divorce pledge process in general. This is done because there is an agreement between husband and wife. Decision number 85/Pdt.G/2021/PA.Pkb is a bid'i divorce in Islamic law, its legal status is legal but its implementation is prohibited by Islam. In this case, the judges implement it according to the Qur'an at-talaq verse 1, it is haram if it is done.

Keywords: *Pledge of divorce, menstruation, court decision*



A. Introduction

Marriage is a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and enduring family based on the belief in the One and Only God¹. In principle, marital life must be founded upon *mawaddah* and *rahmah*. This means that husband and wife are required to perform their respective roles and to complement one another. Article 2 of Law Number 1 of 1974 stipulates that a marriage is considered valid if it is conducted in accordance with the laws of each party's religion and belief. Furthermore, the objectives of marriage, in addition to forming a happy and enduring family, are explained in Article 3 of Law Number 1 of 1974 and the Compilation of Islamic Law, which states that 'marriage aims to realize a household life that is *sakinah*, *mawaddah*, and *rahmah*.'²

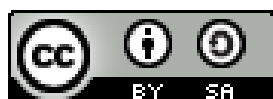
Divorce is one form of the dissolution of marriage, which may occur due to three factors, namely death, divorce, or a court decision. Article 39 paragraph (1) of Law Number 1 of 1974 on Marriage stipulates that 'divorce may only be carried out before a court hearing after the court has attempted, and failed, to reconcile the parties.' Furthermore, Article 114 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) explains that 'the dissolution of marriage caused by divorce may occur through *ṭalāq* or based on a divorce lawsuit.'

A *ṭalāq* pronounced by the husband may be considered valid if it fulfills the following conditions: first, the person pronouncing the *ṭalāq* must be *mukallaf*, having reached maturity (*bāligh*) and being of sound mind; second, the *ṭalāq* must be pronounced of the husband's own free will, as a *ṭalāq* pronounced under coercion is legally invalid; and third, the *ṭalāq* must be pronounced after a valid marriage has taken place.³ *Ṭalāq* refers to the husband's pronouncement made before a session of the Religious Court, which constitutes one of the causes of the dissolution of marriage

¹ Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, (Jakarta : CV. Akademika Pressindo, 2010) 64

² Undang-Undang Perkawinan No. 1 Tahun 1974

³ Kompilasi Hukum Islam, Bab XIV Pasal 113 Tentang Putusnya Hubungan Perkawinan.



Ṭalāq linguistically means the release of a bond or the dissolution of a contract. Terminologically, *ṭalāq* refers to the dissolution of the marital bond (*ḥall al-‘aqd*) through the use of prescribed words⁴. Furthermore, under the Compilation of Islamic Law and Law Number 1 of 1974, the validation of the pronouncement of *ṭalāq* may only be carried out by a judge after the husband has pronounced the *ṭalāq* before the Religious Court.⁵ According to Islamic law, a *ṭalāq* is considered valid if the husband divorces his wife while she is in a state of purity (*tuhr*) during which he has not had marital relations with her. If the *ṭalāq* is pronounced while the wife is menstruating, according to the majority of scholars (*jumhūr al-‘ulamā’*), the *ṭalāq* remains valid. However, Ibn Qayyim al-Jawziyyah holds a different opinion, asserting that a *ṭalāq* pronounced during menstruation does not take effect because it contradicts the guidance of the Sharī‘ah; the husband is considered sinful, and the *ṭalāq* pronounced is invalid⁶. The Qur’an also explains the issue of divorce, as stated in Sūrat al-Ṭalāq verse 1..

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

O Prophet, when you divorce women, divorce them for the commencement of their waiting period (*‘iddah*), and calculate the waiting period carefully, and fear Allah, your Lord. Do not expel them from their homes, nor should they leave, unless they commit a clear act of immorality. These are the limits set by Allah, and whoever transgresses the limits of Allah has indeed wronged himself. You do not know; perhaps Allah will bring about a new matter after that”.⁷

From this verse, it can be understood that when a husband intends to divorce his wife, he must consider the appropriate time so that the wife is able to calculate and observe her waiting period (*‘iddah*). This includes refraining from pronouncing *ṭalāq* during a period of purity (*tuhr*) in which marital relations have already occurred, as well as refraining from divorcing the wife while she is menstruating. When a husband pronounces

⁴ Amiur Nuruddin, *hukum perdata islam di indonesia*, (jakarta:2016), 207.

⁵ Jurnal Al-Fikrah Vol. 1 No. 2 Tahun 2020

⁶ <http://jurnal.arraniry.ac.id/index.php/samarah>.

⁷ <https://www.merdeka.com/quran/at-talaq/ayat-1.s>



ṭalāq, attention must therefore be paid to whether the wife is in a state of purity (not menstruating) or in a state of menstruation.

A *ṭalāq* pronounced while the wife is menstruating falls into the category of *ṭalāq bid'ī*, which is prohibited (*ḥarām*). *Ṭalāq bid'ī* refers to a form of divorce that contravenes religious provisions, and Allah commands that such actions be avoided.⁸

B. Theoretical Review

1. Definition of Marriage and Divorce

Marriage, according to Law No. 1 of 1974, is a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and eternal family based on the belief in God Almighty. The purpose of marriage, as regulated in Articles 1 and 3 of Law No. 1 of 1974, is to create a household that is *sakinah*, *mawaddah*, and *rahmah*, in which husband and wife assist, complement, and develop each other's personalities.

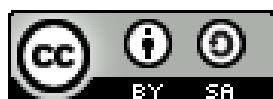
Divorce is one of the causes of the dissolution of marriage. According to Article 38 of Law No. 1 of 1974, divorce can occur due to death, divorce (*ṭalāq*), or court decision. Divorce proceedings must go through the Religious Court, and mediation efforts must be attempted first before a verdict is issued (Article 39, paragraph 1, Law No. 1 of 1974).

2. Ṭalāq in the Perspective of Islamic Law

Ṭalāq is the husband's declaration to end the marital bond. According to Articles 114 and 115 of the Compilation of Islamic Law (KHI), *ṭalāq* is considered valid if pronounced in front of the Religious Court after mediation efforts have failed. *Ṭalāq* may be pronounced when the wife is in a state of purity, while pronouncing it during menstruation is called *ṭalāq bid'ī*, which, according to the majority of scholars (*jumhūr*), is *ḥarām* to perform (Article 122 KHI).

Classical scholars such as Ibn Taymiyyah, Ibn Qayyim, and Ibn Hazm reject pronouncing *ṭalāq* during menstruation, arguing that if *ṭalāq* is pronounced

⁸Nurhayati dan Ali Imran Sinaga, *Fiqh & Ushul Fiqh*, (Jakarta : Prenadamedia Group, 2018), 140.



during a period of purity after marital relations, it contains elements of oppression. Therefore, while *ṭalāq bid'ī* is prohibited under Islamic law, it remains legally valid under state law if conducted through the court.

3. Legal Principles of Ṭalāq Bid'ī

The Qur'an in Sūrat al-Ṭalāq, verse 1, emphasizes the importance of observing the *'iddah* period and the wife's condition when pronouncing *ṭalāq*. The verse instructs that a husband must divorce his wife at an appropriate time so that she can calculate and observe her *'iddah*, and it forbids expelling the wife from her home without a valid reason.

In practice at Religious Courts in Indonesia, including Case No. 85/Pdt.G/2021/PA.Pkb, judges grant the husband the authority to proceed with or postpone the pronouncement of *ṭalāq*. Although the *ṭalāq* may be pronounced during menstruation, its legal status under state law remains valid, while the act is still considered *ḥarām* according to Islamic law.

4. Husband's Obligations After Ṭalāq

Article 149 of the Compilation of Islamic Law stipulates the husband's obligations following *ṭalāq*, including:

- a. Providing *mut'ah* (compensation) to the former wife, either in the form of money or property;
- b. Providing maintenance, housing, and clothing during the *'iddah* period;
- c. Settling any outstanding *mahr* (dowry);
- d. Covering *hadhanah* (childcare) expenses for children who have not yet reached 21 years of age.

C. Findings and Discussion

This research is classified as field research, focusing on phenomena or events occurring within a community. It is a normative juridical legal study, examining the pronouncement of *ṭalāq* to a wife during menstruation as applied by the judges of the Pangkalan Balai Religious Court in Decision No. 85/Pdt.G/2021/PA.Pkb. The study uses qualitative data and employs a descriptive



analytical method⁹. In this study, the research location was selected to address the issues at the Pangkalan Balai Religious Court, located on Sukamaro Street, Talang Kelapa District, Banyuasin Regency, South Sumatra. This study is qualitative in nature because it analyzes social realities in detail. The qualitative method can be used to examine and describe problems that occur, whether in the form of words or language, with the aim of understanding findings that are observed or have occurred in the field based on social facts, such as perceptions, behaviors, motivations, and others¹⁰. The data sources used in this research method consist of primary data and secondary data¹¹. The data used in this study consist of primary data obtained directly from the research location or research objects. In this study, primary data were collected through interviews with the chief judge and other panel judges involved in the case handled by Achmad Fikri Oslami, S.H.I., M.H.I., Uut Muthamainah, S.H.I., and Fitria Saccharina Putri, S.H.I., at the Pangkalan Balai Religious Court regarding Case No. 85/Pdt.G/2021/PA.Pkb.

Secondary data were obtained from literature sources. In this context, secondary data may include documents, and the method used to collect them is called documentation. This method serves to obtain written data, such as books, journals, papers, research reports, and other documents related to Case No. 85/Pdt.G/2021/PA.Pkb¹².

D. Findings and Discussion

1. The Process of the Panel of Judges' Decision on the Pronouncement of **Ṭalāq** to a Wife During Menstruation

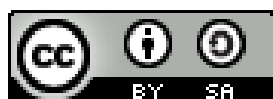
According to Article 1 of Law Number 1 of 1974 on Marriage, the purpose of marriage is to form a happy and enduring family. Husband and wife need to mutually assist and complement each other so that each can develop their

⁹ Muri Yusuf, *Metode Penelitian Kualitatif, dan Penelitian Gabungan* (Jakarta Kencana 4, 2017), 328.

¹⁰ Zainudin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2017) 105

¹¹ Ir. Syofian Siregar, M.M. "*Metode Penelitian Kuantitatif*" (Jakarta Kencana 2013).35

¹² Zainudin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafik, 2017).18



personality, support one another, and achieve well-being. Therefore, the law adopts the principle of making divorce difficult to occur.¹³

A marriage can be dissolved for several reasons, namely due to a *ṭalāq* pronounced by the husband, divorce agreed upon by both parties, or other causes such as *khul'*, *li'ān*, and *fasakh*, as well as by court decision or death. Article 38, Chapter VII of Law Number 1 of 1974 stipulates three ways in which a marriage may end: death, divorce, and court decision.¹⁴

There was a divorce case at the Pangkalan Balai Religious Court concerning the pronouncement of *ṭalāq* to a wife during menstruation. This case occurred at the Pangkalan Balai Religious Court on February 16, 2021, with Decision No. 85/Pdt.G/2021/PA.Pkb, and was handled by three judges.

The panel of judges at the Pangkalan Balai Religious Court issued a ruling on the divorce case with Decision No. 85/Pdt.G/2021/PA.Pkb through a lengthy process, as the proceedings were conducted in accordance with the existing court regulations.

1. After the case was registered on February 16, 2021, the Petitioner or Plaintiff and the Respondent or Defendant, as well as the Co-Respondent or Co-Defendant, awaited a Summons to appear at the court session.
2. Stages of the Trial:
 - a. Reconciliation efforts
 - b. Reading of the petition or lawsuit
 - c. Response of the Respondent or Defendant
 - d. Reply of the Petitioner or Plaintiff
 - e. Rejoinder of the Respondent or Defendant
 - f. Evidence presentation
 - g. Conclusions
 - h. Deliberation by the Panel of Judges
 - i. Reading of the Verdict/Decision

¹³ Abdul Rahman Ghazali, *Fikih Munakahat*, (Jakarta;Premedia Grup, 2015)

¹⁴ Undang-Undang No 1 Tahun 1974 bab VII pasal 38.



3. After the case was registered on February 16, 2021, the Petitioner or Plaintiff, along with the Respondent or Defendant and the Co-Respondent or Co-Defendant, awaited a Summons to appear at the court session.
4. Stages of the Trial:
 - a. Reconciliation efforts
 - b. Reading of the petition or lawsuit
 - c. Response of the Respondent or Defendant
 - d. Reply of the Petitioner or Plaintiff
 - e. Rejoinder of the Respondent or Defendant
 - f. Presentation of evidence
 - g. Conclusions
 - h. Deliberation by the Panel of Judges
 - i. Reading of the Verdict/Decision

Through a lengthy process at the Pangkalan Balai Religious Court, the chronology of the divorce case concerning the pronouncement of *ṭalāq* in Decision No. 85/Pdt.G/2021/PA.Pkb is as follows. The procedure for pronouncing *ṭalāq* is regulated under Article 129 of the Compilation of Islamic Law, which stipulates that a husband who intends to pronounce *ṭalāq* to his wife must submit a request, either orally or in writing, to the Religious Court with jurisdiction over the wife's residence, stating the reasons and requesting that a court session be held for this purpose.

Article 131 paragraph 2 of the Compilation of Islamic Law explains that if the Religious Court is unable to reconcile the parties, and there are sufficient reasons for pronouncing *ṭalāq* while the couple can no longer live harmoniously in the household, the Religious Court shall issue a decision granting the husband permission to pronounce the *ṭalāq*.¹⁵ Article 3 states that after the decision has permanent legal force, the husband shall pronounce the *ṭalāq* before the Religious Court, attended by the wife or her representative. The judge has the authority to summon the husband to the court session to carry out the pronouncement of *ṭalāq*. The husband is given a period of six (6) months to

¹⁵ Kompilasi Hukum Islam, Bab XIV Pasal 113 Tentang Putusnya Hubungan Perkawinan

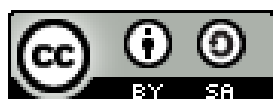
pronounce the *ṭalāq*; if he does not do so within this period, the marriage remains valid.

In Decision No. 85/Pdt.G/2021/PA.Pkb, the procedure for pronouncing *ṭalāq* was carried out while the wife was menstruating. The judge had the authority to grant permission for the husband to pronounce the *ṭalāq*. However, prior to this, the judge also informed the husband and wife that this pronouncement falls under *ṭalāq bid'ī*, which is a *ṭalāq* pronounced to a wife during her menstruation.¹⁶ This *ṭalāq* is a type of divorce prohibited by Islamic law. However, the petitioner insisted on proceeding with the pronouncement of *ṭalāq*, citing his domicile in Ogan Komering Ilir while the case was being tried at the Pangkalan Balai Religious Court. The respondent did not object to the petitioner continuing with the pronouncement. With the agreement of all parties, the pronouncement proceeded due to personal reasons. In carrying out this process, there was no coercion or pressure from the judge or any legal representatives; it was done based on mutual consent, resulting in the pronouncement of *ṭalāq* to the wife during menstruation.

The case was decided because the petitioner and respondent could no longer be reconciled and wished to divorce. The first hearing took place on February 16, 2021, as part of the *ṭalāq* examination, during which all the petitioner's and respondent's demands were read. Similarly, the wife requested a counterclaim (*konvensi*) to the panel of judges at the Pangkalan Balai Religious Court, which was granted.

On April 8, 2021, the second hearing continued with the reading of the pronouncement of *ṭalāq* to the wife. Before proceeding, the wife's requests from the first hearing had to be fulfilled to continue the trial. Once all her requests were met, the session proceeded. At the time of the hearing, it was observed that the wife was menstruating. When the panel of judges learned that the wife was in a state of impurity (menstruation), they asked whether she consented to continue with the pronouncement; if she did not consent, the session would be postponed. The wife agreed, and the hearing continued.

¹⁶ Putusan nomor 85/Pdt.G/2021/PA.Pkb



Although it was known that the wife was menstruating during the pronouncement of *ṭalāq*, according to the provisions of Article 122 of the Compilation of Islamic Law, this constitutes *ṭalāq bid'ī*, which is prohibited. *Ṭalāq bid'ī* refers to a divorce pronounced while the wife is menstruating or during a period of purity in which marital relations have already occurred¹⁷.

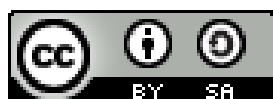
When the judges explained the religious regulations in Islam and asked the wife whether she consented to the pronouncement of *ṭalāq* being carried out despite her being menstruating or in a state of impurity, the wife agreed. Although this action is prohibited in Islam, she insisted due to personal reasons that it needed to be carried out immediately. The judges exercised *ijtihād* and, with the wife's consent and without any coercion from any party, decided to proceed with the hearing.

The reasons for the panel of judges continuing the trial were directly observed by the researcher through field observation of the case concerning the pronouncement of *ṭalāq* to the wife at the Pangkalan Balai Religious Court. Information was obtained through interviews with the three judges handling the case: the first judge, Achmad Fikri Oslami, S.H.I., M.H.I.; the second judge, Uut Muthamainah, S.H.I.; and the third judge, Fitria Saccharina Putri, S.H.I. The explanations provided by these three judges clarified why the trial was continued and other relevant reasons¹⁸.

Opinion of the first judge, Achmad Fikri Oslami, S.H.I., M.H.I.: 'A woman is prohibited from being divorced (*ṭalāq*) while menstruating; however, the panel of judges will ask the wife whether she consents to being divorced during menstruation, because these regulations exist in fiqh, though the act is considered *ḥarām*. The judge seeks the wife's approval when pronouncing *ṭalāq*—asking if she agrees to be divorced while in a state of impurity or menstruating. If the wife consents and does not object, the *ṭalāq* may proceed. But if she refuses and does not permit it, the *ṭalāq* cannot be carried out. A *ṭalāq* is considered valid only if pronounced before

¹⁷ Prosedur cerai talak dalam Pengadilan Agama

¹⁸ Hasil wawancara kepada Hakim Acmad Fikri Oslami, S.H.I.,M.H.I. Uut Muthamainah,S.H.I. dan Fitria Saccharina Putri,S.H.I, 21 Maret 2022



the court; any *ṭalāq* pronounced outside of the court is not considered valid¹⁹”.

***“Opinion of the second judge, Uut Muthamainah, S.H.I.: ‘This is a case of divorce (*ṭalāq*) carried out by the husband. Both parties attended the divorce proceedings. According to PERMA Number 1 of 2019, mediation is mandatory first; if mediation fails, the case proceeds to trial as usual, including the reading of the petition and responses by both wife and husband. When the pronouncement of *ṭalāq* was to be made, the judge asked the wife whether she was in a state of purity, and it was found that she was menstruating. The judge also asked the husband whether he was willing to pronounce *ṭalāq* to his wife while she was menstruating. In Islamic law, pronouncing *ṭalāq* during menstruation is *ḥarām*, but legally, it is recognized by the state. The judge asked whether they agreed to proceed; if the wife did not agree, the hearing could be postponed. The husband agreed and had no objection²⁰”.

***“Opinion of the third judge, Fitria Saccharina Putri, S.H.I.: ‘This is a case of divorce (*ṭalāq*), and the wife raised objections. In the event of a divorce, the wife filed a counterclaim regarding maintenance, custody rights, and child expenses, which the panel of judges granted. During the pronouncement of *ṭalāq*, both parties were present in court, and the judges asked whether arrangements for *‘iddah* maintenance and child expenses had been made. The judges also inquired whether the wife was in a state of purity and whether she objected to the *ṭalāq* being pronounced while not in a state of purity. Since the wife consented, the pronouncement of *ṭalāq* was carried out while she was menstruating.

In pronouncing the *ṭalāq* to a wife during menstruation, the judges exercised their respective *ijtihad* and other considerations. This was the first case of its kind at the Pangkalan Balai Religious Court. There are no

¹⁹ Pendapat hakim pertama Achmad Fikri Oslami, S.H.I.,M.H.I. Hakim Pengadilan Agama Pangkalan Balai

²⁰ Pendapat Hakim kedua Uut Muthamainah,S.H.I. Hakim Pengadilan Agama Pangkalan Balai



regulations prohibiting the pronouncement of *ṭalāq* to a wife during menstruation in court. A *ṭalāq* pronounced outside the court is considered invalid; a valid *ṭalāq* must be pronounced in court before the panel of judges. The legal status of the *ṭalāq* in this case is therefore recognized as valid by law²¹”.

2. Islamic Law Analysis of the Panel of Judges' Decision on the Pronouncement of Ṭalāq to a Wife During Menstruation

According to Article 114 of the Compilation of Islamic Law, the dissolution of marriage due to divorce can occur either through *ṭalāq* or based on a divorce lawsuit. Article 115 of the Compilation of Islamic Law stipulates that divorce may only be carried out before a session of the Religious Court, after the court has attempted and failed to reconcile both parties. *Ṭalāq* is the husband's pronouncement before the Religious Court, which constitutes one of the causes of the dissolution of marriage. The Qur'an also explains the matter of divorce, as stated in Sūrat al-Ṭalāq, verse 1.

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبِينَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

Artinya:

“O Prophet! When you divorce your wives, divorce them at a time when they can properly observe their waiting period (‘iddah), and carefully count the ‘iddah. And fear Allah, your Lord. Do not expel them from their homes, nor should they leave, except if they commit a clear act of immorality. These are the limits set by Allah, and whoever transgresses the limits of Allah has indeed wronged himself. You do not know; perhaps Allah will bring about a new matter after that.”

From this verse, it can be understood that when a husband intends to divorce his wife, he must consider the appropriate time so that the wife can

²¹ Pendapat hakim ketiga Fitria Saccharina Putri,S.H.I. Hakim Pengadilan Agama Pangkalan Balai

calculate and observe her waiting period (*'iddah*). This includes refraining from pronouncing *ṭalāq* during a period of purity (*tuhr*) in which marital relations have already occurred, as well as refraining from divorcing the wife while she is menstruating. When a husband pronounces *ṭalāq*, attention must be paid to whether the wife is in a state of purity (not menstruating) or in a state of menstruation. Pronouncing *ṭalāq* to a wife during menstruation falls under the category of *ṭalāq bid'ī*, which is prohibited (*ḥarām*). According to Article 122 of the Compilation of Islamic Law, *ṭalāq bid'ī* refers to a divorce that is prohibited, namely a *ṭalāq* pronounced when the wife is menstruating or when she is in a state of purity but has already had marital relations during that period of purity²².

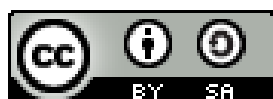
According to Ibn Taymiyyah, Ibn Qayyim, and Ibn Hazm, a *ṭalāq* pronounced during menstruation is rejected, because they argue that if a *ṭalāq* is considered valid during a period of purity (*tuhr*) after marital relations have occurred, it contains an element of injustice. Given the differing opinions among scholars regarding the legal status of *ṭalāq bid'ī*, it can be concluded that, according to the majority of scholars (*jumhūr*), *ṭalāq bid'ī* is *ḥarām* in practice.²³

In the Religious Courts in Indonesia, the pronouncement of *ṭalāq* during menstruation is considered legally valid, even though it may have legal consequences, such as extending the *'iddah* period. The judge also grants the husband, as the holder of the absolute right, the authority to pronounce *ṭalāq* to his wife, while explaining that pronouncing *ṭalāq* during menstruation is *ḥarām* according to Islamic law. Nevertheless, the legal status is recognized by the state, so the husband has the right to proceed or not with the pronouncement of *ṭalāq* during menstruation.

This was also the case at the Pangkalan Balai Religious Court in Case No. 85/Pdt.G/2021/PA.Pkb, where the judges granted the husband the right to continue or refrain from pronouncing *ṭalāq*. The husband chose to

²² Bab XVI Putusnya Perkawinan Pasal 122 Dalam Kompilasi Hukum Islam, 35.

²³ Nurhayati dan Ali Imran Sinaga, *Fiqh & Ushul Fiqh*, (Jakarta : Prenadamedia Group), 2018).72



proceed, and with the pronouncement, the legal status of the divorce remained valid.

Furthermore, before a marriage is dissolved, Article 149 of the Compilation of Islamic Law stipulates that when a marriage ends due to *ṭalāq*, the former husband is obligated

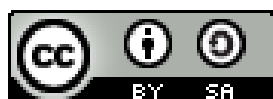
- a. To provide appropriate *mut'ah* (compensation) to the former wife, either in the form of money or property.
- b. To provide maintenance, housing (*maskan*), and clothing (*kiswa*) to the former wife during the *'iddah* period.
- c. To fully pay any outstanding *mahr* (dowry).
- d. To provide *hadhanah* (childcare) expenses for children who have not yet reached the age of 21.²⁴

Among the provisions explained in the Compilation of Islamic Law, one is reflected in the decision of the panel of judges in Case No. 85/Pdt.G/2021/PA.Pkb, regarding the obligation to provide *mut'ah*, *'iddah* maintenance, and *hadhanah* expenses for the children. The fulfillment of these obligations is a prerequisite for proceeding with the pronouncement of *ṭalāq* to a wife during menstruation. If these obligations are not fulfilled, the court must consider the wife's consent on how she wishes to proceed. If she does not consent, the hearing may be postponed; if she agrees, the proceedings can continue

E. Conclusion

Based on the research findings presented earlier, the researcher can draw several conclusions as follows: The decision of the panel of judges in Case No. 85/Pdt.G/2021/PA.Pkb at the Pangkalan Balai Religious Court concerns a divorce (*ṭalāq*), and the divorce proceedings follow the general provisions and procedures of divorce cases. However, there is a slight difference in implementation, as the wife's consent is required to continue the divorce, as determined by the Pangkalan Balai Religious Court.

²⁴BAB XVII Kompilasi Hukum Islam, *akibat putusya perkawinan pasal 149*.



From the perspective of Islamic law, the pronouncement of *ṭalāq* to a wife during menstruation in Case No. 85/Pdt.G/2021/PA.Pkb constitutes *ṭalāq bid'ī*, which is prohibited in Islamic law. Although it may have legal consequences under the state law, it can be concluded that, in practice, *ṭalāq bid'ī* is *ḥarām*, in accordance with the Qur'an, Sūrat al-Ṭalāq, verse 1, which forbids such an act

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