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Maqashid Sharia Review of Decisions Shar'iyah Idi Court in Divorce Cases

Lukmanul Hakim¹⁰

¹ Sekolah Tinggi Agama Islam Aceh Tamiang, Indonesia

ABSTRACT

Background. Divorce is a matter that is never finished to be studied and discussed. Even cases of divorce cases continue to increase. One of them is the divorce case.

Purpose. Many divorce cases are contested due to the background between husband and wife not wanting to carry out their obligations, such as providing a living physically and spiritually, but when analyzed this is not the main thing that causes divorce but rather bad communication between husband and wife, in deciding a divorce case a judge are required to be thorough and observant in deciding on a divorce so that a legal basis and fair considerations are needed so that a positive decision is born for both parties.

Method. In this study, the authors used qualitative legal research and normative legal research, namely what we know as library law research, namely legal articles conducted by researching based on materials sourced from the literature.

Results. Research results: 1) The factor in the occurrence of divorce is due to not fulfilling a living, harming/endangering the wife, one party leaves the other party without permission and without a valid reason, one party gets a prison sentence of 5 years or more after the marriage takes place, Jidal or syiqaq (prolonged and unresolved quarrels), infidelity or one party commits adultery, one party commits violence/nusuz, apostasy or converts. 2) Every decision made by the Panel of Judges of the Syari'yah Idi Court remains based on legal aspects and Maqasid Syari'ah, both ahwal asyahksiyah cases in general and divorce cases in particular, as the purpose of law is to protect the rights of each individual both from the perspective of Life, religion, reason, property, lineage and honor.

Conclusion. As an answer to the formulation of the problem and the results of the author's analysis, it can be concluded that: The factor in the occurrence of divorce is due to the absence of a living.

KEYWORDS

Divorce, Maqashid Syariah, Syariah Court

INTRODUCTION

Marriage and divorce are like two sides of a coin. If there is a wedding event somewhere, it is certain that there is a divorce event there (Kourouxous & Bauer, 2019). This is because divorce or official separation of husband and wife will only occur if a marriage has ever taken place (Ariel dkk., 2019). Even though not everyone who gets married gets divorced, divorce cases often occur, as evidenced by the religious courts/Syari'yah courts, divorce cases handled never subside. In fact, from time to time, the divorce rate tends to increase. The Aceh Sharia Court recorded the number of divorce lawsuits in Aceh reaching 6,823 cases from January to October 2022 and

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Correspondence:

Lukmanul Hakim,

lukmanulhakim@gmail.com

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dominated by divorce claims by wives against husbands. For contested divorces, out of 5,213 cases received by the Sharia Court, 4,4422 cases have been decided, while for talak divorces, 1,610 cases and 1,312 cases of which have had decisions (He dkk., 2019). There are three Sharia Courts that handle cases or the highest divorce rate throughout 2022, namely the Lhoksukon Sharia Court with 672 cases, Kuala Simpang with 512 cases, and the Idie Sharia Court with 442 cases. Meanwhile, the lowest divorce rate was at the Syari'ah Court in the city of Sabang with a total of 55 cases.

Islam as a religion provides a way out, when a husband and wife are no longer able to continue their marriage, in the sense that there are incompatibilities in outlook on life and household disputes that cannot be reconciled anymore, then as long as it provides a way out which in fiqh terms is called thalaq (divorce) (V'kovski dkk., 2019). Islam allows husband and wife to divorce, of course, for certain reasons, even though divorce is hated by Allah SWT (Wang dkk., 2021). Marriage and divorce is one of the fields of al-Ahwal al-Syakhshiyyah. Marriage is a contract that justifies association between a man and a woman and determines the rights and obligations between the two (Groc & Choquet, 2020). Then to achieve the goal of marriage which can provide legal certainty to the parties concerned, a marriage institution is formed (Schwartz & Graham, 2020). For citizens who are Muslim, marriage settlement is carried out by the Sub-District Office of Religious Affairs (KUA), while for non-Muslims it is carried out by the Population and Civil Registry Office, while divorces for Muslims are carried out at the Religious Court or the Aceh Special Syar'iyah Court, while non-Muslims Muslims do divorce in the District Cou

Religion and the State justify divorce on legal grounds or for the sake of benefit or in Islam it is called Magasid Syari'ah. When viewed from the need and its influence on the law, Magashid Syari'ah is divided into three, namely the needs of al-darurīyah, the needs of al-haijīyah and the needs of al-tahsinīyah (Moen dkk., 2019). The needs of al-darū-rīyah are essential interests which are the main, main or most basic needs in human life (primary needs) both regarding the maintenance of the benefit of religion or the benefit of the world. If this benefit is not fulfilled, it will result in mafsadah (damage or harm) so that from this it can cause human life to become injured, disabled and even to death (O'Toole dkk., 2021). Therefore the 5 (five) matters regarding maintaining religion, soul, lineage, property, and mind are closely related to this primary need. These five elements are primary needs to be maintained and to know the position of each requires research (al-istigrā; inductive) and the search for evidence by everyone in various places and times. Basically, marriage is done forever until one husband or wife dies (O'Cathain dkk., 2019). But in reality, not all families end in eternal happiness, meaning that many families end up in court decisions by way of divorce. Divorce in Islam is not a ban, but as the last door of the household, when there is no other way out (Mukhibad dkk., 2022). The number of court decisions in divorce cases is certainly inseparable from the judge's considerations in deciding these cases (Asman & Muchsin, 2021). The purpose of marriage is inseparable from Magasid Shari'ah as is the case with divorce, divorce becomes mandatory or permissible if something harms one of the parties occurs, this is also Magasid Shari'ah (Taufik dkk., 2023). So in relation to this matter, is the decision of the Judge of the Syari'yah Idi Court in accordance with the concept of Maqashid Syari'ah because the basis for judges' considerations in Indonesia is statutory regulations not figh rules.

RESEARCH METHODOLOGY

In this study, the authors used qualitative legal research and normative legal research, namely what we know as library law research, namely legal articles conducted by researching based on materials sourced from the literature (Mulizar dkk., 2022). The data sources used by the author of the article in this writing include primary legal materials (binding legal materials) (Abdul Muthalib

dkk., 2021), namely the applicable laws and regulations relating to the issues in this article. secondary law, namely legal material that provides a description of primary legal material, among others (Ardiansyah Rakhmadi, 2022); commentaries, general books, journals, documents and other references related to this article Tertiary legal materials, namely legal materials that provide instructions and explanations of primary and secondary legal materials, such as dictionaries and other reference materials that support the writing of this article (Kourouxous & Bauer, 2019). As for the data collection technique in writing this article, the authors used library research or literature study, while the data analysis technique used was a qualitative comparative technique, namely providing a comparative review of fiqh and positive law on existing problems.

RESULT AND DISCUSSION

Definition of Magasid Syari'ah

Etymologically, Maqasid Shari'ah is a combined term of two words: al-Maqashid and al-Shari'ah. Maqashid is the plural form of maqshad, qasd which is a derivation of the verb qasada-yaqsudu, with various meanings such as towards a direction, goal, middle ground, fair and not transgressing, straight path, middle between excess and deficiency (Bussières dkk., 2020). While the word syari'ah etymologically comes from the words syara'a-yasyra'u, syar'an which means making shari'ah or laws, explaining and stating. It is said syara'a lahum syar'an means he has shown them the way or means sanna which means showing the way or regulations (Lubit, 2019). In terminology Maqasid syari'ah means the purpose of Allah and His Messenger in formulating Islamic laws (Aguirre, 2019). This goal can be traced in the verses of the Qur'an and the Sunnah of the Prophet as a logical reason for the formulation of a law that is oriented to the benefit of mankind.

The Urgency of Maqasid Syari'ah

Among the urgency of maqasid syari'ah, namely: Maqashid Syariah aims for the benefit of humans, both in this world and in the hereafter (Prescott & Rasmussen, 2020). With the existence of Maqashid Syariah, there is a synergy between Sharia as law and the achievement of goals in providing benefits (Chouksey & Pandey, 2020). To realize the goodness addressed to humans while preventing bad things from happening to them. Refuse all forms of harm and take everything that brings goodness from it. By understanding Maqashid Sharia, you will be able to examine the philosophical basis for the basic purpose of enactment, reasons for rationality, 'illat Hukum, the secrets of tasyri' for establishing laws, and various other legal istinbat (implementation) (Boute, 2020). The application of Maqashid Shari'ah to contemporary law is the main requirement in ijtihad to answer the problems of legal activities that are constantly developing (Hansen, 2019). Helps to know general and partial laws, understands syar'i texts correctly at the practical level, defines the meaning of the intended lafadz correctly, becomes a reference for mujtahids, especially for new issues, helps mujtahid learn laws related to actions man (Agustanti & Astuti, 2022). To preserve religion, soul, mind, lineage, property and honour.

Distribution of Magasid Syari'ah

Based on its influence on the affairs of the Ummah, it is divided into three hierarchical levels, namely dharuriyat, hajiyat and tahsiniyat (Jagannathan & Delhi, 2019). Dharuriyyat Benefit which must be fulfilled and if it is not fulfilled, it will result in the destruction of the order of human life where the condition of the people is not much different from that of animals. Al-kulliyyat al-Khamsah is an example of this level, namely maintaining religion, life, reason, lineage, wealth and honor ("Existence of Cointegration between the Public and Private Bank Index," 2021). Hajiyyat The need for the people to fulfill their benefit and maintain the order of their life, but if it is not

fulfilled it will not result in the destruction of the existing order (Stef & Zenou, 2021). Tahsiniyyat Complementary Maslahat for the order of life of the people so that they live safely and peacefully. In general, there are also many matters related to morals and ethics. Examples are good habits that have a general or special nature.

Definition of Divorce

Divorce when viewed from Islamic law is "At-Talak". Etymologically divorce is which means releasing the marriage contract with a word, there are also those who define it as being released from one bond, or talak can be understood as separation or divorce in the Shari'a between husband and wife based on the husband's will. The root of the word "divorce" is divorce, the meaning of which is separation, which begins with "per" and ends with "an", which means forming an abstract noun, meaning divorce, which means a stage where the relationship between husband and wife is broken. Syar'iyah Court Judge Idi's Considerations in Decisions on Divorce Cases Based on Maqasid Syari'ah In order to find out the decisions of the judges of the Syari'yah Idi Court in the review of MAQASID SYARI'AH, it is necessary for the author to describe several decisions that are inrah if correlated in MAQASID SYARI'AH including:

Considerations in the Decision of the Idi Syari'ah Court Number 215/Pdt.G/2023/MS.Idi The chronology of the divorce case is that a wife sued her husband for divorce on the grounds that prolonged disputes and quarrels were motivated by the defendant (husband) who did not accept the plaintiff's condition which was often sick and the defendant left the plaintiff. Whereas with this incident the household between the plaintiff and the defendant could no longer be fostered properly so that the purpose of marriage to form a sakinah, mawaddah and rahmah household was difficult to maintain. That although it does not explicitly state limitations regarding the meaning of disputes and fights, it should be understood that apart from physical disputes and fights, the Plaintiff and Defendant have also separated their residence for at least 9 (nine) months until now so that they are no longer able to exercising their rights and obligations as husband and wife and family, village parents, and the court have also tried to advise the Plaintiff to get along with the Defendant again, but without success, so contextually it should be interpreted as disputes and quarrels in the household; Based on the existing legal facts, the Panel of Judges granted the plaintiff's claim with the consideration that based on the provisions of Article 19 letter (f) Government Regulation Number 9 of 1975 jo. Article 116 letter (f) of the Compilation of Islamic Law, that a divorce suit is deemed to have legal grounds and does not violate rights if it is based on reasons including that: (f). "Husband and wife are constantly having disputes and quarrels and there is no hope of ever living in harmony in the household"; In addition, the judge needs to put forward the syar'i argument from the book Ghayatul Maram li Syaikhil Majdi which is then taken over to become the opinion of the panel which reads: "When the wife is very unhappy with her husband, the judge drops the husband's divorce". The above matters, if correlated with Magasid Syari'ah, are very relevant because the judge's consideration in granting the plaintiff's claim is to decide: Declare that the defendant who has been summoned officially and should appear before the court, is not present; Granted the plaintiff's lawsuit with verstek; Divorced one bain sughra of the Defendant (XXXXXX) against the Plaintiff (XXXXXX); Charge the Plaintiff to pay the costs of this case in the amount of Rp. 290,000.00 (two hundred and ninety thousand rupiah)

As the aim of the Shari'a (Maqasid Shari'ah) is to maintain Benefit which must be fulfilled (Dharuriyyat) and if it is not fulfilled, it will result in the destruction of the order of human life where the condition of the people is not much different from that of animals. Al-kulliyyat al-Khamsah, namely maintaining religion, life, reason, lineage, wealth and honor. It is very clear that this decision is closely related to the maqhasid syari'ah theory, even at the (Dharuriyyat) level

which must be realized. In this case it is for the sake of protecting the life and mind (psychology) of the plaintiff. If the husband and wife relationship in this case is not granted or the plaintiff and the defendant stay together, of course it will have an effect on the loss of life of one of the parties because of the fights that always occur or at least can damage the plaintiff's psychology because violence is often carried out both physically and verbally.

Considerations of Judges in the Decision of the Syari'ah Court of Idi Number 224/Pdt.G/2023/MS.Idi

In this case the husband as the defendant to be granted a divorce to his wife as the plaintiff, the background of this lawsuit is: That since June 6 2017 the Plaintiff and the Defendant have separated, because the Defendant left the Plaintiff to say goodbye to the Plaintiff to work, after leaving the Defendant never communicating with the Plaintiff and also until now the Defendant has never returned to the shared residence; Whereas because the Defendant left the Plaintiff, the Plaintiff and the Defendant had been separated for more than 5 (five) years, the husband and wife's rights and obligations were not implemented properly because since then the Defendant had no longer carried out his obligations as husband to the Plaintiff; That such an incident was the reason for the Plaintiff to divorce the Defendant because the Defendant had left the Plaintiff for more than 2 (two) years as stated in PP Number 9 of 1975 article (19) letter (B); Whereas previously the Plaintiff was always patient, waiting for the Defendant to return, and the Plaintiff also sought the best way for the integrity of his household, however, the Defendant still made no effort to improve his household conditions to return home; Whereas the above circumstances resulted in the households of the Plaintiff and the Defendant not being happy both physically and mentally and there was no hope of returning to fostering a harmonious and peaceful household as expected by the marriage institution, namely that the husband and wife must love each other, respect, be loyal and give inner and outer assistance to one another; After seeing the evidence, both letters and witnesses, the panel of judges decided: to grant the plaintiff's claim with verstek; and Divorcing one bain sughra of the Defendant (XXXXXX) against the Plaintiff (XXXXXX). The judges' considerations in accordance with Magasid Syar'iah are as follows. Whereas based on the legal facts as mentioned above, the Judge is of the opinion that the reason for the plaintiff's claim for divorce from the Defendant has been qualified in the aims and objectives of Article 19 Letter b Government Regulation Number 9 of 1975 jo. Article 116 letter b Compilation of Islamic Law in Indonesia, namely one party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his control; Whereas a divorce suit based on one party leaving the other party for 2 (two) consecutive years will be declared proven if 2 (two) elements have been fulfilled, namely if the deadline for filing a letter of claim with the defendant's departure has exceeded 2 (two) years years and if the Defendant declares or shows an attitude of not wanting to return to the shared residence, as explained in the provisions of Article 21 Paragraph (2) and (3) of Government Regulation Number 9 of 1975 jo. Article 133 Paragraph (1) and (2) Compilation of Islamic Law in Indonesia; Whereas the Plaintiff filed a divorce suit on May 30, 2023, and the Defendant has left the Plaintiff for more than 5 (five) years. Thus the deadline for filing a letter of claim with the Defendant's departure has exceeded the 2 (two) year period, and therefore the Judge is of the opinion that the first element of proving the reasons for this divorce has been fulfilled; Whereas based on the legal facts as mentioned above, it turns out that the Defendant has never returned to the house where he lives together, and has never even communicated with the Plaintiff. According to the Judge, which attitude in this matter could be used as an indicator showing that the Defendant did not want to unite with the Plaintiff to continue his household life. Thus the second element of proving the reasons for this divorce has been fulfilled.

From several legal facts that occur if it is correlated with maqasid syari'ah, the judge's decision is not only based on statutory regulations, but also based on maqasid syari'ah. The fact that happened was that the defendant/husband did not fulfill his obligations in the form of zhohir and inner living, while living is an urgent need in order to maintain the survival of his wife and children. By understanding Maqashid Sharia, one will be able to examine the philosophical foundations for the basic purpose of enactment, reasons for rationality, 'illat law, secret tasyri' of legal determination, and various other legal istinbat (implementation). the growing problem of legal activity. Helps to know general and partial laws, understands syar'i texts correctly at the practical level, defines the meaning of the intended lafadz correctly, becomes a reference for mujtahids, especially for new issues, helps mujtahid learn laws related to actions man. To preserve religion, soul, mind, lineage, property and honour. Even scholars justify a wife asking for fasakh if the husband neglects his maintenance as stated in the Bugyah Mustarsyidin book.

CONCLUSION

As an answer to the formulation of the problem and the results of the author's analysis, it can be concluded that: The factor in the occurrence of divorce is due to the absence of a living. Harm/endanger the wife. One party leaves the other party without permission and without a valid reason. One of the parties gets a prison sentence of 5 years or more after the marriage takes place. Jidal or syiqaq (prolonged and unresolved quarrel). Affair or one of the parties commits adultery. One of the parties commits violence/nusuz. Apostasy or conversion of religion Every decision made by the panel of judges in general and in particular the Judge of the Syari'yah Idi Court continues to be based on legal aspects and Maqasid Syari'ah, both ahwal asyahksiyah cases in general and divorce cases in particular, as the purpose of law is to safeguard the rights -the rights of each individual both in terms of life, religion, reason, property, lineage and honor.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

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