

CHAPTER I

INTRODUCTION

A. Background of Study

Marriage events are one of the stages that are considered important in human life and have been lived for centuries in a religious culture and community. People think of it as a sacred event, the event of birth and death sought it only happens once in a lifetime.¹ The main point of household life is calm, tranquility and continuity. Islam regulates this relationship with all its safeguards which ensure peace and continuity so that it reaches a high level of obedience.²

Regarding the marriage bond, Allah SWT said in Al-Qur'an Surat Al-Nisa: 21:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

*How will you take it back, even though some of you have mingled (mixed up) with others as husband and wife. And they (your wives) have taken from you a strong agreement. (An-Nis / 4: 21)*³

As *mitsaqon ghalidhan* (very strong agreement). And therefore, any attempt to underestimate the sacred bond or weaken it. Moreover, until break the ties it is very hated by religion.⁴

Divorce can now occur because of changes in social values that are taking place in Indonesian society. Basically, the occurrence of divorce

¹ Wasman & Wadah Nuromiyah Hukum, *Perkawinan Islam di Indonesia* (perbandingan Fiqh dan Hukum Positif), (Yogyakarta: Teras, 2006) p. 279.

² Abdul Aziz Muhammad Azzam & Abdul Wahhab Sayyid Hawwas, *Fiqh Munakahat (khitbah, Nikah dan Talak)*, (Jakarta: Amzah, 2009) p. 251.

³ Syaamil Al-Qur'an Depag, *Al-Qur'an dan Terjemahnya*, (Bandung: PT, Sygma Examedia Arkanleema, 2009), p. 40

⁴ Muhammad Bagir Al-Habsyi, 2002, *Fiqh Praktis Menurut Al-quran, s-Sunnah dan Pendapat para Ulama*, (Bandung, Mizan, 2002) p.181.

cannot be separated from a variety of factors that influence the marital ties. Various reasons that cause a wife who sues for her husband's divorce are sometimes internal factors and external factors. For instance, the internal factors are economic factors or family finances, no responsibility between them, and factor lack of communication between wife and husband. And the external factors are, there is interference from the family of one partner and infidelity of one partner or infidelity. One of them is independent, so there is a high rate of divorce:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

And if you are worried that there will be a dispute between the two, then send a hakam from a male family and a hakam (peace maker) from a female family. If the two hakam people work together to make improvements, Allah will certainly give taufiq to the husband and wife. Verily Allah is Knower, Knower (An-Nis / 4: 35)⁵

The reality of life in the world proves that there are many factors that affect the breakup of marital ties. In the case of divorce in the Ponorogo Religious Court, there were many factors that resulted in the cracking of a household relationship that was previously a harmonious family, so that with these factors, resulting in many divorce cases in the Ponorogo Religious Court.

Most cases that often occur in the Ponorogo religious court are divorce cases. Which is where many divorce cases are proposed by the wife (divorce) on the grounds that the husband is not known until now or known as the case of *mafqud* husband and the other reason is due to early marriage. *Mafqud* (loss) of a husband is one of the various factors that encourage the breakup of marital ties. The loss of her husband caused a wife to be overwhelmed with a sense of uncertainty about her legal status, so that a wife decided to sue for divorce from her husband, whose news was unclear.

⁵ Syaamil Al-Qur'an Depag, *Al-Qur'an dan Terjemahnya*, ... p. 42

A husband *mafqud* will certainly cause new problems for the household. The loss of a husband will cause a wife to feel a sense of uncertainty about her legal status. For legal certainty, the methods for summoning the session are arranged concretely, so that if there is a deviation from the principle, the case can still be resolved.⁶ Thus, in the case of occult divorce (*mafqud*) in religious courts throughout Indonesia as stipulated in Law Number 1 Year 1974 and Government Regulation Number 9 of 1975, Law Number 7 of 1989 and Compilation of Islamic law.

B. Problem Formulation

Departing from the background on the subject matter that has been presented, then the main problem can be drawn into the object of the study is as follows:

1. What is the decision of the judge of the Ponorogo Religious Court to deal with the case number: 959/Pdt. G/2018/PA. PO?
2. What is the Analysis of the Decision of the Ponorogo Religious Court regarding the Divorce?
3. What is the Impact of the Law of *Mafqud's* Husband (defendant) on wife (plaintiff)?

C. Purposes of Research

The purposes of this research are as follows

1. To know the decision of the judge of the Ponorogo Religious Court to deal with the case number: 959/Pdt. G/2018/PA. PO
2. To know the Analysis of the Decision of the Ponorogo Religious Court regarding the Divorce.
3. To know the Impact of the Law of *Mafqud's* Husband (defendant) on wife (plaintiff).

⁶ Roihan Rasyid, *Hukum Acara Peradilan Agama*, (Jakarta: PT. Rajagrafindo Persada, 2005), p. 102

D. Significance of Study

The benefits of preparing this thesis proposal include the following:

1. Theoretical Benefits

This research is expected to be an information material for academic studies as well as input for other research in related themes, so that it can be used as a reference for the next researcher.

2. Practical Benefits

- 1) As a material for discourse and discussion for students of the Sharia Faculty of the Comparative Study Program of UNIDA Gontor, as well as for the community in general.
- 2) As a study material for further research with the same theme.

E. Literature Review

There are several studies that raise about divorce material in various universities. From several studies, there are various kinds of focus that want to be analyzed, both regarding the divorce factor in general, until the analysis of an Article in legislation regarding the reasons for divorce. From several studies found in other universities, about divorce. Including the following research, among them are:

Intafia'ah examined about "*Suami Mafqud sebagai Alasan Perceraian Menurut Hukum Islam dan Hukum Perdata BW*". This thesis discussed the comparison between Islamic law and BW civil law, the subject is the description of *Mafqud*'s husband's differences according to Islamic law and civil law BW.

The difference of this research with the research conducted by Intafia'ah is a discussion of legal differences from *mafqud* husbands according to Islamic law and positive law. However, the research that the author is doing is understanding the law of *mafqud* husband based on a case analysis decision number: 959/Pdt. G/2018/PA. PO⁷.

⁷ File Case Verdict Number: 0959/Pdt.G/2018/PA. Po, accessed on Thursday 4th of October 2018.

Pitono examined “*Posisi Mafqud dalam hukum waris Islam dan hukum sipil BW*” discussed the notion of *mafqud* according to Islamic inheritance law and BW civil law, legal provisions, implications for property and family according to Islamic inheritance law and BW civil law. The difference of this research with the research conducted by Pitono is that the author discusses the impact that occurred on the plaintiff (wife) for the occurrence of cases of *mafqud* husbands related to child custody (*hadhonah*), *iwadh*, and earn a living (*nafkah*)⁸.

Nur Laila examines “*Tinjauan Hukum Islam tentang perceraian karena suami Mafqud di Pengadilan Agama Bojonegoro antara 2005-2006*” discussed how the process of resolving divorce was caused by *Mafqud* in the Bojonegoro Religious Court and what were the underlying factors behind the departure of the husband. The difference of this research with the research conducted by Nur Laila is that the author reviews Islamic jurisprudence regarding the law of divorce due to *mafqud*’s husband, by analyzing the court judge’s decision Ponorogo number: 959/Pdt. G/2018/PA. PO.⁹

In contrast to the thesis that the author discussed, namely entitled “The Decision of Judge about *Mafqud*’s Husband (*Ghoib*) In Case Of Claim for Divorce in Ponorogo Religion (Analysis of Decision Number. 959/Pdt. G/2018/PA. PO), this thesis discusses:

1. The consideration of the judge in deciding cases outside the lawsuit being sued.
2. What factors are behind the number of Husband events (*Mafqud*) in 2018?
3. What is the analysis of the judge’s decision on divorce due to *Mafqud*’s husband in the Ponorogo Regency Religious Court?

⁸ إسحاق بن منصور الكوسج المروزي، مسائل الإمام أحمد بن حنبل وإسحاق بن راهويه برواية إسحاق بن منصور الكوسج المروزي (المدينة المنورة: الجامعة الإسلامية، ٢٠١٥ ص. ١٦٠١)

⁹ File Case Verdict Number: 0959/Pdt.G/2018/PA. Po, accessed on Thursday 4th of October 2018.

4. Impacts that occur on the Plaintiff (Wife) and Defendant (Husband) in terms of Islamic law and Civil Law.

F. Research Methods

1. Types of Research

This type of research is qualitative research. Qualitative research is research that intends to understand the phenomena that are experienced by the subjects of research that occur in the Ponorogo Regency Religious Court, holistically and by way of descriptions in the form of language words, in a special natural context and by utilizing various natural methods.¹⁰

2. Character of Research

The nature of this study is descriptive analytic, namely analyzing (Decision No. 959 / Pdt. G / 2018 / PA. PO) accumulation of reasons for divorce by religious judges in the Religious Court of Ponorogo Regency according to Islamic law.

3. Type of data collection

Documentation, namely, how to obtain the data is by tracing and studying the primary data from file documents on case decisions in the Ponorogo religious court. In addition, a search and assessment of various writings relating to this discussion was conducted, in the legal aspect to sharpen the analysis of the court's decision.

4. Data Sources, data sources are the subject from which data can be obtained.

5. The data sources used in this study include primary data and secondary data, among others:

1) Primary Data

The primary data source is a verdict in the Ponorogo Religious Court regarding Divorce.

¹⁰ Khudzalifah Dimiyati & Kelik Wardiono, *Metode Penelitian Hukum*, (Surakarta: Fakultas Hukum Universitas Muhammadiyah Surakarta, 2004), p. 3.

2) Secondary Data

Secondary data sources are supporting data related to the data studied. This data is obtained by: *kitab al- Fiqh al-Islami wa adilatuha* creation by Wahbah az- Azuhaili, *kitab Kitabul Fiqh* creation by Abdurrahman Jaziri, *kitab al- Fiqh wa as- Sunah* creation by As-Sayid Sabiq, *kitab Fiqh al-Usroh al-Maslahah* creation by Hasan Ayub.

6. Tertiary Data

The approach that the compiler uses in this study is a normative approach and a juridical approach:

- 1) The normative approach, namely the approach that applies the scientific solution method leads to the establishment of something based on the Qur'an, the opinion of scholars, and the rules of *fiqhiyah*.
- 2) The juridical approach is an approach based on the legal norms and rules of the applicable legislation, specifically the Compilation of Islamic Law.

7. Data Analysis

Data analysis attempts to provide interpretation of data that has been arranged. Analysis of this data is done by qualitative methods, meaning that the analysis of the data is aimed at data that is based on quality, quality, and the nature of facts or symptoms that are valid. The collected data is analyzed qualitatively using deductive-inductive thinking methods. Inductive is the analysis of data that starts with things that are specific / specific in a matter. Deductive, which is analyzing and concluding general data in this case completing divorced cases with accumulation of reasons in general and then drawing specific conclusions, in this case relating to the accumulation of reasons for divorce. This conclusion is drawn from Islamic legal norms to assess whether judges' judgments in the Ponorogo Religious Court in case decisions about Divorce with cumulative reasons are in accordance with Islamic law or not.

G. Systematics of Discussion

1. CHAPTER I

Introduction: In this chapter the researcher makes a preliminary description which includes the Background of Problems, Formulation of Problems, Research Objectives, Use of Research, Literature Studies, Research Methods and Systematics Discussion.

2. CHAPTER II

Description of Research Objects: In this chapter the writer will elaborate the overview of the factors that caused an increase in divorce cases in the Religious Management of Ponorogo Regency.

3. CHAPTER III

Discussion: In this chapter contains an Analysis of the Judgment of the Ponorogo Religious Court concerning the Unseen Husband in the Divorced Case and **impact of the law of divorce *mafqud's* husband on wife.**

4. CHAPTER IV

Closing: In this chapter contains Conclusions and Suggestions.