

The Act of Nusyuz By A Wife As An Abortion of The Right To Maintain Mut'ah After Divorce

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ABSTRACT

The aim of this research is to understand nusyuz as a reason for divorce in statutory regulations and the judge's considerations in deciding cases of granting mut'ah maintenance to a wife who is suspected of being nusyuz. This research method uses a normative method of analyzing or reviewing court decisions. The subject of the study is law which is conceptualized in a norm or rule that applies in society. Therefore, Normative legal research is focused on the analysis of positive law, principles, doctrine, legal discoveries, legal systematics, comparative or legal history. The results in the Marriage Law and in the Compilation of Islamic Law (KHI) do not specifically emphasize the condition of a wife's nusyuz as a justified reason for divorce, but implicitly this has been represented by 2 (two) other reasons, namely actions that are difficult to change. and constant disputes or quarrels. In this case, nusyuz's attitude certainly needs to receive attention and reprimand from those around him, especially from his partner himself. This is different if it turns out that the reprimand did not produce any results so it should be considered that the perpetrator of nusyuz has found it difficult to change for the better. In other words, such circumstances or conditions should give rise to a dispute between a husband and wife, where the dispute continues to occur over time, it will increasingly erode harmony in the household and be replaced by anger, violence or other harmful things so that it is legally justified to do a divorce.

Keywords: Divorce, Court, Constitution, Law, Wife.

1. INTRODUCTION

Indonesia is one of the countries with the largest Muslim population in the world, where currently there are at least around 240.62 million, this makes Indonesia rank first among other countries in the world, including Pakistan and India, which respectively occupy second and third order. With the existence of the largest Muslim community in the world, of course this directly or indirectly has an impact on the development of politics, law and national policy in Indonesia itself (Rafiq, 2014).

One proof that the quantity of Muslims in Indonesia has an influence on legal and political affairs is the existence of the Religious Courts as judicial institutions which specifically only have absolute competence regarding Muslim civil affairs or other matters related to Islamic provisions themselves, such as sharia economic disputes. , etc. However, the origins of the establishment of a judicial institution that specifically only adjudicates civil cases for Muslims is not as easy as imagined, but there has been a lot of political turmoil and attraction from time to time between government policy and the will of the people.



The most interesting thing about the political journey relating to the jurisdiction of the Religious Courts can be seen at the time leading up to the enactment of Law No. 1 of 1974 concerning Marriage, where this is the starting point for issues regarding a person's marriage or divorce which are determined based on their religion which will then determine their decision. Which court must resolve the issue, the Religious Court is for people of the Islamic faith while the District Court is for people other than Muslim (Nurhadi, 2018).

Seeing a policy like this, of course, the judicial process relating to Muslim issues, especially marriage, must comply with the rules of the Islamic religion set by Allah Subhanahu Wa Ta'ala through the Prophet sallallaahu alaihi wassalam. However, the Indonesian government does not necessarily make all issues concerning Muslims within the competence of the Religious Courts, but only a few matters based on article 49 paragraph 1 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 2006. 1989 concerning Religious Courts includes issues regarding marriage, inheritance, wills, grants, endowments, zakat, infaq, shadaqah and sharia economics (Puniman, 2018).

Marriage is a spiritual and physical bond between a man and a woman, in which rules, rights and obligations are born to each other to achieve common goals, which include happiness and prosperity in life. In Law No. 1 of 1974 concerning Marriage, it is stated that: "Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family based on the belief in the Almighty God."

Based on this definition of marriage, it has become clear that one of the goals of marriage is to live together in a state of happiness and eternity, but that does not mean that every person who has lived a married life does not have problems in their relationship which ultimately leads to arguments and divorce (Firdawaty, 2017).

Divorce is the ending or dissolution of the marriage bond between a husband and wife due to a problem that is the cause. The problems faced by husband and wife in living their married life are very diverse, some divorces are influenced by economic, social factors, viewpoints (Muhammad Syaifuddin et al., 2022).

In the Compilation of Islamic Law, article 116, divorce can occur for reasons which state:

1. one of the parties committed adultery or became a drunkard, gambler etc. which are difficult to cure;
2. one of the parties 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 or her ability;



3. one of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place;
4. one of the parties commits cruelty or severe persecution that harms the other party;
5. one of the parties has a physical disability or illness as a result of which he is unable to carry out his obligations as husband or wife;
6. between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household again;
7. husband violates taklik talaq;
8. changing religion or apostasy which causes disharmony in the household.

One of the most common reasons for divorce in society is quarrels, while quarrels themselves have many triggers, which are generally because one of the parties is having an extramarital affair or also because there are economic problems. As time goes by, cheating is not only carried out by a husband, but apparently it is also often carried out by the wife, resulting in arguments and ending in divorce (Azizah, 2017).

As for the situation where it turns out that it is the wife who commits adultery with another man, this is known as nusyuz. According to general opinion, Nusyuz is a situation where a wife can be said to have disobeyed/disobeyed a husband, specifically explained by Sayyid Sabiq that a wife's actions such as leaving the house without permission is also one of the indicators of Nusyuz especially if it leads to infidelity with a man another.

Nusyuz's actions carried out by a wife are not simple, but have very significant legal or juridical consequences for the position of husband and wife in carrying out the marital relationship. As regulated in the Compilation of Islamic Law, article 84, it reads: "As long as the wife is in nusyuz, the husband's obligations towards his wife in article 80 paragraph 4 letters a and b do not apply except for matters for the benefit of their children."

Based on the explanation above, this means that a husband is no longer obliged to fulfill his wife's needs or the needs of his household if it is proven that his wife is in a state of nusyuz or disobedience. However, the provisions referred to were also not implemented optimally in the law enforcement process in Indonesia, where it turned out that one of the problems occurred in the jurisdiction of the Banyuwangi Religious Court, a wife had left the house with another man without permission and committed acts who exceeds the limit but in the divorce trial process turns out to still receive madhiyah living, mut'ah living and iddah living. This can be seen in the case registered with registration number 5681/Pdt.G/2021/PA.BWI dated 08 September 2022 at the



Banyuwangi Religious Court, so for this reason, the author is interested in analyzing the Court's decision in more depth based on the rules applicable law.

2. RESEARCH METHODS

Normative research is analyzing or reviewing court decisions. The subject of the study is law which is conceptualized in a norm or rule that applies in society (Efendi & Ibrahim, 2018). Therefore, Normative legal research is focused on the analysis of positive law, principles, doctrine, legal discoveries, legal systematics, comparison or legal history, to carry out a statutory approach. This approach prioritizes the legal basis of statutory regulations. In research, the conceptual approach is an approach with a background of legal concepts and legal principles as well as a case approach (case approach) looking at statutory regulations from the perspective of cases in the field that have been reviewed by judges who have a decision to be used in resolving cases or legal issues that arise.

3. RESULTS AND DISCUSSION

Ratio Decidendi Granting Mut'ah Alimony to the Nusyuz Wife in Case No. 5681/Pdt.G/2021/Pa.Bwi Decided by Banyuwangi Religious Court

1. Sitting Divorce Case No. 5681/Pdt.G/2021/PA.BWI

Whereas the applicant with his application letter dated 01 December 2021 which has been registered at the Registrar's Office of the Banyuwangi Religious Court Number 5681/Pdt.G/2021/PA.BWI basically stated the following:

1. That the applicant and respondent are husband and wife who were legally married before employees of the Banyuwangi Religious Affairs Office on December 13 2013 as recorded in the marriage certificate excerpt number 1018/031/XII/2013;
2. Whereas after the marriage ceremony the applicant and the respondent resided and lived in harmony at the respondent's house for approximately 1 (one) week and then the respondent joined the applicant for 7 (seven) years and 9 (nine) months;
3. That during the marriage they were blessed with 2 (two) children, namely: Tata Tyas Sinambung aged 7 (seven) years and Ravata Aji Pangestu aged 5 (five) years, these two children are currently co-respondent
4. Whereas initially the household life of the applicant and the respondent was in harmony, however, since June 2021 between the applicant and the respondent there have been disputes and quarrels caused by:
 - a. The Respondent was not honest with the applicant regarding financial matters;

- b. The Respondent was proven to have spent the applicant's savings amounting to Rp. 350,000,000 (three hundred and fifty million rupiah) without clear reason;
5. Whereas as a result of this incident, the respondent then left the joint residence and has now been separated for approximately 3 (three) months and during that time there has been no relationship between the two of them;
6. Whereas with the above facts, the applicant is no longer willing to be reconciled with the respondent, and the applicant wishes that his marriage ties with the respondent be terminated due to divorce, and the goal of forming a happy and eternal home is no longer possible to realize;
7. That because the applicant and respondent's household is no longer harmonious and there are continuous disputes between the applicant and the respondent, it has fulfilled the provisions of article 19 of Government Regulation No. 9 of 1975 so it is appropriate for the applicant's divorce petition to be granted by the panel of judges examining the case;
8. That the applicant is able to pay the costs incurred in this case; That on the day of the trial the applicant and the respondent came before the court, and the panel of judges tried to reconcile but were unsuccessful.

Basis of Judge's Consideration in Ruling on Mut'ah Alimony Case No. 5681/Pdt.G/2021/PA.BWI

Considering, that the respondent demanded that the applicant provide mut'ah in the form of money amounting to Rp. 250,000,000 (two hundred and fifty million rupiah);

Considering that the applicant in his reply/answer stated that the respondent is a nusyuz wife, the wife's right to receive mut'ah maintenance is legally invalidated;

Considering that based on the applicant's answer, the respondent stated that he remained in his lawsuit;

Considering, that the provisions of Article 149 letter a, Article 158 letter b, Article 159 and Article 160 of the Compilation of Islamic Law that providing mut'ah maintenance to a wife who is divorced by a husband is the husband's obligation has nothing to do with the nusyuz of a wife, therefore the respondent deserves to receive mut'ah of the applicant;

Considering that the words of Allah SWT in Surat Al Baqarah verse 241 which means: "To divorced women (should be given by their husbands) mut'ah according to the ma'ruf as an obligation for pious people";

Considering, that based on the testimony of witness Agus Suwarno Bin Abdul Sukur, the applicant's income from the motorbike repair shop and motorbike spare parts per day can save Rp.



500,000 (five hundred thousand rupiah) but the respondent denies that the applicant's income from the dirty motorbike repair shop and spare parts per day is around Rp. 1,000 ,000 (one million rupiah);

Considering that there is no agreement regarding the amount of mut'ah, the panel of judges can determine the amount of mut'ah in accordance with the principles of propriety and capability;

Considering that regarding the amount of mut'ah the assembly agrees with and takes over as the opinion of the Assembly the opinion of Sheikh Muhammad Abu Zahra in the book Ahwal as-Syakhshiyah page 334 that the amount of mut'ah is calculated as 1 (one) year's living in accordance with the principles of propriety and nominal ability will be included in the decision below;

M E N G A D I L I

I. In the Convention

1. Grant the Convention Applicant's request;
2. Give permission to the Convention Petitioner (Taufik Fitriyanto, S.E bin H. Ahmad Samsuri Sah) to impose one raj'i talaq on the Convention Respondent (Ary Pangestuti bint Agus Suwarno) before the Banyuwangi Religious Court;

II. In Reconvention

1. Partially grant the Reconvention Plaintiff's claim;
2. Determine custody of the child (Hadhanah) named Tata Rias Shinambung, born 04 November 2014 and Ravata Aji Pangestu born 28 March 2016 to the Reconvention Plaintiff until the child is 12 (twelve) years old with the provisions that the Reconvention Plaintiff is obliged to provide as wide access as possible the extent to which the Reconvention Defendant can meet the two children;
3. Determine and sentence the Reconvention Defendant to pay the Reconvention Plaintiff in the form of:

1. Mut'ah in the form of money amounting to Rp. 24,000,000,- (Twenty-four million rupiah);
2. Iddah support for 3 (three) months in the amount of Rp. 6,000,000,- (six million rupiah);
3. Maintenance for two children named Tata Rias Shinambung, born 04 November 2014 and Ravata Aji Pangestu, born 28 March 2016 each month amounting to IDR 2,000,000 (Two million rupiah) with an increase of 10% each year until both children are adults / 21 years old;
4. Sentence the Rekonvention Defendant to pay the Rekonvention Plaintiff a living allowance for 3 (three) months in the amount of IDR 6,000,000 (Six million rupiah);



5. Punish the Reconvention Defendant to give the Reconvention Plaintiff the mut'ah money, iddah living and madliyah living as in dictum number 3 and 4 before the vow of divorce is carried out;

6. Designate assets in the form of:

Household Furniture:

(one) American spring bed size 180;

(one) children's mattress;

(one) mattress in front of the TV;

Kitchen set ;

(one) dining table;

(one) small marble table;

(one) jamang cupboard;

(one) child's wardrobe;

(two) glass wardrobes;

(one) doll wardrobe;

(one) decorative cupboard;

(one) shoe rack;

(one) HP brand laptop;

Vehicle :

One beat bicycle with plate number P 3218 VJ, Honda brand

Type: NC11B3CA/T, type: motorbike, solo motorbike model, year of manufacture 2010, color: red, frame number: MH1JFS117AK193061, engine number: J551E1199209, in the name of Ary Pangestu, address: Jalan Majapahit no.65, RT.02 RW.04, Tamanbaru Village, Banyuwangi;

One car with license plate number: P 1046 VM, brand: Toyota, Type: Agya 1.2 GWT, Type: Passenger Car, Model: Minibus Year of manufacture: 2018, Color: White, Chassis number/NIK/VIN owner: Agus Suwarno, occupation : Self-employed, address: Jl. Mojopahit No.65, RT/RW.002/004, Tamanbaru Village, Banyuwangi Regency, KTP No.: 3510160412650004;

Thrill brand mountain bike

is the inherited property of the Reconvention Plaintiff;

7. Reject the Reconvention Plaintiff's claim for the remaining assets

8. Sentence the Rekonvention Defendant to hand over the inherited assets as stated in dictum number 6 to the Rekonvention Plaintiff;



9. Designate assets in the form of:

1. 10 (ten) pairs/sets of wooden tables and chairs;
2. 1 (one) piece of sound;
3. Freezer Boxes ;
4. Refrigerator Freezer;
5. 4 pieces of wooden leishan tables;
6. Large front display case;
7. 36 (thirty six) large plates;
8. 56 (fifty six) small plates;
9. 10 (ten) bowls;
10. 3 (three) stoves;
11. 1 (one) gas stove;
12. 52 (fifty two) green oval plates;
13. 40 (forty) round chili sauce containers and 40 (forty) chili sauces;
14. 100 large forks;
15. 6 glasses;
16. 30 glasses of juice;
17. 20 (twenty) ancient cups;
18. Large glass display case;
19. Prayer room display case;

is the joint property of the Reconviction Plaintiff and the Reconviction Defendant;

10 Orders the Reconviction Defendant to divide and hand over the joint assets in petition number

9, half to the Reconviction Plaintiff and half to the Reconviction Defendant;

11. Reject the Reconviction Plaintiff's joint property claim for the remainder;

In Re-convention

Rejects and does not accept the Plaintiff's lawsuit for Re-reconviction in its entirety

In Conventions and Reconventions

Charges the Convention Petitioner / Reconviction Defendant / Re-convention Defendant to pay court costs in the amount of Rp. 1,570,000,- (one million five hundred and seventy thousand rupiah);

Field analysis

Most divorce cases are in the Religious Courts, where the applicant, namely the husband, is charged with paying mut'ah maintenance to his ex-wife. In Article 41 letter (d) of Law Number 1



of 1974, it is stated that the Court can require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife. From this article it can be clearly seen that there are several rights that an ex-wife can obtain from her ex-husband. Meanwhile, the amount is regulated in the Compilation of Islamic Law (KHI) article 160, explaining that the amount of mut'ah support given to a wife by the husband is adjusted to the husband's propriety and capabilities. In reality, the amount of Mut'ah support requested by the wife was not immediately granted by the Panel of Judges handling the divorce case due to economic considerations on the part of the ex-husband.

In the divorce petition case as recorded in register number 5681/Pdt.G/2021/PA.BWI at the Banyuwangi Regency Religious Court involving the parties, namely the applicant on behalf of TF as husband and the respondent on behalf of AP as wife. The applicant and respondent are a couple who married on December 13 2013 in the Islamic faith in the area of the Banyuwangi District Religious Affairs Office.

The domestic life between the applicant and the respondent initially went well, this is proven by the birth of their 2 (two) children, namely the first child named TRS, aged 9 (nine) years as the first child and RAP, aged 7 (seven) years as the second child. In order to support his household, the applicant runs several businesses, including a culinary business in the Osing Banyuwangi traditional village area and an automotive repair shop that sells all kinds of motorbike parts or accessories.

After the applicant and the respondent made love as a married couple, problem after problem began to emerge to test the household's resilience, among several of these problems, namely that the respondent was also strongly suspected of having taken a large amount of money belonging to the applicant's parents without permission, namely approx. Rp. 825,000,000,- (Eight hundred and twenty five million rupiah) which, based on the results of investigations from several family members, the money was used by the respondent to build a business with her husband and rent a place to live together. There are indications that the respondent has another dream man who is none other than her husband's employee, namely the applicant. The Respondent also left the house for approximately 3 (three) months.

The incident as above ultimately had an impact on the breakdown of the domestic relationship between the applicant and the respondent so that with a unanimous decision, the applicant submitted a petition for divorce and divorce from the respondent on December 1 2021 at the clerk's office of the Banyuwangi Religious Court. Which requires the applicant to pay mut'ah maintenance to the respondent in the amount of IDR 24,000,000 (twenty four million rupiah).



Where based on the ruling of the Religious Court mentioned above, it is clear that the Panel of Judges examining the case, granted the respondent's claim for mut'ah maintenance even though the reason for the divorce was because the respondent was suspected of having committed an act of nusyuz because he did not respect the applicant as her husband by taking property belonging to the applicant's parents. , which was then used for the purposes of living with his mistress, as well as leaving the house without the husband's permission for approximately 3 (three) months, then in this case the respondent has violated the orders of the husband (petitioner) and has not carried out the obligation of filial piety to the husband, both by birth and thoughts that are justified by Islamic law as stated in the Compilation of Islamic Law (KHI) in article 83 which reads:

1. The main obligation for a wife is to be physically and mentally devoted to her husband as permitted by Islamic law.
2. The wife organizes and manages daily household needs as well as possible.

The basis of the judge's judgment in deciding a case is an important matter in creating justice and legal certainty (Putra, 2021). The panel of judges set aside the problem of nusyuz in the decision and raised the problem of arguments and disagreements between husband and wife continuously so that there is no hope of living in harmony again in a suitable household, the author found in this matter that the panel of judges used the principle of legal certainty in this matter, namely: 1. Compilation of Islamic Law (KHI) Article 116 letter f.: "Between husband and wife there are continuous disputes and arguments and there is no hope of living in harmony again in the household"

2. Law No. 1 of 1974 Article 39 paragraph 2: "To carry out a divorce there must be sufficient reasons, that the husband and wife cannot live in harmony between husband and wife" The judge considered that the marriage relationship could not be reunited, if it was possible to maintain it then will cause prolonged suffering.

Regarding the mut'ah alimony granted by the judge, even though in the hearing the nusyuz evidence has been verified by the witnesses and acknowledged by the panel of judges dealing with the case, this does not make the mut'ah alimony to the wife in accordance with the decision where ex-husbands are required to pay alimony to ex-wives (Al Idrus, 2021). This is of course contrary to the Compilation of Islamic Law (KHI) Article 84 paragraph 2 (two) "while the wife is in nusyuz, the husband's obligations towards his wife in Article 80 paragraph (4) letter a and b do not apply, except for matters in the interests of his children " (Sembiring, 2021). According to the author's opinion, the judge's decision is not accurate and very surprising, because the judge's judgment is



not enough to overturn the many legal provisions and theories that the author has described in this research, which basically emphasizes the loss of the obligation of a husband to provide mut'ah maintenance to his ex-wife proven to have committed nusyuz.

4. CONCLUSION

The Marriage Law and the Compilation of Islamic Law (KHI) do not specifically emphasize the condition of a wife's nusyuz as a justifiable reason for divorce, but implicitly this is represented by 2 (two) other reasons, namely actions that are difficult to change and continuous disputes or quarrels. In this case, nusyuz's attitude certainly needs to receive attention and reprimand from those around him, especially from his partner himself. This is different if it turns out that the reprimand did not produce any results so it should be considered that the perpetrator of nusyuz has found it difficult to change for the better. In other words, circumstances or conditions like these should give rise to a dispute between a husband and wife, where the dispute continues to occur over time, it will further erode harmony in the household and be replaced by anger, violence or other harmful things so that it is legally justified to do a divorce.

Domestic relationships are not always guaranteed to be in harmony, sometimes there are times when each element in it is faced with complicated problems that threaten the integrity and happiness of the household. We can clearly note this in the case of the position that the author used as material for analysis in writing this final assignment, namely a divorce case registered at the Banyuwangi Religious Court with No. 5681/Pdt.G/2021/PA.BWI dated 08 September 2022, where in the case it turned out that the ex-wife whose ex-husband was requesting a divorce was proven to have committed deviant acts, namely having another dream man, where the judge should be the one to examine the case. The decision must be able to provide a decision that will also have a deterrent and learning effect on the parties contained therein.

As the author has clearly explained that when one of the partners in a married relationship commits an act that is contrary to the law that applies in the marriage itself, it certainly has legal consequences that must be borne. Bearing this in mind, a wife who is proven to have committed acts that hurt her husband's heart and honor by having an affair with another man is a form of one of the conditions of nusyuz, so legally the judge should not have to order her ex-husband to provide post-marital maintenance divorce, that is the trust that is enshrined in our legislation, namely Article 84 of the Compilation of Islamic Law reads: "While the wife is in nusyuz, the husband's obligations towards his wife in Article 80 verse 4 letters a and b do not apply except for matters for the benefit of his children. " In order to uphold the law and restore a woman's position



to her dignity, it is very important that the impact of the act of nusyuz itself becomes something that is observed by law enforcers, one of which is the potential for divorce and not getting her right to alimony from her husband, including mut'ah alimony. .

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