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Ghoib Divorce Lawsuit in The Perspective of Islamic Law: Analysis of Ghoib's Divorce Lawsuit in 2024 at the Purworejo Religious Court Class 1B

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Abstract: *The main focus of the research is the phenomenon of supernatural divorce, which is a legal remedy for the wife to end the marriage when her husband's whereabouts are unknown. The research uses a qualitative method with a phenomenological approach to explore the mechanism, causal factors, and impact of supernatural divorce. Primary data was collected through in-depth interviews with informants, while secondary data was obtained from related agency documents, books, and journals. The results of the study show that supernatural divorce lawsuits are regulated in Law Number 7 of 1989, the Compilation of Islamic Law, and other regulations. The court process includes summoning the defendant through the mass media and a verstek decision if the defendant is not present. In 2024, there will be 99 cases of supernatural divorce lawsuits at the Purworejo Religious Court, reflecting the high divorce rate. The analysis method includes data reduction, data presentation, and conclusion drawn. This research highlights the importance of legal protection for wives and the role of the court in ensuring justice for related parties.*

INTRODUCTION

Marriage can be defined as a bond between a man and a woman that aims to form a conjugal relationship. The main goal of marriage is to create a family that is Sakinah, Mawaddah, and Rahmah (Gema Rahmadani et al., 2024). Every individual longs for a happy, harmonious, and lasting home life, which is the main goal that every family wants. However, not all marriages end in happiness (John Mordechai Gottman et al., 2020). In some cases, problems can arise, one of which is when a husband leaves his wife and children suddenly for a long period of time without permission and without a clear reason (Sari Sakinah et al., 2023). This kind of situation can result in uncertainty in the direction and sustainability of the marriage.

Legally, based on the Marriage Law, marriage is intended to create a lasting and happy relationship in accordance with the principles of faith in God Almighty, as also regulated in the Compilation of Islamic Law (KHI). In the context of customary law, the purpose of marriage can

vary depending on the norms of the local indigenous people and the religion adopted (Micselin Sifa Frisandia and Salsabila Ardila, 2024). Generally, marriage is considered valid if it is carried out in accordance with the beliefs of their respective religions. However, the ideal goal of marriage is not always achieved. In fact, it is not uncommon for marriages that have been going on for many years, as well as those that have just been started, to end in divorce.

One of the causes of divorce is the actions of a husband who hurts his wife's feelings and mind, accompanied by her inability to fulfill her obligation to provide support, both physically and mentally, becoming a source of problems in the household (Ahmad Baihaqi, 2021). Various efforts have been made by the wife to find out the whereabouts of her husband, including visiting the family and places that the husband usually visits, but all these efforts have not yielded results. The husband did not give news, it was difficult to contact, and his whereabouts were unknown, even by his family and friends. In such conditions, the husband's responsibility for birth and mental maintenance is completely neglected. Although the wife has tried to be patient and maintain the integrity of the household, the effort has not yielded the expected results. Therefore, the wife decided to file a divorce lawsuit with the Religious Court in order to obtain clarity on the status and avoid uncertainty in her home life (Ali Zia Husnul Labib, 2024).

Article 116 point b in the Compilation of Islamic Law (KHI) regulates the condition of a missing husband (supernatural), which reads: "One party leaves the other party for two consecutive years without the permission of the abandoned party, without a valid reason, or for other reasons beyond his or her ability." This provision relates to the husband's obligations to his wife, where in Islamic law and positive law in Indonesia, the husband's responsibility remains valid even if a divorce occurs. Husbands are still required to provide support to their wives until the iddah period ends, as well as provide support to children until the children reach adulthood or get married (Riyan Ramdani and Firda Nisa Syafitri, 2021).

Problems that arise in divorce cases on supernatural grounds require special attention and appropriate solutions. Based on this, this topic is interesting to be researched more deeply. Therefore, the author feels compelled to study and analyze this phenomenon through scientific research entitled "Divorce of Supernatural Lawsuits in the Perspective of Islamic Law (Analysis of Divorce of Supernatural Lawsuits in 2024 at the Purworejo Religious Court Class 1B)".

RESEARCH METHODS

The method in this article applies qualitative research with a phenomenological approach that aims to reveal in-depth information about supernatural divorce lawsuits at the Purworejo Religious Court. According to (Zed, 2004), there are four phases in literature study, namely preparing the necessary tools, compiling a bibliography, managing time, and reading and recording research information. Data collection is carried out by looking for sources and reconstructing various materials from existing books, journals, and research. The analysis methods used are content analysis and descriptive. References obtained from various sources are critically and in-depth analyzed to support existing propositions and ideas. The method of data collection in this study includes collecting primary data through in-depth interviews with informants using interview guidelines. Secondary data was collected by reading reports from relevant agencies related to this study. Observation was carried out by directly observing the location of the research and information from the informant. The process of processing and presenting data is carried out by collecting all data/information that is similar and representative of the information needed. After the collection of diverse data, the analysis was carried out using

qualitative analysis techniques that included three elements: data reduction, data presentation, and conclusion drawing to re-describe the data that had been collected about the supernatural divorce lawsuit at the Purworejo Religious Court. The data that has been processed is then compiled in the form of a script (narrative).

RESULTS AND DISCUSSION

Pengadilan Agama Purworejo Kelas 1B

The beginning of the establishment of the Purworejo Religious Court began with the emergence of Penghoeloe Recht by occupying one of the rooms of the Al Izhaar Mosque which is on the west side of Kutoarjo Square. This mosque was built on September 16, 1887 on the land of KH waqf. Kastubi. Since the appointment of KH. Kastubi as the head of the family in 1887, the problem of marriage could be well served, then continued by the head of Kutoarjo KH. Mahfudz who is a descendant of KH. Kastubi. In the mosque, the divorce procedure for married couples has been legally applied.

There was a change of government from Kutoarjo to Purworejo, the Religious Court also changed its location around the Great Mosque "Darul Muttaqqin". This Great Mosque was built at the same time as the construction of the Purworejo square by the Regent of RAA Cokronegoro I. In 1942 the organizational structure of the Religious Court (Penghoeloe Recht) began to be arranged. At that time, the leader was KM. R. Zein. As time went by in 1996/1997, the Purworejo Religious Court office stood on its own land located on West Ring Road Number 5 Purworejo which has now changed its name to Jalan Pahlawan based on a decision from the Purworejo Regency Transportation Office. On January 11, 2012 the Purworejo Religious Court Building with a new prototype was inaugurated by the Chief Justice of the Supreme Court of the Republic of Indonesia DR. H. Harifin Andi Tumpa, M.H.

The settlement of first-level cases at the Purworejo Religious Court includes divorce, petitions, inheritances, wills, and other sharia economics. However, divorce cases occur more in the Purworejo Religious Court and have shown that the divorce rate in Indonesia is the most common. In 2024, there will be 99 cases of ghoib divorce lawsuits at the Purworejo Religious Court, which is 6.6% of the total number of cases received (M. Khorirur Rofiq et al., 2021).

Divorce Lawsuit According to Islamic Law

Divorce is an important legal step in the context of protecting the rights of wives in Islamic law (Rifki Rufaida, 2021). Although divorce is not a desirable option, the law provides a solution for wives to gain clarity and protection in difficult situations. This legal process reflects the principles of justice and individual protection, and seeks to provide a balanced solution for all parties involved (Sekar Balqis Safitra Rizki Wahyudia Putri, 2023).

A ghoib divorce lawsuit is a divorce process filed by a wife against a husband who has disappeared or cannot be contacted for a long period of time (Ahmad Dahlan et al., 2022). In Islamic law, this situation gives the wife the right to file for divorce. Ghoib divorce refers to a situation where a husband leaves his wife and children without news, so that the wife feels compelled to file for divorce. In fiqh terms, a husband who has no news is referred to as Al-Mafqud (Novita Dwi Lestari, 2018).

This uncertainty of marital status can cause various legal and social problems for the wife and children, including difficulties in meeting the needs of life, child custody, and the division of joint property. Therefore, ghoib divorce serves as a legal mechanism that allows the wife to obtain clarity on marital status and protect her rights, so that she can continue her life better and

in an orderly manner (Sabian Uthman and Nurpahsari, 2020). In addition, ghoib divorce also reflects the concern in Islamic law with the social and psychological conditions of the individuals involved, as well as efforts to provide justice in difficult situations (Nilam Permata Sari et al., 2024).

Factors Causing Ghoib's Divorce

A divorce can be said to be an unholy divorce when a wife files for divorce with a condition where the husband as the defendant is not known to exist or vice versa. From this understanding, the term ghoib wife or husband emerged (Eka Ristianawati, 2024). Basically, a ghoib divorce can be done with certain terms or conditions. Therefore, a wife/husband cannot arbitrarily file for a ghoib divorce against his husband/wife. But on the other hand, this supernatural divorce can be one of the best solutions for society, especially wives, who are in a bad marital relationship. In this case, for example, because her husband left without saying goodbye or because her husband suddenly disappeared for a long time without his whereabouts being known (Kiki Agung Mentari, 2023). There are several provisions that regulate ghoib divorce, including the following:

1. Law Number 7 of 1989 concerning Religious Justice (UUPA)

In the "Collection of Laws and Regulations Related to the Compilation of Islamic Law with Definitions in its Discussion" published by the Supreme Court, it is stated that several articles related to divorce lawsuits (divorce where the wife is the plaintiff and the husband is the defendant) are regulated in several articles in this UUPA, including Articles 73 to 86. Article 73 paragraph (3) of the UUPA states: In the event that the plaintiff and the defendant reside abroad, the lawsuit shall be filed with the Court whose jurisdiction includes the place where their marriage was held or to the Central Jakarta Religious Court. Thus, this provision applies to wives who want to sue their husbands in the condition that they (the wife as the plaintiff) are abroad. If the address of the husband (as the defendant) is unknown, then (based on this rule) it is permissible for the wife to file a lawsuit to the husband's last place of residence or the place where the marriage took place or to the Central Jakarta Religious Court as a last resort.

2. Article 139 Compilation of Islamic Law (KHI)

In the KHI, it is clearly stated that when the address or place of residence of the defendant is unknown, the Religious Court will make an open summons by making an announcement that can be seen by the public. The following is a description of the contents of Article 139 of the KHI:

a. If the defendant is unclear about his place of residence or the defendant does not have a permanent residence, the summons is made by announcing the lawsuit on the notice board of the religious court and announcing it in one or more newspapers or other media in accordance with the provisions applicable in the Religious Court.
b. Announcements through newspapers or or mass media paragraph (1) are carried out 2 (two) times with a margin of one month between the first announcement and the second announcement. The grace period between the announcement of the last summons as intended in paragraph (2) and the day of the trial is set at least 3 (three) months. With the record that it has been done as intended in paragraph (2) and the defendant or his attorney is still absent from the trial, at the first hearing the lawsuit is accepted and granted without the presence of the defendant, except if the lawsuit is without rights and without reason.

3. Instruction of the President of the Republic of Indonesia number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI).

4. Several Articles in Government Regulation No. 9 of 1975 (PP 9/1975) concerning the Implementation of Law No. 1 of 1974 concerning Marriage (Marriage Law) Articles 20, 21, 27 and 28 of PP 9/1975).
5. The conditions for Goib Divorce include:
   a) The applicant/plaintiff can no longer contact his or her spouse in various ways.
   b) The address or residence of the husband/wife has been unknown for a long time. If the husband/wife is no longer able to carry out their obligations as they should, such as providing birth and mental support (Annisa Ulfa Haryati, 2022).

Judge's Decision in Deciding Ghoib's Divorce Case

Judge's Legal Considerations can be used in two senses, namely in a broad and narrow sense (Aditya Yuli Sulistyawan and Aldio Fahrezi Permana Atmaja, 2021). In a broad sense, the judge's legal considerations are related to the psychological process carried out by the judge to arrive at a verdict on the case he faces (Rd. Singgih Hasanul Baluqia and Puti Priyana, 2021), while the judge's legal considerations in a narrow sense are related to the arguments that underlie a decision, meaning it concerns the study of the logic of a decision, namely the relationship between consideration and decision, as well as the accuracy of the reasons or considerations that support the decision (Aditya Yuli Sulistyawan and Aldio Fahrezi Permana Atmaja, 2021).

Arguments as the basis and method of discovery of the law of the judge which is also used by the judge as a consideration. Legal Argumentation is "a reason in the form of a clearly explained description, in the form of a series of logical statements, to strengthen or reject an opinion, stance or idea, related to legal principles, legal norms and concrete legal regulations, as well as legal systems and legal discoveries" (Fitri Widayanti, 2024). A meaningful argument, only built on the basis of logic, is a "conditio sine qua non" so that a decision can be accepted, that is, if it is based on a reasoning process, in accordance with the formal logic system which is an absolute requirement in arguing (Siti Nur Intihani, 2021). These arguments must be formulated and arranged carefully, coherently, systematically using good and correct legal language.

The basis for the panel of judges' consideration of the supernatural divorce decision at the Purworejo Religious Court, there is information from the village where the Petitioner or the Plaintiff lives that the husband or wife of the Petitioner or the Plaintiff has left their residence without informing the aiamat that Jeias is where. On that basis, the Applicant or the Plaintiff can file a lawsuit supernaturally. In the case of supernatural divorce, the trial process will take 4 (four) months after the lawsuit or application is registered or the case registry number is obtained. Because of the 4 months, the husband or wife who has left his residence will be announced through the announcement of the Purworejo Religious Court, after 4 months there is no news or kabamya, then the trial process will be held by directly presenting witnesses from the applicant or plaintiff.

The Judge's consideration in the Religious Court Decision is that even though the defendant has been officially and appropriately summoned, the defendant did not appear in the trial and the defendant's absence was not caused by a legitimate obstruction, it was required to be examined in verstek (Singgih Hasanul Baluqia and Puti Priyana, 2021). The verstek decision is related to the provisions of article 125 of the HIR, namely that a verdict handed down without the presence of the defendant can be granted as long as it is based on law and reasonable. If the Respondent (the defendant) leaves the mutually agreed place of residence without the permission of the Applicant (plaintiff), the application must be submitted to the religious court whose jurisdiction includes the

residence of the Applicant (plaintiff). This supernatural lawsuit is intended when one of the spouses (defendants) leaves one of the parties (plaintiffs) (Aan Sastra, Abdul Aziz, and Ahmad Arif Hidayat, 2024). for several months and its exact whereabouts are unknown, but it is still estimated that the territory of the Unitary State of Indonesia is still estimated.

CONCLUSION

The court has a long history since it was established in Kutoarjo in 1887 until it is located on Jalan Pahlawan, Purworejo, with a new building inaugurated in 2012. In street vendors, students learn aspects of court administration, such as reception, PTSP, filing, and court observation. The high number of divorce cases, including ghoib lawsuits, is a major concern in these Religious Courts, reflecting the significant divorce rate in Indonesia. In 2024, there will be 99 cases of ghoib divorce, covering 6.6% of the total cases received. Ghoib divorce is a legal solution for wives to end their marriage with a husband whose whereabouts are unknown. In Islamic law, this divorce functions to protect the rights of the wife from the uncertainty of marital status due to the disappearance of the husband. This process aims to provide justice, protect the wife's socio-psychological condition, and ensure clarity of marital status for the sake of a more orderly life sustainability. A supernatural divorce occurs because the husband or wife disappears without news for a long time, leaving behind obligations, such as birth and mental maintenance. This procedure is regulated in legislation, such as Law Number 7 of 1989, Compilation of Islamic Law (KHI), and Government Regulation Number 9 of 1975. If the defendant's address is unknown, the court will summon him through the mass media. The main condition is the inability of the plaintiff to contact his or her spouse by any means. The judge considers legal, social, and formal logical aspects in deciding a ghoib divorce case. The trial process began four months after the lawsuit was filed, with the defendant summoning it through a public announcement. If the defendant remains absent without a valid reason, the verdict can be made verstek, as stipulated in Article 125 of the HIR. This process shows a judicial system that upholds justice even though the defendant is not present.

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