



**Divorce Petition Against Drug User Husband:
Case Study of Kuala Simpang Syar'iyah Court Decision, Aceh Tamiang**

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Abstract

A wife can file for divorce for a variety of reasons, one of which is because her husband is involved in a drug case. The purpose of this study is to determine the factors considered by Kuala Simpang Syar'iyah Court judges in deciding divorce cases involving drug-user husbands from the standpoint of Islamic law. This study employs empirical research methodologies that are examined using Islamic legal philosophy. This case study examines the judge's ruling at the Kuala Simpang Syar'iyah court in Aceh Tamiang. The court bases its judgment on the state of being detrimental in the family, as the decision of the wife's petition against her drug-using husband is not governed by any law or other regulations. According to the Maliki and Hambali Schools of Thought, a wife may file for divorce from her drug-using husband before a court under Islamic family law. Because the plaintiff and defendant's domestic lives were no longer harmonious since her husband began using drugs, her husband frequently became violent when under the influence of drugs. Thus, the judge's considerations align with Islamic law norms aimed at promoting and protecting the wife and family.

Keywords: Divorce, drugs, judge's decision, sharia court, Islamic family law

Abstrak

Seorang istri dapat mengajukan gugatan cerai karena beberapa alasan, salah satunya adalah karena suaminya terlibat dalam kasus narkoba. Penelitian ini bertujuan untuk mengetahui faktor-faktor yang dipertimbangkan oleh hakim Mahkamah Syar'iyah Kuala Simpang dalam memutuskan perkara perceraian yang melibatkan suami pengguna narkoba ditinjau dari sudut pandang hukum Islam. Studi ini menggunakan metodologi penelitian empiris yang dikaji dengan menggunakan filsafat hukum Islam. Studi kasus ini meneliti putusan hakim di Pengadilan Syar'iyah Kuala Simpang, Aceh Tamiang. Pengadilan mendasarkan putusannya pada keadaan yang merugikan dalam keluarga, karena keputusan permohonan istri terhadap suaminya yang menggunakan narkoba tidak diatur dalam undang-undang atau peraturan lainnya. Menurut Mazhab Maliki dan Hambali, seorang istri dapat mengajukan gugatan cerai terhadap suaminya yang menggunakan narkoba ke pengadilan berdasarkan hukum keluarga Islam. Karena kehidupan rumah tangga penggugat dan tergugat sudah tidak harmonis lagi sejak suaminya menggunakan narkoba, suaminya sering melakukan kekerasan ketika berada di bawah pengaruh narkoba. Dengan demikian, pertimbangan hakim sejalan dengan norma hukum Islam yang bertujuan untuk mempromosikan dan melindungi istri dan keluarga.

Katakunci: *Perceraian, narkoba, keputusan hakim, pengadilan syariah, hukum keluarga Islam*

Introduction

Divorce is a household dynamic. Although the purpose of marriage is not divorce and divorce is a last resort, the underlying factors that contribute to it are different. Divorce and marriage are both present and intricately linked to one another.¹ Divorce may happen for various reasons, including but not limited to the passing of one spouse, an incompatible household dynamic, marital strife, or the biological incapacity of one spouse to perform his or her duties.²

Essentially, individuals who choose to divorce must have their justifications for terminating their marriage. Marriage dissolution can occur through *talak* or as a result of a divorce petition. Consequently, there are two distinct forms of divorce, namely *talak* divorce and judicial divorce, as evident

¹ Fajri M. Kasim, et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syari'ah* 22, No. 2 (2022). Euis Nurlaelawati and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia," *al-Jami'ah: Journal of Islamic Studies* 51, No. 2 (2013).

² Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at The Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, No. 1 (2021). Boedi Abdullah dan Beni Ahmad Saebani, *Perkawinan dan Perceraian Keluarga Muslim* (Bandung: Pustaka Setia, 2013), p. 49.

from numerous legal provisions. Talak is initiated by the husband for divorce, while judicial divorce is a legal petition initiated by the wife.³

Nowadays, wives file more divorce petitions than husbands. This is due to a variety of causes, including economic factors, domestic disputes, the involvement of third parties or infidelity, and the husband's involvement in drug cases. However, one thing that frequently occurs nowadays is the divorce caused by the husband's drug problem, which results in no longer having harmony in the household, so the wife gives up and is no longer able to deal with the husband's attitude, who is always angry and rude to his children and wife.

The Panel of Judges at the Kuala Simpang Syar'iyah Court grants the divorce petition filed by the wife or plaintiff in Decision number 74/Pdt.G/2019/ms-ksg. In the *posita*, the plaintiff and the defendant are husband and wife who got married at KUA Karang Baru. Initially, the plaintiff and defendant's household was peaceful. However, in 2011, the plaintiff's husband started using crystal methamphetamine, leading to conflicts. An argument ensued between the plaintiff and the defendant. During the argument, the defendant hit and slammed his first child and also often got angry and behaved rudely towards his wife (the defendant's habit when he was not taking or using drugs).⁴

The consumption of drugs poses significant risks, both physical and psychological, to the family or its surroundings. Hence, considering the case's description, it is challenging to establish a harmonious and loving family, known as *sakinah mawaddah wa rahmah*, between the plaintiff and the defendant because of this drug problem. Therefore, it is advisable to end the marriage through divorce.

Divorce is permissible according to Islamic law, but it is also something that Allah SWT strongly detests. However, this act is unacceptable unless carried out in an urgent emergency. Allah also hates divorce as it undermines the bonds of relationships between families, which are meant to generate several advantages that serve as the essence of marriage.⁵

Law No. 1 of 1974 concerning marriage does not directly state the reasons why a wife can file a divorce against a drug user; however, Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning marriage, in Article 19, states the permissible grounds for divorce:

1. One of the parties commits adultery or is a drunkard, adulterer, and so on, which is difficult to cure.

³ A. Mukti Arto, *Praktek Perkara Perdata Pada Pengadilan Agama*, (Yogyakarta: Pustaka Pelajar, 1998), hlm. 202. Soraya Devy, et.al., "The Implementation of Verdict Execution on Providing Maḍiyah Maintenance Following Divorce According to Islamic Law (Case Study in Syar'iyah Court Banda Aceh)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 2 (2020).

⁴ Copy of Kuala Simpang Syar'iyah Court Decision Case Number 74/Pdt.G/2019/Ms-Ksg

⁵ Sayyid Sabiq, *Fiqh Sunnah*, Jilid III, (Terj. Abu Syaqqina, Abu Aulia Rahma), (Jakarta: PT. Tinta Abadi Gemilang, 2013), p. 527.

2. One party leaves the other party for 2 (two) consecutive years without the other party's permission, without a valid reason, or for other reasons beyond his or her will.
3. One of the parties receives a prison sentence of 5 years or a heavier sentence after the marriage happens.
4. One party commits severe cruelty or abuse that endangers the other party.
5. One of the parties suffers from a physical disability or illness, which results in being unable to carry out their obligations as husband or wife.
6. There are constant disputes and quarrels between husband and wife, and there is no hope of living in harmony in the household anymore.⁶

The persistent conflicts and arguments arising from the husband's drug addiction have led to a complete absence of physical and mental well-being in the plaintiff and defendant's household. Furthermore, the defendant, who is being prosecuted for his reliance on methamphetamine, has not provided clarity and resolution, leaving no prospect of rebuilding the household. Therefore, the plaintiff decided to end the marriage by judicial divorce.

Studies of divorce initiated by wives against spouses who engage in drug use are significant area of study that remain relatively underexplored by scholars. Hence, the primary purpose of this study is to uncover the judge's rationale behind the husband's drug use in the given situation, emphasizing the need for urgency. This study employs empirical research methodologies, which are scrutinized through the lens of Islamic legal theory. This study entails a case analysis of the judge's decision in the Kuala Simpang Syar'iyah court in Aceh Tamiang.

Divorce in Islamic Law Perspective

1. Definition and Legal Framework

In *fiqh*iyah, the word "divorce" is known as *ath-thalaq*, which means letting go or freeing of the knot (*hal al-qaid*), meaning the release of the husband from his wife. In general terms, divorce is the severance of a relationship or marital bond between a man and a woman (husband and wife). If referred to in *fiqh* books, the word divorce, or *thalaq*, means "dissolution" as opposed to "gathered," which means divorce between husband and wife.⁷

Ali Hasballah said that, etymologically, *al-furqah* comes from the word *faraqa*, meaning to separate. However, the *fuqaha* states that if it is related to husband-and-wife issues, it represents the breakdown of the marital relationship between the two. A similar thing was stated by Wahbah Zuhayli: *al-furqah* is the end of a marriage relationship, or the termination of a husband and wife relationship due to a cause, or the end of the marriage contract due to a cause. However, *madhhab*

⁶ Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage.

⁷Ahmad Rajafi, *Cerai Karena Poligami*, (Yogyakarta: Istana Publishing, 2018), p. 10

ulema do not use the term *al-furqah* but use *talaq* and *fasakh*, whereas *al-furqah* was coined by contemporary ulema.⁸

Divorce in Article 38 of UUP No. 1 of 1974 is a "breakup of marriage." According to Article 1 of UUP No. 1 of 1974, marriage is defined as "a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God." So divorce is the separation of the spiritual and physical bond between husband and wife, which results in the end of the family (household) relationship between husband and wife.

The Compilation of Islamic Law (KHI) does not define divorce, although it does regulate divorce-related issues under articles 113 to 148. Looking at the contents of these articles, it is clear that the divorce procedure is difficult since there must be strong reasons, and these reasons must be completely legal. This is supported in KHI Article 115, which states: "Divorce can only be carried out in front of a court session after the court has tried and failed to reconcile the two parties."

Based on the Compilation of Islamic Law (KHI) article 115, as stated above, what is meant by divorce from the Compilation of Islamic Law (KHI) perspective is the process of pronouncing the divorce vow (*talaq*), which must be carried out in front of a trial and witnessed by the judges of the Religious Court/Syar'iyah Court.⁹

According to Islamic law, divorce is considered inevitable due to the impermanent nature of human households, despite the goal of marriage being to establish a lasting and joyful family. Therefore, *Munakahat fiqh* regulates the procedures for divorce in such detail that even a husband who wants to divorce his wife must know the correct etiquette. Islamic Sharia justifies divorce, but it emphasizes the importance of carrying out the divorce in the correct manner. Divorce must bring more benefits to the lives of the husband and wife, making it the primary reason for divorce according to Islamic law. Thus, divorce must be the only way to implement it.¹⁰

Islamic law provides a way for wives who wish to divorce, just as Islamic law provides a way for husbands to divorce their wives using *talak*. The legal basis for divorce is:

1. Al-Qur'an (QS. Al-Baqarah [2]: 229):

⁸ Agustin Hanapi, *Konsep Perceraian Dalam Islam*, (Banda Aceh: Fakultas Syari'ah dan Hukum UIN Ar-Raniry, 2018) p.196

⁹ Muhammad Arsad Nasution, "Perceraian Menurut Kompilasi Hukum Islam (KHI) dan Fiqh" *Jurnal El-Qanuny* 4 No 2, (2018), p.157.

¹⁰Boedi Abdullah dan Beni Ahmad Saebani, *Perkawinan dan Perceraian Keluarga Muslim* (Bandung: Pustaka Setia, 2013), p. 58-60

الطَّلُقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَنٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: Divorce may be retracted twice, then the husband must retain 'his wife' with honour or separate 'from her' with grace. It is not lawful for husbands to take back anything of the dowry given to their wives, unless the couple fears not being able to keep within the limits of Allah. So if you fear they will not be able to keep within the limits of Allah, there is no blame if the wife compensates the husband to obtain divorce.³ These are the limits set by Allah, so do not transgress them. And whoever transgresses the limits of Allah, they are the 'true' wrongdoers. (QS. Al-Baqarah: 229).

2. Hadith of the Prophet Muhammad Saw.

As a legal basis for the hadith, as stated by Al-Shan'ani, Thabit bin Qais bin Syam's wife, Jamilah, came to Rasulullah SAW to complain about herself regarding her husband, as follows:

رَسُولِيَا فَالْكَفْرَ أَكْرَهُوْا كَيْدِيْنَوَ لَخُلْفِعِيْهَا عَيْبًا إِنِّيْ أَمَّا إِنِّيْ قَيْسِيْنُنَّابِنْتُاللَّهِ الْإِسْلَامِ

Meaning: O Messenger of Allah, towards Thabit bin Qais I do not criticize him regarding his character and religion, but I hate *kufur* (towards his husband) in Islam.

3. Law and Regulation

The legal basis for divorce is regulated in articles 38 to 41 of Law No. 1 of 1974 concerning marriage, namely: Article 38 A marriage can be dissolved due to: 1) death; 2) divorce; and 3) a court decision.

According to KHI Article 39, it is explained that: 1) Divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties. 2) To divorce, there must be sufficient reasons that the husband and wife will not be able to live in harmony as husband and wife. 3) Separate statutory regulations govern the procedures for divorce before a court hearing. Then Article 40: 1) A divorce lawsuit is filed with the court; 2) The procedures for filing a lawsuit as stated in paragraph (1) of this article are regulated in separate legislation. Article 41 The consequences of the dissolution of a marriage due to divorce are: 1) both the mother and father remain obliged to care for and educate their children, solely based on the interests of the children; 2) the court gives its decision;

- 1) The father is responsible for all maintenance and education costs required by the child; if the father is in fact unable to fulfill these obligations, the court determines that the mother also bear the costs;

- 2) The court can require the ex-husband to provide living expenses and/or determine obligations for the ex-wife.¹¹

2. Types of Divorce

There are various reasons why a marriage can end, including divorce imposed by the husband on his wife, divorce that occurs between the two of them, or other reasons. Broadly speaking, in terms of whether or not reconciliation is permissible, there are two types of divorce:

1. *Talaq Raj'i*

Talaq raj'i is a divorce imposed by a husband on his wife, whom he has had intercourse with and is still in the *iddah* period. In other conditions, the husband has the right to take back the wife again, whether the wife agrees or not. *Talaq raj'i* is a divorce that the husband imposes on his wife as a first or second *talaq*. If the wife has the status of *iddah talaq raj'i*, the husband may reconcile with his wife without a new marriage contract, without witness, and without a new dowry.¹² In Islamic law, *talaq raj'i* has several forms, including the first *talaq* and the second *talaq* used with payment (*iwad*). However, there can also be a *talaq raj'i* in the form of a first *talaq* and two *talaq* without *iwad*, and they have not been consummated yet.¹³

2. *Talaq Ba'in*

Talaq ba'in, is an irrevocable divorce, except for a new marriage even during the *iddah* period, similar to a divorce of a woman who has not been consummated. Types of *talaq ba'in* are: 1) women who are divorced before having sexual intercourse; 2) women who were divorced three times; and 3) menopause women, because women who do not menstruate anymore have a similar *iddah* period as women who have not been consummated yet.¹⁴

According to the ulema, *talaq ba'in* is applicable only when imposed on a wife who has not been consummated. *Talaq ba'in* is the third *talaq* pronounced by the husband to the wife, and it is valid because there is a ransom from the wife during *khuluk*. However, there is a difference among the ulemas regarding the classification of *khuluk* as *talak* or *fasakh*. They also agreed that three consecutive *talaks* are considered *talak ba'in*. There are two types of *talaq ba'in*, namely:

- 1) *Talaq Ba'in Sugra*: This divorce can end the marriage bond, meaning that if a divorce has occurred, the wife is considered free to make her choice after the end of her *iddah*.

¹¹ Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.

¹² Tihami and Sohari Sahrani, *Fikih Munakahat: Kajian Fikih Nikah Lengkap* (Jakarta: Rajawali Pers, 2010), p. 244.

¹³ Muhammad Syaifuddin, et.al., *Hukum Perceraian* (Jakarta: Sinar Grafika, 2013), p. 124.

¹⁴ Boedi Abdullah and Beni Ahmad Saebani, *Perkawinan dan Perceraian Keluarga Muslim...* p. 222.

- 2) *Talaq Ba'in Kubra*: This is an irrevocable divorce unless the wife has married another man and divorced again. The marriage must be valid and should not be fabricated, as in a *muhallil* marriage.¹⁵

3. Reasons for Divorce

Divorce can only be granted for specific circumstances, as outlined in the law and regulations.¹⁶ In PP No. 9 of 1975, concerning the Implementation of Law No. 1 of 1974, specifically Article 19, which stipulates that divorce may be carried out for a variety of reasons. Article 39, paragraph 2 of Marriage Law Number 1 of 1974, in conjunction with Article 19 of PP Number 9 of 1975, specifies that in order to divorce, there must be adequate reasons that the husband and wife can no longer get along as husband and wife. The details are as follows:

- a. One of the parties commits adultery or becomes a drunkard, addict, gambler, etc., which is difficult to cure;
- b. One party leaves the other party for 2 (two) consecutive years without the permission of the other party, without a valid reason, or for other reasons beyond his or her will.
- c. One of the parties receives a prison sentence of 5 years or a heavier sentence after the marriage takes place.
- d. One party commits cruelty or serious abuse that endangers the other party.
- e. One of the parties has a physical disability or illness that prevents them from carrying out their responsibilities as a husband or wife.
- f. There are constant disputes and quarrels between husband and wife, and there is no possibility of living in harmony in the household anymore.¹⁷

Apart from the reasons stated above, in Article 116 KHI, the Compilation of Islamic Law, there are two additional reasons for divorce: a) The husband violates the divorce agreement; b) A change in religion or apostasy causes disharmony in the household.¹⁸

Meanwhile, other reasons include: 1) the husband's inability to make a living or fulfil the wife's clothing, food, shelter, and health needs. If the wife cannot accept this circumstance, she requests that the husband divorce her, whereas if the wife truly cannot accept it, the court divorces her. 2) Because the husband acts violently, for example, by hitting his wife, to protect the wife's rights and safety, the court has the authority to divorce him at the request of the person concerned. 3) Her husband is never at home because he has gone for a long time; Imam Malik did not distinguish if the departure is for the sake of seeking knowledge, business, or other reasons. In addition, the wife is unable to accept the circumstances and feels betrayed; the court

¹⁵ Boedi Abdullah and Beni Ahmad Saebani, *Perkawinan dan Perceraian Keluarga Muslim...* p. 126.

¹⁶ Zainal Abidin Abubakar, *Kumpulan Peraturan Perundangan-Undangan Dalam Lingkungan Peradilan Agama* (Jakarta: Yayasan Al-hikmah, 1993), p. 390.

¹⁷ Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage.

¹⁸ Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law.

can divorce her from her husband. In terms of how long the husband has been gone, each community or country may set its own legal limits. 4) The husband is detained or imprisoned. If the wife cannot accept these circumstances, she has the legal right to file for divorce.¹⁹

- a. According to Hamidy, the following are the causes for divorce in Islamic law:
- b. There is no longer any harmony or balance in the household. There is no longer an affectionate emotion, which is the objective and wisdom of marriage.
- c. Because one of the parties converted to another religion (apostasy).
- d. One party commits a horrible act forbidden by religion.
- e. The wife requested a divorce from her husband on the grounds that he did not apologise (forgive) for the reason he was looking for and caused her trouble.
- f. The husband refuses to grant the wife's right.
- g. The husband violates the marriage contract's promise (taklik talak).²⁰

Meanwhile, Sayyid Sabiq argues that the causes of divorce are that the husband never provides a living, abuses the wife, is unseen (distanced), and is sentenced to prison.²¹ The dissolution of marriage in this case means the end of the husband-and-wife relationship. Marriage dissolution comes in several forms, depending on who actually wants the marriage to be dissolved. In this case, there are four possibilities:

1. The dissolution of a marriage by God's own will occurs through the death of one of the husband and wife. With death, the marriage relationship automatically ends.
2. For certain reasons, the husband pronounces his will to dissolve the marriage using specific words. Divorce in this way is known as *talaq*.
3. The marriage ends at the request of the wife because she sees something that wants the marriage to end, although the husband does not. The husband accepts the wife's request to dissolve the marriage in a specific way, followed by his statement ending the marriage. This method of dissolving a marriage is known as *khulu'*.

The dissolution of a marriage is based on the will of the judge as a third party after seeing something in the husband and/or wife that indicates that the marital relationship cannot continue. This form of marriage dissolution is known as *fasakh*.

Divorce Mechanism at the Aceh Syar'iyah Court

The Syar'iyah Court is a judicial institution that, according to Law No. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh Province as

¹⁹ Law no. 1 of 1974 concerning Marriage.

²⁰ Ahmad Zuhri Nafi, "Perceraian Karena Intervensi Orang Tua Terhadap Rumah Tangga Anak, *Jurnal Ulumuddin* 8, No. 2 (2018), p.121.

²¹ Ahmad Zuhri Nafi, "Perceraian Karena Intervensi Orang Tua", p. 122.

Nanggroe Aceh Darussalam Province, was formed to carry out Islamic Sharia Courts in NAD Province as part of the National Judicial System. According to this law, the authority of the Syar'iyah Court is based on Islamic Sharia in the national legal system, which will be regulated in the NAD Province of Qanun. This law also emphasises that this authority only applies to Muslims.²²

The power and authority of the Syar'iyah Court and Provincial Syar'iyah Court are equivalent to those of the Religious Court and High Religious Court. Additionally, they have additional powers and authorities pertaining to community life in the realm of worship and Islamic syi'ar, as specified in the Qanun.

The Sharia Court is a judicial institution that was formed based on Qanun Number 11 of 2002 concerning Islamic Sharia Courts and implements Islamic Sharia in the Nanggroe Aceh Darussalam Province area. It serves as an extension of the pre-existing Religious Courts.²³ Both the Religious Courts and the Syar'iyah Court have the same competence, including handling cases in the field of marriage where divorce is filed. One of them is a lawsuit filed by the wife, also called a judicial divorce case.

In a judicial divorce case, the wife or her legal representative files a divorce with the Syar'iyah Court, whose jurisdiction falls within the wife's area of residence as the plaintiff. Unless the wife leaves the shared residence without the husband's permission, the lawsuit must be addressed to the Syar'iyah Court, whose jurisdiction covers the husband's residence. The divorce filed by the wife must be accompanied by the following requirements:

4. National Identity Card (KTP)
5. Divorce certificate from the village/sub-district head
6. Marriage Certificate Excerpt
7. Divorce permission letter from superiors for Civil Servants (PNS) or members of the Indonesian National Army (TNI) or Indonesian National Police (POLRI)
8. Photocopy of child's birth certificate (if you have children)
9. Pay a down payment on case fees according to applicable regulations.

The Syar'iyah Court examines the divorce petition within 30 (thirty) days of registering it at the Registrar's Office of the Syar'iyah Court. The Syar'iyah Court conducts the examination of the divorce petition in a closed session. The judge must summon both parties to hear their statements at trial; the judge cannot only hear the testimony of one party. When the parties come, the judge tries to reconcile both parties, and the judge examining the divorce case must try to reconcile the two parties. If both parties are present but cannot be reconciled, the next step is to read the petition letter. After that, the defendant's answer, the plaintiff's reply, the defendant's rejoinder, and proof, namely the examination of evidence, both letters

²²Hamid Sarong and Husnul Arifin Melayu, *Mahkamah Syar'iyah Aceh Lintasan Sejarah dan Eksistensinya* (Banda Aceh: Global Education Institute, 2012), p. 71-72.

²³Mardani, *Hukum Acara Perdata Peradilan Agama & Mahkamah Syar'iyah* (Jakarta: sinar Grafika, 2009), p. 30.

and witnesses, are given to the parties, and in turn, the plaintiff is given the opportunity first. The next event is the conclusion by the plaintiff and defendant, and the last is the reading of the verdict, in which the judge's decision is read in a court session open to the public.²⁴ If the parties are not satisfied with the judge decision, the parties can file an appeal and cassation.

The Syar'iyah Court Registrar delivers a copy of the decision letter to the husband, wife, or their representative by placing an excerpt from the marriage certificate of each person concerned and making a note in the space provided on the marriage certificate excerpt that they have divorced. The record contains the place where the divorce occurred, the date of the divorce, the number and date of the decision letter, and the signature of the registrar. Additionally, the Syar'iyah Court Registrar must provide a divorce certificate to the husband and wife within 7 (seven) days after the divorce decision becomes legally binding.

Subsequently, within a maximum of 30 days following the finalisation of the divorce ruling, the Registrar of the Syar'iyah Court is required to send an officially stamped copy of the divorce decision to the Marriage Registrar, located within the jurisdiction of the husband and wife's place of residence. Upon obtaining a duplicate of the official divorce decision from the Syar'iyah Court's Registrar, the Marriage Registrar Officer in the wife's jurisdiction is required to register the divorce in a designated book for judicial divorce registrations. The marriage registrar is required to sign the divorce registration book. Subsequently, the staff at the Marriage Registrar incorporates it into the records concerning the event of a divorce.

If the Marriage Registrar staff in the wife's area is in a different court than the Marriage Registrar staff where the marriage occurred, the Marriage Registrar where the marriage occurred also receives a copy of the divorce decision without a stamp, and is required to provide a note in the marriage certificate column. All the relevant information, including the location and date of the divorce, as well as the date and number of the court decision, is included in the record.²⁵

Judge's Consideration of the divorce decision at the Syar'iyah Court in Kuala Simpang

The judge's considerations at the Kuala Simpang Syar'iyah Court in the divorce case were made on the divorce petition decision sheet number 74/Pdt.G/2019/Ms.Ksg. The judge decided this divorce case after considering the testimony and evidence presented in the trial.

The Kuala Simpang Syar'iyah Court stated, especially from evidence P.2, that it was proven that the Kuala Simpang District Court's decision Number 248/Pid.sus/2018/PN.Ksp for the defendant was declared legally proven and convinced the defendant was guilty of committing a criminal act without right and

²⁴ Musthofa, *Kepaniteraan Peradilan Agama*, (Jakarta: Kencana, 2005), p. 92.

²⁵ Guidelines for the implementation of duties and administration of religious courts, book II, revised edition 2010, (Indonesian Supreme Court Directorate General of Religious Courts: November, 2011)

against the law bought and sold class 1 narcotics in the form of crystal methamphetamine and has been sentenced to 8 years in prison and a fine of Rp. 800,000.- (eight hundred thousand rupiah) with the provision that if it is not paid it will be replaced by imprisonment for 4 months and because the decision has permanent legal force, the provisions as stated in Article 19 letter (c) in conjunction with Article 23 of the Republic of Indonesia Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 is deemed to have been fulfilled.

The Kuala Simpang Syar'iyah Court also gave consideration on the basis of the Plaintiff's statement in relation to the evidence at the trial. The Panel of Judges found the legal facts in this case as follows:

1. Whereas the Plaintiff married the Defendant on May 25, 2007 in Karang Baru District, Aceh Tamiang Regency;
2. Whereas the household conditions of the Plaintiff and Defendant are no longer harmonious and they no longer live in the same house because the Defendant is serving a prison sentence for committing a crime,
3. That the Defendant is guilty of committing a criminal act without rights and unlawfully possessing class 1 narcotics in the form of crystal methamphetamine and has been sentenced to 8 years in prison and a fine of Rp. 800,000 (eight hundred thousand rupiah), with the provision that if it is not paid, it will be replaced by 4 months imprisonment;
4. Whereas up to now, the Defendant is still in detention;
5. Whereas the Panel has tried to advise the Plaintiff to be patient in waiting for the Defendant until the end of his detention period, but the Plaintiff still does not want to reconcile with the Defendant.²⁶

The Panel of Judges in the Kuala Simpang Syar'iyah Court concluded that the Plaintiff successfully proved the claim that the Plaintiff and Defendant's household were no longer in harmony due to the Defendant's conviction of a criminal act, resulting in an 8-year prison sentence.

In trying to decide this divorce case, the Kuala Simpang Syar'iyah Court also considered that given the domestic conditions experienced by the Plaintiff and Defendant, the Panel of Judges was of the opinion that it was very difficult to create the goal of an eternal, happy, *sakinah*, *mawaddah*, and *rahmah* marriage, as addressed to Article 1 of Law Number 1 of 1974 jo.

Furthermore, the judges of the Kuala Simpang Syar'iyah Court consider divorce to be halal but highly detested by Allah SWT, and thus it should be avoided as much as possible by every married couple. But in maintaining the marriage of the plaintiff and defendant under the conditions mentioned above, the panel of judges is of the opinion that it will actually bring greater harm than the benefits, including prolonged mental suffering. Rejecting *mafsadat* is more prioritised than attracting benefits, as per the rules of fiqh and taken into consideration by the Council:²⁷

²⁶ Court Divorce Decision No.74/Pdt.G/2019/ Ms.Ksg, p. 8-9.

²⁷ Court Divorce Decision No.74/Pdt.G/2019/ Ms.Ksg, p. 9.

1. Considering that, based on the considerations mentioned above, the Panel is of the opinion that the reasons for the Plaintiff's divorce have been proven and fulfil the provisions of Article 39 paragraph (2) of Law Number 1 of 1974 in conjunction with Article 19 letter (c) Article 23 of Government Regulation Number 9 of 1975 and Article 116 letter (c) Article 135 of the Compilation of Islamic Law, therefore, the Plaintiff's petition should be granted by imposing one *bain sughra* divorce from the Defendant against the Plaintiff;
2. Considering that the Defendant who had been officially and properly summoned to appear before the trial, was not present, nor did he send a representative or proxy, it was not found that his absence was due to a valid reason, whereas the argument of the Plaintiff's claim was proven and reasonable and was not against the law; therefore, based on Article 149 paragraph (1) RBg, the Plaintiff's lawsuit was granted with *verstek*;
3. Considering that, in accordance with the provisions of Article 89, Paragraph 1, of Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006, most recently amended by Law Number 50 of 2009, all case costs are borne by the Plaintiff.

Given the foregoing reasons, as well as the relevant laws and regulations, as well as the Sharia arguments in this case, the Kuala Simpang Syar'iyah Court decided to adjudicate and impose the following sanctions:

1. Declare that the Defendant, who has been officially summoned and is fit to appear at trial, is not present.
2. Granted the Plaintiff's petition with *Verstek*.
3. Imposing one *bain sughra* divorce from the Defendant against the Plaintiff.
4. Charges the Plaintiff to pay court costs amounting to Rp. 401,000,- (four hundred thousand rupiah).²⁸

So, from the perspective of the wife who filed for divorce against her husband, who is a drug user, because of the many disadvantages rather than the benefits of her marriage, the judge's decision to accept the divorce petition was completely correct, especially given the witnesses and evidence presented during the trial. Because, as stated in Article 1 of Law Number 1 of 1974, the purpose of a family is to create an eternal, happy, *sakinah, mawaddah, and rahmah* marriage. However, in this domestic dispute between the defendant and the plaintiff, the wife will only suffer mentally for an extended period of time. Her marriage is no longer harmonious since her husband is a drug addict.

The perspective of Islamic Law on Divorce Petition to Drug User Husbands

According to Islamic law, which refers to the Quran in Surah Al-Baqarah, drugs are included in the class of *khamr* (intoxicating drinks), which is forbidden (*haram*). This is because the dangers of *khamr* are greater than its benefits. Surah Al-Baqarah, verse 219, explains that:

²⁸ Court Divorce Decision No.74/Pdt.G/2019/ Ms.Ksg, p. 10.

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ وَإِنَّهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَتَفَكَّرُونَ

Meaning: They ask you 'O Prophet' about intoxicants and gambling. Say, "There is great evil in both, as well as some benefit for people—but the evil outweighs the benefit."²⁹ They 'also' ask you 'O Prophet' what they should donate. Say, "Whatever you can spare." This is how Allah makes His revelations clear to you 'believers', so perhaps you may reflect, (QS. 2:219)²⁹

The Qur'an clearly forbids consuming *khamr*, which are intoxicating and can reduce a person's consciousness. Narcotics, such as *khamr*, induce a loss of consciousness and sense, allowing them to trigger acts of violence against fellow humans, becoming a source of anxiety or anger, and hatred that would undermine the people's unity. This is especially true when the husband, the head of the family, is subjected to this addiction. As a result, it causes of a crisis in household. The wife believes that her relationship with her husband is deteriorating and that there is no explanation from the husband.

The Madhab's Imams have different perspectives on the wife's requests. According to the Maliki and Hambali schools of thought, a wife may petition a judge for divorce from her husband if she is treated harshly or badly. They base their opinion because this could be one of the reasons to end the husband-wife relationship's. Meanwhile, Abu Hanifah and Syafi'i argue that a wife cannot seek divorce from a court since the husband's harsh treatment can be remedied by punishing the husband and providing the wife freedom so that she is not forced to obey her husband.³⁰

According to the Maliki School and the Hambali School, if the husband is unable or unwilling to repent and stop using drugs, resulting in frequent abusive acts in the household, the wife may request a divorce. Basically, a husband who is addicted to drugs often cannot think clearly unless he is consuming the drug. His thoughts become chaotic, and his attitudes and behaviour cannot be controlled, so there is no good value for a wife to maintain a family with her husband, who is a drug user. Because things like this can really threaten religion, their lives, and their children.

Ibn Taymiyyah argues that consuming marijuana or narcotics in general is cursed and is considered a major sin, because it has bad effects such as intoxicating, causing an anesthetic effect for the user and can cause other crimes which have an impact on the household. According to him, consuming these illegally is *haram*.³¹ Because anything that causes a person to become delirious and tremble (*sakaw*) as a result of the influence of narcotics or chemicals originating from grains, fruit, and

²⁹ Q.S Al-Baqarah (2): 219

³⁰ Sayyid Sabiq, *Fiqh Sunnah*, (Beirut: Dar al Kitab al-'Arabi, 1977, juz 2), p. 188.

³¹ Ahmad bin Taimiyyah, *Majmu al-Fatawa*, Cet. I, Jilid empat (Beirut Libanon: Dar al-Arabiyah, 1978), p. 205.

other sources, whether raw or processed, is regarded *khamr*, which is *haram*. That is the consensus among ulemas.³²

Additionally, the separation of husbands who use drugs due to disputes and quarrels, also known as *shiqaq*, is regulated in the book *al-Fiqh al-Islami wa Adilatuhu*, written by Sheikh Wahbah Zuhaili. He explained that the Hanafi, Syafi'i, and Hanbali schools of thought allow the separation of husband and wife due to disputes or because of many disadvantages in the relationship between husband and wife. In addition to imposing a divorce, preventing harm from the wife can also be achieved by lodging a complaint about the incident to the *qadhi*.³³ Furthermore, imposing punishment on men is a type of lesson that the *qadhi* could impart to the husband so that he does not commit evil behaviours against his wife in the future. Meanwhile, according to the Maliki School, separation due to conflicts or harm is permissible in order to prevent problems and make the lives of husband and wife less miserable.³⁴ In this case, Islam allows wives to file for divorce against husbands who commit abusive acts.

Based on the description of the decision and the judge's considerations in the divorce case in Decision No. 74/Pdt.G./2019/Ms.Ksg, it is clear that the judge decided that the reason for the divorce had been proven and fulfilled the provisions. The judge is not actually emphasising the reasons for the wife's petition for divorce because the husband was selfish, the husband was a drug user, and even the husband was sentenced to prison. However, the point of emphasis was that the judge saw that there had been a dispute, or *shiqaq*, that had been going on for a long time between the two of them. This was due to the effects of drug use, which eliminated the husband's common sense, which could endanger his wife and children.

From the perspective of *fiqh*, the judge's consideration in accepting the wife's request for a divorce was appropriate in exercising his function as the *qadi*. In fact, the judge's consideration of seeing a greater benefit when granting the plaintiff's petition is also in accordance with one of the rules of *fiqh*, called "The imam's (government's) policy towards its people is based on benefit." In a broader sense, the term "al-Imam" refers not only to those in positions of power but also to those who decide on a case, in this case judges. For this reason, the judge's decision in deciding a contested divorce case in decision No.74/Pdt.G/Ms.Ksg is part of an effort to achieve the benefit for a wife.

Conclusion

The judge's consideration at the Kuala Simpang Syar'iyah Court in deciding the divorce case against the husband, who was a drug user, was that the defendant was declared to have been legally proven guilty of committing a criminal act without rights and unlawfully buying and selling narcotics. Apart from that, the judge also considered that the domestic conditions experienced by the plaintiff and defendant

³² Ahmad bin Taimiyyah, *Majmu al-Fatawa*, Cet. I, Jilid empat... p. 196.

³³ Wahbah al-Zuhaili, *Fiqh Islam Wa Adilatuhu* (Damaskus: Darul Fikr, 2007), p. 457.

³⁴ *Ibid*, p. 457.

made it very difficult to achieve the goal of an eternal, happy, *sakinah mawaddah* and *rahmah* marriage, as stated in the legal regulations. The Maliki School and the Hambali School permit a wife to seek divorce from a judge if her husband treats her harshly. If a husband uses drugs, it can cause harm in the household, which may be a valid reason for a wife to seek divorce from a judge. According to the Hanafi, Syafi'i, and Hambali schools, the separation of husbands who use drugs due to disputes and quarrels, also known as *syiqaq*, is another solution that allows for the separation of husband and wife due to the many disadvantages that arise in their relationship. In addition to imposing a divorce, preventing harm to the wife can also be achieved by lodging a complaint with the judge. Sentencing a husband is a form of lesson that the judge can give to his husband so that he does not commit bad acts against his wife anymore. Therefore, referring to this case, the judge's consideration of divorce for a husband who uses drugs is in accordance with the objectives of Islamic family law, namely to maintain the benefit and protect the wife and family from harm.

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