



**Annulment of Marriage Due to Husband's Sexual Disorder
(Study of Yogyakarta Religious Court Decision Number: 176/Pdt.G/2019/PA. Yk)**

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Abstract

The annulment of marriage is carried out on the grounds that the marriage that has been carried out does not meet the requirements for marriage as described in Law No. 1 of 1974 and the Compilation of Islamic Law for Muslims. However, in the Yogyakarta Religious Court, there is an interesting phenomenon regarding the decision to annul marriage number: 176 / Pdt.G / 2019 / PA. Yk where the request for annulment of marriage was granted. The reason for the annulment of marriage in this case is that the husband suffers from a sexual disorder so the applicant feels cheated. This paper discusses the analysis of why sexual disorders can be used as a reason for annulling marriage as well as a review of Islamic law regarding the legal basis used by the Panel of Judges using the normative juridical approach method. Based on the results of the research and analysis conducted, it was concluded that the sexual disorder submitted by the applicant in the marriage annulment case number: 176/Pdt.G/2019/PA. Yk can be accepted as a form of fraud or misconception committed by the respondent to the applicant. The legal basis used by the Panel of Judges in deciding the marriage annulment case is Article 72 paragraph (2) of the Compilation of Islamic Law, Explanation of Article 72 paragraph (2) of the Compilation of Islamic Law, Arrangements in Article 1328 of the Civil Code, Identity according to Erikson, and based on the Shar'i Proposition in the Book of *Sirajul Wahhaj*. The review of Islamic law regarding the legal basis used by the panel of judges in deciding this case according to researchers is in accordance with Islamic law.

Keywords: Annulment of Marriage, Religious Court, Marriage Law, Compilation of Islamic Law

Abstrak

Pembatalan perkawinan dilakukan dengan alasan bahwa perkawinan yang telah dilaksanakan tidak memenuhi syarat-syarat perkawinan sebagaimana yang telah dijelaskan dalam Undang-Undang No. 1 Tahun 1974 dan Kompilasi Hukum Islam bagi umat Islam. Namun, di Pengadilan Agama Yogyakarta terdapat fenomena yang menarik terkait putusan pembatalan perkawinan nomor: 176/Pdt.G/2019/PA. Yk dimana permohonan pembatalan perkawinan dikabulkan. Alasan pembatalan perkawinan dalam perkara ini adalah karena suami mengidap kelainan seksual sehingga pemohon merasa tertipu. Tulisan ini membahas tentang analisis mengapa kelainan seksual dapat dijadikan alasan pembatalan perkawinan serta tinjauan hukum Islam terhadap dasar hukum yang digunakan oleh Majelis Hakim dengan menggunakan metode pendekatan yuridis normatif. Berdasarkan hasil penelitian dan analisis yang dilakukan, diperoleh kesimpulan bahwa kelainan seksual yang diajukan oleh pemohon dalam perkara pembatalan perkawinan nomor: 176/Pdt.G/2019/PA. Yk dapat diterima sebagai bentuk penipuan atau salah sangka yang dilakukan oleh termohon kepada pemohon. Dasar hukum yang digunakan Majelis Hakim dalam memutus perkara pembatalan perkawinan tersebut adalah Pasal 72 ayat (2) Kompilasi Hukum Islam, Penjelasan Pasal 72 ayat (2) Kompilasi Hukum Islam, Pengaturan dalam Pasal 1328 KUH Perdata, Identitas menurut Erikson, dan berdasarkan Dalil Syar'i dalam Kitab Sirajul Wahhaj. Tinjauan hukum Islam mengenai dasar hukum yang digunakan majelis hakim dalam memutus perkara ini menurut peneliti sudah sesuai dengan hukum Islam.

Katakunci: *Pembatalan Perkawinan, Pengadilan Agama, Hukum Perkawinan, Kompilasi Hukum Islam*

Introduction

Basically, the marriage is carried out for an everlasting time until the death of one of the married couples. But in certain circumstances, there are things that require the breakup of marriage. The breakup of a marriage is due to death, divorce, and annulment of the marriage. The breakup of marriage due to the annulment of marriage can occur in marriages that do not meet the conditions that have been determined when consummating marriage.¹ Annulment of marriage means to regard a marriage that has been performed as an invalid event or is considered to have never existed. Law No. 1 of 1974 does not regulate in detail the definition of marriage annulment.

According to the Encyclopedia of Islam *Fasakh* is the termination of marital relations by the Judge at the request of the husband or wife due to the emergence of rights that are considered severe by the husband or wife or both so that they are

¹ Rachmadi Usman, *Aspects of Individual and Family Law in Indonesia* (Jakarta: Sinar Grafika, 2006), p. 284.

unable to carry out the life of husband and wife in achieving their goals.² If the marriage continues then the home life will get worse, and the aggrieved party will get worse, while Allah does not want such things to happen as explained in the word of Allah SWT:

ولا تمسكو هن ضرارا لتعتدوا ومن يفعل ذلك فقد ظلم نفسه³

Islam does not want harm and forbids harm from each other. In a hadith it is stated that:

حدثني يحيى عن مالك عن عمرو بن يحيى المازني عن ابيه ان رسول الله صلى الله عليه وسلم قال: لا ضرر ولا ضرار (رواه مالك)⁴

Based on the above, a conclusion can be drawn if in a married home life there are circumstances or attitudes that cause harm to one party, then the harm must be eliminated by asking the judge to *make the marriage worse*.

An application for annulment of marriage can be submitted to the Court as mentioned in Article 25 jo Article 63 of Law No. 1 of 1974, namely the Religious Court for people of Muslim faith and the General Court for others. Marriage annulment cases that are usually handled by religious courts are about identity forgery, marital status forgery, illegitimate guardians and so on. However, there is an interesting phenomenon that occurred in the Yogyakarta Religious Court, namely that there was once a case of marriage annulment because the husband had a sexual disorder, namely in the decision of case number: 176 / Pdt.G / 2019 / PA. Yk.

Based on the explanation above, this ruling is interesting to discuss considering that the reason for the annulment of marriage submitted by the wife is because the husband has a sexual disorder. This sexual disorder is what makes researchers feel interested in discussing it more deeply. The researcher will discuss why sexual abnormalities can be used as grounds for marriage annulment and what is the legal basis for the panel of judges in ruling on this case.

Annulment of marriage in positive law

The definition of marriage annulment according to Law No. 1 of 1974 in Article 22 states that a marriage can be annulled if the parties do not meet the conditions for consummating the marriage. Yahya Harahap also means that the annulment of a marriage is a court action in the form of a decision declaring the annulled marriage declared invalid or *no legal force or declared void*. Something that is declared *no legal force* then the situation is considered to have never existed, therefore men and women who are annulled marriage are considered never married as husband and wife.⁵

² Ministry of Religious Affairs of the Republic of Indonesia, *Encyclopedia of Islam in Indonesia* (Jakarta: Arda Utama 1992/1993), p. 282.

³ Al-Baqarah (2): 231.

⁴Yahya Ibn Yahya Ibn Katsir al-Andalusi, al-Muwatà' li Imam Malik ibn Anas, (Beirut: Dar al-fikr, 1989), 489.

⁵ Yahya Harahap, *Indonesian Marriage Law* (Medan: CV. Zahir Tranding Co., 1978), p. 78.

A marriage can be null and void and can be annulled by a court. Simply put, there is a cause for the annulment of marriage. *First*, violation of marriage procedures as described in Law No. 1 of 1974 Articles 24 and 26. An example is the non-fulfillment of the conditions of a marriage guardian, still bound by another marriage bond. *Second*, violations of marital material. For example, marriages performed under unlawful threat. The threat referred to here is not only criminal or physical but also coercive pressure, thus eliminating the free will of the bride and groom and it does not meet the requirements of marriage as described in Article 6 paragraph (1) of Law No. 1 of 1974.⁶ The reasons for applying for marriage annulment in the KHI are contained in Articles 70 to 72 and these reasons are not much different as explained in Law No. 1 of 1974.

Basically, the annulment of marriage can only be demanded by certain people. The annulment of marriage by a particular person must be in accordance with applicable laws and regulations and the law has regulated who are the people who have the right to demand the annulment of marriage. The annulment of marriage begins after the Court Decision has permanent legal force and is valid from the moment of the marriage. The court decision means that the marriage is considered invalid and by itself, the marriage is considered to have never existed. The consequences of the annulment of the marriage do not apply retroactively to:

- a. Children born from such marriages:
- b. A husband or wife acting in good faith, except with respect to joint property, if the annulment of the marriage is based on the existence of another previous marriage;
- c. Other third persons are not included in a and b as long as they acquire rights in good faith before the decision on the annulment of marriage has permanent legal force.

The meaning of good faith in points b and c above means that the annulment of a marriage by a court decision does not necessarily invalidate some legal relations that were born before the decision to annul the marriage was handed down. The law protects children, spouses, heirs and others who have acquired rights as a result of such annulled marriages, provided that the parties concerned obtain their rights in good faith.⁷

Annulment of marriage in Islamic law

The term for the annulment of marriage in Islam is known as *fasakh* nikah. *Fasakh* comes from Arabic *الفسخ* masdar from which means: means to *فسخ العقد*

⁶ Amir Nuruddin A. Trigan, *Islamic Civil Law in Indonesia a Critical Study of the Development of Islamic Law from Fiqh, Law No. 1 of 1974 to KHI* (Jakarta: Kencana, 2004), p. 107.

⁷ Tody Sasmitha, *Material and Formil Civil Law CHAPTER 1B Marriage and Family Law* (Jakarta: The Asia Foundation), p. 53

The point is the ⁹Kamal Mukhtar means *fasakh* by revoking or abolishing. ⁸.cancel breakup of marriage is caused by the emergence of things that are considered heavy by the husband or wife or both so that they are no longer able to carry out the life of husband and wife in achieving the goals of domestic life.

Ali Hasabilah suggested that the occurrence of *fasakh* can be caused by two types, namely¹⁰ :

1. *Fasakh* depends on the judge's decision, in the will to the judge's decision means that it must go through the court process.
2. *Fasakh* does not want the judge's decision, that is, when a husband and wife know there is a cause that damages the marriage, at that time they are obliged to make the marriage known without having to go through the court process. However, for the Islamic community in Indonesia, juridically formal to obtain evidence about the breakup of marriage and its validity according to law must be taken through religious courts. This is based on the law which states that the annulment of a marriage can only be decided by the Court.¹¹

Fasakh can occur because of non-fulfillment of conditions when the marriage contract takes place or because other things come later and cancel the continuity of the marriage.¹²

- a. *Fasakh* due to non-fulfillment of marriage conditions when the contract is as follows:
 1. When the marriage contract is complete and completed, then it is known that the wife he married is his milk brother, and then the marriage must be consummated.
 2. The husband and wife were still young and the marriage was married by someone other than his father. Then after growing up, he has the right to continue his marriage bond or end it. *This Khiyâr is called* Khiyâr baligh. If the chosen one ends the bond between husband and wife, then this is called *fasakh baligh*.¹³
- b. *Fasakh* that comes after the contract:
 1. If one of the spouses is apostates and does not want to return at all, then the marriage contract is void because of the apostasy that occurred.

⁸ The *Most Complete Indonesian Arabic Al-Munawwir* Dictionary, Ahmad Warsom Munawwir, (Surabaya: Pustaka Progressive, 1997), p. 1054.

⁹ Kamal Mukhtar, *Principles of Islamic Law on Marriage*, (Jakarta: Bulan Bintang, 1993), p. 212.

¹⁰ Firdaweri, *Islamic Law on Fasakh Marriage Due to the Husband's Inability to Fulfill His Obligations* (Jakarta: CV Pedoman Ilmu Jaya, 1989), p. 52.

¹¹ Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage, Article 37.

¹² Selamat Abidin, *Fikih Munakahat II*, (Bandung: Pustaka Setia, 1989), p. 73.

¹³ as-Sayyid Sabiq, *Fiqhu as-Sunnah...*, p. 314.

2. If the husband who had converted to Islam, but the wife remained in disbelief i.e. remained a polytheist, then the marriage contract was void.¹⁴
- c. *Fasakh* caused by things:
1. *Syiqaq* is a quarrel between husband and wife that can no longer be reconciled.¹⁵
 2. If the two parties are *li'an*.¹⁶
 3. The husband was poor, and his poverty was known to several reliable witnesses. This means that the husband is completely unable to provide for himself, even if it is simple clothes and shelter, or he cannot afford to pay his dowry before interfering with his wife.
 4. The presence of infectious diseases, such as syphilis, tuberculosis, and so on.¹⁷
 5. Defects or diseases that are difficult to cure. What is meant by defect here is a physical or spiritual disease, which cannot be eliminated or cured. Or it can be cured within a long period of time so that the purpose of marriage cannot be achieved. *Fasakh* due to disability or illness must be performed before a Judge in Court and cannot be done alone. The reason is that the existence of a defect or disease must go through research and proof. This can only be done in Court.

The wisdom of permissible *fasakh* is for the benefit of mankind who have and are living a domestic life, for example, a wife who receives bad treatment from her husband, does not get a living physically and mentally, or a husband whose existence is not clear, accuses his wife of adultery and so on.¹⁸ Under these conditions, Islam does not allow one to live in misery but seeks to eliminate injustice. The legal consequences arising from the existence of *fasakh* are:¹⁹

- a. Dissolution of marriage/dissolution of marriage;
- b. The existence of separation because *fasakh* does not reduce the number of *talaq*;
- c. *Fasakh* before biological contact, the wife is entitled to her dowry; Regarding children born, in accordance with the explanation in Article 75 point (b) of that the decision to annul marriage does not apply retroactively to children born from such marriage. Furthermore, Article 76 states that

¹⁴ Abdul Aziz Dahlan, *Encyclopedia of Islamic Law* (Jakarta: Ictiar Baru Van Hoeve, 1996), p. 317.

¹⁵ Amir Syarifuddin, *Islamic Marriage Law....*, p. 245.

¹⁶ Shaykh Kamil Muhammad Uwaidah, *Women's Fiqh* (Jakarta: Pustaka Kauthar, 1998), p. 434.

¹⁷ Tihami and Sohari Sahrani, *Fiqh Munakahat Complete Study* (Jakarta: Rajawali Pres, 2013), p. 198.

¹⁸ Agustin Hanafi, *Divorce in the Perspective of Fiqh and Indonesian Legislation* (Banda Aceh: Lembaga Script Aceh, 2013), p. 149.

¹⁹ Wasman and Wardah Nuraniyah, *Islamic Marriage Law in Indonesia Comparison of Fiqh and Positive Law* (Yogyakarta: Teras, 2009), p. 130.

the annulment of marriage will not sever the relationship between the child and his parents.

Analysis of the reasons for the annulment of marriage in case Number: 176/Pdt.G/2019/PA. Yk

Article 22 of Law No. 1 of 1974 which explains that a marriage can be annulled if the parties do not meet the conditions for consummating the marriage. The persons who can apply for annulment of a marriage are families in a direct line of descent upwards of a husband and wife, a competent authority only as long as the marriage has not been terminated, as well as an official appointed under subsection (2) of Article 16 of this Law and any person who has a direct legal interest in the marriage, but only after the marriage has been broken.²⁰

When related in the case of marriage annulment number: 176/Pdt.G/2019/PA. Yk, the party who applied for the annulment of marriage is xxx as the wife of DC. The marriage between AB and DC is clarified by the existence of a marriage certificate number: xxx. The existence of this marriage certificate proves that the marriage between AB and DC is valid in the eyes of law and religion.²¹ Therefore, AB as a wife is the person who has the right to file a marriage annulment lawsuit against DC or her husband.

Articles 24, 26, and Article 27 of Law No. 1 of 1974 explain the reasons that can be submitted for annulling marriage, namely:

- a. A marriage that is still bound to one in a legal marriage with another person;
- b. Marriages performed in front of an unauthorized registrar;
- c. Guardians of invalid marriages and marriages performed without two witnesses present;
- d. The existence of unlawful threats;
- e. The occurrence of misconceptions about the husband or wife.

One of the reasons for the annulment of marriage as explained in the law above is regarding the misconception of the husband or wife. When related in this case, the misconception referred to in the case of marriage annulment number: 176/Pdt.G/2019/PA. Yk this is that during the course of the marriage between AB and DC, DC as husband has deliberately covered up his circumstances. The point of covering up his condition is that DC has a sexual disorder that is more attracted to the same sex. In this case, DC did not inform AB about his sexual disorder, leading AB to missuspect and assume that DC was a man who did not have a sexual disorder. The sexual disorder experienced by DC in this case proved that after the marriage took place, AB and DC had never had a conjugal relationship and in the end DC admitted to DC that DC actually had a sexual disorder that was to like or be more attracted to the same sex.²² Apart from DC's self-admission that she had a sexual

²⁰ Law No. 1 of 1974 concerning Marriage, Article 23.

²¹ Case File Number: 176/Pdt.G...., p. 1.

²² *Ibid*, p. 3.

disorder, there was also evidence of a letter, namely an expert doctor's certificate stating that AB was still a virgin.²³

When viewed from the Compilation of Islamic Law, regarding the reasons that can be proposed for the annulment of marriage as explained in Chapter 2. One of the reasons that can be proposed for annulment of marriage is because of fraud and misconceptions about the husband or wife. Article 72 paragraph (2) of the Compilation of Islamic Law explains that a husband or wife can apply for marriage annulment if at the time of marriage there is fraud or misconception about the husband or wife. When it comes to this, it can be said that DC has deceived AB. The scam in question here is that DC has lied to AB about his sexual disorder. And because he felt lied to, it was possible for AB to apply for the annulment of marriage to DC through the Religious Court.

There is evidence in the form of DC's confession admitting that she suffered from sexual disorders and also the existence of a certificate from a doctor stating that AB is still a virgin. This proves that during the marriage between AB and DC has never had a husband and wife relationship like a married couple. And it clearly proves that DC has a sexual disorder, so the researcher argues that the reason for the sexual disorder in this case can be used as a reason for filing an annulment of the marriage. And the evidence that has been submitted in this case according to Article 1870 of the Civil Code has the power of proof and the reason for filing the annulment of the marriage is also in accordance with Article 27 of Law No. 1 of 1974 and Article 72 paragraph (2) of the Compilation of Islamic Law.

Marriage annulment case No. 176/Pdt.G/2019/PA. Yk according to the perspective of Islamic law, the posita that the researcher will look at is about the sexual disorder suffered by DC and DC did not tell AB about the sexual disorder he suffered so that AB before and during the marriage between DC felt cheated by DC. And of course the sexual disorder suffered by DC is no longer in accordance with the purpose of marriage as referred to in Law No. 1 of 1974 and Article 3 of the Compilation of Islamic Law, namely to form a happy and eternal family based on the One and Only Godhead.²⁴

Researchers argue that the reason for sexual disorders suffered by DC is included in a disability. Weakness or defect that hinders the relationship between husband and wife (*sekusual*), for example for men the penis is cut or impotent. While for women the genitals are blocked (*al-ritq*) or blocked bones (*al-qarn*). Weakness or defect that does not hinder sexual intercourse, but in the form of a dangerous disease and can make the opposite sex impatient to live with him unless willing to bear the risk. For example, crazy, or various infectious diseases.²⁵ Researchers also argue that the problem in the case of marriage annulment due to husband sexual disorder has made the wife suffer and impatient to live with her husband because of

²³ *Ibid*, p. 7.

²⁴ *Ibid*, p. 4.

²⁵ Satria Affendi M. Zein, *Problems of Contemporary Islamic Family Law* (Jakarta: Prenada Media, 2005), p. 129.

the unfulfillment of mental support. Especially if you take the opinion of the Jumhur Ulama who says that prosecuting Fasakh for having a disability or disease is permissible.²⁶

So if it is related to the opinion of scholars, defects that are only known after the marriage can be asked for fasakh or annulment of marriage. This is in accordance with the opinion of Imam Hanafi, Maliki, Hambali, and ash-Shafi'i that if a husband is unable to perform his sexual duties, then the wife has the right to claim fasakh to the judge, and the judge may terminate the marriage.²⁷ Husbands who experience sexual disorders cause suffering to their wives so that many harms are obtained by the wife. By that means the husband hurts his wife so that the marriage can be annulled. The opinion of this scholar views that the purpose and life of marriage must be based on tranquility and love that cannot arise if one party is disabled or has a disease that makes the other party unwilling to suffer it.²⁸ This is also in accordance with what is described in the Qur'an:

ولا تمسكو هن ضرارا لتعتدوا ومن يفعل ذلك فقد ظلم نفسه²⁹

A husband who is sexually impaired means not restraining his wife in a good way, because the husband cannot fulfill his wife's rights. A relationship that if there is a defect in it, such as a sexual disorder found in this case, certainly does not provide comfort to either party.³⁰ If one of the parties cannot get comfort, then how will this family establish a happy and eternal family relationship forever as described in Law No. 1 of 1974.

Analysis and Review of Islamic Law Regarding the Legal Basis of the Panel of Judges in Deciding Case Number: 176/Pdt.G/2019/PA. Yk

The legal basis used by the Panel of Judges in case Number: 176/Pdt.G/2019/PA. Yk namely:

1. Article 72 paragraph (2) of the Compilation of Islamic Law.
2. Explanation of Article 72 (2) of the Compilation of Islamic Law.
3. Regulation in Article 1328 of the Civil Code.
4. Understanding self-identity according to Erikson.
5. The Shar'i postulate in Sirajul Wahhaj: 382 is;

أو وجد ته عتينا أو مجنوننا ثبت الخيار في فسخ النكاح³¹

Regarding the legal basis of the Panel of Judges above, the researcher strongly agrees with the legal basis used by the Panel of Judges in deciding this case, where the first legal basis used by the Panel of Judges is Article 72 paragraph (2) of the

²⁶ Firdaweri, *Islamic Law on Fasakh Nikah Because....*, p. 100.

²⁷ *Ibid*, p. 105.

²⁸ Al-Hamdani, *Risalah Nikah* (Jakarta: Pustaka Amani, 2002), p. 276.

²⁹ Al-Baqarah (2): 231.

³⁰ Inna Fauziatal Ngazizah, *Sadomasochism in Indonesia Human Rights and Criminal Law Perspectives*, *Tawazun: Journal of Sharia Economic Law*, Volume 3, Number 2, September 2020, p. 172

³¹ Case File No.: 176/Pdt.G., p. 15.

Compilation of Islamic Law which states that a husband and wife can apply for marriage annulment if at the time of marriage there is fraud or misconception about the husband or wife. When related in this case fraud or misconception is clearly seen, where the respondent has deceived the applicant by not informing or deliberately covering up about the sexual disorder suffered. Fraud is an act or word that is not honest (lying, false, and so on).³² Fraud in this case is the process of dishonesty or lying about the condition of the husband (respondent) committed to the wife (applicant). Then the misconception in this case is that the applicant did not know about the condition of the respondent who had a sexual disorder. Therefore, based on the explanation above, Article 72 paragraph (2) of the Compilation of Islamic Law is very appropriate to be used as a legal basis in deciding this case.

The explanation of Article 72 (2) of the Compilation of Islamic Law is also used as the legal basis for the Panel of Judges to decide this case, the researcher strongly agrees with the explanation of Article 72 (2) of the Compilation of Islamic Law where in this article explains that what is meant by fraud is if the husband confesses to the truth at the time of marriage then it turns out that he is married so that polygamy occurs without court permission, Thus fraud against identity. If it is related in this case, it is clear that the respondent has deceived the applicant by deliberately covering up the sexual disorder suffered and the applicant did not know the sexual disorder suffered by the respondent and if the applicant knew about it, then the applicant did not want to marry the respondent.³³

The panel of judges also made self-identity according to Erikson as a legal basis where the understanding of self-identity according to Erikson is an identity that concerns the existence of the subject which means that the subject has a distinctive personal style, therefore self-identity means maintaining a style of individuality of oneself. Researchers also agree with Erikson's understanding of self-identity as a legal basis. Then the Panel of Judges also made the regulation in Article 1328 of the Civil Code as a legal basis, in the context of Civil Law fraud is not clearly defined in the Civil Code (KUH Percivil), but can be found in Article 1328 of the Civil Code, which is in accordance with the translation of Prof. R Subekti, S.H., and R. Tjitrosubidjo, page 34 that "fraud is a reason for the cancellation of the agreement, if the deception, used by one party, is such that it is clear and evident that the other party has not made the engagement without the deception".

Fraud is not suspected but must be proven. Then he further explained that fraud occurs when one party deliberately gives false or incorrect information accompanied by deception to persuade the opposite party to give his permission. The deceived party acts actively to plunge the opposite party. If it is related in this case, it is clear that the respondent has deceived the applicant because the respondent deliberately covered up his condition of having a sexual disorder and the respondent also deliberately married the applicant so that the sexual disorder experienced was

³²*Big Dictionary Indonesian*, Dictionary Compilation Team of Language Development and Development Center (Jakarta: Balai Pustaka, 1990), p. 952

³³ Case File No.: 176/Pdt.G., p. 16

not discovered by his parents. Therefore, based on the explanation above, the regulation in Article 1328 is also appropriate to be used as a legal basis in this case.

Furthermore, the last legal basis used by the panel of judges in deciding this case is the shari'i proposition in the book Sirajul Wahhaj 382 namely:

أو وجدته عني أو مجنوناً ثبت الخيار في فسخ النكاح³⁴

Based on references to classical books that are used directly and written in judges' decisions, namely the book Sirajul Wahhaj 382 which states that the respondent as the husband is unable to have sexual intercourse because of the sexual disorder he suffers, the wife has the right to terminate her marriage.

The review of Islamic law regarding the legal basis of the Panel of Judges in handing down a decision on this case as described above, according to the researcher is in accordance with Islamic law because in the marriage there has been fraud. In addition, the legal basis used by the Panel of Judges in deciding this case is inseparable from the books of fiqh and is guided by the Article that discusses the element of fraud, the Panel of Judges also in deciding this case looks at the side of harm and in accordance with the *Qawa 'Eid al-Fiqhiyyah*:

الضرر يزال³⁵

If in the life of a husband and wife there are circumstances, traits or attitudes that cause harm to one of the parties, then the party suffering from harm can take steps to annul the marriage. The panel of judges must eliminate harm in this case, if the marriage continues then there is harm to the applicant. The applicant before and after the marriage was not aware that the respondent had a sexual disorder, concealing the sexual disorder suffered by the respondent means that the respondent had committed fraud against the applicant. This deception means harm that must be eliminated.

The five legal bases used by the panel of judges to render a verdict are all very appropriate to be applied in this case. So it is true that the annulment of marriage must be done as a solution to this case, because basically, in this case, the purpose of marriage is not fulfilled as explained in Article 1 of Law No. 1 of 1974, namely to form an eternally happy family or household based on the One and Only Godhead, in this case how can the marriage between the respondent and the applicant be eternally happy and have children if the respondent himself does not can provide mental sustenance to the applicant.

Conclusion

In the last part of this case, the author draws a conclusion to answer the problems that the authors examine, including the following. Sexual disorder filed by the petitioner in the marriage annulment case number: 176/Pdt.G/2019/PA. Yk can be accepted as a form of fraud or misconception committed by the respondent to the applicant because the respondent in this case deliberately covered up the sexual

³⁴ *Ibid*, p. 15.

³⁵ as-Sayyid Sa>biq, *Fiqhu As-Sunnah*..., p. 107.

disorder he suffered. In Islamic law, some clerics basically allow wives or husbands to sue *Fasakh* to the judge and the judge may *Benefit* The marriage is if one of the parties is proven to be suffering from a disability or disease that is difficult to cure. The annulment of marriage in this case is because the husband has a sexual disorder, a sexual disorder is also considered a disability so the case of annulment of marriage is also in accordance with Islamic law.

The legal basis of the Panel of Judges in handing down the decision number: 176/Pdt.G/2019/PA. Yk is based on Article 72 paragraph (2) of the KHI, an explanation of Article 72 paragraph (2) of the KHI, and based on the shari'i proposition in the book Sirajul Wahhaj. The panel of judges also made the arrangements in Article 1328 of the Civil Code and the understanding of self-identity according to Erikson as a legal basis. The review of Islamic law regarding the legal basis used by the Panel of Judges, according to the compiler is in accordance with Islamic law because the legal basis used by the Panel of Judges in deciding this case is inseparable from references to the book of fiqh and the Panel of Judges also in deciding case number: 176 / Pdt.G / PA. Yk saw from the side of his harm that was in accordance with *Qawa' Eid Fiqhiyyah*:

الضراريزال

Reference

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