



Implementation of Divorce Lawsuit in Religious Court Reviewed from Madhhab Shafi'i (Study of the Decision of the Binjai Religious Court No. 258/Pdt.G/2016/P.A.Bji.)

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Abstract

Khulu' is a way out provided by religion for women to break free from the bonds of marriage in exchange for the payment of ransom to their husbands. In fiqh literature, divorce lawsuits without *iwadh* are not known, while in laws and regulations there is the concept of a divorce lawsuit without ransom. This research is a juridical normative research. The results of this study show that there is a difference in the concept of divorce lawsuits between the Shafi'i school and the Binjai Religious Court Decision due to a difference in concept. In the Shafi'i mazahb it is stipulated that *Talak* is the absolute right of the husband and if the *Talak* is requested (sued) by the wife, then the wife is obliged to pay the ransom (*iwadh*) to the husband. Meanwhile, in the applicable laws and regulations in Indonesia, wives are given the right to divorce their husbands without having to provide *iwadh*.

I. INTRODUCTION

The issue of divorce (*al-Talaq*) is discussed quite extensively, as seen in the fiqh books of various sects. As-Sarakhsi, for example, states that divorce is an act that can be done only in an emergency, either on the initiative of the husband (*talaq*) or the wife (*khulu'*) (Thoat Stiawan, 2024).

The shari'at on *khulu'* is given to the wife by giving a ransom to her husband if they are worried that they will not be able to carry out the laws of Allah SWT (Aminudin, 2024).

The giving of ransom from the wife to her husband is a just and appropriate law. Because previously, at the time of the marriage, the husband gave dowry to his wife, marriage expenses and provided for his family. If suddenly the wife retaliates with disobedience and asks for a divorce, then it is appropriate for the wife to return what she once received.

Basically *khulu'* is not recommended in the Shari'ah, just as divorce is not recommended in a marriage, because it is contrary to the principles of marriage in Islam. However, the decree of *khulu'* is enforced in order to avoid dangers that have implications for the weakness of individuals in carrying out the laws of Allah SWT (Aminudin, 2024).

In fiqh literature, *khulu'* is a wife who separates herself from her husband with

compensation (ransom) to him (Simatupang et al., 2024). Meanwhile, according to the 1991 Compilation of Islamic Law in article 1 letter i, *khulu'* is a divorce that occurs at the request of the wife by giving ransom or *iwadh* to and with her husband's consent.

Both in fiqh and in the Compilation of Islamic Law place *khulu'* as one of the ways that can be taken to divorce from the wife. *Khulu'* is not a reason for divorce for the wife to break the marriage bond, but *khulu'* is a way out that is stipulated by the Shari'ah for the wife as the Shari'ah stipulates *talaq* for the husband.

Islamic sharia makes *khulu'* an alternative to resolving domestic conflicts that cannot be resolved properly. *Khulu'* is only permissible if there is a valid reason and makes him worried about violating the law of Allah, if there is no right reason, then the law is forbidden (Aminudin, 2024). Imam Shafi'i explained as follows:

الخلع هي طلاق بعوض.

Meaning: *khulu'* is a divorce by giving ransom.

Furthermore, Imam Shafi'i explained that the consequence of *khulu'* is *talaq bain sughra*. The following is the statement of Imam Shafi'i:

قال الشافعي في المغتدبة انها لا ترجع الى زوجها إلا بنكاح جديد

Meaning: Imam Shafi'i said about a woman who redeems herself (to divorce her husband): "That

a woman cannot return to her husband except with a new marriage contract.

In the Compilation of Islamic Law, article 1 (one) letter i states that khulu' is a divorce that occurs at the request of the wife by giving ransom or iwadh to and with the consent of her husband.

From the above description, it can be known that khulu' is a divorce that is carried out because of the wife's will to release the marriage bond by giving ransom to the husband and with the consent of the husband or with the consent of both. Khulu' can also be referred to as atonement. Furthermore, it can be known that the consequence of khulu' is talaq bain sughra.

In the decision of the Binjai Religious Court No. 258/Pdt.G/2016/PA. Bji khulu' case occurred between the Plaintiff (wife) Age 50, Islam, the job of a domestic helper domiciled in the city of Binjai suing her husband aged 54 years, the religion of Islam, the work of a pedicab driver domiciled in the city of Binjai.

In the decision, it was explained that the reason the wife asked her husband for a divorce was because there was a continuous dispute so that her household could no longer be reconciled. In the judgment No. 258/Pdt.G/2016/PA. The panel of judges gave a decision granting the plaintiff's lawsuit and awarding the defendant's one-bain Suhgra talaq to the plaintiff.

In the decision No. 258/Pdt.G/2016/PA. Bji is not mentioned about iwad/ransom. In fact, if viewed from the perspective of the Shafi'i madhhab, the case mentioned above is a khulu' case because the one who filed for divorce was the wife. From this, it can be seen that there are differences and gaps between the concept of divorce lawsuits in court and the opinion of the Shafi'i school.

II. RESEARCH METHODS

In terms of disciplines, the research carried out is Normative (*Normative Juridical research*). Meanwhile, judging from the type, this research is a library *research*. This research uses a legislative approach and a case approach. The primary legal material in this study is the decision of PA Binjai on the divorce lawsuit, the Marriage Law, KHI and other regulations related to the implementation of ceiri lawsuits in PA. The analysis of research data used is deductive methods and comparative methods.

III. RESULTS AND DISCUSSION

A. Divorce Lawsuit

A lawsuit divorce is a divorce carried out by a wife to her husband. This model of divorce is carried out by submitting a request for divorce to the Religious Court. And divorce cannot occur before the Religious Court officially decides (Darmawijaya & Hasanah, 2020).

Divorce Lawsuit is a marriage bond that is broken as a result of a marriage filed by the wife to the Religious Court (Darmawijaya & Hasanah, 2020), which then the respondent (husband) agreed, so that the religious court granted the application referred to in PP No. 9/1975 explaining that a lawsuit divorce is a divorce carried out by a wife who marries according to Islam and by a husband or a wife who carries out her marriage according to his religion and belief other than Islam. In article 39, it is further explained that talaq divorce and lawsuit divorce can only be carried out in front of the Court Session (Article 39 paragraph (1) PP No. 9).

Ahrum Haerudin also explained that the definition of Divorce Lawsuit broadly is a lawsuit filed by the plaintiff (wife) to the Religious Court, so that the marriage between herself and her husband is decided through a decision of the Religious Court, in accordance with the applicable legal rules (Kawakib, 2022).

Furthermore, KHI Article 132 Paragraph 1 states that: "A divorce lawsuit is filed by the wife or her attorney at the Religious Court whose jurisdiction is the area of residence of the Plaintiff unless the wife leaves the place of residence together without the husband's permission."

Based on the description above, it can be seen that a lawsuit divorce is a divorce filed by a wife to a religious court. In other words, a divorce is a divorce that is desired by the wife and submits the peruses of divorce to the Religious Court.

In classical fiqh literature, that a wife can want a divorce and ask her husband to decide or divorce her, it is called Khuluk. The word khulu' comes from the Arabic (kha-la-'a) which etymologically means to take off or undress. In the Arabic dictionary the word (al-khal'u) means release, revocation. If the word al-khul'u letter خ Didhummah means divorce at the request of the wife with the provision of compensation from the party. In the General Dictionary of the Indonesian Language, khulu' is a divorce at the request of a woman by returning the dowry she has received; Redeem Talak (Huda, 2022).

Sayyid Sabiq in his book mentions that *khulu'*, which is justified by Islamic law, comes from the words *khala'a ats-tsauba* which means to take off clothes (HAZM & FASTING, n.d.). This is because women are men's clothes and men are also women's clothes. As Allah says, swt. Surah al-Baqarah verse 187:

The same meaning was also expressed by Abdurrahman al-Jaziri that *khulu'* is the *masdar* of *khala'a* which means to strip off.

خلع الرجل امرأته وخالعت امرأة زوجها مخالعت إذا اقتدت منه

Meaning: "A man *khulu'* his wife, means that he takes off her as his clothes if she pays the ransom."

The scholars of the four *madhhabs* define *khulu'* as follows: Hanafiyah scholars define that *khulu'* is the release of the marriage bond that depends on the acceptance of the wife by using the word *khulu'* or its equivalent, which results in the enactment of compensation for the husband. Malikiyah scholars stated that the *talaq* is *talaq* with compensation, both from the wife and from the guardian and other people. Then the Shafi'iyah scholars define *khulu'* with divorce between husband and wife with compensation, both with the recitation of *talaq* and the recitation of *khulu'*. Meanwhile, Hanbaliyah scholars define it as the act of a husband divorcing his wife with compensation taken from the wife or another person using a special word. Kamil Muhammad 'Uwaidah defined *khulu'* as a ransom paid by a wife to her husband who hates her, so that she (the husband) can divorce her (HAZM & FASTING, n.d.).

In the Compilation of Islamic Law, article 1 (one) letter i states that *khulu'* is a divorce that occurs at the request of the wife by giving ransom or *iwadh* to and with her husband's consent.

From some of the above definitions of *khulu'*, it can be said that *khulu'* is a divorce that is carried out because of the wife's will to release the marriage bond by giving ransom to the husband and with the consent of the husband or with the consent of both. *Khulu'* can also be referred to as atonement *talaq* (Daud & Syarif, 2021). The ability of *khulu'* in Islam is explained in the Qur'an surah Al-Baqarah verse 229.

Then from the Hadith of the Prophet PBUH narrated from Ibn Abbas r.a.:

عن ابن عباس ان امرأة ثابت بن قيس اتت النبي صلى الله عليه وسلم فقالت يارسول الله ثابت بن قيس ما اعيب عليه في خلق ولا دين ولكن أكره الكفر بعد ادخول في لإسلام فقال رسول الله صلى الله عليه وسلم اتردين عليه حديقته قالت نعم قال رسول الله صلى الله عليه وسلم إقبل الحديقة وطلقها تطليقة (رواه البخار)

Meaning: "From Ibn Abbas ra. That the wife of Tsabit bin Qais came to the Prophet (saw). He said: "O Messenger of Allah, Tsabit bin Qais, I do not condemn him in morals and religion. But I hate disbelief in Islam." The Messenger of Allah asked: "Did you return the garden to him?". He replied: "Yes". The Prophet said: "Accept the garden and reject it with one *talak*." (HR. Bukhaari)

This hadith shows that it is permissible for a wife to redeem herself to her husband so that he can be divorced. It is again emphasized in this hadith that the reason for divorce through *khulu'* is due to the factor of obedience to Allah SWT. *Khulu'* is only permissible when there is a reason demanded such as the husband is reprehensible or immoral, or he often hurts his wife and does not exercise her rights, or the wife fears Allah when she obeys her husband. If there is no reason for the claim of *khulu'* it is forbidden.

Jumhur fuqaha is of the opinion that this verse is if the taking is without the wife's will. So if it is willing, this is allowed.

The pillars of *khulu'* are as follows:

1. A husband who divorces his wife by ransom;
2. A wife who asks for a divorce from her husband for ransom;
3. *Iwadh* or ransom;
4. *Sighat*.

While the conditions of *khulu'* contained in each of the pillars of *khulu'* mentioned above are as follows (Kusmidi, 2018):

First: Husband, the conditions for a husband who divorces his wife in *khulu'* are as applicable in *talaq*, namely being sensible, puberty, acting on his own will and deliberately. Second: A wife, a wife who is going to perform *khulu'* is someone who is in the husband's territory, in the sense that her wife is still under the husband's power and if her wife has been divorced, she is still in '*iddah raj'i*'. Then the next condition for a wife is that she has been able to act on property, that is, she must have reached puberty, have common sense, are not under forgiveness and should act on property, if it does not meet these conditions, then the one who does *khulu'* is the guardian using her own property. Third: *Iwadh* or compensation, about *iwadh*, scholars have different opinions.

The majority of scholars place *iwadh* as a harmony that should not be abandoned. The opinion that *khulu'* is permissible without *iwadh* is one of the opinions of Ahmad and Imam Malik, the reason is that *khulu'* is a form of marital

breakdown, so it is permissible without iwadh as in talaq.

Regarding the form of iwadh, the scholars agree that iwadh is something valuable and can be considered as a dowry as in the hadith about Tsabit's wife above. If the goods used as iwadh are haram, then the husband is not entitled to receive them and his wife is still rejected ba'in.

As for the value, scholars differ in their opinions, a group of fiqh experts are of the opinion that a husband should not take more iwadh than the dowry that has been given to his wife. This is in accordance with the hadith about Tsabit's wife. As for the fuqaha which equates the rate of wealth in khulu' with all the instruments of exchange used in mu'amalat, then the rate of wealth is based on willingness.

Fourth: sighthat, or a divorce speech delivered by the husband declares iwadh or compensation, if it does not mention iwadh, then it becomes ordinary talaq. The scholars are of the opinion that khulu' should use the word khulu' or with a word that comes from the word khulu' or with a word that shows the meaning of khulu', such as katamubara'ah (release) or fidyah (ransom). If it is not with the recitation of 'or the recitation which does not mean khulu', then the recitation falls but the ransom is not khulu', for example with the saying "You are talaq with a million money".

B. Contested Divorce Procedure

In the Indonesian legal system, there are 2 forms of divorce enforced by the state, namely a divorce lawsuit where a wife will sue for divorce from her husband. and Divorce talaq: that is, a husband who will ask permission to impose talaq on his wife. From the two forms of divorce above, it is alleged that divorce cases in Indonesia continue to increase compared to talaq divorce cases (Kawakib, 2022).

In Indonesia, this lawsuit divorce case is regulated in the law, both the State law (Marriage Law) and the Compilation of Islamic Law (KHI). The legal basis for a lawsuit divorce refers to Government Regulation No. 09 of 1975 article 156 which regulates the breakdown of marriage as a result (divorce lawsuit). In addition to the legal formulation in the Marriage Law, in the KHI articles 113 to 162 formulate a more detailed legal line regarding the causes of divorce, procedures, and legal consequences (Kawakib, 2022).

Khulu' as a form of marriage breakup is not regulated at all in the Marriage Law. However, KHI regulates it in two places, namely article 1

paragraph (I) and article 124. Article 1 paragraph (I) A explains that khulu' is a divorce that occurs at the request of the wife by giving ransom and/or iwadh to and with her husband's consent and Article 124 explains that khulu' must be based on the reason for divorce according to Article 116 of the KHI.

In the implementation of divorce in Indonesia, Law No. 1 of 1974 concerning marriage and Government Regulation No. 09 of 1975 do not regulate khulu' at all so that the two rules do not talk about khulu'. However, the Compilation of Islamic Law (KHI) distinguishes divorce from khulu'. However, it has similarities and differences between the two. The similarity is that the desire for divorce comes from the wife's side. The difference is that the divorce lawsuit does not pay the 'iwadl (ransom) which is the basis for the divorce while the khulu' must pay dowry. Thus, according to KHI, divorce lawsuits exist in the first two forms: ordinary divorce without iwadh payment and divorce lawsuit with iwadh (khulu) payment. (Kawakib, 2022).

The khulu' in question is regulated in article 148 of the KHI with the following procedure:

1. A wife who files a divorce lawsuit by means of khulu', submits her application to the Religious Court that governs her residence along with the reasons or reasons.
2. The Religious Court summons his wife and husband for a month at the latest to hear their respective statements.
3. In the trial, the Religious Court gave an explanation of the consequences of khulu', and gave its advice.
4. After both parties agree on the amount of 'iwadl or ransom, the Religious Court provides a determination on permission for the husband to pledge his talaq in front of the Religious Court session. Against this determination, no appeal and cassation efforts can be made.
5. The next settlement is taken as stipulated in article 131 paragraph 5.

Article 131 paragraph 5 explains that after the testimony hearing of the talaq pledge, the religious court makes a determination about the occurrence of triple talaq 4 which is proof of divorce for former husband and wife. The first strand along with the talaq pledge letter is sent to the marriage registrar who is in the area where the husband lives to be recorded, the 2nd and 3rd strands are given to the husband and wife

respectively and the 4th heli is kept by the Religious Court.

In the event that no agreement is reached on the amount of the ransom or 'iwadl, the Religious Court examines and decides as usual.

From the description above, it can be seen that there is a difference between divorce and khulu'. However, Law No. 7 of 1989 and Government Regulation No. 9 of 1975 do not distinguish between the two, so they do not discuss them. Therefore, the settlement based on article 148 of the KHI which was originally a divorce case with the khuluk after there was a decision of the Religious Court and then the execution referred to article 131 paragraph 5, namely the husband vows his talaq against his wife (Kawakib, 2022).

Next is the divorce process with a Supreme Court-style khuluk. The Supreme Court in response to the issue of resolving divorce with this khuluk in the book Guidelines for the Implementation of Duties and Religious Administration Book II 2013 page 151 stated that:

Talak khuluk is a wife's lawsuit to divorce her husband for ransom. The process of resolving the lawsuit is carried out in accordance with the divorce procedure and must be decided by the judge (Daud & Syarif, 2021).

The decree of talaq khuluk reads: Imposing talaq of one khul'i (name-----bin-----) against the Plaintiff (name-----binti -----) with iwadh in the form of money in the amount of Rp----- (written in letters-----).

Furthermore, it is stated that the Iwadh can also be in the form of money, houses or other objects together. The provisions of khuluk as mentioned in article 148 of the KHI must be set aside from their implementation. The khuluk lawsuit is still carried out in accordance with the provisions of letters a, b, and c above.

From the content of article 148 of the KHI and comparing it with the guidelines of the Supreme Court in Book II 2013 page 151, of course, it is appropriate and realistic in the process of settlement to follow the instructions of the Supreme Court, therefore the judge agreed to set aside article 148 of the KHI even though the Supreme Court itself uses the term Talak Khuluk, the following are the steps that must be done by the wife in filing for divorce with khuluk, namely (Rizal, 2024):

1. After the lawsuit is registered at the Religious Court Clerk who is in charge of the wife's residence, in accordance with the

laws and regulations, the wife and husband will be summoned by the Religious Court to carry out the first hearing.

2. In the first hearing, if husband and wife are present, then the panel of judges will reconcile the husband and wife according to the intent of article 130 of the HIR and if they do not succeed in reconciliation, the husband and wife are ordered to follow the mediation process in accordance with Perma Number 01 of 2016 concerning the mediation process in the Court.
3. In mediation, there must be good faith from the husband and wife to resolve the problem, especially if there is an initiative of the wife to divorce with the khuluk therefore, after not succeeding in reconciliation, the mediator tries to direct an agreement on the ransom.
4. The mediator reported in writing to the chairman of the panel of judges about whether the mediation was successful or not.
5. If the issue of ransom does not occur by agreement both in mediation and in the trial, the process is carried out as examining the divorce case with the stages of answering, replicating, duplicating, proof, conclusion and deliberation of the judge to read the verdict.
6. In the event that no agreement is reached on the amount of the ransom or 'iwadl, the Religious Court examines and decides as usual.

From the description above, it can be seen that there is a difference between divorce and khulu'. However, Law No. 7 of 1989 (generally called UUPA) and Government Regulation No. 9 of 1975 do not distinguish between the two so they do not discuss them (Kusmidi, 2018).

C. The Judge's Basis in the Divorce Case at the Binjai Aagama Court

The Binjai Religious Court as a judicial institution that carries out the function of judicial power (judicial) within the jurisdiction of the Medan High Court of Religion, which has the main task of receiving, examining and adjudicating as well as resolving cases submitted as stipulated in Article 2 paragraph (1) of Law Number 14 of 1970 concerning the Principal Provisions of Judicial Power.

For more details on the legal basis taken by the Judge in the divorce case No. 258/PDT.

G/2016/P.A.BJI needs to be seen from two sides, first, the judge's reasons for deciding the case as contained in the copy of the decision, and second, the judge's reasons for not determining the IWDH in the case (Kawakib, 2022).

The reason for the judge to decide the divorce case is No. 258/PDT. G/2016/P.A.BJI is as found in the copy of the decision of the case is Article 19 letter f of Government Regulation Number 9 of 1975 jo. Article 116 letter f Compilation of Islamic Law, articles 38 and 39 of Law No. 1 of 1974 concerning Marriage.

If you look at article 19 letter F, government regulation No. 9 of 1975 explains the reasons for divorce. Article 9 of Government Regulation No. 9 of 1975 reads as follows:

The grounds for divorce are regulated in the provisions of Article 19 of Government Regulation Number 9 of 1975 jo. Article 116 of the Compilation of Islamic Law, as follows:

1. One of the parties commits adultery or becomes a drunkard, stuffer, gambler and so on which is difficult to cure
2. One party leaves the other party for 2 (two) consecutive years without the consent of the other party and without any valid reason or for any other reason beyond the ability of the other party
3. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place
4. One party commits cruelty or severe persecution that endangers the other party
5. One of the parties has a physical disability or illness as a result of not being able to carry out their obligations as husband and wife
6. There are constant disputes and quarrels between husband or wife and there is no hope of harmony in the household anymore In the Compilation of Islamic Law, 2 letters are added, namely: g.) Her husband violated the ta'lik talak
7. Conversion of religion or apostasy that causes disharmony in the household.

While article 116 of the KHI reads Divorce can occur for any reason or reasons:

1. One of the parties commits adultery or becomes a drunkard, stuffer, gambler and so on which is difficult to cure
2. One party leaves the other party for 2 (two) consecutive years without the consent of the other party and without any valid

reason or for any other reason beyond the ability of the other party

3. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place
4. One party commits cruelty or severe persecution that endangers the other party
5. One of the parties has a physical disability or illness as a result of not being able to carry out their obligations as husband and wife
6. There are constant disputes and quarrels between husband or wife and there is no hope of harmony in the household anymore In the Compilation of Islamic Law, 2 letters are added, namely: g.) Her husband violated the ta'lik talak
7. Conversion of religion or apostasy that causes disharmony in the household.

The Judge's next reason was Articles 38 and 39 of Law No.1 of 1974. Article 38 states that marriage can be dissolved due to a. death, b. divorce and c. on the decision of the Court. While article 39 reads as follows:

1. Divorce can only be done in front of a Court hearing after the Court concerned has tried and failed to reconcile the two parties.
2. To get a divorce, there must be enough reason that the husband and wife will not be able to live together as husband and wife.
3. Divorce procedures in front of the Court are regulated in separate laws and regulations.

Based on the description of the articles used by the judge to decide the divorce case, it can be seen that in the judge's view that the case is a divorce lawsuit case on the grounds that there is a continuous dispute between husband and wife. So that the use of these articles does not mention it in the case of Iwadh (Aminudin, 2024).

If traced in Government Regulation No. 9 of 1975 and Law No. 1 of 1974 concerning marriage, there is not a single mention of khulu' so that because what is used is the two sums of law in this case, there is no iwadh determined by the judge.

Based on Mursyid Shah's explanation in the interview that was carried out, he explained as follows:

In the case of divorce, not everything is sued'. Divorce cases are divided into two. First, the divorce case is sued as regulated in article 19 of Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning marriage. In this article, it is explained that a divorce lawsuit can be filed if there are

reasons. The reasons are many, ranging from the letters a to h. If the wife files for divorce from her husband for any of these reasons then it is legally valid. The two cases of khuluk occurred when the husband violated taklik talak. So if the reason is not a violation of taklik talaq, then a case like this is an ordinary divorce case and is resolved by article 38.39 of Law No. 1974, article 19 of Government Regulation No. 9 of 1975 jo article 116 KHI (Kawakib, 2022).

From the above explanation, it can be seen that divorce lawsuits in the Religious Court can be divided into two, the first is a divorce lawsuit case caused by the reasons as contained in Article 19 of PP No. 9 Tahu 1975 and Article 116 of the KHI and the second is a divorce lawsuit case by way of khulu' because the husband violates taklik talak (Faik, 2023).

In the interview that Mursyid Syah also explained that the judge will decide the case according to the facts of the trial, and in accordance with the lawsuit submitted to the Court, if what is presented by the plaintiff is a lawsuit divorce case and in the facts of the lawsuit is obtained as the lawsuit is obtained, then the judge will decide the case in accordance with the facts and the lawsuit by basing it on a legal basis as regulated in Law No. 1 of 1974, Government Regulation No. 9 of 1975 and other regulations.

Furthermore, Mursyid Syah also explained that in Law No. 1 of 1974 and Government Regulation No. 9 of 1975, istilah khulu' is not known. The term khulu' is only known in the Compilation of Islamic Law as mentioned in article 1 letter i. The position of KHI in the Religious Court is not as a source of law but only as a guideline for judges, so that every case submitted to the Religious Court will be seen based on the binding law, namely Law No. 1 of 1974, Government Regulation No. 9 of 1975 and Law No. 3 of 2006.

D. The Opinion of the Shafi'i School on the Implementation of Divorce Lawsuits at the Binjai Prison

As explained in the previous discussion, in the literature of the Shafi'i madhhab, the term divorce lawsuit by the wife has 2 ways that can be done. These two ways are termed by the Shafi'i madhhab as fasakh and khulu' (Simatupang et al., 2024).

Imam Shafi'i explained in the book al-Umm that fasakh that occurs between husband and wife cancels the marital relationship between the two and the consequences are not talak. The following

is the explanation of Imam Shafi'i in the book al-Umm:

قال الشافعي وكل فسخ كان بين الزوجين فلا يقع طلاق لا واحدة ولا ما بعدها

Meaning: Imam Shafi'i (may Allah have mercy on him) is of the opinion that every fasakh that occurs between husband and wife does not fall into talaq, not talaq one and the next.

From the statement of Imam Shafi'i above, it can be clearly seen that the consequence of fasakh is not talaq but the annulment of marriage. Imam Shafi'i explained as follows:

اما الفسخ فحققتة نقض العقد في الحال

Meaning: Fasakh is a spontaneous nullity (marriage) contract.

According to the Shafi'i madhhab as explained, the fasakh that occurs between husband and wife annuls the marital relationship between the two and the consequence is not talaq but the annulment of marriage. While khulu' according to the Shafi'i madhhab is a request for divorce from the wife to the qadhi by giving ransom / iwadh to the husband. Furthermore, Imam Shafi'i explained that the consequence of khulu' is talaq bain sughra. In other words, the husband cannot refer to his wife as being dissatisfied with the new marriage. Meanwhile, the iddah of a divorced wife by the way of khulu' is the iddah of a woman who is rejected (Simatupang et al., 2024).

From the above description, it can be understood that in the Shafi'i madhhab the request for divorce from the wife by way of khulu' is obligatory with ransom (Iwad). Khulu' without iwadh is invalid because iwadh is one of the pillars of khulu' (Kusmidi, 2018).

Meanwhile, in the facts of the divorce case, the lawsuit is as contained in the decision of the Binjai Religious Court No. 258/Pdt.G./2016/PA. Bji that there is no iwadh in the implementation of the divorce lawsuit and the legal consequences that the judge decides is talaq raj'i. Thus, there is a difference between the opinion of the Shafi'i school and the decision of the Supreme Court on the implementation of divorce lawsuits. This is understandable, this difference occurs due to differences in the concept and legal basis used. Madhhab Shafi'i in this case uses the concept of divorce by way of khulu' while PA Binjai carries out divorce lawsuits guided by the Law on Marriage and Government Regulation No. 9 of 1975 and Law No. 23 of 2006 and Law No. 50 of 2009 concerning Religious Justice Proceedings where the entire Law does not recognize the concept of khulu' and equalizes the consequences

of divorce both from the wife and the husband (Aminudin, 2024).

As explained in the previous discussion, in mazahb Shafi'i a wife is allowed to ask for a divorce (suing) her husband by giving her husband a replacement money (iwad). Meanwhile, in the decision of the Binjai Religious Court NO. 258/PDT. G/2016/P.A.BJI divorce lawsuit decided without iwad (Aminudin, 2024).

At first glance, the decision of the Binjai Religious Court looks very different from the opinion of the Shafi'i school as described above. This difference is of course due to the difference in the concept of divorce lawsuit between laws and regulations and the opinion of the Shafi'i school.

In laws and regulations such as Law No. 1 of 1974 and Law No. 7 of 1989 jo Law No. 3 of 2006 and Government Regulation No. 9 of 1975, there is no mention of khulu'.

The regulation of divorce issues in Indonesia is generally contained in Law No. 1 of 1974 concerning Marriage, Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage. Based on Article 38 of the UUP, marriages can be dissolved by death, divorce, and by court decision. In addition, Article 39 paragraph (1) of the Constitution says that divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile (Kawakib, 2022).

About Divorce lawsuit or divorce lawsuit known in UUP and PP 9/1975 is a lawsuit filed by the husband or wife or his attorney to the court whose jurisdiction includes the defendant's place of residence (Article 40 UUP jo. Article 20 paragraph [1] PP 9/1975). Thus, the two rules do not mention khulu' (Simatupang et al., 2024).

Divorce by way of khulu" in the laws and regulations in Indonesia only existed after the enactment of the Compilation of Islamic Law (KHI) which was enforced by Presidential Instruction No. 1 of 1991 which was previously not found in other laws or regulations. Previously, a wife if she wanted to break the marriage bond with her husband, she could sue her husband through a court that would decide the marriage of the two. So in the Compilation of Islamic Law (KHI) a wife can also file for divorce by way of khulu" (Simatupang et al., 2024).

In the context of Islamic law (contained in the KHI), the term divorce lawsuit is different from that contained in the UUP and Government

Regulation 9/1975. If in the UUP and PP 9/1975 it is stated that a divorce lawsuit can be filed by a husband or wife, regarding a divorce lawsuit according to KHI is a lawsuit filed by the wife as contained in Article 132 paragraph (1) of the KHI which reads that a divorce lawsuit is filed by the wife or her attorney at the Religious Court, whose jurisdiction is the area where the plaintiff resides unless the wife leaves the place of residence without the husband's permission (Kawakib, 2022).

Thus, the Compilation of Islamic Law (KHI) distinguishes 2 types of divorce lawsuits. Divorce lawsuit as regulated in Law No. 1 of 1974 and divorce lawsuit with khulu'. However, it has similarities and differences between the two. The equation is: the desire to divorce comes from the wife's side. The difference is that a lawsuit divorce does not always pay 'iwadl (ransom) which is the basis for khulu' or divorce. The khulu' in question is regulated in article 148 of the KHI with the following procedure (Aminudin, 2024):

1. A wife who files a divorce lawsuit by means of khulu', submits her application to the Religious Court that governs her residence along with the reasons or reasons.
2. The Religious Court summons his wife and husband for a month at the latest to hear their respective statements.
3. In the trial, the Religious Court gave an explanation of the consequences of khulu', and gave its advice.
4. After both parties agree on the amount of 'iwadl or ransom, the Religious Court provides a determination on permission for the husband to pledge his talaq in front of the Religious Court session. Against this determination, no appeal and cassation efforts can be made.
5. The next settlement is taken as stipulated in article 131 paragraph 5.
6. In the event that no agreement is reached on the amount of the ransom or 'iwadl, the Religious Court examines and decides as usual.

From the description above, it can be seen that there is a difference between divorce and khulu'. However, Law No. 7 of 1989 and Government Regulation No. 9 of 1975 do not discuss it. Therefore, the settlement based on article 148 of the KHI which was originally a divorce case with the khuluk after there was a decision of the Religious Court and then the execution referred to article 131 paragraph 5, namely the husband

vows his talaq against his wife. The settlement process that ends with the husband's pledge in this case is for cases where there are no difficulties, but the khuluk regulated in the KHI is certainly more difficult in its execution even though the issue of ransom has been agreed.

The enactment of divorce by way of khulu" does not give birth to a new type of divorce case in the religious court, because divorce by way of khulu" becomes part of the divorce case with an additional ruling regarding the ransom that must be paid by the wife and the divorce occurs with the fall of the talaq khulu" from the husband. However, divorce by way of khulu" does not make it easier for a wife to break off the marital relationship with her husband, she must still have the reasons as she must prove in an ordinary divorce, even as a consequence she has to pay ransom to her husband and she is not entitled to maintenance during the iddah that she is living (Daud & Syarif, 2021).

Clearly, a wife prefers to file an ordinary divorce lawsuit that does not complicate and does not burden herself with having to pay the ransom (Iwadh) to her husband and she will still receive alimony during the iddah period from her husband rather than filing for divorce by way of khulu" who must issue the ransom and will not get alimony during the iddah period.

Because divorce by way of khulu" is more burdensome for the wife who has to pay with the iwadh itself as a ransom. Wives are more likely to file for divorce in ordinary lawsuits than in lawsuit divorces by way of khulu". In essence, in a lawsuit divorce by way of khulu" must be accompanied by the same reasons as in an ordinary divorce, for that reason the wife prefers the way of divorce through an ordinary divorce rather than a divorce by means of a khulu" (Aminudin, 2024).

Regarding the payment of iwadh money in the religious court where the implementation of the iwadh money is handed over to baitul mall or other bodies for the sake of social worship and not given to the husband, we need to know that in the religious court, the iwadh money can occur if there is a violation of taklik talak and the husband must have signed the taklik talak in the marriage book because it is a condition that must be met if you are going to file for divorce by way of khulu" (Aminudin, 2024).

There are similarities and differences between a lawsuit divorce in a religious court and a lawsuit divorce in the Shafi'i madhhab, the similarity is

that a lawsuit divorce in a religious court and a lawsuit divorce in Islam are both requested by the wife, but the difference is that the lawsuit divorce requested by the wife must be accompanied by iwadh (ransom) because Indonesian laws and regulations provide an opportunity for wives to sue their husbands without having to pay iwadh. In contrast to a lawsuit divorce in the Shafi'i school which must be accompanied by iwadh (ransom) money. (Simatupang et al., 2024).

Likewise, khulu" in the religious court with khulu" in the Shafi'i madhhab, there are similarities and differences, khulu" in the religious court must be for the reason of the violation of taklik talak, while khulu" in the Shafi'i madhhab can be done for any reason even without reason not necessarily with the violation of taklik talak (Huda, 2022).

This is contained in the Compilation of Islamic Law ("KHI") which is further regulated whose reasons can be the cause of divorce, namely:

1. Her husband violated the talak-talak.
2. Conversion of religion or apostasy that causes disharmony in the household

Because khulu" in the religious court must be accompanied by a violation of taklik talak. Taklik talak is an agreement that is conditional on conditions with the aim of protecting the wife from the husband's arbitrary actions. The taklik talak as in the marriage book is as follows: "

After the marriage contract, saya.....bin....promised with all my heart, that I would fulfill my obligations as a husband, and would associate with my wife namedbinti....well (mu"asyarah bilma"ruf) according to the teachings of Islamic law.

Next, I read the shigat taklik on my wife as follows: At any time I

1. Leaving my wife two years in a row
2. Or I did not give him compulsory maintenance for three months
3. Or when I hurt my wife's physical body
4. Or I let (ignore) my wife for six months.

Then my wife was not satisfied and complained about it to the religious court and her complaint was justified and accepted by the court, and my wife paid Rp. 10,000.00 (ten thousand rupiah) as iwadh (replacement) to me, then one talaq fell on her (Simatupang et al., 2024).

To the court, I authorized him to receive the iwadh money and then handed it over to the Directorate General of Islamic Community Guidance Cq. Directorate of Islamic Religious

Affairs and Sharia Development for the purpose of social worship

As the taklik talak has been formulated by the Minister of Religion of the Republic of Indonesia, in Article 11 paragraph 4 of the Regulation of the Minister of Religion No. 2 of 1990/100 jo Article 23 paragraph 3 of the Regulation of the Minister of Religion No. 07 of 2007/101 that the taklik talak is applied by the Minister of Religion. And also regarding the amount of iwadh money regulated in KMA No. 441 of 2000 which is Rp. 10,000.

Thus the divorce lawsuit filed with the Religious Court will be decided according to the reasons submitted, if the reason is because the husband violates taklik talak then this case will be a khulu' case, but if the reason submitted in the lawsuit is not due to the taxation of taklik talak but because of the reason for divorce as stated in Article 19 PP 9/75 then this case becomes an ordinary divorce lawsuit and the wife does not need to pay iwadh to her husband (Aziz & Fahrudin, 2021).

In contrast to the opinion of mazahb Shafi'i which states that if the wife sues her husband, she is obliged to pay iwadh for any reason (Huda, 2022). Thus the difference between the decision of the Binjai Religious Court which did not stipulate iwadh in case decision no. 258/Pdt.G/2016/PA. Bji. Because the judge saw that the reason for this divorce lawsuit was not because it violated taklik talak but because of the disharmony in the household caused by the defendant (husband) often getting drunk. This can be seen in the decision explained that the legal fact has fulfilled Article 19 letter f of Government Regulation Number 9 of 1975 jo. Article 116 letter f Compilation of Islamic Law.

Referring to Article 19 letter f of Government Regulation Number 9 of 1975, namely:

1. One of the parties commits adultery or becomes a drunkard, a stuffer, a gambler, etc. which is difficult to cure;
2. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for any other reason beyond his or her ability;
3. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place;
4. One party commits cruelty or gross mistreatment that endangers the other;

5. One of the parties has a physical disability or illness as a result of not being able to carry out his obligations as a husband/wife;
6. Between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household anymore.

Thus, based on the facts of the trial, the reason for the divorce lawsuit in the case is that between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household anymore. For reasons like this, the plaintiff who filed a lawsuit against PA binjai has fulfilled the grounds for divorce as stated in Article 19 of Government Regulation No. 9 of 1975 and Article 116 Letter F of the Compilation of Islamic Law. With this description, it is increasingly clear that the divorce lawsuit case no. 258/Pdt.G/2016/PA. Bji is not a khulu' case but a normal divorce case so it does not require a ransom (Iwad.)

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

The divorce lawsuit at the Binjai Religious Court in decision No. 258/Pdt.G/2016/P.A.Bji was carried out based on the applicable laws and regulations. The case was decided by Verstek and granted all of the plaintiff's lawsuits. The legal basis used by Judge PA Binjai in Decision No. 258/Pdt.G/2016/P.A.Bji can be classified into two. First, the basis of formal law in the trial refers to Article 149 paragraph (1) of the Criminal Procedure Code, Article 154 of the Criminal Code of Criminal Justice and Article 154 of the Criminal Code of Law No. 7 of 1989 concerning Religious Justice and Article 31 paragraph (1) and (2) of Government Regulation No. 9 of 1975, Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2008 concerning Mediation Procedures. The two foundations do not stipulate iwadh in a divorce lawsuit because the legal fact has fulfilled Article 19 letter f of Government Regulation Number 9 of 1975 jo. Article 116 letter f of the Compilation of Islamic Law, so that in the decision the judge was more dominant in seeing that the reason for the divorce lawsuit was disharmonization caused by the defendant always drinking alcohol.

The difference in the concept of a divorce lawsuit between the Shafi'i school and the Decision of the Binjai Religious Court No. 258/Pdt.G/2016/P.A.Bji is due to a difference in concept. In the Shafi'i mazahb it is stipulated that

Talak is the absolute right of the husband and if the Talak is requested (sued) by the wife, then the wife is obliged to pay the ransom (iwadh) to the husband. Meanwhile, in the applicable laws and regulations in Indonesia, wives are given the right to divorce their husbands without having to provide iwadh.

B. Suggestions

It is important for scholars, academics, and policymakers to continue to review and update the marriage law in Indonesia to align with the principles of justice and equality in the context of modern society. Socialization of the rights of wives in divorce lawsuits must be increased to ensure that the public understands that wives have the right to file for divorce without having to provide ransom (iwadh) if the reason for the lawsuit is valid according to the law. Furthermore, training and briefing for judges in the Religious Court need to be prioritized so that they can give consistent and fair verdicts, taking into account the social, cultural, and legal context that applies in Indonesia.

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