



LEGAL ANALYSIS OF APPLICATION FOR DIVORCE AND WIFE RECONVENTION CLAIMS AT BANYUWANGI RELIGIOUS COURT

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ABSTRACT

At first 10 (ten) cases studied by the author were cases of divorce applications. However, in the trial process, the wife filed a counterclaim called a reconvention lawsuit to claim her rights. The rights demanded are such as living, mut'ah, iddah, madhiyah, or hadhanah as well as gono-gini assets. However, not all counterclaims were granted by the panel of judges based on various considerations. To find out, the researcher formulated two problem formulations, namely: 1. How is the legal protection for the plaintiffs of reconciliation if their rights are not obtained in accordance with the Court's decision which has permanent legal force, 2. Can the implementation of the Court's decision be carried out effectively. This research is empirical research that uses descriptive analysis method with a qualitative approach. Sources of data were collected through interviews with several relevant informants, namely the panel of judges, the Registrar of the Banyuwangi Religious Court. Literature and documentation in the form of copies of decisions, books were also used as further data sources. After the data is collected, the data is processed by editing, classifying, and grouping according to the problem formulation. Then, it is reviewed and analyzed by connecting the data and literature review. The conclusions of this study are: 1) Efforts to protect the wife by providing a living have been carried out to the maximum. However, these efforts do not always run smoothly, because the husband does not make it happen. In article 34 of Law Number 1 of 1974 in conjunction with article 80 (4) the Compilation of Islamic Law, it has been determined about the kinds of rights that a wife can claim when divorced by her husband in court, and if the husband is unable to fulfill the expenses decided by the Religious Court, the panel of judges will postpone the implementation of the *ikrtalak* for 6 (six) months. 2) The implementation of the Court's decision is not all carried out effectively and according to expectations, this is due to the husband's mediocre level of economic ability.

Keywords: *Divorce, Lawsuit, Reconvention*

1. INTRODUCTION

Marriage is a way to keep oneself pure, and as a gateway to happiness. With marriage also a pair of men and women perform a sacred bond before Allah, build a family that is *sakinah mawaddah waar-rahmah*. In fact, everyone hopes that the existence of the marriage contract is once and for all. The marriage carried out by husband and wife continues until death separates them both. But the reality is that the conditions of domestic life are not as expected, often a household is threatened with sustainability. The number of divorce cases encountered in the community is about divorce and wife reconvention lawsuits due to disharmony between the two due to non-performance of obligations from one of the parties, often disputes that never end in the end for the answer to all of that is divorce. While many reconvention lawsuits are made to seek and guarantee the rights of the wife and children after the divorce. The rights demanded are such as *mut'ah*, *iddah*, *madhiyah*, *hadhanah* and other property rights. Reconvention is a counterclaim as regulated in Article 157 RBg/132 a HIR.

A marriage can break up and end due to several things, namely because of the divorce imposed by the husband on his wife, or because of the divorce that occurred between the two.

In Article 38 of the Marriage Law No. 1 of 1974 concerning Marriage, it is stated that marriages can be terminated due to: Death, Divorce and on the decision of the Court. Based on the above background, the author compiled the title "Legal Analysis of Applications for Divorce Divorce for Husbands and Lawsuits for Reconvention of Wives in the Banyuwangi Religious Court."

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Marriage is the most important event in people's lives because it does not only involve the bride and groom (husband and wife) but also involves the families of both parties and social life. Marriage is not held for a moment, but also possible for once in a lifetime.

As described in Article 1 of the Marriage Law Number 1 of 1974 concerning Marriage, the definition of marriage is: "the inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead". In the provisions of Article 2 of the Compilation of Islamic Law, marriage according to Islamic Law is marriage, which is a very strong contract or mitsaqan ghalidzan to obey Allah's commands and carry it out in worship. The main purpose of a marriage is to obtain offspring or children. With the presence of a child, the life of husband and wife in the household will get peace, tranquility, and happiness. Children are also the rope for the survival of the household.

Article 3 of the Compilation of Islamic Law states that: Marriage aims to realize a sakinah, mawaddah and rahmah household life. The purpose of marriage according to Islamic law is to establish religion, to produce offspring, to prevent society and to foster peaceful and orderly families. To carry out a marriage, the prospective bride and groom must meet the pillars and requirements of the marriage. What is meant by pillars is the essence of marriage itself, so that without one of the pillars of marriage it is impossible to carry out. According to Islamic law, the five pillars of marriage are: (Ahmad Rafiq 1998:71)

1. There is a potential husband.
2. There is a future wife.
3. There is a marriage guardian.
4. There is a marriage witness; and
5. Ijab Qobul

Divorce is the termination of a legal marriage before a court judge based on the conditions determined by law. Divorce can only occur if it is carried out in front of a court, whether it is the husband because the husband has dropped the divorce (thalaq), or because the wife is suing for divorce or applying for divorce. Divorce rights because sighthat taklik divorce. In the eyes of the law, divorce certainly can't just happen. That is, there must be reasons justified by law for a divorce. That's very basic, especially for the court which in fact has the authority to decide whether a divorce is feasible or not to be carried out. Including all decisions concerning the consequences of divorce, is also very much determined by the reasons for divorce. For example, regarding child custody, obligations of the ex-husband to the ex-wife and vice versa, as well as the distribution of marital property. The divorce lawsuit procedure is divided into 2 (two) types, depending on which party files the lawsuit. First, the divorce lawsuit filed by the wife (called a lawsuit) while the husband is called a talak divorce. Divorce means to let go or leave, in other words, divorce means the release of a marriage bond and the end of the marital relationship so that between husband and wife there is no lawfulness for both.

In Islam, the right to divorce belongs to the husband, while divorce is owned by the husband and wife, because the right to divorce belongs only to the husband, therefore the husband must be careful in saying words that can result in the fall of divorce. spoken by a husband who is mature and reasonable, if the husband's condition is not crazy or drunk so he is not in a conscious state then the divorce will be in vain. Judging from the arrangement, there are 2 kinds of divorce, namely:

1. Raj'i divorce is divorce that is handed down by the husband to the wife who has been collected, not for ransom, nor the third divorce. The husband can return directly to his wife who is in the iddah period without having to perform a new marriage contract.
2. Ba'in divorce is a type of divorce that cannot be referred by the husband except with a new marriage even during the iddah period, such as divorce from women who have not been married.

The wife's rights after the divorce, the husband continues to provide for his wife both clothing, food, and residence (Muhamad Yaquf 2007: 24) Wife's Rights Obtained After Divorce The husband's obligations to his wife include material obligations in the form of material and non-



material obligations that are not material. In accordance with his income, the husband has obligations to his wife, namely: providing a living, clothing, and a place to live. Among the livelihoods that must be given are:

- a. Iddah livelihood
- b. Mut'ah livelihood
- c. Madliyah's livelihood
- d. Shared Property
- e. Hadhanah rights

A lawsuit is one of the legal actions taken by a person or group of people against another person, this lawsuit can be carried out orally or in writing or it can also be done through a legal representative, a civil lawsuit is an effort made by certain parties with the aim of getting legal protection through the courts.

Types of lawsuits:

- a. Convention Lawsuit
- b. Reconvention Lawsuit
- c. Provisional Lawsuit
- d. Intervention Lawsuit
- e. Lawsuit for free (prodeo)

2. RESEARCH METHOD

The type of research conducted by the author in this study is empirical (sociological) legal research.

2.1. Time and Place of Research

The time taken by the author in collecting legal materials is carried out in March 2021 until it is finished. While the place of research aimed at by the author is the Banyuwangi Religious Court.

2.2. Data Source

The research carried out is library research and field research using 2 types of data, namely: primary data and secondary data

2.3. Data Collection Techniques

To obtain data as expected, the authors collect data in 2 ways, namely through field research methods and library research methods.

- 1) Field research method with direct observation taken in two ways, namely: interview and documentation
- 2) Literature research method

2.4. Data Collection Method

The researcher processed the data using a qualitative descriptive method starting with editing and classification based on the problems to be studied. After the editing and classification process is complete, then the researcher makes a grouping that is adjusted to the formulation of the existing problem. After editing and grouping the researchers reviewed valid data and in accordance with the research theme. The next stage was to analyze the raw data that had been obtained to make it easier to understand. The analysis is done by connecting these data with the theory that has been determined at the beginning. The data obtained through interviews are described in the form of words or sentences to be analyzed in order to answer the formulation of the problem.

2.5. Data Analysis

Data analysis carried out in this study was carried out by systematically compiling primary data, secondary data, and tertiary data and then carried out in-depth analysis using qualitative methods,

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where the process started from special propositions (results from observations) and ended at a conclusion. (New knowledge) with empirical truth. (Bambang Sunggono, 2003:10).

3. RESEARCH RESULT

3.1. Overview of the Religious Courts

Legal Basis for the Establishment of the Banyuwangi Religious Court, the Banyuwangi Religious Court was established based on TAP Raja Number 24 of 1882 STBL Number 152 of 1882 dated June 2, 1882.

3.2. Main Duties and Functions of Religious Courts

The main tasks of the Religious Courts are in accordance with the provisions of Article 2 jo. Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts is to examine, decide, and resolve certain cases between people who are Muslim in the fields of: a. marriage, b. inheritance, c. will, d. grants, e. waqf, f. zakat, g. Infaq, h. sadaqah; and i. sharia economy.

In addition to the main tasks referred to above, the Banyuwangi Religious Court has the following functions:

1. Construction function
2. Oversight function
3. Advice function
4. Judging function
5. Administrative functions
6. Other Functions: a) Coordinate the execution of reckoning and rukyat tasks with other relevant agencies, such as the Ministry of Religion, MUI, Islamic Organizations, and others (vide: Article 52 A of Law Number 3 of 2006). b) Legal counseling services, research/research services and so on as well as providing the widest possible access for the public in the era of openness and transparency of judicial information, if it is regulated in the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/144/SK/VIII/2007 concerning Information Disclosure. in the court.

3.3. History of the Establishment of the Banyuwangi Religious Court

The history of the formation of the Religious Courts in Banyuwangi is as follows:

- The Pre-Colonial Period.
In the Banyuwangi area at this time it was still not clear about the handling of problems that arise from Muslims, so that it was not yet in the form of an institution.
- The Dutch Colonial Period to Japan. In 1882, after being issued Besluit for the Religious Courts by the Dutch colonial government. In 1942 the Banyuwangi Religious Court had begun to become clear about its existence which was in its journey from the end of the Dutch colonialism to the end of the Japanese colonialists.
- Independence Day
In 1945 the Banyuwangi Religious Court still occupied the office adjacent to the Kenaiban Office which was located north of the Baiturrahman Great Mosque of Banyuwangi. In 1955 moved to a location south of the Great Mosque of Baiturrahman. In the 1970s the Religious Courts, the Ministry of Religious Affairs and the KUA office in the Banyuwangi sub-district moved to Jalan Attorney General Suprpto Banyuwangi.
In its development, the office was later taken over by the Banyuwangi Religious Affairs Department, located at Jalan Ahmad Yani number 106 Banyuwangi, and after that it moved again to Jalan Attorney General Suprpto number 52 Banyuwangi. (www.Pa-Banyuwangi.go.id).



3.4. Research Results

In this study, the author examines 10 (ten) decisions of the Banyuwangi Religious Court regarding Divorce Talak and Lawsuits for Reconvention of Wives which have permanent legal force (inkracht). The data from this religious court decision will be used as material for interviews with both husband and wife, judges, and advocates in order to find out about the obligations that must be fulfilled by the husband after the divorce decision, as well as the rights obtained by the reconciliation plaintiff (wife) along with the decision number. researched:

1. Divorce Decision Number 0537/Pdt.G/2019/PA.Bwi
2. Divorce Decision Number 2141/Pdt.G/2018/PA.Bwi
3. Divorce Decision Number 4413/Pdt.G/2020/PA.Bwi.
4. Divorce Decision Number 3569/Pdt.G/2017/PA.Bwi.
5. Divorce Decision Number 3131/Pdt.G/2019/PA.Bwi.
6. Divorce Decision Number 0524/Pdt.G/2021/PA.Bwi.
7. Divorce Decision Number 3372/Pdt.G/2020/PA.Bwi.
8. Divorce Decision Number 6563/Pdt.G/2019/PA.Bwi.
9. Divorce Decision Number 3372/Pdt.G/2020/PA.Bwi
10. Divorce Decision Number 6563/Pdt.G/2019/PA.Bwi.

Researcher's Note

The researcher's notes in examining ten (10) divorce decisions and reconvention lawsuits are more complicated than those filed for divorce on the wife's initiative. This is because in a lawsuit, the wife usually does not demand a living in general as stipulated in the legislation, while in a divorce the wife's rights can be fought for through a reconvention lawsuit. Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) has regulated in detail the protection of the wife, rights and positions that are balanced with the position of the husband in the household and in society. But in reality, when a divorce occurs, the judge's court decision is not always in favor of the protection of the wife's rights. Based on 149 KHI, if the marriage breaks up due to divorce, the ex-husband is obligated to give his wife a proper mut'ah in the form of money or objects except for her ex-wife qablal-dukhul, provide a living, food (place to live), kiswah, pay off the dowry owed and give hadlanah. to their immature children. In a divorce decision, talak is always followed by an obligation to provide a living for the wife. For a decision to make a living, the wife must be present in court and demand her rights. In general, if there is a dispute regarding the amount to be paid by the husband, it is recommended that it be resolved by deliberation and kinship. If deliberation is not reached, the religious court can determine the amount that is adjusted to the husband's ability.

4. DISCUSSION

The situation now is very different when compared to the year before the 1990s where there are still many people who think that only the husband has the right to file a divorce case. This is partly because wives have begun to understand their rights and problems in society are very complex so that the husband as the head of the family who is obliged to provide a living for his wife's children cannot always be realized so that the wife does not accept so that the wife makes a lawsuit for reconvention and in the end, there is a dispute that results in a dispute. ended in divorce in a religious court. (Interview with Advocate Moch. Djazuli SH.MH)

The panel of judges in deciding the amount of living for the wife is based on the husband's economic level and the existing economic level in the community. This is because sometimes the wife demands a living because something happens when the marriage is still harmonious, for example a wife demands a living of IDR 5,000,000 (five million rupiah) to cover household debts. The debt was for the capital to plant rice the previous year and until the divorce process had not been paid, the judge only gave a living of Rp. 1,500,000 (one million five hundred thousand rupiah). Actually, the wife wanted to protest to the panel of judges, but after further thought, the intention was canceled because it was considered that it would not change the situation.

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According to a statement, a judge stated that the panel of judges wanted to decide with the maximum value in accordance with the wife's expectations. However, this right cannot be exercised when based on the economic level and the husband's mediocre job, so for example the judge decides according to the request of the wife and the husband is unable, the consequences will be the same, namely it will not be realized (Interview with 'AWH, 40 Years Old', Housewife living in Tamansuruh Village, Glagah District on June 6, 2021).

Researchers also found the fact that sometimes husbands and wives have agreed to determine the amount of living to be paid by their husbands. This was once found in a wife who agreed that she would not demand anything, including a living for her husband on the condition that the gono gini property (joint property during marriage) was given to the child. and the ineffectiveness of providing a living outside the court is very important to be monitored so that there are no negligence and delays and other risks that may occur.

According to a lawyer, in 1990 a husband whose status was a Civil Servant had an obligation to give 1/3 of his salary to his children and 1/3 to his wife. But lately it is rarely applied in religious courts. This is because if this decision is imposed on the husband, it will burden the husband because he only receives 1/3 of the salary. This will be even more burdensome if the husband remarries after the divorce, then the husband's household life will not be feasible (Interview with Lawyer Rizal Fiska Adhitama, SH on June 11, 2021).

4.1. Implementation of the Court's decision can be carried out effectively

Of the ten decisions studied, all of them were implemented effectively for the provision of a living in the trial, it can be proven that the majority of divorce expenses were paid by the husband before a period of 6 (six) months but there was some whose implementation was less effective, namely the provision of a living outside the trial, including children and division of gono-gini (joint property). The existence of supervision over the provision of living outside the trial is very necessary for the implementation of the Court's decision which is real and in accordance with the legal provisions decided by the Court. Sometimes the living is not in accordance with the nominal set and the delay in giving is often felt by the ex-wife with such an incident the Plaintiff (ex-wife) can't do anything and not infrequently they have to be extra extra in finding living expenses for their children, during this season. a pandemic like this, the economy is getting more difficult, many are affected which makes it difficult to provide for children as they should in accordance with the provisions of the existing Court, At the Banyuwangi Religious Court, of all divorce cases all wife demands are met, but according to the results of interviews with the Banyuwangi Religious Court judges, does not rule out the demands or requests of the wife can be fulfilled all. If according to the judge it is necessary and indeed it is the right of the wife as well as the husband to be able to fulfill it, then the judge grants it.

5. CONCLUSION

Based on the results of research and discussion, the authors can conclude as follows:

- Legal protection for the wife by providing a living has been carried out to the maximum. However, these efforts do not always run smoothly, because the husband does not make it happen. In article 34 of Law Number 1 of 1974 in conjunction with article 80 (4) the Compilation of Islamic Law, it has been determined about the kinds of rights that a wife can claim when divorced by her husband in court, and if the husband is unable to fulfill the expenses decided by the Religious Court, the panel of judges will postpone the implementation of the *ikrtalak* for 6 (six) months.
- In SEMA No. 2 of 2019 (Supreme Court Circular) delaying the issuance of a divorce certificate to the Defendant (ex-husband) until the Defendant (ex-husband) fulfills the obligations resulting from his divorce to the Plaintiff (ex-wife), is an effective way to protect the rights of the wife after being divorced.



- The implementation of court decisions is not all carried out effectively and according to expectations, this is because the husband's level of economic ability is mediocre, so for example the judge decides according to the request of the wife and the husband is unable, then the consequences will be the same, which will not be realized. From the research, it is known that 80% have implemented the decisions that have been determined by the Court, but there are some who have not carried out in accordance with the Court's decisions, due to economic factors and the current situation due to the effects of the pandemic.

6. SUGGESTIONS

The suggestions that can be put forward by the author:

- The importance of providing socialization to the community about marriage law, including the rights of the wife after divorce.
- That there is a need for supervision regarding the obligation of the ex-husband after the divorce at the time of the provision of a living provided outside the court. Even though the ex-wife can apply for the execution of the maintenance obligations that were negligently given to her ex-husband, it would be better if it could be prevented by giving iddah and mut'ah maintenance while still in court.
- A statutory regulation should be made regarding the time limit for the payment of mut'ah, iddah, and madhiyah expenses as well as making regulations regarding legal sanctions for husbands who do not want to pay their obligations. This is because the existing legal instruments are still unable to provide justice and guarantee the rights of wives who are divorced by their husbands. In the case of divorce, the wife is in a weak state because she has to bear the consequences of divorce and the iddah period, especially if the wife has many children and does not have income to support her life and that of her children.

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