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A Critical Study of The Muhammadiyah's Tarjih Decision Relating to The Validity of Talak in Front of Court Using The *Al-Maslahah Al-Mursalah* Approach

Studi Kritis Terhadap Putusan Tarjih Muhammadiyah Tentang Keabsahan Talak di Depan Sidang Pengadilan Dengan Menggunakan Pendekatan Al-Maslahah Al-Mursalah

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Abstrak

Kata Kunci:

Al-Maslahah Al-Mursalah, Tarjih Muhammadiyah, Talak

Tujuan dari tulisan ini adalah untuk menggambarkan bagaimana hukum Islam merespons permasalahan kontemporer yang relevan dengan kaidah al-maslahah al-mursalah. Kaidah al-maslahah al-mursalah adalah metode efektif dalam penetapan hukum dalam Islam untuk menyikapi dan memberikan solusi terhadap permasalahan kontemporer. Penggunaan kaidah ini harus sesuai dengan syarat-syarat yang ketat yang diformulasikan oleh para ulama. Majelis Tarjih Muhammadiyah, yang merupakan bagian dari Muhammadiyah, memiliki peran penting dalam memberikan bimbingan keagamaan kepada umat, terutama bagi anggota Muhammadiyah itu sendiri. Tanggung jawab Majelis Tarjih ini mencakup perumusan keputusan-keputusan hukum berdasarkan metodologi pengambilan hukum yang memadai. Sejak tahun 1935, upaya perumusan metodologi hukum di tubuh Muhammadiyah telah dimulai, termasuk mengkaji lima masalah dasar (mabadi al-khamsah) yang menjadi panduan Muhammadiyah dalam persoalan keagamaan secara umum. Namun, dalam perjalanannya, Majelis Tarjih Muhammadiyah juga dihadapkan pada masalah-masalah keagamaan

kontemporer yang tidak memiliki dalil yang jelas sebagai perintah atau larangan. Oleh karena itu, Majelis Tarjih Muhammadiyah menggunakan pendekatan *al-maṣlaḥah al-mursalah* untuk mencari hukum-hukum kontemporer. Salah satu contoh permasalahan kontemporer yang diatasi oleh Majelis Tarjih Muhammadiyah dengan menggunakan pendekatan *al-maṣlaḥah al-mursalah* adalah hukum talak di depan sidang pengadilan, di mana menurut Majelis Tarjih Muhammadiyah, talak yang diucapkan oleh seorang suami di depan sidang pengadilan dianggap sah.

Abstract

Keywords:

Al Maslahah al
Mursalah, Tarjih
Muhammadiyah,
Divorce

The purpose of this writing is to describe how Islamic law responds to contemporary issues relevant to the principle of *al-maṣlaḥah al-mursalah*. *Al-maṣlaḥah al-mursalah* is an effective method in Islamic law for addressing and providing solutions to contemporary problems. The use of this principle must adhere to the strict conditions formulated by the scholars. Majelis Tarjih Muhammadiyah, a part of Muhammadiyah, plays a crucial role in providing religious guidance to the community, especially among its members. The responsibilities of Majelis Tarjih include formulating legal decisions based on appropriate methodologies of deriving law. Since 1935, efforts have been made within Muhammadiyah to formulate legal methodologies, including studying the five fundamental principles (*mabadi al-khamsah*) that serve as general guidelines for Muhammadiyah's religious affairs. However, in its journey, Majelis Tarjih Muhammadiyah also faces contemporary religious issues that do not have clear commandments or prohibitions. As a result, Majelis Tarjih Muhammadiyah employs the approach of *al-maṣlaḥah al-mursalah* to explore contemporary legal rulings. One example of a contemporary issue addressed by Majelis Tarjih Muhammadiyah using the principle of *al-maṣlaḥah al-mursalah* is the legal status of divorce pronounced in a court proceeding. According to Majelis Tarjih Muhammadiyah, a husband's pronouncement of divorce in a court session is considered valid.

INTRODUCTION

The effective method of establishing law to respond to and

provide solutions for contemporary Islamic issues is known as *al-maṣlaḥah al-mursalah*. Although some scholars

do not accept this method of *istinbat* (deriving legal rulings), the majority of scholars can accept its principles with very strict conditions. This is because, based on research into the sharia evidence, both in the Qur'an and hadith, scholars concluded that one of the objectives of the divine law (*syariah*) is to achieve benefit or welfare. (Asriaty, 2015)

The Muhammadiyah's Council of Jurisprudence (Majelis Tarjih Muhammadiyah) holds the view that *al-maṣlaḥah al-mursalah* can be used as a legal basis or method for issuing fatwas (legal opinions). This can be observed in the tarjih approach produced during the 2000 tarjih assembly. Unlike the majority of scholars in the field of *usul al-fiqh* (Islamic legal theory), the tarjih approach does not refer to *al-maṣlaḥah al-mursalah* as a legal basis but rather as a method for issuing fatwas. According to the tarjih approach, there are four techniques for issuing fatwas: consensus (*ijma'*), analogical reasoning (*qiyas*), *al-maṣlaḥah al-mursalah*, and customary practice (*'urf*).

One of its applications is in determining the legal ruling (fatwa) on the necessity of pronouncing divorce (*talak*) during a court proceeding. Muhammadiyah believes that this requirement is based on *maṣlaḥah*, and thus, a divorce outside of a court setting is considered invalid. In this paper, the author will delve deeper into the concept of *al-maṣlaḥah al-mursalah* by referring to classical scholars' works and its application according to

Muhammadiyah, as well as the fatwas issued by the Muhammadiyah's Council of Jurisprudence concerning this matter.

In principle, all principles and methods of Islamic jurisprudence (*fiqh*) can be found in the Qur'an and Sunnah (traditions of the Prophet). Furthermore, scholars have formulated various derived principles and discussions on the principles of *fiqh* and *usul al-fiqh* from ancient times to the present. In this study, the author will conduct a literature review by exploring relevant previous research on the topic.

One of the books under study is "*Ḍawābiṭ al-Maṣlaḥah fī al-Syarī'ah al-Islāmiyyah*," written by Muhammad Sa'id Ramaḍān al-Būṭī in 1973. This book discusses the principle of *al-maṣlaḥah* and its limitations, as well as elaborates on the arguments of jurists regarding this principle. Al-Būṭī also explains the derivative principles of *al-maṣlaḥah* and provides examples of its general application in various issues. An important point in this book is the discussion on *al-maṣlaḥah al-mursalah*. The examples of applications outlined by al-Būṭī in his book, which generally discuss *al-maṣlaḥah*, become a significant difference from the title of this research, as it highlights the existence of *al-maṣlaḥah al-mursalah* in the Muhammadiyah's Council of Jurisprudence and Renewal as one of the Islamic organizations in Indonesia that embraces progressive ideas.

One of the focal points of this article is the book on the Manhaj Tarjih Muhammadiyah (Muhammadiyah's

Tarjih Approach) by Prof. Syamsul Anwar, who is the chairman of the Muhammadiyah's Council of Jurisprudence and Renewal. The book generally describes the model of Muhammadiyah's tarjih approach, as well as the insights and spirit embraced by Muhammadiyah's tarjih. In the book, Syamsul Anwar also explains the approaches used by Muhammadiyah's tarjih in deriving laws and their techniques and methods.

This research is a literature-based study. The approach used in this research is a normative theological approach, which believes that Islamic teachings derived from the sacred texts of the Quran and Sunnah serve as a source of inspiration and motivation in Islamic teachings. Furthermore, jurists formulate these Islamic teachings in the form of fiqh and *usul al-fiqh* principles. The data sources examined in this research include the Quran, Sunnah, classical fiqh books, *usul al-fiqh* (principles of Islamic legal theory) works, and relevant principles and books related to the research topic. Additionally, other relevant books dealing with the issues discussed in this research are also utilized.

RESEARCH METHOD

The initial step taken in this research study is to determine the type of research. The clarity of the research type is closely related to the subsequent aspects of the research. Based on the formulation of the research title, this type of research falls under the

categorization of library research or study research.

This research is a descriptive qualitative study because it accommodates various ideas and concepts in data management. Descriptive research is a method used to describe existing phenomena, whether current or past. Essentially, this research describes the views of fuqaha (Islamic jurists) from classical, medieval, and modern periods, obtained from qualitative data analysis through literature review.

DISCUSSIONS

Definitional-Maṣlaḥah al-Mursalah

Al-maṣlaḥah al-mursalah, linguistically, consists of two words: "*maṣlaḥah*" and "*mursalah*." The word "*maṣlaḥah*" has been defined earlier. On the other hand, the term "*mursalah*" is derived from the word الإرسال, which means الإطلاق or "freedom."

كَانَ لِي طَيْرٌ فَأَرْسَلْتُهُ

It means:

I used to have birds, then I set them free. (Manzūr, 1414)

Meaning; "I used to have a bird, then I set it free." If the two words are combined, it means that it is interpreted as a free advantage.

Scholars almost always provide almost the same definition for *al-maṣlaḥah al-Mursalah* in terminology, although with a variety of different expressions. However, basically, the core of these meanings still have similarities and suitability. For example,

Abdul Wahhab Khallaf gives the following definition:

المَصْلَحَةُ الَّتِي لَمْ يَشْرَعْ الشَّارِعُ حُكْمًا لِتَحْقِيقِهَا وَلَمْ يَدُلَّ دَلِيلٌ شَرْعِيٌّ عَلَى اعْتِبَارِهَا أَوْ إِلْغَائِهَا وَسَمِيَتْ مُطْلَقَةً لِأَنَّهَا لَمْ تُقَيَّدْ بِدَلِيلٍ اِعْتِبَارٍ أَوْ بِدَلِيلٍ اِلْغَاءٍ. (Wahhāb Khallāf, 1947).

It means:

Al-Maṣlaḥah al-Mursalah is the benefit that is in line with the objectives desired by Islamic sharia. This includes the types of benefit that are generally recognized by sharia without any specific arguments that specifically regulate it. In this case, known as the term *al-istidlāl al-mursal* or also called by other terms *al-maṣaliḥ al-mursalah*.

While Imam al-Syātibī, defines *al-maṣlaḥah al-mursalah* in his book *al-Iṭīṣāmas* follows:

أَنَّ يُلَانِمَ تَصَرُّفَاتِ الشَّرْعِ وَهُوَ أَنْ يُوجَدَ لِذَلِكَ الْمَعْنَى جُنْسٌ اِعْتِبَارُهُ الشَّارِعُ فِي الْجُمْلَةِ بِغَيْرِ دَلِيلٍ مُعَيَّنٍ وَهُوَ اِلِسْتِدْلَالُ الْمُرْسَلِ الْمُسَمَّى بِالْمَصَالِحِ الْمُرْسَلَةِ. (Al-Syātibī, n.d).

It means:

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Husein Hamid Hasan defines it as follows:

المَصْلَحَةُ الْمُرْسَلَةُ مَصْلَحَةٌ تَدْخُلُ تَحْتَ أَصْلِ شَرْعِيٍّ مَأْخُوذٍ مِنْ اسْتِقْرَاءِ النُّصُوصِ الشَّرْعِيَّةِ. (Hamid Hasan, n.d)

It means:

Al-maṣlaḥah al-mursalah is the benefit that is included in the teachings of Islamic sharia, which is obtained or understood through research and studies from various sources of Islamic law (nas-nas of sharia).

Another definition expressed by Muhammad Said Ramaḍān al-Būṭī is as follows:

كُلُّ مَنْفَعَةٍ دَاخِلَةٍ فِي مَقَاصِدِ الشَّارِعِ دُونَ أَنْ يَكُونَ لَهَا أَوْ لِجِنْسِهَا الْقَرِيبُ شَاهِدٌ بِالْاِعْتِبَارِ أَوْ اِلْغَاءٍ. (Sa'id Ramaḍān al-Būṭī, n.d).

It means:

Every benefit that is included in the objectives of syara' without any argument justifying or canceling.

In his thesis, Zainal Abidin provides a definition of *al-maṣlaḥah al-mursalah*, which is:

The benefits desired by the Shariah (Islamic law) for its servants, whether they are direct or indirect. (Abidin, 2020)

From the several definitions that have been compiled by the experts above, it can be concluded that *al-maṣlaḥah al-mursalah* is benefit that can be recognized by reason on the basis that it is capable of achieving good and preventing evil, even though there is no detailed argument that permits or prohibits it in the Qur'an or hadith. (Syandri et al., 2022) In order to identify whether a benefit is included in the category of *al-maṣlaḥah al-mursalah*, a thorough analysis is needed from various sources of law, both the Qur'an and the hadith, because *al-maṣlaḥah al-mursalah*, although it does not have clear arguments to support it,

must be in accordance with the objectives of Islamic law (*maqāṣid al-syari'ah*) and included in the origins of Sharia (*the difficulties of taḥta aṣlin syar'iyyin*).

***Al-Maṣlaḥah al-Mursalah* in Muhammadiyah's Tarjih Fatwas**

One application example *al-maṣlaḥah al-mursalah* in Muhammadiyah is related to the fatwa regarding the importance of carrying out the divorce process through court hearings. In the book *Manhaj Tarjih Muhammadiyah*, it is explained that *al-maṣlaḥah al-mursalah* also applied in the tarjih fatwa, including in the case of the fatwa regarding the obligation to carry out a divorce through a court hearing. (Anwar, 2018)

KH Ahmad Azhar Basyir, former General Chair of PP Muhammadiyah and former Chair of the Indonesian Ulema Council, stated in conformity with the *Manhaj Tarjih Muhammadiyah* book that "Divorce that is carried out through a court session ensures compliance with Islamic principles regarding divorce, because before the decision is enforced, research is first carried out to ascertain whether the underlying reasons are strong enough to permit divorce between husband and wife. In addition, in some cases, the court can act as a judge before deciding on divorce between husband and wife. (Azhar Basyir, 2000)

He also emphasized the importance of preventing divorce from happening too easily, taking into

account that *al-maṣlaḥah al-mursalah* will not be taken into account if the provisions are left entirely to the law, which requires that every form of divorce must go through the court process. (Azhar Basyir, 2000) Divorce is an act that is disliked by Allah, but it is not considered as haram (forbidden). However, the divorce cases that occur in the Religious Court are more dominated by those who have previously sought a marriage dispensation. (Iqbal & Islam, 2021)

In the book *Fatwa Tarjih Question and Answer Religion Volume 8*, it is further emphasized that "Giving divorce outside the courtroom, because of its bad impact, must be prohibited and considered "illegal" based on the principle *saddu adz-zariah* (close the door that leads to loss or harm). (Majelis Tarjih dan Tajdid PP Muhammadiyah, 2018)

When viewed from the perspective of Indonesian law, this issue has been regulated in Article 39 of Law no. 1/1974 concerning marriage, Article 65 Law no. 9/1989 on the Religious Courts, and Compilation of Islamic Law Article 115, which states that "Divorce can only be carried out through a court hearing after attempts at mediation by the court to reconcile the two parties have been unsuccessful." In addition, regarding the calculation of divorce, it has been regulated in KHI Article 123 which states "Divorce is considered to have occurred when the divorce was pronounced before a court hearing." (Mahkamah Agung RI, 2011)

Definition of Divorce, Pillars and Conditions

In terminology, divorce is defined as follows:

حَلُّ رِبَاطِ الزَّوْجِيَّةِ الصَّحِيحَةِ فِي الْحَالِ أَوْ الْمَالِ
بِعِبَارَةٍ تُفِيدُ ذَلِكَ صَرَاحَةً أَوْ دَلَالَةً تَصُدُّرُ مِنَ الزَّوْجِ
أَوْ مِنَ الْقَاضِي بِنَاءً عَلَى طَلَبِ الزَّوْجَةِ

(Muhyiidin Abdul Hamid, 2012).

It means:

Termination of a legal husband and wife bond directly or gradually with a clear pronouncement or pronouncement that shows it, comes out of a husband or a judge at the request of the husband.

Divorce has pillars and conditions that must be met, because if one of them is not fulfilled then divorce is considered invalid. Pillars are things that must be done and are in the worship. While the condition is a matter that must be done but outside the worship. Both must be met simultaneously and cannot be separated because it determines the law of a problem.

Divorce has four pillars:

- 1) Divorce is carried out by a person who has the right to do so, what is meant here is the husband or his representative such as representatives, envoys, guardians for young children, and judges. So divorce cannot be done by someone who has nothing to do with the couple.
- 2) Divorce is done with the intention of ending a marriage whether it is stated clearly (*commentary*) or metaphor (*revenge*). This aims to expel divorce caused by speech errors or in the teaching process.

- 3) Divorce is intended for legitimate wives, both in normal circumstances (*true*) or during iddah (*fate*).
- 4) Using the pronouncement of divorce, the same pronouncement as divorce and the signs that indicate it.

The four pillars above are the pillars according to the Maliki school of thought. (al-Barakat Ahmad bin Muhammad al-Dardir, n.d.)

Meanwhile, according to the Syafi'i school of thought, there are 5 pillars of divorce, namely by adding a guardian (*region*).

Divorce has three conditions viz *al-muthalli*q, *al-muthallaqah*, and *shigat al-thalaq*. (Mālik Kamāl bin Sayyid Salim, 2016) Then the conditions for divorce if viewed from the three points above, divorce has conditions that must also be met, as follows:

- 1) Conditions that return to the husband:
 - a) Done by the husband or his representative (representative or judge).
 - b) The husband is mature and wise
 - c) Husband performs divorce without coercion
- 2) The second condition for returning to the wife is that divorce is said to a valid wife in a normal state or iddah except for iddah divorce 3.

The third condition returns to the pronouncement of divorce:

- a) Using the pronouncement that indicates divorce or equivalent to it

- b) Using pronunciation that is dependent on the wife in normal or iddah conditions, except for the third iddah of divorce. (Mālik Kamāl bin Sayyid Salim, 2016)

Divorce before the Court

If we look in the books of classical scholars it is not found discussions that clearly explained the issue of the necessity of divorce before the court, but only differences of opinion were found among the clerics about whether to bring witnesses or vice versa.

The differences between these scholars are as follows:

- 1) Divorce falls when the husband says the word divorce to his wife as long as all the conditions are met. This is the opinion of the majority of scholars including the Imams of 4 schools of thought, as evidenced by the opinion of the majority of scholars and including 4 schools of thought which only advocate (*mustahhab*) presence of witnesses in divorce. (Mālik Kamāl bin Sayyid Salim, 2016)

Since the time of Prophet Muhammad peace be upon him, divorce is only based on the words of a husband to his wife or it can be said the husband's prerogative as exemplified by him directly when divorcing Ummul Mu'minin Hafsa, at that time he did not ask to be used as an enforcer in the divorce. So when divorce is necessary and obligatory to use witnesses, the Prophet will certainly use them.

- 2) Divorce must be made in the presence of witnesses. this is the opinion of Ibn Hazm al-Zāhiri.

As Ibnu Hazm said in the book *al-Muhalla*: "Whoever has been mentally and towards his wife without a fair witness then he has digressed against the provisions of Allah SWT, it can be interpreted that he will get a sin for his actions.

This opinion is based on several arguments below, from the Qur'an:

فَإِذَا بَلَغَ آجُلُهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوِي عَدْلٍ مِّنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ إِنَّكُمْ يَوْمَئِذٍ عِندَ اللَّهِ مُنْظَرُونَ ۚ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا ۚ

The translation:

If they are nearing the end of the Eid period, treat them well with kindness or release them in a good way. In this case, make sure there are two righteous witnesses among you, and their testimony should be upheld sincerely for the sake of God. This advice is given to those who believe in Allah and the Last Day. Whoever fears God, surely He will provide a way out and a solution to the problems he faces. (Lajnah Pentashihan Mushaf Al-Qur'an, 2019)

The verse above states that witnesses after two cases, namely reconciliation and separation, so when there is a reconciliation and divorce, a witness is required.

In response to the verse above, it can be said that witnesses are only for reference because reconciliation includes returning marital status where marriage requires witnesses, so the same applies with reconciliation. There

are even Hanafiyah scholars who do not require it at all. As Imam Alauddin al-Kasani said::

أَنَّ الشَّهَادَةَ لَيْسَتْ بِشَرْطٍ لِحَوَازِ الرَّجْعَةِ عِنْدَنَا
Abu Bakr bin Mas'ūd al-Kasānī al-
(Hanafi, 2003)

It means:

That testimony is not required for its ability to refer according to us (Hanafi Madhhab).

Evidence from the friend's actions:

أَنَّ عِمْرَانَ بْنَ حُصَيْنٍ سَمِعَ عَنِ الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ
ثُمَّ يَفْعُ بِهَا وَلَمْ يَشْهَدْ عَلَى طَلَاقِهَا وَلَا عَلَى رَجْعَتِهَا
فَقَالَ: (طَلَقْتَ لَغَيْرِ سَنَةٍ وَرَاجَعْتَ لَغَيْرِ سَنَةٍ أَشْهَدُ
عَلَى طَلَاقِهَا وَعَلَى رَجْعَتِهَا وَلَا تَعُدْ)
(Daud, 2015)

It means:

That Imran Bin Hushain was asked about a man who divorced his wife and then had sex with her and did not witness the divorce nor the revocation of the divorce. He said; you divorced not according to the sunnah and returned not according to the sunnah. Witness his divorce and ruju' (return to him), and do not repeat it again.

This hadith does not clearly show the occurrence of divorce without witnesses, because it could be that this is showing sunnah and an expression of anger alone does not mean that divorce did not occur.

3) When facing the two differences of opinion above, Ibn Rushd (595 H) intervened by saying that the obligation to have a witness when divorce is not to determine whether or not the divorce has fallen, but to protect women's rights. So when there is no divorce witness, it still

occurs accompanied by the obligation to seek reinforcement by bringing witnesses.(Rusyd, 1988)

From the three opinions above we can compare and find a second opinion which says divorce must be carried out if there are witnesses is weak, because there are other possibilities in the argument used so that it does not explicitly require witnesses to divorce. From this, the majority of scholars stated that divorce occurred without the need for witnesses:

a) Ibn Qatthan in his book "*al-Iqna' fi Masailil Ijma'*":
وَلَا نَعْلَمُ خِلَافًا أَنَّ مَنْ طَلَّقَ وَلَمْ يَشْهَدْ أَنَّ الطَّلَاقَ لَهُ
لَا زَمَ. (Qathan, n.d.)

It means:

"And we don't know that there is a difference in divorce cases that don't use witnesses, so divorce still happens.

b) Ibn Hazm in his book *Maratibul Ijma'*:
وَلَا نَعْلَمُ خِلَافًا فِي أَنَّ مَنْ طَلَّقَ وَلَمْ يَشْهَدْ إِنْ الطَّلَاقَ
لَهُ لَزَمَ وَلَكِنْ لَسْنَا نَقْطَعُ عَلَى أَنَّهُ الْإِجْمَاعُ. (Hazm, n.d.)

It means:

And we don't know that there is a difference in divorce cases where no witnesses are used, so divorce still occurs. And we are not sure whether it is included in the Ijma.

Ibn Hazm's statement above shows his doubts in determining whether this matter is included in consensus or not, without denying that there is no difference in divorce without witnesses. Ibn Hazm is one of the strongest figures in the opinion that witnesses are obligated, but we find in another of his

books that it says the opposite, this shows that the obligation still exists but does not affect whether or not a divorce falls.

c) Imam Tahir bin Ashur in his interpretation says:

وَاتَّفَقَ الْجَمِيعُ عَلَى أَنَّ هَذَا الْإِشْهَادَ لَيْسَ شَرْطًا فِي صَحَّةِ الْمُرَاجَعَةِ أَوْ الْمَفَارَقَةِ، لِأَنَّهُ إِنَّمَا شَرَعَ إِحْتِيَاظًا لِحُقُوقِهِمَا وَتَجَنُّبًا لِنَوَازِلِ الْخُصُومَاتِ

It means:

All agree that the Witness is not a syara in matters of the validity of reconciliation or divorce, because it is prescribed to safeguard the rights of both and avoid disputes that are hereditary. (al-Rasyid dkk, n.d.)

He also said: "That setting a condition for other cases requires another special argument, because sometimes it can be a sin to leave it instead of canceling the action, such as the example of praying on the ground without the owner's permission (*ghosob*) or yield clothes *ghosob*." The prayer is valid but it is a sin to use something that is not rightfully his.

Divorce in front of the court according to Darul Ifta' Egypt

Darul Ifta Egypt as an institution that handles divorce issues before being brought to court. It was in this institution that the process of mediation, research and determination took place whether the divorce had been concluded or not. When the results of the research show that divorce has fallen, then it will proceed to court. This is in line with the

consensus of Indonesian scholars in 2012 that:

- 1) Divorce outside the court of law is valid on condition that there are syar'i reasons whose truth can be proven in court.
- 2) The iddah of divorce is counted from the time the husband divorces
- 3) For the sake of benefit and guaranteeing legal certainty, divorces outside the court must be reported to the court. (Ulama Indonesia, 2012)

The model carried out by Darul Ifta of Egypt and Ijma 'ulama of Indonesia accommodate all the possibilities and differences of opinion that exist because declaring legal divorce done outside the court with certain conditions, which is then followed by a clarification process in front of the court while at the same time protecting the public from arbitrarily dropping divorces.

CONCLUSION

Among the efforts made by the previous Indonesian scholars who played a role in formulating Islamic law integrated with the situation in Indonesia, resulting in the Compilation of Islamic Law, which was supported by the scholars of Muhammadiyah. One of the ways to safeguard the rights of wives and children is by using witnesses or recording the divorce in the court.

The fatwa issued by Majelis Tarjih Muhammadiyah regarding the invalidity of divorce except in front of the court, using the approach of *al-maṣlaḥah al-mursalah*, needs to be

reconsidered since no religious scholars have mandated it, and there is no need to use the phrase "not valid" in the fatwa. It is highly possible that divorce can occur outside the court proceedings when all the conditions and requirements are met or when witnesses testify to the validity of the divorce, which is acknowledged by all scholars.

Another negative impact of this fatwa is that it may lead to a casual approach when pronouncing divorce to the wife, as any number of divorces said by the husband is not counted until it goes through a court process to determine the waiting period (iddah). Thus, the actual iddah period might be considered incomplete. Furthermore, if

a husband and wife have not reported their triple divorce (talak 3) to the court, their subsequent relationship would be considered adultery (zina).

Another possible solution that could be implemented is to use the religious court as the center to determine the status of divorce, whether it has been legally finalized in Islamic law. This can be done directly after the divorce occurs, without the need for a lengthy court process. The status of the wife's iddah period can be determined immediately through direct visits or communication via phone, video calls, and other means.

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