

## **Analysis of Judicial Conditions in Case Discussion: Case Study about Description of Witness in Divorce in Medan Religious Court**

**Prof.Dr.H.Asmuni, MA**

*Lecturer of Da'wah & Communication Faculty of State Islamic University Nort Sumatra  
Corresponding Author: Prof.Dr.H.Asmuni, Ma*

---

**ABSTRACT:** According to the provisions of the Religious Courts and the General Courts that the witness is the person who gives testimony in front of the court related to the event experienced, heard and viewed by the witness himself. This provision is explained in the Civil Procedure Code that the witness explained was only what he saw, heard or felt (Article 171 HIR / 308 Rbg). In the case number 597 / Pdt.G / 2015 / PA.Mdn, the witness presented by the plaintiff before the trial did not see, did not hear and did not know that the plaintiff and the defendant had quarreled. Therefore, the witness's testimony is not in accordance with the applicable provisions, however the judge keeps deciding his case based on the witness's statement. The research method used in this research is the theory of Maqasid as-Shariah namely; maintaining Religion, Soul, Intellect, Descendant and Treasure. The results can be concluded that the judge believes in the truth of witness testimony even though he does not see, know and feel the events experienced by the plaintiff and the defendant. Judge Consideration is the testimony of witnesses in line with the statement of the plaintiff and the defendant. Witnesses were aware of the plaintiff's situation and the defendant from the plaintiff's immediate family who claimed that the plaintiff and the defendant had long separated the bed and there was no tranquility in the household. The judge's decision in accepting witness statements is justified according to law, as to maintain the mental health that is part of the Maqasid Shariah. If the testimony of witnesses who do not see, not knowing, and not feel the Judge is not accepted, is strongly suspected to interfere with the plaintiff's soul and the defendant. They will feel good and even impossible, there will be violence in the household that is feasible.

**Keywords;** Judges, plaintiffs, defendants, divorces and witnesses

---

Date of Submission: 06-01-2018

Date of acceptance: 22-01-2018

---

### **I. BACKGROUND ISSUES**

Under the terms of Islam, the Judge has a very important position. Judge is someone who is responsible in explaining the law of Allah SWT to Muslims. The process of explaining God's laws is itself called qadha '. Judge as the representative of Allah SWT and Caliph on earth. He has a very tough task. If he decides a case with a law that is incompatible with the Islamic Shari'a, its place in hell. Judges themselves according to a hadith are divided into three groups. Two groups will be put into hell and only one group survives and enters Paradise. This is confirmed by Rasulullah Saw which means:

"From Ibn Buraidah from his father, from the Prophet Muhammad, he said; There are three classes of judges, one enters Paradise and two classes into Hell. The judge who is to be in Heaven is the Judge who knows the truth, then he breaks up the matter based on that truth. The judge who enters into Hell is the Judge who knows the truth, but he wrongfully decides the case. The same is true of the Judge who decides the case for his folly. Abu Dawud says this is the most authentic hadith on this matter. ".<sup>1</sup>

In Islam, the office of Qadhi or judge is not a position given to people who ask for position. This position should only be given to a professional person. It is based on so heavy a consequence aspect of a judge. A Judge must be prepared to assume the mandate and all the responsibilities as the representative of God. The judge is not natural to be filled by ambitious people in pursuit of a position. People who pursue position tend to ignore the rights of others, not trust, and a great opportunity to be treasonous. The judge is also strictly forbidden to receive a gift from someone who never gave him a gift before being appointed a judge. The Word of the Prophet (s), "Whoever we take to work a job, then we give him sustenance (salary), then something he got after that is betrayal." (HR Abu Daud and Hakim) In Indonesia, the Religious Courts have absolute competence

---

<sup>1</sup> Abu Dawud, *Sunan Abu Dawud*, vol. 9, page 463

mandatory examine and prosecute matters concerning marriage, inheritance, will, grant, endowment, zakat, infaq, shadaqah and syari'ah economy.<sup>2</sup> Thus, the divorce lawsuit becomes something that is commonplace among the people. Looked chords, usually done, because husband and wife is no longer able to maintain harmony in the household.

In many cases, witness testimony is one of the factors that can give the Judge belief. Under the applicable provisions of the territory of Indonesia, the witnesses providing the testimony in the proceedings shall be persons who see, hear and experience an event directly. However, the case number 597 / Pdt.G / 2015 / PA.Mdn, is a case that was decided by the Religious Court Judges of Medan by receiving testimony of people who do not see and hear directly the events of husband and wife whose case is handled by the Medan Religious Court. This is the principal issue to be analyzed in this paper by using the theoretical approach of Maqasid Syariah version as-Syatibi.

## **II. RESEARCH METHODS**

### **A. Data Retrieval:**

#### **1. Library Studies**

The literature references used in this study are as follows;

- a. Law no. 1/1974 jo PP no.9 / 1975 as a rule of conduct rather than Law No.1 / 1974, and document file of case no. 597 / Pdt.G / 2015 / PA.Mdn
- b. The provisions of the applicable law of the Criminal Code. Article 1895 stating that "proof with witnesses is permitted in all things not excluded by law". Thus, in principle, witness evidence reaches all areas and types of civil disputes, unless the law itself determines the dispute can only be proven by deed, then the witness evidence can not be applied. The witness evidence submitted to the parties pursuant to Article 121 paragraph (1) of the HIR is an obligation of the parties to the litigation. However, if the parties concerned are not able to volunteer, even if they have attempted with all power, while the relevant witness is highly relevant, according to Article 139 paragraph (1) the HIR judges may present it in accordance with their duties and authorities which, if not exercised, constitute unprofessional action conduct.

#### **2. Interview**

In relation to the testimony of witnesses and the enactment of divorce in the Religious Courts we interviewed (1). Head of Medan Religious Court, Drs. H. M. Nasrul. K, SH., MH (2). Drs. H. Sahnan, SH, MH, as the Chief Judge in handling the said divorce case. (3). Rusli, Religious Court Judge of Medan (4). Clerk of Medan Religious Court.

#### **3. Observation**

Observation is to see the course of the trial in the case of divorce until there is a decision of the judge. Observations were conducted for 3 (three) months starting from February 5, 2015 to May 5, 2015.

#### **4. Analysis used**

After all data collected through data collection methods, especially the divorce case in case no. 597 / Pdt.G / 2015 / PA.Mdn, about the testimony of the witnesses presented, the data will be analyzed based on As-Syatibi's theory of Maqasid Syariah namely: (1). Hifdz al-Din, guarantees freedom of religion. (2). Hifdz al-Nafs, maintaining survival. (3). Hifdz al-'aql, assures creativity of thinking. (4). Hifdz al-nasl, assures offspring and honor (5). Hifdz al-mall, property ownership, property and wealth.<sup>3</sup>

## **III. DIVORCE CEREMONY**

### **A. Case Event In Decision Number 597 / Pdt.G / 2015 / Pa.Mdn**

Case based on Decision Number 597 / Pdt.G / 2015 / Pa.Mdn regarding the divorce, it was disclosed that the plaintiff has filed a lawsuit dated March 30, 2015 which has been registered at the Registrar of the Medan Religious Court in the Register of the case number 597 / Pdt.G / 2015 / Pa.Mdn dated March 30, 2015. The content of the lawsuit is that the plaintiff is a legal husband and wife. They married in Islam on April 19, 2000 AD in accordance with the excerpt of the Marriage Certificate issued by the Officer of the Registrar of the Office of Religious Affairs of Medan Johor Sub-district, Medan City. After the marriage, the plaintiff and the defendant live together in a house on the Flamboyan road. Before the marriage, the plaintiff worked in a convection business and after the plaintiff's marriage was still working on the venture. After 6 (six months), the plaintiff became pregnant, and when the plaintiff's age entered the third month, the plaintiff suffered a miscarriage so 2 (two) months later the plaintiff stopped working.

After the miscarriage, the plaintiff never became pregnant again, so in 2002, the plaintiff's brother-in-law gave birth to a daughter, the plaintiff and the defendant had agreed to appoint the child. In 2007 the plaintiffs 'and

---

<sup>2</sup> article 49 of Law no. 3 of 2006.

<sup>3</sup> Asafri Jaya Bakri, The Concept of Maqashid Syari'ah According to al-Syatibi, Raja Grafindo Persada, Jakarta, 1996, pp. 60-72.

defendants' houses became less harmonious, because the defendant was often brusque against the plaintiff and even the defendant to physical violence such as hitting, grabbing, spitting on the plaintiff. In 2010 the plaintiff did not withstand the treatment of the defendant and left the plaintiff's residence home. The defendant went to the plaintiff's parents' house, and the next day, the plaintiff returned to the house of the defendant because the adopted daughter of the plaintiff was feverish. It was not welcomed by the defendant and he again throws out harsh words against the plaintiff. The Plaintiff has filed a suit against the brother and sister-in-law of the plaintiff. Both dismiss the plaintiff and help the plaintiff open a business at home.

In 2013 when there was recitation in the plaintiff's house, the defendant suddenly became angry with an unclear reason and slammed the pot of the plaintiff's cooking water, so the plaintiff was ashamed of the defendant's actions. In 2014 when; the plaintiff, the plaintiff and the plaintiff's son and family and neighbors went on an excursion to Sabang, unwittingly the suspect was suspicious and jealous of one of the defendant's friends who went to Sabang. Defendant mocked and accused the plaintiff of doing something that was not good, but the plaintiff denied the accusation of the defendant but the defendant never listened to the plaintiff's argument and even the defendant was more abusive against the plaintiff so that the plaintiff again complained of the defendant's action to the defendant's family. Brother and brother in law asked the defendant to apologize, but the defendant was reluctant to apologize.

In May 2014 the plaintiff requested permission from the defendant to go to the plaintiff's sister's house with the plaintiff's daughter in Malaysia for 2 weeks, after returning from Malaysia the defendant committed physical violence against the plaintiff who consequently the plaintiff reported the incident to the Polsek and the plaintiff also consulted the Pusaka Foundation Indonesia which the consultation resulted in a peace agreement witnessed by the plaintiff's brother and a defendant's friend. Around September 2014 the plaintiffs and defendants were due, the plaintiff tried to remind the defendant the point of a peace agreement, but the defendant got angry and forcibly pulled the plaintiff's hand up to the sprain. After the incident the plaintiff relayed the incident to the plaintiff's brother who co-signed the peace agreement. After being given advice and explanation, the plaintiff tried to be patient and understood the defendant's wishes not to move because of the defendant's job as head of the neighborhood in the plaintiff's residence and the defendant. As compensation, the plaintiff asked to be made a stall in front of the house for the place of daily selling.

Furthermore, the defendant agreed to the plaintiff's wishes and gave Rp.2.000.000 (two million rupiah) for selling and the plaintiff received financial assistance from the plaintiff's brothers Rp.3.000.000 (three million rupiah). After the plaintiff has vend, the defendant never gives any more money to the plaintiff. In March of 2015, the plaintiff filed a complaint with the household at Tanjung Selamat Village, and the defendant gave the plaintiff money to spend. On February 23, 2015 at about 12 noon the defendant beat the plaintiff for no apparent reason, so the plaintiff again made a report to the Deli Old Police Station on February 23, 2015. The Plaintiff requested that the Medan District Court of Justice Judges to make an Interval Selection and allow the plaintiff and the plaintiff to does not live in a house with the defendant, while ordering the defendant not to approach the plaintiff or the plaintiff's son.

Since the plaintiff's son is a foster child of the plaintiff's younger sister, the plaintiff requests that Hadhanah (childcare) be placed on the plaintiff. Since the plaintiff has no permanent employment and relies on his merchandise, he pleads for the Medan District Court of Judges to order the defendant to hand over the merchandise belonging to the plaintiff and also to the plaintiff's sister so that it can be used to continue living with the defendant's child. Plaintiffs and defendants have pursued a peaceful but unsuccessful effort.

The Plaintiff requests that the case be tried and examined subsequently to take the following legal rulings:

In an interrupt:

1. Allowing the plaintiff to not stay a single house with the defendant and not to approach the plaintiff and the plaintiff's child before the case has a permanent legal force.
2. Allow plaintiffs to bring all the necessities of selling.

In the principal matter:

1. To grant the plaintiff's entire claim.
2. divorce from the defendant.
3. Establish child custody on the plaintiff.
4. Order the defendant not to approach the plaintiff and the plaintiff's son.
5. Order the defendant to hand over 3 units of the sony brand play station to the plaintiff.
6. All litigation costs incurred as a result of this case in accordance with applicable laws and regulations.

Whereas against the plaintiff's lawsuit, the defendant gave a substantial reply:

1. That the plaintiff and the defendant are husband and wife.
2. That the plaintiff and the defendant have an adopted child.
3. It is true that the plaintiff and the defendant are at odds but the nature is just a casual argument but the cause is not as claimed by the plaintiff, but the truth is that the plaintiff is not good in dressing and the plaintiff insults

the defendant's family.

4. That it is not true the defendant there hit the plaintiff.

5. That the defendant is not right to master the plaintiff's sister's goods.

In an interrupt:

requested that the Panel of Judges not grant the plaintiff's petition of interlocutory decision.

In the principal matter:

That the Panel of Judges reject the plaintiff's claim.

With the response of the defendant, the plaintiff submitted a reply which in principle remained with his original claim.

Furthermore, in order to strengthen the lawsuit, the plaintiff proposed two evidences: evidence of letters and witness evidence. The witness evidence presented by the plaintiff is from the family side, namely witness I and witness III who are the plaintiff's niece and the plaintiff's niece. On the other hand the defendant who denied the plaintiff's lawsuit mentioned the reason for the quarrel and dispute between the plaintiff and the defendant that is caused by the less good plaintiff in dressing. However, the defendant in denying the lawsuit only shows the proof of the letter and the defendant did not present the witness evidence in the hearing.

#### B. Proof of Plaintiff and Defendant

The proof presented by the plaintiff in the face of the trial, as follows:

I. Proof of Letter. In this case the plaintiff shows the letter proof, in the form of:

1. Copy of Book of Marriage (Absolute proof instrument, must be believed to be true)
2. Copy of birth certificate, issued by UNA maternity hospital.
3. Photocopy of peace agreement between the two parties, the plaintiff and the defendant
4. Photocopy of letter of injury visum request bruises from the Police Sector Deli Tua.
5. Photocopy Receipt of police report.
6. Copy of notice of investigation progress.

II. Proven Witness:

The First Witness, who is a Plaintiff's family party:

- a. Not knowing the circumstances of Plaintiff's household
- b. Never see and hear Plaintiffs and Defendants quarrel
- c. Not knowing when the Plaintiff and Defendant separated house

Second Witness;

- a. Not knowing the Plaintiff's and the Defendant's marriage
- b. Not Knowing Plaintiffs and Defendants have been blessed with a child
- c. Not knowing the circumstances of Plaintiff's and Defendant's household
- d. There was no confirmation of the matter to the Defendant, as the witness was afraid of being considered interfering in the Plaintiff's and Defendant's domestic problems
- e. Unable to reconcile Plaintiff and Defendant

The Third Witness;

- a. Never see and hear Plaintiffs and Defendants quarrel
- b. Plaintiff's and defendant's households in a state of displeasure, the cause of the defendant's jealousy to the plaintiff.
- c. According to the Plaintiff's and Plaintiff's witness's parents' story has been reconciled but unsuccessful.

Based on the statement between the first witness and the second witness who is unaware of the circumstances of the Plaintiff's and the Defendant's household never even sees and hears the disagreements and quarrels between the Plaintiff and the Defendant. A third witness's statement stating that he only heard from the witness's parents' story, and the material requirements of the witness evidence, namely the information given about the event experienced, heard and viewed by the witness himself.<sup>4</sup> However, the three witnesses knew that the plaintiff and the defendant had separated the house.

The evidence presented by the defendant in the face of the trial, as follows:

a. Evidence of Witnesses

That the defendant did not present evidence of witness in front of the court.

b. Proof of Letter

Copy of proof of loan payment to BRI on behalf of the plaintiff dated January 8, 2014, copy of purchase of Honda motorcycles in 2012, a copy of the honda vehicle registration on behalf of the plaintiff on 3 September 2012, original photo 6 sheets but not stamped.

---

<sup>4</sup> Guidebook III, page. 94.

### C. Legal Considerations

In the Civil Procedure Code, a witness must see, hear and experience for himself an event. Witnesses who do not hear, do not see, and do not experience the event themselves are called *Testimonium De Auditu*. Religious courts still refer to general courts, this is corroborated in article 54 of Law No. 7 of 1989 states that: "The procedural law applicable to the Court within the Religious Courts is a civil procedure law applicable to the Court within the General Courts, set out specifically in this Act ". The first point of the material requirements of a witness is to explain what has been seen, heard and experienced by himself. The Criminal Code of *Burgerlijk Wetboek* is contained in article 1907 which states that: "Each testimony must be accompanied by reasons for knowing the things described, The opinion or the specific presupposition, obtained by means of the mind, is not a testimony" .

The focal point of the discussion in this study is that the witness presented by the plaintiff before the trial never sees, never hears and never knows that the plaintiff and the defendant quarreled, even the first witness statement, declared that he was on the phone by the plaintiff to ask for help to be a witness in the plaintiff's court because the plaintiff will divorce the defendant. The first witness then asked what the problem was, the plaintiff declared the issue of domestic violence. The second witness, though never seen, never heard not even know the circumstances of the plaintiff's household and the defendant, but the plaintiff once came to the witness's house in a state of fear and rushed and cried and claimed his shirt had been torn apart by the defendant and declared his body slammed by the defendant.

The third witness, claiming that he had never seen and never heard between the plaintiff and the defendant quarreled, but said that the plaintiff's and the defendant's household was in a state of displeasure. The third witness, knowing the plaintiff and the defendant has split the house for approximately 3 (three) months. This witness only knew from the witness's parents' story that between the plaintiff and the defendant had been reconciled because of his argument but was unsuccessful. The judge of the assembly, finally decides the case of divorce with the consideration of:

1. There is legitimate evidence of a legal marriage book between the plaintiff and the defendant
- 2, the existing Witness has fulfilled the formal and material requirements, which must be 2 persons and must be in accordance with Article 309 RBG. The statements of the witness may convince the Judge that the testimony meets the material and formal requirements and the evidence of the allegations.
3. Witness presented in front of the trial Minimal 2 (two) persons, and the witness has 3 (three) witnesses and it is more perfect.
4. The judge who evaluates the truth of plaintiff and defendant's proof is seen from the Witness who, although not listening directly, but his or her statement is in conformity with each other, and there are 3 (three) persons.
5. The testimony of witnesses remains heard even though they do not see, hear directly. However, the witness said that he knew the plaintiff and the defendant separated the house through a close family of the plaintiff. The judge believed that the split of the house was an indication of an argument in the plaintiff's household and the defendant. The judge also believes that plaintiffs who often complain to witnesses about the crucial problems of plaintiffs 'and defendants' households, because the witness is the family of the defendant is a truth to be believed.<sup>5</sup>

In the end, the judge believes that the testimonies of witnesses in accordance with the statement of the plaintiff, that the plaintiff and the defendant actually has occurred antagonistic relationship. Harmony in the household which is the joint of family life no longer exists. If the plaintiff's petition is not granted, it is feared there will be a worse husband and wife relationship. Thus, the Judge decided to grant the plaintiff's petition with the decision number 597 / Pdt. /2015.PA.Mdn.

### D. Analysis of Judge's Decision

After getting the data in the trial, it can be concluded that the decision of Religious Court Judge Medan with number: 597 / Pdt. /2015.PA.Mdn. in the case of divorce can be declared legitimate according to the method of *Maqasid As-Shariah* in the aspect of keeping the soul. If the Judge does not receive the statements of witnesses who are unaware, not stung and do not directly mersakan, it is feared there will be pressure of the soul, especially on the plaintiff who had been getting violence in the household. Even if the plaintiff's petition is not granted, there is no possibility of a life-threatening act of violence against the plaintiff, with a more sadistic and cruel physical and psychic torture. From the other aspect, all the formal requirements such as marriage certificate, the number of witnesses has exceeded 2 (two) people. This is in accordance with the *fiqhiyya kaedah* which states that rejecting evil must take precedence over taking good (*dar-ul mafasidi muqaddamun ala jalbil masalih*).

---

<sup>5</sup> Sahnan, Medan Religious Court Judge, private interview, Medan, December 09, 2016.

#### E. Conclusions

Decision of Religious Court Judge Medan with no. 597 / Pdt. /2015.PA.Mdn, who adjudicates a divorce from wife to her husband, is in conformity with the applicable provisions. This is because there is already authentic evidence of a legal marriage between the plaintiff and the defendant. Between the plaintiff and the defendant there is no peace in the household, and even the defendant has committed domestic violence (Domestic Violence). As a result, the two have long separated the bed and have tried disamaikan by the family, but both still can not get along and peace. The witnesses presented in the case are 3 (three) witnesses and have fulfilled their formal requirements. In giving testimony the witnesses do not see, know and experience directly about the commotion in the plaintiff's household and the defendant. Nevertheless, the witnesses knew of the plaintiff's situation and the defendant from the plaintiff's close family about the two separated the bed and did not get along. The Medan Religious Court judge accepted the witness statements and finally granted the plaintiff's claim and finally the divorce took place. The judge's decision is in accordance with the theory of Maqasid Syariah is to keep the soul from the aspect of psychic pressure if there is no divorce. It is even feared that there could be a mental threat by physical and psychological violence if the plaintiff's petition is not granted.

#### READING LIST

- [1]. Anwar, Moch, *The Basics of Islamic Law In Decision Making in Religious Courts* (Bandung: CV Diponegoro, 1991).
- [2]. Arto, Mukti, *Reform of Islamic Law through Judge's Decision*, Yogyakarta: Student Literature, 2015.
- [3]. Arifin, Jaenal, *Religious Courts within the Framework of Law Reform In Indonesia*, Jakarta: Kencana Prenada Media Group, 2008.
- [4]. Auda, Jasser, *Earth Islamic Law Through Maqasid Syari'ah*, terj. Rosidin and Ali Abd el-Mun'im, Bandung: PT Mizan Pustaka, 2015.
- [5]. Asafri Jaya Bakri, *Concept of Maqashid Syari'ah According to al-Syatibi*, RajaGrafindo Persada, Jakarta, 1996
- [6]. Department of Religion R.I., *Compilation of Islamic Law In Indonesia*, Jakarta: Directorate General of Islamic Institutional Institution Development, 1997/1998.
- [7]. Elmi As Pelu, Ibn and Abdul Helim, *The Concept of Testimony "Civil Procedure Law in Islamic Religious Courts"*, Jakarta: Setara Press, 2015.
- [8]. Faqih, Mariyadi "Constructive Confidence Construction of Constitutional Court Judges in the Election Dispute Resolution," in the *Constitutional Journal*, vol. X.
- [9]. Hasbi Ash Shiddieqy, Tengku Muhammad, *Judiciary and Islamic Events Law*, Semarang: PT. Rizki Putra Library, 1997.
- [10]. Mertokusumo, Sudikno, *Indonesian Civil Procedure Law Revised Edition*, Yogyakarta: Atma Light Rimdan, Post-Amendment Judicial Power Constitution, Jakarta: Kencana, 2012.
- [11]. Setiawan, *Various Legal Problems And Civil Procedure Law*, Jakarta: Alumni, 1992.
- [12]. Subekti, R. and Tjitrosudibio, *Civil Code of Burgerlijk Wetboek*, Jakarta: Pradnya Paramita, 2001.
- [13]. Shaykh Zainuddin 'Abdul' Aziz Al-Malibariy, *Fathul Mu'in Syarhil Qurrotol Aini*, trans. KH. Aliy As'ad, Holy: The Holy Tower, 1980.
- [14]. Team Compilers PTA Medan and PTA Pekanbaru, *Law of Religious Court (Technical Guidance for Judges, Students and Legal Practitioners)*, Medan: CV Dharma, 2010.

Prof.Dr.H.Asmuni, MA "Analysis of Judicial Conditions in Case Discussion: Case Study about Description of Witness in Divorce in Medan Religious Court." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, vol. 23, no. 1, 2018, pp. 61-66.