



## **Divorce Lawsuit Due to Impotence Perspective Maslahat Theory: Case study of the Andoolo Religious Court Decision, Southeast Sulawesi**

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### **Abstract**

This research aims to analyze the decision to sue for divorce because the husband is impotent from the perspective of *maslahat* theory. The main condition for building a harmonious family is the existence of mutual trust and understanding between husband and wife. However, in living a married life, problems sometimes arise, such as the husband suffering from impotence, which can disrupt the relationship between husband and wife. This type of research is normative legal research, the data source is secondary data in the form of the decision of the Andoolo Religious Court, Southeast Sulawesi, Number 0225/Pdt.G/2019/PA.AdI regarding divorce due to husband suffering from impotence. This research found that the judge's consideration in deciding case Number 0225/Pdt.G/2019/PA.AdI was that the judge granted the divorce suit on the grounds that there had been continuous disputes and quarrels between husband and wife, the factor causing the disputes and quarrels was that the defendant was unable to produce children. The defendant suffered from impotence which the plaintiff only discovered after marrying the defendant. The judge's considerations were in accordance with the provisions of Article 19 letter (f) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage jo. Article 116 letter (f) KHI, so that the Plaintiff's divorce claim is granted. The judge's considerations in granting the divorce suit are also in accordance with the benefit theory, including benefits for the wife, benefits for the husband and benefits for society.

**Keywords:** Divorce lawsuit, impotence, maslahat theory, court decision, Islamic family law

### **Abstrak**

*Penelitian ini bertujuan untuk menganalisis putusan cerai gugat karena suami menderita impoten dalam perspektif teori masalah. Syarat utama membangun keluarga yang harmonis ialah adanya sikap saling percaya dan saling memengerti antara suami istri. Namun, dalam menempuh kehidupan berumah tangga terkadang muncul masalah seperti suami menderita penyakit impotensi, sehingga dapat mengganggu hubungan antara suami dan istri. Jenis penelitian ini adalah penelitian hukum normatif, sumber datanya adalah data sekunder berupa putusan Pengadilan Agama Andoolo Sulawesi Tenggara, Nomor 0225/Pdt.G/2019/PA.Adl tentang cerai gugat karena suami menderita impotensi. Penelitian ini menemukan bahwa pertimbangan hakim dalam memutus perkara Nomor 0225/Pdt.G/2019/PA.Adl adalah hakim mengabulkan gugatan cerai dengan alasan telah terjadi perselisihan dan pertengkaran terus menerus antara suami istri, faktor penyebab perselisihan dan pertengkaran yaitu Tergugat tidak bisa memberikan keturunan dan Tergugat mengidap impotensi yang baru diketahui Penggugat setelah menikah dengan Tergugat. Pertimbangan hakim telah sesuai dengan ketentuan Pasal 19 huruf (f) Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksanaan UU Nomor 1 Tahun 1974 tentang Perkawinan jo. Pasal 116 huruf (f) KHI, sehingga gugatan cerai Penggugat dikabulkan. Pertimbangan hakim yang mengabulkan gugatan cerai tersebut juga sudah sesuai dengan teori masalah, baik masalah untuk isteri, masalah untuk suami dan masalah untuk masyarakat.*

**Kata Kunci:** *Gugat Cerai, impotensi, teori masalah, putusan pengadilan, hukum keluarga Islam*

### **Introduction**

A marriage that has fulfilled the pillars and conditions will give rise to rights and obligations for husband and wife in the household. If these rights and obligations are carried out properly, there will be peace, tranquility, and happiness in married life. Sexual relations between husband and wife become lawful after the marriage contract between the two.<sup>1</sup> However, if one of the husband or wife has a disease or disorder that can prevent sexual intercourse and even have an impact that

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<sup>1</sup> Achmad Musyahid Idrus, et.al., "The Tradition of Mappasikarawa in the Bugis-Makassar Community Marriage: A Study of Islamic Law Philosophy," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 3 (2023). Luthfi Auni and Nidawati Nidawati, "The Semiotic Meaning and Philosophy of Symbols in the Gayo Ethnic Marriage Processions in Central Aceh," *Jurnal Ilmiah Peuradeun* 11, No. 3 (2023).

cannot have offspring, it will certainly cause disappointment for the partner. Related to this, Umar bin Khatab argued that any defect or disgrace that causes a person to feel lazy with his partner, so that the purpose of marriage, namely the desire to get peace and heart and the growth of affection cannot be carried out, must be given the right to choose.<sup>2</sup>

The desire to have children for a married couple is a natural and human instinct.<sup>3</sup> Basically, the child is entrusted to the married couple as a mandate given by Allah SWT. If a marriage does not have offspring, even though it has been married for many years, it is considered a serious problem.<sup>4</sup> So most couples choose the last resort with divorce, even though Islam hates divorce even though divorce is a permissible matter.<sup>5</sup>

In the case of childlessness, it is usually caused by one of the parties having a disease such as impotence so that he cannot have sexual intercourse. As long as the wife is content and accepts her husband's impotence, there is no problem.<sup>6</sup> However, for wives who do not accept this condition, they are allowed to complain to the court and it usually leads to divorce.<sup>7</sup>

In connection with this reason for impotence, there is one religious court decision, namely decision Number 0225/Pdt.G/2019/PA.AdL, filed by the Plaintiff on August 20, 2019,<sup>8</sup> which has been registered at the Registrar of the Andoolo Religious Court, the decision is a case of contested divorce, the Plaintiff argues that the reason for filing for divorce is because the Defendant has a sexual dysfunction disorder or impotence which causes the Plaintiff not to get inner support and the Plaintiff cannot get offspring from the Defendant.

There are several studies related to divorce suits because they do not have offspring due to impotence, including Novianti (2021) discusses Divorce Caused

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<sup>2</sup> Sayyid Sabiq, *Fikih Sunnah*, (Jakarta: Cakrawala, 2008), p. 280. Ihdî Karim Makinara, et.al., "Physical Handicap as a Reason for Divorce: Case Study at the Sharia Court, Banda Aceh, Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

<sup>3</sup> Agus Hermanto and Habib Ismail, "Criticism of Feminist Thought on the Rights and Obligations of Husband and Wife from the Perspective of Islamic Family Law," *Journal of Islamic Law* 1, No. 2 (2020), p. 182-199.

<sup>4</sup> Darmawan, et.al., "Relative Competence of the Sharia Court: Talaq Divorce Lawsuit and Protection of Women's Rights," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1 (2023), p. 84-100.

<sup>5</sup> Syapar Alim Siregar, "Analisis Putusan Hakim Tentang Perceraian Karena Tidak Mempunyai Anak Akibat Kista," *Jurnal El-Thawalib* 2, no. 1 (2021).

<sup>6</sup> A. Zamakhsyari Baharuddin and Rifqi Qowiyul Iman, "At-Tafriq Al-Qadhâ'i and The Religious Courts' Authority In Deciding A Divorce," *Syariah: Jurnal Hukum dan Pemikiran* 20, No. 1 (2020), p. 1-12.

<sup>7</sup> Yayah Yarotul Salamah, "Urgensi Mediasi dalam Perkara Perceraian di Pengadilan Agama," *Ahkam: Jurnal Ilmu Syariah* 13, No. 1 (2013), p. 81-88.

<sup>8</sup> Azwir, Pagar, Muhammad Syukri Albani Nasution, "The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, No. 2 (2022), p. 165-180.

by impotence According to Ibn Hazm (Analysis of the Decision of the Sharia Court of Banda Aceh City Number 434/Pdt.G/2020/Ms.Bna). The results of this study are that the Sharia Court judge saw that in the household there were frequent disputes and arguments because the Defendant had a sexual dysfunction disorder which caused the Defendant to be unable to provide mental support to the Plaintiff.<sup>9</sup> Ibn Hazm's opinion on this case is that he does not allow the judge to terminate or give time for the marriage, but allows the husband to impose thalaaq on his wife.<sup>10</sup>

Furthermore, Sri Wulandari's study (2022) entitled Review of Islamic Law Against Weakness as a Reason for Divorce (Analysis of Decision Number: 18/Pdt.G/2019/PA.Pare). The result of this research is the judge's consideration in deciding the case because in the marriage there is no longer harmony, so the purpose of marriage will not be achieved as in the review of Islamic law the judge prioritizes the welfare of the parties. And because the purpose of marriage as referred to in Article 1 of Law No. 1 of 1974 and Article 3 of KHI cannot be realized, a verdict is handed down.<sup>11</sup>

Based on these studies, they have discussed impotence as a reason for divorce from the perspective of fiqh, positive law, and the opinion of Ibn Hazm. The difference between this research and the previous research is the analysis of the decision to sue for divorce because of impotence from the perspective of *mashlahah* theory.

The research used is normative legal research, normative law research is the study of documents using sources of legal material such as regulations of litigation,<sup>12</sup> court decisions or ordinances, contracts/contracts/acts, legal theory, and opinions of scholars.<sup>13</sup> In this study, secondary data is used as a result of the judgment of the Religious Court. The method of study used to analyze the issue in this article is to perform a search of libraries (books) and legal documents relevant to the subject matter of the question.

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<sup>9</sup> Syukrawati, Imaro Sidqi, Siti Maymanatun Nisa, Zufriani Zufriani, Doli Witro, "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, No. 1 (2024), p. 121-164.

<sup>10</sup> Novianti, Perceraian Disebabkan Impotensi Menurut Ibnu Hazm (Analisis Putusan Hakim Mahkamah Syar'iyah Kota Banda Aceh Nomor 434/Pdt.G/2020/Ms.Bna), *El-Hadanah: Indonesia Journal of Family Law and Islamic Law* 1, no. 1 (2021): 103–121.

<sup>11</sup> Sri Wulandari, Tinjauan Hukum Islam Terhadap Lemah Syahwat Sebagai Alasan Dalam Perceraian (Analisis Putusan Nomor: 18/Pdt.G/2019/PA.Pare), (Institute Agama Islam Negeri Parepare, 2021).

<sup>12</sup> Eka Susylawati, "The Judge Principle Is Active In Case of Divorce In Madura District Religious Court," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, No. 2 (2019), p. 267-282.

<sup>13</sup> Muhaimin, *Metode Penelitian Hukum*, (Mataram: Mataram Univrsity Press, 2020), p. 45.

## Impotence as a Reason for Divorce

Impotence literally means incapacity. In the field of medicine, impotence has always been associated with sexual problems, so impotency is interpreted as a man's inability to have sexual intercourse.<sup>14</sup> Impotence is also referred to as sexual dysfunction, impotence is a weakness that means a state of inability to have sexual intercourse or to die of puffiness. (*lemah syahwat atau tidak ada tenaga*). "Inniin" means a man who is unable to marry a woman and doesn't want to. Impotence is mainly caused by disorders in vital organs, which causes a man's inability to have sexual intercourse because of his abnormal or unable to harden (erection), and not strong enough to have mutually satisfying sexual relations or what society often calls "*lemah syahwat*".<sup>15</sup>

Impotence is also called a condition when the penis is unable to erect or maintain it despite the occurrence of sexual intercourse. Impotence is a common sexual problem in men aged 40 and over. Although not so dangerous, this condition is very annoying for the patient and his partner, because a husband suffering from impotence will be difficult to erect and maintain it. People with impotence will also experience a decrease in the desire to have sexual intercourse.<sup>16</sup>

Impotence rates are generally divided into two categories: First, the rate of permanent impotence, which cannot be cured by one hundred percent. Rates like this are usually caused by physical and psychological factors. Second, the rates of temporary and curable impotency. This is because of psychological factors, if psychological problems improve, then impotence disease tends to be completely cured.<sup>17</sup>

Wahbah Az-Zuhaili in his book *Fiqh Islam Wa Adillatuhu* categorizes defects in either husband or wife that can be a reason for each party to demand divorce. In general, weakness or defect is classified into two forms:

- 1) A disease or disability that becomes predisposed to engage in sexual intercourse, for example baldness, rupture of the penis, impotence in men, or the presence of flesh or bone in the vagina in women.

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<sup>14</sup> Imam Nuril Shofiyuddin, Fenomena Cerai Gugat Alasan Impotensi (Studi Di Pengadilan Agama Kota Malang), *Egalita* 1, no. 2 (2012), p. 1–15.

<sup>15</sup> Selina Abigail, Disfungsi Seksual Sebagai Alasan Perceraian (Studi Putusan No. 234/Pdt.G/2020/PA.Gsg) (Skripsi), (UIN Syarif Hidayatullah Jakarta, 2022), p. 26.

<sup>16</sup> A Mustakim and H Umami, Impotensi Sebagai Alasan Fasakh Prespektif Imam Al-Nawawi Dan Ibnu Hazm:(Studi Komparatif), *Usratuna* 06, no. 02 (2023), p. 97–124.

<sup>17</sup> I Shofiyuddin, Fenomena Cerai Gugat Alasan Impotensi (Studi Di Pengadilan Agama Kota Malang), *Egalita* 1, no. 2. (2012), p.4.

- 2) A disease or dysfunction that does not prevent the occurrence of marriage, but can make the opposite sex impatient to live together unless he is at risk, such as cyst, madness, leprosy, tuberculosis, and syphilis.<sup>18</sup>

The fuqaha have two opinions regarding the permissibility of divorce due to a defect, namely the opinion of the Zhahiri school of thought and the opinion of the majority of scholars.<sup>19</sup> According to the Zhahiri school of thought, divorce is not permissible on the basis of any defect, whether the husband or the wife has one.<sup>20</sup> There is no obstacle for the husband to divorce his wife if he wishes to do so. This is because the invalidity of annulment due to a defect is proven in the Qur'an, hadith, companions' reports, *qias*, or *ma'qul*. Meanwhile, the majority of fuqaha allow divorce claims due to defects.<sup>21</sup> Wahbah Zuhaili further explains, that if the divorce is due to the man is impotent, then he is given a year since his case was brought to court. With consideration, because impotence is likely to heal within that year.

The Hanafi and Maliki are of the opinion that divorce caused by one party suffering from an illness or disability is categorized as divorce ba'in (divorce that cannot be reconciled). Meanwhile, the schools of Shafi'i and Hambali state that the separation of husband and wife due to an illness or defect is called *fasakh* (divorce decided by a judge) not divorce.<sup>22</sup> According to Imam Syafi'i, the diseases that afflict one of the husband and wife, so that the marriage can be canceled are sopak, leprosy, madness, and the husband has impotence. In the case of an impotent husband, Imam Syafi'i argues that the wife gives her husband time for one year, if he does not recover the wife can choose to continue the marriage or get a divorce.<sup>23</sup> If the wife wants a divorce, the marriage is annulled. According to Imam Hanafi, there are three diseases for which marriage can be annulled, namely impotent

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<sup>18</sup> Muhammad Azis and Abd. Rahman Qayyum, *Fasakh Perkawinan Karena Suami Impoten Perspektif Imam Al-Syafi'i Dan Undang-Undang Perkawinan*, *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum* 3, no. 1 (2022), p. 153.

<sup>19</sup> Ali Imron, et.al., "Baby engagement within the traditional ulama of the Madurese ethnicity: a Maşlahā analysis," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, No. 2 (2023).

<sup>20</sup> Fadil, Zidna Mazidah, Zaenul Mahmudi, "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De jure: Jurnal Hukum dan Syar'iah* 16, No. 1 (2024), p. 1-20,

<sup>21</sup> Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu* (Jakarta: Darul Fikir, 2011), p. 447.

<sup>22</sup> Dewi Nurul Imanda, *Fasakh Perkawinan Karena Alasan Cacat Badan*, (Skripsi, UIN Syarif Hidayatullah Jakarta, 2018), p. 57.

<sup>23</sup> Nurhadi, "Fasakh Nikah is Talak Khulu' in the Perceptive of Muqaranah Mazahib Fil Al-Fiqh and Maqashid Syari'ah," *El-Mashlahah* 10, No. 1 (2020). Muchamad Coirun Nizar, "The Religious Court's Decisions on Divorce: A Maqāşid Sharī'a Perspective," *Ulumuna: Journal of Islamic Law* 24, No. 2 (2020).

husband, cut genitals, and absent testicles. These three things can prevent intercourse between husband and wife, while other diseases do not affect it.<sup>24</sup>

### Mashlahah Theory

Maslahah is etymologically the plural of *al-mashalih*, which means something good and useful and is the opposite of ugliness or damage.<sup>25</sup> As for the meaning in terms is the maintenance of the objectives (*maqasid*) *syara'*, namely religion, soul, mind, offspring, and property.<sup>26</sup> Everything that implies the maintenance of the five points is *mashlahat*, and everything that eliminates it is *mafsadat*.<sup>27</sup> Al-Ghazali explained that originally *mashlahah* meant something that brings benefits and keeps away *mudarat* (damage), but the essence of *mashlahah* is maintaining the objectives of *Shara'* in establishing the law.<sup>28</sup> The objectives of Islamic law that humans want to achieve are five, namely maintaining their religion, soul, mind, offspring, and property.<sup>29</sup>

In terms of the quality and importance of the benefit, the scholars divide *maslahah* into three types, namely:

1. *Maslahah Dharuriyyah*, namely the benefits associated with basic human needs in the world and the hereafter. *Maslahat dharuriyyah* there are five, namely maintaining religion, maintaining the soul, maintaining the mind, maintaining offspring and maintaining property. Human life is meaningless if the five principles do not exist.
2. *Maslahah Al-Hajiyyah*, namely the benefit of refining the main benefit in the form of relief to maintain and maintain basic human needs. If the benefit cannot be realized, it will not cause damage or badness, it will only cause difficulties.
3. *Maslahah Al-Tahsiniyyah*, is a benefit that is complementary in nature, which is in the nature of complementing the previous benefit or to maintain goodness and goodness of character and beauty. It is recommended to eat

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<sup>24</sup> Baiq Erni Fatimah, *Fasakh Perkawinan Karena Suami Impoten Studi Komparasi Fikih Munakahat Dan Undang-Undang Perkawinan*, (Skripsi, UIN Sunan Kalijaga, 2011), p. 43.

<sup>25</sup> Muksana Pasaribu, *Maslahat Dalam Perkembangannya Sebagai Dasar Penetapan Hukum Islam*, *Jurnal Justitia* 1, no. 4 (2014), p. 351.

<sup>26</sup> Yahdi Dinul Haq, et.al., "Bid'ah in Concept of *Maslahah Mursalah* and *Istihsan* According to Imam asy-Syathibi," *Juris: Jurnal Ilmiah Syariah* 20, No. 2 (2021), p. 225-237.

<sup>27</sup> Ahmad Khoirul Fata, "Pembaharuan hukum Islam dan problem otentisitas agama," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 13, No. 2 (2013), p. 163-178.

<sup>28</sup> Mulida Hayati and Nuraliah Ali, "Husband's Sexual Violence: Protection Rights for Wives in Terms of Islamic and Indonesian State Law," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 21, No. 1 (2021), 65-81.

<sup>29</sup> Misran, "Al-Mashlahah Mursalah (Suatu Metodologi Alternatif Dalam Menyelesaikan Persoalan Hukum Kontemporer)," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 1, no. 1 (2016).

nutritious food, dress well, and various ways of removing unclean from the human body.<sup>30</sup>

According to Abu Ishaq Ash-Syatibi, a figure from the Malikiyah, all the laws of *shara'* have a fundamental purpose or called the main purpose (*maqashid al-ashliyah*) and its subsidiary purpose (*maqashid al-tabi'iyah*). According to Syatibi, the original purpose is things that are *dharuriyyah*, in other words, a *mukallaf* must maintain it no matter what the circumstances are, and the follower's purpose is things that are *hajiyyat* and *tahsiniah*.<sup>31</sup>

In terms of its existence, the scholars divide *mashlahah* into three types, namely as follows:

### 1. Mashlahah mu'tabarah

*Mashlahah mu'tabarah* is a benefit that is expressly explained in the text and the text recognizes its truth. Included in this *mashlahah* is *mashlahah dharuriyyah*. All scholars agree that all the benefits that fall into the category of *mashlahah mu'tabarah* must be upheld in life, because in terms of its level is the main interest that must be upheld.

### 2. Mashlahah mursalah

*Mashlahah mursalah* is *mashlahah* which explicitly there is no evidence that recognizes it or rejects it. *Mashlahah mursalah* is not explicitly mentioned in the text, this *mashlahah* is in line with *shara'* and is used as a foothold in realizing the needs of humans and can reject misfortune.

### 3. Mashlahah mulghah

*Mashlahah mulghah*, namely *mashlahah* which is basically considered good by reason, but rejected by *shara'* and there is *shara'* guidance that rejects it. For example: a king or a rich man who has intercourse with his wife during the day in the fasting month, the sanction is to fast for two consecutive months, because that is what can deter him.<sup>32</sup>

Al-Gazali stated that in principle *maslahah* is taking advantage and rejecting harm in order to maintain the goals of Islamic law. Thus, al-Gazali views that a benefit must be in line with the *sharia'*, even if it is contrary to human goals, because human benefit is not always based on the will of the *sharia'*, but is often based on the will of lust. In interpreting *maslahah* definitively, there are differences

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<sup>30</sup> Pasaribu, *Maslahat Dalam Perkembangannya Sebagai Dasar Penetapan Hukum Islam*, p. 354-355.

<sup>31</sup> Milhan, *Maqashid Syari'ah Menurut Imam Syatibi Dan Dasar Teori Pembentukannya, Al-USrah: Jurnal Al-AHWAL Asy-Syakhsiyah* 6, no. 1 (2021), p. 95.

<sup>32</sup> Jamaluddin, "Teori Maslahat Dalam Perceraian: Studi Pasca Berlakunya UU No. 1 Tahun 1974 Dan Kompilasi Hukum Islam," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 46, no. 2 (2012), p. 487.



in formulation among scholars which, if analyzed, turn out to be essentially the same.<sup>33</sup>

Imam Malik is of the view that benefit can be used as a basis for independent legal considerations, without requiring the legitimacy of sharia arguments. For example, Imam Malik declared dog saliva sacred. The fatwa is not in line with the instructions of the Ahad hadith which classifies it as unclean. Imam Malik was not the first scholar to pursue such a legal solution, but his friends had experienced such cases, they then resolved these problems by issuing a fatwa that was "contrary" to the instructions of Zhahir Nas. Therefore, renewal of Islamic law can be carried out through consideration of benefits, as carried out by Imam Malik, in order to provide legal answers to the problems faced by society, so that Islamic law appears to live dynamically in the midst of a society that continues to experience change and development.<sup>34</sup>

## **Description of Decision Number 0225/Pdt.G/2019/PA.AdI**

### **1. Sitting of the Case**

Andoolo Religious Court is located in South Konawe Regency, Southeast Sulawesi Province. The Andoolo Religious Court has received, examined, and tried a case of divorce because the husband has impotence between the Plaintiff, age 22, religion Islam, last education SMK, occupation taking care of the household residence in South Konawe Regency. Plaintiff filed for divorce against Defendant, aged 24 years, Muslim religion, occupation car driver, former residence Sidenreng Rappang District South Sulawesi Province.

On November 29, 2016 the Plaintiff and the Defendant entered into a marriage in the presence of a Marriage Registration Officer at the Office of Religious Affairs in the quotation of Marriage Certificate Number 0294/02/XII14/2016. The marriage between the Plaintiff and the Defendant has not been blessed with any children. Initially, the household between Plaintiff and Defendant was harmonious, but one year after marriage the household conditions between Plaintiff and Defendant were often subject to constant disputes and arguments. The cause of the disputes and arguments between Plaintiff and Defendant was because Defendant was unable to fulfill his obligations as a husband. The Defendant was also unable to provide offspring to the Plaintiff because the Defendant suffered from impotence.

The Plaintiff and her family have also tried to invite and accompany the Defendant to seek traditional treatment but to no avail. The culmination of the disharmony between the Plaintiff and Defendant's household occurred in January

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<sup>33</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law in View Imam Malik," *Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020).

<sup>34</sup> Said Syarifuddin, "Maslahat as Considerations of Islamic Law, p. 85.

2019 until this lawsuit was filed. The Defendant left the Plaintiff without the Plaintiff's permission and during that time the Defendant never returned home and gave no news and his address is unknown.

Plaintiff has tried to find Defendant by asking Defendant's family and close friends, but they do not know the exact whereabouts of Defendant. With this incident, the household of the Plaintiff and the Defendant can no longer be built properly, so that the purpose of marriage to establish a household that is *sakinah*, *mawaddah* and *rahmah* is difficult to realize.

## 2. Judge's Considerations

Plaintiff was present at the hearing and maintained his claim, while Defendant never appeared and did not send someone as his proxy to appear at the hearing nor was the reason for his absence known, so the hearing was continued without Defendant. The Panel of Judges has attempted to reconcile by advising the Plaintiff to reconcile with the Defendant, but to no avail. Considering, that the Plaintiff has postulated a situation, then based on Article 283 R.Bg., the Plaintiff has the burden of proof, in this case, the Plaintiff has provided written evidence and witness evidence.

Based on the reasons for divorce submitted by Plaintiff, after a year of marriage, the household of Plaintiff and Defendant began to be disharmonious because Plaintiff was impotent. This testimony was also corroborated by the testimony of witnesses, although the testimony was based on stories, the testimony was related and corroborated by the witness's testimony that the Defendant had often gone to traditional healers and doctors for treatment.

The witnesses also testified that Plaintiff and Defendant have been separated since January 2019 and have never returned and have never sent news or provided for Plaintiff. This situation illustrates that Defendant has abandoned Plaintiff and corroborates the expression of indifference towards Plaintiff and on the other hand Plaintiff is also impatient in waiting for Defendant, so this situation can be considered as a form of quarrel that occurred between Plaintiff and Defendant because of their indifference and unwillingness to get back together. So it can be stated that there has been a continuous dispute and quarrel between Plaintiff and Defendant.

Considering, that in order to obtain a divorce there must be sufficient reason that the husband and wife will not be able to live together in accordance with Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage, and as the Defendant has left the Plaintiff for almost one year without the permission of the other party and without valid reasons and there is no hope for the Plaintiff and the Defendant to get along again, the Plaintiff's claim has fulfilled the provisions of Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage jo. Article 116

letter (f) of the Compilation of Islamic Law, so that the Plaintiff's divorce claim is granted.

Considering, based on the provisions of Islamic law implied in Surah Ar-Rum verse 21, the provisions of Article 1 of the Marriage Law jo. Article 3 of the Compilation of Islamic Law, states that the purpose of marriage is to form a household that is *sakinah, mawaddah, and rahmah*, and if the Plaintiff and Defendant no longer have an attitude of mutual love, mutual understanding and mutual protection, even the plaintiff no longer wishes to continue their household, then so that the two parties do not further violate religious norms and legal norms, divorce can be used as an alternative to resolve the household dispute between the Plaintiff and the Defendant.

Considering, in connection with the household situation of the Plaintiff and the Defendant, maintaining the marital bond as husband and wife can no longer provide *mashlahat*, and will even provide *mudharat* if it is maintained. To avoid greater harm, the solution to solving the household problems of the Plaintiff and Defendant is divorce, by the *fiqh* rule: "Preventing damage is preferable to achieving *maslahat*".<sup>35</sup>

If we look at the consideration of the panel of judges in decision Number 0225/Pdt.G/2019/PA.AdL, it is clear that the judge granted the divorce of the Plaintiff and the Defendant because there has been continuous dispute and quarrel, and there is no hope of getting along again. As for what caused the quarrel, namely Defendant could not provide offspring for Plaintiff and Defendant had impotence (impotence) as argued by Plaintiff.

### **Analysis of the Decision on Divorce for Impotence from the Perspective of Mashlahah**

Case Number 0225/Pdt.G/2019/PA.AdL was initially caused because both of them wanted offspring, while one of them was unable to provide children due to impotence, this was a heavy blow because one of the main purposes of marriage is to continue offspring. The Defendant's impotent condition was only discovered after the marriage, which shows the dishonesty of the Defendant. In addition, the husband's sexual ability plays an important role in creating a happy married life. Regarding impotence, the Marriage Law and Government Regulation No. 9 of 1975 concerning the implementation of the Marriage Law do not state that impotence can be used as a separate reason to file for divorce.

But in article 39 point 2 of the Marriage Law, it is said "to divorce there must be sufficient reason that the husband and wife will not be able to live together".<sup>36</sup> This is based on article 34 point 3, namely "if the wife or husband

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<sup>35</sup> Salinan Putusan Nomor 0225/Pdt.G/2019/PA.AdL.

<sup>36</sup> Mursyid Djawas, et.al., "Fasakh Nikah dalam Teori *Maşlahah* Imām Al-Ghazālī," *El-Usrah: Jurnal Hukum Keluarga* 2, No. 1 (2019), p. 97-122.

neglects their respective obligations, they can file a lawsuit with the court". If we look at the word neglecting obligations, in a household, these obligations can mean physical and spiritual obligations, spiritual obligations can mean the fulfillment of biological needs. The provisions of Article 116 of the Compilation of Islamic Law jo. Article 19 of Government Regulation No. 9 of 1975 states that divorce can occur because one of the parties gets a disability or illness with the result that he cannot carry out his obligations as a husband or wife. This article does not explain the type of disability that causes a husband or wife to be able to sue for divorce, the benchmark is only on not being able to perform their obligations.

In relation to the annulment of a marriage, one of the parties must apply to the court for a trial. If the husband is impotent, the judge must first examine him with an expert. Examining the illness of one of the spouses aims to provide a clear picture of the defect or illness suffered by one of the spouses.<sup>37</sup>

The judge's examination of a lawsuit based on the fact that one of the parties has a disability or illness requires an in-depth and comprehensive examination. The examination should really give both parties the opportunity to raise various matters related to the illness. In this process, questions should be asked that are in-depth and relevant to the illness, so that an understanding can be obtained as to whether the illness actually prevents the party from properly exercising their rights and obligations. Above all, the examination absolutely requires a doctor's examination, so that it can be known whether the disease really prevents the couple from carrying out their rights and obligations or not.<sup>38</sup>

As Article 75 of Law No. 7 of 1989 states "If the divorce suit is based because the defendant has a disability or illness with the result that he or she cannot fulfill the obligations as a husband, the judge may order the defendant to be examined by a doctor". However, this article is not imperative because the article only states "may" not "must", so the requirement for the defendant to see a doctor is not an absolute requirement and can only be done if the defendant is present. Whereas in this case, the Defendant was not present, the judge could not order the Defendant to see a doctor for his illness. Because the illness could not be proven, the judge granted the claim because the consequences of the illness were constant disputes and arguments.

If we look at the problems of Plaintiff and Defendant's household, the disharmony was because Defendant was impotent and could not provide offspring. This culminated in the Defendant leaving the Plaintiff for almost one year. So maintaining the marital bond of the Plaintiff and Defendant as husband and wife will no longer be able to provide *mashlahat* and will even provide *mudharat* if they

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<sup>37</sup> Yahya Harahap, *Kedudukan, Kewenangan Dan Acara Peradilan Agama* (Jakarta: Sinar Grafika, 2001), p. 243.

<sup>38</sup> Dedeng Alamsyah, "Cacat Fisik Dan Sakit Berujung Perceraian," *Ittihad Jurnal Kopertais Wilayah XI Kalimantan* 13, no. 23 (2015), p. 92.

continue to maintain the marital bond, so to eliminate or avoid the occurrence of *mudharat* which is greater than the *mashlahat*, the solution to solving the household problems of the Plaintiff and Defendant is divorce. This is by the consideration of the judge who believes that for the sake of the interests and welfare of both parties and to prevent greater and prolonged harm, separating the Plaintiff and the Defendant is a better way as the *ushul* rule which reads: preventing damage is more important than achieving benefits.

As for the *maslahat* perspective, Decision Number 0225/Pdt.G/2019/PA.adl is by the *mashlahah* theory. Regarding this, refer to Abu Ishaq Ash-Syatibi. In his work, *al-Muwafaqat fi Usul ash-Syari'ah* explains that the lawmaker (namely Allah and His Messenger) in formulating the law has two objectives, namely, the main objective (*al-maqasid al-asliyah*) and supporting objectives (*al-maqasid at-tabiah*). In marriage, the main goal is to preserve the human species on earth. Preserving humanity or continuing offspring is one of the objectives of Islamic law (*maqasid shari'ah*), in addition to maintaining religion, soul, mind, and property. In addition to these primary goals, marriage also has secondary goals that support the achievement of the first primary goal. For example, there is a sexual desire for husband and wife which can be channeled through marriage in a halal manner so as to avoid sinning, there is a sense of affection, domestic tranquility, and others whose nature can help realize the main goal.<sup>39</sup> Therefore, a divorce between the Plaintiff and the Defendant would be more *mashlahat* because the main purpose of the marriage could not be realized.

If in the household there is constant disagreement, the Plaintiff and Defendant's marriage is no longer a means of obeying Allah's commands and the marriage relationship between the two is no longer meaningful worship, then the purpose of marriage as stated in the Marriage Law cannot be achieved. This divorce is also an effort to preserve the mind, *hifz al-aql* is not only limited to protecting the mind from alcohol and drugs but can also be understood as how to keep the wife from worrying or stressing because of the conditions of marriage that disturb her soul and mind. So the granting of a divorce suit can maintain the soul and mind to remain stable and normal, although of course divorce has a negative impact on the wife, but in terms of *kemashlahlah* it is better than waiting for the husband in uncertainty and unknown whereabouts.

## Conclusion

The judge in deciding case number 0225/Pdt.G/2019 granted the divorce of the Plaintiff and the Defendant because there had been continuous disputes and arguments, and there was no hope of getting along again. As for what caused the quarrel, namely, Defendant could not provide offspring for Plaintiff and Defendant

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<sup>39</sup> Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer* (Jakarta: Kencana, 2010), p. 127.

had impotence (impotence) as argued by Plaintiff. And has been in accordance with the provisions of Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage jo. Article 116 letter (f) of the Compilation of Islamic Law, so that the Plaintiff's divorce claim is granted. Decision Number 0225/Pdt.G/2019/PA.adl is in accordance with the *mashlahah* theory. In prioritizing the benefits must pay attention to five principles, namely religion, soul, mind, offspring, and property. Referring to the opinion of Abu Ishaq Ash-Syatibi in his work *al-Muwafaqat fi Usul ash-Syari'ah* explains that the lawmaker (namely Allah and His Messenger) in formulating the law has two objectives, namely, the main objective (*al-maqasid al-asliyah*) and supporting objectives (*al-maqasid of at-tabiah*). In marriage, the main objective is to preserve the human species on earth. Preserving humans or continuing offspring is one of the objectives of Islamic law (*maqasid shari'ah*), in addition to maintaining religion, soul, mind and property. In addition to these primary objectives, marriage also has secondary objectives that support the achievement of the first primary objective. Thus, the judge's decision is by the theory of *maslahat*, both *maslahat* for the husband, and the wife and *maslahat* for the community.

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