Turnitin JPH Imam

by Batubara Ucok

Submission date: 03-Dec-2023 05:54AM (UTC+0200)
Submission ID: 2245710107
File name: JURNAL_JPH_IMAM_YAZID_-_ENG_-_PARAFRASE.docx (122.59K)
Word count: 8767
Character count: 53678

Consideration of Judges of the Pandan Religious Court in Determining the Status of the Defendant / Invisible Applicant: Maqashid al-Usrah Perspective

Imam Yazid[1)], Nurcahaya[2)], & Fikri Al Muhaddits[3)]

[1)] Universitas Islam Negeri Sumatera Utara, Email : imam.yazid@uinsu.ac.id
[2)] Universitas Islam Negeri Sumatera Utara, Email : tnurcahaya@gmail.com
[3)] Universitas Islam Negeri Sumatera Utara, Email : fikri.al.muhaddits@gmail.com

Abstrak: This article aims to find out what the judge considers in determining the status of the defendant/respondent in absentia. Then, the consideration is analyzed using the maqashid al-usrah theory which is part of the maqashid al-syariah study. The judge's consideration referred to here is the consideration of the judge of the Pandan Religious Court, which is limited to occult divorce cases, to be precise Decision Number 33/Pdt.G/2020/PA.Pdn and Decision Number 24/Pdt.G/2020/PA.Pdn. This decision is interesting to discuss, because the entire determination of the invisibility limit in the Pandan Religious Court does not have a definite time limit, including these two decisions. The methodological flow of this research uses a normative legal research format, with primary legal materials (secondary data), Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and copies of Decision Number 33/Pdt.G/2020/PA.Pdn and Decision Number 24/Pdt.G/2020/PA.Pdn. The results of the study show that in the two decisions, it must be distinguished between the judge's consideration in determining the status of the defendant/respondent in occultation and the judge's consideration in breaking the marriage bond between the litigants. Regarding the determination of the status of the respondent/applicant as invisible, it turned out that the judge was not guided by Islamic law (fiqh mazhab), but rather the general civil procedural law. As for the reason for dissolving the marriage, the judge saw that the marriage of the litigants no longer fulfilled the elements to achieve the purpose of marriage; if the family is maintained, it will bring mafsadah. It can be concluded that the judge's consideration in each decision is in accordance with maqashid al-usrah.
Kata Kunci: Invisible Divorce; Mafqud; Religious Court; Maqashid al-Usrah

1. INTRODUCTION

In Indonesia, the dissolution of marriage is accomplished through court proceedings.[1] As a general rule, judges are required to hear testimony from both parties.[2] The problem is that in certain circumstances, one of the parties is not present at the trial, because his or her whereabouts are unknown. In fact, judges are required to resolve every case. It is in these circumstances that a verdict of verstek occurs.[3]

---

[1] Ibnu Radwan Siddik Turnip, *Hukum Perdata Islam di Indonesia; Studi tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah, dan Perwakafan,* (Depok: Rajawali Pers, 2021), h. 171.
[2] Barzun, Charles L. and Goldberg, John C. P, "Introduction: *The Nature of the Judicial Process* at 100", *Yale Journal of Law & the Humanities*, Vol. 34, No. 1, 2023, h. 1-8. Diakses dari https://ssrn.com/abstract=4459439
[3] Rd. Singgih Hasanul Baluqia dan Puti Priyana, "Pertimbangan Hakim terhadap Perkara Cerai Gugat Suami Ghaib dan Akibat Hukumnya di Pengadilan Agama Karawang", *Jurnal Yustisia,* Vol. 7, No. 2, 2021, h. 225-226.

In Islamic law (fiqh), ghaib is called al-mafqūd. According to Wahbah al-Zuhayli, the terms mafqūd are,

أو المكان بمعرفة عبرة ولا أوموته. حياته تعرف فلم خبره، انقطع الذي الغائب هو المفقود: أو حياته تعرف لا ولكنه المكان، معلوم كان فلو الممات، أو الحياة مجهول كان إذا به الجهل مفقود[4] فهو مماته

Mafqūd is a person who is unseen or whose whereabouts are unknown, and whose life or death is unknown. In this case, if his residence is known or unknown, but his life or death is not known, then he is also said to be mafqūd.

It can be understood that mafqūd is equivalent to ghaib. In Wahbah al-Zuhayli's perspective, a person whose life or death is unknown (news about him is disputed), even if his place of residence is known (let alone unknown), is said to be a mafqūd person.

So, how much time is needed or considered to conclude that a person is mafqūd or ghaib? In this case, the determination of how long a person is mafqūd is not explicitly regulated in the Qur'an and al-Sunnah. Therefore, scholars differ in their opinions on the time limit for determining whether a person is mafqūd or ghaib.[5]

According to the Hanafiyah Mazhab, the determination of mafqud is when a person's whereabouts are unknown within 100-120 years.[6] However, in the case of a missing husband (mafqūd) resulting in the wife being denied her rights, Imam Abū Ḥanīfah provided a solution to wait four years.[7]

Whereas in the Malikiyah Mazhab, the judge is allowed to give a verdict for the death of someone mafqūd within a period of four years.[8] The Shaafa'is say that a person who is missing or taken prisoner and news of him is interrupted cannot be ruled dead until there is proof of his death, or a period passes during which it is known or strongly suspected that he will not live beyond that time, as do his contemporaries.[9]

Finally, the Hambali Mazhab explains that, firstly, in the absence of the husband where there is a suspicion that the woman's husband is still alive, then this situation is exemplified when for example the husband is traveling on vacation, working, studying, or performing the Hajj in a safe condition. In such circumstances, the judge can determine the status of the husband's death after there is a strong suspicion that the man has died. In this first situation, Imam Ahmad gave a consideration of 90 years.[10] Secondly, if the disappearance of the husband is in a situation where there is a life-threatening danger, such as the disappearance of the husband while on the

---

[4] Wahbah al-Zuhayli, *Fiqh al-Islam wa Adillatuhu,* Cet. Ke-2, (Damaskus: Dar al-Fikr, 1985), Jilid 8, h. 419

[5] Muh. Taufik LaOde, "Protection of Mafqud Rights in Inheritance Without Court Determination According to Islamic Law", *Journal of Research Trends in Social Sciences and Humanities*, *1*(2), 155–164. https://doi.org/10.59110/aplikatif.v1i2.118

[6] Muḥammad Bin Aḥmad Bin Abi Sahal, *al-Mabsut*, (Beirut: Al-Ma'arif, t.t.), Juz 11, h. 35

[7] Abū Abdillah Muḥammad Bin Ḥasan Bin Farqad al-Syaibani, *Kitab al- Hujjah Ala Ahli Madinah,* (Beirut: Alam al-Kutub, t.t.), Juz 4, h. 55

[8] Anas Ibn Malik, *al-Muwwaṭṭa',* (Maktabah Syamilah, t.t.) Juz 2, h. 575

[9] Ibnu Rusyd, *Bidayatul Mujtahid*, Cet. Ke-3, (Mesir: Darussalam, 2006), Jilid 3, h. 1353

[10] Ibrahim Bin Muḥammad, *al-Mubdi' Fi Syarhi al-Muqni*, (Maktabah Syamilah, t.th.), Juz 5 h.198

battlefield, or during an enemy attack and then not returning, then the judge can determine the status of the husband's death after four years from the time of the disappearance of the man.[11]

In this case, the author finds two interesting decisions to discuss related to occult divorce cases, namely Decision Number 33/Pdt.G/2020/PA.Pdn and Decision Number 24/Pdt.G/2020/PA.Pdn. Both of these decisions were adjudicated by judges of the Pandan Religious Court. The first decision determines the status of the respondent in absentia within a span of 5 (five) months, while the last decision the time span for determining the respondent in absentia is 4 (four) years). This decision is interesting to discuss, because the entire determination of the invisibility limit in the Pandan Religious Court does not have a definite time limit, including these two decisions.

There are several studies related to the object of research in this article. Ahmad Khotim researched about "Relevance of Imam Syafi'is Thoughts about Mafqūd to Ghaib Divorce (Case Study in Jombang Religious Court)". [12] According to Khotim, there is no single Quranic and hadith argument that mentions the time limit for determining gaib, so the judge is free to determine the time limit.

Mukhlis Bakri examines "Comparison of Munakahat Jurisprudence with Positive Law on Mafqūd Divorce Suit (Missing Husband) in Case No. 2791/pdt.g/2021/pa.kng at Kuningan Religious Court".[13] According to Bakri, the process of determining the application for a divorce case when the husband is mafqūd or missing, the judge uses a legal basis derived from the Koran, Hadith, and the opinions of the fuqoha, Article 19 letter of Government Regulation No.9 of 1975, jo. Assembly, and KHI article 116. The judge determines the consideration of an application for a divorce case when the husband is mafqūd or missing based on the conditions and evidence that has existed during the trial, such as having left for more than two years, and there is no hope of maintaining the household. That in case No. 2791/Pdt.G/2021/Pa.Kng is in accordance with Munakahat Jurisprudence and Positive Law.

Sofia Hardani, et. al, meneliti tentang "Perkara Madqud di Pengadilan Agama Provinsi Riau dalam Perspektif Keadilan Gender".[14] According to Hardani, et. al, in the Religious Courts of Riau Province, the mafqūd case is referred to as husband ghaib, which is the departure of the husband for a long time without his whereabouts being known. The mafqūd cases that occur are closely related to the personal and household conditions of the couple. These include level of education, traditions, marital age, occupation, and domestic relationships. The process of mafqūd cases is longer at the summoning stage than the case of a contested divorce, but the trial process is quite short due to the absence of the defendant, and is decided by verstek. From a gender perspective, the husband's absence is a form of wrongdoing and irresponsibility. However, this is inseparable from personal background conditions with low levels of education; lack of knowledge of religious laws; not having a

---

[11] *Ibid.,* h. 399.

[12] Ahmad Khotim "Relevance of Imam Syafi'is Thoughts about *Mafqūd* to Ghaib Divorce (Case Study in Jombang Religious Court), Jurnal Familia, Vol. 3, No. 2, 2022.

[13] Mukhlis Bakri, "Komparasi Fikih Munakahat dengan Hukum Positif terhadap Gugat Cerai *Mafqūd* (Suami yang Hilang) pada No. Perkara 2791/pdt.g/2021/pa.kng di Pengadilan Agama Kuningan, Jurnal Al Mashalih, Vol 3, No. 2, 2022

[14] Sofia Hardani, *et al.* "Perkara Madqud di Pengadilan Agama Provonsi Riau dalam Perspektif Keadilan Gender", Jurnal Marwah, Vol. 17, No. 2, 2018

permanent job, and low income. Therefore, they need to be made aware of their household responsibilities, receive mental and religious guidance, and get a decent job. Women who are left behind by the ghaib need to be protected, socially, psychologically and economically.

In contrast to some of these studies, in this article the researcher wants to discuss the consideration of the Pandan Religious Court judge in determining the status of gaib, which is then analyzed with the maqashid al-usrah theory. Maqāsid al-Usrah is part of contemporary maqāsid al-syarī´ah studies. Obviously, that Islamic family law must also guide the principles that have been conceptualized in maqāsid al-syarī´ah. Regarding further explanation of maqashid al-usrah, the author will present it in the section on research results and discussion.

2. RESEARCH METHODS

This type of research is normative law research. The approach that the author uses is a statute approach and a case approach. The primary legal materials in this research are Law Number 1 of 1974 concerning Marriage; Compilation of Islamic Law; and copies of Decision Number 33/Pdt.G/2020/PA.Pdn and Decision Number 24/Pdt.G/2020/PA.Pdn.

3. RESULT AND DISCUSSION

3.1 Legal Logic in Judges' Considerations: A Review of Theological, Philosophical, Sociological, and Juridical Facets

3.1.1 Decision Number 33/Pdt.G/2020/PA.Pdn

In Decision Number 33/Pdt.G/2020/PA.Pdn, what the judge considers from the theological aspect is, Q.S. al-Baqarah (2) verse 227, "And if they make up their minds to divorce, then indeed Allah is All-Hearing and All-Knowing". Then followed by Q.S. al-Baqarah (2) verse 229, "Talak (which can be reconciled) twice. After that, it is permissible to reconcile in a fair manner or to divorce in a good manner."

The judge also cited the Prophet's hadith.,

من دعي إلى حاكم من حكام المسلمين فلم يجب فهو ظالم لا حق له[15]

Whoever is summoned to appear before the Islamic judge and then does not appear, then he is among the wrongdoers and his rights are waived;

After quoting the hadith, the judge then quoted the opinion of Zainuddin Al-Malibari (who gave an explanation of the hadith), that.

جائز(في تغزر) بتوارأو المجلس عن أو غيرعمله، في كان وإن البلد، (عن غائب على والقضاء غير في الحق أن بينة بعد تحليفه ووجب مقر، هو يقل ولم حجة لمدع كان إن تعالى) الله عقوبة ذمته[16]

---

[15] Daruquthni, *Sunan Ad-Daruquthni,* (Beirut: Dar Al-Ma'rifah, 2001), Jilid III, h. 456

[16] Zainuddin Al-Malibari, *Fath Al-Mu'in,* (Beirut: Dar Ibn Hazm, 2004), h. 625

According to Al-Malibari - who was later considered by the judges - it is permissible for judges to decide cases against people who are absent from the place or from the panel of judges, whether the absence is hidden or reluctant (other than criminal cases), if the petitioner has strong evidence, while the defendant (ghaib) does not declare his presence and prove his existence.

From a philosophical aspect, the judges focused on the purpose of marriage. The judges were of the opinion that the purpose of marriage is to form a household that is sakinah, mawaddah and rahmah. Seeing that between the applicant and the respondent as a married couple, it turned out that there was no longer an attitude of mutual love, mutual understanding, and mutual protection, even the applicant no longer wished to continue his household with the respondent, then to avoid greater negative things or aspects of mudharat caused than the principle of benefit obtained, the Panel of Judges then believed that between the applicant and the respondent would be difficult to unite. Thus, divorce was deemed to be the best step, because maintaining such a household would bring greater mudharat than mashalahat.

Then from the sociological aspect, the decision explains that the applicant and the respondent have had continuous disputes and quarrels since the beginning of 2019, which are difficult to reconcile. The cause of the quarrel between the applicant and the respondent was that the respondent was difficult to advise by the applicant; the respondent lacked respect for the applicant's family; the respondent lacked care for the applicant's children; and the respondent often left the house without permission from the applicant.

Between the applicant and the respondent there was an argument which reached a breaking point, which occurred approximately 1 (one) year ago - in the applicant's statement of claim it was 5 months. Then the respondent left the house with the applicant's and respondent's children, until now. After their departure, the respondent and the applicant's child never returned.

The applicant and the respondent have been separated for approximately 1 (one) year until now. The applicant and respondent have also been reconciled by their families but to no avail. Therefore, the applicant has decided to divorce from the respondent.

Regarding the juridical aspect, in his consideration, the judge explained that based on Article 40 and Article 63 paragraph (1) letter (a) of Law of the Republic of Indonesia Number 1 of 1974 as amended by Law Number 16 of 2019 Concerning Amendments to Law Number 1 of 1974 Concerning Marriage jo. Article 49 paragraph 1 letter (a) of Law of the Republic of Indonesia Number 7 of 1989 as amended several times, most recently by Law Number 50 of 2009 Concerning the Second Amendment to Law Number 7 of 1989 Concerning Religious Courts jo. Article 1 letter (b) of Government Regulation of the Republic of Indonesia Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage, then the Religious Court is absolutely authorized to examine and hear and decide this case.

To the applicant and respondent to appear in court has been carried out in accordance with the provisions of Article 145 paragraphs (1) and (2) RBg/RDS jo. Article 26 of Government Regulation No. 9 of 1975, thus the summons has been carried out officially and properly.

The respondent was never present and did not send anyone else as his representative. The respondent did not appear without a valid reason, nor did he file an exception regarding relative authority. Meanwhile, the applicant continued to appear in court. The applicant's application was deemed to be based on the law and well-founded, therefore based on Article 149 paragraph (1) and Article 150 RBg jo. Circular Letter of the Supreme Court of the Republic of Indonesia No. 9/1964 this case could be examined and decided in the absence of the respondent (verstek).

During the trial only the applicant was always present, while the respondent was never present, so mediation efforts as stipulated in Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, could not be implemented. Nevertheless, in accordance with the provisions of Article 82 paragraphs (1) and (4) of Law No. 7 of 1989 Concerning Religious Courts as amended twice, most recently by Law No. 50 of 2009 Concerning the Second Amendment to Law No. 7 of 1989 Concerning Religious Courts, in front of the trial the Panel of Judges had tried to reconcile by giving advice and suggestions to the applicant to maintain his household with the respondent, but without success.

Although it can be interpreted, in the absence of the respondent, the respondent does not object to the arguments of the petitioner, so that the arguments of the petitioner are considered true and proven, but because this case is a divorce case (person recht) is a household problem that contains noble moral values. It is not just an ordinary civil relationship. Thus, there must be sufficient reason to prove that the husband and wife will not be able to live together as husband and wife, as stipulated in the provisions of Article 39 paragraph 2 of Law Number 1 of 1974 which has been amended by Law Number 16 of 2019 jo Article 22 paragraph 2 of Government Regulation Number 9 of 1975 vide Article 76 paragraph 1 of Law Number 7 of 1989 which was amended twice and finally Law Number 50 of 2009 concerning Religious Courts, as well as considering the principle of making divorce difficult as stated in the General Elucidation of Law Number 1 of 1974 number 4 letter e, which has been amended by Law Number 16 of 2019, and also to avoid the possibility of a divorce agreement motive that is not adopted and not justified by the laws and regulations, the applicant is still burdened with the obligation to prove the arguments of his petition as stipulated in Article 283 RBg.

To strengthen the arguments of the applicant, the applicant has submitted Exhibit P (photocopy of Marriage Certificate Excerpt) which is a photocopy of an authentic deed that has been sufficiently stamped and has been matched with the original, therefore, the evidence has fulfilled Article 2 paragraph (3) of Law Number 13 of 1985 jo. Articles 1868 and 1870 of the Civil Code.

The applicant argued that the applicant and respondent were a married couple who had entered into a valid marriage and recorded at the Office of Religious Affairs, so that the applicant felt that he had a legal interest in the case a quo.

Based on Exhibit P, which was not refuted, it has perfect and binding evidentiary power (Article 1870 of the Civil Code and Article 285 RBg/RDS). Therefore, it has been proven that the applicant and the respondent since March 22, 2018 have been bound by a relationship as a legal husband and wife so that the applicant is qualified to act as a party or legitima persona standi in judicio in this case.

The applicant has also presented 2 (two) witnesses at the hearing who have testified under oath before the court. Witness 1 and witness 2 of the applicant, are adults

and close persons of the applicant as stipulated in Article 172 RBg/RDS jo. Article 76 of Law No. 7 of 1989 as amended several times and most recently Law No. 50 of 2009 concerning Religious Courts as well as the provisions of Article 22 paragraph (2) of Government Regulation No. 9 of 1975, thus fulfilling the formal requirements as a witness.

Witness 1 and witness 2 of the applicant testified about the causes of disputes and quarrels in the applicant's household with the respondent, which are facts known to the witnesses and relevant to the arguments that must be proven by the applicant. Therefore, the testimony of these witnesses has fulfilled the material requirements, so that the witness testimony has evidentiary power and can be accepted as evidence, as referred to in Article 308 RBg.

It turned out that the applicant's witnesses had direct knowledge of the legal events that occurred in the applicant's household with the respondent, at the peak of which the applicant and respondent had been separated from the house since approximately 1 (one) year ago. So that the Panel of Judges is of the opinion that the testimony submitted is interrelated and related (link and match), so that the testimony of these witnesses has the value of free evidentiary power (vrijbewijskracht) as referred to in Article 309 RBg.

The applicant's witnesses testified to a legal effect (Recht Gevoig) which first explained the existence of legal causes/reasons (Vreem de Oozaak). The witnesses were aware of the separation between the applicant and the respondent. Thus the panel of judges was of the opinion that the testimony of these witnesses had perfect evidentiary power so that it could be accepted and used as valid evidence to corroborate the arguments of the applicant.

Referring to the petitioner's petition, the Panel of Judges considered that the reason for the petitioner's petition was that the household of the Petitioner and Respondent had been in continuous dispute which was difficult to reconcile and the reason was in accordance with the provisions of Article 19 letter (f) of Government Regulation No. 9 of 1975 jo. Article 116 (f) and 134 of the Compilation of Islamic Law therefore formally the petition should be accepted and considered based on the facts at trial, where the petitioner and the respondent have not been in a joint residence which has been going on since 1 (one) year ago until now ignoring each other again, has shown that between the petitioner and the respondent have lost happiness as a representation of physical and mental attachment. Therefore, in the opinion of the panel of judges, the above facts should be declared to have contradicted the values contained in the provisions of Article 1 of Law No. 1 of 1974 where the applicant and the respondent can no longer realize lasting happiness in their marriage.

In the provisions of Article 19 letter f of Government Regulation No. 9 of 1975 in conjunction with Articles 116 letter f and 134 of the Compilation of Islamic Law it is confirmed that "A divorce suit for the reasons mentioned in article 116 letter f, can be accepted if it is clear enough to the Religious Court regarding the causes of the dispute and quarrel and after hearing the family and people close to the husband and wife."

After it was proven that the household of the applicant and the respondent was difficult to maintain in order to live together again as husband and wife, which is in line with the rule of law in the Jurisprudence of the Indonesian Supreme Court Number 379K/AG/1995, dated March 26, 1997 which states that: "husband and wife

who do not live in the same house anymore and there is no hope to live in harmony again, then the household has been proven to be cracked and broken and has fulfilled Article 19 letter f of Government Regulation Number 9 of 1975" (vide Supreme Court Decision Number 296 K/Ag/2017 dated May 31, 2017 and Number 657 K/Ag/2017 dated November 15, 2017).

Based on the facts and legal considerations as mentioned above, the Panel of Judges is of the opinion that the petitioner's request to be granted permission to divorce the respondent on the grounds that in the household there are frequent disputes and quarrels of an ongoing nature and it is difficult to get along again, is well founded in law and has fulfilled the reasons as contained in Article 39 paragraph 2 of Law Number 1 of 1974 jo Article 19 letter (f) of Government Regulation Number 9 of 1975 jo Article 116 letter (f) and Article 134 of the Compilation of Islamic Law. Therefore, the petition should be granted.

3.1.1 Decision Number 24/Pdt.G/2020/PA.Pdn

In the deliberation of the Panel of Judges of the Pandan Religious Court on Wednesday, July 29, 2020 AD coinciding with the 8th of Zulhijjah 1441 Hijriah by Drs. Irmantasir, M.H.I. as Chairperson of the Panel, Suryadi, S.Sy., M.H., and Zaldaki Lutfi Zulfikar, S.Sy., each as Member Judges, has rendered a decision in the case of Divorce (Ghaib). This is stated in Decision Number 24/Pdt.G/2020/PA.Pdn. The verdict was pronounced on the same day in a session open to the public by the Chairman of the Panel and the Member Judges, and assisted by H. Zulpan, S.Ag, M.H. as Registrar, in the presence of the applicant without the presence of the respondent. Regarding the judge's reasoning in the decision, it will be explained below.

Regarding the judge's theological reasoning, in this decision, it is the same as the previous decision. And the judge added in the copy of the decision the rules of fiqh,

جلب من أولى المفاسد درء المصالح[17]

This rule explains that rejecting mafsadah takes precedence over achieving maslahat.

Then, for philosophical reasons, the panel of judges was of the opinion that due to the severity of the situation between the plaintiff and the defendant, the panel of judges considered that the household of the plaintiff and the defendant was not a place of peace and tranquility, but had turned into a place that made them physically and mentally tormented. Therefore, saving them from this situation through divorce is a better and more beneficial action for both of them than continuing to maintain their marriage. Meanwhile, it is known that the purpose of marriage is to form a household that is sakinah, mawaddah and rahmah.

According to the judge, sociologically, the plaintiff and respondent have been separated for approximately 4 (four) years, because the plaintiff returned to her parents' house. During the time the plaintiff and the respondent were separated, there was no communication, and the respondent never sent alimony to the plaintiff. The plaintiff's family had advised the plaintiff to reconcile with the defendant, but to no avail. Until this case was heard, the respondent had no known address within the

[17] Tajuddin As-Subki, *Al-Asybah wa An-Nazhair,* (Beirut: Dar Al-Kutub Al-Ilmiyah, 1991), Jilid I, h. 105.

territory of the Republic of Indonesia. And, the plaintiff still wanted a divorce from the defendant.

Juridically, the Plaintiff and Defendant are Muslims. Therefore, based on Article 40 and Article 63 paragraph (1) letter (a) of Law of the Republic of Indonesia Number 1 of 1974 as amended by Law Number 16 of 2019 Concerning Amendments to Law Number 1 of 1974 Concerning Marriage jo. Article 49 of Law of the Republic of Indonesia Number 7 of 1989 as amended several times, most recently by Law Number 50 of 2009 Concerning the Second Amendment to Law Number 7 of 1989 Concerning Religious Courts jo. Article 1 letter (b) of Government Regulation of the Republic of Indonesia Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage, therefore the Religious Court is authorized to examine and hear and decide this case.

In the Plaintiff's lawsuit, the Plaintiff's domicile is within the jurisdiction of the Pandan Religious Court, in accordance with Article 73 of the Law of the Republic of Indonesia Number 7 of 1989 as amended several times, most recently by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, then this case is the relative authority of the Pandan Religious Court.

The plaintiff in his lawsuit argued that the plaintiff had entered into a marriage and the household of the plaintiff and the defendant was no longer harmonious, therefore the plaintiff had legal standing to file for divorce as stipulated in Article 49 paragraph (1) letter (a) and Article 73 of Law of the Republic of Indonesia Number 7 of 1989 as amended several times, most recently by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.

For the plaintiff's lawsuit, the defendant has been officially and properly summoned in accordance with the provisions of Article 145 paragraphs (1) and (2) of the Rechtsreglement voor de Buitengewesten/Reglement for Cross Regions (RBg/RDS) jo. Articles 26 and 27 of Government Regulation of the Republic of Indonesia Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage, however the respondent was never present, nor did he send another person to appear in court as his legal representative or attorney, and his absence was not caused by a legal impediment.

In accordance with the provisions of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, it was found that mediation could not be carried out because the respondent never appeared in court. Nevertheless, in accordance with the provisions of Article 154 RBg/RDS jo. Article 82 paragraphs (1) and (4) of Law of the Republic of Indonesia Number 7 of 1989 Concerning Religious Courts as amended several times, most recently by Law Number 50 of 2009 Concerning the Second Amendment to Law Number 7 of 1989 Concerning Religious Courts, before the trial the Panel of Judges had attempted to reconcile by giving advice and suggestions to the Plaintiff to maintain her household with the Defendant, and patiently wait for the return of the defendant, but to no avail.

Because the defendant did not appear at the trial without a valid reason, and also did not send someone else to appear in the courtroom as his representative / attorney even though the Pandan Religious Court had summoned him officially and properly, as stipulated in Article 149 paragraph (1) RBg / RDS jo. Article 27 of

Government Regulation of the Republic of Indonesia Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage, then the defendant must be declared absent and the plaintiff's claim can be decided by verstek.

To strengthen the arguments of his lawsuit, the plaintiff has submitted Exhibit P (photocopy of Marriage Certificate Excerpt) which is a photocopy of an authentic deed that has been sufficiently stamped and has matched the original. Therefore, the evidence has fulfilled the provisions of Article 2 paragraph (3) of the Law of the Republic of Indonesia Number 13 of 1985 concerning Stamp Duty jo. Article 1888 of the Civil Code.

Likewise, the plaintiff who argues that she is the wife of the defendant, as stated in her testimony at trial, which fact is also consistent with Exhibit (P) in the form of a photocopy of the Marriage Certificate Excerpt, proves that the plaintiff and the defendant have a legal relationship as husband and wife, therefore it must be proven that the plaintiff and the defendant are husband and wife in accordance with the provisions of Article 7 paragraph (1) of the Compilation of Islamic Law, which states that marriage is proven by a Marriage Certificate. Thus the plaintiff has legal standing, has a legal position as a party with rights and interests in this case (as persona standi in judicio).

The plaintiff has also presented 2 (two) witnesses at the trial and under oath have provided testimony as described in the sitting of the case. Witness 1 and witness 2 of the plaintiff, are adults and close to the plaintiff as stipulated in Article 172 RBg/RDS jo. Article 76 of Law of the Republic of Indonesia Number 7 of 1989 Concerning Religious Courts and the provisions of Article 22 paragraph (2) of Government Regulation of the Republic of Indonesia Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage, thus fulfilling the formal requirements as witnesses.

Witness 1 and witness 2 of the plaintiff testified about the causes of disputes and quarrels in the plaintiff's household with the defendant, which were facts heard by themselves and were relevant to the arguments that the plaintiff had to prove, therefore the testimony of these witnesses met the material requirements. Therefore, the witness testimony has evidentiary power and is admissible as evidence, as referred to in Article 309 RBg/RDS.

In fact, the plaintiff's witnesses had direct knowledge of the legal events that occurred in the household of the plaintiff and the defendant, namely that the plaintiff and the defendant had been separated for approximately 4 (four) years, because the plaintiff returned to her parents' house, and the defendant never picked up the plaintiff; during that time the communication between the plaintiff and the defendant had been cut off. In fact, the respondent no longer sent alimony to the plaintiff, so the panel of judges was of the opinion that the testimony presented was interrelated (link and match), even though the testimony of these witnesses basically had the value of independent evidentiary force (vrijbewijskracht) as referred to in Article 309 RBg/RDS. However, these witnesses were also aware of the separation between the Plaintiff and the Defendant, thus the panel of judges was of the opinion that the testimony of these witnesses had perfect evidentiary power that could be accepted and used as valid evidence to corroborate the arguments of the Plaintiff's claim.

From the postulation of the plaintiff's claim, the panel of judges considered that the reason for the plaintiff's claim was that the plaintiff and the defendant had separated; where the plaintiff returned to her parents' house; The defendant never picked up the plaintiff again; during this time the communication between the plaintiff and the defendant was interrupted; the defendant no longer sent alimony to the plaintiff; until the lawsuit was filed with the Pandan Religious Court, and even the defendant's address is no longer known in the territory of the Republic of Indonesia. Thus, this reason is in accordance with the provisions of Article 19 letter (b) of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage jo. Article 116 letter (b) and Article 133 of the Compilation of Islamic Law, therefore formally the plaintiff's claim should be accepted and considered.

Based on the aforementioned considerations, the plaintiff's claim is considered legally grounded and not against the right and has fulfilled the elements of the reason for divorce contained in Article 19 letter (b) of Government Regulation of the Republic of Indonesia Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage jo. Article 76 paragraph (1) of Law of the Republic of Indonesia Number 7 of 1989 as amended several times, most recently by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts jo. Article 116 point (b) and Article 133 of the Compilation of Islamic Law so that the Plaintiff's claim should be granted.

3.2. Maqāsid al-'Usriyah Perspective on Judges' Considerations in Granting Divorce Cases in Decision Number 33/Pdt.G/2020/PA.Pdn and Decision Number 24/Pdt.G/2020/PA.Pdn

3.2.1 Maqāsid al-ʻUsriyah

The consideration of maqās}id al-syarī´ah in Islamic family law has, theoretically, been discussed by several scholars of Islamic law. One of them is Jamāluddīn 'Atiyah, in his work Nahw Taf'īl al-Maqāṣid al-Sharī'ah. According to 'Atiyah, the "family" is the field for manifesting al-Kulliyāt al-Khams (hifz al-dīn; hifz al-nafs; hifz al-'aql; hif al-nasl; hifz al-māl) which is the al-d}arūriyah aspect of maqāsid al-syarī'ah.[18] ʻAtiyah includes a separate (special) sub-chapter in explaining the consideration of maqās}id al-syarī´ah in Islamic family law, (مقاصد الشريعة يخص فيما الأسرة الأهل).

Quoting Zainab Taha al-'Alwānī, that-according to the view that the scope of the family includes the scope of al-darūriyah in maqāsid al-syarī´ah-the purpose of a family is,

> الشريعة هدف أن وسلم عليه الله صلى الله رسول وتطبيقات الكريم القرآن نصوص أكدت عنهم[19] المفسدة ودرء للبشر المصلحة هوتحقيق

Various descriptions of the Qur'anic texts and what was practiced by the Messenger of Allah have confirmed that the purpose of Islamic law is to manifest the benefit of mankind, and provide protection to humans from various damages, as well as the law on the family.

---

[18] Jamal al-Din ʻAtiyah, *Nahw Taf'il Maqashid al-Syariah,* (Damaskus: Dar al-Fikr, 2001), h. 139.
[19] Zainab Taha al-ʻAlwānī, *Al-Usrah fī Maqāṣid Al-Syarī´ah: Qirāʻah fī Qadāyā al-Zawāj wa al-Talāq fī Amrīka,* (Herndon: The International Institute of Islamic Thought, 2012), h. 71.

To achieve the benefit of the family, 'Atiyah makes several elements that are "inevitable".

First, تنظيم العلاقة بين الجنسين/ regulation of the relationship between men and women. 'Atiyah explains,

العلاقة هذه في الأطراف لجميع والواجبات الحقوق وبينت التفصيليه، الأحكام لها ووضعت

In order to achieve the goals of a family, there must be detailed arrangements; and a clear description of the rights and obligations in family relationships.

Second, حفظ النسل/ preserving offspring.

من فردين بين العلاقة هو المشروع جعلت بأن المقصد هذا تحقيق على أكدت الشريعة فإن والسحاق اللواط حرمت المقصد هذا مختلفين...فلتحقيق جنسين

Shari'ah has made it clear that families (in marital relations) are based on the opposite sex only. Thus Islam prohibits homosexual and lesbian behavior.

In addition, having pious offspring is also one of the elements in measuring family resilience. This is because one of the goals of marriage is to try to form a quality generation; children who are devoted to Allah SWT.

Third, تحقيق السكن والمودة والرحمة/ The realization of sakinah, mawaddah, and rahmah.

الزوجين بين بالمعروف للمعاشرة أحكاما المقصد هذا لتحقيق وشرعت

In order to realize this goal, Islam regulates the relationship between husband and wife, which is described as "mu'āsarah bi al-ma'rūf", which means treating the husband or wife in the best way that will not hurt both partners.

Fourth, حفظ النسب/ maintaining the clarity of the lineage (maintaining the nasab of children).

Maintaining lineage is different from preserving offspring. Maintaining lineage means that marriage is expected to give birth to children as the next generation to continue the descendants. Meanwhile, preserving lineage means that marriage is expected to give birth to children as the next generation to continue the descendants, but the children are born through a legal marriage so that the lineage is clear; the legitimate parents of the children are known and confirmed.

Sharia efforts to realize this can be seen from the prohibition of adultery, because due to adultery there is uncertainty about the lineage of a child. In addition to adultery, it is also forbidden to conceal what is in the womb; rules about denying and establishing lineage; forbidding adoption and so on. Ibn ʿĀshūr added a caveat regarding the preservation of nasab. He states that the ultimate goal of the preservation of lineage is the truth of the child's lineage to his parents.

Fifth, حفظ التدين في الأسرة / maintaining aspects of religiosity in the family.

It is common knowledge in Islam that the preservation of religion in the family is an aspect of al-d}arūriyāt. As in the families of the Prophets, their preaching was always

directed at their families (relatives) first. Moreover, before marriage, people are encouraged to pay attention to the religiosity of their partner.

Sixth, تنظيم الجانب المؤسسي للأسرة /regulation of the basic aspects (building) of the family.

There are several basic aspects of the family: first, the permanence of the marriage bond; second, deliberation; third, submission to the rules of Shari'ah; and fourth, relationships among family members and relationships between families. It is also necessary to pay attention to provisions regarding social interaction, including the rights and obligations of the husband; the rights and obligations of the wife; the rights and obligations of parents; the rights and obligations of children; kinship rights; friendship; and others.

Seventh, تنظيم الجانب المالي للأسرة / arrangements on aspects of family property.

In addition to the purposes of marriage that have been explained, one of the other purposes of the existence of marriage law is to regulate the economic aspects of the family. The special side of Islamic law that is not owned by other marriage rules that only emphasize romantic and social relationships, is its attention to the economic aspects of the family, such as the law of dowry (mahr) and maintenance.

Furthermore, Zainab Taha al-'Alwānī, an expert on Islamic family law at Howard University School of Divinity (HUSD), also specifies the maqāsid al-syarī´ah theory in her research entitled, Al-Usrah fī Maqāṣid Al-Syarī´ah: Qirā`ah fī Qadāyā al-Zawāj wa al-T}alāq fī Amrīka. Al-'Alwānī specifically includes a nomenclature on the study of maqās}id al-syarī´ah in Islamic family law with Maqāsiid al-'Usriyah. Several aspects are needed in manifesting maqās}id al-syarī´ah, according to Al-'Alwānī as follows.

First, الزواج الشرعي / Shar'i marriage. One of the aspects of a shar'i marriage according to Al-'Alwānī is:

فمفهوم الزواج لا يطلق إلا على علاقة شرعية بين رجل وامرأة اتفقا على حدود مراعاة الله، المودة وبث ، بها الله أمر التي بالقيم والتمسك بهما، المنوطة المسؤوليات بأداء والالتزام والتآلف بالتشاور العدل وإقامة بالمعروف، والتعامل السكن، لتوفير والرحمة

The concept of marriage that is intended here is that each husband and wife agree in obeying the limits set by Allah; commitment to carry out obligations; adhering to the values ordered by Allah; spreading mawaddah and rahmah to find sakinah; associating / cooperating with ma'ruf; and upholding justice through deliberation and unity.

Second, تحقيق السكن والاستقرار الأسري / Realizing sakinah and family stability.

الأسرة استقرار إلى يؤدي الذي السكن مقصد ويتحقق

By realizing the goal of sakinah, it automatically leads to family stability. Therefore, the first concern is about building a sakinah family.

Third, ضبط العلاقة بين الرجل والمرأة / regulates the relationship between men and women.

This relationship arrangement is intended so that each man or woman understands the boundaries between his or her rights and obligations in the family.

Fourth, النسل وحفظ/Preserving offspring.

النسل على المحافظة هو النكاح من الأصلي المقصد أنّ على الشريعة علماء اتفق

Scholars have agreed that one of the purposes of marriage is to preserve offspring.

At this point, a propositional statement can be made that, if all the elements described by Jamāluddīn 'At{iyah and Zainab T}aha al-'Alwānī are fulfilled, family resilience will be achieved; if family resilience is achieved, then the purpose of marriage has been fulfilled. On the other hand, if the above-mentioned elements are not fulfilled in the family, then the law provides an alternative "dissolution of marriage".

3.2.2. Analysis of Judges' Considerations

At this point, it has been noted that in Decision No. 33/Pdt.G/2020/PA.Pdn the determination of the respondent being unseen was within 5 (five) months; in Decision No. 24/Pdt.G/2020/PA.Pdn the determination of the respondent being unseen was 4 (four) years. In the copies of the two decisions, it was explained that the cases heard by the judges were occult divorce cases: occult divorce and occult divorce. However, interestingly, in each copy of the decision, the occultation was not a consideration for the judge to grant the divorce. Thus, the decisions discussed in this study can be accentuated on two issues, first, the reasons for the judge to determine the respondent and respondent as unseen, and second, the judge's reasons for granting the unseen divorce case.

First, the judge's reasoning for determining the respondent and respondent as unseen.

Reporting from the badilag.mahkamahagung.go.id page, what is meant by a ghoib divorce or ghaib divorce is a lawsuit filed with the Religious Court by a plaintiff / applicant to sue for divorce from the Defendant / Respondent, where until the submission of the lawsuit, the address and whereabouts of the defendant / respondent are unclear (unknown). So, the meaning of unseen here is accentuated on the unknown and/or unclear address of the defendant or respondent. It is not what is described in fiqh, as Wahbah Al-Zuhaily argues, which parallels gaib and mafqūd.

Determining the status of the ghaib defendant or respondent in a divorce case in the Religious Court is based on a certificate from the head of the village / kelurahan head where the plaintiff / applicant and the defendant / respondent live, which explains that the defendant / respondent has left an unclear address. This certificate is one of the requirements in applying for an occult divorce. This is explained in the website pa-kandangan.go.id.

It should be explained that, specifically divorce cases for parties whose addresses are unclear (ghaib), for Religious Court officials are usually only guided by Government Regulation (PP) No. 9 of 1975 Jo Article 139 KHI (Compilation of Islamic Law) and Book II Guidelines for the Implementation of Duties and Administration of Religious Courts.

According to article 20 paragraph (2) of PP. No. 9/75: "In the event that the place of residence of the Defendant is unclear or unknown or does not have a permanent residence, a divorce suit shall be filed with the Court at the place of residence of the plaintiff". Meanwhile, Article 27 paragraph (1) "If the Defendant is in a situation as referred to in Article 20 paragraph (2), the summons shall be made by posting the lawsuit on the notice board at the Court and announcing it through one or more newspapers or other mass media determined by the court. Paragraph (2), the announcement as mentioned in paragraph (1) shall be made twice with a grace period of one month between the first and second announcement. Paragraph (3) The period between the last summons as referred to in paragraph 2) and the trial shall be at least 3 (three) months. And paragraph (4) in the event that this has been done as referred to in paragraph (2) and the defendant or his attorney remains absent, the lawsuit shall be accepted in the absence of the defendant, unless the lawsuit is without right or unreasonable.

Interestingly, there is a difference in the deadline for summoning the unseen between one legal source and another, as follows,

a. According to Articles 20 paragraph (2), 27 paragraph (1) of PP. No.9 of 1975 Jo. Article 139 KHI and Book II Guidelines for the Implementation of Duties and Administration of Religious Courts in 2013 is, the summons is announced twice, the first announcement deadline with the second for 1 (one) month. The deadline between the last summons and the trial is set at least 3 (three) months, so the total deadline is 4 (four) months with the first trial.[20]

b. According to Article 390 HIR paragraph (3), "In the case of a person whose residence is unknown and in the case of a person who is unknown, the bailiff's letter shall be delivered to the regent in whose district the residence of the accused is located, and in the case of a criminal case, in whose district the competent judge is located. The regent shall give notice of the bailiff's letter by affixing it to the main door of the place where the judge is sitting. (R.Bg. Article 718.)". So according to the provisions of this article does not mention how long the period between the summons and the trial, this provision by the residents of the Religious Court is applied to Property Cases. Usually the period of 1 (month) is posted in the announcement of the local government / mayor.

c. According to Article 10 of the RV (Civil Procedure Regulations), also known as the Reglement op de Rechtsvordering, it is stated that the usual period for notifying a lawsuit before the raad van justitie (in Dutch times it was called the Judicial Council) and HGH (Het Hooggerechtshof / Court of Appeal) is as follows,

1) At least eight days for the defendant who resides or, if his residence is unknown in Indonesia, has his real residence in the prefecture where the court of justice is to hear the case.

2) At least fourteen days for the defendant who resides or, as aforesaid, has his real residence in a prefecture of Java and Madura other than that referred to in n. 1) above, but still within the jurisdiction of the same raad van justitie.

---

[20] Abdul Manan, *Reformasi Hukum Islam di Indonesia,* (Jakarta: PT Rajagrafindo Persadar, 2005), h. 87-88

3) and at least twenty days for the defendant who resides or, as aforesaid, has his real domicile in another district of Java, other than that referred to in no. 2) and also not within the jurisdiction of the same raad van justitie.

d. As according to Article 122 HIR reads: "In determining the day of the trial, the chairman shall take into account the distance of the place of residence or residence of both parties from the place where the district court convenes, and the time between the day of summoning both parties and the day of the trial shall not be less than three working days, unless the case needs to be examined immediately and this is mentioned in the warrant."

Thus, from the provisions of the HIR and R.Bg explicitly (real) does not mention how many days or weeks or months, but the judge is authorized to think about the appropriate grace period. In essence, that the judge is welcome to assess how long the appropriate summoning period is, between the summons and the distance of the trial. Whereas in Article 10 RV. there is a choice of grace period, namely at least between 8 days or 14 days or 20 days grace period between summons and trial.

Then, in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, there is also no explanation regarding the time limit for determining someone is unaware. The regulations are not yet equipped with a minimum limit for the departure of the husband/wife from home to be determined by the court.

Thus, there has been legal uncertainty. The limitations of gaib in Islamic law (fiqh) and national law are also very different. In the author's opinion, it is time to revise the legislation on marriage, by clearly stating the meaning of gaib and the time limit to be determined by the court. It is not only a matter of summoning the court, but also the time limit for occult cases to be heard.

Second, the judge's reasoning in granting the occult divorce case.

Regarding the case sitting in Decision Number 33/Pdt.G/2020/PA.Pdn and Decision Number 24/Pdt.G/2020/PA.Pdn, viewed from the perspective of maqās}id al-'usriyah, the marriage no longer fulfills the elements of achieving the objectives of sharia (maqās}id al-syarī'ah).

First, تحقيق السكن والاستقرار الأسري / Realizing sakinah and family stability.

الأسرة استقرار إلى يؤدي الذي السكن مقصد ويتحقق

By realizing the goal of sakinah, it automatically leads to family stability. Therefore, the first concern is the building of a sakinah family. In this case, ignorance of the husband's whereabouts, even in one of the verdicts deliberately leaving the wife, is certainly contrary to this principle.

Second, ضبط العلاقة بين الرجل والمرأة /regulates the relationship between men and women. This is so that each man or woman understands the boundaries between his or her rights and obligations in the family. After the husband leaves home, or his whereabouts are no longer known, this second principle is ignored.

Third, النسل وحفظ/ Preserving offspring.

النسل على المحافظة هو النكاح من الأصلي المقصد أنّ على الشريعة علماء اتفق

The scholars have agreed that one of the purposes of marriage is to preserve offspring. Thus, the unknown circumstances of the husband would make a household lame, certainly with implications for the neglect of the aspect of hifz al-nasl.

It has been argued before about the propositional statement that, if all of the above elements described by Jamāluddīn 'Atiyah and Zainab Taha al-'Alwānī are fulfilled, then family resilience will be achieved; if family resilience is achieved, then the purpose of marriage law has been fulfilled. On the other hand, if the above-mentioned elements are not fulfilled in the family, then the law provides an alternative "dissolution of marriage".

KESIMPULAN

The judge's consideration in granting an occult divorce case in Decision Number 33/Pdt.G/2020/PA.Pdn and Decision Number 24/Pdt.G/2020/PA.Pdn, is not on the occultation of the respondent/defendant, but other considerations. Thus, the decisions discussed in this study can be accentuated on two issues, first, the reasons for the judge to determine the respondent and the defendant as unseen, and second, the reasons for the judge to grant the unseen divorce case. The first, namely the consideration of the determination of unseen, the judge refers to the provisions of the law in the Religious Court, that the defendant/respondent has been officially and properly summoned, as stipulated in Article 149 paragraph (1) RBg/RDS jo. Article 27 of Government Regulation of the Republic of Indonesia Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage, and upon examination that the respondent/applicant's whereabouts were unknown (based on a certificate from the village head). This means that the judge did not decide based on Islamic law (fiqh), but based on civil law in general. Meanwhile, the second reason for the judge in granting the invisible divorce case was that the marriage of the plaintiff/applicant and the defendant/applicant had no longer found the purpose of marriage, namely a sakinah, mawaddah, warohmah family. Therefore, the judge's decision is in accordance with the maqashid al-usriyah theory.

DAFTAR PUSTAKA

Books:

Al-'Alwānī, Z.T. 2012. *Al-Usrah fī Maqāṣid Al-Syarī´ah: Qirā`ah fī Qadāyā al-Zawāj wa al-Talāq fī Amrīka.* Herndon: The International Institute of Islamic Thought.

Al-Malibari, Z. 2004. *Fath Al-Mu'in.* Beirut: Dar Ibn Hazm.

Al-Syaibani, A. A. M. .H. F. 1998. *Kitab al- Hujjah Ala Ahli Madinah.* Beirut: Alam al-Kutub.

Al-Zuhayli, Wahbah. 1984. *Fiqh al-Islam wa Adillatuhu.* Cet. Ke-2. Damaskus: Dar al-Fikr.

As-Subki, T. 1991. *Al-Asybah wa An-Nazhair.* Beirut: Dar Al-Kutub Al-Ilmiyah.

Daruquthni. 2001. *Sunan Ad-Daruquthni.* Beirut: Dar Al-Ma'rifah.

Hardani, S. *et al.* 2018. Perkara Madqud di Pengadilan Agama Provonsi Riau dalam Perspektif Keadilan Gender. *Jurnal Marwah*, Vol. 17, No. 2.

Jamal al-Din ‘Atiyah, J.A. 2001. *Nahw Taf’il Maqashid al-Syariah.* Damaskus: Dar al-Fikr.

Malik, Anas. 1998. *al-Muwwaṭṭa’.* Maktabah Syamilah.

Manan, A. 2005. *Reformasi Hukum Islam di Indonesia.* Jakarta: PT Rajagrafindo Persada.

Muḥammad, I. 1998. *al-Mubdi’ Fi Syarhi al-Muqni*. Maktabah Syamilah.

Rusyd, Ibnu. 2006. *Bidayatul Mujtahid*. Mesir : Darussalam.

Sahal, M. A. A. 1998. *al-Mabsut*. Beirut: Al-Ma’arif.

Turnip, IRS. 2021. *Hukum Perdata Islam di Indonesia; Studi tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah, dan Perwakafan.* Depok: Rajawali Pers.

Journal:

Bakri Mukhlis, M. Komparasi Fikih Munakahat dengan Hukum Positif terhadap Gugat Cerai *Mafqūd* (Suami yang Hilang) pada No. Perkara 2791/pdt.g/2021/pa.kng di Pengadilan Agama Kuningan. *Jurnal Al Mashalih,* Vol 3, No. 2. 2022.

Baluqia, Rd. S. H. dan Puti Priyana. Pertimbangan Hakim terhadap Perkara Cerai Gugat Suami Ghaib dan Akibat Hukumnya di Pengadilan Agama Karawang. *Jurnal Yustisia,* Vol. 7, No. 2. 2021.

Barzun, Charles L. and Goldberg, John C. P. Introduction: *The Nature of the Judicial Process* at 100”, *Yale Journal of Law & the Humanities*, Vol. 34, No. 1. 2023

Khotim, A. Relevance of Imam Syafi’is Thoughts about *Mafqūd* to Ghaib Divorce (Case Study in Jombang Religious Court). *Jurnal Familia*, Vol. 3, No. 2. 2022.

LaOde, M.T. Protection of Mafqud Rights in Inheritance Without Court Determination According to Islamic Law, *Journal of Research Trends in Social Sciences and Humanities*, *1*(2), 155–164. https://doi.org/10.59110/aplikatif.v1i2.118. 2023.

Turnitin JPH Imam

ORIGINALITY REPORT

5%	3%	0%	2%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	repository.uki.ac.id Internet Source	2%
2	digilib.unila.ac.id Internet Source	2%
3	Submitted to UIN Walisongo Student Paper	1%
4	Submitted to UIN Raden Intan Lampung Student Paper	<1%
5	M. Nasir, Nuri Aslami. "Sugmentasi Pasar dan Positioning pada Perusahaan Asuransi", Mimbar Kampus: Jurnal Pendidikan dan Agama Islam, 2022 Publication	<1%
6	Submitted to Higher Education Commission Pakistan Student Paper	<1%
7	Submitted to Victoria University Student Paper	<1%

8	Submitted to Damodaram Sanjivayya National Law University Student Paper	<1%

Exclude quotes	Off	Exclude matches	Off
Exclude bibliography	On		

Turnitin JPH Imam

PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10

PAGE 11

PAGE 12

PAGE 13

PAGE 14

PAGE 15

PAGE 16

PAGE 17

PAGE 18