

ACCURACY OF RELIGIOUS COURT JUDGEMENT WRITING AND THE VALIDITY OF WITNESSES IN THE COURTROOM

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Article Info

Keyword:

Religious Court

Typographical Error

Witnesses

Abstract

This study aims to analyze the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh, which focuses on the divorce suit filed by the wife against the husband. Qualitative research method with a normative juridical approach with primary data sourced from religious court documents, while secondary data sources come from some legal literature and previous research. The results of the study illustrate a procedural problem, namely a typographical error in the wording that contradicts the witness testimony and the consideration of the panel of judges, namely in the wording of sexual activity Qabla Dukhul and Ba'da Dukhul. Although it looks trivial and does not invalidate the Court's decision, however, this typographical error or human error typing or clerical error should not be left unchecked, because it is published on the internet media managed by a state institution, namely the Supreme Court, so it is necessary to build and utilize Artificial Intelligence systems in minimizing and avoiding administrative errors. This research also analyses the witness testimony that was accepted and considered by the judge about never engaging in sexual activity (Qabla Dukhul), the standard of witness validity must be considered by the panel of judges so that it does not need to be included in the court decision if it is not considered valid in its evidence. The contribution of this research is to improve procedural justice and judicial governance.

Page: 102-110

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Article history:

Received: August 23, 2024; Received in revised form November 1, 2024; Available online: November 24, 2024.

Introduction

Islam regulates marriage as a form of carrying out Allah's commands (Qur'an Surah al-Nur verse 32); implementation of the sunnah of the Prophet (Ibn Majah, 1431H); Prevention of adultery (al-Bukhārī, 2002); Completion of half religion (al-Bayhaqī, 2000); the preservation

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of offspring (al-Quran Surah al-Nahl verse 72); and the development of a happy family (al-Quran Surah al-Rum verse 21). Marriage is a strong bond between a man and a woman, so they are expected to be able to maintain and perpetuate the marriage and avoid rifts (*al-syiqaq*) and divorce (Al-Sharmani, 2018).

Marriage is an institution that is expected to make a Muslim avoid and not commit acts that are prohibited by religion such as adultery, or domestic violence, so that the household can be built as everyone's dream, namely a household that is *sakinah*, *mawaddah*, and *rahmah* and not the other way around, a household that is inharmonious, hostile, and disaffected (Peletz, 2020).

When a household cannot be maintained for various reasons and reasons, in Indonesia regulates the causes and reasons for divorce, this is contained in the explanation of Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage, there are six causes and reasons for divorce, namely one of the parties or spouses commits adultery, is a drunkard, a drunkard, a gambler, and other acts that are difficult to cure; one party leaves the other party for 2 consecutive years without the permission of the other party and without a valid reason or for other reasons beyond its capabilities; one of the parties or spouses gets a prison sentence of 5 years or a heavier sentence after the marriage takes place; one party or spouse commits cruelty or severe persecution that endangers the other party; One of the parties or spouses suffers from a physical disability or illness as a result of being unable to carry out their obligations as a husband/wife; And between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household anymore.

Article 116 of the Compilation of Islamic Law regulates the causes and grounds for divorce, namely: one of the parties or spouses commits adultery or becomes a drunkard, a drunkard, a gambler and so on that is difficult to cure; either party leaves the other party for 2 consecutive years without the other party's permission and without a valid reason or due to other reasons beyond its capabilities; one of the parties or spouses gets a prison sentence of 5 years or a heavier sentence after the marriage takes place; one of the parties or spouses commits cruelty or severe persecution that endangers the other party; one of the parties or spouses suffers from severe disability or illness as a result of being unable to carry out their obligations as husband or wife; between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household anymore; the husband violates the divorce clause; and religious conversion or apostasy that causes disharmony in the household.

In Indonesia, the regulation of proving divorce is regulated in the Civil Procedure Code to convince the judge of the truth of the postulates presented in a dispute (Subekti, 1982). Article 164 of the Herzien Inlandsch Reglement (HIR), Article 284 of the Rechtreglement voor de Buitengewesten (R.Bg), and Article 1866 of the Civil Code regulate evidence, namely written evidence; witness evidence; suspicion; confession; and oath. Law Number 7 of 1989 concerning Religious Courts specifically regulates the event of proving the occurrence of divorce in articles 70, 74, 75, 76, and 87.

This study analyzes the decision of the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh who focuses on typographical error or human error typing or clerical error and standard testimony never engaged in sexual activity between the plaintiff and the defendant (*Qabla Dukhul*). There have been many previous studies on typographical errors, for example, Amelia Bellatrix Pantjo'u and Prawitra Thalib mentioned in their research that typographical errors are common and cannot be problematic (Pantjo'u & Thalib, 2022). Nurus Zaman, in his research, found typographical errors that can have a big impact on the principles of the meaning contained in a legal norm (Zaman, 2024). Finona Raissa Anselma et al., in their research, showed that clerical error is still tolerable, the fact is that between the plaintiff and the defendant justifies the object of dispute, which should have been

written in the Building Rights Letter (SHGB) but written in the Property Rights Letter (SHM) (Anselma, 2020). Eka N.A.M. Sihombing and Cynthia Hadita said that clerical error can give rise to multiple interpretations, ambiguity, and obscure the meaning of the substance of the Article, and a mechanism is needed to optimize the authority of the Constitutional Court (Sihombing & Hadita, 2023). Previous research on the standard of the testimony of never engaging in sexual activity between the plaintiff and the defendant (*Qabla Dukhul*), for example, Nur Ilmi Wahab et al. and Ayu Cahyani, who mentioned that there were testimonies in the case return of dowry due to Never engaged in sexual activity between the plaintiff and the defendant (*Qabla Dukhul*) (Ayu Cahyani et al., 2024; Wahab et al., 2021).

Research Method

This research is included as qualitative research with a normative juridical approach (Noor, 2023), which is used to refer to the applicable laws and regulations. As a type of legal research methodology, the analysis is based on applicable laws and regulations and is relevant to the legal issues that are the focus of the research. This study took primary data sourced from a copy of the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh is available on the internet (Mahkamah Agung Republik Indonesia, n.d.). Meanwhile, secondary data sources are taken through books, websites, and research results. This study uses data descriptive analysis techniques through collecting, compiling, analyzing, and concluding (George, 2008).

Results and Discussions

Typographical Error and Validity of Testimony in Religious Court Decisions

This research is a study of the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh on the Divorce Lawsuit filed by Mrs. X (wife) who is -hereinafter referred to as the plaintiff- against Mr. Y (husband) -hereinafter referred to as the defendant-. They registered their marriage at the Office of Religious Affairs in 20XX. At the beginning of the marriage, the defendant lived at the house of the defendant's parents in the city of Banjarmasin for 2 (two) months. At the beginning of the marriage, it seemed harmonious and lived as a married couple, but the plaintiff admitted that he had not done sexual activity (*Qabla Dukhul*) with the defendant so there was no pregnancy. At the end of November 20XX, the plaintiff registered a divorce lawsuit because there was no good communication in their daily life as a married couple. The plaintiff admitted that this marriage was carried out because of an arranged marriage and not because of love, besides that, it turned out that the defendant was a person with intellectual disabilities who felt that he was not ready to live a household life.

2 (two) months later, precisely in October 20XX, the plaintiff left the house of the defendant's parents in a state of not being evicted to the house of his biological parents, he left the house based on his intention and will. After separating for 1 (one) month, until finally in November 20XX, the plaintiff filed a divorce lawsuit at the Pelaihari Religious Court. During this separation, the defendant never visited him to communicate and provide for himself. The plaintiff felt that he no longer had a sense of love and wanted to divorce and assessed that the defendant had violated the law. The trial was held without the presence of the defendant or his guardian and was only attended by the plaintiff. The panel of judges had advised the plaintiff but was unsuccessful. The plaintiff presented a photocopy of the Marriage Certificate Citation as evidence and presented 2 (two) witnesses in the trial. These 2 (two) witnesses are the biological mother and aunt of the plaintiff and gave information under oath. The first and

second witnesses stated that the plaintiff and the defendant were bound in a marital relationship, the defendant felt disharmony as husband and wife, and they had no children because they had not engaged in sexual activity (*Qabla Dukhul*). Arranged marriage without a basis of love results in poor communication, especially the defendant who has clingy behavior (Shahmoradi et al., 2021), where he is very dependent on his parents emotionally and physically. The families of the plaintiff and the defendant have tried to reconcile, but all decisions are in the hands of the plaintiff.

The defendant or his guardian did not attend the trial so he did not refute the plaintiff's lawsuit. The defendant or his guardian has been formally and appropriately summoned without giving a valid reason, so the panel of judges should assess that he has committed defiance (*Ta'azuz*) against the court's summons. The panel of judges considered evidence in the form of a photocopy of the Marriage Certificate Citation and 2 (two) witnesses from the plaintiff's family presented in the trial, the presence of these 2 (two) witnesses fulfilled Article 22 paragraph (2) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. 2 (two) pieces of evidence presented in the trial are the assessment of the panel of judges as the fulfillment of the formal requirements of a lawsuit filed by the plaintiff. The panel of judges has been guided by Article 4 of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, because of the absence of the defendant, mediation cannot be carried out. The panel of judges had advised the plaintiff to maintain his marriage with the defendant but was unsuccessful in advising him, the panel of judges tried to comply with and implement the provisions of Article 39 of Law No. 1 of 1974 concerning Marriage jo. Article 65 of Law Number 7 of 1989 concerning Religious Courts which has been amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts and Law (UU) Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts Jo Article 115 Compilation of Islamic Law Jo Article 154 R.Bg and Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court.

The panel of judges considered the jurisprudence of the Supreme Court of the Republic of Indonesia Number: 237.K/AG/1998 dated March 17, 1999, this jurisprudence explains the condition of married couples who experience quarrels, separation, do not live together, and the wife no longer intends to continue her domestic life with her husband as husband and wife. This condition is considered a sufficient fact and the grounds for divorce as referred to in Article 39 paragraph (2) of Law Number 1 of 1974 concerning marriage. The plaintiff has succeeded in proving the main postulate of his lawsuit and the panel of judges concluded that the household between the plaintiff and the defendant has no hope of being maintained anymore because the household of the plaintiff and the defendant has been broken, so that the purpose of marriage to foster a family of *sakinah*, *mawaddah*, and *rohmah* is not realized as referred to in Article 1 of Law Number 1 of 1974 concerning marriage. Article 3 Compilation of Islamic Law. The panel of judges assessed, if the household between the plaintiff and the defendant cannot be maintained, if it is maintained, it can result in the emergence of dangers and prolonged physical and mental suffering. The panel of judges cited the postulates of *Ushul Fiqh*:

درا المفاسد مقدم على جلب المصالح

"Eliminating damage is more important than bringing benefits" (Al Zuhaili, 2006).

The panel of judges considered that the reasons for divorce submitted by the plaintiff had been proven and were also by the intention of the Sharia postulate. The panel of judges quoted the opinion of Islamic Law expert Sheikh Al-Majedy in the book *Ghayat Al-Maram*:

واذا اشتد عدم رغبة الزوجة لزوجها طلق عليه القاضي طلقة

"If the wife is very unhappy with her husband, then the Judge is allowed to impose the husband's divorce with one divorce".

The panel of judges considered that the lawsuit filed by the plaintiff had fulfilled the reasons based on Article 39 paragraph (2) 39 of Law No. 1 of 1974 concerning Marriage jo. Article 19 letter f of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage Jo. Article 116 letter f of the Compilation of Islamic Law. In the end, the panel of judges granted the plaintiff's lawsuit by imposing the defendant's divorce against the plaintiff. When the defendant disobeys the summons of the court, while the plaintiff's lawsuit is grounded and not unlawful, then according to the provisions of Article 149 paragraph (1) R.Bg the defendant who does not appear in court must be declared absent and the defendant's lawsuit is granted with versteek. The panel of judges considers the conditions during the marriage of the plaintiff and the defendant who have engaged in sexual activities (*Ba'da Dukhul*). The panel of judges decided and declared that the defendant who had been formally summoned and fit to appear in Court but did not attend the trial granted the plaintiff's lawsuit with *Versteek*, imposed divorce one *Bain Shugra* of the defendant against the plaintiff, and charged the plaintiff to pay the cost of the case in the amount of Rp. 416,000.00 (four hundred and sixteen thousand rupiah).

Decision of the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh imposed divorce one *Bain Shugra* against the plaintiff, thus causing legal consequences, namely divorce which can cause the loss of the ex-husband's right to be able to marriage reconciliation against his ex-wife who had been divorced. If the ex-husband wants to marriage reconciliation. So it is mandatory to perform a new marriage contract even though it is in iddah. This is by the provisions in Article 119 paragraph (1) of the Compilation of Islamic Law which explains that divorce *Bain Shugra* is a divorce that should not be marriage reconciliation but can contract a new marriage with her ex-husband even though it is in iddah. Paragraph (2) regulates the Divorce *Bain Shugra* as mentioned in paragraph (1): Divorce that occurs *Qabla Dukhul*; Divorce with ransom or *khuluk*; and divorce imposed by the Religious Court. Article 119 paragraph (1) of the Compilation of Islamic Law only regulates the ability for marriage reconciliation by performing a new marriage contract without mentioning the giving of dowry, while the provisions for giving this dowry are determined by the scholars of the four *madhhabs* (al-Syakir, 1185; Sabiq, 1977; Zuhaily, 1989). So there needs to be an editorial improvement in Article 119 paragraph (1) of the Compilation of Islamic Law.

In the decision of the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh was found to be editorial ambiguity, the information submitted by the plaintiff and 2 (two) witnesses in the trial stated that the marriage between the plaintiff and the defendant did not occur in sexual activity (*Qabla Dukhul*), but in consideration of the panel of judges, it was written that during the marriage the plaintiff and the defendant had gotten along as befits husband and wife (*Ba'da Dukhul*). The researcher assumes that there was a typographical error in the decision of the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh.

Typographical error or human error typing or Clerical Error in court decisions should not occur, must be avoided, and immediately corrected (Cohen, 2020), although it does not cause the decision to be null and void, nevertheless, Judges will be held accountable for their mistakes in court. No less important is typographical error or human error typing or Clerical Error if a lot of writing in the court decision is feared to have a serious effect on the content of the norm Especially on the meaning contained in the redaction, so as not to obscure the substance of the decision (Asshiddiqie, 2011). It is necessary to use Artificial Intelligence (AI)

to minimize errors because humans have limitations in researching the documents they prepare that can be missed (Bell et al., 2023). AI systems are already being used in courts to support administration and decision-making (Walters & Novak, 2021).

Religious Courts must begin to be aware of the importance of AI, especially for judges, clerks, court administrators, and all parties involved in the trial (Nowotko, 2021), in the end, the core values of justice, namely open justice, accountability, impartiality, equality before the law, procedural justice, access to justice, and efficiency can create a just and prosperous society (Piana, 2021). In addition, it is important to build effective communication and practice in the courtroom so that there is an increase in transcription accuracy with technology and collaboration, it is also necessary to optimize stenography practices in the legal field (Etulle et al., 2023).

The Supreme Court must make changes in the digital era and the development of an Artificial Intelligence system, typographical errors that have been published on the website do look simple and do not cause technical and administrative problems (Baker, 2017). It is necessary to develop a standard policy and prepare human resources to correct typographical errors after publication, by retracting and then republishing. The Supreme Court must take several samples of decisions that contain typographical errors so that readers and observers of the court get the correct document information and there are no more typographical errors (Nissan, 2008).

Other notes that need to be considered in the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh is a testimony submitted by 2 (two) people who explain that the plaintiff and the defendant have never engaged in sexual activity. Witnesses in the Civil Procedure Code are regulated in Article 164 of the Herzien Inlandsch Reglement (HIR), article 284 of the Rechtreglement voor de Buitengewesten (R.Bg) and Article 1866 of the Civil Code regulate the means of evidence, namely written evidence; witness evidence; suspicion; confession; and oath. Law Number 7 of 1989 concerning Religious Courts specifically regulates the event of proving the occurrence of divorce in articles 70, 74, 75, 76, and 87. Article 1909 of the Civil Code explains that all persons who are capable of being witnesses are obliged to testify in front of the judge. A witness is a person who gives testimony/testimony in front of the court about what they know, see for themselves, hear for themselves, or experience themselves, with which the testimony will become clear about a case (Ali, 2012).

Witnesses deliver information orally and personally or may not be represented to others in court hearings. Witnesses with disabilities, it is regulated through Government Regulation (PP) Number 39 of 2020 concerning Proper Accommodation for Persons with Disabilities in the Judicial Process. In the decision of the decision of the Pelaihari Religious Court's divorce suit Number 7XX/Pdt.G/20XX/PA.Plh shows that 2 (two) witnesses who explain that between the plaintiff and the defendant have never engaged in sexual activity, do they know, see for themselves, hear by themselves, or experience for themselves the sexual activities carried out by the plaintiff and the defendant? This question is to explain that the panel of judges should ignore the information that he never engaged in sexual activity submitted by these 2 (two) witnesses. By ignoring this information, it will show that the judge has complied with the existing laws and regulations (Mansyah et al., 2023; Usman et al., 2022). Supposedly, the panel of judges included the information of the wife - who sued for divorce from her husband - who had never engaged in sexual activity in the decision of the Pelaihari Religious Court Number 7XX/Pdt.G/20XX/PA. Therefore, women who dare to provide information are considered part of the protection of human rights and dignity (Irianto & Nurcahyo, 2006).

Conclusion

This study shows that in the decision of the Pelaihari Religious Court Number 7XX/Pdt.G/20XX/PA. The plaintiff has proven the reasons for divorce by Article 39 paragraph (2) of Law Number 1 of 1974 concerning marriage and Article 116 letter f of the Compilation of Islamic Law. This Court decision still contains a typographical error in the judge's consideration with the editor that the married couple has carried out sexual activities (Ba'da Dukhul), while the testimony of the witnesses indicates the opposite, namely not doing sexual activities (Qabla Dukhul). Although it does not go so far as to overturn the Court's decision, this mistake shows the judge's lack of caution, haste, and inaccuracy, and can ultimately reduce the credibility of the judicial institution. The panel of judges received 2 (two) pieces of evidence in the form of photocopies of Marriage Certificate citations and the testimony of two witnesses. The witness statement of sexual activity (Qabla Dukhul) cannot be considered valid, this is because the witnesses do not know, see for themselves, hear for themselves, or experience for themselves. Religious Courts must be able to utilize and operate Artificial Intelligence to minimize typographical errors.

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