

Mubadalah Values in Plaintiff's Divorce Cases in the Religious Courts of Lampung Province and its Contribution to the Development of Indonesian Family Law

Diah Aprillia^{1*}

¹ Lampung High Prosecutor's Office, Indonesia

Abstract: This article examines the problem of the judge's granting of a divorce suit filed by the wife on the grounds that the husband committed polygamy in the Religious Court of Lampung Province. The focus of the research is to understand the legal basis used by the judge in deciding the divorce suit, as well as the mubadalah values contained in the decision and its contribution to the development of Indonesian family law. The research method used is a qualitative approach with an in-depth analysis of the case, involving interviews with judges as participants and data collection through the study of decision documents. Primary data was obtained from direct interviews, while secondary data was collected from relevant literature on polygamy and Islamic family law. The results showed that mubadalah values, which emphasize gender equality, play an important role in judges' decisions, where the application of the principles of mutual respect and justice for wives is prioritized. In addition, the contribution of these values is seen in the development of Indonesian family law that is more inclusive and responsive to gender issues. Thus, this study explains that the mubadalah theory is not only a legal basis for decision-making but also contributes to positive changes in family law in Indonesia.

Keywords: Divorce Lawsuit, Family Law, Mubadalah, Religious Court, Polygamy

Abstrak: Artikel ini mengkaji problem pengabulan hakim terhadap gugatan cerai yang diajukan oleh istri dengan alasan suami melakukan poligami di Pengadilan Agama Provinsi Lampung. Fokus penelitian adalah untuk memahami dasar hukum yang digunakan hakim dalam memutuskan cerai gugat tersebut, serta nilai-nilai mubadalah yang terkandung dalam putusan tersebut dan kontribusinya terhadap pengembangan hukum keluarga Indonesia. Metode penelitian yang digunakan adalah pendekatan kualitatif dengan analisis mendalam terhadap kasus cerai gugat, melibatkan wawancara dengan hakim sebagai partisipan dan pengumpulan data melalui studi dokumen putusan. Data primer diperoleh dari wawancara langsung, sementara data sekunder dikumpulkan dari literatur yang relevan mengenai poligami dan hukum keluarga Islam. Hasil penelitian menunjukkan bahwa nilai-nilai mubadalah, yang menekankan pada kesetaraan gender, berperan penting dalam putusan hakim, di mana penerapan prinsip saling menghormati dan keadilan bagi istri menjadi prioritas. Selain itu, kontribusi nilai-nilai ini terlihat dalam pengembangan hukum keluarga Indonesia yang lebih inklusif dan responsif terhadap isu gender. Dengan demikian, penelitian ini menjelaskan bahwa teori mubadalah tidak hanya menjadi dasar hukum dalam pengambilan keputusan tetapi juga berkontribusi dalam perubahan positif hukum keluarga di Indonesia.

Keywords: Cerai Gugat, Hukum Keluarga, Mubadalah, Pengadilan Agama, Poligami

Corresponding Author: Diah Aprillia (diahaprillias3hk@gmail.com)

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A. Introduction

The phenomenon of divorce in Religious Courts is increasing, especially in Lampung Province, where many wives file for divorce on the grounds that their husbands commit polygamy. In some cases, judges grant the divorce even though the reason for polygamy is not explicitly regulated in the Marriage Law in Indonesia as a basis for divorce (Yusron Rofi et al., 2024). This fact raises important questions regarding the legal basis used by judges in deciding divorce cases on the grounds of polygamy and what considerations are used by judges in granting the lawsuit (Arifin et al., 2024). Based on pre-research data, there are a number of divorce cases at the Lampung Religious Court filed by wives on the grounds that the husband committed polygamy without consent.

This research uses the theory of *mubadalah* as an analytical tool to examine the decision of divorce related to polygamy in the Religious Court (Kashvi, 2024). *Mubadalah*, proposed by Faqihuddin Abdul Kodir, emphasizes the concept of equality and justice in the relationship between men and women. This theory is relevant in the context of this research because it provides a perspective that leads to gender justice, which is indispensable in divorce decisions, especially to ensure that judges' decisions are not one-sided or discriminatory against women (Innayah, 2009). By using *mubadalah*, the author hopes to evaluate whether the values of equality have been applied in these decisions.

This writing is important because the researcher seeks to find how the values of *mubadalah* can contribute to building a more just and inclusive family law in Indonesia (Hermanto et al., 2024). This research also aims to provide a new understanding of divorce verdicts based on polygamy grounds, so that judges have clearer guidelines in upholding justice for wives who are forced to face unapproved polygamy.

The review of relevant literature compares this research with similar studies that also discuss divorce decisions due to polygamy in the Religious Courts. Some previous studies may have discussed women's perspectives in divorce or polygamy decisions, but did not specifically use *mubadalah* analysis to highlight justice in judges' decisions. The *novelty* of this article lies in its focus on the application of *mubadalah* values in divorce verdicts filed on the basis of polygamy, as well as its impact on the development of family law in Indonesia.

The formulation of this research problem is how the values of *mubadalah* are applied in the case of contested divorce in the Lampung Province Religious Court and how it contributes to the development of family law in Indonesia. The purpose of this study is to examine the application of *mubadalah* values in the case of contested divorce on the grounds of polygamy in the Lampung Provincial Religious Court and to analyze its contribution to the development of a more inclusive and just family law in Indonesia.

B. Research Method

This study uses a qualitative approach that focuses on an in-depth analysis of a case of contested divorce at the Lampung Provincial Religious Court, where the reason for polygamy was used by the wife to file a lawsuit. Involving the judges of the court as participants, this research aims to understand the views and legal basis of the judges in deciding such cases, and analyze them through the perspective of

mubadalah theory that emphasizes gender equality. Primary data was obtained through direct interviews with the judges and a document study of the relevant decisions, while secondary data came from various literatures that discuss polygamy, contested divorce, and the application of *mubadalah* theory in Islamic family law. Data collection techniques included in-depth interviews with a list of open-ended questions and review of relevant decision documents. Data analysis was conducted using a descriptive-qualitative method, namely describing the results of interviews and documents in detail to understand the dynamics of the case, as well as highlighting how *mubadalah* values can be applied in the judge's decision. Through this approach, this research is expected to reveal the contribution of *mubadalah* theory in the development of family law in Indonesia, especially in contested divorce cases involving polygamy issues

C. Result

The Concept of Mubadalah

The concept of *Mubadalah* is an approach to understanding gender relations in Islam that emphasizes equality, justice, and mutual respect between husband and wife in marriage (Asnawi., 2024). This approach focuses on the principle of reciprocity, where both parties have equal rights and obligations in carrying out their respective roles in the household (Kodir, 2019). Faqihuddin Abdul Kodir, as one of the main figures in the development of this concept, explains that the values of *mubadalah* aim to create harmonious and mutually supportive relationships, not only in the context of marriage, but also in wider social life (Kodir, 2019).

In relation to this article, polygamy can be considered as a reason for wives to file for divorce, especially if the practice of polygamy does not meet the principles of justice and equality emphasized by *mubadalah*. In this context, if the husband engages in polygamy without paying sufficient attention to the rights and feelings of the wife, then the act has the potential to create injustice and can be a valid reason for divorce (Hamidah, 2020). As expressed by (Hanafi, 2021), in some cases, wives feel marginalized and disrespected in polygamous practices, leading to dissatisfaction in the household and prompting divorce lawsuits (Asnawi, 2024).

Other sources also show that polygamy can create significant psychological impacts for wives, as researched by (Aisyah, 2022), where many wives experience stress and uncertainty as a result of injustice in polygamous relationships. Therefore, it is important to apply the concept of *mubadalah* in the assessment of divorces involving polygamy, in order to see whether the practice is still in accordance with the values of justice expected in husband and wife relationships. With this approach, judges in Religious Courts can consider not only the rights of the husband, but also the rights and feelings of the wife in making decisions regarding divorce (Mahmud, 2021).

Thus, the concept of *mubadalah* is not only relevant in the context of Islamic law but also provides a new perspective in understanding modern family dynamics, especially when dealing with issues of polygamy and divorce. This approach is expected to make a positive contribution to the development of Islamic family law in Indonesia, and prioritize justice and equality in the institution of marriage (Kodir, 2019).

Divorce in Islamic Family Law in Indonesia

In Islamic family law in Indonesia, divorce is divided into several types, including *cerai talaq*, which is a divorce filed by the husband, and *cerai gugat*, which is a divorce filed by the wife. The Compilation of Islamic Law (KHI) in Indonesia, which was formalized through Presidential Instruction No. 1 of 1991 and Minister of Religious Affairs Decree No. 154 of 1991, also introduces the concept of *cerai khuluk*, whereby the wife can separate herself from the husband by returning the dowry or providing certain compensation to the husband. Article 116 of the KHI details the grounds on which a wife can file for divorce. Some of these grounds include adulterous behavior or bad habits such as drunkenness and gambling, leaving a spouse without permission for two years, a prison sentence of five years or more, cruelty or serious maltreatment, disability or illness that prevents the obligations of the husband or wife, ongoing disputes, violation of *taklik talak*, and conversion of religion that causes domestic disharmony (Lestari et al., 2024).

In the context of this research, the issue of whether polygamy can be a reason for a wife to file for a divorce is of particular interest. Although not explicitly mentioned in Article 116 KHI, the practice of polygamy carried out without consent or in a way that harms the wife is often a source of serious disputes that cause disharmony. For example, research conducted by (Fitriani, 2020) in the *Ahwal Syakhshiyah* journal shows that many wives feel disrespected when their husbands commit polygamy unilaterally, so household disharmony is inevitable. Another study by (Maulana, 2019) in the *Islamic Law* journal also suggests that polygamy carried out without fulfilling moral requirements can have a negative impact on household stability and is often the basis for divorce.

The study of *mubadalah* theory used in this research provides a perspective that polygamy can be seen as a form of injustice if it is not carried out with the principles of mutual respect and equality (Kodir, 2019). Through the *mubadalah* approach, the relationship between husband and wife is seen as a relationship that must be based on cooperation and justice, so that if one party, in this case the husband, takes polygamous steps that cause suffering to the wife, this can be used as a reason for the wife to sue for divorce. The *mubadalah* approach that emphasizes gender equality and mutual respect can provide a theoretical basis for judges in considering divorce claims filed by wives on the grounds of polygamy. Thus, this article tries to find the contribution of *mubadalah* values in the decision to file for divorce in Religious Courts in Lampung Province, especially in cases involving polygamy grounds, as an effort to enrich Islamic family law in Indonesia that is more in favor of justice for both parties (Kodir, 2019).

D. Discussion

Legal Basis for Judges in Deciding Divorce Plaintiffs on the Ground of Polygamous Husbands

Polygamy, although recognized in Islamic law, is not explicitly regulated in Law Number 1 of 1974 concerning Marriage as a reason to sue for divorce. In practice, the Lampung Province Religious Court (PA) granted the wife's divorce claim on the grounds that the husband was polygamous, which shows that there is a different legal interpretation from that contained in the legislation. This reflects that judges

have scope for interpretation in deciding divorce cases, even though there is no clear legal basis in the law for these cases (Badrudin, 2020).

The legal basis used by judges in deciding these cases usually refers to the principles of Islamic law and the Compilation of Islamic Law (KHI). The KHI, although not providing specific provisions regarding polygamy as a reason for divorce, provides a broad legal framework for judges to consider social and psychological factors in the household. According to Article 116 of the KHI, divorce can occur if there are strong reasons, including prolonged disputes and no hope of getting along again (Hasyim, 2021).

In the context of *mubadalah*, the judge's decision to grant the wife's divorce because the husband is polygamous can be seen from the perspective of gender equality and justice. The theory of *mubadalah*, which focuses on the equality of roles between husband and wife, offers the perspective that the wife has the right to file for divorce if her husband does not fulfill his marital responsibilities, including in the context of polygamy. This suggests that the judge's decision could be in line with the values of *mubadalah*, which emphasizes justice and mutual respect in the husband-wife relationship (Kodir F. A., 2020).

However, it is important to consider that this decision is also debatable from the perspective of traditional Islamic law, of which polygamy is a permitted part. According to some scholars, a wife who disagrees with her husband's polygamy can file for divorce based on the incompatibility and unhappiness brought about by the practice. For example, in a study by Faqihuddin Abdul Kodir, an explanation of the values of *mubadalah* explains that justice in marriage must be upheld, and unfair polygamy can be a reason for the wife to end the marriage (Al-Razi, 2019).

In this analysis, the decision of the judge in PA Lampung to grant the wife's divorce on the grounds that the husband is polygamous can be considered as a reflection of legal development that takes into account the social context. Polygamous activities that are not fulfilled fairly can have a negative impact on the wife's mental and emotional health, so this was a strong consideration for the judge in deciding the case. Some researchers have also noted that public legal awareness of women's rights in marriage is increasing, which affects legal decisions in the courts (Anwar, 2018).

Finally, the judge's decision in this case reflects an evolution in the enforcement of family law in Indonesia, which takes into account the needs and rights of women. Although polygamy is permitted in Islamic law, the fact that the judge granted the divorce on this ground shows that there is room for more equitable and equal justice in the context of family law. This is important in strengthening the legal position of women in a society that is still thick with patriarchal norms (Mardani, 2020).

Thus, the judges' decision in PA Lampung Province to grant the wife's contested divorce on the grounds that the husband was polygamous not only reflects creative legal interpretation but also shows awareness of the importance of gender justice in the context of family law. This is an important step in the development of Indonesian family law that is more responsive to the needs of society and the values of justice (Nasution, 2017).

***Mubadalah* Values in Divorce Decisions at the Lampung Religious Court**

In the context of Islamic family law in Indonesia, the values of *mubadalah* are important to analyze, especially in the decision of divorce filed by the wife on the grounds that the husband is polygamous. The value of *mubadalah*, which means

equality and mutual respect between husband and wife, offers a relevant perspective to understand the dynamics of relationships within the institution of marriage. Therefore, when a wife files for divorce on the grounds of a polygamous husband, it is important to review how these values are applied in judges' decisions in the Religious Courts, particularly in Lampung Province (Kodir F. A., 2019).

Since the issuance of Law No. 1/1974 on Marriage, polygamy has not been explicitly regulated as a valid reason for a wife to sue for divorce. Nonetheless, this practice continues to occur, and judges in Lampung's Religious Courts often grant divorce claims on the basis of mubadalah values. Thus, the application of these values in decisions can be seen as a step towards gender justice and the recognition of women's rights in the household (Ali, 2018).

In that context, judges need to evaluate the emotional and psychological impact of polygamy on wives. Research shows that polygamy can result in stress and deep dissatisfaction in the marital relationship, which can justify grounds for filing for divorce. In this regard, the values of mubadalah provide a basis for understanding that inequality in marriage, resulting from polygamy, is unacceptable and should be addressed through legal proceedings (Hasyim M. , 2019).

Furthermore, the recognition of the value of mubadalah in the decision to grant a divorce can strengthen the position of women in Islamic family law. Thus, judges' decisions that reflect these values contribute to the development of a more just and equal family law. In this case, judges in the Religious Courts are expected to consider these values when deciding cases, so that the decisions taken are not only based on positive law, but also based on the principles of justice and gender equality (Ismail, 2021).

It is important to note that the application of the value of mubadalah in contested divorce decisions not only impacts the individuals involved, but also contributes to broader social change. By recognizing and applying these values in a legal context, the Lampung Religious Court can help create awareness of the importance of gender equality in marriage and family. This may encourage society to better value women's rights and reduce the negative stigma often associated with divorce (Mulia, 2016).

The contribution of mubadalah values in the development of Indonesian family law can be seen in the increased awareness of the importance of balance in husband-wife relationships. Judges who consider these aspects in their decisions help to uphold social justice and promote family welfare. In this regard, rulings that recognize women's rights and reject harmful practices can be considered a step forward in the evolution of family law in Indonesia (Nasution H. , 2017).

Overall, the application of the values of mubadalah in the decision to file for divorce at the Lampung Religious Court shows that there is room to consider gender justice in the legal system. Decisions based on the principles of mubadalah not only address individual needs, but also create positive precedents for the development of more progressive family law. The study of these values is therefore highly relevant in the legal and social context of Indonesia (Rahman, 2018).

By paying attention to the values of mubadalah, it is hoped that judges can make more humane and fair decisions, which not only emphasize aspects of legality, but also pay attention to the psychological and emotional well-being of the parties involved. This is very important, given that the law should function as a tool to achieve justice, not just as a mechanism to enforce regulations (Sayuti, 2020).

Through the application of these values, the religious justice system in Indonesia can develop to be more responsive to the needs of society, particularly in the context of gender and family issues (Zain, 2022).

E. Conclusion

Based on an analysis of the values of mubadalah in cases of contested divorce in the Lampung Province Religious Courts, it can be concluded that the application of the principles of equality and mutual respect between husband and wife plays an important role in the decisions taken by judges. The values of mubadalah not only provide a foundation for the fulfillment of women's rights, but also encourage the creation of justice in husband-wife relationships, especially in the context of polygamy cases that become grounds for divorce. In addition, the contribution of these values to the development of Indonesian family law is seen in the emergence of awareness of the need for gender justice, which has implications for positive changes in the legal system that are more inclusive and responsive to the needs of society. Thus, the values of mubadalah not only function as a legal basis in decision-making, but also as a driving factor in the development of a more progressive and just family law in Indonesia.

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