

## JUDGES' REASONING IN VASECTOMY-INDUCED DIVORCE CASES

Adim Ranun<sup>1</sup>, Yusnita Eva<sup>2</sup>

<sup>1,2</sup>Universitas Islam Negeri Imam Bonjol Padang

E-mail: [adimranun03@gmail.com](mailto:adimranun03@gmail.com)<sup>1</sup>, [yusnitaeva@uinib.ac.id](mailto:yusnitaeva@uinib.ac.id)<sup>2</sup>

Submitted: 23-06-2024

Accepted: 01-09-2024

Published: 05-11-2024

### *Abstract*

*Vasectomy or vas ligation is a male contraceptive method that involves cutting and ligating the right and left vas deferens to prevent the release of sperm during ejaculation. Vasectomy family planning also aims to change people's thinking about the value and number of children. This research method is library research, where books, journals, laws, and other scientific works relevant to the writing are used as references. The approach used in this research is a historical approach, which is carried out by examining the background and historical development of the legal issues at hand. The focus of this research is the judge's consideration of divorce cases triggered by vasectomy, as happened in the decision of the Simalungun Religious Court Number 266/Pdt.G/2013/PA.Sim. In the verdict, a dispute between husband and wife triggered by a vasectomy is recognized as a valid basis for granting permission for divorce. This reflects the importance of proper education and socialization regarding vasectomy that is not communicated can have an impact on the marriage, making the wife feel that she does not get satisfaction, enjoyment during sexual activity and the impact, among others, not having offspring. If a divorce occurs after a vasectomy, and then remarries, the subsequent marriage will have an impact on the couple who want offspring.*

**Keywords:** Divorce; Judge's Consideration; Vasectomy.

### **Abstrak**

Vasektomi atau ligasi vas adalah metode kontrasepsi pria yang melibatkan pemotongan dan pengikatan vas deferens kanan dan kiri untuk mencegah keluarnya sperma saat ejakulasi. KB vasektomi juga bertujuan untuk mengubah pemikiran masyarakat tentang nilai dan jumlah anak. Metode penelitian ini adalah penelitian kepustakaan (library research), dimana buku-buku, jurnal, undang-undang, dan karya ilmiah lainnya yang relevan dengan penulisan digunakan sebagai referensi. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan historis, yang dilakukan dengan menelaah latar belakang dan perkembangan historis dari isu hukum yang dihadapi. Fokus penelitian ini adalah pertimbangan hakim terhadap perkara perceraian yang dipicu oleh vasektomi, sebagaimana yang terjadi dalam putusan Pengadilan Agama Simalungun Nomor 266/Pdt.G/2013/PA.Sim. Hasil dari putusan tersebut, perselisihan antara suami istri yang dipicu oleh vasektomi diakui sebagai dasar yang sah untuk memberikan izin cerai talak. Hal ini mencerminkan pentingnya edukasi dan sosialisasi yang tepat mengenai vasektomi yang tidak dikomunikasikan dapat berdampak pada perkawinan, membuat istri merasa tidak mendapatkan kepuasan, kenikmatan saat melakukan aktivitas seksual dan dampaknya antara lain

tidak memiliki keturunan. Jika perceraian terjadi setelah vasektomi, dan kemudian menikah lagi, pernikahan berikutnya akan berdampak pada pasangan yang menginginkan keturunan.

**Kata Kunci:** Perceraian; Pertimbangan Hakim; Vasektomi.

## INTRODUCTION

Family planning is an effort to shorten or plan the number of children and the distance of pregnancy by using contraception.<sup>1</sup> Family planning is a movement to form a healthy family. In general, family planning can be interpreted as an effort that regulates the number of pregnancies in such a way that it has a positive impact on the mother, baby, father and family concerned will not cause losses as a direct result of the pregnancy. It is hoped that with mature family planning, pregnancy is something that is indeed highly expected so that it will avoid the act of ending the pregnancy with an abortion. Family Planning (*Family Planning, Planned Parenthood*) is an effort to shorten or plan the number and distance of pregnancies by using contraceptives, to realize a small, happy and prosperous family.<sup>2</sup>

A vasectomy, often referred to as male birth control, is a simple surgical procedure to cut the duct that carries sperm from the testicles to the penis. Once the vas deferens duct is cut, a man can no longer produce sperm that can fertilize his partner. However, it is important to note that vasectomy or male surgery medical (MOP) does not affect sexual activity because this procedure only affects the vas deferens duct and does not affect the production of testosterone hormone by the testicles. This hormone is still produced and absorbed into the bloodstream, to supply other organs in the body.<sup>3</sup>

Although vasectomy is considered a reliable method of birth control, the ability to have offspring can be restored by a procedure called recanalization, which is through surgery to restore or reconnect the vas deferens duct. This means that men who have undergone a

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<sup>1</sup> Afnita Ayu Rizkitama and Fitri Indrawanti, "Hubungan Pengetahuan, Persepsi, Sosial Budaya Dengan Peran Aktif Pria Dalam Vasektomi Di Kecamatan Paguyangan Kabupaten Brebes Tahun 2011-2012," *Unnes Journal of Public Health* 4, no. 1 (2015): 48–54.

<sup>2</sup> Tri Utami, "Pengalaman Menggunakan Alat Kontrasepsi Mantap (Vasektomi) Di Kecamatan Wanasaba Kabupaten Lombok Timur," *Jurnal Ilmu Kesehatan Bhakti Husada: Health Sciences Journal* 9, no. 2 (2018): 55–65, <https://doi.org/10.34305/jikbh.v9i2.69>.

<sup>3</sup> Mashudi Mashudi, "Kontribusi Metode Istiqra' Dalam Program Vasektomi (Mop)," *Iqtisad* 4, no. 2 (2017): 49–72, <https://doi.org/10.31942/iq.v4i2.2629>.

vasectomy procedure still have the option of restoring the function of their vital organs if they decide to have another child in the future.<sup>4</sup>

In 2024, vasectomy has been widely practiced throughout Indonesia with the cooperation of urological surgeons in each region. Based on data from the BKKBN Family Information System (SIGA) in May 2024, it was recorded that 0.1 percent or around 27 out of 27,371,689 active family planning participants had undergone vasectomy procedures.

Vasectomy can have an impact on sexual function (sexual dysfunction). This causes the low utilization of vasectomy as a male contraceptive.<sup>5</sup> Although, this method is very effective and safe for preventing pregnancy. Rumors and facts about vasectomy in society such as scary surgery, vasectomy is the same as infertility (infertility), can make men impotent, can reduce sex drive (libido), make men unable to ejaculate, men/husbands can easily cheat and some men are worried about the procedure of performing vasectomy. In addition, there is a misconception that men who have had a vasectomy will lose sexual arousal. Even though the difference after a vasectomy is that only sperm does not come out during ejaculation, thus pregnancy does not occur. If the cut channel wants to be reconnected, it is possible. Lack of socialization causes a wrong understanding of vasectomy so that men who do vasectomy are low. Male sexual function is the ability to experience sexual desire, erection, orgasm, ejaculation and recovery of the sexual response cycle phase.<sup>6</sup>

Side effects of vasectomy are quite rare. However, an uncommunicated vasectomy can have an impact on marriage, making the wife feel that she has not received satisfaction, pleasure during sexual activity and the impact includes not having children. Since then, quarrels (shiqaq) have continued to arise until one party decides to leave the other. Vasectomy must be paid more attention because the impact is truly extraordinary. If the divorce occurs after a vasectomy,

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<sup>4</sup> Rizkitama and Indrawanti, "Hubungan Pengetahuan, Persepsi, Sosial Budaya Dengan Peran Aktif Pria Dalam Vasektomi Di Kecamatan Paguyangan Kabupaten Brebes Tahun 2011-2012."

<sup>5</sup> Yulia M. Nur, Yade Kurnia Sari, and Dewi Harwita, "Pengaruh Pendidikan Kesehatan Kontrasepsi Pria Terhadap Motivasi Pria PUS Menjadi Akseptor KB Vasektomi," *Jurnal Akademika Baiturrahim Jambi* 12, no. 1 (2023): 30, <https://doi.org/10.36565/jab.v12i1.578>.

<sup>6</sup> Sulha and Fenti Dewi Pertiwi, "Gambaran Pemilihan Kontrasepsi Vasektomi Pada Pasangan Usia Subur Di Kecamatan Bogor Selatan Tahun 2019," *Promotor* 4, no. 2 (2021): 184–91, <https://doi.org/10.32832/pro.v4i2.5585>.

then remarrys, the subsequent marriage will have an impact on couples who crave offspring. As stated in the Decision of the Simalungun Religious Court decision number 266/Pdt.G/2013/PA. Sim.

## **RESEARCH METHODS**

This study uses a qualitative method with a normative juridical approach, primary data is obtained from court decision number 266/Pdt.G/2013/PA. Sim, secondary data was obtained from the health communication book of the practical review of vasectomy in Madura as well as Law Number 1 of 1974, and journals relevant to this study. Meanwhile, the data analysis uses Similar Case Analysis analysis. After the data is analyzed, conclusions will be drawn according to the findings obtained.

## **RESULTS AND DISCUSSION**

### **Definition of Vasectomy**

Vasectomy, also known as Vas Ligation, is a male sterilization procedure. Sterilization is the process of making a person unable to have children through surgery. Unlike other contraceptives that only prevent a temporary pregnancy, sterilization is permanent. Vasectomy is a minor surgery that is less invasive compared to male circumcision. The surgical scar is only one incision in the middle or two incisions on either side of the testicle.<sup>7</sup>

One method of sterilization in men is to inject the seminal tract with a substance that can make it freeze or tie it with a device such as a ring. This prevents sperm cells from coming out of the penis. Male sterilization is a mild procedure, does not require hospital treatment, and does not affect sexual life. This surgery does not change the nature of male masculinity. The male sex drive and sexual ability remain, and during sexual intercourse, ejaculation still occurs, although all that is secreted is the fluid that does not contain sperm cells. Vasectomy is a very safe, simple, and effective method of contraception. The operation is short and does not require general anesthesia.<sup>8</sup>

The vasectomy family planning program is one of the efforts to help reduce the rate of population growth and continues to be

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<sup>7</sup> Muh Nasrul Hanasir, Universitas Islam, and Negeri Alauddin, "PENGUNAAN KONTRASEPSI VASEKTOMI DALAM PANDANGAN HUKUM," 2 1 (2020): 60–71.

<sup>8</sup> Pande Putri Dwintasari and Ketut Hari Mulyawan, "Faktor Yang Mempengaruhi Partisipasi Pria Dalam Penggunaan Metode Kontrasepsi Vasektomi Di Kecamatan Payangan Kabupaten Gianyar," *Archive of Community Health* 4, no. 1 (2019): 62, <https://doi.org/10.24843/ach.2017.v04.i01.p08>.

encouraged. Vasectomy is a safe method of male sterilization and has no side effects.<sup>9</sup> This method is very effective, efficient, and harmless, and has no effect on sexual ability or satisfaction. Vasectomy can generally be performed for men who no longer want to have children, by cutting the sperm ducts that connect the testicles to the sperm sac, so that no seeds are found in the man's ejaculation. Vasectomy can be considered a permanent method of contraception, once performed, a person cannot have children forever. The success rate of vasectomy is very high, which is 99.8%. This method is also called sterilization and is recommended only for husbands who do not want their wives to get pregnant. Vasectomy does not affect a man's sexual ability, but it does affect his ability to have offspring. As long as he is physically healthy, his sexual performance will be fine.<sup>10</sup>

The difference is, after a vasectomy, men no longer have sperm coming out of the penis to fertilize eggs. So it is very safe from unwanted pregnancy. Many men are hesitant to have a vasectomy, mainly because they are afraid that one day they will change their mind and want to have children again, and they are afraid that their virility will no longer exist. Nothing has changed in terms of sex after vasectomy surgery. The amount of fluid ejaculated is only slightly reduced and does not at all reduce the pleasure obtained from orgasm. The seminal fluid is also the same, both in viscosity and aroma. What is missing is sperm.<sup>11</sup>

After a vasectomy, the testicles will continue to produce sperm, but sperm is not expelled during ejaculation. Instead, sperm will be reabsorbed by the body. This is actually common in men who are not married or do not engage in sexual activity, the sperm they produce will be reabsorbed by the body. In essence, men's participation in family planning is a manifestation of gender equality, gender inequality in the field of family planning and reproductive health which has a great

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<sup>9</sup> Bani Eka Dartiningsih, "Komunikasi Kesehatan Tinjauan Praktis Vasektomi Di Madura," 2018, 53–54.

<sup>10</sup> Shelly Rosalina, "Gambaran Faktor Predisposing, Enabling Dan Reinforcing Kb Vasektomi," *Jurnal PROMKES* 7, no. 1 (2019): 113, <https://doi.org/10.20473/jpk.v7.i1.2019.113-123>.

<sup>11</sup> Dwi Ayu Cahyani, "Dukungan Sosial Dalam Melakukan Vasektomi Di Kecamatan Tanggulangin Kabupaten Sidoarjo," *Jurnal Biometrika Dan Kependudukan* 6, no. 2 (2018): 171, <https://doi.org/10.20473/jbk.v6i2.2017.171-179>.

influence on the success of the program.<sup>12</sup> There are several forms of vasectomy as follows:

First, a vasectomy using a knife is administered under local anesthesia using a solution of procaine lidocaine or lignocaine without the use of adrendine, an incision is made in the skin of the scrotum or in two places above each vasa deferentia. Both vasa deferentia look white and slightly chewy when touched. *Vasa deferentia* can be distinguished from blood vessels because they do not pulse. Identification of vasa deferentia is very difficult if the skin of the scrotum is thick. Second, a knifeless vasectomy can also be performed without making an incision in the skin, so no knife is used at all. This method includes: 1) Tying the seminal canal with the skin of the scrotum by inserting a needle with a thread into the seminal canal; 2) Direct injection into the seminal canal; and 3) Heating the seminal canal by inserting a fine cauterized needle through the skin into the seminal canal.<sup>13</sup> Third, vasectomy without cutting the seminal duct. Vasectomy without cutting the seminal duct can be done by opening the skin and opening the seminal duct. The seminal canal is then tied or sliced, or it can also use a small incision and insert a small spiral into the lumen of the seminal canal. The requirements to become a vasectomy acceptor are as follows: 1) Volunteer; 2) Consultation with a doctor or contraceptive service provider; 3) Written consent from the spouse.<sup>14</sup>

The process is as follows: a) Before surgery, the patient will undergo a medical examination; b) Local anesthesia is given before surgery; c) The sperm duct is closed through a minor surgery, so that the sperm is not in the semen and does not cause pregnancy; d) The surgery is performed by a trained doctor; e) Surgery can be performed at any time. Postoperative care includes: a) Adequate rest; b) Maintain the cleanliness and dryness of the scars; c) Having sexual intercourse after 1 week post-surgery; d) Using other contraceptive methods for 10-12 sexual intercourse; e) Re-examination is carried out by the doctor after 1 week, 1 month, 3 months, 6 months, and 1 year postoperatively.

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<sup>12</sup> Dartiningsih, "Komunikasi Kesehatan Tinjauan Praktis Vasektomi Di Madura."

<sup>13</sup> Solehuddin Harahap, "Hukum Vasektomi Dan Tubektomi Dalam Pernikahan," *Jurnal Ilmu Kebidanan Dan Kesehatan (Journal of Midwifery Science and Health)* 01 (2017): 1–10.

<sup>14</sup> Salamun and Wita Yulianti, "Analisa Tingkat Keharmonisan Suami Istri Pengguna Vasektomi Dengan Algoritma C4.5," *Jurnal Buana Informatika* 9, no. 2 (2018): 81, <https://doi.org/10.24002/jbi.v9i2.1655>.

The advantages of vasectomy include: a) Rare side complaints; b) Avoiding pregnancy permanently; c) Very low failure rate; d) Simple surgical procedure; e) Does not interfere with sexual desire, as erectile and ejaculatory functions remain after vasectomy surgery.<sup>15</sup>

Most people, service providers and policymakers still think that contraceptive use is a woman's affair, so male birth control participants are still very low. Although the low use of contraception is also related to the limited contraceptive techniques available to men, this figure shows that men's awareness of birth control must be admittedly low.<sup>16</sup> The family planning program through the vasectomy program that is being promoted should be appreciated together, where this program does not solely aim to limit the number of population, but further than that the government wants to build small families, happy and prosperous families. Thus, men's participation in family planning is ultimately expected to help every family achieve the Norm of Happy and Prosperous Small Families.

### **Maslahah According to Imam Al-Ghazali**

Al-Ghazâlî states that *maslahah* in general is to receive benefits and reject *mudharat* in order to uphold the objectives of *shara'*. *Maslahah* can be understood as a benefit, benefit, or anything that contains benefits. Rejecting *mudharat* also means *maslahah* because the terms benefit and *mudharat* have conflicting connotations. *Ash-syatibi*, *Al-Ghazâlî*, *Al-Tufi*, and *Al-Buti* are some of the foundations of *maslahah*, but the author will only discuss further about the idea of *maslahah al-Ghazâlî*.<sup>17</sup>

*Maslahah* is defined by *Al-Ghazâlî*, *maslahat* is basically an expression to accept benefits and reject damage, but that is not what we mean, because the purpose of beings (humans) is to attract benefits and reject damage, and the welfare of beings will be fulfilled by the achievement of their goals. Therefore, the term "*maslahat*" refers to the maintenance of the five goals of *Shara'* (Islamic law), namely the maintenance of religion, soul, intellect, heredity (some argue heredity

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<sup>15</sup> Selfi Wahyu Putri, Ramdan Fawzi, and Muhammad Yunus, "Analisis Hukum Islam Terhadap Perubahan Fatwa Mui Tahun 1979,2009,2012 Tentang Penggunaan Alat Kontrasepsi Vasektomi," *Jurnal Riset Hukum Keluarga Islam* 1, no. 2 (2022): 83–88, <https://doi.org/10.29313/jrhki.v1i2.577>.

<sup>16</sup> Harahap, "Hukum Vasektomi Dan Tubektomi Dalam Pernikahan."

<sup>17</sup> Amrin Borotan, "Studi Komparatif Pemikiran Ibnu Hazm Dan Imam Al-Ghazali Tentang 'Azl Sebagai Metode Kontrasepsi Dan Relevansinya Dengan Program Keluarga Berencana (Kb) Di Indonesia," *Islam* 3, no. 2 (2020): 1–24.

and honor), and property. Anything that requires the enforcement of these five principles is called *maslahat*; anything that eliminates it is called *mafsadat* (danger); and rejecting it is called *maslahat*. Al-Syathibi also included the views of Al-Razi and Muktazilah in al-Muwafaqat. Al-Razi argues that God's deeds have no purpose at all ('illah). However, Muktazilah argues that God applies Sharia with the aim of protecting human interests. Al-Syathibi agrees with Sharia, which tries to protect human welfare.<sup>18</sup>

According to the interpretation mentioned above, *maslahah* is determined by the goals of Shara', or Shari' rules, even when those rules appear to be contrary to the interests of man. This is because humans often see rewards only based on desire. In the creation of Islamic law, the purpose of Sharia is to serve humanity by guaranteeing the satisfaction of their basic, secondary, and supplementary needs. The rules of *ushuliyyah* explain the overall purpose of Shari'ah in the creation of law, while the books of Tafsir and Asbabun-nuzul (the reasons for the descent of the verses of the Qur'an) and customs explain the events behind the creation of law. "The main purpose of sharia in establishing the law is to realize the benefits of human beings in this life, namely to attract benefits for them and reject *mudharat*," reads the rule of *ushuliyyah*. The benefit in question is the actual benefit, which is focused on maintaining five things: faith, property, intellect, descendants, and soul. Humans can manage their lives with these five things.<sup>19</sup>

*Maqâsid as-Syarî'ah*, or the reason behind the creation of law, is a term used by scholars of *ushul fiqh* to describe the purpose of law. Tracing the verses of the Qur'an and hadith will help people understand the purpose of the law. Based on this search, it is known that the main motivation of *as-Syarî'* in creating the law is for the benefit of human beings (*al-maslahah*), both in the form of rewards in this world and rewards in the hereafter.

Al-Ghazâlî is famous for helping to realize the theoretical framework of *Al-maslahah*, which is the goal of Sharia upkeeping. It was Al-Ghazâlî who first proposed *Al-maqâsid*, also known as *Maslahah*, as a multi-level necessity. When viewed from the strength of its substance, the distribution of *maslahah* can be divided into two

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<sup>18</sup> Apriana Asdin, "Dampak Keluarga Berencana (KB) Terhadap Permasalahan Penduduk Dan Hukumnya" 3, no. 2 (2024): 105–6.

<sup>19</sup> Sevi Sukri Azhari and Mustapa, "Konsep Pend Islam Menurut Al Ghazali," *Jurnal Review Pendidikan Dan Pengajaran* 4 (2021): 271–78.



levels: first, *maslahah dharûriyyah*, which is in the form of basic human demands related to the need for the welfare of this world and the hereafter. Second, *maslahah hâjiyyah* which is in the form of a secondary need to maximize *maslahah dharûriyyah* and prevent harm (*rukhsah*). Third, *maqâsid tahsîniyah* which is also called the term *taryinah* (complement and perfecter) which has a lower level of importance compared to *dharûriyyah* and *hâjiyyah*. If these two needs are not met, human life becomes less interesting but still poses no threat.<sup>20</sup>

### **Distribution of Maslahah**

The basis of the existence of the world to achieve the hereafter is the criterion of *maslahah*, therefore, all types of *maslahah* that are solely for the benefit of the world and are not supported by the interests of the hereafter cannot be said to be *maslahah*. In the division of *maslahah*, al-Ghazâlî divides it into several categories. Al-Ghazâlî states that *maslahah* is divided into three categories in terms of seeking and determining the law.

First, *Al-maslahah al-mutabarah*, or *maslahah* that has been legally recognized by sharia and recognized by law. This type of *maslahah* is legal and can be used as a basis for *qiyas*. The law of *qishas*, for example, has the duty to protect the soul; the threat of punishment for adultery serves to protect honor; and the descendants of al-Ghazâlî give an example in the context of *haram*, stating that all intoxicating foods and drinks, this can be equated with the prohibition of *khamr* because of the *maslahah* to maintain mental health.<sup>21</sup>

Second, *Al-maslahah Al-mulghah*, or *maslahah* which is based on human reason but contrary to sharia, which is also contrary to the purpose of Islamic law. Most scholars agree that if there is a conflict between *nash* and *maslahah*, then the one who must win is the *nash*, as exemplified by al-Ghazâlî. An example is the opinion of the scholar regarding the king who performs sexual activity during the day during the month of Ramadan, which is equivalent to fasting for two consecutive months, rather than freeing slaves as contained in the

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<sup>20</sup> Tanza Dona Pertiwi and Sri Herianingrum, "Menggali Konsep Maqashid Syariah: Perspektif Pemikiran Tokoh Islam," *Jurnal Ilmiah Ekonomi Islam* 10, no. 1 (2024): 807, <https://doi.org/10.29040/jiei.v10i1.12386>.

<sup>21</sup> Muhammad Syarif and Furqan Furqan, "Maqashid Al-Syariah Kesepakatan Pasangan Suami Istri Tidak Memiliki Anak (Childfree) Dalam Perspektif Hukum Islam," *Jurnal Al-Ijtima'iyah* 9, no. 1 (2023): 51, <https://doi.org/10.22373/al-ijtima'iyah.v9i1.17545>.

evidence of nash, namely the Hadith of the Prophet PBUH which states: "Abu Hurairah RA narrated that there is a man who has sex with his wife or with his wife in the month of Ramadan. then he went to the Prophet PBUH to ask for a fatwa about what they had done, then the Prophet PBUH said: "Do you have any freed slaves?" "Are you able to fast for two months in a row?" the Messenger of Allah asked the man, "No," he replied, "feed 60 poor people."

The benefit, according to these academics, is that if the king's punishment for freeing slaves is very light and simple, then the purpose of the law will be lost. On the other hand, the punishment that can restrain the king's actions or serve as a deterrent is fasting for two months. This opinion of al-Ghazâlî is considered invalid because it contradicts the provisions of the nash.<sup>22</sup>

Third, *maslahah mursalah* is *maslahah* that is in accordance with the purpose of sharia and has no evidence, but there is no legal provision in the nash. *Maslahah* who has no evidence to support or reject it. Al-Ghazâlî states that more thought should be given to this passage. Regarding its strength, the *maslahah* factor in this third category requires more analysis. Al-Ghazâlî's perspective divides this type of *maslahah* into two categories: first, *maslahah mulâ'im*, or *maslahah* that corresponds to the type of shara's deed. Specifically, this type of *maslahah* is called *maslahah mursalah* by al-Ghazâlî because it is supported by a collection of the meanings of nash, not by nash which is *mu'ayyan* (specific). Second, *maslahah garîbah* is *maslahah* that is not hinted at by shara' in any way, either through a certain nash or a set of meanings that justify or deny it. Al-Ghazâlî emphasized that this *maslahah garîbah* cannot actually be realized. According to al-Ghazâlî, the Shari'ah always makes *maslahah* a reference in an event that occurs (*waqi'iyah*), either by justifying or rejecting it, either by specific evidences or by postulates in general, because if this is not the case, then the Shari'ah and the religion of Allah will not be perfect if there is no event that is excluded from the laws of the Shari'a.<sup>23</sup>

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<sup>22</sup> Mahmudin Hasibuan et al., "Keluarga Berencana (Kb) Dalam Perspektif Maqashid Syariah," *Mushaf Journal: Jurnal Ilmu Al-Qur'an Dan Hadis* 4, no. 1 (2024): 86–95.

<sup>23</sup> Hj. Nur Asiah, "MASLAHAH MENURUT KONSEP IMAM AL GHAZALI," n.d., 1–17.

**Sitting on the case of the decision of the Simalungun Religious Court with number: 266/Pdt.G/2013/PA. Sim**

The applicant (husband) is 34 years old, Islamic, high school education, civil servant job, address of Simalungun Regency. Against the respondent (wife) aged 32 years, Islam, elementary education, housewife's work address in the district address of Simalungun Regency, the applicant is the legal husband of the respondent who was married on August 8, 2004 registered at the Religious Affairs Office of Siantar Marihat District, Pematang Siantar Regency according to the marriage certificate citation number: 38/01/VIII/2024, dated August 8, 2004.

That at first the household of the applicant (husband) and the respondent (wife) was harmonious and harmonious, and was blessed with 3 children, the first child was 8 years old, the second child was 5 years old, and the third child was 2 years old and the three children lived with the applicant, but in November 2012, between the applicant and the respondent there were often disputes and quarrels resulting from, among others, First, the Respondent had a love relationship with another man, this was known to the Applicant from the Respondent's friend, even when the Applicant asked the Respondent, the Respondent admitted that the relationship was like a husband and wife. The two respondents often spoke rudely and even cursed the applicant. The three respondents often borrowed money from loan sharks without the applicant's knowledge.

In January 2013, the applicant learned that the respondent was pregnant, even though since July 2012, the applicant used vasectomy, after knowing this, the applicant intended to divorce the respondent, but the respondent apologized to the applicant and even begged and promised not to repeat the respondent's habit so that the applicant wanted to forgive the respondent and wanted to accept the child in the respondent's womb, However, the Respondent still repeated the Respondent's habit and found his affair.

In May 2013, the respondent forged a signature to the environmental agency of the Simalungun Regency Government where the applicant worked to borrow money from the North Sumatra bank on behalf of the applicant without the applicant's permission and knowledge. Therefore, the dispute and quarrel between the applicant and the respondent occurred continuously and gradually escalated so that there was no hope to live in harmony in the household anymore as a result on June 2, 2013, the applicant left the common residence and

returned to his parents' residence, because the applicant could no longer stand the habit of the respondent while the respondent lived in the common residence. Since the separation, the Applicant and the Respondent have never been united in the household and there is no longer any communication with each other. And the family has tried to reconcile the applicant with the respondent so that they can live in harmony again in the household, but to no avail.

### **Basics of Judge's Consideration of Divorce Cases Triggered by Vasectomy**

First, the validity of the Summons Letter: Considering, that the summons against the Applicant and the Respondent has been carried out officially and appropriately in accordance with the provisions of article 55 of Law Number 7 of 1989 which has been amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009, jo. Article 145 paragraph (1) R.Bg, jo. article 26 of Government Regulation No. 9 of 1975, jo. article 138 of the Compilation of Islamic Law in Indonesia of 1991, and upon the summons, the Petitioner and the Respondent were present in person at the trial. The presence of both parties in person at the trial, to ensure that formal procedures have been met.

Second, efforts to obtain a divorce permit: Compliance with Regulations: that the Applicant as a civil servant in filing this case has tried to obtain permission to carry out a divorce from the Official as stipulated in article 3 paragraph (1) of Government Regulation Number 10 of 1983 jo. Government Regulation Number 45 of 1990 but the Applicant's efforts were not responded to by the authorized Officer and the permit was not successful in obtaining and the Applicant made a statement that he was ready to accept all risk dated December 18, 2013 on stamped and signed paper.

Third, the Process or Implementation of Mediation: Considering, that the mediation carried out against the Applicant and the Respondent through the mediator judge, has fulfilled the will of the Supreme Court of the Republic of Indonesia Regulation Number 1 of 2008. Considering, that even though the mediation was declared unsuccessful, the Panel of Judges still tried to reconcile the Petitioner and the Respondent to maintain the integrity of their household as before, but to no avail.

Fourth, the basis of the application: Hearing the Applicant's testimony at the trial, the subject matter of the Applicant's application is that the Applicant requests permission to impose a one-raj'i talaq

against the Respondent before the Simalungun Religious Court with the postulate that is used as a legal basis, namely that there has been a continuous dispute between the Applicant and the Respondent since November 2011 until this application was submitted so that the household becomes disharmonious due to the things as described in the sitting part of the case.

Fifth, the petitioner's arguments and the respondent's rebuttal, according to the petitioner's version, that there was a dispute and quarrel between the applicant and the respondent because the respondent had a loving relationship with another man known to the applicant from the story of the respondent's friend and when confirmed with the respondent, the respondent often spoke rudely and even cursed the applicant and the respondent often borrowed money from loan sharks without the applicant's knowledge and permission, in January 2013 the Applicant found out that the Respondent was pregnant while the Applicant had used Vasectomy, the Applicant intended to divorce the Respondent but because the Respondent apologized and promised not to repeat the Respondent's actions, the Applicant forgave the Respondent but the Respondent repeated the Respondent's actions, the Respondent also forged the signature of the Applicant's superior to borrow money at Bank Sumut without the Applicant's knowledge, The Respondent's actions caused a continuous quarrel in the end from June 2, 2013 until the filing of this application, the Applicant no longer lived in the same house with the Respondent, and during that time he also never had a relationship as a husband and wife.

Sixth, according to the Respondent's version, that the dispute and quarrel between the Applicant and the Respondent never occurred because the Petitioner's and the Respondent's household has remained in harmony until now, the Respondent has never had a relationship with another man and the Respondent has never been pregnant with another man as postulated by the Petitioner, the Respondent only once said rude words to the Applicant because the Respondent asked the Applicant for money but was not loved, The Respondent borrowed money to the best of the Applicant's knowledge and the money was used to pay for the Applicant's and Respondent's house contract, the Respondent did not know that the Applicant was using a vasectomy Birth Control Respondent only knew that when the Applicant returned home it was already bandaged, the Respondent never forged the signature of the Applicant's superior.

Seventh Written Evidence: Written evidence submitted by the Applicant includes the Marriage Certificate (P1), Salary List (P2), and Credit Bill List (P3). The evidence is considered valid by the Panel of Judges. Witness Evidence: Two witnesses presented by the Applicant provided mutually corroborating testimony regarding the dispute and quarrel between the Applicant and the Respondent.

Eighth conclusion of the Panel of Judges: Dispute Continues: Based on the evidence and testimony of witnesses, the Panel of Judges concluded that the continuous dispute and quarrel between the Applicant and the Respondent has been legally and convincingly proven. Statement of Residence Separation: From June 2, 2013 until this case was decided, the Applicant and the Respondent no longer live in the same house, which indicates that the Petitioner and Respondent's household is no longer harmonious and there is no hope for reconciliation. Because the purpose of marriage is not achieved and there is no compatibility in the household, the Panel of Judges stated that maintaining the household will bring more harm than benefits.

Ninth Postulates of the Qur'an: The legal considerations are strengthened by the postulates of the Qur'an Surah Al-Baqarah verse 227 which emphasizes the determination to divorce.

وَأِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

Meaning: "If they are determined to divorce, indeed Allah is the Hearer and the Knower (Q.S Al-Baqarah verse 227).

The verse emphasizes the importance of determination in the divorce process. In the legal context, this verse is used as a consideration that if a married couple has decided to divorce with a unanimous determination, then Allah SWT is All-Knowing and All-Hearing of all matters, so that the decision must be respected and considered seriously. This verse reminds us that divorce is not something that is taken lightly and must be done with full consideration and seriousness. Therefore, in the case of divorce, the decision must be taken carefully and based on deep consideration, in accordance with the instructions given in the Qur'an.

Tenth Divorce Decision: Granting the application for permission to divorce Based on these considerations, the Panel of Judges granted permission to the Petitioner to impose talaq of one raj'i against the Respondent.

Eleventh Reconvention (Counterclaim): Iddah and Mut'ah Maintenance: The Defendant is willing to provide iddah and mut'ah maintenance according to his ability. The Panel of Judges assessed the amount of alimony in accordance with the propriety and feasibility as well as the economic ability of the Defendant. Past Maintenance and Child Custody: Past alimony and child custody claims are assessed in accordance with the capabilities and capacity of the Reconvention Defendant.

## **CONCLUSION**

The results of the study reached the conclusion that the decision of the Simalungun Religious Court Number 266/Pdt.G/2013/PA. Sim stated that disputes and quarrels between husband and wife triggered by the wife's actions have been legally proven. With the failure to achieve the purpose of marriage and the absence of compatibility in the household, the Panel of Judges decided to grant the divorce application for one raj'i talaq filed by the husband. This verdict is based on the testimony and evidence submitted by the husband, as well as in accordance with the provisions of Islamic law and the consideration of the Quran. The judge also determines iddah and mut'ah alimony according to the husband's ability, and assesses the demands of past alimony and child custody by considering the wife's economic ability. According to researchers, side effects of vasectomy are quite rare. However, an uncommunicated vasectomy can have an impact on marriage, making the wife feel that she has not received satisfaction, pleasure during sexual activity and the impact includes not having children. Since then, quarrels (shiqaq) have continued to arise until one party decides to leave the other. Vasectomy must be paid more attention because the impact is truly extraordinary. If the divorce occurs after a vasectomy, then remarrys, the subsequent marriage will have an impact on couples who crave offspring.

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