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Penyimpangan Seksual sebagai Alasan Perceraian: Kajian Normatif Hukum Islam dan Hukum Positif di Indonesia

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ABSTRACT

This study aims to analyze the urgency of sexual deviant behavior as the reason for divorce in the household according to Islamic law and laws and regulations in Indonesia. Indonesia as a legal country regulates marriage through Law Number 1 of 1974, where marriage aims to form a family of sakinah, mawaddah, and warahmah. However, the reality is that many households experience rifts due to disharmony, one of which is triggered by unnatural sexual behavior. The method used in this study is library research with a qualitative approach and inductive data analysis techniques. The results of the study show that: First, from the perspective of Islamic law (Fiqh Munakahat), the relationship between husband and wife must be based on the concept of muasyarah bi al-ma'ruf (good association). Deviant behavior such as sodomy or masochism is contrary to this principle because it causes physical and psychological suffering to the couple. Second, according to Indonesian legislation, although the term "sexual deviance" is not explicitly mentioned in the grounds for divorce in the Marriage Law, such acts can be categorized as "constant quarrelling" or "cruelty/severe persecution" that makes the household unable to get along again. Third, various forms of deviance such as homosexuality, pedophilia, and sadomasochism are a strong basis for the wife to file for divorce in order to avoid greater harm. This study concludes that sexual deviant behavior is a valid and relevant reason in the divorce legal process in Indonesia in order to realize the benefits of the parties.

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Introduction

The 1945 Constitution of the Republic of Indonesia emphasizes that the State of Indonesia is a State based on the State of law or rechtstaat, not based on mere power (machstaat). This means that the State of the Republic of Indonesia is a state of democratic law based on Pancasila and the Constitution of the Republic of Indonesia in 1945. This law upholds human rights and guarantees the equality of every citizen before the law and government. As a state of law, of course everyone has the same rights and position before the law, whether rich, poor, men, women, ordinary people and people with rank and position (Constitution of the Republic of Indonesia of 1945).

The concept of this state of law was made so that the norms contained in it can be used as a legal basis in living in society. Everything that concerns Indonesian citizens must be based on the Law, with this it can be abbreviated that everything must be based on the applicable laws in Indonesia including marriage and divorce cases are also problems regulated in Indonesian law. In Law Number 1 paragraph 1 concerning Marriage explains that, "Marriage is a birth and mind bond between a woman and a man as husband and wife with the aim of forming an eternal and happy household based on the One Godhead". In other words, marriage itself is a ceremony of binding sacred promises carried out by two people with the intention of formalizing the marriage bond legally according to the norms that apply in Indonesia such as religious norms, legal norms and social norms. Marriage is sharia so that humans have legitimate offspring and families towards a happy life in this world and in the hereafter, under the will of pleasure and love that Allah SWT gives (Winosobo. 2025:2).

Given how large and wide the scope of marriage is, it is very appropriate that when Law Number 1 of 1974 concerning Marriage offers the concept of marriage, it is explained that marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. However, it should be noted that a marriage basically consists of 2 (two) people who have different personalities, traits, and characters, family backgrounds and problems. All of that has been considered long before the two decide to get married. Because it is not as beautiful and romantic as the couple hopes. Problem after problem that is faced every day, not to mention the uniqueness of each individual, often makes married life difficult and bland. If this is the case, then this condition further opens up opportunities for disputes to arise which then results in divorce between them (Faridah. 2012:3).

Islam understands and realizes the above, therefore Islam justifies and permits divorce if divorce is considered better than remaining in the marriage bond. Although the purpose of marriage is to achieve happiness and harmony of each heart, of course this will not be achieved in things that can no longer be adjusted. Because happiness cannot be forced, forcing happiness is not happiness but results in suffering. Therefore, Islam does not bind marriage but does not facilitate divorce. To allow divorce to occur, it must be based on certain reasons and carried out in front of a Court session (Rofiq. 1998:268).

The issue of sexuality from the point of view of fiqh can never be separated from its context. Human sexual activity is something very personal, for reasons of legal security, Islam pays great attention to this issue (Hannah. 2017:2). In Islamic rules, Allah SWT emphasizes that the distribution of sexual desires is controlled and the practice is in accordance with religious and human ethics, so before that a valid marriage is held in a sharia manner, in the sense that sexual relations can only be carried out by married couples and it is unlawful if it is done with the same sex (Ghazaly. 2019:9). In the medical world, abnormal sexual behavior is called sexual

deviance. In accordance with the development of human experience, sexual behavior that emerges becomes increasingly complicated to detect whether the behavior is deviant or not because it is just a method or model in one familiar place. However, in other places it is considered deviant and sometimes in a certain period of time the pattern is considered deviant and other times the pattern is considered normal (Zabidi. 2019:67).

Indonesia is a country of law regulated by government regulators based on applicable laws. Therefore, every action is subject to the laws that apply in a country. Indonesia is part of a society that can apply human rights principles thanks to law No. 23 of 2004, Article 5 Letter c and Article 8 concerning sexual violence and coercion of sexual relations. Recently, there are many forms of sexual deviant behavior in society. Sexually deviant behavior in terms of morally deviant acts such as prostitution, adultery, and object deformities such as lesbianism, homosexuality, and sexual deviance of women, especially forced sex. Deviant behavior will result in crimes and urgently need special treatment (Asshiddiqie. 2006:69). This is a very important problem because it can cause problems that result in the breakup of the marriage (divorce). And it is possible that unwanted things will happen to one of the couples. So that their home life does not run harmoniously, such as deviant behavior committed by one of the husbands or wives (Laksono. 2022:108)..

Method

This type of research is *library research* with a qualitative approach. The data is obtained through documentation activities (Sugiyono. 2020:13). Documentation is carried out on literature not only limited to books, but also in several analyses and opinions of previous research related to the theme of this study. The analysis in this study is in the form of inductive, starting with the presentation of specific statements and then drawing a generalization of a general conclusion.

Results and Discussion

The Concept and Reasons for Divorce in Islamic Law and Positive Law

Divorce according to jurisprudence is called talaq or *firqoh*. Talak is taken from the word (اطالق) itlaq), which means to let go, or abandon. Meanwhile, in the term sharia', talaq is to release the marriage bond, or the destruction of the marital relationship. In R's opinion, subekti divorce is the abolition of marriage by the decision of a judge or the demands of one of the parties during marriage (Subekti. 2010:21). Meanwhile, the meaning of divorce according to Indonesian comes from the syllable divorce, and divorce according to language means separation, regarding divorce between husband and wife, separation, divorce. Divorce in Islamic law is an act or step taken by a husband and wife if their domestic relationship cannot be reunited and if it is continued, it will cause madharat for both the husband, wife, children, and their environment (Dahwadin. 2020:27).

So that in Islamic law, divorce is carried out in a good way in order to realize the benefits of all parties who have interests**.** In Fiqh Munakahat, the procedure for divorce has been regulated in such detail, even a husband who wants to divorce his wife must know the correct etiquette. Therefore, divorce is the only way that must be done. Divorce is a lawful act done but is hated by Allah SWT. Meaning: "And how will you take it back, even though you have been associated with each other (as husband and wife). And they (your wives) have taken a strong covenant (marriage bond) from you." (An-Nisa' : 21). Divorce is the breakdown of the marriage bond between a husband and wife that is carried out based on an authorized court decision after the court tries to reconcile both parties. The legal basis is contained in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019.

The reason for divorce referred to here is a condition where the husband or wife uses it as an excuse to end or break their marriage bond. In the event of divorce, several reasons for divorce must be met. So that the divorce can be carried out, this is in accordance with article 39 paragraph 2 of Law Number 1 of 1974 concerning marriage which has been amended by Law Number 16 of 2019 which reads: "to carry out a divorce there must be enough reason, that between husband and wife the husband and wife will not be able to live together as husband and wife". The reasons for divorce recognized by Indonesian law are:

a. One of the parties commits adultery or becomes a drunkard, a gluttony, a gambler, and so on which is difficult to cure.
b. One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his or her ability.
c. One of the parties received a prison sentence of 5 (five) years or a heavier sentence after the marriage took place.
d. One party commits cruelty or severe persecution that endangers the other party.
e. One of the parties has a physical disability or illness as a result of not being able to carry out his obligations as a husband/wife.
f. Between husband and wife, there are continuous disputes and quarrels and there is no hope of living in harmony in the household anymore (Syaifuddin. 2012:81).

The Concept of Sexual Deviance

Sexual deviance or also called sexual deviation is a disturbance of sexual direction and goals. Clearly, in terms of the habits that live in a person's society in order to meet their sexual needs, an adult person will have sexual relations with the opposite sex who has reached adulthood. However, in a person who has a tendency to be sexually deviant, the main way he takes to meet his sexual needs is channeled in an unusual way or with other objects that are generally not considered ordinary (Andarmoyo. 2016:67).

In language, sexual deviance is formed from two syllables, namely deviance and sexual. Deviance comes from the word deviation which has 4 (four) meanings. First, deviation can be interpreted as a process, so it means a process of deviant or deviant acts. Second, deviation means deviating or taking another path, so it can also be said that deviance achieves something by other ways or other ways that are commonly used. Third, deviance means not according to what has been determined, so that it violates the rules that have been applied. The fourth deviation is a violation of custom or deviation from the truth, law, and religion. If we draw conclusions from the definition above, sexual deviance is a person's behavior in pursuing the achievement of sexual desire through unusual ways that people in general do. In general, a person achieves his sexual desire by having sex with the opposite sex who is old enough. However, in a person who has sexual deviance, he tends to vent his sexual desires on objects that are not appropriate (Suri. 2011:28).

There are several forms of sexual deviance, including:

1. *Homosexual*, that is, a person likes to have sex with the same sex. If a man is a man of the same sex, he is called gay and if a woman is a woman, he is called a lesbian.
2. *Fetishism*, which is a person obtaining sexual pleasure by using an inanimate object.6 For example, using women's underwear.
3. *Exhibitionism*, where a person is sexually aroused by showing off his genitals to strangers or strangers.

4. *Sadomasochism*, where a person obtains sexual pleasure after hurting his or her partner first.
5. *Masocism*, which is a person who is aroused by involving harassment, beatings, and torture first by his partner.
6. *Voyeurism*, which is a person who is aroused after seeing or peeking at someone taking off their clothes, bathing, or doing sexual activities without them knowing.
7. *Pedophilia*, which is adults who like to have sex with minors.
8. *Bestially*, that is, a person likes to have sex with animals such as dogs, horses, cows, chickens, and so on.
9. *Zoophilia*, where a person feels after seeing an animal having sex.
10. *Sodomy*, i.e. a man enjoys sexual intercourse through anus of their partner (Aeni. 2018:6).

Sexual Deviance According to Laws and Regulations

There are not many laws and regulations in Indonesia that accommodate the problem of sexual deviance. Even if there is, the issue of sexual deviance is only regulated in regional regulations, one of which is Bogor City Regional Regulation Number 10 of 2021 concerning the Prevention of Sexual Deviant Behavior. The regional regulation defines sexual deviant behavior as a person's behavior in a sexual relationship that is oriented towards sexual satisfaction obtained from or directed at sexual objects unnaturally. There are three elements of this definition. First, a person's behavior, meaning that the subject who commits sexual deviance is a human being. Second, sexual relationships, meaning that a person's behavior is related to sexual relations. Third, it is oriented towards sexual satisfaction obtained from or directed at sexual objects in an unnatural way, meaning that the means taken to achieve sexual pleasure through unusually used means. Generally, a person achieves sexual pleasure by having heterosexual relations with the opposite sex who is of sufficient age. In the case of a person who commits sexual deviance, he or she will have homosexual or heterosexual sexual sexual relations with objects or methods that are not commonly used. Another regional regulation that regulates the problem of sexual deviance is Cianjur Regency Regional Regulation Number 1 of 2020 concerning the Prevention and Countermeasures of Deviant Sexual Behavior. The regulation explains that sexual deviance refers to unnatural sexual behavior, behavior, and acts that are contrary to the norms and laws that live in society. Not only that, this regulation also classifies sexual deviance as a crime that needs to be prevented and rehabilitated by the perpetrator. So that later this sexual deviant behavior will not mushroom in society because it is quickly resolved. The Criminal Code also regulates sexual deviance in the form of pedophilia which is divided into two types. First, it is regulated in Article 287 paragraph (1) of the Criminal Code, which explains that a person is threatened with a prison sentence of 9 (nine) years if he has intercourse with someone who is not yet 15 years old. Second, it is regulated in Article 294 paragraph (1) of the Criminal Procedure Code, explaining that parents are threatened with a prison sentence of 7 (seven) years if they commit obscenity against their children, both biological children and stepchildren. Law Number 1 of 1974 concerning Marriage implicitly does not approve same-sex marriage, which is a form of sexual deviation in the form of homosexuality, with legal consequences in the form of not recording marriages by the Marriage Registrar. In Article 1 of Law Number 1 of 1974 concerning Marriage, it is emphasized that marriage is an inner bond between a man and a woman as husband and wife. So it is clear that in Indonesia only legalizes marriage between a man and a woman, not of the same sex or with other objects that are considered unnatural. Coupled with the problem of marriage in

Indonesia, it is very tied to the religious norms embraced by the bride-to-be as affirmed in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage.

Sexual Deviance According to Islamic Law *(Fiqh)*

That in the *fiqh* of munakahat the association between husband and wife is regulated in the concept of muasyarah *bi al-ma'ruf.* This concept is also directly affirmed by Allah SWT in his words in Q.S. An-Nisa (4): 19 which means: "O you who believe, it is not lawful for you to inherit a woman by force, and do not trouble them because you want to take back some of what you have given them, unless they commit a real heinous deed. And associate with them in a proper way. If you do not like them, (then be patient) because you may not like something, but Allah has done much good to them." Muasyarah bi al ma'ruf is a concept that regulates the relationship between husband and wife must be carried out properly and appropriately as a form of implementation of rights and obligations to maintain the integrity of the household (Syarifuddin. 2014:163).

Good association begins with gentleness both in speech and behavior. This means that the relationship pattern built between husband and wife is free from acts of violence committed by each other and prioritizes good speech and behavior as a form of exercising the rights and obligations of the husband or wife to maintain integrity in the household. The practice of the concept of muasyarah *bi al-ma'ruf* is not only limited to socializing such as daily communication, but this concept is inseparable in terms of sexual intercourse between husband and wife. He explained that in order to fulfill sexual needs, they must have associations based on mutual love, love, and understanding of each other (Community. 2022:45).

Sexual intercourse between them is carried out without deviating from the applicable norms or habits. So that each of them is not hurt or harmed. Sexual deviance in domestic life is very unjustified in the concept of muasyarah bi al-ma'ruf. The existence of sexual deviance actually causes couples to associate in a way that is not good, does not love each other, does not love each other, is inappropriate, and contrary to applicable norms such as religious norms, morals, and politeness. This will also result in the complete non-fulfillment of mental sustenance which is the right of a joint obligation of the husband or wife to his partner. The existence of sexual deviance also results in the partner experiencing pain both psychologically and physically (Fathurohman. 2023:15).

For example, a person commits sexual deviance through sodomy, which is a way to achieve sexual pleasure by inserting the husband's genitals into his wife's anus. Of course, this is not good for health and the partner will experience pain, both physical and psychological. Another example is a person committing a masochistic deviation, which is the way to achieve sexual pleasure through hurting the partner first. Of course, this will be painful and not the punishment that is obtained, but the pain that must be endured by the partner. Especially if the sexual deviance is in the form of homosexuality, both gay and lesbian. A person tends not to touch or associate with his partner because he feels dislike and prefers his same-sex friend (Fathurohman. 2023:16).

Pairing is one of the sunnah of the Prophet that applies to all creatures and His creation. This sunnah is general and even, so that there is no exception, both humans, animals, and plants. Sunnah is a method used by Allah SWT. so that all His creatures multiply and multiply offspring, as well as continue the relay of life, after preparing and equipping each couple so that each one plays a positive role to achieve this goal. As human nature, the desire to have each other naturally grows between men and women, among the spiritual impulses that underlie

the relationship is love and affection. With reciprocal efforts, both can prioritize the goals that human civilization and culture want to achieve through marriage.

Divorce is a fact that occurs between a husband and wife. No matter how long you have been in a romantic relationship or not, whether you are in a romantic relationship or not, married or not, divorce is still considered a solution for some couples who cannot overcome domestic problems. Divorce cannot be stopped and continues to occur, so it brings external trauma and disappointment to many people and worse for married couples brings negative effects on themselves such as being able to suffer from mental disorders due to divorce. According to Islam, in the case of divorce there are no verses that prohibit and allow, but most of the verses in the Qur'an are found that discuss talaq, among which in the words of Allah SWT it is explained: "O Prophet, if you pray for your wife, then thalaqlah is her when she enters *into her iddah*". (QS. at-Thalaq: 1). This verse is strengthened by the words of Allah SWT as follows: "If you pray for your wife and until the time of her iddah, then do not be reluctant if she marries another husband". (QS. Al-Baqarah: 232). In general, although there is no explanation about the certainty of the abilities and prohibitions of divorce, the original law is "makruh (reprehensible)". However, the law will change according to the situation and conditions, sometimes it can be mandatory, sunnah, haram, and mubah. There are two types of divorce, first: Thalaq. Second: Divorce Lawsuit. Of the two types of divorce, divorce is the focus of the problem, where a lawsuit is a divorce carried out by the wife without being paid with property. A lawsuit divorce occurs certainly motivated by reasons that make the wife dare to make a decision to divorce. Among them, first: birth and mental maintenance for six consecutive months are not given. Second: for four consecutive years, the husband left his wife without any news. Third: there is still a dowry debt from the husband to the wife that has not been paid. Fourth: there is bad treatment by the husband to the wife that hurts, abuses and endangers the safety of the wife, such as violence and sexual deviance (Sudirman. 2018:6).

Moving on from the type, there are many factors behind the occurrence of divorce such as differences of opinion, continuous quarrels that lead to the loss of love and affection. Quarrels make feelings of hatred and distrust towards the partner increase, which leads to a loss of trust and triggers divorce (Matondang. 2014:50). Furthermore, if you look deeper at divorce lawsuit cases, there are impacts that affect life after divorce. Of course, from the impact of divorce, the main object that is felt is the divorced parties by feeling the inner pressure of divorce. Furthermore, the children will feel the psychological impact as a result of divorce (Fintiyani. 2019:23).

In addition, the family also feels the misery of the divorced party. Observing divorce problems is inseparable from how every couple should maintain the household so that it remains Sakinnah Mawaddah Warahmah with positive actions such as trying to improve domestic relationships. Of course, there are many ways that can keep the marital relationship improving, including mediation, advice from parties who encourage to maintain household security and maintain good communication, and deepen religious knowledge about divorce. It is also necessary to see that there are many negative impacts that will be felt when a husband and wife have decided to separate. Every married couple certainly wants their household to be prosperous, harmonious and conflict-free (Suri. 2011:65).

In Islamic teachings, this ideal is often referred to as the sakinah family," meaning a family filled with wa rahmah, mutual love and affection. Islamic sharia strongly encourages marriage to prevent its followers from committing adultery. Of course, here marriage also has another aspect, namely giving birth and developing offspring by having sex after marriage which is the

greatest potential that Allah SWT gives to humans. This potential is what makes humans able to produce offspring and the preservation of life is maintained. However, sexual relations in the household not only bring happiness and harmony, but sexual relations can destroy domestic resilience due to the practice of sexual behavior that is not in accordance with Islamic teachings and norms. Sexual deviance is called sexual deviation, which is a person's deviant sexual behavior that is far from the rules or norms in general. Various cases of divorce in Indonesia arise due to deviant sexual behavior in domestic life (Suri. 2011:66).

Conclusion

From the explanation presented in this article, it can be concluded that sexual deviant behavior in the household such as *homosexuality, pedophilia, sadomasochism,* sodomy, and masochism is a valid and legally relevant reason for a wife to file for divorce in Indonesia in order to avoid greater harm. From the perspective of Islamic law (Fiqh Munakahat), this act of deviance is contrary to the principle of muasyarah bi al-ma'ruf (good association) because it is proven to cause physical and psychological suffering to the couple and hinder the fulfillment of mental sustenance in its entirety. Meanwhile, in positive law in Indonesia, although the term sexual deviance is not explicitly written as a reason for divorce in the Marriage Law, such acts can legally be categorized as "cruelty or severe persecution" or triggering constant quarrels that cause the couple to be unable to live in harmony again in the household. Thus, filing for divorce due to deviant behavior is seen as a legitimate solution to realize benefits and protect the rights of the aggrieved party.

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