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Examination Of The Ruling Of The Syar'iyah Court On Divorce Cases Lawsuit

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ABSTRACT

When there is an indication of judicial negligence in providing legal considerations, it is highly possible to conduct an examination or investigation. The decision of the Bireuen Sharia Court regarding divorce on demand, the panel of judges pronounced talak ba'in sughrā against the plaintiff without first attempting reconciliation through the appointment of an arbitrator. Looking at the legal provisions, when a case falls under shiqāq, the judge must appoint an arbitrator. Therefore, departing from this issue, there is a need for an examination as to why the judge did not appoint an arbitrator to resolve the dispute and what legal considerations were provided by the judge. This study is designed with a qualitative pattern, utilizing a statutory approach. Data collection techniques involve documentation and interviews. The research findings prove that the panel of judges argued that it did not fall under shiqāq cases, hence the appointment of an arbitrator was not necessary. The legal considerations provided by the judge in the divorce ruling include fiqhiyah principles, legal provisions, Supreme Court jurisprudence, Quranic verse al-Rūm ayat 21, and fiqhiyah principles.

Key Words: Examination, Decision of Mahkamah Syar'iyah, Contested divorce case.

INTRODUCTION

The Sharia Court is a specialized judiciary within the framework of Religious Courts whose jurisdiction concerns matters of religious judiciary. Based on Article 49 of Law Number 7 of 1989 concerning Religious Courts together with Article 49 of Law Number 3 of 2006, the main tasks and authorities of Religious Courts are to examine, adjudicate, and settle cases submitted to them among individuals of the Islamic faith in the fields of marriage, inheritance, wills, gifts, endowments, alms, charity, and Sharia economics (Jaenal Aripin, 2010).

According to Article 54 of Law No. 7 of 1989 together with No. 3 of 2006, as amended by the latest amendment, Law No. 50 of 2009 concerning Religious

Courts states, "The procedural law applicable in the Courts within the framework of Religious Courts is the civil procedural law applicable in the Courts within the framework of General Courts, except as specifically regulated in this Law." Cases in the field of marriage are governed by special procedural law, while the rest are subject to general civil procedural law. This special procedural law includes the relative authority of the Religious Courts, summons, examination, evidence, case fees, and judgment execution (A. Basiq, 2010).

The resolution process of civil cases in front of the court is conducted through stages in Civil Procedure Law, after the judge has attempted and failed to reconcile the disputing parties. These stages include: reading the lawsuit, reconciliation (mediation), defendant's response, plaintiff's reply, defendant's rejoinder, evidence presentation, conclusion, judge's deliberation, judgment, and execution.

In the examination stage, as regulated in Article 185 paragraph 1 of the Civil Code/Article 196 paragraph 1 of the Civil Procedure Code, essentially there is a provision for actions other than final decisions to be taken to facilitate the trial process (Ropaun Rambe, 2010). In the Indonesian Code of Criminal Procedure (KUHAP) Article 156 paragraphs 1 and 2, essentially if the defendant (in this case, the respondent) or their legal counsel objects to the charge, and the judge accepts this objection, then the case is not further examined.

In Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006 and Law Number 50 of 2009, Article 76 paragraph 2 states, "after hearing witness testimony regarding the nature of the dispute between husband and wife, the court may appoint one or more individuals from each party's family or others to act as arbitrators" (Jaenal Aripin, 2010).

Regarding the appointment of arbitrators as mediators when disputes arise between husband and wife (Syobah, 2023), the Quran offers it as stated in Surah An-Nisa' verse 35. In the decision of the Bireuen Sharia Court, the decision-making process does not align with this law. The misalignment occurs during the examination stage when the respondent objects to the allegations, where the judge should provide an opportunity for the respondent to state their objection in accordance with the applicable regulations, and then the judge issues an interim judgment and appoints an arbitrator for each party. Thus, there is an indication of the application of regulations that do not align with statutory provisions, as well as regarding the appointment of arbitrators in cases of shiqāq.

RESEARCH METHODS

The approach utilized in this research is qualitative in nature (Ratnaningtyas, 2023), based on the descriptive analysis of the data. Meanwhile, based on the discipline of Islamic law, the approach employed in this research is normative because the theme revolves around the thoughts of fuqaha/ulama. Research that addresses the concept of examining verdicts, when viewed from the form of its data sources such as books or other written works, falls into the category of juridical-normative research or doctrinal legal research. In this type of legal research, the law is often conceptualized as what is written as legislation (law

in books) or as norms that serve as standards for human behavior (Hasan Bisri, 2004).

The data in this research is primarily obtained from verdicts and legal textbooks as primary legal materials, as mentioned above, followed by data from supporting books (secondary) that explain the concept of examination or related literature. The method of data analysis used in this research is content analysis. In this type of data analysis, documents analyzed are referred to as "texts" or forms of symbolic representation that are recorded or documented. Content analysis refers to an integrative and conceptually directed method of analysis aimed at discovering, identifying, processing, and analyzing documents to understand their meanings and significance (Burhan Bungin, 2007).

RESULTS AND DISCUSSION

Basis of Interim Verdicts and Appointment of Arbitrators

The term "eksaminasi" originates from Dutch, "examinatie," which means to examine, evaluate, or retest the decision of a court body. "Eksaminasi" also derives from English, "examination," which is interpreted as a test or reexamination. In the context of judicial bodies or institutions, "eksaminasi" can be understood as an examination or review of the court decision or determination given by a judge. A term similar to "eksaminasi" is "legal annotation," which refers to commentary or notes on court rulings (Wasingatu, 2004).

The legal basis of "eksaminasi" can be found in Supreme Court Decree No. 1 of 1967 concerning Examinations, Monthly Reports, and Appeal Lists; Supreme Court Chief Decree No. 144 of 2007 regarding Transparency of Information in Courts. The legal basis for "eksaminasi" is further clarified in the Republic of Indonesia Law Number 14 of 2008 concerning Public Information Transparency.

"Cerai gugat" is the annulment or cancellation of a marriage contract filed by the wife to the judge due to circumstances that burden the wife (Hadi Mufaat, 1992). "Cerai gugat" is a divorce case decided by the judge upon the wife's lawsuit to terminate the marriage relationship (Kadir, 2022). The main reason for "cerai gugat" is not due to the quarrel between the husband and wife, but rather certain obstacles or hindrances that prevent the marriage's objectives from being achieved, such as the failure to conceive a child despite the marriage lasting for a considerable period, possibly due to the husband being sterile (Hasbullah Bakry, 1978).

The procedural law principles applied in the Sharia Court are the same as those applied in the Religious Courts. Article 54 of Law No. 7 of 1989 together with No. 3 of 2006, as amended by Law No. 50 of 2009 concerning Religious Courts states, "The procedural law applicable in the Courts within the framework of Religious Courts is the civil procedural law applicable in the Courts within the framework of General Courts, except as specifically regulated in this Law."

The judges presiding over cases are in a panel, consisting of at least three individuals, one serving as the chairperson and the others as members. The principle of a panel of judges is intended to ensure the most objective examination possible, to safeguard human rights in the judicial field (Roihan Rosyid, 2007). The

party being tried has the right to challenge the judges adjudicating their case (Article 29 paragraph 1 of Republic of Indonesia Law No. 4 of 2004 concerning Judicial Power). This right to challenge means the right of an individual to raise objections along with reasons against the judges and/or court clerks who will adjudicate their case (Titon Slamet, 2009).

All civil cases can be resolved amicably (Article 14 paragraph 2 of Law No. 4/2004). At the beginning of each session, before the case examination, the judge is required to seek reconciliation between the parties involved in the litigation. The judge is obligated to reconcile the parties (Article 130 of the Civil Code, Article 39 paragraph 2 of Law No. 4/2004). The principle of the obligation to reconcile is regulated in Law No. 3/2006, as last amended by Law No. 50/2009, and this principle is also stipulated in Article 65 and Article 82. The formulations of these two articles are examined, and their wordings and meanings are exactly the same as those stated in Article 39 of Law No. 1/1974 and Article 31 of Government Regulation No. 9/1975, which state: (a) The judge examining a divorce petition must endeavor to reconcile both parties. (b) Reconciliation efforts can be made at every trial session until the case is decided.

Law Number 7 of 1989 concerning Religious Courts together with Law Number 3 of 2006 and the latest amendment Law Number 50 of 2009, Article 76 paragraph 2 states, "after hearing witness testimony regarding the nature of the dispute between husband and wife, the court may appoint one or more individuals from each party's family or others to act as arbitrators" (Jaenal Aripin, 2010).

In the resolution of divorce cases, when the respondent objects to the plaintiff's claim, the judge must consider the objection. If the objection is based on logical reasons and evidence, the examination must be postponed, and the judge issues an interim ruling and appoints arbitrators from each party to bring them together and seek a solution to the dispute (Abdullah, 2021).

This is in accordance with Article 185 paragraph 1 of the Civil Code/Article 196 paragraph 1 of the Civil Procedure Code, Article 48 of the Civil Procedure Regulation (Rv) which essentially states that the judge, before making a final decision, may issue preparatory or interim rulings, and Article 156 paragraphs 1 and 2 of the Indonesian Criminal Procedure Code (KUHAP) which essentially states that if the defendant (in this case, the respondent) or their legal counsel objects to the indictment and the judge accepts the objection, then the case is not further examined, as well as Law Number 7 of 1989 concerning Religious Courts, as amended by Law Number 3 of 2006 and Law Number 50 of 2009, Article 76 paragraph 2 regarding the appointment of arbitrators.

Analysis of Bireuen Sharia Court Verdict

Islamic Sharia Courts in the province of Aceh are specialized courts within the scope of Religious Courts as long as their authority pertains to religious court jurisdiction, as stated in Article 15 paragraph (2) of Law Number 4 of 2004 concerning Judicial Power. The authority of the Sharia Courts in the province of Aceh is broader than that of Religious Courts in other provinces in general and has the authority to adjudicate jināyah cases. Article 51 of Aceh Provincial

Regulation Number 10 of 2002 concerning Islamic Sharia Courts states, "In addition to the duties and authority as stipulated in Articles 49 and 50, the Court may be entrusted with other duties and authority regulated by Regulation."

The process of resolving divorce cases in the first-instance court of the Bireuen Sharia Court is as follows: the plaintiff registers the divorce petition with the Bireuen Sharia Court; the plaintiff and defendant are summoned through a Summons or official letter by the Substitute Clerk upon the order of the Sharia Court Chairman to attend the trial; Trial Stage, at the first trial session, the judge attempts to reconcile both parties, and the husband and wife must appear in person (Article 82 of Law No. 7 of 1989). The judge requires both parties to undergo mediation first (Article 2 paragraph (2) of PERMA No. 1 of 2008); If mediation fails, the examination continues with reading the lawsuit, response, rejoinder, evidence presentation, and conclusion. In the rejoinder stage (before the evidence presentation), the defendant may file a counterclaim (reconvention) (Article 158 R.Bg, jo. Article 132a of HIR).

In Case Number 17/Pdt.G/2013/MS-Bir, the plaintiff requested to the Chairman of the Bireuen Sharia Court to kindly accept, open, and hear this case and to issue a divorce decree (talak satu ba'in sughrā) against the defendant in favor of the plaintiff (Safrizal, 2020). If the Panel of Judges holds a different opinion, a fair decision is requested.

In his defense, the defendant affirmed the plaintiff's statement, indicating that the plaintiff pressured the defendant to purchase land at a high price. With a heavy heart, the defendant reluctantly bought the land without the plaintiff's knowledge. The plaintiff, along with her parents, secretly obtained a certificate in her name. The plaintiff only sought excuses to gain sympathy from all parties. The root cause of the quarrel and dispute between the defendant and the plaintiff is mostly related to financial matters. The plaintiff burdens the defendant with the monthly expenses of her parents. The plaintiff is closed off to financial discussions with the defendant.

The defendant understands and empathizes with the plaintiff's feelings but strives to maintain the marriage by any means necessary. The defendant will continue to endeavor to preserve this marriage and has no intention of ending it. Through this trial, the defendant requests the Chairman of the Bireuen Sharia Court to review and consider the defendant's plea with the hope of reaching the best conclusion, believing that the Chairman of the Bireuen Sharia Court can reach a wise and fair decision.

In response to the defendant's defense, the plaintiff also submitted a reply or written rebuttal, as well as responding to the plaintiff's reply, the defendant also submitted a rejoinder, essentially in accordance with the minutes of the hearing. To strengthen the statements and claims in her lawsuit, the plaintiff presented evidence in the form of documents and witnesses in court, including photocopies of the Marriage Certificate issued by the Office of Religious Affairs. Furthermore, the plaintiff stated that she had provided sufficient evidence, and the panel of judges had also provided ample opportunity for the defendant to prove his rebuttal arguments. However, the defendant stated that he would not present any further evidence, either documentary or testimonial, to the court. In

this regard, the defendant did not present witnesses to support his defense. Therefore, the panel of judges deemed the examination at this evidence stage to be sufficient, and the defendant was considered to have waived his opportunity to present evidence.

In the deliberation and decision-making stage, the panel of judges, before rendering a final verdict, considered that on the scheduled trial date of this case, both the plaintiff and the defendant appeared in court. Furthermore, the panel of judges attempted reconciliation by advising both parties to be patient and maintain the integrity of their household, but without success. Subsequently, mediation was attempted by the Mediator Judge, but this effort also failed.

Considering that the plaintiff bases the lawsuit on arguments as elaborated in the case dossier, essentially indicating ongoing disputes and conflicts in the plaintiff's and defendant's household, the plaintiff seeks divorce from the defendant on these grounds. Furthermore, the plaintiff has presented witnesses. The witnesses provided sworn statements, and based on their testimonies, it can be concluded that there have been disputes and quarrels in the plaintiff's and defendant's household due to the defendant's remarriage to another woman. The panel of judges provided ample opportunity and time for the defendant to substantiate his defense with evidence, but the defendant did not present any evidence, whether written or testimonial. Therefore, the panel of judges deemed the defendant to have wasted his opportunity to present evidence, and consequently, the defendant's defense was considered unsubstantiated and rejected, except for what has been clearly acknowledged by the defendant.

Based on the plaintiff's lawsuit and the defendant's acknowledged response, when correlated with the evidence presented by the plaintiff in court, the panel of judges found that the plaintiff's and defendant's household is no longer harmonious due to ongoing disputes and conflicts. Based on this fact, the panel of judges concluded that the marriage between the plaintiff and the defendant has broken down and is no longer feasible to be reconciled within the bonds of marriage, as it no longer aligns with the purpose of marriage, which is to establish a harmonious, loving, and compassionate household.

Furthermore, despite divorce being an act that should be avoided as much as possible as it is permissible but detested by Allah SWT, when the purpose of marriage cannot be realized, maintaining the marriage under the aforementioned conditions is feared to cause harm to both parties. Thus, avoiding harm is prioritized.

Considering all applicable legal provisions and Sharia law relevant to this case, the panel of judges ruled in favor of the plaintiff's lawsuit, granting the plaintiff a talak satu ba'in sughra (divorce initiated by the husband) against the defendant. However, the conclusion reached by the panel of judges regarding the breakdown of the marriage between the plaintiff and the defendant, deeming it irreconcilable, can be considered inappropriate because the process of reconciliation between the plaintiff and the defendant through arbitration has not been attempted at all. Attempting reconciliation through the first trial session and then proceeding with mediation by the judge sometimes does not yield results because at this stage, each party still feels and exhibits their selfishness. And

sometimes, when the defendant and plaintiff are brought together, they still feel embarrassed and, in principle, defend themselves, making it very difficult to compromise and reach a peaceful agreement. However, when pursued with peaceful efforts through arbitration, it eventually yields results because each party, plaintiff, and defendant, can express their feelings to their arbitrator without being known by their opponent. Thus, the plaintiff and defendant do not feel embarrassed or selfish in expressing their desires to their arbitrator.

Based on the statements and testimonies of both the plaintiff and defendant, as well as their statements and testimonies in the lawsuit and the defendant's response, as well as the statements made under oath by the plaintiff's witnesses, it is clear that the case falls under the category of shiqāq, which refers to sharp disputes between husband and wife. In the resolution of shiqāq cases, efforts should be made as much as possible through the appointment of an arbitrator. However, this was not attempted by the panel of judges, as found in the examination of the Trial Proceedings. In the Trial Proceedings, the presiding judge stated that the examination at the rejoinder stage was sufficient, and the next trial session would proceed with the evidence and witness examination stage.

Ideally, when the defendant in his response and rejoinder states that he will strive to preserve his marriage with the plaintiff by any means and requests the panel of judges to reconsider the plaintiff's lawsuit, the panel of judges should postpone the trial and issue an interim decision to appoint an arbitrator to reconcile the misunderstandings between the husband and wife. In this case, the judges seemed to rush in concluding the evidence examination and decision-making process. Ideally, when the defendant cannot present witnesses to support his defense, the panel of judges should take alternative measures and inquire why the defendant cannot present witnesses. Thus, it seems that the judges are unwilling to inconvenience themselves by postponing the trial to wait for witnesses from the defendant.

Meanwhile, in the verdict of Case Number 259/Pdt.G/2012/MS-Bir, the plaintiff stated that initially, in building a household between the plaintiff and the defendant, everything was peaceful and harmonious, as every couple's aspiration, but afterward, the household began to falter, constantly embroiled in endless disputes, and frequent quarrels, leading to a lack of harmony in the household. After enduring this situation for some time, the plaintiff finally could no longer bear it and found it exceedingly difficult to maintain the integrity of the household that had been built for so long. Based on the plaintiff's lawsuit, the defendant also responded to the plaintiff's allegations, and likewise, in response to the defendant's answer, the plaintiff filed a rebuttal, the essence of which can be found in the court record.

Subsequently, in the trial phase, the defendant presented two witnesses who were close to him. The defendant then stated that there were no more witnesses to be presented at the trial and deemed his evidence sufficient. Therefore, the panel of judges concluded that the evidence examination in this case had been completed. According to the panel of judges, this case fundamentally revolves around ongoing disputes and quarrels, and to optimize

reconciliation between the plaintiff and the defendant, the panel deemed it necessary to appoint arbitrators from both sides.

Next, the plaintiff presented their arbitrator in court, and the defendant also presented theirs. Subsequently, after deliberation, the panel of judges issued an Interim Decision and appointed the plaintiff's arbitrator. In the next session, both arbitrators were given the opportunity by the panel of judges to report on their efforts to reconcile the plaintiff and the defendant. However, according to the arbitrators' reports, their efforts to reconcile the plaintiff and the defendant were unsuccessful.

Before rendering a final decision, the panel of judges first considered that both the plaintiff and the defendant had been officially summoned and were deemed necessary to appear in court. Both the plaintiff and the defendant personally attended the trial in response to the summons. Furthermore, the panel of judges made optimal efforts to reconcile by advising the plaintiff and the defendant to be patient and maintain the integrity of their households, but to no avail. Subsequently, in accordance with Supreme Court Regulation Number 1 of 2008 dated July 31, 2008, regarding Mediation, mediation was also attempted by the mediator judge. However, based on the mediator judge's report, this effort also failed and was declared unsuccessful.

Considering that the essence of this case is the plaintiff's lawsuit for divorce against the defendant, based on the grounds that the plaintiff's and defendant's household is no longer harmonious and is constantly embroiled in endless disputes, attempts at resolution by the family have been made, but they are no longer capable of resolving the issues between the plaintiff and the defendant. In response to the lawsuit, both the plaintiff and the defendant provided written responses that essentially confirm the ongoing disputes and quarrels in the household. This is due to the plaintiff leaving the defendant and the children without permission, and the defendant objecting to divorce from the plaintiff.

To reinforce the lawsuit, the plaintiff presented two family witnesses, each of whom provided sworn testimony, confirming the existence of disputes and quarrels between the plaintiff and the defendant. The plaintiff and the defendant have separated residences and attempted reconciliation in the village, but to no avail. The defendant also presented two witnesses, whose testimonies were consistent with each other.

The panel of judges opined that this case revolves around ongoing disputes and quarrels. Therefore, to optimize reconciliation between the plaintiff and the defendant, arbitrators from both sides were appointed. However, based on the arbitrators' reports, the reconciliation efforts they conducted were also unsuccessful.

Considering the plaintiff's lawsuit and the defendant's response, when correlated with the documentary evidence and witnesses presented, the panel of judges found that the plaintiff's and defendant's household is no longer harmonious, despite reconciliation attempts in the village and by both arbitrators. Nevertheless, these attempts were unsuccessful.

Considering the facts and evidence presented, it is evident that the plaintiff's and defendant's marriage has broken down. As affirmed by Allah SWT in the Quran, surah Al-Rum, verse 21, the purpose of marriage is to establish peace and affection between husband and wife. This is also stipulated in the Compilation of Islamic Law and Law Number 1 of 1974 concerning Marriage.

Considering that if the marriage is maintained under the aforementioned conditions, it is feared to cause harm. Conversely, if the marriage is not maintained (divorced), it will also cause harm. Therefore, after the panel of judges observed and considered the existence of these two harms, the panel of judges deemed it more important to prioritize the lesser harm over the greater harm (Abd al-Rahman, 1983).

Taking into account all applicable laws and Sharia provisions related to this case, the panel of judges adjudicated by granting the plaintiff's lawsuit and issuing a talak satu ba'in sughrā (irrevocable divorce) against the plaintiff. From the trial process, Case Number 259/Pdt.G/2012/MS-Bir falls into the category of shiqāq cases, which require the appointment of arbitrators, and this has been attempted by the panel of judges. After the arbitrators attempted to reconcile the husband and wife, their reconciliation efforts were unsuccessful. This ruling needs to be examined and noted that even though the reconciliation efforts through the appointment of arbitrators failed, the final decision-making process is not contrary to the laws requiring the appointment of arbitrators in shiqāq cases.

From the case examination results, although the plaintiff has stated their commitment to the lawsuit, the plaintiff's statement is still in the yellow light, meaning that if reconciliation is attempted, the yellow light will turn green. However, this effort was not made by the judge on the pretext that the case was not a shiqāq case, thus not requiring the appointment of arbitrators. In the judge's view, shiqāq is a common ongoing dispute between a husband and wife that does not reach its peak. Shiqāq is different from continuous disputes that have reached their peak, as shiqāq still holds hope for reconciliation, while continuous disputes are unlikely to be reconciled. This contradicts the opinion stating that shiqāq is a sharp and ongoing dispute between a husband and wife that is harmful.

There is now a rule issued by the Supreme Court in 2010, which states that divorce lawsuits based on shiqāq must be made from the outset by the plaintiff when filing a case. Divorce lawsuits based on other reasons, such as not providing maintenance, then being included in a shiqāq case, are not allowed (Karimuddin, 2021). The aim is for the judge to focus more on understanding the plaintiff's issues or reasons for filing the case. Furthermore, with clear reasons for divorce due to shiqāq, the judge can better prepare the steps to resolve the case.

In this ruling, there is indeed the principle of lex specialis derogat legi generalis, meaning that specific provisions override general provisions. Although the issuance of the Supreme Court rule in 2010 has made it easier for judges to handle divorce cases, it has also made judges rigid in making decisions because they must follow the existing rules.

The appointment of arbitrators is specifically done in shiqāq cases, where the plaintiff has included the reasons for their lawsuit from the beginning of the case. If the lawsuit is not based on shiqāq, then the judge has no authority to

reclassify the case as a shiqāq case because it would contradict the regulations set by the Supreme Court. Therefore, the judge also cannot appoint arbitrators to resolve the dispute because, in the judge's view, if the case is filed based on continuous disputes, reconciliation efforts through arbitrators will also never be achieved. The current regulations do not require judges to issue interim decisions and appoint arbitrators, even if the case falls into the shiqāq category. Mrs. Rubaiyah's view on a case is only categorized as shiqāq if the husband and wife feel there are fundamental differences and both insist on their reasons.

Based on the interview results, it is understood that judges are somewhat rigid in understanding the rules issued by the Supreme Court. Although the rule states that shiqāq lawsuits must be filed from the outset, judges will better understand the cases they will handle, but whether the parties involved or their attorneys understand the rules or the difference between shiqāq and continuous disputes is different. Moreover, before entering the question-and-answer stage and calling witnesses, it is very difficult to understand what type of dispute the case falls into. Thus, the Supreme Court rule can facilitate judges in handling cases, but what is demanded here is the judge's discretion in handling cases that can resolve issues without causing harm to the defeated party.

The judges at the Bireuen Sharia Court also have conflicting opinions and views regarding the appointment of arbitrators and in interpreting shiqāq. Some judges argue that the appointment of arbitrators is mandatory in marital disputes, in line with the recommendations of the Quran and the laws as stated in Article 76 paragraph 2 of Law No. 7 of 1989. Others say that the appointment of arbitrators is not an obligation but still a recommendation for judges to consider. Similarly, in interpreting shiqāq, some judges say that shiqāq is a common dispute, while others say that shiqāq is an ongoing dispute.

CONCLUSION

Based on the study outlined in the previous chapter, it can be concluded that the panel of judges believes that Case No. 17/Pdt.G/2013/MS-Bir is not classified as a shiqāq case, but rather falls into the category of continuous disputes. Therefore, if an attempt is made to appoint arbitrators, it will not succeed in reconciling both parties. According to the Supreme Court's regulations, divorce lawsuits based on shiqāq must be filed from the outset by the plaintiff, while in this case, the plaintiff filed the lawsuit not based on shiqāq. The legal considerations made by the judge in the divorce decree for Case No. 17/Pdt.G/2013/MS-Bir consist of fiqhiyah principles and statutory regulations. Meanwhile, in the verdict of Case No. 259/Pdt.G/2012/MS-Bir, the legal considerations provided include Supreme Court jurisprudence, Quran surah al-Rūm verse 21, and fiqhiyah principles.

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