

## ABSTRACT

Susanto, Helmi. 09210007. 2013. *Transgender as the Reason of Divorce Lawsuit* (Case Study Number: 1106/Pdt.G/2011/PA.Mlg.). Thesis. Department of Al Ahwal Al Syakhshiyah. Faculty of Sharia. State Islamic University Maulana Malik Ibrahim, Malang.

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Essentially, everyone wants a marriage for only once throughout his life. However, in certain circumstances, there are things that cause marital breakdown, in the sense that the marital relationship will cause a disadvantage if it keeps maintained. In Islam itself, this disadvantage should be eliminated since the goal of sharia is to achieve the benefit and reject the disadvantage. Therefore, the most equitable and best settlement is divorce.

However, carrying out a divorce, one must have strong and justifiable reasons in Islam, which are also in accordance with the applicable law so that a divorce can be executed. A case occurs in the Malang Court in which a wife sues her husband for a divorce with the reason that her husband is a transgender. Although the reason is not written in the Articles clarifying the reasons of divorce, the panel judges accept the divorce reason and grants the lawsuit. Based on that case, this study tries to examine the process of the judges' proving that the husband is a transgender. It also explores the legal basis and the judges' consideration used in that decision so that the divorce lawsuit, with a reason that the husband is a transgender, can be granted.

This study uses a descriptive research design using a normative legal research or library research and document. The approach used in this study is a statute approach since this study examines the application of the rules or norms of positive law. The type of research is normative. The sources of data are obtained from the primary and secondary legal materials as the result of documentation in the form of decision and interview as a complement. The data are then processed through editing, coding, concluding, and analytical descriptive as the method of analysis so that the result of this study is liable.

From the results of this study, it can be concluded that to determine whether the husband is a transgender or not, the judge checks the evidences that has been filed by the plaintiff. The legal consideration basis used to decide this case is Law No. 1 of 1974 concerning the purpose of marriage, Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 379/K/AG/1995 dated March 26, 1997, Dr. Mustafa Assiba'I's opinion as stated in his book "Al Mar'atu Bainal Fiqhi Wal Qanun", Abdurrahman Ash-Shabunis' opinions in the book "Al-Mada Hurriyyatuzza'ujain", Article 39 paragraph (2) Law No. 1 of 1974 Jo, and Article 19, subparagraph (f) of Government Regulation No. 9 of 1975, Article 116 subparagraph (f) of Compilation of Islamic Law.