



THE IMPACT OF DIVORCE OUTSIDE THE RELIGIOUS COURT ON THE SOCIAL LIFE OF THE COMMUNITIES IN ACEH UTARA AND ACEH BARAT

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Abstract

Divorce is a final path that must be taken in resolving household disputes and turmoil. If the cracks in the household can no longer be reconciled, it is feared that it will cause division between the two families. The objectives of this study are to understand the law of divorce in religious courts and outside of them, the factors causing divorce outside the religious courts, and to identify the impacts of divorce outside the religious court on the social life of the communities in Aceh Utara and Aceh Barat. This research uses a qualitative method, where the researcher thoroughly examines the facts found in the research locations according to the problem focus directly, then presents and discusses the analysis results. To obtain accurate and reliable data, data collection was carried out through observation, interviews, and documentation. The results show: (1) in Islamic law, divorce performed outside the religious court is valid, while the law of divorce outside the religious court is not valid under Indonesian law and the Marriage Law as well as the Compilation of Islamic Law; (2) the factors causing the community to divorce outside the religious court are due to adhering to the opinions of the Imam Mazhab and local ulama, due to customs, economic conditions, ignorance/lack of understanding of regulations, laziness in processing, and indifference to divorce laws; and (3) the impacts felt by the community after divorcing outside the religious court are not receiving the iddah rights, difficulty in remarrying. After all, they do not have a divorce certificate, as the KUA does not permit because they are still considered the wife of the first husband. Furthermore, they cannot claim joint property, hadhonah, and child support. This is consistent with what has happened to the people of Aceh Utara and Aceh Barat. Additionally, problems arising from divorce outside the religious court are related to children and their education, lack of legal certainty, asset distribution, inheritance, creating priority for the husband over the wife, the husband being arbitrary towards the wife, and child custody.

Keywords: Divorce; Religious Court; Social Life of the Community.

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Abstrak

Talak atau perceraian merupakan jalan akhir yang harus ditempuh dalam penyelesaian perselisihan dan kemelut rumah tangga. Keretakan yang terjadi dalam rumah tangga tidak dapat lagi dileraikan lagi, bahkan kalau dibiarkan berlarut dikhawatirkan akan menyebabkan perpecahan antara kedua belah pihak keluarga. Adapun tujuan penelitian ini adalah untuk mengetahui hukum talak di pengadilan agama dan di luar pengadilan agama, faktor penyebab terjadinya talak di luar pengadilan agama dan untuk mengidentifikasi dampak yang terjadi dari talak di luar pengadilan agama terhadap kehidupan sosial masyarakat Aceh Utara dan Aceh Barat. Penelitian ini menggunakan metode kualitatif, di mana peneliti secara menyeluruh meneliti fakta yang terdapat di lokasi penelitian sesuai dengan fokus permasalahan secara langsung, kemudian data hasil analisis disajikan dan diberikan pembahasan. Untuk mendapatkan data yang akurat dan terpercaya dilakukan dengan teknik pengumpulan data melalui observasi, wawancara dan dokumentasi. Hasil penelitian menjelaskan: (1) secara Islam, talak yang dilakukan di luar pengadilan agama sah, sedangkan hukum talak di luar pengadilan agama tidak sah secara hukum di Indonesia dan Undang-undang perkawinan serta Kompilasi Hukum Islam; (2) faktor yang menyebabkan masyarakat melakukan talak di luar pengadilan agama adalah karena memegang teguh pendapat para Imam Mazhab dan para ulama setempat, karena kondisi kebiasaan, perekonomian, ketidaktahuan/ketidapkahaman tentang peraturan, malas dengan proses pengurusan serta acuh terhadap aturan perundang-undangan perceraian; dan (3) dampak yang dirasakan oleh masyarakat setelah melakukan talak di luar pengadilan agama adalah tidak mendapatkan hak iddah, sulit melakukan pernikahan lagi karena tidak memiliki legalitas perceraianya, karena pihak KUA tidak memberikan izin karena masih berstatus sebagai istri dari suami yang pertama. Selanjutnya, tidak dapat menuntut harta bersama, hadhronah dan nafkah anak. Hal ini sesuai dengan apa yang telah terjadi pada masyarakat Kabupaten Aceh Utara dan Aceh Barat. Di samping itu, problem yang muncul akibat talak di luar pengadilan agama adalah terhadap anak dan pendidikannya, tidak ada kepastian hukum, harta kepada siapa, warisan, akan menimbulkan perioritas suami lebih daripada istri, suami sewenang-wenang terhadap istri, dan hak asuh anak.

Kata Kunci: Talak; Pengadilan Agama; Kehidupan Sosial Masyarakat.

INTRODUCTION

Divorce is the dissolution of the marriage contract with the word divorce or something synonymous with it. According to Maliki scholars, divorce is a legal characteristic that causes the permissibility of the relationship between husband and wife to be annulled. Allah Swt gives the right to the husband to divorce his wife if the husband finds reasons to do so with a specific expression and desire to separate. Allah Swt grants the right of divorce to the husband, not to the wife, although the wife participates in the contract, to maintain the continuity of marriage and avoid things that could terminate the marriage. Women are not given the authority to pronounce divorce because women are more easily influenced by feelings and emotions.¹

¹Abu Malik Kamal bin As-Sayyid Salim, *Shahih Fiqih Sunnah*, Jilid 3, (Jakarta: Pustaka Azzam, 2007), hlm. 318.

Divorce is the last resort to solve household disputes and turmoil. The cracks in the household can no longer be repaired; if left unresolved, it could cause division between the two families. In essence, Islam does not prohibit its followers from divorcing, but it is better to strive for reconciliation so that divorce does not occur. This does not mean Islam opens the way for divorce. In Islam, there are specific limits on every divorce, and it should be based on strong reasons and is the last resort taken by husband and wife after other efforts fail to restore the unity of their household.²

Indirectly, Islam allows divorce, but on the other hand, it also expects the divorce process not to be carried out by the husband and wife. Islam teaches that a mediator should be sent to reconcile the couple. Thus, Islam encourages repairing the relationship between husband and wife rather than separating them. As Allah explained in QS. An-Nisa: 35.

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ ۚ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلَاحًا يُوَفِّقِ
 اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ۝٣٥

Meaning: "And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted (with all things)". (QS. An-Nisa [4]: 35).

Besides the divorce process based on Islamic law, in the context of positive law in Indonesia, the divorce procedure is also regulated in a registered process. To divorce, there must be a sufficient and strong reason that the husband and wife cannot live harmoniously and happily in the marital relationship. Divorce is given special attention by the government, as stated in Law No. 1 of 1974 on marriage, later supplemented by Government Regulation No. 4 of 1975.

This legislation is general, applying to all Indonesian people, especially Muslims, and also refers to Law No. 7 of 1989 on religious courts, which specifically regulates certain issues for Muslims in Indonesia, including divorce. Therefore, with the existence of the religious court law, Muslims are no longer fully guided by the Marriage Law and its implementing regulations but are also supported by the Compilation of Islamic Law (KHI). Article 39 of Law No. 1 of 1974 states that:

1. Divorce can only be performed in front of the Court Session after the concerned Court has tried and failed to reconcile both parties.
2. To perform a divorce, there must be sufficient reason that the husband and wife cannot live harmoniously as husband and wife; and
3. The procedure for divorce in front of the Court Session is regulated in the legislation itself.³

Article 115 of the Compilation of Islamic Law (KHI), states that "Divorce can only be performed in front of the religious court after the religious court has tried and failed to reconcile the two parties".

²Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*, (Yogyakarta: Liberty, 2004), hlm. 103.

³Abdurrahman, *Himpunan Peraturan Perundang-undangan tentang Perkawinan*, (Jakarta: Akademi Persindo, 1986), hlm. 73.

Based on the explanation of the above articles, it can be understood that divorce must be performed in front of the religious court with reasons for the divorce presented. However, although the law has regulated the procedure in Indonesia, there are still some areas where the community adheres to customary law and religious law and there are still people who, for certain reasons, do not comply with the applicable laws.

In reality, many divorce cases occur outside the religious court and do not get a valid divorce certificate from the court. In some cases, many people divorce, even without a mediator, simply by saying the word "divorce" between husband and wife, which is considered valid according to their custom. This happens to some communities in Aceh Utara, who have a very high sense of kinship. In some of their customs, household disputes are always resolved through family reconciliation. The majority background in some remote areas are only graduates of elementary and junior high school, so it is not surprising if there are still people unaware of legal issues such as divorce conducted outside the religious court.

Some communities in Aceh Utara and Aceh Barat divorce according to customs, not in front of the religious court as stipulated by the applicable legislation. Divorce is the husband's authority over his wife, whereas, in classical books and Law No. 1 of 1974 concerning marriage, divorce can occur in any way that indicates the end of a marital relationship, whether the divorce is pronounced by the husband or *khulu'* filed by the wife or other reasons.

To make it difficult for couples to divorce, it is determined that to divorce, there must be a reason or strong evidence that the relationship between the husband and wife can no longer be maintained and cannot live in harmony. This divorce, as mentioned in Law No. 1 of 1974 on marriage jo. PP No. 9 of 1975 jo. Law No. 7 of 1989 jo. Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, must occur in front of a court session (Wanjtik, 37).

The procedural divorce that is valid according to Indonesian law must be performed in front of the court session. Divorce performed outside the procedure of the court is considered not to have occurred. However, the consequences of this procedural process may create new issues for the community in running their household life, in other words, the impacts arising from divorce outside the religious court. The divorce events in some communities in Aceh Utara are something that needs to be studied more deeply in the form of the title "The Impact of Divorce Outside the Religious Court on the Social Life of the Communities in Aceh Utara and Aceh Barat".

METHOD

The approach in this study is qualitative research, which is an approach to finding and understanding what is hidden behind phenomena that are sometimes difficult to know or understand.⁴ The population to be studied in this research is the entire community in Aceh Utara and Aceh Barat. However, considering the number is too large, the sample taken by the researcher in this study includes the Head of KUA, 10 heads of families, village heads (*Keuchik*), *Tgk. Imum*, community leaders, youth leaders, and related parties in the study. To obtain accurate and reliable data, data collection was carried out through observation, interviews, and documentation.

⁴Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*, (Yogyakarta: Rineka, 2002), hl. 11.

FINDINGS AND DISCUSSION

Findings

The religious court is one of the institutions appointed to examine, hear and decide cases of Muslims, including divorce. Divorce is the right step to avoid the abuse of a husband towards his wife by easily imposing a divorce. Divorce should be done in a religious court, because by doing a divorce before a religious court, both the divorced husband and wife have legal certainty about the divorce so that the rights resulting from the divorce can be implemented and accepted intact by both parties. If the divorce is done outside the religious court, then the court does not recognize the validation of the divorce because there is no legalization process or *itsbat* divorce. In Islam, a divorce conducted outside a religious court is valid, while a divorce outside a religious court is not legally valid in Indonesia and the Marriage Law and Compilation of Islamic Law (Interview with AB).

The factors that cause people to divorce outside the religious courts are because they uphold the opinions of the Mazhab Imams and local scholars, as well as habitual conditions, the economy, ignorance/lack of understanding of the regulations, laziness with the management process and indifference to divorce laws and regulations (Interview with MD).

The impact felt by the community after divorcing outside the religious court is not getting *iddah* rights, and the difficulty of remarrying because they do not have legality for their divorce because the KUA does not permit it. After all, they are still the wife of the first husband. Furthermore, they cannot claim joint property, *hadhonah* and child maintenance. This is consistent with what has happened in the communities of Aceh Utara and Aceh Barat. In addition, the problems that arise as a result of divorce outside the religious court are for children and their education, there is no legal certainty, to whom the property belongs, inheritance will lead to the priority of the husband over the wife, the husband is arbitrary towards the wife, and child custody (Results of interviews with PT).

Discussion

1. Overview of Divorce

Divorce according to the language is to untie the knot or divorce according to the language is to untie the knot, either a real knot such as a horse tie or a prisoner's knot or a *ma`nawi* knot such as marriage.⁵ Whereas according to the term, divorce means the termination of the marriage rope with the word divorce or its equivalent or eliminating the marriage bond immediately or a certain period of distance by using a certain word. The marriage bond can be lost immediately when the husband divorces his wife with a *ba'in* divorce, and the marriage bond can be lost after the *'iddah* period has passed when the husband divorces his wife with a *raj'i* divorce.

Meanwhile, according to Abu Malik, divorce in Sharia terminology is to release the marriage bond with the word divorce or the like or to release the marriage bond immediately (divorce *ba'in*) or in the future (after the *'iddah* of divorce *raj'i*) with a specific word.⁶ Al-Jaziri in Djamaan explained further that what is meant by the loss of the marriage bond is to lift the marriage bond so that the wife is no longer halal for her husband (if there is a third divorce).⁷

⁵Djamaan Nur, *Fiqih Munaqahat*, (Semarang: CV. Toha Putra, 1993), hlm. 134-135.

⁶Abu Malik Kamal bin As-Sayyid Salim, *Shahih Fiqih Sunnah...*, hlm. 361.

⁷Djamaan Nur, *Fiqih Munaqahat...*, hlm. 135.

2. The Pillars and Conditions of Divorce

The pillars of divorce are divided into three parts, namely the husband, wife and divorce *sighat*. Husband, other than her husband the divorced wife cannot divorce. The wife is the one who is under the protection of the husband, and she is the object of getting a divorce. While the *sighat* is a lafaz that indicates the existence of divorce, whether it is spoken openly or done alone with the condition that it must be accompanied by an intention. Meanwhile, the conditions of divorce are maturity, sound mind, the bond between husband and wife and their own volition.

3. The Legal Basis for Divorce

Every legal product must be based on the law that considers the position of the legal product, with no exception to the existence of divorce. The legal basis for the existence of divorce includes QS. Al-Baqarah: 229,

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْءًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ ۞

Meaning: "Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers". (QS. Al-Baqarah [2]: 229).

The hadith of the Prophet (peace be upon him) which means: "Ibn Umar (may Allah be pleased with him) reported that he divorced his wife while she was menstruating at the time of the Messenger of Allah (peace be upon him). So, Umar bin Khatab asked the Messenger of Allah about it, and the Messenger of Allah replied: Order your son to reconcile (return) to his wife, then let him continue the marriage until she is pure from menstruation, then menstruation again and then pure again from the second menstruation. Then, if he wishes, he may continue as before, and if he wishes, he may divorce her before he has intercourse with her. This is how the 'iddah is ordered by Allah Swt when a woman is divorced." (HR. Muttafaqun `alaih).

Furthermore, the legal basis for divorce is stated in Law Number 1 of 1974 concerning Marriage in article 38 which reads: marriage can be broken up by death, divorce, and court decision, and continued in article 39 which reads: (1) divorce can only be carried out in front of a Court session after the Court concerned has tried and failed to reconcile the two parties; (2) to carry out a divorce there must be the sufficient reason that the husband and wife cannot live together as husband and wife; (3) the procedure for divorce in front of a Court session is regulated in the legislation itself.

Not only Law Number 1 of 1974 concerning marriage, but the Compilation of Islamic Law also explains divorce. Among other things article 113 states, marriage can be broken because of: (1) death; (2) divorce; and (3) by court decision. Article 114 states: that

the dissolution of marriage caused by divorce can occur due to divorce or based on a divorce suit.

4. Forms and Causes of Divorce

In Islamic law, divorce is caused by several causes, including *talak*⁸, *khulu'*⁹, *zihar*¹⁰, *ila'*¹¹, *fasakh*¹², *li'an*¹³, death and *nusyuz*. Divorce is divided into several forms. If the divorce occurs by the will of the husband, then the divorce is divided into two, namely *raj'i* divorce and *ba'in* divorce. However, if the divorce occurs at the will of the wife, it is called *khulu'*. There are also two kinds of divorce imposed by the husband on his wife, namely *sunni* divorce and *bid'i* divorce. Likewise, the Compilation of Islamic Law (KHI) states that divorce other than the two types (*raj'i* and *ba'in* divorce) is *sunni* divorce and *bid'i* divorce¹⁴. Thus, it can be concluded that the form of divorce consists of *raj'i* divorce, *ba'in* divorce, *sunni* divorce and *bid'i* divorce.

CONCLUSION

In Islam, divorce conducted outside the religious court is valid, while divorce outside the religious court is not legally valid in Indonesia and the Marriage Law and the Compilation of Islamic Law. The factors that cause people to divorce outside the religious court are because they uphold the opinions of the Mazhab Imams and local scholars, as well as habitual conditions, the economy, ignorance/lack of understanding of the regulations, laziness with the management process and indifference to divorce laws and regulations.

The impact felt by the community after divorcing outside the religious court is not getting iddah rights, and the difficulty of remarrying because they do not have legality for their divorce because the KUA does not permit it. After all, they are still the wife of the first husband. Furthermore, they cannot claim joint property, *hadhonah* and child maintenance. This is consistent with what has happened in the communities of Aceh Utara and Aceh Barat. In addition, the problems that arise as a result of divorce outside the religious court are for children and their education, there is no legal certainty, to whom the property belongs, inheritance will lead to the priority of the husband over the wife, the husband is arbitrary towards the wife, and child custody.

Talak or divorce is the final path that must be taken in resolving household disputes and meltdowns. The rift that occurs in the household can no longer be restored, even if it is allowed to drag on it is feared that it will cause a split between the two sides of the family. In essence, Islam does not prohibit its people from divorcing, but it would be better to try to make peace so that divorce does not occur. In this case, it does not mean that Islam opens the widest possible way to divorce. In Islam, there are certain limitations on every divorce, and this must be based on strong reasons and is the last resort taken by husband and wife after other efforts are unable to restore the integrity of their household life.

⁸Al-Hamdani, *Risalah Nikah*, (Jakarta: Pustaka Amani, 1985), hlm. 176. Sayyid Sabiq, *Fiqh Sunnah*, (Bandung: Al-Ma'arif, 2009), hlm. 17.

⁹Abdul Rahman Ghazaliy, *Fiqh Munakahat*, (Jakarta: Kencana, 2007), hlm. 199.

¹⁰Muhammad Jawad Mugniyah, *Fiqh Lima Mazhab*, (Jakarta: Lentera, 2007), hlm. 494.

¹¹Muhammad Jawad Mugniyah, *Fiqh Lima Mazhab...*, hlm. 498.

¹²Sayyid Sabiq, *Fiqh Sunnah...*, hlm. 314.

¹³Sayyid Sabiq, *Fiqh Sunnah...*, hlm. 241.

¹⁴Taqiuddin, *Kifayatul Akhyar*, Juz II, (Bandung: Al-Haromain Jaya, 2005), hlm. 87.

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