

Legal Reconstruction of Reasons for Divorce in Islamic Marriage Law in Indonesia Based on Justice Values

Ahmad Fauzi^{1*}, Gunarto², Anis Mashdurohatun²

¹Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

²Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

DOI: [10.36348/sijlcj.2024.v07i05.002](https://doi.org/10.36348/sijlcj.2024.v07i05.002)

| Received: 26.03.2024 | Accepted: 05.05.2024 | Published: 07.05.2024

*Corresponding author: Ahmad Fauzi

Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

Abstract

This research aims to analyze and find the weaknesses in the regulation of reasons for divorce in Islamic marriage law in Indonesia currently and to reconstruct the regulations for reasons for divorce in Islamic marriage law in Indonesia based on the value of justice using a constructivist paradigm with a socio-legal research approach method by examining secondary data and primary data by finding legal realities experienced in the field as well as a qualitative descriptive method, namely where the data obtained is then arranged systematically so that a comprehensive picture will be obtained, where later the data will be presented descriptively. The results of the research shows that the Weaknesses in the regulation of reasons for divorce in Islamic marriage law in Indonesia consist of: a). Legal Substance where Article 19 letter (f) Government Regulation Number 9 of 1975 and Article 116 letter (f) b). The Legal Structure consists of the weaknesses of the judge and the Weaknesses of the Mediator c). The legal culture where the husband's actions are super powerful, the increasing number of media broadcasting or presenting divorce issues, a cultural shift that exists where divorce is not considered taboo in society. Therefore, The reconstruction of the regulation of reasons for divorce in Islamic marriage law in Indonesia based on the value of justice consists of a value reconstruction where improvements are made to Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage and Article 116 letter (f) of the Compilation of Islamic Law so that continuous disputes as a reason for divorce can be in line with the objectives of Islamic sharia (maqashid syari'ah) being implemented. Reconstructing norms regarding Article 19 letter (f) Government Regulation Number 9 of 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage and Article 116 letter (f) Compilation of Islamic Law and Point C of Supreme Court Circular Letter Number 3 of 2023 by adding norms for divorce cases based on continuous disputes and quarrels can be granted if it is proven that the husband and wife have continuous disputes and quarrels which results in damage to religion, soul, reason, lineage and property which causes disharmony in the household.

Keywords: Legal Reconstruction, Divorce, Islamic Law, Justice Value.

Copyright © 2024 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

INTRODUCTION

Based on the 2023 Indonesian Statistics report, divorce cases in Indonesia reached 516,334 cases in 2022. Clearly this figure has increased by 15% compared to 2021 which reached 447,743 cases. The number of divorce cases that occurred is the highest divorce rate that has occurred in the last six years. The majority of divorce cases that will occur in 2022 will be contested divorces, which means the divorce lawsuit is filed by the wife. The number was 338,358 cases or 75.21% of the total divorce cases that occurred.

On the other hand, as many as 127,986 cases or 24.79% of divorces occurred due to talak divorce. This

means that the divorce petition is submitted by the husband and then decided by the court. So it is clear that more than half of the divorce cases that occur are filed by the wife. The main factors causing divorce that occur in 2022 are disputes and quarrels. The number is 284,169 cases or the equivalent of 63.41% of the total factors causing the increasing number of divorce cases in Indonesia. Other divorce cases are motivated by economic problems, one party leaving, polygamy, and even domestic violence (KDRT).

The author gives an example of a case that was submitted to the Subang Religious Court, where there were 3,564 divorce cases (three thousand five hundred and sixty four) consisting of 2,934 (two thousand nine

hundred and thirty four) talak divorce cases, 928 (nine hundred twenty eight) talak divorce cases (Malikah, 2022).

Indramayu is also one of the districts/cities with a very high divorce rate. As per the recapitulation of case data for 2023, in general, the number of cases handled by the Indramayu Religious Court was 10,272 cases, consisting of 586 remaining cases for 2022 and 9,686 cases received for 2023. case. Meanwhile, there are 9,632 cases decided in 2023, with the remaining cases in 2023 that have not been decided are 640 cases with a percentage of 24.01% divorce and contested divorce 64.15% (Databoks, 2024).

For example, the reason for divorce is because of continuous disputes and quarrels and there is no hope of ever living in harmony in the household again, which can be found in the Subang Religious Court Decision with Case Number 158/Pdt.G/2024/PA.Sbg as decided by Verstek, where in the case filing Several reasons are listed, one of which is because there are often continuous disputes and fights. In proving his claim, the applicant presented family and neighbor witnesses (Widodo, 2019). Based on the facts above, the Panel of Judges concluded that between Plaintiff and Defendant, there had been continuous disputes and quarrels and there was no hope of living in harmony in the household again.

The same thing also happened in the judge's basic considerations in deciding case number 555/Pdt.G/2024/PA.Badg, wherein the panel of judges' considerations based on the facts of the trial it was proven that they had legal grounds in accordance with the provisions of Article 19 letter (f) of Government Regulation Number 9 1975 and Article 116 letter (f) Compilation of Islamic Law.

Decision in PA Indramayu with Number 6825/Pdt.G/2023/PA.IM the applicant filed a divorce petition on the grounds that there were frequent disputes and quarrels because the applicant did not want to live in the Respondent's residence and vice versa, in the consideration of the panel of judges in their decision the materiality of the lawsuit The applicant has fulfilled the provisions of Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 jo. Article 116 letter (f) of the Compilation of Islamic Law states "*Divorce can occur on the grounds that between husband and wife, there are continuous disputes and quarrels and there is no hope of living in harmony in the household again.*"

Basically, religious court judges before 1974 decided cases based on Islamic law which was sourced from 13 books of fiqh determined by the Ministry of Religion. After the enactment of Law No. 1 of 1974 concerning Marriage, Religious Court Judges decided

marriage cases based on Islamic law contained in the fiqh book and the Marriage Law.

The reasons that can be used as a basis for divorce are regulated in the explanation of Article 39 paragraph (2) of Law Number 1 of 1974 concerning Marriage, namely:

1. One of the parties commits adultery or becomes a drunkard, addict, gambler and so on which are difficult to cure;
2. One party leaves the other 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 will;
3. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place;
4. One of the parties commits cruelty or serious and dangerous abuse against the other party;
5. One of the parties has a physical disability or illness which results in him being unable to carry out his obligations as husband/wife;
6. Between husband and wife there are constant disputes and quarrels and there is no hope of ever living in harmony in the household again.

Marriage is the beginning of life together between a man and woman as husband and wife, while divorce is the end of life together between husband and wife. Everyone wants their marriage to remain intact throughout their life. But quite a few marriages that have been built with great difficulty end in divorce. The increasing number of divorces in every Religious Court is certainly not something that should be expected. Religious courts tend to easily approve divorce lawsuits, especially on the grounds for divorce using Article 39 paragraph (2) Law Number 1 of 1974 concerning Marriage in conjunction with Article 19 letter (f) PP No. 9 of 1975 Jo. Article 116 letter (f) of the Compilation of Islamic Law needs to be reviewed because it is not in line with the objectives of Islamic sharia (maqashid sharia) being implemented. A dream of forming a happy family must be abandoned with a divorce based only on arguments, of course, this is not fair. The hope of marriage is to realize the goal of a happy household, sakinah, mawaddah warahmah, as desired by Article 1 of Law Number 1 of 1974 concerning marriage in conjunction with Article 3 of the Compilation of Islamic Law which is difficult to realize.

Problems with legal norms in Article 39 paragraph (2) Law Number 1 of 1974 concerning Marriage in conjunction with Article 19 letter (f) PP No. 9 of 1975 Jo. The author will discuss Article 116 letter (f) Compilation of Islamic Law in more detail into a research with the following main problem:

1. What are the weaknesses of the reasons for divorce in islamic marriage law in indonesia currently?

2. How is the legal reconstruction of the reasons for divorce in Islamic marriage law based on the value of Pancasila justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies (Widodo 2018).

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Reasons for Divorce in Islamic Marriage Law in Indonesia Currently

When filing for divorce, the one who submits the lawsuit must also submit the reasons that are accepted by law. One of the reasons for divorce is regulated in Article 19 letter (f) of Government Regulation Number 9 of 1975 and Article 116 letter (f) of the Compilation of Islamic Law, namely "*between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony again in the household*".

The existence of provisions stating disputes and quarrels coupled with continuous sentences is not a fixed price as a reason for divorce but is only a tool for the judge to make an assessment of whether the husband and wife still have hope of being able to live in harmony again in the household or not, so that the conclusion is that the condition is not the hope for husband and wife to be able to live in harmony again in the household is a reason for divorce that dominates the provisions on reasons for divorce regulated in Article 19 letter (f) of Government Regulation Number 9 of 1975 and Article 116 letter (f) of the Compilation of Islamic Law.

Religious courts tend to easily approve divorce lawsuits, especially on the grounds for divorce using Article 19 letter (f) PP No. 9 of 1975 Jo. Article 116 letter (f) of the Compilation of Islamic Law (KHI) needs to be reviewed because it is not in line with the objectives of Islamic Sharia (*maqashid syari'ah*) being implemented. A dream of forming a happy family must be abandoned with a divorce based only on arguments, of course, this is not fair (Ajjahidi, 2023).

The results of this research found weaknesses in the reasons for divorce in Islamic marriage law in Indonesia, namely articles other than Article 19 letter (f) PP No. 9 of 1975 Jo. It is as if Article 116 letter (f) KHI is not considered to exist because this article is the basis of the reasons for every plaintiff/applicant who wants to file a divorce case in the Religious Court. In addition, Article 19 letter (f) PP No. 9 of 1975 Jo. Article 116 letter (f) Compilation of Islamic Law is considered too easy to prove in front of a court hearing when compared to other articles, and there is still a gap that is too wide in Article 19 letter (f) PP No. 9 of 1975 Jo. Article 116 letter (f) KHI makes it easier for married couples to divorce and dissolve the marriage bond. New construction of regulations on reasons for divorce in Islamic marriage law in Indonesia (*maqashid syari'ah* perspective) contained in Article 19 letter (f) PP No. 9 of 1975 Jo. Article 116 letter (f) of the Compilation of Islamic Law which states "*between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household*" is formulated as "*between husband and wife there are continuous disputes and quarrels which endanger the other party and resulting in damage to religion, soul, mind, lineage and property which can be proven before a court hearing*."

In divorce cases, the party filing the lawsuit must be able to provide and show evidence for the lawsuit, so with sufficient judge experience a judge will not easily accept the evidence submitted by the parties at face value. When receiving evidence, a judge can certainly understand which evidence is related and which evidence is not related to the divorce lawsuit filed against him (Toebagus, 2022).

In practice, the rank of judges is something called DUS (list of judges' seniority order) which is usually used for the composition of the panel, judges with high seniority sit in the chair of the chief judge, and judges below them sit on the right, then those with lower seniority sit on the bench. left side (according to Supreme Court regulations).

In terms of judges, it is called DUS and in civil service, there is DUK (Special Order List) so those who are higher up as judges are considered to be more senior. However, judges outside Java are on average younger than judges in Java.

The law functions to protect human interests so that human interests are protected, the law must be implemented. Therefore, in implementing the law, what is no less important to receive serious attention is socialization, because socialization is a means of communicating legal messages to the community that is the target of the law itself. There is no need to expect and rely on legal fiction which assumes that everyone is considered to know the law if it has been promulgated in the State Gazette. A legal rule or statutory regulation is created to be enforced so that society obeys it.

One culture that is still strong in Indonesian society is patriarchal culture. Patriarchal culture is a culture where men have a higher position than women. In this culture, there are clear differences regarding the duties and roles of women and men in social life, especially in the family. Men as leaders or heads of families have authority which includes control over economic resources, and a sexual division of labor within the family. This causes women to have less access to the public sector than men. Patriarchy is a term used to describe a social system in which men as a group exercise power over women.

In general, patriarchal culture is defined as a system characterized by men. In this system men have the power to determine, this condition is considered normal because it is associated with the division of labor based on sex. The existence of culture has given privileges to the male gender. Therefore, this culture does not accommodate equality and balance, where in this culture the female gender is not taken into account. This culture then created a lineage based on the male line. This patriarchal culture influences the relationship between women and men, which generally shows a subordination, top-down relationship with male dominance. Men as leaders or heads of families have authority which includes control over economic resources, and a sexual division of labor within the family. This causes women to have less access to the public sector than men (Triana, 2023).

The patriarchal culture which has been embraced as a custom by today's society is not fully embraced, this is influenced by the heterogeneous

conditions of society which have become mixed up due to cultural assimilation. Based on research conducted at the Religious Courts, by conducting interviews with wives who were suing for divorce from their husbands, information was obtained that the wives who were suing for divorce from their husbands stated that they considered that the figure of the husband who was supposed to be a protector and reassurance for his family was no longer carrying out his role properly. In fact, according to them, the position that places men above women has an impact on husbands' arbitrary behavior.

The implementation of patriarchal culture in society cannot be generalized as a whole as the cause of the increasing number of divorces. What can be underlined is that the increase in the number of divorce lawsuits in the Religious Courts is largely based on the treatment of husbands who position themselves as superpowers who can act and behave arbitrarily towards their wives and children. The action of a super-powered husband by placing himself as an authoritarian leader in the family is an inappropriate application of patriarchal culture. The husband as a priest should be able to position himself by providing protection and a sense of security and comfort in his family, especially for his wife and children in creating a *sakinah* family.

2. Legal Reconstruction of the Reasons for Divorce in Islamic Marriage Law Based on the Value of Pancasila Justice

The reasons for divorce due to continuous disputes and quarrels are contained in Article 19 letter (f) Government Regulation Number 9 of 1975, Article 116 letter (f) Compilation of Islamic Law, Supreme Court Circular Letter Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the Chamber Plenary Meeting Supreme Court in 2023 as a guide for carrying out duties for the court. The explanation of the meaning of the words dispute and quarrel is that a quarrel occurs because there was a dispute first. A dispute is a situation where there are conflicting opinions between a husband and wife.

In the concept of *maqāṣid syarī'ah*, the essence of all Islamic religious law is to create benefits and avoid harm. To achieve benefits, *maqāṣid syarī'ah* is divided into three priorities (hierarchy), namely *al-ḍaruriyyāt*, *tahsiniyyat*, *hajjiyat*. It is explained later that what *al-ḍaruriyyāt* means is the basic (primary) principle of all aspects of life. If *al-ḍaruriyyāt* is not fulfilled, then it is impossible to achieve the second hierarchy, *tahsiniyyat* and the third, *hajjiyat*. In other words, the need for *al-ḍaruriyyāt* is something that must exist so that human life can continue on God's earth. The needs and protection of *al-ḍaruriyyāt* in the book *Ushul Fiqh*, including by *ash-Shaythibi* are divided into five, namely (Asman, 2023):

- a. *Hifz Al-Dīn*: Religious salvation, (obedience to worship Allah SWT).
- b. *Hifz Al-Nafs*: Safety of lives, (individuals).

- c. *Hifz Al-'Aql*: Safety of reason (including conscience).
- d. *Hifz Al-Nasl*: Salvation or continuity of descendants (human existence)
- e. Maintaining and protecting a person's self-esteem and honor

The author uses the concept of *maqāṣid syarī'ah* as a reason for divorce due to continuous disputes and quarrels contained in Article 19 letter (f) Government Regulation Number 9 of 1975, Article 116 letter (f) Compilation of Islamic Law, Supreme Court Circular Letter Number 3 of 1975 2023 Concerning the Implementation of the Formulation of the Results of the 2023 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court by including the value of necessity and protection of *al-ḍaruriyyāt* in reconstructing existing legal norms as an effort to realize benefits (benefits) and avoid harm.

Therefore, the reconstruction of regulations on reasons for divorce in Islamic marriage law in Indonesia based on the value of justice consists of a reconstruction of values where improvements are made to Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage and Article 116 letter (f) of the Compilation of Islamic Law so that continuous disputes as a reason for divorce can be in line with the objectives of Islamic sharia (*maqashid syari'ah*) being implemented. reconstruction of norms regarding Article 19 letter (f) Government Regulation Number 9 of 1975 concerning Implementation of Law no. 1 of 1974 concerning Marriage and Article 116 letter (f) Compilation of Islamic Law so that between husband and wife there are constant disputes which result in damage to religion, soul, mind, lineage and property which causes disharmony in the household. As well as the reconstruction of Point C of Supreme Court Circular Letter Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the 2023 Supreme Court Chamber Plenary Meeting as Guidelines for Carrying Out Duties for the Court so that a divorce case on the grounds of continuous disputes and quarrels can be granted if it is proven that the husband and wife have had disputes and quarrels continuously resulting in damage to religion, soul, mind, lineage and property which causes disharmony in the household followed by separation of residence for at least 6 (six) months unless the legal fact is found that the Defendant/Plaintiff has committed domestic violence.

CONCLUSION

1. The Weaknesses in the regulation of reasons for divorce in Islamic marriage law in Indonesia consist of: a). Legal Substance where Article 19 letter (f) Government Regulation Number 9 of 1975 and Article 116 letter (f) is the basis of the reasons for every plaintiff/applicant who wants to file a divorce case in the Religious Court and

there is still a gap that is too wide to make it easier for married couples to divorce and severing marital ties. b). The legal structure consists of the weaknesses of judges in deciding divorce cases in religious courts including the judge's experience, ethics, professionalism, and responsibility of the judge, the ability to think logically, and the psychology of the judge and the age factor. Weaknesses of Mediators in Resolving Divorce Disputes Through Mediation include the absence of the parties during the mediation process, the parties' lack of understanding of the mediation procedure, the parties' agreement to divorce, the absence of common ground between the two parties, and the embarrassment of reconciliation. c). The legal culture where the action of a husband who has superpower by placing himself as an authoritarian leader in the family is an inappropriate application of patriarchal culture, the increasing number of media which broadcast or present divorce issues, thereby generating knowledge, especially for women who are starting to know about their rights. must be owned by him and creates a cultural shift where divorce is not considered taboo in society.

2. The Reconstruction of regulations on reasons for divorce in Islamic marriage law in Indonesia based on the value of justice consists of a reconstruction of values where improvements are made to Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage and Article 116 letter (f) of the Compilation of Islamic Law so that continuous disputes as a reason for divorce can be in line with the objectives of Islamic sharia (*maqashid syari'ah*) being implemented. reconstruction of norms regarding Article 19 letter (f) Government Regulation Number 9 of 1975 concerning Implementation of Law no. 1 of 1974 concerning Marriage and Article 116 letter (f) Compilation of Islamic Law so that between husband and wife there are constant disputes which result in damage to religion, soul, mind, lineage and property which causes disharmony in the household. As well as the reconstruction of Point C of Supreme Court Circular Letter Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the 2023 Supreme Court Chamber Plenary Meeting as Guidelines for Carrying Out Duties for the Court so that a divorce case on the grounds of continuous disputes and quarrels can be granted if it is proven that the husband and wife have had disputes and quarrels continuously resulting in damage to religion, soul, mind, lineage and property which causes disharmony in the household followed by

separation of residence for at least 6 (six) months unless the legal fact is found that the Defendant/Plaintiff has committed domestic violence.

REFERENCES

- Ajjahidi, M. (2023). Dinamika Hukum Keluarga Terhadap Pengaturan Perceraian Dalam Negara Indonesia Dan Beberapa Negara-Negara Muslim Di Dunia. *Tahkim (Jurnal Peradaban dan Hukum Islam)*, 6, 35-54. 10.29313/tahkim.v6i2.11732.
- Asman, A., & Ahmed, A. (2023). Parental Obligations Towards Hadhanah Mumayyiz after Divorce Islamic Family Law Perspective. *Jurnal Mediasas: Media Ilmu Syari'ah dan Ahwal Al-Syakhsyiyah*, 6, 27. 10.58824/mediasas.v6i1.599.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Malukah, U., Septiandani, D., & Junaidi, M. (2022). Keabsahan Talak Diluar Pengadilan Berdasarkan Hukum Islam Dan Hukum Positif Di Indonesia. *Semarang Law Review (SLR)*, 2, 246. 10.26623/slr.v2i2.3961.
- Toebagus, G. W. P. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514, DOI:10.36348/sjhss.2020.v05i10.001.
- Toebagus, G. W. P. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
- Triana, T., & Suhar, S., & Ishaq, I. (2023). Providing Nafkah Muṭ'ah for Wives in Lawsuits of Divorce According to Islamic Law and Indonesian Legislation. *Journal of Comprehensive Islamic Studies*, 2, 149-166. 10.56436/jocis.v2i1.197.
- Wahyu, W., Sapto, B., & Toebagus, G. W. P. (2018). The role of law politics on creating good governance and clean governance for a free-corruption indonesia in 2030. *The Social Sciences*, 13, 1307-1311.
- Wahyu, W., & Toebagus, G. (2019). Poverty, evictions and development: efforts to build social welfare through the concept of welfare state in indonesia. *3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019)*, Dx.Doi.Org/10.2991/Icglow-19.2019.65..
- Databoks. (2023). *75% Kasus Perceraian di Indonesia Diajukan Pihak Istri*, taken from <https://databoks.katadata.co.id/datapublish/2023/11/02/75-kasus-perceraian-di-indonesia-diajukan-pihak-istri>, taken on 20 Februari 2024