



Legal Ramifications of Unregistered Divorce in the Religious Court within the Mandailing Natal Community

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Abstract

The legal dualism in the Mandailing Natal community between the rules of school fiqh and the laws and regulations regarding divorce issues still leaves problems. This research aims to answer the phenomenon of divorce outside the Religious Courts in the Mandailing Natal community and the factors that influence it, then the legal consequences that occur in the Mandailing Natal community. This study uses sociological legal methods with a legislative approach and is analyzed philosophically. Data was collected by means of literature study and observation. The study found that the rules in fiqh state that divorce can be carried out anywhere and at any time without being limited by space and time as long as harmony and conditions are met, while the rules in legislation such as the Marriage Law, the Religious Courts Law and the Compilation of Islamic Law (KHI) states that divorce can only be carried out in front of a court hearing, in other words, there are rules that must be fulfilled when seeking a divorce. The legal consequences of divorce outside the Religious Courts show that the legal rules were made with the aim of maintaining benefits and avoiding mafsadat. So the public needs to understand that even though divorce is a private matter, the presence of the government is an effort to guarantee the rights and legal protection of the community. So that Islamic law can be seen from various aspects of life, so that the goal of sharia, namely legal certainty and order, can be realized.

Keyword: Legal ramifications, dissolution of marriage, Mandailing Natal community

Abstrak

Dualisme hukum di tengah masyarakat Mandailing Natal antara aturan fiqh mazhab dan aturan peraturan perundang-undangan terkait masalah perceraian masih menyisakan permasalahan. Penelitian ini bertujuan untuk menjawab terkait fenomena perceraian di luar Pengadilan Agama pada masyarakat Mandailing Natal serta faktor yang mempengaruhinya, kemudian konsekuensi hukum yang terjadi pada masyarakat Mandailing Natal. Kajian ini menggunakan metode hukum sosiologi dengan pendekatan perundang-undangan dan dianalisis secara filosofis. Data dikumpulkan dengan cara studi literatur dan obsevasi. Kajian menemukan bahwa aturan dalam fiqh menyebutkan bahwa perceraian itu boleh dilakukan dimana dan kapan saja tanpa dibatasi oleh ruang dan waktu asalkan rukun dan syaratnya terpenuhi, sementara aturan dalam perundang-undangan seperti Undang-Undang Perkawinan, Undang-Undang Peradilan Agama dan Kompilasi Hukum Islam (KHI) menyebutkan bahwa perceraian itu hanya dapat dilakukan di depan sidang pengadilan, dengan kata lain, ada aturan-aturan yang harus dipenuhi ketika hendak bercerai. Konsekuensi hukum perceraian di luar Pengadilan Agama sehingga didapatkan bahwa aturan hukum itu dibuat dengan tujuan untuk memelihara kemaslahatan dan menghindari mafsadat. Sehingga perlu difahami oleh masyarakat bahwa meskipun perceraian itu merupakan urusan pribadi akan tetapi kehadiran dari pemerintah merupakan upaya untuk menjamin hak dan perlindungan hukum bagi masyarakat. Sehingga hukum Islam itu terlihat dari berbagai aspek kehidupan, sehingga tujuan syariat yaitu kepastian dan ketertiban hukum dapat terwujud.

Kata kunci: *Konsekuensi hukum, perceraian, masyarakat Mandailing Natal*

Introduction

Marriage is a solemn covenant characterized by a robust agreement (*mitsaqan ghaliza*), yet it should not be seen as indissoluble, like to the sacraments in Hindu and Catholic doctrines. The institution of marriage is an inherent connection between two individuals, with some enduring till death while others fail to withstand the challenges it presents.¹ Marriage or divorce is a legally binding action that carries significant ramifications and must be approached with prudence to avoid future complications.

¹ Juwaini Saleh, et.al., "Marriage Guidance Towards Family Resilience in Aceh: A Study of Islamic Law Philosophy," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 2 (2022). Amiur Nuruddin and Azhari, *Hukum Perdata Islam Di Indonesia (Studi Kritis Perkembangan Hukum Islam Dari Fikih, Undang-Undang No. 1 Tahun 1974 Sampai Kompilasi Hukum Islam* (Jakarta: Kencana Prenada Media Group, 2004), p. 208.

Divorce is the ultimate solution for addressing irreparable household issues that, if left unattended, would inevitably lead to more significant problems.² Islam does not categorically forbid divorce, nevertheless, it does not grant unrestricted freedom to dissolve a marriage.³ There are specific conditions and restrictions that serve as the basis for allowing a divorce. The absence of divorce as an option in emergency situations, as dictated by Islamic teachings, will adversely affect the dynamics and outcomes of a marital relationship.⁴ The marriage will be perceived as an experience akin to being in a state of torment and anguish, resembling the conditions of hell. This will have a detrimental impact on the psychological maturation of children, causing them to endure hardship and ultimately succumb to the self-centeredness of their parents.⁵

While divorce is typically considered a private affair that does not necessitate government involvement, it is prudent for the Muslim community to adhere to government-imposed regulations in order to prevent future harm, ensure legal clarity, and promote the well-being of all parties involved. By doing so, legal protection can be provided for both the former wife and any children resulting from the marriage.⁶

By examining the fiqh regulations concerning divorce, it becomes apparent that they suggest a lenient approach, granting the husband greater authority as if the right to divorce is solely his, thereby enabling the husband to exercise unilateral power and potentially act in an authoritarian manner by divorcing his wife without her consent.⁷ Islamic teachings were revealed to rectify errors and safeguard mankind from diverse perils that pose a threat to life and inflict severe harm. Islamic law was revealed as a comprehensive framework of principles and regulations that provide solutions to all aspects of human existence.⁸

Hence, the government's assistance is necessary in this case to empower the Religious Court's jurisdiction in addressing domestic issues within the Muslim community, thereby mitigating preventable occurrences.⁹ Nevertheless, individuals

² Soemiyati, *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan* (Yogyakarta: Liberty, 2007), p. 104

³ Soemiyati, *Hukum Perkawinan Islam*.

⁴ Syaikh Hasan Ayyub, *Fikih Keluarga, Translation by M. Abdul Ghofar EM*, Ke-5 (Jakarta: Pustaka Al-Kautsar, 2006), p. 205-206

⁵ Jamhuri Ungel, et.al., "Pengabaian Nafkah Dalam Proses Perceraian Di Kecamatan Pintu Rime Gayo Kabupaten Bener Meriah," *El-USRAH: Jurnal Hukum Keluarga* 3, no. 2 (2020),

⁶ Yudistira Leon, et.al., "Perceraian Di Luar Pengadilan Agama Ditinjau Menurut Hukum Positif Dan Hukum Islam (Studi Perceraian Di Desa Cigudeg, Kabupaten Bogor)," *Jurnal Legal Reasoning* 2, no. 1 (2019), p. 34-51.

⁷ Siti Maimunah Binti Mohd Rijal, "Efektivitas Pelaksanaan Sanksi Talak Di Luar Mahkamah Rendah Syariah (Studi Kasus Di Mahkamah Rendah Syariah Selangor, Malaysia)," *Petita : Jurnal Kajian Ilmu Hukum Dan Syariah* 3, no. 1 (2018).

⁸ Asrul Hamid and Dedisyah Putra, "The Existence Of New Direction In Islamic Law Reform Based On The Construction Of Ibnu Qayyim Al-Jauziyah's Thought," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (2021), p. 247.

⁹ Irfan, "Fungsi Hakam Dalam Menyelesaikan Sengketa Rumah Tangga (Syiqaq) Dalam Peradilan Agama.," *Edu Tech* 4, no. 1 (2018), p. 50-58.

with limited awareness often choose to pursue divorce proceedings outside of the Religious Court using means that they are familiar with.¹⁰ Most Mandailing Natal individuals who divorce outside the Religious Court face legal consequences, which include the inability to address the rights of the ex-wife and children resulting from the marriage. These rights encompass expenses such as *'iddah*, *mut'ah*, children's education, and children's healthcare.

Despite the government's efforts to inform the community about the legal ramifications of divorces conducted outside the Religious Court, the community is hesitant to embrace this information. The Mandailing Natal community is rejected due to the prevailing assumption that divorce can occur without any spatial or temporal limitations. This perception is derived from the comprehension of the fiqh school of thinking, which serves as a legal authority within the society.¹¹

The Mandailing Natal population in North Sumatra is highly religious and has a strong connection to Mecca. This is evident by the presence of 21 active Islamic boarding schools, known as "City of Santri."¹² Nevertheless, the community's level of religious awareness does not match the amount of legal awareness of the Religious Court, which is an official government agency responsible for hearing divorce cases and all the ensuing legal ramifications.

The permissibility of divorce outside the Religious Court is advocated by certain *ustadz* or religious personalities who base their arguments solely on the limited insights provided by the fiqh mazhab book. This phenomena is responsible for the existence of legal dualism between statutory norms and fiqh mazhab. Additionally, the law in the fiqh holds a sacred significance within the community.

This study uses sociological legal methods with a legislative approach and is analyzed philosophically. Data was collected by means of literature study and observation. The field study was conducted in Mandailing Natal Regency, North Sumatra Province.

The occurrence of unregistered divorce in the jurisdiction of the religious court within the Mandailing Natal community

Each community possesses a distinct culture that distinguishes it from other regions.¹³ This culture encompasses the legal norms and values that shape how the community perceives and interacts with matters pertaining to law and regulations. The purpose of this legal culture is to ensure the smooth and orderly functioning of

¹⁰ Iwan Zaenul Fuad and Miftah Husaeni, "Kesadaran Hukum Masyarakat Pedesaan Untuk Bercerai di Pengadilan (Studi Kasus di Desa Bantarbolang, Kabupaten Pematang),"
Jurnal Hukum Islam 18, No. 2 (2020), p. 251–69.

¹¹ Asrul Hamid, "Praktik Perceraian Masyarakat Mandailing Natal: Analisis Keberlanjutan Dari Fiqh Kepada Hukum Perkawinan Di Indonesia," *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 6, no. 2 (2020).

¹² S Nasution, et.al., "Dinamika Pesantren: Studi Futuristic Transformasi-Tansmisi Sistem Pesantren Di Mandailing Natal," *Edukasi Islami: Jurnal Pendidikan Islam* 10, No 3 (2021).

¹³ Frank J. Macchiarola and Lawrence Friedman, *The Republic of Choice: Law, Authority and Culture, Political Science Quarterly*, vol. 106 (London: Harvard University Press, 1991). p. 4.

community activities, allowing its members to freely navigate within the established rules and ultimately contribute to the development of civilization.¹⁴

The progression of human existence is characterized by the swift advancement of globalization, which impacts diverse aspects of communal life, including economics, social dynamics, and politics, therefore yielding substantial ramifications, including legal matters.¹⁵ The Muslim society is an inseparable organism within a larger community, and therefore, it inevitably deals with legal matters concerning various events. Issues that have been explicitly and unequivocally addressed in the Qur'an and Hadith, will not raise any potential advantages or disadvantages in the society. Nevertheless, unresolved matters with uncertain legal standing necessitate mujtahids to offer prompt and accurate resolutions in order to maintain the adaptability and vitality of the Islamic law, enabling it to foresee the intricate social dynamics and complications arising from these difficulties.¹⁶

The law serves as a social institution in communal life, reflecting the values upheld by the society.¹⁷ This implies that the substance of the law should be flexible enough to adapt to the evolving desires of the society, not only in terms of new ideas, but also to serve as a foundation for predicting future economic, social, and political advancements.¹⁸ Given that the law is a manifestation of the society, it will prove challenging to compel community members to adhere to approaches that are not grounded in the values and traditions of their society. This dynamic ultimately leads to a conflicting relationship between the enforceable law and the law practiced within the society, even in the context of divorce. Consequently, compelling society to comply with rules that contradict deeply ingrained societal norms and beliefs will prove to be arduous.¹⁹

The general perception that divorce can be conducted without any spatial or temporal constraints, as long as it adheres to the principles and criteria of Islamic jurisprudence, contradicts the legal regulations that mandate divorces to be carried out exclusively in a court of law. This legal requirement is considered a state law and

¹⁴ Rifyal Ka'bah, *Hukum Islam Di Indonesia: Perspektif Muhammadiyah Dan NU, Universitas Yarsi Jakarta, Ke-1* (Jakarta: Universitas Yarsi, 1999), p. 23.

¹⁵ Musthafa MUhammad Az-Zaqra, *Hukum Islam Dan Perubahan Sosial (Study Komparatif Delapan Mazhab)* (Jakarta: Rineka Cipta, 2000).

¹⁶ hamid And Putra, "The Existence of New Direction In Islamic Law Reform Based On The Construction Of Ibnu Qayyim Al-Jauziyah's Thought."

¹⁷ Asrul Hamid and Dedisyah Putra, "Pemenuhan Nafkah Keluarga Dengan Bekerja Di Bank Konvensional: Suatu Pendekatan Maqashid Syariah," *El-USRAH: Jurnal Hukum Keluarga* 2, no. 1 (2020).

¹⁸ Amrullah Ahmad SF dkk, *Dimensi Hukum Islam Dalam Sistem Hukum Nasional, Gema Insani Press* (Jakarta: Gema Insani Press, 1996).

¹⁹ Mushafi Mushafi and Ismail Marzuki, "Persinggungan Hukum Dengan Masyarakat Dalam Kajian Sosiologi Hukum," *Jurnal Cakrawala Hukum* 9, no. 1 (2018).

is deemed incompatible with the Islamic law. The remnants of this colonialism mentality are still evident throughout the society.²⁰

The perceived differentiation and dichotomy between Islamic jurisprudence and statutory regulations, particularly in relation to divorce law, suggests that statutory regulations may be seen as conflicting with the Islamic law. As a result, there is a societal inclination to prioritize the legal principles found in fiqh over those found in statutory regulations. This occurs, whether intentionally or unintentionally, due to the influence of a paradigm that asserts that the application of Islamic principles does not necessitate government involvement, in essence, advocating for the separation of religion from the affairs of the nation.²¹

If a society adopts this paradigm, it will consistently reject the laws established by the government, despite the government's focus on implementing policies that emphasize the well-being of all citizens.²² The principle of welfare serves as the foundation for determining the outcome of divorce cases in court. Its purpose is to ensure a fair and equitable process, allowing each party to assert their rights. The primary objective is to guarantee that all legal consequences resulting from the divorce are addressed, thereby upholding justice and legal certain.²³

The occurrence of divorce outside the jurisdiction of the Religious Court is a prevalent societal practice, which is also observed within the Mandailing Natal community. There are other elements contributing to this issue, with the primary one or the first one being the strong adherence to specific schools of thought and the reverence for fiqh (Islamic jurisprudence),²⁴ This deep theological understanding often leads to a reluctance to accept alternative viewpoints. This deep theological understanding often leads to a reluctance to accept alternative viewpoints.

The lack of clarity in society's understanding of the terms sharia, fiqh, and the Islamic law leads to the ironic perception that fiqh is an immutable aspect of the religion, incapable of being altered or interpreted. The Mandailing Natal community frequently encounters this situation, as they prioritize the *Syafi'iyah* fiqh over the legal provisions while dealing with divorce cases. Consequently, as per the consensus of the community, it is deemed unnecessary to bring this issue to the Religious Court for resolution. This is because, according to the interpretation of *Syafi'iyah* fiqh by local educators, religious scholars, and Islamic scholars, divorce does not mandate a formal court hearing. Indeed, the implementation of fiqh is

²⁰ Asrul Hamid, "Praktik Perceraian Masyarakat Mandailing Natal: Analisis Keberlanjutan Dari Fiqh Kepada Hukum Perkawinan Di Indonesia."

²¹ Nurhadi, "Perceraian Di Bawah Tangan Perspektif Hukum Islam Dan Hukum Indonesia," *Jurnal Syari'ah & Hukum* 1, No. 2 (2019), p. 179.

²² Asrul Hamid, "Syirkah Abdan Dalam Perspektif Mazhab Syafi'i: Analisis Kontekstualisasi Fikih Islam Kontemporer," *Islamic Circle* 1, No. 1 (2020), p. 76–77.

²³ Latifah Ratnawaty, "Perceraian Di Bawah Tangan Dalam Perspektif Islam Dan Hukum Positif," *Yustisi* 4, no. 1 (2017).

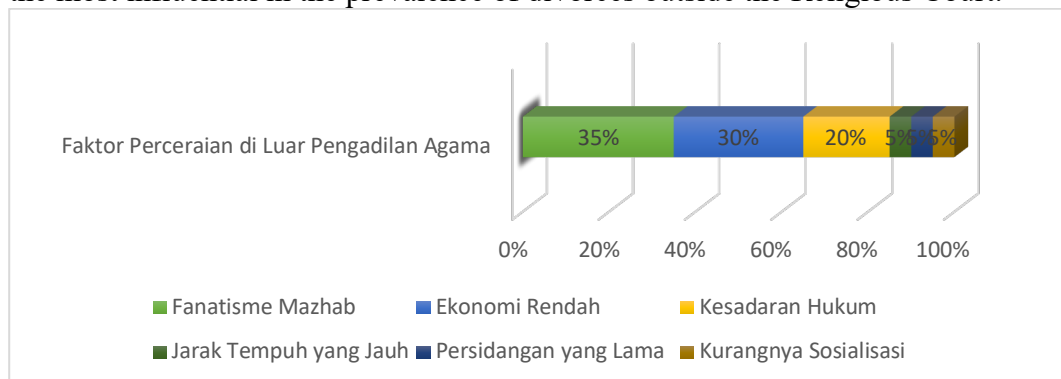
²⁴ Results of research on the Mandailing Natal community regarding divorce outside the Religious Courts.

inherently intertwined with the impact of temporal, spatial, and situational changes that occur during its application.

Second, despite the fervent devotion to schools of thought and the sanctity of fiqh, there are individuals who recognize the advantages of obtaining a divorce through a court due to the relatively poor economic status of the society. However, the low economic status is a significant factor contributing to the high divorce rate in the Mandailing Natal group. This is mostly because the majority of individuals in the community work as farmers, earning insufficient or inconsistent wages, which often leads to financial strain during legal proceedings. Providing *pro bono* legal representation, the budget allocated for the less fortunate is insufficient to handle all the cases that arise. The budget is only sufficient for 40-50 individuals per year, whereas the number of less fortunate individuals seeking divorce exceeds that. Consequently, the society opts to pursue divorce proceedings unregistered at the Religious Court.²⁵

Third, the occurrence of divorces outside the Religious Court can be attributed to a lack of legal understanding among individuals. This is mostly due to the low level of public attention and the perception that the issue is insignificant. Additionally, the limited education opportunities resulting from economic circumstances also contribute to this phenomenon. The correlation between economic status and lower educational attainment is a mutually reinforcing cycle that poses challenges for resolution.²⁶

Various factors contribute to the preference for divorcing outside the Religious Court in the Mandailing Natal community. The primary factors include the significant distance to the Religious Court, lengthy trial proceedings, and limited community awareness,²⁷ while other factors may play a role, these three factors are the most influential in the prevalence of divorces outside the Religious Court.



Reasons for the unregistered divorces to religious court Mandailing Natal Society

²⁵ Research conducted in Mandailing Natal Society on divorce outside Religious court

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Legal Ramifications of Unregistered Divorce in the Mandailing Natal Community Religious Court

In the complex social reality of Indonesia, there exists a duality of legal systems that are believed in and enforced by its people. These systems, known as formal and non-formal law, play a crucial part in shaping the thought, character, and behavior of the society. Formal law refers to a system of rules established by the government to safeguard the rights of the community. On the other hand, non-formal law pertains to unwritten rules that have originated and are upheld by the community itself, and with the aim of protecting the community's rights in an informal manner.²⁸

In the Indonesian context, the discourse aligns with the introduction of legal regulations that govern marriage matters and the resulting legal implications. Specifically, Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, commonly referred to as the Marriage Law, addresses all aspects of marriage and its legal consequences, including divorce. Consequently, these matters are no longer considered private, as the government, through the Religious Court, intervenes as an official institution to resolve them. Hence, it is imperative for the society to adhere to the laws established by the government, in addition to obeying the laws of Allah SWT. This is because legal regulations are implemented to enhance the quality of people's lives. It is a fact that a significant number of individuals continue to disregard the law and perceive it as intimidating.²⁹

The convergence of the relevant legal systems is an inevitable reality in Indonesia, where at least three legal systems coexist and govern the society: customary law, western law (civil), and Islamic law.³⁰ The three legal systems seeks for influence to establish themselves as the national legal system, while operating within the framework of democratization as national legal eclecticism. This includes the Islamic legal system, which does not want to impose Islamic law as a dominant and coercive force on the society.³¹

Throughout the history of law implementation, it is evident that the Islamic law has had a substantial role in shaping national law. This is exemplified by the creation of the Marriage Law and the Compilation of Islamic Law (KHI), which align with Islamic principles. This implies that the reestablishment of the Islamic law,

²⁸ Komisi Yudisial Republik Indonesia, *Bunga-Rampai-KY-2014-Problematika-Hukum-Peradilan-Di-Indonesia*, Cetakan Pertama (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2014).

²⁹ Qodariah Barkah, "Kontekstualisasi Hukum Keluarga Islam Di Indonesia," *Jurnal Hukum Islam*, (2018), p. 95.

³⁰ Lutfi Asy-Syaukanie, *Positivisasi Syari'ah*, Dalam Buku "*Syari'at Islam Yes Syari'at Islam No*" (Jakarta: Paramadina, 2001), p. 155.

³¹ Ahmad Qodri Azizy, *Eklektisisme Hukum Nasional* (Yogyakarta: Gama Media, 2002), hlm. 9.

which has been authorized, should be considered as an integral component of the Islamic law.³²

From a legal standpoint, the enactment of the Marriage Law and the Compilation of the Islamic Law (KHI) was intended to ensure legal certainty and protection for all legal actions, as stated by A. Gani Abdullah explains that: a legal act is an action that is performed in accordance with the law and therefore has legal consequences, meaning that the outcomes of the action are legally protected. Conversely, an action that is not performed in accordance with the rules of law is not considered a legal act, even if it is not necessarily against the law and has not resulted in any consequences that are recognized or protected by law.³³

Regarding the aforementioned legal theory, engaging in divorce proceedings outside of the Religious Court is not considered a lawful action as it does not adhere to legal regulations, resulting in the absence of legal repercussions. If a spouse initiates a legal case with the Religious Court based on the "divorce occurring outside of the Religious Court," it is deemed as if the divorce never took place.

When judges handle a divorce case, they evaluate whether the grounds for divorce align with Article 39 paragraph (2) of Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, as well as Article 19 of Government Regulation No. 9 of 1975 and Article 116 of the Compilation of Islamic Law (KHI). If the grounds are not in accordance with these laws, the divorce case is rejected, even if the husband and wife have already divorced outside of court. This is because divorces that occur outside of court are considered to have never happened, a concept known as "*wujuduhu ka'adamih*" (it exists as if it did not exist).³⁴

Similarly, according to Article 18 of Government Regulation Number 9 of 1975 and Article 123 of the Compilation of Islamic Law (KHI), divorce is only recognized when it is declared before a court. This is in contrast to Article 81 of Law Number 7 of 1989, which states that a divorce is considered to have taken place and has legal consequences once the court decision becomes legally binding. Consequently, unregistered divorces are not considered legally valid.

Based on observations of several cases that occurred in the Mandailing Natal community regarding the legal consequences of unregistered divorces, one of which is that the former husband/wife cannot fight for their respective rights and obligations after the divorce, including the division of joint property obtained during their marriage, in this case more ex-wives are often disadvantaged because they are considered weaker than their ex-husbands, then the *mut'ah* maintenance, *'iddah*

³² Asrul Hamid And Putra, "The Existence of New Direction In Islamic Law Reform Based On The Construction Of Ibnu Qayyim Al-Jauziyah's Thought."

³³ A. Gani Abdullah, *Tinjauan Hukum Terhadap Nikah Di Bawah Tangan, Mimbar Hukum No. 23, 1995*, (Jakarta: Al-Hikmah dan Ditbinbapera, 1995), p. 47-48.

³⁴ Mukti A Arto, *Masalah Pencatatan Perkawinan Dan Sahnya Perkawinan, Mimbar Hukum* ((Jakarta: Al-Hikmah dan Ditbinbapera Islam, 1993), p. 51.

maintenance, *maskah* and *kiswah* during the *'iddah* period are also not received by the ex-wife.³⁵

Furthermore, the cost of *hadhanah* for children born from their marriage before reaching the age of 21 in the form of living expenses, education, health and future security are also often not obtained, finally the child becomes a victim of the selfishness and indifference of his parents. It was even found that a woman who had been widowed was forced to sell herself to become a "prostitute" in order to be able to earn a living and pay for her child's needs because her ex-husband no longer cared about their child's needs.³⁶

In addition, there was also a triple divorce pronounced at once by a husband to his wife and witnessed by the community, then the husband regretted it and the case was submitted to the Religious Court, however, the Religious Court considered the divorce that had never existed because it was not in accordance with the procedures of the laws and regulations, and the judge ordered the husband/wife to get back together, while the community considered the divorce to have occurred and was valid, finally resulting in the husband/wife being ostracized from the community by expelling them from their residence.³⁷

The legal consequences related to divorce outside the Religious Court are also often found, namely if one or both of the former husband/wife who wants to marry their new partner, it is not possible to register the marriage at the Religious Affairs Office (KUA) because in the state documents they are still listed as a legal husband/wife and have not divorced. Finally, many former husbands/wives who want to remarry choose to have an underhand marriage without being registered.³⁸ This choice of marrying underhand is actually not the right solution or answer to their problems but instead creates new problems for them and their children in the future.

The legal consequences mentioned above are just a fraction of the numerous issues that arise in divorce cases conducted outside the Religious Court in the Mandailing Natal community. It is essential for the government to regulate divorce proceedings through a court hearing to prevent any harm to the former spouses, their children, families, and society at large. This will ensure that the objectives of the law, namely legal certainty and order, are achieved.

Philosophical examination of the regulations governing the legal outcomes of divorce in non-religious courts

³⁵ Observation in society Mandailing Natal regarding the negative impact of divorce unregistered at Religious Court

³⁶ Observation in society Mandailing Natal regarding the negative impact of divorce unregistered at Religious Court

³⁷ Observation in society Mandailing Natal regarding the negative impact of divorce unregistered at Religious Court

³⁸ Observation results among the Mandailing Natal community regarding the legal consequences of divorce outside the Religious Courts.

Human nature inherently includes a longing and drive to pursue justice and truth in one's life. To uphold this, it is essential to establish legal regulations that can ensure this pursuit. This aligns with the purpose of Islamic law, which is to articulate its qualitative accomplishments in order to achieve the well-being of the people.³⁹

The rapid development of dynamics in the society necessitates social change, which in turn requires modifications to the existing system, including values and laws. Furthermore, the presence of solidarity in society is influenced by the law.⁴⁰ Therefore, it is evident that the factors driving social change are closely linked to the impact of the applicable legal framework.

The prevailing social structure and societal dynamics have the potential to shape social transformation, impacting the values, attitudes, and conduct of the community. Consequently, alterations in one domain can reverberate across other domains. Hence, when confronted with legal predicaments, it is crucial to assess the extent to which legal modifications can engender change in other spheres. This examination also sheds light on the efficacy of the Islamic law in addressing contemporary issues, such as the legal ramifications of divorce outside the purview of the Religious Court.⁴¹

When examining the legal ramifications of divorce outside the Religious Court following the implementation of the Marriage Law and the Religious Court Law, the first step is to assess whether these regulations align with Islamic law or if they create conflicts.

To analyze this problem, it is important to refer to Surah An-Nisa' (4), verse 59 in the Qur'an:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

Meaning: O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger, if you 'truly' believe in Allah and the Last Day. This is the best and fairest resolution (Q.S An-Nisa' (4): 59).⁴²

This verse implies that Muslims are obligated to obey "ulil amri" alongside their obedience to Allah and His Messenger. Regarding the significance of "ulil amri" in relation to the preceding verse, specifically Surah An-Nisa' (4) verse 58

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ...

³⁹ Dedisyah Putra and Asrul Hamid, "Tinjauan Maqashid As-Syari'Ah Terhadap Perlindungan Anak Panti Asuhan Siti Aisyah Kabupaten Mandailing Natal," *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial* 10, no. 1 (2020), p. 1–22.

⁴⁰ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: RajaGrafindo Persada, 2013), p. 96.

⁴¹ Ellya Rosana, "Hukum Dan Perkembangan Masyarakat," *Jurnal TAPIS* 9, no. 1 (2013).

⁴² Kementerian Agama Republik Indonesia, *Al-Qur'an Dan Terjemahnya, Al-Qur'an Dan Terjemahnya*, 2010. Q.S An-Nisa' (4), p. 59.

Meaning: *O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger, if you 'truly' believe in Allah and the Last Day. This is the best and fairest resolution (Q.S An-Nisa' (4) : 58).*⁴³

The verse above implies that believers have been granted the authority by Allah SWT to establish rules or ordinances. Islamic law is derived from the Koran, Hadith, and rulings of Ulil Amri. The power to create laws or regulations by Ulil Amri must be grounded not only in justice but also in the welfare of society, in line with the principles of fiqhiyah.

تصرف الإمام على الراعية منوط بالمصلحة

Meaning: *A leader's policy towards their people should be focused on maximizing the welfare and advantage.*⁴⁴

In the modern context, the interpretation of ulil amri in Surah An-Nisa' (4) verse 59 as "legitimate government" with its legal instruments is more precise. This implies the necessity of legal principles that act as guidance to prevent the occurrence of legal dualism in society. This is in conformity with the principles of fiqh.

حكم الحاكم يرفع الخلاف

Meaning: *The law of the judge eliminate the differences.*⁴⁵

These provisions indicate that when the ulil amri (government/judge) establishes laws as outlined in statutory regulations, these regulations can resolve disagreements by establishing the applicable laws that must be followed, obeyed, and implemented to address a problem. Consequently, the government has established regulations for divorce by enacting the Marriage Law and the Religious Courts Law, which align with the Compilation of the Islamic Law (KHI). These regulations include the requirement that divorce proceedings must take place in a court setting. These laws solely govern matters of formality, whereas the substantive law applied continues to be Islamic law.

There are multiple significant justifications for divorce to be finalized through a court hearing. Firstly, it compels the husband to exercise caution and contemplate the legal ramifications of his decision before proceeding with the divorce. Furthermore, by employing a panel of judges to assess and manage the case, it is anticipated that the right to divorce will be executed accurately and exclusively in urgent circumstances. Furthermore, the court assumes the role of an impartial arbiter responsible for mediating between the two sides. Furthermore, the court has

⁴³ Kementrian Agama Republik Indonesia. Q.S An-Nisa' (4), p. 59.

⁴⁴ H.A.Djazuli, *Kaidah-Kaidah Fikih (Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis)* (Jakarta: Kencana Prenada Media Group, 2006), p. 15.

⁴⁵ Jalaluddin as-Suyuti, *Al-Asybah Wan Nazhair* (Beirut: Darul Kutub Ilmiah, 2019), p. 34.

the authority to ensure that the rights and responsibilities of each party are protected as a direct result of the divorce.⁴⁶

Given the significant detrimental consequences of divorce in non-Religious Courts, it is imperative that the issue of "divorce" is not treated as a private affair that the government should refrain from intervening in. Rather, it is not only the responsibility of the government, but also their duty to regulate it, as they are tasked with safeguarding and ensuring the well-being of their citizens in accordance with the provisions of the 1945 Constitution and Pancasila.

The government's provisions on divorce regulations are designed to address issues related to the objectives of Islamic law. These provisions reflect the government's concern for human values by rejecting anything that may lead to negative consequences, in accordance with the rules of fiqh:

درء المفساد مقدم على جلب المصالح

Meaning: *It is preferable to resist harm rather than to take advantage.*⁴⁷

If there is a balanced or paradoxical relationship between damage and benefit, it is more advisable to reject things that cause hurt rather than pursue things that bring advantage. This is because the act of rejecting harm demonstrates wisdom, which will inevitably lead to the attainment of benefit.⁴⁸ and serving as a fundamental pillar in Islamic teachings. Put simply, Islamic law encompasses the fundamental principles and practices of Islamic teachings, encompassing both ideology and lifestyle⁴⁹ In order to ensure that Islamic law is perceived as the primary basis in the ideology of Islamic teachings, which serves as a tangible embodiment of the divine will of Allah SWT. Islamic law.⁵⁰ Islamic law, also known as Sharia, is a religious code that governs human conduct in all areas of life, both personal and societal, with the aim of promoting beneficial outcomes in accordance with Islamic principles.⁵¹

The content of Islamic law explicitly embodies the message, directives, and divine intent of Allah SWT, while also providing indications for human comprehension. Thus, while Islamic law is considered divine, it is imperative for people to have the capacity to articulate it.⁵² Islamic law, also known as Sharia, is a

⁴⁶ Tahir Al-Haddad, *Wanita Dalam Syari'at Dan Masyarakat*, Terj. M. Adib Bisri (Jakarta: Pustaka Firdaus, 1993), p. 87.

⁴⁷ H.A.Djazuli, *Kaidah-Kaidah Fikih (Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis)*.

⁴⁸ Asy-Syathibi, *Al-Muwafaqat Fi Ushul Fiqh*, ed. Abdullah Darraz, 2nd ed. (Beirut: Dar al-Ma'rifah, 2010).

⁴⁹ Joseph Scacht, *An Introduction to Islamic Law* (London: Clarendon Press, 1996), p. 1.

⁵⁰ Sayed Husen Nasr, *Ideas and Realities of Islam* (London: Unwin Paperbacks, 1979), p. 93.

⁵¹ Frederick Mathewson Denny, "Islamic Theology in the New World: Some Issues and Prospects," *Journal of the American Academy of Religion* 62, no. 4 (1994), p. 1069–84.

⁵² Herbert J. Liebesny, Noel J. Coulson, and Chafik Chehata, *Conflicts and Tensions in Islamic Jurisprudence, The American Journal of Comparative Law*, vol. 18 (Chicago: The University of Chicago Press, 1970), p. 221.

religious code that governs human conduct in all areas of life, including individual and collective behavior. It aims to promote beneficial outcomes in conformity with the principles of Islam, as expressed by the word "*shahih li kulli masa wa makan.*"

Conclusion

Based on the explanation of the research conducted related to the legal consequences regarding the phenomenon of divorce outside the Religious Court in the Mandailing Natal community is as follows: The phenomenon of the increasing occurrence of divorce outside the Religious Court in the Mandailing Natal community is caused by various factors, the most dominant of which is first, the community's understanding regarding the rules that divorce can be done anywhere and anytime as long as fulfilling the pillars and requirements of divorce. This is the result of religious understanding by teachers, ustadz, and local ulama based on *Shafi'iyah* fiqh, so that fanaticism of the school of thought arises and the fiqh is too sacred so that it does not accept other opinions that differ from it. Second, the relatively low economic level, because they only work as farmers with inadequate income, finally this economic problem is not only a trigger for divorce but also causes people to divorce outside the Religious Court, because even prodeo litigation is limited due to the Religious Court budget. which is not enough. Third, the lack of public awareness due to low concern and considering it trivial, this is also inseparable from the low level of education and economic factors as well. In addition, there are still several factors that influence so that the phenomenon of divorce outside the Religious Court is still rampant, such as the long distance to the Religious Court, the trial takes a long time, the lack of socialization to the community regarding the harm when carrying out a divorce outside the Religious Court. In order to prevent negative consequences for both parties involved, including the former spouses, children, extended family, and society as a whole, it is crucial to highlight the importance of government intervention in establishing clear guidelines for divorce proceedings. This intervention is necessary to promote well-being and prevent significant harm, ultimately ensuring that the objectives of the law, such as legal certainty and social order, are achieved.

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