

Review Of Islamic Law On The Settlement Of Divorce Cases On The Groundsthat One Ofthe Parties Is Anapostate

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ABSTRAK

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There are many factors that lead to divorce, such as infidelity and financial problems. But what is rarely discussed is divorce as a result of one of the spouses choosing to become an apostate. An apostate in Islamic law is a party that decides to turn away from Islam to another religion. This study aims to determine the review of Islamic law on the settlement of divorce cases on the grounds that one of the parties is an apostate. This type of research is a type of descriptive qualitative research. Methods of data collection using documentation techniques. The results of the study found that in Islamic law, apostasy cannot be used as a reason for divorce. Except as stated in Article 116 letter h in the Compilation of Islamic Law (KHI).

1. Introduction

Islam is a perfect religion that has regulated all aspects of human life, as a form of realization of how great and powerful the Creator is. The boundaries that have been set become the standard for fulfilling pillars and conditions so that the relationship that is formed becomes a legitimate thing to live.

Marriage is an important event in one's life. The definition of marriage according to the Compilation of Islamic Law is a very strong contract or mitsaqongholidhon to obey Allah's commands and carry them out as worship (Yustisia, 2004)

Marriage is something that is very sacred and cannot be separated from religious rules, which basically aim to form a happy family. At this time the meaning of marriage which is very sacred is experiencing a shift in values, so many marriages end in divorce. Marriage also has enormous urgency in the lives of individuals and nations. Islam has stated the great urgency of this marriage and explained its great influence in many verses of the Qur'an and Sunnah. (Umar, 2015)

In Marriage is bound to have trials and strife. Husband and wife must be good at managing emotions and think of the right solution to deal with problems. There are families that make it through these problems, but there are also those that end in separation. The Islamic religion allows divorce as the final solution for husbands and wives who have failed to build a household, even though Allah actually hates divorce.

There are many factors that lead to divorce, such as infidelity and financial problems. But what is rarely discussed is the divorce caused by one of the spouses choosing to become an apostate. deep apostasyShari'at Islam is the party that decides to turn away from Islam to other religions. For this reason, perhaps divorce caused by apostasy can be called apostate divorce.

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What is meant by apostasy in relation to divorce based on positive law in Indonesia, is apostasy which is carried out officially, with evidence that can give rise to legal certainty. This is in accordance with the Letter of the High Islamic Court dated January 7, 1939 No. A/6/9 which states that apostasy must be proven before the trial of the Religious Courts. And apostasy is done without coercion, so that as a result of apostasy, marriage cannot possibly last forever.

Based on the analysis of these problems, the purpose of this research is to find out a review of Islamic law on the settlement of divorce cases on the grounds that one of the parties is an apostate.

2. Literature Review

2.1 Marriage In Islam

The word marriage comes from the Arabic nikaahun which is masdar from the verb nakaha. The synonym tazawwaja is then translated into Indonesian as marriage. According to the language, the word marriage means al-dhammuwa al-tadaakhul (overlapping and inserting). Therefore, according to the custom of the Arabs, the friction of a clump of trees such as bamboo due to the wind blowing is termed tanaakahatilyjar (that grove is mating), because the wind blows cause friction and the entry of one clump to another. (Judge, 2008).

According to some Hanafiyah scholars, marriage is a contract that benefits (results in) ownership for pleasure consciously (intentionally) for a man and a woman, especially in order to obtain biological pleasure. Meanwhile, according to some of the Maliki schools of thought, marriage is an expression (designation) or title for a contract that is carried out and is intended to achieve (sexual) pleasure solely. According to the Syafi'iyah school, marriage is defined as "a contract that guarantees ownership for intercourse by using the editorial (pronunciation) "inkah or tazwij or derivative meanings of both". Whereas Hanbilah scholars define hand marriage as "a contract carried out using the word inka or tazwij in order to get pleasure (happy)" (Mardani, 2011)

Meanwhile, according to fiqh terms, marriage means a contract (agreement) that contains the permissibility of having sexual relations by using the words (lafaz) of marriage or tazwij. Marriage is a contract that justifies association by limiting rights and obligations, and mutual help between a man and a woman who is not a mahram (Rasjid, 2008).

2.2 Divorce

Divorce is the breaking up of a legal marriage before a court judge based on the conditions determined by law. Therefore, it is necessary to understand the soul of the regulations regarding divorce and the causes and consequences that may arise after the husband and wife break up. Then no less urgency are the reasons underlying the breakup of the marriage and the reasons why the divorce occurred.

Divorce can only occur if it is done before the court, be it the husband because the husband has imposed a divorce (thalaq), or because the wife is suing for divorce or applying for divorce rights because of sighthaklik divorce. Even though in Islamic teachings, divorce is considered legal if it is said immediately by the husband, but it must still be carried out before the court. The aim is to protect all rights and obligations arising from the legal consequences of the divorce.

In the eyes of the law, divorce certainly can't just happen. That is, there must be reasons justified by law for carrying out a divorce. That is very basic, especially for the court which incidentally has the authority to decide whether a divorce is appropriate or not to be implemented. Including all decisions concerning the consequences of divorce, it is also very much determined by the reasons for carrying out the divorce. For example, the issue of child custody, the obligations of ex-husbands to ex-wives and vice versa, as well as the distribution of mutual assets (Budi, 2007).

2.3 Apostate

Apostasy in the Big Indonesian Dictionary says that apostasy is turning back, turning infidel. Not much different from the formulation above, in the Encyclopedia of Islam it is stated that apostasy is leaving the religion of Islam in the form of intentions, words, and actions that cause a person to become an infidel or have no religion at all.

An apostate is a person who was previously a Muslim, wise and mature, then left Islam. The act of apostasy is the most vile and worst type of disbelief, absolutely (Muhammad, 2009)

2.4 Islamic law

The term Islamic law consists of two words derived from Arabic, namely the word law and the word Islam. The word Law means provisions and decrees. While the word Islam is contained in the Qur'an, namely the noun derived from the verb "Salima" which then becomes Islam which means peace, prosperity, safety and submission and self-compliance (Arifin, 2008). So it can be concluded that etymologically Islamic law is all kinds of provisions or provisions regarding one matter where the provisions have been regulated and determined by the Islamic religion. Al-Qur'an as a source of Islamic law. In terms of

terms, Islamic law according to Islamic teachings as stated by Abdurrauf, law is regulations consisting of provisions, orders and prohibitions, which give rise to obligations and or rights.

3. Methodology

This type of research is a type of descriptive qualitative research. The object which is the point of concern of a study, then the point of attention in this research is in the form of the substance of the problem or phenomenon studied, namely the settlement of divorce cases on the grounds that one of the parties is apostate in the perspective of Islamic law.

The type of data used in writing this article is secondary data obtained from literature obtained online in the form of journals and theses related to the problem under study. In collecting data, the researcher uses documentation techniques, namely by collecting data sources which are carried out through document searches by utilizing online written documents relating to the aspects studied. Then the data was analyzed using descriptive analytical method to get a broad and detailed picture of the object of study in this article.

4. Results and Discussion

In Islam, divorce is also known as talak. Divorce which means removing the marriage bond or reducing its attachment by using certain words, releasing the marriage bond and ending the husband and wife relationship, and releasing the marriage bond by saying divorce or something equivalent to that. Divorce is a legal action that is permitted by religion during an emergency that can be carried out by a husband and wife if the household cannot be maintained in its integrity and continuity. The emergency in question is if you have tried with various steps to find peace between the two, either with the judge (mediator) or other steps that have not produced results (Husnatul, 2018).

There are various factors of divorce, one of which is rarely discussed is apostate divorce. In Islamic law the equality of beliefs is a sacred thing in marriage. Therefore, when one of the parties decides to change their beliefs, the legal consequences as written by Muhammad Az-Zuhri in his book entitled *As-SirojulWahhaj* can be explained as follows:

1. When he apostates after marriage but has not yet had sexual intercourse, divorce occurs automatically.
2. If a husband and wife have had sexual intercourse, then one of the parties apostates, then the marriage ties of both are suspended. Couples are not allowed to have intercourse again after that.
3. Meanwhile, if this apostasy continues until the iddah period is over, then one divorce will occur (there is a risk from this point, namely when one of the parties wants to return to marriage, then as long as they have divorced once or twice, both parties may remarry in harmony marriage that must be fulfilled again like the beginning of the marriage before falling divorce)
4. The case is different, if during the iddah period the apostate party decides to convert to Islam again, then the marriage will continue without divorce.

From the argument of the opinion above as in the Word of Allah SubhanahuwaTa'ala.

وَلَا تُمْسِكُوا بِعَصَمِ الْكُوفِرِ

"And do not stick to the rope (marriage) with disbelieving women" [al-Mumtahanah/60: 10]

The above argument is not in line with the divorce law in force in the religious courts. The implementation of divorce must be based on a logical reason, because divorce is the last resort that will be taken by husband and wife, if the other efforts that have been tried previously cannot restore the integrity and harmony of life in the family. The reasons that can be used by a husband or wife to apply for a divorce to the Religious Courts are contained in Article 39 paragraph (2) of Law Number 1 of 1974 in conjunction with Article 19 of Government Regulation Number 9 of 1975 in conjunction with Article 116 Compilation of Islamic Law . These reasons include:

1. One of the parties commits adultery or becomes a drunkard, addict, gambler, and so on which is difficult to cure;
2. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without valid reasons or for other reasons beyond his control;

3. One of the parties gets a prison sentence of 5 (five) years or a more severe punishment after the marriage takes place;
4. One of the parties commits cruelty or serious persecution that endangers the other party;
5. One of the parties has a physical disability or illness which causes them to be unable to carry out their obligations as husband or wife;
6. Between husband and wife there are constant disputes and fights and there is no hope of ever living in harmony in the household;
7. Husband violates the taklik divorce;
8. Conversion of religion or apostasy which causes disharmony in the household.

Based on the six points of the article above, apostasy cannot be used as a reason for divorce. Except as stated in Article 116 letter h in the Compilation of Islamic Law (KHI). At that point it is clearly stated that to divorce on the grounds that one of the parties has apostasy if there is conflict or disharmony as a result of that apostasy.

So that it is not only the apostasy of the husband or wife that must be proven in court. Discord in the household due to apostasy must also be proven in court by the party filing for divorce. Proof of disharmony in the households of the litigants must be assessed by the Panel of Judges in Court by first determining the quality of disputes and quarrels between husband and wife.

Changes in religion or apostasy can actually affect the validity of a marriage, as well as the legal consequences for children born from these marriages will also have an effect, especially in terms of inheriting those who have died when their parents apostate. It's just that Islamic law has not specifically emphasized this issue. Based on the judge's consideration through legal facts that have been proven in court, that the Respondent had apostatized or left Islam, thus the judge determined that the decision on the divorce case was terminated by fasakh because the Respondent's apostasy had damaged the marriage which caused disharmony in the household.

Legal provisions with apostasy as a reason for divorce as set forth in Article 116 letter (h) of the Compilation of Islamic Law as explained above, must fulfill the three elements that must be considered, namely: legal certainty, benefits and justice, certainty, justice and legal benefits. Furthermore, the judge's considerations applying the considerations mentioned above, the Panel of Judges concluded that the reasons for the divorce proposed by the applicant/ plaintiff could be qualified as part of the explanation of Article 39 Law Number 1 Year 1974 jis. Article 19 letter (f) Government Regulation Number 9 of 1975 and Article 116 letter (h) Compilation of Islamic Law of 1991,

The judges at the BireuenSyar'iyah Court generally take the legal basis in giving decisions on Law No. 1 of 1974 concerning Marriage, Law no. 7 of 1989 concerning the Religious Courts Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning the Religious Courts, Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law and Government Regulation No. 9 of 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage.

The Panel of Judges is of the opinion that based on the facts as described, that between the Petitioner/Plaintiff and the Respondent/Defendant there is no longer peace and harmony in fostering a household because there have been continuous disputes and quarrels indicating the absence of the desire of the Petitioner/Plaintiff to accept the Respondent/Respondent/Defendant again, so continuing a household like this will actually cause greater harm than benefits because the purpose of marriage is to form a happy and eternal family, loving and respecting each other as stipulated in Articles 1 and 33 of Law Number 1 of 1974 in conjunction with Article 77 verses (1), (2), (3) and (4) The Compilation of Islamic Law has not materialized as indicated in the Koran letter ar-Rum verse 21: (Fadhilah, 2020)

. بَيْنَكُمْ مَوَدَّةٌ وَرَحْمَةٌ إِنَّفِيدُوا لِكَلِمَاتِهِ لِقَوْمٍ يُتَفَكَّرُونَ . Amen

Meaning: "And among the signs of His power is that He created for you wives of your own kind, so that you are inclined and feel at ease to him, and He made them between you with love and affection. Verily, in that there are signs for people who think."

Then if the separation of the Petitioner/Plaintiff from the Respondent/Defendant is indeed a damage (mafsadah) for the domestic life of the Petitioner/Plaintiff and the Respondent/Defendant. However, if their marriage is maintained, it is also a damage (mafsadah). Because, in the households of the Petitioner/Plaintiff and the Respondent/Defendant there is no longer any harmony, peace, peace and happiness because in the households of the Petitioner/Plaintiff and the Respondent/Defendant there are always disputes and quarrels. Therefore, the Panel of Judges concluded that if two mafsadah (damage) face each other, then the legal solution is to see which mafsadah (damage) is less due to the danger posed by the two. This is in accordance with the rule of fiqh which reads:

إذا تعارض المفسدان ارتكبا خفيهما ضررين

Meaning: "If there is a conflict between the two mafsadah/damage, then the way out is to see which harm is less the result of the two".

In addition, if the Petitioner/Plaintiff and the Respondent/Defendant are reunited and then carry out household life as usual, there will indeed be benefit in it because it can maintain the integrity of the household and maintain the dignity of the family of both the Petitioner/Plaintiff and the Respondent/Defendant. The provisions of Article 116 letter (h) of the Compilation of Islamic Law mentioned above do not only depend on the conditions for divorce on the reason "there has been a conversion of religion (apostasy) by one of the parties in the marriage", but are also bound to depend on the condition "the occurrence of disharmony in the household due to the apostate." That is, the reasons for divorce according to Article 116 letter (h) must fulfill 2 (two) inseparable legal qualifications, namely:

- a. There is a conversion of religion (apostasy) by one of the parties in the marriage, namely the husband or wife;
- b. There is disharmony in the household due to the conversion of religion (apostasy).

This qualification contains legal consequences that conversion of religion (apostasy) by one party in a marriage which does not result in disharmony in the household cannot be a reason for divorce. If the household remains harmonious after the husband or wife has apostatized, then the party who remains Muslim does not have any reason to file a divorce claim at the Religious Courts. Thus, the provisions of Article 116 letter (h) of the Compilation of Islamic Law must be read as follows: "Apostasy (religious conversion) can be a reason for divorce, only if the conditions after the occurrence of apostasy have an impact on the occurrence of a form of disharmony in the household of the party filing for divorce". It is not only the husband's or wife's apostasy that must be proven in court.

5. Conclusion

Based on the results and discussion, it can be concluded that in Islamic law, apostasy cannot be used as a reason for divorce. Except as stated in Article 116 letter h in the Compilation of Islamic Law (KHI). At that point it is stated that to divorce on the grounds that one of the parties has apostasy if there is conflict or disharmony as a result of that apostasy.

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