

The Impacts of a *Fatwa* (Edict) From Aceh Ulema Council (Mpu) Number 2 of 2015 Concerning *Talak* (Divorce) Without Court Proceedings

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Abstract:

Background: The Aceh Ulema Council (MPU) Aceh has issued a fatwa (edict), that is, Fatwa Number 2 of 2015 concerning *Talak* (divorce). Essentially, the result of the decision in point 3 claimed that divorce by a husband without having to go through court proceedings and divorce without witnesses is legal. The results of the Aceh Ulema Council's decision seems to refer to the opinion of the *jumhur* (majority opinion) of the ulema. When the legal requirements for divorce laid down in *fiqh* have been met, divorce shall be deemed legal under religious law. This issue is different from Indonesia's definition of positive law, which is to be determined by the Sharia Court in the case of divorce. Therefore, the purpose of this study is to explain and analyze the application of the Aceh Ulema Council (MPU) Fatwa No. 2 of 2015 concerning Divorce whether it has provided legal certainty and to explain and analyze the impact of the issuance of the fatwa of Aceh Ulema Council (MPU) No. 2 of 2015 concerning divorce without court proceedings.

Research Methods: This work uses empirical legal research methods. Primary and secondary data sources are collected. Primary data was collected through interviews with respondents and informants relevant to the intent of this study. Furthermore, the secondary data is obtained from library studies, namely reviewing the laws and regulations, books, and journals relating to the object to be examined.

Results: The impacts of the issuance of Aceh Ulema Council (MPU) No. 2 of 2015 concerning *Talak* without court proceedings are first, to not have legal certainty; Second, the husband's abuse of the wife; Third, children's rights; Fourth, shared assets; and fifth, inheritance.

Conclusion: It can be concluded that the Fatwa of the Aceh Ulema Council (MPU) Number 2 of 2015 concerning *Talak* specifically on the third point on divorce without trial does not provide legal certainty. It can also be concluded that the impact of the validity of divorce without court proceedings, according to the Fatwa of the Aceh Ulema Council, will result in harm resulting from arbitrary divorce from the husband so that it will harm his wife and children.

Keywords: Impact; Fatwa of Ulema Council; *Talak* without court proceedings.

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I. INTRODUCTION

Marriage is a durable and robust agreement between a man and a woman who form a family that is eternal, respectful, compassionate, loving, peaceful and happy.¹ Besides, marriage is a common *sunnatullah* that applies to all of God's creatures. All creatures are created in pairs and soul mates, as is the case with the perfect being, human.² The legal basis of marriage in Islam is contained in the An-Nisa Verse 3 and Al A'raaf verse 189 which means as follows: "And if you will not be fair to orphans, then marry other women whom you like, two, three, or four and if you are afraid you will not be fair, just one person." "He created you from a substance and him he created his wife so that he felt happy." Whereas divorce is contained in Surah Al-Baqarah verse 227, which means "And if they intend to (resolve to) divorce, then surely Allah is Hearing, All-Knowing."

Juridically in Indonesia, marriages are regulated in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 as implementing regulations. Then specifically for Muslims, marriage is contained in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.

¹ Idris Ramulyo, (1996), *Hukum Perkawinan Islam*, Jakarta, Bumi Aksara, p. 2.

² Beni Ahmad Saebani, (2008), *Perkawinan dalam Hukum Islam dan Undang-Undang*, Bandung, Pustaka Setia, p. 13.

According to Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is explained that a marriage is legal if it is carried out according to their respective religious and religious laws. This means that marriage is valid if it has been carried out following the pillars and conditions determined by each of these religions and beliefs, while the registration of marriage in the Office of Religious Affairs aims to provide legal certainty for marital events that occur along with the consequences.

Marriage must be adequately maintained, so that marriage can last indefinitely and create a stable family (*sakinah mawadah warrahmah*).³ Sometimes it is complicated to foster families so that it will create difficulties in the implementation of their rights and obligations. If those rights and obligations are not correctly implemented, a separation will result in *Talak* or other languages known as divorce. According to Subekti divorce is the abolition of the marriage by the judge's decision or the demands of one of the parties in the marriage.⁴

Article 38 of Law Number 1 of 1974 concerning Marriage states that the breaking up of marital ties between husband and wife is caused by death, divorce, and court decisions. Whereas based on Article 114 of the Compilation of Islamic Law, the breaking of the marriage ties due to divorce can result from divorce from the husband or a lawsuit from the wife. Article 114 KHI states: "Marriage termination due to divorce can occur due to divorce or based on divorce suit."

Article 39 Paragraph (1) of Law Number 1 of 1974 concerning Marriage states that divorce can only be carried out through court proceedings, in this case, for people who are Muslims in the Religious Courts. Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage states: "Divorce can only be conducted before a court hearing after the court concerned has tried and failed to reconcile."

There is no legal decision outside the court concerning marriage that prevails in Indonesia. The definition of divorce, according to Article 117, KHI, is the commitment of the husband before the Religious Court hearing which is one of the reasons why the marriage is terminated. Article 117 KHI states that "Divorce is a husband's pledge before the hearing of the Religious Court which is one of the reasons for the termination of marriage, in the manner referred to in Articles 129, 130, and 131".

Under Islamic law, divorce through the Court is not required. The divorce provisions in this court are not governed in any fiqh mazhab, including the Shiite Imamiyah, because *Talak*, known as divorce, is an absolute right of a husband and he can use it anywhere and at any time. For this reason, there is no need to tell anyone or ask permission from anyone. Because of the fiqh of divorce as is the case of marriage is a private matter and therefore does not need to be regulated by public provisions.⁵ Divorce without going to court is legal under religious law, but not valid under the constitution. Divorce without a court decision is a divorce that has met all the divorce conditions and foundations laid down in the Islamic Shari'a, but without the approved institution's official determination as laid down in the law.⁶

Specifically, in Aceh in the case of divorce, the Aceh Ulema Council (MPU) has issued a *fatwa* Number 2 of 2015 concerning *Talak*. The outcome of the *fatwa* decision in point 3 effectively states that divorce committed by the husband without a trial and divorce without a witness is legal. The results of the Aceh Ulema Council's decision seemed to refer to the opinion of the *jumhur* (majority) of ulema where when the legal requirements for divorce formulated in fiqh have been fulfilled, and the divorce has been considered valid.

In the form of the divorce decision, the court decides where the judge decides on the divorce case filed by the claimant, for example, the spouse has divorced two times independently, without hearings being held. This is not the same as the legal concept. Then when the husband requests divorce for the *Talak 3* in court, the judge still considers *Talak 1*. This is undoubtedly a legal gap between *fiqh* products, including the *Fatwa* of the Aceh Ulema Council and the legal products that are applied in the Religious Courts (in the Aceh Mahkamah Syar'iyah). There is a different legal construction between the law issued by the Aceh Ulema Council which refers to the opinion of the jurisprudence of fiqh scholars with the reality of existing law, one of which is the law applied in the Religious Court or the Syari'yah Court and the provisions contained in the Marriage Law and Compilation of Islamic Law.

Empirically, the presence of the Aceh Ulema Council (MPU) *fatwa* No. 2 of 2015 on *Talak* concerning the acceptance of the legality of divorce without court effectively increases the number of divorce by the husband unilaterally. A wife who is in a weak position does not have comparable strength. Later the Religious Courts only function as ratification (legal formal) to divorce that has occurred outside the Religious Courts. The husband and wife concerned will understand that they, as according to the Aceh MPU, have been legally divorced religiously. They come to the Religious Court only to submit reports. The presence of this *fatwa* would make it easier for husbands to claim divorce and whether or not there is legal power in divorce matters. It is

³ *Ibid*, hal. 47.

⁴ Syaifudin, (2012), *Hukum Perceraian*, Palembang, Sinar Gravika, p. 20.

⁵ Amir Syarifuddin, (2006), *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Jakarta, Kencana, p. 227-228.

⁶ Emir, (2015), *Collection of Fatwa MUI since 1975*, Jakarta, Erlangga, p. 1201

suspected that the Aceh MPU *Fatwa* will be misused in the divorce case. Based on the above interpretations, this study aims to define and evaluate the effect of the 2015 Aceh Ulema Consultative Council (MPU) No. 2 birth upon *Talak* on divorce points without trial.

II. RESEARCH METHODS

This study is empirical legal research, i.e., legal research performed by collecting data from primary data or data obtained directly from research subjects, either through observation or through direct interviews. There is also the same opinion with an interpretation that is a legal research approach that aims to see the law in the real sense or can be said to see, investigate how the law works in society. This research is supported by literature related to the problem under study.⁷ To obtain data that can answer the problem to be investigated, the chosen research location is the Aceh Ulema Council and the Banda Aceh Sharia Court.

Data would be evaluated as descriptive and in-depth, taking data on the issue to be investigated in order to describe the reality and aspects of applicable law in a descriptively, qualitatively, and detailed manner. The writers would use the inductive analysis method for this empirical research. In empirical legal research, researchers re-examine information obtained from respondents or informants and informants. Also, researchers pay attention to the relationship between primary data and secondary data and between legal materials collected. The writers did the editing, with the intention that the completeness and validity of data and information are guaranteed. The writers classified data systematically, meaning that all data are placed in categories.⁸

III. DISCUSSION

The aspect of legal certainty in the Implementation of *Fatwa* of the Aceh Ulema Council (MPU) Number 2 of 2015 concerning Divorce

Family law, particularly for Muslims in Indonesia, has become a positive law because it was implemented by Law No. 1 of 1974 on marriage, so this marriage law, in addition to being *diyani*, has also become *qadha'i*. If there is a family law conflict, there must be state jurisdiction to challenge it; in this case, the Religious Courts. The validity of marriage law in this Marriage Law depends on the observance of the Indonesian Islamic community and the State's power to enforce it is in the Supreme Court, the High Court of Religion and the Religious Courts (PA) in Aceh in the Shariah Court.

Rifyal Ka'bah states that it is possible to classify Islamic law into those *diyani* (religious) and *qadha'i* (legal). Islamic law is entirely *diyani* but only Islamic law which is *qadha'i* requires the power of the State to enforce it. *Diyani* Islamic law relies heavily on the obedience of individuals who are subject to the law. *Diyani* are laws in the fields of worship, prayer, *zakat*, fasting and pilgrimage. Moderate Islamic law that is *qadha'i*, among others, are laws in the areas of muamalah law, family law and criminal law. In the sale and purchase dispute (sharia economy) and husband and wife disputes in marriage, it is necessary for the intervention of the Court to try it.⁹

If there is a dispute between husband and wife, sometimes the husband is already pronounced divorce sentences. After saying the divorce sentence, the husband and wife then realize it. The husband realized that he had dropped divorce from his wife after that, his wife realized that her husband had divorced it. Then there was doubt among the husband and wife. Does the husband lawfully speak divorce or not? Husband and wife disruption occurs why it happened, so in this case, it is necessary to intervene in the Court to try it.

Based on the study of fiqh, as stated by al-Mahalli in his book *Syarh Minhaj at-Thalibin* that divorce is "*Hillu qoyid an-nikahi bi lafdz thalaq wa nahwihi*," the release of the marriage contract with the *Talak* pronouncement or as meant by the pronouncement. Divorce is the absolute right of the husband. Divorce is considered valid if it is dropped consciously by a husband of understanding and *baligh* (mature). When a husband has spoken a divorce to his wife, it immediately fell divorce. Then the husband and wife became divorced. There is no obligation to deal with the Court. Divorce in the yellow book does not require written evidence. Shiite Imamiyah argues that divorce must be pronounced in front of 2 witnesses if divorce is not pronounced in front of 2 witnesses; divorce is invalid. In contrast to *Jumhur ulama*, argues, because divorce is the husband's right, so whenever the divorce is handed down the law is valid, whether there are witnesses or no witnesses.

The Sharia Court will take part in trying it. In the Indonesian version of fiqh, a husband who will divorce his wife must ask permission or submit to the Sharia Court, that he will pledge his divorce to his wife. Divorce is not an absolute husband's right, but part of it has been taken by the state, in this case, by the Religious Court or the Sharia Court in Aceh individually. The husband who is going to divorce his wife must submit a divorce pledge to the Sharia Court along with the reason he divorced his wife. After going through the trial

⁷ Salim HS, (2013), *Penerapan Teori Hukum pada Penelitian Tesis dan Desertasi*, Jakarta, PT. Rajagrafindo, p. 26

⁸ *Ibid*, hal. 128-129.

⁹ <https://pa-jakartaselatan.go.id/artikel/236-ketika-suami-mengucapkan-talak-diluar-sidang-pengadilan>, accessed on 24 October 2019

process, if the Sharia Court grants his application, he will be summoned to appear before the court to pronounce the divorce pledge against his wife. If the Sharia Court rejects the petition, then he cannot pronounce his divorce pledge to his wife. If the Sharia Court rejects the petition, he has the right to appeal in the Religious High Court or the Sharia High Court until the appeal in the Supreme Court.

The state has regulated family law, including divorce. Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that "Divorce can only be carried out in front of the Trial Court after the relevant Court tries and fails to reconcile the two parties." By Compilation of Islamic Law (KHI) in Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is precisely copied in Article 115. Divorce, both on the will of the husband or the wife's wishes, must be carried out before the Religious Court. There is no divorce outside the Religious Court hearing. So if the Religious Court rejects the request, the husband cannot drop the divorce.

When, as explained above, the husband pronounces divorce against his wife in a dispute and quarrel between husband and wife, for example, "I divorce you," then according to the yellow book fiqh, divorce has been valid, but if according to the Indonesian version of *fiqh*, divorce does not fall. In following religious rules, we must obey Allah (Al-Qur'an), obey the Messenger of Allah (as-Sunnah) and obey the Government (legislation). This is as stated in the word of Allah in the An-Nisa 'verse 59: "Yaa ayyuhalladzina aamanuu' atiiullah wa'atuu ar-rasul wa ulil Amri minkum, O you who believe, obey Allah and obey the Apostles (His), and Ulil Amri among you."

Submission to government is equated with submission to God and obedience to the Messenger of Allah. Accordingly, it is imperative for people not only to follow Allah and His Messenger but also to obey state rules. One of the rules of the State that applies to the Islamic ummah is Law Number 1 of 1974 concerning Marriage which in one of the rules governs divorce which must be carried out before a hearing of the Religious Court (sharia court). In this case, divorce is not permitted to be decided in any place, but it must be decided before the hearing of the Religious Court. If it is said outside the court hearing, it is invalid. This opinion is not in conflict with *fiqh* because the Ulema and *Kyai* who are members of the House of Representative (DPR) when formulating Law Number 1 of 1974 concerning Marriage had made an *ijtihad* (independent reasoning) in such a way that Law No. 1 of 1974 concerning Marriage for Muslims did not conflict with Islamic law. The Ulema and *Kyai* have inserted Islamic law in the field of marriage for Indonesian Muslims to the law that is *qadha'i* in the context of legislation in the State of Indonesia. With the provision that stipulates, divorce must be said in front of the Religious Court hearing, divorce pronounced by the husband outside the court is invalid.¹⁰

With the enactment of Law Number 1 of 1974 concerning Marriage, there should be no more conflict amid the Islamic ummah that divorce outside the Religious Courts hearing is invalid. The validity of this opinion is based on the principles of fiqh: "*hukmul Hakim ilzmun wa yarfa'ul khilaf*", rules of legislation made by the State are binding and eliminate dissent." Therefore, because divorce is to be pronounced before the Religious Court in the legislative law, differences of opinion in the community as to whether or not divorce falls outside the trial must cease, in which the divorce is spoken outside the Religious Court hearing is invalid.

Legal certainty is an assurance that a statute must be applied fairly or correctly, legal certainty is one of the purposes of the law. In this case, relating to the application of the *fatwa* of the Ulema Council regarding divorce specifically in point 3 which mentions divorce outside the court and divorce without witnesses is legal, it must be seen first the background of the birth of the *fatwa*.

Many conditions in the divorce were established and harmonious in Islamic law relating to divorce law. While properly meeting the conditions and criteria, acts of divorce law are considered legal according to Islamic law. The majority of Aceh's people are Muslim, so they already know on average how the rule on divorce works. In the case of divorce or divorce, there is no provision in classical fiqh regarding the requirement to establish divorce before the court. It is just that divorce has been considered valid according to the law when the terms and conditions set by *syara* (law) have been fulfilled. Besides that, in Islam, it is stated that divorce is the husband's prerogative towards his wife.¹¹

Divorce law provisions in Islam conflict with the construction of positive law in Indonesia, so the requirements laid down by Islamic law regarding the validity of the divorce are not considered sufficient, meaning that other criteria must be met in its execution which are considered better by positive law. Under this, the law on divorce is established and recognized amid society, which interestingly interprets the culture as an interpretation of Islamic law varying from positive law.¹²

It can be noted that there has been a legal difference between what the society knows, namely the law and the decision of the Sharia Court about the legal divorce status. The Sharia Court's decisions must be based

¹⁰https://pa-jakartaselatan.go.id/artikel/236-ketika-suami-mengucapkan-talak-diluar-sidang-pengadilan_, accessed by 24 October 2019

¹¹Nurdin Bakri dan Antoni, (2017), *Talak di Luar Pengadilan Menurut Fatwa Mpu Aceh No 2 of 2015 regarding Talak*, Samarah: Journal of Family Law and Islamic Law, Vol1 No. 1. January-June 2017, pp. 57

¹²*Ibid*

on law. Therefore, every decision of the Sharia Court including the provisions in divorce matters, must be based on statutory regulations, not based on fiqh legal products.

There are several laws requiring divorce in a court or sharia court, including Article 39(1) of Law No. 1 of 1974 on marriage: "Divorce can only be held before a court hearing after the court has sought, and the two parties have refused to reconcile." Furthermore, Article 115 of Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law states that "Divorce can only be carried out before a religious court hearing after the religious court has tried and failed to reconcile the two parties." Then Article 117 of the Presidential Instruction Number 1 of 1999 concerning Compilation of Islamic Law states, "Divorce is a husband's pledge before a religious court hearing which is one of the reasons for the termination of marriage in the manner referred to in articles 129, 130, and 131". Article 129 Presidential Instruction No. 1 of 1999 concerning Compilation of Islamic Law; "A husband who will decide on divorce from his wife submits a request both verbally and in writing to the religious court which occupies the wife's place of residence accompanied by a reason and requests that a hearing be held for this purpose."

Based on these two provisions, it can be noted that positive law does not recognize divorce determined outside the courthouse. Therefore, the presence of divorce is not considered legitimate. Islamic law/*fiqh* (Jurisprudence) considers that the conditions are not relevant in the Sharia Court or the Court.

The two legal constructions make a difference. The Aceh Ulema Council has received numerous requests from the public to explain the divorce law provisions on this subject, and a *fatwa* on divorce No. 2 of 2015 has been formed. As Tgk Faisal Ali explained that the *fatwa* would be used if only during the issue of divorce. As the community came to the Aceh MPU to consult about divorce one, divorce two, and divorce three and the fall or failure of the divorce, this is where the divorce issue plays a role in answering problems in the community.¹³

Based on Article 1 number 2 of Law No. 12/2011 concerning the Formation of Legislative Regulations states that the Legislative Regulations are written rules that generally contain binding legal norms and are formed or established by state institutions or authorized officials through the procedures set out in legislation. In connection with the sound of Article 1 number 2, what is meant by the hierarchy of legislation is:

1. The 1945 Constitution of the Republic of Indonesia
2. Decree of the People's Consultative Assembly (MPR)
3. Law / Government Regulation In Lieu of Law
4. Government regulations
5. Presidential decree
6. Provincial Regulations
7. District / city Regional Regulations

In addition to the hierarchy of statutory regulations as mentioned above, several other laws and regulations such as;

1. The regulation established by the People's Consultative Assembly (MPR)
2. The regulation established by the House of Representative (DPR)
3. The regulation established by the Regional Representative Council (DPD)
4. The regulation established by the Supreme Court
5. The regulation established by Constitutional Court
6. The regulation established by the Supreme Audit Agency
7. The regulation established by Judicial Commission
8. The regulation established by Bank Indonesia
9. The regulation established by Minister
10. The regulation established by institutional bodies or commissions of the same level formed by laws or the Government on the orders of the law
11. The regulation established by Provincial House of Representative
12. The regulation established by Governor
13. The regulation established by City House of Representative
14. The regulation established by Regent/ Mayor
15. The regulation established by Village Head or equivalent.

Observing the regulations that may be issued by state institutions as set out above, the MPU *fatwa* is not one of the components of the legislation, so that the MPU *fatwa* is not a binding rule because the MPU is an association of Islamic scholars and is not a state-owned body, and even the MPU *fatwa* is not a state law that can be enforced and has no penalties and must be implemented.

¹³ Faisal Ali, Vice Chairman of Aceh Ulema Council, interview on 16 October 2019

Therefore, all forms of legal rules, both Islamic law and customary law which are not included and not included in the legislation, are not binding on the community. For example, the law stated by the Aceh Ulema Council especially in the issue of divorce, does not have binding legal force for Acehnese citizens. Because, the *fatwa* is not positive law, and does not enter into the hierarchy of statutory regulations. This is as stated by Mahfud MD that all forms of the *fatwas* do not bind Indonesian society.¹⁴

The contents of the MPU's *fatwa* on divorce are as follows:

1. Divorce is the termination of marriage ties with *Talak* statement or other sayings;
2. *Talak* 3 (Divorce level 3) is said once, and or three times, falls three;
3. Divorce without the court proceedings and divorce without witnesses is legal;
4. *Taushiyah* (advice);
 - a. It is hoped that the Aceh government will soon form the Aceh Qanun on *Munakahat* (Marriage);
 - b. It is expected that the Aceh Government before the birth of the Aceh Qanun on *Munakahat* to propose to the Sharia Court to make this *fatwa* as a guideline in deciding the *Talak* law in order to avoid differences of opinion which could lead to divisions of the people;
 - c. It is expected that the Sharia Court will examine carefully and accurately the Divorce that is dropped out of court and stipulates it in a decision;
 - d. It is expected that the District Office of Religious Affairs (KUA) and the authorities in charge of optimizing the supply and strengthening of the knowledge of the prospective husband and wife to prevent the occurrence of divorce arbitrarily;
 - e. It is expected that the community avoids things that lead to breaking the bond of marriage;
 - f. It is expected that the Office of the Ministry of Religious Affairs in Aceh and related parties will socialize this *fatwa*.

In point 3, the contents of the *fatwa*, which explains divorce outside the court, are legal. The *fatwa* was issued based on the facts that happened in the field that warranted the *fatwa* to be issued by the Aceh MPU. According to Faisal Ali, the *fatwa* was given to respond to the divorce issues that had arisen in the community so that legal clarity would also be established. If in the community has done divorce outside the court but is not recognized then this is also very dangerous and this also provides justice for women in their *iddah* (waiting) period and to remarry until waiting for a court decision. In order to make the community aware of the *fatwa*, the Aceh MPU has conducted the socialization of the *fatwa*. MPU is also tasked with disseminating *Fatwa* that it has issued. Besides, the socialization depends on the request of the Regency/ City. Because sometimes there are districts/ cities that ask for the *Fatwa* to be socialized.

Nevertheless, in practice, the socialization that has been done has not been able to all of Aceh. Every year the MPU will conduct socialization. Every socialization is carried out based on a Decree so that the socialization is valid.¹⁵

A *fatwa* is an argument or legal opinion that serves to explain a law/ regulation, whether the nature of the *fatwa* has binding power for the requestor of the *fatwa*, *fatwa* giver and the wider community. In theory, a *fatwa* in the classical definition is optional “*ikhtiyariah*” (choices that are not legally binding), although morally binding for *mustafti* (those who ask for *fatwa*), while for other than *mustafti* are “*i’lamiyah*” or informative which is more than just discourse. However, if we look at the practice of implementing Islamic sharia, the *fatwa* theory only binds the *mustafti* (people who ask for *fatwa*), the MPU *fatwa* will be able to bind if the formulations of legal opinions in the MPU *Fatwa* are stated in the Aceh Government Regulation.

Based on the above definition, Aceh MPU's *fatwa* on divorce necessarily does not bind the people of Aceh because *Fatwa* is not other than that part of Indonesia's laws and regulations. Law No. 1 of 1974 relating to marriage, one of the articles governing divorce or *Talak* is a state law that is a consequence of Ulil Amri in Indonesia through studies so that it has its advantage and mudharat (disadvantage) from the law. The benefits and *mudharat* have been reviewed about the importance of divorce must be done in the trial of the Religious Court or the Sharia Court, so that the legal certainty of divorce has existed in Law No. 1 of 1974 concerning Marriage and the rules of the provisions. Also, the particular divorce *fatwa* in the third point does not provide legal certainty in terms of marriage legislation in Indonesia. So it is necessary to have a landslide or divorce carried out in the Court following established procedures.

The impact of the issuance of the *Fatwa* of Aceh Ulema Council (MU) No. 2 Aceh 2015 regarding *Talak* without Court Proceedings

The integrity and harmony of a happy, safe, and peaceful household is the desire of everyone in the household. The Republic of Indonesia is a country based on the Almighty God, where this is guaranteed by Article 29 of the 1945 Constitution of the Republic of Indonesia. Therefore everyone in the household sphere in

¹⁴Nurdin Bakri dan Antoni, (2017), *Talak di Luar Pengadilan Menurut Fatwa Mpu Aceh No 2 of 2015 concerning Talak*, *Op.cit*, pp. 61

¹⁵ Faisal Ali, Vice Chairman of Aceh Ulema Council, interview on 16 October 2019

exercising their rights and obligations must be based on religion. This needs to be continuously developed in order to build the integrity of the household. To realize the integrity and harmony is very dependent on everyone in the scope of the household, especially the quality level of behavior and self-control of each person in the scope of the household.¹⁶

The majority of Indonesian people are Muslim, especially in Aceh which in Islamic law, in general, explained that divorce could be carried out outside the Court on certain conditions. With this problem, especially in Aceh, the Aceh MPU issued a *Fatwa* on divorce to answer the problems that occur in the community about divorce spoken outside the trial. The issue of divorce outside the court is indeed already common in society, primarily because of the lack of understanding of the regulations on marriage in Indonesia. Many cases of divorce occur outside the court, and the community carried out consultations about the validity or illegality of divorce that has been spoken by her husband. So the MPU provides answers to these problems. With many consultations on divorce outside the court from the community, the Aceh MPU state policy in issuing *fatwas* on divorce.

Based on the explanation from the Aceh MPU in issuing a *Fatwa* on divorce already has a mechanism and procedures for issuing *fatwas*. The procedure for issuing the *fatwa* is by looking at *fiqh* references that have been passed down by the previous scholars and by referring to the four *mazhab* (in general the *mahzab* used in this study are the Syafi'i *mazhab*) and if in the Syafi'i *mazhab* no explanation was found, only referring to the other three *mazhabs* as studies. From these references, it is explained that *Talak* is an absolute right in a husband. In addition, in *fiqh* references, there is nothing that explains that *Talak* committed by the husband must be based on a court decision, unless the divorce is *Talak fassah*. However, if the divorce is divorce, there are no sources that state that it must be decided by the court as well as relating to witnesses. Then the divorce can also be declared valid even though the divorce is decided by a husband to a wife indirectly or not face to face and in the distance from each other. However, there are some laws in which if a husband decides divorce from a wife who is pregnant, then the law of doing so is a sin.

Nevertheless, the divorce that has been dropped by a husband is still valid.¹⁷

The third point of the *fatwa* states that "divorce outside the court and divorce without witnesses is valid." The contents of the third point are indeed contrary to the laws and regulations concerning marriage in Indonesia that does not recognize divorce outside the court. Every law that is made is to provide benefit to the community or society, especially the legislation regarding marriage in Indonesia to adopt Islamic law.

The explanation above then try to look at some of the impacts of divorce outside the court listed in the third point of the Aceh MPU *Fatwa*, which is as follows:

1. Not have legal certainty

The husband and wife do not have legal certainty in divorce. As a result of the lack of legal certainty, if one or both parties want to remarry with another person, then the marriage will not be accepted or will not be valid because it is still considered to have a marriage relationship with the previous spouse.

2. The occurrence of abuses of the husband against his wife¹⁸

If the divorce is not carried out in court, it will lead to the arbitrariness of the husband towards his wife; for example, the wife tends to be harmed because her assumption is divorce is included in her husband's rights. If this happens, the husband will do what he wants at will and tends to say divorce easily.

3. To Children's Rights¹⁹

Children in this position can also have an impact. Due to the divorce of these parents, children must get their rights to live to thrive by getting a proper education and the needs of everyday life. However, if the children's parents referred to divorce outside the court and then the children did not get their rights, then then the parent could not file a lawsuit to the Religious Court to get the children's rights because divorce carried out without the court proceedings would not get legality following statutory regulations.

4. Shared Assets

In filing for divorce in the Court or the Sharia Court either through the petition or lawsuit process, shared assets are used as the object of the lawsuit and can be obtained by both divorced parties. However, if both parties do divorce outside the court, then the shared assets will not be sued, because the legality will be issued by the Religious Court or the Sharia Court in Aceh.

5. Inheritance

Heirs come from deceased family members, and their heirs are family members who have legal marital relations. The legality of the marriage relationship can be seen from the proof of legality of the marriage, and if there is no termination of the husband and wife relationship through the court, then the marriage relationship is

¹⁶ Vivi Hayati, (2015), *Dampak Yuridis Perceraian di Luar Pengadilan* (a Study in Langsa) Jurnal of Law, Samudra Keadilan Vol. 10 No. 2 July-December, pp. 221-222

¹⁷ Faisal Ali, Vice Chairman of Aceh Ulema Council, interview on 16 October 2019

¹⁸ Rokhmadi, Hakim Mahkamah Syariah Banda Aceh, interview on 21 October 2019

¹⁹ Rokhmadi, Hakim Mahkamah Syariah Banda Aceh, interview on 21 October 2019

still legal according to the law. Although between husband and wife have done divorce outside the court, the marriage relationship is still valid, so that if one party dies, the other party can file a claim/ application for the inheritance left behind, because it is considered to be still in a legal relationship between the husband and wife according to the provisions applicable.

The above explanation has clearly illustrated the impact of divorce without going through the Religious Courts contained in the third point of the *fatwa* on divorce. *Talak* performed in the Religious Court is following the benefits and disadvantages that will occur and as an effort to prevent abuses that occur by the husband. Because of the facts in the field, there are many cases of abuse of divorce *fatwa* to negative things so that is the importance of the State's role in making efforts to legalize divorce and it is under the objectives of religion and the state. The state is present to provide comfort, peace and well-being of the people including in family law.

IV. CONCLUSION

The *Fatwa* of the Aceh Ulema Council (MPU) on divorce is not legally binding on the people of Aceh because it is not included in the legislation in Indonesia. *Fatwa* of the Aceh Ulema Council (MPU) Number 2 of 2015 concerning the divorce in the third point does not provide legal certainty. The impact of the issuance of the *Fatwa* of Aceh Ulema Council (MPU) No. 2 of 2015 concerning *Talak* is, first, not having legal certainty; Second, the husband's abuse towards his wife; third, on children's rights; fourth, shared assets; and fifth, inheritance.

REFERENCES

Books and Articles

- [1]. Amir Syarifuddin, (2006), *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Jakarta, Kencana
- [2]. Beni Ahmad Saebani, (2008), *Perkawinan dalam Hukum Islam dan Undang-Undang*, Bandung, Pustaka Setia
- [3]. Emir, (2015), *Himpunan Fatwa MUI Sejak Tahun 1975*, Jakarta, Erlangga
- [4]. Idris Ramulyo, (1996), *Hukum Perkawinan Islam*, Jakarta, Bumi Aksara
- [5]. Nurdin Bakri dan Antoni, (2017), *Talak di Luar Pengadilan Menurut Fatwa Mpu Aceh No 2 Tahun 2015 tentang Talak*, Samarah: Jurnal Hukum Keluarga dan Hukum Islam, Vol1 No. 1. Januari-Juni 2017, hal. 57
- [6]. Salim HS, (2013), *Penerapan Teori Hukum pada Penelitian Tesis dan Desertasi*, Jakarta, PT. Rajagrafindo
- [7]. Syaifudin, (2012), *Hukum Perceraian*, Palembang, Sinar Gravika
- [8]. Vivi Hayati, (2015), *Dampak Yuridis Perceraian di Luar Pengadilan* (Penelitian di Kota Langsa) Jurnal Hukum Samudra Keadilan Vol. 10 No. 2 July-December

Website

- [1]. <https://pa-jakartaselatan.go.id/artikel/236-ketika-suami-mengucapkan-Talak-diluar-sidang-pengadilan>

Interview

- [1]. Faisal Ali, Vice Chairman of Aceh Ulema Council, Interview 16 October 2019
- [2]. Rokhmadi, Judge of Banda Aceh Sharia Court, Interview 21 October 2019

Muhammad Salamuddin, etal. "The Impacts of a Fatwa (Edict) From Aceh Ulema Council (Mpu) Number 2 of 2015 Concerning Talak (Divorce) Without Court Proceedings." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(2), 2020, pp. 25-32.