

Juridical Research on Grounds for Divorce (Case Study in Takengon Syar'iyah Court)

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ABSTRACT

Divorce is the termination of a marriage by the Court order under the claim of one of the marriage parties. The claim for divorce must be submitted to the Syar'iyah Court/Religious Court under the civil cases. Implicitly, the principle of hindering the divorce process can be found in Article 39 paragraph (1) of Marriage Act, which stipulated "divorce shall be done before the Court after the Court has tried unsuccessfully to reconcile both parties". However, this principle could not prevent the rising number of divorce in Aceh Tengah. This study aims to understand the grounds for the rising divorce rate and the efforts to decrease the high divorce rate in Takengon Syar'iyah Court. This research uses juridical empirical methods along with primary and secondary data resources. The data are analyzed using a legal sociology approach. The research is conducted in Aceh Tengah. The result shows that the grounds of divorce are: the absence of intimacy in marriage; unending quarrel between spouses; public's legal awareness regarding divorce; oblivious to the purpose of marriage; child marriage; financial reasons; and interference of the third party. The efforts that may be employed to decrease the divorce rate are; to share information regarding marriage objectives for the marriage candidates upon the marriage registration; and the assertion of marital age restrictions to select brides and grooms that are mature in terms of psychological, economic, and social. It is hoped that the Syar'iyah Court will be more active in hindering the divorce process; for local KUA (the Office of Religious Affair) to share information regarding marriage to the candidates.

KEYWORDS: Juridical Research, Divorce.

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I. INTRODUCTION

A family is created through marriage. Marriage is a bond between a man and a woman as a husband and wife to create a loving and everlasting family based on the belief of one and only God.¹ After the vows or marriage between the groom and the bride, which was witnessed by their guardians, a bond is formed. The bond created rights and obligations, which are reciprocated by both parties. In marriage, rights are divided into three kinds, which are: joint property; the wife's rights that become the husband's obligation; and the husband's rights which become the wife's obligation. The rights and obligations must be performed under proportion and equality.²

¹ Article 1 Act Number 1 the Year 1974 concerning Marriage.

² Bina Risma, "Penelantaran Isteri oleh Suami sebagai Sebab Perceraian (Studi Kasus di Mahkamah Syar'iyah Tapak Tuan)", *Jurnal Hukum Keluarga dan Hukum Islam*, ISSN 2549-3132, E-ISSN 2549-3167, Volume 2 No.2, July-Desember 2018.

In reality, occasionally, the family that has been created through marriage can not be continued because of several reasons. The problem that arises in a household may become a major issue when there is no solution, which resulted in divorce.

Dissolution of marriage is covered in the regulations and Islamic Law Compilation. According to the regulations, marriage may be terminated because:

- a. Presumption of death;
- b. Divorce;
- c. The Court order.

Divorce is a part of household dynamics. Divorce exists in corresponds to marriage. Although the purpose of a marriage is not divorce, divorce is considered as *sunatullah*, though the causes vary. Dissolution of marriage may be caused by the death of a spouse; spouses' incompatibility and continuous fight; and also the spouse's sexual incapacity.

Divorce is the termination of a marriage by the Court order as per the claim of a spouse. The regulation prohibited divorce through agreement by both husband and wife. Divorce claims must be filed to Syar'iyah Court through a claim in a civil case. The Chief of local Syar'iyah Court or Religious Court must issue a decision before divorce is approved. Before such a decision is issued, the Court must have tried unsuccessfully to reconcile both parties.⁴

Marriage termination may also occur because of *talaq* or divorce claims.⁵ Divorce may only be settled before the Court after the Court has tried unsuccessfully to reconcile both parties.⁶

The principle of hindering the divorce process, implicitly found in Article 39 paragraph (1) Act Number 1 the Year 1974 concerning Marriage, which stipulated "Divorce may only be settled before the Court after the Court tried unsuccessfully to reconcile both parties". Paragraph (2) stipulated "to settle a divorce, there must be enough reasons that both husband and wife could not live harmoniously as spouses".

Additionally, Article 65 Act Number 3 the Year 2006 regarding the Amendment of Act Number 7 the Year 1989 concerning Religious Court stipulated "Divorce may only be settled before the Court after the Court unsuccessfully to reconcile parties". Consequently, divorce must be finalized in front of the Court.

The existence of this Act at least offers restriction for spouses that wished divorce. However, the Act itself could not lessen the high number of divorce in Aceh Tengah. Based on the total population of Aceh, Aceh Tengah has the second-highest record of divorce in the last three years (2016-2018). It is shown in the table below.

³ Boedi Abdullah, *Perkawinan dan Perceraian Keluarga Muslim*, Pustaka Setia, Bandung, 2013, p. 49.

⁴ Djumairi Achmad, *Hukum Perdata II*, Fakultas Syari'ah IAIN Walisongo, Semarang, 2001, p.65.

⁵ Article 114 Islamic Law Compilation.

⁶ Article 39 paragraph (1) Act Number 1 the Year 1974 *jo* Article 65 Act Number 7 the Year 1989.

Table . 1 : Number of Divorce in Aceh

No	Mahkamah Syar'iyah List	Divorce			Total
		2016	2017	2018	
1	Banda Aceh	415	16	515	946
2	Bireun	410	361	480	1,251
3	Blang Kejeren	69	100	88	257
4	Calang	78	73	83	234
5	Idi	359	373	382	1,114
6	Jantho	290	299	364	953
7	Kuala Simpang	433	409	422	1,264
8	Kuta Cane	152	167	251	570
9	Langsa	288	312	344	944
10	Lhokseumawe	304	255	270	865
11	Lhoksukon	498	361	590	1,449
12	Meulaboh	377	326	366	1,069
13	Meureudeu	154	135	150	439
14	Sabang	63	46	64	173
15	Sigli	331	362	426	1,119
16	Simpang 3 Redelong	281	277	293	851
17	Sinabang	16	91	92	199
18	Singkil	123	161	148	432
19	Takengon	384	476	455	1,315
20	Tapak Tuan	257	248	240	745
Total		5,282	4,848	6,023	16,153

Source: Aceh Syar'iyah Court 2019

Based on data recapitulation above, it can be concluded that Aceh Tengah has significant numbers of divorce compared to the other regions.

According to the issue mentioned above, the researcher wishes to study in the form of a thesis with the topic “**Juridical Research on Grounds for Divorce (Case Study in Takengon Syar'iyah Court)**”.

II. MATERIALS AND METHOD

When conducting a study, the researcher requires data that extract facts from science. To gain such data, the researcher must expand, find, and study the science fact. The efforts to gain data are conducted through the scientific method. A method is important to support the expected research result. It leads to clarity of the present issue. Therefore, this research uses the method below to maximize research quality:

This research is juridical empirical. Juridical empirical is a method of research that analyzed and studied how the law operates in society. This research is also field research through the study of regulations combined with data and behaviour that existed in society.⁷

III. RESULT AND DISCUSSION

1. The grounds for high divorce rate in Takengon Syar'iyah Court

Divorce is one of the reasons for marriage termination, as stated in Act Number 1 the Year 1974. In Takengon Syar'iyah Court divorce commonly causes by:

a. Disagreements and Quarrels

Based on Article 116 Islamic Law Compilation regarding termination of marriage, divorce may occurred because:

- a) One of the spouses committed adultery or became an alcoholic, drug addict, gambler, and others as such, which are difficult to cure.
- b) One of the spouses left the other spouse for two years in a row without the consent of the other spouse and a valid reason or for others beyond one's capability.
- c) One of the spouses has been sentenced to imprisonment for a period of five years or higher after their marriage.
- d) One of the spouses committed brutality or severe persecution that endangers others.
- e) One of the spouses has a physical disability or disease that causes sexual incapacity.
- f) Unending quarrels between spouses and giving up on their marriage;
- g) Husband violated the *taklik talak*;
- h) Apostate or *murtad*, which causes friction in the marriage.

Article 116 number 6 clearly stated that divorce may be filed if the spouses continue to quarrel and are unable to maintain their marriage. The Article indicated that the condition for divorce is an alternative. It explains that divorce may be filed after meeting one of the requirements listed in the Article 116 Islamic Law Compilation. Moreover, field study shows that one of the motives for divorce is the continuous arguments between the spouses and both spouses no longer wish to be together, as stated in Article 116 number 6 Islamic Law Compilation.

b. Public's legal awareness regarding divorce

The Head of KUA Pegasing, Aceh Tengah, stated that the number of divorces and public's legal awareness are related. The growing number of divorces in Takengon Syar'iyah Court indicated that the local's

⁷ Mukti Fajar ND, Yulianto Ahmad, *Dualisme Penelitian Hukum: Normatif dan Empiris*, Pustaka Pelajar, Jakarta, 2010, p. 97.

legal awareness is increasing. Therefore, the party that wishes to divorce could directly file the claim to the local Court.⁸

This shows that the Takengon people have the awareness to legalize their marriage, which prevents one-sided termination or illegal divorce. Divorce pronounced outside of the Court would not have any legal competence. Another possibility, the rate of divorce in other regions may also be high. However, because some of the divorces are undocumented (the *talak* was spoken outside of the Court), it is impossible to identify the exact number of divorce in those regions.

c. Husband failure to provide maintenance for his wife

During a marriage, each spouse has rights and obligations to fulfil. One of the wife's rights is to receive maintenance from the husband (a husband's duty). Article 34 paragraph (1) of the Civil Code explained that the husband's duties are to protect his wife and provide maintenance for the household as within his ability. Consequently, a husband must provide maintenance for the livelihood of his wife and child.

In Takengon, the majority of husbands failed to perform the duty for their families. The fact shows that most of the divorce claims filed in Takengon Syar'iyah Court were made by the wives. The common ground for divorce is the wife does not receive any maintenance for a long period from the husband. Subsequently, the wife could not support the household, whether for nourishment or other things that her children needed.

In the interview with a Judge from Takengon Syar'iyah Court, he stated that most of the claims were filed by the wives. The wives claimed that their husbands can not provide enough support for their families. Eventually, forcing the wives to provide living on their own.

Because the husband fails to provide, the wife becomes unable to support their household. Thus, claiming divorce to the Takengon Syar'iyah Court.

d. Child Marriage (Marriage Dispensation)

Marriage dispensation is marriage whereas the groom and the bride are underage and are not allowed to marry, as stipulated in the regulations. The limit age for marriage is regulated in Article 7 paragraph (2) Act Number 1 the Year 1974 concerning Marriage, which stated: "Marriage will only be allowed if the groom has reached 19 years old and the bride has reached 16 years old." Further, the Article 7 paragraph (2) explained: "If deviation occurs to paragraph (1), the Court or other officials —chosen by either the groom's or the bride's parents— may be asked for dispensation."

In new regulation concerning marriage, Article 7 Act Number 16 the Year 2019 was amended to: (1) Marriage will only be allowed when the man and the woman have reached 19 years old. The ground of the change is the consideration that underage marriage harms children development, and may neglect the children's

basic rights such as the right for protection from violence and discrimination, the civil rights, the right for health, the right for education, and the social rights of children.

However, according to the field data, many underage children in Aceh Tengah are married. The Marriage Act Number 1 the Year 1974 stipulated that the limit age of children that are allowed to marry. This regulation is inapplicable in Aceh Tengah. The high rate of promiscuity among teens impedes the enforcement of the law. Therefore, the Court offers the marriage dispensation for the party that filed a divorce.

Evidence shows that the marriage dispensation in this region was higher than the others. It is shown in the table below.

Table . 2 : Number of Marriage Dispensation in Aceh

No	Mahkamah Syar'iyah List	Marriage Dispensation			Total
		2016	2017	2018	
1	Banda Aceh	0	1	1	2
2	Bireun	4	3	4	11
3	Blang Kejeren	0	1	2	3
4	Calang	2	10	0	12
5	Idi	7	4	6	17
6	Jantho	1	0	1	2
7	Kuala Simpang	0	6	6	12
8	Kuta Cane	2	2	0	4
9	Langsa	0	6	2	8
10	Lhokseumawe	0	2	2	4
11	Lhoksukon	2	2	3	7
12	Meulaboh	1	0	3	4
13	Meureudeu	1	2	0	3
14	Sabang	1	1	1	3
15	Sigli	1	1	5	7
16	Simpang Tiga Redelong	12	18	13	43
17	Sinabang	1	1	2	4
18	Singkil	1	2	2	5
19	Takengon	35	37	33	105

20	Tapak Tuan	1	4	0	5
Total		72	103	104	261

Source: Aceh Syar'iyah Court 2019

The total of marriage dispensation in Aceh Tengah is higher than the other regions. Underage marriage becomes one of the grounds for divorce. Essentially, children do not have enough mental capacity and information in terms of the marriage. Therefore, most of the underage marriages failed to reach the original purpose of marriage, as stated in Article 1 Act Number 1 the Year 1974 concerning Marriage.

e. Third-party Interference

Third-party involvement is also one of the reasons for divorce. Third-party in this research is defined as the parent or the family from the husband's side, and other individuals who do not have any familial relation to both spouses (adultery). The Head of KUA Pegasing, Mursid, stated that third-party involvement (the husband's parent or family) is one of the motives for the high divorce rate in Aceh Tengah.

In Gayo culture, marriages are divided into three types which are *kawin angkap*, *juelen*, and *kuso kini*. *Kawin juelen*, corresponds to the word *juelen* which means "being sold", means that the bride believes to be "sold" to the groom's family. The bride believes that she does not belong to her parents anymore. The "sold" girl could not speak to her parents, it will apply when the *mahar* is settled. Afterwards, the wife may stay in the

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village or the husband's house.

Further, *angkap* marriage means that the husband stays at the wife's house. Because the husband could not afford all of the *mahar* (wedding gift for the bride). *Angkap* husband is perceived as pathetic in Gayo people's eyes since he can not bring his wife to his place. Rather than the inability to provide *mahar*, another reason for *angkap* is that the bride is the only daughter of the family. Therefore, the bride's parents refuse to be away with their daughter. Another possibility, the bride's parent's fondness for the groom, and choosing to have an *angkap* marriage.¹⁰ However, *angkap* marriage usually occurred because the groom only fulfilled the duty under the Islamic Law and failed to fulfil the cultural obligation, which is to provide for the bride's parents' wishes (*teniron*).

In addition, *kuso kini* marriage is a form of marriage that offers freedom for spouses to choose where they will stay. In *kuso kini*, spouses may stay and help their family or live and work by themselves (independent). Even though the spouses stay independent, they still genuinely help both of their family.¹¹

Marriage does not only involve a man and a woman but also their respective family. In other words, marriage united both families. It creates an opportunity for third-party interference, which are the parents or families of either the husband or wife. The opportunity may arise after the marriage since the husband and wife may stay at the husband's household.

⁹ Robi Efendi Batubara, "Tradisi Pernikahan *Angkap* Pada Masyarakat Muslim Suku Gayo", Thesis, Program Pascasarjana Institut Agama Islam Negeri Sumatera Utara, 2014, p. 31.

¹⁰ *Ibid*, p. 68.

¹¹ Devi Erawati, "Studi Mengenai Pelaksanaan Perkawinan *Angkap* Pada Masyarakat Gayo Di Kabupaten Aceh Tengah Dengan Berlakunya Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan",

Apart from parents' involvement, adultery is also a trigger for divorce in Aceh Tengah. Abd. Rahman, the Kedelah Head Village (*geuchik*) in Pegasing, Aceh Tengah, mentioned that the husband's infidelity will neglect household livelihood, which forces the wife to provide a living for the children by herself. Infidelity is also triggered by the absence of one spouse's attention to the other spouse. The lack of attention makes the spouse seek comfort from the other individual.

f. Cultural change as a trigger for divorce

Globalization causes the culture to shift and conform itself to the new change. Presently, Gayo people settled their dispute through the village apparatus in Aceh Tengah. The method used to end their disagreement is divided through the process: from the family, whether the husband's or wife's; and if there is no compromise then the case will proceed to the local village apparatus, known as *sarak opat*.

Sarak opat consists of two words. *Sarak* means place or area around the village or *belah* or honour that must be protected and maintained. On the other hand, *opat* means four *untur* or people's potential that are integrated to their obligation for protecting and maintaining the honour of people that they lead. All of the four *unturare Reje, Imem, Petue dan Rakyat*¹².

Based on the field data, marriage disputes that can not be resolved by families, would not be settled through *sarak opat* but directly to the Court of law. In this case, *sarak opat* will only issue a recommendation for divorce. The *sarak opat* behaviour causes the shift in Gayo Culture on dealing with marriage.

IV. CONCLUSION AND SUGGESTION

1. Conclusion

The high rate of divorces in Takengon Syar'iyah Court is caused by unending quarrels; public's legal awareness concerning divorce; the husband inability to provide a living for his family; child marriage (marriage dispensation); third-party involvement; and cultural change in accord with global change.

2. Suggestion

It is suggested that parents should supervise and share awareness concerning promiscuity, therefore decreasing the number of marriage dispensation, which is one of the main reasons for divorce.

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¹² Mahmud Ibrahim dan Hakim Aman Pinan, *Syariat dan Adat Istiadat*, Yayasan Mahamam Mahmuda Takengon, Takengon, 2010, p. 99.

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Regulation

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