

The Nature Of Divorce As A Result Of Marriage Law In The Legal Area Of South Sulawesi Province

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ABSTRACT

The aim of the research is to analyze the nature of divorce as a consequence of marriage law in the legal area of South Sulawesi Province. This type of research is normative-empirical legal research. The research results show that the essence of divorce as a consequence of marriage law in the jurisdiction of South Sulawesi Province is to form a happy and eternal family (household) based on belief in the Almighty God and realizing a household life of sakinah, mawaddah and warahmah as the embodiment of the values of Justice, Certainty and Benefit in society.

Keywords: Divorce; Marriage; Household

INTRODUCTION

Divorce according to Islamic religious law which has been positive in Article 38 and Article 39 of Law no. 1 of 1974 and has been described in Articles 14 to Article 18 and Articles 20 to Article 36 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage (hereinafter abbreviated as PP No. 9 of 1975), including: first, "divorce talak", namely a divorce where a divorce application is submitted by and on the initiative of the husband to the Religious Court, which is deemed to have occurred and takes effect with all its legal consequences from the moment the divorce is declared (pledged) before a Religious Court session; secondly, "contested divorce", namely a divorce filed for divorce by and on the initiative of the wife to the Religious Court, which is deemed to have occurred and is in effect with all its legal consequences since the decision of the Religious Court which has permanent legal force.

Later legal developments, the specific legal process for divorce lawsuits filed by and on the initiative of the wife in the Religious Courts has been regulated in Law Number 7 of 1989 concerning Religious Courts (hereinafter abbreviated to Law No. 7 of 1989) as amended by Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts (hereinafter abbreviated to Law No. 3 of 2006) as amended by Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts (hereinafter abbreviated to Law No. 50 of 2009).

Divorce according to religious law other than Islam has also been positive in Law no. 1 of 1974 and described in Article 20 to Article 34 paragraph (2) PP No. 9 of 1975, namely a divorce where the divorce suit is filed by and on the initiative of the husband or wife to the District Court, which is deemed to have occurred with all its legal consequences starting from the time it is registered on the registration list by the Registrar's Officer at the Civil Registry Office.

As social values change and more and more women become aware of their rights and obligations, according to A. Reni Widyastuti, women as wives do not remain silent and do not want to be treated arbitrarily by men, so women will exercise their rights by filing a divorce suit in court.

Table 1. Comparison of the number of divorce divorce and lawsuit divorce data in South Sulawesi Province in 2019-2023

No	Type of Matter	2019	2020	2021	2022	2023
1	Divorce Divorce	13.104	4.397	4.870	5.409	6.937
2	Divorce	5.251	4.397	4.870	5.409	4.340

Source: Data was obtained from the results of field research carried out from May to August 2024 by visiting the Makassar High Religious Court.

Based on the data in table 1 presented regarding talak divorce and contested divorce cases from 2019 to 2023, it can be seen that there is a quite significant fluctuation trend in these two types of cases.

1. Divorce Divorce:

a. In talak divorce cases, the number of cases has decreased drastically from 13,104 in 2019 to 4,397 in 2020. However, since 2020, the number of talak divorce cases has started to increase again with the number 4,870 in 2021, 5,409 in 2022, and 6,937 in 2023.

b. This could indicate social and cultural changes in society, where there may be an increase in disharmony in the household leading to divorce, or it could also be due to an increase in awareness of individual legal rights, especially related to divorce.

2. Divorce:

a. Meanwhile, for a contested divorce, the number of cases tends to be stable from 2019 to 2021, at 4,397 and 4,870 and then decreases in 2023 to 4,340.

b. This decline could be influenced by various factors, such as economic changes, shifts in society's mindset about marriage and divorce, or increased mediation efforts to resolve domestic conflicts before choosing the path of divorce.

Based on this data, it can be concluded that the divorce rate, both talak divorce and contested divorce, shows fluctuations that stakeholders, including the courts, government and social institutions, need to be aware of. The increase in the divorce rate, in particular, shows that there may be many couples facing serious problems in their marriages, which may not have received effective resolution through legal approaches that prioritize mediation or counseling.

UU no. 1 of 1974 is the umbrella for national law regarding marriage, including divorce, which is currently in force in Indonesia. Therefore, the Indonesian people are happy who have Law no. 1 of 1974, which in its General Explanation, is called the "National Marriage Law, the existence of which is absolute for a country and nation like Indonesia, which at the same time accommodates the principles and provides a legal basis for marriage which has been a reference and has been in force for various groups in Indonesian society.

Next, General Explanation of Law no. 1 of 1974 also explains that in accordance with the philosophical foundation of Pancasila and the 1945 Constitution, Law no. 1 of 1974, on the one hand, must be able to embody the principles contained in Pancasila and the 1945 Constitution, while on the other hand, it must also be able to accommodate all the realities of life in society today. UU no. 1 of 1974 has contained in it the elements and legal provisions of the religion and beliefs of the person concerned. With the enactment of Law no. 1 In 1974, the Indonesian nation had a marriage law, including a divorce law that applied nationally based on Pancasila and was still based on the motto "Bhinneka Tunggal Ika", which means that even though in essence the Indonesian nation already has a marriage law, including a divorce law that is based on unity, its diversity still applies.

Sulawesi Island itself has around 19 tribes. Where one of the most dominant tribes is the Bugis tribe which is spread across South Sulawesi, Southeast to Central Sulawesi. In everyday life, the Bugis people cannot be separated from traditions and culture, from the way they communicate, dress, and eat, to marriage. One of the Bugis philosophies "Makkalu Dapureng Wekka Pitu" which can be translated linguistically as "going around the kitchen seven times". This philosophy is intended for young people (kallolo) bugis before leaving his bachelor period where the young man has reached an established period to build a household mahligai ark. To go around the kitchen seven times, a young man must prepare three pieces of wood in order to keep the kitchen operational, namely Wood (aju)

1. "mulle mua ga, polengangi aju tunung bine mu na wedding madummpu dapureng na" (can you prepare firewood for your wife so that the kitchen can smoke);

2. mulle mua ga, polengangi waju binemu na tutukengi welang pelang na"Can you provide clothes for your wife to cover her body);

3. maybe your poncom-aju is relieved in the middle of your two stones"(is there your short stick in the middle of your two stones) This aju is the most important aju, because it concerns the continuation of generations and also the satisfaction of a woman.

In Article 3 of the Compilation of Islamic Law on Marriage, the aim is to create a household life that is sakinah, mawaddah and rahmah. Meanwhile, the purpose of marriage according to Law Number 1 of 1974 is to form a happy and eternal family (household) based on belief in the Almighty God.

In the author's opinion, based on the goals of marriage mentioned above, divorce should be the last resort taken by society, efforts should be made to maintain the integrity of marriage because marriage in Islam does allow divorce, but Allah hates divorce. This means that divorce is the last option for a husband and wife when there is no other way out. Peace is still sought to avoid divorce conflict. So, if society has

awareness and compliance with the law and awareness of religion, then marriage will certainly create a household life that is *sakinah, mawaddah and rahmah*. So that it becomes a solution to the problem (problem solving) towards reducing the increase in divorce in the South Sulawesi Province region.

In the author's opinion, the ideal reason is that there is a need to study the issue of divorce more deeply, because there is an increase in divorces every year. With the increase in divorces in the Religious Courts of South Sulawesi, it proves the legal fact that there are legal problems in marriages so that there is an increase in divorces every year, giving rise to legal problems in marriages, both legal problems regarding the aspects of children born, marital assets, both inherited and joint assets, as well as the impact on family relationships that were initially harmonious, changes occur after the divorce, so that with the existence of these legal problems, problem solving is needed (problem solving) to resolve the divorce escalation.

In the author's opinion, although the increase in divorce in South Sulawesi is always increasing every month, it is hoped that there will be a solution to the problem (problem solving) to resolve the increase in divorce and provide legal protection for divorce victims, especially women who suffer a lot from the consequences of divorce, it is hoped that the reduction in the number of divorces in South Sulawesi will reduce injustice towards women and children, if it cannot be avoided that divorce occurs because there is no longer any compatibility so the last resort is divorce, it is hoped that divorce will not make the two victims, especially the female victims, become desperate so they do undesirable things which of course are very detrimental to the victims and the families they leave behind.

Research methods

Empirical normative legal research is a type of legal research that combines normative legal research and empirical legal research. In this type of research, researchers conduct research by combining 2 (two) types of research, namely normative legal research and empirical legal research in legal research. In this research, the focus of the study is twofold, namely conducting research or observations in a normative setting (law in book) and on the empirical shutter (law in action).

DISCUSSION

In the author's opinion, to study the essence of divorce as a result of marriage law in the jurisdiction of South Sulawesi Province, it cannot be separated from a philosophical study of the values of the purpose of marriage itself. The nature of the purpose of marriage can be understood from various perspectives with a comprehensive study, either a study of values or "value" in positive law, and a compilation of Islamic law, Islamic law (Al-Quran) and customary law. Some of the main objectives of marriage can be described as follows:

1. Values "Value" The Purpose of Marriage According to Law Number 1 of 1974 concerning Amendments to Law Number 16 of 2019 concerning Marriage.

As in Article 1 of Law Number 1 of 1974 concerning Amendments to Law Number 16 of 2019 concerning Marriage, the purpose of marriage is regulated as follows:

"Marriage is an inner bond between a man and a woman as husband and wife with the aim of forming a happy and permanent family (household) based on the One and Only God".

From this definition, several meanings are found in it, namely:^[1]

- a. Marriage is a physical and spiritual bond between a man and a woman as husband and wife.
- b. Bonds born and born and intended to form a family (household) that is happy, permanent and prosperous.
- c. The basis of inner and outer bonds and the goal of eternal happiness is based on the One and Only God.

Things that people need to pay attention to in marriage are as follows:^[2]

1) The meaning of inner and outer bonds. Physical and spiritual ties need to exist in a marriage relationship. This means that there is a legal relationship between husband and wife. Birth bonds are also referred to as formal bonds. The bond of birth binds the husband, wife and third parties. Meanwhile, mental ties are bonds that are not visible to the naked eye. This bond can only be felt by husband and wife.

2) Between men and women. This is the most important formulation of a marriage relationship that in Indonesia, only two people, a man and a woman, can marry. In terms, they are called opposite sex couples. Under these conditions, Indonesia clearly rejects same-sex marriage. However, if that happens it will not be legally recognized.

- 3) Husband and wife form a happy family. "Family" or "forming a family" means that in marriage a man and woman must not only live alone, but they must have a goal. The purpose of marriage is fulfilled by creating a family. Therefore, there is no legal marriage practice in Indonesia that is not intended for marriage such as the practice of arranged marriage. It is clear that in marriage, the contract is limited according to the marriage contract. A marriage that has a time limit is the same as an unhappy marriage.
- 4) Based on Almighty God. This is the key that separates marriage from a civil contract. Marriage must be based on God Almighty. This means that marriage is a sacred event, so it is said to be a religious event.

As stated in the law, the purpose of marriage is to form a happy and eternal family based on the belief in Almighty God. Meanwhile, in the Compilation of Islamic Law Chapter II concerning the Basics of Marriage, Article 3, the purpose of marriage is to create a household that is *sakinah*, *mawaddah* and *warahmah*. Editorially, the goals are different, but both want to include more elements of the goal of marriage.

The purpose of marriage is also found in Law No. 1 of 1974 article 1 "The purpose of forming a happy and permanent family based on the one and only divinity." And also in the compilation of Islamic law Article 3 "Marriage aims to create a household life that is *sakinah* *mawaddah* and *warahmah*." From this source it can be interpreted that marriage brings us happiness.^[3]

Every marriage has the hope that it will last a lifetime, because one of the principles of marriage is that it is forever.^[4] Marriage as a step in the formation of a family or household is intended as a vehicle to create a peaceful, peaceful, peaceful, prosperous life in an atmosphere of love between those who are in it, because marriage aims to form a happy and eternal family based on the One God.

Even though divorce is hated by Allah, divorce is lawful for those who cannot reunite their household. So that the opportunity for divorce is accommodated by law. This is in line with the provisions regarding divorce which are regulated in Chapter VIII Article 38 to Article 41 of the Marriage Law regarding the dissolution of marriage and its consequences. It explains that one of the dissolutions of marriage is divorce.^[5]

Regarding the problems of *talak* divorce and contested divorce, currently what is happening more often is contested divorce. This is very surprising and has many question marks. In fact, usually it is the husband who divorces the most, while the wife follows what her husband proposes.

Meanwhile, divorce can occur due to divorce and divorce lawsuits. Regarding divorce, it is regulated in Articles 117-122 of the KHI which determine that divorce is the husband's vow before a Religious Court session which is one of the reasons for the dissolution of a marriage. Divorce divorce is filed by the husband whose *petitum* asks to be allowed to impose divorce on his wife. Divorce divorce filed by a husband who has left the Islamic religion (*riddah*), the product of the decision is not giving permission to the husband to vow divorce, but divorce is imposed by the Religious Court.

Meanwhile, the petition for divorce was filed by the wife, whose *petitum* requested that the Religious Court dissolve the marriage between the Plaintiff and the Defendant. Lawsuits for *hadhanah*, child support, wife support, *mut'ah*, *iddah* support and joint assets between husband and wife can be filed together with a lawsuit for divorce. During the divorce examination process before the evidentiary hearing, the husband can submit a reconciliation regarding control of children and joint property (Article 156 KHI).

One of the rights granted by the court is the right to divorce. if the household ark cannot be saved. Based on Indonesian jurisdiction, the issue of divorce is regulated in Article 38 of the Marriage Law, a marriage can be dissolved due to three things, namely (1) Death, (2) Divorce, and (3) Court Decision.

Meanwhile, Article 39 paragraph (1) of the Marriage Law stipulates that divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties, in which case for divorce there must be sufficient reasons that the husband and wife will no longer be able to get along as husband and wife. On the other hand, if there are no reasons for divorce, the court can reject the divorce.

Before forming a household or family together, we must first know each other's rights and obligations. By having rights and obligations, we will understand each other's situation in the household. Basically, the rights and obligations of a husband and wife are reciprocal, meaning that what is a husband's obligation is a right for the wife and what is a wife's obligation is a right for the husband.

The rights and obligations are stated in Law Number 1 of 1974. In Article 30 which reads "Husband and wife bear a noble obligation to uphold the household which is the basic pillar of the structure of

society." In this law, husband and wife have equal rights in the sense of having the same rights and obligations in building their household.

In Article 31, both paragraphs 1 and 2 of the Marriage Law, it is quite clear that the welfare of the rights and position of husband and wife in social life is quite in accordance with the order of social life in the current era. modern At the moment. The husband has the right to be the head of the household, therefore he must be responsible for the safety of his family and household. And the wife has the right as a housewife, therefore the wife's main task is to serve her husband and manage the needs of the family and household.^[6]

Normatively, divorce in Islam is a halal matter, but it is highly hated by Allah, as in the Hadith of the Prophet SAW. that divorce or divorce is a halal act that Allah SWT hates the most:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ

Divorce is the last alternative as an "emergency door" that can be taken when the ark of family life can no longer maintain its integrity and continuity. In its nature as a last alternative, Islam shows that before divorce occurs, reconciliation efforts should be made between the two parties, because the bond of marriage is the most sacred and solid bond.

Sahih from the Messenger of Allah shallallahu 'alaihi wa sallam that he said, "Any woman who asks her husband for a divorce without any reason, the smell of heaven is forbidden to her." (HR. Abu Dawud: 2226, Darimi: 2270, Ibnu Majah 2055, Amad: 5/283, with a hasan chain).

In Islam, the purpose of marriage is the preservation and preservation of offspring and human purity. This is as stated by Taqiyyuddin Abu Bakar in his book Kifatul Akhyar which states that marriage aims to avoid adultery, to have children and as a form of worship. Apart from that, with marriage, humans will gain peace, gain love and be able to obtain peace in life. This is as in the word of Allah Q.S. ar-Rum verse 21 which reads:^[7]

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

The translation:

And among the signs of His power is that He created for you wives of your own kind, so that you may be inclined and feel at ease with them, and He made between you a sense of love and affection. In fact, there are signs for those who think.

From the verse above, it can be understood that the purpose of marriage according to Islamic law is to create a household life that is sakinah, mawaddah and warahmah.^[8] Meanwhile, based on the juridical provisions of Article 1 of the Marriage Law, it explains that the purpose of a marriage is to form an eternal and prosperous family.

Divorce is a lawful act that is hated by Allah, but if you look at the various circumstances that are the background to the breakdown of marriage, then divorce can be considered the best way to go. The law of talak is viewed from the perspective of its benefits and welfare, there are five legal divisions, namely:^[9]

- (1) Divorce is mandatory when there is continuous disagreement between husband and wife and there is no other way to go except by bringing two judges to handle both cases. If the two judges see that divorce is better for them, then that's when divorce becomes obligatory;
- (2) Divorce is considered makruh when divorce is done without a strong reason or when the relationship between husband and wife is fine.^[10]
- (3) Divorce is punished as mubah, namely when husband and wife see that they are no longer able to understand and love each other, and each is afraid of neglecting their partner's rights, while both of them are not prepared to try to find a solution, or have tried but their efforts have been fruitless.^[11]
- (4) Divorce is punishable by sunnah, ie divorce is done when the wife ignores the rights of Allah Ta'ala that have been made obligatory for her, such as prayer, fasting and other obligations, and there is no possibility of forcing the wife to do those obligations. Divorce is also sunnah to be performed when the wife no longer maintains her honor and chastity.
- (5) Divorce is prohibited, ie divorce performed when the wife is menstruating.

2. Values "Value" The Purpose of Marriage according to the Compilation of Islamic Law.

In the author's opinion, to examine the nature of divorce as a result of marriage law in the jurisdiction of South Sulawesi Province, it cannot be separated from a philosophical study of the values or "values" of the purpose of marriage itself, as in the previous sub-chapter the purpose of marriage based on positive

law has been explained. As based on Law Number 1 of 1974 concerning amendments to Law Number 16 of 2019 concerning Marriage in Article 1 regulates that:

"Marriage is an inner bond between a man and a woman as husband and wife with the aim of forming a happy and permanent family (household) based on the One and Only God".

Based on the purpose of marriage according to the Marriage Law above, it is also strengthened by the Compilation of Islamic Law Article 3 as follows:

"Marriage aims to create a household life that is *sakinah*, *mawaddah* and *warahmah*."

In Islam, concept **sakinah**, **mawaddah**, and **grace** is an important principle that describes the ideal quality of a marital relationship. These three terms are often used as goals in building a harmonious and happy family. As in the Marriage Book/Excerpt from the Marriage Certificate, the Religious Affairs Office of the Ministry of Religion of the Republic of Indonesia has regulated the Rights and Obligations of Husband/Wife as follows:

a. Joint Rights of Husband and Wife

1. Husband and wife have equal rights in domestic life and social life together in society.
2. Each husband and wife can take legal action.
3. Halal relationship as husband and wife.
4. Exercising parental authority over children who are not yet 18 years old or have never been married.
5. If a husband or wife neglects their obligations, each can file a lawsuit in court.
6. Property acquired during marriage becomes joint property.
7. If there are sufficient legal reasons for not being able to live in harmony as husband and wife, the husband can apply for divorce, while the wife can file for divorce in court.

Husband's Rights

1. The husband is the head of the household;
2. Inherited property obtained as a gift or inheritance is under his control, as long as it is not determined otherwise by the husband and wife.

Wife's Rights

1. Wife is a housewife.
2. Obtaining the necessities of married life according to the husband's ability.
3. Get protection and good treatment from your husband.
4. Obtaining freedom to think and act in accordance with the limits determined by religious teachings and social norms.
5. Inherited property obtained as a gift or inheritance is under his control, as long as it is not determined otherwise by the husband and wife.

b. Joint Obligations of Husband and Wife

1. Upholding the household;
2. Must have a permanent place of residence;
3. Love each other, respect, be loyal and provide help physically and mentally.
4. Maintain mutual trust and not reveal personal secrets to each other.
5. Be patient and willing for each other's shortcomings and weaknesses.
6. Always discuss for the common good.
7. Caring for and educating children is full of responsibility.
8. Respect the parents and families of both parties.
9. Maintain good neighborly and community relations.

Duties of the Husband

1. Leading and guiding the family physically and spiritually;
2. Protect wife and children;
3. Providing spiritual and physical support according to ability;
4. Dealing with situations and finding solutions wisely and not acting arbitrarily;
5. Helping the wife in managing household affairs.

Wife's obligations

1. Respect and love husband;
2. Manage household affairs as well as possible;
3. Maintain and protect the honor of the household.

After the marriage contract, I IR bin Is promise with all my heart, I will treat my wife named H binti G well (mu'asyarah bima'ruf) according to the teachings of Islamic law. Next, I recited the taklik sighthat on my wife as follows:

From time to time I:

1. Leaving my wife two years in a row;
2. Or I did not give him compulsory maintenance for three months;
3. Or I hurt my wife's body/body;
4. Or I let (don't care) about my wife for six months, then my wife is not happy and complains about the matter to the Religious Court and her complaint is confirmed and accepted by the Court, and my wife pays Rp. 1,000.00 (one thousand rupiah) as iwadh (substitute) to me, then I will give one divorce to him.

I authorized the Court to receive the iwadh money and then hand it over to the Central Mosque Welfare Agency (BKM) for the needs of social worship.

Conclusion

The essence of divorce as a consequence of marriage law in the jurisdiction of South Sulawesi Province is to form a happy and eternal family (household) based on belief in the Almighty God and to create a household life that is *sakinah*, *mawaddah* and *warahmah* as the embodiment of the values of justice, certainty and benefit in society.

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