

# Emergency Condition of Divorce

## *Measuring the Resilience of Muslim Indonesian Families in Facing the Threat of Divorce*

Ramdani Wahyu Sururie, Oyo Sunaryo Mukhlas, Khoirul Aziz, Ikhwan Aulia Fatahillah, and Dadang Syaripudin

*UIN Sunan Gunung Djati Bandung, Jl. A. H. Nasution 105, Bandung, Indonesia*  
*ramdani.wahyu@uinsgd.ac.id*

**Keywords:** Marriage, Religious Courts, Children Rights.

**Abstract:** Divorce of Muslim families in positive law in Indonesia can only be done in religious courts. The increasing number of divorcees each year is the issue of this research, especially to describe whether there is a chance for a religious court to facilitate divorce in Indonesia, analyze the root causes of divorce, and formulate effective strategies to prevent it. This research used a descriptive method of analysis that describes and interprets data from court archives and interview. The data shows that religious courts normatively complicate the occurrence of divorce, but empirically there is convenience because there is a default judgment (*verstek*) and divorce lawsuit by husband and wife. The strategy of sustaining marriage is done before marriage through marital guidance and at the time of marriage through a mediation group in the community that can be exploited by a husband and wife in conflict so that the divorce rate can be reduced.

## 1 INTRODUCTION

Indonesia as the largest Muslim country in the world faces many challenges and threats in politics, social as well as culture. In the social field, there has been a serious threat, one of which is high divorce rates. This high divorce rate leads to the fragility of marital ties within the family whereas the strength of a nation is determined by the resilience of the family because a solid family is a development capital of a nation. One form of family resilience is the toughness in facing the family problems faced by husband and wife so as not to damage the bonds of marriage between the two. Since the last five years, there has been a decrease in the resilience of marriage bonds among Muslim families in Indonesia due to the high rate of divorce. Divorce is like a shortcut that solves all problems. Harmony in the household that became the pillar of family resilience can easily be shaken by disputes between husband and wife.

The statistical data released by the Central Bureau of Statistics (BPS) from 2012-2015 shows the number of divorces increasing rapidly. This data is a collection of the Director General of the Islamic Guidance of the Ministry of Religious Affairs and

Directorate General of Religious Courts for the last three years compiled by BPS.

The data shows that the number of married people in 2012 was very high compared to the following years. But, the divorce rate in 2015 was higher than the previous year. Marriage and divorce rates decreased in 2013, but increased in 2014 and 2015. In line with the data, the age of married couples are at the age of 30-40 years. This has a serious impact on parenting because in general at that age it is assumed they have children at the age of 0-15 years.

## 2 METHOD

This study used a descriptive method of analysis to the problem of divorce that occurred in the Muslim family in Indonesia. Descriptive research is a research method that tries to describe and interpret the object as it is. This research is also often called non-experiment as the researchers did not control and manipulate research variables. The study was conducted in six courts located in several major cities in Indonesia.

### 3 RESULTS AND DISCUSSION

#### 3.1 Contribution of Religious Courts to Opportunities for Divorce

The Religious Court is one of the judicial authorities for the Muslim justice seekers on a particular case. One of the cases that becomes the jurisdiction of the religious courts is to examine, hear and decide upon marital disputes. The various marital disputes in religious courts are more dominated by divorce whose numbers are increasing every year.

The number of divorce cases that were decided by religious courts and syar'iyah courts increased every year from 2001-2015 by 180% from 159,299 cases to 445,568. The significant increase occurred in 2006 which was 166% while the period 2001 s, d, 20016 only 5% increase (n.d.: 2016).

The Muslim family divorce trends occur because the wife sues a divorce to a religious court. During 2001-2014, the increasing number of divorce cases demanded by husbands was 85% while the increase in divorce cases demanded by the wife was 222%. The high percentage of divorce rate requested by the wife compared to the divorce number requested by husband based on data above was 71.9% and 27.1%. This high difference is interesting for the study, particularly to investigate the "courage" of women to request for divorce.

The important question of the above data is actually addressed to the religious court. Do religious courts have a stake to make divorce easier or not? The answer to this question can be traced normatively and empirically about the process of examining divorce cases in religious courts.

Normatively, marriage laws and all of its derivatives complicate divorce. The principle of complicating divorce is a legal principle contained in the general explanation of Law No. 1 of 1974 on marriage points 4e which says that in principle this Marriage Law adheres to the principle of complicating divorce. If it is associated with divorce to be done in court then, indirectly this principle is also contained in Article 39 of the Marriage Law and Article 65 of Law Number 7 Year 1989 on Religious Courts. Both articles say that the divorce must be done before the court.

The application of the article on the principle of complicating divorce is described in Article 31 of the Government's Government. No. 9 of 1975 on the

Implementation of Law No. 1 of 1974 on Marriage. The article states that a judge in a divorce hearing is required to reconcile both parties as long as the examination has not been decided. Also in article 115 of the Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law also states that divorce should be conducted before the court in the Religious Courts, and the divorce decisions can be made after the Religious Courts fail to reconcile the parties.

The application of the principle of complicating divorce in religious court is the conclusion of the study conducted by Hasyim (2015) in Religious Courts in Semarang City. The principle of complicating divorce is through a variety of doors, namely maximizing mediation, involvement of judges, granting divorce if supported by valid evidence, and if successfully reconciled in court the case is revoked.

Empirically, the law of marriage and religious court law also provides an easy chance for divorce so that married couples can make many choices, such as the mechanism of *verstek* (default judgement) in the examination of the case. Persons who do not arrive after being appropriately and officially called will be readily examined with *verstek*. In addition, in general, husband and wife when deciding divorce has agreed in advance so that a faster way to check the case will be taken in religious court. *Verstek* is used by married couples as a way of speeding up divorce checks.

In addition to using *verstek*, the process of examination through the divorce requested by the wife more effective and efficient rather than divorce is requested by the husband. Divorce requested by the wife was more effective in terms of examination time and efficient in terms of cost. In Religious Court in Cimahi City the divorce process requested by the wife spends two months and costs cheaper while the divorce requested by the husband takes three months with higher cost (Hamdadin: 2015).

#### 3.2 The Causes of Husband and Wife's Problems in Muslim Family Divorce

Economic reasons are the main cause for divorce in Indramayu District by 2013. A woman's profession in Indramayu Regency in 2013 may affect the occurrence of divorce. A wife who has a profession of labor has a tendency to divorce higher (Jamil and Fakhruddin: 2015).

In Lampung City, the main reason for divorce is polygamy, moral crisis, jealousy, economy, lack of responsibility, third party interference and disharmony in the family. The largest percentage of

divorce reasons was lack of harmony at 34% of the 27 divorce cases conducted by highly educated couples (Nunung: 2011).

The triggers of divorce in Mataram were economic factors (40%), moral factors (25%), domestic violence (10%), education factor (10%) and third party intervention factor (5%).

The dominant factors that caused divorce in Bungo District were disputes (380 cases) and lack of responsibility (842 cases). The percentage of divorce was lack of harmony (31.05%), lack of responsibility (68.46%), economy (0.32%), maltreatment (0.08%) and imprisoned husband (0.08%) (Bahtiar: 2009).

### 3.3 Effective Strategies to Strengthen the Resilience of Marriage in Muslim Families

The effort to save a family that is not harmonious, both legally and socially, is the responsibility of all parties. This peace effort is important to reduce the number of divorce rates.

First, in the trial process, judges in religious courts are required to make a maximum peace effort not merely a formality. If peace succeeds, the judge creates a Deed of Peace that has the power of a decision. However, if not successful then proceed at the next stage of the trial.

Second, it is important to maximize the mediating institutions. In general, married couples do not know that prior to the Religious Courts, marriage conflicts should be resolved through a mediating body. The couple did not have sufficient information about the mediation institution. In the future, the marriage certificate should include the addresses of mediation institutions that can be used by married couples to resolve their conflicts.

Thirdly, Supreme Court Regulation No. 1 of 2016 concerning mediation procedures in the court states that the mediator may be from within or outside the court (Article 4 paragraph 1), judges and non-judges. This reinforces the spread of mediation institutions developed by communities and even universities that perform the function of mediating and facilitating family conflicts in order to be able to suppress divorce rates. The emergence of mediation institutions in the community will increase the chances of mediation that can play a role in reducing the rate of divorce.

## 4 CONCLUSIONS

Based on the above description, the Religious Courts contribute to the possibility of divorce. Juridical, legislation provides the principle of complicating

divorce so that judges can facilitate the examination of the divorce with justified reasons. In addition, this law provides space for the parties (husbands and wives) to facilitate divorce, either through the case of *verstek* or done by applying for a divorce which is felt to be very effective and efficient.

Secondly, the root of the issue of divorce of married couples in Muslim families varies greatly in several major cities in Indonesia. The root of the problem can be seen in terms of education level, age of husband and wife and child age. The root of the problem affects the reasons couples make divorce.

Third, an effective strategy to strengthen the resilience of marriage bonds within the Muslim family can be done in the pre-marital stage, during marriage and during marital conflicts. In the pre marriage stage prospective married couples need to get marital guidance that can be integrated in the college curriculum or also involving other institutions such as the Office of Religious Affairs.

## REFERENCES

- A. Mulianny Hasyim. 2015. The Principles of Tightening Divorce in Semarang High Religious Court in Maqasid Al-Shari'ah Perspective. *Al-Mawarid Journal of Islamic Law*, XV (1).
- Abdul Jamil., Fakhrudin. 2015. Isu dan Realitas di Balik Tingginya Angka Cerai-Gugat di Indramayu. *HARMONI Jurnal Multikultural and Multireligius* 14 (2).
- Anonymous. 2016. *Ketika Perempuan Bersikap: Trend Cerai Gugat Keluarga Muslim*. Jakarta: Puslitbang Kehidupan Keagamaan.
- Bahtiar Hasan Arsa Muhammad. 2009. Perceraian dan Perubahan Sosial di Kabupaten Bungo: Studi terhadap Tren Pola Perceraian dari Talak Cerai ke Gugat Cerai. *KONTEKSTUALITA Jurnal Penelitian Sosial Keagamaan* 26 (2).
- Budhy Prianto, dkk., 2013. Rrendahnya Komitmen dalam Perkawinan sebagai Sebab Perceraian. *Jurnal Komunitas: Research and Learning in Sociology and Anthropology*. Semarang: Universitas Negeri Semarang.
- Faisal. 1998. *Metodologi Penelitian Pendidikan*. Surabaya: Usaha Nasional.
- Lexy J. M. 2002. *Metodologi Penelitian Kualitatif*. Bandung: Remaja Rosdakarya.
- Nunung Rodliyah. 2011. Perceraian Pasangan Muslim Berpendidikan Tinggi (Studi Kasus di Kota Bandar Lampung), *Disertasi*. Yogyakarta: UIN Sunan Kalijaga.
- Nurhasanah., Rozalinda. 2014. Persepsi Perempuan terhadap Perceraian: Studi Analisis terhadap Meningkatnya Angka Gugatan Cerai di Pengadilan

Agama Padang *Kafa'ah: Jurnal Ilmiah Kajian Gender*  
4 (2).

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.  
Undang-Undang Nomor 52 Tahun 2009 tentang  
Perkembangan Kependudukan Dan Pembangunan  
Keluarga.

Wawancara dengan Zeni Hamdadin dan M. Burhanudin  
(Advokat)

