

Disparity in Religious Court Decisions in Divorce Cases Due to Apostasy: Normative Analysis and Legal Construction

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ABSTRACT

This study aims to analyze the disparity of Religious Court decisions in divorce cases caused by apostasy and to formulate an appropriate legal construction for such cases. This research employs normative legal research using statutory, conceptual, and case approaches. The analysis focuses on three Religious Court decisions, namely Decision of the Bandung Religious Court No. 0166/Pdt.G/2017/PA. Bdg, Decision of the Palu Religious Court No. 0249/Pdt.G/2016/PA. Pal, and Decision of the Bandung Religious Court No. 147/Pdt.G/2012/PA.Bdg. Data were collected through document study of primary and secondary legal materials and analyzed qualitatively through inventory, classification, and systematization stages. The findings reveal a disparity in judicial reasoning regarding divorce due to apostasy. Some judges consider apostasy as the primary legal ground for divorce through *fasakh*, while others base their decisions on continuous disputes and marital disharmony resulting from apostasy. This disparity indicates inconsistency in the application of Article 116 letter (h) of the Compilation of Islamic Law, which requires apostasy to cause marital discord. Therefore, this study recommends a legal construction that recognizes apostasy as an independent ground for divorce without the necessity of linking it to continuous disputes, in order to ensure legal certainty and uniformity of decisions within the Religious Court system.

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1. INTRODUCTION

Marriage in the Indonesian legal system is seen as a bond of birth and mind between a man and a woman that aims to form a happy and eternal family based on the One Godhead. This principle is affirmed in Article 1 of Law Number 1 of 1974 concerning Marriage which places religion as the main foundation for the validity of a marriage. Furthermore, Article 2 paragraph (1) of the Marriage Law emphasizes that a marriage is declared valid if it is carried out according to the laws of each religion and its beliefs (Law of the Republic of Indonesia Number 1 of 1974, 1974). Consequently, religious unity in

marriage becomes a fundamental element that cannot be ignored, especially in the context of marriage that is carried out according to Islamic law.

In Islamic law, religious differences between husband and wife are a principled prohibition because they are contrary to the principles and conditions of the validity of marriage. The Compilation of Islamic Law (KHI) explicitly prohibits marriage between a Muslim and a non-Muslim partner (Abdurrahman, 2007). Therefore, a conversion of religion or apostasy carried out by one of the parties in an Islamic marriage not only has an impact on the personal relationship of husband and wife, but also has juridical implications for the validity of the marriage bond itself.

In the context of divorce, the Marriage Law stipulates that divorce can only be carried out if there are sufficient reasons that the husband and wife cannot live together as a married couple (Law of the Republic of Indonesia Number 1 of 1974, 1974). Meanwhile, KHI in Article 116 letter (h) states that divorce can occur due to religious conversion or apostasy that causes disharmony in the household (Abdurrahman, 2007). The formulation of this norm shows that apostasy does not stand as a reason for divorce that stands alone, but must be proven to have caused disharmony in domestic life.

This provision raises problems in the practice of religious justice. In various cases of divorce due to apostasy, there are differences in the judge's perspective in determining the legal basis of the decision. Some judges make apostasy the main reason for divorce that leads to *fasakh*, as seen in the decision of the Bandung Religious Court Number 147/Pdt.G/2012/PA.Bdg. On the other hand, some other judges emphasize the aspect of ongoing disputes and quarrels as the basis for divorce, even though the facts of the trial show that there is a conversion of religion by one of the parties, as seen in the Decision of the Bandung Religious Court Number 0166/Pdt.G/2017/PA. Bdg and the Decision of the Palu Religious Court Number 0249/Pdt.G/2016/PA. Pal (Nindya Pratiwi, 2021).

The disparity in the decision shows that there are inconsistencies in the application of legal norms, both those sourced from the Marriage Law, the Compilation of Islamic Law, and the principles of Islamic law itself. In fact, in the view of the majority of scholars, the apostasy of one of the parties in marriage causes the breakdown of the marriage bond automatically through the *fasakh* mechanism, without requiring disputes or quarrels in the household (Darmansyah, 2023; Saputra et al., 2024). This condition creates legal uncertainty and has the potential to harm the parties to the case, especially in the context of the protection of civil rights after divorce.

Departing from this reality, it is important to conduct an in-depth legal study of the disparity in the decision of the Religious Court in divorce cases due to apostasy. This study not only aims to identify the forms and factors that cause the disparity in decisions, but also to formulate a more consistent and fair legal construction. Thus, it is hoped that this research can make an academic and practical contribution to the development of Islamic family law, especially in an effort to realize legal certainty and uniformity of decisions within the Religious Court.

2. METHODS

This research is normative legal research, which is research that examines law as a norm or rule that applies in society and becomes a guideline for the behavior of legal subjects (Widiarty, 2024). Normative legal research was chosen because the focus of the study is directed at the analysis of written legal norms, court decisions, as well as the doctrine and views of legal scholars related to divorce due to apostasy in the Islamic legal system and Indonesian national law.

The approaches used in this study include the statute approach, the conceptual approach, and the case approach. The legislative approach is used to examine the legal provisions that govern marriage and divorce, especially Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law. The conceptual approach is used to examine the concepts of apostasy, *fasakh*, and the principle of Islamic personality based on Islamic legal doctrine and the opinions of scholars and legal scholars. Meanwhile, the case approach is used to analyze the decisions of the Religious Court related to divorce due to apostasy in order to find patterns of legal argumentation and disparity in decisions (Rangkuti, 2017).

The object of study in this study is three decisions of the Religious Court, namely the Decision of the Bandung Religious Court Number 0166/Pdt.G/2017/PA. Bdg, Decision of the Palu Religious Court Number 0249/Pdt.G/2016/PA. Pal, and the Bandung Religious Court Decision Number 147/Pdt.G/2012/PA.Bdg. The three decisions were chosen because they represent differences in judges' legal considerations in deciding divorce cases due to apostasy, both those that make apostasy the main reason for divorce and those that associate it with disputes and quarrels in the household (Nindya Pratiwi, 2021).

The types and sources of legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, court decisions, and Compilation of Islamic Law. Secondary legal materials are in the form of legal textbooks, scientific journals, the results of previous research, and the opinions of scholars related to divorce due to apostasy and Islamic family law. Tertiary legal materials are used as support, such as legal dictionaries and encyclopedias of Islamic law (Widiarty, 2024).

The technique of collecting legal materials is carried out through document studies (library research), which is by studying, inventorying, and reviewing legal materials that are relevant to the research problem. Furthermore, the collected legal materials are analyzed qualitatively through several stages, namely inventory of legal materials, identification of their relevance and suitability with legal issues, classification based on their type and normative position, and systematization to build coherent legal arguments (Widiarty, 2024).

The results of the analysis are then used to answer the research problem, namely identifying the form of disparity in the decision of the Religious Court in divorce cases due to apostasy and formulating a more consistent and fair legal construction in order to realize legal certainty within the Religious Court.

3. FINDINGS AND DISCUSSION

Divorce due to apostasy is one of the most complex Islamic family law issues in the practice of Religious Courts in Indonesia. This complexity is not only caused by the sensitivity of religious issues, but also by the insynchronization of positive legal norms with the rules of Islamic law that are the basis for the applicability of family law for Muslims. In the context of national law, Law Number 1 of 1974 concerning Marriage does not explicitly regulate apostasy as a reason for divorce, but rather emphasizes the existence of domestic disharmony as the main condition for divorce. Meanwhile, the Compilation of Islamic Law (KHI) provides more specific arrangements, but still leaves interpretive problems.

Article 116 letter (h) of the KHI states that divorce can occur due to religious conversion or apostasy that causes disharmony in the household (Abdurrahman, 2007). The formulation of this norm shows that apostasy is positioned as an indirect cause of divorce, because it still has to be proven that there is a consequence in the form of disharmony. In fact, in classical Islamic law, apostasy is seen as a direct cause that cancels the marriage contract (*fasakh*), without requiring a domestic conflict (Darmansyah, 2023).

This paradigm difference is then reflected in judicial practice, especially in the decisions of the Religious Court related to divorce due to apostasy. Judges are faced with a choice between applying textually positive legal norms or prioritizing substantive Islamic legal principles. This choice ultimately gives birth to disparity in decisions that have an impact on legal certainty and justice for the parties.

The results of the study show that the disparity in the decision of the Religious Court in divorce cases due to apostasy mainly lies in the basic differences in legal considerations used by judges. In the Decision of the Bandung Religious Court Number 0166/Pdt.G/2017/PA. Bdg, the panel of judges granted the divorce lawsuit on the basis that the parties' households had experienced disharmony due to the change in the defendant's beliefs. However, apostasy is not used as a legal reason on its own, but is positioned as a triggering factor for domestic disharmony.

A similar approach is also seen in the Decision of the Palu Religious Court Number 0249/Pdt.G/2016/PA. Pal. In this case, the judge focused more on the reasons for continuous disputes and quarrels as stipulated in Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 letter (f) of the KHI. Although the facts of the trial show that the defendant has apostatized, this is not used as the main basis for divorce (Nindya Pratiwi, 2021).

On the contrary, the decision of the Bandung Religious Court Number 147/Pdt.G/2012/PA. BDG shows a different paradigm. In this decision, the panel of judges expressly made apostasy the main reason for the breakdown of the marriage and declared the marriage of the fasakh parties. The judge based his consideration on the provisions of Islamic law and the opinions of scholars who stated that the apostate of one of the parties caused the automatic cancellation of the marriage contract (Nindya Pratiwi, 2021).

These differences in approach show that judges have a fairly wide discretion in interpreting legal norms related to divorce due to apostasy. However, too wide a space of discretion without clear guidelines has the potential to cause legal uncertainty and injustice for justice seekers.

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Normatively, Article 116 letter (h) of the KHI contains conceptual problems because it combines two different elements, namely conversion of religion (apostasy) and disharmony in the household. This incorporation raises a fundamental question about the position of apostasy as a ground for divorce: whether apostasy is the main cause of divorce or merely a supporting factor that must be proven through the existence of a domestic conflict.

From the perspective of Islamic law, apostasy is seen as a violation of the basic principle of Islamic marriage, namely the unity of faith between husband and wife. Therefore, apostasy has direct legal consequences in the form of the breaking of the marriage bond through the fasakh mechanism (Darmansyah, 2023). Thus, requiring the existence of disharmony as a result of apostasy is contrary to the logic of Islamic law itself.

The dualism of regulation in KHI also reinforces this problem. Article 75 of the KHI states that apostasy is one of the causes of the annulment of marriage, while Article 116 letter (h) of the KHI places apostate as a reason for divorce with certain conditions. This inconsistency opens up different interpretations among judges and is one of the main factors causing disparity in verdicts (Saputra et al., 2024).

The principle of Islamic personality is a fundamental principle in Islamic marriage law in Indonesia. This principle affirms that Islamic law only applies to those who are Muslim. In the context

of marriage, this principle requires that both parties remain in the Islamic religion in order for the marriage to remain legally valid.

If one of the parties apostatizes, then the principle of Islamic personality is no longer fulfilled. As a consequence, the marriage loses its legal basis in the Islamic legal system. Therefore, maintaining a marriage in which one of the parties has apostatized, even though there is factually no domestic conflict, is still contrary to the basic principles of Islamic marriage law (Nindya Pratiwi, 2021).

In judicial practice, not all judges make the principle of Islamic personality the main basis for legal considerations. Some judges prefer a positivistic approach by adhering to the textual formulation of Article 116 letter (h) of the KHI, while others prioritize the substance of Islamic law. This difference in approach again contributes to the disparity in verdicts.

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These differences in approach show that judges have a fairly wide discretion in interpreting legal norms related to divorce due to apostasy. However, too wide a space of discretion without clear guidelines has the potential to cause legal uncertainty and injustice for justice seekers.

The scholars' view of apostasy and its implications for marriage is relatively consistent. The majority of scholars, including Imam Abu Hanifah, Imam Malik, and Imam Shafi'i, are of the opinion that the apostate of one of the parties in the marriage causes the termination of the marriage contract automatically through fasakh (Darmansyah, 2023). This view is based on the prohibition of interfaith marriage in the Qur'an, especially Surah Al-Baqarah verse 221.

The doctrine of Islamic law shows that apostasy has a very serious position in the context of marriage. Therefore, making apostasy only a supporting factor for divorce without direct legal consequences can be seen as a deviation from the basic principles of Islamic law.

The disparity in verdicts in divorce cases due to apostasy has a significant impact on legal certainty. Justice seekers cannot predict exactly how their cases will be decided, despite having similar legal facts. This condition has the potential to cause injustice and reduce public trust in religious justice institutions.

In addition, the disparity in decisions also has an impact on the protection of the civil rights of the parties, especially related to post-divorce rights such as iddah maintenance, mut'ah, and child custody. Differences in the legal basis of decisions have direct implications for the differences in legal consequences received by the parties (Saputra et al., 2024).

Based on the above analysis, a firmer and more consistent legal construction is needed in handling divorce cases due to apostasy. Apostasy should be positioned as a reason for divorce that stands alone and has direct legal consequences in the form of fasakh. Thus, no additional proof is needed regarding the existence of disputes or disharmony in the household.

This legal construction can be realized through the renewal of norms in Article 116 letter (h) of the KHI or through special provisions in the Draft Law on the Applied Law of the Religious Courts. The elimination of the phrase "which causes disharmony in the household" will clarify the position of apostasy as a ground for divorce and minimize excessive room for interpretation among judges.

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Theoretically, this research reinforces the view that Islamic family law should be understood substantively, not merely textually. Practically, the results of this study are expected to be a reference for Religious Court judges in deciding divorce cases due to apostasy more consistently and fairly. Thus, the legal goals in the form of certainty, justice, and benefits can be achieved in a balanced manner.

In addition to updating norms in the Compilation of Islamic Law, strengthening regulations in divorce cases due to apostasy also requires the active role of the Supreme Court as the highest judicial institution. Until now, there have been no technical guidelines or Supreme Court circulars that specifically regulate the mechanism for handling *fasakh* cases due to apostasy within the Religious Court. The absence of these guidelines causes judges to have enormous flexibility in interpreting and applying legal norms, which ultimately contributes to the disparity in decisions between courts.

The Supreme Court actually has the strategic authority to establish uniformity in the application of the law through the issuance of permanent jurisprudence, Supreme Court Circular Letters (SEMA), or Supreme Court Regulations (PERMA). These instruments can be used as a reference for Religious Court judges in consistently deciding divorce cases due to apostasy, especially in determining whether apostasy is positioned as a stand-alone *fasakh* reason or must be associated with other reasons for divorce.

The handling of divorce cases due to apostasy also requires harmonization between national law and Islamic law. Law Number 1 of 1974 concerning Marriage places religion as the legal basis for marriage, but does not provide technical arrangements related to the implications of religious conversion in marriages that have taken place. This void of norms was then filled by the Compilation of Islamic Law, although its arrangement did not fully reflect the principles of Islamic law in its entirety.

Legal harmonization is needed so that there is no conflict between positive legal norms and Islamic law rules which are a substantive reference for Religious Courts. By placing apostasy as a substantive legal defect in Islamic marriage, national law can provide a clearer space for judges to decide cases fairly, without having to be trapped in ambiguous normative constructions.

The disparity in decisions in divorce cases due to apostasy also needs to be studied from the perspective of protecting the rights of the parties. The difference in the legal basis of the decision has direct implications for the fulfillment of civil rights after divorce, such as *iddah* maintenance, *mut'ah*, and the division of child custody. In some rulings, these rights are still granted even if the marriage is terminated due to apostasy, while in other rulings these rights are abolished on the grounds of breaking Islamic legal relations.

This condition shows the need for clearer standards in determining the legal consequences of divorce due to apostasy. The protection of civil rights should still pay attention to the principles of justice and humanity, without ignoring the provisions of Islamic law that are the basis for the termination of marriage. Thus, the legal construction that is built not only guarantees legal certainty, but also upholds the value of substantive justice for all parties to the case.

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4. CONCLUSION

Based on the results of the research and discussion that has been described, it can be concluded that there is a disparity in the decision of the Religious Court in handling divorce cases due to apostasy. This disparity is especially evident in the fundamental differences in judges' legal considerations, where some rulings make apostasy the main reason for the breakdown of marriage through the *fasakh* mechanism, while some other rulings place apostasy only as a trigger factor for disputes and quarrels in the household. This difference in approach shows that there is no uniformity in the application of Article 116 letter (h) of the Compilation of Islamic Law and the lack of optimal understanding of the principles of substantive Islamic law in judicial practice.

Normatively, the regulation regarding apostasy in the Compilation of Islamic Law still contains inconsistencies, especially between Article 75 which places apostate as the cause of annulment of marriage and Article 116 letter (h) which requires the existence of domestic disharmony as the basis for divorce. This condition opens up a wide range of interpretation for judges and ultimately contributes to the disparity in verdicts. In fact, from the perspective of Islamic law, apostasy is a substantive legal defect that directly eliminates the validity of the marriage contract without having to prove the existence of a conflict or domestic disharmony.

Therefore, the ideal legal construction in the case of divorce due to apostasy should place apostasy as a reason for divorce that stands alone and has direct implications for the breakdown of the marriage through *fasakh*. In order to realize legal certainty and uniformity of decisions within the Religious

Court, it is necessary to strengthen regulations through the renewal of norms in the Compilation of Islamic Law or the establishment of special arrangements that expressly regulate the mechanism of divorce due to apostasy. In addition, the role of the Supreme Court through the issuance of technical guidelines or jurisprudence remains important to direct judges in applying the law consistently, fairly, and in harmony with the principles of Islamic law.

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