

Reasons For Divorce in The Compilation of Islamic Law: An Overview of Islamic Legal Psychology

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Abstract : *This article aims to reveal the reasons for juridical divorce and further reveal the psychological factors contained in the reasons for divorce in the Islamic Law Compilation. Through a psychological approach (psychological approach) and legislation (statute approach), the authors analyze descriptively and analytically based on materials collected through literature study. The result is that the reasons for divorce as stated in the KHI show the existence of psychological relationships such as mental readiness, the level of maturity and maturity of thought and accuracy in making decisions when having to divorce a partner. That in the reasons for divorce there are psychological factors that directly influence the occurrence of divorce.*

Keywords : *reason, divorce, legal psychology*

Abstrak : Artikel ini bertujuan untuk mengungkap alasan-alasan perceraian secara yuridis dan mengungkap lebih jauh faktor-faktor psikologis yang terkandung dalam alasan-alasan perceraian dalam Kompilasi Hukum Islam. Melalui pendekatan psikologis (psychological approach) dan peraturan perundang-undangan (statute approach), penulis menganalisis secara deskriptif dan analitis berdasarkan bahan-bahan yang dikumpulkan melalui studi literatur. Hasilnya alasan perceraian sebagaimana tercantum dalam KHI menunjukkan adanya hubungan psikologis seperti kesiapan mental, tingkat kematangan dan kematangan berpikir serta ketepatan dalam mengambil keputusan ketika memutuskan untuk menceraikan pasangan. Bahwa di dalam alasan perceraian terdapat faktor psikologis yang berpengaruh langsung terhadap terjadinya perceraian.

Kata kunci : alasan, perceraian, psikologi hukum



I. INTRODUCTION

Marriage is idealized as a physical and mental bond between a husband and wife to live together for an eternity based on One God.¹ The essence of marriage is in principle a religious commandment. to be carried out in accordance with the teachings of Islamic law so that both husband and wife have equal rights and obligations within the framework of the household.²

The legal perspective sees marriage as a legal agreement between two parties (husband and wife) to mutually agree between a man and a woman and have legal consequences for both. With a balanced and equal position between husband and wife, both have legal consequences for what they have agreed on together in a marriage. The marriage agreement in the Islamic conception is a solid agreement (*mitsaq ghalizh*) which is different from the agreement in general. This difference can be found in religious values which are very thick in the marriage bond. That is why it is stated that the validity of a marriage depends on the suitability of the marriage process with religious principles including Islam.³

As it is known that Islamic law is a law that comes from God (divine law). In contrast to positive law (legal positivism), which is a human-created law that is constructed to regulate the order of community life related to the relationship between individuals and other individuals, as well as the relationship between individuals as citizens of the State and the government or the State.⁴ Divorce arrangement in the Islamic Law Compilation (KHI) is a concept of Islamic law that is derived from universal Islamic legal values to instrumental Islamic law.⁵ This model of derivation of Islamic law is part of from legal adaptation to adapt to the conditions and environment around it. That is why some people say that KHI is Indonesian *fiqh*.⁶

Islam has determined theoretical and practical aspects related to the implementation of marriage and divorce. Divorce carried out by the Muslim community should be obliged to obey and obey the provisions of the divorce law outlined by the Islamic religion as stipulated in the marriage law which has been outlined in a straightforward and thorough manner.⁷ Divorce (*talak*) in The conception of normative Islamic law (*fiqh*) becomes the husband's authority to divorce his wife. With the pronouncement of the divorce vow by the husband, the marriage bond between the husband and wife is severed.⁸ Unlike classical

¹ Moch. Isnaeni, *Hukum Perkawinan Indonesia* (Bandung: PT. Refika Aditama, 2016), 5; See also Republic of Indonesia, "Law Number 1 of 1974 Concerning Marriage" (1974) article 1.

² Jaih Mubarak, *Pembaruan Hukum Perkawinan Di Indonesia* (Bandung: Simbiosis Rekatama Media, 2015), 16.

³ Abd. Shomad, *Hukum Islam Penormaan Prinsip Syariah Dalam Hukum Indonesia*, Cet. ke-2 (Jakarta: Kencana, 2012), 284.

⁴ Satjipto Raharjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 1996), 34.

⁵ Mohammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Rajawali Pers, 2015), 48–55.

⁶ Abdurrahman, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: CV. Akademika Pressindo, 2007), 15.

⁷ Zeni Lutfiyah, Agus Rianto, and M. Rasyid Ridlo, "Perkawinan Siri Dalam Reformulasi Hukum Perkawinan Islam Di Indonesia Sebagai Upaya Preventif Terhadap Disharmoni Sosial Dalam Masyarakat (Perspektif Gender Dan Hak Asasi Manusia)," *Yustisia* 4, no. 1 (2015): 173–89, <https://doi.org/10.1145/3132847.3132886>.

⁸ Syaefuddin Haris, "Kedudukan Taklik Talak Dalam Perkawinan Islam Ditinjau Dari Hukum Perjanjian," *Arena Hukum* 6, no. 3 (2013): 336–59.

Islamic law, the Marriage Law determines different matters related to the imposition of divorce where in article 39 it is stated that divorce can only be done in.⁹ This means that the stipulation on the imposition of divorce is not absolutely the right of the husband, but the judge also regulates the imposition of the divorce.

The phenomenon of talaq dropping has developed when state law takes part in regulating the mechanism for the imposition of talaq. In this case, the state is obliged to protect all citizens in order to avoid behavior that is detrimental to both parties as a result of this divorce. From here, the adaptation of Islamic law (fiqh) is absolutely necessary by adjusting to the conditions of the social culture that develops in society. The concept put forward by Imam Ibnu Qoyyim is that changing fatwas is possible due to changes in space and time, which becomes a necessity to be implemented in the legal system in force in a country as a form of protection for every citizen.

It seems that the idealities of a marriage are not always present as dreams are. Various kinds of conditions and situations require married couples to separate and break the marital ties between them. The agreement that they had previously pledged to live together forever seemed to have been forgotten even though they had tried to be reminded to stay together and prefer to divorce as a way to terminate marriage as stated in article 38 of Law Number 1 of 1974 concerning Marriage) which explains that a marriage can break up because; (a) death, (b) divorce and (c) court decision.¹⁰

Divorce (talak) is an act of releasing the marriage bond between a husband and wife so that the rights and obligations between the two are released. With the breakdown of the marriage, the relationship between the two was completely cut off and they were no longer allowed to have a relationship like husband and wife as before.¹¹ Divorce is an act that is religiously permissible even though its implementation leaves hatred before God Almighty.

The occurrence of divorce is generally caused by various factors. Ahmad Rofiq stated that at least there are several conditions that commonly occur in husband-and-wife relationships that cause the breakdown of the marriage bond, namely:

1. Nusyuz which is done by the wife to the husband.
2. Nusyuz by husbands against wives.
3. The continuous syiqaq (dispute and / or dispute) between husband and wife.
4. Adultery or other fakhisyah deeds so that husband and wife suspect each other and accuse each other¹²

The occurrence of divorce is not only caused by the various factors mentioned above, it can be seen that divorce includes the psychological factors of the perpetrator of the divorce, either husband or wife. Attitudes and daily behavior of everyday actors can also show how a person divorces their partner. So that sometimes, the dropping of

⁹ Indonesia, Law Number 1 of 1974 concerning Marriage, See Article 39.

¹⁰ Indonesia, Law Number 1 of 1974 concerning Marriage Article 38.

¹¹ Syaikh Hasan Ayub, *Fikih Keluarga*, Cet. ke-5 (Jakarta: Pustaka Al-Kautsar, 2008), 247.

¹² Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia*, Cet. 1 (Jakarta: Rajawali Pers, 2013), 214–17.

divorce by the husband is referred to as a manifestation of Islamic teachings, even though many other factors contribute to a person's religious practice¹³ such as cultural culture, social aspects and even the psychology of the perpetrator.

Research related to divorce has been carried out by many previous researchers. Linda Azizah in her research entitled *Divorce Analysis in Islamic Law Compilation*, reviewed the overview of divorce in Islamic law which she then confronted with the Islamic Law Compilation as one of the references in solving divorce law in Indonesia. His review of divorce in the KHI describes the legal normativity of divorce but has not touched the psychological aspect.¹⁴ In line with this research, Riami et al wrote about *Divorce according to the Perceptions of Psychology and Islamic Law* which in the end concludes that psychological divorce is caused by several factors, such as heredity, psychology, ethics, and so on.¹⁵ Another research on the psychology of divorce was also written by Agoes Dariyo entitled *Understanding the Psychology of Divorce in Family Life*. He stated that various factors can lead to divorce in society. Divorce, apart from breaking the marital ties, also has an impact on emotional ties such as community divorce, cooperative divorce and so on.¹⁶

The entire research that has been carried out, even though it has entered into discussions about divorce and the reasons for divorce, has not specifically targeted the psychological aspects of the law. Through a legal psychological approach, this paper intends to explore the reasons for divorce contained in the Islamic Law Compilation by raising legal psychological theories as a foundation in constructing divorce law constructions in Indonesia. Thus, it can be seen that there is a fundamental difference with previous research where this research focuses on the psychological relationships contained in the applicable statutory provisions.

II. METHODS

This research is a normative juridical study that combines a psychological approach (psychological approach) and legislation (statute approach). Legal materials are compiled through literature studies drawn from primary legal materials, such as the Marriage Law and the Compilation of Islamic Laws. In addition, secondary and tertiary legal materials are also used which consist of scientific journals, books and other related literature. The materials that have been compiled are then analyzed in a descriptive analytical manner which seeks to reveal the psychological relationships in the Islamic Law Compilation regarding the reasons for divorce.

¹³ Imani Mohammad and Charlie Lehmann, "Women's Rights in Islam Regarding Marriage and Divorce," *Journal of Law and Practice* 4, no. 3 (2011): 1–13.

¹⁴ Linda Azizah, "Analisis Perceraian Dalam Kompilasi Hukum Islam," *Al-'Adalah* X, no. 4 (2012): 415–22.

¹⁵ Riami et al., "Perceraian Menurut Persepsi Psikologi Dan Hukum Islam," *Jurnal Imtiyaz* 4, no. 02 (2020): 163–74.

¹⁶ Agoes Dariyo, "Memahami Psikologi Perceraian Dalam Kehidupan Keluarga," *Jurnal Psikologi* 2, no. 2 (2004): 94–100, <http://download.portalgaruda.org/article.php?article=62924&val=4564>.

III. DISCUSSION

Legal Optics Regarding Reasons for Divorce

Divorce is a form of renouncing the marriage bond in which both parties, either husband or wife, are still alive for accountable reasons.¹⁷ Divorce is a matter that is avoided as much as possible even though under certain conditions it is permissible. The ability to divorce in a marriage bond is defined as an “emergency door” which is the last way to be taken where no other effort can be taken apart from that last route.¹⁸

In the Islamic legal tradition, divorce is actually a right that a husband has to release himself from his wife. Because it is so sacred, some fiqh scholars have even affirmed the word "divorce" of a husband in his jokes as a true form of divorce. Juridically, divorce has been regulated according to the provisions of marriage in the Marriage Law. Specifically, regarding divorce, this provision is stated in article 38 letter (b) which states that a marriage bond can be broken if there is the death of one of the husband or wife, divorce and a court ruling. Divorce as a form of terminating the marital relationship between husband and wife is one of the reasons for the formal juridical break up of marriage. Because divorce has a very serious legal impact, the state regulates that divorce can only be considered legality when the divorce is carried out before a court as stipulated in article 39 of the Marriage Law.

Many questions then arise, why did the state participate in arranging and legalizing divorces, which in fact divorce is a private domain? It should be understood that the state is obliged to attend in the event of a divorce. The participation of the state is a form of state responsibility in ensuring that the divorce is legally valid and does not harm other parties. The implementation of divorce before the court is a form of guaranteeing the implementation of divorce to ensure harmony with the principles of the Islamic religion. In addition, the judge will later be able to see whether the husband who handed down divorce has fulfilled his obligations before finally separating from his wife, including convincing him that what he did was really without coercion from any party.

The reasons that were also put forward regarding the necessity to implement a divorce before the court were to accentuate the basic principles of procedural law in religious courts which make divorce difficult.¹⁹ This provision as referred to in article 39 paragraph (1) of the Marriage Law and article 65 Law Number 7 of 1989 concerning Religious Courts (hereinafter referred to as UUPA).²⁰ This principle puts forward efforts to prevent divorce by way of examination by a judge beforehand. before the court before it was decided to divorce.

If indeed the divorce is unavoidable, then the proposed divorce must at least meet justifiable reasons for divorce. Article 39 paragraph (2) of the Marriage Law requires clear

¹⁷ Hilman Hadikusuma, *Hukum Perkawinan Di Indonesia* (Bandung: Mandar Maju, 2007), 3.

¹⁸ Rofiq, *Hukum Perdata Islam Di Indonesia*, 213.

¹⁹ Rofiq, 213.

²⁰ Indonesia, Law Number 1 of 1974 concerning Marriage article 39 paragraph (1). It completely reads "Divorce can only be carried out before a Court Session after the Court concerned has tried and failed to reconcile the two parties. See also Republic of Indonesia, “Law Number 7 of 1989 Concerning Religious Courts” (1989) Article 65. The article reads" 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.

reasons for being able to file for a divorce where both parties cannot run the household in harmony. Several reasons for divorce that can be filed are further detailed in Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage Article 19. This article identifies several things that can lead to divorce, namely

- a. Adultery, gambling, drunkenness which is difficult to cure.
- b. The husband or wife leaves their partner for two consecutive years without permission and without justifiable reasons or other reasons beyond their means.
- c. Imprisonment for five years or more severe befall on one of the husband or wives.
- d. Persecution and cruelty.
- e. There is a disability or disease that causes the obligation to be husband or wife is not fulfilled.
- f. Constant quarrels and fights.

Furthermore, in article 116 KHI two reasons are added, namely

- a. Husband violates ta'lik talak
- b. Religious conversion or apostasy which causes dissonance in the household.²¹

The reasons for divorce above are legally required to be accompanied by the time a divorce is filed. The limitation of reasons for divorce by means of written rules (*scripta*) in statutory provisions is also part of the protection of the husband's arbitrariness to pass divorce to his wife. The part of the text written in a statutory law must also be clear (*certa*) and understandable so that these provisions can be implemented properly without confusion. In addition, reasons that are rigid and strict (*stricta*) make the divorce case filed must be in accordance with religious principles and have fulfilled these elements.²²

Divorce in the Psychological Dimension

Divorce is a common phenomenon in society, both in the culture of rural and urban communities. Various factors are cited as the cause of divorce, ranging from economic, educational, cultural to social factors. The divorce can come from the husband's side or the wife's side or even both. Although Islam emphasizes maintaining a sacred marriage bond, the phenomenon of divorce in society cannot be stopped just like that.

²¹ Abdurrahman, *Kompilasi Hukum Islam Di Indonesia* Article 116.

²² These three elements are a description of the legality principle which is often referred to in criminal law. In the context of national criminal law, the measure of the application of the legality principle is the *lex scripta*, *lex certa* and *lex stricta* or based on written law and clear and strict rules so that it is not justified to apply the legality principle only based on customary law. See I Gde Yasanegara, "Urgensi Asas Legalitas Dalam Pembaharuan Hukum Pidana Nasional Di Indonesia," *Krettha Dyatmika* 2 13, no. 1 (2016): 1–17, <https://doi.org/10.1017/CBO9781107415324.004>.

Many things are faced by married couples in their domestic life. Romance of the pre-marital period is sometimes only sweet at some time after marriage without continuing to colorize household life continuously²³ triggers the breakdown of the relationship between the two.

The effort to reconcile before the divorce as regulated in the marriage law in Indonesia is actually a form of "awareness" for both parties to prepare both psychological and mental conditions. Because it is possible, when the husband drops the divorce, the husband's emotional condition is unstable so that without realizing it, the word talak is spoken from his mouth either directly or figuratively. A person's mental mood can be in such an uncontrollable state that the doer does what is not appropriate outside of his consciousness.

Couples who are about to divorce have actually made a mutual agreement in a sacred marriage vow. The marriage process also does not suddenly take place without any further introductory processes for each party. The process of getting to know each other (ta'aruf) is undertaken by the pair of prospective husband and wife to be able to match each other. When they feel fit, then they carry out the marriage contract.

Unfortunately, this match seems to be fake when the two of them always live in uncertain disputes. The incompatibility between the two eventually led to divorce before the trial. Paul Bahanon, a psychologist, as quoted by Dariyo revealed that a divorce usually goes through several stages until they finally decide to separate. This stage is defined as various kinds of events experienced by a married couple so that they finally decide to divorce, such as infidelity, economic deprivation, etc.²⁴ These events will gradually make the relationship between the two increasingly distant and harmony difficult to achieve. .

Furthermore, Paul Bahanon explained that there are at least several stages before finally divorcing, namely:²⁵

1. Financial divorce, is one of the stages of divorce that begins with a financial dispute and leads to a financial divorce. Financial problems often trigger a breakdown in the household which gradually culminates in physical separation.
2. Coparental divorce, as a stage of divorce after divorce which makes the relationship between the two completely separate so that each party carries out the obligation to care for children in their respective positions with the status of ex-husband and ex-wife.
3. Legal divorce, is a form of legal and legal divorce from the perspective of state law. The legality of divorce is an important factor in determining what kind of legal consequences affect both parties.
4. Community divorce, as it is understood that marriage is a process of uniting two cultural cultures, a socio-kinship system in one marriage bond. When a divorce

²³ Riami et al., "Perceraian Menurut Persepsi Psikologi Dan Hukum Islam."

²⁴ Dariyo, "Memahami Psikologi Perceraian Dalam Kehidupan Keluarga."

²⁵ Dariyo.

occurs, it will certainly have an impact on the separation of the two communities even though in personal relationships it looks fine.

5. Divorce psycho-emotional, at this stage is usually the real pre-divorce stage where each party feels distant from one another. This emotional condition causes the harmony between husband and wife to become tenuous, which leads to real separation.
6. Physical separation, this condition is a condition in which each husband and wife no longer live together. Each of them distances themselves to keep their distance so that it seems as if there is no longer any relationship between the two.

Psychological Relations: Readings Against the Reasons for Divorce in KHI

Divorce is a form of breaking the marriage bond between a husband and wife who are bound in one marriage bond. As is well known, the minimum age of marriage as stipulated in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which states that the minimum age limit for men and women who will marry is 19 years. The latest law, the provisions are amended by equalizing the age limit for marriage for men and women.²⁶ This figure is sufficient to conduct a marriage where the age of 19 for a man and a woman has entered maturity periodically, psychic and mental.

With the age limit that has entered maturity for a man and a woman, thus a person who decides to undergo marriage means that he is ready to face all risks including the consequences that arise later, both legally, socially and psychologically.

In psychological perspective, the maturity of a person's personality will have an impact on one's mental readiness in living life and maturity in attitude. This maturity will then accompany the choice of attitude to life that will be taken in living everyday life, including even in difficult cases. A married person is required to be able to make all forms of adjustment in a marriage bond. There are at least four things that can be done in a marriage; (1) adjustment with a husband or wife partner, (2) adjustment in matters of sexuality, (3) adjustment in financial matters, and (4) adjustment to their respective families.²⁷

All forms of adjustment mentioned above will be achieved well if both parties have reached psychological maturity. Maturity is a person's ability to express and shed emotional feelings appropriately and naturally coupled with self-control, independence, and high self-acceptance.²⁸ Maturity and maturity will also be able to present an attitude of special responsibility to a man. -a man who will carry out the duties as head of the household in a marriage bond.

²⁶ See Republik Indonesia, "Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (2019) article 7.

²⁷ N. Anissa & A. Handayani, "Hubungan Antara Konsep Diri Dan Kematangan Emosi Dengan Penyesuaian Diri Istri Yang Tinggal Bersama Keluarga Suami," *Jurnal Psikologi Pitutur* 1, no. 1 (2012): 56–64.

²⁸ Lis Binti Muawanah, "Kematangan Emosi, Konsep Diri Dan Kenakalan Remaja," *Persona: Jurnal Psikologi Indonesia* 1, no. 1 (2012): 6–14, <https://doi.org/10.30996/persona.v1i1.9>.

If it is related to divorce cases, then it is only fitting that someone who decides to divorce has first thought and considered all its aspects. This is because divorce does not only affect the husband and wife, but also their children. The decisions they make when they divorce must really consider all forms of risks that may arise, especially for children who will have quite serious impacts.

The principle of complicating divorce in the legal provisions of marriage seems to emphasize psychological principles that emphasize maturity in thinking and accuracy in making decisions. It is hoped that the peace effort that is presented is also expected to be able to return the fully conscious mind to really be able to think about the consequences and impacts that will arise in the event of a divorce.

KHI has detailed the reasons for divorce to be submitted to court. The reasons mentioned beside point to normative legal provisions, but also lead to psychological aspects, especially for husbands who pronounce divorce to their wives. The reason for the first divorce called "gambler, seducer and drunkard" is one that emphasizes the character and behavior of a person. That is why in the verse the sentence "which is difficult to heal" is pronounced, remembering that the bad behavior is not immutable but it takes time and a process to get better.

Another reason that is also interesting to review is the existence of elements of violence, persecution, strife and constant bickering. This condition can be ascertained that it is directly related to a person's psychological factors when he / she commits an act that is detrimental to another party. Those who do these things often do it out of "consciousness" and thus commit uncontrollable actions.

From all the descriptions above, it can be said that the application of the principle of complicating the occurrence of divorce through the litigation process is actually an effort to prevent a divorce which is avoided as much as possible. Many of the reasons for divorce as described above point to a person's psychological factors, so it is not wrong to limit the age of marriage to become a major stress given that marriage and divorce have very serious consequences in a person's life.

IV. CONCLUSION

Divorce in a legal perspective shows quite a serious incident considering the impact it has had on not only targeting the divorced parties (husband and wife) but also on their children. By mentioning the reasons for divorce in the KHI to be able to be submitted to court in detail and clearly, the law really plays its role in constructing social-society in maintaining the marriage. Apart from that, psychological factors also play a very vital role where someone who is going to divorce will certainly show mental readiness, a person's level of maturity, maturity and thinking ability and accuracy in making decisions before finally deciding to divorce their partner. This condition will be seen if it is related to the reasons for divorce mentioned in the KHI.

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