

THE OUT OF COURT DIVORCE MODEL AND ITS LEGAL IMPLICATIONS: A JURIDICAL STUDY IN BABELAN DISTRICT BEKASI

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Abstrak: Perceraian di Indonesia secara hukum positif harus dilakukan dihadapan majelis hakim di persidangan sesuai dengan amanat Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam. Namun demikian, perceraian di luar pengadilan masih banyak ditemui di beberapa daerah termasuk di kecamatan Babelan Bekasi dimana sebagian masyarakatnya masih mempraktikkan perceraian di luar pengadilan. Perceraian di luar pengadilan meskipun dianggap sah secara agama, tetapi menyisakan berbagai persoalan hukum seperti pengabaian hak anak dan istri yang diceraikan hingga legalitas perceraian itu sendiri. Penelitian ini bertujuan untuk menemukan model-model perceraian di luar pengadilan yang dilakukan masyarakat. Disamping itu, kajian tentang akibat serta upaya hukum menanggulangi fenomena tersebut menjadi sangat penting untuk dianalisis. Penelitian ini tergolong penelitian yuridis normative-empiris dengan menggunakan pendekatan perundang-undangan dibantu dengan pendekatan sosiologis. Hasil penelitian menunjukkan bahwa penelitian di luar pengadilan dilakukan dengan cara: (1) secara kekeluargaan, dan (2) melalui *amil*. Dalam perspektif hukum positif, perceraian di luar pengadilan tidak memiliki kedudukan hukum yang kuat sehingga berakibat kepada pengabaian terhadap hak nafkah, pembagian harta serta pernikahan selanjutnya.

Kata Kunci: akibat hukum, luar pengadilan, perceraian, Pengadilan Agama

Abstract: Divorce in Indonesia, legally positive, must be carried out before a panel of judges at trial following the mandate of Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. However, out-of-court divorce is still common in several areas, including Babelan district Bekasi where some of the community always practice out-of-court divorce. Even

though it is considered religiously valid, out-of-court divorce leaves various legal issues such as neglect of the rights of children and wives who are divorced from the legality of the divorce itself. This study aims to find models of out-of-court divorce that are conducted by the community. Besides that, the study of the consequences and legal efforts to overcome this phenomenon is significant to be analyzed. This research is classified as a normative-empirical juridical study using a statutory approach assisted by a sociological approach. The results showed that analysis outside the court was carried out by (1) kinship and (2) through *amil*. From a positive legal perspective, divorce outside the court does not have a strong legal position, resulting in neglect of the right to support, distribution of assets, and subsequent marriage.

Keywords: divorce, Religious Court, legal consequences

INTRODUCTION

Marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage (in the future referred to as the Marriage Law) in conjunction with Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage stated in article 1 which says that "Marriage is a physical and mental bond between a man and a woman as husband and wife to form a happy and eternal family based on one supreme deity."¹

A birth bond is a formal relationship that can be seen because it is formed according to law. An inner bond is an informal relationship formed by genuine mutual will, which binds only the two parties, which means that the inner and outer bond only

occurs between a man and a woman in one period. Husband and wife are the functions of each party as a result of the inner and outer bonds. No physical and mental bonds mean there is no function as husband and wife.² Furthermore, when viewed from Islamic law, the meaning of marriage can be seen in article 2 of the Islamic Law Compilation (KHI), which states that marriage is marriage, namely a solid contract or *mitsaqan ghalizhan* to obey Allah's orders and carry out it is worship.³

As it is known, marriage is an act that contains sacred values. Therefore, a marriage must not deviate from religion or religious law because religion or religious law determines a marriage's validity.⁴ This is clearly and firmly stated in article 2 paragraph (1) of Law No. 1 of 1974

¹ Republic of Indonesia, Law No 1 of 1974 Concerning Marriage, Article 1.

² Abdulkadir Muhammad, *Hukum Perdata Indonesia*, (Bandung: PT. Citra Aditya Bakti, 2000), p. 74.

³ Rosnidar Sembiring, *Hukum Keluarga Harta-Harta Benda Dalam Perkawinan*, (Depok: PT Raja Grafindo Persada, 2019), p. 43.

⁴ Nurul Maisyal, "Reformulasi Hukum Perkawinan Islam Responsif Gender" *Muwazah* 8, No. 2 (2016)

concerning Marriage, which reads: "Marriage is legal if it is carried out according to the law of each religion and belief." What is meant by the law of their respective religions and beliefs includes statutory provisions applicable to their religious groups and trusts as long as they do not contradict or are not stipulated otherwise in the Marriage Law. After the marriage is carried out following the provisions of Article 2 paragraph (1), then the marriage registration shall be carried out according to the formal requirements, following the conditions of Article 2 paragraph (2) of the marriage law, which reads, "Every marriage is recorded according to the prevailing rules and regulations."⁵

The purpose of marriage is to form a happy and eternal family based on the Supreme Lordship. However, not all marriages can run smoothly, and not a few have to run aground on the way. Because sometimes in undergoing marriage, there will be much friction and problems faced by husbands and wives. And sometimes, it is in the best interests of both parties that many decide to take the path of divorce. Especially in Islamic law (religious law), achieving benefit is one of the pillars of forming a valid legal order.⁶

Divorce can be caused by various things that happen in the household. The background to the occurrence of divorce can be understood that in carrying out a husband and wife's life, of course, it is not always in a peaceful and peaceful situation. Still, sometimes there is also a misunderstanding between husband and wife or one of the parties neglecting their obligations, distrusting each other, and so on. In a situation where this tension arises, sometimes it can be resolved so that the two parties become profitable again. Still, sometimes the misunderstanding becomes irreconcilable, and there are continuous quarrels between husband and wife.⁷ If it is like that, divorce becomes the last resort even though it must be hated by religious law.

According to Prof. Subekti, divorce is the abolition of a marriage by a judge's decision or the parties' demands in the marriage. The law does not allow divorce by consensus alone between husband and wife, but there must also be a valid reason for divorce.⁸ The definition of divorce further in the Marriage Law and KHI cannot find a clear explanation of divorce. The two regulations only state that marriage can

⁵ Sirman Dahwal, *Perbandingan Hukum Perkawinan*, Bandung: CV Mandar Maju, 2017, p.69.

⁶ Adi Nur Rohman, "The Existence of Masalah Mursalah As The Basis of Islamic Law Development In Indonesia" *Krtha Bhayangkara* 13, No. 2 (2019).

⁷ Muhammad Syaifuddin dan Sri Turatmiyah dan Annalisa Yahana, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2019), p. 21.

⁸ Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: Intermasa, 2003), p. 42.

break up due to death, divorce, and court rulings.⁹

Divorce can only occur if carried out in front of a court, either because of the husband who has handed down the divorce (talaq) or because the wife is suing for divorce or applying for divorce rights. Even though divorce is considered legal in Islam if it is said immediately by the husband, according to the law, divorce must still be done in front of a court. The goal is to protect all rights and obligations that arise as a result of the divorce law.¹⁰

The Religious Court is a judicial institution that has the authority to resolve and decide divorce cases.¹¹ Law No.7 of 1989 concerning Religious Courts Article 65 also states that divorce can only be carried out before a religious court hearing after the court concerned has tried and failed to reconcile the two parties.¹²

Other provisions governing divorce that must be carried out through court proceedings are contained in article 115 of the Compilation of Islamic Law, which is the same as article 39 paragraph (1) of Law No. 1 of 1974 and Article 65 of Law No. 7 of 1989. Where divorce is mentioned can only be carried out before a religious court

hearing after the said religious court has tried and failed to reconcile the two parties.¹³

Based on the provisions and regulations that have been mentioned above, it can be understood that if a husband and wife are married legally according to positive law and want to divorce, then the divorce must be carried out before a court session. Even so, it is still found in some areas where people divorce outside court proceedings.

One of the study sites related to out-of-court divorce is the community in Babelan District, Bekasi Regency. In that area, several people are legally married in the eyes of the law, but when they divorced, the husband and wife did not divorce through a court hearing, but both preferred to divorce outside of court. This means that the husband and wife are only divorced religiously but are not legally divorced from the State. Of course, this is a concern for the government and stakeholders where the rules of marriage law are neglected, which should provide protection and guarantee for the divorced parties.

Based on the background described above, the researcher is interested in further researching this problem by asking several research questions; What is the model for out-of-court divorce carried out by the

⁹Solahudin Pugung, *Prosedur Perceraian Di Pengadilan Agama*, (Jakarta: Djambatan, 2010), p. 9.

¹⁰Budi Susilo, *Prosedur Gugatan Cerai*, (Yogyakarta: Pustaka Yustisia, 2007), p. 17. See also Marriage Law Article 39.

¹¹ Amran Suadi, "The Role of Religious Court in Prevention Underage Marriage," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020)

¹² Republic of Indonesia, Law No 7 of 1989 Concerning Religious Court, Article 65.

¹³ Abdurrahman, *Kompilasi Hukum Islam Di Indonesia*, (Jakarta: Akademika Pressindo, 2010), P. 76.

Babelan District community, Bekasi Regency? And what is the legal impact arising from out of court divorce?

METHOD

This research is legal research that combines normative and empirical research. Through a statute approach and assisted by legal sociology, the study was investigated on the out-of-court divorce model in the community of Babelan district Bekasi as the object of this research. Research data consisting of primary, secondary, and tertiary data were collected using literature search techniques and field data using interviews and questionnaires. Furthermore, the research data that was ordered were analyzed qualitatively and presented descriptively and analytically.

RESULTS AND DISCUSSION

1. The Marriage in Positive Law

Marriage is an instinctual requirement that applies to all living things, be it humans, animals, or plants. Therefore, humans as intelligent creatures. For humans, marriage is a culture for offspring to survive, which is regular and follows human culture development.¹⁴

Article 1 of the Marriage Law states that marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Godhead.¹⁵ This definition fulfills at least five elements, namely (1) physical and mental bonds, (2) carried out between a man and a woman, (3) as husband and wife, (4) forming a happy and eternal family, (5) based on the Supreme Lordship.¹⁶ Meanwhile, in KHI article 2, it is stated that marriage, according to Islamic law, is a marriage that is a solid contract or *mitssaqan ghalidzan* to obey Allah's orders and carry out it is worship.¹⁷

Marriage has a very noble and noble purpose. Therefore, the marriage bond must be based on good intentions and noble goals, which stipulate that a valid marriage lasts a lifetime. If you want to divorce, strict conditions are needed and are the last way, and husbands and wives help each other develop themselves.¹⁸ KHI also formulates the purpose of marriage to realize a *sakinah mawaddah* and merciful household life.¹⁹ *Sakinah* means calm, *mawaddah* means a family in which there is a feeling of love and all things related to the body, while *rahmah* means a family in which there is a sense of affection.²⁰

¹⁴ Aulia Muthiah, *Hukum Islam Dinamika Seputar Hukum Keluarga*, (Yogyakarta: Pustaka Baru, 2017), p. 49

¹⁵ Marriage Law, Article 1

¹⁶ Titik Triwulan Tutik, *Hukum Perdata Dalam Sistem Hukum Nasional*, (Jakarta: Kencana, 2015), p. 104-106

¹⁷ Kompilasi Hukum Islam, Article 2

¹⁸ Titik Triwulan Tutik, *Op. Cit*, p. 108

¹⁹ Kompilasi Hukum Islam, article 3

²⁰ Abd. Shomad, *Hukum Islam Penormaan Prinsip Syariah Dalam Hukum Indonesia* (Jakarta : kencana, 2017) p. 262

As already stated that the marriage bond should be carried out based on strong legal principles. The Marriage Law states at least six principles of marriage which serve as the primary basis for the marriage bond, namely:²¹

- 1) The goal of marriage is to form a happy and lasting family.
- 2) A marriage is valid if it is carried out according to the law of each religion and belief. Besides, every marriage must be recorded according to the prevailing rules and regulations.
- 3) This law adheres to the principle of monogamy.
- 4) This marriage law adheres to the principle that a husband and wife candidate must have their body and soul mature to carry out the marriage to realize the goal of marriage properly without thinking about divorce and having excellent and healthy offspring.
- 5) Make divorce more difficult.
- 6) The rights and position of the wife are equal to the rights and role of the husband.

It can be seen that a marriage is legal if it is carried out according to the law of each religion and belief and is recorded according to the prevailing rules and

regulations. Legal marriage has legal consequences on the position of husband and wife, marital assets, and children's place. The role of husband and wife, in this case, relates to the rights and obligations of husband and wife, which is regulated in articles 30 to 34 of the Marriage Law. Furthermore, the matter of marriage assets is handled in articles 35 to 37 of the Marriage Law. And finally, regarding the position of children in a marriage, it is regulated in article 42 of the Marriage Law.²²

2. Conception of Divorce in Indonesian Marriage Law

In the Indonesian dictionary, the word for divorce means to separate. It means separating something that has been put together. That is, two human beings who previously practiced *aqad* agreed to bind themselves to live together in one household and then separate them again, either by the desire of one party or on both parties' wishes.²³

According to Subekti, divorce is the abolition of marriage either by a judge's decision or by a husband or wife's demands. With a divorce, the marriage between husband and wife is abolished. However, Subekti did not mention the definition of divorce as the abolition of the marriage by death or what is commonly referred to as

²¹ Santoso, *Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat*, Yudisia, Vol 7/ No. 2/ 2016, p. 413

²² Juliana Pretty Sanger, *Akibat Hukum Perkawinan Yang Sah Didasarkan Pada Pasal 2 UU Nomor 1 Tahun*

1974 Tentang Perkawinan, Lex Administratum 3, No. 6 (2015)

²³ Solahudin Pugung, *Prosedur Perceraian Di Pengadilan Agama*, (Jakarta: Djembatan, 2010), p. 9

"divorced death." Thus, the purpose of divorce, according to Subekti, is narrower than the definition of divorce according to Article 38 of the Marriage Law.²⁴

Article 38 of the Marriage Law states that marriages can be broken up due to death, divorce, and court decisions. Based on article 38 of Law Number 1 of 1974 concerning Marriage, it explains that marriages that break up due to death in society are commonly referred to as divorce, while marriages that break up due to divorce are commonly called divorce talak and divorce sue, and marriages that break up based on a court decision are called with the cancellation of the wedding.²⁵

The term divorce, according to the Marriage Law, indicates:²⁶

- a) A husband or wife can take legal actions to terminate the marital relationship between them.
- b) The legal event which terminates the relationship between husband and wife, namely the death of the husband or wife concerned, is a definite and direct stipulation by God the Almighty.
- c) A legal decision declared by the court resulted in the legal termination of

the marital relationship between husband and wife

In Article 113 of the Islamic Law Compilation, it is stated that marriage can break up due to death, divorce, and court rulings. In Islam, divorce is recognized as a way out of domestic chaos caused by constant quarrels, or one partner has chosen someone else to be his new partner or a husband who does not fulfill his obligations. At the same time, he is a man who can support his wife. And their children, or other reasons, result in a husband and wife relationship that was initially filled with affection but eventually turned into hatred between them.²⁷

Marriage breakdown caused by a divorce can occur due to divorce or divorce suit. It is contained in article 114 of the Compilation of Islamic Law. In Article 115 of the Islamic Law Compilation, it is stated that divorce can only be done before the Religious Court after the Religious Court has tried and failed to reconcile the two parties.²⁸

In essence, in a divorce case at the Religious Court, there are only two parties: the husband's side and the wife's side. Therefore, judicial institutions, especially the Religious Courts, use two different

²⁴ Muhammad Syaifuddin dan Sri Turatmiyah dan Annalisa Yahana, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2019), p. 20

²⁵ Muhammad Akbar, *Hukum Perdata Islam Penerapan Hukum Keluarga Dan Hukum Bisnis Islam Di Indonesia*, (Jakarta: Sinar Grafika, 2019), P. 76

²⁶ Ramadhan Syahmedi Siregar, *Dampak Perceraian Tidak Sesuai Dengan Prosedur Undang- Undang*, Fitrah 1, No. 1 (2015)

²⁷ Aulia Muthiah, *Op. Cit*, Hlm 104

²⁸ Abdurrahman, *Kompilasi Hukum Islam Di Indonesia*, (Jakarta: CV Akademika Pressindo, 2010), p. 76

terms to distinguish claims from the husband's side and those that come from the wife's side because each has other consequences. The two types of divorce consist of: First, sue divorce, namely the initiative that is litigated or the initiative to file a divorce suit to the Religious Court is from the wife's side. The two divorce talak, namely the industry of the case or the initiative to file a lawsuit at the Religious Court, comes from the husband's side.²⁹

In Article 39 paragraph (2) of the Marriage Law, it is stated that to divorce, there must be sufficient reasons that the husband and wife will not live in harmony as husband and wife. These reasons are clarified in Article 19 of Government Regulation Number 9 of 1975, which states that divorce can occur for the following reasons:³⁰

- a) One of the parties commits adultery or becomes a drunkard, a prostitute, gambler, etc., which is difficult to cure.
- b) One of the parties leaves the other party for 2 (two) consecutive years without the other party's consent and valid reasons or for other reasons beyond his means.
- c) One of the parties receives a prison sentence of 5 (five) years or a heavier punishment after marriage.

- d) One party commits cruelty or severe maltreatment that endangers the other.
- e) One of the parties has a physical disability or illness, resulting in not carrying out his obligations as a husband/wife.
- f) There are constant quarrels and fights between husband and wife, and there is no hope of living in harmony again in the household.

Furthermore, in article 116 KHI, it is stated that divorce can occur due to the following reasons or reasons:³¹

- a) One of the parties commits adultery or becomes a drunkard, a prostitute, gambler, etc., which is difficult to cure.
- b) One of the parties leaves the other party for 2 (two) consecutive years without the other party's permission and valid reasons or for other reasons beyond his means.
- c) One of the parties receives a prison sentence of 5 (five) years or a heavier punishment after marriage.
- d) One party commits cruelty or severe maltreatment that endangers the other.
- e) One of the parties has a physical disability or illness, resulting in not

²⁹ Solahudin Pugung, *Op. Cit.*, p. 10

³⁰ Republic of Indonesia, Government Regulations No. 9 of 1975, article 19

³¹ Kompilasi Hukum Islam, Article 116

carrying out his obligations as a husband/wife.

- f) There are constant quarrels and fights between husband and wife, and there is no hope of living in harmony again in the household.
- g) Husband violates taklik divorce.
- h) Religious conversion or apostasy causes disharmony in the household.

After the divorce is decided, it will affect other legal aspects for both parties. Article 41 of the Marriage Law describes the consequences of a divorce as follows:³²

- a. Both the mother and the father are still obliged to care for and educate their children, solely based on their interests. If there is a dispute over the control of the children, the court gives the decision.
- b. The father is responsible for all the child's maintenance and education costs, and if the father cannot fulfill this obligation, the court can determine that the mother shares the costs.
- c. The court can oblige the former husband to provide living expenses and/or determine an ex-wife's obligation.

1. The Phenomenon of Out-of-Court Divorce in Babelan District, Bekasi Regency

The portrait of divorce outside the court in the Babelan sub-district is fascinating to review. After being traced, several people in Babelan District, Bekasi Regency, divorced without going through court procedures, meaning that the divorce was carried out outside the court, where it is contrary to the prevailing regulations, especially the Marriage Law and the Compilation of Islamic Laws.

Researchers succeeded in interviewing eight respondents from residents of the Babelan sub-district who had divorced outside the court. Seven of the eight respondents work as housewives while the rest are teachers.

From the results of the interview, it was found that the practice of out-of-court divorce by the people of the Babelan sub-district was carried out using two models, namely:

1. Divorced through Amil

Amil is the name of a religious figure for the people of the Babelan District. Amil is also a Marriage Registration Officer (P3N).³³ The Marriage Registration Officer (P3N)'s assistance is a particular community member appointed by the Head of the

³² Marriage Law, Article 41

³³ An Interview with Bapak Amil Samsudin on June 8, 2020

Regency / City Department of Religion to assist with PPN tasks in specific villages.³⁴

Based on interviews conducted with eight respondents who divorced outside the court, six respondents proceeded to divorce outside the court through Amil. The divorce process through Amil is as follows:³⁵

- a. Both parties come to Amil to divorce.
- b. Then Amil explained that the divorce should be carried out through court procedures so that the divorce was legal in the eyes of the State
- c. After explaining this, Amil then asked whether the two wanted to divorce without going through court proceedings.
- d. After both agree to divorce without going through court proceedings or, in other words, outside the court, then both parties are asked to make a statement of talaq/divorce. The contents of the statement letter are:
 - 1) Biodata of both husband and wife.
 - 2) Date dropped the talaq.
 - 3) A statement which states, "This is the statement of talaq/divorce I made, and I signed it properly in a healthy state of mind and body and was witnessed by several witnesses who also signed this statement. As

for this divorce on the will of both of us without coercion from the other party. If in the future, my wife gets a different mate, then this talaq/divorce statement is proof of our divorce, so that it can be used properly."

- 4) Signature of both parties
- 5) The witness's signature, meanwhile the witness is Amil and the head of the local RT.

2. *Divorced in a family manner*

Based on interviews conducted by eight respondents who divorced outside the court, two respondents carried out the divorce process outside the court by family only. One respondent said that her divorce was witnessed only by her family, where her husband dropped the talaq in front of his family and handed him back to his family. After dropping the talaq in front of her family, her husband left Mrs. Siti Khoriah, and until now, there has been no news from her husband.³⁶ Not much different from the first respondent, the second respondent's divorce from her husband was also only done kinship where her husband dropped talaq in front of his family. Initially, she asked her husband to make a divorce certificate signed by both parties

³⁴ Republic of Indonesia, Regulation of the Minister of Religion Number 11 of 2007 concerning Registration of Marriage, Article 1 Number 4

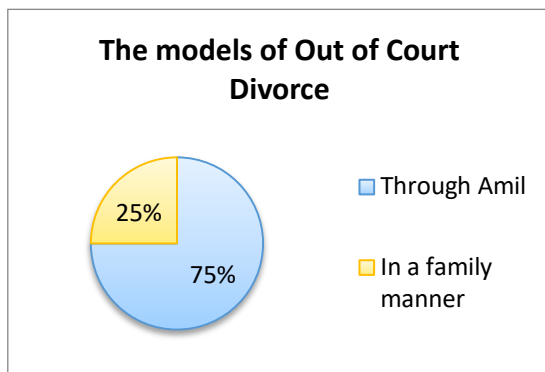
³⁵ An Interview with Mr. Amil Samsudin as Amil as well as a Religious Leader in Babelan District, on June 8, 2020

³⁶ An Interview with Ms. Siti Khoriah, Actor of Divorce outside the Court in Babelan District, Bekasi Regency, on June 6, 2020

and RT and Amil's head as witnesses. Still, her husband refused until finally, the divorce was only carried out in a family manner.³⁷

The procedures for divorce carried out by several communities in the Babelan District as mentioned above are not following the applicable laws where Article 39 paragraph (1) of the Marriage Law and Article 115 of the Compilation of Islamic Law states that divorce can only be done in before a court session after the court concerned tried and failed to reconcile the two parties

Figure 1. The models of Out of Court Divorce



Based on the diagram shown in figure 1, 75% of the interviewed respondents divorced outside of court through Amil, and 25% of the interviewed respondents divorced outside of court by family means.

The factors for out of court divorce are as follows:

1. Economic Factors

Economic factors are one of the reasons some people in Babelan District

divorce out of court. Considering the high costs that have to be incurred to proceed with the divorce process through the court, while some of them have deficient economic income levels, this triggers some Babelan sub-district people to prefer to divorce outside the court.

2. The trial process took a long time

Apart from the costly issue, other factors have led some people in Babelan District to divorce outside the court, namely the trial process, which took a long time to divorce immediately. As stated by Mrs. Febriani Ahyar, one of the respondents who carried out a divorce outside the court when interviewed, Febriani Ahyar said that because the divorce process through court took a long time, both of them agreed to divorce without going through court procedures.³⁸

The divorce process outside the court is indeed faster than the divorce process through court procedures. Divorce outside the court can take place briefly because the divorce is only done by dropping the divorce in front of his family or dropping the divorce after making a talaq statement. It does not take days.

3. Do not know if the divorce must go through a court

Apart from the two factors mentioned above, there is one more factor. Namely,

³⁷ An Interview with Mrs. Has'anah, Actor of Divorce outside the Court in Babelan District, Bekasi Regency, on June 6, 2020

³⁸ An Interview with Mrs. Febriani Ahyar, Actor of Divorce outside the Court in Babelan District, Bekasi Regency, on June 6, 2020

some people do not understand that the divorce process must go through a court hearing. Of the eight respondents, two respondents did not know if a divorce had to go through the court. When conducting interviews with the two people, and when asked whether the two people knew that the divorce had to go through court procedures, the two men replied that they did not know if the divorce had to go through court procedures. Both of them assumed that religious divorce alone was sufficient. Because of this ignorance, the two of them only divorced religiously.³⁹

2. Legal Analysis of Out of Court Divorce in Babelan District, Bekasi Regency

Divorce is the termination of marriage for some reason by a judge's decision on both parties' demands in the union.⁴⁰ Article 39 of the Marriage Law states that divorce can only be carried out before a court session after the court concerned has tried and failed to reconcile the two parties.⁴¹ Furthermore, Article 115 of the Compilation of Islamic Law also states that divorce can only be carried out in front of a Religious Court hearing after the Religious Court has tried and failed to reconcile the two parties.⁴²

Even though the Marriage Law and the Compilation of Islamic Law stipulate that divorce must go through court procedures, there are still some people who divorce only in religious terms, meaning that the person is divorcing without going through court procedures or in other words, a divorce out of court.

As is the case with some people in Babelan District, Bekasi Regency, who divorce without going through a court process or in other words, the divorce is carried out outside the court. Divorce outside the court is carried out utilizing the husband handing down talaq on his wife, and if the husband has handed down talaq on his wife, then in Islam, they are officially divorced.

Based on an interview with Pak Muhyar, Judge of the Bekasi City Religious Court, he thinks that divorce outside the court is a Siri divorce or it can also be called an illegal divorce, which, when seen in classical fiqh books, is classified as legal. However, according to the Marriage Law and Law Number 7 of 1989 concerning the Religious Courts, divorce is illegal. Although several times the husband said the word talaq. So the point is that divorce outside the court is not legal according to law, and in the eyes

³⁹ An Interview with Mrs. Santi and Mrs. Siti Koriah, Actors of Divorce outside the Court in Babelan District, Bekasi Regency, on 5 and 6 June 2020

⁴⁰ Novie Oktary Dan Lapeti Sari Dan Yusni Maulida, *Analisis Faktor- Faktor Yang Mempengaruhi*

Tingkat Cerai Gugat Di Kota Pekan Baru, Jom Fekon 1, No. 2 (2014)

⁴¹ Marriage Law, Article 39.

⁴² Kompilasi Hukum Islam, Article 115

of the country, the two of them are still husband and wife.⁴³

Besides, Pak Sahrurodi also believes that people who divorce outside the divorce court are not legal according to the Marriage Law. Because according to the Marriage Law, a legal divorce is a divorce carried out through court procedures. Indeed, sometimes some people think that divorce is legally valid. They do not realize that they are in a country that is regulated by law, so they think that if the divorce is legally legal, it is sufficient. They do not know if the divorce is carried out outside the court; it causes a lot of harm to both the husband and the wife.⁴⁴

Divorce can only occur if carried out in front of a court, either because of the husband who has handed down the divorce (talaq) or because the wife is suing for divorce or applying for divorce rights. Although in Islam, divorce is considered legal if it is said immediately by the husband, according to the law, divorce must still be done in front of a court. The goal is to protect all rights and obligations that arise as a result of the divorce law.⁴⁵

Therefore, with the provision that states that divorce must be done before a court hearing, this provision applies to all Indonesian citizens, including those who

are Muslim. Although Islamic law does not require that divorce be carried out in front of a court hearing, this provision is more beneficial for both parties, especially all citizens. Besides, it follows the principle of positive Indonesian law, which states that the regulation applies to all citizens unless the rules specify otherwise. Meanwhile, the Marriage Law does not stipulate any other provisions regarding this divorce issue.⁴⁶

Divorce carried out without going through court procedures will have legal consequences, including:

1. Barriers to further marriages result from illegal divorce. A person who divorces out of court, when one of the two wants to remarry, the marriage cannot be registered at the Office of Religious Affairs (KUA). In Article 8 of the Compilation of Islamic Law, it is stated that the break of marriage apart from being divorced can only be proven by a divorce certificate in the form of a decision from the Religious Court, either in the form of a divorce decision, divorce vows, khuluk or taklik talak decision. That means a divorce is said to be legal in the law's eyes if it has a divorce certificate from the Religious Court.

⁴³ An Interview with Pak Muhyah, Judge of the Bekasi City Religious Court, on June 12, 2020

⁴⁴ An Interview with Pak Sahrurrodih, Penghulu KUA Babelan District, on June 2, 2020

⁴⁵ Budi Susilo, *Prosedur Gugatan Cerai*, (Yogyakarta: Pustaka Yustisia, 2007), p.17.

⁴⁶ Muhammad Syaifuddin dan Sri Turatmiyah dan Annalisa Yahana, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2019), p. 19

2. The neglect of children's support. In article 41 of the Marriage Law, it is known that the ex-husband is responsible for all maintenance and education costs required by the child after the child's parents are divorced. If the ex-husband cannot fulfill this obligation, the court may determine that the ex-wife shared the costs. However, it is different from someone who is divorced out of court, who cannot sue because they do not have a strong legal position.
3. They are ignoring the sharing of assets together.⁴⁷ Joint assets are property obtained during the marriage. Collective investments are tangible and intangible objects. Actual objects include immovable objects, movable objects, and marketable securities, while transcendental objects include rights and obligations.⁴⁸ When the marriage contract has been carried out, there will automatically be joint assets, commonly called gono-gini property.⁴⁹ Article 37 of the Marriage Law states that if a marriage breaks up due to divorce, joint assets are regulated according to their respective laws.⁵⁰ But once again, a

person who is divorced outside the court cannot claim to share of joint assets as is the case for neglecting the rights of living above.

However, concerning the distribution of joint assets, actually divorced persons outside the court can share their assets by deliberation based on both parties' agreement.⁵¹ However, if we look at several respondents' statements, many of them did not get shared assets after divorce. And this is one of the disadvantages of divorce outside the court. When there is a dispute over joint property, they cannot force to get a share of the joint property because the settlement of disputes over the distribution of joint assets can only be resolved at the Religious Court.

CONCLUSION

Divorce outside the court carried out by several communities in Babelan District was carried out through several models, including divorce through *amil* and kinship.

Divorce outside the court committed by the Babelan community was caused by several factors, including economic factors, the trial process, which took a long time, and the public ignorance factor if the divorce had to go through court procedures.

Divorce outside the court committed by the people of Babelan District resulted in:

⁴⁷ Marriage Law, Article 35 paragraph (1)

⁴⁸ Kompilasi Hukum Islam, Article 91

⁴⁹ Aulia Muthiah, *Op. Cit*, p. 134

⁵⁰ Marriage Law, Article 37

⁵¹ An Interview with Mr. Amil Samsudin as Amil and a Religious Leader in Babelan District, on June 8, 2020

- (a) illegal divorce in the eyes of state law so that it is prevented from further marriages, (b) neglect of children's livelihoods, (c) neglect of sharing of joint assets.

REFERENCES

- Abdurrahman, 2010. *Kompilasi Hukum Islam Di Indonesia*, Jakarta: CV Akademika Pressindo.
- Akbar, Muhammad. 2019. *Hukum Perdata Islam Penerapan Hukum Keluarga Dan Hukum Bisnis Islam Di Indonesia*, Jakarta: Sinar Grafika.
- Dahwal, Sirman. *Perbandingan Hukum Perkawinan*, Bandung: CV Mandar Maju, 2017.
- Mardani, 2017. *Hukum Keluarga Islam Di Indonesia*, Jakarta: Kencana.
- Maisyal, Nurul. "Reformulasi Hukum Perkawinan Islam Responsif Gender" *Muwazah* 8, No. 2 (2016)
- Muhammad, Abdul Kadir. 2000. *Hukum Perdata Indonesia*, Bandung: PT. Citra Aditya Bakti.
- Muthiah, Aulia. 2017. *Hukum Islam Dinamika Seputar Hukum Keluarga*, Yogyakarta: Pustaka Baru.
- Oktary. Novie, dkk, *Analisis Faktor- Faktor Yang Mempengaruhi Tingkat Cerai Gugat Di Kota Pekan Baru*, Jom Fekon 1, No. 2 (2014)
- Pugung, Solahudin. 2010. *Prosedur Perceraian Di Pengadilan Agama*, Jakarta: Djambatan.
- Rohman, Adi Nur. "The Existence Of Masalah Mursalah As The Basis Of Islamic Law Development In Indonesia" *Krtha Bhayangkara* 13, No. 2 (2019)
- Sanger, Juliana Pretty. *Akibat Hukum Perkawinan Yang Sab Didasarkan Pada Pasal 2 UU Nomor 1 Tahun 1974 Tentang Perkawinan*, Lex Administratum 3, No. 6 (2015)
- Santoso, *Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat*, Yudisia 7, No. 2 (2016)
- Sembiring, Rosnidar. 2019. *Hukum Keluarga Harta-Harta Benda Dalam Perkawinan*, Depok: PT Raja Grafindo Persada.
- Shomad, Abd. 2017. *Hukum Islam Penormaan Prinsip Syariah Dalam Hukum Indonesia*, Jakarta: Kencana.
- Simanjuntak, P.N.H. 2017. *Hukum Perdata Indonesia Edisi Pertama*, Jakarta: Kencana.
- Siregar, Ramadhan Syahmedi, *Dampak Perceraian Tidak Sesuai Dengan Prosedur Undang- Undang*, *Fitrah* 1, No. 1 (2015)
- Suadi, Amran. "The Role of Religious Court in Prevention Underage Marriage," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020)
- Subekti. 2003. *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa.
- Susilo, Budi. 2007. *Prosedur Gugatan Cerai*, Yogyakarta: Pustaka Yustisia.
- Syaifuddin, Muhammad, dkk. 2019. *Hukum Perceraian*, Jakarta: Sinar Grafika.
- Tutik, Titik Triwulan. 2015. *Hukum Perdata Dalam Sistem Hukum Nasional*, Jakarta: Kencana.

Laws

Kompilasi Hukum Islam

The Republic of Indonesia, Regulation of the Minister of Religion Number 11 of 2007 concerning Marriage Registration

The Republic of Indonesia, Government Regulation Number 9 of 1975

The Republic of Indonesia, Law No. 1 of 1974 concerning Marriage.

Republic of Indonesia, Law No. 7 of 1989 concerning Religious Courts.

Internet

<http://Kecamatan-Babelan.Simplesite.Com/43946246>
4

<http://Kecamatan-Babelan.Simplesite.Com/43946246>
4

<https://bekasikab.bps.go.id/statictable/2019/02/06/62/luaws-wilayah-menurut-kecamatan-di-kabupaten-bekasi-2017.html>