

Legal Considerations of Religious Court Judges in Divorce Applications on the Basis of Apostasy

Nasrullah ¹, Logi Farman ², Ferdi Aditya Hidayat ³

Universitas Muhammadiyah Yogyakarta
Jl. Brawijaya, Geblagan, Tamantirto, Kec. Kasihan, Kabupaten Bantul,
Daerah Istimewa Yogyakarta Email: nasrullah@umy.ac.id

Universitas Muhammadiyah Yogyakarta
Jl. Brawijaya, Geblagan, Tamantirto, Kec. Kasihan, Kabupaten Bantul, Daerah Istimewa
Yogyakarta Email: logi.farman.law21@mail.umy.ac.id

Universitas Muhammadiyah Yogyakarta
Jl. Brawijaya, Geblagan, Tamantirto, Kec. Kasihan, Kabupaten Bantul, Daerah Istimewa
Yogyakarta Email: Ferdi.aditya.law21@mail.umy.ac.id

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Abstract: Based on the decision of the Religious Court regarding the governance of religious life and strengthening religious moderation regarding divorce cases based on apostasy in Indonesia in 2022, there were 680 cases. And most recently in 2023 there were 4 cases. The Compilation of Islamic Law does not clearly determine the legal consequences of the conversion of one or both spouses, both divorce and marriage annulment. These doubts lead to different interpretations in the realm of judges and their judgments. This study aims to analyze the legal considerations of religious court judges using 4 religious court decisions in 2023 regarding divorce cases based on apostasy. The legal research used is normative legal research, research placing law as a system of forming norms. Doctrinal law research in this study uses a statutory approach, and research sources that are in accordance with the legal issues studied. The results of the study show that although the Compilation of Islamic Law does not emphasize the legal consequences of divorce on the basis of apostasy, religious court judges as legal considerations are not only static based on positive law. But overall legal considerations of judges also use a theoretical approach in Islamic law, principles of Islamic law, the Quran, and books published by Islamic jurists.

Keywords: Apostasy; Religion Court; Divorce

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INTRODUCTION

Running a household will not be separated from the possibility of problems between husband and wife. Which can have an impact

on the harmony of a household relationship. Usually, the disharmony of household relationships is caused by obligations between husband and wife that cannot be fulfilled which

causes one party to feel disadvantaged. This can trigger other problems in the household that can cause household breakups.

Based on the Compilation of Islam Law in Article 113 the breakup of marriage can occur due to death, divorce, and court decisions as for factors that encourage divorce such as economic factors, disharmony, infidelity or can also occur because one spouse has left Islam or apostatized.

Based on data from the Directive of Decisions of the Supreme Court of the Republic of Indonesia, it is recorded that in 2022 divorce cases on the basis of apostasy amounted to 680 cases and in 2023 there were 4 cases¹. Although it has decreased dramatically, it is fairly high if we refer to the total number of divorce cases on the basis of religion since the year 2022 Until 2023, there are 684 cases.

The compilation of Islamic Law does not provide clear guidance on the legal consequences of religious change in marriage, be it divorce talaq or annulment of marriage (fasakh). Although the Marriage annulment Chapter in the Compilation of Islamic Law, namely Articles 70, 71, and 72, does not directly mention conversion or apostasy, it indirectly refers to the annulment of marriage due to apostasy in Article 75². Because of this lack of clarity, judges have different interpretations of making decisions in such cases. However, this distinction should have been resolved through two Supreme Court Decisions, where the application of fasakh only applies if the conversion is used as the basis of the petition and requested by the

parties in their petition³.

In 2023, divorce cases on the basis of one party, husband and wife, apostasy will still occur. The authors found that there are five rulings related to divorce due to apostasy in 2023. So that the decision can be a reference in conducting an assessment as to what the author wants to do, namely to be able to analyze the legal considerations of Religious Court judges in Deciding the divorce case because of apostasy. Previously there was a journal with the title Lawsuit Related to Divorce Due to Apostasy at the Bitung Religious Court written by Evera Willya, Nurlaila Harun, and Afni Anom. This study aim to analyze the considerations of judges in deciding divorce cases with apostasy lawsuits. The research material used is decision number 14/Pdt.G/2019/PA.Bitg and 17/Pdt.G/2019/PA.Bitg. articles written by Evra Willya, Nurlaila Harun, and Afni Anom are still limited to the decisions of the Bitung Religious Court in 2019, then the author will try to do more extensive research using court decisions regarding the latest divorce due to apostasy, issued by 4 different courts in 2023. The four decisions are taken from the Directory of Decisions of the Supreme Court of the Republic of Indonesia, and will be analyzed explanatively using normative methods.

METHOD

Kind of Research

The type of research is normative legal research, using. According to Johnny Ibrahim,

¹ Tingkat Proses and Tahun Putusan, "Ditemukan 5 Data" 00 (2023): 5–6.

² Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah* 6, no. 2 (2022): 514–536.

³ Risenly Tapada, "Akibat Hukum Penerapan Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara Terhadap Peningkatan Nilai Tambah Pertambangan," *Lex Privatum* 10, no. 4 (2022): 2, <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/42407>.

normative legal research is a scientific research procedure to find the truth based on scientific logic from the normative side. Then the main study becomes the law, conceptualized as a norm or rule that applies in society. Therefore, this normative legal research will focus on an inventory of positive laws, legal principles and doctrines.

Research Sites

To fulfill research sources with a library approach through the analysis of articles and journals, this research uses the Social Science Research Network or (SSRN) site and to obtain court decisions, this research uses the Directory of Supreme Court Decisions of the Republic of Indonesia.

Source of Legal Material

The source of material and data in this study is taken from the Law Journal in accordance with the problem under study and uses Court Decisions.

Legal Material/Data Collection Techniques

The method of data collection was Carried out by means of literature studies, namely data collection by searching from data sources. Legal materials will be collected through procedures for inventory and identification of laws and regulations, data sources for journals, as well as classification and systematics of legal materials in accordance with research problems.

Legal Analysis

The data that were obtained were analyzed through descriptive analytic analysis based on legal understanding, legal norms, legal theories and doctrines related to the essence of the problem.

ANYLISIS AND DISCUSSION

Authority of the Court in Deciding Divorce Cases on the Basis of Apostasy

Marriage is basically a physical and spiritual bond between husband and wife, but on this basis it cannot be denied that there will be a problem in the household which has the possibility of being difficult to be able to reunite, so that the marital status ends with a divorce decision. the intention is that both parties can avoid things that can harm and harm the household.⁴

Decisions in divorce occur if both parties already feel incompatibility in living the household. As explained in Law Number 1 of 1974 Concerning Marriage, Article 39 paragraph (2) that it is clear that divorce can be carried out if it is in accordance with the reasons that have been determined. However, the Marriage Law and its Implementing Regulations do not define and regulate divorce resulting from religious conversion (apostasy), because the State of Indonesia adheres to the principle of freedom of religion⁵. Currently, to avoid disparities in judges in deciding interfaith marriage cases, on July 17, 2023 the Supreme Court of the Republic of Indonesia has issued a Supreme Court Circular Letter (SEMA) Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases on Requests for Registration of Marriages Between People of Different Religions and Trust.

As a judicial institution based on Islamic law,

⁴ Sudarsono, *Hukum Perkawinan Nasional* (Jakarta: Rineka Cipta, 2005).

⁵ Aryati Yahya, Rusli Rusli, And Muhammad Akbar, "Analysis Of Judges' Considerations In Deciding Child Care Case Against Apostate Wife," *International Journal Of Contemporary Islamic Law And Society* 3, no. 2 (December 31, 2021): 44–55, accessed June 6, 2023, <http://www.ijcils.org/index.php/ijcils/article/view/34>.

the Religious Courts are called special courts because they only try cases specifically determined by laws and regulations, namely specifically authorized to try certain cases or concerning certain groups of people. With this position the Religious Courts only have authority in certain fields, not including the criminal field and also only for Muslims in Indonesia, in Islamic civil cases. This is because the majority of Indonesian people are Muslim.⁶ The Religious Courts can only process divorce if one of the parties submits a divorce application or suit. Article 63 paragraph (1) of the Marriage Law states that the Religious Courts are for those who are Muslim. So if a marriage is held and registered in the Islamic religion, then the termination of the marriage can be carried out by the Religious Court. The authority obtained by the judge of the Religious Courts in this case is through the law that was in force when the marriage was carried out by the party who wanted to carry out the divorce. If the marriage is carried out in the Office of Religious Affairs (KUA), then the authority to resolve the problem is the Religious Courts, but if the marriage is carried out in the Civil Registry Office, the authority is the District Court. The law that applies at the time the marriage is carried out as a benchmark for determining the competent court (Religious Court or District Court) and only in an effort to resolve disputes over authority between courts, but regarding cases originating from law where when married the Plaintiff converted to Islam only to legally legalize civil law and based on Islamic law, what becomes the entry into Islam is not because of the calling of the soul for a convert. In Verdict Number: 603/Pdt.G/2014/PA.Mdn,

⁶ Basiq Djalil, *Peradilan Agama Di Indonesia* (Jakarta: Kencana, 2006).

the authority of the Religious Courts to adjudicate divorces caused by a husband's conversion (apostasy) is based on the principle of Islamic personality where the application of the principle of Islamic personality is an integral relationship that is inseparable from the basis of legal relations where the perfection and absoluteness of the principle of Islamic personality must be supported by elements of legal relations based on Islamic law, then the dispute is absolutely and absolutely subject to the authority of the religious court.

According to the Islamic Law Compilation (KHI) as a guideline and instructions for Religious Court judges, in an effort to anticipate these problems, Article 116 letter h of the Islamic Law Compilation (KHI) has emphasized that one of the reasons for divorce is apostasy which causes disputes and quarrels in the household⁷. content of Article 116 letter h The Compilation of Islamic Law (KHI) seems ambiguous, because the statement "which causes disputes and fights in the household" this statement shows that "Apostasy" is not in itself a reason for divorce, except when one of the parties is apostate⁸. disputes and fights arise in the household. In contrario it can be said, if there are no dis-

⁷ Rika Fitriani and Abdul Aziz, "Tinjauan Hukum Islam Tentang Pembebanan Mut'ah Dan Nafkah Iddah Terhadap Suami Yang Murtad (Studi Kasus Putusan Pengadilan Agama Nganjuk No: 1830/Pdt.G/2016/PA.Ngj) [Review of Islamic Law on The Imposition of Mut'ah and Living Iddah against Apostate Husbands (Case Study of Nganjuk Religious Court Decision No: 1830/Pdt.G/2016/PA. Ngj)]," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (November 20, 2019): 365–377, accessed June 6, 2023, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/5242>.

⁸ Eden H.B. Chua, "The Malaysian Apostasy Case: Determining the Limits of Syariah Courts," *Oxford Journal of Law and Religion* 10, no. 3 (April 29, 2022): 509–513, accessed June 6, 2023, <https://academic.oup.com/ojlr/article/10/3/509/6459131>.

putes and fights as a result of apostasy, then apostasy cannot be a reason for divorce⁹.

If the Panel of Judges continues to stand firm in its opinion on the case in question is filing a divorce suit so that the Defendant's bain sughra divorce is imposed on the Plaintiff and in the end if it has already renounced and after the parties are duly summoned and present at the hearing, the Panel of Judges must witness the pronouncement of the pledge of divorce. The Defendant, even though the Defendant has converted to religion (apostate), this is because the Defendant has submitted himself to the applicable Islamic Law in accordance with the Principles of Islamic Personality.¹⁰

With the understanding of the Medan Religious Court Judge in proving someone to convert to religion (apostasy) is by testimony and authentic evidence that can be found from Identity Cards (KTP), population censuses and other certificates. Meanwhile, regarding the standard of the principle of Islamic personality based on the occurrence of a legal relationship, it is determined by two conditions: First, at the time of the occurrence of a legal relationship, both parties are both Muslims, and Second, the legal relationship that underlies civil law.¹¹

⁹ Muhammad Lutfi Hakim and Khoiruddin Nasution, "Accommodating Non-Muslim Rights: Legal Arguments and Legal Principles in the Islamic Jurisprudence of the Indonesian Supreme Court in the Post-New Order Era," *Oxford Journal of Law and Religion* (May 16, 2023), accessed June 6, 2023, <https://academic.oup.com/ojlr/advance-article/doi/10.1093/ojlr/rwad004/7165710>.

¹⁰ Maya Jannah Risdalina, Kusno, Bernat Panjaitan, "Verstek Decision In Divorce Case In Religious Courts Of Rantaprapat," accessed June 6, 2023, <https://ijsr.internationaljournalallabs.com/index.php/ijsr/article/view/391/438>.

¹¹ Zulkifli Achmad, Suparudin, Asni, "Divorce Case With Reconciliation Verdict Refers To Maqasid Al-Sharia Perspective (Case Study At The Religious Court

Legal considerations of religious court judges in deciding divorce cases on the basis of apostasy

Decision Number 3/Pdt.G/2023/MS. Sgi.

In this case it was about the application for itsbat nikah where the judge granted the plaintiff's application to impose talaq one Ba'in Sughra. That in this case the plaintiff and the defendant only lived together for a period of 2 years, then there were many disputes caused by the plaintiff and the defendant no longer agreed in building a household other than that because the defendant had returned to his original religion, namely Christianity or in other words had apostatized. In this case, the judge has tried to reconcile the parties in order to live in harmony, but the defendant did not have the good faith to attend mediation or the trial process to give an answer. So related to this the judge weighed with the opinion of jurisprudence expert Ahmad Ali Ar Razi Al Jashos in the book *Ahkamul Quran Juz V* page 190 of 1984 AD which reads: *Artinya: "Whoever is summoned to appear before an Islamic judge, then eggan attends the call then he is included in the dholim and forfeits his rights"*. Furthermore, to render judgment on the petition of Ba'in Sughra by the Plaintiff, the judge weighed in with Article 39 of Law No. 1 of 1974 concerning marriage, specifying that in the case of conferring a divorce, it must Meeting sufficient reasons include that husband and wife will not be able to live in harmony in running a household. Furthermore, in Article 19 letter (f) of Government Regulation Number 9 of 1975 juncto Article 116 letter (f) of the Compilation of Islamic Law affirms one of

of Polewalu Class 1 B) accessed June 6, 2023, <https://journal3.uin-alauddin.ac.id/index.php/ijis/article/view/35050/16586>

the reasons for divorce, namely continuous disputes and quarrels between husband and wife and there is no longer a way to get along. Letter (h) conversion or apostasy that causes disharmony in the household¹². In addition to the above legal considerations, there is also another consideration, namely the theory of Islamic law in the book *Al Furqah Baina al Zaujaini* li al'Aly Hasballah p. 175 which reads: "If the husband converts to another religion or apostates, the marriage bond between the husband and wife is broken¹³" according to the judge that based on the doctrine of Islamic law contained in the book of *Muhadzdzab* and the book of *Qaluyubi wa 'Umairah* then because of the conversion of the defendant then the marriage can be divorced¹⁴;

That based on the above considerations, the judge in the decision of Decision Number 3/Pdt.G/2023/MS. Sgi. grant requests For Talak by plaintiff¹⁵.

Decision No. 219/Pdt.G/2023/PA. Jmb

The petitioner filed for divorce against the Defendant on the grounds that initially their household was harmonious and good, but since January 2006, their relationship began to be disrupted due to ongoing disputes and quarrels, caused by differences in religious beliefs. The applicant returned to Christianity, and the dispute reached its peak in 2022. The Claimant and the Defendant had been living separately in the residence for approximately 3 months after they no longer slept in the same bed and the Defendant left their household.

Based on the situation that occurred in the domestic conflict between the Petitioner and the Respondent, the judge concluded that there was no longer any harmony between the two and they were no longer in line in establishing the household. Therefore, it can be stated that the Applicant's application has fulfilled one of the grounds for divorce as stipulated in Article 19 (1) of Government Regulation Number 9 of 1975 jo Article 116 (1) of the Compilation of Islamic Law in Indonesia (Presidential Instruction Number 1 of 1991)¹⁶. Judges also added the consideration of the case with the *kaidah* of Islamic Law which means "Rejecting *madharatan* must take precedence over attracting benefit".

After considering the Petitioner's application and the confession made at the hearing, it became known that the Applicant had returned to his native religion which was Christianity and expressly stated this at the hearing. However, the Petitioner's application to impose one *raj'i talaq* against the Respondent is no longer applicable as it is not in accordance with the provisions of law and the Petitioner has no right to impose one *raj'i talaq* against the Respondent. Therefore, the Panel of Judges decided to terminate the marriage of the Petitioner with the Respondent based on these considerations. The Applicant's application is considered to have sufficient grounds and does not violate the law because the Applicant has converted/apostatized. In the final judgment, the judge imposed a marriage decree between the petitioner and the respondent for apostasy.

Decision No. 245/Pdt.G/2023/PA. YK

What was considered by the judge was Ananta the plaintiff and there were often disputes

¹²Ibid

¹³Verdict, *First*, 3/Pdt.G/2023/MS. Sgi. Thing. 14

¹⁴Evra Willya, Nurlaila Harun, and Afni Anom, "Lawsuits Related To Divorce Due To Apostasy in Bitung Religious Court," *MIQOT: Journal of Islamic Sciences* 46, no. 1 (2022): 53–69.

¹⁵ Ibid

¹⁶ Directory of Verdicts, *First*, 219/Pdt.G/2023/PA.Jmb. p.14

and disputes caused by the Defendant not providing a living and had apostatized and as a result of the dispute made the two parties separate residence for 5 months. In this regard, the judge considered in article 19 letter (f) of Government Regulation Number 9 of 1975 jo Article 116 letter (f) of the Compilation of Islamic Law affirmed that divorce can occur because there are frequent disputes and there is no hope of returning to live in harmony. In Article 116 of the Compilation of Islamic Law, letter (h) affirms that divorce can occur due to conversion or apostasy¹⁷. Then the judge considered related to child custody, namely judges considering from the point of view of positive legal norms, as stipulated in Article 105 letter (a) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), then the custody of children who have not been mumayyiz is the mother's right. If the plaintiff is a mother who has filed for divorce with the defendant who has defaulted, then the Panel of Judges determines that the child who is in the family in the divorce process is under the care of the plaintiff.¹⁸ . Hereby the efforts of the Religious Court take precedence in the divorce process, not only in the form of judgments and examinations conducted by the Religious Court in this case, in the form of mediation, efforts to reunite with the aim of building and improving the relationship between the defendant and the plaintiff, as well as the status of children already owned by families who have been in divorce proceedings are considered important by the panel of Religious Courts.

Decision Number 000/Pdt.G/2023/PA. Kds

¹⁷Directory of Judgments et al.,First "Supreme Court of the Republic of Indonesia" (2023).

¹⁸ Ibid.

Based on the consideration of the Supreme Court Decision regarding divorce cases caused by religious conversion, which refers to KMA Number: KMA/032/SK/IV/2006, concerning the Implementation of Book II of the Guidelines for the Implementation of Administrative Duties of Religious Courts Revised Edition 2010 page 149, that a husband or wife who is riddah (out of Islam) who files a divorce lawsuit must be in the form of a lawsuit. In the case of a quo Defendant turned out to be apostate, the Judge held that the marriage of Plaintiff and Defendant should be terminated (annulled) as referred to in Article 116 letter (h) of the Compilation of Islamic Law. There are times when the rights and powers of Religious Courts are required with related issues, but not all, only some can be enforced by Religious Courts as stipulated in Supreme Court Decisions.

With relevant considerations and in accordance with the argument that it does not violate rights and also in accordance with legal certainty, it will be implemented in the provisions of Article 39 paragraph (2) of Law Number 1 of 1974 juncto Article 19 letter (h) of Government Regulation Number 9 of 1975 jo Article 116 letter (h) of the Compilation of Islamic Law, the Court may grant the Plaintiff's claim. With the evidence that the defendant and the plaintiff have apostatized, both the defendant and the plaintiff have decided to divorce by the statement of fasakh. In this case, that 2 (two) witnesses of the Plaintiff are the family or close people of the Plaintiff and or the Defendant in accordance with Article 22 paragraph (2) of Government Regulation Number 9 of 1975 jo. Article 134 Compilation of Islamic Law and is an adult and has been sworn, so as to meet the formal requirements as stipulated in Article 145 HIR.

Decision Number	Legal Considerations	Petition	Final Decisions
Decision Number 3/Pdt.G/2023/MS. Sgi.	- Law No. 1 of 1974 concerning marriage - Opinion of jurisprudence expert Ahmad Ali Ar Razi Al Jashos and - Government Regulation Number 9 of 1975 juncto Article 116 letter (f) of the Compilation of Islamic Law - Theory of Islamic Law book Al Furqah baina al Zaujaini li al'Aly Hasballah	Talaq	Grant
Decision No. 219/Pdt.G/2023/P A. Jmb	- Article 19 (1) Government Regulation Number 9 of 1975 jo Article 116 (1) of the Compilation of Islamic Law - Presidential Intruction Number 1 of 1991 - Kaidah of Islamic Law	one raj'i talaq	Grant
Decision No. 245/Pdt.G/2023/P A. YK	- Government Regulation Number 9 of 1975 juncto Article 116 letter (f) of the Compilation of Islamic Law - Article 105 letter (a) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law	one Ba'in Talaq	Grant with Verstek

Decision Number	Legal Considerations	Petition	Final Decisions
Decision Number 3/Pdt.G/2023/MS. Sgi.	- Law No. 1 of 1974 concerning marriage - Opinion of jurisprudence expert Ahmad Ali Ar Razi Al Jashos and - Government Regulation Number 9 of 1975 juncto Article 116 letter (f) of the Compilation of Islamic Law - Theory of Islamic Law book Al Furqah baina al Zaujaini li al'Aly Hasballah	Talaq	Grant
Decision No. 219/Pdt.G/2023/P A. Jmb	- Article 19 (1) Government Regulation Number 9 of 1975 jo Article 116 (1) of the Compilation of Islamic Law - Presidential Intruction Number 1 of 1991 - Kaidah of Islamic Law	one raj'i talaq	Grant
Decision Number 000/Pdt.G/2023/PA. Kds	- KMA Nomor: KMA/032/SK/IV/2006 - Article 116 letter (h) of the Compilation of Islamic Law - Article 39 paragraph (2) of Law Number 1 of 1974 juncto Article 19 letter (h) of Government Regulation Number 9 of 1975 jo Article 116 letter (h) of the Compilation of Islamic Law	The marriage is dissolved fasakh	Grant

Table of decision analysis results

CONCLUSION

The authority of religious courts to adjudicate divorces caused by husband or wife converting is based on Islamic personality principles. The results showed that although the Compilation of Islamic Law did not mention concretely the consequences of divorce law due to apostasy, the consideration of judges of religious

courts was advanced and overall has the same consideration which not only based on positive law. but also with relevant facts, rules of Islamic law, the Quran and books published by Islamic jurists.

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