

## Divorce Bureaucracy in the Sharia Space: Examining Practices in Langsa City, Aceh

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**Abstract:** Divorce in the community is often understood differently between Islamic law, the State, and customary law. Each of these laws has a fundamental legal basis regarding the concept of divorce. The impact of differences in the legal concept of divorce results in different Muslim communities in the process of terminating marital relations. This research aims to examine further how the divorce bureaucracy in Indonesia affects the divorce process in the community. This paper results from an empirical study with a socio-legal study approach, this approach is used to review how divorce in society is practiced. Data was obtained from interviews with relevant parties. To strengthen the data and analysis, this research also uses several empirical research results and other important articles related to this paper. The results show that the divorce bureaucracy in Langsa City, Aceh still leaves problems caused by differences in viewpoints and interests so that divorce outside the court still occurs. The difference in perspective is based on the understanding that divorce is legal if it fulfills the provisions of Islamic law. On the other hand, people who are aware of the law have the view that divorce must be done before the court. The bureaucracy of divorce, which involves administration and the conditions that must be met, makes divorce considered complicated and takes a long time. Conversely, religious divorce does not require a long time and cost. In addition, the interest in a quick process without the need for an administrative process also influences the divorce bureaucracy. Non-judicial mediation at the village level is essential for reducing divorce rates and reducing divorce bureaucracy.

**Keywords:** Bureaucracy, Divorce, Islamic Law, State

**Abstrak:** Proses perceraian di kalangan masyarakat seringkali dipahami berbeda antara hukum Islam, Negara dan Hukum adat. Masing-masing hukum tersebut memiliki basis hukum yang mendasar tentang konsep perceraian. Dampak perbedaan konsep hukum perceraian tersebut mengakibatkan masyarakat muslim berbeda dalam proses pemutusan hubungan perkawinan. Penelitian ini bertujuan menelaah lebih jauh lagi bagaimana birokrasi perceraian di Indonesia mempengaruhi proses perceraian di kalangan masyarakat. Tulisan ini dihasilkan dari kajian empiris dengan pendekatan sosio-legal study, pendekatan ini digunakan untuk meninjau kembali bagaimana perceraian di masyarakat dipraktikan. Sumber data diperoleh dari hasil wawancara dengan para pihak terkait. Untuk memperkuat data dan



analisis, penelitian ini juga menggunakan beberapa hasil penelitian empiris dan artikel penting lainnya yang berkaitan dengan tulisan ini. Hasil penelitian menunjukkan bahwa birokrasi perceraian di Kota Langsa, Aceh masih menyisakan permasalahan yang disebabkan oleh perbedaan sudut pandang dan kepentingan sehingga perceraian diluar pengadilan masih saja terjadi. Perbedaan sudut pandang tersebut didasari oleh pemahaman bahwa perceraian pada dasarnya sah apabila memenuhi ketentuan hukum Islam. Disisi lain, bagi masyarakat yang sadar terhadap hukum memiliki pandangan bahwa perceraian harus dilakukan dihadapan pengadilan. Birokrasi perceraian yang melibatkan administrasi dan syarat-syarat yang harus dipenuhi menjadikan perceraian dianggap rumit dan membutuhkan waktu lama. Sebaliknya perceraian secara agama tidak membutuhkan waktu lama dan biaya. Selain itu, Kepentingan untuk proses cepat tanpa harus adanya proses administrasi turut mempengaruhi birokrasi perceraian. Mediasi non-hakim ditingkat Desa menjadi penting untuk meminimalisir terjadinya perceraian sehingga mampu memangkas birokrasi perceraian.

**Kata Kunci:** Birokrasi, Perceraian, Hukum Islam, Hukum Negara.

## Introduction

The issue of divorce is still interesting to discuss today because it concerns the continuity of the household. Divorce is one of the things that is very undesirable; even in Islam, divorce is an act that is not recommended and hated (Abdullah & Muhtadin, 2024). However, it can't be denied that when a household becomes disharmonious, it results in divorce (Basyiroh & Afif, 2024). In Indonesian marriage regulations, disharmony can be a reason for breaking up a marriage relationship. Many factors lead to divorce, such as domestic violence, infidelity, economics, and differences of opinion, which result in disputes (Rinaldo et al., 2024). These factors trigger disharmony in the household, and differences in communication can even lead to divorce (Sari et al., 2024). This condition is becoming increasingly worrying day by day because several studies have explained that most divorces hurt children (Pertaminawati & Arifa, 2024).

Based on the data obtained, divorce in religious courts has increased. In 2023, the number of divorce cases will reach 6,091 cases. North Aceh, Aceh Tamiang, Central Aceh, East Aceh, and Bireuen are the five regions with the highest number of divorce requests (Safrina, 2024). The number of divorce cases that were resolved through the religious courts does not include divorces that occurred outside the religious courts (Reski et al., 2024). Of course, this condition is very worrying. If you look at the impact of divorce, how many children feel the effects of the divorce on their parents? However, returning to the initial concept of marriage (Suryani et al., 2024; Faridah & Salsa, 2024; Rohimah et al., 2024; Setiawan et al., 2024), Islam should want marriage to be healthy, even though it is inevitable that divorce will occur when the household cannot be maintained (Rahmawati & Mahmuda, 2024).

The Indonesian government has regulated that the divorce mechanism must go through a court, as regulated in Article 39 of Law Number 1 of 1974 concerning

marriage, which states that divorce can only be carried out in front of a court hearing after mediation efforts have been made. This provision further emphasizes that divorce is only done in front of the court, not outside the court (Bukido et al., 2024). This condition certainly gives rise to pros and cons, so that to this day it still happens that some people in Langsa City, Aceh, carry out divorces outside of court (Zulfadli & Aziz, 2024). Divorce bureaucracy is a consideration for some people when resolving divorce before the court, not only related to administration but cost, distance, and time also influence the resolution of divorce before the court.

Euis Nurlaelawati's research in Cianjur on divorce in court explains that most of the use of the court in divorce is carried out by women; even though it is considered expensive, complicated, and long, the court route is still carried out to achieve justice and fulfill their rights, which husbands tend to ignore (Nurlaelawati, 2013). Abdullah's research was conducted in Lombok regarding the practice of divorce using customary law by following local traditions in severing marriage ties. The customary mechanism was carried out in several stages involving Tuan Guru and community leaders, and then the tradition of harassment was carried out and ended with the termination of the husband's rights and obligations. The results of Abdullah's research explain that there are conflicting traditions at the stage of harassment and termination of a wife's rights that are considered contrary to Islamic law (A. Abdullah et al., 2022).

This study is more concerned with examining the divorce bureaucracy that exists in the Langsa City, Aceh community than some of the other research mentioned above. In addition, this study aims to investigate the causes of divorce as well as the factors that impact the divorce process. This research has helped to offer recommendations and answers to the divorce bureaucracy issue, making it simpler and able to remove the stigma associated with it from society.

## Method

This research is an empirical study with a socio-legal study approach involving data from various sources (Adriaman, 2024). Primary data sources are obtained from interviews and observations. To strengthen the analysis and data, this research also uses several empirical research results and articles related to this research problem. Empirical research is a type of research that involves aspects of reality that occur, while the socio-legal study approach is used to analyze data findings by considering sociological and normative aspects (Rosidi et al., 2024). Data analysis was carried out by reducing and analyzing data content. Data reduction was carried out as an effort to collect and select data that was appropriate to the problems in this research, with content analysis carried out to analyze in a focused and in-depth manner the data findings obtained from interviews and observations.

## Results and Discussion

### Examining divorce in Langsa City, Aceh

In Islam, divorce is one of the options for preventing harm and maintaining the household when it is not possible. Despite being associated with actions that God

detests, there are certain legal justifications that are utilized as grounds for divorce. Surat al-Baqarah verse 230 of the Qur'an clarifies that "And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other if they think that they can keep [within] the limits of Allah. These are the limits of Allah, which He makes clear to a people who know" (Asy-Syarbaini, 1991). This verse indicates that, unlike talak ba'in sugra, which still allows the husband to go back to his wife, talak ba'in sugra denotes that the husband is not allowed to return after he has said talaq (Setiyawan et al., 2024). This demonstrates that divorce is more than simply a word of mouth; the bulk of the Muslim community does not always understand this condition. Even casually mentioning divorce can affect one's marital status legally (Imron, 2016). The majority of Muslims occasionally lack a thorough understanding of this problem (Alfa, 2019).

Divorce cannot be avoided in building a household, so it is possible that it will end in divorce. In response to this, Islam also regulates the law regarding divorce because divorce is part of a legal relationship that results in legal changes both after divorce and after marriage (Umar et al., 2024). In several fiqh literatures, scholars provide various definitions of the meaning of divorce. Terminologically, divorce is understood as a form of separation or abandonment (Azizah, 2017). The consequence of the divorce is the prohibition on being together like husband and wife (Lestari et al., 2024).

In fiqh literature, divorce is categorized as talak, which has the meaning of farqi (separation). Etymologically, talak means releasing the bond of talak, which comes from the word *itlaq* (M. K. B. A.-S. Salim, 1422), which means to let go or abandon. In sharia terminology, talak means severing or canceling the marriage bond, whether the severance occurs in the present (if the talak is in the form of talak bain) or in the future, namely after iddah (if the talak is in the form of talak raj'i) using certain pronunciations. In the Compilation of Islamic Law article 113 (Afendi & Choeri, 2024), it is stated that marriage can be dissolved due to death, divorce, and court decisions (Rahman, 2024).

Divorce is something that is very unexpected in a household. However, sometimes divorce cannot be avoided. The results of the research show that the influence of divorce on children is quite large, both on attitudes and psychology. Of course, this influence cannot be ignored because it has a negative impact on children's development, and apart from that, it also affects the emotions of husband and wife if the divorce begins with an argument (Fajar, 2024). Divorce through the divorce process carried out by the husband to the wife has legal aspects that do not necessarily mean that the divorce will fall and there will be no peace again. In Islam, talak is classified into several aspects (Azwir et al., 2022):

*First.* Talak is viewed from the time it is pronounced; in Islamic law, it does not absolutely prohibit a husband from divorcing his wife, but there are legal provisions regarding when it is permissible to divorce a wife and when it is prohibited. In this

case, talak is divided into two, namely Sunni talak and bid'i talak. Sunni talak, namely talak imposed by the husband on the wife in accordance with the provisions of the Shari'a in the sense that it does not conflict with or is prohibited by Allah and the Sunnah of the Prophet. The scholars agree that divorce imposed by a husband when the wife is in a pure state from menstruation and does not gather (jima') with her husband is included in Sunni divorce; the legal basis used is the QS. At-Talaq 65: (1) (Rusdi, 2016).

Quoting Ibn Taimiyyah's opinion in the Sunnah Lin-Nisa's book of fiqh, the criteria for Sunni divorce are divided into five, including (M. K. B. A.-S. Salim, 1422):

1. A husband divorces his wife with one divorce
2. After menstruation ends
3. After taking a shower from menstruation
4. Before being collected (jima')
5. Not followed by other divorces

In KHI Article 121, it is also explained that Sunni divorce is a permissible divorce, namely divorce imposed on a wife who is chaste and should not be interfered with during that sacred time. When we see what is wrong with Sunni divorce and why this type of divorce must be regulated. So, the important point that will be obtained is that the purpose of this provision is to protect women's rights so that husbands do not easily divorce their wives without regard to legal provisions and the wife's rights. Apart from that, the law of divorce is a solution when unavoidable commotion occurs in the household so that undesirable things do not happen. It is permissible to divorce according to the provisions set out in Islam. Meanwhile, talak bid'i is a type of talak that is contrary to Islamic law, such as talak when the wife is menstruating or pregnant, or there are also those who believe that three talaks at once or three talaks in one utterance are considered talak bid'i. The consensus of the ulama states that talak bid'i is haram (M. K. B. A.-S. Salim, 1422).

Second, talak is viewed from the perspective of clarity of pronunciation; in pronouncing, talak is related to the clarity of the pronunciation. So, this type of talak is divided into two types, namely talak sharih and kinayah. What is meant by talak sharih is talak pronounced by the husband to the wife with words that directly indicate the meaning of divorce, such as "I will divorce you one" or "I will divorce you.". Meanwhile, talak kinayah is talak, which is said indirectly or through innuendo, so it is necessary to clarify the meaning of the statement, such as saying "go home to your parents." Talaq can be pronounced directly in the form of sarih and kinayah, but for mute people it can be done through gestures; the majority of ulama allow it in writing as long as the intention is accompanied and the writing is clear. In this case, Imam Syafi'i is of the opinion that divorce is done through writing if he intends or has the desire to divorce (M. K. B. A.-S. Salim, 1422).

Third, talak is viewed from the perspective of the husband's ability to reconcile; in this case, it is divided into two, namely talak raj'i and talak ba'in. Talak raj'i is a divorce imposed by a husband on his wife who has been married, and in conditions like

this, the husband can reconcile' (return) to his wife without entering into a new contract and dowry (tajdid an-nikāh) (Asy-Syarbaini, 1991), the legal basis used in talak raj'i, namely QS. al-Baqarah. 2: (229).

"Divorce (which can be referred to) twice. After that, you can reconcile again in a good way or divorce in a good way. It is not halal for you to take back something that you have given to them, unless both of you are worried that you will not be able to If you are worried that both (husband and wife) cannot carry out Allah's laws, then there is no sin on either of them regarding the payment given by the wife to redeem herself. These are Allah's laws; then do not violate them. Whoever violates the laws of Allah, those are the wrongdoers."

The verse is the basis of the law that allows the husband to refer to his wife when there have been two divorces by the husband against his wife. While ba'in divorce is divided into 2 (two), namely ba'in sughra and ba'in kubra. Talak ba'in sughra is a divorce that cannot be referred to like a raj'i divorce, but the husband can refer to it by entering into a new marriage contract and dowry even during the iddah period, as explained in KHI Article 119.

Thus, in the case of talak ba'in sughra, it does not apply like talak raj'i, meaning that if the husband has abandoned his wife and has not performed reconciliation so that the iddah period has expired, then if the husband changes his mind about returning to his wife, the husband is obliged to enter into a new contract and dowry. (tajdīd an-nikah). In contrast to ba'in kubra, which is a husband's talaq to his wife with three good words at once in pronouncing it or not, the legal impact of talak ba'in kubra is that it cannot be referred back by the ex-husband unless the ex-wife remarries the man. another and divorced after the jima' (muhallil), the legal basis used in talak ba'in kubra is QS. al-Baqarah. 2: (230) with someone else, and then there was a ba'da al dukhul divorce, and the iddah period ended" (Ferdiana et al., 2024).

Fourth, Talak is viewed in terms of the number of pronunciations. In practice, in the Religious Courts, even though the husband pronounces triple talaq, it is still decided that talaq is ba'in shugrā. The concept applied by the Sharia Court is based on the principle of "complicated" divorce. The meaning of making it difficult is that in the divorce process, the state seeks mediation so that a divorce does not occur, and even though the divorce has been decided, a talaq ba'in shugr is declared (even though a triple talaq has occurred outside the trial), which allows the husband to reconcile'. In contrast to the Shafi'i school of thought scholars who state that when a husband gives his wife triple talaq at once, then talaq ba'in kubra applies and such a talaq is permissible, this opinion is the same as Imam Malik and Abu Hanifah, who are of the opinion that triple talaq at once is still talaq. Three, it's just that the law is haram as regulated in Islam. The opinion of the Imam of this school is different from that of Ibn Taimiyah, who is of the opinion that triple talaq pronounced at once is considered one talaq and this type of talaq is considered haram. is of the opinion that triple divorce can be tripled if it is intended by the husband (Asman & Rahman, 2024).

In practice, divorce in court is an alternative for people who want to get justice for their rights. The majority of divorces in court are an option for career women to protect their rights who will worry about being neglected by their ex-husband (M. Muliani, personal communication, November 10, 2023). In fact, quite a few divorces carried out in court still do not guarantee the ex-husband's implementation of the decision. This condition shows that the judge's decision has not been able to achieve implementation.

Divorce outside the religious courts does not rule out the possibility of occurring; this condition is influenced by the legal cultural conditions of society, which prefer religious figures as an effort to legalize the legal status of divorce. Divorce that occurs in Acehnese society certainly has its own arguments; apart from the reasons for the complexity of divorce matters in court, religious figures in society also have a big influence on the occurrence of divorce outside of court. In matters of religion, the people of Aceh are very dependent on the Ulama. One very real example in social life is that every time there is a moment related to divorce, the community will ask the Gampong Imam's opinion to make a decision regarding the divorce he has carried out (S. Salahuddin, personal communication, July 15, 2020).

In a cultural context, a person's character in the field of religion greatly determines legal status, especially those related to Islamic law. This fanatical attitude towards this figure has implications for everyday legal behavior. When carrying out divorces, the people of Aceh still predominantly do so according to traditions that have been believed for a long time and are based on fiqh. In this connection, it can be concluded that the traditions that live in society are religious traditions that ignore the Marriage Law and KHI. Religious figures in society have a responsibility to maintain religious harmony and resolve domestic conflicts, including divorce issues; even Muhsin, a KUA in Eastern Aceh, stated that "most people in resolving divorce simply need to get recognition from religious figures in this matter, whose role is very important. Imam Gampong" (M. Muhsin, personal communication, May 6, 2022).

In general, it can be understood that there are many divorces that do not receive legality at the Syar'iyah Court. Information here is also obtained that the average decision sent by the court to the KUA is that those who divorce in court are only people who have civil servant status or people who need a divorce decision. For administrative purposes only; the rest is for people who don't need a court decision so they don't report it to the court .

### Reconstructing of Bureaucracy: Ideas for Resolving Divorce Cases

The Islamic bureaucracy in Indonesia continues to develop and even continues to increase in optimizing services for the Indonesian Muslim community, especially in Aceh. After the peace between the Indonesian government and the Free Aceh Movement (GAM), Islamic institutions continue to emerge, one of the most obvious of which is the Islamic Sharia Service. and the Sharia Court. These institutions are present with the aim of responding to the Helsinki MoU and providing maximum services for the enforcement of Islamic law (A. Salim, 2010).

In its development, the religious court in Aceh is known as the Sharia Court. This provision is in accordance with Article 1 paragraph (1) of the Republic of Indonesia Presidential Decree No. 11 of 2003 concerning the Provincial Sharia Court in Nanggroe Aceh Darussalam Province, which stated that the existing Religious Court in Nanggroe Aceh Darussalam Province was changed to the Syar'iyah Court (A. Salim, 2021). And the position of the sharia court was also strengthened by the enactment of Law No. 50 of 2009 concerning religious courts. In article 3A Paragraph (2), it is explained that

"The Islamic Sharia Court in Nanggroe Aceh Darussalam Province is a special court within the religious justice environment as long as its authority concerns the authority of the religious court, and is a special court within the general justice environment as long as its authority concerns the authority of the general court."

This article is not known as the Sharia Court but rather the Sharia Court. The term Sharia Court is contained in the Republic of Indonesia's Presidential Decree No. 11 of 2003 concerning the Provincial Sharia Court in Nanggroe Aceh Darussalam Province and Law Number 11 of 2006 concerning the Government of Aceh. This is to provide a general understanding that the Sharia Court is a Sharia Court (Abror, 2020). Since becoming a sharia-based region, especially with the enactment of Law Number 11 of 2006 concerning the Government of Aceh, it has been emphasized that Aceh is an Islamic sharia-based region, even though its implementation is less than optimal. However, the enthusiasm to implement Islamic law grew from the people of Aceh itself. This can be seen from the customs that have developed in Acehnese society, such as extending greetings to everyone who is greeted, as well as supporting the birth of the Qanun, which regulates the prohibition of adultery, khamar, maisir, and khalwat, and recently a regional regulation was also issued regarding the prohibition of straddling women riding motorbikes (Sulubara & Murthada, 2023). Although there are many pros and cons. This condition also proves that not everything that is considered to be syar'I can be applied without looking at the contextuality of the existing conditions (Pane, 2017).

In Article 3 paragraph 2 of Republic of Indonesia Law No. 44 of 1999 concerning the implementation of privileges, it is explained that the implementation of privileges includes;

1. Implementation of religious life
2. Implementation of traditional life
3. Providing education and
4. The role of ulama in determining regional policy

The provisions of this article provide fresh air for the people of Aceh to carry out religious life in accordance with the wishes of the people of Aceh. It is said to be a form of the wishes of the people of Aceh because the customs there reflect sharia. With the enactment of Law No. 44 of 1999, this is the first step to establishing an Islamic judicial institution that is not only formal and material but also uses the Islamic term, namely the Sharia Court (Fakhriah & Yusrizal', 2014).

The Sharia Court in Nanggroe Aceh Darussalam Province is the same as the Religious Courts in Indonesia. At the first level, the decision is decided by the City or Regency Sharia Court and the Provincial Syariah Court for the appeal level. If the parties to the dispute are not satisfied, they can appeal to the Supreme Court. Hierarchically, the Sharia Court remains subordinate to the Supreme Court, as regulated in Article 3 paragraph (2) of Law No. 10 of 2002 concerning Islamic Sharia Courts (Yusrizal et al., 2011).

Based on the results of observations and interviews, it is clear that until now divorce outside the religious courts still occurs. This condition is influenced by several factors, including: first, access is long and takes time; this is an obstacle for people who live far from religious courts; Second, concerns about costs, the stigma that arises that when a divorce is carried out in court it will require costs; this concern often occurs because this stigma often haunts rural rural communities; third, it takes a long time; this also influences the mindset of the village community because they think that divorce in court takes a long time to complete and must be carried out over several trials; fourth, the existence of religious figures is considered sufficient to provide legal explanations that are in accordance with Islamic law because marriage is dominated by Islamic law rather than state law.

Important steps are needed to reduce the occurrence of divorce in society, one of which is by holding mobile courts and reviving cultural mediation in each village. Apart from that, it is also important to involve the village court as an effort to reduce divorce bureaucracy by involving village officials and religious leaders in every village. This can help resolve divorce without ignoring state law. As Werner Menski said, the state cannot ignore religious and customary law, so if the law wants to run well, the state must accommodate religious and customary law (Menski, 2006). Likewise, what Eugen Ehrlich explained was that traditional and religious law actually existed and was created before state law, so it is important to consider living law (Menski, 2006).

## Conclusion

Some Muslim communities in Aceh still see bureaucracy in divorce cases negatively, citing different reasons related to distance, expense, efficiency, and administration. The concept of cultural mediation and the use of gampong courts in divorce proceedings can facilitate the resolution of Islamic civil matters, not just divorce-related ones. These two organizations are able to support the religious court's work in addressing a range of issues that come up. The religious court will handle domestic cases more quickly and efficiently since it will be there when the issue cannot be settled at the village level.

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