

# Analysis on the Decisions of the Tanjungkarang and Metro Religious Courts Toward State Civil Apparatus Divorce Case on Islamic and Positive Law Perspective

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Received: 02-06-2022	Revised: 13-06-2022	30-06-2022
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## Abstract

This article discusses divorce among the State Civil Apparatus (ASN) which is still rife. Even though there are many budgets and government regulations that aim to harmonize the households of ASN. State servants are required to be disciplined and able to show work performance, on the other hand they are also obliged to maintain the integrity of their household. The focus of this article is to reveal the factors in the occurrence of divorce for ASN, then the divorce factors are analyzed from the perspective of Islamic law and positive law. This type of article is qualitative, with a normative analytical approach, the source of the data for this article is obtained from the Class I Lampung Religious Court which includes the Tanjungkarang Religious Court and the Metro Religious Court. This article concludes that the factors that cause divorce are internal and external factors. The cause of ASN divorce at the Tanjungkarang and Metro Religious Courts is a factor of domestic disputes as well as economic factors. Even though he works as an ASN, he is considered unable to meet household needs. In the context of Islamic law, divorce may be carried out if the marriage is continued, it will cause *mafsadah* for both, because there is no harmony between husband and wife.

**Keywords: Divorce Factors, Islamic Law, and Positive Law**

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## INTRODUCTION

The divorce rate in several religious courts in Indonesia continues to increase every year, including the Lampung Class IA Religious Court. Divorce is either sued divorce or talak divorce. Divorce occurs from various groups, both from the community such as traders, farmers, laborers, as well as from among the State Civil Apparatus (ASN). This is certainly interesting to study, because divorce cases are found in all circles of Lampung society.

In fact, the teachings of Islam provide guidance, among others, with the Hadith of the Prophet SAW which has been more than 14 centuries ago explaining that the severance of marriage ties is lawful but is hated by Allah. Meanwhile, in another Hadith, the Apostle also explains that a wife who asks for a divorce from her husband for reasons that are not clear or even without a reason, then the law is haram. Complete Islamic teachings provide guidance for married life. For civil servants, divorce cannot be processed directly in court, but must go through mediation from their respective agencies.

Mediation is carried out up to three times, if the mediation is not successful then permission is given to process the divorce in court. However, until now, divorces are still

common among ASN. This raises questions that must be explored and researched as well as the causal factors discussed. For example, is it due to a lack of insight in forming a harmonious family, is it due to inadequate salary received, or maybe due to other unknown reasons?

The issue becomes interesting to study to find a solution to the problem by analyzing it using Islamic law and positive law regarding the divorce factor. Allah explains in His word Al-Qur'an letter Ar Ruum verse 21 that the purpose of marriage is to form a *sakinah mawaddah warahmah* household. Law No. I of 1974 concerning Marriage, Article I explain that the purpose of marriage is to form a happy and eternal family (household) based on the one and only God. Both Islamic law and positive law have explained that the purpose of marriage is to form a happy household, *sakinah mawaddah* and *warahmah*.

Likewise, with ASN regulations which are not so easy to carry out a divorce, because ASN is bound by laws and government regulations that must be obeyed, and ASN must also be disciplined and able to show work performance. On the other hand, ASN is also obliged to maintain the integrity of the household. Many ASN households live happily, and many ASN households experience a household crisis that ends in divorce. Currently, there are still many divorces among ASN. This has never been studied specifically the causative factor. The purpose of this article is what are the factors that cause divorce for ASN? How is the decision on the divorce case for ASN in the perspective of Islamic law and positive law?

## RESEARCH METHODS

The type of this article is qualitative, namely revealing the factors of divorce for ASN, then the divorce factors are analyzed with the perspective of Islamic law and positive law. The analytical approach in this article is a normative approach, namely legal research that examines norms or rules that apply in society and becomes a reference for behavior for everyone. This normative legal research only examines secondary data. (Abdul Kadir Muhammad, 2004, 52). This legal research is *descriptive analysis*, namely legal research that is expository in nature and aims to obtain a complete description (description) of the legal conditions that apply in a certain place and at a certain time. Or regarding existing juridical phenomena, or certain legal events that occur in society (Abdul Kadir Muhammad, 2004, 83). In this case, this research focuses on the factors causing the divorce which have been decided by the Lampung Class IA Religious Court which includes the Tanjungkarang Class IA Religious Court and the Metro IA Class Religious Court, where the divorced individual is ASN, then analyzed with the perspective of Islamic law and positive law.

## RESULT AND DISCUSSION

### Overview of Divorce

Divorce is the end of a husband-and-wife relationship because there is no mutual interest, mutual trust, and no compatibility with each other, causing disharmony in the household. Divorce comes from the word divorce which means separation, breaking up as husband and wife and divorce. While the word *talak* is the same as divorce, the word *talak* means to divorce. Divorce literally comes from the word *ithlaq*, which means to let go or leave. Meanwhile, according to the term *syara'*, *talak* is releasing the marriage rope and

ending the husband-and-wife relationship, (Abdul Rahman Ghozali, 2008. 192). Divorce in the Indonesian encyclopedia is an event where a husband and wife break up which is regulated according to procedures that have been institutionalized, in this case, through a religious court. Therefore, based on this understanding, the word *talak* has the same meaning as divorce or divorce (Saeful Anwar, 2015, 19).

In positive law in Indonesia, in this case Law Number 1 of 1974 concerning Marriage, it is stated in Article 38, that what is meant by marriage can be terminated due to death, divorce, and on the decision of the Court, (Amir Syamsudin, 2006, 189). Meanwhile, according to R. Subekti, divorce is the abolition of marriage by a judge's decision on the demands of one of the parties to the marriage. Therefore, it can be concluded that divorce is the termination or dissolution of a marriage while the parties are still alive based on justifiable reasons and determined by the decision of the judge of the religious court. That with the divorce, the marriage of husband and wife is broken so that between them there is no longer a husband-and-wife relationship or bond. (Article 8 of Law Number 1 of 1974 concerning Marriage).

The word divorce has existed since pre-Islamic times. Then, Islam is here to strengthen it, of course with the provisions of Allah swt. The legal basis for divorce is contained in the Qur'an letter Ath-Thalaq verse 1 and Surah Albaqarah verse 229. That Islamic law exists to provide a way for wives who want divorce by filing *khulu'*, just as Islamic law provides a way for husbands to divorce their wives by way of divorce.

Forming a *sakinah, mawaddah, wa rahmah* is the main goal of marriage and this is very much considered by Islam. This is because a marriage contract is intended to last for life, so that husband and wife make the household a comfortable and permanent shelter so that in the protection of their household both husband and wife can enjoy their lives and so that both can create a household climate that allows the realization and maintenance of offspring in the best possible way.

### **Divorce at the Tanjungkarang and Metro Religious Courts**

There are two class IA religious courts in Lampung Province, namely the Tanjungkarang Religious Courts and the Metro Religious Courts. The Tanjungkarang Religious Court in 2019 has decided at least 1,570 divorce cases. This number increased compared to the previous period. According to the Junior Law Registrar Zulhaida through IT staff Siti Aminah, in 2018, 1,382 cases were decided and had permanent legal force. When compared to the previous year, it increased by about 200 cases.

Based on the data obtained, that of all the cases submitted to the court that the dominant factors or triggers are disputes and quarrels. There are at least 1,354 cases recorded. The factors causing this divorce are in accordance with the number of divorce certificates issued. The highest number was due to continuous disputes and quarrels, namely 1,354 cases. Furthermore, Siti detailed that in 2019, there were at least 1,441 divorce cases and 452 divorce cases. For professions, they consist of housewives, civil servants, and other professions.

Meanwhile, the IA Metro Class Court also revealed that the divorce rate continues to increase every year. In the early 2019 period alone, the Class 1 A Religious Court has received 333 cases. According to the Deputy Registrar of PA Metro, Soleha, his party accepts

more divorce cases than talak divorces. Many wives are the first to file for divorce from their husbands. According to Soleha, the dominant factor is the economic problem. Based on data, during January and February 2019 there were at least 144 divorce cases, the main factor being family economic problems. The next factor is leaving one of the parties as many as 109 cases. Then the next factor is the dispute as many as 61 cases, the next is the factor of Domestic Violence or KDRT as many as 7 cases and the rest are other factors.

### **Divorce factors in the Tanjungkarang Religious Court and Metro**

Marriage is a very sacred bond and should be done once in life as much as possible. This is because marriage has a very noble goal, namely, to create a *sakinah, mawaddah wa rahmah* family. However, along with the dynamics of married life, all these noble goals will not be realized if there is no compatibility of hearts between the two parties and then influenced by other parties. Therefore, ideally there should be reciprocal relationship between husband and wife to achieve the goal of mutual happiness.

Islamic law certainly does not prohibit divorce, because it is one way to solve problems. Because problems arise there must be something that causes them, so does a divorce. Of course, there are factors behind the divorce that occurred in the Lampung Class IA Court which includes the Tanjungkarang Religious Court and the Metro Court.

Factors causing divorce are due to internal and external factors. Internal factors are economic factors, disputes, and factors of Domestic Violence (KDRT). According to the Public Relations of the Tanjungkarang Religious Court Class 1A Junaidi, economic factors are a very dominant factor in divorce cases. Junaidi explained that divorces in his institution usually occur because of family economic problems, then problems with the involvement of a third person and because of domestic violence. Same is the case with the Metro Religious Courts.

### **ASN Divorce Factors at the Tanjungkarang and Metro Religious Courts**

Researchers conducted research on the divorce case of State Civil Apparatus (ASN) at the Class I Religious Courts of Lampung. The Tanjungkarang Class IA Court Decision is one decision, and the Class IA Metro Court Decision is one decision. The decisions studied are the decision Number 0720/Pdt.G/2019/PA.Tnk, which is a talak divorce and the decision Number 0227/Pdt.G/2019/PA.Mt, which is a sued divorce.

In the first decision (Number 0720/Pdt.G/2019/PA.Tnk), the divorce was carried out by an ASN in the Pringsewu Regency Government. The Plaintiff is 56 years old, has an undergraduate education and resides in Banyumas Subdistrict, Pringsewu Regency, in this case represented by his attorney, Masayu Robianti, SHMH, and Nunung Herawati, SH, both advocates at the LBH Sejahtera Bersama Office in Lampung, having their address at Jalan ST. Badarudin Gg Kenanga Number 24 Langkapura City, Bandar Lampung, with a Special Power of Attorney Number 39/SK/LBH-SBL/V/2019 dated 06 May 2019. The defendant (the respondent) is a 43-year-old woman, undergraduate education, honorary occupation, living in Tanjung Karang Timur District, Kota Bandar Lampung.

That the Petitioner in his application letter dated May 06 2019, which was registered at the Registrar of the Tanjungkarang Religious Court under Register Number 0720/Pdt.G/2019/PA.Tnk dated May 06 2019, which basically stated the following reasons:

First, the Petitioner and The Respondent is a legal husband and wife whose marriage was carried out on May 10 2015, at the home of the Respondent's parents with the guardian of the marriage of the Respondent's biological father named XXXXX with a dowry in the form of a 5 (five) gram gold ring paid in cash recorded at the Office of Religious Affairs, Tanjung Karang Timur District, Bandar City Lampung with the Marriage Deed Number 0223/036/V/2015, dated May 18, 2015

Second, that the marriage between the Petitioner and the Respondent was based on consensual consent. The Petitioner is Divorced Widower, and the Respondent is Divorced Widow. Third, that the Petitioner and the Respondent have been getting along as husband and wife (ba'da dukhul) but have not been blessed with any children.

Fourth, that after the marriage contract, the Petitioner and the Respondent have lived in the Petitioner's House at the Petitioner's address mentioned above for approximately 2 weeks. Then the Respondent returned to live at the Respondent's Parents' house as stated above until now, however, the Petitioner and the Respondent still visited each other once or twice a week until July 10, 2016.

Fifth, that at first the household of the Petitioner and the Respondent was harmonious and peaceful, however, since August 2015, the household of the Petitioner and the Respondent began to have disputes and quarrels caused.

The Respondent often asks the Petitioner to be divorced. Then, the temperamental respondent likes to get angry even if it's only because of trivial matters, even the respondent often slams things like cellphones, helmets, and other home furnishings.

The Petitioner and the Respondent have been separated from their homes since July 10, 2016. There is no match between the Petitioner and the Respondent so that disputes and quarrels often occur between the Petitioner and the Respondent, even if only because of trivial matters. Sixth, that the peak of the dispute and quarrel between the Petitioner and the Respondent occurred on July 10, 2016, because the Respondent requested/challenged to request a divorce and asked to be sent home to the Respondent's parents.

Seventh, that the Petitioner has repeatedly explained to the Respondent to change his attitude, but the Respondent is unable to change his attitude. Eighth, that due to the Respondent's actions, the Petitioner is no longer able to marry the Respondent and the Petitioner concludes that it is no longer possible to maintain a household with the Respondent and it is better to divorce. Based on the description and legal reasons, the plaintiff filed a divorce suit at the Tanjungkarang Class IA Religious Court.

In this case, the factors that cause divorce are disputes and quarrels. The dispute that occurred started with a trivial thing, a small quarrel but in the end, it grew and could not be resolved. Quarrels that start from small things can have big tails because the fights keep happening.

Every married life, of course, not everything can always run smoothly, at a certain phase will face problems that will arise, but in fact, it's just a husband and wife how to respond and solve the problems that occur.

In the second decision (Number 0227/Pdt.G/2019/PA.Mt), the plaintiff is a citizen born in Metro, September 4, 1967, with a job taking care of the household, Diploma II education,

residence in Metro City. Meanwhile, the defendant is her husband, whose place and date of birth is in Sidodadi, July 15, 1963, occupation is Civil Servant, Senior High School Education, residence in Metro City.

Sitting on this issue, among others, the plaintiff in his lawsuit dated June 18, 2019 has filed for Divorce, which has been registered with the Registrar of the Metro Religion Court, Number 0227/Pdt.G/2019/PA.Mt, dated June 18 2019, with the arguments- The argument is basically as follows.

First, that on January 14, 1989, the Plaintiff and the Defendant had married in an Islamic way as stated in the Marriage Certificate Number: 579/29/I/1989, dated January 21, 1989, which was issued by the Marriage Registrar at the Office of Religious Affairs (KUA).

Second, that the Plaintiff's marriage to the Defendant was carried out on a consensual basis with the status of a young girl. Third, that after marriage, the Plaintiff and Defendant resided in a joint residence for ± 25 (twenty-five) years having their address at Metro City. Fourth, that during their marriage, the Plaintiff and the Defendant were blessed with eight children.

Fifth, that at the beginning of the marriage between the Plaintiff and the Defendant, the household was harmonious, but around December 2009 there were frequent quarrels which were caused. First, the defendant is lazy to work and is less responsible for economic problems. Second, the defendant when he was angry often said harsh words.

Third, the defendant has committed violence. Sixth, that the peak of the dispute occurred around February 2013, the family's economic problem was due to the fact that the defendant was no longer working so that all economic needs had to be met by the plaintiff himself without the assistance of the Defendant, and since then the Plaintiff and the Defendant have separated but still reside in the common residence, namely at Jl Selagai No 23 C RT/RW 030/014, Iring Mulyo Metro Timur Metro City.

That the family has tried to reconcile the Plaintiff with the Defendant but did not find a common ground or was unsuccessful. That by looking at the actions and attitudes of the defendant, the Plaintiff suffered greatly and the Plaintiff's household with the Defendant is difficult to maintain, so the Plaintiff requests the Chairperson of the Metro Klas IA Religious Court Cq. The Panel of Judges examining and adjudicating the aquo case decided to impose the Defendant's Talak Satu Ba'in Sughro against the Plaintiff. In this case, the main factor causing the dissolution of the marriage relationship is the economic factor. This factor has a very close relationship with family income.

### **Analysis of ASN Divorce Factors at the Tanjungkarang Religious Court and Metro**

The data disclosed above shows the reality of divorce that occurs among people in two cities in Lampung Province, especially those who work as ASN. There are several factors that lead to divorce in the Lampung Class IA Court which includes the Tanjungkarang Class IA Court and the AI Metro Class Court. The first is the dispute factor and results in domestic violence and economic factors. Divorce in the Lampung Class IA Court carried out by ASN the dominant factor is disputes and quarrels. The dispute that occurred started with a trivial thing, a small quarrel but in the end, it grew and could not be resolved. Quarrels that start from small things can have big tails because the fights keep happening.

Disputes in domestic life are unavoidable. Because, in the family there are problems that will arise, it's just a matter of how the husband and wife react to all the problems that occur. When a marriage is often colored by quarrels, feeling unhappy or other problems, which are often used as an excuse to end the marriage, divorce from a spouse is considered the best solution.

The dominant factor for divorce among the second ASN is the economic factor. Although a husband works as an ASN does not close the door to divorce. As a civil servant who has a fixed salary, it turns out that he cannot meet the needs of a family, in some cases, on the contrary, this profession creates an imbalance in the family economy so that it becomes the reason for his wife to ask for a divorce because the ASN salary is considered insufficient for all needs.

Based on the facts revealed above, the majority of Muslims divorce because they know that this case is lawful but is very hated by Allah SWT. This is of course very concerning, because people who incidentally are state servants who have been paid by the state, but it is so easy to decide to get a divorce, if in the family there are problems, even if they are trivial problems, including only because of economic factors. Besides that, some ASNs think that divorce is a common thing in their environment, so they don't think long about divorce instead of trying hard to maintain their household.

The number of divorce cases among ASN within the Class IA Court of Lampung is a concern because in this case the ASN acts as a servant of the State and a public servant who indirectly becomes a figure for the community. If a Civil Servant Divorces, in fact, it has damaged the image of the PNS.

However, on the other hand, that divorce among ASN has become a matter of course as is common in ordinary people, this is of course also influenced by the continued increase in the number of ASN because almost every year the faucet is opened for recruitment. Of course, also because the condition of the household is broken and difficult to maintain, so the best way is to get a divorce.

### **Analysis of Islamic Law and Positive Law on ASN Divorce Factors Divorce**

is an act that is allowed in Islam. However, even though the law is permissible, divorce hates Allah, as explained in the hadith narrated by Abu Dawud and Ibn Majah that the most disgraceful lawful act by Allah is to drop divorce. This hadith is the basis that among the halal paths there are paths that are hated or displeased by Allah if they are not used properly. So, divorce is not worth worship.

Not only that, but this hadith is also the basis that a husband is obliged to abstain from dropping divorce, if there is a way to live happily with his partner. A husband is only justified by his wife's divorce if he is forced to do so that there is no other way than divorce. If analyzed, the hadith does allow married couples to divorce, but Islam does not justify this practice being carried out arbitrarily. That there must be sufficient reason for a divorce, that the husband and wife will not be able to live in harmony anymore.

Domestic life always has dynamics, and it becomes sunatullah. On the other hand, if there is a problem, breaking away from domestic life which is far from the teachings of the prophet, then that is also something that must also be taken. What if the marriage can no

longer be maintained and if it continues it will only add to the harm and destruction, then Islam opens the door for divorce? Therefore, the legal divorce is makruh.

The Qur'an does not explain in detail whether to order or forbid the existence of divorce, but in the case of marriage the Qur'an instructs to build a *sakinah* family, *mawaddah warohmah*. Although there are several verses that regulate divorce, their contents only regulate what if divorce must occur, even if it is in the form of orders or prohibitions.

Regarding the issue of disputes, in domestic life it is undeniable that over time and environmental developments coupled with a lifestyle that is not in accordance with religious teachings can lead to divorce. But it should be, because they have agreed to become husband and wife, they should do their best to maintain the household by improving each other's character and behavior and understanding each other.

Regarding economic factors, Imam Malik, Imam Shafi'i and Imam Ahmad allow divorce by decision of the religious court, if the wife demands because she is not given a living and, the husband does not have sufficient wealth to meet the needs of his wife. Among the basics is that the husband is obliged to take care of his wife in a good way or to divorce her in a good way. This is in accordance with the letter *Albaqarah* verse 229.

Therefore, if there is no husband's ability to meet the needs of a living for his wife, then it means that the husband has not carried out the orders as in the letter *Albaqarah* verse 231. This is in accordance with the hadith of the prophet that should not harm and repay a bad deed with a bad deed.

The greatest harm for a wife is of course when she does not get a living from her husband. Therefore, the Religious Courts are obliged to save her from the dangers that might befall a wife like this. If it has been recognized that the Religious Court may impose a divorce because there is a defect in the husband, then the reason for not providing a living can be a reason to be used as a reason for divorce.

In positive law, the reasons for divorce are contained in Article 19 of Government Regulation Number 9 of 1975, among others, that between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household. So, the settlement was left to two mediators, each of whom brought the interests of each husband and wife. If divorce is not very forced, then it is better to maintain the household is a must, because marriage is a matter of the heart.

Divorce carried out by ASN is a legal act and is known to Allah. If the marriage is broken, then the marriage bond as an eternal bond can no longer be maintained. However, an ASN should not divorce because it is not good in social life. Moreover, ASN is a civil servant who is paid by the people so that they should set a good example in society, including having to maintain household harmony.

## CONCLUSION

Based on the explanation in this study, it can be concluded that the factors that cause divorce can be caused by internal and external factors. Factors causing the divorce of State Civil Apparatus (ASN) at the Lampung Class IA Court are factors of domestic disputes and economic factors. In decision No. 0720/Pdt.G/2019/PA.Tnk, the dispute started with trivial things, small quarrels but in the end they grew and could not be resolved. Meanwhile, in the

second decision Number 0227/Pdt.G/2019/PA.Mt, the factors that caused the divorce were economic problems. Even though he works as an ASN, he is considered unable to meet household needs. Judging from the ASN divorce factors in the Lampung Class I Court, in the context of Islamic law it is permissible to divorce if the marriage is continued, it will cause *mafsadah* for both, because there is no harmony between husband and wife. Divorcing her is better than keeping her. However, maintaining a harmonious household must still be prioritized, considering that even though divorce is allowed, Allah hates the act. Whereas in positive law it is explained in Article 19 of Government Regulation of the Republic of Indonesia Number 9 of 1975 and then reaffirmed in Article 116 of the KHI that these factors may be a reason for divorce.

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