

Wild Divorce Solutions: Perspectives from Law Number 1 of 1974, Law Number 7 of 1989, and the Compilation of Islamic Law¹

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Abstract

This study acknowledges about the illegal divorce that husbands have imposed outside the court of the perspective of Marriage Law in Indonesia. There are three problems that will be answered in this study. First, how are the illegal divorce law problems in the perspective of Indonesian Marriage Law and Islamic Jurisprudence? Second, how is the illegal divorce urgency in the perspective of Islamic Jurisprudence and Indonesian Marriage Law? Third, how is the Marriage Law solution in Indonesia against the illegal divorce? To answer these problems, a literature study has been done. Data about the illegal divorce is obtained from books or Islamic Jurisprudence books, laws or regulations, and electronic data through the website. These data are processed, analyzed, and used as materials to study about the illegal divorce by using the normative legal study methods. The results of the research have found answers to the problems above, first, there are four of the illegal divorce law problems, such as its validity, lack of legal protection, the illegal divorce couples can't legally marry another person, and they also can't get the rights after divorce..

1. Introduction

Wild divorces have become a major concern in the social and legal contexts of modern society. This term refers to divorce practices that occur outside the

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official court or prescribed legal processes. These practices often occur without adhering to the clearly defined procedures in Law Number 1 of 1974, Law Number 7 of 1989, and the Compilation of Islamic Law. This condition creates serious legal uncertainties, causing detrimental impacts, especially concerning the rights of the individuals involved, the legal status of children born from such marriages, and the overall welfare of the family.²

Article 39 paragraph 1 of Law Number 1 of 1974 asserts that divorce proceedings can only be processed before a court hearing after attempts to reconcile both parties have failed as mediated by the relevant court. For Muslims, this affirmation is reinforced by Article 115 of the Compilation of Islamic Law (KHI), which specifies that the court referred to is the Religious Court.³ Similarly, Article 117 of the Compilation of Islamic Law (KHI) explains that talak (divorce initiated by the husband) is an oath made before the Religious Court, which constitutes one of the valid reasons for divorce. Based on this provision, formally, judges in the Religious Court do not recognize the validity of talak done outside the court. If a husband who has divorced outside the court later presents the talak oath to the court, the divorce pronounced in the court hearing is deemed valid and counted as the first talak, whereas the divorce done outside the court is not recognized or deemed nonexistent.⁴

When considering the comparison between statutory provisions and Islamic jurisprudence regarding talak (divorce), a dilemma arises. On one hand, the law does not recognize the validity of divorce conducted outside the court, yet on the other hand, according to Islamic jurisprudence, divorce outside the court is deemed valid. There is a perspective indicating that divorce is considered to occur if pronounced in front of two witnesses, a view held by adherents of the Imami Shia school of thought.⁵ However, the majority of scholars (jumhur) are of the opinion that talak (divorce) does not require witnesses as marriage does. According to this view, if a husband pronounces talak anywhere, it is still considered valid. This perspective refers to a saying of the Prophet Muhammad

² Wardah Nuroniyah, 'Cerai Lebe Sebagai Inisiatif Lokal Dalam Upaya Meminimalisir Praktek Perceraian Liar (Studi Kasus Di Desa Cangkring Kabupaten Indramayu)', *Al-Manahij: Jurnal Kajian Hukum Islam*, 14.1 (2020), 113–29 <<https://doi.org/10.24090/mnh.v14i1.3739>>.

³ Rezki Amaliah, Dachran S. Busthami, and Anggreany Arief, 'Penerapan Putusan Verstek Dalam Perkara Perceraian Di Pengadilan Agama Kelas LI Majene', *Journal of Lex Generalis (JLS)*, 2.3 (2021), 1344–51.

⁴ Moch Khoirul Anam and Jumni Nelli, 'Perceraian Di Depan Pengadilan Agama Menurut Hukum Islam Dan Hukum Positif Di Indonesia Studi Analisis Multi Displiner', *Journal of Indonesian Law*, 2.1 (2021), 1–24.

⁵ Dahlia Haliah Ma'u, Wagiyem Wagiyem, and Rita Mustika Rahayu, 'The Construction of Cerai Manis (Prefered Divorce) on the Border of Indonesia and Malaysia Communities', *Al- 'Adalah*, 20.1 (2023), 19 <<https://doi.org/10.24042/adalah.v20i1.16518>>.

stating that there are three matters which will definitely occur, whether done seriously or jokingly: marriage, divorce, and reconciliation.⁶

The opinion of the Aceh Ulama Consultative Assembly (MPU/MUI) in Fatwa No. 2 of 2015 regarding the validity of divorce pronounced outside the court demonstrates an interpretation that acknowledges the validity of talak (divorce) within the context of Islamic jurisprudence (fikih). This fatwa legitimizes talak pronounced without the requirement of witnesses and outside the jurisdiction of the court, considering the principles of Islamic law. The argumentation underlying this fatwa may refer to the principles of jurisprudence which assert that talak can be valid merely by the husband's pronouncement, without necessitating more intricate procedures.⁷

However, this fatwa raises a dilemma as it appears to contradict statutory provisions requiring divorce to be ratified by the court to be officially recognized. This creates an inconsistency between the Islamic legal perspective upheld by the Aceh Ulama Consultative Assembly (MPU/MUI) and the nationally applicable legal regulations. Although the fatwa may be grounded in deep theological interpretation, its legal implications within the context of civil adjudication and legal validity generally still require alignment with the legal framework prevailing in Indonesia. As a result, there exists tension between Islamic legal interpretation and positive law, which potentially disrupts the stability of the national legal system.⁸

The provisions regarding the legal recognition (itsbat) of marriage in Indonesia are regulated in Presidential Instruction (Inpres) number 1 of 1991 concerning the Compilation of Islamic Law. Article 7 paragraph (2) of this Inpres explains that if a marriage cannot be proven through a Marriage Certificate, the concerned party can submit their marriage for legal recognition to the Religious Court. However, there is still debate regarding the legal status of the Compilation of Islamic Law itself, as its formal legality is in the form of a Presidential Instruction (Inpres). The debate about the legal status of the Compilation of Islamic Law as a Presidential Instruction creates uncertainty in the interpretation and implementation of the rules contained within it. Some argue that the status of an Inpres provides limited authority for the application of Islamic law in

⁶ Fikri Fikri and others, 'Kontekstualisasi Cerai Talak Dalam Fikih Dan Hukum Nasional Di Indonesia', *Al-Ulum*, 19.1 (2019), 151–70 <<https://doi.org/10.30603/au.v19i1.643>>.

⁷ Nurdin Bakri Nurdin Bakri and Antoni Antoni, 'Talak Di Luar Pengadilan Menurut Fatwa Mpu Aceh No 2 Tahun 2015 Tentang Talak', *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam*, 1.1 (2017), 52 <<https://doi.org/10.22373/sjhk.v1i1.1570>>.

⁸ Muhazir Muhazir, 'Dualisme Peraturan Perceraian Di Aceh: Kontestasi Fatwa Dan Hukum Negara', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 13.2 (2020), 198 <<https://doi.org/10.14421/ahwal.2020.13208>>.

Indonesia, while others consider it a strong legal basis for the marriage recognition process in the Religious Court.⁹

Unlike the process of *itsbat nikah* (legal recognition of marriage), regulations regarding *itsbat talak* (legal recognition of divorce) have not been explicitly stipulated in marriage law in Indonesia. The term *itsbat talak* is still rarely encountered in the terminology of marriage law in Indonesia, and there have been no cases filed in the Religious Courts, thus no clear jurisprudence has been established regarding this matter. If *itsbat nikah* is intended to provide legal legitimacy to marriages, then *itsbat talak* would be aimed at legal legitimacy concerning divorce according to the prevailing legal regulations. However, the question remains whether judges are willing to process requests for *itsbat talak*, even though there is no clear textual support from the legal regulations. Conversely, *itsbat nikah* is supported by the Compilation of Islamic Law established through Presidential Instruction number 1 of 1991.¹⁰

In this complex context, it is important to seek appropriate solutions to address the challenges posed by wild divorces. Efforts to resolve this issue must carefully consider the applicable legal provisions. There are several approaches that can be explored to achieve effective solutions. First, strengthening law enforcement against wild divorces by reinforcing the monitoring and enforcement mechanisms of Law Number 1 of 1974, Law Number 7 of 1989, and the Compilation of Islamic Law.

Furthermore, comprehensive socialization about the legal and social consequences of wild divorces is necessary, both to the general public and to the parties involved in divorces. Increasing awareness of the negative impacts of this practice can help prevent wild divorces and encourage people to choose the official path in resolving marital disputes. Additionally, there is a need to enhance religious education and socialization of family values in society to strengthen family ties and prevent wild divorces as an undesirable alternative.

In addressing this issue, collaboration among government agencies, legal institutions, and civil society organizations is crucial. Solid cooperation among these various stakeholders can result in comprehensive and effective strategies to address the phenomenon of wild divorces. Moreover, further research and dialogue among legal experts, religious scholars, and legal practitioners are needed to develop better approaches to address this issue in line with the social and legal contexts prevailing in Indonesian society.

⁹ Sulfanwandi Sulfanwandi, 'Kompilasi Hukum Islam Di Indonesia: Penyusunan Dan Kaitannya Dengan Ushul Fiqh', *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum*, 9.2 (2021), 219 <<https://doi.org/10.22373/legitimasi.v9i2.8513>>.

¹⁰ Nasrullah Abdul Rahim, Muhammad Amar Adly, and Akmaluddin Syahputra, 'Studi Pandangan Hakim Pengadilan Tinggi Agama Medan Terhadap Fatwa MUI Sumut Tentang Istbat Talak Di Luar Sidang Pengadilan Agama', *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, 10.01 (2022), 239 <<https://doi.org/10.30868/am.v10i01.2445>>.

2. Research Method

This study utilizes qualitative methods and a juridical approach through literature research. One of the methods used is the theory of finding the law in a concrete case, known as legal research. The aim is to examine whether certain normative postulates can be used to solve specific legal issues in concrete events. Regarding the "Solution to Wild Divorce," no normative provisions governing it have been found.¹¹ This causes judges in the court to potentially face difficulties in resolving such cases due to the absence of laws governing it. To find legal answers to the issue of wild divorces, a documentation study was conducted on various legal materials such as books, journals, research reports, legislation, previous court judgments, and electronic data via websites. These documents were examined to find legal formulations that could address the problem of wild divorces. Additionally, Focus Group Discussions (FGDs) were conducted with judges from the Religious Courts and the Heads of the Office of Religious Affairs (KUA) in several districts of Deli Serdang Regency to strengthen arguments in the study.¹²

3. Results and Discussion

Wild Divorce in Law Number 1 of 1974, Law Number 7 of 1989, and the Compilation of Islamic Law (KHI)

Divorce occurs when a husband and wife decide to separate, ending their family relationship. Although undesirable, the law allows them to divorce if their marriage can no longer be sustained. There are two types of divorce: talak (divorce initiated by the husband) and divorce by lawsuit. Divorce by lawsuit occurs when one of them files a request with the court, and the divorce is decided by the court. Although not specifically mentioned in the law, it is generally known as divorce by lawsuit. The law states that divorce lawsuits must be filed in court, and the process will be regulated by applicable legislation. A divorce lawsuit can be filed by a wife married according to Islamic teachings or by a husband or wife married according to their religion or belief.¹³

Wild divorces are a complex phenomenon that often gives rise to various issues in society. In the context of Indonesian legislation, this practice becomes a primary focus due to its widespread impact on social and legal stability. Marriage and divorce laws in Indonesia are governed by a series of laws, including Law Number 1 of 1974 concerning Marriage, Law Number 7 of 1989 concerning Religious Courts, and the Compilation of Islamic Law (KHI). These laws form

¹¹ Irwansyah, *Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Arikel* (Yogyakarta: Mitra Buana Media, 2020).

¹² Sofyan A. P. Kau, *Metode Penelitian Hukum Islam* (Yogyakarta: Mitra Pustaka, 2013).

¹³ Nur Taufiq Sanusi, 'Perceraian Dalam Perundang-Undangan Negara Muslim (Studi Perbandingan Hukum Keluarga Islam Pakistan, Mesir Dan Indonesia)', *Al-Qaḍāu*, 4.2 (2017), 323–44.

the legal basis regulating all aspects related to marriage and divorce in Indonesia. However, in practice, wild divorces often do not comply with the provisions stipulated in these laws. One characteristic of wild divorces is divorcing without going through the formal legal process in court. This often violates the procedures established in Law Number 1 of 1974, Law Number 7 of 1989, and the KHI.¹⁴

Wild divorces pose several challenges, both for the individuals directly involved and for the judicial and legal system as a whole. Non-compliance with established procedures can result in legal uncertainty, unprotected individual rights, and evolving social issues. Therefore, addressing wild divorces requires a comprehensive approach, including efforts to enhance public understanding of the importance of adhering to laws and procedures applicable in divorce cases.¹⁵

Article 39 paragraph 1 of Law Number 1 of 1974 provides clear provisions regarding the divorce process in Indonesia. This article emphasizes the importance of attempting reconciliation between both parties before deciding to divorce. This requirement is in line with legal principles that prioritize peaceful conflict resolution and consultation. In this context, the court plays a crucial role as a mediator to assist married couples in finding a good and fair solution. However, the reality in the field often does not align with these provisions. Many cases of wild divorces occur without going through the mediation process or obtaining the consent of both parties. This indicates a gap between the existing law and the practices in society. Wild divorces are often triggered by various factors, such as marital disharmony, conflicting interests, or other external factors.¹⁶

On the other hand, the Compilation of Islamic Law (KHI) also provides its own perspective regarding divorce in the context of Islamic law. According to the KHI, talak (divorce initiated by the husband) is an oath made before the Religious Court, which is one of the valid reasons for divorce in Islamic law. However, talak done outside the court is not recognized or deemed invalid by judges in the Religious Court, as stipulated in Article 115 of the KHI.¹⁷ This indicates a difference between Islamic law practices and the positive law that applies nationally. The gap between the legal requirements and the practices in society creates challenges in handling divorce cases. Efforts to reconcile both parties and ensure that the divorce process is conducted fairly and in accordance

¹⁴ Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani, 'Ceraai Gugat: Telaah Penyebab Perceraian Pada Keluarga Di Indonesia', *Jurnal Al-Azhar Indonesia Seri Humaniora*, 6.1 (2021), 11 <<https://doi.org/10.36722/sh.v6i1.443>>.

¹⁵ Fitriani Lundeto, 'Efektifitas Relas Panggilan Dalam Penyelesaian Perkara Perceraian Di Pengadilan Agama Bitung', *I'tisham : Journal of Islamic Law and Economics*, 1.2 (2021), 114–28.

¹⁶ Hamid Pongoliu, 'Perceraian Akibat Peralihan Agama: Studi Kasus Tentang Putusan Hakim Pengadilan Agama Gorontalo', *Al-Mizan*, 11.1 (2015), 45–56.

¹⁷ Nur Hadi, 'Maqashid Syari'ah Hukum Perkawinan Dalam Kompilasi Hukum Islam (KHI)', *Al-Fikra : Jurnal Ilmiah Keislaman*, 16.2 (2017), 203 <<https://doi.org/10.24014/af.v16i2.3831>>.

with legal provisions are a primary concern in addressing the phenomenon of wild divorces. Coordination among judicial institutions, the government, and other relevant agencies is needed to increase public awareness of the importance of adhering to the laws and procedures applicable in divorce cases.¹⁸

Divorce petition or divorce lawsuit is a legal process filed in court to request the termination of a husband and wife's relationship. In Islamic law, a divorce petition is only accepted if, after examination in an official court session, it is proven to meet the requirements stipulated in Islamic law. A wife who files for divorce from her husband must submit a divorce petition to the court, and the husband must also attend the session to provide testimony. If the petition is rejected, the wife's status remains as the wife of her husband.¹⁹

According to the Marriage Law and Government Regulation Number 9 of 1975, a divorce petition or lawsuit is a request filed by either the husband or the wife or their representative to the court within the jurisdiction covering the respondent's residence. However, in the Compilation of Islamic Law (KHI) Article 132 paragraph (1), a divorce petition is a request filed by the wife or her representative to the Religious Court within the jurisdiction covering the petitioner's residence, unless the wife leaves the residence without her husband's permission. In divorce petitions, the husband is referred to as the petitioner and the wife as the respondent. Through this petition, the court can regulate various matters such as child custody, child support, joint assets, and the husband's financial obligations to the wife.²⁰

The legal basis for divorce petitions in religious courts encompasses several important aspects that aid in the divorce resolution process. Here is a detailed explanation of the legal basis for divorce petitions in religious courts:

- a. The Marriage Law serves as the primary foundation governing marriage and divorce in Indonesia. Articles 38 and 39 of the Marriage Law emphasize that divorce can only be carried out through a court hearing after the court ensures that divorce is an important and necessary step to help the couple improve their welfare and balance.
- b. Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage (PP 9/1975) includes reasons for divorce permitted in Islamic law. These reasons include adultery, leaving the spouse without permission for two consecutive years, imprisonment for five years or more after marriage, physical or mental

¹⁸ Sulfanwandi.

¹⁹ Manna, Doriza, and Oktaviani.

²⁰ Syamsul, Bala Bakri, and Salma P. Tamu, 'Dampak Perceraian Terhadap Tumbuh Kembang Anak Di Kabupaten Gorontalo', *Jurnal Of Public Administration Studies*, 2.1 (2019), 11–23.

abuse, bodily defects or illnesses hindering the fulfillment of duties as a husband or wife, and others.²¹

- c. For couples of Islamic faith, divorce is subject to the Compilation of Islamic Law (KHI), which is enforced based on Presidential Instruction Number 1 of 1991. The KHI also emphasizes that divorce can only be carried out through a court hearing after the court is convinced that divorce is necessary to help the couple achieve welfare and balance.
- d. The procedures for filing a divorce petition are regulated in Articles 19-41 of the Marriage Law and Articles 14-36 of Government Regulation Number 9 of 1975. The party filing for divorce must meet the requirements stipulated in the law and government regulations, including mandatory requirements, presentation of valid evidence, and payment of advance fees.
- e. Religious courts generally adhere to Civil Procedure Law, unless specifically regulated otherwise. For example, in the examination of marriage disputes, a petition filed by the husband is called a talak divorce petition, while a petition filed by the wife is called a divorce petition.²²

Divorce petitions for those of Islamic faith are regulated in the Compilation of Islamic Law as well as Law Number 7 of 1989 and Law Number 3 of 2006 concerning Religious Courts. Articles 132 to 148 in the Compilation of Islamic Law state the following:

- a. Divorce petitions are filed by the wife or her representative to the Religious Court within the jurisdiction covering the petitioner's residence, unless the wife leaves the shared residence without her husband's permission. If the respondent is abroad, the Chief Justice of the Religious Court will notify the petition through the local representative of the Republic of Indonesia.
- b. During the proceedings, the Religious Court may permit the husband and wife not to reside together upon the petitioner's or respondent's request, based on considerations of potential harm. The court may also determine the husband's responsibility for maintenance and regulate the protection of their joint assets.
- c. After the divorce verdict is issued, the court clerk of the Religious Court will deliver a copy of the verdict to the husband and wife or their representatives. This copy will be accompanied by excerpts of the marriage certificate from each party. The clerk will also send a copy of the legally binding verdict without stamp duty to the marriage registration officer responsible for the wife's residence for registration.

²¹ Abdillah Wahab and Rifqi Awati Zahara, 'Analisis Yuridis Terhadap Faktor-Faktor Penyebab Tingginya Tingkat Cerai Gugat Di Pengadilan Agama Kabupaten Kediri', *Legitima : Jurnal Hukum Keluarga Islam*, 3.1 (2020), 59–78 <<https://doi.org/https://doi.org/10.33367/legitima.v3i1.1444>>.

²² Dahris Siregar and others, 'Studi Hukum Tentang Tingkat Perceraian Dan Efeknya Terhadap Anak', *Jurnal Derma Pengabdian Dosen Perguruan Tinggi (Jurnal DEPUTI)*, 3.2 (2023), 178–85 <<https://doi.org/10.54123/deputi.v3i2.276>>.

- d. The court clerk of the Religious Court will provide a certificate to the husband and wife or their representatives stating that the verdict has obtained legal force and is evidence of the divorce.
- e. The court clerk of the Religious Court will make a note in the excerpt of the marriage certificate of each party stating that they have been divorced. This note will include the place and date of the divorce, the number and date of the certificate, and the signature of the court clerk.²³

Legal Issues of Unregistered Divorces (Talak Liar)

Unregistered divorces are challenging to document because they are not officially recorded. Several Heads of the Office of Religious Affairs (KUA) in districts of Deli Serdang Regency, North Sumatra, acknowledge this difficulty. Couples involved in unregistered divorces often proceed to remarry secretly. Cases of unregistered divorces often come to light when the former partners are about to remarry and are questioned about their previous marital status. Unregistered divorces can also be revealed when these couples apply for marital confirmation (*itsbat nikah*) at the Religious Court, where judges will become aware of the existence of unregistered divorces during the trial process. During mobile court sessions, the KUA typically conducts data collection on couples intending to apply for marital confirmation before the trial. However, only a small percentage of couples involved in unregistered divorces are recorded, while others cannot be documented due to various reasons. Firstly, recording unregistered marriages or divorces is not the primary task of the KUA; secondly, many are reluctant to report divorces because it is considered shameful.²⁴

Research conducted by the Women's Family Head Empowerment Community Organization (PEKKA) in 2015 in the Pantai Labu District found 45 cases of couples applying for marital confirmation. However, out of this number, only 10 cases could be confirmed because they did not have divorce certificates from their previous partners. All of these couples had children from their previous marriages who did not have legal status because their parents did not have official marriage certificates. The Office of Religious Affairs (KUA) in other districts of Deli Serdang Regency has also collaborated with the Religious Court in conducting mobile court sessions for marital confirmation cases. However, there is an urgent need to find a solution regarding the neglected rights of children because both parents do not have valid marriage certificates.

In addition to the difficulties in carrying out marital confirmation, couples also face challenges in obtaining birth certificates for their children. Although Family Cards (KK) and Identity Cards (KTP) can be obtained without marriage certificates, for the birth certificate application process, a marriage certificate is

²³ Sulfanwandi.

²⁴ M. Muhsin and Soleh Hasan Wahid, 'Talak Di Luar Pengadilan Perspektif Fikih Dan Hukum Positif', *E-Journal Al-Syakhsiyyah Journal of Law and Family Studies*, 3.1 (2021), 67–84.

still required as the main guide for civil records in determining the status of children. Although there is a possibility to obtain a birth certificate without a marriage certificate, for some couples, this is still considered embarrassing because their children are considered only as the mother's children, without clear evidence of their father. This obstacle has resulted in many children from couples who married clandestinely or without proper registration not having birth certificates because the family still wants their status as the father's children to be officially recognized in official records.²⁵

The controversy between the fiqh perspective and positive law in Indonesia regarding talak liar remains an ongoing debate. Fukaha, or Islamic jurists, consider such talak valid, while experts or enforcers of positive law state otherwise. Despite many studies revealing various negative impacts of talak outside the court, religious scholars still maintain the view that such talak is valid, both individually and institutionally, such as the Indonesian Ulema Council (MUI), the Provincial Consultative Assembly of Ulama in Aceh, the Indonesian Ulema Council in North Sumatra, the Fatwa Council of Jam'iyatul Washliyah, and others. This view was even affirmed at the assembly of scholars of the Indonesian Ulema Council in 2012. On the other hand, judges in Religious Courts tend to view talak liar as invalid because it lacks clear legal legitimacy.²⁶

Although there is debate regarding the legal validity of talak liar, the reality is that talak liar has occurred due to various driving factors, ranging from economic, social, geographical aspects to understanding of fiqh law. In addition to the causal factors, significant impacts have been identified both for the divorcing couples and the society at large. At least five negative impacts have been identified, including legal uncertainty, husband's unilateralism, losses suffered by children, unclear status of shared assets, and uncertainty regarding inheritance status. With these negative impacts, talak outside the court often faces criticism from various quarters.

Divorce liar not only has social and economic impacts but also significant legal consequences for both couples and their children. One of the most striking legal impacts is the inability of divorced couples to remarry officially due to the lack of talak deeds. Generally, those who engage in talak liar will enter into subsequent marriages unofficially, known as clandestine marriages. However, new problems arise when they have children who require legal status and identity documents, where processing these documents requires marriage certificates from the parents. In this case, parents will try to petition for itsbat nikah in court. However, the court cannot validate such marriages because previous divorces are considered invalid according to the law. For men, this issue

²⁵ Umu Malikah, Dian Septiandani, and Muhammad Junaidi, 'Keabsahan Talak Di Luar Pengadilan Berdasarkan Hukum Islam Dan Hukum Positif Di Indonesia', *Semarang Law Review (SLR)*, 2.2 (2021), 246–58.

²⁶ Muhazir.

may not be as significant because they can engage in polygamy, but for women, marrying another man while their status is still considered as someone's wife by the court can lead to complex legal consequences, which are religiously prohibited as in the case of polyandry.²⁷

Talak liar can make talak calculations complex when couples formally declare talak to the court, as judges generally do not recognize or consider talak outside the court as valid. For example, if a husband divorces his wife outside the court and then they reconcile, the talak that occurs in court is counted as the second talak if the event happens once, and as the third talak if it happens again, and so on. However, for couples who do not understand fiqh well, they may still believe that there is a chance for reconciliation after the third talak.

According to the fiqh view, talak tiga cannot be reconciled unless the former couple marry new partners. If they reconcile without knowing this, it is considered dangerous and clearly violates the rules according to fiqh. For those who argue that talak dua or tiga must be counted separately, then talak outside the court that is pronounced again in court while the wife is still undergoing iddah is not counted. The same applies after the iddah period ends because at that time, the one being divorced is no longer the wife. However, if the husband reconciles during the iddah period, then his talak is counted. This means that if talak has occurred two or three times, it is already included in the talak calculation.²⁸

The issue of legalizing talak presents a number of complex issues that require careful handling from various stakeholders. Talak liar, which is divorce conducted outside the established legal procedures, poses several challenges, both from the perspective of positive law and religious perspectives. Firstly, the law regarding talak liar often contradicts the prevailing laws in Indonesia. Although Islamic law recognizes the validity of talak conducted outside the court, in practice, such talak is not recognized by official judicial institutions. This creates legal uncertainty for those involved, especially regarding marital status and associated rights.²⁹

Furthermore, the practice of talak liar also brings about serious social impacts, especially concerning the welfare of families and children. Divorce conducted without proper legal procedures can increase the risk of injustice, instability, and conflict within families. Children are also vulnerable to negative impacts, such as trauma and uncertainty regarding their future. On the other hand, from the perspective of Islamic law, talak liar also raises questions about

²⁷ Nikman Nashirin, As'ad Badar, and Abdullah Sani, 'Problematika Talak Suami Kepada Istri Di Luar Pengadilan (Studi Kasus Talak Di Kecamatan Babalan)', *JSL: Journal Smart Law*, 1.2 (2023), 140–50.

²⁸ Zainuddin and Khairina, 'Itsbat Talak Dalam Perspektif Hukum Perkawinan Di Indonesia', *Al-Aḥwāl*, 12.1 (2019), 29–45.

²⁹ Hasan Nur Hakim, 'Penindakan Terhadap Pelaku Penjatuhan Talak Di Luar Pengadilan Melalui Sarana/Pendekatan Pidana (Penal Approachment)', *Al-Fikra : Jurnal Ilmiah Keislaman*, 15.2 (2017), 326–40 <<https://doi.org/10.24014/af.v15i2.4020>>.

legitimacy and legal validity. Although Islamic law recognizes the validity of talak conducted outside the court, this approach may contradict the principles of national positive law. This creates tension between the interpretation of Islamic law and positive law, potentially disrupting the stability of the national legal system.³⁰

In addressing the issue of talak liar, a holistic and collaborative approach is needed involving various stakeholders, including the judiciary, government, religious leaders, and civil society. Efforts to raise awareness among the public about the importance of adhering to legal procedures, promoting mediation in resolving family conflicts, and increasing access to legal services can be effective steps in addressing this issue.

4. Conclusion

The Law Number 1 of 1974, Law Number 7 of 1989, and Compilation of Islamic Law (KHI) state that divorce conducted outside the court, known as "perceraian liar", often violates established regulations. Such divorces bring about issues, including legal uncertainty, lack of protection for individuals, and serious social repercussions. Despite the emphasis on mediation before divorce in the law, many cases of "perceraian liar" occur without undergoing mediation or obtaining mutual consent. The Compilation of Islamic Law (KHI) asserts that talak outside the court is not considered valid by the Religious Courts. In Islam, divorce must go through a court hearing and adhere to the stipulated conditions. The Religious Courts play a crucial role in handling divorce lawsuits, with the legal foundation consisting of the Marriage Law, Government Regulation Number 9 of 1975, and KHI. The divorce lawsuit process is tightly regulated, including requirements, presentation of valid evidence, and deposit fees. Through divorce lawsuits, the court regulates matters such as child custody, alimony, joint assets, and the husband's financial obligations to the wife.

The issue of "talak liar," which refers to divorce outside the official legal procedure, presents a number of complex challenges that require a holistic approach. One challenge is the difficulty in officially documenting "talak liar," which often comes to light when the couple intends to remarry or when they apply for a marriage validation (itsbat nikah) at the Religious Court. Additionally, there is controversy between the views of Islamic jurisprudence (fikih) and positive law regarding the validity of "talak liar," leading to confusion in law enforcement. To address the issue of "talak liar," close cooperation among various parties is necessary, including the judiciary, government, religious leaders, and the community. Efforts that can be made include raising legal

³⁰ Syamsul, Bakri, and Tamu.

awareness among the public about the importance of adhering to applicable legal procedures, promoting mediation as a method of resolving family conflicts, and improving access to legal services for those in need. With a holistic and collaborative approach, it is hoped that the issue of "talak liar" can be effectively addressed for the well-being of families and society as a whole.

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