Understanding and Awareness of Gender Equality in Divorce Laws in Lampung Province and Its Contribution to the Reform of Islamic Family Law in Indonesia

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Abstract

This article examines the understanding and awareness of gender equality in divorce cases in Lampung Province and its contribution to the reform of Islamic family law in Indonesia. The study aims to analyze the dominant factors in filing for divorce in Lampung Province, as well as the understanding and awareness of gender equality among divorce litigants from a mubādalah perspective. The research employs a qualitative method with field research. Data sources are obtained from a series of activities including interviews and observations conducted directly with judges handling divorce cases and litigants involved in divorce proceedings, complemented by secondary data from relevant scholarly works. Data analysis is performed qualitatively with a focus on the mentioned theories. The results indicate that in Lampung Province, economic factors are dominant in divorce cases, with husbands' inability to provide for the family or wives feeling dissatisfied with the husband's provisions. The understanding and awareness of gender equality among divorce litigants are reflected in their attitudes towards women's rights, gender roles, and household division of labor, which often lead to injustice and divorce disputes. To achieve gender equality, it is recommended that changes be made to laws defining the roles of husbands and wives as mutually responsible partners in the household. This research contributes to the development of law in Indonesia by providing an in-depth analysis of the understanding and awareness of gender equality in divorce cases, particularly in Lampung Province.

I. Introduction

Divorce in Islam is considered permissible, though it is greatly disliked by Allah. This aligns with the social reality that any relationship may face the possibility of separation, including within family contexts. Islam clearly regulates divorce in the Qur'an and Hadith, the primary sources of Islamic law. The goal of these regulations is to ensure that the divorce process is carried out correctly, providing fair protection for all parties involved.

Historically, divorce or talaq was solely considered the husband's right. Women did not have the right to initiate divorce, often leaving them in disadvantaged positions during separation. With the husband holding absolute authority to divorce, women and children were particularly vulnerable to the negative impacts of divorce, sometimes being left without clear justification.

Divorce, or talaq, entails dissolving the marriage bond between husband and wife. This can be temporary or permanent, depending on the circumstances. Allah states in Surah Al-Baqarah (2:229) that divorce is permissible up to two times. After this, the couple may choose to reconcile in a good manner or separate in a respectful way.

The verse also emphasizes that a husband should not reclaim any property given to the wife, except if both parties fear they cannot uphold the laws of Allah properly. Hadiths from the Prophet Muhammad (SAW) indicate that divorce, while allowed, is the most disliked act in the eyes of Allah. This underscores that divorce, though permitted, is not recommended.

Nonetheless, divorce in Islam should be conducted ethically, maintaining good relations between the spouses and their respective families to avoid animosity post-divorce. Legally, divorce is regulated under Law No. 1 of 1974 on Marriage, which outlines that marriage dissolution can occur due to death, divorce, or court decisions.

The law differentiates divorce from death in terms of marriage dissolution. Divorce must occur before a court. Article 39 of Law No. 1 of 1974 specifies that divorce can only be effected through a court decision, not unilateral decisions. This aims to regulate *talaq* within Islamic marriage.

Government Regulation No. 9 of 1975 introduced the terms *"talaq"* and "gugatan cerai" *(lawsuit for divorce)*, distinguishing between divorce initiated by the husband and divorce initiated by the wife. According to Article 114 of the Compilation of Islamic Law (KHI), divorce can occur through talaq or a divorce lawsuit. Article 116 of the KHI also outlines valid reasons for filing for

divorce in court.

Valid reasons include adultery, addiction, abandonment for two consecutive years without permission, imprisonment for five years or more, and severe physical abuse or mistreatment. Additionally, physical defects or illnesses that prevent one from fulfilling marital duties can also be grounds for divorce.

Continual disputes and arguments are also valid reasons for divorce, especially if there is no hope for reconciliation in the household. Talaq, as per Article 117 of the KHI, is a declaration by the husband before the religious court that leads to the dissolution of the marriage. Hence, divorce must follow proper legal procedures.

In 2020, the Indonesian Ministry of Religious Affairs reported 450,000 divorce cases. This number increased to 500,000 cases in 2021. Most divorces in Indonesia result from lawsuits filed by wives, with around 70% of cases in religious courts being divorce lawsuits.

In Lampung Province, 17,229 divorce cases were recorded in 14 religious courts from January to November 2021. Of these, most have been decided by the courts. The Tanjung Karang Religious Court recorded the highest number of divorces in Lampung, followed by the Gunung Sugih and Kalianda Religious Courts. The divorce rate continues to rise annually.

The increasing number of divorces in Lampung Province reflects an important phenomenon that warrants further study, particularly concerning gender awareness in divorce lawsuits. This dissertation research aims to explore the understanding and awareness of gender equality in divorce lawsuits in Lampung Province and its contribution to the reform of Islamic family law in Indonesia.

2. Research Method

The type of research conducted is field research, which involves an intensive study of the current conditions and interactions of social entities, individuals, groups, institutions, and communities. This research was carried out at the Tanjung Karang Religious Court, Gunung Sugih Religious Court, and Kalianda Religious Court. The primary data sources for this study include direct interviews and observations with judges handling divorce lawsuits and individuals filing for divorce. The data is then analyzed qualitatively using mubadalah theory.

3. Results and Discussion

Divorce in Islamic Law and Positive Law

In Islamic law, divorce is referred to as talaq, derived from the Arabic root طَلَّقَ *(ṭalaqa),* which means "to release from a bond" or "to separate." According to Sayyid Sabiq, talaq is derived from the term الطلاق *(at-talaq),* meaning to release and leave the marital relationship. In Islamic jurisprudence *(fiqh),* divorce is also known as al-furqah, which signifies separation. There are two types of separation in Islam: first, separation due to annulment, which can occur through mutual consent of the husband and wife *(known as khulʿ),* or through a ruling by a judge *(qāḍī)* or arbitrator; and second, separation due to talaq.

Legally, divorce signifies the termination of the marital relationship, ending the marital status between the two parties. According to Law No. 1 of 1974 on Marriage in Indonesia, divorce encompasses three main aspects: (1) a legal action taken by either the husband or wife to terminate the marital relationship, (2) a legal event such as death that directly ends the marriage, and (3) a court decision that legally dissolves the marital bond. All these aspects indicate that divorce is a significant legal event affecting the legal status of the married couple.

Article 38 of Law No. 1 of 1974 on Marriage states that divorce is the termination of marriage. According to Article 1 of this law, marriage is a spiritual and physical bond between a man and a woman as husband and wife, aimed at forming a happy and eternal family based on the belief in the Almighty God. Divorce ends this bond, both spiritually and physically, thus ending the husband-wife relationship. According to Article 39, divorce is only valid if carried out in court, which must first attempt to reconcile the parties. Divorces conducted outside the court are considered invalid under both national law and religious law.

Forms of Divorce in Islamic Law

The forms of divorce in Indonesia, viewed from the procedures and regulations in the Religious Court, are governed by Government Regulation No. 9 of 1975, which differentiates divorce into two types: divorce by talaq and divorce by lawsuit. Divorce by talaq is regulated in Article 117 of the Compilation of Islamic Law, where talaq is a declaration by the husband before the Religious Court that causes the dissolution of the marriage. Talaq is divided into two types: *talaq raj'i and talaq ba'in. Talaq raj'i* allows the husband to reconcile during the wife's iddah period, while *talaq ba'in,* which is divided into *talaq ba'in sughra* and *talaq ba'in kubra,* does not grant the husband the right to reconcile except under certain conditions.

Talaq ba'in sughra is a type of talaq that does not allow reconciliation, but the husband and wife may remarry with a new contract after the iddah period. This type of talaq includes talaq before consummation *(qobla dukhul)* and talaq with

khulu' (compensation). On the other hand, *talaq ba'in kubra* is more severe because after this type of talaq, the husband cannot remarry his former wife unless the wife has married another man and then divorced. This type of talaq is considered final, requiring the pronouncement of talaq to be made with full responsibility in accordance with Islamic law.

Divorce by lawsuit, as explained by K. Wantjik Saleh, is a divorce initiated by one party to the court, either by the husband or the wife. According to Articles 20 to 36 of Government Regulation No. 9 of 1975, a divorce lawsuit can be filed by a wife married under Islamic law or by a husband or wife married under another religion. This lawsuit grants the party who feels aggrieved in the marriage the right to file a divorce petition in court.

Dominant Factors Influencing Plaintiffs in Divorce Cases in Lampung Province

The author identifies several factors influencing individuals to file for divorce at the Religious Courts in Lampung Province, focusing on three main factors: economic issues, domestic violence (DV), and infidelity. Economic factors are one of the primary triggers for divorce, as indicated by data from the Religious Courts of Tanjung Karang, Gunung Sugih, and Kalianda, showing a high number of divorce cases due to the husband's inability to provide financial support. In Islamic teachings, the husband's obligation to provide for his family is clearly outlined in the Quran. However, this inability can become a reason for the wife to file for divorce if she feels she cannot endure the situation.

In addition to economic issues, domestic violence (DV) is also a strong reason for wives to file for divorce. Data from the courts in Lampung reveal hundreds of divorce cases caused by DV. Islam emphasizes the importance of treating each other with kindness and respect within the marital relationship. When a husband commits violence resulting in physical or mental suffering, the wife is entitled to seek legal protection. This is also consistent with the principles of *maqasid as-syari'ah,* which stress the importance of safeguarding human life.

Infidelity or the presence of a "mistress" (Wanita Idaman Lain, WIL) is also a cause of divorce, although it is difficult to prove legally since accusations of adultery require strong evidence according to Islamic law and Indonesian legislation. Infidelity, often resulting from unmet emotional needs within the marriage, frequently causes emotional pain and loss of trust, eventually leading the betrayed party to seek divorce. Islam dictates that maintaining fidelity is a crucial aspect of marital life.

In addressing these challenges, Islam does not solely place the responsibility for domestic affairs on either the husband or the wife but encourages mutual

agreement in fulfilling their respective roles, including economic matters. When the roles of husband and wife are unbalanced—such as a wife working and supporting the family while the husband is inactive—it often leads to conflicts that can result in divorce.

Therefore, economic factors, domestic violence, and infidelity are the primary reasons driving wives to file for divorce at the Religious Courts in Lampung Province. Islam allows women to actively participate in public life but also emphasizes the importance of balance in managing domestic and public roles to maintain marital harmony.

Understanding and Awareness of Gender Equality Among Divorce Plaintiffs in Lampung Province

The primary factors contributing to the high number of divorce petitions filed by respondents include economic issues, domestic violence (DV), lack of responsibility from the husband, and the presence of a mistress (Wanita Idaman Lain, WIL). Behind this phenomenon, there is an awareness of women's rights influenced by gender understanding. Respondents are aware of injustices within the household, rejection of violence, and the lack of responsibility from the husband. This awareness, coupled with economic independence, motivates them to file for divorce. Therefore, this study focuses on gender understanding and the factors influencing the high rate of divorce petitions.

The meaning of marriage for respondents is a sacred bond based on personal choice without coercion. Most respondents were already employed before marriage, and many of them have had to become the breadwinners because their husbands do not work. This perspective challenges the notion that women marry solely for economic reasons. Instead, many of them were financially independent before marriage. When the household conditions are unfair and the husband does not contribute, respondents feel compelled to work harder to meet the family's needs.

Respondents have a good understanding of their rights within the household. They are aware of the rights they should receive, such as financial and emotional support and protection from violence. However, these rights are often not fulfilled. For example, some husbands do not work or even commit physical violence. Awareness of these injustices and a good gender understanding drive respondents to file for divorce. Economic independence also plays a key role in their willingness to take this step.

Respondents also have a positive view of women working. They do not see any issues with women working outside the home, as long as they maintain their

self-respect and responsibilities. In fact, working provides them with confidence and opportunities for self-actualization. This economic independence contributes to their awareness of gender and their rights within the household. The demands of being a mother, wife, and breadwinner often create tension, especially when the husband does not help with domestic duties.

Domestic violence is another factor pushing respondents to file for divorce. Respondents recognize that physical and emotional violence is unacceptable, and they are unwilling to live in violent situations. A good gender understanding enables them to realize that they deserve a better life, free from violence. Often, gender biases that perceive women as submissive to their husbands contribute to this violence, and respondents reject such views.

Understanding and Awareness of Gender Equality Among Plaintiffs in Divorce Cases in Lampung Province: The *Mubādalah* Perspective and Its Contribution to Islamic Family Law Reform in Indonesia

The increase in divorce cases indicates a rising dissatisfaction with marital life, particularly concerning the role of the husband. Economic aspects often become the main focus, where meeting economic needs is seen as a guarantee for the well-being of those entitled to financial support. Economic well-being functions to prevent negative impacts that may arise from neglecting economic responsibilities. If a husband fails to fulfill his economic obligations, it can significantly affect the happiness and harmony of the household. Conversely, economic deficiencies often lead to conflicts and instability in the household, which can result in divorce. Adequate finances are crucial for creating a happy family, while serious economic issues—whether a lack or excess—can cause various household problems, including financial management issues.

In this context, the theory of *mubādalah* developed by Abdul Kodir offers an important perspective. *Mubādalah* is defined as a perspective and understanding that emphasizes partnership, cooperation, and reciprocity in relationships between two parties. This theory proposes a reinterpretation of texts in the Quran to uncover the elements of *mubādalah*, particularly concerning gender issues. By using a *mubādalah* approach, Quranic texts are interpreted to identify fundamental principles of gender justice. This process involves several steps: first, exploring fundamental teachings and thematic principles in the texts to emphasize balance and reciprocity; second, interpreting relational texts that are implementational by removing subject-object distinctions to find the core idea; and third, applying these ideas to texts that may not explicitly mention specific genders. This approach aims to ensure that Quranic texts, whether directed towards men or women, reflect principles of equality and justice.

The working method of *mubādalah* interpretation can be understood through a clear sequence. In this context, financial support is considered a partial-implementational issue, which is the third stage in the *mubādalah* tafsir workflow. To understand the concept of financial support from Faqihuddin Abdul Kodir's perspective, one must start with the explanation of universal ideas, followed by partial ideas. The universal idea in marriage, according to Abdul Kodir, is the concept of *mu'asyarah bil ma'ruf*, which emphasizes reciprocity and the mutual obligation of spouses to treat each other well. Additionally, the purpose of marriage is to achieve tranquility based on love and affection, as outlined in QS. Ar-Ruum (30): 21.

Faqihuddin Abdul Kodir adds several other universal principles, referred to as the five pillars of marital life. These pillars include: first, a solid agreement (*mitsāqan ghalīzan*), meaning that the marriage contract is a strong agreement between husband and wife as stated in QS. An-Nisa' (4): 21; second, pairing, which indicates an equal relationship between men and women, as described in QS. Al-Baqarah (2): 187; third, *mu'asyarah bil ma'ruf*, which refers to treating each other well as found in QS. An-Nisa' (4): 19; fourth, consultation, which involves collaboration and exchange of opinions in household decisions; and fifth, *tarādhim min-huma*, which means mutual comfort in the relationship, as explained in QS. Al-Baqarah (2): 233.

From a *mubādalah* perspective, the concept of financial support is interpreted more inclusively. Abdul Kodir critiques classical interpretations that view financial support as solely the husband's responsibility and suggests that it should be a joint responsibility of both spouses. Referring to QS. Al-Jumu'ah (62): 10 and QS. Al-Baqarah (2): 3, Abdul Kodir emphasizes that both men and women are encouraged to seek and provide financial support according to their abilities. Support for this interpretation is also found in the hadith about Zainab, the wife of Abdullah bin Mas'ud, which shows that women can also be providers for the family. In *mubādalah* interpretation, verses such as QS. An-Nisa' (4): 34 and QS. Al-Baqarah (2): 233 are understood in a more egalitarian manner, affirming that women can play the role of financial providers if they have the capability and resources.

4. Conclusion

First, the dominant factor influencing divorce suits in Lampung Province is economic issues. This is evident from the number of divorce cases attributed to economic factors, where husbands' inability to provide for their families or wives feeling dissatisfied with their husband's financial support leads to disputes. According to the *mubādalah* interpretation, if the husband is responsible for providing for the family's economic needs, the wife should

manage domestic duties at home. Conversely, if the wife is the primary breadwinner, the husband should handle domestic responsibilities. If both spouses are working, they should consider hiring external help to manage the household, preventing the need for divorce if roles are shared fairly.

Second, understanding and awareness of gender equality among plaintiffs in divorce cases in Lampung Province can be seen from several themes, including respondents' understanding of the meaning of marriage, knowledge of women's rights within the household (marriage), perceptions about women working, gender roles in the family/work division, domestic violence (KDRT), perceptions of divorce, and factors influencing gender understanding. This understanding indicates that respondents are aware of and have a good grasp of gender equality, though their partners may not be committed to gender justice. As a result, if wives feel treated unfairly in the household, they are more willing to file for divorce in the Religious Court.

Plaintiffs in divorce cases in Lampung Province understand gender equality in the household as explained in mubādalah tafsir. The issue of financial support is considered a joint responsibility in family life, with both spouses being responsible for the family's economic needs. If there is gender injustice and unwillingness to share household roles, filing for divorce is permissible. Based on this, the author proposes that to create a gender-equitable spousal relationship, Article 31 (3) of Law No. 1 of 1974 on Marriage, which states, "The husband is the head of the family and the wife is the housewife," should be revised to "The husband and wife are equal partners in managing the household." Article 34 (1), which reads, "The husband must protect his wife and provide all necessities of household life according to his ability," should be revised to "The husband and wife must mutually protect and provide all necessities for household life according to their respective abilities." Additionally, Article 34 (2), which states, "The wife must manage household affairs as well as possible," should be revised to "The husband and wife must jointly manage household affairs as best as possible."

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