

Apostasy As a Reason For the Dissolution of Marriage

Yuyun Yulianah¹, Taufiq², Cucu Solihah².

taufiqunikal@gmail.com yuyunyuliana01@gmail.com cucusolihah2012@gmail.com

^{1,3} Faculty of Law, Universitas Suryakencana

²Faculty of law, Pekalongan University

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Abstract

Freedom of religion is a human right protected by law, however, the Indonesian marriage law system does not recognize religious differences within the family. The act of leaving Islam (apostasy) affects the validity of the marriage and results in the dissolution of the marriage. Based on data obtained from the West Java High Religious Court related to the dissolution of marriage due to apostasy, the author tries to examine it from the aspect of the normative legal basis regarding the reasons for apostasy being considered by the religious court and also the study of Islamic law (fiqhiyah) in terminating a marriage bond. The research method uses a qualitative approach in the form of a comparative analytical descriptive study, namely explaining, describing, and revealing data that is related to the research theme.

I. Introduction

Commitment to realize the goal of a sakinah, mawaddah wa rahmah marriage is the hope of all married couples. Since ancient times, humans have carried out a marriage without any significant turmoil for the continuation of the marriage, of course this happens because there is a clear intention and purpose of the marriage which is based on religious teachings as the basis for forming the direction and purpose of a marriage. In line with this, the law formulates that the validity of a marriage if it is carried out in accordance with the provisions of the law of each religion and belief and is recorded in accordance with the provisions of applicable law.

Along with the development of the era of freedom has eroded the order of family resilience in strengthening the values of religious teachings of husband and wife to continue to maintain and preserve religious beliefs in a family. The phenomenon of weakening family resilience as an impact of one party or both (husband and wife) are unable to maintain the same beliefs in accordance with

the initial commitment, so it cannot be denied that there is a marriage that is damaged and has no legal force as a result of deciding religious beliefs, and for this action has changed the paradigm of society regarding the nature and purpose of marriage and in turn changes the status of marriage and the decision to end the marriage.

Religion is a very fundamental value in organizing personal, family, community, national and state life, so that the state has provided a special constitutional guarantee regarding religious freedom.¹ This has consequences for the essence of religion, especially for a Muslim in domestic life and makes religion a measure of the validity of a legal relationship of a marriage in Islam.

Islamic teachings provide direction and concepts. Freedom of religion has been stated in the Qur'an, that there is no compulsion for someone to embrace Islam. The Prophet Muhammad was also warned by Allah that he was only a person who conveyed the message by inviting to the path of truth. The position to determine the decision to choose a belief and worship according to one's beliefs until the matter of changing religion is a person's basic right, there should be no interference with the basic decision, however, the decision to change religion for a Muslim family whose marital status has been legally valid according to Islamic law will sufficiently affect the marital status and have legal consequences for both property and children from the marriage.

West Java is a multicultural area with a diversity of religions, customs and cultures with the majority of adherents of Islam, however there is a phenomenon that is quite interesting to study and research related to the attitude of declaring a change of religion that occurs in legal marriage couples and registering their marriage decisions to the religious court. On the other hand, this phenomenon shows the weak foundation of family resilience to maintain the same belief in Islam between husband and wife, this can be indicated by changing religions from Islam to non-Islamic religions which is known as apostasy and on the other hand this shows the existence of legal awareness in society by registering their cases to the religious court.

Apostasy in relation to a marriage of a husband and wife who are both Muslims and one of the couple decides to leave Islam and has different beliefs from her partner. In practice, there is a unique phenomenon where a non-Muslim woman is willing to be married and marry in Islam according to her husband's

¹ James W. Nickel and Titis Eddy Arini, *Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (Jakarta: PT Gramedia Pustaka Utama, 1996), 125.

religion, and over time the converted woman becomes a devout Muslim and conversely her husband is unable to become a devout Muslim and leader in the family until in turn the husband decides to leave Islam and has believed and worshiped according to his new religion. And there is also a case where both partners who were originally Muslims agree to leave Islam, but the husband and wife still take care of their marital status in the religious court considering that the initial legal relationship of marriage was carried out in Islam in this case the implementation of the principle of Islamic personality is applied in registering a divorce due to apostasy.

Marriage annulment in Islamic law is better known as fasakh. Which has the meaning of destroying or canceling. So in this case fasakh can be one of the causes of breaking up a marriage by destroying or canceling the marriage.² Fasakh itself is caused by 2 (two) things, namely first because the marriage does not fulfill the pillars and requirements of marriage or there are obstacles to marriage, then secondly it is caused by something happening in the household that does not allow the marriage to continue, so in this case it is cancelled/ vanity and fasid/fasad are part of fasakh.³

Furthermore, divorce caused by apostasy based on positive law in Indonesia, is apostasy that is done officially, with evidence that can create legal certainty. This is in accordance with the Letter of the High Islamic Court dated January 7, 1939 No. A/6/9 which states that apostasy must be proven before the Religious Court. And apostasy that is done without coercion, makes the status of marriage damaged and cannot possibly run sustainably in the corridor of Islamic teachings. Based on the research background, the author formulates the problem identification as follows:

1. How is the study and consequences of apostasy as a reason for the end of a marriage?
2. What legal reasons make apostasy a reason for the dissolution of a marriage?

2. Research Method

The research method uses qualitative research in the form of comparative analytical descriptive studies, namely explaining, describing, and revealing data

² Faisal, "Annulment of Marriage and Its Prevention," *Al-Qadha Journal of Islamic Law and Legislation* 4, no. 1 (2017): 4.

³ Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and Marriage Law* (Jakarta: Kencana, 2006), 235.

that is related to the research theme related to the dissolution of marriage as a result of apostasy. Using a normative legal approach in this case, exploring the law on apostasy from the sources of the Qur'an and Sunnah and explaining religious freedom according to applicable laws, and Islamic law studies (fiqh).

3. Results and Discussion

3.1. Changing Religion (apostasy) in the Perspective of Islamic Law.

Freedom of religion reflected in the meaning of no coercion in religion, gives consequences to the choice of religious adherents to choose religion and belief. The choice of religion and belief has also entered the realm of marriage, where a married couple who were previously Muslim in their development outside the Islamic religion and belief, are then called apostates.

Etymologically, the word apostate means turning away or leaving. The use in Indonesian of murtad means riddah or irtiddad. The term riddah is present in the Qur'an in two models, namely the lafz model and the meaning model. A number of verses can be found that contain these two criteria.⁴ Apostasy means leaving the religion of Allah. So when combined in the meaning of the apostasy process, namely the stages of an event of leaving the religion of Allah.⁵ As a basis for the concept of apostasy, it is explained in the Qur'an, surah Al-Baqarah [2] verse 217: "Whoever among you apostates from his religion, then dies in disbelief, those are the ones whose deeds are in vain in this world and the afterlife and they are the inhabitants of hell, they will abide therein forever."

A person is considered an apostate if he has converted and includes his apostasy openly or with words that make him an apostate or actions that contain elements of apostasy. The term apostate in Arabic means turning back. Meanwhile, according to the Shari'a, an apostate is a Muslim who becomes an infidel after converting to Islam, without any coercion, at the age of tamyiz (already able to sort and choose matters, between good and bad) and of sound mind. Etymologically, apostasy is interpreted by jurists as al-ruj ū `an al-islām (turning away from Islam). Meanwhile, terminologically, apostate means *Abdurrahman of al-Juzairīn al-Fiqh`al ā alMadh āhib al-Arba`a*, as a Muslim who chose to become an infidel after previously saying the two sentences of the

⁴ Sayed Husein Nasr, *Exploring the Modern World*, (Translated) Hasti Tarekat, From the Original Title *A Young Muslim's Guide in The Modern World*, 2nd ed. (Bandung: Mizan, 1995), 95.

⁵ Pius A Partanto and M. Dahlan Al Barry, *Popular Scientific Dictionary* (Surabaya: Arkola, 2001), 500.

shahada and implementing Islamic law. The apostasy is clearly expressed (sharīḥ), for example, “usyriku bi Allah” (I associate partners with Allah).⁶

The issue of apostasy (riddah) has emerged as an important issue in Islamic discourse. Apostasy has long been categorized as a form of crime and is subject to severe sanctions. The concept of Universal Human Rights has been applied in various countries. Indonesia has also ratified and has legislation that protects human rights interests. Therefore, human rights have become the main reference in freedom of behavior so that the law of apostasy in Islam is sometimes said to violate human rights. In response to this, a small group of Islamic thinkers emerged who provided another interpretation of the law of apostasy that differed from the majority of scholars.⁷

Murtad with all its derivative words is listed in the Koran. The word apostate is used for people who change their faith for disbelief, from being Muslim and then leaving to become Jews, Christians, etc. There are at least three verses in the Koran that refer to this matter of apostasy. The first verse is Qs al-Mâ'idah [5]: 54 which means:

"O you who believe, whoever among you turns away from his religion, then Allah will bring a people whom Allah will love and they will love Him, who will be gentle towards the believers, who will be harsh towards the disbelievers, who strives in the way of Allah, and who is not afraid of the reproaches of those who like to criticize. That is the gift of Allah, He gives it to whom He wills, and Allah is All-Encompassing (His gifts), and All-Knowing."

The reason for changing religion (apostasy) has legal consequences for marriage. The parties bound in the marriage who then in the trial process place the Plaintiff and Defendant more appropriately terminated with Fasakh not with talak ba'in shugra, as written by Sayyid Sabiq in his book called Fiqhus Sunnah volume 2 which states: "Because the Defendant has consented (apostatized) then it is no longer possible (not valid) to pronounce the vow of divorce, because apostasy means leaving the Islamic religion and that is the cause of the dissolution of the marriage or the destruction of the marriage (Fasakh/Fasid). Apostasy carried out according to Islamic marriage in the termination of the marriage is not caused by disputes and quarrels and there is no hope of living in harmony again in the household, but because it is prohibited by the Islamic

⁶ Arief Sallah Rosman, *Apostasy According to Islamic Law* (Malaysia: Technology University, 2001), 7.

⁷ Syamsuddin, "Between the Law of Apostasy in Islam and Freedom of Religion According to Human Rights (HAM)," *El-Mashlahah* 11, no. 1 (2021): 45.

religion, the existence of disputes or not in the matter of apostasy is what breaks the marriage.⁸

Hanafiyah, Malikiyah and Hanabilah scholars in a history said that if one of the husband and wife apostates, the divorce must be hastened in order to maintain monotheism of one of them.⁹ Hasbi Ash-Shidiqie said that divorce is considered fasakh because the divorce occurs for a reason that is allied to the husband and wife because of riddah, as what happens on the husband's side can also happen on the wife's side. Each related cause is considered Fasakh, not divorce.¹⁰

In QS Al-Mumtahanah Verse 10 it can be understood that religious differences prevent the occurrence of eligibility (truth). In the letter of Al-Baqarah Verse 221 it is not permitted for Muslim women to make any kind of agreement with infidel men. Likewise, Muslim men make a sacred agreement with infidel women. As it is forbidden for husband and wife who have made a sacred agreement in the bond of marriage, then one of them is an apostate.¹¹

3.2. Apostasy as a Reason for Divorce

The concept of apostasy now faces serious challenges in a society that supports religious freedom. Modern society tends to hold the view that a person's choice to enter or leave a religion is a private matter that should not be intervened because it has the authority to choose and determine. In several cases, it was found that the conversion of a married couple occurred more often in couples who had different religions before marriage, only for the sake of the validity of the marriage, one of them follows and submits to the rules of the other partner's religion. After the marriage is underway and the husband and wife have children, one of the partners decides to return to their original religion and asks the children from the marriage to follow the religion of the partner who converted.

However, in another case, it was also found that a prospective Muslim husband married a non-Muslim woman and the woman eventually converted to Islam and became a devout Muslim. As time went by, the wife saw and witnessed

⁸ Diana Aristanti, Dyah Ochtorina Susanti, and Pratiwi Pusphitho Andini, "Divorce Lawsuit Due to Apostasy (Study of Palu Religious Court Decision No: 0249/Pdt.G/2016/PA.Pal)," *Journal Lentera Hukum* 2, no. 1 (2017): 21.

⁹ Mustofa Hasan, *Introduction to Family Law* (Bandung: Pustaka Setia, 2011), 217.

¹⁰ *Ibid.*

¹¹ *Ibid.*, 230.

that her husband was no longer a devout Muslim but had practiced the teachings of another religion and had even carried out the obligations of his new religion. This incident finally became the background for the wife to file for divorce because her husband had changed religion.

The phenomenon of apostasy which is the reason for a marriage to be annulled, and the following are cases obtained from data from the West Java High Religious Court, as follows:

*DIVORCE DUE TO APOSTASY IN WEST JAVA
YEAR 2018,2019,2020,2021¹²*

NO.	RELIGIOUS COURTS DISTRICT/CITY	THE BREAKDOWN OF MARRIAGE DUE TO APOSTASY				
		2018	2019	2020	2021	2022
1	Bandung	21	25	28	30	
2	Sumedang	16	-	3	-	
3	Cimahi	63	9	7	6	
4	Ciamis	1	-	3	3	
5	Lake Malaya	13	40	30	25	
6	Garut	21	26	23	37	
7	Bogor	4	8	6	4	
8	Sukabumi	1	1	2	1	
9	Cianjur	12	12	8	6	
10	Cirebon	1	2	9	7	
11	Indramayu	1	1	-	3	
12	The Great Plains	2	-	-	-	
13	Brass	1	-	-	-	
14	Bekasi	14	11	13	13	
15	Karawang	8	2	4	4	
16	Purwakarta	2	7	9	4	
17	Soreang	-	16	13	10	
18	The Journey	-	4	11	13	
19	Subang	7	12	13	2	

¹² "Statistics of Religious Court Cases in West Java," TIMDA PTA Jabar, last modified 2023, http://kabayan.pta-bandung.go.id/pengawasan_sipp/proses_stat.

20	Cibadak	5	2	6	10	
21	Source	1	2	2	5	
22	Cibinong	27	14	25	54	
23	Cikarang	12	13	41	33	
24	Depok	55	21	15	24	
25	City of Tasikmalaya	5	5	10	7	
26	Banjar	-	4	1	1	

The data is a validation of legal awareness actions as a logical consequence of a decision to change religious beliefs by taking legal action to obtain legal certainty regarding marital status with all its consequences, and can also be used as a description of the iceberg phenomenon of decisions to change religions without registering in a religious court with 2 (two) possible assumptions, namely that a husband and wife continue to live as a household without having to take care of their marital status with the commitment of each to respect and acknowledge differences in religious beliefs (*acknowledge and respect religious differences*) and a husband and wife can also terminate their marriage automatically without going through a court decision because they are influenced by the belief that the fiqh provisions have invalidated their marriage.

3.3. Changing Religion and Its Legal Consequences for Marriage.

The paradigm of religious freedom has entered the realm of private law and has affected the foundations of Indonesian society's household life, and what is very concerning is the shift in values that is developing in society that choice is freedom and freedom has become a value that can no longer be avoided in the current of modernization.

The dissolution of a marriage is generally known as divorce, and talak is one way to end a marriage (divorce). Etymologically, talak means breaking a bond. Terminologically, talak means breaking a marriage bond. Among the things that invalidate a marriage relationship are: (1) a wife who is insane, has leprosy, or is hairless (*belagi*); (2) if after the marriage contract has taken place, it is discovered that the wife is someone who is forbidden to marry, such as a sister, parent, aunt, or someone whose sister is still married to her, and so on; (3) if the one who makes the marriage contract is still not old enough and is not her father or grandfather; (4) if the husband converts to Islam while the wife refuses or remains a polytheist; (5) if the wife embraces Islam while the husband remains

an infidel;¹³(6) if one of the husband and wife apostatizes; (7) if the wife has sexual intercourse with her father or grandfather, either accidentally or with the intention of committing adultery; (8) if both parties are in a relationship; (9) if both apostatize; (10) if one of them dies, in which case there is no difference in the legal provisions; and (11) the husband has been missing for four years.¹⁴

A marriage can end or be dissolved for several reasons, namely because of a divorce decreed by the husband against his wife, or divorce or other reasons, one of which is because of a fasakh or annulment of marriage decreed by the court.

Based on the two fundamental differences as mentioned, it can be understood the reason for the formulation of the wording of Article 116 letter (h) of the Compilation of Islamic Law regarding apostasy as a reason for divorce in court, namely conversion of religion or apostasy which causes disharmony in the household. The provisions of Article 116 letter (h) above not only depend on the condition for divorce on the reason "there has been a conversion of religion (apostasy) by one of the parties in the marriage", but are also bound to depend on the condition "there has been disharmony in the household due to the apostasy". This means that the reason for divorce according to Article 116 letter

(h) must meet 2 (two) inseparable legal qualifications, namely:

1. There is a change of religion (apostasy) by one of the parties in the marriage, namely the husband or wife;
2. There is disharmony in the household due to the change of religion (apostasy).

In terms of the second condition as mentioned, of course this is something that invites long debate, considering that today the public's understanding of the concept of freedom to choose religion and belief is a human right that influences attitudes and decisions in married life. The marriage model that is driven by religious moderation has now developed into a marriage of interfaith couples, and this has occurred in several regions in Indonesia that have received legality from the district court, so it is certain that aspects of disharmony in the household can be avoided, so this matter requires further study and discussion.

¹³ Kamil Muhammad, Uwaidah, *Al-Jami' Fi Fiqh an-Nisa* (Lebanon: Dar Al-Kutub Al-Ilmiyah, 1996), 461–462.

¹⁴ Moh. Afandi, "Divorce Law in Indonesia: Comparative Study Between Conventional Jurisprudence, Contemporary Law in Indonesia and Muslim Countries from the Perspective of Human Rights and Cedaw," *Al-Ahwal* 7, no. 2 (2014): 192.

Cancellation of marriage (fasakh) as regulated in Law no. 1 of 1974 and KHI, are intended to improve marriage provisions as well as to anticipate possibilities that arise in the future in the form of inheritance rights, guardianship, maintenance rights such as the position of children (nasab) and wife's rights. As in Article 22 of Law no. 1 of 1974 that: "Marriage can be annulled if the parties do not fulfill the requirements for entering into a marriage." An application for marriage annulment is submitted to the court in the jurisdiction where the marriage took place, or where the husband and wife live.¹⁵

A married couple whose marriage is annulled by the court through fasakh or marriage annulment cannot be referred by their husband. Likewise, this legal consequence will also occur to a married couple where one or both of them change religions. So if both of them want to live as husband and wife again, it must be with a new marriage, namely carrying out a new marriage contract.¹⁶ In accordance with the pillars and requirements of marriage. Thus the provisions regarding a marriage that is canceled or annulled based on a court decision, after the decision has permanent legal force, the marriage is declared null and void and has no legal force. Because it is not valid according to the law, the deed issued by the Office of Religious Affairs is declared to have no legal force.¹⁷

Apostasy as a legal act has legal consequences, and also has legal impacts on certain parties involved in the marriage and post-marriage, especially:

1. For a third party who has good intentions, the annulment of a marriage does not have any retroactive legal consequences. Therefore, all legal bonds in the civil field or agreements made by the husband and wife before the annulment are valid bonds and agreements that can be implemented on the marital property or borne jointly by the husband and wife whose marriage has been annulled, both on joint property and on the assets of each individual (Article 28 paragraph 2 sub c).¹⁸
2. The legal consequences arising from the annulment of marriage, the position of the child resulting from the annulment of marriage still has an official legal status as a biological child, meaning that the apostasy of his parents still has

¹⁵ Sri Turatmiyah, M. Syarifuddin, and Arfianna Novera, "Legal Consequences of Marriage Annulment in the Perspective of Child and Women Protection Law in the Religious Court of South Sumatra," *Jurnal Hukum Ius Quia Iustum* 22, no. 1 (2015): 164–165.

¹⁶ Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and Marriage Law*, 114.

¹⁷ Muhamad Nur Fajar, Amnawaty, and Sepriyadi A, "Factors Causing Annulment of Marriage According to Law No. 1 of 1974 and Presidential Instruction No. 1 of 1991 (Study of Decision Number 144/Pdt.G/2012/PA.Sgt)," *Pactum Law Journal* 1, no. 2 (2018): 105.

¹⁸ Yahya Harahap, *National Marriage Law* (Medan: Zhir Trading, 1975), 81.

an official legal status with his mother and father. Because the dissolution of marriage does not immediately sever the relationship between the child and his parents, the relationship between the child and both parents cannot be severed at any time unless the parents do not recognize the child as their flesh and blood.

3. For joint assets where the marriage has been annulled, the decision to settle the matter is left to the former husband and wife to divide fairly or based on the laws of their respective religions.¹⁹

If previously the marriage was conducted without a marriage agreement, then the division of assets obtained during the marriage only applies if the marital assets benefit the party with good intentions. So if before the marriage the assets owned by the party with good intentions are less than the party without good intentions, then the marital assets are divided so that the assets of the party with good intentions will increase. On the other hand, if before the marriage the assets of the party with good intentions are more than the party without good intentions, then no division of marital assets is made.²⁰

In civil law, marriage will provide legal protection to the parties related to the marriage, be it husband, wife, children or third parties. Marriage as a legal act has legal consequences and the legal consequences are desired by the parties.²¹

The legal consequences of annulment of marriage are regulated in Article 28 of Law No. 1 of 1974 and Article 95-98 of the Civil Code which are divided into: first, the existence of good faith from the husband and wife, second, only one party has good faith, third, the absence of good faith from the husband and wife. Assets obtained during the marriage until the decision to annul the marriage will be divided in two if the parties to the marriage do not make a marriage agreement. In the case where only one party has good faith, the marriage only has legal and beneficial consequences for the party with good faith and the children.²²

¹⁹ Fajar, Amnawaty, and A, "Factors Causing Annulment of Marriage According to Law No. 1 of 1974 and Presidential Instruction No. 1 of 1991 (Study of Decision Number 144/Pdt.G/2012/PA.Sgt)," 108.

²⁰ R. Soetojo Prawirohamidjojo, *Law of Persons and Families (Personen Familie-Recht)* (Surabaya: Airlangga University Press, 1991), 38.

²¹ CST Kansil and Chritine ST. Kansil, *Introduction to Indonesian Legal Science* (Jakarta: Rineka Cipta, 2011), 104.

²² Turatmiyah, Syarifuddin, and Novera, "Legal Consequences of Marriage Annulment from the Perspective of Child and Women Protection Law in the Religious Court of South Sumatra," 164–165.

3.4. Aspects of the Principle of Marriage Annulment (fasakh) Due to Apostasy

The perfection of Islamic teachings has led humans to glory. In every form of rule, this is a divine message for human happiness and God's way of honoring and dignifying humans. Among the legal forms of Islamic teachings that provide aspects of the Divine message are marriage laws that require basic elements that have characteristics such as psychology, spirituality (inner and outer body), humanity and truth. Apart from that, it is based on religion in terms of the religious aspect of faith and devotion to Allah SWT which is the main thing in marriage.²³ Basic human needs in the form of psychic, biological, and pedagogical can be realized through marriage. Psychological values in the form of peace and comfort will be greatly felt by humans after having a partner, likewise spiritual values will be the perfection of peace as well as what will provide direction and orientation for the purpose of household in the corridor of guided spiritual values and the aspect of humanity becomes an aspect that is highly considered with the existence of marriage law regulations through the fulfillment of the biological needs of husband and wife and the aspect of truth values becomes a very objective and fundamental principle for humans to avoid mistakes in socializing.

In relation to this, if the basic elements as mentioned are not achieved, then it can be a trigger and reason for a marriage to end and be null and void by law. In the case of a divorce filed in a religious court, the provisions of Article 28 of the Marriage Law state that "the annulment of a marriage begins after the Court's decision has permanent legal force and is valid since the marriage was carried out." And in Article 37 of PP No. 9 of 1975 it states "The annulment of a marriage can only be decided by a court." from the two things it can be noted that divorce and annulment of marriage are both said to be the termination of a new marriage which is declared valid according to state law if a court decision is issued and carried out in court.²⁴

Soedaryo Soeimin stated that "Annulment of marriage is a marriage that has occurred without fulfilling the requirements according to the law."²⁵ If a marriage has been declared null and void, then the marriage that has taken place is considered to have never existed, as if it had been known before the marriage

²³ Santoso, "The Nature of Marriage According to Marriage Law, Islamic Law, and Customary Law," *Yidisia Journal of Social Religious Thought and Research* 7, no. 2 (2009): 412.

²⁴ Ingrid Maria Lake, "Dissolution of Marriage Due to Annulment of Marriage" (Faculty of Law, Airlangga University, 2015), 24–25.

²⁵ Muchlis Marwan and Thoyib Mangkupranoto, *Islamic Law II* (Surabaya: Buana Cipta, 1986), 168.

took place, the marriage would have been considered to have never taken place (no-existed).²⁶

The legal provisions applicable in religious courts are closely tied to the principle of Islamic personality, meaning that one of the general principles inherent in the religious court environment, the key word of this concept is Islam, meaning that those who submit and can be submitted to the authority of the religious court environment are only those who claim to be adherents of Islam. Adherents of other religions outside of Islam or non-Muslims, do not submit and cannot be forced to submit to the authority of the Religious Court environment.²⁷In addition, it can also be seen from the aspect of the statement of will in the form of a marriage contract carried out in accordance with Islam, even though during the course of the marriage after the contract, one of them leaves Islam.

The principle of Islamic personality is one of the principles that inspires the judge's considerations in deciding a case. Including in the case of a marriage breaking up due to changing religion, this is considering that the requirements for implementing the principle of Islamic personality have been fulfilled where the legal relationship created by the groom and the bride at the time of marriage are both Muslims and the legal bond agreed upon by both parties uses an Islamic marriage contract. Peter Mahmud mentioned the judge's considerations in terms of "ratio decidendi" namely the legal reasons used by the judge to reach his decision, the ratio decidendi is contained in the consideration of "considering" the main case.²⁸

The judge's consideration and decision that the marriage is annulled by the court by way of fasakh or cancellation of marriage as is the case for the act of leaving Islam from one of the husband and wife, then the legal consequences of the marriage cannot be referred to by the husband. So if both of them want to live as husband and wife again, it must be with a new marriage, namely carrying out a new marriage contract in accordance with and fulfilling the pillars and requirements of marriage according to Islam.²⁹For marriages that are annulled or cancelled based on a court decision, including the dissolution of a marriage due

²⁶ Suriana R, "Annulment of Fasakh's Marriage and Its Consequences Based on Law Number 1 of 1974" (Alauddin State Islamic University Makassar, 2015), 62.

²⁷ M. Yahya Harahap, Position, Authority and Procedure of Religious Courts (Law Number 7 of 1989) (Jakarta: Pustaka Kartini, 1997), 37–38.

²⁸ Rusli Muhammad, Portrait of the Indonesian Judicial Institution (Jakarta: Raja Grafindo Persada, 2006), 136–144.

²⁹ Syarifuddin, Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and Marriage Law, 144.

to apostasy, then after the decision has permanent legal force, the marriage is declared annulled and has no legal force because it is not valid according to the law, then the marriage certificate issued by the Office of Religious Affairs is declared to have no legal force.³⁰

Referring to the provisions of Article 37 of PP No. 9 of 1975, it states that "The annulment of a marriage can only be decided by a court." From these two things, it can be noted that divorce and annulment of marriage are both said to be the termination of a marriage, and this is only declared valid according to state law if after a court decision has been issued and carried out in court.³¹ So, for a married couple where one or both of them leave the Islamic faith, the iddah period does not apply to the wife, considering that their marriage has automatically been annulled and the legal relationship as husband and wife has no legal force whatsoever.

4. Conclusion

The consequences of apostasy as a reason for the dissolution of marriage will greatly affect the legal status of the marriage and also have legal impacts on property and descendants. By changing religions carried out by one or both of the husband and wife, it is certain that it will damage the law and purpose of marriage and the purpose of religion (maqosidhus syariah) in terms of maintaining the preservation of religion (hifzh al-din), and maintaining descendants or (hifzh al-nasl).

The legal reason that makes apostasy a reason for dissolution of marriage is because it will trigger continuous disputes and quarrels, however, if the disputes can be avoided by the husband and wife by upholding and committing to differences in beliefs, this cannot be justified in Islamic law considering that the basis for apostasy is a fundamental prohibition for a marriage to be dissolved both according to the provisions of Islamic jurisprudence and based on the decision of a religious court.

To suggest, It is hoped that society can maintain religious commitment to realize the goals of marriage in Islam. It is hoped that parents/guardians will be more selective in choosing life partners for their children. It is hoped that the

³⁰ Fajar, Amnawaty, and A, "Factors Causing Annulment of Marriage According to Law No. 1 of 1974 and Presidential Instruction No. 1 of 1991 (Study of Decision Number 144/Pdt.G/2012/PA.Sgt)," 105.

³¹ Lake, "Dissolution of Marriage by Annulment," 24–25.

public will understand the legal consequences of religious differences in the family, especially their impact on descendants and marital property.

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