



## Juridical empirical analysis in divorce lawsuit in the marriage goal's perspective

Sangkot Puli<sup>1</sup>, Azhari<sup>2</sup>, Teuku Saiful<sup>2</sup>

<sup>1</sup> Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

<sup>2</sup> Lecturers, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

### Abstract

The primary objective of marriage, as stated in Article 1 of the Marriage Act Number 1 of 1974, is to establish a contented and enduring family unit. Due to the current living conditions, there is a significant increase in divorce cases in the Syrian community. Interestingly, the number of divorce claims filed by women is higher than those filed by men, despite the fact that men have the legal right to initiate divorce proceedings. The research technique employed is empirical jurisprudence, which involves studying both the relevant legal provisions and the actual occurrences in a society that is governed by established legal principles and foundations. The objective of this study is to provide a comprehensive analysis of the legal principles involved in a wife initiating a divorce action against her husband in North Aceh. Based on the description above, it may be inferred that the primary factor contributing to divorce initiated by wives against their husbands is domestic conflict, accounting for 51% of cases. This leads to discord within households, resulting in divorces. In the northern district of Aceh, there were 2,044 divorce lawsuits, whereas there were only 521 cases of divorce settlements.

**Keywords:** Juridical empirical analysis, divorce lawsuit, marriage's goal

### Introduction

Marriage is a fundamental and intrinsic union between a male and a female, assuming the roles of husband and wife, with the objective of establishing a harmonious and enduring familial unit or domestic arrangement grounded on a singular divine entity. The aforementioned statement aligns with the provisions outlined in Article 1 of Act No. 1 of 1974, also referred to as the Marriage Act. According to the provisions outlined in Act No. 1 of 1974, marriage is defined as the intended establishment of a contented and enduring familial unit. The term "perpetuity" in the context of defining marriage can imply that the intended purpose of the marital union is of an enduring nature, without any predetermined temporal limitations.<sup>[1]</sup>

According to Yuliatin, the purpose of marriage is to fulfill religious guidelines in order to establish a harmonious, prosperous, and happy family.<sup>[2]</sup> Etymologically, marriage is mixing, alignment, or intermarriage. But according to the law of marriage, marriage is a bond of birth between a man and a woman as husbands, for the purpose of forming an everlasting family on the one God.<sup>[3]</sup>

The purpose of marriage is to form a happy and lasting family, as affirmed in Article 1 of Act No. 1 of 1974 on Marriage, which has the jurisprudential meaning of marrying is "the birth and inward relationship between a man and a woman as husband and wife for the purpose of forming a family. So, marriage constitutes a "religious bond", because the effect of the law is to bind men and women in an inward birth bond as husbands and wives with a holy and noble purpose based on the One Divinity. It has a very close relationship with religion/spirituality so marriage has not only a natural element but an inner element.<sup>[4]</sup>

Divorce is the dissolution of a marriage by the will of a husband or wife, or by the wish of both of them, which may result from the non-exercise of rights and obligations as required by the law of marriage in force. Divorce was chosen as a last resort by the parties in solving the

household problem. This is because the consequences are enormous, especially when the parties have had children. Such a divorce would affect the child's psychology and mentality and could destroy the fraternal bond between the families. Therefore, it takes an action or effort to prevent or reduce divorce, one of which is to make peaceful efforts.<sup>[5]</sup>

With the progress of living in a staircase in these days, there is often a variety of divorce cases that we encounter in the community or in the neighborhood of the Syrian Court where divorce claims are higher than divorce divorce even though the truth is that the husband has the prerogative to divorce his wife.<sup>[6]</sup>

The Shariah Court of Lhoksukon recorded 2044 cases of divorced couples in the category of divorce litigation. This is counted from January 2021 to November 2023. Then divorce Litigation there were 521 cases from January 2021, to November 2023<sup>[7]</sup>. Based on this, this study will investigate the jurisprudence of a wife making a divorce against her husband in North Aceh.

### Research Method

This method of research includes empirical jurisprudence, i.e. the study of applicable legal provisions as well as what is happening to reality in society.<sup>[8]</sup> Still guided by existing legal principles and foundations, empirical jurisprudence is the study of law concerning the enforcement or implementation of normative legal provisions in action on any particular legal event that occurs in society.<sup>[9]</sup> The research is located in the northern district of Aceh, at the Lhoksukon Sharia Court.

### Results and Discussions

Every marriage is based not only on the biological needs between a man and a woman that are recognized as legitimate but on the fulfillment of the processes of human life. Likewise, in the law of Islam marriage contains the basic elements of the soul and the spirit, including the inner

life, humanity, and truth. Marriage is based on religion, which means that the religious aspects are the basis of the family life by practicing the faith and the remembrance of God, while the basic concepts of marriage are based on the three things that a person must have before practicing it, namely: faith, Islam and sincerity.<sup>[10]</sup> Then the people of Islam should keep away from divorce.

According to Islam, divorce is an act that is not liked by God, even though it is basically justified. The fullness of life in the marriage bond is a primary goal that is expected in Islam.<sup>[11]</sup> But it cannot be denied the fact that not all marriages go according to the desire achieved. It can be seen from the many couples who in their marriage "forced" to end in the middle of the road.<sup>[12]</sup>

The National Marriage Act adopted the principle of complicating the occurrence of divorce, this is reflected in the general explanation of Act No. 1 of 1974 on Marriage number 4 letter e that "Since the purpose of marriage is to form a happy, lasting and peaceful family, this Act adopts the principles to complicate divorce. To allow a divorce, there must be certain grounds and must be done in court." Most scholars say that divorce is forbidden unless it is justified. They say, "It is forbidden to disbelieve in the grace of Allah and to deny His grace." Therefore, it is not lawful to divorce except for an emergency. If a husband doubts the purity of his wife's conduct, or if he has lost his love for no reason, then divorce is a disobedience to the grace of God.<sup>[13]</sup>

Islam does not forbid divorce, but divorce is an act that Allah hates. (HR. Abu Dawud dan Ibnu Majah). The Prophet (peace and blessings be upon him) said: "Whoever asks for divorce from his husband without cause, the smell of paradise is forbidden to him." Divorce causes many harmful consequences, which imply a child's life, an ex-husband's obligation, and a common property problem. Therefore, divorce must be suppressed and prevented.

Divorce is the ultimate solution that can be obtained by the husband and wife in terminating the marriage bond after a peaceful settlement or mediation can be made at the maximum at the will of the husband or wife.<sup>[14]</sup> A divorce is a request of a wife to her husband to divorce herself from the marriage bond with the consent of money or goods to the husband of the wife in return for the fall of the divorce. The claim gives equal rights to a woman to get rid of a marriage that is deemed to have no merit in exchange for her marital rights and realizes that the wife has the same right to terminate the marital relationship.<sup>[15]</sup>

Article 115 of President's Instruction No. 01 of 1991 on the Compilation of Islamic Law also states that divorce must be made in the presence of a religious court, and the divorce judgment can be made after the religious tribunal fails to reconcile both parties. Divorce must be accompanied by the legal grounds as specified in Article 39 (2) of Act No. 1 of 1974 on Marriage, which has been promulgated in Article 19 of the Civil Code No. 9 of 1975, namely:

1. One party commits adultery or becomes a drunkard, addict, gambler and so on that is difficult to cure.
2. One party leaves the other party for two consecutive years without the permission of the other side and without a legitimate reason or anything else beyond its ability.
3. One party receives a sentence of imprisonment of 5 years or a heavier sentence after the marriage has taken place.

4. One party perpetrates or serious persecution that endangers the other;
5. One party is disabled or sick as a result of not being able to perform his duties as a husband and wife.
6. A family feud is happening.

Life in a staircase is not always going smoothly, sometimes there are problems that arise that cause a husband to hate his wife or vice versa, so that arises undue words, speculation, oaths that are not-not, and among them swear not to associate with his partner. It can be a factor in divorce. As is the case in the North Aceh district, divorce claims that occurred reached the number of 2044 cases counted from January 2021 to November 2023. Whereas divorce divorces there were 521 cases between January 2021 and November 2023, all of this data in the Sharia Court of Lhoksukon.<sup>[16]</sup> Accordingly, it is known that divorce is a higher case than divorce.

Based on the report of the divorce factors issued by the Shariah Court of Lhoksukon, obtained data the reason for the wife's jurisdiction to divorce is as follows:

**Table 1:** Yuridis's Wife's Divorce The Husband's Prosecution at Sharia Court in Lhoksukon 2021-2023

No	Divorce Caused Factors	YEARS		
		2021	2022	2023
1	Unmarrittal Relationship	17	35	18
2	Drunk	4	8	1
3	Drugs Use	-	-	-
4	Gambling	13	19	7
5	Abandonment	69	84	61
6	Imprisonment	9	3	8
7	Polygamous	21	13	12
8	Domestic Violence	77	48	42
9	Body defects	8	3	-
10	Family feud	365	397	276
11	Arrange marriage	-	-	-
12	Convert	-	1	-
13	Economy	104	117	204
Total		687	728	629

**Source:** Lhoksukon Sharia Court Case Search Information System. <https://www.sipp.ms-lhoksukon.go.id>.

According to the above data, divorces occurred in North Aceh district due to several cases, among others: Zina, drunkenness, gambling, abandonment of one party, imprisonment, polygamy, domestic violence (HDRT), disabilities, quarrels, forced marriage, mutilation, and economics. Currently, the highest number of divorces occurred in 2022, with 728 cases, and since then there has been a decrease, albeit not significantly. However, the conflict factor always occupies the biggest reason for a divorce. It happened because of a misunderstanding on one side.

The Lhoksukon Sharia Court recorded 2044 divorce cases of couples in northern Aceh from January 2021 to November 2023. It's known that 51% of these divorces are caused by constant quarrels.<sup>[17]</sup> According to the expression of the divorce judgment, it is known that the result of divorce is dominant, among other things, due to disputes between the parties. Juridically, Article 39 (2) of the Law No. 1 of 1974 on Marriages, which has been promulgated in Article 19 of the Civil Code No. 9 of 1975, states that the grounds for divorce claimed in the North Aceh district are dominated by the factors of domestic disputes.

## Conclusion

Based on the description above, it is possible to conclude that the cause of divorce by the wife against the husband (divorce claimed) is caused by disputes (51%) that occurred in the households of each couple. This creates disharmony in the family that ended in divorce, divorce cases that belonged to the category of divorces claimed in the northern district of Aceh reached the number of 2,044 cases, while the divorce case only had 521 cases.

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