

The Practice of Remarriage After Divorce Outside the Religious Court: A Case Study in Tatengger Village Angkola Muara Tais Subdistrict

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Abstract : Divorce outside the Religious Court is still a common practice among Muslim communities, including in Tatengger Village, Angkola Muara Tais District, and raises further legal issues regarding marital status and remarriage practices. This study aims to analyze the implementation of remarriage after divorce outside the Religious Court and review it from the perspective of Islamic law and Indonesian positive law. This study uses a qualitative method with a normative and empirical juridical approach, through field studies and literature studies. Data was obtained through interviews with married couples, religious leaders, and community leaders, then analyzed descriptively and analytically. The results of the study show that remarriage is carried out as a form of precaution (Ihtiyati) to maintain the validity of the husband and wife relationship due to doubts about the status of divorce. In Islamic law, this practice is related to the concept of *Tajdid Al-Nikah*, which has certain legal implications, while in positive law, this practice has no legal force and has the potential to cause legal uncertainty. This study emphasizes the need for harmonization between Islamic law and state law in family law practice.

Keywords: *Divorce; Remarriage; Islamic Law; Religious Court.*

INTRODUCTION

Marriage is a fundamental institution in Islamic law and Indonesian national law, which aims to establish a family that is Sakinah, Mawaddah, and Rahmah.¹ The positive law perspective views marriage not only as a physical and spiritual bond between a man and a woman, but also as a legal event that gives rise to civil law consequences regulated and protected by the state.² Therefore, Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI) emphasizes the importance of recording marriages and divorces in order to ensure legal certainty and protect the rights of all parties, especially women and children.³

However, in religious social practices within the community, there is still a phenomenon of divorce outside of the Religious Court, often known as informal divorce. This type of divorce is generally based on the community's understanding of fiqh, which considers divorce to be

¹ Syamsiah Nur dkk, *Fikih Munakabat Hukum Perkawinan dalam Islam, Ii* (Medan: Perdana Publishing, 2022).

² Republik Indonesia, "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Peraturan Pemerintah Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan*, no. 1 (1974): 2, <https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>.

³ Muhammad Arsad Nasution, "Perceraian Menurut Kompilasi Hukum Islam (KHI) dan Fiqh," *Jurnal el-Qanuniy: Jurnal Ilmu-Ilmu Keyariaban dan Pranata Sosial* 4, no. 2 (2018): 157–70, <https://doi.org/10.24952/el-qanuniy.v4i2.2385>.

religiously valid even if it is not carried out through the state legal mechanism.⁴ In fact, according to the provisions of Article 115 of the KHI, a divorce is only considered valid if it is carried out before a Religious Court.⁵ after peace efforts failed. The differences between state legal norms and community fiqh practices give rise to further legal issues, particularly regarding marital status, the iddah period, the rights and obligations of husbands and wives, and the validity of reconciliation or remarriage.

One of the effects of divorce outside the Religious Court is the emergence of the practice of remarriage for couples who have been separated for a certain period of time. In the context of community fiqh, especially in rural areas, remarriage is often understood as a form of caution (Ihtiyati) to avoid doubts about the validity of the husband and wife relationship.⁶ especially if the divorce is carried out with a divorce pronouncement that is unclear in terms of its number and form, or is uttered in a state of emotion. This practice is known in fiqh terminology as *Tajdid An Nikah*,⁷ is the renewal of the marriage contract as an effort to strengthen the marriage bond.⁸

This phenomenon also occurred in Tatengger Village, Angkola Muara Tais Subdistrict, where a married couple divorced outside of the Religious Court. After a long period of separation, they decided to remarry outside of the Office of Religious Affairs based on the advice of religious scholars and local community leaders.⁹ This practice has sparked debate among the public regarding its validity, both from the perspective of Islamic law and positive law, given that, normatively, state law does not recognise divorce outside of the Religious Court and does not explicitly regulate the practice of remarriage based on informal divorce.

As far as the author's research indicates, previous studies have mostly discussed divorce outside of court from the aspect of the legality of divorce,¹⁰ legal implications for women and children, or a comparison of the views of the fiqh school with positive law. However, studies that specifically examine the practice of remarriage after divorce outside the Religious Court as a form of fiqh response in society and are empirically studied in a local context are still relatively limited.

⁴ M Muhsin dan Soleh Hasan Wahid, "Talak di Luar Pengadilan Perspektif Fikih dan Hukum Positif," *Al-Syakhsyiyah: Journal of Law & Family Studies* 3, no. 1 (2021): 67–84, <https://doi.org/10.21154/syakhsyiyah.v3i1.3063>.

⁵ Republik Indonesia, *Kompilasi Hukum Islam* (Pustaka Widyatama (Publisher), 2004).

⁶ Mohammad Nafik, "Fenomena Tajdid an-Nikah dalam Praktik Hukum Keluarga Islam," *Realita: Jurnal Penelitian dan Kebudayaan Islam* 14, no. 2 (2022).

⁷ Masjfuk Zuhdi, *Pengantar Hukum Islam* (Jakarta: RajaGrafindo Persada, 2011).

⁸ Roos Nelly dan Fahmi Khairil, "Tata Cara Pelaksanaan Nikah, Cerai dan Rujuk Menurut Kompilasi Hukum Islam," *Jurnal Institusi Politeknik Ganesha Medan* 7, no. 1 (2024): 42–53.

⁹ Indah Asana, "Rujuk dan Tajdid Al-Nikah Sebagai Upaya Membentuk Keluarga Sakinah," *Institut Agama Islam Negeri* (2016).

¹⁰ Muhammad Za'im Muhibbullah dkk, "Perkawinan dalam Perspektif Hukum Islam dan Hukum Negara," *Indonesian Journal of Islamic Law and Civil Law* 2, no. 2 (2021).

Therefore, this study has an important position in filling this gap by examining the religious social practices that exist in society and analysing them from the perspective of Islamic law and positive law.

Based on this background, this study aims to examine in depth the practice of remarriage after divorce outside the Religious Court in Tatengger Village, Angkola Muara Tais Subdistrict, and analyse it from the perspective of Islamic law and positive law in Indonesia. This study is expected to contribute academically to the development of Islamic family law studies and to provide material for consideration by the community and stakeholders in addressing the practice of divorce and remarriage outside the formal legal mechanism.

METHOD

This research is qualitative research with an empirical juridical approach.¹¹ This approach is used to examine law not only as norms written in legislation and sources of Islamic law, but also as practices that are alive and applied in society.¹² With this approach, this study seeks to comprehensively understand the practice of remarriage after divorce outside the Religious Court and the religious and social rationale behind it.

The research was conducted in Tatengger Village, Angkola Muara Tais Subdistrict, considering that in this area there is a practice of divorce outside the Religious Court, followed by remarriage based on the fiqh considerations of the community and the advice of local religious scholars. The research subjects included married couples who had remarried, religious scholars, community leaders, and other parties considered to have knowledge of and direct involvement in these practices.

Research data was obtained through in-depth interviews, observation, and documentation. Interviews were conducted in person and were semi-structured in order to explore information about the chronology of divorce, the reasons for remarriage, and the community's religious understanding of *Talak*, *Rujuk*, and *Tajdid Nikah*. Observations were used to understand the social and religious context of the local community, while documentation was used to reinforce field data in the form of notes, archives, and relevant supporting documents.

Analysis was conducted descriptively and analytically through the stages of data reduction, data presentation, and conclusion drawing. The data obtained from the field was analysed by linking empirical findings with Islamic law provisions, the Compilation of Islamic Law, and laws and regulations related to marriage and divorce. To maintain data validity, this study used source and

¹¹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosda Karya, 2018).

¹² Soerjono Soekanto, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2017).

method triangulation techniques, namely comparing interview results between informants and combining them with the results of observations and documentation obtained during the study.

RESULTS AND DISCUSSION

The Practice of Divorce Outside the Religious Court in the Social Reality of the Tatengger Village Community

Research findings indicate that divorce practices in Tatengger Village, Angkola Muara Tais Subdistrict, are still largely conducted outside the mechanisms of the Religious Court. Divorce generally occurs through the husband directly pronouncing talaq to his wife, either with clear wording (Sarih) or with insinuating wording (Kinayah),¹³ even in one session accompanied by the mention of one, two, and three divorces at once. This practice is common in emotional situations and domestic disputes, as revealed in interviews with research informants.

In the perspective of fiqh munakahat, divorce is a legal act that is valid if it fulfils certain conditions and requirements.¹⁴ Sayyid Sabiq explains that divorce is the last resort permitted by Islamic law when marital life can no longer be sustained, even though marriage is essentially an institution that is strongly encouraged to be preserved for the sake of the welfare of the family and offspring.¹⁵ However, in the practice of the Tatengger village community, divorce is understood more as the prerogative of the husband, which can be exercised directly without formal state procedures..¹⁶

This understanding differs from positive law in Indonesia. The Compilation of Islamic Law explicitly states that divorce is only valid if it is carried out before a Religious Court after attempts at reconciliation have failed (Article 115 KHI).¹⁷ Similarly, Law No. 1 of 1974 stipulates that divorce is a legal event that must go through the judicial mechanism in order to guarantee legal certainty and protect the rights of the parties involved. Thus, divorces conducted outside the Religious Court have no formal legal force, even though they are often considered valid by society in social and religious terms.

The tension between the community's understanding of fiqh and positive law is what has led to further issues, particularly regarding the status of the relationship between husband and wife

¹³ Nur dkk, *Fikih Munakahat Hukum Perkawinan dalam Islam*.

¹⁴ Wahbah Az-Zuhaili, "Fiqh Islam Wa Adillatuhu, Jilid 3, Cetakan 10" (Darul Fikr, 2007), 369.

¹⁵ Z Hsb and IR Siregar AM Nst, A Hamid, R Ritonga, "The Principle of Maslahah in Marriage Registration Policy: Preventing the Exploitation of Women and Children in Mandailing Natal Regency," *Madania: Jurnal Kajian Keislaman* 29, no. 2 (2025): 273–84.

¹⁶ Muhsin dan Wahid, "Talak di Luar Pengadilan Perspektif Fikih dan Hukum Positif."

¹⁷ Republik Indonesia, *Kompilasi Hukum Islam*.

after divorce,¹⁸ the waiting period, and the possibility of returning to live together. In the context of Tatengger Village, informal divorce is not only a matter for the couple, but also involves local religious authorities, such as religious scholars and traditional leaders, who have a strong influence in determining the resolution of domestic issues.¹⁹

After the couple had been separated for more than one year and five months, they wanted to rebuild their household. However, because the separation period had exceeded the iddah limit according to community understanding, and there were doubts regarding the number of talaqs that had been issued, the rujuk mechanism as recognised in positive law was not pursued. Instead, the couple chose to remarry with a new marriage contract outside the Office of Religious Affairs.²⁰

This remarriage was carried out on the basis of advice from local religious scholars who considered that this step was a form of caution (Ihtiyati).²¹ In their view, the ambiguity surrounding the status of divorce whether the divorce pronounced was *Sarih* or *kinayah*, and whether it was *Ba'in Kubra* could potentially cast doubt on the validity of the marital relationship if the couple immediately resumed living together without a new contract. Therefore, renewing the marriage contract is seen as a solution to avoid a relationship that is *Syubhat*.

This practice cannot be separated from the social and cultural constructs of the local community. In the customs of the Batak Angkola people living in Tatengger Village, marriage is viewed as a sacred bond that ideally only occurs once in a lifetime. This view encourages efforts at domestic reconciliation, including through remarriage, if the couple still has the good intention of maintaining the family. The advice of parents, traditional leaders, and religious scholars is an important factor in guiding couples to choose remarriage as a peaceful solution.

Analysis of Islamic Law on the Practice of Remarriage (Tajdid Nikah)

In the perspective of Islamic law, the issue of remarriage after divorce outside the Religious Court cannot be separated from the concepts of talak, rujuk, and *Tajdid Nikah* in fiqh Munakahat. Talak in Islam is basically a permissible legal act, but it is greatly detested by Allah SWT if done without a valid reason.²² Sayyid Sabiq emphasised that divorce is a last resort when marital life can

¹⁸ Nelly dan Khairil, "Tata Cara Pelaksanaan Nikah, Cerai dan Rujuk Menurut Kompilasi Hukum Islam."

¹⁹ Indah Asana, "Rujuk dan Tajdid Al-Nikah Sebagai Upaya Membentuk Keluarga Sakinah."

²⁰ Mohammad Nafik, "Fenomena Tajdid an-Nikāḥ dalam Praktik Hukum Keluarga Islam."

²¹ Vita Sari Isnaidar, Endang Rochmiatun, dan Santosa, "Hatobangon: Perannya dalam Penyelesaian Adat Pernikahan Masyarakat Batak Angkola," *Tanjak: Sejarah dan Peradaban Islam* 4, no. 2 SE-Articles (Agustus 2024): 19–34, <https://doi.org/10.19109/tanjak.v4i2.23916>.

²² Abi al-Hasan 'Ali bin Muhammad bin Habib al-Mawardi al-Basri, *Al-Hawi al-Kabir fi Fiqh Mazhab al-Imam al-Shafi'e* (Beirut, Lebanon.: Dar al-Kutub al-Ilmiyyah, 1994), <https://ia802303.us.archive.org/19/items/FP56035/hakb06.pdf>.

no longer be sustained and there is concern that continuing the marriage will cause greater harm.²³ Therefore, even though divorce is valid according to Islamic law if it fulfils the conditions and requirements, Islam still encourages caution and careful consideration before proceeding with it.

In the case that occurred in Tatengger Village, the husband pronounced the divorce directly with words that included one, two, and three divorces at once, and it was done in an emotional state. In fiqh, this issue has become a classic debate among scholars, both in terms of the validity of divorce pronounced in a state of anger and the calculation of divorces pronounced at once in one session. Some scholars argue that a divorce pronounced in a *Sarih* manner remains valid even if it is done in a state of anger, as long as the perpetrator's mind is still functioning. However, there are also more cautious views that take into account the psychological condition and intentions of the person pronouncing the divorce.

This uncertainty regarding the status of divorce has given rise to a cautious attitude (*Ihtiyati*) in the practices of the Tatengger village community. In situations where a couple has been separated for a long time and has passed the *Iddah* period, but there is still doubt as to whether the divorce that was pronounced has reached talak ba'in kubra or not, renewing the marriage contract is seen as the safest solution from a religious perspective.²⁴ In this context, *Tajdid Nikah* is not understood as a disregard for the law of divorce, but rather as an effort to maintain the validity of the marital relationship in order to avoid practices that could potentially be considered dubious.

Masjful Zuhdi explains that the concept of *tajdid* in Islam contains the meaning of renewal and reinforcing religious values that have shifted in social practice.²⁵ In the context of marriage, *Tajdid Nikah* can be understood as an effort to repair and strengthen marital bonds that have been broken socially and psychologically. However, *Tajdid Nikah* cannot be separated from its accompanying legal implications.

Some Shafi'i scholars, such as Yusuf al-Ardabili al-Shafi'i, argue that renewing a marriage contract has serious legal consequences, including the obligation to pay a new dowry and implications for calculating the number of divorces.²⁶ This view shows that *Tajdid Nikah* is not merely a formality or a symbol of caution, but can be understood as an implicit acknowledgement of a previous divorce. Therefore, if the renewal of the marriage contract is carried out repeatedly until it reaches the limit of talak, it may imply the necessity of *Muhallil*.

²³ Sayyid Sabiq, *Fiqh Sunnah*, vol. 2 (Beirut: Dar al-Fikr, 2000).

²⁴ Mohammad Nafik, "Fenomena *Tajdid an-Nikāḥ* dalam Praktik Hukum Keluarga Islam."

²⁵ Zuhdi, *Pengantar Hukum Islam*.

²⁶ Yusuf al-Ardabili al-Shafi'i, *al-Anwār li A'māl al-Abrār* (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, n.d.).

In practice in Tatengger Village, these normative fiqh aspects are not entirely the main considerations. The community places greater emphasis on the good intentions of the couple, the advice of religious scholars, and the goal of maintaining the honour and harmony of the household. This shows that fiqh that is alive in the community (living fiqh) is often contextual and pragmatic, although it does not always align with the systematic construction of classical fiqh. Thus, the practice of remarriage in Tatengger Village reflects the dynamics of the application of Islamic law, which is influenced by the social and cultural context and the level of religious understanding of the community..

Analysis of Positive Law on the Practice of Remarriage

Different from the Islamic legal approach, which allows for variations in scholars' opinions, Indonesian positive law treats marriage and divorce as legal events that must comply with formal state procedures. Law No. 1 of 1974 on Marriage emphasises that marriage is a physical and spiritual bond that is not only religious in nature but also has public legal dimensions.²⁷ Therefore, the registration of marriages and divorces is a key instrument for ensuring legal certainty and protecting the rights of the parties involved.

The Compilation of Islamic Law (KHI) explicitly states that divorce is only valid if it is carried out before the Religious Court (Article 115 of the KHI). Furthermore, Article 117 of the KHI emphasises that talak is a declaration made by the husband before the Religious Court, which is one of the causes for the dissolution of marriage. This provision indicates that positive law does not recognise talak pronounced outside the judicial mechanism, even though religiously, such talak may be considered valid by some members of the community.²⁸

Within the framework of positive law, divorces outside the Religious Court have no formal legal force.²⁹ As a result, legally speaking, the couple concerned are still bound by a valid marriage. The logical consequence of this situation is that the practice of remarriage without a court ruling and without official registration has the potential to give rise to new legal conflicts.³⁰ Such remarriage is not only problematic from an administrative point of view, but also has implications for the legal status of children, inheritance rights, and legal protection for women.

²⁷ Republik Indonesia, "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," Pub. L. No. 1, Peraturan Pemerintah Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan 2 (1974), <https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>.

²⁸ Nasution, "Perceraian Menurut Kompilasi Hukum Islam (KHI) dan Fiqh."

²⁹ Asrul Hamid, "Praktik Perceraian Masyarakat Mandailing Natal: Analisis Keberlanjutan Dari Fiqh Kepada Hukum Perkawinan Di Indonesia," *Syar-E: Jurnal Kajian Ekonomi Hukum Syariah* 6, no. 2 (2020): 69–90, <https://doi.org/10.37567/shar-e.v6i2.189>.

³⁰ Muhsin dan Wahid, "Talak di Luar Pengadilan Perspektif Fikih dan Hukum Positif."

Positive law does not recognise the concept of *Tajdid Nikah* as understood in fiqh. The state only recognises reconciliation that takes place during the iddah period and must be recorded by a Marriage Registrar.³¹ Therefore, the practice of remarriage after divorce outside the Religious Court shows that there is a considerable gap between state law and the socio-religious reality of society. This gap is not only caused by differences in norms, but also by the community's limited access to and understanding of formal legal procedures.

Thus, the practice of remarriage in Tatengger Village can be understood as the community's response to a legal system that is considered complicated, formalistic, and less accommodating to socio-religious realities. However, from the state's point of view, this practice has the potential to undermine the objectives of marriage law, namely to create legal certainty and protection for vulnerable parties.

Summary of Findings and Law Implications

Based on the analysis of Islamic law and positive law above, it can be synthesised that the practice of remarriage after divorce outside the Religious Court in Tatengger Village is a meeting point and a point of conflict between two legal systems that coexist. On the one hand, Islamic law as understood in the context of community fiqh provides room for a cautious approach (*Ihtiyati*) through *Tajdid Nikah* as an effort to maintain the validity of the husband-wife relationship. On the other hand, positive law demands legal certainty through formal procedures that are non-negotiable.

The practice of remarriage in this context serves as a socio-religious mechanism for resolving domestic conflicts arising from informal divorce. Although it has no legal legitimacy under state law, this practice is considered valid and meaningful by the community because it is supported by local religious authorities and living traditional values. This shows that Islamic family law at the local level cannot be understood solely through the text of legislation, but must also be seen as a dynamic social practice.

The legal implication of this finding is the need for harmonisation between Islamic law and positive law. The state needs to improve public legal literacy regarding divorce and legal marriage procedures, without neglecting the sensitivity of religious values that exist within society. Conversely, local religious authorities also need to be encouraged to provide a more comprehensive understanding of the legal consequences of divorce and marriage outside the state mechanism.

³¹ Moh. Najib Syaf, "Studi Komparasi Konsep Rujuk dalam Fikih dan KHI," *Darussalam: Jurnal Pendidikan, Komunikasi dan Pemikiran Hukum Islam* 15, no. 2 (2024).

Thus, the practice of remarriage after divorce outside the Religious Court cannot be viewed solely as a violation of the law, but also as a reflection of society's need for legal solutions that are considered fair, safe, and meaningful in religious terms. This finding also emphasises the importance of an integrative approach in the development of Islamic family law in Indonesia, so that the law is not only normative, but also responsive to social realities.

CONCLUSION

Based on the results of research and discussion, it can be concluded that the practice of divorce outside the Religious Court that occurs in Tatengger Village, Angkola Muara Tais District, is a socio-religious phenomenon that is still alive and practised by the community. These divorces are generally carried out through the direct pronouncement of talak by the husband without going through formal legal mechanisms, so that in positive law they have no legal force, even though religiously they are understood to be valid by some members of the community.

The practice of remarriage after divorce outside the Religious Court is carried out as a form of precaution (Ihtiyati) to maintain the validity of the husband and wife relationship. From an Islamic legal perspective, this practice is related to the concept of *Tajdid Nikah*, which is understood as the renewal of the marriage contract to avoid potentially dubious relationships, especially when there are doubts about the status of divorce and the *Iddah* period. However, in normative fiqh, *Tajdid Nikah* has serious legal implications, including the obligation of a new dowry and consequences for the calculation of the number of divorces, so it cannot be viewed merely as a religious formality.

From a positive law perspective, the practice of divorce and remarriage outside the Religious Court is contrary to the provisions of Law No. 1 of 1974 and the Compilation of Islamic Law, which require divorce to be carried out before the Religious Court and officially recorded. This inconsistency has the potential to create legal uncertainty, particularly with regard to marital status, the protection of women's and children's rights, and other legal consequences such as inheritance rights and population administration.

Thus, the practice of remarriage after divorce outside the Religious Court reflects a gap between Islamic legal norms as practised socially and the applicable positive legal provisions. This finding emphasises the importance of harmonising Islamic law and state law by improving public legal literacy, strengthening the role of religious and traditional leaders in providing legal education, and adopting a more responsive approach to Islamic family law that takes social realities into account without neglecting the principle of legal certainty.

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