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THE COMPLEXITY OF THE DIVORCE LAWSUIT PROCESS FOR WIVES WHO ARE CIVIL SERVANTS (ASN): A PERSPECTIVE OF THE ACEH TIMUR ULAMA CONSULTATIVE COUNCIL (MPU)(A CASE STUDY IN PEREULAK KOTA DISTRICT, ACEH)

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Abstract : This study examines the process of divorce (talaq) undertaken by Civil Servants (Pegawai Negeri Sipil/PNS) in Peureulak Kota District and analyzes the views of the Aceh Ulama Consultative Council (Majelis Permusyawaratan Ulama/MPU) on the implementation of government regulations governing divorce permits for civil servants. The objectives of the study are to identify the constraints faced by PNS in obtaining divorce authorization and to assess the implications of these regulations for Islamic Family Law in Aceh, which is grounded in Sharia-based values. The research employs a qualitative methodology with a descriptive-analytical approach, utilizing interviews with village residents (warga gampong), tuha peut (members of the village consultative council), imum gampong (village imams), and geuchik (village heads). The findings indicate that although the grounds for divorce cited by civil servants meet the Sharia requirements, they nonetheless encounter significant difficulties in securing official permission from their superiors due to stringent administrative procedures. From the perspective of Islamic Family Law, this situation reflects an inherent tension between the individual right to initiate talaq and the state's policy objective of safeguarding the public interest (maslahah ʿāmmah). The MPU Aceh maintains that such regulations are consistent with the principles of Maqasid al-Sharia, particularly the preservation of family integrity (hifz al-nasl) and social order (hifz al-mujtamaʿ). Accordingly, restrictions on

divorce permits for civil servants may be understood as a form of tanzhīmī (administrative regulation) intended to support the objectives of the Sharia in realizing justice and social welfare within Islamic Family Law.

Abstrak : Penelitian ini membahas proses perceraian (talaq) yang dilakukan oleh Pegawai Negeri Sipil (PNS) di Kecamatan Peureulak Kota serta menganalisis pandangan Majelis Permusyawaratan Ulama (MPU) Aceh terhadap penerapan peraturan pemerintah yang mengatur izin perceraian bagi PNS. Tujuan penelitian ini adalah untuk mengidentifikasi kendala yang dihadapi PNS dalam memperoleh izin perceraian dan menilai implikasinya terhadap Hukum Keluarga Islam di Aceh yang berlandaskan nilai-nilai syariat. Metode penelitian yang digunakan adalah kualitatif dengan pendekatan deskriptif-analitik melalui wawancara dengan warga gampong, tuha peut, imum gampong, dan geuchik. Hasil penelitian menunjukkan bahwa meskipun alasan perceraian para PNS telah memenuhi ketentuan syar'i, mereka tetap mengalami kesulitan dalam memperoleh surat izin dari atasan karena prosedur administratif yang ketat. Dari sudut pandang Hukum Keluarga Islam, kondisi ini menggambarkan adanya ketegangan antara hak individu untuk melakukan talaq dan kebijakan pemerintah dalam menjaga kemaslahatan umum. MPU Aceh berpendapat bahwa peraturan tersebut sejalan dengan prinsip Maqashid Syariah, yakni menjaga keutuhan keluarga (hifzh al-nasl) dan ketertiban sosial (hifzh al-mujtama'). Oleh karena itu, kebijakan pembatasan izin perceraian bagi PNS dapat dipandang sebagai upaya tanzhīmī (pengaturan administratif) yang mendukung tujuan syariat dalam mewujudkan kemaslahatan dan keadilan dalam Hukum Keluarga Islam

INTRODUCTION

Marriage, as defined in Article 1 paragraph (2) of Law Number 1 of 1974, is "a physical and spiritual bond between a man and a woman as husband and wife, with the purpose of forming a happy and enduring family (household) based on the belief in the One and Only God" (Nuruddin & Tarigan, 2006). In Islam, marriage is regarded as an ʿaqdun sakran (a sacred covenant) between a man and a woman to establish a household characterized by sakinah, mawaddah, and raḥmah (Compilation of Islamic Law/KHI, Article 3). It constitutes one of the means through which human beings fulfill the objectives of Islamic law (maqasid al-Sharia), particularly the preservation of lineage (hifz al-nasl), honor (hifz al-ʿirḍ), and psychological well-being or life (hifz al-nafs).

Nevertheless, although marriage is intended to create harmony, in practice domestic conflicts frequently arise and may culminate in divorce (talaq). Divorce is a legally permissible act that is nevertheless strongly disfavored by God, as it may generate profound social and psychological consequences for both the family and society at large. In certain circumstances, however, divorce may serve as an

emergency remedy (darurah) to prevent greater harm, such as domestic violence or the violation of spousal rights.

For Civil Servants (Pegawai Negeri Sipil—PNS), divorce is strictly regulated under Government Regulation Number 45 of 1990, which amends Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. This regulation requires every PNS to obtain prior authorization from their superior before initiating divorce proceedings. The policy aims to safeguard institutional integrity, prevent the abuse of the right to talaq, and uphold moral order among state officials. However, in practice, this policy often creates significant obstacles for PNS particularly for women who are victims of domestic violence because the permit application process is frequently complex and protracted.

Preliminary observations conducted by the author in Peureulak Kota District revealed cases such as those experienced by "Mrs. Mawar" and "Mrs. Fitriani," two female civil servants who were victims of domestic violence yet encountered serious difficulties in filing for divorce due to their inability to obtain authorization from their superiors. This situation gives rise to a dilemma between the enforcement of state administrative law and the realization of justice as envisaged by Islamic Family Law.

This context reveals a clear research gap: to what extent is the policy requiring divorce permits for civil servants consistent with the principles of maqasid al-Sharia and juristic maxims such as sadd al-dhara'i (blocking the means to harm) and the principle of maslahah (public welfare)? Does this policy function as a protective mechanism, or does it instead become an impediment for individuals seeking justice under emergency circumstances

Based on these considerations, this study seeks to examine the process through which Civil Servants (PNS) in Peureulak Kota District obtain divorce permits from their superiors, with particular attention to the obstacles they encounter; to analyze the perspective of the Aceh Ulama Consultative Council (Majelis Permusyawaratan Ulama—MPU) regarding the implementation of government regulations on divorce permits for PNS from the standpoint of Islamic Family Law; and to assess the extent to which this policy can be evaluated

and justified within the framework of Islamic law through the principles of maqasid al-Sharia, maslahah, darurah, and sadd al-dhara'i.

Accordingly, this study aims to analyze the policy on divorce permits for civil servants from the perspective of Islamic Family Law, to identify its implications for individual rights, and to assess the extent to which it aligns with the principles of maqasid al-Sharia. It is expected that this research will contribute academically to the development of a more just Islamic family law discourse and serve as a reference for policymakers and Islamic institutions in balancing positive law with the norms and objectives of Islamic law.

RESEARCH METHODS

This study employs a descriptive-analytic research design with a sociological–juridical (empirical sociological) approach, aiming to provide a comprehensive account of divorce practices among Civil Servants and to analyze these practices in light of legal theories and applicable statutory regulations, particularly Government Regulation No. 45 of 1990 amending Government Regulation No. 10 of 1983 on Marriage and Divorce Permits for Civil Servants. The research is sociological in nature, as it involves direct field engagement to observe and assess prevailing social realities (Nasir Budiman, 2004). Research informants were selected through purposive sampling, based on the consideration that they possess relevant knowledge and experience related to the issue under study, including Religious Court judges, officials of the Regional Civil Service and Human Resources Development Agency (BKPSDM), direct supervisors of civil servants, and PNS who have undergone divorce proceedings. Where additional data were required, snowball sampling was employed based on referrals from prior informants until data saturation was achieved (Sugiyono, 2013). Data analysis was conducted using the Miles and Huberman model, encompassing data reduction, data display, and conclusion drawing/verification, in order to develop an in-depth understanding of divorce practices among civil servants and their conformity with the principles of Islamic law and the prevailing positive legal framework (Miles & Huberman, 1994).

Overall, this descriptive analytic and empirical sociological approach enables the researcher to directly examine and evaluate the realities of divorce

practices among PNS in the study area, while also providing a systematic assessment of the specific government regulations governing divorce for civil servants.

DISCUSSION/RESULTS AND DISCUSSION

The Perspective of the East Aceh Ulama Consultative Council (MPU) on the Difficulties Faced by Female Civil Servants in Filing for Divorce

As part of the field research, the researcher conducted interviews with government-related actors within the community. Given that Aceh implements an Islamic legal and social framework, the Aceh Ulama Consultative Council constitutes a key institutional authority. Accordingly, the interview questions were directed primarily at eliciting the MPU's views on the requirement for Civil Servants to obtain a divorce permit from their superiors.

Based on an interview with T. Muhammad Thahir, MD, Vice Chair I of the Aceh Timur MPU, the MPU views the enactment of Government Regulation No. 45 of 1990 as a policy intended to promote public welfare. He emphasized that every regulation is fundamentally designed to serve the well-being of society, including this regulation. According to him, the regulation does not prohibit divorce for civil servants; rather, it seeks to preserve the integrity of marriages that have already been established so that divorce is not pursued hastily. He further explained that divorce is not categorically forbidden for PNS, but is subject to procedural stages. As long as the prescribed conditions are met, divorce remains permissible and the required permit will ultimately be issued. From this perspective, he argued that Government Regulation No. 45 of 1990 continues to realize maslahah (public benefit), particularly because divorce is an act that, while permissible, is disliked by God. Therefore, the regulation is understood as a governmental effort to maintain marital harmony within society, even though its application is limited to civil servants.

According to T. Muhammad Thahir, the regulation has a positive impact in fostering household stability and discouraging individuals from dissolving marriages too easily, especially given the moral and religious sensitivity surrounding divorce. Consequently, he maintained that this policy should be viewed as providing maslahah for those bound by it (Nawawi, 2023). In the same

interview, he also explained that, in order to proceed with a divorce, civil servants are required to obtain a recommendation letter from the MPU, which must be arranged by the PNS seeking the divorce.

Theoretical Framework of Divorce in Islamic Law

According to Oka Setiawan, divorce refers to the dissolution of a marriage based on a judicial decision or a claim brought by one of the parties. Similarly, Article 114 of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) provides that the termination of marriage may occur as a result of divorce initiated either by the husband or the wife. Article 116 of the KHI further stipulates that divorce may be granted on the following grounds: (a) one party commits adultery or becomes an alcoholic, gambler, or engages in other forms of chronic misconduct that are difficult to remedy; (b) one party abandons the other for two consecutive years without lawful permission or a valid reason, or due to circumstances beyond their control; (c) one party is sentenced to imprisonment for five years or more after the marriage has taken place; (d) one party suffers from a physical disability or illness that prevents the fulfillment of marital obligations; and (e) persistent and irreconcilable disputes between husband and wife that eliminate any reasonable prospect of a harmonious marital life.

Civil Servants, currently referred to as State Civil Apparatus, play a strategic role in governance and national development. They are expected to uphold professionalism, responsibility, and loyalty to the state, while providing equitable and impartial public services. The implementation of a merit-based system grounded in qualifications, competence, and performance is essential to fostering a professional and high-quality civil service. Nevertheless, significant challenges remain in the enforcement of regulations, particularly those concerning polygamy among PNS. Despite the existence of statutory provisions regulating polygamy, many individuals, including civil servants, tend to disregard these rules, resulting in a gap between regulatory objectives and their practical implementation. Addressing this issue requires comprehensive measures, including legal reform, stricter sanctions, enhanced oversight, and effective educational campaigns to promote compliance with applicable regulations (Widiana, 2018).

Marriage and divorce among Indonesian civil servants are specifically regulated by Government Regulation No. 10 of 1983 and its amendment, Government Regulation No. 45 of 1990, which require PNS to obtain written permission from their superiors prior to entering into marriage or initiating divorce proceedings (Filardhi et al., 2024). This regulatory framework is intended to preserve the role of civil servants as moral exemplars within society. Empirical studies indicate that factors influencing divorce among PNS include educational background, duration of marriage, income level, and domestic problems (Riyanto, 2019). The requirement of divorce authorization for PNS is generally considered consistent with the five pillars of maqasid al-Shariah and does not contradict the objectives of Islamic law. However, Article 4 paragraph (2) of Government Regulation No. 45 of 1990 has been criticized for exhibiting gender bias, as it is viewed as inconsistent with the principles of gender equality enshrined in the 1945 Constitution, the Marriage Law, and Presidential Instruction No. 9 of 2000 on Gender Mainstreaming.

In addition, Government Regulation No. 10 of 1983 also imposes obligations on superiors and authorized officials in handling applications for divorce permits, including provisions governing post-divorce salary distribution, particularly where child support obligations persist. Noncompliance with these requirements exposes civil servants seeking divorce to administrative sanctions, as stipulated in Article 3 paragraph (1) of Government Regulation No. 10 of 1983, which states: “A Civil Servant who intends to divorce must first obtain permission from the competent authority.” This obligation arises from the civil servant’s status as a state apparatus, servant of the state, and public servant, and is intended to ensure that divorce is pursued only as a last resort after all reasonable efforts to preserve the marriage have failed. Accordingly, divorce is framed as an ultimate measure, undertaken only when no viable alternatives remain. The requirement to seek prior authorization also aims to remind civil servants that the fundamental purpose of marriage is to establish a harmonious and enduring family life, thereby justifying the strict regulation of divorce. Moreover, this mechanism provides an opportunity for superiors and relevant officials to facilitate reconciliation.

Consequently, civil servants are permitted to proceed with divorce only on legally and substantively valid grounds.

Grounds for the Dissolution of Marriage

As cited in the work of Hilman Hadi Kusuma, several grounds may justify the dissolution of a marriage (Tutik, n.d.). These include: (a) when either the husband or the wife becomes an alcoholic, gambler, adulterer, or drug addict whose condition is difficult to cure; (b) when one party abandons the other without consent or a lawful justification beyond their control; (c) when either spouse is sentenced to imprisonment for five years or more after the marriage has been concluded; (d) when one party commits acts of violence or other forms of cruelty that cause physical or psychological harm to the other; (e) when one party suffers from a disability or illness that renders them incapable of fulfilling their marital obligations as husband or wife; and (f) when continuous disputes occur within the household, resulting in the breakdown of marital harmony.

Positive law in Indonesia regulates the grounds upon which spouses may lawfully seek divorce. These provisions are intended to restrict and formalize divorce by requiring that it be adjudicated before a court of law and supported by legally recognized reasons. Article 39 paragraph (2) of Law No. 1 of 1974 stipulates that divorce may only be granted on the basis of compelling reasons demonstrating that the husband and wife are no longer able to live together harmoniously. As previously noted, although divorce is permissible in Islamic teaching, it is an act that is disfavored by Allah. Accordingly, the existence of statutory regulations serves to prevent spouses from arbitrarily dissolving the marital bond. These grounds are further elaborated in Article 39 paragraph (2) of the Marriage Law and Article 19 of Government Regulation No. 9 of 1975.

The importance of clearly defining permissible grounds for divorce, as set out in Article 19 of the Government Regulation, is reaffirmed in Article 116 of the Compilation of Islamic Law (KHI), which adopts substantially the same formulation. However, the KHI introduces two additional grounds specifically applicable to Muslims. First, divorce may be granted when the husband violates the taʿliq talaq and subsequently apostatizes, thereby leaving Islam for another religion. This provision aligns with Law No. 1 of 1974, which seeks to make

divorce more difficult in accordance with the objective of marriage as a lifelong union. Nevertheless, when a difference of religion arises, the realization of a harmonious household becomes particularly challenging due to divergent beliefs. Second, divorce may be justified when either the husband or the wife fails to perform their respective marital obligations as prescribed under Islamic law.

Procedures for Initiating Divorce

The procedures for initiating divorce involve several steps that must be undertaken by the plaintiff (the wife) or her legal representative (Ansari, n.d.). First, either the husband or the wife may file a petition for divorce before the Religious Court (Pengadilan Agama) or the Sharia Court, either orally or in writing; this petition may also be submitted through legal counsel (Article 118 HIR, Article 142 RBg in conjunction with Article 73 of Law No. 7 of 1989). Second, the plaintiff is advised to consult the Religious Court or Sharia Court regarding the proper procedures for filing a divorce petition, in order to ensure that the process is conducted in an orderly manner and in accordance with applicable procedural requirements (Article 118 HIR, Article 142 RBg in conjunction with Article 58 of Law No. 7 of 1989). Third, a claim may be amended provided that such amendment does not alter the posita (statement of facts and legal grounds) and the petitum (relief sought). If the defendant has already submitted a response and the proposed amendment entails substantive changes, such amendment requires the consent of the defendant. The petition must be filed before the Religious Court or Sharia Court.

Fourth, a divorce petition must be filed within the jurisdiction of the court corresponding to the plaintiff's place of residence and may not be submitted outside that jurisdiction (Article 73 paragraph (1) of Law No. 7 of 1989). Fifth, if the plaintiff leaves the jointly agreed marital residence without the consent of the defendant, the petition must be filed before the Religious Court or Sharia Court having jurisdiction over the defendant's place of residence (Article 73 paragraph (1) of Law No. 7 of 1989 in conjunction with Article 32 paragraph (2) of Law No. 1 of 1974). Sixth, if the plaintiff resides abroad, the divorce petition must be submitted to the Religious Court or Sharia Court with jurisdiction over the defendant's place of residence (Article 73 paragraph (2) of Law No. 7 of 1989).

Seventh, if both the plaintiff and the defendant reside abroad, the petition must be filed before the Religious Court or Sharia Court having jurisdiction over the place where the marriage was solemnized, or alternatively before the Central Jakarta Religious Court (Article 73 paragraph (3) of Law No. 7 of 1989).

Where the divorce petition is submitted in writing, it must include: (a) the names, ages, occupations, religions, and addresses of both the plaintiff and the defendant; (b) the posita, namely the factual and legal grounds of the claim; and (c) the petitum, namely the relief sought based on the stated grounds. However, for divorce petitions filed by spouses who are Civil Servants, additional documentation is required, specifically a written permit issued by their superior as a prerequisite for initiating divorce proceedings.

Government Regulations Concerning Divorce Among Civil Servants (PNS)

As a country with an orderly system of governance, Indonesia possesses a structured governmental framework as an organizational entity. Civil Servants constitute an integral part of this governmental structure and represent a vital component of the state's human resources. The definition of PNS cannot be separated from the broader concept of civil service itself. In his book Perkawinan dan Perceraian bagi Pegawai Negeri Sipil, Ridwan Syahrani cites the view of Buchari Zainudin, who defines the term pegawai (employee) as a noun referring to individuals who hold a particular status or position obtained through their occupation; this term is derived from the Javanese word gawai, meaning work. The concept of kepegawaian (civil service administration) subsequently evolved to encompass all matters related to employees within an organization, each of whom carries specific duties and functions aligned with the organization's objectives, resulting in qualitative and quantitative distinctions among personnel. When this understanding is applied to the state as an organization, the employees in question are state employees who work for the government with duties aimed at administering and developing the nation. In this sense, they may be regarded as governmental staff.

Krannenburg offers another perspective on the definition of Civil Servants, as cited in Miftah Thoha's Manajemen Kepegawaian Sipil di Indonesia. He argues that Civil Servants are appointed state officials, though they do not include those

holding political offices such as members of parliament, the president, and similar positions. Meanwhile, J.H.A. Logemann defines Civil Servants as public officials who maintain a public service relationship with the state and work in the interest of the state. This public service relationship arises when an individual is formally bound to and subordinate to the government and, in return, receives remuneration in the form of a salary and other benefits.

Civil Servants function as state apparatus who are expected to serve as role models for society. Consequently, their conduct and behavior should exemplify compliance with laws and regulations established by the government, including in matters of personal and family life. In fulfilling this important role, Civil Servants are expected to be supported by harmonious family lives, which in turn contribute to stability and professionalism in carrying out their public duties.

The concept of Civil Servants in Indonesia has thus been defined by various scholars and legal instruments. PNS are regarded as state officials appointed to serve the public interest, distinct from political officeholders such as legislators and the president. They play a crucial role in governmental organization and national development, which requires professionalism, responsibility, integrity, and fairness. Civil service management aims to ensure efficient and effective governance through career development based on a merit system. Nevertheless, challenges remain in the implementation of civil service laws, particularly in structural appointments, which are often influenced by political interests and personal connections. Civil Servants also differ from non-PNS employees in terms of decision-making authority and access to strategic structural positions (Yayan Ansori Pernanda, 2021). Furthermore, maintaining the political neutrality of Civil Servants during elections is essential to good governance, although cases of political exploitation continue to occur.

Civil Servants, also referred to as the State Civil Apparatus (Aparatur Sipil Negara—ASN), play a crucial role as state officials and public servants in the administration of government and the implementation of national development (Filardhi et al., 2024). They are expected to serve as role models for society in terms of conduct, compliance with regulations, and the maintenance of harmonious family life. Accordingly, PNS are required to demonstrate high

integrity, dedication, sound moral character, honesty, discipline, professionalism, and a strong sense of responsibility. In carrying out their duties, they play a vital role in delivering optimal public services, including the provision of integrated one-stop services. To ensure the achievement of national development objectives, continuous efforts are required to foster esprit de corps and to consistently enforce codes of ethics among civil servants.

Divorce among Indonesian civil servants is subject to a specific legal regime that requires prior written permission from a superior, as mandated by Government Regulation No. 45 of 1990 (Lani, 2023). This requirement applies equally to male and female civil servants, whether they act as plaintiffs or defendants in divorce proceedings. The process of obtaining divorce permission involves multiple stages and considerations, which may extend beyond a three-month period. Empirical studies indicate that this regulation is consistent with the five foundational principles of maqasid al-Sharia and does not contradict the objectives of Islamic law. The requirement to obtain divorce permission is regarded as a formal prerequisite in divorce cases involving civil servants, distinguishing them from divorces involving non-civil servants. Consequently, divorce is positioned as a measure of last resort, to be pursued only after other reconciliation efforts have failed. This obligation is also intended to reinforce awareness among civil servants that the fundamental purpose of marriage is to establish a happy and enduring family life, thereby making divorce procedurally difficult. Moreover, the permission requirement provides superiors and relevant officials with the opportunity to facilitate reconciliation between the parties. Civil servants are therefore permitted to divorce only on legally recognized and justified grounds.

Government Regulation No. 10 of 1983 was subsequently amended and replaced by Government Regulation No. 45 of 1990, which was enacted during the administration of President Soeharto. Although revised, the new regulation retains the requirement that civil servants obtain permission from their superiors prior to divorce. The amendment was intended to clarify provisions that had not been explicitly regulated under Government Regulation No. 10 of 1983, with the objectives of enhancing discipline among civil servants and providing greater

legal certainty and a sense of justice. The key changes introduced under the new regulation include:

a) Clearer provisions regarding requests for divorce permission and the legally permissible grounds for divorce;
b) Explicit prohibitions against female civil servants becoming second, third, or fourth wives, thereby effectively barring polygamous marriages involving women employed as civil servants; and
c) Regulations concerning the division of salary following divorce to better ensure fairness for both parties.

Another significant revision concerns the regulation of cohabitation, which had not been addressed under Government Regulation No. 10 of 1983 but was subsequently clarified under the new regulatory framework.

The Definition of the MPU and Its Institutional Position

Aceh is a province in Sumatra that has been granted special autonomous status by the Indonesian government. This status enables Aceh to implement a set of special regulations that shape and govern social life within the region. As an area widely known as the Verandah of Mecca, Aceh is home to the Ulama Consultative Council, commonly referred to as the Aceh Ulama Consultative Council (Majelis Permusyawaratan Ulama, MPU Aceh, or simply MPU). The MPU is an independent institution that serves as a forum for ulama and Muslim intellectuals to guide, educate, and protect the Muslim community in Aceh (Budiman Purba, n.d.). The establishment of the Ulama Consultative Council of Banda Aceh represents a concrete initiative by the Banda Aceh municipal government to implement Islamic law, as stipulated in Banda Aceh Municipal Regulation No. 1 of 2002 on the Establishment, Organizational Structure, and Working Procedures of the Ulama Consultative Council (MPU) of Banda Aceh (Eka Febri Pamungkas & Edrisy, 2021) (Mawardi Nurdin, n.d.).

Hasanuddin Yusuf Hadan further explains that the MPU is an independent institutional body and does not function as a subordinate organ of either the Aceh Government or the Regional People's Representative Council (DPRD). Instead, it holds a position equal to both institutions. The MPU plays a vital role in strengthening the implementation of Islamic law in Aceh. It is consistently

involved in providing considerations and recommendations on regulations to be enacted in Aceh. Owing to this strategic role, the MPU is routinely included in deliberations with the government and the Aceh People's Representative Council (DPRA) in the drafting and formulation of qanun, which are Aceh's regional regulations.

The establishment of the MPU is intended to advise and guide the Muslim community in order to realize a peaceful and harmonious society in Aceh based on Islamic law. The MPU also issues fatwas on various issues requiring legal and religious solutions by referring to Islamic legal principles (Mahkamah Syariyah Provinsi Nanggroe Aceh Darusalam, 2006)

In carrying out its duties and functions, the MPU operates in accordance with Islamic law and applicable statutory regulations, as stipulated in Aceh Qanun No. 2 of 2009. Specifically, the Ulama Consultative Council of Banda Aceh is tasked with the following responsibilities (Secretariat of the Banda Aceh MPU, n.d.): (a) providing input on emerging issues, participating in the consideration of decisions taken by the Aceh Government, and offering recommendations on proposed policies and regulations; (b) supervising the implementation of government policies to ensure their conformity with Islamic law; (c) conducting the cadre development of ulama to ensure the continuity of leadership and institutional functions of the MPU; and (d) monitoring activities, teachings, or studies suspected of deviating from Islamic teachings and potentially misleading or disturbing the public.

In light of its functions and objectives, it is evident that the MPU's position in Acehnese society extends beyond matters of ritual worship. Its influence encompasses broader domains, including political, social, and cultural aspects of community life, in accordance with the comprehensive nature of Islamic teachings, which address all dimensions of human existence.

Analysis of the Views of the Four Sunni Schools of Law and Their Compatibility with Government Regulation No. 45 of 1990 from the Perspective of Maqasid al-Sharia

In Islamic law, talaq (divorce) is fundamentally recognized as a right of the husband, as affirmed in the Qur'anic verse of Allah the Exalted:

اَلطَّلَاقُ مَرَّتٰنِ ۖ فَاِمۡسَاكٌۢ بِمَعۡرُوۡفٍ اَوۡ تَسۡرِيۡحٌۢ بِاِحۡسَانٍ ؕ وَلَا يَحِلُّ لَـكُمۡ اَنۡ تَاۡخُذُوۡا مِمَّاۤ اٰتَيۡتُمُوۡهُنَّ

شَيۡـئًا اِلَّاۤ اَنۡ يَّخَافَاۤ اَلَّا يُقِيۡمَا حُدُوۡدَ اللّٰهِ ؕ فَاِنۡ خِفۡتُمۡ اَلَّا يُقِيۡمَا حُدُوۡدَ اللّٰهِ ۙ فَلَا جُنَاحَ عَلَيۡهِمَا

فِيۡمَا افۡتَدَتۡ بِهٖ ؕ تِلۡكَ حُدُوۡدُ اللّٰهِ فَلَا تَعۡتَدُوۡهَا ۚ وَمَنۡ يَّتَعَدَّ حُدُوۡدَ اللّٰهِ فَاُولٰٓئِكَ هُمُ الظّٰلِمُوۡنَ

> “Divorce is twice. Then, either retain [the wife] in a fair manner or release [her] with kindness. It is not lawful for you to take back anything of what you have given them unless both fear that they will not be able to uphold the limits set by Allah. If you fear that they will not be able to uphold the limits set by Allah, then there is no blame upon either of them concerning what the wife gives to ransom herself. These are the limits set by Allah, so do not transgress them. And whoever transgresses the limits set by Allah—it is they who are the wrongdoers” (Qur’an, al-Baqarah 2:229).

Within the four Sunni schools of Islamic jurisprudence, there are differences of opinion regarding the extent to which third parties such as guardians (walī) or judges (hakim) may be involved in the divorce process.

First, the Ḥanafī school maintains that talaq is entirely the husband’s right and does not require permission or intervention from any other party, provided that it is pronounced with clear intent and fulfills the requisite Sharia conditions (A.-D, 1986). However, in cases where ḍarar (harm), such as domestic violence or neglect, is evident, the judge is authorized to dissolve the marriage through the mechanism of fasakh.

Second, the Maliki school holds that judges possess broader authority to adjudicate divorce when there is proven and manifest harm to the wife, whether physical or psychological. According to Imam Mālik, judicial intervention serves to protect public welfare and to prevent injustice (rafʿ al-ḍarar), thereby safeguarding the wife’s rights (Az-Zuhayli, 2011).

Third, the Shāfiʿī school recognizes talaq as the husband’s prerogative, yet allows judicial involvement when the wife is deprived of her lawful rights, such as maintenance (nafāqah), or when domestic violence occurs. Under such

circumstances, the judge is empowered to decree fasakh in the interest of public welfare (maslahah) (al-Nawawi, 1996).

Fourth, the Ḥanbalī school asserts that a judge may postpone or reject a divorce request if no valid Sharia-based justification exists. Conversely, when evidence of violence or threats to life and safety is present, the judge is obligated to grant permission for divorce or to issue a judicial dissolution (Ibn Qudamah, 2020).

Accordingly, although the four schools concur that talaq is, in principle, a right vested in the husband, they also agree that third-party intervention—whether by a guardian or a judge—is permissible and even necessary in situations involving demonstrable harm. This consensus illustrates that Islamic jurisprudence is not rigid in nature; rather, it prioritizes the principles of justice (al-ʿadl) and public welfare (al-maslahah) as foundational considerations in the application of Islamic family law.

A Critical Analysis of Government Regulation No. 45 of 1990 from the Perspective of Maqasid al-Sharia

Government Regulation No. 45 of 1990 constitutes an administrative legal instrument that obliges civil servants (Pegawai Negeri Sipil, PNS) to obtain prior authorization from their superiors before initiating divorce proceedings. The formal objective of this regulation is to safeguard the public image of state officials and to prevent hasty divorces, thereby aligning with the principle of hifz al-nasl (protection of lineage) within the framework of maqasid al-Sharia. By delaying or filtering divorce applications, the government seeks to preserve family integrity and promote the welfare of children.

Substantively, however, the implementation of this regulation often gives rise to significant problems when divorce authorization is applied as a rigid control mechanism that restricts access to justice, particularly for victims of domestic violence. In such circumstances, the administrative requirement may contradict the principle of hifz al-nafs (protection of life), as it can prolong suffering and pose serious risks to the safety and well-being of wives.

From the perspective of maqasid al-Sharia, the law must strike a balance between jalb al-maslahah (the promotion of benefit) and darʾ al-mafsadah (the

prevention of harm) (Syatibi, 1997). Accordingly, the application of Government Regulation No. 45 of 1990 should be accompanied by an emergency mechanism (darurah sharʿiyyah), namely an exemption from the requirement of superior authorization for civil servants who are victims of violence or severe neglect. Such a mechanism would render the regulation more consistent with maqasid al-Sharia, as it would ensure the protection of both lineage (hifz al-nasl) and human life (hifz al-nafs).

Overall, Government Regulation No. 45 of 1990 may be regarded as aligned with the objectives of maqasid al-Sharia, yet insufficiently aligned in its practical implementation. Harmonizing positive law with Islamic law therefore requires policies that are responsive to social and moral realities, rather than a mere reliance on administrative formalities.

CONCLUSIONS

Following field research and an in-depth analysis of the East Aceh Ulama Consultative Council's (MPU) perspective on the difficulties faced by female Civil Servants (Aparatur Sipil Negara, ASN) in filing for divorce in Peureulak Kota District, Aceh, this study contributes to the enrichment of Islamic family law discourse in Indonesia, particularly with regard to the application of administrative regulations governing civil servants seeking divorce. The empirical findings indicate that the primary obstacle does not lie in substantive legal grounds since most informants had already fulfilled both sharʿi and juridical requirements for divorce but rather in administrative procedures, specifically the difficulty of obtaining written authorization from superiors. This situation reveals an imbalance between Islamic legal norms, which provide space for justice and the protection of women, and state bureaucracy, which in practice may delay or obstruct access to these rights. Within the framework of Islamic family law, these findings underscore the urgency of harmonizing religious law, state law, and civil service policies to ensure the concrete realization of justice (al-ʿadl) and public interest (al-maslahah).

From a practical standpoint, this study recommends the reformulation of the ASN divorce authorization mechanism to make it more efficient and grounded in gender justice, including the establishment of stronger legal protections for ASN

who are victims of domestic violence. Local governments, in collaboration with the MPU, could develop special protocols for divorce cases involving violence or severe neglect, so that victims are not further burdened by complex and protracted bureaucratic procedures. In addition, enhancing the understanding of civil service officials regarding contemporary Islamic family law is essential to prevent overly narrow or rigid interpretations of existing regulations. For future research, this study opens avenues for comparative interprovincial analyses, such as examining how religious institutions and civil service authorities in other provinces such as North Sumatra, West Java, or South Kalimantan address divorce authorization for female ASN. Such comparative approaches may enrich academic discourse on the interplay between Islamic law, state policy, and social practice across regions, while also contributing to the formulation of more inclusive and gender-responsive national policies in the field of Islamic family law.

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