



Relative Competence of the Sharia Court: *Talaq* Divorce Lawsuit and Protection of Women's Rights

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Abstract. This paper examines how the legal protection of women in the event of *talaq* divorce at the Sharia Court is related to the relative competence of the Sharia Court. This study is significant due to many *talaq* divorce cases at the Sharia Court filed by husbands not based on the wives' domiciles. Such practices have been contrary to the principle of civil procedural law, which stipulates that a divorce case filed by the husband must be based on the wife's domicile. Data were taken from *talaq* divorce decisions tried by the Banda Aceh Sharia Court, analyzed using the principles of civil procedural law. Findings of the study revealed that the majority of *talaq* divorce cases tried by the Sharia Court did not have strong legal force, as they were not in line with the principle of *actor sequitor forum rei*. In general, the decisions of the Banda Aceh Sharia Court in *talaq* divorce cases were made without the presence of the respondents (wives). Such decisions not only contradicted the principles of civil procedural law, but also had an impact on limited access for women to defend their interests in the courtroom.
Keywords: Relative Competence; Sharia Court; *Talaq* Divorce; Women's Rights

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Abstrak: *Tulisan ini bertujuan menganalisis bagaimana perlindungan hukum terhadap perempuan dalam hal terjadinya cerai talak di Mahkamah Syar'iyah terkait dengan kompetensi relatif dari Mahkamah Syar'iyah. Penelitian ini penting karena ada banyak perkara cerai talak di Mahkamah Syar'iyah yang diajukan oleh suami tidak berdasarkan tempat domisili isteri. Praktek ini berbeda dengan prinsip hukum acara perdata yang mengatur bahwa dalam kasus gugat cerai yang diajukan oleh suami harus berdasarkan tempat domisili isteri. Data bersumber dari putusan cerai talak yang diadili oleh Mahkamah Syar'iyah Banda Aceh, dianalisis dengan menggunakan pendekatan asas-asas hukum acara perdata. Hasil penelitian menunjukkan bahwa kasus cerai talak yang diadili oleh Mahkamah Syar'iyah yang menjadi sampel dalam penelitian ini mayoritas tidak mempunyai kekuatan hukum kuat, karena tidak sejalan dengan asas actor sequitor forum rei. Pada umumnya putusan Mahkamah Syar'iyah Banda Aceh dalam kasus cerai talak dilakukan tanpa kehadiran termohon(isteri). Keputusan ini tidak saja bertentangan dengan prinsip-prinsip hukum acara perdata, melainkan berdampak pada keterbatasan akses bagi perempuan untuk membela kepentingannya di ruang persidangan.*

Kata Kunci: *kompetensi relatif; mahkamah syar'iyah; cerai talak; hak perempuan*

Introduction

Marriage not only serves to legalize the biological relationship between a man and a woman, but it also becomes a process of implementing the nature of human life. By nature, humans, like any other creatures, are created in pairs; and yet, humans are the perfect ones.¹ However, the legality of human biological relations must be carried out through legal marriage ties according to religious teachings (Surah al-Zariyat:56 and Surah an-Nisa':23).

Marriage involves a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Belief in the One Almighty God. Such a happy and eternal family will materialize only if there is a sense of mutual understanding, mutual respect, and cooperation within the family.²

The hope of forming a happy and eternal family is not an easy feat; more often than not, many marriages encounter a deadlock that leads to divorce. This

¹ Tim B. Heaton, Mark Cammack, and Larry Young, "Why Is the Divorce Rate Declining in Indonesia?," *Journal of Marriage and Family* 63, no. 2 (2001), <https://doi.org/10.1111/j.1741-3737.2001.00480.x>; Muzakkir Abubakar, "Meningkatnya Cerai Gugat Pada Mahkamah Syar'iyah," *Kanun: Jurnal Ilmu Hukum* 22, no. 2 (2020): 302.

² Ladan Rahbari, "Marriage, Parentage and Child Registration in Iran: Legal Status of Children of Unmarried Parents," *Social Sciences* 11, no. 3 (2022), <https://doi.org/10.3390/socsci11030120>.

happens because a marriage journey is bound to experience problems that may haunt and disturb the harmony of a spousal relationship. These problems may include economic situations, mindset and lifestyle issues, selfish behaviors of both parties, lack of understanding of rights and obligations, lack of openness from both parties, and infidelity or extramarital affairs, among others. The inability to overcome these various problems will eventually cause disruption in the family, which sometimes end in divorce.³

The physical and spiritual bond packaged in marriage is regulated in the statutory regulations that contain limitations, so that it is not easy for couples to carry out a divorce. Divorce is to be avoided as much as possible, unless the marital relationship is impossible to repair and living together is no longer possible due to circumstances that have been strictly determined in the law. This is one of the principles adhered to by the Law Number 1 of 1974 concerning Marriage, which makes it difficult for divorce to occur. This principle is contained in the General Explanation Number 4 letter e of the Law Number 1 of 1974, stating that that divorce is only possible if it is carried out before a court session and based on certain reasons.⁴

The reasons for divorce according to the Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 are as follows:

1. One of the parties behaves terribly, such as adulterers, gamblers, junkies, drunkards and others that are difficult to correct.
2. One of the parties neglects or abandons the other party for 2 (two) consecutive years without permission, or without valid reasons, or for other reasons beyond one's control.
3. One of the parties is subject to imprisonment for 5 (five) years or more after marriage.
4. One of the parties commits cruelty or commits serious abuse that might endanger the other party.
5. One of the parties suffers from an illness or has a physical disability, which causes the inability to carry out one's obligations as husband/wife.
6. There are continuous disputes or fights between the two parties and it is difficult to live in harmony again in the household.⁵

³ Ahmad Bello Dogarawa, "Marriage and Divorce in Islam," *Islam Zeitschrift Für Geschichte Und Kultur Des Islamischen Orients*, no. 23194 (2009).; Shazia Ramzan et al., "Divorce Status and Its Major Reasons in Pakistan," *Sociology and Anthropology* 6, no. 4 (2018), <https://doi.org/10.13189/sa.2018.060405>.

⁴ Asmaul Husna et al., "The Government's Role in Decreasing Divorce Rates in Indonesia: The Case of Aceh and South Sulawesi," *Ahkam: Jurnal Ilmu Syariah* 21, no. 1 (2021): 163–88, <https://doi.org/DOI: 10.15408/ajis.v21i1.20870>.

⁵ Article 9 the Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage

The provisions above show the strictness of the reasons for carrying out a divorce. Each reason is determined equally between husband and wife. If one party does or has reasons as mentioned above, then the other party can file for or request a divorce from his/her partner. Divorce initiatives in marriage law are not only dominated by men or husbands, but also by women or wives.⁶

Divorce is divided into two types, namely *talaq* (repudiation) divorce and judicial divorce. In a *talaq* divorce, the divorce suit is filed by the husband, whereas in a judicial divorce, the wife has the right to file a lawsuit. Husband or wife can file a divorce suit as regulated in Article 20 of the Government Regulation Number 9 of 1975 which states “a divorce lawsuit can be filed by the husband or wife or their attorney to the Court whose jurisdiction covers the place of residence of the defendant”. Furthermore, Article 114 of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) also states that “the breakup of a marriage caused by divorce can occur due to *talaq* or based on a divorce lawsuit.”

Provisions regarding the authority of religious courts to adjudicate *talaq* divorce cases are clearly regulated in the civil procedural law. Article 118 paragraph (1) *Herzien Inlandsch Regulation* (HIR) confirms that the application for a lawsuit filed by the Plaintiff (Petitioner) must be filed in accordance with the jurisdiction (domicile) of the Defendant (Respondent) where she resides. The Applicant (husband) who files for divorce from the Respondent (wife) with the reasons as stated above must submit the application to the Religious Court (or the Sharia Court in Aceh) where the Respondent resides. If the husband files the lawsuit (*talaq* divorce), then the lawsuit must be submitted to the Sharia Court in the area where the wife is domiciled.⁷ However, in reality this provision is not always implemented, which may result in non-fulfillment of women’s rights in connection with the occurrence of divorce. For example, in *talaq* divorce cases tried at the Banda Aceh Sharia Court, it was found that several legal cases were resolved not based on the domicile of the respondents (wives), or not in its jurisdiction.

A number of studies have examined such issues, and the studies have mostly focused on the impact of the relative authority of the religious courts in Indonesia in divorce cases. However, they have yet to discuss on the authority of the Aceh Sharia Court that handles divorce cases outside of its relative authority. Muhammad Nur in his research found that divorces out of court had caused the rights of the wives as divorce victims to be often neglected, as the divorces outside the court did not provide any legal protection to the wives as divorce victims. The

⁶ Najichah and Alfian Qodri Azizi, “Implikasi Inisiatif Perceraian Terhadap Hak Nafkah Istri,” *Journal of Islamic Studies and Humanities* 5, no. 1 (2020): 49.

⁷ Raudhatul Jannah and M. Ya’kub Aiyub Kadir, “Child Marriage Conditionality and Its Dispensation In Mahkamah Syar’iyah Aceh, Indonesia,” *Student Journal of International Law* 1, no. 1 (2021), <https://doi.org/10.24815/sjil.v1i1.18078>.

rights of the wives as victims that were often neglected included child support and housing, as well as the support of the *iddah* (waiting) period.⁸ Further, in terms of the authority to try, Arbi Pramono Putra and Fadri Sanafiah describe that the Religious Court has the authority to adjudicate divorce in interfaith marriages.⁹ In addition, studies that examined the impact of resolving divorce cases were not based on relative competence, which resulted in legal consequences toward children, inherited assets, and sustenance, either from the perspective of the Law Number 1 of 1974 as stated from Article 38 to Article 41, or from the perspective of Islamic jurisprudence on marriage (*fiqh munakahat*).¹⁰

Little is known on the relative competence of the Sharia Court and its relation to the protection of women's rights in terms of neglecting relative competence. Thus, this present study sought to analyze the decisions of the Sharia Court, which adjudicated *talaq* divorce suits outside of its relative competence along with binding legal force, and the way the protection of women in the decisions of the Sharia Court outside of its relative competence.

This study used a normative legal approach. The data consisted of the decisions of the Sharia Court, which tried *talaq* divorce cases outside the respondents' domiciles. These decisions were analyzed using legal principles and conformity between the law in the statutory regulations and the concrete law in the decisions of the Sharia Court, especially in terms of the protection of women's rights.

Sharia Court Competency and *Talaq* Divorce Lawsuit

The competence or authority of the court is divided into two: absolute competence (*absolute competentie*) and relative competence (*relative competentie*).¹¹ Absolute competence is the authority of a judicial body to examine certain types of cases which absolutely cannot be examined by other judicial bodies. In Indonesia, the judicial bodies consist of General Courts,

⁸ Muhammad Nur, Imam Jauhari, and Azhari Yahya, "Perlindungan Hukum Terhadap Korban Perceraian Di Luar Pengadilan: Suatu Penelitian Di Kota Langsa Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 563–72.

⁹ Arbi Pramono Putra dan Fadri Sanafiah "Putusnya Perkawinan Pasangan Beda Agama (Analisis Undang-Undang No. 16 Tahun 2019 dan Kompilasi Hukum Islam): Jurnal Hukum Prolex Fakultas Hukum Institut Ilmu Sosial dan Ilmu Budaya Samawa Rea (IISBUD SAREA), Vol 1, No. 1 (2021)

¹⁰ Ubong E. Eyo, "Divorce: Causes and Effects on Children," *Asian Journal of Humanities and Social Studies* 6, no. 5 (2018), <https://doi.org/10.24203/ajhss.v6i5.5315>.; Hassan Maajeeny, "Effects of Family Disintegration on Children Later Depression," *International Journal of Advanced and Applied Sciences* 9, no. 3 (2022), <https://doi.org/10.21833/IJAAS.2022.03.008>.

¹¹ M Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*, VIII (Jakarta: Sinar Grafika, 2008).; Achmad Ali, *Menguak Teori Hukum Dan Teori Peradilan*, 5th ed. (Jakarta: Kencana, 2013).

Religious Courts, State Administrative Courts, and Military Courts. The absolute competence of a judicial body authorized to examine and adjudicate a case may not be tried by another judicial body which is not its authority. In contrast, relative competence is the authority of a judicial body related to its jurisdiction, such as the competency of a District Court in a district that only has the authority to hear cases that occur within its jurisdiction.

The relative competence of the Religious Courts (or Sharia Courts in Aceh) is the authority to examine and adjudicate a case based on the jurisdiction of the Religious Courts (Sharia Courts).¹² Article 54 of the Law Number 7 of 1989 confirms that the civil procedural law that applies to the Religious Courts is also the civil procedural law that applies to the General Courts. Thus, the legal basis in determining the relative authority of the Religious Courts (Sharia Courts) refers to the provisions stipulated in Article 118 HIR or Article 142 R.Bg. jo. Article 66 and Article 73 of the Law Number 7 of 1989. Article 118 paragraph (1) HIR/Article 142 paragraph (5) R.Bg. adheres to the principle that the competent authority is the court at the place of residence of the defendant. This principle is called “*actor sequitur forum rei*” in Latin.

This legal principle is usually referred to as the basis for the conception of a legal regulation, or as a legal ratio of legal regulations. The principle has permanent legal force and must be used as a basis to be followed and obeyed in producing subsequent legal regulations.¹³ According to Retnowulan Sutantio, in relative authority the principle of “*actor sequitur forum rei*” applies.¹⁴ Based on this principle, relative authority becomes absolute to be followed and referred to by the judiciary as an authority that has been regulated in legislations.

Legally and formally, the divorce application for *talaq* divorce has been regulated in Article 66 of the Law on the Religious Courts, as the following:

1. A husband, who is a Muslim about to divorce his wife, submits an application for *talaq* divorce to the Religious Court in the jurisdiction of his wife’s residence (Respondent).
2. In the event that the wife’s residence is abroad, the application shall be submitted to the Religious Court where the husband resides.
3. If both husband and wife live abroad, the application shall be submitted to the Central Jakarta Religious Court.

¹² Dinas Syariat Islam Aceh, *Himpunan Undang-Undang, Keputusan Presiden, Peraturan Daerah/Qanun, Instruksi Gubernur Berkaitan Palaksanaan Syariat Islam*, 8th ed. (Banda Aceh: Dinas Syariat Islam Aceh, 2010).

¹³ Satjipto Rahardjo, *Ilmu Hukum*, viii (Bandung: Citra Aditya Bakti, 2014), 45.

¹⁴ Retnowulan Sutantio, *Hukum Acara Pedata Dalam Teori Dan Praktek* (Bandung: Manda Maju, 1989), 8.

The reasons for *talaq* divorce as stipulated in the law above show that in principle those who have the right to examine and adjudicate *talaq* divorce cases are the Religious Courts (Sharia Courts) in the jurisdiction where the wife is domiciled, as the respective courts have the authority to examine and adjudicate the divorce cases. However, the results of the study of several decisions of the Sharia Court of the City of Banda Aceh related to *talaq* divorce lawsuits filed by husbands revealed that the Banda Aceh Sharia Court have examined and tried *talaq* divorce cases that were not in accordance with its relative competence. The results can be seen in the following table 1.

Table 1:
Talak Divorce Cases Examined and Tried Outside the Relative Competence of the Banda Aceh Sharia Court

No.	Year	Case No.	Lawsuit	Description
1	2018	117/Pdt.G/2018/MS-Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
2	2018	239/Pdt.G/2018/MS-Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
3	2018	247/Pdt.G/2018/MS-Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
4	2018	249/Pdt.G/2018/MS-Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
5	2019	132/Pdt.G/2019/MS-Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
6	2019	223/Pdt.G/2019/MS-Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
7	2019	226/Pdt.G/2019/MS-Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
8	2019	3/Pdt.G/2019/MS.Bna	<i>Talaq</i> Divorce Application	<i>Verstek</i> decision granted
9	2019	14/Pdt.G/2019/MS.Bna	<i>Talaq</i> Divorce Application	Granted the exception of the Respondent and declared that the Banda Aceh Sharia Court had no authority to examine and try it

As seen in table 1, during 2018-2019 it was found that divorce decisions examined by the Banda Aceh Sharia Court were generally *verstek* decisions, and only one decision stated that the Banda Aceh Sharia Court had no authority to examine and try the case. The Compilation of Islamic Law regulates in detail the

procedure for divorce in the form of *talaq* divorce as contained in Articles 129 to 148 of the Compilation of Islamic Law, as follows:

- a) The husband can apply for *talaq* divorce to the Sharia Court where the wife resides. The application can be submitted orally or in writing by stating the reasons and the husband requesting that a hearing be held for the purpose of the divorce (Article 129 of the KHI).
- b) The application can be granted or rejected by the Sharia Court, and against this decision legal remedies can be filed in the form of appeal or cassation.
- c) After the Sharia Court has studied the application, within 30 days the relevant Sharia Court has studied it and then summoned the applicant and his wife to ask for an explanation from both parties regarding everything related to the husband's desire to pronounce *talaq* on his wife.
- d) In the event that the Sharia Court's efforts to advise both parties are unsuccessful, and it is impossible for the two to live together in the family in harmony, as well as there are sufficient reasons to impose a divorce, the Sharia Court decides to give permission to the husband to pronounce *talaq* on his wife.
- e) In the presence of the wife or her attorney, the husband pledges his *talaq* before the Sharia Court after the decision has permanent legal force.
- f) In the event that the husband does not pledge *talaq* within 6 months of the decision of the Sharia Court, regarding the permission to pledge *talaq* for him which has permanent legal force, then the husband's right to declare *talaq* is null and void, and the marriage bond returns intact as before.
- g) After the pronouncement of the pledge of *talaq* is completed, the decision regarding the occurrence of *talaq* divorce by the Sharia Court is made in 4 (four) copies as evidence that a divorce has occurred for the ex-husband and ex-wife. The first copy along with the pledge of *talaq* is sent to the marriage registrar where the husband lives to be recorded. The second and third copies are each given to ex-husband and ex-wife, and the fourth copy is kept by the Sharia Court.
- h) The Sharia Court can grant or reject the proposed *talaq* divorce suit.

These descriptions suggest that the rules of *talaq* divorce are strictly regulated. Filing for *talaq* divorce is not only submitted to the Sharia Court where the wife is domiciled, but is also followed by a number of other procedures that must be completed. This shows that the legal rule has guaranteed the rights of women or wives, so that after divorcing from her husband, these rights will still be fulfilled.

Nevertheless, despite *talaq* divorce rules being strictly regulated by statutory regulations, the judge's authority can also be considered in making a fair decision. In practice, the judge who examines and adjudicates *talaq* divorce cases

can grant the lawsuit (of the husband). Such cases reflect that judges play a key role in loosening the mechanism for *talaq* divorce suits although laws and regulations regulate the cases strictly. It is even contrary to the principles of human rights, as stipulated in Article 28D of the 1945 Constitution of the Republic of Indonesia, in which everyone has the right to protection and fair legal certainty and is entitled to equal treatment before the law.

Legal instruments related to human rights, including the right to receive equal treatment before the law, are a form of protection and fair legal certainty. This principle has been regulated in the laws and regulations in Indonesia. However, the problem lies in the application and enforcement of the law as it has always been the demand of the community. This is part of the internationally recognized universal human rights, as stipulated in the International Covenant on Civil and Political Rights by the United Nations.¹⁵

Judges have great authority to decide whether to accept or reject the *talaq* divorce lawsuits filed by the husbands. However, on the other hand, judges also have great responsibilities, including the responsibility to God Almighty. This can be seen from the decisions of a judge, which reads “For the sake of justice based on God Almighty.” This indicates, “the obligation to uphold justice is borne by the judge who makes the decision and must be accountable for his/her decision not only to humans but also to God Almighty.”¹⁶

In addition, judges must also respect the human rights of others (i.e., the human rights of women who are filed for *talaq* divorce by their husbands without fulfilling the relative competence requirements) since it is included in the human rights regulated in Article 28J of the 1945 Constitution. In this regard, Article 28J paragraph (1) of the 1945 Constitution states, among other things, that everyone (without exception, including judges) is obliged to respect the human rights of others, both in the orderly life of society, nation, and state. Furthermore, in Article 28J paragraph (2) of the 1945 Constitution it is stated that in exercising one’s rights and freedoms one must comply with the restrictions determined by law in guaranteeing recognition and respect for the rights and freedoms of others in order to fulfill the demands of justice.

Justice is the estuary of the judge’s decision and the freedom of the judge is aimed at achieving that justice. However, on the other hand, judges are also limited by a number of rules that have been determined by the Supreme Court as the supervisor within the scope of their duties as judges. In the sense that if in the judicial process a judge’s mistake is found, whether due to intentional or unintentional elements in making a decision, then the judge may be subject to

¹⁵<https://www.balitbangham.go.id/detailpost/setiap-orang-berhak-mendapatkan-perlakuan-yang-sama-dihadapan-hukum>, diakses tanggal 11 November 2022.

¹⁶Bambang Sutiyo and Sri Hastuti Puspitasari, *Aspek-Aspek Perkembangan Kekuasaan Kehakiman Di Indonesia* (Yogyakarta: UII Press, 2005), 33.

administrative sanctions or criminal sanctions based on applicable regulations. Therefore, a judge in carrying out his/her duties is bound by the oath he/she utters as stipulated in Article 30 of the Law Number 4 of 2004 concerning Judicial Power, which reads: “By Allah, I swear that I will fulfill my obligations as a judge in the best and fairest way possible, adhere to the 1945 Constitution of the Republic of Indonesia, and carry out all laws and regulations as strictly as possible according to the 1945 Constitution of the Republic of Indonesia, and serve the homeland and nation.”

The rules and procedures for filing a *talaq* divorce suit are regulated more clearly and completely in the Government Regulation Number 9 of 1975 concerning the Executor of the Law Number 1 of 1974 concerning Marriage. As stipulated, a husband (applicant) shall file a *talaq* divorce suit against his wife (respondent) with the reasons as stated in Article 19 letter f.

Hence, based on the aforementioned provisions, the *talaq* divorce case filed by the applicant (husband) must be submitted to the Sharia Court (religious court) where the wife (respondent) resides. This rule is as stipulated in Article 22 paragraph (1) that Divorce Lawsuit due to the reasons mentioned in Article 19 letter f should be submitted to the Court at the place of residence of the Defendant (wife’s residence).

Further, this provision is also emphasized in the KHI Article 129, which determines the following: “A husband who is about to impose a *talaq* on his wife submits an application both verbally and in writing to the Religious Court which administers the wife’s residence accompanied by the reasons and requests that a trial be held for this purpose”. Thus, based on the data obtained (data for 2018-2019 at the Banda Aceh Sharia Court), lawsuits filed not at the Sharia Courts which cover the areas where the wives live have violated the relative authority of the Banda Aceh Sharia Court, in accordance with the prevailing laws and regulations in Indonesia.

The Provisions in the Government Regulation No. 9 of 1975 concerning the implementation of the Law No. 1 of 1974 concerning Marriage, and Article 19 letter f, Article 22 paragraph (1) and Article 129 in the KHI regulate which Sharia Court to submit to in the event that the husband (applicant) wants to file for *talaq* divorce. They also serve as a basis for legal considerations for judges of the Sharia Court to reject a *talaq* divorce suit if the husband (applicant) submits the suit not to the Sharia Court of legal jurisdiction where the wife (respondent) lives.

Irregularities that occur due to violation of the Government Regulation No. 9 of 1975 and also the provisions in the Compilation of Islamic Law can be said to be a deviation or abuse of authority, and such abuse of authority will also be related to the efforts of citizens as the injured party to the issuance of a Court Decision. When the authority exercised by the court is not in accordance with

statutory regulations or the authority is misused or applied arbitrarily which results in the violation of the rights of citizens, citizens must be given legal protection (*rechtsbescherming*).

The domicile of the legal area determines the relative competence limits for adjudicating at each Sharia Court. Even though the disputed case belongs to the absolute jurisdiction of the Sharia Court, in which in absolute terms the Sharia Court has the authority to try it, such absolute competency authority is still limited by its relative competence to try. If a case occurs outside its jurisdiction, relatively the Sharia Court has no authority to adjudicate.

If there is an excess of jurisdictional boundaries as referred to in the aforementioned Decisions, this suggests that the Sharia Court concerned has exceeded its authority (*exceeding its power*). This action could result in the examination and the decision handed down in that case to be invalid or without legal force.

Protection of Women's Rights in Decisions of the Sharia Court Outside of Relative Competence

The constitution has mandated the protection and fulfillment of the rights of every citizen, known as constitutional rights. The protection and fulfillment of such rights shall be carried out in accordance with the conditions of various citizens. In actuality, however, people have a different ability to access the protection and fulfillment of these constitutional rights; therefore, special treatment is needed as stated in Article 28H Paragraph (2) which reads, "Every person has the right to receive special facilities and treatment to obtain the same opportunities and benefits to achieve equality and justice." Among the groups of citizens who because of their conditions require special treatment are women, and in this case, wives who have been pronounced *talaq* by their husbands. If such special treatment did not exist, it would be difficult for women to access the fulfillment of their rights.¹⁷

In fact, the legislations related to divorce have already accommodated the rights of the divorced wives. The provisions regarding the relative competence of the sharia court, which stipulates that the lawsuit must be filed at the domicile of the respondent, in this case the wife, are made in order for the wife to assess her rights. Thus, if these provisions are not followed, these rights will certainly be prone to violations.

Other relevant provisions include the Government Regulation No. 9 of 1975 concerning the implementation of the Law No. 1 of 1974 concerning

¹⁷Jimly Asshiddiqie, "Hak Konstitusional Perempuan Dan Tantangan Penegakannya". https://scholar.google.co.id/scholar?q=HAK+KONSTITUSIONAL+PEREMPUAN.+DAN+TANTANGAN+PENEGAKANNYA.+Oleh:+Jimly+Asshiddiqie.+Hak+Asasi+Manusia+Dan+Hak+Konstitusional&hl=en&as_sdt=0&as_vis=1&oi=scholart (diakses 11-2-2022)

Marriage, and Article 19 letter f, Article 22 paragraph (1) and Article 129 in the KHI regulating which Sharia Court to submit to in the event that the husband (applicant) wants to file for *talaq* divorce. These provisions also serve as a basis for legal considerations for judges of the Sharia Court to reject a *talaq* divorce suit if the husband (applicant) submits the suit not to the Sharia Court of legal jurisdiction where the wife (respondent) lives.

In addition, the authority of the Sharia Court to examine, hear, and decide cases of *talaq* divorce applications has also been regulated in Article 66 paragraph (2) of the Law Number 7 of 1989 concerning Religious Courts as amended by the Law Number 3 of 2006 concerning Amendments to the Law Number 7 of 1989 concerning Religious Courts, and the Law Number 3 of 2006 concerning Amendments to the Law Number 7 of 1989 concerning Religious Courts. As previously mentioned, the regulations have determined that the authorized sharia court is the one in the jurisdiction of the wife's domicile, so that the rights of the wife can be fulfilled. The existing situations, however, cause these rights to not be fulfilled.

In terms of the fulfillment of women's rights, the Qur'an describes that there is no difference in rights between men and women.¹⁸ Certainly, equality and specificity should be considered as specified in the constitution since women must receive special treatment due to their circumstances. In certain situations, women are part of a group that is vulnerable to human rights violations.¹⁹

In the context of the protection of women in the event of a divorce, the Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Trialing Cases of Women Against the Law aims to provide justice for women who are in conflict with the law, to eliminate potential discrimination against women,

¹⁸ Fatemeh Radi Meybodi and Saeedeh Rasouli, "A Comparative Study of the Universal and Islamic Declaration of Human Rights in the Field of Women and the Family," *International Journal of Multicultural and Multireligious Understanding* 9, no. 2 (2022), <https://doi.org/10.18415/ijmmu.v9i2.3538>; Haifa F. Fawaris, "The Role of Muslim Women in Managing the Family during Crisis: Corona Pandemic as a Model," *International Journal of Human Rights in Healthcare* 15, no. 2 (2022), <https://doi.org/10.1108/IJHRH-12-2020-0130>; Nadzrah Ahmad, Mohd. Haeqal Ishak, and Mohammed Farid Ali al-Fijawi, "Women's Rights in the Qur'an, Sunnah and Heritage of Islam," *Journal of Islam in Asia (E-ISSN 2289-8077)* 17, no. 3 (2020), <https://doi.org/10.31436/jia.v17i3.1004>.

¹⁹ Abul al-A'la Maududi, *Human Rights in Islam* (London: The Islamic Foundation, 1967); Andrée Feillard, "Nancy J. Smith-Hefner, Islamizing Intimacies. Youth, Sexuality, and Gender in Contemporary Indonesia," *Archives de Sciences Sociales Des Religions*, no. 196 (2021), <https://doi.org/10.4000/assr.65524>; Oliver Nikolić, "The Cairo Declaration on Human Rights in Islam," *Strani Pravni Zivot*, no. 3 (2020), <https://doi.org/10.5937/spz64-28285>; Abdullah Saeed, *Human Rights and Islam: An Introduction to Key Debates between Islamic Law and International Human Rights Law*, *Human Rights and Islam: An Introduction to Key Debates between Islamic Law and International Human Rights Law*, 2018, <https://doi.org/10.4337/9781784716585>.

and to provide a reference for judges in trying cases without gender discrimination according to the principle in Article 2 of the Supreme Court Regulation No. 3 of 2017. The contents of which are as follows:

- a. Respect for human dignity
- b. Non-discrimination
- c. Gender equality
- d. Equality before the law
- e. Justice
- f. Benefit
- g. Legal certainty

In connection with the rights of women who will be divorced by their husbands through *talaq*, upholding women's rights should be obtained in the *talaq* divorce process at the Sharia Court by referring to the provisions of the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trying Cases of Women Against the Law. If the judge is not guided by this provision, there will be a violation of the rights of the woman who will be divorced. This rule protects the rights of women who are about to divorce their husbands in three ways as in the following:

1. The wife is divorced in the form of *talaq raj'i*. Here, the Muslim scholars agree that the rights received by the ex-wife are full as they were when they were married before the divorce takes place, including clothing, food, and housing.
2. The wife who is divorced in the form of *ba'in*, whether *ba'in sughra* or *ba'in kubra*, and is pregnant has the right to maintenance and housing. In this case, the Muslim scholars agree that the legal basis taken by this group is the Qur'an surah al-Thalaq verse 6. However, if the wife is not pregnant, there are differences of opinion, such as of Ibn Mas'ud, Imam Malik and Imam Shafi'i, that ex-wife is only entitled to housing and not entitled to maintenance. Ibn Abbas, Daud al-Zhahiri and several other scholars are of the opinion that the ex-wife does not have the right to alimony as well as housing, as they based their opinion on the grounds that the marriage is completely broken and the woman is not pregnant. Their view is used as the basis in the provisions of the KHI in the event that the wife is divorced to *bain* and in a non-pregnant state, she will not receive alimony, *maskan* (housing) and *kiswah* (clothing) (Article 149 letter (b) of the KHI).
3. The right of a wife whose husband has died. If the wife is pregnant, the Muslim scholars agree that the wife has the right to sustenance and housing. However, if she is not pregnant, the scholars disagree, including Imam Malik and Imam Shafi'i who said "she has the right to a place to live", while some other scholars such as Imam Ahmad are of the opinion that if the wife

is not pregnant, then she is not entitled to a living and a housing support since there are rights in the form of inheritance.²⁰

Article 39 of the Government Regulation Number 9 of 1975 contains the provisions on the obligations of a husband who has pronounced *talaq* on his wife as follows:

1. Providing *mut'ah* (amenity) to the ex-wife. A husband who pronounces *talaq* on his wife should give *mut'ah* to his ex-wife. *Mut'ah* may be in the form of clothing, goods, or money according to the condition and position of the husband. In this case, women may ask the judge for a decision to determine the amount or *mut'ah* by taking into account the condition and position of the husband.
2. Providing maintenance, clothing, and housing for the divorced wife as long as she is still in a state of *iddah*. When the *iddah* period is over, then the obligation to provide maintenance, clothing, and housing is finished.
3. Providing or paying off the dowry. If the husband imposes *talaq* on his wife, then it is obligatory to provide or pay off the dowry at all.
4. Paying maintenance for their children. A husband who pronounces *talaq* on his wife is obliged to pay maintenance for his children, such as spending for the maintenance and educational needs of his children, according to the status of the husband. The obligation to provide for the children must be continuous until the children reach puberty and have an income (Surah al-Thalaq verse 6 states, "if they (ex-wives) nurse your child, give them their due payment"). It is clear and unequivocal in this verse that the husband is obliged to pay wages to his ex-wife to take care of his children, and it is a proof that the husband is obliged to provide expenses for the needs of his children. Hence, it is clear that the maintenance is for the wife and children, and the obligation to provide maintenance still applies even though the wife has been divorced by her husband. An ex-wife has the right to ask her ex-husband for wages to breastfeed their child.²¹

²⁰ Wahbah Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, 6th ed. (Jakarta: Gema Insani, 2011).; Muhammad bin Ahmad bin Rusyd Al-Qurtubi, *Bidayat Al-Mujtahid*, II (Maktabah wa Matba'ah Taha, n.d.).

²¹ Lyn Parker, "The Theory and Context of the Stigmatisation of Widows and Divorcees (Janda) in Indonesia," *Indonesia and the Malay World* 44, no. 128 (2016), <https://doi.org/10.1080/13639811.2015.1100863>. Stijn Cornelis Van Huis, "Khul' over the Longue Durée: The Decline of Traditional Fiqh -Based Divorce Mechanisms in Indonesian Legal Practice," *Islamic Law and Society*, 2019, <https://doi.org/10.1163/15685195-00254A05>.; Mark Cammack and Tim Heaton, "Explaining the Recent Upturn in Divorce in Indonesia: Developmental Idealism and the Effect of Political Change," *Asian Journal of Social Science* 39, no. 6 (2011), <https://doi.org/10.1163/156853111X619229>.

In practice, the obligations imposed on the ex-husband (Petitioner) occur because of a counterclaim from the wife (reconvention) or without any counterclaim from the wife, as the judge can determine the obligations of the ex-husband based on *ex officio* rights (position) under the considerations obtained from the facts during the trial process. However, if the application is submitted by the husband not at the wife's domicile and the decision granted is in the form of *verstek*, then the facts of the trial do not exist since they are not disclosed, and thus, the wife's rights are not listed nor found in the decision.

Conclusions

Talaq divorce decisions between 2018 and 2019, which were tried and examined by the Sharia Court of Banda Aceh City in cases of *talaq* divorce not within its relative authority, were predominantly decisions that were not in line with the principles contained in the civil procedural law. From a juridical-formal point of view, such decisions exceed the relative authority of the religious courts in Indonesia. It can even limit the freedom of women (wives) in demanding and defending the women's human rights as a vulnerable group. Women who no longer have husbands should obtain their rights predetermined by the law, such as *iddah* money and housing. The existence of the Supreme Court Regulation Number 3 of 2017 should be a guideline and reference for the Sharia Court of Banda Aceh City to try and decide cases for women who are in conflict with the law. After the divorce, the rights of women left by their husbands are often neglected by law enforcers even though women's rights have been guaranteed in the Supreme Court regulations, which must be followed and referred to by religious court judges in Indonesia.

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