

Apostasy as Grounds for Divorce by Talak Raj'i (Study of Decision Number 541/Pdt.G/2020/Pa.Bjb)

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Abstrak

Perbedaan agama dalam perkawinan menimbulkan persoalan hukum, terutama ketika salah satu pihak keluar dari Islam (apostasi) yang berdampak pada keabsahan perkawinan. Penelitian ini bertujuan menganalisis dasar pertimbangan hakim dan akibat hukum penerapan talak raj'i dalam perkara perceraian karena apostasi sebagaimana tercantum dalam Putusan Pengadilan Agama Banjarbaru Nomor 541/Pdt.G/2020/PA.Bjb. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual melalui analisis terhadap bahan hukum primer dan sekunder. Hasil penelitian menunjukkan bahwa hakim menjatuhkan talak raj'i berdasarkan alasan perselisihan yang terus-menerus sesuai ketentuan hukum positif, meskipun secara syari'at hubungan perkawinan telah batal sejak terjadinya perbedaan agama. Dalam hal ini, hak rujuk dan nafkah Iddah tidak dapat diberlakukan karena ikatan perkawinan telah putus secara syar'i.
Kata kunci: Apostasi; Perceraian; Talak raj'i

Abstract

Religious differences in marriage raise legal issues, especially when one party leaves Islam (apostasy), which affects the validity of the marriage. This study aims to analyze the basis of the judge's considerations and the legal consequences of applying talak raj'i in divorce cases due to apostasy as stated in the Banjarbaru Religious Court Decision Number 541/Pdt.G/2020/PA.Bjb. The method used is normative legal research with a case approach through analysis of primary and secondary legal materials. The results of the study show that the judge imposed talak raj'i based on the grounds of continuous disputes in accordance with positive law, even though according to Sharia law, the marriage relationship had been invalid since the occurrence of religious differences. In this case, the right of rujuk and nafkah Iddah cannot be enforced because the marriage bond has been severed according to Sharia law.

Keywords: Apostasy; Divorce; Talak raj'i

INTRODUCTION

Divorce often occurs when one of the spouses commits apostasy¹, because such a change in belief can affect the validity of the marriage according to Islamic law.² From a social perspective, divorce is not merely a private matter, but also has an impact on family structure and social stability.³ The loss of a marriage bond can have psychological and economic consequences for all family members, especially children, so it must be handled fairly and thoughtfully.⁴ Based on Article 3 of the Compilation of Islamic Law, the purpose of marriage is to establish a household that is *sakinah, mawaddah, wa rahmah*⁵, so that the relationship between husband and wife is not only to fulfill personal needs, but also as a means of complementing each other and worshipping God.

Several previous studies have discussed divorce due to apostasy, such as the study by Muhammad Idris Nasution⁶ entitled "Disparitas Putusan Mahkamah Agung Dan Pengadilan Agama Dalam Penerapan *Fasakh* Terhadap Perceraian Atas Dasar Murtad", which discusses many Religious Court decisions after two Supreme Court decisions tended to continue to impose *fasakh* on the basis of apostasy despite variations in practice in various regions. Research by Hadromi⁷ entitled "Analisis Putusan Hakim Terhadap Perceraian Akibat Murtad Di Pengadilan Agama Bogor (Putusan Nomor 1151/Pdt.G/2023/PA.Bgr)" which discusses the results of *fasakh* rulings due to apostasy. Research by Evra Wilya, et.al,⁸ entitled "Lawsuits Related To Divorce Due To Apostasy In Bitung Religious Court" which analyzed the considerations of judges in

¹ Evra Wilya et.al., "Lawsuits Related to Divorce Due to Apostasy in Bitung Religious Court," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 46, no. 1 (2022): 55, <https://doi.org/10.30821/miqot.v46i1.877>.

² Muhammad Aminuddin Shofi, "Marriage and Religion: Dynamics of Religious Conversion in Marriage and The Advancement of Community Religious Life Perspective of Religious Psychology and Sociology (Study in Lumajang Regency)," *Dialog* 44, no. 1 (2021): 52, <https://doi.org/10.47655/dialog.v44i1.422>.

³ Naila Farah et.al., "Kekerasan Berbasis Gender Dalam Kasus Perceraian Pada Masa Pandemi Covid-19 Di Kabupaten Cirebon," *Yinyang: Jurnal Studi Islam Gender dan Anak* 18, no. 2 (2023): 178, <https://doi.org/10.24090/yinyang.v18i2.9188>.

⁴ David A. Sbarra and Mark A. Whisman, "Divorce, Health, And Socioeconomic Status: An Agenda For Psychological Science," *Current Opinion in Psychology* 43 (Februari 2022): 76, <https://doi.org/10.1016/j.copsyc.2021.06.007>.

⁵ Marice Yuniria et.al., "Implementasi Ikrar Sighat Taklik Talak Dalam Membentuk Keluarga Sakinah Mawaddah Wa Rahmah," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 16, no. 5 (2022): 1780, <https://doi.org/10.35931/aq.v16i5.1228>.

⁶ Muhammad Idris Nasution, "Disparitas Putusan Mahkamah Agung Dan Pengadilan Agama Dalam Penerapan *Fasakh* Terhadap Perceraian Atas Dasar Murtad," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 2 (2021): 370–86, <https://doi.org/10.22373/ujhk.v4i2.10015>.

⁷ Muhamad Hasyimi Hadromi, "Analisis Putusan Hakim Terhadap Perceraian Akibat Murtad Di Pengadilan Agama Bogor (Putusan Nomor 1151/Pdt.G/2023/PA.Bgr)" (diploma, UNUSIA, 2024), <https://unusia.ac.id/prodi/s1hukumkeluarga>.

⁸ Evra Wilya et.al., "Lawsuits Related To Divorce Due To Apostasy In Bitung Religious Court," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 46, no. 1 (2022): 53–69, <https://doi.org/10.30821/miqot.v46i1.877>.

deciding two divorce cases involving apostasy, namely case No. 14/Pdt.G/2019/PA.Bitg and 17/Pdt.G/2019/PA.Bitg at the Bitung Religious Court. The research by Saputra et al., entitled “Kompleksitas Perceraian Akibat Murtad: Analisis Peran Pengadilan Agama Dalam Konteks Hukum Islam”, highlights the complexity of *fasakh* based on Article 116 letter (h) of the Compilation of Islamic Law, which requires evidence of incompatibility.⁹ Existing research has not specifically discussed the application of *talak raj'i* in cases of apostasy. This gap in research indicates that there is an area of research that has not been widely explored, making it an important research gap to fill. This study is novel in its focus on an in-depth analysis of the use of the concept of *talak raj'i* as the basis for terminating a marriage due to apostasy.

The urgency of this research arises from the fact that the use of *talak raj'i* in cases of apostasy has complex legal implications. *Talak raj'i* provides the opportunity for reconciliation during the *iddah* period, while differences in religion make reconciliation impossible according to Sharia and positive law. This condition creates normative inconsistencies that have the potential to cause legal uncertainty for the parties

involved. In addition, diverse court practices require analysis that can provide clarity on the appropriate application of the law. Therefore, an in-depth and systematic study is needed to contribute to the development of Islamic family law.

The main issue in this study relates to the basis for the judge's consideration when granting a *talak raj'i* in cases of apostasy in Decision Number 541/Pdt.G/2020/PA.Bjb. This legal issue includes the judge's interpretation of the relationship between *fiqh* law, the Compilation of Islamic Law, and positive law provisions in determining the form of marriage dissolution. In addition, this study also highlights the appropriateness of using *talak raj'i* divorce with the principles of Islamic law that prohibit interfaith marriage after apostasy. Another issue examined is the logical consistency between the form of divorce imposed and the legal consequences it entails. Through this focus, the study seeks to elaborate on the normative and practical problems in the application of divorce law due to apostasy.

This study uses a normative juridical method by combining a legislative approach, a case approach, and a conceptual approach to obtain a comprehensive understanding of the law,¹⁰ a legislative approach was used to

⁹ Maulana Adi Saputra et.al., “Kompleksitas Perceraian Akibat Murtad: Analisis Peran Pengadilan Agama Dalam Konteks Hukum Islam,” *Journal of Contemporary Law Studies* 1, no. 3 (2024): 129–40, <https://doi.org/10.47134/lawstudies.v2i2.2239>.

¹⁰ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel (Edisi Revisi)*, 5 (Mira Buana Media, 2022), 3:94.

examine divorce laws on the grounds of apostasy, while a case approach was used through an in-depth review of Banjarbaru Religious Court Decision Number 541/Pdt.G/2020/PA. Bjb, which has permanent legal force, while a conceptual approach was used to examine the principles of Islamic law, the concept of family law, and the *fiqh* view of apostasy and its impact on marital status. The legal materials analyzed consisted of primary legal materials such as court decisions, the Compilation of Islamic Law, verses from the Qur'an that regulate the prohibition of marrying non-Muslims, classical and contemporary *fiqh* literature, and secondary legal materials obtained from relevant journals, books, and previous studies. The collection of legal materials was carried out through a literature study to obtain a comprehensive understanding, and data analysis techniques used descriptive-analytical and evaluative methods. Descriptive-analytical analysis is used to describe and elaborate on relevant legal provisions, comparative analysis is used to compare the judge's considerations with the normative provisions of Islamic law and positive law, while evaluative analysis is used to assess the accuracy of the application of the law in the ruling. With this combination of techniques and approaches, the study is expected to provide a comprehensive picture of the legal considerations in cases of apostasy as grounds for divorce.

The purpose of this study is to explain the basis for the judge's consideration in granting a *raj'i* divorce in a divorce case due to apostasy in Decision Number 541/Pdt.G/2020/PA.Bjb. This study also aims to examine the legal consequences arising from the use of *raj'i* divorce in apostasy, both from the perspective of *fiqh* and positive law. Furthermore, this study is intended to provide theoretical and practical contributions to the development of Islamic family law in Indonesia. Through this analysis, the study is expected to enrich the literature and provide a basis for consistency in religious court decisions. Thus, the results of this study can be used as a reference in determining the most appropriate form of divorce in cases of apostasy.

RESULT AND DISCUSSION

Case Details in Decision Number 541/Pdt.G/2020/PA.Bjb

Divorce cases due to religious differences are one of the family law issues that often cause problems, because they relate to differences in beliefs between husband and wife and the legal rules governing the validity and annulment of marriage. In Islamic law, apostasy is seen as an event that can affect the continuity of the husband and wife relationship because it concerns the unity of faith within the family. Meanwhile, the annulment of a marriage under national law must go through the courts in order for the decision to have legal force and guarantee

justice, as stipulated in Article 23 of Law Number 1 of 1974 concerning Marriage. This statement emphasizes that the state gives full authority to the courts as the only institution that has the right to decide whether or not a marriage annulment is valid. One example of a case that illustrates this issue is divorce case No. 541/Pdt.G/2020/PA.Bjb at the Banjarbaru Religious Court.

Divorce case No. 541/Pdt.G/2020/PA.Bjb was filed by a Muslim man as the Petitioner against his wife (Respondent), who married on May 20, 2011, in Banjarbaru and was registered at the Landasan Ulin Subdistrict Religious Affairs Office. Three children were born from the marriage. The household was initially harmonious, but since 2014, disputes arose after the Respondent converted from Islam to Christianity. These differences in belief led to repeated arguments until the Petitioner left the house in January 2020. Since then, the two have lived separately for about three months before the case was filed.

On October 2, 2020, the Petitioner filed for divorce on the grounds that the marriage could no longer be maintained because the goal of forming a *sakinah, mawaddah, wa rahmah* family could no longer be realized. The Respondent, through their legal representative, did not oppose the divorce, and mediation resulted in a partial agreement

regarding child custody, alimony, and the Respondent's commitment not to influence the children's beliefs. Custody was granted to the Respondent with the obligation to uphold the children's Islamic faith, while the Petitioner continued to provide child support of IDR 2,500,000.00 per month, excluding education and health costs.

The trial showed that the Petitioner and the Respondent each presented documentary evidence and witnesses confirming that they had separated and that their marital relationship was not harmonious. The Panel of Judges also confirmed that the Respondent had indeed converted to another religion, as recorded in the population registry. Thus, this case stems from disharmony due to religious differences (apostasy) that have made it impossible to maintain the marital relationship. The Petitioner considers divorce to be the best solution and requests permission from the Banjarbaru Religious Court to grant a *raj'i* divorce to the Respondent in accordance with Islamic law and applicable positive law.¹¹

Apostasy does not automatically invalidate a marriage, but must go through a judicial process with a divorce mechanism in order to be legally valid. In Indonesian positive law, divorce can only be carried out before a religious court as stipulated in Article 39 paragraph (1) of Law Number 1 of 1974

¹¹ Direktori Putusan Mahkamah Agung Republik Indonesia, "Putusan Nomor 541/Pdt.G/2020/PA.Bjb," preprint, 2020.

concerning Marriage. In Islamic law, however, scholars have differing views on this matter. The Hanafi and Maliki schools of thought argue that apostasy automatically invalidates a marriage (*fasakh*), while the Shafi'i and Hambali schools of thought argue that the annulment only takes effect after the *Iddah* period ends if the apostate does not return to Islam.¹² Therefore, the judge's decision to continue processing the case through the divorce mechanism in accordance with the principle of due process of law was legally correct, because the authority to decide on marital status lies with the court, not solely with the change of religion of one of the parties.

This principle essentially affirms that every legal process carried out by judicial institutions must uphold procedural fairness, protect individual rights, and provide equal opportunity for each party to be heard before a decision is made.¹³ However, the use of *talak raj'i* in cases of apostasy is inconsistent with the principles of Islamic law adopted by the Indonesian state, particularly the Shafi'i school of thought, which states that marriages resulting from apostasy are not dissolved by

talak, but by *fasakh* after the *iddah* period if the apostate does not return. This has the potential to cause confusion between the *fiqh* norms that serve as the reference for the material law of the Religious Court and the divorce mechanism used by judges. The Nature of Divorce Based on National Law and Islamic Law.

The Basis for the Judge's Considerations in Deciding Divorce Due to Apostasy

In divorce cases due to religious differences, judges are faced with two interrelated legal dimensions, namely Islamic law and national law.¹⁴ Both must be considered in a balanced manner so that the verdict not only fulfills the formal requirements of the court, but is also in line with the values of justice and the principles of Islamic teachings.¹⁵

One example of a case related to this issue is found in the Banjarbaru Religious Court Decision Number 541/Pdt.G/2020/PA.Bjb. The Religious Court Decision Number 541/PdI.G/2020/PABjb ended with the husband granting his wife a *raj'i* divorce. This decision was made based on the judge's consideration that the

¹² Reka Desrina Wati, "The Marriage Agreement in Article 29 of Law Number 1 of 1974 Is Reviewed According to Islamic Law," *Al-Hurriyah: Jurnal Hukum Islam* 7, no. 2 (2022): 179, <https://doi.org/10.30983/alhurriyah.v7i2.4125>.

¹³ Ayu Wulandari and Sidi Ahyar Wiraguna, "Problematika Penerapan Prinsip Due Process of Law Dalam Hukum Acara Pengujian Undang-Undang Di Mahkamah Konstitusi," *Politika Progresif: Jurnal Hukum, Politik dan Humaniora* 2, no. 2 (2025): 55, <https://doi.org/10.62383/progres.v2i2.1613>.

¹⁴ Achmad Thorik et.al., "Dinamika Perceraian di Kalangan Keluarga Muslim Indonesia Dalam Perspektif Sosiologi Hukum Islam," *Millatuna: Jurnal Studi Islam* 2, no. 04 (2025): 95, <https://doi.org/10.33752/mjsi.v2i04.11154>.

¹⁵ Wiranto et.al., "Perceraian dan Hak Hak Pasca Perceraian Dalam Hukum Keluarga Islam," *Jurnal Riset Multidisiplin Edukasi* 2, no. 6 (2025): 496, <https://doi.org/10.71282/jurmie.v2i6.507>.

respondent had returned to Christianity. This became the basis for consideration because the respondent's return to her previous religion had triggered arguments, separation, and domestic disharmony.

The judge ruled that the circumstances met the criteria for divorce as stipulated in Government Regulation No. 9 of 1975, Article 19 (f) in conjunction with Article 116 (h) of the Compilation of Islamic Law, namely the existence of continuous disputes and quarrels that made it impossible to maintain the marriage. Thus, apostasy is not considered a direct cause of the annulment of the marriage, but rather the main cause of the loss of harmony in the household. Therefore, the petitioner was granted authority by the judge to pronounce a *raj'i* divorce in court, in accordance with the provisions of Article 49 paragraph (1) of Law Number 1989 in conjunction with Law Number 3 of 2006 and Law Number 50 of 2009.

From the author's analytical perspective, the judge's considerations in this case show an emphasis on factual and legal aspects. The factual aspect is the existence of differences in beliefs that trigger domestic conflicts, while the legal aspect is the fulfillment of the element of continuous quarrels as referred to in Government Regulation Number 9 of 1975 Article 19 letter (f) in conjunction with Article 116 letter (h) of the Compilation of Islamic Law.

The judge did not consider apostasy as the direct cause of the dissolution of the marriage, but rather as an indirect cause that resulted in the failure to fulfill the purpose of marriage, namely to create a household that is *sakinah, mawaddah, and warahmah*. From a legal interpretation perspective, the judge appears to have used a positive law approach, basing his considerations on the norms contained in Article 19 (f) of Government Regulation No. 9 of 1975 in conjunction with Article 116 (h) of the Compilation of Islamic Law. This approach demonstrates the judge's efforts to maintain consistency in the application of religious court procedural law, which requires a formal legal basis for every decision.

In this case, the application of talak *raj'i* is considered procedurally appropriate because it follows the judicial mechanism as stipulated in Article 49 paragraph (1) of Law Number 7 of 1989 and Law Number 50 of 2009 concerning Religious Courts, namely that the Religious Court has the authority to receive, examine, adjudicate, and settle such cases. However, from an Islamic legal perspective, the judge's consideration can be deemed substantially inappropriate. In classical *fiqh*, particularly according to the Shafi'i school of thought, if one of the spouses apostatizes, the marriage is automatically dissolved from the moment of apostasy, unless the apostate returns to Islam before the

end of the *iddah* period.¹⁶ This means that Islam views religious differences between husband and wife as something that cannot be maintained within the bonds of marriage,¹⁷ Because marriage is a means to realize Maqasid al-Syariah, especially to protect religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), offspring (*hifz al-nasl*), and wealth (*hifz al-mal*) as the basis for family resilience and worship.¹⁸

The *maqasid al-syariah* approach is important to use in assessing divorce¹⁹ The consequences of apostasy due to this issue are not only related to the validity of the marriage, but also have an impact on the rights of husband and wife, child protection, and family life after divorce. This approach helps Islamic law to not only focus on formal rules, but also on efforts to bring about justice and benefit.²⁰ In cases where the husband and wife have different religions, *maqasid al-syariah* provides a basis for protecting the vulnerable party and ensuring that responsibilities continue to be fulfilled after the marriage ends.

The implications of applying *maqasid al-syariah* in divorce cases due to apostasy can be seen in the way judges or legal policymakers prioritize the greater good. Protection of religion (*hifz al-din*) is not interpreted narrowly as merely terminating the marriage, but also includes respect for the religious rights of each party without causing discrimination or symbolic violence. Protection of life (*hifz al-nafs*) requires the state and judicial institutions to pay attention to physical and psychological safety, especially for children and spouses who are vulnerable to the impact of conflict and divorce.

The application of *hifz al-'aql* requires legal certainty and policy clarity so as not to cause social confusion or psychological instability in children due to the tug-of-war over the legal status of their parents. Protection of descendants (*hifz al-nasl*) implies the determination of child custody rights that focus on the best interests of the

¹⁶ Moh Sa'i Affan and Holil Holil, "Analisis Tentang Status Anak Pada Pasangan Murtad Perspektif UU No. 16 Tahun 2019 dan Mazhab Syafi'i," *Al-Muqaranah: Jurnal Perbandingan Mazhab Dan Hukum* 3, no. 1 (2025): 2, <https://doi.org/10.55210/jpmh.v3i1.509>.

¹⁷ Arif Sugitanata and Suud Sarim Karimullah, "Implemetasi Hukum Keluarga Islam Pada Undang-Undang Perkawinan Di Indonesia Mengenai Hak Memilih Pasangan Bagi Perempuan," *SETARA: Jurnal Studi Gender dan Anak* 5, no. 01 (2023): 2–3, <https://doi.org/10.32332/jsga.v5i01.6536>.

¹⁸ Chairil Irawan Ranguti dkk., "The Concept Of Maqashid Sharia In The Effectiveness Of The Implementation Of Presidential Regulation No. 72 Of 2021 Concerning The Handling Of Stunting Mandailing Natal Regency," *Journal of Law, Politic and Humanities* 4, no. 5 (2024): 1412–13, <https://doi.org/10.38035/jlph.v4i5.526>.

¹⁹ Sumarta Sumarta et.al., "Maqasid Al-Syariah Mendorong Keadilan dan Keseimbangan Dalam Hukum Islam," *Khulasah : Islamic Studies Journal* 6, no. 1 (2024): 22, <https://doi.org/10.55656/kisj.v6i1.120>.

²⁰ Jauhari Jauhari, "Penerapan Prinsip Maqashid Syariah Dalam Perundang-Undangan Di Indonesia," *Karimiyah* 4, no. 1 (2024): 10, <https://doi.org/10.59623/karimiyah.v4i1.49>.

child,²¹ not solely based on the parents' religious differences. Meanwhile, *hifz al-mal* requires fair arrangements regarding alimony, property division, and economic security so that divorce does not result in the structural impoverishment of one party or the neglect of the children's needs.²² Therefore, the application of *maqasid al-syariah* in resolving divorce cases due to apostasy not only upholds legal norms, but also ensures the achievement of substantive justice that protects the dignity and welfare of all family members.

Imam Hanafi in the book *Al-Mughni* by Ibn Qudamah states that when one of them apostatizes before the occurrence of marital relations,²³ therefore, separation must be carried out immediately, but if sexual intercourse has occurred, separation must be based on the completion of the *Iddah* period. If the apostate spouse converts back to Islam before the *Iddah* period ends, the marriage can be continued. This view shows that according to both Imam Shafi'i and Imam Hanafi, a marriage resulting from apostasy is not immediately invalidated but must wait

until the *Iddah* period ends to ensure the possibility of the apostate returning to Islam.

Thus, formally speaking, the judge's application of the law in this case was appropriate because it followed the principle of *non ultra petita*, which means not exceeding what is requested. The doctrine of *non ultra petita* means that "the court may not decide more than what is requested by the plaintiff" and is subject to the applicable positive legal procedures.²⁴ However, materially speaking, this contradicts Islamic law, because in *Shafi'i fiqh*, the marital relationship resulting from apostasy should not be terminated by *talak raj'i*, but rather suspended first and then automatically dissolved if the apostate does not convert back to Islam by the end of the *iddah* period.

This approach reflects the application of the principle of due process of law as reflected in Law Number 7 Article 65 of 1989 concerning Religious Courts, whereby divorce can only be granted in court after the court concerned has attempted and failed to

²¹ Bagus Ary Damawan et.al., "Analisis Hak Asuh Anak Dalam Putusan Pengadilan Agama Lahat Nomor 685/Pdt.G/2022/PA.LT: Perspektif Maqâsid Al-Syari'ah Muhammad Thâhir Ibn Âsyûr," *Konsensus : Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi* 1, no. 4 (2024): 322, <https://doi.org/10.62383/konsensus.v1i4.297>.

²² Ahmad Fauzi Ahmad et.al., "Rekonstruksi Hukum Keluarga Islam Dalam Perspektif Maqasid Al-Syari'ah Upaya Preventif Pernikahan Dini Di Indonesia," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (2025): 463, <https://doi.org/10.46773/usrah.v6i4.2528>.

²³ Aulia Nur Riftiani, "Analisis Terhadap Pendapat Imam Asy-Syafi'i Tentang Perkawinan Yang Salah Satu Pasangan Murtad" (Skripsi, Universitas Islam Negeri Walisongo, 2019), 7.

²⁴ Bambang Sugeng Ariadi Subagyo et.al., "Kajian Penerapan Asas Ultra Petita Pada Petitum Ex Aequo Et Bono," *Yuridika* 29, no. 1 (2014): 104, <https://doi.org/10.20473/ydk.v29i1.360>.

reconcile the two parties.²⁵ This demonstrates fair legal protection in accordance with procedures, whereby divorce cannot be carried out arbitrarily without going through the proper judicial mechanisms and opportunities for mediation.²⁶

The principle of due process of law in the Indonesian legal system emphasizes a fair and open judicial process and guarantees the right of the parties to be heard in a balanced manner, including in the Religious Court. In practice, judges do not consider apostasy as a direct legal cause for divorce, but rather as a factor that gives rise to domestic discord and conflict. This is reflected in the legal basis used, namely Article 19 letter (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 of the Compilation of Islamic Law Article 116 letter (h), which stipulates that divorce can be granted if there are continuous disturbances and conflicts that make it impossible to continue married life.²⁷ Thus, apostasy is not positioned as a legal reason for divorce, but rather as the background to a conflict that is

assessed through a mechanism of proof in court.

This approach is not in line with the majority opinion of the *fiqh* school. The majority of scholars from the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought are of the view that apostasy by one of the spouses results in the dissolution of the marriage bond.²⁸ The differences of opinion only relate to technical aspects, such as the timing of the dissolution of the marriage and the need for a court ruling, not the legal principle itself. Therefore, from a *fiqh* perspective, apostasy is a substantive cause for the annulment of a marriage and is not understood merely as a trigger for domestic conflict.

In the Banjarbaru religious court case No. 541/Pdt.G/2020/PA.Bjb, the judge did not use apostasy as the main legal basis, but based the decision on the existence of domestic conflict. As a result, the judge's considerations were not in line with the *fiqh* law that has been the normative reference in similar cases. The following is a comparison table of *talak raj'i* and *fasakh* due to apostasy:

Aspects	<i>Talak Raj'i</i>	<i>Fasakh</i> due to Apostasy
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²⁵ M Muhsin and Soleh Hasan Wahid, "Talak di Luar Pengadilan Perspektif Fikih dan Hukum Positif," *Al-Syakhsyiyah: Journal of Law & Family Studies* 3, no. 1 (2021): 67, <https://doi.org/10.21154/syakhsyiyah.v3i1.3063>.

²⁶ Nur Fadhilah dkk., "Regulating Arbitrary Divorce in Islamic Family Law: A Maqāṣid al-Sharī'ah-Based Comparative Analysis of Muslim-Majority Legal Systems," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 15, no. 2 (2025): 156, <https://doi.org/10.15642/alhukama.2025.15.1>.

²⁷ Andi Intan Cahyani, "Peradilan Agama sebagai Penegak Hukum Islam di Indonesia," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 6, no. 1 (2019): 100, <https://doi.org/10.24252/al-qadau.v6i1.9483>.

²⁸ Raja Faisal et.al., "Putusnya Perkawinan (Perspektif Perbandingan Empat Madzhab Fikih)," *Indonesian Journal of Sharia and Law* 2, no. 1 (2025): 41, <https://doi.org/10.54622/ijsl.v2i1.419>.

Marital Status	The marriage is considered dissolved after the pronouncement of divorce in court.	The marriage is considered dissolved upon apostasy, unless the person returns to Islam before the completion of the waiting period.
<i>Iddah</i>	The wife undergoes the <i>Iddah</i> period for a revocable divorce (three menstrual cycles), and may reconcile during the <i>Iddah</i> period without a new marriage contract.	The waiting period applies, but the marriage cannot be continued unless she returns to Islam before the waiting period ends.
Maintenance <i>Iddah</i>	A wife is entitled to financial support during the <i>Iddah</i> period because she is still legally married.	There is no alimony if the termination is due to apostasy on the part of the wife.

Table 1: Comparison of Talak Raj'i and Fasakh**Legal Consequences in Decision Number 541/Pdt.G/2020/PA.Bjb**

Every court decision not only serves to resolve disputes, but also has legal consequences that affect the status of the parties and the legal relationship between them. In divorce cases, the legal consequences include marital status, the rights and obligations of each party, and responsibility for children.²⁹ Therefore, it is important to examine the legal consequences arising from the Banjarbaru Religious Court Decision Number 541/Pdt.G/2020/PA Bjb in order to understand the extent to which the

decision reflects the proportional application of Islamic law and positive law.

The legal consequences in Decision Number 541/Pdt.G/2020/PA.Bjb relate to the pronouncement of a *raj'i* divorce by a husband against his wife who had apostatized from Islam to Christianity. The main issue arising from this decision is the validity of the use of *raj'i* divorce in cases of apostasy, as well as the legal consequences that arise regarding marital status, the right of reconciliation, and post-divorce responsibilities.

²⁹ Laila Azizah and Anwar Hafidzi, "Hak dan Kewajiban Suami-Istri, Harta Bersama, serta Akibat Hukum Perceraian," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 1737, <https://doi.org/10.62976/ijjel.v3i2.1164>.

Based on the provisions of Government Regulation Number 9 of 1975, divorce can be granted if “there are continuous disputes and quarrels between husband and wife and there is no hope of living harmoniously in the household again.” In this case, the judge ruled that religious differences had caused quarrels and disharmony that could not be repaired, so the grounds for divorce were considered legally valid. The petitioner expressly requested permission for divorce, so the panel of judges decided the case in accordance with the principle of non ultra petita, which states that a court may not decide a case beyond what has been requested.

The next legal consequence concerns the disharmony between the form of *raj'i* divorce and the condition of religious differences between the parties. According to Imam Shafi'i's view, a marriage resulting from apostasy is not immediately invalidated, but rather awaits the *Iddah* period to see whether the apostate returns to Islam. If he returns before the *Iddah* period ends, the marriage can be continued without a new contract, but if not, the marital relationship is declared *fasakh*.³⁰

It is important to distinguish between the concepts of “*rujuk*” and “continuing the marriage.” *Rujuk* occurs in cases of talak *raj'i*, which is when the husband takes back his wife who is still in her *Iddah* period without requiring a new marriage contract. In this case, the marriage contract is legally terminated, but the legal consequences of the marriage have not completely disappeared, because during the *iddah* period there are still certain rights and obligations as well as the opportunity to return through *rujuk*.³¹

Meanwhile, continuing the marriage in cases of apostasy after *dukhul* is not based on divorce, but rather means maintaining a marital bond that has not been completely severed, whereby the legal relationship of marriage is not annulled, but only suspended until the *iddah* period ends.³²

Scholars differ on the legal consequences of apostasy on marriage. The Hanafi and Maliki schools of thought argue that the apostasy of one spouse automatically invalidates the marriage through *fasakh*,³³ so that the marriage bond is severed upon apostasy. Conversely, the Shafi'i and Hanbali schools of thought argue that the marriage is

³⁰ Efita Nurhidayati and Miftakhul Huda, “Perspektif Murtad Dalam Perkawinan Menurut Hukum Positif Islam Dan Fikih 4 Imam Mazhab,” *Jurnal Hukum Saraswati (JHS)* 7, no. 02 (2025): 996, <https://doi.org/10.36733/jhshs.v7i02.12702>.

³¹ Khairani Mukdin et.al., “The Validity Of Reconciliation Without Witnesses At The Religious Affairs Office,” *El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law* 3, no. 1 (2023): 128, <https://doi.org/10.22373/hadhanah.v3i1.2725>.

³² Nasution, “Disparitas Putusan Mahkamah Agung Dan Pengadilan Agama Dalam Penerapan Fasakh Terhadap Perceraian Atas Dasar Murtad,” 377.

³³ Deris Arista Saputra, “A Study of Fasakh and Khulu in The Compilation of Islamic Law (KHI): Comparison, Causes, and Implications,” *International Journal of Social Service and Research* 5, no. 1 (2025): 137, <https://doi.org/10.46799/ijssr.v5i1.1191>.

not immediately annulled, but rather suspended until the end of the *iddah* period. If the apostate returns to Islam before the end of the *iddah* period, the marriage remains valid and can be continued without a new marriage contract. However, if they do not return before the end of the *iddah* period, the marriage ends in *fasakh* and a new marriage contract is required to reunite.

In Indonesian positive law, the concept of reconciliation is clearly regulated in the Compilation of Islamic Law. Article 163 of the Compilation of Islamic Law states:

"Referral may be made in the following cases: (a) termination of marriage due to divorce, except for divorce that has been pronounced three times before consummation."

Unlike "*rujuk*", the Compilation of Islamic Law does not list apostasy or renunciation of faith as direct grounds for divorce. The grounds for divorce are limited to those specified in Article 116 (h), which reads as follows:

"Divorce may occur for reasons (h) where the husband and wife continuously experience disputes and conflicts and there is no hope of living in harmony again in the marriage".

This provision is in accordance with Government Regulation No. 9 of 1975 Article 19 letter (f), which states:

"Divorce may occur for the following reasons: (f) the husband and wife are constantly fighting and

there is no hope for a peaceful life in the household."

Based on these provisions, religious courts in Indonesia do not consider apostasy as an automatic legal cause for divorce, but rather as a factor that gives rise to domestic conflict. As a result, as long as there is no court decision with permanent legal force, the marriage status is still considered valid according to positive law. The concept of "continuing the marriage" in cases of apostasy is therefore not a reference as regulated in Article 163 of the Compilation of Islamic Law, but rather a consequence of the absence of positive legal norms regulating the automatic annulment of marriage due to apostasy.

Allah SWT says in the Qur'an, Surah Al-Mumtahanah, verse 10:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا جَاءَكُمُ
الْمُؤْمِنَاتُ مَهَاجِرَاتٍ فَامْتَحِنُوهُنَّ ۚ إِنَّهُنَّ
بِأَيْمَانِهِنَّ قَائِنَاتٌ عَلِمْتُوهُنَّ مُؤْمِنَاتٍ فَلَا
تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۚ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا
هُنَّ يَحِلُّونَ لَهُنَّ ۚ

"Hey, you who believe, when believing women come to you as migrants, test them. Allah knows best about their faith; so if you know that they are truly believers, do not return them to their disbelieving husbands. They are not lawful for the disbelievers, nor are the disbelievers lawful for them...." (QS. al-Mumtahanah: 10).

Based on this verse, a believing woman is not lawful for an unbelieving man, so that from the moment of conversion, the marriage relationship is effectively severed without the need for a pronouncement of divorce. Therefore, the right of reconciliation arising from the use of the term *talak raj'i* in this case cannot be exercised, because the marriage bond no longer exists and the right of reconciliation cannot be enforced. In this case, another consequence that arises is that the husband is not obligated to provide financial support during the *Iddah* period.

This is explained in *Al-Umm* by Imam Muhammad bin Idris Asy-Syafi'i, that if a Muslim husband marries a woman of the Book and his wife then apostatizes to become a follower of the Majusi religion or another religion outside of the Book, then if she returns to Islam or a religion of the Book before the *Iddah* period ends, their marriage is still considered valid. Conversely, if he does not return until the *Iddah* period is over, then their marriage automatically ends, and the wife is not entitled to alimony during the *Iddah* period because her apostasy makes it impossible for her husband to have relations with her.³⁴

Imam Shafi'i's statement indicates that the loss of the right to financial support during the *Iddah* period is a direct consequence of the wife's apostasy, because this action causes

the severance of the marital relationship and prevents the husband from fulfilling his obligations towards his wife. In other words, when a wife renounces Islam, she legally forfeits her marital rights, including the right to receive financial support during the *Iddah* period. This situation highlights the tension between the application of positive law and Sharia principles. However, the use of the term *talak raj'i* can be interpreted as a form of caution on the part of the judge to remain in accordance with positive law, which requires divorce to be carried out in court and not decided outside the petitioner's petition (non ultra petita).

In addition, other legal consequences in this decision also include the determination of child custody and alimony obligations. The panel of judges ruled that custody of the three children be granted to the Respondent as their biological mother, on the condition that the children remain in the Islamic faith. The petitioner is required to provide child support in the amount of 2,500,000.00 IDR per month, excluding education and health costs. The judge's consideration is in line with the principle of the best interests of the child as stipulated in Article 41 of Law Number 1 of 1974 and Article 105 of the Compilation of Islamic Law, which emphasizes that the maintenance and education of children after divorce remains a top priority, with parents

³⁴ Muhammad bin Idris Asy-Syafi'i, *Al-Umm Juz 9*, ed. oleh Terjemah. Misbah (Pustaka Azzam, 2014). 58.

obliged to fulfill it in accordance with the interests of the child.

Based on Article 41 letter (a) of Law No. 1 of 1974 concerning Marriage, it is stipulated that "both the mother and father remain obliged to care for and educate their children, solely based on the interests of the child", while 105 letter (a) and (c) of the Compilation of Islamic Law stipulate that the care of "children who are not yet mumayiz or under the age of 12 is the right of the mother and the costs of care are borne by the father".³⁵

According to Islamic law, granting custody to the mother is also in accordance with the opinion of the majority of scholars, as long as it does not threaten the child's faith. Meanwhile, the obligation to provide financial support remains with the father as a form of moral and legal responsibility towards his children.^{36,37}

Overall, the use of *talak raj'i* in apostasy cases shows a discrepancy between Islamic law principles and positive law in Indonesia. In Shafi'i jurisprudence, apostasy is not understood as a cause for divorce, but rather as grounds for *fasakh* (annulment) if the spouse does not return to Islam before the

end of the *iddah* period. Furthermore, the use of *talak raj'i* has confusing legal implications because it formally opens up the possibility of reconciliation and gives rise to the obligation of *iddah* maintenance, even though reconciliation is impossible in a situation of religious difference.

CONCLUSION

This study found that Decision Number 541/Pdt.G/2020/PA.Bjb served to affirm the application of positive law in cases that also had a basis in Sharia law, so that the results remained legally valid. Problems arising from religious differences had led to arguments and disharmony, making it impossible to maintain the purpose of marriage.

In his consideration, the judge did not place apostasy as the direct cause of the marriage's annulment, but as a source of conflict that fulfilled the elements of continuous dispute in accordance with the provisions of Article 19 letter (f) of Government Regulation No. 9 of 1975 in conjunction with Article 116 letter (h) of the Compilation of Islamic Law. As a legal consequence, the application of *talak raj'i* in this case is only formal, because according to Islamic law, the marriage bond was severed

³⁵ Fawzia Hidayatul Ulya et.al., "Penguasaan Hak Asuh Anak di bawah Umur kepada Bapak," *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 1 (2021): 103, <https://doi.org/10.51675/jaksya.v2i1.176>.

³⁶ Faisal Fauzan Ilyasa et.al., "Keutamaan Ibu Dalam Hak Asuh Anak Perspektif Pendidikan: Analisis Hadits Tarbawi," *Al-Hikmah: Jurnal Agama dan Ilmu Pengetahuan* 22, no. 1 (2025): 95, [https://doi.org/10.25299/ajaip.2025.vol22\(1\).15850](https://doi.org/10.25299/ajaip.2025.vol22(1).15850).

³⁷ M. Jafar, "Tinjauan Yuridis Hak Asuh Anak (Hadhanah) Setelah Perceraian Menurut Kompilasi Hukum Islam: (Studi Putusan Nomor 567/Pdt.G/2018/PA.Clg)," *Rechtsnormen Jurnal Komunikasi dan Informasi Hukum* 3, no. 1 (2024): 40, <https://doi.org/10.56211/rechtsnormen.v3i1.625>.

when the religious differences arose, so that the right of reconciliation and *Iddah* maintenance cannot be enforced even though this is not explicitly stated in the decision.

SUGGESTION

This study contributes to the development of Islamic family law by emphasizing the importance of synchronization between the principles of Sharia justice and national legal certainty. The limitation of this study lies in its scope, which only examines one decision, so the results are not yet able to provide a comprehensive picture of practices in religious courts. Therefore, further research needs to be conducted comparatively on several similar decisions to enrich the understanding of the consistency of the application of divorce law due to apostasy in Indonesia.

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