The Effectiveness of KHI in the Effort to Minimize Case of Divorce; Case Study at the Sigli Shar'i Court

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Abstract
This study aims to determine the effectiveness of applying the Islamic Law Compilation (KHI) to minimize divorce cases at the Sigli Sharia Court. In addition, this study is to find out the obstacles to applying the Islamic Law Compilation in the Sharia Court and the efforts made by the Sigli Syari'ah Court to minimize disputes/divorce cases based on the Islamic Law Compilation. The research method used is empirical legal research using a case study approach, a statute approach. This study uses 2 (two) theories, namely the theory of legal effectiveness and the theory of the legal system.

Keywords: Effectiveness, Islamic Law, KHI

Introduction

Marriage is a religious injunction which is the only way to distribute sex that Islam sanctions. When people do it simultaneously, the desire to carry out religious orders (shari'a) and have the desire to fulfil their biological needs can be fulfilled, and it must be distributed.¹

Etymologically, marriage comes from Arabic, namely marriage or zawaj. This word is found in Qur'an and Hadith's Prophet and is used in the daily life of the Arabs.

Marriage can mean Al-Wath‘i, Al-Dhommu, Al-Tadakhul, Al-jam‘u or like ‘an al-wathaqd which means intercourse, association, jima‘ and contract.²

The meaning of marriage can be seen in truth (haqiqat) and can also be interpreted figuratively (majaz). The true meaning of marriage is gathering, while it means the contract or there is a marriage agreement in a figurative sense.³

"Marriage can create a happy and lasting family if it is lived well. According to Islamic law, marriage justifies association with the contract so that things that limit rights and obligations before the contract can be freed. It is a bonded relationship between a man and a woman, and the two are not muhrim at first. So husband and wife must help and complement each other to develop his personality to help and achieve spiritual and material well-being.⁴

In Article 2 of the Compilation of Islamic Law (KHI), marriage is a solid contract or mitsaqaq ghalizan to obey Allah's commands, and marriage is also an act of worship. Marriage is sacred because it is a way to obey God's commandments. Marriage is also called sunnatullah whose purpose is to maintain human honour. The purpose of marriage is stated in Article 3 of the Compilation of Islamic Law (KHI) that marriage is expected to create a sakinah, mawaddah and rahmah family. The researcher concludes that marriage is sacred worship because it is proof of obedience to Allah's commands. Moreover, marriage has the purpose of maintaining human honour.

The primary purpose of marriage in Islam is a complete household. However, there may also be differences of opinion in a husband and wife relationship. Because of this difference of thought and opinion, this marriage bond is "forced" to separate or divorce.⁵

Based on the theory of the hierarchy of norms and trias politica, applying Islamic law in Aceh must not conflict with one law and another, including qanuns that contradict higher laws. Referring to the hierarchy of norms theory, the supreme law guides the regulations below it, including qanuns and other regional regulations.

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³ Lili Rasjidi, Hukum Perkawinan dan Perceraian di Malaysia dan Indonesia (Bandung: Alumni, 1982), 3.
⁴ Hasballah Thaib dan Marahalim Harahap, Hukum Keluarga Dalam Syariat Islam (Universitas Al-Azhar, 2010), 4.
Realizing the purpose of marriage is to create a prosperous family (mawaddah warahmah), the marriage must be appropriately maintained. Islam also understands that marriage is a solid and absolute bond to social life to become an honourable human being. Differences in thinking that exist in a marriage are one of the causes of divorce.

The principle is a word that comes from Arabic; this word means basis or principle, while the word legality comes from the Latin word lex (noun), which means law. Legal words are legal or by the provisions of the law. Legality can be understood as the validity of something according to the law.

The term legality in Islamic law is not clearly defined as contained in the positive law books. Historically, the principle of legality was first proposed by Anselm van Voirbacht. Its application in Indonesia can be seen in Article 1 paragraph (1) of the Criminal Code (KUHP), which reads, "an act cannot be punished unless it is based on the force of criminal legislation." However, it does not mean that Islamic law does not recognize the principle of legality. Those who claim that Islamic criminal law does not recognize the principle of legality have not studied various verses that substantially indicate the principle of legality.

The nobility of this marriage makes it inappropriate for people to destroy it, mainly because of trivial things; even marriage should be legalized by being registered by the Office of Religious Affairs to be registered in the state. As for the various things that lead to the destruction of the household is very hated by Allah.

Divorce is known as talaq, the linguistic definition of letting go of the rope. Meanwhile, according to general terms, divorce is a break in the marital relationship between a man or a woman (husband and wife). According to Islamic law, divorce is called talak, which means release or liberation (release of husband from his wife).

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9 Subekti dan Tjitosudibyo, Kamus Hukum (Jakarta: Pradnya Paramita, 2019), 63.
Islamic jurisprudence explains that divorce or talak is divorce from the opposite party. This word is used as a term by fiqh experts, called divorce.  

Divorce lawsuits based in Arabic are called al-khulû. Islamic Shari'ah explains that scholars define al-khulû as separation (divorce) between a husband and wife with the pleasure of both and with the wife giving the payment to her husband. As for the meaning of al-khulû, namely taking off clothes. Then this term changed to a woman who asked her husband to be released from the bondage of marriage. As for Shaykh al-Bassam, al-khulû is the divorce of the husband.

Regarding divorce, based on article 115 of the compilation of Islamic law (KHI), it is stated: "Divorce can only be carried out in front of a court session after the Court has tried and failed to reconcile the two parties."

KHI Article 115 states that divorce must be done before a religious court. Divorce decisions are made after a religious court fails to reconcile the two sides. This article limits the space for divorce and minimizes the divorce rate in Indonesia.

In fact, KHI limits the permissibility of divorce only for reasons as stated in Article 116 of the compilation of Islamic law which states the reasons for divorce, namely: 1) One of the parties commits adultery or is a drunkard, gambler and so on which is too difficult to cure; 2) One of the parties chooses to leave the other party for 2 (two) consecutive years without any other permission and without a valid reason or for other reasons beyond his control; 3) One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place; 4) One of the parties commits severe persecution and cruelty that can endanger the other party; 5) One of the parties gets a disability or disease with the result that they are unable to carry out their obligations as husband or wife; 6) Between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household; 7) Husband violates taklik talak; 8) Religious conversion or apostasy that causes disharmony in the household.

However, the author can find many divorce cases registered at the Sigli Syari'ah Court. From 2018 to 2020, 1,323 cases were accepted by the Sigli Sharia Court.

As in the data in 2018, there were 395 cases with details of 103 divorce cases and 292 lawsuits; in 2019, there were 439 cases with 135 divorce details and 304
lawsuits. In 2020 there were 489 divorce cases, with details of 107 divorce cases and 382 lawsuits.

This study aims to answer why there can be an increase in the divorce rate in the Sigli Sharia Court and why the efforts made to minimize divorce have not been achieved effectively. Based on this, this problem is fascinating to examine. They are considered that researchers must continue research on the Sharia Court's efforts concerning the Compilation of Islamic Law. The title: The Effectiveness of Application of the Compilation of Islamic Law (KHI) as an Effort to Minimize Disputes/Divorce Cases (Case Study at the Sigli Syar’iah Court).

Method

The type of research used is empirical law research or field research. This study examines various legal provisions that apply to society. This research is used to examine the data contained in the community; after the data is collected, the next step is to identify the problem and then find a solution to the problem.

The theory used is the theory of legal effectiveness. This theory in the Big Indonesian Dictionary (KBBI) means that there is an effect (consequence, effect, effect). When referring to laws or regulations, this effective word "applies". At the same time, the meaning of effectiveness is effectiveness, so the level of success or validity interprets it.

The research approach used by the author is as follows: first, the case study approach, the case study approach is carried out by examining cases related to legal issues to be faced. The second is the Statute Approach. The statutory approach examines various laws and regulations related to current legal issues. The author reviews Islamic law's marriage laws and compilations with this approach. Third, the Sociology of Law Approach The sociology of law approach is an approach that seeks to "examine law in a social context. The results are then tested and criticized according to society's ceremonial law.

The study's primary data are the results of interviews with researchers from the judges of the Sharia Court of Sigli and the Registrar. The secondary sources, namely the

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14 Waluyo, 12.
15 Departemen Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia (Jakarta: Balai Pustaka, 1990), 219.
The data obtained from the literature. Namely in decisions from the Sigli Sharia Court and sourced from the Compilation of Islamic Law and legal books, scientific journals, and other supporting research data.

The data collection technique in this study, namely Observation by systematically observing the phenomena that became the object of the Sigli Sharia Court in order to obtain direct data about the effectiveness of the application of KHI to minimize divorce in the Sigli Sharia Court. Then a documentation study was conducted by looking for records, documents, and decisions from the Sharia Court to minimize divorce at the Sigli Sharia Court. Furthermore, interviews with informants who know the problems being researched, face-to-face interviews with the Registrar Mr. Maskur SHI MH, and interviews with the young law clerk Mr. Dedy Affrizal SH, MH related to the problem of the effectiveness of the application of KHI at the Sigli Sharia Court.

Data analysis techniques systematically compiled data for each data obtained in a study. Sometimes the data results are documents, interviews, and others. He explained again that there are three essential classifications in analyzing the data: 1). Data reduction; 2). Data presentation; and 3). Conclusion. Data analysis techniques can also analyze, think abstractly, live, on an object.

Results and Discussion

Efforts to Minimize Divorce Rates at the Sigli Sharia Court Based on KHI

Implementation of the Privileges of the Aceh Regional Province. This law does not directly emphasize the regulation of the Customary Court in Aceh. However, it regulates the special rights possessed by the Aceh Province, such as regarding the privileges of religion, education, customs, and the role of the ulama in every virtue of the Regional Government.17

Qanun Number 4 of 2003 concerning the Mukim Government in the Province of Nanggroe Aceh Darussalam, Qanun Number 5 of 2003 concerning the Government of Kampong in the Province of Nanggroe Aceh Darussalam Chapter II Position, Duties, Functions, and Authorities of Kampong there are several articles relating to the Kampong Government.18

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17 "Pasal 18 ayat (1), (2), (3), (4) PERMA (Peraturan Mahkamah Agung) Nomor 1 tahun 2008 tentang tidak adanya kesepakatan putusan mediator.," t.t.
18 "Pasal 18 ayat (1), (2), (3), (4) PERMA (Peraturan Mahkamah Agung) Nomor 1 tahun 2008 tentang tidak adanya kesepakatan putusan mediator."
Duties of Kampong Traditional Institutions, Regional Regulation (perda) Number 7 of 2000 concerning the Implementation of Traditional Life confirms that, as intended in article 5, Customary Institutions function as a means of controlling security, peace, harmony, and public order. Article 8 The function of everyday life is to carry out and streamline customs and customary law to foster community. 19

The Aceh Customary Council is tasked with assisting the Wali Nanggroe in fostering coordinating the traditional institutions as referred to in Article 2 paragraphs b to m. (2) In carrying out its duties as referred to in paragraph (1), the organizational structure and working procedures of the Aceh Customary Council shall be established as stipulated in the Aceh Qanun. 20

As for the location of this research, it was carried out in two villages in the Sakti sub-district, Pidie Regency, which are still the work area of the Sharia Court, namely in the village of mali uke and the village of mali mosque. The mediation process is divided into three stages: the premediation stage, the mediation implementation stage, and the final stage of implementing the mediation results. These three stages are the path that will be taken by the mediator and the parties in resolving their dispute. 21

Generally, the implementation of the mediation results is carried out by the parties themselves. However, there may be also assistance from other parties to realize a written agreement or agreement. The existence of other rights here is only to help carry out the results of a written agreement after it has obtained the approval of both parties.

Although this kampong traditional institution has played an important role in efforts to resolve various problems that exist in their community, there are also some people who do not use the Kampong traditional institution, this is because for example in divorce cases where couples prefer to go to court to resolve the divorce case so that the Kampong/village people do not know that they are divorced and this makes the Kampong adat institutions dislike this because they do not consider them to be parents in the Kampong. 22 The role of Kampong adat as a mediator in resolving conflicts and also as a supporter of the implementation of Islamic Shari’a. 23

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19 Badruzzaman Ismail, Dasar-dasar Hukum Pelaksanaan Adat dan Adat Istiadat di Aceh (Banda Aceh: CV. Boenbon Jaya, 2013), 47.
20 Badruzzaman Ismail, Pedoman Peradilan Adat di Aceh, Untuk Peradilan Adat yang Adil dan Akuntabel (Banda Aceh, 2008), 7.
21 Sahrizal Abbas, Mediasi dalam Perspektif Hukum Syariah, Hukum Adat, dan Hukum Nasional (Jakarta: Kencana Prenada Media Group, 2009), 36.
Based on traditional institutions in Aceh, the settlement process is only carried out simply by emphasizing the aspect of deliberation and consensus to achieve peace from the disputing parties. The trial process carried out by the kampong traditional institution is not the same as in a court that has judges clerks.

The author interviewed couples who have problems in their households who choose to resolve them at the kampong adat institution because they chose the mediation route from the Kampong adat institution instead of settling their case through legal channels. This route is considered safer and more economical than taking a mediation settlement through legal channels. In addition, the positive impact of the mediation pathway at the Kampong level is not widely known by the community and does not require much time; the children in the family are maintained.

**Mediation Process in Court**

Based on Article 115 of the compilation of Islamic law (KHI), it is said: "Divorce can only be carried out in front of a court session after the Court has tried and failed to reconcile the two parties." So the obligation of mediation before the trial can be carried out and is required by KHI. According to PERMA (Supreme Court Regulation) Number 1 of 2008, mediation is one of the mandatory processes in case settlement; if this process is not implemented, the decision is null and void.

Mediation is an effort to reconcile the litigants, not only essential but must be carried out before the case is examined. PERMA (Supreme Court Regulation) Number 1 of 2008 has fundamentally changed judicial practice in Indonesia about civil cases.

The mediator is a neutral party who assists the parties in the negotiation process to find various possible dispute resolutions without resorting to breaking or imposing a settlement. Based on PERMA (Supreme Court Regulation) Number 1 of 2008, the mediator has many tasks that have been regulated in Article 15.

The mediator must prepare a proposed mediation meeting schedule to discuss and agree upon the parties. The mediator must encourage the parties to take a direct role in the mediation process. According to PERMA (Supreme Court Regulation) Number 1 of 2008, the position of the decision is also various kinds that have been regulated in the articles including With the approval of the parties or legal counsel, the mediator can

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25 Pasal 1 ayat 6 “PERMA Nomor 1 Tahun 2008 tentang mediasi,” t.t.
26 Pasal 15 “PERMA Nomor 1 tahun 2008 tentang tugas mediator,” t.t.
invite one or more experts in a particular field to provide explanations or considerations that can be made. Help resolve differences of opinion between the parties.

The parties can submit a peace agreement to the judge to be strengthened in the form of a peace deed. If the parties do not want the peace agreement to be strengthened in the form of a peace deed, the peace agreement must contain a clause revocation of the lawsuit and or a clause stating the case has been completed with a maximum time limit of 40 (forty) working days as referred to in Article 13 paragraph (3).

Meanwhile, as referred to in paragraph (3), the reconciliation effort lasts no later than 14 (fourteen) working days from the day the parties express their desire to make peace to the judge examining the case concerned.  

**Mediation process outside the court**

Non-litigation dispute resolution is a process carried out outside the court or often referred to as alternative dispute resolution. There are several ways to resolve non-litigation disputes, one of which is through mediation. Non-judicial dispute resolution institutions, particularly institutions that handle dispute resolution issues outside the court, are also called Alternative Dispute Resolution (ADR) through negotiation, mediation, conciliation, and expert determination.

The provisions for mediation outside court are regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 2016 concerning Mediation Procedures in Court (from now on referred to as PERMA No. 1/2016) which is a substitute for the Regulation of the Supreme Court Number 1 of 2008.

The juridical provisions regarding legal counseling are regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2007 concerning Amendments to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2006 concerning Patterns of Legal Counseling. The background of the issuance of the ministerial regulation is to develop a legal culture in all levels of society to create awareness and legal compliance to uphold the rule of law in the Unitary State of the Republic of Indonesia. It is necessary to conduct legal counseling nationally so that the implementation of legal counseling nationally can run orderly—directed and integrated need to be based on the pattern of legal counseling.

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27 “Pasal 18 ayat (1), (2), (3), (4) PERMA (Peraturan Mahkamah Agung) Nomor 1 tahun 2008 tentang tidak adanya kesepakatan putusan mediator.”
Legal counseling is one information dissemination activity; understanding legal norms, applicable laws, and regulations to create legal awareness in the community.

Meanwhile, community legal awareness is the value that lives in a society in understanding and obedience or community compliance with legal norms and applicable laws and regulations.28

Based on the description above, it can be concluded that it is essential to have legal counseling to minimize divorce in the Sigli sharia court.

Analysis of Legal Theory Against Efforts to Minimize By the Sigli Sharia Court Based on KHI

1. Legal Effectiveness Theory

Soekanto, together Purnadi Purbacaraka, said that the effectiveness of a law is the essence of the sociological application of the law. Both distinguish the application of the law on three things, namely, philosophical, sociological, and juridical. Sociologically applicable is about the effectiveness of law in society. 29 The law's enactment philosophically means that the law is following the ideals of the law, and the enactment of the juridical law is the formation of the law following the established method or based on higher rules/rules.30

According to Soekanto, the benchmark of legal effectiveness is the extent to which the law is enforced. Five factors influence law enforcement that is closely related and are the essence of law enforcement. 1) Factors of the legislation itself, 2) Law enforcement factors, namely the parties that form and apply the law, 3) Factors of facilities or facilities that support law enforcement, 4) Community factors, namely the environment in which the law is enforced, 5) Cultural factors, namely, result from people's habits in social life. The factor of the legislation itself.31

There are principles in the law itself that accompany the enactment of the law in a society that aims to make the law effective.32 1) The law is not retroactive, meaning that the law can only be applied to cases that occur after the enactment of the law. 2)
Legislations made by institutions or authorities with higher positions are higher than laws and regulations made by institutions or authorities with lower positions. 3) Specific laws override more general laws, even though they cover the same thing. 4) The newer law cancels the earlier law if the two laws regulate the same thing. If the new law has a different purpose or is contrary to the old law, both apply side by side. 5) The law is inviolable.

The author uses this theory to examine the effectiveness of the use of KHI in the Sharia Court to minimize divorce. However, the reality is that the use of KHI to minimize divorce is still not adequate. The theory based on the theory of effectiveness for law enforcement must be supported by law enforcers and the substance of the law itself.

2. Legal System Theory

Legal System Theory According to Lawrence M. Friedman, There are three main elements of the legal system, namely; Legal Structure, Legal Content (Legal Substance), and Legal Culture (Legal Culture). 33

Based on Friedman's legal system theory, if it is associated with this research, why is the application of KHI ineffective to minimize divorce in the Sigli Sharia Court due to awareness of the law and also law enforcement officers as well as public knowledge of the law so that the law can work if one of the These factors are not applied in the Sharia Court, so this makes the substance of the KHI less effective to be used to minimize divorce.

The Role of Supporting Institutions in Efforts to Minimize the Divorce Rate at the Sigli Sharia Court.

Its role is fostering traditional life and customs carried out following the development of the privileges and specificities of Aceh, which are based on Islamic Shari'a values. Qanun Number 9 of 2008 concerning Indigenous Life and Customs, Aceh Qanun Number 10 of 2008 concerning Customary Institutions, UUPA, and Aceh Customary Institutions, of the various advantages possessed by Law Number 11 of 2006 challenges the Aceh Government, including the recognition of the existence of Aceh's traditional institutions officially.

The duties of customary institutions themselves in overcoming problems and solving various problems have their rights and authorities, including: 1) Resolving
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various social problems (article 5), 2) Became a peace judge and was given top priority by law enforcement officers to resolve various cases (articles 6 and 10), 3) Become a facilitator and mediator in the resolution of disputes concerning the customs and habits of the community, 4) Empower, develop, and preserve the customs and habits of the community in order to enrich the regional culture as an inseparable part of the national culture, 5) We are creating a democratic, harmonious and objective relationship between the Customary Leaders, Customary Stakeholders, Customary Leaders, and Government Officials at all levels of government in the district of the customary area, 6) It is creating an atmosphere that can guarantee the maintenance of indigenous peoples' diversity to strengthen the unity and integrity of the nation, I am fostering and preserving culture and customs and the relationship between traditional leaders and the Village Government and Lurah.34

Customary institutions must organize customary disputes, maintain and preserve customs and customs. Maintaining peace and order and preventing the emergence of immoral acts in society together with Tuha Peut and Imuem Meunasah as judges of peace.35

Conclusion

Based on the analysis of the effectiveness of the application of KHI to minimize divorce in the Sigli Syariah Court, the authors conclude that the application of KHI has not been effective in minimizing divorce in the Sigli Syariah Court. Based on the discussion on efforts to minimize the divorce rate, article 116 of the KHI limits the reasons for allowing divorce to only 8. However, what happened in the Sharia Court, the authors found a more dominant reason outside the KHI that was submitted and accepted at the Sigli Sharia Court. This means that the use of KHI in suppressing the divorce rate in the Sharia Court has not been effective.

What are the obstacles that cause the KHI regulations to not work in the Sharia Court, namely the Law / Legislation or here called KHI itself, because of the indecision of the legislation so that the elements in the regulation do not work? The second is law enforcement; when officers do not strictly enforce a law, the law will not work. The last

34 Ismail, Dasar-dasar Hukum Pelaksanaan Adat dan Adat Istiadat di Aceh, 47.
is public awareness; most people do not understand the substance of KHI, which causes the use of KHI in the Sigli Sharia Court to be ineffective.

References


“Pasal 18 ayat (1), (2), (3), (4) PERMA (Peraturan Mahkamah Agung) Nomor 1 tahun 2008 tentang tidak adanya kesepakatan putusan mediator,” t.t.

“Peraturan Menteri Hukum dan HAM RI Nomor: M-01.PR.08.10 Tahun 2007,” t.t.

“PERMA Nomor 1 Tahun 2008 tentang mediasi,” t.t.

“PERMA Nomor 1 tahun 2008 tentang tugas mediator,” t.t.


