

THE VALIDITY OF TALAK OUTSIDE THE COURT: PERSPECTIVES OF ISLAMIC LAW AND POSITIVE LAW ACCORDING TO THE VIEWS OF RELIGIOUS LEADERS IN CENTRAL LOMBOK

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Abstract

This study examines the perceptions of religious leaders on the legality of out-of-court divorce in Central Lombok using a qualitative approach and field research methodology. Primary information was collected through in-depth interviews with religious leaders and community leaders who have expertise in divorce issues. To obtain precise and comprehensive data, face-to-face interviews were conducted. In addition, this research utilized qualitative methodology to present secondary information on Islamic law and affirmative divorce law. Among the secondary data used were court decisions, legislation related to divorce, legal literature, and court decisions. This research examines the perspectives of religious authorities, Islamic legal ideas, and legal provisions that support out-of-court divorce through primary and secondary data collection. This approach is expected to provide a thorough understanding of the religious authorities' point of view and outline the actual circumstances surrounding the legality of out-of-court divorce within the framework of Islamic law and positive law in Central Lombok.

Keywords: Talak outside the court, religious leaders, Islamic law, positive law, Central Lombok (West Nusa Tenggara)

Abstrak

Penelitian ini mengkaji persepsi pemuka agama terhadap legalitas perceraian di luar pengadilan di Lombok Tengah dengan menggunakan pendekatan kualitatif dan metodologi penelitian lapangan. Informasi primer dikumpulkan melalui wawancara mendalam dengan para tokoh agama dan tokoh masyarakat yang memiliki keahlian dalam masalah perceraian. Untuk mendapatkan data yang tepat dan komprehensif, wawancara tatap muka dilakukan. Selain itu, penelitian ini juga menggunakan metodologi kualitatif untuk menyajikan informasi sekunder mengenai hukum Islam dan hukum perceraian yang bersifat afirmatif. Di antara data sekunder yang digunakan adalah putusan pengadilan, peraturan perundang-undangan yang terkait dengan perceraian, literatur hukum, dan putusan pengadilan. Penelitian ini mengkaji perspektif otoritas agama, gagasan hukum Islam, dan ketentuan hukum yang mendukung perceraian di luar pengadilan melalui pengumpulan data primer dan sekunder. Pendekatan ini diharapkan dapat memberikan pemahaman yang menyeluruh tentang sudut pandang otoritas agama dan menguraikan keadaan sebenarnya seputar legalitas perceraian di luar pengadilan dalam kerangka hukum Islam dan hukum positif di Lombok Tengah.

Kata kunci: Talak di luar pengadilan, pemuka agama, hukum Islam, hukum positif, Lombok Tengah (Nusa Tenggara Barat)



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INTRODUCTION

The word "talak" (which meaning to go or let go) comes from the Arabic word "itlaq". In religious parlance, talak denotes the weakening or breaking of the marital tie. A divorce or dissolution of marriage stems from a husband and wife's relationship ending when they choose to let go of their marriage tie. When referring to the breakup of a marriage, "divorce" and "talak" are equivalent terms in Indonesian. Islamic divorce law, like Islamic marriage law, is occasionally misunderstood, as if Islamic theology grants more rights to the man than the female. It is accurate to say that no religion or human law can govern divorce as precisely as Islamic law does. A strong sense of fairness is shown in men's and women's equal rights.¹

In actuality, the divorce procedure is not thoroughly explained in the Sunnah or the Qur'an. Scholars have differing opinions about this issue as a result. Certain academics establish stringent rules, such calling witnesses or dictating behavior in court. Others, on the other hand, are extremely lenient; for example, they think a husband can divorce his wife for any cause and without having witnesses. According to government law, divorce should not be carried out in a haughty manner since it undermines the integrity of Sharia law.

Law Number 1 of 1974 about Marriage and the Compilation of Islamic Law (KHI) established the legal conditions and processes for the implementation of divorce in the eyes of the law, namely by conducting the divorce process in a court session. The phrase "out-of-court divorce" refers to divorce processes that take place in public but do not adhere to these legal requirements. The in question is an out-of-court divorce that satisfies all the standards, including the fact that the woman is undeniably physically mature. Second, no mental disease (of sound mind) exists. Fourth, there is no coercion; and third, she genuinely wants a divorce² and the foundations of divorce consist of: First, the husband, or his legal representative, or a guardian with the necessary qualifications, to enforce the divorce. Second, the divorce is done consciously, as indicated by the use of kinayah, clear, or sarih pronouncement. Third, the wife who got divorced has a recognized marital status under the law.³ This indicates that the majority of scholars, as per fiqh studies, believe that a court hearing is not necessary for divorce.

Based on information gathered from interviews with religious leaders in Central Lombok, a large number of the local population thinks that divorces have happened because people have divorced illegally. This phenomenon suggests that divorce is being carried out outside of the established legal court system. This widely held belief is founded on religious doctrine, which is regarded as the last word when it comes to divorce.⁴ This calls into question whether divorces

¹ Beni Ahmad Saebani, *FIQH MUNAKAHAT 2, Ed 1 Cet 5*, 2016.

² Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab, Cet.VII*, 2001.

³ Muhammad Jawad Mughniyah.

⁴ Abdullah, "Wawancara" (Lombok Tengah, 2023).

finalized outside of the legal system are lawful under Islamic law and under positive law. In order to gain a deeper understanding of this phenomenon in Central Lombok, a thorough investigation into the legality of extrajudicial divorces that takes into account formal legal as well as religious viewpoints must be conducted.

The study of divorce outside of court is not new; Qurrotal A'yuni's research demonstrates NU's bias and support of the ulama as the authors of the yellow books, as well as NU's continued adherence to the perspective of classical scholars in its analysis of divorce outside of court. Regarding Muhammadiyah, it places a higher priority on societal benefits when utilizing contemporary *ijtihad* to resolve issues.⁵

Endorsed by Teubner, who claims that the only kind of legal certainty that can appease all parties is responsive law and that it can only be developed in the event that legislation becomes more democratic. Not a single independent law will be made in the absence of democracy, or public involvement in the legislative process. Any action undertaken by the government is deemed illegal if the law only recognizes the will of the government. When the law disregards the interests of the community and instead refers to itself (justice, certainty, expediency) in the context of this paper, namely the Indonesian people, it ceases to be independent.⁶

The aim of this study is to examine the legality of divorce outside of court from the standpoint of Islamic law and positive law, as well as to find out what Central Lombok's religious leaders think about this issue. Previous research has shown that there is still a knowledge gap regarding the legality of divorces that occur outside of court, particularly when considering the Central Lombok research location. This study will examine how divorce is viewed in Islamic law and how positive law governs the validity of divorces that take place out of court. The two thought systems will also be contrasted in this study. Additionally, this research will identify and characterize the opinions of religious leaders in Central Lombok regarding the legitimacy of extrajudicial affairs through interviews. By examining and contrasting all of the collected perspectives, this study aims to provide a more comprehensive understanding of the matter from a theological and legal standpoint in the context of Central Lombok.

RESEARCH METHODS

A qualitative methodology comprising interviews and a review of the literature will be used in this study. The purpose of the research is to create a comprehensive understanding of the legal

⁵ Qurrotal A'yuni, "Kedudukan Talak Di Luar Sidang Pengadilan Menurut Pandangan Nahdlatul Ulama Dan Muhammadiyah," *Tesis Tidak Diterbitkan (Yogyakarta: Fakultas Syari'ah) UIN Sunan Kalijaga*, 2019.

⁶ Gunther Teubner, "Substantive and Reflexive Elements in Modern Law, Law and Social Review" 17, no. 2 (2012): 317–18.

systems of other countries, including Islamic law, by conducting a literature review to gather information. Furthermore, interviews will be held with religious leaders in Central Lombok who have been chosen based on their familiarity with Islamic law, their involvement in the community, and their knowledge of it. The investigation of religious leaders' views on the legitimacy of extrajudicial divorce will be conducted by means of data collection, transcription, and qualitative analysis from the interviews.

RESULT AND DISCUSSION

The Concept of Talak in Islamic Law

Divorce is one of the primary rules under Islamic law that addresses the matter. According to Abu Zakaria Al-Anshari, talak is the use of phrases like "divorce" and similar expressions to end a marriage.⁷ Al-Jaziri defines talak as the dissolution of the marriage bond or lowering of its detachment through the use of specific language.⁸ According to a literary work cited by Ibn Mas'ud and Zainal Abidin, divorce is legal but brings Allah's wrath with it. Divorce also signifies a declaration of release. Furthermore, breaking the marriage vow through the use of words or memorization that result in divorce is regarded as adhering to syarak's provisions.⁹

Divorce, then, is the dissolution of marriage, which releases the wife from her husband's legal obligations. In the case of the divorce of bain, this happens. In the meantime, the term "reduction of marital ties" refers to the husband's right to a reduced number of divorces; this is the reason why the husband's entitlement to a divorce has decreased from three to two, from two to one, and from one to the loss of the right to divorce.¹⁰

The Qur'an, the sunnah, and the consensus all contain divorce ordinances. Even though Allah detests divorce, it is permissible in certain situations where the marriage cannot last. Divorce is the last option if issues in the marriage cannot be worked out peacefully.¹¹ The basis for the permissibility of Talak, among others:

Al-Qur'an

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ۗ ذَٰلِكَ يُوعَظُ بِهِ ۗ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۖ ذَٰلِكُمْ أَزْكَى لَكُمْ وَأَطْهَرُ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ ٢٣٢

⁷ Rusli Halil Nasution, "TALAK MENURUT HUKUM ISLAM," *Jurnal Ilmiah Al-Hadi* 3, no. 2 (2018): 707–16.

⁸ Nasution.

⁹ Ibnu Mas'ud and Zainal Abidin, *Fiqh Madzhab Syafi'i* (Bandung: Pustaka Setia, 2000).

¹⁰ Beni Ahmad Saebani, *FIQH MUNAKAHAT 2, Ed 1 Cet 5*.

¹¹ Wahbah Al-Zuhaili, "Al-Fiqh Al-Islam Wa Adillatuh," *Gema Insani Press*, no. jilid 9 (2011): 356.

Meaning: *"When you have divorced your wives, and their 'iddah has expired, then do not prevent them (their guardians) from remarrying their future husbands, if there is a consensus between them in a way that is fair. This is what is advised to those who believe among you in Allah and the Last Day. That is better for you and more pure. Allah knows, and you do not know."* (QS. Al-Baqarah: 232)¹²

Sunnah

"From Ibn Abbas ra. He said: A man came to the Prophet. Then he asked: O Messenger of Allah, my master has married me to his amat and now he intends to divorce me and my wife (what do you think)?" Ibn Abbas said: Then the Messenger of Allah (saw) ascended the pulpit and said: *"O people, what about one of your servants and his amat (female servant) and now he wants to divorce them? In fact, divorce is the right of the one who takes the shank."* (Ibn Majah and Daru Qutni)¹³ Hadith of the Prophet Muhammad about divorce which means : Ibn Umar r.a said: The Messenger of Allah (SAW) said, *"What is lawful but most hated in the sight of Allah is divorce."* (Reported by Abu Daud and Ibn Majah and judged saheeh by al-Hakim, with Abu Hatim favoring the mursal).

This demonstrates the significance of fostering a culture of kindness and affection among family members in Islam. A woman has sinned and will not smell heaven if she asks for her spouse's divorce in order to live a better life. In the end, marriage is a gift from Allah, so one ought to be thankful for it. Divorce additionally indicates a lack of gratitude for this present (kufr nikmat). Additionally, it is undeniably against religious law to perform kufr of blessings, and it should only be done in an emergency. Divorce should be the last option if the family ark can no longer be kept intact. Islam encourages couples to try to work things out amicably before divorcing, as marriage is the most valuable and stable kind of relationship. The law pertaining to divorce is based on multiple legal sources in specific situations and circumstances. It is:

First, obligatory: If both parties agree that talaq is the only way to resolve their differences, the goal of using talaq in a dispute between a husband and wife is to end the conflict. Next, Sunnah Divorce is advised if the spouse is morally reprehensible, has an adulterous relationship, disobeys religious laws, disregards fasting and prayer, or is not practicing self-care (*afifah*). That would be Makruh. The prophet did not condemn talaq because it cannot take away the advantages of marriage, according to the Hadith, which claims that talaq is the most despised legal practice of Allah SWT when there is no justification. Fourth, it is against the law to divorce a wife without cause, while

¹² "Al-Qur'an Dan Terjemahannya," n.d.

¹³ Ibrahim Muhammad, *Fiqh Wanita*, n.d.

she is menstruating, or after engaging in sexual relations while she is chaste. Fifth, acceptable. Even though there are advantages, divorce is lawful if it's required and won't harm anyone.¹⁴

Divorce can actually take many different forms, each of which reveals the couple's decision-making process and methods. Examining the various forms of divorce is crucial to comprehending the dynamics of divorce and how it affects society. According to Islamic law, divorce can take one of three forms. Here's more information on each type of divorce:

Talak Raj'i

Talak Raj'i is a sort of divorce in which, following a predetermined amount of time, both parties are permitted to come to an understanding or get back together. In this case, the divorced husband still has the choice to mend his marriage to his wife without getting married again. If the divorced husband and wife agree and reconcile before the end of the iddah period (waiting period after divorce), the marriage can be restored without a new marriage ceremony.¹⁵

Talak Bain

It's the kind of separation that can never be undone or made whole. Once the husband signs the divorce bond, the divorce is finalized, and it is impossible to reconcile without entering into a new union. Husband and wife cannot live together again after a divorce; they must get married again.¹⁶

Talak Mughallazah

A divorce that falls under the category of *talak mughallazah* cannot be corrected or annulled. Reconciliation or resuming a relationship with the former spouse are not possible in this situation. Divorce is finalized. If a husband and wife wish to live together again after a divorce, they must remarry as a new couple and go through the entire divorce procedure.¹⁷

What separates these three forms of divorce is the possibility of reconciliation or the capacity for reconciliation short of remarriage. While *talak raj'i* permits reconciliation after a specific amount of time, *talak bain* prohibits reconciliation altogether, and *talak mughallazah* only permits reconciliation after a new marriage. Divorce under each of these categories may be subject to different standards and procedures, depending on how each school of thought or scholar interprets Islamic law.

¹⁴ Amir Syarifuddin, "Hukum Perkawinan Islam Di Indonesia Antara Fiqh Munakahat Dan Undang-Undang Perkawinan," 2006, 201.

¹⁵ Abdul Rahman Ghozali, "Fiqh Munakahat," 2003, 192.

¹⁶ Ghozali.

¹⁷ Ghozali.

The phenomenon of out-of-court divorce, which occurs when a husband and wife choose to dissolve their marriage without going through the court system or other formal legal processes, is an intriguing one to examine in the context of Islamic law. From the perspective of Islamic law, divorce is recognized as a legitimate way to dissolve a marriage; however, there are steps and conditions that need to be fulfilled for the divorce to be approved. Furthermore, there exist variations among the Fuqaha with respect to the quantity or nomenclature of divorce grounds. However, each can be divided into the following categories according to different estimates of the number of grounds for divorce:

Munthaliq

Inthaliq. This husband is the one with the legal right to dissolve the union if he so chooses. The husband who issues the divorce decree, known as the Muntahaliq, must abide by the following rules:

1. Munthaliq. When declaring a divorce, Munthaliq, the husband, must be awake and in a sound state of mind; he cannot be in a state of sleep, mental illness (junun), or illness-induced loss of consciousness (mughma 'alaih).¹⁸
2. maintaining mental stability. Munthaliq is not receiving mental health care, is not being forced to do anything, and is not in a situation where other people are using his voice and will against him (mukrah/ikrah).¹⁹
3. Munthallaqah. Is the wife the one seeking a divorce or the reason for the divorce? Mahall is another term used to refer to Munthallaqah in other languages or titles.²⁰ Some of the requirements in this pillar include:
 - a. Bound in lawful marriage to the munhalliq
 - b. Widows who are divorced raj'i who are still married and in the iddah period are muthalliqah.²¹

Sighat

Sighat is the term for a divorced person. Since the wife's agreement or willingness is not needed in this sighat, it can be claimed that the ijab element is the only component. This is due to the husband's unrestricted ability to file for divorce from the wife.²²

¹⁸ Mughni Al-Munhaj Muhammad Khatib Syarbaini, *Juz III* (Beirut: Darul Al-Kutub AlIllyyah, 2009).

¹⁹ Hasyiah Bujairimi 'Ala Syarh ManhajThullab Zakariyya Al-Anshari, "Juz IV," *Beirut: Darul Fikr*, 2009, 4.

²⁰ Zakariyya Al-Anshari.

²¹ Zakariyya Al-Anshari.

²² Abdurrahman Al-Jaziry, *Al-Figh 'Ala Al Madzahib Al Arba'Ah*, n.d.

Qashad

Qashad, there needs to be an abstract seriousness component for this component. Put differently, this element necessitates an abstract seriousness element.²³ When a person pronounces talak carefully (sighat talak), it indicates that they are fully conscious of the implications of their words and speak them with awareness.

From an Islamic legal standpoint, contested divorce is still regarded as lawful provided that the prerequisites and fundamentals of divorce as outlined in fiqh are met, as explained above. This suggests an interpretation and implementation of divorce that is done informally, without the need for a sanctioned legal establishment, akin to the divorce process that takes place outside of Central Lombok's courts. Depending on personal beliefs and interpretations of Islamic law, this practice is frequently carried out without oversight or official approval.²⁴

Therefore, for a divorce to be enforceable under Islamic law, all of the terms and conditions must be met. Thus, insofar as the terms and conditions of the marriage are met, if Islamic law declares the divorce to be invalid, the husband and wife's subsequent marriage is likewise void. While fiqh permits this type of divorce, the lack of an original deed signed by an official recognized by the state leaves it vulnerable to objections and legal challenges. This occurs as a result of the divorce not being handled in compliance with the relevant laws.

The Validity of Talak from a Positive Law Perspective

Divorce is the dissolution of a husband and wife's marriage as a result of the marriage bond breaking. A husband delivers the Pledge of Talak in front of a Religious Court meeting in the interim. The husband must give notice of his intention to divorce his wife in front of a Religious Court session in order to sever the marriage contract. According to the Marriage Law, "dissolution of marriage" refers to the divorce or dissolution of marriage between a man and a woman who have been living together.²⁵ In Government Regulation Number 9 of 1975 Article 19 states that the things that cause divorce can occur for reasons:

1. Divorce can occur because one of the parties commits adultery or becomes an incurable drunkard, addict, gambler and so on.
2. For two years in a row, one party separates from the other without the other's consent, without good reason, or for any other reason outside of their control.
3. After the marriage, one of the parties receives a severe penalty or a sentence of five years in prison.

²³ Nihayatul Muhtaj Ila Syarhil Minha Syamsyuddin Muhammad Ibnu Abi Abbas, "Jilid 22," *Maktabah Syamilah*, n.d., 129.

²⁴ Abdullah, "Wawancara."

²⁵ Amir Syarifuddin, "Hukum Perkawinan Islam Di Indonesia," 2009, 189.

4. One party commits cruelty or serious abuse that endangers the other party.
5. One of the parties gets a disability or illness with the result that he/she cannot fulfill the obligations as husband and wife.
6. There are continuous disputes and quarrels between husband and wife and there is no hope that they will live together again in the household.²⁶

According to positive law, a divorce that is carried out outside of court or under other circumstances is illegal and must occur in front of a judge during a hearing. As a result, an uncontested divorce must be dissolved legally, and the wife is still obligated to her ex-husband under their contract.

According to Law Number 1 of 1974 concerning Marriage, the court can only grant a divorce after trying and failing to reconcile the two parties.²⁷ This is also explained in Marriage Law Number 1 of 1974 Article 39:

1. Divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties.
2. In order to obtain a divorce, there must be sufficient grounds that the husband and wife will not be able to get along as husband and wife.
3. The procedure for divorce before a court session is regulated in these laws.²⁸

A husband who claims to have divorced his wife must still take legal action because in the Sharia Court, a divorce is only deemed lawful if it is announced in front of a court. Divorce must be filed in front of a judge for the following reasons; if it is not, state law will not recognize the divorce:

1. To avoid illegal divorce
2. To protect women's rights so that women are not neglected because the law only applies unilaterally.
3. To follow the laws listed in the compilation of Islamic law because the compilation of Islamic law is a legal guide for Indonesian citizens.

Article 14 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, that "a husband who has entered into a marriage according to Islam, who will divorce his wife, submits a letter to the Court at his place of residence,

²⁶ Martiman Prodjohamidjodjo, *Hukum Perkawinan Indonesia* (Jakarta: Indonesia Legal Center Publishing, n.d.).

²⁷ *No Title* (Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Pasal 39, n.d.).

²⁸ Abdul Manan, "Pokok-Pokok Hukum Perdata Wewenang Pengadilan Agama," 2006, 36.

containing a notification that he intends to divorce his wife accompanied by reasons and requests the Court to hold a hearing for that purpose".

The Complication of Islamic Law requires that the husband's pledge to divorce (talak) must be delivered before a Religious Court session.²⁹ The Compilation of Islamic Law's Article 113 declares that "marriage may be dissolved by death, divorce, and by court decision". "The dissolution of marriage due to divorce can occur through divorce or based on a divorce suit," according to Article 114. Article 115 states that "divorce can only be done in front of a religious court after the religious court has tried and failed to reconcile the two parties".

A divorce that a husband forces on his wife can only occur prior to a court hearing, as stated by the rationale in the affirmative laws that regulate the divorce process. A divorce is only recognized by state law if certain requirements are met. However, since a religious court must be involved in the divorce process in order for it to be recognized by law as a valid divorce, divorces that are conducted outside of court are not recognized as legitimate divorce practices.

An out-of-court divorce may have legal ramifications in Indonesia due to the positive legal framework, such as the court refusing to recognize the divorce. This may affect the way debts related to divorce, *gono-gini* property, and child custody are recorded. It could be challenging in this situation for the parties to an out-of-court divorce to receive the appropriate legal recognition and protection. Legal protection is a key component of an out-of-court divorce. To safeguard the rights of individuals going through a divorce, the state enacts laws involving formal legal processes. This is done to guarantee that the parties receive equal treatment under the law.

Hence, from a positive legal standpoint, extrajudicial divorces cannot be recognized as legal divorces. Religious courts must participate in the legal processes of marriage and divorce as recognized institutions. Ensuring equitable treatment and legal protection for all parties involved in the divorce process is imperative.

Perspectives of Lombok Religious Leaders on the Validity of Talak Outside the Court

Divorce cases filed outside of court are legitimate. Because there isn't a single law that specifically states that this kind of behavior is illegal. Because of this, one party frequently behaves arbitrarily, which may eventually be detrimental to both parties.

Regarding religious leaders' views on the legitimacy of extrajudicial divorce, a number of findings can serve as a starting point for discussion. Five respondents—two actors involved in extrajudicial divorces in Central Lombok and three religious leaders—were interviewed by the researchers. First off, it's well known that divorces in Central Lombok are frequently handled

²⁹ Amiur Nuruddin dan Azhari Akmal Taringan, "Hukum Perdata Islam Di Indonesia "Studi Kritis Perkembangan Hukum Islam UU 1/1974 Sampai KHI," 2006, 216.

amicably. According to the participants, "Most people in Central Lombok divorce without going to court, and this incident is very valid to be declared as a divorce in Central Lombok society."³⁰ It is clear from the respondents' justifications that divorce outside of the official legal system happens frequently in Central Lombok.

Second, the information gathered from the interviews demonstrates the community's perception that a divorce, whether verbal or written, is lawful and dissolves the marriage. "Religiously speaking, a divorce occurs even without a court hearing when a husband pronounces a divorce to his wife. My husband divorced me at home in a state of emotion and rage. And my family experienced that as well."³¹ said a respondent. This implies that there is a common perception that extrajudicial divorces are legitimate in society. The last piece of information reveals that Central Lombok locals only appear in court under specific circumstances. If I require a formal divorce decree for any reason—such as a desire to get married again or something else—I might visit the religious court. Since I am already legally divorced, why would I go to court if I don't need it?" When the researcher asked the respondent when they planned to appear in the Religious Court to finalize their family's divorce, this was their response.

The opinions of religious leaders in Central Lombok regarding the legality of divorces that take place outside of court can be analyzed by taking into account the social, cultural, and religious factors that shape people's decisions, based on information gleaned from interviews. In Central Lombok, religious leaders also have a big say in how divorces that happen outside of court are perceived and handled. Religious authorities serve as both protectors of Islamic values and advisors to the community on matters pertaining to marriage and divorce.³²

Religious leaders in Central Lombok understand the matter in a way that supports the idea that divorces that take place outside of court are permissible, and there are several reasons for this. They first support the Islamic notion of religious freedom.³³ Religious leaders affirm that Islamic law gives husbands the right to divorce their wives, confirming that out-of-court divorce is still in line with Islamic teachings and stating that divorce is valid as long as it is carried out in accordance with the requirements outlined in Islamic law, either orally or in writing. These leaders view the out-of-court divorce procedure as part of religious freedom and everyone's right to worship as they choose.³⁴ Consequently, religious authorities in Central Lombok propagate the notion that divorced outside of court is permissible under Islamic law. Without a doubt, their understanding of the Qur'an, hadith, and scholarly interpretations forms the basis of this belief. They hold that religious

³⁰ Amin, "Wawancara" (Lombok Tengah, 2023).

³¹ Siti, "Wawancara" (Lombok Tengah, 2023).

³² Ina, "Wawancara" (Lombok Tengah, 2023).

³³ Amin, "Wawancara."

³⁴ Abdullah, "Wawancara."

requirements must be fully understood and adhered to during the divorce process, even though the court is not always required for a divorce to be valid.³⁵

Spiritual advisors and counselors can offer direction and encouragement to those going through an extrajudicial divorce. They provide spiritual counseling in addition to religious legal advice to guarantee that the divorce process is equitable and compliant with Islamic principles. Religious leaders also help to create an atmosphere that supports peace, family values, and the reconciliation and healing of divorced families.³⁶

Religious leaders handle divorces out of court in an effort to preserve families and avoid contentious divorces. They inculcate in the community the value of giving mediation, discussion, and communication top priority when settling marital conflicts. Religious authorities back the use of the legal system to settle disputes and inform the public about the financial, social, and psychological effects of a civil divorce³⁷ and ensure that out-of-court divorces are conducted with adequate consideration for religious principles, good law, and the needs of the community.³⁸ Religious leaders use their teaching, coaching, and faith-based conflict resolution programs to influence the community's understanding of the value of upholding family unity and protecting individual rights in the context of extrajudicial divorce.

Religious leaders are aware that non-judicial divorces can cause legal ambiguity and make it harder for both parties to get equitable rights since they don't adhere to the formalized procedures. Religious leaders claim that positive law does not fully recognize divorces that occur outside of court. In actuality, though, extrajudicial divorce is seen as a reaction to social and environmental pressures. Religious authorities contend that formal court procedures don't always provide appropriate resolutions or meet the needs of divorcing parties. Because of this, they believe that in certain situations, an out-of-court divorce may be a good option.

Religious leaders also underlined the significance of respecting justice, equality, and family welfare in all divorce procedures, whether handled in court or out of it. They also stressed the need for us to comprehend and abide by religious principles, particularly established rules and guidelines, when conducting out-of-court divorces.

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³⁵ Iman, "Wawancara" (Lombok Tengah, 2023).

³⁶ Abdullah, "Wawancara."

³⁷ Abdullah.

³⁸ Iman, "Wawancara."

CONCLUSION

The article's conclusion illustrates the intricacy of the out-of-court divorce phenomenon in Central Lombok. It can be concluded from data obtained from interviews with local religious leaders that the majority of people in Central Lombok favor uncontested divorce and believe that both verbal and written judgments are equally binding. The religious leaders' opinions regarding the validity of divorces that take place outside of court are founded on their interpretation and knowledge of Islamic law, which grants husbands the right to divorce their wives and acknowledges that divorces may not always be finalized through a court procedure. Nonetheless, an extrajudicial divorce is still regarded as lawful and has the power to dissolve a marriage.

It should be mentioned, though, that positive Indonesian law has not formally acknowledged the validity of amicable divorce. Under positive law, divorces are legally binding only after a judge grants approval. As a result, there are differences in perception between the positive law of the nation and the Islamic law that the people of Central Lombok follow. In guiding and guaranteeing that the community is appropriately informed about the laws and religious teachings pertaining to divorce, religious leaders play a significant role. On the other hand, a thorough investigation by the government and legal institutions is required to comprehend this incident and develop a just solution that complies with existing legal standards.

Given the complexity of the issue of out-of-court divorce in Central Lombok, the main conclusion of this paper is that collaborative efforts are needed to develop a thorough and comprehensive legal solution. This will maintain a balance between the right to practice religion and compliance with current laws, while providing the necessary legal protection for the community in the event of an uncontested divorce.

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