



ANALYSIS OF REFERRAL PROCEDURES ACCORDING TO LAW NUMBER 1 YEAR 1974 CONCERNING MARRIAGE AND THE COMPILATION OF ISLAMIC LAW (Study at KUA Rajabasa)

Ansori¹, Dina Marefa²

Faculty of Law, University of Bandar Lampung. Email: ansori@ubl.ac.id

Faculty of Law, University of Bandar Lampung. Email: dinamarefa88@gmail.com

Abstract: *Marriage is a means to form a household as a bond that is recognized by the community where they live as legal husband and wife. However, as time goes by, it is not uncommon to have quarrels between husband and wife caused by third parties, economics, and other things, resulting in divorce. Rujuk means returning to life as husband and wife between a man and a woman doing divorce by way of talak while still in iddah without marriage who has the right to reconcile her husband as a balance of her divorce rights. The purpose of the study is to understand the procedure for reconciliation according to Law Number 1 of 1974 concerning marriage and the Compilation of Islamic Law studies at the KUA Rajabasa, and to understand the comparative analysis of law related to the synchronization of procedures for reconciliation according to Law Number 1 of 1974 concerning marriage and the Compilation of Laws.*

Keywords: *Procedures for Reconciliation, Compilation of Islamic Law, Marriage*

I. INTRODUCTION

The family is the smallest element of a society, the family can be formed through marriage or blood relations. Marriage is a means to form a household as a bond that is recognized by the community where they live as husband and wife legitimate eri.¹ Marriage is carried out by someone who is old enough, regardless of profession, ethnicity, religion, wealth, place of residence and so on. Not everyone who is going to get married can understand the nature of marriage and the purpose of marriage, which is to get true happiness in the household. Where according to Islamic law the purpose of marriage is to justify sexual relations between a man and a woman to fulfill the demands of human nature, to form or

¹Marriage, *Dispute and Divorce Advisory Board*. Muslim Family Smart Book, BP4 Central Java, Semarang, p. 27

create a peaceful, peaceful and eternal family on the basis of love and affection, to obtain offspring and to develop human tribes. And in article 3 of the Compilation of Islamic Law it is stated that marriage aims to realize a *sakinah, mawaddah, and rahmah* household life. Marriage is not just the gathering of two people under one roof and then getting offspring, not for a while but for a lifetime.²

Law Number 1 of 1974 concerning Marriage has mandated all people to always form a family. In an effort to achieve the goals of the marriage, physical maturity, thinking maturity and mental or mental maturity for married couples are needed. Thus, one of the things that needs to be considered by someone before getting married is the age factor. Married age is one aspect that affects emotional/psychological. This is to perpetuate a happy, prosperous marriage, *sakinah wamaddah warahmah*, in order to avoid cracks and divorce in the household. However, as time goes by, it is not uncommon to have quarrels between husband and wife caused by third parties, the economy, and the absence of affection, love and desire to have between the two, resulting in divorce. But it is not uncommon for married couples who have broken up because of divorce still love each other because of love, deep affection, and a sense of belonging, so that both parties agree to reconcile. *Rujuk* means returning to life as husband and wife between a man and a woman doing divorce by way of divorce while still in *iddah* without marriage who has the right to reconcile with her husband as a balance of her divorce rights.³

II. DISCUSSION

According to Law Number 1 of 1974, the definition of marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. According to the Compilation of Islamic Law, marriage is a marriage, which is a very strong contract or *gholiidhan* to obey Allah's commands and carry it out in worship. That marriage aims to realize a *sakinah, mawaddah and rahmah* household life.

The word marriage according to Islamic legal terms is the same as the word "marriage" and the word "zawaj". Marriage according to the language has a real meaning (*haqiqat*) namely "dham" which means squeezing, pressing or gathering. Marriage has a figurative meaning, namely "wathaa" which means "intercourse" or "aqad" which means entering into a marriage agreement. In everyday life,

² Abdul Ghofur Anshori. *The dynamics of Islamic law and its development in Indonesia*. Total Media Creations, Yogyakarta, p.214

³ Baharudin. *Islamic Law Teaching Materials*. Faculty of Law, University of Bandar Lampung, Bandar Lampung. p.26

marriage in a figurative sense is more widely used in the real sense, it is rarely used today.

Marriage is a contract or agreement to bind themselves between a man and a woman to justify sexual relations between the two parties, on a voluntary basis and the pleasure of both parties to realize a happy family life which is filled with love and peace by means of the following: way that is blessed by Allah SWT. Marriage is carried out to obey Allah's commands and carrying it out is worship. Marriage is an act of worship in the category of general worship, thus in carrying out marriage it must be known and implemented the rules of marriage in Islamic law. That the intended family with marriage is a Sakinah family which means calm, Mawadah is a family in which there is a sense of love.⁴

Marriage is considered valid if it is carried out according to the marriage law of each religion and belief and is registered by an authorized institution according to the applicable legislation. The validity of a legal act according to Islamic law must meet two elements, namely pillars and conditions. Pillars are the main elements, while requirements are complementary elements in every legal action. In connection with marriage is a legal act, it must meet the pillars and conditions. In the pillars of Islam determine whether or not legal acts are legal, depending on the fulfillment or non-fulfillment of these three things, namely the pillars of marriage, the conditions of marriage, not violating the prohibition of marriage as determined by the Shari'ah.⁵

Sources of Marriage Law

Article 6 of Law no. 1 Year 1974 Conditions for a valid marriage:

1. There is agreement from both parties
2. For those who are not yet 21 years old, must get permission from both parents. Or if one of the parents has died or is unable to express his will, then permission can be obtained from the parent who is still alive or the parent who is able to express his will.
3. If the parents have died or are unable to express their will, then permission is obtained from the guardian, the person who maintains it or a family who is related by blood in a straight line of descent.

Based on Article 14 of the Compilation of Islamic Law, for those who are Muslim, in marriage there must be:

⁴Abd Shomad. *Islamic Law Normative Sharia Principles in Indonesian Law*. Kencana, Jakarta, p. 276

⁵ Mohammad Dawud Ali. *Islamic Law and Religious Courts*. Raja Grafindo Persada, Jakarta, p.58

1. Future wife
2. Future husband
3. Guardian of Marriage
4. Two Witnesses
5. Ijab and Kabul

Differences of opinion, quarrels, squabbles, disputes that continue to cause loss of love and cause prejudice to partners. Quarrel causes hatred and prejudice to blossom against a partner. Overwhelming quarrels lead to loss of trust and continue to lead to divorce. The cause of divorce is also triggered by the rise of underage marriages. Underage marriages make them not ready to deal with the knick-knacks of conflict they encounter. So that a lot of couples who experience divorce or dissolution of marriage.

There are at least four possibilities that occur in domestic life that can trigger the desire to break up a marriage, namely the occurrence of nusyuz from the wife's side, the occurrence of nusyuz from the husband's side, the occurrence of disputes or disputes between husband and wife in the Qur'an called syiqaq, the occurrence of wrongdoing, one party commits adultery or fahisyah which causes mutual accusations between the two.⁶

Islamic law has regulated the provisions for the dissolution of marriages and the legal consequences arising from the dissolution of this marriage. Marriage can be broken because it is caused by one of three things, namely divorce (divorce from husband and khuluk or divorce lawsuit from wife), death of husband or wife, and judge's decision (because mafqud, i.e. husband or wife does not live in the same house and or their whereabouts are not known within the limit). certain time). Divorce in fiqh munakahat is the husband's authority unilaterally and does not require the consent of the wife. Divorce can be valid and even though it is said unilaterally by the husband, it can divorce the wife without the wife knowing. If the husband has declared the vow of divorce, then the divorce falls.⁷

Marriages can break up due to death and divorce. What is meant by a death divorce is a divorce in which one husband and wife dies, if such a thing occurs, then the leave has an iddah period of 4 months and 10 days. Divorce that occurs because of talak or based on a divorce suit. Divorce occurs at the husband's initiative which is called talak, namely the husband's right to divorce his wife with certain words, Khuluk is ransom divorce because the wife gives something object

⁶Ahmad Rafiq. *Islamic Law in Indonesia*. Raja grafindo Persada, Jakarta, p.269

⁷Ali Imron. *Legal Reconstruction of Dissolution of Marriage in the Marriage Law*. QISTIE Scientific Journal of Law, Vol.10 No.1, p. 35-36

or money as ransom to her husband, so that her husband will divorce her so that they can divorce and divorce. i.e. divorce which is hung on the occurrence of something mentioned in the divorce pledge after the qabul ijab is carried out. Furthermore, the wife's initiative is called Fasach.

According to Article 38 of Law Number 1 of 1974 a marriage can be terminated because:

1. Death
2. Divorce
3. On the court's decision

Based on Article 39 of Law Number 1 of 1974 concerning the termination of marriage and its consequences:

1. Divorce can only be carried out before a court hearing after the court concerned has tried and failed to reconcile the two parties.
2. In order to divorce, there must be sufficient reason that the husband and wife will not be able to live in harmony as husband and wife.
3. The procedure for divorce before the court is regulated in a separate law.

Based on Article 40 of Law Number 1 of 1974 concerning the dissolution of marriage and its consequences:

1. Divorce lawsuit filed in court
2. The procedure for filing the lawsuit in paragraph (1) of this article is regulated in a separate law.

Based on Article 41 of Law Number 1 of 1974 concerning the dissolution of marriage and its consequences:

1. Both mother and father are still obliged to maintain and educate their children, solely based on the interests of the child; when there is a dispute regarding the control of children, the court gives its decision;
2. The father is responsible for all costs of maintenance and education needed by the child; if the father is in fact unable to fulfill these obligations, the court can determine that the mother is also responsible for the costs,
3. The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

Based on Article 113 of the Compilation of Islamic Law regarding the termination of marriage, namely:

1. Death ;
2. Divorce and
3. On the Court's decision

Based on Article 114 of the Compilation of Islamic Law regarding the termination of marriage:

The dissolution of a marriage due to divorce can occur due to talak or based on a divorce suit.

Based on Article 115 of the Compilation of Islamic Law regarding the termination of marriage:

Divorce can only be carried out in front of the Religious Court after the Religious Court tried and failed to reconcile the two parties.

Based on Article 116 of the Compilation of Islamic Law regarding the termination of marriage:

Divorce can occur for the following reasons or reasons:

1. One of the parties commits adultery or becomes a drunkard, compactor, gambler, and so on which is difficult to cure;
2. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or for other reasons beyond his ability.
3. One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place.
4. One party commits atrocities or severe persecution that endangers the other party.
5. One of the parties gets a disability or disease as a result of not carrying out his obligations as husband or wife.
6. Between husband and wife there are constant disputes and quarrels and there is no longer a harmonious life in the household.
7. Husband violates taklik-talak
8. Religious conversion or apostasy that causes disharmony in the household.

Based on Article 117 of the Compilation of Islamic Law regarding the termination of marriage: Divorce is a husband's vow before a Religious Court session which is one of the reasons for the dissolution of a marriage, in the manner as referred to in Articles 129, 130, and 131. Referring is returning the wife who is still in the iddah period to her original state. Where is the return of the husband to the wife who has been divorced without a new contract by continuing the marriage with the ex-wife who has been divorced raj'i who is still in the iddah period.

It can be said that reconciliation is to restore the legal status of marriage in full after the talak raj'i done by the ex-husband against his ex-wife who is still in the iddah period with certain words or actions. From this description, it can be concluded that with the divorce of the husband against his wife, even though the status of divorce is raj'i, basically the divorce results in the prohibition of sexual

relations between the two. As is forbidden for another man to have sex with another woman who is not his wife. Therefore, although the ex-husband during the iddah period has the right to refer back to his ex-wife and return her as a fully legal husband and wife, but because of the divorce which was stamped by the ex-husband on his wife.

iddah is a term for a woman to wait and prevent her from marrying after her husband dies or after separating from him. Then for that reason the period of iddah is counted. The iddah period begins after the occurrence of three things, namely divorce, Faskh, and death. Allah requires iddah for Muslim women in order to protect the honor of the family and to guard against division and mixing of lineages. This is worship because it is a manifestation of the implementation of Allah's commands to Muslim women on earth.

Based on Article 163 of the Compilation of Islamic Law CHAPTER XVIII concerning Referrals:

1. A husband can refer his wife who is in the iddah period.
2. Referrals can be made in the following cases:
 - a. Dissolution of marriage due to divorce, except for the divorce which has fallen three times or the divorce which has been imposed by the qobla al dukhul.
 - b. The dissolution of a marriage is based on a court decision for reasons or reasons other than adultery and khuluk.

Based on Article 164 of the Compilation of Islamic Law CHAPTER XVIII concerning Referrals:

A woman in iddah talak raj'i has the right to object to the will of reconciliation from her ex-husband before a marriage registrar in the presence of two witnesses.

Based on Article 165 of the Compilation of Islamic Law CHAPTER XVIII concerning Referrals:

Referrals made without the consent of the ex-wife can be declared invalid by a religious court decision.

Based on Article 166 of the Compilation of Islamic Law CHAPTER XVIII concerning Referrals:

Referrals must be proven by excerpts from the reference registration book and if the evidence is lost or referred so that it cannot be used again, a duplicate can be requested from the agency that issued it originally. Based on Article 167 of the Compilation of Islamic Law CHAPTER XVIII regarding the procedure for reconciliation:

1. The husband who wants to refer his wife comes together with his wife to the official in the area where the husband and wife live by bringing a stipulation regarding the occurrence of divorce and other required certificates.
2. Referral is carried out with the wife's approval in front of the marriage registrar or assistant to the marriage registrar.
3. The marriage registrar or assistant marriage registrar checks and investigates whether the husband who is going to refer meets the requirements for referring according to the munakahat law, whether the reconciliation to be carried out is still in the iddah talak raj'i, whether the woman to be referred is his wife.
4. After that, the husband said the reconciliation and each concerned and the witnesses signed the reconciliation registration book.
5. After the reconciliation is carried out, the marriage registrar or assistant marriage registrar advises husband and wife about the laws and their obligations related to reconciliation.

Based on Article 168 of the Compilation of Islamic Law CHAPTER XVIII concerning Referrals:

1. In this case, the reconciliation is carried out in the presence of the assistant marriage registrar, the reconciliation list is made in 2 (two) copies, filled out and signed by each person concerned and the witnesses, a piece is sent to the marriage registrar in his jurisdiction, accompanied by the required certificates. to be recorded in another reference register book stored.
2. The receipt of the first sheet of the reconciliation list by the assistant marriage registrar is carried out no later than 15 (fifteen) days after the reconciliation is made.
3. If the first sheet of the reference list is lost, the assistant marriage registrar will make a copy of the second sheet list with an official report on the causes of the disappearance.

Based on Article 169 of the Compilation of Islamic Law CHAPTER XVIII concerning Referrals:

1. The marriage registrar makes a certificate regarding the occurrence of reconciliation and sends it to the religious court at the place where the divorce took place, and to each husband and wife a quote from the reconciliation registration book is given according to the sample set by the minister of religion.
2. The husband and wife or their proxies, bringing a copy of the reference registration book, come to the religious court at the place where the divorce took place first to arrange and collect the marriage certificate of each

concerned after being given a note by the religious court in the space provided for the marriage certificate, that concerned has been referred.

3. The note referred to in paragraph (2) contains the place where the reconciliation took place, the date the reconciliation was made, the number and date of the quotation from the reference registration book and the clerk's signature.

III. CONCLUSION

The procedure for reconciliation according to Law Number 1 of 1974 concerning marriage does not contain a special article which states the procedure for reconciliation but in the Law on reconciliation it is allowed, while the procedure for reconciliation according to the Compilation of Islamic Law contains a special article, namely Articles 163-169 about refer. The procedure for reconciliation according to the Compilation of Islamic Law, namely, that the husband who wants to refer his wife comes with his wife to the employee in the area where the husband and wife live by bringing a stipulation regarding the occurrence of divorce and other necessary certificates, the reconciliation is carried out with the wife's consent before the Marriage Registrar or Assistant Marriage Registrar.

The synchronization of the procedure for reconciliation according to Law Number 1 of 1974 concerning marriage and the Compilation of Islamic Law is still in harmony because although in Law Number 1 of 1974 concerning marriage there is no special article that explains the procedure for reconciliation, but Law Number 1 The year 1974 helps explain reconciliation in general with the article concerning the termination of marriage or divorce, during the iddah period or waiting period according to the provisions of the period, the husband and wife can be together again or called reconciliation again so that they are legal as husband and wife. In line with the contents of the article on procedures for reconciliation in the Compilation of Islamic Law. The procedure for reconciliation in theory according to Islamic law, if there is a divorce while in the iddah or waiting period, it is enough for me to state that I want to return, then in Islam it has been reconciled. But if there is a divorce in the Religious Court, the procedure for reconciliation must be remarried because the marriage certificate book has been withdrawn by the Religious Court, so when they want to reconcile they must make a new marriage book in accordance with the requirements for the marriage list that has been determined. The similarity is that in Law Number 1 of 1974 concerning marriage and the Compilation of Islamic Law, they both explain about the breakup so that when they want to reconcile, they must make a new marriage book in accordance with the requirements for the marriage register that has been determined. The similarity is that in Law Number 1 of 1974 concerning marriage and the Compilation of Islamic Law, they both explain about the breakup so that

when they want to reconcile, they must make a new marriage book in accordance with the requirements for the marriage register that has been determined. The similarity is that in Law Number 1 of 1974 concerning marriage and the Compilation of Islamic Law, they both explain about the breakup. So for Law Number 1 of 1974 this is only to strengthen the explanation regarding the dissolution of marriage and in general to explain the existence of reconciliation, so that when a husband and wife want to reconcile the legal regulations, the procedure for reconciliation used is the Compilation of Islamic Law.

REFERENCES

Abd Shomad. *Islamic Law Normative Sharia Principles in Indonesian Law*. Kencana, Jakarta.

Abdul Ghofur Anshori. *The dynamics of Islamic law and its development in Indonesia*. Total Media Creations, Yogyakarta.

Ahmad Rafiq. *Islamic Law in Indonesia*. Raja grafindo Persada, Jakarta.

Ali Imron. *Legal Reconstruction of Dissolution of Marriage in the Marriage Law*. QISTIE Scientific Journal of Law, Vol.10 No.1.

Baharudin. *Islamic Law Teaching Materials*. Faculty of Law, University of Bandar Lampung, Bandar Lampung.

Marriage, *Dispute and Divorce Advisory Board*. Muslim Family Smart Book, BP4 Central Java, Semarang.

Mohammad Dawud Ali. *Islamic Law and Religious Courts*. Raja Grafindo Persada, Jakarta.