

Judges' Opinion in Accepting Divorce Cases with Time Limits (Study of Judges of Balikpapan, Banjarmasin, and Pelaihari Religious Court)

Rahmawati¹, Diana Rahmi²

^{1,2} Prodi Hukum Keluarga Islam Fakultas Syariah Universitas Islam Negeri Antasari, Banjarmasin

e-mail: ¹ rahmawati.app04@gmail.com, ² dianarahmi54@gmail.com

Received 29-10-2023 | Received in revised form 23-11-2023 | Accepted 16-12-2023

Abstract

This research aims to find out the opinions of Balikpapan, Banjarmasin, and Pelaihari Religious Court Judges regarding considerations for accepting divorce cases with a time limit and the reasons underlying these opinions. This type of research is empirical legal research. The data extracted in this research are the opinions and reasons of the Balikpapan, Banjarmasin, and Pelaihari Religious Court Judges regarding divorce with a time limit. The data sources or informants for this research were nine judges. This research is empirical legal research with a sociological approach. Data was collected using interview techniques. After collecting the data, it is processed by editing and matriculation. The data was then analyzed using qualitative descriptive methods. The research results show that the judge stated that divorce with a time limit is a rule that can be negotiated in severe divorce cases. Thus, the judge must make *ijtihad* with other laws. This is based on Article 50 of Law No. 48 of 2009 and the rules of *fiqh*, namely, the judge's decision can eliminate differences. Three judges thought that the 6-month time limit for reasons of continuous disputes and quarrels or separation of residence is cumulative, where both reasons must reach the minimum time if they are to be submitted to the court. Six other judges thought that the six-month time limit was an alternative. This is required for reasons of separation of residence. All Judges relied on Supreme Court Circular Letter Number 1 of 2022. Some others added Article 19 of Government Regulation Number 9 of 1975 and Article 116 of Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law.

Keywords: Divorce, Time Limits, Judge's Considerations

Abstrak

Penelitian ini bertujuan untuk mengetahui pendapat Hakim Pengadilan Agama Balikpapan, Banjarmasin, dan Pelaihari tentang pertimbangan menerima perkara perceraian dengan batas waktu serta alasan yang mendasari pendapat tersebut. Jenis penelitian ini ialah penelitian hukum empiris. Data yang digali pada penelitian ini adalah pendapat dan alasan Hakim Pengadilan Agama Balikpapan, Banjarmasin, dan Pelaihari mengenai perceraian dengan batas waktu. Sumber data atau informan penelitian ini adalah sembilan orang Hakim. Penelitian ini merupakan penelitian hukum empiris dengan pendekatan sosiologis. Data dikumpulkan dengan teknik wawancara. Setelah terkumpul data diolah dengan editing dan matrikasi. Data kemudian dianalisis dengan menggunakan teknik deskriptif kualitatif. Hasil penelitian menunjukkan Hakim menyatakan perceraian dengan *batas waktu* adalah peraturan yang bisa

dinegosiasikan pada perkara perceraian yang berat. Dengan demikian Hakim harus berijtihad dengan hukum lain. Hal ini dilandasi oleh Pasal 50 UU No. 48 Tahun 2009 dan kaidah fiqh yaitu keputusan Hakim dapat menghilangkan perbedaan. Tiga orang Hakim berpendapat *batas waktu* 6 bulan pada alasan perselisihan dan pertengkaran terus-menerus atau berpisah tempat tinggal bersifat kumulatif, yang dimana kedua alasan tersebut haruslah mencapai waktu minimal tersebut jika ingin diajukan ke Pengadilan. Enam orang Hakim lainnya berpendapat bahwa batas waktu 6 bulan ini bersifat alternatif. Yaitu diharuskan pada alasan berpisah tempat tinggal. Semua Hakim bersandar pada Surat Edaran Mahkamah Agung Nomor 1 Tahun 2022 dan sebagian lain menambahkan Pasal 19 Peraturan Pemerintah Nomor 9 tahun 1975 dan Pasal 116 Instruksi Presiden Nomor 1 Tahun 1991 Kompilasi Hukum Islam.

Kata Kunci: Perceraian, Batas Waktu, Pertimbangan Hakim.

This is an open access article under the [CC BY-NC-SA](https://creativecommons.org/licenses/by-nc-sa/4.0/) license.



INTRODUCTION

Marriage is the most extended form of worship that must always be carried out with the hope of Allah's approval and blessings. In Indonesia, marriage is more commonly called marriage. Marriage law in Indonesia is contained in Law Number 1 of 1974 concerning Marriage. The definition of marriage is regulated in Article 1. Namely, that being is a spiritual and physical bond between a man and a woman as husband and wife to form a happy and eternal family or household based on the belief in the Almighty God.

Based on the definition of marriage in Article 1 above, the ideal and desired marriage is happy and eternal. Happiness and eternity are different for each person. Some live a simple life and feel happiness. Some people must have a house and a luxury car to feel happy. But what is certain is that marriage is a hope or desire for eternity. This means that the marriage cannot be terminated unless one of them dies, and the principle of making divorce difficult is created.¹

Marriage is only sometimes smooth and lasting. There are times when harmony in the household is shaken and tested in disputes and quarrels that end up in court. The sacred agreement they have entered into could be in danger of being broken if one takes the dispute to court for trial. Suppose various existing legal

¹ Mubasyaroh Mubasyaroh, "Analisis Faktor Penyebab Pernikahan Dini Dan Dampaknya Bagi Pelakunya," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 7, no. 2 (2016): 398, <https://doi.org/10.21043/yudisia.v7i2.2161>. Rizal Arif Fitria, Ahmadi Hasan, and Masyithah Umar, "Dispensasi Kawin Dan Pemenuhan Hak Anak: Studi Pengaruh Terhadap Hak-Hak Anak Dalam Konteks Hukum Dan Sosial," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 4 (December 15, 2023): 749–67.

instruments do not prevent this. In that case, the sacredness and strong bonds contained in the marriage contract have the potential to be destroyed and no longer have meaning.²

Focusing on our country, Indonesia, the marriage figure in 2022 will be 1.7 million. Compared to 2021, this figure decreased by 2.1%, according to the Indonesian Statistics report.³ Meanwhile, the divorce rate in Indonesia in 2022 will reach 516,334 cases; this figure has increased compared to 2021, namely 447,743 cases.⁴

Divorce in Islam is an act that Allah hates. As in the hadith narrated by Abu Dawud, which reads:

حَدَّثَنَا كَثِيرٌ بْنُ عُبَيْدٍ حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ عَنْ مُعْرِفِ بْنِ وَاصِلٍ مُحَارِبٍ بْنِ دِثَارٍ عَنْ ابْنِ عُمرَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أْبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ⁵

As told by Katsir bin 'Ubaid, Muhammad bin Khalid narrated from Mu'arif bin Washil from Muharib bin Ditsar from Ibn Umar from the Prophet PBUH, who said: "The halal thing that Allah most hates is divorce." (Hadith narrated by Abu Dawud and declared authentic by al-Hakim)

Based on the hadith above explains that the law of divorce itself is permissible, but Allah hates it because divorce is a representation of failure to build a household. Allah also does not close the way for people whose households can no longer be reunited, so the final way out is divorce.⁶

As in general world society, divorce has become an inseparable part of the social phenomenon of Indonesian society. The intensity is relatively different from one

² Muhammad Ilham, "The Implementation Of Principles In Making Divorce Difficult As The General Explanation Of Law Number 1 Of 1974 Concerning Marriage In Serui Religious Court," *JICSA (Journal of Islamic Civilization in Southeast Asia)* 9, no. 2 (December 30, 2020): 174, <https://doi.org/10.24252/jicsa.v9i2.18843>.

³ "Angka Pernikahan Di Indonesia Pada 2022 Terendah Dalam Satu Dekade Terakhir | Databoks," accessed March 7, 2023, <https://databoks.katadata.co.id/datapublish/2023/03/02/angka-pernikahan-di-indonesia-pada-2022-terendah-dalam-satu-dekade-terakhir>.

⁴ "Kasus Perceraian Di Indonesia Melonjak Lagi Pada 2022, Tertinggi Dalam Enam Tahun Terakhir | Databoks," accessed March 7, 2023, <https://databoks.katadata.co.id/datapublish/2023/03/01/kasus-perceraian-di-indonesia-melonjak-lagi-pada-2022-tertinggi-dalam-enam-tahun-terakhir>.

⁵ Abu Abdillah Muhammad bin Yazid Al-Qozwani ibn Majah, *Sunan Ibnu Majah*, vol. Juz 3 (Dar Risalah Al-'Alamiah, 2009), p 180.

⁶ Dina Khalidah, "Tinjauan NU Terhadap Talak Dilihat dari Perspektif Hadits Abghadh Al-Halal Ilallahi At-Thalaq (Studi Kasus di PC NU Kota Malang)," June 12, 2021, 6, <http://repository.unisma.ac.id/handle/123456789/2596>.

region to another.⁷ Divorce cases in Indonesia in the Religious Courts are the most significant divorce cases in the Indonesian justice system, covering 50% of all cases, followed by criminal cases with 33%. Religious Courts produce decisions in 98% and the remaining 2% by District Courts of all divorce cases in Indonesia. This means that the Religious Courts have a significant influence on the divorce process that occurs in Indonesia.⁸

In a national study of marriage therapists working with couples, Whisman, Dixon, and Johnson identified the most common problems reported by couples. Their research results showed that poor communication, power struggles, unrealistic expectations about marriage, sexual relationship problems, and difficulties in decision-making topped the list.⁹

Infidelity was the most frequently reported cause of divorce in other studies, followed by incompatibility, drinking or drug use, and growing apart. Ex-husbands and wives are more likely to blame their ex-partners than themselves for the problems that led to the breakup. Both ex-husbands and wives say that women are more likely to initiate divorce.¹⁰

As explained in Law Number 1 of 1974 concerning Marriage, there are principles or principles in marriage, one of which is contained in number 4 letter (e), which reads:

Because the purpose of marriage is to form a family that is eternally happy and prosperous, this law adheres to the principle of making divorce difficult. To allow a divorce, there must be specific reasons, and it must be done before a court hearing.¹¹

The Religious Courts, as actors of judicial power in family law, are also a determinant of success in realizing the ideals of a prosperous family. Thus, the final

⁷ Khairul Amri, Muhammad Adnan, and Cut Dian Fitri, "Does Poverty Affect Divorce Rates? The Role of Women's Income as Moderating Variable," *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2, <https://doi.org/10.1080/23311886.2022.2069908>.

⁸ Masyithah Umar, "Marriage and Divorce: How the Two Manifest within the Banjarise Community in Indonesia," *The Journal of Social Sciences Research*, no. 63 (March 24, 2020): 248, <https://doi.org/10.32861/jssr.63.245.251>.

⁹ David H. Olson, John DeFrain, and Linda Skogrand, *Marriages and Families Intimacy, Diversity, and Strengths*, 7th ed. (New York: McGraw-Hill Companies, 2011), 452.

¹⁰ Olson, DeFrain, dan Skogrand, p 452.

¹¹ Penjelasan Atas Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan pada angka 4 huruf e.

gate for a marriage is the Religious Court. Every judicial apparatus must be at the forefront of preventing divorce.¹²

- 1) To reduce the divorce rate in the Religious Courts, the Supreme Court of the Republic of Indonesia, with a lot of consideration and keeping in mind the principle of making divorce difficult, created a regulation, namely Supreme Court Circular Letter Number 1 of 2022 concerning the Implementation of the Formulation of the Results of the 2022 Supreme Court Chamber Plenary Meeting as a Guide to Implementing Duties for The next court, abbreviated as SEMA, contains several plenary chambers, one of which includes the formulation of the entire chamber of religion as stated in the marriage law. What is written in letter (b) is:
- 2) To maintain a marriage and fulfill the principle of making divorce difficult:
- 3) Divorce cases, because the husband/wife has not carried out their physical and spiritual support obligations, can only be granted if it is proven that the husband/wife has not carried out their obligations after a minimum of 12 (twelve) months or
- 4) Divorce cases based on continuous disputes and quarrels can be granted if it is proven that the husband/wife has constant disputes and quarrels or has lived separately for at least 6 (six) months.¹³

By Law Number 12 of 2011 concerning the Formation of Legislative Regulations Articles 7 and 8, the Supreme Court Circular Letter (SEMA) can be categorized as a form of statutory regulation based on an institution's authority. The formation of SEMA itself stems from the authority of the Supreme Court (MA) to request information and provide guidance to courts in all subordinate judicial environments. By looking at existing developments, SEMA has become a policy to carry out the supervisory function of the Supreme Court. SEMA itself operates under the Law. SEMA only applies to the judicial environment. Meanwhile, the Law is the highest legal rule under the 1945 Constitution of the Republic of Indonesia and has binding force on all Indonesian citizens.¹⁴

¹² Ilham, "The Implementation Of Principles In Making Divorce Difficult As The General Explanation Of Law Number 1 Of 1974 Concerning Marriage In Serui Religious Court," 178.

¹³ Surat Edaran Mahkamah Agung Nomor 1 Tahun 2022

¹⁴ Adv Yuda Asmara S.H, "Kedudukan SEMA Terhadap Suatu Undang-Undang - Klinik Hukumonline," [hukumonline.com](https://hukumonline.com/klinik/a/kedudukan-sema-terhadap-suatu-undang-undang-lt5da3d5db300a9), accessed May 5, 2023, <https://hukumonline.com/klinik/a/kedudukan-sema-terhadap-suatu-undang-undang-lt5da3d5db300a9>.

A former law must fulfill usefulness, legal certainty, and justice. These three things are known as Gustav Radbruch's "style" legal approach as the three primary legal values.¹⁵ The SEMA regulations above meet legal certainty. Because the enactment of written laws in the event of a concrete event makes society orderly.¹⁶ In the benefit aspect, this aspect is already functional to fulfill the principle of making divorce difficult. Then, on the element of justice. Is SEMA regulation Number 1 of 2022 fair to people who want a divorce?

The results of initial observations show that by observing several divorce case decisions at the Balikpapan Religious Court, Banjarmasin Religious Court, and Pelaihari Religious Court, there are differences between the judges in responding to this problem. Moving on from the issues in the three religious courts, further research is needed to formulate two problems, namely, what the judge's opinion is in accepting a divorce case with a time limit and what the judge's reasons are for giving an opinion in getting a divorce case with a time limit.

METHOD

This research is empirical legal research with a legal sociology approach. The research locations were at Balikpapan, Banjarmasin, and Pelaihari Religious Courts. The subjects of this research were informants, namely judges of the Banjarmasin, Balikpapan, and Pelaihari Religious Courts. The object of this research is the opinion of judges at the Banjarmasin, Balikpapan, and Pelaihari Religious Courts regarding how to adjudicate divorce cases within a time limit. The type of data used in this research is primary data in the form of identity data, data regarding the judge's opinion, and data regarding the judge's reasons for giving that opinion. The data sources were obtained from judges at the Banjarmasin, Balikpapan, and Pelaihari Religious Courts. Data collection techniques through interviews. Data processing techniques through editing and matrices. Data analysis uses qualitative analysis through descriptive analysis methods.

¹⁵ M. Muslih, "NEGARA HUKUM INDONESIA DALAM PERSPEKTIF TEORI HUKUM GUSTAV RADBRUCH (Tiga Nilai Dasar Hukum)," *Legalitas: Jurnal Hukum* 4, no. 1 (May 12, 2017): 143, <https://doi.org/10.33087/legalitas.v4i1.117>.

¹⁶ Hasaziduhu Moho, "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan," *Warta Dharmawangsa* 13, no. 1 (March 14, 2019): 7, <https://doi.org/10.46576/wdw.v0i59.349>.

RESULTS AND DISCUSSIONS

Judge's Opinion Regarding Divorce with Time Limits

The interviews showed that all Balikpapan, Banjarmasin, and Pelaihari Religious Court Judges agreed that the time limit rules regulated in SEMA Number 1 of 2022 were in effect and used since the rule was passed. The stipulated time limit is applied in divorce cases for continuous disputes, quarrels, or separation of residence. The time is a minimum of 6 (six) months. There are two opinions regarding the use of this time in considering the judge's decision.

Cumulatively

Three judges said the six-month time limit in divorce cases based on continuous disputes, quarrels, or separation of residence is a cumulative reason. They understand this 6-month time limit applies to both. Whether for reasons of dispute or separation of residence.

In line with this, Doonan and Foster stated that the term *or* has two meanings. First, *or* usually exclusive, but may be inclusive. Or it means complete, so it requires a choice between linked items. In some circumstances, it can be interpreted as inclusive, where two related items can be taken simultaneously. However, the term tends to be treated as inclusive unless the concepts it links are mutually exclusive.¹⁷ As is the context of the regulations in SEMA, namely, "divorce cases based on continuous disputes and quarrels can be granted if it is proven that the husband/wife has continuous disputes and quarrels or has lived separately for at least 6 (six) months." This term *or* SEMA rule is understood by three judges, meaning it is interpreted inclusively, where two related items can be taken simultaneously. Therefore, this opinion aligns with Doonan and Foster's theory, which states that the meaning or interpretation can be taken from two items simultaneously. It seems that it can be accepted in adjudicating divorce cases because it is considered that the reason for the dispute can be proven or can be seen to have occurred because of the realization that the separation of residence is one unit with the conflict, namely the separation is the result of an argument.

Alternatively

Furthermore, the results of the interviews found that six judges believed that the six-month time limit for divorce reasons, namely continuous

¹⁷ Aan Efendi and Dyah Ochtorina Susanti, "Makna dan Problematika Penggunaan Term 'Dan', 'Atau', 'Dan/Atau', 'Kecuali', dan 'Selain' dalam Undang-Undang," *Jurnal Legislasi Indonesia* Vol 17, no. 4 (December 1, 2020): 399, <https://repository.unej.ac.id/xmlui/handle/123456789/103174>.

disputes and quarrels or separation of residence, was an alternative reason. They stated that a minimum period of 6 months was provided for reasons of separation of residence. They understand that the term “or” in the SEMA rules means choice or as an option, which is indicated on the split. They also consider that these six months can be calculated with certainty because it is visible in the actual situation. This is in line with Doonan and Foster’s theory, which states that apart from being understood as a whole, it can also be understood as a choice or alternative.¹⁸ What is meant by taking one of the two options? Because the phrase contains two different sentences. So, constant disputes and quarrels with the separation of residences is a phrase that has a different meaning. Therefore, the author agrees with this opinion because if the meaning of the words is interpreted or interpreted simultaneously, it will be burdensome for the parties litigating in court. If there is an element of emergency behind their quarrel, that will give rise to a more excellent emergency. Thus, writers tend to like opinions that interpret or mean words interpreted as alternatives or choices.

The author also agrees with the opinion above because it has absolute certainty. Because the separation of residences can be seen and known directly and realistically. This is different from continuous disputes and quarrels; if you have to fulfill six months, it will be challenging to determine precisely when the conflicts and quarrels will occur because other people cannot see what happened directly. In line with what Rahmida Erliyani stated, the information given by a witness must be an incident that he has experienced. At the same time, opinions or conjectures obtained through thinking are not included in testimony.¹⁹ Thus, the reason for divorce using continuous disputes must be proven at the evidentiary stage at trial.

The Judge’s Reasons for Hearing Divorce Cases with a Time Limit

Based on the results of the interview, it is known that the legal basis for the opinion of the Balikpapan, Banjarmasin, and Pelaihari Religious Court Judges regarding adjudicating divorce cases with a time limit is the provisions of Supreme Court Circular Letter Number 1 of 2022 and Government Regulation Number 9 of 1975 Article 19 in conjunction with Presidential Instruction Number

¹⁸Efendi and Susanti, 399. Zein Firdaus et al., “Review Of Islamic Law Regarding The Beliefs Of The Banjar Community Regarding Pamali And Kapuhunan In Their Daily Lives,” *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 2 (June 11, 2023): 79–84.

¹⁹ Rahmida Erliyani, *Hukum Pembuktian Di Peradilan Agama* (Yogyakarta: K-Media, 2017), p 47.

1 of 2022 1991 Compilation of Islamic Law Article 116.

As in line with Article 115 KHI²⁰ which states, "Divorce can be carried out in front of a Religious Court after the Religious Court has tried and failed to reconcile the two parties." This means that this article shows that during the trial process, maximum mediation must be attempted by all parties, including the judge, witnesses, and family. This step was taken because the original law of this marriage is makruh and is genuinely hated by Allah. As in the Hadith of the Prophet, which reads:

عن مُحَارِبٍ قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَحَلَّ اللَّهُ شَيْئًا أَبْغَضَ إِلَيْهِ مِنَ الطَّلَاقِ²¹

"From Muharib, the Messenger of Allah said: 'There is nothing halal that Allah hates more than talaq'."

In line with the hadith above, divorce is the last resort when a marriage cannot be saved. This is by Sayyid Sabiq, who stated that if the husband and wife relationship cannot be repaired, it is impossible to maintain it because it will only harm both parties.²²

According to all informants in divorce cases based on continuous disputes and quarrels accompanied by other reasons such as domestic violence, drunkenness, gambling, adultery, and apostasy, the rules regarding time limits can be set aside. The legal basis that the Judge uses in making this decision is based on the laws of jurisprudence, namely:

حكم الحاكم في مسائل الإجتihad يرفع الخلاف²³

This means: "The law decided by the judge in matters of ijtiḥad can eliminate differences of opinion."

The application of the rule above is that when a judge faces a problem, there is a difference in resolution in a law. Then, the panel of judges agreed to decide on a decision that was considered more robust. So, other parties must not

²⁰Intruksi Presiden Nomor 1 Tahun 1991 Kompilasi Hukum Islam

²¹Abu Daud Sulaiman as-Sijistani as-Sijistani, *Sunan Abi Daud*, vol. Vol 2 (Beirut: Dar al-Kitab, n.d.), 220.

²²Iffah Muzammil, *Fiqh Munakahat (Hukum Pernikahan Dalam Islam)* (Tangerang: Tira Smart, 2019), 130.

²³Khaerun Nufus, "SIDANG ISBAT PENENTUAN AWAL BULAN KAMARIAH PRESPEKTIF HUKUM ISLAM (Kajian Terhadap Penetapan Kementerian Agama RI Selaku Ulil Amri)," *INKLUSIF (JURNAL PENGKAJIAN PENELITIAN EKONOMI DAN HUKUM ISLAM)* 3, no. 1 (June 1, 2018): 16, <https://doi.org/10.24235/inklusif.v3i1.2476>.

deny this decision.

The connection in this divorce case is that various causes or reasons are found behind the disputes and quarrels between husband and wife. It could be that it's so severe that it hurts them physically, and they abuse each other. In this way, the judge can make *ijtihad* using another legal basis to grant a divorce claim that has not yet reached its due date for reasons of mutual benefit.

So when a law is no longer relevant to the event at hand, the judge can make *ijtihad* with his reasoning, and the results of his *ijtihad* can be justified and recognized based on the explanation of Article 50 of Law Number 48 of 2009. This is also by the steps in preparing legal opinions, according to Van Der Braught, which are at the stage of selecting relevant legal rules.²⁴

When judges consider the law, they consider juridical factors and non-juridical factors such as the background of events, current and future conditions, and the judges' beliefs.²⁵ Namely by looking at the evasion of the divorce case being filed. This is also in line with what has been regulated in Article 39 paragraph (2) KHI, namely that to carry out a divorce, there must be sufficient reasons that the husband and wife will not be able to live in harmony as husband and wife.²⁶ So what is meant by sufficient reason is that the reason is proven at trial and fulfills the reasons for divorce stated in Article 116 KHI. However, not all legislative approaches can provide wise legal arguments. In a casuistry situation, a case approach can be taken to obtain relevant rules, namely building legal arguments by referring to the legal opinion formulated by the judge in a court decision (jurisprudence). If it is not found, you can move on by exploring other laws, such as customary law or normative values that live in society.²⁷

In divorce cases based on continuous disputes and quarrels, which have a time limit of 6 months, there are differences of opinion between one judge and another. Several judges think that if a divorce case is based on the reason that the dispute is still minor, the six months have not been fulfilled. If it is possible to reconcile or reconcile, then the case is considered unacceptable. The judge's

²⁴Shidarta, *Karakteristik Penalaran Hukum Dalam Konteks Keindonesiaan* (Bandung: CV. Utomo, 2006), p 197.

²⁵Syarifah Dewi Indawati, "Dasar Pertimbangan Hukum Hakim Menjatuhkan Putusan Lepas Dari Segala Tuntutan Hukum Terdakwa Dalam Perkara Penipuan," *Verstek* 5, no. 2 (August 6, 2019): p 270, <https://doi.org/10.20961/jv.v5i2.33500>.

²⁶Intruksi Presiden Nomor 1 Tahun 1991 Kompilasi Hukum Islam

²⁷Nur Iftitah Isnantiana, "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan," *Islamadina : Jurnal Pemikiran Islam* 18, no. 2 (2017): 46, <https://doi.org/10.30595/islamadina.v18i2.1920>.

consideration in making this decision was to understand that the six-month time limit was a requirement for filing a divorce case. If it is less than these requirements, it is indicated as a formal defect, which implies being unacceptable.

As explained by Sudirman, the decision of inadmissibility (Niet Ontvankelijke Verklaard) is a decision where the judge says the lawsuit cannot be accepted because it contains formal defects. There are several reasons why a lawsuit cannot be accepted due to legal defects, and in this case, the time limit rule is understood as a lawsuit that is premature or has yet to reach its due date.²⁸ So, it is understood that when a lawsuit is at the initial examination or first trial stage, the judge will first look at the contents of the lawsuit. If the formal and material requirements are met, the trial can continue. If not, the judge must rule that the decision cannot be accepted because of the legal defects.

Several informants stated that for the benefit of their parties, they suggested that divorce cases that had not met the time requirements at SEMA withdraw their lawsuits. They do this so that the parties' rights are protected. Based on the theory of starting the lawsuit, the Plaintiff can re-file the lawsuit for the same reason. The result of removing the lawsuit does not make the lawsuit identity in line with what Yahya Harahap wrote in his book, which states that basically, the withdrawal of a lawsuit that has not been examined at trial does not involve the defendant's consent because it is guided by Article 271 Rv and jurisprudence.²⁹ Thus, the reasons used in the initial lawsuit can be used again in the second lawsuit after this revocation.

The time limit for divorce cases for not carrying out physical and/or mental support obligations is at least 12 months. Some judges think that the urgency of divorce for this reason has several levels. If you have reached the stage of not providing any income at all, this 12-month time limit can be waived. This time limit can be considered if it is lacking in the sense that more is needed to meet the wife's needs. Look at the fairness that applies in the family environment. As the following hadith:

أَخْبَرَنَا الرَّبِيعُ، قَالَ: أَخْبَرَنَا الشَّافِعِيُّ رَضِيَ اللَّهُ عَنْهُ، قَالَ: أَخْبَرَنَا أَنَسُ بْنُ عِيَاضٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّهَا حَدَّثَتْهُ: أَنَّ هِنْدَ أُمَّ مُعَاوِيَةَ جَاءَتْ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ، وَإِنَّهُ لَا يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي إِلَّا مَا أَخَذْتُ مِنْهُ سِرًّا وَهُوَ لَا

²⁸Sudirman L, *Hukum Acara Peradilan Agama* (Parepare: IAIN Parepare Nusantara Press, 2021), 115.

²⁹M. Yahya Harahap, S.H., *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017), 95.

بِالْمَعْرُوفِ³⁰ وَوَلَدَكَ يَكْفِيكَ مَا خُذِيَ يَعْلَمُ، فَهَلْ عَلَيَّ فِي ذَلِكَ مِنْ شَيْءٍ؟ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: »

Based on the hadith narrated by Ahmad, Bukhari, Muslim, Abu Daud, and Nasai, from Aisyah ra., Hindun said, O Messenger of Allah, Abu Sufyan is a stingy person. He doesn't give me sufficient support for me and my child apart from what I took from him without his knowledge. He said, "Take what is sufficient for you and your child appropriately." This hadith says that adequate living indicates that it is adjusted to the wife's needs while still referring to the principles of decency. This varies according to differences in time, place, circumstances, and each person concerned.³¹ Therefore, the judge should examine the husband's condition regarding opportunities and difficulties when considering this case. How appropriate is it for a wife to be provided with a living when her husband is free and when his husband is difficult?

Some Judges think that divorce cases based on continuous disputes and quarrels can be examined and granted even in less than six months, that is, if the Plaintiff can prove his claim as long as the Plaintiff can produce legal evidence according to the law and by the formal law. For example, witnesses must be sworn in first, and there must be two because the judge cannot trust the testimony of one witness alone (*unus testis nullus testis*). The judge must also pay attention to several things, as explained by Yahya Harahap, namely in assessing and constructing the truth of the statements of the witnesses concerned, namely the correspondence between the witness's statement and the arguments of the lawsuit, the correspondence of the witness's statement with other evidence, the reasons why the witness gave certain statements and way of life and decency of witnesses.³² If the judge has explored these four things, it depends on how the judge assesses the strength of the Plaintiff's evidence. Then, if agreement is found between all of these things, it can be formulated to be granted by the judge.

Rahmida Erliyani, quoted from Sudikno Mertokusumo regarding the issue of evaluating evidence, stated her opinion: "In general, as long as the law does not stipulate otherwise, judges are free to assess the evidence." Since judges, in assessing evidence, can act independently or be bound by the law, there are three theories regarding this matter: independent, negative, and positive.³³ Thus,

³⁰Abu Abdillah Muhammad ibn Idris ibn "Abbas ibn Usman ibn Syafi" as-Syafi'i, *Musnad Al-Imam as-Syafi'i* (Kuwait: Syirkah Guros Lin Nasyri Wa at-Tauzi', 2004), 80.

³¹Sayyid Sabiq, *Fikih Sunnah 3* (Jakarta: Cakrawala Publishing, 2008), p 434.

³²M. Yahya Harahap, S.H., *Pembahasan Permasalahan Dan Penerapan KUHAP* (Jakarta: Pustaka Kartini, 1993), 812.

³³Erliyani, *Hukum Pembuktian Di Peradilan Agama*, p 24-25.

if the evidence submitted by the Plaintiff can strengthen his argument and convince the Judge that there is no refutation of evidence from the opposing party, the divorce case can be granted. This is in line with what was said by Roihan A. Rosyid, quoted by Rahmida Erliyani, that proof is only carried out when there is a difference of opinion/dispute. So in civil cases before the court, there is no need to prove things the opposing party does not deny.³⁴

There are differences between the Pelaihari Religious Court and other Religious Courts, namely the Balikpapan and Banjarmasin Religious Courts, in deciding divorce cases within this time limit. The Balikpapan and Banjarmasin Religious Courts tend to determine that it is unacceptable/N.O. for mild cases below six months and 12 months. Meanwhile, the Pelaihari Religious Court rejected light cases that were less than six months and 12 months old. The results of the author's interviews with several Judges at the Pelaihari Religious Court stated that all cases submitted to the Court will be processed if there are no formal defects. According to them, less than six months and 12 months is not a legal requirement that must be stated in the N.O. They adhere to Article 28, paragraph (1) of the Judicial Power Law³⁵ that judges must explore, follow, and understand society's legal values and sense of justice. They know that in investigating a case, they must undergo an examination process regulated in the religious court procedural law.

All informants believe that SEMA Number 1 of 2022 must be implemented to ensure the uniformity of Judges' decisions within the scope of the Religious Courts. The legal consequence of the existence of a time limit for divorce is that the parties cannot immediately file a lawsuit. However, with time, SEMA Number 1 of 2022 was updated with SEMA Number 3 of 2023, which excludes this time limit if domestic violence is found in the lawsuit. This positively impacts couples, encouraging them to rethink household problems so that some moments and circumstances allow them to come together again to fix them. This kind of understanding is supported by Tsani and Utama's explanation that the Islamic religion regulates divorce. If the situation is like that or it is difficult and there is no other way to protect the interests of both husband and wife, then divorce is permissible.³⁶

³⁴Erliyani, 37.

³⁵Undang-Undang Nomor 4 Tahun 2004 tentang Kekuasaan Kehakiman

³⁶Wifa Lutfiani Tsani and Alfian Doha Wira Utama, "PERCERAIAN DI MASA PANDEMI COVID-19; ANALISIS TERHADAP PENYEBAB MENINGKATNYA ANGKA PERCERAIAN DI

CONCLUSION

Firstly, the opinion of the Judges of the Balikpapan, Banjarmasin, and Pelaihari Religious Courts regarding divorce with a time limit is that three of the nine judges think that the time limit is cumulative, and the other six stated that the alternative is only separation of residence. In the word, there are two possibilities: it can be interpreted at once or in the form of options. Overall, it thinks that if a divorce case is based on a dispute that there are other reasons or the reason for the conflict that is deemed to be severe and impossible to reconcile, time limits can be considered because SEMA regulations are not the legal basis if something detrimental is dangerous for the litigants.

Second, the legal basis used by the Balikpapan, Banjarmasin, and Pelaihari Religious Court Judges regarding divorce with a time limit is the provisions of Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage jo. Article 116 Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, and Supreme Court Circular Letter Number 1 of 2022. This considers divorce cases that must be guided by regulations but does not ignore events that occurred and requires looking at the welfare of both parties. Evaluating the law does not only take a statutory approach but also explores the values of justice that live in society.

REFERENCES

- Amri, Khairul, Muhammad Adnan, and Cut Dian Fitri. "Does Poverty Affect Divorce Rates? The Role of Women's Income as Moderating Variable." *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2069908. <https://doi.org/10.1080/23311886.2022.2069908>.
- "Angka Pernikahan Di Indonesia Pada 2022 Terendah Dalam Satu Dekade Terakhir | Databoks." Accessed March 7, 2023. <https://databoks.katadata.co.id/datapublish/2023/03/02/angka-pernikahan-di-indonesia-pada-2022-terendah-dalam-satu-dekade-terakhir>.
- Efendi, Aan, and Dyah Ochtorina Susanti. "Makna dan Problematika Penggunaan Term 'Dan', 'Atau', 'Dan/Atau', 'Kecuali', dan 'Selain' dalam Undang-

SEMARANG," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 16, no. 2 (December 18, 2022): p 251, <https://doi.org/10.24239/blc.v16i2.1167>.

- Undang." *Jurnal Legislasi Indonesia* Vol 17, no. 4 (December 1, 2020).
<https://repository.unej.ac.id/xmlui/handle/123456789/103174>.
- Erliyani, Rahmida. *Hukum Pembuktian Di Peradilan Agama*. Yogyakarta: K-Media, 2017.
- Firdaus, Zein, Aisyah Magfirah, Mahdaniah, Abdul Hadi, Imam Alfiannoor, M. H. Ergina Faralita, and S. Ag Fuad Luthfi. "Review Of Islamic Law Regarding The Beliefs Of The Banjar Community Regarding Pamali And Kapuhunan In Their Daily Lives." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 2 (June 11, 2023): 79–84.
- Fitria, Rizal Arif, Ahmadi Hasan, and Masyithah Umar. "Dispensasi Kawin Dan Pemenuhan Hak Anak: Studi Pengaruh Terhadap Hak-Hak Anak Dalam Konteks Hukum Dan Sosial." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 4 (December 15, 2023): 749–67.
- Harahap, S.H., M. Yahya. *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2017.
- — —. *Pembahasan Permasalahan Dan Penerapan KUHAP*. Jakarta: Pustaka Kartini, 1993.
- i, Abu Abdillah Muhammad ibn Idris ibn "Abbas ibn Usman ibn Syafi" as-Syafi'. *Musnad Al-Imam as-Syafi'i*. Kuwait: Syirkah Guros Lin Nasyri Wa at-Tauzi', 2004.
- Ilham, Muhammad. "The Implementation Of Principles In Making Divorce Difficult As The General Explanation Of Law Number 1 Of 1974 Concerning Marriage In Serui Religious Court." *JICSA (Journal of Islamic Civilization in Southeast Asia)* 9, no. 2 (December 30, 2020): 172–210.
<https://doi.org/10.24252/jicsa.v9i2.18843>.
- Indawati, Syarifah Dewi. "Dasar Pertimbangan Hukum Hakim Menjatuhkan Putusan Lepas Dari Segala Tuntutan Hukum Terdakwa Dalam Perkara Penipuan." *Verstek* 5, no. 2 (August 6, 2019).
<https://doi.org/10.20961/jv.v5i2.33500>.
- Isnantiana, Nur Iftitah. "Legal Reasoning Hakim Dalam Pengambilan Putusan Perkara Di Pengadilan." *Islamadina : Jurnal Pemikiran Islam* 18, no. 2 (2017): 41–56. <https://doi.org/10.30595/islamadina.v18i2.1920>.
- "Kasus Perceraian Di Indonesia Melonjak Lagi Pada 2022, Tertinggi Dalam Enam Tahun Terakhir | Databoks." Accessed March 7, 2023.
<https://databoks.katadata.co.id/datapublish/2023/03/01/kasus-perceraian-di-indonesia-melonjak-lagi-pada-2022-tertinggi-dalam-enam-tahun-terakhir>.
- Khalidah, Dina. "Tinjauan NU Terhadap Talak Dilihat dari Perspektif Hadits Abghadh Al-Halal Ilallahi At-Thalaq (Studi Kasus di PC NU Kota Malang)," June 12, 2021. <http://repository.unisma.ac.id/handle/123456789/2596>.
- Majah, Abu Abdillah Muhammad bin Yazid Al-Qozwani ibn. *Sunan Ibnu Majah*. Vol. Juz 3. Dar Risalah Al-'Alamiah, 2009.

- Moho, Hasaziduhu. "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan." *Warta Dharmawangsa* 13, no. 1 (March 14, 2019). <https://doi.org/10.46576/wdw.v0i59.349>.
- Mubasyaroh, Mubasyaroh. "Analisis Faktor Penyebab Pernikahan Dini Dan Dampaknya Bagi Pelakunya." *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 7, no. 2 (2016): 385–411. <https://doi.org/10.21043/yudisia.v7i2.2161>.
- Muslih, M. "NEGARA HUKUM INDONESIA DALAM PERSPEKTIF TEORI HUKUM GUSTAV RADBRUCH (Tiga Nilai Dasar Hukum)." *Legalitas: Jurnal Hukum* 4, no. 1 (May 12, 2017): 130–52. <https://doi.org/10.33087/legalitas.v4i1.117>.
- Muzammil, Iffah. *Fiqh Munakahat (Hukum Pernikahan Dalam Islam)*. Tangerang: Tira Smart, 2019.
- Nufus, Khaerun. "SIDANG ISBAT PENENTUAN AWAL BULAN KAMARIAH PRESPEKTIF HUKUM ISLAM (Kajian Terhadap Penetapan Kementerian Agama RI Selaku Ulil Amri)." *INKLUSIF (JURNAL PENGKAJIAN PENELITIAN EKONOMI DAN HUKUM ISLAM)* 3, no. 1 (June 1, 2018): 1–21. <https://doi.org/10.24235/inklusif.v3i1.2476>.
- Olson, David H., John DeFrain, and Linda Skogrand. *Marriages and Families Intimacy, Diversity, and Strengths*. 7th ed. New York: McGraw-Hill Companies, 2011.
- Sabiq, Sayyid. *Fikih Sunnah* 3. Jakarta: Cakrawala Publishing, 2008.
- S.H, Adv Yuda Asmara. "Kedudukan SEMA Terhadap Suatu Undang-Undang - Klinik Hukumonline." *hukumonline.com*. Accessed May 5, 2023. <https://hukumonline.com/klinik/a/kedudukan-sema-terhadap-suatu-undang-undang-lt5da3d5db300a9>.
- Shidarta. *Karakteristik Penelaran Hukum Dalam Konteks Keindonesiaan*. Bandung: CV. Utomo, 2006.
- Sijistani, Abu Daud Sulaiman as-Sijistani as-. *Sunan Abi Daud*. Vol. Vol 2. Beirut: Dar al-Kitab, n.d.
- Sudirman L. *Hukum Acara Peradilan Agama*. Parepare: IAIN PArepare Nusantara Press, 2021.
- Tsani, Wifa Lutfiani, and Alfian Daha Wira Utama. "PERCERAIAN DI MASA PANDEMI COVID-19; ANALISIS TERHADAP PENYEBAB MENINGKATNYA ANGKA PERCERAIAN DI SEMARANG." *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 16, no. 2 (December 18, 2022): 249–69. <https://doi.org/10.24239/blc.v16i2.1167>.
- Umar, Masyithah. "Marriage and Divorce: How the Two Manifest within the Banjarise Community in Indonesia." *The Journal of Social Sciences Research*, no. 63 (March 24, 2020): 245–51. <https://doi.org/10.32861/jssr.63.245.251>.