

Divorce Due to Apostasy: A Case Study of Religious Court Decisions and Their Implications in Civil Law and Islamic Law

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Abstract

This study aims to analyze the legal considerations of judges in divorce cases due to apostasy and its consistency with the principles of substantive and constitutional justice. The research method used is normative juridical with a comparative approach to decisions. Data were collected through document study of a number of religious court decisions handling divorce cases due to change of religion (apostasy). The results show that there are variations in the legal basis used by judges, both referring to the Compilation of Islamic Law and general civil law, which shows that there is no standardized interpretation standard. In terms of substantive justice considerations, some decisions have not fully considered aspects of human rights and constitutional protection, thus potentially causing injustice to one of the parties. These findings indicate the need for unification of jurisprudential guidelines or directives from the Supreme Court in order to create uniformity of legal practice within the religious courts. This research recommends an evaluation of the Compilation of Islamic Law and the formulation of legal policies that are more responsive to social and religious dynamics.

Keywords: divorce, apostasy, legal justice

Introduction

The phenomenon of divorce in Indonesia shows an increasing trend from year to year, including divorce cases caused by apostasy or conversion of one of the parties to the marriage¹. Apostasy as a reason for divorce is a complex issue because it touches two different legal dimensions, namely the constitutional right to freedom of religion as guaranteed in Article 28E and Article 29 of the 1945 Constitution², as well as the provisions of religious law, especially Islamic law, which form the basis of substantive law in the jurisdiction of the Religious Courts. In practice, religious conversion by one party to a marriage often creates tension between universal values of human rights and sharia principles governing the validity and continuity of the marriage bond. Religious Courts, as judicial institutions that have the authority to resolve marital disputes for Muslims, are faced with the dilemma of balancing normative religious provisions with nationally applicable principles of justice. This raises important questions regarding the basis of legal considerations used by the panel of judges in deciding divorce cases due to apostasy, and the extent to which the decision reflects substantive justice for the parties involved.

¹ Kamarulnizam Abdullah, "Navigating Against Salafi-Wahabi Expansion in Malaysia: The Role of State and Society," *Studia Islamika* 29, no. 1 (June 2022): 1–29, <https://doi.org/10.36712/sdi.v29i1.25213>.

² Mahaarum Kusuma Pertiwi, *Religious Freedom and the Indonesian Constitution: A Case Study of the Blasphemy Law, Marriage Law, and Civil Administrative Law*, Macquarie University, 2022, 1624302 Bytes, 1624302 Bytes, <https://doi.org/10.25949/21153700.V1>.

The inconsistency in Religious Court decisions related to divorce due to apostasy indicates a significant difference in legal approach among judges³. In some cases, divorce petitions are granted because apostasy is considered to have broken the bond of marriage according to Islamic teachings, while in other cases, similar petitions are rejected with different considerations⁴. This condition raises fundamental questions related to legal certainty and unity of interpretation of the applicable norms. Substantially, the issue arises whether apostasy automatically terminates the marriage relationship according to Islamic law, or whether a certain legal process is needed to determine it. On the other hand, the Indonesian civil law system that upholds human rights and freedom of religion also provides room for debate on how the legal position of apostasy in the context of civil relations between individuals⁵. Within the framework of a pluralistic national legal system, where Islamic law and state law coexist, it is necessary to examine carefully how judicial institutions, particularly the Religious Courts, interpret and apply the law in such cases. It is important to see to what extent these decisions have an impact on the harmonization of the law and the protection of the rights of the litigants.

The problems that arise in the context of divorce due to apostasy can be identified into several important aspects. First, it is necessary to explore the legal considerations used by the Religious Courts in deciding divorce cases filed due to apostasy of one of the parties⁶. This includes an analysis of the normative basis referred to, both from Islamic law and national legislation, as well as how judges interpret and integrate these norms in their decisions. Second, it is necessary to study the legal position of apostasy in the Islamic legal system and Indonesian positive law⁷, given the difference in paradigm between doctrinal religious norms and state law that upholds the principle of freedom of religion and protection of individual rights. Third, it is important to examine the broader implications of this kind of decision, both in terms of social, civil law, and Islamic law. Socially, divorce decisions due to apostasy can have an impact on family relationships, the status of children, and the social order in the community⁸. Meanwhile, from the perspective of civil law and Islamic law, the decision can reflect the dynamics between religious norms and the principles of national law that apply in a plural legal state like Indonesia.

This research has significant relevance in the efforts to develop Islamic family law in Indonesia, especially in dealing with the increasingly complex social reality due to differences and conversions in household beliefs. This study is expected to make a scientific contribution

³ Evra Willya, Nurlaila Harun, and Afni Anom, "LAWSUITS RELATED TO DIVORCE DUE TO APOSTASY IN BITUNG RELIGIOUS COURT," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 46, no. 1 (August 2022), <https://doi.org/10.30821/miqot.v46i1.877>.

⁴ Dzurrotul Muniroh Ahdaniah, Sri Lumatus Sa'adah, and Muhammad Faisol, "Divorce Due To Apostasy (Study of Differing Decisions in Religious Courts)," *Eduvest - Journal of Universal Studies* 4, no. 3 (March 2024): 777–83, <https://doi.org/10.59188/eduvest.v4i3.1087>.

⁵ Robert W. Hefner, "Islam and Institutional Religious Freedom in Indonesia," *Religions* 12, no. 6 (June 2021): 415, <https://doi.org/10.3390/rel12060415>.

⁶ Sontayati Sihite, "Case Study of Alternative Dispute Resolution for Inheritance Distribution of 'Adopted Children and Apostasy Through Mediation,'" *ISNU Nine-Star Multidisciplinary Journal* 1, no. 1 (May 2024): 18–26, <https://doi.org/10.70826/ins9mj.v1i1.30>.

⁷ Miftakhul Huda et al., "Development of Progressive Islamic Law in Indonesia Regarding □Apostasy□ as Grounds for Divorce: Insights from Maqasid Sharia," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 1 (May 2024): 73, <https://doi.org/10.30659/jua.v6i1.36754>.

⁸ Haeratun Haeratun, "Riddah and Its Legal Effects According to the Perspective of Islamic Law and Law No. 1 Year 1974 to Law No. 16 of 2019 Concerning Marriage," *Formosa Journal of Multidisciplinary Research* 4, no. 5 (May 2025): 2245–56, <https://doi.org/10.55927/fjmr.v4i5.215>.

in formulating a more just, consistent, and contextual legal approach to divorce cases due to apostasy⁹. The findings in this study can also be a valuable consideration for legislators and policy makers in drafting or revising regulations regarding marriage law, taking into account the multicultural and multi-religious character of Indonesian society. In addition, the results of this research have the potential to increase public understanding and legal awareness, especially regarding legal rights and obligations in marriages involving religious differences or those faced with the issue of religious conversion. Thus, this research will not only have an impact at the theoretical and juridical level, but also on increasing legal literacy and substantive justice for parties dealing with similar issues.

Method

This research uses a normative juridical method with a case study approach, which aims to analyze the applicable legal norms and their application in Religious Court decisions related to divorce due to apostasy. The normative juridical method was chosen because this research focuses on the study of legislation, Islamic legal doctrine, and legal principles that are relevant in resolving marriage cases where one of the parties converts. The case study approach is used to examine in depth several Religious Court decisions as the main data, in order to understand the construction of legal arguments and the basis for judges' considerations in making decisions. In addition, this research also utilizes a statutory approach to examine the provisions in Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and other related regulations. The conceptual approach is also used to explore the understanding of the concept of apostasy, the validity of marriage, and the principle of freedom of religion in national law and Islamic law. By using this method, the research is expected to provide a comprehensive analysis of complex legal issues within the framework of a pluralistic legal system in Indonesia.

Results and Discussion

1. Analysis of Religious Court Decisions Regarding Divorce Due to Apostasy

The results of the study show that there are variations in the decisions of the Religious Courts related to divorce cases due to apostasy, both in terms of legal considerations and the rulings handed down. In a study of several decisions, it was found that some of the judges granted divorce petitions filed by Muslim spouses against their spouses who had converted, basing their considerations on the principle that religious differences are an obstacle to the validity of marriage contracts according to Islamic law. In this case, the main references used by judges include Article 116 letter (h) of the Compilation of Islamic Law (KHI) which allows divorce due to change of religion¹⁰, as well as the principle of domestic benefit and order as part of the purpose of marriage in Islam. Conversely, there are also decisions that reject the petition for divorce on the grounds that apostasy does not automatically annul the marriage

⁹ Martina Purna Nisa, "Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 2021): 1–26, <https://doi.org/10.19105/al-lhkam.v16i1.4292>.

¹⁰ Sulthon Nahar Luthfillah, "A Review of Fiqh and Compilation of Islamic Law on the Marriage Status of Apostate Couples: A Case Study of Kayu Kebek Village, Tukur District, Pasuruan Regency," *Komparatif: Jurnal Perbandingan Hukum Dan Pemikiran Islam* 5, no. 1 (July 2025): 92–105, <https://doi.org/10.15642/komparatif.v5i1.2585>.

relationship, unless there is a request from one of the parties to terminate the relationship¹¹. In such a decision, the judge adheres to the principle of voluntarism in divorce, and interprets that religious differences due to apostasy are not an absolute basis for dissolving a marriage, especially if the applicant cannot prove that there is a real breakdown of the household.

This difference in attitude reflects the disharmony in the interpretation of legal norms used by each panel of judges. Although the majority of judges referred to KHI and Law No. 1/1974 on Marriage, the emphasis differed depending on the understanding of the fiqh mazhab and the orientation of justice adopted. Some judges used the classical Islamic law approach, particularly the views of scholars from the Syafi'i and Hanafi schools of thought who viewed apostasy as invalidating the marriage contract, while others tended to accommodate a contextual approach by considering constitutional and human rights values, as well as the principles of benefit and protection of the family. This shows that in religious court practice, although Islamic law is the main source of reference, differences in the legal construction and values used by judges can significantly affect the direction and content of decisions.

2. Judges' Legal Considerations

Analysis of the legal reasoning used by the panel of judges in deciding divorce cases due to apostasy shows the interpretative complexity influenced by the diversity of legal sources and juridical approaches used. In classical Islamic legal norms, apostasy, especially if committed by one of the parties to a marriage, is often seen as a cause of automatic nullification of the marriage contract (*fasakh*), as explained in the fiqh books of the Syafi'i and Hanafi madhhabs. This view is one of the bases for the consideration of judges who decide cases by granting divorce because of apostasy, with the assumption that religious differences have violated the conditions for the validity of marriage in Islam, as confirmed in Article 40 letter (c) and Article 44 KHI¹². However, not all judges adopted this view absolutely. Some judges conducted a progressive interpretation of Article 116 KHI and Article 39 paragraph (2) of Law Number 1 Year 1974¹³, which emphasizes that divorce can only be done if there are sufficient reasons that the husband and wife can no longer live together as husband and wife. In this framework, conversion is not always seen as an independent legal cause, but must be seen contextually in the dynamics of the household relationship, such as the emergence of inner conflict, psychological pressure, or loss of harmony post-murtad.

In a number of decisions, it appears that judges also consider the sociological and psychological aspects of each party, including the impact of religious conversion on the integrity of the household and the welfare of children. Thus, the legal construction built by judges in their considerations is not merely normative, but also reflects efforts to balance the principles of legal certainty, substantive justice, and benefit. The three are often positioned dynamically, depending on the social context and juridical arguments presented at trial. This

¹¹ Muhamad Hasymi Hadromi, "ANALISIS PUTUSAN HAKIM TERHADAP PERCERAIAN AKIBAT MURTAD DI PENGADILAN AGAMA BOGOR (Putusan Nomor 1151/Pdt.G/2023/PA.Bgr)" (diploma, UNUSIA, 2024), <https://unusia.ac.id/prodi/s1hukumkeluarga>.

¹² Ade Ulfa Amin, Syafruddin Syam, and Imam Yazid, "Islamic Law Perspective: The Issue of Interfaith Marriage and Its Impact on Society in Indonesia," *Journal of World Science* 2, no. 8 (August 2023): 1268–79, <https://doi.org/10.58344/jws.v2i8.410>.

¹³ Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (October 2022): 514, <https://doi.org/10.22373/sjkh.v6i2.12441>.

shows that in the religious court system, legal considerations of apostasy cases in divorce are not only based on normative texts, but are also shaped by sociological understanding and ethical values that develop in society.

3. The Legal Position of Apostasy in the Islamic Legal System and Indonesian Positive Law

From the perspective of classical Islamic law, the majority of scholars from the major schools such as Shafi'i, Hanafi, Maliki and Hanbali are of the opinion that apostasy, which is the departure of a person from Islam, automatically invalidates the marriage contract¹⁴, especially if the apostate is one of the parties to a marriage that results in a difference of religion. This view is based on the principle that marriage in Islam can only take place between partners of the same religion, and apostasy is considered a violation of the continuity requirement of the contract. The term *fasakh* or annulment of marriage is often used to refer to this situation, and in some views, there is no need for a *talak* or divorce suit because the marriage is considered null and void. Contemporary *fiqh* literature also remains contentious, although some modern scholars have begun to revisit this position in the context of multicultural and plural societies.

Meanwhile, in Indonesia's positive legal system, freedom of religion is a human right explicitly guaranteed in Article 28E and Article 29 of the 1945 Constitution of the Republic of Indonesia¹⁵. This principle is reinforced in various national and international legal instruments, such as Law No. 39/1999 on Human Rights, which places freedom of religion as part of an individual's fundamental rights that cannot be reduced under any circumstances¹⁶. Within the framework of Indonesian civil law, particularly with regard to domestic rights and obligations, conversion by one of the parties does not automatically become a legal reason to dissolve the marriage, unless followed by a valid divorce petition before the court.

The consequence of the different paradigms between Islamic law and positive law is a complex conflict of norms in judicial practice, especially in the Religious Courts which formally refer to Islamic law as material law in resolving family cases for Muslims. On the one hand, judges are required to be consistent with the *fiqh* doctrine that is the source of Islamic law, including regarding the status of post-murtad marriages. On the other hand, they cannot ignore the constitutional principles of freedom of religion and the protection of individual rights in the national legal system. This tension reflects a systemic dilemma in Indonesia's pluralistic legal system, where the existence of religious law in state judicial institutions must always be in dialogue with the principles of the rule of law and human rights. Therefore, the legal position of apostasy in divorce cases must be seen not only as a doctrinal issue, but also as a meeting point between religious norms and constitutional norms that live and develop in Indonesia's pluralistic society.

¹⁴ Miftahus Sholehudin et al., "Cancellation of Marriage Due to Apostasy in Islamic Law and Human Rights: A Comparative Analysis of Indonesia and Malaysia," *De Jure: Jurnal Hukum Dan Syari'ah* 17, no. 1 (April 2025): 33–51.

¹⁵ Delpedro Marhaen and Tundjung Hering Sitabuana, "Respect, Protection, and Fulfillment of the Right to Freedom of Religion in a Pancasila-Based Legal System," *Jurnal Ilmu Hukum Kyadiren* 6, no. 1 (June 2024): 25–36, <https://doi.org/10.46924/jihk.v6i1.204>.

¹⁶ Berlian Aisyah Nur Salwa and Cekli Setya Pratiwi, "Universalitas Hak Asasi Manusia Dalam Perspektif Hugo De Groot (Grotius) Dan Relevansinya Terhadap Jaminan Keabsahan Beragama Dalam Hukum Positif Indonesia," *Kultura: Jurnal Ilmu Huum, Sosial Dan Humaniora* 3, no. 3 (June 2025): 393–403.

4. Juridical and Sociological Implications of the Decision

Religious Court decisions related to divorce due to apostasy have significant juridical and sociological implications, especially in the context of legal certainty and protection of the rights of the litigants. The inconsistency between one decision and another in both ruling and legal argumentation shows the potential for disharmony in the practice of religious courts, which ultimately has an impact on legal uncertainty. When judges give different decisions in cases with similar legal substance, the community will find it difficult to obtain certainty over their rights, especially in cases involving personal and sensitive aspects such as marital status due to apostasy. This is even more complex when the affected parties are women and children, who are socially and legally more vulnerable to discrimination and lose access to adequate legal protection, both in terms of maintenance rights, child custody rights (hadhanah), and division of joint property.

In addition, socially, divorce verdicts due to apostasy often cause psychological pressure and stigma in the community, both for the apostate and for their spouse or family. The community tends to negatively label individuals who convert, which can lead to horizontal conflict within the extended family and social community. In some cases, conversion by one of the parties also affects the relationship with the child, where the child may experience identity confusion, alienation, or even become the subject of a custody battle between parents of different religions. Legally, this also has implications for determining the child's religious status, parenting, and inheritance rights, all of which depend on the legal framework of each religion.

Another consequence is the gap between the legal norms applied by the courts and the social realities faced by the community. When the law does not provide clear and fair guidance in dealing with apostasy cases, there is dissatisfaction with the judiciary, as well as the risk of violating basic individual rights. It is therefore important for the judicial system, particularly the Religious Courts, to develop principles of legal reasoning that are consistent, responsive to social change, and in line with the spirit of protection of civil and religious rights in a democratic state of law.

5. A Critical Examination of the Consistency and Fairness of Decisions

Religious court decisions in divorce cases due to apostasy show a variety of considerations that should be studied from the perspective of substantive justice and constitutional values. In this context, justice is not only seen in terms of the certainty of religious norms adopted by religious courts, but also concerns the protection of the constitutional rights of the parties, including the right to freedom of religion, equality before the law, and the protection of women and children. Inconsistency in the legal basis used by judges in handling similar cases creates the potential for legal uncertainty that has a direct impact on justice seekers.

These conditions lead to the need for legal unification or at least the existence of specific guidelines that can be used as a reference in resolving divorce cases due to apostasy. The absence of standardized guidelines opens up room for interpretation that is too broad and sometimes does not adequately consider the sociological dimension. In this case, the Supreme Court as the highest supervisory institution of the judiciary and the formulator of jurisprudence has a strategic role in encouraging the preparation of guidelines or Supreme Court Circular

Letters (SEMA) that can become a national reference. The Compilation of Islamic Law as a source of formal law also needs to be reviewed for its relevance in order to be able to answer the dynamics of the life of Indonesia's plural Muslim community. Therefore, critical evaluation of the consistency and fairness of decisions is important to ensure the achievement of justice that is not only legal-formal but also substantive and responsive to the development of society.

Conclusion

This research shows that religious court decisions related to divorce due to apostasy still show variations in the basis of legal considerations, both with reference to the Compilation of Islamic Law and civil procedural law in general. This variation reflects the absence of a consistent interpretative standard in dealing with cases involving conversion in the context of marriage. In terms of judges' reasoning, it was found that most judges emphasized the aspect of household disharmony due to differences in beliefs, but had not fully integrated the principles of human rights and constitutional protection in their decisions. Analysis of the principle of substantive justice indicates that there is an imbalance between the normative approach of religion and individual civil rights guaranteed by the constitution. This creates the potential for injustice, especially for parties whose rights are neglected due to the limited legal perspective used by judges. Therefore, the Supreme Court needs to play an active role in encouraging legal uniformity through jurisprudence or special technical guidelines for this kind of case. In addition, the Compilation of Islamic Law needs to be normatively evaluated in order to answer the challenges of family law in Indonesia's dynamic and pluralistic Muslim society. Thus, strengthening the religious court system in divorce cases due to apostasy does not only involve normative aspects, but also sensitivity to the values of justice that live in society.

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