



Research Article

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Proposed Improvement for Divorce Resolution in Aceh And Malaysia: A Comparative Study

Jamaluddin¹

Faisal¹

Manfarisyah¹

Fatimah Yusro Hashim²

Muhamad Helmi Md Said^{2*}

¹Fakultas Hukum Universitas Malikussaleh Aceh,
Komplek Kampus Bukit Indah,
Muara Satu – Lhokseumawe, Aceh, Indonesia

²Fakulti Undang-Undang, Universiti Kebangsaan Malaysia,
43600 UKM, 43600 Bangi, Selangor, Malaysia

*Corresponding Author

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Abstract

The purpose of this study is to analyze the solution of divorce cases among the people of Aceh and to study the best practices that can be learned from Malaysia in order to create a model of a divorce case that can be practised in Aceh. This qualitative study used the interview method which was conducted in Aceh and Malaysia to learn how similar cases were resolved in Malaysia, while the secondary data was obtained through a library study. The study concludes that the Customary Court has jurisdiction to resolve divorce cases, involving either registered or unregistered marriage. However, the Customary Court failed to distinguish between criminal and civil trial cases, which led to all cases of divorce claims being processed and subsequently allowed, but the decision was only a fine. However, the Syariah court resolved divorce cases involving only registered marriages as well as cases which impose imprisonment. This study proposes the need to create a Comprehensive Divorce Case Settlement (PKPK) model which shows that divorce cases in the Customary Court can be brought before the Syariah Court by the leader of the village who is entrusted to resolve the matter.

Keywords: Settlement, Divorce Case, Innovation, Model, legal, Mediation

1. Introduction

Divorce is a method that allows the termination of a marriage between husband and wife (Hilman Hadikusuma, 1990). There are various types of problems encountered by the spouses in managing households that show violent physical and emotional behaviours that cause one of them to suffer. A prolonged conflict is most likely to end in divorce, which requires legal solutions (Islamic Law Compilation (KHI)). However, in practice amongst the Acehnese people, marriage conflict resolution

need is submitted to the Customary Court that has been practiced since ancient times (Hilman Hadikusuma, 1990). This is reinforced by the introduction of Article 13 of Law of Aceh Number 9 of 2008 on *Adat* Development. The importance of the existence of Customary Court in the community is to resolve divorce cases that have shown a gradual increase every year. This is primarily caused by domestic violence and other marital problems have led to the occurrence of divorce. Divorce is a way to dissolve a marriage (Hilman Hadikusuma, 1990).

Jamil Ibrahim, Chairman of the Aceh Syariah Court states that divorce cases in Aceh in 2017 amounted to 4917 cases. In 2018, the divorce cases had increased to 5562 cases with 1562 cases of husbands divorcing their wives on their own will while a further 4000 cases involved wives who applied for *fasakh* to the court. However, there are still cases of divorces which occur among people who only settled in the village but not recorded by the Courts (Drh. M Yusen Saied, 2019).

2. Literature Review

Various studies have shown the important role of traditional institutions in helping or reducing the duties of the judiciary to resolve cases of divorce. In reality, the Court of Customs has an important position in society and its existence is regarded as one of the alternative resolution methods apart from formal court institutions (Marpensory, 2017). Traditional leaders play a role in resolving conflicts in society weddings in the village of Labone District, *Kecamatan Lasalepa, Kabupaten Muna* according to a study by Listamin B et al. (2018). Furthermore, some studies have been conducted about the settlement of divorce cases in the Manado Religious Court in terms of law enforcement that can provide effective solutions to the cases (Rizwan Jamal, 2019).

In addition, upholding justice in the village community seems difficult to achieve. This is not only caused by the distance to the court that is far but also because of the expenses which have to be borne by them as well as the complexity of the administrative system. Such realities led to the existence of Customary Courts which play a strategic role in ensuring justice is served for the people in the village, especially those who are less fortunate (J. Juniarti, 2012). Roscoe Pound and Eugen Ehrlich argued that a good law is the one that accords justice to prevails within society (R. Otje Salman, 2010). This suggests a careful compromise between the written law as a legal community for the sake of validity of the law and the customary law as a form of appreciation towards the people's interests in terms of legislation and legal orientation (R. Otje Salman, 2010). Roscoe Pound recommends that law that is studied in terms of its procedure (law in action) should be distinguished by the written law (law in the books) (Soekanto, S. *Loc.cit.*).

Customary Court which is a part of the people's right still exists and it is benefitted by them. It is a sociological fact but it is not recognized by law according to the judicial power. In addition, the court also serves as a measure to safeguard the interests of the people in modern legal claims (Tedy Sudrajat, 2010). A conflict resolution process in a Customary Court emphasizes the sense of the family and it is expected to provide effective results to the connubial as if no conflict happens before.

A claim submission in the civil court procedural law requires a significant legal basis (Lilik Mulyadi, 2013). In civil cases, the submission of matters related to the rights' claims is up to the stakeholders as stated in Article 118 HIR and 142 RBg about who can claim the rights (the parties concerned). Whether the claim is filed or otherwise is left entirely to the parties while the judge only concern is whether to accept the claim submitted to him or her (*iudex ne procedat ex officio*). The judge cannot refuse to examine and hear (except in the cases determined by law) even if there is no law or that law is vague according to Article 10 of the Law No. 48 of 2009. The prohibition from refusing the case examination is because the judges know the law (*ius curia novita*) (Yahya Harahap, 2016). If the judge does not find any provisions in written law, he must explore, understand and make decisions based on the values of legislation adopted by the public in accordance to Article 5 of Law No. 48 of 2009.

Article 39 (1) of Law No. 1 of 1974 on marriage, states that divorce claim can only be made before the trial court after a mediator tasked to assist the reconciliation between both parties failed to do so.

This is because according to Act No. 1 in 1974, a similar provision is also stated under Article 155 of Compilation of Islamic Law (KHI), a divorce can only be done in the presence of the Religious Court after the court had tried to reconcile the couple but failed to solve it. Article 18 of Government Regulation No. 9 of 1975 provides that the divorce is considered valid when it is declared before the court.

In reality, there are still many people in Indonesia, particularly in Aceh who utilize traditional courts to resolve cases involving marital conflicts. The court is regarded as one of the dispute resolution platforms before the case is being brought to the Syariah Court. Therefore, this measure is a positive sign in upholding justice among society through customary law which is considered as one of the principles of restorative justice (Eva Achyani Spirit, 2009; Ahmad Ubbe 2013). The principle of restorative justice means that the willingness and participation of the victim(s), offender(s) and community in rehabilitation of criminal conduct that occurred that is also characterized by the customary law (Eva Achyani Spirit, 2010). Moreover, the existence of other laws such as the land law, civil law and marriage law that exist under customary law also have the values of justice. As such, this study focuses on analysing the methods in settling divorce cases in Aceh and Malaysia by way of studying the circumstances pertaining to the public, the courts and the Syariah Court. However, the Customary Court official's decision to prioritize an agreement between the two conflicting parties illustrates its legal position. In other words, when it is being tested with theoretical validity, the decision does not have a strong legal basis. Based on these arguments, it is imperative for the study to establish the divorce cases' resolution model in Aceh and Malaysia in order to study the methods of settling divorce cases.

3. Problem Statements

1. How are divorce cases settled through the Customary Court compared to the Syariah Court in Aceh and Malaysia?
2. How can the best resolution method for divorce cases be constructed and practised in Aceh?

4. Research Objectives

This study aims to:

1. Analyse the divorce cases' resolution methods through Customary Court and Syariah Court in Aceh and Malaysia; and
2. Suggest the best divorce cases' resolution model that can be practised in Aceh.

5. Research Methodology

This study used the qualitative approach, by means of interviews with the concerned parties in the villages and districts, the customary council in Aceh and Malaysia, Ulama Syura Council, police and Syariah Court judges alongside case studies conducted in Central Aceh, Aceh Besar, Lhokseumawe and North Aceh and Shariah Court officer in Malaysia

Secondary data were obtained through a literature review and library database.

6. Research Findings and Discussion

6.1 Matrimonial matters resolution through Customary Court and Syariah Court

6.1.1 Matrimonial matters resolution through Customary Court

To begin with, the conflict in a marriage that ended in divorce among the people of Aceh mostly cannot be resolved by the spouses themselves or by their parents and immediate family. Before the case is

submitted to the Court, it will be submitted to the Village Customary Court and District Customary Court first. The method for resolving the divorce cases that is conducted by the Village Customary Court based on several resolution fundamentals such as trustworthiness, accountability and it should be non-discriminative. In addition, there are other related principles such as equality before the law, fast, simple, humble, sincere, voluntary, peaceful solution to reach a consensus alongside the sense of transparency to the public (Majlis Adat Aceh, 2008).

Based on the results of the study's focus group discussions conducted in Central Aceh, Aceh Besar and Lhokseumawe; the researchers also found that the methods of resolving conflicts between husband and wife are still commonly being achieved through the customary approach of seeking justice in Central Aceh which is usually attended by *Geuchik* (Petue), *Tuha Peut*, Village Imam and district (*Sara Opat*) (the fieldwork conducted through interviews, observations and focus group discussions for this study were conducted from 2017 to 2019).

Moreover, the settlement of divorce cases' through the traditional courts' method also tend to achieve a win-win situation for both husband and wife. Most divorce cases indicated that the divorced couples were often successfully reconciled (*peudame*) either through *rujuk* (*meuwoe* in Acehnese) or through re-marriage. In addition, there were a number of cases that were decided by traditional sentencing in the form of a fine as the case facts indicated that there were elements of domestic violence. For example, the husband who had hurt his wife by hitting was required to promise not to repeat the same act again. Those who beat his wife to the extent that it caused bleeding could also be imposed with a penalty known as *luke bersalin* which means a husband should treat and take care of his wife by recovering the blood that came out from the blow by slaughtering a goat for normal bleeding while a cow would be required to replenish serious bleeding suffered by the wife. Slaughtering a cow or goat also must include a thanksgiving feast that will be served to family members and the community as well as to the chairman and members of the judicial council of village customs who had helped in resolving the matter.

Then, the *teping tawar* ceremony (*peusijuek*) will be carried out next followed by a handshake (*peumat jaroe*) between the disputing parties. *Peumat jaroe* is a symbol of a compromise in the relationship between the conflicting husband and wife. It is also expected to be the first step for both sides to restore their marriage in order to achieve a peaceful (*sakinah*), loving (*mawaddah*) and mercy (*rahmah*) family in accordance to the Islamic teachings (Mahmudin et.al, 2006).

Often the conflicts solved by the judicial council of village customs involve domestic violence, divorce and division of property that is unable to be solved internally by the parties involved. Therefore, they presented the problem to the representative of the village custom council which comprised the chairman, the village chief, *geuchik* and *tuha peut*. When filing a report, they are free to choose any member of the representative to receive the report because there is no specific procedure established. They can report the matter to the *tengku imam*, *geuchik* or even *tuha peut*. The customary representative will then begin the trial process to resolve the cases submitted to them (M. Husin Z, 2019).

Next, one of the important things to be investigated is the reasons behind the conflict between the husband and wife in order to facilitate the resolution process. When these circumstances have been established, efforts to reconcile them will be attempted with the aim of strengthening their marital establishment. If either party or both parties cannot reach an agreement on the decision suggested by the customary authorities, then the authority can submit the matter to the village *geuchik* to be resolved. After the *geuchik* received the report, it will summon both parties to be brought before him and the same procedure conducted earlier by the customary authorities will be repeated in order to reconcile them. If they still cannot accept the *geuchik* offer for peace, he will then convene a meeting of the Board of Customs involving the head of the village, the village imam, *tuha peut* (in Gayo called *Sara Opat*) and the village secretary as a minute writer during the session.

Geuchik would order the village secretary to call both husband and wife and witnesses to attend the meeting during the day or night that has been determined and agreed by the Board of Customs. After receiving the *geuchik* order, the village secretary will contact the couple and related witnesses to

attend the Board of Customs meeting during the day or night specified.

In this case, when both conflicting parties need to attend the meeting; the *geuchik* will act as the session chairman of the Board of Customs meeting that will take place in front of both parties while both of them will take their seats, facing the Board. After that, the session started by the *geuchik* asking the plaintiff about the marital problems they had to get a clear explanation about their marital woes. After the plaintiff had offered the explanations, the defendant would be given an opportunity to defend himself either in the form of a protest or by presenting arguments that were presented by the plaintiff. After the *geuchik* had finished asking questions and listening to the evidence from both parties, he will give the chance to the *iman* and *tuha peut* to investigate other related matters by taking similar steps made by the *geuchik* until the board could decide fairly for the interest of both sides.

After the chairman and members of the Board of Customs ended the meeting, in order to obtain sufficient information during the session, they would deliberate for a few minutes to allow the council of justices to make a decision on such matters. After the council managed to find a solution, the chairman will deliver the results of the meeting to the couple. If the decision is accepted by them, the conflict between them is considered resolved but if they do not accept the decision, one or both spouses may submit their case to the court.

Despite the Board's decision is recompensate the plaintiff in the form of monetary damages or thanksgiving feast (eating together) by slaughtering livestock (cow or goat) or expelled them from their hometown, it must be revised according to the damage suffered by the aggrieved party based on the followings:

- (1) *In the case of domestic violence that causes bleeding, the defendant will be charged a penalty that commensurate the severity of the bleeding.*
- (2) *In the case of a divorce that has been pronounced by a husband against his wife, the Board of Customs Council Meeting is in the view that such divorce is valid according to Islamic law, so they can advise the husband to his wife to conduct reconciliation but if the wife ended her iddah term, then they will need to remarry if they wish to reconcile (Drh. M. Yusen Saleh, 2019).*
- (3) *In the case of adultery that happens between a married man and another woman, if the woman is pregnant, the man shall have to marry her alongside obtaining consent from his current wife. If the wife does not agree, the marriage must be continued even if the man needs to divorce his wife for a while (Idrusmadi, 2019).*
- (4) *If the act of adultery is committed by teenagers, the Village Board of Customs Council Meeting may also direct the young man to marry that woman despite the fact that he has yet to attain the age of marriage. However, he needs to apply for an exemption from the from the Syariah Court (Drs. Amrullah MH, 2019)*

After both parties have comprehended the decision of the Board of Customs Council Meeting, they should comply with the customary rules adopted by the relevant communities if they accept the decision. On the other hand, if they do not accept or reject the decision, they are required to file an appeal to the district traditional judiciary. After receiving the application, the *imam mukim* should hold a District Customs Council meeting, which comprises the *Imam Chik* and *Tuha Peut* at an allocated time. *Imam mukim* will summon both parties alongside the Village Customs Council officials who had decided on the matter earlier. During the meeting, if both parties and the village customs officers are present, the Board of Customs will be convened with all parties involved facing each other.

Next, the *Imam Mukim* as the meeting's chairman will begin the ceremony by listening to the arguments from the appellant before the respondents are given the opportunity to give responses or submissions in response to the questions raised by the appellant. After the *Iman Mukim* is satisfied with the responses from both sides, the trial will continue by granting time for other members of the District Board of Customs to ask the couple additional questions in order to ensure that all issues pertaining to the matter are completely explained.

Then, when District Customs Council Meeting has been completed, they will discuss for a few minutes before making a decision. Some of them might agree with the decision of the Village Board of

Customs and some of them might disagree with the decision. Next, the District Customs Council Meeting will return to the courtroom to address their decision to the couple regarding their matrimonial discord. The decision may be accepted and may also be rejected. If accepted, it should be implemented as soon as possible in accordance with the customary rules adopted by the respective communities. For the decision that is not accepted, both parties still have a chance to bring the case to the country's judiciary. The decision settled by the customary council is regarded as final after the decision has been made by the District Board of Customs.

6.2 Matrimonial matters resolution through National Judiciary

For matters related to the resolution of marriage through means of the judiciary, we have found marriage-related cases from our interviews with the Judges of the Takengon Syariah Court. The results of the interview described that most cases brought to court consists of domestic conflict between husband and wife that could not be resolved, and divorce is the final solution to end the domestic conflict in the form of a divorce or *fasakh*. Most of the applications relating to the marriage cases submitted to the judiciary is made up of domestic conflicts that could not be resolved by the Village Board of Customs (the field study conducted interviews, observations and focus group discussions in 2019) such as the divorce case committed by a husband against his wife would be addressed before the Syariah Court for verification purposes.

Such realities resulted in an introduction of the term 'Divorce Verification' to be used by the Courts (Drs. Amrullah M.H, 2019). Divorce Verification can be defined as a husband who divorces his wife in the village and later submits the matter to the Syariah Court with a statement that he has divorced his wife and it needs to be verified by the court. Their application will not be accepted directly because the act is contrary to the procedures laid down by the court because the pronouncement of *talak* should not be made outside a court hearing.

In addition, the marriage can only be resolved by the court if it is a registered marriage. The divorce application for a marriage that is not registered cannot be processed because the marriage is considered to be invalid under the law, even if it is proven valid according to Islamic law. To resolve the divorce case where the marriage is unregistered, they must apply for prior approval of their marriage until it is registered. Only then can their application for divorce will be dealt with according to the divorce procedures before the court (Article 14 Regulation Number 9 of 1975 on the Implementation of Law No. 1974 on Marriage) so that the divorce paper can be issued by the Syariah Court. It is to protect the rights and obligations of the parties involved as the result of the divorce verification (Budi Susilo, 2007).

In addition, one of the circumstances relating to marriage submitted to the court to be resolved is when the husband has divorced his wife outside the court, which is publicly believed as a legitimate pronouncement of divorce and marks the end of their marriage. However, it is considered to be invalid under the law of the country because of it takes place outside of the court; only a pronouncement of divorce declared by the husband to his wife before the court can be considered as valid. Additionally, it should also be noted that a husband who divorced his wife once with the words 'I divorce you with triple *talak*', the *talak* is considered as one *talak* instead of three, according to the court.

Other cases that have been submitted to the court including young couples who married out of the court due to pregnancy outside of marriage. According to Dra. Hj. Venus M.H. (2019), when their marriage is not officially registered, claims submitted cannot be processed until they officially approve the marriage because marriage at a young age must be accordance with the legal provisions stipulated under Article 7(2), Clause 63 of Act No. 1 of 1974.

In addition, this study also found a case which a wife who was pregnant with a child from her new husband, but in fact, they were still bound by a previous marriage according to the law. This is because the pronouncement of divorce made by her former was made outside of court based on Syariah rules alone and the divorce has yet to be verified a divorce certificate was not issued by the court. Thus, they are still considered as married under the law even if they have been divorced according to Islamic law.

Therefore, the wife needs to submit a *fasakh* claim to the court to resolve her problem (Sarwono, 2012).

Based on the circumstances described above, it can be argued that this happened due to a divorce pronouncement that was made without submitting a specific divorce application to the Syariah Court as they remarried in accordance to the Islamic law only. Although the case had been resolved, he or she still needs to request for the marriage to be verified through a marriage authentication method before being allowed to register. An ex-wife who wants to remarry could be registered if the previous divorce cannot be proven through the issuance of a certificate of divorce by the Syariah Court. Therefore, she has to submit a *fasakh* application to the Syariah Court with regards to the previous marriage that was alleged to have been done according to the Islamic law through the pronouncement of *talak* by her ex-husband outside the court to obtain legal verification (Saifuddin, 2019).

7. Divorce Resolution at Malaysian Syariah Court

The cases related to Muslim families in Malaysia is within the jurisdiction of the Syariah court but they are categorized according to the types of cases that are heard either before the Syariah Subordinate Court or the Syariah High Court. Cases related to betrothal and defaulted betrothal, marriage and divorce, as well as matters related to maintenance are heard in the Syariah Subordinate Court, while the cases related to custody, verification and denial of consanguinity, *mut'ah* and matrimonial property claims and cases of re-hearing from the Subordinate Courts are heard in the Syariah High Court. Syariah Appeal Court also serves as the final stage of all appeal cases against a decision made by the Syariah Subordinate Court or the Syariah High Court.

Dissolution of marriage cases recorded the highest number of cases compared to other cases such as the defaulted betrothal, marriage outside the territory verification, polygamy application, custody, maintenance, *mut'ah* and matrimonial property claims. Syariah Court in Malaysia does not only hear cases on Islamic Family Law but also try criminal acts such as offences related to marriage, seclusion or the beginning of adultery, drinking alcohol, apostasy, offences relating to religion and beliefs, ethical disobedience such as not fasting and respecting the month of Ramadan, crossdressing as well as cases related to inheritance, bequest, endowment or vow claims (Said. M.H, 2019, Hak, N.A, 2017).

Application for the dissolution of marriage can be done through various methods and can be initiated by either party. Unlike a divorce in Aceh that has to be solved at the level of the Customary Court first, divorce in Malaysia can be brought to the Syariah Subordinate Court to be resolved. In fact, if the divorce application meets all the criteria required, divorce can take place immediately in which the husband could divorce his wife and one *talak* will be recorded by the court officials who witnessed it. Moreover, in the state of Selangor at the present time, the Express Divorce Counter is available to carry out divorcement procedures without the requirement to extend the time for both parties to attend a court hearing. This is because the number of applications for divorce is escalating throughout Malaysia, particularly in Selangor. This situation can be seen in 2016 which there were 40,030 applications for divorce among Muslims married couples in Malaysia, a total of 12513 is recorded in the state. In 2017, there were 12203 applications for divorce in the state from 39,709 applications nationwide while in 2018, the numbers somewhat decreased by 11,860 compared to the previous year.

Any couple who wants to divorce in Malaysia must apply for divorce to take place in court. This application may be made by any party, either the husband or wife. In the application for the pronouncement of *talak*, generally, after an application is filed, the court will issue a summon order to beckon the parties involved to appear before the court to pronounce *talak* before a Syariah judge. When both parties have come to the court, the judge will order the husband to pronounce *talak* against his wife once if there is no objection from either. A divorce will be pronounced on a voluntary basis by the husband and the judge will order the spouse (wife) to undergo an *iddah* period for three months. The husband will also be instructed to pay maintenance during the period in addition to the financial maintenance of their children if any (Mohd. Zin, N, 2015).

If there are objections to the application for divorce by either party, the judge will order both parties to go through a conciliatory committee named Family *Hakam*. The Committee shall be

attended by the husband and wife as well as a representative of the husband and wife who can be selected their family members, each who has close ties with them (Zainul Rijal Abu Bakar and Nurhidayah Muhammad Hashim, 2018). Section 47(5) of the Islamic Family Law Federal Territories provides that the court will give directions for the council's rulings carried out to reconcile the couple. But, if the appointed committee cannot reconcile the couple, or the court is not satisfied with the conciliator appointed by it, the court may dismiss the mediator and appoint another one for the purpose of carrying out the process of reconciling the two spouses (Section 47[5] Islamic Family Law (Federal Territories) Act 1984 (Act 303). However, in accordance with Subsection (11), if the mediator is unable to achieve peace, then the committee should issue a certificate pertaining to the processes that took place and provides any appropriate recommendations for the purposes of the couple's divorce and matters related to the maintenance and custody of children (Section 47 [11] Islamic Family Law (Federal Territories) Act 1984 (Act 303).

Hakam (Islamic Conciliation) is the last process to ensure the husband and wife are successfully separated from each other. This is aimed to prevent more harm to occur in their marriage as *shiqāq* or fights that happened could not be reconciled. The refusal of the husband to pronounce *talak* to his wife can sometimes cause his wife to continue to suffer throughout her domestic life and to prevent it from happening repeatedly, the court authorizes the *Hakam* to divorce her on her husband's behalf. Section 48(5) and (6) state clearly that the powers granted to the *Hakam* is to persuade the husband as much as possible to pronounce *talak* against his wife. If it is not successful, *Hakam* should strive to obtain full power from their respective representatives to pronounce *talak* on behalf of the husband even without the consent of the husband (Section 48[5] and [6] of the Islamic Family Law (Federal Territories) Act 1984) (Act 303). The *Hakam* process is usually conducted based on the court order when the court finds that the *shiqāq* is already too severe but the husband still refuses to cooperate or does not want to obey the court order to divorce his wife through the pronouncement of *talak*.

It should be noted that the dissolution of marriage in Malaysia is not simply through the pronouncement of *talak* by the husband. The dissolution of marriage by divorce or is known as *cerai gugat* in Aceh includes various forms such as divorce through *khuluk* or *tebus talak*, divorce through *taklik* or by promise, divorce through *li'an* allegation or *fasakh* claim. Each one means that the dissolution of marriage has its own procedures and methods. Divorce through *khuluk* or *tebus talak* in Malaysia is done through an agreement between the spouses by redemption or payment of damages to be paid by the wife to obtain a divorce from her husband who refused to pronounce *talak*. The amount to be paid by the wife is often regarded as the term agreed by the husband and wife, and if the total amount requested is too excessive, the court will assess the amounts to be paid according to Islamic law (Section 49 of the Act Family Islam [Federal Territories] Act 1984).

In addition, another way of divorce is through *taklik* as provided under Section 50 of the Islamic Family Law (Federal Territories) Act 1984 (Act 303) that the application for divorce by a wife who has been abandoned for more than four months in a row, or because maintenance is not given or unfulfillment of any promise that has been agreed between the spouses during the solemnization. Besides *taklik*, a wife can be divorced through *li'an* by way of an allegation of adultery against the wife or through the denial of child lineage borne by the wife as stated in Section 50A of the same Act.

Last but not least, the final method of divorce to provide dissolution to marriage is through the *fasakh* application. Divorce through *fasakh* is a type of application that requires considerable evidence and reasons that justify the essentiality of divorce to be carried out. *Fasakh* application can be filed by either the husband or wife and each application must be attached with evidentiary materials to support the application. Divorce through *fasakh* is articulated in Section 52(1) to (4) and attached herewith are the examples of reasons that could be used as the basis for divorce. Among the reasons listed in this section include the following *inter alia*:

- (a) that the whereabouts of the husband have not been known for a period of more than one year;
- (b) that the husband has neglected or failed to provide for her maintenance for a period of three months;
- (c) that the husband has been sentenced to imprisonment for a period of three years or more;

- (d) that the husband has failed to perform, without reasonable cause, his marital obligations (*nafkah batin*) for a period of one year;
- (e) that the husband was impotent at the time of marriage and remains so and she was not aware at the time of the marriage that he was impotent;
- (f) that the husband has been insane for a period of two years or is suffering from leprosy or vitiligo or is suffering from a venereal disease in a communicable form;
- (g) that she, having been given in marriage by her wali Mujbir before she attained the age of baligh, repudiated the marriage before attaining the age of eighteen years, the marriage has not been consummated.

In addition, the persecution of parties is also made some of the reasons for *fasakh*:

- (h) that the husband treats her with cruelty, that is to say, *inter alia* -
- (i) habitually assaults her or makes her life miserable by cruelty of conduct; or
- (ii) associates with women of evil repute or lead to, according to *Hukum Syara'*, what is considered as an infamous life; or
- (iii) attempts to force her to lead an immoral life; or
- (iv) disposes of her property or prevents her from exercising her legal rights over it; or
- (v) obstructs her in the observance of her religious obligations or practice; or
- (vi) if he has more wives than one, does not treat her equitably in accordance with the requirements of *Hukum Syara'*;
- (i) that even after the lapse of four months, the marriage has still not been consummated owing to the wilful refusal of the husband to consummate it.
- (j) that she did not consent to the marriage or her consent was not valid, whether in consequence of duress, mistake, unsoundness of mind, or any other circumstance recognized by *Hukum Syara'*;
- (k) that at the time of the marriage she, though capable of giving valid consent, was, whether continuously or intermittently, a mentally disordered person within the meaning of the Mental Disorders Ordinance 1952 [Ord. 31 of 1952] in the case of the Federal Territory of Kuala Lumpur, or the Lunatics Ordinance [Sabah Cap.74] in the case of the Federal Territory of Labuan, and her mental disorder was of such a kind or to such extent as to render her unfit for marriage;
- (l) any other ground that is recognized as valid for dissolution of marriages or *fasakh* under *Hukum Syara'*.
- (1A) Any person married in accordance with *Hukum Syara'* shall be entitled to obtain an order for the dissolution of the marriage or *fasakh* on the ground that the wife is incapacitated which prevents sexual intercourse.

Generally, the dissolution of marriage by means of *khuluk*, *taklik*, *li'an* and *fasakh* applications will cause the divorce between both parties to be regarded as *Bain Sughra* which cannot be withdrawn through *rujuk* again. This is because such divorce was done through a court application and not through the pronouncement of *talak* that allows *rujuk* to be made to withdraw the dissolution.

8. Research Summary

Based on the findings that have been described above, the proposed improvements summarized and described in this section can be used as a model for a solution in matrimonial dispute in response to a divorce decree articulated outside of the court as seen in the Comprehensive Matrimonial Matters Resolution Model (PPPK).

This model outlines the solution methods regarding matrimonial matters which includes both customary law and modern law as follows:

- 1) Decisions made regarding marriage matters through the Customary Judicial Council especially divorce decision should be submitted to the court for hearing and verification before the court can issue a divorce certificate.
- 2) The submission of the Customary Judicial Council regarding the divorce decision is submitted to the court by the assistant registration officer of marriage and divorce in the village or the village secretary or any officer entrusted to the task in the village.

- 3) Divorce decision has been submitted and accepted by the court to be fairly processed where the husband will be requested by the judge acting as a middle man to pronounce *talak* towards his wife without having to go through the initial stage.

In addition, this model is also believed to assist the public regarding the procedural facilities at the court that were previously considered as complicated, consume immense expenses as well as a waste of time.

9. Conclusion

In conclusion, based on the discussions above, the solution for the matrimonial discord in Aceh provided by the Board of Customs cannot distinguish between civil or criminal matters, whether the marriage is registered or otherwise. All submitted matrimonial matters will be accepted to be solved and the decisions are in the form of fines or other penalties while the resolution through the national judiciary is differentiated by whether it is a civil or criminal case and the judiciary only resolve issues involving registered marriages only.

In Malaysia, marriage and dispute resolution matters related to Islamic Family Law are divided according to their categories and they will be placed under the jurisdiction of different courts. The court aims to simplify the management of each case by forming a more systematic and organized approach. Although there are many types of cases related to Islamic families, involving civil cases and criminal cases in Malaysia, the firm position of the Syariah Court enables these cases to be tried with ease and the solutions can also be granted without denying the rights of the disputing parties.

Therefore, through the best practice at the Syariah Court in Malaysia, this study concluded that the model of marriage and divorce settlement that is named Comprehensive Matrimonial Matters Resolution Model (PPPK) should be established in the Aceh Province. This model can assist the court matters involving the pronouncement of divorce out of the court, in order for it to be confirmed by the judiciary based on the Customary Judicial Council. It will be enforced and approved by a moderate process that requires the husband to pronounce *talak* against his wife in front of the mediation judge before a divorce certificate can be issued. Only a divorce decree recognized by the law will safeguard the rights of both parties. As a result, justice and peace could be upheld for the benefit of society. Hence, this study suggests that the district administration can enforce this matter in the form of a written law.

References

- Ahmad Ubbe. (2013). Peradilan Adat dan Keadilan Restoratif. *Jurnal Rechtsvinding* 2(2), 163.
- Al-Aqqad, Abbas Mahmud. (1886). *Filsafat Quran, Filsafat Spiritualisme dan Sosial dalam Isyarat Quran*. Indonesia: Pustaka Firdaus.
- Akta Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984 (Akta 303).
- Amrullah. (2019). Pengesahan Cerai, Mahkamah Syariah Takengon. Temu bual, 20 Mei.
- Budi Susilo. (2007). *Prosedur Gugatan Cerai*. Yogyakarta: Pustaka Yustisia.
- Eva Achjani Zulfa. (2010). Keadilan Restoratif Dan Revitalisasi Lembaga Adat di Indonesia. *Jurnal Kriminologi Indonesia* 6(2), 190.
- Eva Achyani Zulfa, (2009). *Keadilan Restoratif*. Jakarta: Badan Penerbitan FHUI.
- Hilman Hadikusuma. (1990). *Hukum Perkahwinan Indonesia Menurut Peruna'angan Hukum Adai - Hukum Agama*. Bandung: Mandar Maji.
- Idrusmadi. (2019). Temu bual, 19 Mei.
- Instruksi Presiden No. 1 Tentang Kompilasi Hukum Islam Tahun 1991 (Indonesia).
- J. Juniarti. (2012). Peran Strategis Peradilan Adat di Aceh dalam Memberikan Keadilan Bagi Perempuan dan Kaum Marjinal, *Annual International Conference on Islamic Studies XII Proceedings*, 5-8 November 2012.
- Jamil Ibrahim. (2019). <http://acehonline.info/2019/01/selama-2018-kasus-perceraian-di-aceh-meningkat-menjadi-5-562-kasus/> [26 Jun 2019].
- Lilik Mulyadi. (2013). Hukum dan Putusan Adat dalam Peradilan Negara. *Dialog Nasional Bersama Perkumpulan HuMa dan Mahkamah Agung*, Royal Kuningan. t. hlm.

- Listamin, B, Monto, L. O. dan Muh Arsyad. (2018). Konflik Perkawinan Dan Cara Penyelesaian Melalui Tokoh Adat (Studi Di Desa Labone Kecamatan Lasalepa Kabupaten Muna). *Neo Societal* 3(2), 362-373.
- Hak, A.N., Said, M.H., Hashim, N., Soh, C.R.(2017), Cross-border marriages: Socio-legal knowledge among Muslims in Malaysia *Pertanika Journal of Social Sciences and Humanities*, 2017, 25(October), pp. 135-144
- M. Husin Z. (2019). Interview, 19 Mei.
- M. Yusen Saleh. (2019). Putusan Sara Opat Bersifat Mengikat. Temu bual, 20 Mei.
- Mahmudin et al. (2006). Nilai Lokal dan Konflik Aceh: Studi Dimensi Budaya Dalam Penguatan Civil Society. *Laporan Kajian Satker BRR Revitalisasi dan Pengembangan Kebudayaan NAD*, Banda Aceh.
- Majlis Adat Aceh. (2008). *Pedoman Peradilan Adat Aceh – Untuk Peradilan Adat Yang Adil dan Kompatibel*. t. pt: Nanggroe Aceh Darussalam.
- Marpensory. (2017). Penyelesaian Sengketa Perkahwinan Melalui Peradilan Adat Di Kecamatan Tanjung Kemuning. *QIYAS* 2(1), t. hlm.
- Maslow, A. H. (1970). *Motivation and Personality*, New York: Harper & Row Publishers.
- Mohd Zin, N., Md Hashim, N. & Hak, N. A. Che.Soh R, Ibrahim,K, Md Said, M.H, 2015. A baseline study of the enforcement of nafkah orders in the Selangor Syariah Court. *Pertanika Journals Social Sciences & Humanities* 23:327-336
- Peraturan Pemerintah Nombor 9 Tentang Pelaksanaan UU Nombor 1974 Tahun 1975 (Indonesia).
- R. Otje Salman. (2010). *Filsafat Hukum (Perkembangan & Dinamika Masalah)*, Cetakan Kedua. Bandung: Refika Aditama.
- Ridwan Jamal. (2019). Penyelesaian Perkara Gugat Cerai Yang di Dasarkan Atas Alasan Syiqaq (Studi Kasus Di Pa Kota Manado). <https://media.neliti.com/media/publications/240358-penyelesaian-perkara-gugat-cerai-yang-di-a56dfzce.pdf> [26 Mei 2019].
- Said, M.H.M., Hashim, N.M., Hak, N.A., Wok, S., Soh, R.C.(2019), Socio-legal implications of cross-border marriage among muslims in Malaysia: An empirical study. *Al-Shajarah*, 24(1), pp. 67-96
- Saifuddin. (2019). Cerai Gugat, Mahkamah Syariah Takengon. Temu bual, 25 Mei.
- Sarwono. (2012). *Hukum Acara Perdata Teori dan Praktek*. Jakarta: Sinar Grafika.
- Tedy Sudrajat. (2010). Aspirasi Reformasi Hukum dan Penegakan Hukum Progresif Melalui Hakim Perdamaian Desa. *Jurnal Dinamika Hukum* 10(3), 291-300.
- Umamuddin B. Yunus. Penyelesaian Pertikaian Keluarga di Mahkamah Syariah. Hakim Mahkamah Rendah Syariah Putrajaya. Temubual pada 19 Julai 2019.
- Undang-Undang Nombor 1 Tentang Perkahwinan Tahun 1974 (Indonesia).
- Yahya Harahap. (2016). *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*. Jakarta: Sinar Grafika.
- Zainul Rijal Abu Bakar dan Nurhidayah Muhammad Hashim. (2018). *Sebelum dan Sesudah Ijab Kabul: Perspektif Undang-Undang*. Kuala Lumpur, Institut Terjemahan & Buku Malaysia.
- Zuhrah. (2019). Maraknya Perceraian dan Dispensasi Nikah dalam Kalangan Remaja, Mahkamah Syariah Takengon. Temu bual, 20 Mei.