

THE PRINCIPLES OF TIGHTENING DIVORCE IN SEMARANG HIGH RELIGIOUS COURT IN MAQASID AL-SHARI'AH PERSPECTIVE

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Abstract

The following article is the result of the author's study (dissertation) which focus the need to tighten the divorce because the marriage is very strong agreement that aims to create a happy home and eternal, sakinah mawaddah and mercy, suppress escalation of divorce while reducing the negative impact on children after divorce her parents. The location of the study authors are in the jurisdiction of PTA Semarang. These results indicate that Semarang PTA in examining divorce case has been applying the principles of tightening divorce, mediation institutions maximize and optimize Hakam institutions to realize the goal of marriage, if successful peace revoked case, if it turns out there is no reason the case is not accepted, if it can not prove the case rejected , If proven, there is reason enough divorce, unsuccessful peace efforts and apply the theory of benefit, as the central idea Maqasid al-Shariah, divorce is granted by refusing mafsadah more important consideration than grabbing masalah mafsadah refused because it is a benefit in accordance with Maqasid al-Shariah. According to the author that another attempt to tighten a divorce is necessary premarital education provision by the Religious Affairs Office (KUA) presenting the subject matter of the rights and obligations of husband and wife as well as the consequences if left malpractice. In addition, the need for regulations that provide its jurisdiction in a particular case examination and decide divorce cases the reason of domestic violence as well examining the actions of domestic violence so that the subject is no longer a litigant in two of the judiciary, in order to realize the principle is simple, fast and low cost.

Keywords : Semarang PTA, Tighten, Divorce, Maqasid Shari'ah and Premarital Education.

ملخص البحث

هذه المقالة في أصلها أطروحة دكتوراه تركز على أهمية تضيق فرص الطلاق، معتبرة أن الزواج هو العقد الوثيق الذي يهدف إلى تحقيق الأسرة السعيدة لأطول مدى ممكن بناء على السكينة والمودة والرحمة. إن القيم الإسلامية في المجال الأسري لتسعى إلى التقليل من

فرص الفراق بين الزوجين، وتقليل الأثر السلبي لذلك تجاه الأولاد حين حدوثه. اتخذ البحث من الدائرة القانونية للمحكمة الشرعية العليا بسمارانغ (جاوى الوسطى – إندونيسيا) مجتمعاً بحثياً له. وأشارت نتائج البحث إلى أن فحص الدعاوى المتعلقة بافتراق الزوجين تعمل على عدم تسهيل الفرقة، مفعلة من دور المؤسسات الاستشارية التي تتوسط الخلاف بين الزوجين، ومن دور الهيئة القضائية إلى الحد الأقصى لتحقيق الهدف من الزواج. وفي حال نجحت جهود الوساطة بين الطرفين في حل النزاع، فيتم إسقاط الدعوى، وفي حال لم تفلح، فإن المحكمة، وفي تطبيق لمبدأ المصلحة كمبدأ جوهري لمقاصد الشريعة، درءاً للمفسدة فإنها تقبل الدعوى وتفرق بين الزوجين. ومن جهة أخرى، يطرح البحث أهمية التربية الأسرية فيما قبل النكاح، حيث يقوم بها مكتب الشئون الدينية حول الحقوق والواجبات بين الزوجين والتوعية بالأثر السلبي لإهمالها. كما يوجه البحث النظر إلى الحاجة إلى استصدار قانون أو لائحة تنفيذية تُمنح بموجبها صلاحية للمحكمة الشرعية من أجل فحص القضايا الخاصة بالعنف الأسري، وذلك درءاً لازدواج الاختصاص كما هو الآن، حيث تبحث إجراءات العنف في المحاكم العادية والطلاق في المحاكم الشرعية. إن منحا لصلاحية كذلك سوف يزيل الالتباس ويسهم في إقامة منظومة التقاضي البسيطة والسريعة وذات الكلفة اليسيرة، كما هي أهداف المنظومة القضائية المأمولة.

الكلمات الدالة : قضايا التفريق، القانون الأسري الإسلامي، الشريعة في إندونيسيا، العنف الأسري، المحكمة الشرعية بسمارانغ

Introduction

Islam principle does not allow for divorce except emergencies. Marriage law regulates the procedure of marriage and divorce procedures. In the context of a divorce, the Marriage Act embarras adheres to the principle of divorce as stated in the General Explanation of Marriage Act in number 4 letter (e). "For the purpose of marriage is to create a happy family, lasting and prosperous, it adheres to the principles of this Act to embarras the divorce occurs. For divorce, there must be specific reasons and should be done in front of the court".

The purpose of marriage is to establish a family (household) happy and everlasting based on God.¹ Compilation of Islamic Law (KHI) to formulate: marriage law according to Islam is that marriage is a very strong agreement or *misaqan galiza* to obey God's command and execute it is worship, which aims to realize *sakinah, mawaddah* and *rahmah* households. ² Son of descent from the legitimate marriage decorate family life and is a human survival in a clean and

¹ Article 1 of the Law of Marriage. See, *Ministry of Religious Affairs, Himpunan*, p. 100.

² Article 2 and 3 of KHI. See, *Ministry of Religious Affairs, Himpunan*, p. 309.

respectable,³this is in accordance with *maqâsid al-Shari'ah* or purpose is to realize the serious benefits.

Maqâsid al-Shari'ah is divided into three kinds viewed from the side needs. First, *maqâsid al-d arûriyyat*, namely *maqâsid* to maintain the five basic elements of human life, namely (1) *hifz al-deen* (religion maintain), (2) *hifz al-nafs* (maintain viability), (3) *hifdz al-'aql* (men watch sense) (4) *hifdz al-nasl* (nurturing offspring and honor), and (5) *hifdz al-mâl* (maintaining the property);⁴second, *maqâsid al-hââjiyyat*, ie *maqâsid* to eliminate difficulties or make maintenance of the five basic elements become more better again; third, *maqâsid al-tahsiniyyât*, ie *maqâsid* so that people do their best to enhance the maintenance of the five basic elements. Not achieving *darûriyyat* aspect can damage the whole world and the hereafter. Neglecting *hajiyyât* not to damage the existence of five (5) basic elements, but it will bring trouble to mukalaf humans in realizing it, while neglect the aspect of *tahsiniyyât*, making the maintenance of the five basic elements to be imperfect.⁵

Islamic law, has the ultimate goal, which is the purpose of the creation of the law itself is a benchmark for human life in order to achieve happiness in this world and in the hereafter.

Observing the importance of the value of a valid marriage, then it should (*das sollen*) aimed marriage for life and happiness for the couple concerned,⁶ is expected to realize the purpose of marriage, divorce decreased after enactment of the Marriage Act, but in reality (*das Sein*), noted of 359 Shariah Court / PA throughout Indonesia, in 2011 to handle 425 937 cases and in 2012 some 476 961 cases.⁷ This case shows the national divorce rate is increasing. Three high Court Religion (PTA) which has the Court of First class (PA) most, one of which is PTA of Semarang.

Marriage law, embarrass the principle divorce with a view to realizing the goal of marriage. The elaborate in Article 39 of the Marriage Act, stated that divorce can only be done in front of the trial court after the relevant court and unsuccessfully tried to reconcile the two sides. To do divorce there must be

³ Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 2004), p. 1.

⁴ Abu Ishaq al-Syatibi Ibrahim Ibn Musa al-Lakhmi al-Garnati al-Maliki, *Al-Muwâfaqât Fi Usuli Al-Syari'ah*, Juz I, (Beirut: Dâr al-Ma'rifah, 1997), p. 9 and A. Djazuli, *Ilmu Fiqh: Penggalian, Perkembangan dan Penerapan Hukum Islam*, (Jakarta: Prenada Media, 2005), pp. 27-28.

⁵ Abdul Manan, *Reformasi Hukum Islam di Indonesia*, (Jakarta: Raja Grafindo Persada, 2006), p. 108.

⁶ Sayuti Thalib, *Hukum Kekeluargaan Indonesia*, (Jakarta: UI Press, 1986), p. 99.

⁷ Hermansyah, "Wow! Tahun 2012, Pengadilan Agama Menangani 476961 Perkara", quoted from <http://www.badilag.net>, on Friday, March 8, 2013.

sufficient grounds that the husband and wife will not be able to live in harmony as husband and wife. The procedure for divorce before the trial court set in the legislation itself.

Under these provisions, the principle elements embarrass divorce must be fulfilled that divorce should be in the Religious, there is reason enough, the Court has tried and not succeeded in reconciling the two parties, husband and wife can not live peacefully as husband and wife. And the procedure for divorce in court Religious Court stipulated in the Act.

In the Dictionary of Bahasa Indonesia, hamper or complicate a similar meaning and principle embarrass or complicate divorce, when viewed from the root connotes more difficult or more difficult (*mempersulit*), according to researchers saving more appropriate to use the word tightened (*memperketat*), as where restricted polygamy tightly, writer use the word as a substitute for the word divorce embarrass, based on arguing that noting the intent and purpose of the principle of divorce embarrass itself. Observing the hamper or complicate the meaning of the word, can not benefit the parties, and there are strict sense of the word meaning rule, careful, conscientious, tidy and so on. Arso Sosroatmodjo and the referee gave understanding of the principles of marriage Aulawi letter in use is strictly limited Polygamy “

The phenomenon of the increasing divorce rate nationally, show cases received from year to year increases,⁸ is no exception in PTA of Semarang, how to tighten the principle of divorce after the birth of the Marriage Act. It is very important to know through research on the principle of divorce tighten the Marriage Law in perspective *maqâsid al-Shari'ah* and the place of research in the area of law in PTA of Semarang.

The urgent reason for researching the phenomenon: *First*, because one of the principles of Islamic marriage law is the marriage bond must be strengthened as much as possible to realize a harmonious *mawaddah family* and *mercy*. *Both*, interestingly this study that the principles stipulated in the Act tightened divorce, but the phenomenon of divorce rate continues to increase. *Third*, Divorce brings big consequences mainly affects children. These several reasons of the title: *Principle of Divorce Tightening in Semarang High Religious Court Jurisdiction in Maqâsid al-Shariah Perspective*.

⁸ Annual Report Badilag Supreme Court of Republic of Indonesia in 2009, 2010 and 2011.

The Problem Statement

Departing from the background mentioned above, the problem statement of this article can be formulated as follow, why is it necessary to tighten the divorce as principles of the Marriage Act? How to tighten the implementation of the principle of divorce in the jurisdiction of of Semarang High Court Religion in perspective of *maqâsid al-Shari'ah*?

The objectives of this study were: to determine why need to tighten the divorce and how can tighten up the implementation of the principle of divorce in jurisdictions PTA Religion of Semarang in perspective *Maqâsid al-Shariah*. And also to find and develop a theory about the escalation of effort divorce case and tighten its actualization with the principle of divorce. The benefits of research, is expected to be input and guidelines for judges in applying the indicator tighten divorce and family welfare considerations, especially for children. This expectation is not only for Semarang PTA judicial district but also nationally in the Institute of Justice in Indonesia and provide input to refine the legislation concerning marriage. Case of violence in the household (domestic violence) is an internal problem of households and is one reason for divorce, required for the rules that give authority of an Islamic Court in a particular case is the case of divorce on the grounds of domestic violence at the same time authorized to investigate cases of domestic violence acts, so that the subject is no longer a litigant in two of the judiciary, in order to realize the principle of simple, fast and low cost.

The Prior Research on Topic and The Theoretical Framework

As far as the knowledge of researcher, there are several previous studies that focus on the material there are similarities, for instances, research conducted by Rashid Khatib,⁹ Asniar Khumas,¹⁰ Nunung Rodliyah,¹¹ Sumarso,¹² Anastasius Rico Haratua Sitanggang.¹³ From the foregoing review of the literature known to

⁹ Khatib Rasyid, "Penerapan Asas Mempersulit Perceraian dalam Pemeriksaan Perkara di Pengadilan", *Doctoral Dissertation*, Bandung:Unisba, 2012.

¹⁰ Asniar Khumas, "Model Penjelasan Intensi Cerai Perempuan", *Doctoral Dissertation*, Yogyakarta: UGM, 2012.

¹¹ Nunung Rodliyah, "Perceraian Pasangan Muslim Berpendidikan Tinggi (Studi Kasus di Kota Bandar Lampung)", *Doctoral Dissertation*, Yogyakarta: UIN Sunan Kalijaga, 2011.

¹² Sumarso, "Pola Kehidupan Keluarga Cerai dan Dampak Psikologis terhadap Siswa", *Doctoral Dissertation*, Yogyakarta: Universitas Muhammadiyah Yogyakarta, 2012.

¹³ Anastasius Rico Haratua Sitanggang, "Analisis Yuridis Tentang Putusnya Perkawinan Akibat Perceraian studi Pada Pengadilan Negeri Siak Sri Indrapura-Riau", *Doctoral Dissertation*, Medan: Universitas Sumatera Utara, 2009.

investigators, it appears that previous studies exist that have not been discussed in detail on the implementation of the tighten principle of divorce in perspective of *maqâsid al-shari'ah*. Other literature review in the form of legislation and the books are closely connected with this dissertation, both in terms of positive law and Islamic law, arguing about marriage, divorce, conflict and the imposition of resolving and verification from *maqasid al-shari'ah*.

Through focuses on the goals of marriage, *grand theory* used is the theory of *Maqâsid al-Shari'ah*, namely to formulate the laws of Islam and the laws of Allah prescribed to realize the benefit of humankind, both worldly and in the hereafter.¹⁴ With the implementation of the benefit theory, *supplements* the other *theory* is conflict resolution, *Hakam* institutions, alternative dispute resolution and mediation that integrated to litigation and the imposition of proof theory.

To overcome the crisis in the household used the theory of conflict resolution by optimizing proses of mediation, peace efforts outside the court is *Alternative Resolution Disputes* (ADR), *hakam* institutions and non-litigation integration into litigation based PERMA 1 of 2008 on Mediation Procedures in court, otherwise not be able to get back together in the household, continued the examination in accordance with the applicable procedural law, the imposition of proof apply theory, theory and welfare theory of *Al-Zari'ah*.

Theoretical framework that used in this study is presented in three levels. *First*, the purpose of marriage is to establish an eternal happy family based on God¹⁵ or to realize the domestic life that *sakinah*, *mawaddah*, and *mercy*,¹⁶ in line with *maqasid al-shariah* which aims to realize *maqasid ad-darûriyah*, there are five that *hifz al-dien*, *hifz al-nafs*, *hifz al-'aql*, *hifz al-nasl*, and *hifz al-mâl*.¹⁷ Surely, if the husband and wife keep five things above-mentioned, of conjugal implement their respective obligations once the husband and wife met his rights, then it is easy to realize the purpose of marriage and simultaneously reduce the number of divorces. *The second* level, the institution of divorce, the parties filed a case to the PA accompanied by reasons for divorce¹⁸ and begging to be decided

¹⁴ Abu Ishaq al-Syatibi Ibrahim ibn Musa al-Lakhmi al-Gharnati al-Maliki, *Al-Muwafaqat Fi Usul Al-Syariah*, the Section I, (Beirut: Dar al-Ma'rifah, 1997), p. 5

¹⁵ Article 1 of Undang-Undang Nomor 1 Tahun 1974 about Marriage. See *Himpunan Peraturan Perundang-Undangan dalam Lingkungan Peradilan Agama* (Jakarta: Proyek Peningkatan Pelayanan Aparatur Hukum Pusat, Departemen Agama RI, 2004), p. 100.

¹⁶ Article of 3 *Kompilasi Hukum Islam*, *Himpunan*, p. 309.

¹⁷ Al-Syatibi, Al-Muwafaqat, p. 9.

¹⁸ Article 19 of Peraturan Pemerintah No. 9 Tahun 1975 and article 116 of KHI. See Departemen Agama, *Himpunan*, p. 133 and 335.

upon marriage. *The third level*, applying the principle of tightened divorce, to apply a theory of conflict resolution: mediation, *hakam* institutions and the implementation of integration mediation in litigation, if peace efforts with the various ways in which it did not succeed, then appropriate examination of the procedural law and consider the sociological factors, the benefits and harms.

Research Methodology and Location

This study denotes field research with qualitative research, with the primary data source. And also secondary data in the legal field that constituting of the primary legal materials and secondary law. With Juridical empirical approach to the specification of descriptive analytical research in finding a theory of divorce tighten the application of the theory of benefit.

The location of this research is in Semarang PTA jurisdiction. The reasons for this because the geographical position of Semarang PTA jurisdiction bordering jurisdictions of Surabaya PTA and Bandung PTA. Besides, Semarang PTA has all types of court class. Then, the number of cases received and granted each year is increasing. Deciding research sites within the jurisdiction of Semarang PTA done proportionally, and to facilitate the analysis of the sample collection is done by *stratified cluster random sampling*. Determination of 6 PA is based on the amount of the same class are relatively homogeneous, ie PA of Cilacap, PA of Pekalongan, PA of Sragen, PA of Boyolali, PA of Surakarta PA and PA of Magelang.

Using observation techniques,¹⁹ questionnaire,²⁰ interview²¹ and collecting documents. Researcher conducted interviews with 30 judges and some people who've filed several cases of divorce in the PA, observation and collection of data in the form of documents related to the study of the years 2009-2012 as well as several copies of the verdict.

¹⁹ The method of observation is the method of data collection is done by holding the observation and recording systematically investigated phenomena. Read Sutrisno Hadi, *Metodologi Penelitian Research*, vol 2, (Yogyakarta: Andi Offset, 2012), p. 70.

²⁰ Questionnaire is an attempt to gather information by delivering a number of written questions to answer in writing also by the respondent, read Hadari Nawawi, and Mimi Martini, *Penelitian Terapan*, (Yogyakarta: Gadjah Mada University Press, 2009), p. 117.

²¹ Interview or interview is a conversation that is directed at a specific problem; This is an oral question and answer process, in which two or more people face to face physically (interview = talk, debriefing origin of the word *entrevue* = encounter in accordance with previous agreements. From the word *entre*, *inter* and *voir* = *videre* = to see. Interview = oral debriefing with the intent to be published), read Kartini Kartono, *Pengantar Metodologi Riset Sosial*, (Bandung: Alumni, 2012), p. 171.

The Technique of data analysis is descriptive analysis. Analysis of the data in this study is based on interactive analysis was developed by Miles and Huberman. The analysis consists of three interacting components analysis, namely: (1) data reduction, (2) display the data (3) conclusions and verification.

The Brief History of Semarang PTA

Religious Court as a judicial body was born on August 1, 1882 pursuant to a decision of the king of the Netherlands (*Koninklijk Besluit*), the King Willem III dated January 19, 1882 Number 24 of 1882 published in Government Gazette No. 152, set the rules of religious courts with the name "*Piesterraden*" for Java and Madura. In Dutch called "*completely turning away betreffende de Priesteraden op Java en Madoe ra*",²² or shortened by the name *Priesterraad*²³ (*Raad Religion*). and declared valid from August 1, 1882 is contained in the 1882 Statute No. 153.

P No 1938 Dutch East Indies government formed the judiciary of the Islamic community, the High Court of Islam (MIT) on January 1, 1938 by virtue of the Governor General of the Netherlands on 12 November 1937 Number 18 and domiciled in Surakarta. And Pursuant to Article 27 C Rule Islamic Courts, that MIT domiciled in the city but the Government may designate another city as a domicile. On the basis of the MIT based in Surakarta with the stipulation of the Minister of Justice of the Republic of Indonesia on January 2, 1946 Number T.2 and determined that starting on January 1, 1946 for an unspecified length of time the seat of the MIT is in Surakarta²⁴ and then in 1985 the authority of MIT based in Surakarta moved to Jakarta by virtue of the Decision of the Minister of Religion No. 61 in 1985, then to the court of appeal in the jurisdiction of the Central Java remains the name of MIT domiciled in Surakarta whose jurisdiction covers Central Java and Yogyakarta, and then in 1986 in the form of the High Court Religion (PTA) Semarang by virtue of the Decision of the Minister of Religion No. 207 of 1986 Jo. No. 18 of 1987 which jurisdiction is the same as the MIT Surakarta Central Java and Yogyakarta,²⁵ and in 1992 formed PTA Yogyakarta under the

²² Zaini Ahmad Noeh dan Abdul Basit Adnan, *Sejarah Singkat Peradilan Agama di Indonesia* (Surabaya: Bina Ilmu, 1983), p. 32.

²³ The name, according to legal experts, is not appropriate, because the word "*Priest*" means the clergyman.

²⁴ Notosusanto, *Organisasi dan Yuriprodensi Peradilan Agama di Indonesia*, (Yogyakarta: Gajah Mada University Press. 1977), p. 23.

²⁵ PTA Semarang, *Profil Peradilan Agama se Jawa Tengah*, (Semarang: Pengadilan Tinggi Agama Semarang, 2014), pp. 1-23.

Act RI No. 20 of 1992, dated August 31, 1992 and inaugurated on January 30, 1993 by the Chairman of the Supreme Court. So since it Semarang PTA jurisdiction only covers the laws of the Province of Central Java.

From the above description, we can conclude the formation of PTA of Semarang: Semarang *first* PTA previously named MIT based in Surakarta started up in 1938, and *both* PTA Semarang established in 1986 by virtue of the Decision of the Minister of Religion No. 207 of 1986 Jo. No. 18 in 1987. Semarang PTA building is located at Jalan Hanoman No. 18 Semarang, installed 22 photo Chairman of the MIT / PTA Semarang from 1938 to 2012 in the Office of the proficiency level.

The Authority of the Religious Courts

The existence of the Religious institutions since 1882 from time to time subject to change. Status of Religious Courts and the existence of more solid with the enactment of Act No. 7 Year 1989 About the Religious Courts (Religious Courts Law), as well as provisions regarding formal law stipulated in Article 54 of Law on Religious Courts.²⁶ Then perform the changes through Law No. 3 2006 which expands the authority of the Religious Courts including the authority to resolve cases of economic disputes syari'ah, Then do the second amendment of Law No. 7 Year 1989 On the Religious Courts Law 50 Year 2009.

Duties and authorities of the PA stipulated in Article 49 of the Law on Religious Courts, duty and authority to examine, cut, and completed the first level judge actions among people who are Muslims in the areas of: a. Marriage; b. Inheritance, wills, and grants are made I slam by law; c. Endowments and Sadaqah. Along with the regulations acts and regulations concerning religious courts indicate its existence PA stronger and more extensive its authority with the enactment of Law No. 3 2006 on the amendment of Law No. 7 Year 1989 About the Religious Courts that expanded the authority of PA covered, completion of economic Shari'ah:²⁷ a. disputes Shari'ah Bank; b. The micro of Shariah Economic Institution; c. Shariah assurance and Shari'ah reassurance; d. Shari'ah obligation, and medium-term securities; e securities Shari'ah; f. shari'a financing; g. Shari'ah pawnshops; h. Shari'ah pension funds and Shari'ah financial institutions and i. Shariah business.

²⁶ The Legal Procedure in religious courts is the procedure that applies to the court within the General Court, except as specifically provided in this Act, the Ministry of Religion, *Himpunan*, p. 261.

²⁷ Article 49 of Act No. 3 Year 2006. Mahkamah Agung, *Himpunan Peraturan Perundang-undangan di Lingkungan Peradilan Agama*, (Jakarta: Direktorat Jenderal Badan Peradilan Agama, tahun 2014), p. 286.

Religious Courts now has undergone fundamental changes, namely PA check certain things, Article 1 point 8 of Law No. 50 In 2009, meant an opportunity for the PA formed a special court and examine cases other than civil cases.²⁸ Understanding between the people who are Muslims. Article 49 of Law No. 3 of 2006 expanded to include the person or legal entity which itself voluntarily subjecting themselves to the Islamic law on matters under the authority of the PA.²⁹ PA has been unable to execute the decision itself.³⁰ The subject property disputes between religious people, the object is decided by the PA together cases that are being examined.³¹ The provisions of the choice of law in litigation inheritance otherwise removed.³² PA authorities to establish adoption.³³ Authorized the Shari'ah economic case.³⁴ Shari'ah banking dispute settlement made by the court in Islamic Justice environments.³⁵

²⁸ Article 1 point 8 Act No. 50 Year 2009 Regarding The Second Change for Act No. 7 Year 1989 about Peradilan Agama, Mahkamah Agung, *Himpunan*, p. 314

²⁹ The Explanation of Article 49 Act No. 3 Year 2006, Mahkamah Agung, *Himpunan*, p. 307.

³⁰ PA can execute its own decisions, Article 107 paragraph (1) letter (d) of Act No. 7 Year 1989 About Peradilan Agama, Mahkamah Agung, *Himpunan*, p. 262.

³¹ Article 50 of Act No. 3 Year 2006, Mahkamah Agung, *Himpunan*, pp. 298-299.

³² The right option or choice of law in Act No. 3 of 2006 explicitly deleted. In figure 1 paragraph 2 of Act No. 3 of 2006 General Explanation affirmed: "... In relation to this Act changes anyway, the sentence contained in the general explanation of Law No. 7 of 1989 on Religious Courts stating: the parties before litigation can consider to choose what law used in inheritance otherwise removed "Look, Mahkamah Agung, *Himpunan*, p. 301.

³³ Explanation of Article 49 of Act No. 3/ 2006, the field of marriage No. 20 The Decision authorities regarding the origin of a child and establishment of adoption under Islamic Law, See, Mahkamah Agung, p. 308.

³⁴ Authority of Religious Court, Article 49 of Law No.3 Year 2006. The religious court duty and authority to examine, cut, and finish the case at the first level in the field: the letter i. Shari'ah economy. What is meant by "economic Shari'ah" is an act or course of business which is carried out according to the principles of Shari'ah, include the following: a. Islamic bank; b. microfinance institutions Shari'ah. c. Shari'ah insurance; d. Shari'ah reinsurance; e. Shari'ah funds; f. Islamic bonds and medium-term securities Shari'ah; g. Shari'ah securities; h. Shari'ah financing; i. sharia pawnshop; j. pension funds shari'a financial institution; and k. Shari'ah business. See, Mahkamah Agung, *Himpunan*, pp. 309-310.

³⁵ Under the Constitutional Court's decision dated August 29, 2013 to register cases 93 / PUU-X / 2012, thus an explanation of paragraph (2) d through the courts in general courts, these explanations do not have binding legal force, and the back refers to Article 55 paragraph (1), namely Sharia Banking Dispute Settlement made by the court within the Religious Courts. See, Mahkamah Agung, p. 659 and 689.

The Cases of Divorce in PA in the Jurisdiction of Semarang PTA

Case in receipt of authority in the PA as a whole of the year 2009-2010:

Table 1 Cases received by PA of Cilacap, Pekalongan, Sragen, Boyolali, Surakarta and Magelang (Years 2009-2012)

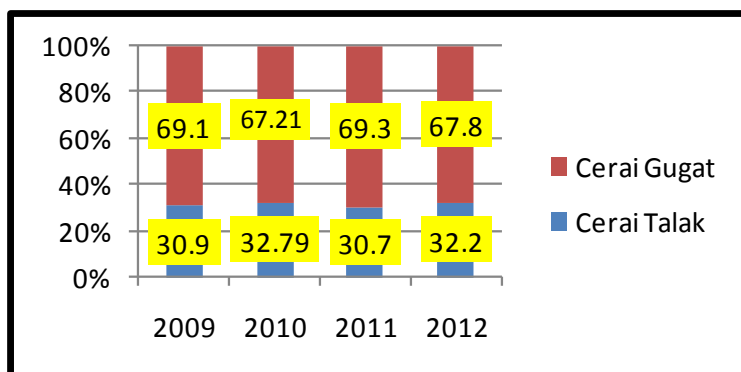
No.	Religious Courts	Case received			
		2009	2010	2011	2012
1	PA Cilacap	3861	4202	4646	5070
2	PA Pekalongan	360	425	460	523
3	PA Sragen	1884	1991	2190	2459
4	PA Boyolali	1483	1368	1471	1623
5	PA Surakarta	677	792	865	946
6	PA Magelang	221	252	297	282

Source: PA of Cilacap, PA of Pekalongan, PA of Sragen, PA of Boyolali, Surakarta PA and PA of Magelang, in 2013.

Case of Divorce

Generally case which has been finished, PA is the case in the field of marriage and divorce case, if the husband filed for divorce known as talaq (CT), and if the wife was filed called contested divorce (CG). Comparison case of CT and CG in period 2009-2012 turned out CG is much more than CT, for more details can be described as below :

Percentage of CT and CG p no PA
PTA jurisdiction in Semarang
In 2009 -2012.



Factors which influence on divorce

Diverse factors causing the divorce, causes divorce in the jurisdiction of the 2009-2012 PTA Semarang: Divorce cases are cut out n 2009 some 46 751 cases, in 2010: 47 839 cases, in 2011: 57 195 cases and 2012: 63 157 cases by a factor: it can be seen in the image below:

Table 2 Causes Divorce Case
the PA in the jurisdiction PTA Semarang
Year 2009-2012

Year	2009	2010	2011	2012
Leave liability	28704	30 643	35 899	40 935
Constantly fight and quarrel	15141	14 273	18228	18 534
hurt the body / physical	79	131	210	318
Mating minors	381	170	215	173
Moral	2458	2454	2502	3032
The law	53	48	35	27
Biological Disease	163	91	99	118
etc	51	29	7	20

Based on data analysis and interviews can be concluded that divorce cases in the jurisdiction of the 2009-2012 PTA Semarang is increased; factors causing the advent of more and potentially husband and wife filed for divorce, compared to the factors causing the arrival of the wife; sequence The highest causal factors can be explained the husband leave liability and breach taklik divorce; ongoing dispute and there is no hope to live in harmony in the household, the trigger is: moral factor, hurting the physical body and other factors, and more contested divorce cases in the appeal of divorce. The accumulation factors cause of the husband and wife filed a result there is reason to sue for divorce and divorce cases that resulted in divorce cases increased in the PA within the jurisdiction of Semarang PTA.

The Tightening Divorce Act

The need to be tightened divorce

When there is contention between the two sides, Islam does not directly advocate a husband and wife to end the marriage, but done first deliberation. If these efforts do not succeed, then it is advisable to take *hakam* one person from each

party to bridge and try to recover and bring peace between husband and wife.³⁶

Transformation of Islamic family law from conventional fiqh to the legislation was a positive influence on the development of Islamic law,

Entering the modern society, modification or modernization of Islamic law through the Act provide a more diverse pattern. In Egypt, for example, arranged that: (1) the right of the court to impose divorce on the grounds fail to make a living, and (2) divorces fell by reason of a dangerous disease. Iran establishes divorce can only take place after obtaining a certificate from the court stating that the couple may not live together, and Tunisia stipulates that divorce is only valid in court.³⁷ Prior to the Marriage Act, customary law institute also has a mechanism of divorce. According to Nani Seowondo, Indonesian customary law typically include head of customs in the process of divorce and they only give permission when there is a real reason.³⁸

In Indonesia, the divorce is not prohibited, but must be tightened, since the divorce that would result in the failure of efforts to establish a family (household) are happy and eternal, *mawaddah sakinah* households and *mercy*. And post divorce remains many problems not only in the husband and wife are divorced, can affect large family breakup conjugal and most felt the negative impact of divorce is the child.

Indicators of tightened divorce

Tighten the principle of divorce is mentioned in the General Explanation of Marriage Act number 4 letter (e):³⁹ and set out in Article 39 of the Marriage Law, so that in carrying out the process of divorce tightening there are several indicators: (a) Divorce should be in court; (B) There must be a sufficient reason, (c) the Court has tried to reconcile and if it did not work, (d) proved unable to get along as husband and wife. (E) The procedure for divorce before the trial court set in the legislation itself.

³⁶ This process is emphasized in the Qur'an: And if you worry there is dispute between the two, then send a Hakam family man and a Hakam from a family of women. if two people Hakam it intend to repair it, Allah gives to the husband-wife taufik it. Lo! Allah is Knower, Aware. (Qur'an, An-Nisa '(4): 35).

³⁷ Nasution, Khoiruddin, *Status wanita di Asia Tenggara : Studi terhadap Perundang-undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia*, (Jakarta : INIS, 2002), p. 245-251.

³⁸ Nani Soewondo, *Kedudukan Wanita Indonesia dalam Hukum dan Masyarakat*, (Jakarta: Ghalia Indonesia, 1984),p. 62.

³⁹ Departemen Agama, Himpunan, p. 120.

Divorce Flow at Judicial Action

Conflict in the household, led to submit a case to the PA. Under Article 63 of the Marriage Law: Paragraph (1) confirms to the PA for the Moslems,⁴⁰ it is becoming absolute authority PA appropriate authority stipulated in Article 49 of the Law on Religious Court⁴¹. And the relative authority of the Plaintiff (husband or wife) to take the case under Article 20 paragraph (1) PP 9 In 1975 put forward a Defendant, this can not be guided entirely because bringing a divorce case both contested divorce divorce divorce and regulated in the Law of Religious Courts as special arrangements for the Moslems. Procedure of divorce cases provided for in Article 66⁴² and contested divorce provided for in Article 73.⁴³ Thus, both as Respondent's wife and as a plaintiff in the divorce case filed in court in the residence's wife, but the wife left the residence determined together without the husband's permission.

The Divorce Reason

The reason for divorce either in the District Court (PN) as well as in PA regulated in the PP 9 In 1975 and specific reasons in PA are also regulated in KHI.

⁴⁰ *Ibid*, p. 155.

⁴¹ *Ibid*, p. 260.

⁴² Article 66 of the Law of Religious Court, paragraph (1) A Muslim husband will divorce his wife apply to the Court to hold a hearing to witness the vow of divorce. Paragraph (2) The application referred to in paragraph (1) shall be submitted to the court whose jurisdiction includes the residence of the defendant, unless the defendant intentionally left along a specified residence without permission of the applicant. Paragraph (3) In the case of the defendant's residence located abroad, the petition submitted to the court whose jurisdiction includes the residence of the applicant. Paragraph (4) In the case of the applicant and the defendant's residence located abroad, the petition submitted to the court whose jurisdiction covers where their marriage took place or to the Central Jakarta Religious Court.

⁴³ Article 73 of the Law of Religious Court, paragraph (1) lawsuit filed by the wife or divorce attorney to the court whose jurisdiction includes the residence of the claimant, unless the claimant intentionally left the residence together without the permission of the defendant. Paragraph (2) In the case of the plaintiff's residence located abroad, the divorce suit filed with the court whose jurisdiction includes the residence of the defendant. Paragraph (3) In the case of the plaintiff and the defendant took residence abroad, then the lawsuit filed with the court whose jurisdiction covers where their marriage took place or to the Central Jakarta Religious Court.

Divorce reasons as mentioned in the following table:

Table 3 Reasons to Divorce

REASONS FOR DIVORCE	
The PN and PA	In PA
Article 19 PP 9 1975	Article 116 KHI
<p>Either party commits adultery or become drunks, compactor, gamblers and others that are difficult to cure;</p> <p>One party leaving the other party for two (2) consecutive years without the permission of the other party and without valid reason or because of other things beyond his control;</p> <p>c. One party gets a prison sentence of 5 (five) years or more severe punishment after the marriage took place;</p> <p>d. One side committed atrocities or Pengania-Yaan weight which harm the other party;</p>	<p>Either party commits adultery or become drunks, compactor, gamblers and others that are difficult to cure;</p> <p>b. One hand, leaving the other party for two (2) consecutive years without the consent of others and without a valid reason or because of other things beyond his control;</p> <p>c. One party gets a prison sentence of 5 (five) years or more severe punishment after the marriage took place;</p> <p>dd. One side committed atrocities or pengania-weight Yaan harm the other party;</p>
<p>e. One party gets disability or disease as a result are unable to perform his duty as a husband / wife;</p> <p>f. Between husband and wife constantly going disputes and late quarrels and there was no hope for life another pillar in the household.</p>	<p>e. One party gets disability or disease as a result are unable to perform his duty as a husband / wife;</p> <p>f. Between husband and wife constantly disputes and quarrels, and no hope for life another pillar in the household;</p> <p>g. Husband violates taklik talaq;</p> <p>h. apostate religion that cause disharmony in the household.</p>

A weld two letters (g) and (h) KHI, letter (g) husband violates taklik-talak. Meaning of *ta'lik* is a divorce that depends on something that might happen has been mentioned in an agreement that has been agreed in advance. In Indonesia the reading *ta'lik talak* by her husband shortly after the ceremony. Similarly Marriage Law does not mention *the apostate* as a reason for divorce, whereas in KHI letter (h) that *the apostate* be a reason of divorce.

Problematic reason divorce letter (h) KHI; ie *apostasy* that cause disharmony in the household. What if one partner is husband or wife in the household *lapsed* but still get along well. Observing these clauses KHI gives the impression if the *apostate* is not entirely the reason of divorce, being a person of his *apostasy* in Islamic law as a cause divorce without the clause.

If one of the spouses *apostate*, and households remain in harmony and peace, a husband or wife does not submit his case in court, the question arises how the marriage bond ?. If adhering to the terms of the divorce should be in front of the court religion means that by itself this marriage is not in a position to be null and void. KHI provisions of the above clause has become a benchmark, the preferred standard, while *apostates* only be a secondary or supplementary reason for divorce. And KHI provision is at its peak will lead to multiple interpretations and impressed *lapsed* as input material very forced.

Islamic personality principle is the subject of the discussion. If the PA received a statement of one of the parties litigant that he/she has really *riddah*, according the principles of the Islamic personality, then started again when it was not authorized to take care of conjugal case is concerned, by reason of one of the parties is no longer Muslim. PN but also unable to give her/him the divorce decree based *riddah*-, because the Marriage Law does not mention apostasy as a reason for divorce. Of these problems, although one of the litigant parties is no longer Muslims but marriage conducted according to Islamic law, then the marriage should also be decided based on Islamic law, PTA Semarang decide marriage by reason of *renegade* plaintiff.⁴⁴

Trying to Reconcile at the Court.

Their conflict which is closely associated with the causes there were chaos in the household, then the court should endeavor to reconcile in order to get back together in the household, steps should be taken to tighten the divorce is to apply the theory of conflict resolution. Conflict resolution can only be applied optimally in combination with a variety of other conflict resolution mechanisms

⁴⁴ Semarang PTA Decision No. 1 1 2 / Pdt.G / 2010 / PTASmg., Dated December 30, 2010, marriage performed according to Islamic law, Plaintiff *apostate* (out of Islam) Plaintiffs back Christian religion. Consideration of which, if one of conjugal apostate from the religion of Islam and did not return again to convert to Islam, the marriage contract broken with the apostate because that comes with suddenly. And the verdict is Memfasakh His marriage; read Sayyid Sabiq, *Fiqh al-Sunnah*, Juz II, (Cairo: Dar Al-Turas Maktabah, 1970), p. 268.

relevant. A conflict resolution mechanism can be implemented effectively only if it is associated with a comprehensive effort to achieve lasting peace.⁴⁵

To combine with a variety of conflict resolution mechanisms, to take measures that peace efforts in court (litigation), through non-litigation, mediation has been integrated into litigation based PERMA No.1 Year 2008 on the procedure for Mediation in court, and the case *syiqaq* done through institutions peace efforts *hakam*.

Husband and Wife Can not Reconcile

Conflict resolution in various ways has been done was not successful. Continued examination of the case in court in accordance with the provisions and the law applicable, the arguments of the suit / petition proved that there is sufficient reason, it can be concluded husband and wife can no longer realize the goal of marriage, there is no hope to live in harmony as husband and wife, if wedlock to be retained will cause *madarat*. The divorce should be opened, can be applied in terms of *qaeda*:

دفع الضرر أولى من جلب النفع⁴⁶

Meaning: Rejecting the conveniences expected aratan more important than attaining the benefit

Or *qaeda* :

دفع المفساد مقدم على جلب المصالح⁴⁷

Meaning: Rejecting mafsadah m eraih precedence over welfare

Noting the above, efforts to tighten divorce and tighten the legal process of divorce is not just based on a general explanation of figure 4 subparagraph (e) of the Law of Marriage and its formulation in Article 39 of the Marriage Act, but is supported by the provisions of Islamic law, peace efforts with the process for resolution of the institution *hakam*, customary law, various legislations, material law, procedural law and specifically regulated by the Law on the Religious and KHI and PERMA No. 1 of 2008 on Mediation Procedure of the Court, it indicates that the tightening divorce is necessary.

⁴⁵ Without name or ananame, "Four Step Resolution Conflict " quoted from <http://5osial.com> , on Sunday, December 28th, 2014 at 10 pm.

⁴⁶ A. Djazuli, *Kaidah-Kaidah Fikih*, (Jakarta: Kencana, 2006), p. 28.

⁴⁷ *Ibid.*, p. 29.

Based on the description above, to answer the *first problem statement* : Need to tighten divorce set out in the Marriage Act because marriage is very strong agreement or *misaqan galizan*, which has a close relationship with religion, marriage is not only the physical elements but also the inner element , tightened divorce to realize a happy home and eternal, *sakinah mawaddah* and *mercy*, suppress escalation of divorce and also reduce the negative impact on children.

Application of Tightening Divorce in PA of the Jurisdiction of Semarang PTA.

Lawsuit filed to the PA meets three elements of their identity, *posita* and *petition*. The judges consider the authority of the *absolute* and *relative* , and *legal standing*. Upper case filed by the Plaintiff / Applicant.

The legal process of divorce by applying the principles of tightening divorce must be applied, and not less important is peace efforts if the judges negligent and did not make efforts to peacefully decision null and void,⁴⁸ in the case of divorce if a peace agreement is reached, the settlement of the case was withdrawn. In the hearing the position of the litigants is the same. About revocation case, if the case has been answered by the Defendant / Respondent, then the case must be heard response revocation if it approves the lifting of a bag or case is not otherwise *disetu jui*, the case continued examination.

If peace is not achieved then continued and in legal proceedings if it turns out there is no reason in accordance with the reason for divorce stipulated in the Act and KHI., PA can be ruled on the case is not accepted / NO (*niet ontvankelijke verklart*). Lawsuit / petition has met the formal requirements, which have been included *alsan* divorce, then *p embuktian* have an important role to give an answer what is asked in the petition, if it does not prove to be rejected.⁴⁹ the verdict rejected the Plaintiff's claim. Plaintiff appealed to the PTA Semarang to register case Number 059 /Pdt.G/201 3 / PTA Smg. Judge PTA Semarang examine cases *quo* , then ruled on March 26, 2013, the verdict reinforces the first instance verdict. This proves religion trials were not limited to legalize the will of the parties litigant.

The result of research that judges in examining cases applying the evidence accordingly. The burden of proof to the Plaintiff / Applicant in divorce cases is not limited to the arguments refuted, but despite their arguments recognized by the opposing party, assemblies rights still imposes Plaintiff / Applicant to prove the proposition –argument.

⁴⁸ Article 2 (3) PERMA No.1 / 2008, Kementerian Agama, Himpunan, p. 1062.

⁴⁹ Case No. 0389 / Pdt.G / 2012 / PA. Declared dated March 26, 2013.

The burden of proof theory, who argue that he/she must prove. One of evidence is the recognition⁵⁰ and Defendant admits Plaintiff's argument, then it is based on the recognition that evidence has proven Plaintiff argued, recognition of the strength of evidence have perfect (*Volleding bewijs*) for people who provide recognition,⁵¹ but in proving the existence of a valid marriage has been specifically determined by regulation, although not denied or acknowledged by the Defendant / Respondent, but with the recognition that was not enough and must be proven with the Marriage Certificate.⁵²

Theory of Procedural Law, in line with the theory of proof in Islamic law, not through Home Visits Umar proof can we meet in the Minutes of Umar, the treatise which he sent to Abu Musa Al-Ash'ari ra

البينة على المدعي واليمين على من انكر⁵³

That is; Bayyinah (witness / evidence) that upon anyone who accuses (postulate something) and the oath over who reject kepadanya.

PA judge in the jurisdiction of PTA in case of divorce application proof that blood money in PP No. 9 of 1975 and KHI namely the lawsuit by reason of Article 19 (b) PP 9 In 1975, proven and proven Defendant / Respondent left the Plaintiff / Applicant at least two years in a row without a legitimate reason.⁵⁴ The lawsuit by reason of Article 19 (c) of Regulation No. 9 In 1975, evidenced by PN decision, that (husband / wife) punished with imprisonment of 5 (five) years or more severe which has binding.⁵⁵ The lawsuit by reason of Article 19 letter (d) PP 9 In 1975, attested to by the documentary evidence in the form of post mortem of the doctor or witnesses who know themselves and corresponding statement that the Defendant has conducted severe cruelty or mistreatment which harm the other party.⁵⁶ The lawsuit by reason of Article 19 letter (e) PP 9 In 1975, could

⁵⁰ Article 174-176 of HIR and article 1923-1928 of KUHPerdara.

⁵¹ Abdul Manan, Penerapan., p. 258.

⁵² Article 7 (1) Marriage can only be proved by a marriage certificate made by the Registrar Employees marriage.

⁵³ Maktabah Syamilah, *Kitab Jaami' al-ahadith*, Chapter Musnad Umar ibn al-Khattab, Juz 28 p. 181, see Fath Ar-Rizq, "Risalah of Umar Ibn Khattab (Justice Umar Ibn Khattab version)" quoted from <http://www.fathurrizqi.com/2013/09/hukum-pembuktian-perdata>, on Thursday, 26 September 2013 20:30 pm.

⁵⁴ PA Surakarta Decision No. 0165 / Pdt.G / 2012 / PA.Ska, dated June 16, 2012.

⁵⁵ PA Cilacap Decision No. 2585 / Pdt.G / 2009 / PA.Clp, dated December 1, 2009.

⁵⁶ PA Surakarta Decision No. 0402 / Pdt.G / 2010 / PA.Ska, September 15, 2010, The cause of domestic violence and drunk but and reasons used are quarrels and disputes.

be proved by evidence of a certificate from a doctor or witnesses who meet the formal requirements and conditions marital which proves that the Defendant gets disability or disease as a result are unable to perform its obligations as a husband.⁵⁷ The lawsuit is based on Article 19 letter (f) PP 9 In 1975, to discover the fact that "between husband and wife constantly disputes and quarrels, and no hope of living in harmony again in the household" has heard from family Plaintiff / Applicant and family Defendant / Respondent.⁵⁸ Ta'liq infringement lawsuit by reason of divorce, Article 116 letter. KHI, it must be proved that the husband had violated *sighat ta'lik* he spoke shortly after the marriage ceremony, and the Plaintiff was not willing to pay money *iwad*.⁵⁹ Lawsuit on the grounds of *apostasy*, Article 116 letter (h) KHI, it must be proved and proved husband or wife *lapsed*. Proof can be recognition, documentary evidence and witnesses.⁶⁰ The reason is based on Article 19 letter (f) PP 9 The year 1975 can be triggered from the grounds of Article 19 paragraph (a) to (d) PP 9 In 1975, it must be proven by the application of Article 39 of the Marriage Law, the solution to this reason, applying the provisions of Article 22 paragraph (2) PP 9 1975.

Based on the decision that has been assessed against both cases granted in check by *kontradiktoir* or in *verstek* in applying the principles tightening divorce in a religious court in the jurisdiction of PTA of Semarang, can be seen in the following table:

Table 4 Implementation Tightening Divorce
The Religious Courts Jurisdiction of Semarang PTA

No.	Tightening Divorce	Case Number	
		Decision <i>Contradiktoir</i>	Decision <i>Verstek</i>
		1023 / Pdt.G / 2012 / PA.Bi.	0165 / Pdt.G / 2012 / PA.Ska
1	Divorce should be in PA	Case submitted to PA Boyolali	Case submitted to PA Surakarta

⁵⁷ PA Pekalongan No. 0134 / Pdt.G / 2010 / PA.Pkl, dated June 19, 2010.

⁵⁸ Decision PA Sragen /Pdt.G/200 0946 No. 9 / PA. Sr., 1st July 6 i 20 0 9 PA Surakarta Decision No. 0402 /Pdt.G/20 10 / PA. Ska, dated 5 September 1 20 1 0, PA Cilacap Decision No. 2120 / Pdt.G / 2011 / PA.Clp, dated July 18, 2011 and PA Magelang Decision No. 0047 / Pdt.G / 2012 / PA.Mgl, May 23 2012.

⁵⁹ PA Boyolali No. 0188 /Pdt.G/20 0 9 / PA. Bi l, dated August 4, 2009.

⁶⁰ PTA Semarang /Pdt.G/2010/PT A. SMG No. 112, dated December 30 2010.

2	Reason	Continuous quarrel and separate dispute residence	Left to go 12 Years without a news story and an unknown residence in the territory of the Republic of Indonesia
3	Evidence	documentary evidence and witnesses; Reason t erbukti dipersidangan	documentary evidence and witnesses; Reason t erbukti dipersidangan
4	Chapter basis	Article 19 letter (f) Regulation No. 9 of 1975 and Article 116 letter (f) KHI	Article 125 HIR Article 19, letter (b) Regulation No. 9 of 1975 and and Article 116 (b) KHI
5	The court has tried to reconcile the Plaintiff and Defendant	- The trial - Through Mediation - Family of Plaintiff and Defendant	Rated as peace efforts, by advising the Plaintiff that dissuade divorce
		Not successful	Not successful
6	Proved unable to get along as husband and wife	Unsuccessful peace efforts, shows can not get along as husband and wife	The advice does not work, go 12 years in a row showed no hope for harmonious as husband and wife
7	Perspective <i>Maqâ S id al-Shari'ah</i>	Benefit theory	Benefit theory
		دفع المفاسد مقدم على جلب المصالح	دفع المفاسد مقدم على جلب المصالح
		Divorced more maslahah	Divorced more maslahah
8	Verdict	Granted	Granted
9	Legal certainty	Divorce Certificate of PA Boyolali	Divorce Certificate of PA Surakarta

Divorce due to divorce, ex officio judges can determine the rights of the wife after the divorce, such as mut'ah and living idda.⁶¹ Decision PA in fig perk license application pledge divorces that have permanent legal force, held the trial testimony pledge divorce.⁶² For the orderly administration of divorce evidence with divorce certificate issued by the PA.

The Impact of Divorce in the Perspective of the Maqasid al-Shari'ah

Principle tightened divorce laws adopted in accordance with the Marriage is the central idea *maqâsid al-shari'ah* that benefit, to realize the goal of marriage with maintaining five principal pillars (*al - maqâs id al-khamsah*), if mopped maintained by well and applied in family life, the divorce can be suppressed and achieved the goal of marriage as mandated by the Marriage Act and Islamic law, which is eternal marriage *mawaddah* and *mercy* achievement of happiness in the world and in the hereafter.

On the other hand, if the household ongoing dispute and there is no hope to live in harmony in the household, if maintained household with such conditions and forced to hang on Diperta marriage will not bring benefits even cause mafsadat, refused mafsadah it is a benefit.⁶³ This is in accordance with the rules:

دفع الضرر أولى من جلب النفع⁶⁴

Meaning: Rejecting main mudarat prior than achieve more benefit

دفع المفساد مقدم على جلب المصالح⁶⁵

Meaning: Rejecting all forms kemafsadatan take precedence over welfare

⁶¹ As a result of repudiation, Article 149 KHI: When the marriage broke up because of divorce, the ex-husband shall: (a). provide decent mut'ah to the former wife, either in the form of money or objects, except the former wife of qobla al dukhul; (B). give a living, maskan and kiswah to the former wife during the waiting period, unless the former wife of telahdi sentenced to divorce balin or nusyus and in the non-pregnant state; (c). pay off the outstanding dowry entirely, and half if qabla al dukhul; (d). provide hadhanan costs for children who have not attained the age of 21 years. See, PA Surakarta Decision No. 0492 / Pdt.G / 2011 / PA.Sk., November 3, 2011.

⁶² Article 131 paragraph (3) KHI: Once the decision has permanent legal force pledge husband's talaq in front of Religious Court hearing, attended by the wife or their proxies. Kemeterian Agama, Himpunan, p. 338.

⁶³ A. Djazuli, *Kaidah-Kaidah Fikih*, (Jakarta: Kencana, 2006), p. 28.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, p. 29.

درء المفساد مقدم على جلب المصالح⁶⁶

Meaning: refused Kema fsadatan precedence over the good of reach

The application of the tighten divorce does not mean not to do the divorce, the divorce should be done if the purpose of marriage can not be realized again in compliance with the category tighten divorce. In households have disputes and quarrels constantly and there is no hope to live in harmony in the household then by applying *zari'ah* terms of quality of mafsadah judge may grant the divorce as a solution to get out of this crisis even though households still remain problem post namely the impact of divorce on children as a result of his parents' divorce. Another see that there is a negative stigma of being a widow.

The impact of divorce for a boy, his parents are victims of divorce when connected with the theory of maqasid al-shariah then divorce is not only negative impact on *hifz al-nasl* but overall no effect in maintaining *al - Maqasid al-khamsah* namely: *hifz al-dien*, *hifz al-nafs*, *hifz al-'aql*, *hifz al-nasl*, and *hifz al-Mal* .

After analyzing divorce restrict the practice in the PA within the jurisdiction of Semarang PTA, to answer *the second of the problem statement: how to tighten the implementation of the principle of divorce in the Religious Court in the jurisdiction PTA Semarang in perspective maqâsid al-shari'ah*: Supreme Court Justice Religion in the jurisdiction in examining Semarang PTA divorce case has been applying the principles of tightening divorce, mediation agencies to maximize and optimize the institution of *Hakam* to realize the goal of marriage, if successful peace revoked case, if it turns out there is no reason the case is not accepted / NO (*niet ontvankelijke verklart*), if it can not prove the case was rejected. And if it is proved, there is reason enough divorce, unsuccessful peace efforts and apply the theory benefit, as the central idea *maqâsid al-shari'ah* , divorce is granted in consideration refusing *mafsadah* more important than attaining *maslahah* refused because *mafsadah* is already a benefit in accordance with *maqâsid al-shari'ah*.

Other efforts of Tightening Divorce

The high divorce rate and the highest causative factor is husband no obligations, and increased domestic violence action is deemed necessary to put forward in this research other efforts in tackling the escalating divorce, namely improving the quality of pre-marriage education and breakthrough new expansion of absolute the competence religious courts. It needs a thorough briefing to the bride by the

⁶⁶ *Ibid.*, p. 164.

Ministry of Religious Affairs through course for the candidate of bride with subject matter of rights and obligations in addition to other materials. Besides, the court has given a guarantee to the husband or wife to file a divorce suit in the event of action.

The principle is simple, fast and low cost⁶⁷ is the most fundamental principles of justice and accommodated by law enforcement in order to effectively and efficiently, according Amran Suhaidi, Supreme Judge, that the PA may contribute to actualize this principle in the settlement of domestic violence acts by inspecting a divorce on the grounds of domestic violence simultaneously process the criminal acts of domestic violence itself, which is certainly to be set beforehand regulations justify this process.⁶⁸ Substantially, the Act has supported the PA authorities prosecute criminal offenses as contained in Article 2 of Law No. 3 Year 2006 on the Amendment of Law Number 7 of 1989 About the Religious Court is changing "Regarding certain civil matters" to "the particular case." By removing the word "civil" suggest there is a specific criminal act under the authority of absolute of PA. PA authorized to examine cases of divorce on the grounds of domestic violence as well competent to deal with crime on complaint criminal acts of domestic violence for the realization of the principle is simple, fast and inexpensive so it is no longer the subject of a case in two courts. Thus the act of domestic violence can be predicted to decline and as an effort to tackle the escalation of divorce.

Conclusion

Based on the description, discussion and analysis that have been explained in previous sections and the end of this article the writer does not hesitate to conclude as follow :

1. That need to tighten divorce because marriage is a contract that is very strong or *misaqan galizan*, which has a close relationship with religion, marriage is not only the physical elements but also the mental element, tighten divorce aims to realize a happy home and eternal, *sakinah mawaddah* and *rahmah*, pressing

⁶⁷ Article 2 (4) of Act No. 48 Year 2009 concerning Judicial Authority.

⁶⁸ Amran Suhaidi, Hakim Agung MA-RI, "Peranan PA dalam Perspektif Pembaharuan Hukum Islam" paper, presented at Seminar Nasional optimalisasi Peranan Peradilan Agama dan Masyarakat Madani dalam Perspektif Pembaharuan Hukum Islam di bidang Penegakan HAM dan Kesetaraan Jender, organized by Pusat Pengembangan Hukum Islam dan Masyarakat Madani (PPHIMM) PTA Surabaya, 14 of October 2014, p. 6.

the escalation of divorce while reducing the negative impact on the child after his parents' divorce.

2. That the Religious Court judge in the jurisdiction of Semarang PTA in checking the divorce case has been applying the principles of tightening divorce, mediation agencies to maximize and optimize the institution *Hakam* to realize the goal of marriage, if successful peace revoked case, if it turns out there is no reason the case is not accepted / NO (*niet ontvoankelijke verklart*), if it can not prove the case was rejected. And if it is proved, there is reason enough divorce, unsuccessful peace efforts and apply the theory benefit, as the central idea *maqasid al-Shari'ah*, divorce is granted by considering refuse *mafsadah* greater than getting *maslahah* refused because *mafsadah* it already is the benefit in accordance with the *maqasid al-shari'ah*.

3. That other efforts to tighten divorce namely need Implementation of pre-marriage course for bride by the Religious Affairs Office (KUA) with material fiqh *Munakahat*, with sub subject matter of the rights and obligations of husband and wife as well as the consequences if left / malpractice. Besides, the need for regulations that provide authority of an Islamic Court in a particular case examination and decide divorce cases as well examine the reasons of domestic violence acts of domestic violence so that the subject is no longer a litigant in two of the judiciary, in order to realize the principle is simple, fast and low cost.

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