

Legal Institutions in Resolving Divorce Cases in Aceh

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Abstract

This study aims to examine the legal institutions involved in divorce settlement in Langsa City. Apart from that, this study also analyzes the influence of each institution on the solution to the divorce problem in Aceh. Empirical legal studies are carried out using social and legislative frameworks. A statute approach is used to examine the legal elements in the process of resolving divorce cases, while a sociological approach is used to examine the social components of divorce practice. This study found that the Gampong traditional institution has more influence than the Sharia Court in resolving divorce cases. Even though state law does not allow divorce outside of court, the community believes that the Gampong traditional institution can resolve divorce cases more quickly, cheaply, easily, and with ease. more sacred. This differs from divorce in religious courts, which usually takes time, and filing takes time. Divorce through religious courts is used by the community when the parties want to legalize their new marriage. This study concludes that the influence of traditional institutions is very strong for the people of Langsa City because traditional institutions are able to resolve divorce problems easily and quickly. This study contributes to a distinct viewpoint on divorce by demonstrating that, in addition to state institutions, traditional institutions play an essential role in resolving divorce cases. Without disobeying state laws, the government need to respect traditional institutions' rulings in divorce situations. This implies that a conventional institution's decision may serve as a basis for the law in divorce situations. Aside from that, a court divorce still carries a bad

reputation in society because of the length, difficulty of the procedure, and perceived difficulty of the operations.

Keywords: Custom; village customary institution; state; divorce

Introduction

The legality of divorce in Indonesia is regulated in the marriage law. The court has absolute authority to decide and adjudicate divorce cases that occur among Muslims.¹ By applying the principle of divorce in difficulty, every Muslim who wants a divorce must have a strong reason in accordance with the provisions of the marriage law,² Indeed, this provision shows that the government does not want the divorce to occur.³ However, it is undeniable that not all marriages go well; not a few marriages lead to divorce.⁴ Based on divorce data collected from the *Aceh Shar'iyah* Court shows that divorce is significantly increasing day by day.⁵ Islam provides an opportunity for divorce when the household that has been built can no longer be maintained.⁶ However, of course, every divorce has a bad effect on child growth; some studies have illustrated that divorce significantly affects child psychology; in fact, there is often neglect of the rights of children and wives after divorce.⁷

In Indonesia, divorce is regulated in the marriage law, and legal provisions regarding divorce can only be carried out before the court; this provision is the juridical basis for the Indonesian people to legalize the status of

¹ Diana Farid et al., "Interfaith Marriage: Subjectivity of the Judge in Determination of No. 454/Pdt.p/2018 Surakarta District Court," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 November (December 1, 2022): 348, <https://doi.org/10.29240/jhi.v7i2.4574>.

² Iman Fadhilah Iman et al., "Exploring the Monogamy Principle in the Samin Community's Customary Marriages in Kudus: Harmonisation of Tradition and State Law," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 2 (2023): 294, <https://doi.org/10.18326/ijtihad.v23i2.281-304>.

³ Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, "The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts," *Al-Manabij: Jurnal Kajian Hukum Islam*, November 25, 2022, 165–80, <https://doi.org/10.24090/mnh.v16i2.6389>.

⁴ Jumni Nelli et al., "The Immorality of a Husband as the Cause of a Working Wife to File for Divorce Lawsuit in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 13, 2023): 119, <https://doi.org/10.31958/juris.v22i1.7392>.

⁵ Asna Husin, "Falling Out of Love: Divorce of Three Acehnese Ubanan Couples in the Islamic Law Perspective," *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (November 30, 2023): 1869, <https://doi.org/10.22373/sjhk.v7i3.19433>.

⁶ Ali Imron, "Memahami Konsep Perceraian Dalam Hukum Keluarga," *BUANA GENDER: Jurnal Studi Gender Dan Anak* 1, no. 1 (June 28, 2016): 15–27, <https://doi.org/10.22515/bg.v1i1.66>.

⁷ Fahmi Tiara Rahma Andrea and Zakiah Nurul Awaliyah, "Fulfillment of The Rights of Wife and Children Post Divorce," *MILRev: Metro Islamic Law Review* 1, no. 2 (December 27, 2022): 241, <https://doi.org/10.32332/milrev.v1i2.6211>.

divorce.⁸ In the marriage law, it is explained that the breakup of a marriage is due to death, divorce and upon court decision; further, in Article 39, it is affirmed that divorce is valid when carried out before the court.⁹ This provision further emphasizes that the divorce process must refer to marriage regulations.¹⁰ Unlike Aceh, strong customary law is always alive and goes hand in hand with the spirit of implementing Islamic law.¹¹ The Gampong Customary Institution consisting of *tuba peut* and religious leaders has a role in resolving household disputes, both related to divorce, domestic violence, joint property and inheritance. The community sometimes understands the presence of the institution as an institution that legitimizes divorce status, so it is not surprising when the main reference talaq of the community is the Gampong device.¹²

Mohamad Abdul Nasir's research was conducted in Lombok with a focus on divorce dominance conducted in Religious Courts; this study tries to offer an interpretation of divorce as a forum for women's resistance to legally legitimate male domination by analyzing divorce cases that occur in religious courts and examining the wider socio-religious and cultural environment. Local legal customs reinforce this interpretation. Islamic customary law. This study also explains that divorce through religious courts in Lombok is a form of resistance to the hegemony of husbands. In Islamic tradition, divorce is the right of the husband, while women do not have the right to divorce. Religious courts became women's favorite places to resolve household conflicts because they offered them the power to subvert gender bias and patriarchy.¹³

⁸ Mark Cammack, Lawrence A. Young, and Tim B. Heaton, "An Empirical Assessment of Divorce Law in Indonesia," *Studia Islamika* 4, no. 4 (March 30, 2014), <https://doi.org/10.15408/sdi.v4i4.766>.

⁹ Ahmad Izzuddin, Ahmad Rofiq, and Abu Hapsin, "Revitalizing Divorce Ethical Values in Verstek Decisions in Religious Courts/Revitalisasi Nilai Etika Perceraian dalam Putusan Verstek Di Pengadilan Agama," *De Jure: Jurnal Hukum dan Syar'iah* 13, no. 1 (July 28, 2021): 80–89, <https://doi.org/10.18860/j-fsh.v13i1.12191>.

¹⁰ Latifah Ratnawaty, "Perceraian di Bawah Tangan Dalam Perspektif Hukum Islam Dan Hukum Positif," *YUSTISI* 4, no. 1 (March 1, 2017): 112–112, <https://doi.org/10.32832/yustisi.v4i1.1126>. baca juga Agus Toni, "Aktualisasi Hukum Perceraian Perspektif Pengadilan Agama Di Indonesia," *MAQASHID Jurnal Hukum Islam* 1, no. 2 (September 21, 2018): 34–63, <https://doi.org/10.35897/maqashid.v1i2.130>.

¹¹ Muzakkir, "Integrasi Hukum Adat Dalam Hukum Perkawinan Di Indonesia," *Jurnal Hukum Samudra Keadilan* 17, no. 1 (June 18, 2022): 61–69, <https://doi.org/10.33059/jhsk.v17i1.5609>.

¹² Azwir, Pagar, and Nasution, "The Legality of Divorce in Aceh," November 25, 2022. Baca juga Muhazir Muhazir, "Islam, Fatwa Dan Negara: Meretas Pluralisme Hukum Perceraian Di Aceh," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (December 1, 2021): 233–48, <https://doi.org/10.24090/mnh.v15i2.5150>.

¹³ Mohamad Abdun Nasir, "Islamic Law and Paradox of Domination and Resistance," *Asian Journal of Social Science* 44, no. 1–2 (2016): 78–103, <https://doi.org/10.1163/15685314-04401006>.

The results of investigations conducted by Euis Nurlaelawati¹⁴ in Jakarta and West Java areas with a focus on divorce practices conducted by Muslim Women in Indonesian Religious Courts. The study examines how and why women use the courts and analyzes the strategies used by women to achieve their goals. This study explains that divorce in the Religious Court is the leading choice of Muslim women to fight for status, rights and reasons for divorce lawsuits filed by wives. This research also has similarities to the argument expressed by Musda Amara that the State Institution authorized to handle divorce cases has worked in accordance with the rule of law, as well as a picture of the struggle of wives in seeking justice for their marital status. Religious courts are essential in maintaining justice and legal protection for women after divorce occurs.¹⁵

Wijayati's Research¹⁶ focuses on women's experiences in divorce with the involvement of village officials in the divorce process. This study explores the involvement of village officials as intermediaries of justice in divorce proceedings and their assistance to women during the process. There are two important findings points in this study, namely the involvement of village officials who position themselves as intermediaries of justice and the influence of stigma of village officials on the subordination status of women in the household. The study argues that customary interference in divorce has an impact on women, so it often harms women.

Another study related to customs (*adat*) and the state in divorce cases in Aceh was conducted by Azwir¹⁷ with a focus on divorce practices in court. It was explained that customs (*adat*) and the state have a strong relationship, considering that Indonesia is a multiethnic country; customary law has a role in divorce and marriage. However, not a few people ignore customary law and prioritize state law. This argument is the same as Arskal Salim's argument¹⁸ that Aceh, after the MoU revived customary law in the government bureaucracy, even customary institutions began to revive in an effort to resolve disputes that occurred in Acehese society.

¹⁴ Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 242–71, <https://doi.org/10.1163/15685195-0010A0003>.

¹⁵ Musda Asmara and Reti Andira, "Urgensi Talak Di Depan Sidang Pengadilan Perspektif Masalah Mursalah," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 December (December 29, 2018): 207–26.

¹⁶ Mufliha Wijayati et al., "Justice Brokers: Women's Experiences with Injustice and Dependence in the Divorce Process," ed. Kevin Cheng, *Cogent Social Sciences* 7, no. 1 (January 1, 2021): 1966208, <https://doi.org/10.1080/23311886.2021.1966208>.

¹⁷ Azwir Azwir, "The Legality of Divorce Outside the Court (Analysis of Divorce in Acehese Society)" (doctoral, Medan, Postgraduate State Islamic University of North Sumatra, 2022).

¹⁸ Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 25, 2021): 529–51, <https://doi.org/10.22373/sjhk.v5i2.11082>.

Jamaluddin's Research,¹⁹ Muslim Zainuddin,²⁰ Muhammad Sahlan,²¹ illustrates that divorce in Aceh is still sociologically dominated by divorce outside the court until now, divorce is settled religiously and customarily without involving the state.

Some of these studies have at least discussed how the divorce phenomenon in Indonesia tends to be resolved by religion, custom and state. This study will focus more on the study of the influence and relationship of existing village (Gampong) institutions and the Shar'iyah Court in resolving divorce cases. Important questions that arise in this study relate to why divorce dominates in village (Gampong) customary institutions rather than Syar'iyah courts and how the community is against Gampong customary courts and *Syar'iah* courts.

This paper is based on an empirical study conducted in Langsa City with a sociological juridical methodology.²² Empirical research is field research that investigates divorce practices. A juridical approach is used to analyze data with laws and regulations,²³ while the sociological approach is used to analyze divorce practices in Langsa City. Primary data are generated from interviews and observations, while data analysis is done by reducing and analyzing the finding data. Direct interviews were conducted in this study involving 2 people from the Shar'iyah Court Judges, 2 from the Ulema Consultative Assembly (MPU), 3 from elements of Gampong customary institutions and 1 from the community.

This study aims to analyze Gampong customary institutions' influence on divorce cases in Langsa City. In addition, this study also aims to look further at the relationship between customary institutions and the state in the settlement of divorce cases, who dominates in the settlement of divorce cases and what factors cause divorce are more likely to be carried out in each of these institutions. This research is essential to be studied because, in the midst of the rampant divorce in Aceh, Gampong customary institutions play a role in

¹⁹ Jamaluddin, Nanda Amalia, and Laila M. Rasyid, "Women And Divorce: Legal Justice Study Of Societal And Judicial Perspective Toward Unrecorded Divorce in Aceh, Indonesia," *US-China Law Review* 12, no. 8 (August 28, 2015): 656–57, <https://doi.org/10.17265/1548-6605/2015.08.002>.

²⁰ Muslim Zainuddin, Mansari Mansari, and Nadhilah Filzah, "Divorce Problems and Community Social Capital in Realizing Family Resilience in Aceh," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 914–33, <https://doi.org/10.22373/sjhk.v6i2.15080>.

²¹ Muhammad Sahlan, "Pengamatan Sosiologis tentang Perceraian di Aceh," *Substantia: Jurnal Ilmu-Ilmu Ushuluddin* 14, no. 1 (April 11, 2012): 88–97, <https://doi.org/10.22373/substantia.v14i1.4858>.

²² Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Prenada Media, 2018).

²³ Zulfidiane Zaini, "Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum," *Pranata Hukum* 6, no. 2 (July 31, 2011): 117–19.

resolving divorce cases so that the community no longer feels the need for divorce in court. This can affect women's rights, children and divorce outside the court and marriage when one party wants to remarry.

Discussion

Divorce Practices of People in Langsa City, Aceh

Aceh's divorce rate has risen over the last three years, with economic issues contributing to some of the causes,²⁴ Early marriage and domestic violence (KDRT).²⁵ This finding shows that the rise of divorce cannot be separated from environmental influences and weak preparation of couples in facing household dynamics. The data shows that in 2021, there were 59 divorce cases, and in 2022, there were 70 cases, with the average age of filing lawsuits ranging from 20 to 30 years.²⁶ Unlike divorce in court, "wild" divorce is a problem for the Muslim community, with the existence of Gampong customary institutions with elements of religious figures, elders, village heads, and Gampong imams provide opportunities for divorce to be resolved at the Gampong level, for some indigenous people who uphold religious and customary values, the divorce process can be taken by divorce solely religiously.

Table. 1 Total Divorce Matters in Aceh Syariah Court²⁷

Year	REPORT RECEIVED		REPORT DECIDED	
	<i>Talak</i> Divorce	Divorce Lawsuit	<i>Talak</i>	Divorce Lawsuit
2020	1.694	5.003	1.558	4.532
2019	1.724	4.976	1.555	4.493
2018	1.532	4.000	1.427	3.752

Divorce in Acehnese people certainly has its own problems. Religious figures significantly influence the number of divorces that occur outside the court and are the reason for the complexity of divorce cases in court. Ulama had

²⁴ Muslim Zainuddin, Mansari Mansari, and Nadhilah Filzah, "Divorce Problems and Community Social Capital in Realizing Family Resilience in Aceh," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 914–933, <https://doi.org/10.22373/sjhk.v6i2.15080>.

²⁵ Mufliha Wijayati and Aden Rosadi, "Women Before The Law: Between Justice and Certainty: Notes on Divorce Settlement Case Due to Domestic Violence in Metro Religious Court," *Akademika: Jurnal Pemikiran Islam* 25, no. 1 (June 17, 2020): 209–34, <https://doi.org/10.32332/akademika.v25i1.1974>.

²⁶ Alfathur Rizki, "Kasus Perceraian di Langsa Meningkatkan," AJNN.net, March 20, 2023, <https://www.ajnn.net/news/kasus-perceraian-di-langsa-meningkat/index.html>.

²⁷ Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, "The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts," *Al-Manabij: Jurnal Kajian Hukum Islam* 16, no. 2 (November 25, 2022): 173, <https://doi.org/10.24090/mnh.v16i2.6389>.

a significant influence on the religious affairs of Acehese society.²⁸ In community life, one very practical example is that whenever there is a divorce problem, the community will ask Imam Gampong for advice before making a decision on the divorce that has been resolved.²⁹

Sociologically, religious figures with significant influence on the legality of divorce, especially religious leaders and traditional Gampong leaders, have an essential role in maintaining Islamic law and resolving disputes in the household. However, it did not stop there; it turned out that religious leaders also gave directions that when jurisprudence has been legalized, it will be resolved in the Shar'iyah Court to obtain legal legality by state.³⁰ Sometimes, the parties do not immediately settle the divorce to the Shar'iyah Court, when obtaining the legitimacy of the divorce status from religious figures then this is considered sufficient to explain the status of divorce; for people who understand marriage law, the Gampong customary institution only acts as a medium for mediation alone, and the divorce is still carried out before the court.³¹

The problem of divorce does not only stop at the settlement stage. Other problems arise when faced with the provisions of *Talaq* in the book of jurisprudence. In practice, there are differences in understanding divorce provisions among Acehese people, especially concerning the law of pronouncing *talaq*. This difference is fundamentalist; the Gampong Customary institution, which consists of *imum gampong*, understands that triple (3) *talaq* pronounced by the husband at the same time results in the fall of *talaq ba'in kubro*; this is different from the Religious Court, which classifies the *talaq* into *talaq ba'in sughra*.³² Both views have implications for the legal beliefs of the Acehese people. One of the Judges of the Syar'iyah Court of Langsa City explained that when asked about the opinion of the validity or invalidity of *talaq* outside the court personally, indeed, in the study of jurisprudence from the past until now, it does say that, and if we look at it from the historical side also in *fiqh* says that when a husband drops *talaq* then the *talaq* falls even though it is done outside the court. It has been valid from the time of the companions until now, so I personally, who work in the *Shari'ah* Court, is heavy to say that divorce carried out outside the court session is legal I am heavy to say because it refers to Law No. 1974 concerning Marriage, which basically divorce is valid before the court.³³

²⁸ Damien Kingsbury, "The Free Aceh Movement: Islam and Democratisation," *Journal of Contemporary Asia* 37, no. 2 (May 2007): 166–189, <https://doi.org/10.1080/00472330701253759>.

²⁹ Abdul Manaf, MPU Kota Langsa, Desember, 2023.

³⁰ Salahuddin, Ketua MPU Kota Langsa, July 2020.

³¹ Irwan, Wawancara dengan Masyarakat, Desember, 2023.

³² Sulaiman, Wawancara Imam Gampong PB. Seuleumah, July, 2020.

³³ Roihan Mahbub, Hakim Mahkamah Syar'iyah, July, 2020.

Divorce outside of the courtroom is not uncommon, and the Shar'iyah Court is occasionally called upon to handle the issue. However, the court still mentioned the marital legislation. As an institution with the capacity to rule divorce cases, judges believe that divorce cases outside of marriage cannot be authorized because the procedure takes place outside of the courtroom. The marriage law also does not regulate *istbat talaq* like marriage *istbat*, if someone wants to get married then they must file a lawsuit from the Shar'iyah Court.³⁴

The Gampong customary institution often resolves problems in the household, but there is no clear document on how many cases we have resolved, because it is still traditional. The parties mainly report to the *Imum mukim* and, after that, are brought into Gampong deliberations to be resolved, while the place where the settlement of cases can be done in *Mushala, Masjid* or at the homes of the parties, so conditionally where possible.³⁵

If the divorce cannot be handled at the Gampong level, some people may file a petition directly with the court. They usually go to court if one party has a lot of property, and those who file for divorce are usually their offspring, not their parents. The Shar'iyah court occasionally required a letter of introduction from Gampong stating that a divorce lawsuit brought by one of the parties had been mediated.³⁶

Customs and the State: The Institution of Divorce in Aceh

The institution is a structure or system that regulates social interaction activities related to language, law, action or manners.³⁷ Similarly, Douglass C. North argues that institutions are man-made boundaries that regulate informal and formal rules, the purpose of forming institutions is to create order, justice and avoid uncertainty.³⁸ Institutions are very important in regulating humans to achieve order; institutions regulate what is allowed and not allowed by society in time and space.³⁹ Of course, institutions have a great influence on a country in achieving a well-structured order.

After the Helsinki MoU, Aceh Province experienced drastic changes in the legal, political and economic sectors.⁴⁰ The main focus of the Aceh government after the MoU is the positivization of Islamic law in the legal

³⁴ Royan Bawono, Hakim Mahkamah Syar'iyah, Desember, 2023.

³⁵ Abu Hasbi, Tuha Pheut, November 5, 2022.

³⁶ Faisal, Kepala Dusun, July 8, 2020.

³⁷ Geoffrey M. Hodgson, "What Are Institutions?," *Journal of Economic Issues* 40, no. 1 (March 2006): 2, <https://doi.org/10.1080/00213624.2006.11506879>.

³⁸ Douglass C North, "Institutions," *Journal of Economic Perspectives* 5, no. 1 (February 1, 1991): 97–112, <https://doi.org/10.1257/jep.5.1.97>.

³⁹ Saba Siddiki et al., "Institutional Analysis with the Institutional Grammar," *Policy Studies Journal* 50, no. 2 (May 2022): 315–39, <https://doi.org/10.1111/psj.12361>.

⁴⁰ Ramzi Murziqin, "Aceh Paska MoU Helsinki," *Al-Ijtima'i: International Journal of Government and Social Science* 1, no. 2 (April 30, 2016): 1–11, <https://doi.org/10.22373/jai.v1i2.475>.

system in Aceh.⁴¹ Also, some terms of state institutions also changed, such as the Religious Court to the Shar'iyah Court, and the naming of institutions in Malay Arabic. In addition, several new institutions emerged to support the establishment of Islamic law in Aceh, such as the Aceh Customary Council (MAA), the Islamic Sharia Office (DSI), the Regional Education Council (MPD), *Wilayatul Hisbah*, the Nanggroe Guardian Institute.⁴² Gampong Customary Institution. All of these institutions have a role in enforcing and supervising Islamic law in Aceh.

Gampong customary institutions have an important role in resolving disputes that occur in Gampong, so it is not surprising that customary law is active and alive after the MoU occurred because, in the historical trajectory, Aceh has customary solid law and is a reference in a legal settlement in Aceh.⁴³ The Aceh government revived this condition as a form of attention to Acehnese customs that have been inherent in the lives of the Acehnese people, so great is the position of customs in Aceh that it is described in the form of a poem "*Adat ngon hukom lagee z̄at ngon sifeut*" (customs and laws such as substances and properties that cannot be separated).⁴⁴ Custom for the people of Aceh influences arranging ethical values in behavior, customs and laws support each other and run harmoniously in organizing society.⁴⁵ Of course, this is different from what Snouck Hurgronje and Van Vollenhoven said in the theory of *receptie*, which states that Islamic law can be accepted after verification of customary law. In the end the ⁴⁶theory of *receptie is refuted by the theory* of *receptio a contrario*.⁴⁷

According to the explanation in the Aceh Customary Justice Guidebook, MAA, in some cases that are the authority of customary institutions is limited, among others;

⁴¹ Siti Ikramatoun and Khairul Amin, "Konstelasi Politik Aceh Pasca MoU Helsinki (2006-2015)," *Jurnal Sosiologi USK (Media Pemikiran & Aplikasi)* 12, no. 1 (June 17, 2018): 89–110.

⁴² Arskal Salim, "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh," *The Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (January 2010): 1–29, <https://doi.org/10.1080/07329113.2010.10756640>.

⁴³ Jamhir Jamhir, "Revitalisasi Hukum Adat Di Aceh," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 1, no. 1 (July 8, 2020): 68–90, <https://doi.org/10.22373/justisia.v1i1.2562>.

⁴⁴ Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 25, 2021): 529–51, <https://doi.org/10.22373/sjhk.v5i2.11082>.

⁴⁵ Zubir Zubir and Kamaruzzaman Bustamam Ahmad, "The Dialectics of Islam and Custom in the Kenduri La'ot Tradition of the Coastal Muslim Community of East Aceh," *Jurnal Ilmiah Peuradeun* 10, no. 3 (September 30, 2022): 899–922, <https://doi.org/10.26811/peuradeun.v10i3.778>.

⁴⁶ Rahmad Alamsyah, Imadah Thooyibah, and Tri Novianti, "The influence of *receptie* theory in Dutch colonial legal politics on Islamic law and customary law in Indonesian legal history." *PETITA*, January 28, 2022, <https://doi.org/10.33373/pta.v3i2.3875>.

⁴⁷ Khoiruddin Buzama, "Pemberlakuan Teori-Teori Hukum Islam di Indonesia," *Al-Adalah* 10, no. 2 (2012): 467–72, <https://doi.org/10.24042/adalah.v10i2.300>.

Table. 1. Customary Court Authority

No	Customary Court Authority	
1	Land restriction	6 Livestock problems
2	Violations in rice fields and agriculture	7 Traffic accidents
3	Disputes between families	8 Non-uniformity descends into the fields
4	Wasiat	9 Fights (beatings)
5	Fitnah	10 Marriage

Article 13 Qanun Number 9 of 2008 concerning the Development of Customs and Traditions states that disputes over customs and customs include many problems that arise in society on a small scale or problems between residents. This includes problems related to the household, problems involving violations of Islamic Sharia, disputes over property rights, theft, which can still be handled using Gampong customary institutions, disputes in the workplace, and so on. It is possible that every problem that arises in the community can be handled in accordance with tradition because this qanun does not expressly limit the problems that can be handled by customary means.

The Gampong Customary Institution chooses a role in resolving minor criminal and civil cases. Especially for civil cases in the form of domestic disputes and domestic violence (KDRT).⁴⁸ In divorce cases, based on interviews, it has been explained that the involvement of Gampong customary institutions in divorce is a form of initial mediation before litigation is taken. In practice, religious and traditional leaders gave opinions regarding the status of divorces that husbands had carried out. However, there were significant differences in understanding the law of pronouncement of talaq. Azwir's previous research also explained that there are three divorce models carried out by married couples that also influence the divorce process; *first*, traditional divorce; *second*, neo-modern divorce; *Third*, modern.⁴⁹

In terms of divorce, Gampong customary institutions and religious courts both have an impact on the people of Langsa City. Gampong customary institutions contribute to security and tranquillity. The Gampong Customary Institution is a religious and customary mediator in divorce, determining divorce status. Meanwhile, religious courts, legally authorized by the state, legalize divorce status. However, it is evident that the legality of religion, rather than court decisions, serves as the primary reference point for Acehnese people when determining the status of divorce. Because, as previously established, the notion

⁴⁸ Kamaruddin Kamaruddin, "Model Penyelesaian Konflik di Lembaga Adat," *Walisono: Jurnal Penelitian Sosial Keagamaan* 21, no. 1 (June 15, 2013): 39–70, <https://doi.org/10.21580/ws.21.1.236>.

⁴⁹ Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, "The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts," *Al-Manabij: Jurnal Kajian Hukum Islam*, November 25, 2022, 165–80, <https://doi.org/10.24090/mnh.v16i2.6389>.

of divorce differs in the pronouncement of talaq between the fiqh of the Shafi'i school (*mazhab*) utilized by the Gampong customary institution and the Shar'iyah Court. If the parties wish to legalize a new marriage, the Shar'iyah Court will be their first choice for divorce.

There are several reasons why Acehnese people generally prefer divorce in Gampong customary institutions rather than Sharia courts;

First, the settlement of divorce cases at the Customary institution of the Gampong level is felt to be easier, faster, solemn and low-cost. The role of religious figures and traditional leaders are very influential in reducing the occurrence of actions that harm one party, public figures owned by parties in Gampong customary institutions are able to resolve divorce problems not only legally, but there are socially dicks carried out by Gampong customary institutions when husbands are not responsible for the rights of wives after divorce. That is, the Gampong customary institution receives a moral burden to be responsible if the divorce decree is not implemented.

Second, settlement by means of deliberation and kinship. Every divorce that occurs is done first by means of mediation and deliberation to find a middle ground from the problems faced by the family. Justice, religion, custom and social are one of the important considerations in every decision at the Gampong customary institution, along with the stages of resolving divorce cases at the Gampong Customary Institution;

Figure. 1 Divorce Case Settlement Process of Gampong Customary Institution

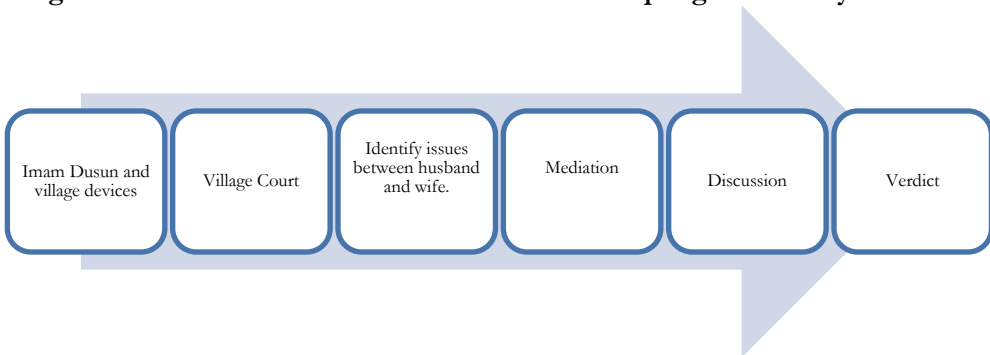


Figure 1. Explaining that the process of resolving divorce cases at the village level still prioritizes mediation before arriving at decisions agreed by the parties, each with their respective demands. In reality, most wives only seek the religious status of their divorce. This aims to clarify the legal stance wives and husbands should take.

Thirdly, clarity of religious law is of utmost importance to the Acehnese people, as they adhere to mazhab Syafi'i. Therefore, adherence to Islamic law becomes necessary due to its connection with faith and belief. There are differences in divorce law between the customary village authorities and the

Religious court. Theoretically, there are two distinct perspectives regarding the pronouncement of divorce. The differences arise from two legal principles and varying interpretations, yet they still aim to maintain marital stability within the community at that time. The legal basis for pronouncing divorce comes from the hadith narrated by Ahmad and Muslim. The hadith recorded by Ahmad in his *musnad* states:

Haddastanâ Sa'd Ibn Ibrâhîma, 'an Muhammad Ibn Isbâq, haddastanî Dâwudu Ibn al-Husaini, 'an 'Ikrimata maula Ibn 'Abbâs 'an Ibn 'Abbâs, qâla: Thallaqa Rukânab bin Yazîd akbû Banî al-Mutthalib imraatabu stalâstan fî majlisin wâhidin, fabazîna 'alaihâ buẓnan syadîdan, qâla: fasaalahu Rasûlullâhi Shallallâhu 'alaihi Wasallama: kaifa thallaqtubâ?. qâla: thallaqtubâ stalâstan. faqâla: fî majlisin wâhidin?. qâla: na'am, qâla: fainnamâ tilka wâhidatun faarji'ha in syikta. qâla: faraja'abâ fakâna Ibn 'Abbâs: yara annamâ at-thalâqu 'inda kulli thubrin. (HR. Ahmad)

The above hadith illustrates that during the time of the Prophet, pronouncing triple divorce was considered a single occurrence. In addition to Ahmad's hadith, there is also a hadith narrated by Muslim that recounts:

Haddastnâ Ishaqu Ibn Ibrâhîma wa Muhammad Ibn Râfi'in wallafidhu li Ibni Râfi' qâla Ishaqu akhbaranâ wa qâla Ibn Râfi'in haddastanâ 'Abdu al-Razẓâqi akhbaranâ Ma'marun 'an Ibn Thâwusin 'an Abîhi 'An Ibn 'Abbas qâla kâna al-thalâqu 'ala 'abdi Rasûlillâhi Shallallâhu 'Alaihi Wasallama wa Abî Bakrin wasanataini min khilâfati 'Umara thalâqu al-stalâsti wâhidatan faqâla 'Umaru Ibnu al-Khattabi inna an-nâsa qad ista'jalû fî amrin qad kânat labum fîbi anâatun falaw amd bainâhu 'alaihîm faamdihâhu 'alaihîm. (HR. Muslim)

The hadith narrated by Muslim depicts Umar bin Khattab's *ijtihad* (independent legal reasoning) when observing the ease with which the community pronounced divorce. Consequently, Umar established a legal ruling by considering the social context of that time. At least these two hadiths above have several different legal definitions regarding divorce;⁵⁰

1. Regarding these two hadiths, Muhammad bin Ishak states that combining triple divorce into one pronouncement constitutes a single divorce, as narrated by Daud bin Hushain from Ikrimah, who heard it from Ibn Abbas.⁵¹
2. According to Ibn 'Arabi, the hadith narrated by Ma'mar from Ibn Thawus is subject to debate regarding its authenticity. This contradicts the hadith narrated by Nasa'i, which explains that the Prophet was very angry when a husband pronounced triple divorce to his wife simultaneously.⁵²

⁵⁰ Ibn Hajar Al-Asqalani, *Fathu Al-Bari Bisyarhi Shahih al-Bukhari, Vol. 2* (Jordan: Baitu al-Afkir al-Dauliyah, 2000). 5251

⁵¹ Al-Asqalani.

⁵² Al-Asqalani.

3. Naskh (Abrogation) of Hadith: According to Baihaqi from the Shafi'i school, Ibn Abbas knew something related to a hadith that had been abrogated. Baihaqi also adds that the hadith narrated by Abu Daud through the chain of transmission from Ikrimah to Ibn Abbas is stronger. Another opinion suggests that the hadith narrated by Abu Daud, which states that "a man who pronounces triple divorce has the right to reconcile," has been abrogated by the Quranic verse in Surah Al-Baqarah (2:229). Al-Mazari argues that what Umar established does not imply that Umar invalidated the hadith, stating that triple divorce counts as one. If Umar had enforced his opinion that triple divorce results in three separate instances, surely the companions would have opposed and refuted it then. In this context, Umar sought to extract the meaning of the hadith by considering the context of divorce during the time of the Prophet.⁵³
4. Considering the historical context during Umar's time, many people at that period played with divorce, making it easy to pronounce to their wives.⁵⁴
5. Linguistically, the meaning of the phrase "وَاحِدَةً" (wahidatan) refers to triple divorce, where during the time of the Prophet, companions would issue a single divorce to their wives. However, during Umar's era, many husbands played with divorce and tended to pronounce it three times in one statement. This implies that the legal concept of triple divorce was established as three separate instances by Umar, whereas previously it had been treated as a single occurrence because no one had pronounced triple divorce was established as three separate instances by Umar, whereas previously it had been treated as a single occurrence because no one had pronounced triple divorce simultaneously during the time of the Prophet.⁵⁵
6. According to Qurtubi, it is clear that scholars (ulama) unanimously agree that when a husband pronounces a triple divorce, the former husband cannot reconcile unless after the divorce of the former wife from her new husband (muhallil).⁵⁶

Based on the differing interpretations of this legal principle, the customary village authorities argue that if a triple divorce occurs simultaneously, it is valid and falls under the category of "talak ba'in kubra". Conversely, the Religious Court classifies it as "talak ba'ih sughra", which implies the possibility of reconciliation.

The customary practice of divorce should indeed be a significant concern for the government, accommodating this practice because it has long existed and is present within Acehnese society. Friedman suggests that social forces continually work to dismantle the law here, renew it there; refresh it in

⁵³ Al-Asqalani.

⁵⁴ Al-Asqalani.

⁵⁵ Al-Asqalani.

⁵⁶ Al-Asqalani.

one place, extinguish it in another; choose which parts of the “law” will apply, which parts will not; what substitutes, detours, and shortcuts will emerge; and what changes will occur openly or discreetly. To find a better term, we can refer to some of these forces as legal culture. It is an element of social attitudes and values. The expression “social forces” itself is an abstraction; in any case, these forces do not directly operate on the legal system.⁵⁷

What Friedman says has a correlation with what Eugen Ehrlich said about law living in society. The state should give a greater portion to the laws the community practises. Furthermore, Ehrlich emphasized that the social institutions of society have preceded the institutions and laws of the state so that the state cannot easily override the laws that live in society.⁵⁸

In light of this theory, within the context of Aceh, a region with specific legal enforcement, it is only fitting for the government to reconsider involving customary justice in the divorce process within Acehnese society. This approach could also alleviate the workload of judges handling divorce cases. Furthermore, in Aceh, the Religious Court has the authority to examine and decide cases related to violations of *Qanun Jinayat*. It takes easy administration, fast tanopa have to wait for the time of queuing cases, so customary courts are one solution in resolving divorce cases in Aceh. However, there is one weakness experienced by Gampong customary institutions, namely the traditional administrative system without good archiving; in this context, it can be improved according to future administrative needs.

Conclusion

In practice, divorce is not solely governed by state regulations; the living law within a society plays a crucial role in resolving divorce cases. Moreover, in Langsa, which is part of Aceh province, customary law and the Gampong customary institution are legally empowered to settle marital disputes. Gampong customary leaders, in practice, serve to legitimize divorce status, but the subsequent proceedings are still resolved in the Sharia Court. Notably, many divorces are settled within the Gampong, sometimes leading some members of the community to perceive that religious law suffices as a form of divorce legality. Legal institutional negotiations occur because both legally hold authority in resolving marital disputes, resulting in an accommodating negotiation that accommodates both institutions. This aims to maintain harmony between customary law and state law. According to Menski, this condition benefits both parties, as the law operates when the living law within society is recognized as state law. In a pluralistic state context, incorporating Islamic law into state law

⁵⁷ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975).15

⁵⁸ Werner Menski, *Comparative Law in a Global Context the Legal Systems of Asia and Africa* (London: Cambridge University Press, 2006). 92-93

regarding divorce cases can provide legality for divorces conducted within the Gampong customary institution. Furthermore, this can help the Syariah court minimize the influx of divorce cases into the judiciary. In other words, the state needs to establish an effective administrative system to accommodate divorces that occur within the Gampong customary institution, considering the urgency of customary institutions that are inseparable within the community.

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