



The implementation of triple thalaq outside the court in the jurisdiction of the Bireuen shari'ah court

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Abstract

The difference in the implementation of the determination of the amount of thalaq decided by the religious court or in Aceh called the shari'ah court is different from the opinion of the majority of scholars who are often used as a reference for the community in carrying out thalaq outside the court, especially on the count of thalaq after the triple thalaq pledge spoken by the husband, so this raises the issue of confusion in society, especially husbands and wives who before outside the court had divorced with thalaq three but in court the judge handed down thalaq one. This study is intended to provide an overview of the implementation of thalaq outside the court in the jurisdiction of the Bireuen sharia court and the legal implications if the judge in court handed down thalaq one while outside the court the husband handed down thalaq three. This research is an empirical juridical law research with a case approach. The data collection technique is by collecting primary data related to the problems studied. Meanwhile, data analysis was carried out in a qualitative descriptive way. The theory of existence, the theory of maqashid sharia and the theory of legal certainty are used as analytical tools to answer the problems studied. The results of the study indicate that the drop in the amount of thalaq in the Bireuen sharia court refers to Article 115 of the Compilation of Islamic Law (KHI) which in Article 115 of the Compilation of Islamic Law (KHI) which reads "Divorce can only be carried out before a religious court trial after the religious court tried and failed to reconcile the two parties. In other words, a divorce that is not carried out before the court is considered invalid, so that the third thalaq pledged by the husband outside the court is considered invalid, and the judge drops the first thalaq (raj'i) because the thalaq pledge has only occurred before the court. While the opinion of the majority of scholars on triple thalaq refers to the QS. Al-Baqarah verse 230 which reads: "Then if he divorces her (after the second divorce), then the woman is no longer lawful for him before she marries another husband, then if the other husband divorces her, then it is not a sin for both of them." first husband and former wife) to remarry if both think they will be able to carry out Allah's laws, those are Allah's provisions which he explains to people of knowledge." So it can be concluded that there are differences in the imposition of triple talaq based on the Compilation of Islamic Law (KHI) and the number of scholars.

Keywords: Thalaq; refer; wedding

Introduction

Problems in the household are an endless problem to discuss ranging from small issues to big problems that can occur in the household, of course it is not an easy matter to unite two people with different thoughts, different backgrounds, then marry with the aim of creating a harmonious family, namely a sakinah, mawaddah and warahmah family. In creating a harmonious family, sometimes a household has to face problems with various factors, both internal and external, so it is not uncommon for a husband or wife to be unable to deal with household problems and choose divorce as a way out to avoid division. which is getting bigger and the husband drops talaq to his wife.

According to the Shafi'i school of thought, thalaq is the release of the marriage contract by using thalaq pronouncement or pronouncement which has the same meaning as thalaq pronouncement (Wahbah az-zuhaili, 2010: 343). Many scholars of the Hanafi and Hanbali schools provide a definition of thalaq, namely the release of a marriage bond either directly or indirectly and for the future with a special pronouncement (Syekh Zainuddin Ibn Sheikh Abdul Aziz, 2000: 135).

Article 115 of the Compilation of Islamic Law (KHI) which reads "Divorce is a process of pronouncing the thalaq pledge which must be carried out in front of the court and witnessed by the judges of the religious court". Furthermore, Article 38 of Law Number 1 of 1974 concerning Marriage states that divorce is a "breakup of marriage" which means that divorce is the breaking of the inner and outer bond between husband and wife, resulting in the end of the family relationship (household) between the husband and wife. Law Number 1 of 1974 in Article 39 also contains an imperative provision that divorce can only be carried out before the court after the court tries to mediate or reconcile the two parties. So it can be concluded that a divorce that is not carried out before the court does not get legal recognition from the state.

However, it is not uncommon for husbands to drop triple talaq on their wives as a last resort to end the problem without being brought before the court, even though the state has established a religious court which in Aceh is called the Sharia Court as a place or alternative that can be used by people who want to divorce to get a solution to the problem. Problems in the household because the sharia court is not only a place to seek justice but is also able to first reconcile the two parties who want to divorce. However, in the jurisdiction of the Bireuen sharia court, there are still many divorce cases whose implementation is only limited to the husband saying the talaq pledge to his wife without being carried out before the court this is due to the lack of education in the community regarding the proceedings in court. There is still speculation in society, the court is a terrible place and shame if you have to go to court.

The court is an institution established by the government to resolve conflicts and disputes with the aim of creating justice (Qabrati, 2020: 70) therefore the sharia court does not directly impose triple talaq on divorced married couples before the court but imposes talaq one (raj'i) even though out of court the husband had first handed down three talaqs to his wife. This difference in terms of imposition then gave rise to various speculations in society, especially husband and wife who were divorced, where the difference in the imposition of talaq gave rise to two legal differences, which if the husband had dropped the triple talaq, he could not reconcile with his wife unless the wife remarried to a man, another, and then divorced by another man who in Acehnese terms is called (blind china), as explained in QS. Al-Baqarah verse 230 which means: *"then if he divorces her (after the second talaq), then the woman it is not lawful for her again before she marries another husband, then if the other husband divorces her, then it is not a sin for both (first husband and ex-wife) to remarry if both think they will be able to carry out Allah's laws. These are the statutes of Allah which He makes clear to those who have knowledge"*.

As for the current problem in society, there are no men who want to be "blind Chinese", so if the ex-husband and ex-wife want to reconcile, they cannot reconcile because the husband has dropped three talaqs, but with a court decision that decides the husband the wife fell talaq one, then it raises the possibility to reconcile this is a very important and interesting problem to study, namely how the system of implementing talaq in the jurisdiction of the Bireuen sharia court and what are the legal implications if the judge in court drops talaq one while outside the court the husband drops talaq three.

Several previous studies that discussed talaq outside the court such as: Yalis Sokhib (2018) ^[25], Hasyim Fahmi (2017), Aiya Ernita (2014), Yalis Sokhib stated that talaq which is implemented outside the court will get legal sanctions as a reinforcement of the law and sanctions for legal norms namely the absence of legal recognition of divorce outside the court. Hasyim Fahmi stated that in order to obtain the validity of talaqs whose implementation outside the court, the husband must submit an application to the religious court, while in Aiya Ernita's research he said that the legitimacy of talaq outside the court is invalid so that if the wife remarries and has another child with her new husband then the validity of the child cannot be given. This journal was written to enrich and expand previous research, especially related to the implementation of talaq outside the court in the jurisdiction of the Bireuen sharia court and the legal implications if a judge in court handed down talaq one while previously out of court the husband handed down talaq three.

Materials and Methods

The method used in this research is empirical juridical, namely legal research regarding the application of normative legal provisions (codification, laws or contracts) in action in legal events that occur in society (Abdulkadir, 2004: 134). Using a case approach to see cases or problems that occur related to the implementation of talaq outside the court. The technique used is a field study (by collecting primary data by conducting direct interviews with the Chief Justice of the Bireuen Sharia Court, Registrars, Religious Leaders, and divorced couples, then collecting secondary data by collecting books related to research, journals, legislation, and court decisions (Zainuddin, 2010: 10) ^[22]. The collected data is then analyzed by means of qualitative descriptive analysis.

Results and Discussion

Implementation of the Talaq

The implementation of talaq outside the court is contrary to the compilation rules of Islamic law (KHI) and Law No. 1 of 1974 Article 39 paragraph (1) which states: "divorce can only be carried out in front of a court hearing after the court concerned has tried and failed to reconcile the two parties. The implementation of talaq outside the court does not provide any legal certainty to a divorced husband and wife.

In Article 18 PP No.9 of 1974 and Article 123 of the KHI, namely: "Divorce occurs as of the time the divorce is declared before a court session". So that when talaq is pledged in court, from then on the wife's iddah is calculated, so that the wife is entitled to receive (iddah, mathliyah, and muth'ah income) that her ex-husband gives to his ex-wife. However, the implementation of talaq carried out outside the court does not provide a binding obligation for the ex-husband to fulfill his obligations to the ex-wife.

Regarding triple talaq spoken by a husband to his wife outside the court, the law is valid even though there is no witness who sees it as it is in court, the majority of scholars give the opinion that talaq can occur in the presence or absence of witness, which talaq can be considered valid by law without any witnesses. who sees if the husband has said the word talaq which is sharih (obvious) but the intention is just joking or playing games is not accompanied by the intention of menthalaq then the talaq is considered to fall as described in the hadith

of the Prophet narrated by Ahmad, Abu Dawud, Ibn Majah and Turmudzi from Abu Hurairah, he said: "*Three things if done seriously will have legal consequences, and if done playfully, they will have consequences as they are done in earnest, namely marriage, thalaq, and reconciliation.*"

However, according to the majority of Shia Imamiyah scholars that witnessing is a valid condition for thalaq, this is to avoid temporary hatred and anger from the husband when he pronounces the thalaq pledge (Hamid Sarong, 2004: 155). 'ah is almost the same as that applied in the KHI (Compilation of Islamic Law) and Law No. 1 of 1974 which stipulates that a divorce is only considered valid if it is carried out before a court, which means that if the husband makes a talaq pledge in court then it can already be done. It is certain that the husband is mentally aware of his wife with full awareness and without a moment of anger. The implementation of thalaq before the court has several procedures, namely as follows: (Abdurrahman, 1992: 3-5).

The husband submits an application to the court according to his place of residence.

1. The panel of judges shall examine the application for thalaq divorce no later than 30 (thirty) days after the file or application for thalaq divorce is registered with the clerk.
2. After the case is registered, then the date of the divorce trial is determined and a summons is issued for the applicant or plaintiff and the respondent or the defendant or the defendant as well as the respondent and co-defendant.
3. The court mediates at the first trial of the examination of the divorce application.
4. If after mediation it is not successful, the trial will continue.
5. Replic of the applicant or plaintiff.
6. Duplicate the respondent or the defendant.
7. Evidence (applicant/plaintiff and respondent/defendant)
8. Conclusion (applicant/plaintiff and respondent/defendant)
9. Assembly meeting.
10. Reading the determination decision.
11. The reading of the talaq pledge.

The implementation of thalaq in court has stages that must be done, but the implementation of thalaq in court can provide legal certainty. Based on interviews conducted by researchers with divorced couples, there is still the implementation of triple thalaq by husbands against wives outside the court on the grounds that the procedures in court are complicated and they feel ashamed if they have to go to court, so they decide that thalaq divorce is only limited to religiously divorced status but not stately.

The study of the implementation of thalaq outside the court as a divorce practice in society is a study that has been widely studied by other researchers, at least two tendencies are found in this discussion. First, a study that examines legal sanctions against divorce outside the religious court (Yalis shokhib, 2018) ^[25], second, the concept of divorce according to Ibn Qayyim Al-Jauziyah (Jamhuri, Zuhra, 2018) ^[12]. The study of the third thalaq spoken by the husband outside the court and in the court the judge handed down the first thalaq is a study that has been overlooked by the researchers. At this point the researchers in this journal finally become an important thing to study.

A number of literatures that the researcher has previously mentioned as a basis so that the research can complete the empty space that has not been studied previously in line with that, the researcher asks the following questions. First, how is the implementation of thalaq outside the court in the jurisdiction of the Bireuen sharia court. Second, what are the legal implications if in court the husband drops thalaq one while outside the court the husband has dropped thalaq three. The two questions posed above illustrate a very comprehensive understanding of the implementation of triple thalaq outside the court.

This study has the assumption that first, the Compilation of Islamic Law (KHI) which is used as a reference in dropping the amount of thalaq in sharia courts is so complex that it also regulates the rights and obligations of the husband that binds his ex-wife and children after the divorce. The existence of a compilation of Islamic Law (KHI) is not entirely based on the rules set out in the Qur'an but is based on a joint decision by the chairman of the Supreme Court and the Minister of Religion so that there are still differences in terms of the imposition of triple thalaq.

Legal Implications for Implementation Thalaq

According to Jumhur scholars, the legal implications related to the implementation of triple thalaqs handed down by the husband outside the court are considered valid, but the husband has used all his thalaq rights and does not get the right to reconcile with his ex-wife except with some provisions that have been stipulated in the Qur'an, and if the judge in sharia courts, they decided on one thalaq, while previously outside the court the husband had dropped three thalass, so if the husband and wife reconcile without carrying out the provisions stipulated in the Qur'an, the impact on the marriage is categorized as religious adultery.

The implications of implementing thalaq outside the court are as follows:

1. The absence of clear legal certainty in the state, both husband and wife, if remarried, the subsequent marriage cannot be recorded at the Office of Religious Affairs (KUA) because they do not have a divorce certificate from the previous marriage.
2. There is a possibility that the husband will not carry out his obligations to his ex-wife, the distribution of joint property, and the responsibility of raising and educating children until they are adults.

3. Uncertainty about the future of the child, the child is the party that has the most impact on the divorce of his parents, often divorces carried out outside the court have an impact on the non-fulfillment of children's rights, the right to a good place to live and a good environment, to get an education, get proper clothing and food.
4. The impact on joint property, the distribution of joint property does not have clarity because it does not have the legality of joint property.
5. Inheritance, a divorce that is not carried out before the court if the ex-husband or wife dies, the other party can apply for the inheritance because they are still legally bound by a husband and wife relationship (interview with Mr. Alwin, S.Ag., MH (Chairman of the Sharia Court of Bireuen).

Regarding when the court will give the third thalaq, after going through three trials in court, namely the first divorce the judge handed down the first thalaq, namely thalaq raj'i, the second divorce of bain sughra, and the third bain Qubra then the third thalaq namely thalaq bain Qubra which does not allow husband and wife refer back. Therefore, both in the Compilation of Islamic Law (KHI) and according to the opinion of the majority of scholars, it is ordered that husbands be able to keep their words so that it is not easy to say thalaq.

Based on the above, the significance of this research is, there is a difference between the opinions of the majority of scholars and the Compilation of Islamic Law (KHI) but this is a natural thing, therefore as Muslims and good citizens, we should follow the rules that have been set. regulated by the state by carrying out thalaq before the court, but without neglecting religious values, namely if the husband has said thalaq three out of court, then the husband and wife do not reconcile even though the court imposes thalaq one.

The next solution that needs to be done is to provide more education by socializing to the public that recording a divorce is the same as recording a marriage in order to get recognition in the eyes of the law. And for further researchers to be able to increase research on thalaq in order to provide additional knowledge for everyone.

Conclusions

The implementation of thalaq outside the court in the jurisdiction of the Bireuen sharia court is still widely found in the community, there are several factors that cause it, including the lack of education received by the community about the importance of recording divorce.

The legal implication is that if the judge in court handed down thalaq one while previously out of court the husband first handed down thalaq three, then stately the husband and wife can still be reconciled, but religiously they cannot reconcile because the husband has used all of his thalaq rights.

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