



## The Problems of Contested Divorce in Marriages Over 30 Years Old at the Pangkalan Balai Religious Court

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### Abstract

This research was motivated by the problem of contested divorce in marriages over 30 years old, which means that the husband and wife ended their marital relationship after many years of marriage. At that age, they would likely already have children or even grandchildren. This indicates that the couple's household is not in line with the goal of marriage, which is to build a happy and eternal family. This research aims to identify the problems and considerations of judges in deciding cases of contested divorce when the marriage is over 30 years old. The type of research used is field research, using data collection techniques through interviews, documentation, and literature. Interviews were conducted using an interview guide in the form of a list of questions to be asked of the judges. The data analysis technique uses qualitative descriptive methods. Based on the results of research conducted at the Pangkalan Balai Religious Court through interviews with judges show that the factors causing contested divorce in marriages over 30 years old are the husband's irresponsibility as head of the family, the husband having an affair/having another dream woman, committing domestic violence, continuous disputes, and leaving the wife. Meanwhile, in deciding cases of contested divorce when the marriage is over 30 years old, the judge considers it based on procedures that meet the requirements and the firm wishes of the parties and considers the benefit.

**Keywords:** Divorce, Religious Courts, Marriage Age

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## Introduction

Marriage is part of the Sunnah of the Prophet Muhammad, which contains elements of worship, intending to realize a *sakinah*, *mawaddah*, and *rahmah* family.<sup>1</sup> According to Sayuti Thalib, marriage is a sacred, strong and firm agreement to legally live together between a man and a woman to form an eternal, polite, loving, peaceful, and happy family.<sup>2</sup> However, not every household runs smoothly because many face obstacles that can lead to divorce, either through the initiative of the husband (*cerai talak*) or the wife (*cerai gugat*).

According to Article 1 of Law Number 1 of 1974, marriage is a physical and spiritual bond between a man and a woman as husband and wife, and it is used to form a happy and eternal family (household) based on the One Godhead.<sup>3</sup> The Marriage Law also regulates the minimum age for marriage for men and women in Article 7 of Law Number 1 of 1974, which was later updated in Law Number 16 of 2019, where the law allows marriage if both have reached the age of 19. The provision on the minimum age for marriage is aimed at anticipating that the household does not end in divorce.

According to Abdullah bin Abdurrahman, the purpose of marriage is to safeguard the genitals of the husband and wife and limit their gaze from each other; increase the population through offspring; maintain lineage; foster feelings of love and affection between husband and wife; and share household and family matters so they can be managed due to the union of husband and wife.<sup>4</sup> In addition, the Quran also explains the purpose of marriage in Surah Ar-Rum verse 21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ (٢١)

Moreover, among His signs is that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts. Verily, there are signs for those who reflect.<sup>5</sup>

Based on Surah Ar-Rum verse 21, it can be understood that Islam prescribes marriage intending to form a *sakinah*, *mawaddah* *warahmah* family. In addition, a peaceful household of love and affection can be created if the husband and wife can carry it out by following the teachings prescribed in Islam. As for Imam Al-Ghazali, the virtue of marriage is to obtain children (carry out the Sunnah of the Prophet), foster a household, and carry out obligations.<sup>6</sup> Every household cannot be separated from disputes, but some can handle them well, and some cannot resolve them, so that it triggers the breakdown of the household. Therefore, if maintaining the marriage will only bring more harm (badness) than bring goodness, then the only solution is through divorce. This is explained in the hadith of the Prophet, namely:

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<sup>1</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia*, Edisi Revi (Depok: Rajawali Pers, 2017), 53.

<sup>2</sup> Kumedu Ja'far, *Hukum Perkawinan Islam Di Indonesia* (Bandar Lampung: Arjasa Pratama, 2021).

<sup>3</sup> Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Pasal 1.

<sup>4</sup> Moh Ali Wafa, *Hukum Perkawinan Di Indonesia* (Tangerang Selatan: Yayasan Asy-Syariah Modern Indonesia, 2018), 51.

<sup>5</sup> Kementerian Agama Republik Indonesia, *Mushaf Al-Quran Tajwid Dan Terjemah* (Banjarsari: Abyan, 2014), 406.

<sup>6</sup> Haeraton and others, "The Practice of Muhallil Marriage for a Wife Who Been Divorced Three Times According to The Perspective Masyarakat Bestari", *Jurnal Pengabdian Masyarakat Bestari*, 2(9) (2023), 846.

عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : أَبْغَضُ الْحَلَائِلَ إِلَى اللَّهِ  
الطَّلَاقُ (رَوَاهُ أَبُو دَاوُدَ وَابْنُ مَاجَهَ وَصَحَّحَهُ الْحَاكِمُ، وَرَجَّحَ أَبُو حَاتِمٍ إِسْرَافَهُ)

*From Ibn Umar, the Messenger of Allah said: "The lawful thing that Allah hates the most is divorce" (Narrated by Abu Dawud and Ibn Majah, Hadith Sahih according to hakim, Abu Hatim considered it Mursal hadith).<sup>7</sup>*

This hadith explains that divorce is a lawful thing but is hated by Allah. However, if maintaining the household will only bring badness, while a divorce will lead to a better situation, then in Islamic law, the divorce is allowed.

Divorce is not a simple matter. Therefore, resolving this must involve government/state policy. Divorce also has several provisions, one of which must be done before a court session. This follows the explanation of Law Number 7 of 1989 concerning Religious Courts. The law explains that divorce in front of a court session aims to protect women, and juridically, the law aims to obtain legal certainty.<sup>8</sup>

Divorce is the breaking of family ties caused by one or both partners deciding to leave each other. The causes of the breakup of a marriage are explained in Article 38 of Law Number 1 of 1974 concerning Marriage. Several things can cause the termination of a marriage: 1) death, 2) divorce, 3) court decision.<sup>9</sup>

There are two types of divorce, namely talak divorce and contested divorce. Talak divorce is a lawsuit filed by the husband in the Religious Court. At the same time, a contested divorce is a lawsuit filed by the wife in the Religious Court. The Religious Court is a Religious Court at the first level.<sup>10</sup>

Home problems do not only occur in young couples because even couples who have been married for a long time are not free from disputes or problems. As happened in the Pangkalan Balai Class II Religious Court, there were several cases of contested divorce at the marriage age of over 30 years. The Pangkalan Balai Class II Religious Court has decided many divorce cases. Here is some divorce data from the last 3 years at the Pangkalan Balai Class II Religious Court.

Divorce Cases	2020	2021	2022	2023	Total
<b>Divorce</b>	778	995	925	1.039	3.737
<b>Talak Divorce</b>	158	185	201	207	751
<b>Contested Divorce</b>	620	810	751	832	3.013
<b>Contested Divorce at Marriage Age Over 20-30 Years</b>	44	84	99	32	259

**Table 1. Data on Divorce Cases in 2020-2023 at Pangkalan Balai Class II Religious Court**

<sup>7</sup> Ibnu Hajar Atsqalani, *Bulughul Maram* (Singapura-Indonesia: Al-Haromain), 231.

<sup>8</sup> M Anshary, *Hukum Perkawinan Di Indonesia*, Yogyakarta (Pustaka Pelajar, 2015), 75-79.

<sup>9</sup> Muhammad Apriansyah Topan, Arne Huzaimah, and Armasito, 'Putusan Cerai Gugat Bagi Pegawai Negeri Sipil Tanpa Izin Atasan Di Pengadilan Agama Kota Palembang Perspektif Masalah', *Usrob: Jurnal Hukum Keluarga Islam*, 6(2) (2022), 141.

<sup>10</sup> Erfaniah Zuhriah, *Peradilan Agama Indonesia* (Jatim: Setara Press, 2016), 4.

*Source: Data from Pangkalan Balai Class II Religious Court.*

From some data on divorce cases at the Pangkalan Balai Class II Religious Court, the author found several divorce cases that occurred based on the age of the marriage in 2020-2023. Divorce cases at marriage ages 20-30 years at the Pangkalan Balai Class II Religious Court totaled 259 cases. Thus, the researcher discusses the case of contested divorce at the marriage age of over 30 years.

Based on this, it can be understood that at the Pangkalan Balai Class II Religious Court, several cases indicate the existence of divorce at the age of over 30 years of marriage. Thus, the occurrence of divorce at the marriage age of over 30 years is regrettable because they must have children and grandchildren. However, every divorce case must have reasons behind it because various reasons are included in every divorce filed based on the problems they experience. Therefore, if the wife feels suffering in the marriage, if she continues to maintain the marriage, then the only way out of that suffering is divorce.

Research conducted by Zainal Adi Putra entitled "Factors Causing Divorce in Couples with Marriage Age Over 10 Years (Case Study in Renah Semanek Village, Karang Tinggi District, Central Bengkulu)". The study discusses the factors causing divorce in married couples over 10 years of age. The leading cause of divorce is due to internal factors.<sup>11</sup> Meanwhile, the research the author examines discusses the case of contested divorce at a marriage age of over 30 years.

Research conducted by Muhammad Farid Firdaus entitled "The Phenomenology of Divorce of Elderly Couples in Dumai City from the Perspective of Islamic Family Law." The study discusses the phenomenon of divorce that occurs in elderly couples, where emotional experience and action should increase at that age.<sup>12</sup> The research that the author examines discusses the problem of contested divorce at the marriage age above 30 years. Among them are those who are included and some who are not yet included as elderly couples.

Research conducted by Umi Zikriah entitled "Divorce in Second Marriage among the Elderly (Case Study of Pamutih Village, Ulujami District, Pemalang Regency)." The study discusses the phenomenon of divorce in couples who remarry after their first marriage ends. This occurs in old age.<sup>13</sup> Meanwhile, the research that the author examines discusses the problem of contested divorce at the marriage age above 30 years and is the first divorce during the marriage.

The three previous literature review studies show that the problems studied have different problem backgrounds from the research the author examines. This is because the focus of the current study is to discuss the case of contested divorce in married couples over 30 years of age, with the object of research being the Pangkalan Balai Class II Religious Court.

The purpose of this research is to find out the problems of contested divorce at the marriage age over 30 years at the Pangkalan Balai Class II Religious Court and to find out how the judges of the Pangkalan Balai Class II Religious Court consider in deciding cases of contested divorce at the marriage age over 30 years.

This research uses the type of field research with a normative juridical approach. The data analysis technique uses the qualitative descriptive method, which presents and describes

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<sup>11</sup> Zainal Adi Putra, 'Faktor Penyebab Perceraian Pada Pasangan Usia Pernikahan Di Atas 10 Tahun (Studi Kasus Di Desa Renah Semanek, Kecamatan Karang Tinggi, Bengkulu Tengah)' (Institut Agama Islam Negeri Bengkulu, 2021).

<sup>12</sup> Muhammad Farid Firdaus, 'Fenomenologi Perceraian Pasangan Lanjut Usia Di Kota Dumai Perspektif Hukum Keluarga Islam' (UIN Sultan Syarif Kasim Riau, 2024).

<sup>13</sup> Umi Zikriah, 'Perceraian Pada Pernikahan Kedua Di Kalangan Lanjut Usia' (UIN K.H Abdurrahman Wahid Pekalongan, 2024).

events based on facts in the field. This research was conducted at the Pangkalan Balai Class II Religious Court.

## Result and Discussion

### The Problems of Contested Divorce at Marriage Age Over 30 Years at the Pangkalan Balai Class II Religious Court

Divorce means breaking a relationship in a marriage or ending a household life between husband and wife. This occurs due to problems in the household, such as disputes that both cannot resolve. Continuous disputes make it challenging to create harmony in the household, so if it is maintained, it is feared that it will have a negative impact. Therefore, Islam allows divorce. It can be understood that in marital life, one will not be free from what is called a problem, even though married life has been attempted to the fullest.<sup>14</sup>

Based on the author's research at the Pangkalan Balai Class II Religious Court, the author obtained information showing that contested divorce cases are higher than talak divorce cases. Based on an interview with Uut Murmainah as a judge, the cause of the high number of contested divorce cases compared to talak divorce is usually because the one who most often leaves is the husband, due to a reason that makes him unable to maintain the household.<sup>15</sup> An interview with Lia Rachmatilah explained that the causes are economic factors and third parties. Economics/finance is identical to living because living is a husband's obligation to his wife. Many contested divorce cases are due to the husband's inability to fulfil a living optimally.<sup>16</sup> As for the interview with Fikri Hanif regarding the causes of the high number of contested divorces at the Pangkalan Balai Class II Religious Court, the cause is primarily economic problems. A lack of economy can cause unfulfilled livelihood because livelihood is the husband's obligation. If the husband fails in economic matters, it will make the wife uncomfortable living with her husband, thus encouraging her to divorce.<sup>17</sup> Several results of interviews with the judges of the Pangkalan Balai Class II Religious Court show that the reason for the high number of contested divorce cases compared to talak divorce is due to the large number of wives who feel tortured. The wife filed for divorce because she could not continue to maintain her household. This is caused by the husband, who does not do his job well and misbehaves towards his wife, thus making him negligent and irresponsible as the head of the family.

Among the several divorce cases described above, the author obtained several divorce cases with a marriage age of over 20-30 years at the Pangkalan Balai Class II Religious Court, which occurred in the last 3 years.

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Year	Divorce at Marriage Age Over 20-30 Years
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<sup>14</sup> Khoiril Abror, *Hukum Perkawinan Dan Perceraian* (Yogyakarta: Ladang Kata, 2020).

<sup>15</sup> Hasil Wawancara dengan Uut Mutmainah sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

<sup>16</sup> Hasil Wawancara dengan Lia Rachmatilah sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

<sup>17</sup> Hasil Wawancara dengan Fikri Hanif sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

	Talak Divorce	Contested Divorce
2021	18	84
2022	25	99
2023	3	32
<b>Total</b>	<b>46</b>	<b>216</b>

**Table 2. Number of Divorce Cases at Pangkalan Balai Class II Religious Court Based on Marriage Age**

*Source: Data from Pangkalan Balai Class II Religious Court.*

Based on the total divorce data, it can be seen that contested divorce cases with a marriage age in the range of 20-30 years are higher than talak divorce cases. Contested divorce cases in the last 3 years amounted to 216 cases at the Pangkalan Balai Class II Religious Court. Of the 216 cases, several included divorce cases at the marriage age of over 30. The author then further investigated divorce at the marriage age of over 30 years, and 10 cases were found at the Pangkalan Balai Class II Religious Court. The following are some details regarding the 10 divorce cases with a marriage age of over 30 years.

Case Number	Name of Plaintiff and Defendant	Age of Marriage
50/Pdt.G/2023/PA.Pkb	Painah dan Mudiarjo / Tukimin	43 Year
98/Pdt.G/2023/PA.Pkb	Nasirah and Sudiono	36 Year
174/Pdt.G/2023/PA.Pkb	Umami Salamah and Asmara	41 Year
210/Pdt.G/2023/PA.Pkb	Eni Kusmawati and Ahmad Mustopa	34 Year
211/Pdt.G/2023/PA.Pkb	Julaiha and Suswadi	33 Year
279/Pdt.G/2023/PA.Pkb	Gapsa and Maniso	35 Year
320/Pdt.G/2023/PA.Pkb	Mistri and Kamirudin	31 Year
489/Pdt.G/2023/PA.Pkb	Parida and Isjuhardi	32 Year
507/Pdt.G/2023/PA.Pkb	Mahwiti and Sujarno	31 Year
816/Pdt.G/2023/PA.Pkb	Suryani and Ponimin	36 Year

**Table 3. Divorce Cases at Marriage Age Over 30 Years at Pangkalan Balai Class II Religious Court**

*Source: Data from Pangkalan Balai Class II Religious Court.*

This data shows that some couples end their marriages at a marriage age of over 30 years. Divorces at this marriage age indicate the possibility of elderly couples who decide to end a marriage. Generally, divorces are dominated by young couples due to uncontrolled emotions and immature thinking to resolve conflicts that will be faced. As for couples who have lived a long married life, they have mature thinking skills and understand married life. However, a

problem in the household cannot be avoided, both for young couples and couples who have been married for a long time (not young).

Further explanation regarding several factors of divorce at the marriage age of over 30 years based on 10 decisions from the Pangkalan Balai Class II Religious Court, as follows:

*First*, contested divorce case with case number 50/Pdt.G/2023/PA.Pkb, on behalf of Painah and Mudiarjo, married at age 43. Their household harmony lasted for about 38 years, the rest being quarrelsome. The cause of the breakdown of the household was the husband not providing a living, often committing domestic violence, saying harsh words, and not wanting to be advised. Seeing the household's state, the wife cannot maintain the household.<sup>18</sup>

*Second*, contested divorce case with case number 98/Pdt.G/2023/PA.Pkb, on behalf of Nasirah and Sudiono, married at 36. Their household harmony lasted for 26 years, but since 2013, there have been frequent disputes. The cause of the breakdown of the household was due to the husband not providing a living for 13 years, the husband having no desire to continue the household, and not caring for the wife both physically and mentally. Seeing the state of the household, it is complicated to create a *Sakinah* family and maintaining it is no longer possible.<sup>19</sup>

*Third*, contested divorce case with case number 174/Pdt.G/2023/PA.Pkb, on behalf of Ummi Salamah and Asmara, married at age 41. Their household harmony lasted for 25 years, but since 2008, there have been frequent disputes. The cause is that the husband has never come home for 15 years and has not provided a living for 15 years. Seeing the state of their household, it will be challenging to create a *sakinah mawaddah warahmah* family, which is impossible to maintain.<sup>20</sup>

*Fourth*, contested divorce case with case number 210/Pdt.G/2023/PA.Pkb, on behalf of Eni Kusmawati and Ahmad Mustopa, married at 34. Their household harmony lasted for approximately 31 years. However, since 2020, there have been frequent disputes due to the husband marrying another woman, not providing a living for approximately 2 years, and then agreeing to separate. Seeing the state of their household, it is no longer possible to maintain.<sup>21</sup>

*Fifth*, contested divorce case with case number 211/Pdt.G/2023/PA.Pkb, on behalf of Julaiha and Suswadi, married at age 33. Their household harmony lasted for about 30 years, the rest being quarrelsome. The cause of the breakdown of the household was due to domestic violence, having an affair with another woman, often being angry, and not being responsible as the head of the family. Seeing the state of their household, maintaining it is no longer possible, and they choose to divorce.<sup>22</sup>

*Sixth*, contested divorce case with case number 279/Pdt.G/2023/PA.Pkb, on behalf of Gapsa, alias Kapsah and Maniso, married at 35. Their household harmony lasted for 11 years because since 1999, there have been frequent disputes, and the peak of the problem occurred in 2022. The causes are the husband having an affair or playing with another woman, not providing a living, frequent quarrels, and having been separated for approximately 7 months. Seeing the condition of the household, it is no longer possible to maintain.<sup>23</sup>

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<sup>18</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 50/Pdt.G/2023/PA.Pkb.

<sup>19</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 98/Pdt.G/2023/PA.Pkb.

<sup>20</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 174/Pdt.G/2023/PA.Pkb.

<sup>21</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 210/Pdt.G/2023/PA.Pkb.

<sup>22</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 211/Pdt.G/2023/PA.Pkb.

<sup>23</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 279/Pdt.G/2023/PA.Pkb.

*Seventh*, contested divorce case with case number 320/Pdt.G/2023/PA.Pkb, on behalf of Mistri and Kamirudin, married at age 31. Household harmony lasted for approximately 29 years because, since 2022, there have been frequent disputes. The causes were the husband having another dream woman, not caring, often being angry, and saying harsh words. Seeing the household's condition, the wife can no longer maintain the household and chooses to divorce.<sup>24</sup>

*Eighth*, contested divorce case with case number 489/Pdt.G/2023/PA.Pkb, on behalf of Parida and Isjuhardi, married at 32 years old. Their household harmony lasted for about 30 years, the rest being quarrelsome. The causes were the husband being irresponsible as the head of the family, not providing a living, having another dream woman, and often committing domestic violence. Seeing this condition, the wife is no longer able to maintain her household, and the best way is to divorce.<sup>25</sup>

*Ninth*, contested divorce case with case number 507/Pdt.G/2023/PA.Pkb, on behalf of Mahwiti and Sujarno, married at age 31. Their household harmony lasted for approximately 20 years because of frequent disputes, and the problem's peak occurred in 2021. The causes are the husband, who is too lazy to work, so he cannot provide a living, does not care, often gets angry and says harsh words, and even commits domestic violence. Seeing the state of the household, the wife cannot maintain her household and chooses to divorce.<sup>26</sup>

*Tenth*, contested divorce case with case number 816/Pdt.G/2023/PA.Pkb, on behalf of Suryani and Ponimin, married at age 36. Their household harmony lasted only 5 years because, since 1992, there have been frequent disputes, and the peak of the problem occurred in 2022. The causes of the dispute were the husband, who was too lazy to work, so he rarely provided a living, frequent quarrels, so they separated for approximately 1 year and 6 months and then both agreed to divorce. Seeing this condition, it is no longer possible to create a *sakinah mawaddah warahmah* family, and it is impossible to maintain it.<sup>27</sup>

From several divorce cases, it can be understood that there are several reasons the wife filed for contested divorce at the marriage age of over 30 years. The causes of contested divorce at the marriage age of over 30 years include the following: (1) The husband is not responsible as the head of the family; (2) Domestic violence; (3) Infidelity/having another dream woman; (4) Continuous disputes; (5) Leaving the wife.

Among these problems, there are several reasons related to livelihood, and livelihood is identical to economic problems. Providing a living is the husband's obligation because giving a living to the wife does not have to wait until the wife needs it. Even though the wife can meet her needs, the husband should still provide a living. This obligation arises by itself without regard to the wife's condition.<sup>28</sup>

According to Fikri Hanif, a Judge at the Pangkalan Balai Class II Religious Court, in terms of livelihood, there are three possibilities for the husband not providing a living, providing less of a living, or rarely providing a living. The husband has neglected his obligations if he does not provide a living. Meanwhile, if the husband provides less or rarely provides a living,

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<sup>24</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 320/Pdt.G/2023/PA.Pkb.

<sup>25</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 489/Pdt.G/2023/PA.Pkb.

<sup>26</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 507/Pdt.G/2023/PA.Pkb.

<sup>27</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 816/Pdt.G/2023/PA.Pkb.

<sup>28</sup> Husni Fuaddi and Nurhadi, *Konsep Nafkah Keluarga Dalam Islam* (Jawa Barat: Guepedia, 2020).

it could be that the husband has tried to work. However, the wife is not grateful enough for the husband's income, which a lazy husband could also cause with insufficient income.<sup>29</sup>

In addition, the issue of domestic violence often occurs in the household environment, and most victims of domestic violence are women. According to Fikri Hanif, a Judge at the Pangkalan Balai Class II Religious Court, there is a connection between domestic violence, disputes, infidelity, and leaving the wife or leaving the house because most domestic violence begins with continuous disputes that make him uncomfortable, so that he thinks of cheating on his wife. This is what makes the husband not care about his wife, thus inviting emotions, and if it cannot be controlled, it can end in domestic violence against the wife.<sup>30</sup>

As for the several descriptions of the causes of divorce, they have fulfilled the provisions in Article 116 of the Compilation of Islamic Law, namely:

Divorce can occur due to reasons or reasons: (1) One party commits adultery or becomes a drunkard, compactor, gambler, and others, which are difficult to cure. (2) One of the parties leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or due to other things beyond their ability. (3) One party gets a 5 (five) year prison sentence or a heavier sentence after the marriage takes place. (4) One party commits cruelty or severe persecution that endangers the other party. (5) One of the parties has a disability or illness with the consequence of not being able to carry out his obligations as husband or wife. (6) Between husband and wife, there are continuous disputes and quarrels, and there is no hope of living in harmony again in the household. (7) The husband violates the *taklik talak*. (8) Religious conversion or apostasy causes disharmony in the household.<sup>31</sup>

Based on the reasons explained in Article 116 of the Compilation of Islamic Law, if the husband has committed acts prohibited by law and fulfils the provisions for reasons in that article, the wife can sue for divorce from her husband in a religious court. In addition, Article 39 paragraph (2) explains that to file for divorce, there must be sufficient reason that between the husband and wife, it will not be possible to live in harmony as husband and wife.<sup>32</sup> If it has met the provisions, the wife can file for a contested divorce to the religious court by including these reasons because filing a lawsuit cannot be done for arbitrary reasons.

Disharmony in the household can be one of the causes of divorce. Therefore, the cause of the large number of wives filing for divorce must have reasons behind it so they dare to take the path of divorce. This is because the wife feels that she can no longer stand her husband's behaviour, even though she has often been given the opportunity to improve the relationship. However, it turns out that her husband keeps repeating the same mistakes.

### **Considerations of Pangkalan Balai Class II Religious Court Judges in Deciding Contested Divorce Cases at Marriage Age Over 30 Years**

Judges are officials who carry out judicial powers, whose guidance and general supervision are carried out by the Chief Justice of the Supreme Court. However, guidance and general

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<sup>29</sup> Hasil Wawancara dengan Fikri Hanif sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

<sup>30</sup> Hasil Wawancara dengan Fikri Hanif sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

<sup>31</sup> 'Kompilasi Hukum Islam'.

<sup>32</sup> Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Pasal 39 ayat (2).

supervision may not reduce the freedom of judges to examine and decide cases.<sup>33</sup> Therefore, every time deciding divorce cases, especially divorces at the marriage age of over 30 years, judges need consideration. Each time, deciding divorce cases must not be arbitrary; they must meet the provisions or be based on existing facts. Every time a divorce lawsuit is filed, the elements must be fulfilled because each case may not be filed arbitrarily. Therefore, if it has been fulfilled, the court will accept every incoming case because it cannot refuse it. Judges are not justified in refusing cases because there is no legal basis for regulating them.<sup>34</sup> This is based on the principle of *Ius Curia Novit*. This principle states that every judge must know the law of the examined case. Judges are absolutely not allowed to decide cases because the judge does not know the law.<sup>35</sup> Based on this principle, the judge considers several considerations for divorce at the marriage age of over 30 years, including the following:

#### *Has Met the Requirements*

Every divorce case must follow procedures, and the procedures for all divorce cases are the same. Nothing is different, whether it is divorce at a young age or old age. In filing for divorce, the elements must be fulfilled because the judge cannot decide the case arbitrarily. In addition, while handling divorce cases, proof is needed, where the evidence results will be used as consideration in deciding the case. This proof will obtain legal certainty that the event occurred.<sup>36</sup>

During the trial process and before deciding the case, the judge considers it depending on the reasons put forward by the plaintiff, and the basis for the judge's consideration in deciding the case is following Article 116 of the Compilation of Islamic Law, namely adultery, drunkard, compactor, gambler, leaving the other party for 2 years without a break, 5-year prison sentence, persecution, disability, continuous disputes, violating the talk talak and apostasy.<sup>37</sup> If these reasons have been fulfilled, then the lawsuit is granted.

The judge's consideration in divorce cases is all the same. There are no specific criteria for handling divorce at the marriage age of over 30 years or other divorces. Judges still assess the evidence submitted by the husband/wife. Then, the judge assesses whether their household is still beneficial if continued or if continued, it will add to the problem. From there, the judge will decide whether to grant or not.<sup>38</sup> Based on this, it can be understood that every time a divorce case is handled, the procedure is the same, and nothing is different. So, regardless of the age of the marriage, there are no specific criteria. The judge still looks at the reasons put forward because a person cannot divorce for arbitrary reasons and must meet

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<sup>33</sup> Muhammad Syaifuddin, Sri Turatmiyah, and Annalisa Yahanan, *Hukum Perceraian* (Jakarta: Sinar Grafika, 2014).

<sup>34</sup> Achmad Rifai, *Kesalahan Hakim Dalam Penerapan Hukum Pada Putusan Menciderai Keadilan Masyarakat* (Makassar: CV Nas Media Pustaka, 2020).

<sup>35</sup> Achmad Ali and Wiwie Heryani, *Asas-Asas Hukum Pembuktian Perdata* (Jakarta: Kencana Prenata Media Group, 2012).

<sup>36</sup> Hidayatul Ma'unah, Nanik Sutarni, and Purwadi, 'Pertimbangan Hakim Dalam Memutuskan Perkara Perceraian Karena Adanya Perselisihan Dan Pertengkaran (Studi Putusan Nomor 0708/Pdt.G/2019/Pa.Bi)', *Jurnal Bedah Hukum*, 4(1) (2020), 5.

<sup>37</sup> Kompilasi Hukum Islam, Pasal 116.

<sup>38</sup> Hasil Wawancara dengan Lia Rachmatilah sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

the reasons that have been determined. So, when it has met the requirements, the lawsuit is granted, and vice versa. If it does not meet the requirements, it is not granted.

Based on these reasons, it can be understood that the reasons for filing a divorce lawsuit must prove that their household is no longer harmonious, so there is no possibility of reconciling, and the reason must meet the provisions. It will be granted if it has met the requirements and legal provisions.

#### *Strong Desire of the Parties*

The parties have a strong desire to divorce for several reasons, so the parties have no desire to make peace/reconcile in the mediation process. Divorce at the marriage age of over 30 years is not entirely wrong, although they have been living together for a long time. However, if one of them feels tortured and there is no compatibility between them, especially if there is domestic violence, then the only way is to divorce. In addition, looking at some of the reasons for divorce, most wives are unable and feel tortured if they continue to maintain their household. Thus, the efforts made through mediation and peace have a minimal chance. Divorce at the marriage age of over 30 years is not entirely wrong, although they have been living together for a long time. However, if one of them feels tortured and there is no compatibility between them, especially if there is domestic violence, then the only way is to divorce. In addition, looking at some of the reasons for divorce, most wives are unable and feel tortured if they continue to maintain their household. Thus, the efforts made through mediation and peace have a minimal chance.

Seeing from the age of the marriage, of course, their mindset is mature enough to make decisions, and if they have decided something like divorce, of course, it has been carefully thought out so that in peace efforts, it has a minimal chance. However, the judge continues to make peace efforts during the trial by advising both parties. If both parties are present, mediation will be carried out, even though it is known that the chances of peace are minimal. Overcoming divorce at a marriage age of over 30 years, the researcher interviewed Fikri Hanif, and he expressed his opinion regarding the efforts made to overcome the problems of divorce lawsuits at a marriage age of over 30 years. The judge maximized peace efforts in the trial by advising because the age of marriage of 30 years is not a short time, and the level of maturity of their minds is also sufficient to realize their decision to divorce. Then, the next effort is through the mediation process, aiming to find out the problems so that they can offer solutions that they can take.<sup>39</sup>

Meanwhile, Uut Mutmainah also has the same opinion regarding how to resolve the divorce. According to her, the judge will try in the mediation process, but during the divorce trial process, most of the defendants were not present, so it was decided by default. The mediation in question is advice in the trial because one of the judge's obligations is to provide advice, but the chances of peace are small because if the wife has filed a lawsuit, she is sure of the decision she has taken.<sup>40</sup>

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<sup>39</sup> Hasil Wawancara dengan Fikri Hanif sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

<sup>40</sup> Hasil Wawancara dengan Uut Mutmainah sebagai Hakim Pengadilan Agama Pangkalan Balai Kelas II, 1 April 2024.

Based on the judge's explanation, it can be understood that even though the parties still insist on divorce, peace efforts will still be made. Peace efforts are made through the mediation process. Although mediation has a minimal chance of peace/reconciliation, several couples have succeeded in peace/reconciliation because they consider the descendants they already have, namely children/grandchildren. The slight chance of peace/reconciliation is because the problems they face tend to have been going on for a long time or have been protracted, so they agree to separate in the end.

#### *Taking Benefit into Account*

Islam prioritizes the safety of its adherents so that all forms of applied legislation contain benefits. In terms of worship to Allah and household relations, Islam also regulates it, so how to establish an ideal household, also called a *sakinah* family, is a harmonious family. However, many still fail to realize a harmonious family. This is evident from the large number of families that end in divorce.<sup>41</sup>

Marriage aims to provide benefits for the husband and wife. However, many household conditions are not harmonious, and each party cannot fulfil their husband and wife's obligations. If it is maintained, then instead of bringing benefits, it will bring harm to both of them, and this harm must be eliminated. This follows the *fiqh* principle, which reads:<sup>42</sup>

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

*"Rejecting harm (badness) takes precedence over bringing benefit (goodness)."*

Therefore, if there is a conflict between benefit and harm in a marriage, the value of the more significant benefit must be prioritized.<sup>43</sup> Therefore, if the state of the household has been proven to have disharmony and is challenging to repair, it will only cause harm instead of harmony if forced to live under one roof. This situation illustrates that the household has no hope of reconciling, and the wife can also get out of suffering/harm through a divorce.

Judges consider the benefits and harms because if maintaining the household will only bring more harm than benefit, divorce is the only way to eliminate harm. However, there are some general public who have an assessment of divorce at the marriage age of over 30 years because it is miserable to have a marriage for so long but end in divorce. However, if you look at their age, they are mature enough to make a decision. Besides that, if you look at the conditions of each, there is a situation that requires them to make that decision.

#### **Conclusion**

Based on the author's research at the Pangkalan Balai Class II Religious Court regarding contested divorce at the marriage age of over 30 years, the author can draw the following conclusions. The problems of contested divorce at the marriage age of over 30 years at the Pangkalan Balai Class II Religious Court are caused by several factors. Namely, the husband is not responsible as the head of the family, the husband has an affair/has another dream woman, domestic violence, continuous disputes, and leaving the wife. These problems refer

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<sup>41</sup> Subairi, 'Keharmonisan Rumah Tangga Perspektif Hukum Islam', *Mahabits: Jurnal Hukum Keluarga Islam*, 2(2) (2021), 171.

<sup>42</sup> Putusan Pengadilan Agama Pangkalan Balai Kelas II Nomor 174/Pdt.G/2023/PA.Pkb.

<sup>43</sup> Dahwadin and others, 'Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam Di Indonesia', *Yusidia: Jurnal Pemikiran Hukum Dan Hukum Islam*, 11(1) (2020), 90.

to the wife who feels tormented in living the marriage so that household harmony is not created. The consideration of the Pangkalan Balai Class II Religious Court judges in deciding cases of contested divorce at the marriage age of over 30 years, namely the procedure has met the requirements, the strong desire of the parties, and taking benefit into account. When a case is decided, the judge still looks at the reasons. These reasons must meet the provisions because a person cannot divorce for arbitrary reasons.

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