

## The Implementation of MPU Aceh Fatwa Number 02 of 2015 on Divorce: Perspectives of MPU Aceh Tamiang and Judges of *Mahkamah Syar'iyah* Kuala Simpang

Lukmanul Hakim \*

Sekolah Tinggi Agama Islam Aceh Tamiang, Aceh Tamiang, Indonesia.

\*Correspondence author: [lukman575789@gmail.com](mailto:lukman575789@gmail.com)

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### ABSTRACT

Divorce can only be carried out based on a judge's decision in an Islamic Court session (Article 115 of the Compilation of Islamic Law). However, in practice, many divorces occur outside of court, creating confusion in society. This is particularly challenging for the Acehnese community, which follows the Shafi'i school of thought, as they are required to abide by laws that do not always align with religious edicts. The fatwas issued by the Aceh Consultative Assembly (MPU), for instance, often conflict with rulings from the Mahkamah Syar'iyah on matters such as the validity of triple talaq pronounced in a single instance. The research questions in this study are: 1) What is the opinion of MPU Aceh Tamiang on the implementation of MPU Aceh Fatwa Number 02 of 2015 on Talaq? 2) What is the perspective of judges at the Mahkamah Syar'iyah Kuala Simpang on the implementation of MPU Aceh Fatwa Number 02 of 2015 on Talaq in court rulings? This research is a Comparative Law Study using both comparative and sociological or philosophical approaches. The research findings indicate that: 1) MPU Aceh Tamiang supports the implementation of the MPU Aceh Fatwa by referring to Qanun Aceh Number 2 of 2009 concerning MPU, which mandates that district/city MPUs are responsible for upholding MPU Aceh's fatwas. 2) Judges at the Mahkamah Syar'iyah Kuala Simpang acknowledge MPU's authority to issue fatwas based on legal mandate. However, the implementation of MPU Aceh Fatwa Number 02 of 2015 on Talaq cannot serve as a legal basis for judges in Mahkamah Syar'iyah decisions, as fatwas are not part of the legal hierarchy. For a fatwa to be considered as a source of legal reasoning, it must be codified as a Qanun (regional regulation) in Aceh.

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## 1. Introduction

Divorce is a legal act that carries certain legal consequences, and as such, it is regulated by the state. According to Article 144 of the Compilation of Islamic Law (KHI), divorce can occur due to a husband's declaration of *talaq* or a wife's filing of a divorce claim. Such divorces can only take place based on a judge's ruling in a hearing at the Religious Court (Article 115 of the KHI).

Given the increasing divorce rates, the government has made efforts to make divorce more difficult. In other words, divorce can only occur if the requirements

stipulated in Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, are met. Additionally, the Compilation of Islamic Law, as a codification of Islamic law, has classified the causes or reasons for divorce that must fulfill specific elements, and the divorce must be conducted in a court hearing.

The government's policy to minimize the likelihood of divorce deserves appreciation, even though divorce is a right of both the husband and wife. Nonetheless, marriage is inherently a sacred and holy bond that should be preserved. This aligns with the teachings of the Prophet Muhammad (peace be upon him).

حَدَّثَنَا كَثِيرُ بْنُ عُبَيْدٍ حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ عَنْ مُعَرِّفِ بْنِ وَاصِلٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صلى الله عليه وسلم- قَالَ « أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ تَعَالَى الطَّلَاقُ ».

*Narration: Katsir bin 'Ubaid narrated to us, Muhammad bin Khalid narrated to us, from Mu'arrif bin Washil, from Muharib bin Ditsar, from Ibn Abbas, who reported that the Prophet (peace and blessings be upon him) said: "The most detestable of permissible matters to Allah is divorce."*

Regarding the issue of divorce, as stipulated in Article 144 of the Compilation of Islamic Law (KHI), divorce can occur through a husband's declaration of *talaq* or a wife's divorce lawsuit. However, such divorces can only be executed based on a judge's ruling in a hearing at the Religious Court (Article 115 of KHI). This matter inevitably involves religious institutions, specifically the *Mahkamah Syar'iyah* (Sharia Court), whose function is to examine cases related to Islamic law, both civil and criminal.

In the context of the Religious Courts, Article 2 of Chapter I in conjunction with Article 49 of Chapter III of Law No. 7 of 1989 stipulates its authority to examine, decide, and resolve civil cases in the following areas: marriage, inheritance, wills, and grants conducted under Islamic law, as well as *waqf* and *sadaqah* (charity). Thus, the jurisdiction of the Religious Courts is connected to the principle of Islamic personal status (*asas personalitas keislaman*), meaning that its authority applies exclusively to individuals who are Muslim.

With the enactment of Law No. 3 of 2006, which amended Law No. 7 of 1989 concerning the Religious Courts, one of the significant changes was the expansion of the court's jurisdiction as outlined in Article 49. This now includes cases in the field of sharia economic law. The complete range of matters under the authority of the Religious Courts now includes marriage, inheritance, wills, grants, *waqf*, *zakat*, *infaq*, *sadaqah*, and sharia economics.

On the other hand, the public is often confused by the issue of divorces or *talaq* that occur outside court hearings. According to classical Islamic jurisprudence, particularly the Shafi'i school of thought, a husband's declaration of *talaq* is not required to take place in a courtroom. This view is further supported by Aceh's MPU (Ulema Consultative Assembly) Fatwa No. 02 of 2015 regarding *Talaq*. This creates a contradiction between the existing legal regulations and the MPU Fatwa.

This situation has led to the perception that the legal rulings of the *Mahkamah Syar'iyah* are not fully reliable as references for the public when legal disputes arise. Even more concerning is that some people perceive the decisions issued by the *Mahkamah Syar'iyah* as incorporating elements of non-Islamic law. This perception can adversely affect the reputation of a religiously affiliated institution like the *Mahkamah Syar'iyah*.

## **2. MPU Aceh Fatwa No. 02 of 2015 on Divorce (*Talak*)**

Concerning divorce, the Aceh Ulama Consultative Assembly (Majelis Permusyawaratan Ulama, MPU) issued Fatwa No. 02 of 2015 on *talak* (divorce). The fatwa states, in its second point, that if *talak* tiga (triple divorce) is pronounced either in a single declaration or three consecutive declarations, it is considered valid as three divorces. Additionally, the third point states that a divorce declared by a husband outside of court proceedings and/or without witnesses is still deemed valid.

Based on a previous MPU Aceh Fatwa dated 27 Dhu al-Hijjah 1402 H (October 24, 1981), it was agreed that a triple divorce pronounced simultaneously is regarded as three divorces. This opinion is supported by the majority of *sahabah* (companions), *tabi'in* (successors), the four major Sunni schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali), and Ibn Hazm of the Zahiri school. Meanwhile, an alternative view holds that a triple divorce pronounced simultaneously should only be considered as one divorce. This opinion is upheld by Thawus, the Imamiyah school, the Ahl al-Zahir group, and Ibn Taymiyyah. Ultimately, the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI) adopted the first opinion due to the strength of its supporting evidence.

Islamic jurists (*fuqaha*) have differing opinions (*ikhtilaf*) regarding the issue of triple divorce pronounced simultaneously. After analyzing various classical texts, such as: *Kitab al-Majmû'* by Imam al-Nawawî (631–676 H), *Bidâyat al-Mujtahid* by Ibn Rushd (d. 565 H), *al-Fiqh al-Islâmî wa-Adillatuh* by Shaykh Wahbah al-Zuhailî, *Sharh Sahih Muslim* by Imam al-Nawawî, *Fath al-Bari*, *Rawa'i al-Bayan*, *Bughyat al-Mustarsyidin*, and *Tanwir al-Qulub*, the differences of opinion on this issue can be categorized into four groups.

First Opinion A triple divorce pronounced simultaneously is legally counted as three divorces. This view is upheld by the four major Sunni schools (Hanafi, Maliki, Shafi'i, Hanbali), the Zaidiyyah Shia (in its most prominent opinion), some narrations from the Imamiyah school, and Ibn Hazm of the Zahiri school. This opinion is attributed to the majority of *sahabah*, including the *Khulafa' al-Rashidun* (except Abu Bakr RA), Ibn Umar, Ibn Abbas, Ibn Mas'ud, Abu Hurairah, and many prominent *tabi'in*.

Second Opinion A triple divorce pronounced simultaneously is considered as only one divorce. This opinion is supported by Dawud al-Zahiri (except Ibn Hazm), Ibn Ishaq, Ibn Taymiyyah, and Ibn al-Qayyim, as well as some narrations from the Zaidiyyah Shia and the majority of the Imamiyah Shia, including al-Tusi (385–460 H).

Third Opinion This opinion distinguishes between a wife who has consummated the marriage and one who has not. If the marriage has been consummated, a triple divorce is counted as three divorces. If the marriage has not been consummated, it is counted as only one divorce (*talak raj'i*).

This view is upheld by students of Ibn Abbas RA, such as Ata', Sa'id bin Jubair, Abu al-Sha'tha', and Amar bin Dinar, as well as Ishaq bin Rahuyah. One of the supporting evidences for this view is a narration from Abu Dawud: "Do you know that if a man divorces his wife three times before consummating the marriage, it is counted as one divorce?"

Fourth Opinion A triple divorce pronounced simultaneously is invalid (*laysa bi shay'*) and does not result in a divorce. This view considers such a declaration as an impermissible innovation (*bid'ah muharramah*), rendering it null and void as it contradicts the procedures outlined in the Qur'an and Sunnah regarding divorce. Proponents of this view include al-Hajjaj bin Arthah, Muhammad bin Ishaq, and certain prominent narrations from the Imamiyah Shia.

### 3. Divorce Based on Statutory Regulations

According to Article 120 of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), *talak ba'in kubra* refers to a divorce that occurs after the third pronouncement of *talak*. This differs from a triple divorce (*talak tiga*) pronounced simultaneously.

Based on Article 38 of the Marriage Law (Undang-Undang Perkawinan, UUP), the dissolution of marriage between a husband and wife occurs due to death, divorce, or a court decision. Meanwhile, Article 114 of the KHI states that the dissolution of marriage due to divorce can occur through *talak* pronounced by the husband or through a divorce lawsuit (*gugatan cerai*) filed by the wife.

Article 39 paragraph (1) of the Marriage Law specifies that divorce can only take place through court proceedings, particularly at the Religious Court (*Pengadilan Agama*) for Muslim couples. The article states:

*"Divorce can only be carried out before the court in a session after the court has made every effort to reconcile the parties but has not succeeded."*

Therefore, both divorces initiated by *talak* and by a divorce lawsuit are only legally valid if conducted through proceedings at the Religious Court, which holds jurisdiction based on the wife's domicile.

In Indonesian marriage law, the concept of *talak* outside the court is not recognized or regulated. Article 117 of the KHI defines *talak* as a pronouncement made by the husband before a session of the Religious Court, which serves as one of the causes for the dissolution of marriage. The article states: *"Talak is the husband's declaration before a session of the Religious Court that constitutes one of the causes for the dissolution of marriage, as outlined in Articles 129, 130, and 131."*

Thus, a valid *talak* under Indonesian law is one declared in a Religious Court session. If *talak* is pronounced outside the court, it is not legally valid according to state law because it does not follow the prescribed procedure. Consequently, the marital bond between the husband and wife remains intact, and they are still legally considered a married couple.

### 4. MPU Aceh Tamiang's View on Fatwa MPU Aceh Number 02 of 2015 Regarding Divorce

Based on the interview conducted by the author with Ust. Syahrizal Darwis, MA, the Chairman of MPU Aceh Tamiang, the author obtained several explanations related to this research. In the interview, the author asked several pre-prepared questions:

1. As the chairman of the district/city MPU, which is an extension of the Provincial MPU, what is your opinion regarding the Fatwa MPU Aceh No. 02 of 2015 concerning divorce? Regarding this issue, he explained: "We realize that as the people of Aceh, who strongly adhere to the foundation of the Shafi'i school of thought, from the time of the kingdom to the present, every law has been based on this school, even if we closely study the way of life of the people of Aceh, especially the customs followed in society, which have been adopted from the Shafi'i school, such as the practice of *tepung tawar*, *maulid* celebrations, and others. However, as time passed and our society underwent a mix of cultures and customs, new understandings emerged, especially concerning divorce. Previously, society firmly held the belief that a triple *talaq* (divorce) uttered in one or three statements would result in an irreversible divorce. Now, we see the necessity of the MPU issuing what we call a fatwa to prevent division within the Muslim community in Aceh."

2. After the issuance of Fatwa MPU Aceh No. 02 of 2015 on Divorce, what are the impacts on the community's life? Regarding this, he explained: "As an institution recognized by the law to partner with the government, and if we look at regulations such as Article 6, paragraph (1) of Qanun Aceh No. 2 of 2009 concerning MPU Aceh, and Article 139 of Law No. 11 of 2006 concerning the Government of Aceh, the MPU has specific functions and authority, such as issuing fatwas. These fatwas will serve as consideration for local government policies in areas like governance, development, and community guidance. Unfortunately, the MPU is merely an advisory body, with no legal authority to legitimize decisions. In other words, today, we can only provide guidance on differing religious opinions in society."
3. Ust. Syahrizal's response to public opinion that fatwas cannot be considered legal products to follow: "What is the point of making a fatwa if it cannot be a binding legal product?" Regarding this, he explained: "In essence, the MPU as an institution has no authority to make regulations, especially those with legal force. However, this does not mean that a fatwa issued by the MPU is merely a superficial opinion. The misconception in our society is that the MPU is only seen as a label of government partnership. Today, we are seeking ways to make this fatwa legally binding in court decisions. One way is to incorporate this fatwa into the Qanun of Aceh so that, God willing, the fatwa can be implemented in court decisions, especially in the Sharia Court."
4. The Impact of the Emergence of Legal Dualism in Aceh Tamiang  
When discussing the impact of legal dualism in Aceh Tamiang, Ust. Syahrizal Darwis shared his view as follows: "The most noticeable impact on the community is felt by those who have divorced outside the court and undergone mediation or reconciliation at the village level. However, when they seek legal recognition of their divorce, they must continue the process at the Sharia Court. Upon arriving at the court, they are redirected to mediation, which implies that the divorce they previously declared has no legal effect on their marriage. For ordinary people, this creates legal uncertainty. If this issue is not addressed, it can have psychological effects, as people feel trapped in an administrative situation requiring legal recognition of their divorce. Even though the divorce has clearly been declared and the wife has undergone the iddah period, the Sharia Court does not recognize the divorce as valid, requiring it to be repeated in court. This creates the impression that the court is trapping them in a situation that could lead to other legal problems, such as adultery."

#### **5. The View of the Judges of the Kuala Simpang Sharia Court on the Aceh MPU Fatwa No. 02 of 2015 on Talaq**

The Aceh MPU Fatwa No. 02 of 2015 concerning talaq raises two key issues that are the focus of this research:

1. The issue of three talaqs pronounced at once, or three talaqs pronounced in one utterance, which results in three divorces.
2. The issue of talaq outside the court or talaq without witnesses, which is considered valid.

These two decisions are analyzed in this research to understand the perspectives of the judges of the Kuala Simpang Sharia Court and the Aceh Tamiang MPU on the fatwa, which appears to contradict the prevailing legal regulations.



In handling divorce cases, the state has established clear procedures and mechanisms to ensure that these matters are resolved fairly, and to avoid the abuse or arbitrary actions by one party that could harm the other. One of the efforts made is the establishment of Religious Courts as institutions tasked with handling marriage and divorce matters, as stipulated in Article 39 paragraph (1) of Law No. 1 of 1974 and Article 115 of the Compilation of Islamic Law (KHI), which states: "Divorce may only be conducted in front of the Sharia Court after an attempt at reconciliation by the Sharia Court fails."

This situation cannot be taken lightly, considering that Aceh is an integral part of Indonesia with special autonomy rights. This is regulated in Law of the Republic of Indonesia No. 11 of 2006, Chapter 1, Article 1, paragraph 2, which explains that Aceh has the right to regulate and manage its own government affairs and the interests of its people in accordance with applicable laws. The provision reads: "Aceh is a province that is a legal community with special characteristics and is granted special authority to regulate and manage government affairs and the interests of the local community, in accordance with the laws in the system of the Unitary State of the Republic of Indonesia based on the 1945 Constitution of the Republic of Indonesia, led by a governor."

The issue that arises from the discrepancy between the MPU Aceh fatwa and the Sharia Court's ruling, which refers to the provisions in the Compilation of Islamic Law (KHI), especially in Aceh, may trigger reactions from the public. Some parties may consider the Sharia Court's decision as not a valid legal reference because it is deemed to be in contradiction with the fatwa issued by the scholars. Some members of the community even feel that certain rulings issued by the Sharia Court do not align with the principles of Islamic law. This could negatively impact the reputation of the institution responsible for managing religious legal matters, such as the Sharia Court, especially if there is a difference of opinion with the local fatwa.

This contradiction, if left unresolved, could potentially lead to polarization within the society. On one hand, there are people who tend to follow the fatwa on divorce, while on the other hand, some prefer the Sharia Court's decision as their legal guideline. This choice is often influenced by social conditions and the level of education in the community. However, when people are confronted with state administrative needs, such as for umrah, birth certificates, or other documents, they are forced to follow the decisions made by the Sharia Court because the administrative requirements compel them to adhere to those regulations.

The legal impact of this uncertainty makes the community feel the need to adjust to the legal decisions in Indonesia, even though it may conflict with their personal preferences. Therefore, the legal dualism in one region must be addressed immediately, as the community urgently needs clear and consistent legal certainty. As expressed by O. Notohamidjojo in the theory of legal certainty, the purpose of law is to protect the rights and obligations of individuals in society and ensure the protection of social institutions in various fields, such as politics, social affairs, economics, and culture, with the ultimate goal of achieving justice, balance, and the common good (*bonum commune*).

This issue requires serious attention, and the author attempts to delve deeper into the matter, hoping that a clear solution will be found to avoid confusion in the community. Given that the MPU fatwa holds an important position and must be respected, as citizens of Indonesia, a country based on law, adherence to regulations and laws is a value that should be upheld by every individual.

To better understand this issue, the author collected data and information by interviewing Judge Dr. Nusra Arini, S.H.I., M.H. from the Kuala Simpang Sharia Court to gain a more comprehensive understanding of the matter. During the interview, the author raised several questions designed to explore the issue further, including:

1. Regarding the Issue of Talaq, Particularly the Three Talaqs Being Treated as Three: The judge explained that the issue of talaq is a *furu'iyah* (secondary) matter, not a fundamental issue like *aqidah*, so differences of opinion among scholars are highly possible. While there are differences, it does not mean they lack a basis or evidence from the Qur'an or hadith. This difference arises from different methods of legal interpretation. The majority of scholars, especially the Shafi'i school, argue that three talaqs at once result in three divorces, while others argue that it results in only one, based on textual evidence. This difference is part of the diversity in Islamic law, which produces various schools of thought. Regarding marriage matters, according to the judge, it is acceptable to follow any opinion based on valid evidence. Therefore, if the community follows the majority or one of the opinions, it is not an issue. It can be concluded that the difference of opinion regarding talaq is a *furu'* issue in religion, rooted in varying interpretations of the Qur'an, particularly Surah Al-Baqarah verse 230, and other texts related to talaq. The public is encouraged to study and understand the background of the scholars' differences regarding talaq and not view this as a fault of the judges, as they only apply the legal products that are in place for the public's benefit.
2. The Sharia Court's Procedure Regarding a Dispute over Three Talaqs Being Treated as One: Regarding the procedure followed by the Sharia Court if someone contests the decision of three talaqs being treated as one, the judge clarified that so far, no such issue has been raised. If this matter arises, the solution will certainly be based on positive law. He emphasized that the differences that have emerged are not the fault of the judges, but a difference between classical *fiqh* and positive law (KHI), which is more commonly known as contemporary *fiqh*. As judges working within the framework of applicable law, they are simply carrying out the legal products established by the regulations.
3. View on MPU Aceh Fatwa No. 02 of 2015 on Talaq: The judge views that there is no issue with the MPU Aceh fatwa regarding talaq, especially the stance that three talaqs pronounced result in three divorces. This fatwa has a clear legal basis and is supported by evidence. As an institution with special autonomy in Aceh, the MPU has the right to issue fatwas relevant to the community's life, including those on talaq. Therefore, this fatwa is legitimate and there is no problem with its issuance.
4. Influence of the MPU Fatwa on Sharia Court Decisions: The MPU fatwa can influence the Sharia Court's decisions if it has been accommodated by the government into positive law. However, since this fatwa has not been incorporated, it does not fall within the hierarchy of legislation. Therefore, for it to serve as a basis for Sharia Court rulings, the fatwa must be legalized into regulations. The author hopes that the government will soon accommodate this fatwa so that it can have binding legal force. If not, this fatwa cannot serve as a reference in the Sharia Court's decision-making process.

From this explanation, it can be concluded that a fatwa is not a source of law for the Sharia Court, as it has not been incorporated into positive law. Once it becomes part of the legislation, it can be considered in the judge's decision-making process.

Therefore, for the fatwa to be a legal basis for judges handling talaq issues specifically, it is hoped that the Aceh government will propose to the Sharia Court to make this fatwa a guideline for ruling on talaq cases to avoid differences of opinion that could lead to division in the community.

Thus, the author concludes that for the benefit of the community, it is reasonable for a judge to implement this fatwa immediately, given that Aceh is a special region as regulated in the Law of the Republic of Indonesia No. 11 of 2006 on the Governance of Aceh.

This conclusion is in line with the theory of the Application of Islamic Law in Indonesia, specifically the Receptie In Complexu theory, which states that Islamic law can be applied if it has become part of the customary law or practices in the community. This theory can serve as a basis for legal determination, considering Aceh's strong adherence to the Shafi'i school.

However, if the MPU fatwa is not used as a reference in Sharia Court rulings, this may lead to new polemics in the community. The public may view the fatwa as a futile action, with the MPU simply wasting government funds without clear benefits. On the other hand, it could also lead to the perception that the MPU institution is just a waste of state funds without generating meaningful change.

## 6. Conclusion

Based on the results of this study, the author draws the following conclusions. The Opinion of the MPU Aceh Tamiang on Fatwa MPU Aceh Number 02 of 2015 Regarding Divorce: This fatwa was issued in response to public concerns arising from the inconsistency between the rulings of the Sharia Court and the practices in society. This inconsistency has led to issues related to social harmony, particularly in relation to the implementation of the fatwa. According to Qanun Aceh No. 2 of 2009 on the MPU, the MPU of the district or city is obligated to implement and enforce the fatwas issued by MPU Aceh.

The Views of the Judge of the Sharia Court of Kuala Simpang on Fatwa MPU Aceh Number 02 of 2015 Regarding Divorce: The judge stated that the MPU, in issuing the fatwa, has acted in accordance with the mandate of the law, which grants the MPU the authority to issue religious legal fatwas, as long as they are intended for the welfare of the community. However, the fatwa issued by MPU Aceh cannot serve as a legal basis for the judges of the Sharia Court in making decisions, as the fatwa is not yet part of the legislative hierarchy. For the fatwa to be a valid basis for judges in making decisions, it must first be accommodated in local regulations or the Qanun of Aceh.

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