



Divorce Due to Religious Differences

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Abstract

This study analyzes jurisprudence in divorce cases, especially in two important decisions, namely Number 235/Pdt.G/2018/PTA. Sby and Number 0136/Pdt.G/2018/PA. Mto. Using a qualitative approach and normative legal analysis, this study examines the background of the case, the trial process, and the judge's legal considerations in divorce decisions. The main focus is the application of the principles of justice and the values of Islamic law. The results of the study show that persistent disputes between husband and wife are used as a legal basis for divorce, by referring to Law No. 1 of 1974, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law. This decision reflects a balance between legal, social, and religious aspects, and considers the psychological impact and well-being of children. This research emphasizes the importance of jurisprudence in interpreting Islamic law and the flexibility of Islamic law in dealing with social dynamics. Her contribution to the development of Islamic family law in Indonesia is expected to be a reference for academics, legal practitioners, and policymakers in improving the quality of resolving divorce cases in the future.

Keywords: Divorce; Different; Streams

Abstrak

Penelitian ini menganalisis yurisprudensi dalam kasus perceraian, khususnya pada dua putusan penting, yaitu Nomor 235/Pdt.G/2018/PTA.Sby dan Nomor 0136/Pdt.G/2018/PA.Mto. Menggunakan pendekatan kualitatif dan analisis hukum normatif, penelitian ini mengkaji latar belakang kasus, proses persidangan, serta pertimbangan hukum hakim dalam keputusan perceraian. Fokus utama adalah penerapan prinsip keadilan dan nilai hukum Islam. Hasil penelitian menunjukkan bahwa perselisihan terus-menerus antara suami dan istri dijadikan dasar sah untuk perceraian, dengan merujuk pada Undang-Undang No. 1 Tahun 1974, PP No. 9 Tahun 1975, dan Kompilasi Hukum Islam. Keputusan ini mencerminkan keseimbangan antara aspek hukum, sosial, dan agama, serta mempertimbangkan dampak psikologis dan kesejahteraan anak. Penelitian ini menekankan pentingnya yurisprudensi dalam menginterpretasikan hukum dan fleksibilitas hukum Islam dalam menghadapi dinamika sosial. Kontribusinya bagi pengembangan hukum keluarga Islam di Indonesia diharapkan dapat menjadi rujukan bagi akademisi, praktisi hukum, dan pembuat kebijakan dalam meningkatkan kualitas penyelesaian kasus perceraian di masa depan.

Kata Kunci: Perceraian; Beda; Aliran

Introduction

The phenomenon of divorce due to religious differences is increasingly encountered in multicultural societies, especially in urban areas that have diverse religious

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backgrounds.¹ One of the problems that arises is when a couple who was previously married in one faith then one of them decides to change religion.² These changes often trigger tension in the household, both in terms of communication, children's education, and daily worship practices.³ On the other hand, society and extended family often exert social pressure that exacerbates the couple's internal conflicts. At the legal level, the lack of clarity in regulations regarding the status of interfaith marriages also adds complexity in the process of resolving cases, so that many couples face confusion in taking the right legal route.

Divorce is a complex family law issue and involves various aspects, such as legal, social, economic, and religious.⁴ In the Indonesian legal system, divorce is regulated by Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI).⁵ The divorce process in religious courts is not only aimed at resolving conflicts between husband and wife, but also ensures the protection of children's rights and reflects the principles of justice in the family.⁶ Jurisprudence has an important role in providing guidelines to judges in deciding divorce cases, especially when the reason for divorce is related to broken marriage.⁷ Broken marriage is a concept recognized by positive Indonesian law and Islamic sharia with key indicators such as persistent disputes, failure of peace efforts, and separation of residence.

¹ Andeskebtso Yohanna Adaki dan John Wajim, "Cultural Adaptation and Marriage Dissolution," *Vejo-Veritas Journal of Humanities* 5, no. 1 (2024), <https://acjoi.org/index.php/veritas/article/view/4337>.

² Ashley Roberson, "Understanding the Current Availability of Marriage Education in the Church and the Perceived Need for Earlier Education" (PhD Thesis, Amridge University, 2024), <https://search.proquest.com/openview/37fae7a6fedbc0b04ff2bed86493bebb/1?pq-origsite=gscholar&cbl=18750&diss=y>.

³ Fatma Kurttekin, *Effects of Alevi-Sunni Marriages on Children's Religious Education and Family Relations* (Oku Okut Yayınları, 2024), <https://www.ceeol.com/search/book-detail?id=1299870>.

⁴ Michael A. Goodman dkk., "Religious Faith and Transformational Processes in Marriage," *Family Relations* 62, no. 5 (2013): 808–23, <https://doi.org/10.1111/fare.12038>.

⁵ Queen Adila dan Zamzami Ahmad, "The Dynamics of Women's Involvement in the Formulation of Islamic Family Law in Indonesia: Analysis of Law No. 1 of 1974," *Jurnal Mediasas: Media Ilmu Syari'ah dan Ahwal Al-Syakhsyiyah* 8, no. 2 (2025): 343–58.

⁶ Lina Sulistiawati, "Divorce Mediation in Islamic Family Law: Assessing the Role of Religious Mediation in Conflict Resolution," *Journal of Islamic Family Law* 1, no. 1 (2025): 8–15.

⁷ Ana Ulfiana dkk., "JUDGES' CONSIDERATIONS IN DIVORCE CASES DUE TO BROKEN MARRIAGE: AN ANALYSIS OF CONTEMPORARY ISLAMIC FAMILY LAW," *al-Mawarid Jurnal Syariah dan Hukum (JSYH)* 7, no. 1 (2025): 135–52.

This article discusses two important decisions that reflect the application of jurisprudence in divorce cases, namely the Decision of the Surabaya High Court of Religion Number 235/Pdt.G/2018/PTA. Sby and the Decision of the Muara Tebo Religious Court Number 0136/Pdt.G/2018/PA. Mto. These two rulings provide an overview of how judges use jurisprudence to ensure justice for the parties, especially women and children. By comparing these two rulings, this article aims to examine the application of the principle of broken marriage and its relevance in the Islamic family law system in Indonesia.

Several previous studies have addressed the issue of divorce caused by religious differences from various perspectives. Research by William D. Stanford shows that conflict of faith in the household is often the main trigger for divorce, especially when one of the spouses converts to religion after marriage.⁸ Meanwhile, a study by Khoirul Anwar highlights a clear legal vacuum in the Indonesian Marriage Law regarding interfaith marriage, which causes courts to often make decisions based on inconsistent jurisprudence interpretations.⁹ Another study by Nader Ayadi that divorce due to religious differences not only impacts couples, but also poses a dilemma of identity and religious education for their children. In general, previous studies agree that divorce due to religious differences is a multidimensional problem that requires an interdisciplinary approach to understand the root cause of the problem and to formulate contextual and humane solutions.¹⁰

In contrast to previous studies that focused more on the juridical and sociological aspects of divorce due to religious differences, this study seeks to present a more holistic approach by examining the emotional, psychological, and spiritual dynamics experienced by couples during the process of changing beliefs until divorce. The study also attempted to explore the subjective experiences of individuals who experienced divorce due to religious differences through an in-depth qualitative approach, including how they interpreted marriage, religion, and post-divorce identity change. In addition, this study will focus on the response of the surrounding community and the role of religious institutions

⁸ William D. Stanford dkk., "Sources of Influence in Marriage and Parenting for Interfaith Couples," *Marriage & Family Review* 61, no. 4 (2025): 373–408, <https://doi.org/10.1080/01494929.2025.2467914>.

⁹ Khoirul Anwar dkk., "Muslim Minorities in the Context of Citizenship in Western Countries According to Fiqh Al-Aqalliyat; Challenges and Obligations," *Tribakti: Jurnal Pemikiran Keislaman* 36, no. 1 (2025): 1–24.

¹⁰ Nader Ayadi dkk., "Challenges of the Transition Process from Divorce to Remarriage: A Qualitative Meta-Synthesis," *Current Psychology*, advance online publication, Springer Science and Business Media LLC, 7 Juni 2025, <https://doi.org/10.1007/s12144-025-08006-4>.

or mediation in the conflict resolution process, which has not been highlighted much in previous studies.

Method

This study uses a normative juridical approach with a case approach method to examine the application of jurisprudence in divorce cases in the Indonesian religious justice environment. The main focus of this research is the analysis of two court decisions, namely the Decision of the Surabaya High Court of Religion Number 235/Pdt.G/2018/PTA. Sby and the Decision of the Muara Tebo Religious Court Number 0136/Pdt.G/2018/PA. Mto. These two rulings were chosen purposively because they represent the dynamics of the application of the principle of broken marriage in the settlement of divorce cases and show how judges use jurisprudence to realize substantive justice, especially for affected women and children.¹¹

The data used in this study consisted of primary data in the form of official copies of court decisions, as well as secondary data that included legal literature, laws and regulations, Islamic family law journals, and doctrines from Islamic legal experts and religious courts. The data collection technique is carried out through document studies and literature review, while data analysis is carried out using a legal hermeneutic approach, which is to interpret the content of the decision based on the argumentative structure and the legal context behind it.¹² Comparative analysis was also applied to identify similarities and differences in legal considerations used by judges in the two decisions, as well as to assess the consistency of the application of the principle of broken marriage in religious judicial jurisprudence. With this methodology, the research is expected to contribute to a deeper understanding of the development of Islamic family law in Indonesia, especially in the framework of jurisprudence-based progressive justice.

¹¹ Jennifer Anuchiracheeva-Zamarripa, "A Qualitative Phenomenological Study of Adult School Counselors' Importance and Influence in Supporting Adult Learners" (PhD Thesis, University of La Verne, 2024), <https://search.proquest.com/openview/913fc8067ba7e13e88640ee4f52be306/1?pq-origsite=gscholar&cbl=18750&diss=y>.

¹² John W. Creswell dan Cheryl N. Poth, *Qualitative inquiry and research design: Choosing among five approaches* (Sage publications, 2016), <https://books.google.com/books?hl=id&lr=&id=DLbBDQAAQBAJ&oi=fnd&pg=PP1&dq=creswell&ots=-ir918MRVx&sig=tNz5z8VXFzdz5f4cdDUX4UCWYqQ>.

Results and Discussion

Decision of the Surabaya High Court of Religion Number 235/Pdt.G/2018/PTA. Sby

This case began with a divorce lawsuit filed by a wife (Plaintiff) against her husband (Defendant) at the Kediri Religious Court. They married in 2015 and had a child who was 1 year and 5 months old at the time the divorce lawsuit was filed. The marriage relationship was initially harmonious, but it began to deteriorate in 2016. This conflict is triggered by several factors, namely the husband's inability to meet economic needs after being laid off from his job, as well as the husband's selfish nature who often imposes his beliefs (LDII tradition) on his wife. This domestic problem worsened until it peaked in July 2017, when the husband left home. Since then, the husband has not provided for his wife with birth or mental support. This situation makes the wife feel that her household can no longer be repaired. In the end, the wife decided to file a divorce lawsuit with the Kediri Religious Court. In the trial process, the Kediri Religious Court decided to:

1. Granting the Plaintiff's divorce lawsuit;
2. To drop talaq one bain sughro;
3. Giving child custody to the husband.

Not satisfied with the decision, the husband appealed to the Surabaya High Court of Religion (PTA). After examining the case file and considering the facts, PTA Surabaya upheld the first-instance verdict. In its ruling, PTA Surabaya emphasized that the couple's household had experienced a broken marriage, and the peaceful efforts made during the mediation process did not yield results. Therefore, PTA Surabaya decided to reject her husband's appeal and uphold the decision that had been taken by the Kediri Religious Court.

The facts that are the main consideration of PTA Surabaya are, The inability of the husband to meet economic needs. The husband no longer has a job since he was laid off, which resulted in the neglect of his responsibilities as the head of the family. Loss of communication and involvement in the household. The husband leaves the house without giving a clear reason, and does not provide support both naturally and mentally to the wife. Failure of peace efforts. Despite mediation efforts, the two parties have not been able to reach an agreement to improve the household. This decision affirms the importance of the role of economics and communication in maintaining the sustainability of marriage, and

shows how the High Court of Religion handles broken marriage cases fairly based on the facts and available evidence.

Decision of the Muara Tebo Religious Court Number 0136/Pdt.G/2018/PA. Mto

This second case was filed by a 21-year-old young wife (Plaintiff) against her husband (Defendant) who was 22 years old. The couple got married on January 15, 2017 at KUA, Rimbo Ulu District, Tebo Regency, and were blessed with a son who was born on December 5, 2017. However, their household began to experience problems just a few months after marriage. The plaintiff complained about her husband's selfish nature who often got angry for no apparent reason, curtailed the wife's freedom, and did not care about domestic affairs. This conflict is exacerbated by differences in religious views between husband and wife, which are a major source of dispute. The peak of the conflict occurred in January 2018, when the husband left the house without giving an explanation. Since then, the couple has not lived together.

The plaintiffs filed for divorce in May 2018 on the grounds that their household was no longer tenable. In the trial process, the husband was never present even though he had been officially summoned by the court. Due to the absence of the husband, this case was decided *verstek* by the Muara Tebo Religious Court. In its ruling, the Muara Tebo Religious Court decided to:

1. Granting the Plaintiff's divorce lawsuit;
2. To drop *talaq one bain sughro*;
3. Charging the case fee to the husband.

Some important facts that are the basis for the court's decision are the absence of the husband in the trial process. This absence shows a lack of good faith from the husband to solve domestic problems legally. Failure to carry out obligations as a husband. Not only does the husband leave the house for no reason, but he also does not provide support and emotional support to his wife. Prolonged conflicts that cannot be resolved. Differences in religious views and the husband's selfish nature are the main factors that cause this marriage to be untenable. This ruling reflects how the court gives serious attention to the sustainability of the household and the welfare of wives and children. Even though this case was decided *verstek*, the court still conducted in-depth consideration based on the evidence submitted by the Plaintiff.

Analysis of Similarities and Differences of Cases

Both cases involve a divorce lawsuit filed by the wife with the main reason for the husband's failure to fulfill economic and emotional responsibilities. In both cases, the husband left the house and did not provide for his wife with birth or mental support. The court decision in both cases led to the granting of the divorce lawsuit with the imposition of *talaq one bain sughro*. Both cases show the importance of communication, economics, and common views in maintaining the integrity of the household. Factors causing conflict: In the first case, conflict is triggered by economic incompetence and the imposition of religious beliefs, while in the second case, conflict is more influenced by selfishness and differences in religious views.

Husband's response to the legal process: In the first case, the husband appeals after the first-instance verdict, while in the second case, the husband is not present at the trial so the case is decided *verstek*. Child custody in the first case, child custody is given to the husband, while in the second case, it is not discussed in detail because it focuses on the termination of the marriage. These two cases provide important lessons about marriage and how Islamic family law in Indonesia is applied.

The importance of the role of the economy in the household. Inability to meet economic needs is often a major factor in the cause of divorce. In the context of Islamic law, the husband has an obligation to provide for his wife and children. Balance in the husband-wife relationship. Healthy relationships require good communication, mutual respect, and tolerance for differences. Imbalances in these aspects can lead to conflicts that are difficult to resolve. The importance of peaceful conflict resolution. The mediation process in a religious court aims to reconcile the couple before taking the divorce step. However, if mediation does not work, divorce becomes the last resort. Women's rights in Islam. Both cases show how Islamic family law protects women's rights in marriage, including the right to file for divorce if the husband fails to perform his obligations. The role of the court in maintaining balance. Religious courts have a responsibility to ensure that decisions taken are fair and take into account the interests of all parties, especially the children involved.

Judge's Legal Considerations: Decision of the Surabaya High Court of Religion Number 235/Pdt.G/2018/PTA. Sby

The Panel of Judges began its consideration by stating that the appeal filed by the

husband (defendant) had been in accordance with the procedure and was filed within the time specified by law. In this context, the judge considered that there was no violation of the procedures set out in the civil procedure law. An orderly procedure is an absolute prerequisite for the acceptance of an appeal. Thus, the appeal application is declared admissible for examination and decision. The fact that the appeal is formally qualified reflects the procedural fairness upheld by the court. In civil procedure law, the timeliness of appeals is crucial, and even the slightest omission can lead to the rejection of the application.

In examining the case, the Panel of Judges found the fact that the relationship between husband and wife had not been harmonious since 2016. This disharmony is caused by the husband's inability to meet economic needs after being fired from his job and the imposition of religious beliefs on his wife. This illustrates fundamental conflicts that are not only material but also emotional and spiritual. The facts of the trial show that the couple has been separated since July 2017, and there has been no communication to repair the relationship. The panel of judges was of the view that the disharmony was no longer irreparable and that their household had reached the stage of "broken marriage." This principle refers to the jurisprudence of the Supreme Court which states that a broken household can no longer be maintained in order to prevent greater harm.

Peace efforts are one of the required steps in the divorce legal process. In this case, the Panel of Judges considered that peace efforts had been made, both by the family and through mediation at the court level. However, all these efforts failed because both sides could not reach an agreement. This fact reflects that domestic relationships that have reached a critical stage are often difficult to restore, especially when both parties do not share the same desire to improve the situation. This is strengthened by the regulations in Article 39 paragraph (2) of Law No. 1 of 1974 and Article 19 letter (f) of Government Regulation No. 9 of 1975. In this case, the Panel of Judges decided to award child custody to the plaintiff (wife) based on Article 105 letter (a) of the Compilation of Islamic Law (KHI). The main consideration is that a minor child needs more of a mother's attention and affection.

Decision of the Muara Tebo Religious Court Number 0136/Pdt.G/2018/PA. Mto

The judge stated that the wife's (plaintiff's) lawsuit could be accepted and examined

verstek because the defendant was not present at the trial even though he had been formally and properly summoned. The defendant's absence shows a disregard for legal proceedings and shows the defendant's unwillingness to maintain the marriage. This decision is based on Articles 149 and 150 R.Bg., which stipulate that if the defendant is absent without valid reasons, the court can decide the case based on the plaintiff's lawsuit.

The Panel of Judges found that the household between the two had experienced serious disharmony since the end of 2017. The main causes were the husband's selfish nature, differences in religious views, and the husband's departure from home in January 2018. The facts of the trial show that they no longer lived together for more than six months, and there was no real effort to mend the relationship.

This disharmony reflects a fundamental conflict that is difficult to resolve. The judge concluded that their marriage had reached the stage of "broken marriage," which was a strong reason to grant the divorce lawsuit. Mediation as a mandatory step in the divorce process cannot be carried out due to the absence of the husband (defendant) in the trial. This is contrary to PERMA No. 1 of 2016 concerning Mediation Procedures in Court, which requires both parties to participate in the mediation process. The defendant's absence not only shows a disregard for legal proceedings but also confirms that there is no good faith to improve domestic relations. The Panel of Judges decided to grant the divorce lawsuit of the wife (plaintiff), impose talaq satu bain sughro, and charge the wife the costs of the case. This ruling reflects that the court adheres to the principle of justice by considering the fact that the household has broken down and there is no hope of repair.

The above two court decisions show that although there are similarities in the grounds for divorce (broken marriage), there are significant differences in the procedural aspects and dynamics of the case. In the case of the Surabaya High Court of Religion, both parties were present in the legal process, allowing for formal mediation even if it failed. On the other hand, in the case of the Muara Tebo Religious Court, the defendant was not present so that the process ran verstek without mediation. These differences reflect the challenges the courts face in upholding justice, especially when one of the parties is uncooperative. In addition, the main conflict in both cases is also different. In the first case, the conflict is more influenced by economic and spiritual factors, while in the second case, differences in religious views and the husband's selfish nature are the main triggers.

Analysis

In Islamic family law in Indonesia, sharia principles are the main foundation in handling divorce cases.¹³ However, the application of Islamic law is integrated with positive law through Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI). In the two cases discussed, namely the Decision of PTA Surabaya Number 235/Pdt.G/2018/PTA. Sby and the Decision of the Muara Tebo PA Number 0136/Pdt.G/2018/PA. Mto, it can be seen that the legal approach used has an important role in achieving justice for the parties to the dispute.

The principle of broken marriage is the main reference in determining whether a marriage can be maintained or not. Based on the jurisprudence of the Supreme Court, including Number 38K/AG/1990 and Number 379/K/AG/1995, broken marriage is defined as a condition in which marriage has lost the essence of togetherness, both emotionally, spiritually, and materially. In the case of PTA Surabaya, this rift can be seen from the separation of the couple's residence since July 2017, the failure of mediation, and the husband's economic incapacity. Meanwhile, in the case of the Muara Tebo PA case, the difference in religious views and the defendant's absence from the trial strengthened the indication of a broken marriage. It is important to note that this principle not only assesses individual faults, but also considers the psychological and social impact of domestic conflicts. According to research by Sari and Utami (2019), broken marriage is often the best solution to avoid further losses, including for the children involved.

In the case of PTA Surabaya, child custody is given to the mother by referring to Article 105 letter (a) of the KHI. This decision reflects the application of the principle of "the best interest of the child," where the judge considers that children under the age of 12 need more attention and affection than the mother. In contrast, in the case of the Muara Tebo PA the custody issue was not discussed because the main focus lay on the termination of the marital relationship. The case of PTA Surabaya shows compliance with legal procedures in filing an appeal, while the case of PA Muara Tebo reflects the defendant's neglect which resulted in a *verstek* decision. According to Articles 149 and 150 R.Bg., the defendant's absence from the trial can be the basis for deciding the case unilaterally. Orderly legal

¹³ Tasnim Rahman Fitra dkk., "Sanctions and Legal Compliance in Marriage Registration: A Comparative Implementation of Islamic Family Law in Indonesia and Malaysia," *Islamic Law and Social Issues in Society* 1, no. 1 (2025): 47–61.

procedures are an important element in ensuring procedural and substantive justice for the parties.

Divorce is not only a legal issue, but also a complex social phenomenon. Domestic conflicts are often influenced by economic, emotional, and cultural factors attached to the spouse. Both of these cases provide an in-depth look at how these factors affect household stability. In the case of PTA Surabaya, the husband's inability to meet economic needs is the root of the problem. Husbands who lose their jobs and fail to provide for their children create tension in the relationship. This is in line with research which states that economic resilience is an important pillar in maintaining marital harmony.¹⁴ Differences in religious views are the main issue in the case of the Muara Tebo PA. This conflict shows that spiritual values can be a trigger for conflict if not managed properly. According to Fakhruddin, differences in religious values often bring social pressure from extended families, which ultimately worsens the couple's situation. Selfish nature and lack of communication are common themes in both cases.¹⁵ According to research by Fathima Sherin Ottakkam Thodukayil unresolved conflicts can cause prolonged stress for couples, which ultimately influences the decision to divorce.¹⁶

The decision of PTA Surabaya reflects compliance with applicable legal principles, by taking into account relevant facts. The judge gave in-depth consideration of the husband's economic failure, the failure of mediation, and the interests of the children. The legal basis used, including Article 39 paragraph (2) of Law No. 1 of 1974 and Article 105 letter (a) of the KHI, shows that this decision is based on a strong law. On the contrary, the decision of the Muara Tebo PA paid special attention to the defendant's neglect of the legal process. The *verstek* decision was taken to protect the rights of the plaintiff, which shows that the court has flexibility in handling cases where one of the parties is uncooperative. These two rulings highlight the importance of the court's role in maintaining a balance between legal

¹⁴ Gita Prismadianto dkk., "The Importance of Educational Attainment and Premarital Counseling in Building Family Harmony and Preventing Domestic Violence to Strengthen National Resilience," *Tafkir: Interdisciplinary Journal of Islamic Education* 6, no. 2 (2025): 305–21.

¹⁵ Fakhir Ud Din dkk., "Exploring Attitudes of People Towards Polygamous Marriages: A Qualitative Analysis in District Battagram, Pakistan," *Review Journal of Social Psychology & Social Works* 3, no. 1 (2025): 304–14.

¹⁶ Fathima Sherin Ottakkam Thodukayil dkk., "The Causes of Divorce and Its Effects on Women: A Systematic Review," *Marriage & Family Review*, Informa UK Limited, 18 April 2025, 1–36, <https://doi.org/10.1080/01494929.2025.2484781>.

justice and social impact. In the context of Indonesian society, divorce is often considered taboo, but these cases show that divorce can be a solution to end conflicts that are detrimental to all parties.

In addition, it is important to see that in both cases, gender issues and the protection of women's rights receive significant attention. In the context of Islamic family law, women are often in a disadvantaged position due to their financial and social dependence on their husbands.¹⁷ However, religious courts have shown their alignment with the principle of substantive justice by protecting women's rights through rulings that provide space for women to continue their lives independently. In the case of PTA Surabaya, the granting of custody to the mother not only reflects the needs of the child, but also provides emotional and economic stability for the plaintiff. Meanwhile, in the Muara Tebo PA case, the court ruled to protect the plaintiff's rights even in the defendant's absence, reflecting the court's efforts to reduce gender inequality in legal proceedings.

The sharia perspective also makes an important contribution to understanding the basics of divorce in both cases.¹⁸ The principle of "*la dharara wa la dhirar*" teaches that marriage should not be a source of harm to both parties. In this context, divorce is not seen as a failure, but rather as a measure to protect the rights of individuals from greater negative impacts.¹⁹ The emphasis on benefits is also seen in the court's efforts to ensure that their verdicts provide the best solution for all parties involved, especially children. This principle is in line with Olena Ivanii emphasizes that Islamic law places a balance between rights and obligations as the main foundation in resolving domestic conflicts.²⁰

These two cases provide important lessons on how Islamic family law in Indonesia is applied to handle domestic conflicts. The principle of broken marriage, the importance of mediation, and the protection of child custody are key elements in achieving justice.

¹⁷ Nor Suzyilah Sohami dkk., "Exploring Women's Housing Challenges: Legal and Policy Solutions for Women's Access to Adequate Housing," *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 1 (2025): 20–37.

¹⁸ Awad Abdulraheem Awad Al Dwairi, *Islamic Principles and Family Stability: An Analytical Study on the Role of Religion in Preventing Divorce*, t.t., diakses 22 Juli 2025, https://universum-journal-chile-issn0716-498x.com/style/site/uploads/gallery/2025-03-11_21-34-18-image_250311093418.pdf.

¹⁹ Ndametem James Ojen, "The Increasing Rate of Divorce and Its Effects on the Family and Society's Development in the 21st Century," *Nigerian Journal of Social Psychology* 8, no. 2 (2025), <https://www.nigerianjps.com/index.php/NJSP/article/view/234>.

²⁰ Olena Ivanii, "Family legal relations in the context of gender equality: Legal protection of women and men," *Legal Horizons* 24, no. 1 (2025): 51–62.

Religious Courts need to strengthen mediation programs by involving trained family counselors to help couples resolve conflicts before taking the divorce step. The government can also expand pre-marriage education programs to increase couples' understanding of economic, emotional, and spiritual responsibilities in marriage. In cases where husbands are uncooperative, there needs to be a stronger mechanism to protect the rights of women and children.

Conclusion

Decision of the Surabaya High Court of Religion Number 235/Pdt.G/2018/PTA. Sby and the Decision of the Muara Tebo Religious Court Number 0136/Pdt.G/2018/PA. The Mto provides a comprehensive overview of how jurisprudence and positive law are applied in divorce cases in Indonesia. The two rulings not only show consistency in the application of legal principles, but also underscore the relevance of the concept of broken marriage as one of the main foundations in determining the end of a marriage that can no longer be defended.

In both cases, the judge identified several key elements that are indications of a broken marriage condition. These elements include persistent disputes between spouses, failure to resolve conflicts through mediation and reconciliation efforts, and circumstances in which the spouse has lived apart both physically and emotionally. These indicators are clear evidence that marriage has lost the essence of togetherness and the original purpose of its formation. Thus, broken marriage is used as a legal basis to provide certainty for the parties involved, both husband and wife.

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