

## Challenges of Family Fragility Among Muallaf An Analysis of Religious Court Decisions in Indonesia

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**Abstract:** *The marriage between individuals of different religions continues to emerge in Indonesia. Some of them convert to Islam (become Muslim) in order to have their marriage officially registered at the Religious Affairs Office (KUA), making their marriage valid. However, the reality of living a married life based on religious differences before marriage is at risk due to various crucial factors that the couple already faced prior to converting to Islam. This study aims to further elaborate on the fragility of the families of converts through an analysis of court rulings from Indonesian Religious Courts. These rulings are analyzed based on the reasons for divorce in cases from various Religious Courts, examining the judges' legal considerations and analyzing their decisions from the perspective of interfaith marriages. This normative legal research uses secondary data, consisting of primary legal materials from the rulings of Religious Courts obtained from the Supreme Court's decision directory. Additionally, secondary legal materials such as fiqh books, marriage regulations, and other related articles are also used. The findings of the study indicate that divorces occurring in these thousands of rulings were caused by non-Muslim partners reverting to their previous religion (apostasy). In these cases, judges granted divorce petitions due to the conversion from Islam to another religion (apostasy), which became one of the grounds for marriage dissolution (fasakh). From this perspective, it can be concluded that the fundamental principle in Indonesian marriage regulations, which only accepts marriages between individuals of the same religion, is aimed at ensuring the creation of intact, strong, and solid families, built on a foundation of the same religion from before marriage.*

**Keywords:** *Converts, Apostates, Religious Differences, Divorce.*

**Abstrak:** *Perkawinan antara orang yang berbeda agama terus bermunculan di Indonesia. Sebagian mereka mengubah agamanya menjadi Islam (muallaf) agar dapat dicatatkan secara resmi di KUA, sehingga perkawinan mereka menjadi sah. Hanya saja, realitas dalam menjalani kehidupan rumah tangga yang didasari oleh perbedaan agama sebelum menikah menjadi terancam karena berbagai faktor krusial yang telah dimiliki pasangan sebelum mereka pindah agama. Kajian ini bertujuan untuk mengelaborasi lebih jauh tentang kerapuhan keluarga muallaf melalui analisis putusan-putusan Pengadilan Agama di Indonesia. Putusan-putusan ini dianalisis dari alasan perceraian dalam sebaran kasus dari berbagai Pengadilan Agama, mengkaji pertimbangan hukum hakim serta menganalisis penyelesaian hakim dari perspektif perkawinan beda agama. Penelitian hukum normative ini menggunakan data sekunder berupa bahan hukum primer dari putusan-putusan Pengadilan Agama yang didapatkan dari direktori putusan Mahkamah Agung. Selain itu, digunakan juga bahan hukum sekunder berupa kitab/buku fiqh, regulasi perkawinan, serta artikel terkait lainnya. Hasil kajian menunjukkan bahwa perceraian yang terjadi dalam puluhan ribu putusan ini disebabkan karena pasangan non-Muslim kembali pada agama lamanya (murtad). Dalam hal ini, hakim-hakim mengabulkan permohonan/gugatan perceraian para pihak karena pindah agama dari Islam kepada selain Islam (murtad) menjadi salah satu penyebab putusnya perkawinan*

(fasakh). Dari sisi ini juga dapat ditarik kesimpulan bahwa prinsip dasar dalam regulasi perkawinan Indonesia yang hanya menerima perkawinan orang yang sama agamanya adalah bertujuan untuk memastikan terwujudnya keluarga yang utuh, kuat, kokoh dan dibangun dari pondasi agama yang sama sejak sebelum perkawinan.

**Kata Kunci:** Muallaf, Murtad, Perbedaan Agama, Perceraian.

## Introduction

Divorce cases in Religious Courts continue to rise across Indonesia. Data from the Supreme Court's Decision Directory for the Religious Courts section shows that the number of divorce rulings in Indonesian Religious Courts reached 574,723 in 2021, 471,142 in 2022, and 457,234 in 2023. In comparison, divorce rulings from the previous decade were recorded as 162,714 in 2011, 245,861 in 2012, and 314,584 in 2013. Looking further back, the Supreme Court's Decision Directory recorded only 20 divorce rulings in 1972, 32 in 1971, and 710 in 1970. The highest number of divorce rulings recorded by the Supreme Court was 734,700 in 2019, during the peak of the COVID-19 pandemic. The data above clearly indicates that the phenomenon of divorce among Muslims in Indonesia represents an undeniable manifestation of the fragility of Muslim family households. Some of the divorce data is caused by apostasy of one or both married couples. The latest data (December 2024) in the Supreme Court's decision directory shows that there are around 53,419 married couples who divorced due to apostasy.

The reasons for divorce in general rulings refer to marriage regulations in Indonesia, namely Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law (KHI). Article 39, paragraph 2 of the Marriage Law states that the grounds for divorce include: first, one of the spouses commits adultery, is an alcoholic, a drug addict, or a gambler; second, one party abandons the other without permission or communication for two consecutive years; third, one party is sentenced to imprisonment for more than 5 years or a heavier penalty; fourth, one party commits cruelty or violence that endangers the other; fifth, one party has a physical disability that prevents the fulfillment of their rights and obligations; and sixth, there is continuous conflict between the two. These six grounds are further supplemented in the Compilation of Islamic Law (KHI), Article 116, which includes: first, the husband violates a marital vow (*ta'lik talak*); and second, one of the parties converts from Islam (apostasy).

Apostasy, or leaving Islam, is one of the grounds for the dissolution of marriage in Islamic jurisprudence (*fiqh*), and it is specifically regulated in Indonesian marriage law, particularly in the Compilation of Islamic Law (KHI). Essentially, the study of apostasy is addressed in several areas of *fiqh*. For instance, in the field of *fiqh jinayah*, it is taught that leaving Islam (*riddah*) is one of the hudud punishable offenses, and those who commit it are severely penalized.<sup>1</sup> Similarly, in the field of *fiqh mawaris* (inheritance), it is stated that religious differences are an obstacle to mutual inheritance between Muslims and non-Muslims. This prohibition is based on the Hadith of the Prophet Muhammad (PBUH), which explains this concept.<sup>2</sup> Religious differences also serve as an obstacle to the validity of marriage in Indonesia, as the principle of marriage law in Indonesia is that marriage must occur between individuals of the same religion and belief. This is regulated in Article 2 of Law No. 1 of 1974 on Marriage. When a case of interfaith marriage arises, each party is faced with a difficult choice: either follow the religion of their spouse or

<sup>1</sup> Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu*, vol. VII (Beirut: Dar al-Fikr, 1997).

<sup>2</sup> Imam Muslim, *Sahih Muslim* (Kairo: Dar al-Hadits, 2005).

continue the marriage, but without the possibility of having it officially registered with the state-designated authorities.

Religious freedom in Indonesia is entrusted to each individual, and the state cannot force anyone to follow a particular religion. This fundamental principle is also taught in the official religions in Indonesia. The principle of freedom to choose one's religion is also recognized in Islam, as The God (Allah) says in the Qur'an, Surah al-Baqarah (2): 256. This verse explains that there is no compulsion in choosing or adhering to Islam. However, once a person has embraced Islam, the teachings of Islam apply to them. Similarly, when someone has embraced another religion, the rules of that religion apply to them. When a person converts to Islam, the teachings of Islam instruct them to remain steadfast in their faith. Therefore, choosing to leave Islam is considered forbidden in Islam. The act of a Muslim leaving Islam is known as *murtad* (apostasy). The concept of *murtad* is not as simple as its term suggests, as one word—*murtad*—can have significant legal implications in Islamic law (Shari'a), affecting various other legal actions.

Apostasy (*murtad*) is considered a legitimate Shari'a reason for the dissolution of a marriage, and thus it also serves as a formal legal ground for divorce under Indonesian marriage regulations. Apostasy leads to the termination of inheritance rights between heirs. This inheritance conflict involving apostates is clearly visible in the rulings of Religious Courts in Indonesia. Apostasy prevents a father from acting as the *wali* (guardian) for his daughter's marriage, and the state takes over his role as the guardian. Similarly, apostasy serves as a Shari'a reason to deny custody rights of children to an apostate spouse. Therefore, in Islamic law, choosing Islam or becoming a Muslim is not a compulsion; however, once a person becomes a Muslim, the teachings of Islam must be followed in order to achieve the intended goals of religion: a good life in both this world and the hereafter.

The consequences of apostasy on various legal matters have been explained across different aspects of Islamic law. However, the study of apostasy becomes controversial when it involves *hadd al-riddah* (punishment for apostasy) or criminal sanctions.<sup>3,4</sup> *Riddah* is one of the *hudud* (fixed punishments) accepted by scholars in the field of *fiqh jinayah* (criminal law). Conceptually, *riddah* refers to the act of someone leaving Islam, which was their original belief, and converting to another religion.<sup>5</sup> The choice to leave Islam is not permitted in Islamic law. Scholars base their views on the Qur'an and the Sunnah. In Surah al-Baqarah (2): 217, it is stated that anyone who leaves Islam and dies in a state of disbelief will have all their deeds, both in this world and the hereafter, nullified. The God (Allah) ensures their eternal punishment in hell. This verse explains the severity of apostasy and its consequences for all the good deeds performed while a person was Muslim. Furthermore, the Hadith of the Prophet (PBUH) adds legal consequences for apostasy, including severe punishment. A Hadith narrated by al-Bukhari states: "*Man baddala dinahu faqtuluhu*," meaning "Whoever changes his religion (from Islam to disbelief), kill him." The existence of apostasy as a prohibition, with death

<sup>3</sup> Lalu Supriadi B. Mujib and Khairul Hamim, "Religious Freedom and Riddah through the Maqāṣidī Interpretation of Ibn 'Āshūr," *HTS Theologiese Studies / Theological Studies* 77, no. 4 (2021): 1–10, <https://doi.org/10.4102/hts.v77i4.6928>.

<sup>4</sup> Abd. Moqsiṭh, "Tafsir atas Hukum Murtad dalam Islam," *AHKAM : Jurnal Ilmu Syariah* 13, no. 2 (2013): 283–94, <https://doi.org/10.15408/ajis.v13i2.940>.

<sup>5</sup> Abdul Qadir Audah, *Al-Tasyri' al-Jinai al-Islami Jilid I* (Cairo: Maktabah Dar al-'Urubah, 1963).

as the prescribed punishment, makes *riddah* one of the criminal offenses recognized in *fiqh jinayah*, and performing it is *haram* (forbidden).<sup>6</sup> Apostasy is categorized as an act of treason,<sup>7</sup> and the apostate is considered a disbeliever (*kafir*).<sup>8</sup> However, the death penalty for apostasy remains controversial in modern civilization, especially in the context of religious freedom and the right to choose or renounce a religion.

The freedom to choose and embrace a religion is considered a fundamental human right in Western concepts, which has sparked significant resistance in Muslim-majority countries. This resistance reflects the reality that issues related to religious freedom and belief are contentious in society. Some scholars raise concerns about the misclassification of apostasy (*riddah*) as a type of right that cannot be reduced under any circumstances, thereby viewing it as an act of blasphemy in Islam. This study reveals a significant relationship between Islam and human rights, emphasizing that Islam fundamentally legitimizes religious freedom as a type of human right that should not be restricted in any situation.<sup>9</sup> Ibn 'Āshūr states that the primary objectives of Islamic law in the Qur'an are based on three aspects: individual good, collective good, and the good of civilization. The purpose of the Qur'an in relation to individual good refers to the fulfillment of individual rights, such as the freedom to choose one's belief or religion. According to him, religion is considered personal, but it is also meant to determine collective good, meaning personal religious choices affect the greater good of human civilization in this world. Ultimately, Ibn 'Āshūr argues that the death penalty for apostasy needs to be reinterpreted, taking into account theological, historical, and political contexts. He suggests that this punishment contradicts the goals of Shari'ah, which are to preserve life (*hifz al-nafs*) and preserve religion (*hifz al-din*).<sup>10</sup>

In another study, criticism was found regarding the provisions of apostasy in *fiqh*, which classifies *riddah* as a *hudud* offense punishable by death. A reassessment of the *fiqh* provisions on *riddah* using an allegorical approach, supported by historical evidence, concludes that apostasy is a theological violation against God. Therefore, only God has the right to punish it. The Qur'an mentions punishments that are of an eschatological and non-physical nature for those who commit apostasy. However, an apostate may be sentenced to death if the *riddah* is political or civil in nature. This means that *riddah* accompanied by resistance or rebellion against legitimate political authority, which

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<sup>6</sup> Nawawi Marhaban, "THE CRIMINALIZATION OF THE QUR'AN PERSPECTIVE AND IT'S CONTEXTUALIZATION IN INDONESIA," *Jurnal At-Tibyan: Jurnal Ilmu Alqur'an Dan Tafsir* 6, no. 2 (2021): 361–77, <https://doi.org/10.32505/at-tibyan.v6i2.3418>.

<sup>7</sup> Tomi Septian, Abdul Ghafar, and Halimah Dja'far, "STUDY OF BETRAYAL ANALYSIS IN THE QURANIC PERSPECTIVE," *Jurnal At-Tibyan: Jurnal Ilmu Alqur'an Dan Tafsir* 8, no. 2 (2023): 313–36.

<sup>8</sup> Nazar Nurdin, "DELIK PENODAAN AGAMA ISLAM DI INDONESIA," *International Journal Ihya' 'Ulum al-Din* 19, no. 1 (September 7, 2017): 129–60, <https://doi.org/10.21580/ihya.18.1.1745>.

<sup>9</sup> Fawaizul Umam, "The Religious Freedom: Universalism Claim, Resistance of Islamic World, and Reconceptualization," *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 21, no. 2 (2020): 119–34, <https://doi.org/10.14421/esensia.v21i2.2234>.

<sup>10</sup> Mujib and Hamim, "Religious Freedom and Riddah through the Maqāṣidī Interpretation of Ibn 'Āshūr."

threatens public safety, may warrant such punishment. In this case, the appropriate punishment may be determined by the state (*takzir*).<sup>11,12,13</sup>

Other studies present a different perspective. Indeed, there is no compulsion in choosing and embracing a particular religion. A person has the right and freedom to choose Islam or any other religion. However, once a person has made the decision to embrace Islam, they no longer have the freedom to adopt another religion after becoming a Muslim. As a Muslim, they must comply with, submit to, and fully follow the teachings of Islam. Thus, leaving Islam is considered an act prohibited by Islamic law, and the person who commits apostasy is subject to a specific punishment.<sup>14,15</sup> This view is shared by other scholars. Islam is often seen as incompatible with modernity and as a violation of human rights, particularly regarding the freedom to change religion. However, this perspective does not align with the concept of *murtad* (*riddah*) that can be punished by death. Islam actually guarantees freedom of religion. However, once a person embraces Islam, they acquire the obligation to remain steadfast in their faith, because leaving Islam leads to the consequences outlined in the prophetic tradition, which approves of the death penalty for apostates. This political strategy of the Prophet aims to protect the Muslim community from acts of betrayal or incitement. Therefore, the death penalty for apostasy is not only about a personal offense of changing religion but also relates to public law or crimes against the state.<sup>16</sup>

Apostasy is not only discussed at the conceptual level. In the reality of social life, apostasy frequently occurs, particularly in the context of marriage. The freedom to embrace or leave Islam is evident in the tens of thousands of rulings by Religious Courts. This reality has been ongoing in Indonesian society, which grants individuals the freedom to choose or change their religion. The decision to leave Islam after marriage has affected many aspects of the couple's life. Apostasy not only leads to the dissolution of marriage (*fasakh*) but also impacts other aspects such as financial support (*nafkah*), child custody (*hadhanah*), guardianship of daughters, and inheritance. Theoretically, when someone leaves Islam, their marriage is dissolved (*fasakh*), their mutual inheritance rights are blocked, the guardianship of their daughter is severed if the father is the apostate, and the apostate mother loses her right to custody of her child. The various problems arising from this, as well as the controversial or debated decisions of judges, are evident in many Religious Court rulings.

For example, in the ruling of the Nganjuk Religious Court Number 1830/Pdt.G/2016/PA.Ngj, the court imposed *nafaqah iddah* (maintenance during the waiting period) and *mut'ah* (compensation) on the apostate ex-husband. The judge

<sup>11</sup> Sofyan A P Kau and Zulkarnain Suleman, "KRITIK TERHADAP EPISTEMOLOGI FIKIH MURTAD," *Ahkam* XVI, no. 1 (2016): 51–60.

<sup>12</sup> Arif Wahyudi, "Kapasitas Nabi Muhammad dalam Hadits-Hadits Hukuman Mati bagi Pelaku Riddah (Perspektif Mahmūd Syaltūt)," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (August 6, 2017): 1–21, <https://doi.org/10.19105/al-ihkam.v12i1.1185>.

<sup>13</sup> Dede Rodin, "RIDDAHDAN KEBEBASAN BERAGAMA DALAM ALQURAN," *AHKAM: Jurnal Ilmu Syariah* 14, no. 2 (2014): 253–66, <https://doi.org/10.15408/ajis.v14i2.1284>.

<sup>14</sup> Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022): 237–62, <https://doi.org/10.15408/ajis.v22i1.26359>.

<sup>15</sup> Miftahur Rahmah and Zainuddin Zainuddin, "Murtad dalam Perspektif Fikih, Teologi, dan Hak Asasi Manusia," *TAJIDID* 28, no. 1 (July 15, 2021): 105, <https://doi.org/10.36667/tajdid.v28i1.559>.

<sup>16</sup> Syafa'atun Almirzanah, "On Human Rights and the Qur'anic Perspective: Freedom of Religion and the Rule of Apostasy," *Al-Jami'ah: Journal of Islamic Studies* 45, no. 2 (December 28, 2007): 367–88, <https://doi.org/10.14421/ajis.2007.452.367-388>.

equated the apostasy-related divorce case with a regular divorce filed by the husband, ensuring that the ex-wife did not lose her rights, even though her husband had apostatized.<sup>17</sup> Additionally, in the ruling of the Religious Court Number 1/Pdt.G/2013/PA.Mur, the child custody (*hadhanah*) rights were granted to the apostate wife/mother, while in the ruling of the Religious Court Number 1429/Pdt.G/2013/PA.Tng, the judge awarded custody to the apostate husband/father for specific reasons.<sup>18</sup> Another example is the case where the inheritance rights were transferred to a beneficiary under a will because one of the spouses had apostatized.<sup>19</sup> These rulings from the Religious Courts demonstrate that judges face significant challenges in rejecting the doctrine that Muslims are obligated to protect their religion from potential threats posed by other religious groups. As a result, the obligation to preserve the religion often conflicts with the right to religious freedom.<sup>20</sup>

Based on the background above, this paper discusses the fragility of *muallaf* families through an analysis of the rulings of Religious Courts in Indonesia. These rulings are analyzed based on the grounds for divorce found in cases from various Religious Courts, examining the judges' legal considerations and analyzing their decisions from the perspective of interfaith marriages. Therefore, this article presents irrefutable evidence that the fact of divorce due to one of the partners having apostatized is much greater in Supreme Court data than the issues that arise in Indonesian society.

## Method

The type of research conducted is normative legal research, which utilizes secondary data. This secondary data is divided into two parts: primary legal materials sourced from religious court decisions obtained from the Supreme Court's decision directory. By using the keyword "apostasy" in December 2024, a total of 53,419 religious court decisions were found. Among these, some decisions specifically affirm that apostasy never occurred. However, the majority of these decisions are divorce rulings where one party committed apostasy. These rulings are distributed across various religious courts throughout Indonesia. The decisions analyzed specifically are purposefully selected from several religious courts in Indonesia. Examples include decisions from predominantly Muslim areas such as Aceh and South Sulawesi, metropolitan areas like Depok, heterogeneous societies like Central Java, and areas with a Muslim minority such as Papua. Additionally, secondary legal materials were used, including *fiqh* books, marriage regulations, and related articles. Data collection was carried out in two ways: manually and online. Manual data was obtained from books in libraries, while online data was gathered by searching the Supreme Court's decision

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<sup>17</sup> Rika Fitriani and Abdul Aziz, "Tinjauan Hukum Islam tentang Pembebanan Mut'ah dan Nafkah Iddah terhadap Suami yang Murtad (Studi Kasus Putusan Pengadilan Agama Nganjuk No: 1830/Pdt.G/2016/PA.Ngj)," *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (2019): 377, <https://doi.org/10.22373/sjhk.v3i2.5242>.

<sup>18</sup> Muhammad Khoirur Rofiq, "PEMBERIAN HAK ASUH ANAK DALAM PERCERAIAN KARENA PERALIHAN AGAMA (MURTAD)," *Journal of Islamic Studies and Humanities* 6, no. 2 (October 28, 2021): 97–110, <https://doi.org/10.21580/jish.v6i2.8171>.

<sup>19</sup> Qisthina Armalia Hirzi, Ani Setiawati, and Afdol, "KEDUDUKAN JANDA MURTAD DALAM PEMBAGIAN WARIS ATAS HARTA PEWARIS (SUAMI)," *Perspektif Hukum* 19, no. 2 (2019): 214–28.

<sup>20</sup> Euis Nurlaelawati, "FOR THE SAKE OF PROTECTING RELIGION Apostasy and Its Judicial Impact on Muslim's Marital Life in Indonesia," *JOURNAL OF INDONESIAN ISLAM* 10, no. 1 (2016): 89–112.

directory website and credible journal indexing sites. The collected data was then analyzed using reduction techniques (initial analysis during data collection), data display (presentation of the initially analyzed data), and concluded with verification or final conclusion.

## Findings and Discussion

### 1. Reasons for Divorce and Judges' Legal Considerations

The reasons for divorce permitted by Indonesia's marriage regulations are explicitly outlined in various legal frameworks, including the Marriage Law, Government Regulations, and the Compilation of Islamic Law. However, the actual reasons couples cite for divorcing are not always identical to those listed in marriage regulations, due to the unique nature of each household's issues. Among the reasons for divorce mentioned in the regulations, some are commonly observed in real cases. For example, reasons such as drug addiction, imprisonment, abandonment without financial support, or conversion to another religion/leaving Islam are cited. Even so, the most frequently cited reason in judges' considerations is the occurrence of continuous quarrels between the parties. Although leaving Islam (apostasy) can legally justify a divorce, judges' considerations often do not place apostasy as the primary reason. Apostasy tends to be associated with, accompanied by, or simultaneous with other reasons, particularly continuous disputes. The following discussion explores the connection between apostasy as a reason for divorce and other related reasons, demonstrating that apostasy is rarely the sole reason for the dissolution of a marriage.

In the ruling of the Jayapura Religious Court Decision Number 419/Pdt.G/2018/PA-Jpr, the judges' considerations were based on the reasons presented by the petitioner in their divorce application. The judge stated that the petitioner filed for divorce on the grounds that the respondent returned to their previous religion (apostasy), making apostasy the primary reason. The judge also noted that the respondent was physically abusive (prone to hitting the petitioner), failed to provide financial support, and was involved with another woman. Although many reasons were presented, the judge clarified that the main basis for the lawsuit in this case was the respondent's confirmed departure from Islam (apostasy), making it impossible to continue the marriage. Furthermore, the judge explained that the petition for divorce was submitted due to the disharmony in their household, continuous disputes, and quarrels stemming from the respondent's return to their previous religion, Hinduism. The judge ultimately highlighted that the peak of their conflicts occurred in 2015 when the respondent left the petitioner and never returned until the court ruling was issued. The respondent's return to Hinduism and departure from the petitioner were corroborated by witnesses present during the trial.

All the reasons presented by the judges in these Religious Court decisions are based on statutory regulations, jurisprudence, the Qur'an, Sunnah, *fiqh* principles, and scholars' opinions in Islamic jurisprudence. The judges referred to Article 116 (h) of the Compilation of Islamic Law (KHI), which explains apostasy as one of the reasons for divorce. Judges also based their considerations on the Qur'anic verse al-Baqarah (2): 221. According to the judges, while this verse explicitly prohibits marriage between a Muslim and a non-Muslim, it also implies that maintaining a household governed by Islamic law becomes prohibited when one of the spouses leaves Islam (apostasy).

Judges further relied on the opinion of jurists who stated that if one of the spouses leaves Islam (apostasy) and does not return to Islam, the marriage contract is nullified due

to the abrupt departure from Islam.<sup>21</sup> Additionally, the judges referred to the opinion of other scholars, which explained that apostasy of either spouse automatically invalidates the marriage without requiring a court decision.<sup>22</sup> In the decision of the Merauke Religious Court Number 136/Pdt.G./2011/PA.Mrk, the judge's considerations referred to several reasons presented by the petitioner. In this decision, the primary reason for divorce was continuous disputes, rather than the apostasy of one spouse. The judge explained that the divorce petition was granted because the household of the petitioner and the respondent lacked harmony and compatibility since April 2007. The respondent had returned to their previous religion (Christianity/Catholicism) and consistently participated in church worship activities.

The petitioner repeatedly advised and attempted to dissuade the respondent from apostasy, but the respondent ignored these warnings. This ultimately led to disputes and arguments, resulting in the couple living separately since 2009. The respondent showed no intention of heeding the petitioner's advice to refrain from returning to Christianity/Catholicism. The respondent actively participated in church activities despite the petitioner's objections, which escalated the conflicts and disputes. These facts were corroborated by evidence, including witness testimonies. Therefore, the judge concluded that the marriage could no longer be preserved, and there was no hope for reconciliation given the religious differences between the parties. In this decision, the judge based their considerations on the Marriage Law and KHI, Qur'anic verse al-Baqarah (2): 227 regarding the strong desire for divorce, and the fiqh principle prioritizing the prevention of harm over the pursuit of benefit.<sup>23</sup>

The same pattern of reasoning and judicial considerations is evident in the decision of the Muara Bulian Religious Court Number 256/Pdt.G/2012/PA.Mbl. The judge considered the couple's divorce on the grounds of continuous disputes, although one of the causes was that one of them had apostatized. The judge referred to the plaintiff's statement that their household was not harmonious. Every time the plaintiff performed prayers (salat), the defendant would become angry and displeased because the defendant had reverted to their previous religion, Christianity, thereby apostatizing from Islam. They had been living separately since December 1, 2012. Since their separation, there had been no physical or emotional relationship between them, and the defendant had never provided financial support to the plaintiff. Based on these facts, the judge concluded that their marriage was no longer harmonious and could not be salvaged. Therefore, their marriage was considered irreparably broken (broken-down marriage). Unlike the decision of the Merauke Religious Court, the judge of the Muara Bulian Religious Court based their considerations on statutory regulations, the Compilation of Islamic Law (KHI), Supreme Court Jurisprudence Number 38/K/AG/1990 dated August 22, 1991, and the opinions of scholars explaining the nullification (*fasakh*) of a marriage due to apostasy.<sup>24</sup>

A more concerning divorce case was observed in the decision of the Depok Religious Court Number 390/Pdt.G/2017/PA.Dpk. In this case, the couple was both non-Muslim because both had left Islam (apostatized). Factually, the Depok Religious Court handled the case of Christians, seemingly contradicting the principle of personalization, even though, legally (administratively, as indicated by their Marriage Book), they were

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<sup>21</sup> Said Sabiq, *Fiqh Al-Sunnah* (Beirut: Dar al-Fikr, 1983).

<sup>22</sup> Ali Haidar, *Durar Al-Hukkam Syarh Majallah al-Ahkam* (Beirut: Dar al-Kutub al-Ilmiyah, n.d.).

<sup>23</sup> al-Suyuthi, *Al-Asybah Wa an-Nazhair* (Beirut: Dar al-Fikr, 1981).

<sup>24</sup> Sabiq, *Fiqh Al-Sunnah*.



registered as Muslims, making the case within the jurisdiction of the Religious Court.<sup>25</sup> The primary reason cited by the couple was continuous disputes. In 2014, the plaintiff left Islam (apostatized), followed by the defendant in the subsequent year. When the lawsuit was filed in the Depok Religious Court, both parties were Christians. Despite their non-Muslim status, the Depok Religious Court had absolute jurisdiction over their case because, administratively, according to their Marriage Book, they were still registered as Muslims. Thus, their divorce was resolved under Islamic law (*fasakh*) in the Religious Court.

The judges of the Depok Religious Court outlined several considerations in adjudicating this case of an apostate couple. Firstly, there was clear acknowledgment from both individuals that they had left Islam and returned to their previous religion. According to the judges, their acknowledgment was sufficient as evidence to confirm that their marriage could be declared void (*fasakh*). This opinion was based on Article 1925 of the Civil Code in conjunction with Article 174 of the HIR, which states that acknowledgment carries perfect and binding evidentiary value. Therefore, the judges deemed it unnecessary to summon witnesses. This article aligns with the Islamic legal principle of *al-ikrar* (acknowledgment) as a standalone piece of evidence (*al-bayyinah*).<sup>26</sup> Secondly, the judges assessed that their marriage had become irreparably fractured due to the collapse of the religious foundation between them after their apostasy. As such, their marriage was declared void by the Religious Court.

Thirdly, the judges elaborated on the provisions for nullifying the marriage of an apostate couple. When *fasakh* is applied to marriage, it means annulment or dissolution due to specific causes that prevent the marriage from continuing (Khalaf, 1990). Additionally, Islamic jurisprudence explains that a valid marriage can be voided without a judicial decision if there is a defect in the contract, the emergence of a mahram relationship through *musaharah* (in-laws), apostasy, or *li'an* (mutual cursing).<sup>27</sup> Despite efforts by the judges to encourage them to return to Islam, the couple remained steadfast in their apostasy. Therefore, the judges granted their request and declared their marriage void. Shifting to the westernmost region of Indonesia, a divorce case involving apostasy by one spouse also occurred in Aceh Province. The Sharia Court of Simpang Tiga Redelong ruled on the case in Decision Number 0260/Pdt.G/2016/MS-STR.

The primary consideration of the judges was the plaintiff's claim of disputes and quarrels instigated by the defendant, who had apostatized. The judges explained that conflicts arose between the plaintiff and the defendant because the defendant attempted to persuade the plaintiff and their children to convert to the defendant's new religion (apostasy), which the plaintiff refused in 2012. Since then, the defendant left the marital home without providing financial support until the Sharia Court issued its ruling. The judges required testimony and other evidence to verify the plaintiff's claims in accordance with Article 76 paragraph (1) of Law Number 7 of 1989 in conjunction with Article 22 paragraph (2) of Government Regulation Number 9 of 1975. According to witness testimonies, the plaintiff and the defendant had separated because the defendant left the plaintiff and their children without providing financial support, nor were there any assets

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<sup>25</sup> Fatmawati Fatmawati, "KEWENANGAN PERADILAN AGAMA DALAM MEMUTUS PERKARA PERCERAIAN AKIBAT MURTAD," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (June 26, 2017): 26–33, <https://doi.org/10.17977/um019v2i12017p026>.

<sup>26</sup> Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuh Vol VI* (Beirut: Dar al-Fikr, 1997).

<sup>27</sup> Ali Hasabullah, *Al-Firqah Baina Zaujaini (Wama Yata'allaqu Biha Min 'Iddatin Wa Nasabin* (Beirut: Dar al-Fikr, 1993).

that could be used as a source of livelihood. Since then, the defendant never returned or sent living expenses for the plaintiff and their children. This situation arose because the plaintiff and their children refused the defendant's invitation to convert to a different religion. Ultimately, neither party fulfilled their rights and obligations as husband and wife.

Based on these reasons, the judge concluded that according to Article 116 letter (f) of the Compilation of Islamic Law, divorce can occur for reasons including persistent disputes and quarrels between husband and wife, with no hope of reconciliation in the household. The judge explained other legal facts, namely that the marriage between the plaintiff and the defendant had experienced frequent disputes that were difficult to reconcile. The cause of these disputes was the defendant's attempt to persuade the plaintiff to convert to another religion (apostasy). After the plaintiff refused the defendant's request, the defendant left and separated from the plaintiff two years ago, without providing financial support for the plaintiff and their children. The judges of the Sharia Court of Simpang Tiga Redelong relied solely on statutory regulations as the legal basis for their considerations, without referencing other arguments.

The Belopa Religious Court in South Sulawesi Province also ruled on a divorce case caused by the apostasy of one of the spouses. This includes Decision Number 177/Pdt.G/2021/PA.Blp. The judge stated that the main issue in this case was ongoing disputes and quarrels, but the judge considered that there was insufficient reason to grant the plaintiff's claim. Therefore, the judge required additional facts in this case. Based on the evaluation of the plaintiff's claim, the evidence presented by the plaintiff, and the facts revealed during the trial, the following legal facts were established: firstly, persistent disputes and quarrels occurred between the plaintiff and the defendant because the defendant had left Islam (apostasy). Secondly, the plaintiff and the defendant had been living separately since August 2014 up to the present, a duration of 6 years and 7 months. Thirdly, witnesses under oath explained consistent details supporting the plaintiff's claims, proving their truthfulness. Fourthly, based on the facts above, it was proven that the defendant had left Islam (apostasy), resulting in a fractured and irreparable household due to fundamental differences in religious beliefs. Thus, the plaintiff's request to dissolve the marriage on the grounds that the defendant had changed their religion (*riddah*) could be considered.

The judge's considerations are based on the concept of Islamic law that the term *fasakh* in the context of *fiqh* is generally understood as the annulment of a marriage that is not a form of *talak* (divorce) but involves the annulment process through judicial authority. *Fasakh* in marriage refers to the dissolution of the marriage by the authority of a judge (*qadhi*). Essentially, *fasakh* invalidates a marriage (as if the marriage never occurred) because it is later discovered that certain conditions and pillars of the marriage were not fulfilled during its course. Moreover, the term *fasakh* can also be found in contexts where the marriage is not invalidated but is deemed impossible to continue (*'adamu luzumih*), resulting in the dissolution of the marriage through the authority of the judge (*qadhi*), not because of unmet conditions and pillars of marriage but due to other relative causes that are considered harmful to the continuation of the marriage or specifically endanger the wife.

Therefore, *fasakh* can be classified into two categories based on its characteristics: absolute *fasakh* and relative *fasakh* (*mukhtalaf/mujtahad*). The first category, absolute *fasakh*, is regulated in the context of marriage annulment institutions in Indonesia (Religious Courts). These provisions are outlined in Articles 22-28 of the Marriage Law

and Articles 70-76 of the Compilation of Islamic Law. Meanwhile, the second category, relative *fasakh*, is addressed in the context of marital dissolution due to divorce (*talak*), specifically categorized as one form of *talak ba'in shugra*.

Fifthly, when one of the spouses converts to another religion during the marriage, the judge reinforced his consideration with the opinion of Islamic scholars who stated that if one of the spouses becomes apostate and does not return to Islam, their marriage contract becomes invalid (*fasakh*) because the apostasy occurred after the contract (*Sabiq, 1986*). Furthermore, the judge deemed that maintaining the household after apostasy could lead to violations of *shari'ah* and result in harm (*mafsadat*). Therefore, such harm must be avoided, as stated in the *fiqh* principle, *dar' al-mafasid muqaddamun 'ala jalb al-masalih* ("preventing harm takes precedence over obtaining benefit").<sup>28</sup> Ultimately, the judge concluded that divorce was the best solution for the couple and that the plaintiff's claim was justified and should be granted. These are some examples of the reasons and considerations of judges in Religious Courts when granting divorce claims due to one spouse leaving Islam and returning to their previous religion. Based on the discussion of several examples of court decisions on divorce due to apostasy above, it is known that among the causes of apostasy of a person or both partners is due to their limited knowledge and understanding of the Islamic religion. On the other hand, the temptation to return to the old religion is very open. This situation triggers arguments between husband and wife which leads to divorce.

## 2. Judicial Decisions and Resolutions from the Perspective of Interfaith Marriage

Several hadiths of the Prophet Muhammad (peace be upon him) explain situations and conditions where a person transitions from being a Muslim to a non-Muslim. Firstly, a hadith in the context of combating a group of people who converted to Islam and then committed apostasy.<sup>29</sup> This hadith describes a group of people who were on a journey. They were in a state of hunger, and some were sick. When they arrived, the Prophet Muhammad (peace be upon him) received them warmly. They were placed in the Prophet's pasture so they could be properly cared for, given food, drink, milk, and medicine for their recovery. However, once they had recovered, they killed the caretaker of the Prophet's pasture, stole livestock, and fled. When the Prophet learned of their escape, he ordered his companions to pursue and fight them due to the crimes they had committed, including murder, theft, and apostasy from the religion they previously embraced. Secondly, a hadith that explains a Muslim who was reported to the Prophet Muhammad (peace be upon him) as having committed apostasy. The Prophet said that anyone who changes their religion from Islam to non-Islam should be executed.

These two hadiths serve as legal grounds that leaving Islam is considered a crime and is punishable by death for the individual who does so. Although apostasy is widely agreed upon by *fiqh* scholars as one of the *jarimah hudud* (crimes under Islamic penal law), these two hadiths have sparked intense debate among them regarding the implementation of the death penalty for apostates. Thirdly, a hadith in the context of marriage explains that women are generally married for several reasons: their beauty, wealth, lineage, and religiosity. At the end of the hadith, men are reminded to prioritize religion to ensure safety and happiness in both their worldly life and the hereafter with their spouse. In another hadith, the Prophet Muhammad (peace be upon him) discusses

<sup>28</sup> al-Suyuthi, *Al-Asybah Wa an-Nazhair*.

<sup>29</sup> *Sahih Al-Bukhari*, vol. IV (Beirut: Dar al-Kutub al-Ilmiyah, 2009).

the intention or desire of a person when migrating (*hijrah*) from disbelief to faith. The Prophet states that every action depends on its initial intention. Whoever migrates from disbelief to faith in Allah and His Messenger, their migration will indeed be for Allah and His Messenger. However, if the migration is only for worldly gains or for a woman to marry, the person will only attain the worldly benefits or the woman they sought, without earning the pleasure of Allah and His Messenger.<sup>30</sup> This hadith illustrates that transitioning from disbelief to faith without genuine sincerity in embracing Islam will render such a conversion meaningless. The person will only gain what they initially intended. For example, if someone converts to Islam solely to marry a Muslim woman, they will gain the woman but not the essence of the religion.

The issue of changing one's faith, as described in the hadith, continues to be relevant in Indonesia today. Although the hadith was conveyed by the Prophet Muhammad (peace be upon him) more than a thousand years ago, its context persists due to several social factors present in Indonesian society. Firstly, from the regulatory perspective, religion and religious freedom are enshrined in the 1945 Constitution as a right of every citizen. Everyone has the right to choose and adhere to the religion they believe in, and the state guarantees and protects this right. Consequently, neither individuals nor institutions, including the state, have the right to force someone to change their religion or beliefs. Moreover, individuals are prohibited from insulting, mocking, undermining, or disparaging others' religions. Secondly, from the societal perspective, coexistence among people with diverse religious and belief backgrounds has long been a reality in Indonesian society. This has fostered attitudes of tolerance and mutual respect between followers of different religions and beliefs. Thirdly, from the educational perspective, Indonesia's education system ensures freedom of religion in society. Every individual has the right to choose religious educational institutions for their children. In Indonesia, it is common to find Muslim students studying in non-Muslim schools and vice versa, with non-Muslim students attending Islamic educational institutions.

The three essential factors above have facilitated relationships and connections between religious communities in Indonesia. Ultimately, this situation has also created opportunities for interfaith marriages. According to data from the Indonesian Conference on Religion and Peace (ICRP), a non-governmental organization, there were 1,655 recorded cases of interfaith marriages between 2014 and 2023. This data is further reflected in divorce rulings at Religious Courts, often involving individuals who initially converted to Islam to marry their Muslim partner but later apostatized. Similarly, there are numerous decisions from the District Courts regarding the acceptance or rejection of applications to register interfaith marriages, with the numbers increasing yearly. To prevent disparities in judicial decisions, the Supreme Court issued Circular Letter No. 2 of 2023, providing guidelines for judges in adjudicating cases concerning interfaith marriage registration. This circular prohibits judges from accepting applications for the registration of interfaith marriages. Despite this prohibition, the circular does not necessarily ensure that individuals of different religions will stop marrying, particularly when driven by love.

## Conclusion

Based on the explanation above, the main conclusion is that marriages involving converts (*muallaf*) with an interfaith background before the marriage contract are highly

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<sup>30</sup> Al-Bukhari, *Sahih Al-Bukhari Jilid I* (Beirut: Dar al-Fikr, 1994).

susceptible to instability. Even if the individual has converted to Islam at the time of the marriage contract, a solid foundation of faith (*aqidah*) cannot be developed instantly. A strong foundation of faith is essential to maintaining the integrity of a household. First, this conclusion is drawn from the following analysis of Religious Court rulings throughout Indonesia. Second, many Muslim couples marry with interfaith backgrounds prior to the marriage contract. This is evident from the large number of cases, exceeding 80,000 divorce rulings in the Religious Courts, where one party easily reverted to their previous religion (apostasy). These tens of thousands of divorces were primarily justified by apostasy as a valid reason for divorce. Third, judges granted divorce petitions even when accompanied by other legal considerations after the decision to change religion was proven in court. Evidence of apostasy often included actions such as returning to worship at their previous place of worship, forcing their children to abandon Islam, or their own admissions. Apostasy served as proof leading to the dissolution of the marriage (*fasakh*). It can also be concluded from this perspective that the fundamental principle of Indonesia's marriage regulations, which only recognizes marriages between individuals of the same religion, aims to ensure the establishment of a united, strong, and stable family built on a shared religious foundation from the outset. Thus, Indonesia's marriage regulations, which prohibit interfaith marriages, serve as a protective measure to prevent divorces. Divorce due to one of the spouses being apostasy is not as simple as it seems. This divorce will affect many aspects such as child care, guardianship of the daughter and joint property. This will be a separate problem and will still return to the decision of the Religious Court to ensure the continuity of the child's religion, the determination of the guardian when their daughter will marry and the division of property acquired during the marriage.

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