

Modernizing Divorce in Courts: How to Realize Justice in Diverse Geographical Conditions?

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Abstract: The modernization of Islamic family law requires divorce to be carried out in court. However, it causes problems of injustice in its implementation, especially for some people in Central Kalimantan Province. For example, a wide geographical condition makes the location of the court and the community not always easy to reach, which makes it difficult for people to propose and administer divorce through the court. The study aimed to analyze how to realize divorce justice in court in diverse geographical conditions. The study was a juridical-empirical legal study with analysis using the theory of legal objectives and *maslahah*. The findings showed that divorce in court in its implementation causes injustice, especially in Central Kalimantan Province, due to geographical conditions that make it difficult for people to access the court. The wide area and far distance, and the condition of terrain (broken road) in some areas make the community fall into a dilemma. They must choose the least *mulharat* (disadvantage/harm). Also, the findings offer optimization of two things that can minimize harm and injustice for the community, namely optimization of the implementation of mobile courts and the use of the e-Court system. The alternative solution is proposed because these two things have limitations in both facilities and infrastructure and their implementation. In addition, it needs to have further study on the idea of *isbat talak* as another alternative to overcome this problem.

Keywords: Islamic Family Law; Divorce; Justice; Geographical Diversity.

Introduction

Modernization of today's family law requires that divorce be carried out in court (Mudzhar & Nasution, 2003; Wahyuni, 2011). In the world, Muslim countries have implemented this rule, including Indonesia. Divorce for Muslims is the absolute competence of religious courts, according to Law Number 3 of 2006 on Religious Courts. The geographical conditions in Indonesia as an archipelagic country have their problems. Central Kalimantan Province, the largest province in Indonesia with an area of 153,564 km², is only divided into 13 regencies and 1 city (D. K. P. K. Tengah, n.d.). The area of Central Kalimantan Province is even larger than the island of Java, which is 129,442 km². There are 6 provinces on the island of Java, consisting of 199 regencies and cities (Bayu, 2022). The religious courts are located in the capital city of the regency or city as regulated in Article 4 of the Religious Courts Law. Compared to the island of Java, which is divided into 199 districts and cities, there is no problem found in the distance to the court. However, this condition is different in the province of Central Kalimantan, which is much larger than the island of Java and only divided into 14 districts and cities. Some people in Central Kalimantan have problems with the distance to the court. Wardah stated that one area in Kapuas Regency has a distance of 230 km to reach the court or 5 hours 15 minutes by land (Wardah, 2020). It is just an example of one area in the Province of Central Kalimantan. Moreover, many other areas in Central Kalimantan have a very long distance to reach the court (Hidayatullah, 2016), which makes some people prefer to divorce underhand deed.

Many studies have been conducted in divorce issue in Indonesia, such as by Fitriyani, Mufrod Teguh Mulyo, Shera Yunita, Siti Nurjanah, Lilik Andar Yuni, Muchamad Coirun Nizar (Fitriyani et al., 2023; Mulyo et al., 2023; Nizar, 2020; Nurjanah, 2022; Yuni, 2021; Yunita, 2023). Also, a comparison of Indonesian divorce law with other countries is found, such as Martina Purna Nisa Jaliyah and Ali Trigiyatno (Jaliyah, 2021; Trigiyatno & Sutrisno, 2022). Romi Bhakti Hartarto researches the influence of media on divorce (Hartarto & Hajar, 2024). In addition, there found divorce from the customary law aspect, such as Kamarudin, Ridwan Nurdin, and Muhammad Aulia Rahman (Kamaruddin, 2023; Nurdin et al., 2023; M. A. Rahman et al., 2023). And, the research from the aspect of legal consequences after divorce, such as Firdaus, Nur Triyono, Feni Agustina, and Abd Rahman Dahlan (Agustina, 2023; Dahlan et al., 2023; Firdaus et al., 2023; Triyono & Asmuni, 2023).

Previous studies analyzed divorce from various aspects, such as the theory of divorce, the comparative-legal, the influence of divorce, the customary law, and the legal consequences after divorce. These previous studies are different from this study. The purpose of this study is to explore the problem of justice for people who want to divorce but are constrained by geographical conditions in accessing justice through judicial institutions. This research is important as an effort to raise the issue of divorce law outside the court, which rarely highlights the aspect of justice. This condition is caused by the geographical conditions of Central Kalimantan Province, the largest province in Indonesia, where each district has a very long distance from the capital to the regions. Moreover, not all conditions of the road are easily accessible, some areas can only be accessed using water or river routes. Then, it is important to consider the aspect of justice besides legal certainty.

Literature Review

Legal Reforms in Divorce

Divorce is a part of the study of family law that always relates to the reforms that have occurred in various countries. The Qur'an and Hadith do not regulate the procedures for divorce in detail. The shift in Islamic family law from conventional Fiqh to statutory regulations has had a positive influence on the development of Islamic law, including divorce. During the time of 'Umar bin Khattāb, efforts were initiated to overcome the abuse of talaq. These restrictions were not intended to interfere in someone's household affairs, but rather to regulate and prevent the arbitrariness of men in divorcing their wives (Kasim et al., 2022; Kharlie, 2015; Yunita, 2023).

Modifications and modernization of Islamic law have been carried out since entering the modern era. Current Islamic family law tends to limit the right of divorce for husbands. Some of these restrictive efforts include: first, court intervention. Second, administrative intervention and third, indirect restrictions, namely the form of the husband's utterance of divorce must be truly intended to express the husband's desire to divorce his wife, not in the form of metaphorical language, nor caused by threats or provocation (Fitriani et al., 2023). Fourth, the cancellation of triple talaq as a form of utterance of talaq. In conventional fiqh, triple talaq pronounced three times has fallen to triple talaq. But, in the renewal of Islamic family law (Arfiansyah et al., 2023), the talaq pronounced three times cannot be considered as triple talaq because talaq must be pronounced in a court (Mudzhar, 2000; Mudzhar & Nasution, 2003; Wahyuni, 2016).

Modernization of Divorce Law in the World

The modernization of divorce law in the world, especially in Islamic countries and countries with Muslim-majority populations, is divided into two categories. The first category is that divorce must be carried out in court. The second category, divorce is still permitted outside the court with certain conditions. The majority of countries use the first category. For example, the family law applicable in Indonesia, especially those related to divorce, is only possible if the husband and wife are unable to live in harmony in the household (Law Number 1 of 1974 concerning Marriage). The divorce can only be carried out in a court after prior efforts for reconciliation have been made and have failed and unsuccessful. The divorce is effective from the time it is declared in the Religious Court (Presidential Instruction Number 1

of 1991 concerning the Compilation of Islamic Law). The dissolution of a marriage can only be proven by a divorce certificate.

Similar to Indonesia, neighboring countries, such as Malaysia, Philippines, and Singapore also require divorce cases to be registered in court (Wahyuni, 2011). Brunei Darussalam still recognizes divorces outside the court. However, there is a recommendation to register it after the divorce (talaq) occurs. This country even recognizes triple talaq at once (Nasution, 2002). In Egypt, there was a draft, prepared in 1943 and 1945 by the Egyptian Minister of Social Affairs. This draft stated that a husband may divorce his wife after obtaining permission from the court. Moreover, officials may not register a divorce that has not been approved by the court. In Article 2, the judge only grants permission for divorce if the peace efforts are unsuccessful. People who violate this rule can be subject to imprisonment or a fine, although the divorce is considered valid. However, this rule had to be canceled because it received opposition from several scholars. The same draft was rejected in Law Number 25 of 1920. In 1985, Egypt stipulated that divorce must be recorded in a certificate, signed by an authorized notary, and the consequences of divorce are calculated from the date of the certificate (Law Number 100 of 1985).

Lebanon still recognizes the validity of talaq that occurs outside the court, on the condition that the judge is notified after the talaq occurs. Meanwhile, the Lebanese Druze Law Number 24 of 1948, stipulates that divorce by talaq only occurs with a judge's decision (Qādi al-Mažhab). Divorce with the agreement of both parties can only occur with a vow of divorce in the presence of 2 (two) witnesses after a judge's decision in court (Nasution, 2002). Iran stipulates that divorce can only occur after receiving a certificate from the court stating that the husband and wife are no longer able to live together, whether the divorce is filed by one party or agreed to by both parties. Employees who record uncertified divorces can be subject to disciplinary sanctions. Therefore, before a divorce occurs, there must be a certificate from the court stating that the couple is no longer able to live in peace. In addition, there must be an effort to reconcile before issuing a certificate. This decision is based on the Qur'an, Surah an-Nisā' [4]: 35. The certificate is valid for 3 (three) months from the date. If in 3 (three) months, the parties do not decide to divorce or not, it means, automatically, the right to divorce is lost. In other words, the 3 (three) month period is a period for the parties to think about the decision to divorce or continue their household life together (Lisnawati, 2019; Nasution, 2002).

Pakistan, India, and Bangladesh still recognize divorces that occur outside the court. The Muslim Family Laws Ordinance 1961 Article 7 paragraph (1), "A husband who divorces his wife, immediately after the divorce vow, must make a written report to the chairman of the Arbitration Council, and one copy is sent to his wife." Article 7 paragraph (2), "For a person who violates paragraph (1) of this article, can be subject to imprisonment for 1 (one) year or a fine of 5,000 Rupees or both" (Mahmood, 1972). It is also found in Jordan. However, there is a requirement to register it afterward. Those who do not report can be punished with the Jordanian Criminal Penalty, which is a maximum of 1 (one) month or a maximum fine of 15 Dinars. Thus, a husband who wants to divorce his wife is encouraged but not required to come to court (Nasution, 2002).

Furthermore, in Syria, Syrian Law Number 34 of 1975 stipulates that a husband has the right to a full divorce if he is 18 years old. It is possible to do it under that age with the permission of the judge, namely on the condition of a benefit. In this law, Article 85 paragraphs (1) and (2), "A person has the right to a full divorce if he is 18 years old." "The judge may grant permission for a husband who is an adult and has been married and is not yet 18 years old if there is a benefit" (Mahmood, 1972). Syrian law stipulates that a husband who wants to divorce his wife is encouraged, but not required to report to court. Divorce occurs after attempting to reconcile before and is unsuccessful. Divorce is effective since registered in the court (Nasution, 2002). Tunisia is a country that recognizes divorce only occurs in court. This is stated in the Tunisian Law of 1956 which was updated by Law Number 40 of 1957. But it occurs after the judge tries to reconcile them and fails. Meanwhile, the Moroccan Law stipulates that divorce must be registered by an officer and witnessed by at least 2 (two) witnesses. Divorce carried out outside the court remains valid (Nasution, 2002).

Iraq stipulates that a husband who wants to divorce his wife is encouraged, but not required to report to the court. A husband, who divorces his wife not by a judge's decision, must register the divorce during the waiting period. The divorce is effective since registered in court (Law Number 188 of 1959). Somali law, like other countries, also stipulates that divorce must be conducted in court after the court has tried to reconcile and has failed. Article 36 of the 1975 Somali Law states, "A husband may divorce his wife after obtaining permission from the court. The court must first appoint a peacemaker, and consent for divorce is given after the peacemaker has tried his best to reconcile and has failed or been unsuccessful (An-Na'im, 2002). Meanwhile, South Yemen stipulates that the declaration of *talaq* must only be made in the court. In line with this, the Law of the Republic of Yemen Number 20 of 1992 specifies that the annulment of a marriage (divorce) can only be done by a court decision (Law of the Republic of Yemen Number 20 of 1992). Algeria, in their law, stipulates that divorce only occurs by a judge's decision in court after trying to reconcile and has failed (Mahmood, 1972). The divorce is effective since registered in court. Libya still recognizes divorce outside the court, with the condition that it must be registered to the court, as stated in Libyan Law Number 10 of 1984. However, the divorce must be agreed by both parties. If the divorce is only agreed to by one party, then it must be through a court decision (Nasution, 2002).

Not only the Muslim countries, but the particular articles also complete it with regulations in the United States. Divorce registration in the United States is an affair of the state and local. Civil law in all states provides a continuous and permanent divorce registration system in court (Aghbari et al., 2024). Divorce registration is centralized in the state statistics office, established in almost all states. In this country, divorce registration provides documentary evidence that the divorce has been determined by the court and every citizen needs it. This document is related to the right to re-marry, receive pension funds, and other issues, including inheritance, insurance, or others, which may depend on the official divorce document (*Handbook on Divorce Registration*, 1988). Marriage and divorce registration are required to obtain documents that can protect the rights of married couples and children (Global Civil Registration and Vital Statistics Scaling up Investment Plan 2015–2024, 2014). Therefore, executing divorce under legal procedures is very important and requires more attention from all parties. In general, various countries want orderly administration. In short, the divorces that are recognized by the state are only divorces that are registered and carried out in court.

Non-Judicial Divorce

Divorce without registration is practiced in several Muslim countries. For example, in Nigeria, *talaq bid'i* is legally valid even though it is morally wrong. Also, in Pakistan, oral *talaq* is valid even though it is not registered. Then, the women (ex-wife) think that they have been legally divorced. However, men seem to be increasingly aware (perhaps through legal counsel) that oral divorce will prove useful later to manipulate the *zina* articles against their ex-wives. Similar conditions were found in Senegal, Sri Lanka, and Tanzania. In these countries, "triple *talaq*" outside the court is still common and considered legal (Laws, 2006).

Vivi Hayati argues several factors of divorce outside the court, including common habits, lack of legal awareness, personal problems, economic factors, and time issues (Hayati, 2015). In addition, Nurul Qodar studied the issue of divorce outside the court in the Sumberharjo village community. She found the factors, such as the lack of knowledge and legal awareness of the community about divorce that is valid according to positive law, low economic levels, the location of the Religious Court, which is very far, too complicated, and takes time divorce process in court, and lack of information from the government (Qodar, 2010).

Fifin Niya Pusyakhois stated that divorce outside the court is still practiced by the Penaruban village community. It is caused by two factors, namely religion and convenience and cost. Moreover, Pusyakhois stated that the community has the view that Islamic law is the basic law for life. Therefore, the implementation of religious law is more important than other laws. Also, they assume the divorce process outside the court is easier and does not require a lot of money. According to them, the divorce process is too protracted and long because it has to go through several trials. This is different from the divorce practice

that they did in front of the penghulu, which can be decided directly. After an attempt at peace that is not protracted and does not involve many people (only focused on the couple who are going to divorce), the husband and wife who are going to divorce completely want a divorce (Pusyakhois, 2010).

Also, Cut Elidar mentioned several factors of divorce in the Gampong Alue Bu Tuha Village community outside the Sharia Court, namely the practice of underhanded marriages. That, a divorce is resolved only between families, many people reconcile after divorce and they feel that they do not need the legal process anymore, lack of information (Elidar et al., 2017). Maybe, the problem of divorce outside the court that still occurs from year to year is caused by similar factors, including court procedures, information on regulations, community economy, and legal awareness.

The previous studies were conducted in the Java and Sumatra islands. It is different from the island of Kalimantan, especially in the province of Central Kalimantan. Wardah, for example, explained the reasons for divorce outside the court by the Lahei Mangkutup Village community - internal and external factors. Internal factors are factors that come from within the Lahei village community, such as economic factors, busyness activity, and dualism factors in understanding divorce. External factors that come from outside the Lahei village community are access and lack of information carried out by the religious court (Wardah, 2020).

Access (road infrastructure) for justice seekers to reach the religious court needs special attention. The wide area of Central Kalimantan, which is only divided into 14 districts/cities, makes some areas very far and difficult to access (broken roads). This factor needs to be taken into consideration because the main purpose of enacting the law is justice. Then, this study is important to find out this problem.

Method

The research was a juridical-empirical legal (Ali, 2018; Arifah et al., 2023). It used the Islamic legal approach (Lisnawati & Ahmad, 2023; Syaikhu et al., 2023). The data were primary and secondary (Siboy et al., 2023) which are divided into primary legal material data, secondary legal materials, and tertiary legal materials (Ahmad et al., 2019; Lisnawati, 2019, 2023). Primary legal material data was laws and regulations and primary sources of Islamic law. Secondary legal material data was secondary literature, both books and research articles. Tertiary legal material data was language dictionaries, legal dictionaries, and encyclopedias to support comprehensive analysis. Then, data were analyzed using the *mashlahah* theory (Arifah et al., 2023; Nurjaman & Witro, 2021; Wicaksono et al., 2023) and the theory of justice (Galenter, 1993; Lathif, 2017; Sunaryo & Purnamawati, 2019; Wantu, 2012).

Results

This section presents data on the modernization of divorce law in the world, including in Indonesia. Modernization in the form of legal reform has made new and useful breakthroughs. However, problems are found in various aspects, including its implementation, especially in Central Kalimantan. In terms of the difficulty of access for justice seekers, they are faced with the distance to get to the court. The following is a presentation of the data.

Problematics of Divorce in Court with the Geographical Conditions of Central Kalimantan

Central Kalimantan Province was formed in 1957, based on Emergency Law Number 10 of 1957 on the Establishment of the Autonomous Region of Central Kalimantan Province. At first, the Central Kalimantan region was divided into five districts, namely North Barito, South Barito, Kapuas, West Kotawaringin, and East Kotawaringin Regencies. In 2002, through Law Number 5 of 2002 on the Establishment of Katingan Regency, Seruan Regency, Sukamara Regency, Lamandau Regency, Gunung Mas Regency, Pulang Pisau Regency, Murung Raya Regency, and East Barito Regency in Central Kalimantan Province, was expanded into 13 regencies and 1 city (*Sejarah Singkat Provinsi Kalimantan Tengah*, 2019).

The area of Central Kalimantan is 153,564 km², which is divided into 14 regencies and 1 city, causing problems for justice seekers to access judicial institutions, including divorce cases that must be carried out in court. The distance traveled in 14 regencies and 1 city in Central Kalimantan is presented in Table 1.

Table 1. Data of Geographical Condition of Central Kalimantan Province

No.	Regency/City	Distance to Religious Court	Information
1.	Sukamara	1-103 Km	Most can be accessed by land, some by water.
2.	Lamandau	1-128 Km	Most can be accessed by land, some by water.
3.	Kotawaringin Barat	1-143 Km	Most can be accessed by land, some by water.
4.	Seruyan	1-431 Km	Mostly accessible by land, some by water only.
5.	Kotawaringin Timur	1-193 Km	Most can be accessed by land, some by water.
6.	Katingan	1-230 Km	Mostly accessible by land, some by water only.
7.	Palangka Raya	1-77 Km	Mostly accessible by land, some by water only.
8.	Barito Selatan	1-290 Km	Mostly accessible by land, some by water only.
9.	Barito Timur	1-64 Km	Most can be accessed by land, some by water.
10.	Barito Utara		
11.	Puruk Cahu		
12.	Gunung Mas	1-112 Km	Most can be accessed by land, some by water.
13.	Pulang Pisau	1-170 Km	Most can be accessed by land, some by water.
14.	Kapuas	1-230 Km	Most can be accessed by land, some by water.

Based on Table 1, the average longest distance traveled in various regencies or city in Central Kalimantan Province is above 100 Km, others are almost 500 Km. In addition, the geographical conditions of Central Kalimantan, where many villages are located along rivers, many villages can only be reached by water. Several large rivers flow in the Central Kalimantan province, based on their length and width, namely the Barito River, the Kapuas River, and the Kahayan River, which have their headwaters in the northern sector (D. K. P. K. Tengah, 2019). Table 2 shows the list of rivers in Central Kalimantan.

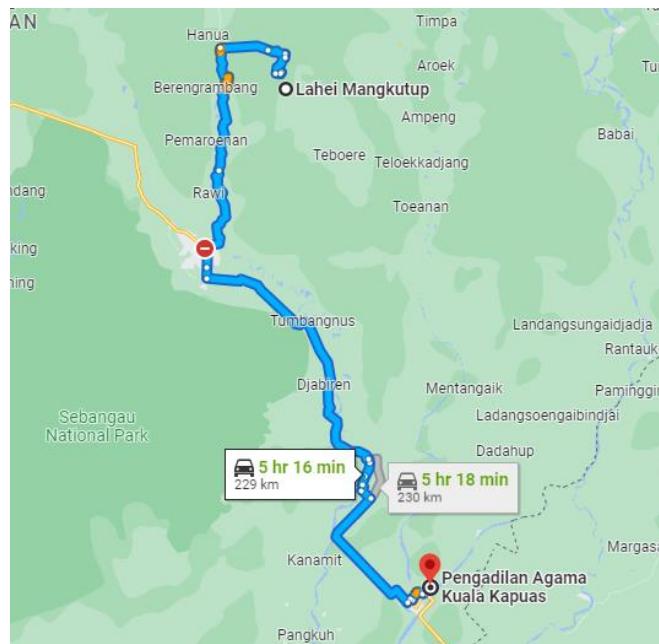
Table 2. List of Rivers in Central Kalimantan

No.	Name of River	Length (Km)	Navigable (Km)	Depth (M)	Width (M)
1.	Jelai River	200	150	8	150
2.	Arut River	250	190	4	100
3.	Lamandau River	300	250	6	150
4.	Kumai River	175	100	6-9	250
5.	Seruyan River	350	300	5	250
6.	Mentaya River	400	270	6	350
7.	Katingan River	650	520	3-6	250
8.	Sebangau River	200	150	5	100
9.	Kahayan River	600	500	7	450
10.	Kapuas River	600	420	6	450
11.	Barito River	900	700	6-14	350-500

Table 2 shows the 11 longest rivers in Central Kalimantan Province. These rivers flow through almost every district or city. Moreover, some rivers flow through several districts or city, such as the Barito River. In addition, the topography of the plains in Central Kalimantan Province is relatively flat and covered in forests. The forest area reaches 64% of the 153,654 km² of Central Kalimantan, and 36% is urban areas (D. P. K. K. Tengah, n.d.).

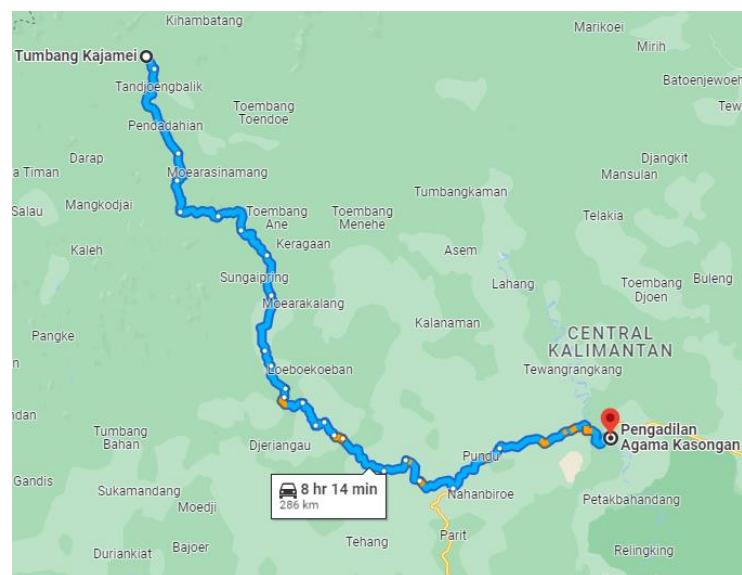
The following description is data from several regencies that have difficult access to the court. First, Kapuas Regency, which has an area of 14,999 km², its capital is located in the city of Kuala Kapuas. Wardah shows areas of this district that are very far from the capital. Moreover, they need to pass through the city

of Palangka Raya, and Pulang Pisau Regency (Wardah, 2020). The following figure is a map of Kapuas Regency.



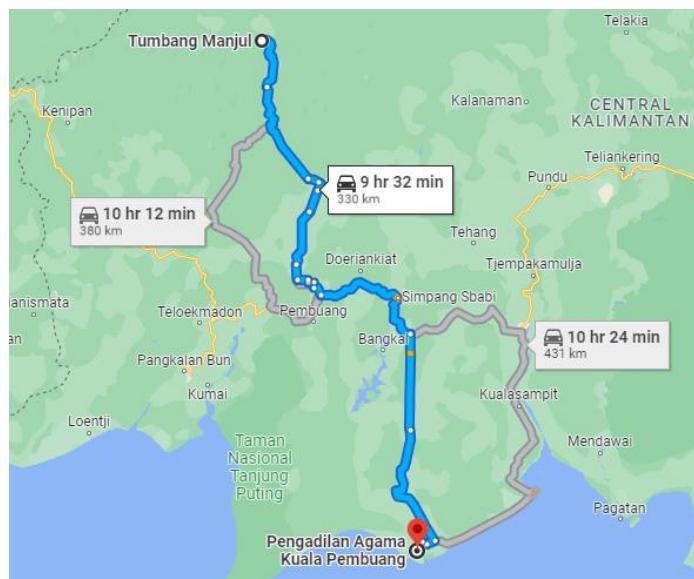
Source: Google Maps

Based on the map, people who live in an area in Kapuas Regency must travel 230 km to get to the Kuala Kapuas religious court or use a vehicle (car) for about 5 hours and 18 minutes. After that, Katingan Regency has the largest area in Central Kalimantan of 17,500 km².



Source: Google Maps

In Katingan regency, the largest regency the distance is even farther, which is 286 km to reach the Kasongan religious court, or about 8 hours and 14 minutes by land (car). Also, the Seruyan Regency has an area of 16,404 km².



Source: Google Maps

Tumbang Manjul as one of the districts in Seruyan regency must travel 431 km to reach the Kuala Pembuang religious court, or about 10 hours and 24 minutes by land. That is not the farthest area or village in the Seruyan regency. Thus, people find difficulties in access to reach, especially in cases of divorce that must be carried out in court. Therefore, most local people prefer to divorce underhand than divorce in court. The condition is added by many areas that can only be accessed by river routes.

The Impact of Divorce outside the Court

Legislation in several countries has regulated divorce, which is only carried out in court. However, many people do not follow the existing rules and choose to divorce outside the court. Because, according to them, following the rules set by the legislation is considered very difficult. People prefer a faster and easier process, which does not go through the procedures in the court, as determined by the state.

According to Ramadhan Syahmedi Siregar, the dualism of divorce law in society is a thing that cannot be denied and is a reality in people's lives. This condition is still widely practiced openly and acceptable to society. He quoted the opinion of Sulistyowati Irianto who stated that the view of pluralism/dualism of law can explain how diverse laws together regulate a problem. According to most legal academics, the fact that there is another legal system besides state law is still difficult to accept. However, in life in society, it cannot be denied that there is another legal system outside state law. Through this legal pluralism perspective, it observed how all legal systems in a society operate together. It gives meaning to the context of society choosing certain legal rules (Siregar, 2017).

Several impacts of divorce do not go through the procedures as per applicable laws. First, its consequences on the status of divorce. Divorce that is not under the applicable laws and regulations, the status of the divorce has no legal consequences or force because the divorce decision was not made in a court, or it is not an official divorce by the court. The government has formed a regulation related to divorce, with the aim of orderly administration, such as registration of marriages, and births of children, and making it difficult for divorces which follow the principles of Islamic law (Beddu et al., 2024; Hayati, 2015).

Second, its consequences on the wife. Divorce outside the court will have a negative impact on the wife because she does not have a divorce certificate from the Court that has legal force. So, if the widow wants to remarry, she will have difficulties with the Office of Religious Affairs. This also leads to other problems, such as underhand marriage (Alfitri et al., 2024). In addition, the wife does not get her rights after the divorce, such as receiving livelihood during the waiting period (Hayati, 2015).

Fourth, its impact on the husband has a similar impact on the wife. A husband who divorces outside the court will have difficulties if he wants to marry another woman (Sofiani et al., 2024). Fifth, its impact

on the children (R. Rahman et al., 2024). Divorce outside the court will affect the condition of the children (Rasyid et al., 2024) because the father often neglects the duty to give livelihood. This divorce has no legal force, so it does not have the power to force regular livelihood, both in terms of the time and the amount of material livelihood provided (Hayati, 2015).

Divorce that occurs, both divorce by *talaq* and divorce by lawsuit can only be carried out and is legally valid through a trial process in court (Suryani et al., 2024). The consequence of a divorce outside the court is that the marriage bond between the husband and wife has not been legally terminated, or in other words, both the husband and wife are still registered as legally married husband and wife.

Discussion

Realizing Justice amidst the Difficult Geographical Conditions of Central Kalimantan

According to Gustav Radburch, the purpose of the law, in addition to realizing the benefits and certainty of law, is to realize justice (Wantu, 2012). In fact, justice is the main thing in the implementation of a law. Every court decision always begins with the sentence "For Justice Based on the Almighty God," which means justice is very important for society.

The problems, as previously described, show injustice in divorce law, especially in Central Kalimantan Province. Divorce that must be carried out in front of a religious court should consider the conditions experienced by the community. Some people who live in rural areas of Central Kalimantan have difficult access to the court. The long-distance requires a lot of energy and money, besides the road access. Moreover, some areas can only be reached by water (rivers). This condition can be understood as the geographical conditions of Central Kalimantan Province, the largest province in Indonesia, have a far distance between areas in a regency. Some areas also follow the flow of rivers, which is 11 long rivers.

Divorce in court, from one perspective, contains benefits (April & Saiin, 2021; Qotadah et al., 2022) and legal certainty. Benefits are obtained because divorce in court goes through a trial process with several stages. The judge tries to make a decision to reach benefits. The rights of the husband, wife, and children are considered as a legal consequence of divorce.

According to the Marriage Law, the legal consequences of divorce have consequences for husband and wife towards their children. This obligation is in the form of maintenance and education. The costs required for the needs of the child are the responsibility of the father until he is an adult. In addition, according to the Compilation of Islamic Law, there is also an obligation for the husband to his ex-wife, namely the giving *mut'ah* and maintenance during the *iddah* period, unless his wife commits *nusyuz* (Heniyatun et al., 2020). These obligations, although not included in the petition of the divorce lawsuit, the judge has the ex officio right to punish the parties to carry out these obligations (Amal & Zulaicha, 2023; Jamil & Nur, 2022; Yuni, 2021).

Although divorce in court produces many *maslahah* (benefits), divorce in court has a negative impact because of the difficulty of access for people who have great difficulty accessing the court. These people do not want to divorce outside the court but are found by problems of access to the court due to geographical conditions in Central Kalimantan.

According to a fiqh principle, harm must be eliminated (Djazuli A, 2010). However, if there are two harms, then the lightest harm is chosen (Ahmad, 2018). This is expressed in the fiqh principle when determining the priority scale. For people who experience two conditions of harm as occurs in some areas of Central Kalimantan, they must choose the lightest harm. If access is difficult and the costs are high, resulting in greater harm than divorce outside the court. Then, this should be tolerated as a form of implementing just law.

The difficult choices can be minimized when optimizing two things that should be the ideal way out to overcome. First, it optimizes the mobile court under Circular Letter of Supreme Court Number 10 of 2010. Mobile courts have generally been running in almost all Religious Courts in Indonesia. However, the provided legal assistance is not only limited to providing facilities to the community but also provides education and learning for the community, especially those in need. In addition, realizing a simple, fast,

and low-cost judicial process and increasing public legal awareness of Islamic Sharia law is one of the duties, functions, and authorities of the court, including the implementation of divorce trials (Prabowo et al., 2024). Then, mobile courts are present to provide benefits to the community (Abubakar & Rahman, 2020).

The mobile courts are effective in overcoming the problem of distance. Salma Siti Safira found that the mobile court at the Garut Religious Court provides convenience for people, especially in remote areas of the Garut Regency. They think that it makes it easier for people to resolve their cases with easy access, fast time, and lower costs. If associated with the level in the *maslahah* theory (Hakim et al., 2024) the mobile court at the Garut Religious Court is included in the *maslahah hajjiyah* (Ifandy & Hasanah, 2024) because the mobile court is a secondary need that brings convenience to human life and free from the hardships/harm.

Also, Hazar Kusmayanti shows that the implementation of the mobile court at the Tasikmalaya Religious Court has fulfilled several principles of civil procedural law, namely fast, simple, and low cost. For example, when people have difficulty coming to the court office due to distance, transportation, and costs, the court comes directly to the location. The bureaucracy is not complicated, meaning the trial must be completed no more than 4 times. And there is an effective control system and various elements (Kusmayanti & Puteri, 2020). However, the implementation of mobile courts is limited because this program from each court has limitations in implementing mobile courts, both in terms of budget and programs.

Second, optimization of electronic courts (e-Court) under the Supreme Court Regulation Number 3 of 2018 on Electronic Court Case Administration. Since the Supreme Court made a policy on e-Court, it has provided one of the various problems of justice in Indonesia, including the problem that is the focus of this study, namely for people who are constrained by distance to go to court directly.

Several studies have stated that the e-Court system has proven to be quite effective in making the justice system based on simplicity, speed, and low cost. Supported by Susanto's research, the E-court system in the regency and religious courts in the Tangerang Raya area is segmented to create efficiency in serving case administration. It shows the level of satisfaction from the segmentation of time and cost efficiency (Susanto et al., 2020). Moreover, Siti Nur Intihani shows that the e-court-based justice system during the Covid-19 pandemic at the Bekasi Regency Court has been effective, so it can simplify and accelerate the case process and reduce court costs even though the trial process is still conventional in several stages, namely at the stage of evidence and reading the verdict (Intihani et al., 2022).

However, e-Court in its implementation is not optimal. Dian Latifiani argues that the legal culture of e-court-based is not optimal. Justice seekers (non-advocates) tend to choose conventional registration and trials rather than e-court. The factor of mastery of technology in the implementation of the e-court system is the main obstacle. Traditional cultural values are still deep-rooted and inherent, especially for people (non-advocates) who litigate conventionally (Latifiani et al., 2022).

Likewise, its implementation in Central Kalimantan, such as Wiwik Krisnawati's research that the implementation of the E-Court application at the Palangka Raya State Administrative Court often experiences obstacles, such as internet network problems, server down, and people who do not understand the E-Court application (Krisnawati et al., 2023). Areas far from urban areas have the worst where cellphone signals are low and unstable internet access. However, the e-Court judicial system is one effort to realize justice, including for people constrained by distance or difficult access to the court.

After the two previous things of optimization, there is an idea that has not become a positive law, namely *isbat talaq*. Novia Sari states that *isbat talaq* is possible to be constructed in the Religious Court system, as recommended by the Indonesian Ulema Council (MUI) in its *fatwa* (official statement or order from an Islamic religious leader). This construction is also possible to be applied to couples who divorce abroad by considering other related regulations (Sari et al., 2021). This research is motivated by the *fatwa* of the MUI of North Sumatra Province, which issued Fatwa No: 04/KF/MUI-SU/IV/2011 on *Isbat Talaq* for Divorce/Divorce Outside the Religious Court. This *fatwa* is a proposal to the Supreme Court to issue

regulations on isbat for divorce outside the court, aiming the couples to obtain legality for their status (Rahim et al., 2022). Indeed, an in-depth study of this idea is needed as related to positive law, which requires divorce only carried out in front of a court hearing. However, it is not impossible to realize this because marriages also require registration with the Marriage Registrar (PPN). On the other hand, positive law provides legality for unregistered marriages through the isbat marriage mechanism.

Conclusion

Divorce in court is a necessity in this modern era. But its implementation can lead to injustice, especially in Central Kalimantan Province. The geographical conditions of this province make it difficult to access the court. The wide area and far distance, added to difficult terrain in some areas make it a dilemma for the community. On the one hand, divorce in court contains benefits and the difficulty of access becomes a disadvantage. This dilemma causes two disadvantages that must choose the least disadvantage between the two disadvantages. The findings of this study offer optimization of two things to minimize disadvantages and injustice for the community in Central Kalimantan. They are the implementation of mobile courts and the use of the e-court system because these two things have limitations in both facilities and infrastructure and their implementation. In addition, the idea of *isbat talak* also needs to be studied further, playing as another alternative to overcome this problem.

Conflict of Interest

The authors declared no conflicts of interest.

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