



Legal Implications of Rejecting Divorce Petitions in the Perspective of Islamic Law and Positive Law in Indonesia

(Case Study of Andre Taulany's Case in the Religious Court)

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Article received: 01 November 2025, Review process: 11 November 2025

Article Accepted: 25 Desember 2025, Article published: 01 Januari 2026

ABSTRACT

Divorce cases in Indonesia often reveal a tension between the fiqh concept of talak as a husband's prerogative and the national legal system that requires judicial control. This study focuses on the repeated rejection of Andre Taulany's divorce case to understand this legal dynamic. This research aims to analyze the judges' legal considerations in rejecting divorce suits and to compare Islamic law and Indonesian positive law perspectives regarding such rejections. This study employs a normative juridical approach using case and statute approaches, with data derived from court decisions, fiqh literature, and relevant legislation. The findings indicate a fundamental difference between fiqh, which positions talak as a direct right of the husband, and Indonesian positive law, which requires judicial examination to ensure fairness and legal protection. The court's authority to reject talak reflects efforts to achieve justice, protect women's rights, and ensure that divorce occurs based on legitimate legal reasons.

Keywords: Divorce Lawsuit Rejection; Judge's Legal Considerations; Talak In Islamic Law; Indonesian Positive Law

ABSTRAK

Kasus perceraian di Indonesia kerap menunjukkan ketegangan antara konsep talak dalam fiqh yang merupakan hak prerogatif suami dengan sistem hukum nasional yang menempatkan perceraian sebagai urusan publik yang harus melalui mekanisme peradilan. Penelitian ini menyoroti penolakan berulang gugatan cerai talak Andre Taulany untuk memahami dinamika tersebut. Penelitian ini bertujuan menganalisis dasar pertimbangan hakim dalam menolak gugatan cerai talak serta membandingkan pandangan hukum Islam dan hukum positif Indonesia terhadap penolakan tersebut. Penelitian menggunakan pendekatan yuridis normatif dengan pendekatan kasus dan pendekatan perundang-undangan, dengan data bersumber dari putusan pengadilan, literatur fiqh, dan peraturan perundang-undangan terkait. Temuan menunjukkan adanya perbedaan mendasar antara fiqh yang memosisikan talak sebagai hak langsung suami, dengan hukum positif Indonesia yang mensyaratkan pemeriksaan hakim demi memastikan keadilan dan perlindungan hukum. Kewenangan hakim menolak talak mencerminkan upaya mewujudkan keadilan, melindungi hak perempuan, serta memastikan perceraian terjadi berdasarkan alasan hukum yang sah.

Kata Kunci: Penolakan Gugatan Perceraian; Pertimbangan Hukum Hakim; Talak Dalam Hukum Islam; Hukum Positif Indonesia

INTRODUCTION

In Islamic law, divorce is understood as the prerogative of the husband to end the marriage, as stated in the Qur'an, Surah Al-Baqarah, verse 229: "Divorce is twice, after that you may either retain her in a reasonable manner or release her with good treatment." In the classical fiqh perspective, divorce does not require the intervention of a judicial institution; it is sufficient to utter the words of divorce that are valid according to sharia, and the divorce is final. This confirms that in fiqh, divorce is the unilateral right of the husband that can be exercised directly. (J., Islam, K., , R., Vatanen, A., & Arifin 2025)

Meanwhile, Indonesian positive law treats divorce as a matter of public law that must go through the judicial system. Based on Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), divorce can only be carried out before the Religious Court after the judge has attempted to reconcile the two parties. Thus, the court functions as a legal filter to ensure that divorce occurs on valid grounds and does not cause injustice, especially for the wife and children. (Hasan 2022)

Divorce is one of the most common issues brought before religious courts, including among public figures. One case that attracted public attention was the divorce suit filed by Andre Taulany against his wife, Erin Taulany, which was rejected by the court three times. This phenomenon raises legal questions about the basis and implications of the rejection. (Ridha, M., Deliana, D., & Hasibuan 2023)

This phenomenon raises questions about the legal implications of rejecting a divorce petition in the context of Islamic law and Indonesian positive law. Is such rejection in line with Sharia principles, or does it actually limit the husband's right to divorce? Furthermore, how does this affect the legal status of the husband and wife, as well as the obligation to provide financial support while the marriage is still legally valid.

Therefore, this study is relevant and important to conduct. Analysis of the differences between the concepts of divorce in fiqh and positive law, as well as studies of actual cases such as the Andre Taulany and Erin case, can provide a more comprehensive understanding of how Islamic law and national law interact in protecting the integrity and justice of families in Indonesia. (Hasanudin 2025)

The research questions in this study include: (1) what is the legal basis for rejecting divorce suits in Indonesian positive law; (2) what is the Islamic legal perspective on the rejection of divorce suits by judges; and (3) what are the legal implications for the position of husbands and wives. The objectives of this study are to examine the basis for the judge's considerations, review the Islamic legal perspective, and analyze the legal implications of rejecting the divorce petition.

Normatively, Islamic law grants husbands the right to divorce, as explained in QS. Al-Baqarah verse 229 and the hadith of the Prophet SAW regarding the permissibility of divorce. However, Indonesian positive law through Law Number 1 of 1974 and the Compilation of Islamic Law stipulates that divorce can only be carried out before a court after attempts at reconciliation have failed. (Hariyadi 2024). The literature review covers the views of the four schools of fiqh regarding the mechanism of divorce, the theory of judicial authority in Islamic civil law, and

the theory of legal protection for women in marriage. Several previous studies have discussed the role of judges in divorce, but not many have specifically highlighted cases of repeated refusal of divorce, such as in the Andre Taulany case.

METHOD

This study uses a normative juridical approach, which focuses on examining applicable legal norms, both those derived from Islamic law and Indonesian positive law. This approach was chosen because the study aims to analyze the concept and application of law in cases of divorce by repudiation (talak) being rejected in the Religious Court, thus placing greater emphasis on the study of legal documents and scientific literature rather than field research. The data sources in this study consist of primary and secondary legal materials. Primary legal materials include court decisions and legislation directly related to divorce cases. Secondary legal materials were obtained from various classical and contemporary fiqh literature, scientific journals, previous research results, and credible legal news relevant to the research topic. The data obtained was then analyzed qualitatively and descriptively, namely by describing, interpreting, and reviewing the contents of legal materials systematically to gain a deeper understanding of the legal issues under study. In addition, the analysis was conducted comparatively by comparing the principles of Islamic law and Indonesian positive law in viewing the authority of judges to reject divorce suits. Through this analysis, it is hoped that a balance can be found between the values of Sharia and positive legal justice in providing protection to the parties involved in the case.

RESULTS AND DISCUSSION

In Islamic law, divorce is permissible, but there are four main schools of thought that have different views on the concept of divorce. Each of these schools provides different explanations and laws regarding the implementation of divorce. The following is an explanation of the views of each school of thought:

a. **Mazhab Hanafi**

The Hanafi school defines divorce etymologically as رفع قيد, meaning the release of a bond. Epistemologically, it is رفع قيد النكاح بلفظ مخصوص, meaning the release of a marriage bond with specific words. ("Dar Al-Mukhtar Wa Hasyiyatu Ibnu 'Abidin," n.d.) In law, they are divided into three parts: first, Talak Ahsan, which is a divorce pronounced to a wife who is pure and has not been consummated. The second part is Talak Hasan, which is a divorce pronounced to a wife who has never been consummated even though she is menstruating, or pronounced to a wife who has been consummated but has not been consummated again for three periods of purity. The third part is Talak Bid'i, which is a divorce pronounced to a wife who is menstruating or pregnant. ("Dar Al-Mukhtar Wa Hasyiyatu Ibnu 'Abidin," n.d.)

b. **Mazhab Maliki**

The Maliki school defines divorce etymologically as انطلاق والذهاب, meaning to break and leave. Epistemologically, it is صفة حكمية ترفع حلية متعة الزوج بزوجه, meaning a legal characteristic that causes the dissolution of the lawful relationship between husband and wife. In terms of law, they are divided into three parts: first, Sunnah,

which is a single divorce pronounced to a wife who is pure and has not been consummated. The second part is Makruh, which is a divorce pronounced to more than one wife who is not menstruating. The third part is Prohibited/Haram, which is a divorce pronounced to a wife who is menstruating or pregnant. ("Dar Al-Mukhtar," n.d.)

c. **Mazhab Syafi'i**

The Shafi'i school defines divorce etymologically as: *حلّ القيد والاطلاق*, which means to release the bond and leave. Epistemologically, it is defined as: *حلّ عقد النكاح* بلفظ الطلاق ونحوه, which means to release the bond of marriage with the words "divorce" or similar. (Al-Syarbini 2006a) In law, they are divided into four parts: first, Obligatory, if there is a dispute between husband and wife that cannot be reconciled, and two arbitrators handling the case have determined that they need to divorce. The second part, Sunnah, is if the wife is morally corrupt. The third part is Haram, if the husband divorces his wife during her menstrual period or when she is not menstruating but has just had sexual intercourse (i.e., she is in her clean period but has just had sexual intercourse). The fourth part is Makruh, if the husband divorces his wife without cause. (Al-Syarbini 2006b)

d. **Mazhab Hanbali**

The Hanbali school defines divorce etymologically: *رفع الوثاق مطلق* is the absolute dissolution of the bond. Epistemologically: *رفع قيد النكاح بلفظ مخصوص* is the dissolution of the marriage bond with specific words. ("Fathul Qodir Lil Kamal Ibni Hamam," n.d.-a) In law, they are divided into three parts: first, Ahsan, which is a single divorce pronounced to the wife in a state of purity. The second part is Hasan, which is a triple divorce pronounced to the wife in three states of purity. The third part is Bid'ah, which is a triple divorce pronounced in one go and in one state of purity. ("Fathul Qodir Lil Kamal Ibni Hamam," n.d.-b)

Regulations on divorce in Indonesian positive law (Law No. 1 of 1974 & KHI).

In the context of Islamic law in Indonesia, the implementation of divorce or talak has been systematically regulated through the Compilation of Islamic Law (KHI), which serves as the main reference in resolving marriage issues in the Religious Court. This regulation changes the previous paradigm that allowed husbands to unilaterally declare talak. Every divorce must now go through the courts to ensure that the rights of both parties are protected and that there is legal certainty. (*Departemen Agama Republik Indonesia, Instruksi Presiden Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam (Jakarta: Departemen Agama RI, 1991).*, n.d.)

The KHI clearly states that divorce proceedings cannot be conducted outside of court. Based on Articles 129 to 131, there are several important steps that must be taken, including filing for divorce at the Religious Court in the area where the wife resides, stating valid reasons in accordance with the law, reviewing the files within thirty days, and summoning both parties for clarification and mediation. If the mediation procedure fails, the court may allow the husband to announce the divorce before a panel of judges. After that, the court issues a Divorce Decree, which serves as an official document that the divorce is permitted under Indonesian Islamic law. (Abdurrahman 1992)

Although this process has been formally and legally regulated, informal divorce practices, often known as private divorce, remain popular in society. This type of divorce practice clearly violates Law No. 1 of 1974 on Marriage, specifically Article 39 paragraph (1), which states that divorce can only be granted by the court after reconciliation efforts have failed. Divorces conducted outside of court have no legal validity and have the potential to harm one of the parties, especially women and children, whose rights are not guaranteed by state law. (Syarifuddin 2011)

Thus, the formal divorce process through the Religious Court is an effort to combine Islamic beliefs with the national legal system. This effort emphasizes the importance of justice, benefit, and legal certainty in the settlement of all marriage cases, which is in line with the objectives of applying Islamic law in Indonesia. (Praja 2014)

The theory of judicial authority and the theory of protection for women and children in family law.

In the Indonesian Islamic legal system, judges are not only seen as enforcers of the law, but also as guardians of Sharia values throughout society. Judges have the authority to interpret legal norms when the language of the law does not provide sufficient certainty, especially in family law disputes involving the rights of women and children. The theory of judicial authority in this context is based on the principle of *al-sulṭah al-qaḍā'iyyah* (السلطة القضائية), which positions judges as representatives of *al-shar'* or representatives appointed to act on behalf of others in legal or Sharia matters in the administration of justice.

In family law practice, judges use their authority to correct social injustices. For example, in disputes over divorce, alimony, and child custody, judges help determine the limits of legal protection for women and children, preventing structural injustices. This approach is in line with the views of Ibn al-Qayyim al-Jawziyyah, who stated that justice is the basis of all Sharia law, and that any policy that deviates from justice cannot be considered true Islamic Sharia. (Al-Jawziyyah 1991)

The theory of protection for women and children in Islamic family law is based on *hiḏ al-naḑ* (self-preservation) and *hiḏ al-naḑ* (preservation of offspring) in the science of *maqāḑid al-sharī'ah*. Legal protection for women and children encompasses physical, psychological, and social dimensions, ensuring that they are not harmed by patriarchal power or gender-biased interpretations of the law. (Auda 2008) In the context of national law, Law No. 7 of 1989 on Religious Courts, as amended by Law No. 3 of 2006, gives judges the authority to explore legal values and realize a sense of justice for the community (Article 52A). (Indonesia, n.d.)

This reinforces the theory that judges in Islamic family cases do not merely enforce textual law, but also have room for *ijtihād* to ensure substantive justice. The authority of judges, combined with the theory of legal protection for women and children, is proof that Islamic family law in Indonesia is dynamic and capable of adapting to developments in society. Judges act as moral agents who balance

legal texts with the public interest (*maslahah mursalah*), rather than simply applying regulations rigidly. In this context, Islamic law has demonstrated its ability to adapt strict principles into instruments of social justice that protect vulnerable groups, while still adhering to Sharia values.

Analysis Judge's Decision in Andre Taulany's Divorce Case

In the case of Andre Taulany and Ririn Amalia, the panel of judges rejected the divorce petition on the basis of Article 39 paragraph (1) of Law No. 1 of 1974, which stipulates that divorce can only be granted if there are sufficient grounds and these are proven in court. The judges considered that the petitioner's reasons did not fulfill the element of "irreconcilable differences" as stated in Article 19 letter (f) of Government Regulation No. 9 of 1975. The panel of judges also considered the principle of family integrity as explained in Article 116 of the Compilation of Islamic Law (KHI). This consideration shows the judges' orientation towards the protection of women and children and the application of mediation and deliberation before deciding on a divorce. (Siregar 2022) Thus, judges not only enforce the law normatively, but also consider substantive justice and the welfare of the family.

Islamic Legal Review of the Rejection of Divorce by a Judge

In the Islamic perspective, divorce is the right of the husband (*haqq al-zauj*) as explained in QS. Al-Baqarah verses 229–230, but this right is not absolute. The principle of *lā ḍarar wa lā ḍirār* (no harm) is the moral limit on the use of the right to divorce. (Al-Nawawi 2002) The concept of *taqyīd al-ṭalāq* emerged in contemporary Islamic law as a form of restriction on the right to divorce for the sake of the public interest (*al-maṣlahah al-‘āmmah*). (Anwar 2020) Thus, the judge may reject the divorce if there are elements of injustice or abuse of rights against the wife. (Nasution 2021) The judge's decision in this case does not contradict Islamic law, but rather reflects the *maqāṣid al-syarī‘ah*, especially the protection of offspring (*ḥifẓ al-nasl*) and honor (*ḥifẓ al-‘ird*). (Rahman 2022)

Comparison between Fiqh Principles and Indonesian Positive Law

In classical *fiqh*, divorce can be granted immediately without the involvement of a judicial institution (Al-Kasani, 1996). However, the Indonesian legal system stipulates that divorce is only valid after it has been pronounced before a court of law (Article 65 of Law No. 7 of 1989 in conjunction with Law No. 3 of 2006). This restriction aims to ensure legal certainty and protection for wives and children. From a *fiqh* perspective, this falls under *siyāsah syar‘iyyah*, which is a legitimate state policy as long as it is for the benefit of society. (Abdurrahman 2023) Thus, Islamic jurisprudence and Indonesian positive law have a complementary relationship, not a contradictory one. Islamic jurisprudence provides the normative basis, while positive law enforces fair procedural mechanisms.

Legal Implications for Marital Status and Spousal Support

The rejection of divorce by a judge means that the marriage remains valid and legally binding, as there is no final and binding decision (Madjid & Kartika, 2024). As a result, the husband is still obligated to provide financial support to his wife as stipulated in Article 34 paragraph (1) of Law No. 1 of 1974 and Article 80 paragraph (4) of the Islamic Family Law (KHI).

If these obligations are neglected, the wife has the right to file for divorce (khulu' or fasakh) on the grounds of abandonment. This shows that the national legal system seeks to balance the husband's right to divorce and legal protection for the wife, so that there is no gender inequality or economic injustice in the household.

The results of the study show that the rejection of divorce petitions by judges is based on incomplete formal and material requirements, such as the failure to fulfill the valid reasons for divorce as stipulated in Article 19 of Government Regulation No. 9 of 1975 and Article 116 of the Islamic Family Law. In some cases, judges also consider the principle of protection for women and children in rejecting divorce petitions that are deemed to lack a strong basis.

From an Islamic legal perspective, divorce is indeed the husband's right, but it is not absolute without responsibility. The judge has the authority to reject the petition if the divorce is considered to cause greater harm, in accordance with the principles of sadd al-dzari'ah and maqashid al-syari'ah in maintaining family integrity. Thus, the rejection of a divorce petition can be seen as a form of legal protection that is in line with the values of justice in Islam.

CONCLUSION

The rejection of divorce petitions in positive law shows a paradigm shift from the absolute rights of husbands to rights that are regulated and supervised by judicial institutions. Under Islamic law, the judge's decision to reject an irrevocable divorce without strong grounds can be justified as an effort to maintain the common good and avoid harm. The legal implication of this rejection is that the marriage remains valid and the husband remains obligated to provide financial support to his wife until the divorce decree becomes final. Recommendation: Religious courts need to strengthen their legal basis and public communication in explaining the reasons for rejecting divorce so as not to cause misunderstanding among the public regarding the function of Islamic law in the national judicial system.

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