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**Talak By Husband Outside The Shar'iyah Court (Research
Study in Lawe Kongker Village, Lawe Alas District,
Southeast Aceh Regency)**

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Abstract

This study aims to determine the factors that cause divorce outside the Syar'iyah Court in Lawe Kongker Village, the legal consequences for ex-husbands, ex-wives and children who divorce outside the Syar'iyah Court and the rights and obligations of ex-husbands to ex-wives who sentenced to divorce outside the Syar'iyah Court. This study uses empirical juridical research methods. This legal research is based on juridical facts that apply in society. The nature of this research is descriptive analytical. The secondary data collection was carried out by literature study and data analysis techniques were carried out qualitatively. The results obtained in conducting research are how the factors that cause divorce outside the Syar'iyah Court in Lawe Kongker Village are economic factors, adultery, excessive wife demands and gamblers. The legal consequences for ex-husbands and ex-wives who do divorce outside the Syar'iyah Court are the absence of divorce certificates for ex-husbands and ex-wives as one of the conditions for the next marriage. After the divorce outside the Syar'iyah Court, there is no longer any relationship between the ex-husband and the ex-wife after talak according to the prevailing customs in Lawe Kongker Village.

Keywords

Divorce outside the Syariah Court, Lawe Kongker Village.

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A. Introduction

The marriage bond is a very sacred thing, both according to religious teachings or the position in Law Number 1 of 1974 concerning Marriage, namely the inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household). based on God Almighty. The marriage bond is an inner and outer bond and a continuous responsibility, not only a civil relationship, but also a relationship between human beings both in this world and in the hereafter. on the issue of divorce. Because, a marriage bond will not be enough to answer the problems of the human heart which always needs a life partner. Sometimes humans have feelings of disappointment with the lack of inner and outer satisfaction with their partners, or are no longer compatible and ultimately want to avoid a legal marriage relationship. Therefore, it is necessary to have a divorce law in the household, even though the lawful thing to do but is hated by God is divorce, it is not impossible that God allows a married couple to divorce under certain circumstances.

The termination of marriage is also regulated by the State through Law Number 1 of 1974 concerning Marriage and is described in Government Regulation Number 9 of 1975 as an implementing rule of the Marriage Law and is also regulated in the KHI. The definition of divorce in Article 177 of the KHI which explains that divorce is a husband's pledge before a Religious Court trial which is one of the reasons for the breakup of a marriage. In connection with the provision that divorce must be carried out before a court session, this provision also applies to the people of Lawe Kongker Village, Lawe Alas District, Southeast Aceh

Regency who are Muslim. Although basically Islamic law does not stipulate that divorce must be carried out in front of the Syar'iyah Court, and many Lawe Kongker Village people who divorce outside the Syar'iyah Court only follow the provisions of religion, but because of the provisions regulated by laws and regulations. -Invitations or provisions of this State bring more goodness to both parties, so it is appropriate that Muslims are obliged to follow these provisions for the benefit and legal certainty.

As for the divorce cases in Lawe Kongker Village from 2018-2020 as many as 23 couples who divorced outside the Syar'iyah Court, this shows that divorce is considered a trivial and ordinary thing. Currently, especially in Lawe Kongker Village, there are still many divorced outside the Syar'iyah Court, divorce from year to year, in 2018 there were 6 couples who had 8 couples and in 2020 there were 9 divorced married couples. divorced, while in 2019 there were

Many married couples feel ready and have a lot of provisions, but in the middle of their path, they fail to achieve the previously aspired goals, they fail to create and build a happy, prosperous and eternal home. The household is getting more and more fractured, the marriage rope is getting looser, the affectionate relationship is getting more and more disharmonious, finally it runs away and disappears. The coveted domestic tranquility and peace turned into strife and quarrels, the household was no longer a palace and heaven but turned into a prison and hell.

Problems in the household must occur and have been experienced by every married couple, no matter how harmonious the family is, they must have felt a conflict in the household, sometimes the conflict is triggered by various problems and ultimately causes a commotion in the household, this factor makes husband and wife divorce. usually begins with a loss of trust to cause a lot of debate that raises the feeling of tired of living the household.

B. Research Results and Discussion

a. What Factors Caused A Divorce Outside The Shar'iyah Court In Lawe Kongker Village.

The occurrence of divorce outside the legal procedure of marriage carried out by the husband by giving divorce to the wife, both in their own household, and during the peaceful settlement of disputes. Indonesia has regulated divorce in Law Number 1 of 1974 concerning Marriage. Especially for Muslims, the divorce rules have been regulated in the Compilation of Islamic Law (KHI). Laws and regulations in Indonesia state the reasons for the dissolution of marriages, one of which is due to divorce. As regulated in Article 38 of Law Number 1 of 1974 concerning Marriage which reads: "marriages can be terminated due to death, divorce, and by court decisions". The same thing is also regulated in the Compilation of Islamic Law (KHI), namely in Article 113 it is stated: "marriages can be terminated due to death, divorce and by court decisions".

Divorce that occurs outside the settlement process by the Syar'iyah Court which deviates from Law no. 1 of 1974 and the Compilation of Islamic Law is carried out by the husband dropping the divorce on his wife either directly without witnesses or in the presence of the husband's parents or in the presence of the wife's parents as well as in the presence of the Village Customs apparatus and in front of his brother. When domestic disputes are at their peak and on the brink, while their parents and the Village Customary

apparatus and their siblings are unable to reconcile the husband and wife, divorce takes place.

Many village communities choose to divorce outside the Syar'iyah Court for reasons of being unable, it has become a habit, distance, and lack of legal awareness. This reason makes them prefer to divorce outside the Syar'iyah Court. Economic problems are also the basis for the parties not to divorce in the Syar'iyah Court, one of the consequences of the husband not having a permanent job while in marriage the only one who supports the family is the wife. If a wife asks for a divorce, then the wife must pay for her case to settle the case at the Syar'iyah Court. Although there are provisions regarding divorce, many people who are less able to file divorce cases through the Syar'iyah Court of Kuta Cane, because the cost of the case is so large, it triggers divorce outside the Syar'iyah Court. It can be felt by the people of Lawe Kongker Village whose economy is middle to lower. So they can't afford to pay the court fees. Because daily needs are not sufficient, especially if filing a case in court requires a large amount of money.

Another reason has become a habit, many people in Lawe Kongker Village have divorced without going through the Syar'iyah Court so that the divorced people follow the people who have been divorced for a long time. "Because from the beginning there have been divorces outside the Syar'iyah Court, they divorced using the Islamic Law, in the Islamic Law divorce will occur when the husband utters the sentence of divorce to his wife, so there is nothing wrong with following the religion".

The next reason is that the distance between Lawe Kongker Village and the Syar'iyah Court is very far, it takes about 1:50 hours, the long distance makes people lazy to take cases to the Syar'iyah Court, coupled with the public's lack of understanding of the procedures at the Syar'iyah Court. For example, people do not understand the procedures because of education. Lack of legal awareness, many people do not know at all that there is a mechanism that regulates the procedure for divorce properly, it can be said to be disobedient to Indonesian law. Many people do not know there is a law that regulates divorce.

According to Salimin as the Village Head in Lawe Kongker, the factors that cause many divorces in the Lawe Kongker Village community are economic problems, adultery, excessive wife demands and gamblers. Economic problems are one of the main factors that can lead to divorce. Divorce due to the economy is not only experienced by those whose economy is low but also those who are well established. For those who are already established, or the chaos of the economy can be caused by an excessive lifestyle and can be due to poor financial management.

Adultery or adultery often stems from infidelity, divorce problems are often found due to the occurrence of cheating in the household. This is because the involvement of a third person, either the husband or wife, becomes a source of chaos in the household. Many of those who have an affair admit that they are not satisfied with their husband or wife. This is the cause of the wife or husband looking for another outlet.

The wife's excessive demands are also a factor that causes divorce, the wife's excessive demands here are the wife forcing her husband to fulfill his wife's wishes to be equal to his neighbors, it's like his neighbor buying a car he also asks his husband to buy a car too or his neighbor buys gold he also asks to her husband to buy gold as well, while her husband's income is much different from the neighbor's husband, this kind of habit often occurs in the Lawe Kongker Village community which causes quarrels between husband and wife and can lead to divorce.

Not only that, the gambling factor can also be the basis for divorce, many village people prioritize their hobby of playing gambling rather than supporting their children and wives, many men who already know the economy is difficult but still like to gamble, this is the cause of husband and wife fuss in marriage and lead to divorce.

The results of the interviews obtained in the study are interviews with divorce actors:

The first is an interview with 34-year-old Ropiana munte and her 42-year-old husband Jamidi, the couple married in 2012 and divorced in 2019. There was a dispute between the two parties to the point of emotion that caused the husband to divorce his wife in front of the children. -his son. The factors that led to the divorce between this couple were the absence of the ex-husband's responsibility for his ex-wife and children in the form of a living, who became the backbone of the family in this household to support his two children.

As for the interview with Mardiana, 36, and her husband, Buhari Desky, who is 38, the couple married in 2011 and divorced in 2018. The divorce was pronounced by the husband through electronic media (handpon). As for the factors that caused the divorce between this couple, namely economic problems and distance, Mardiana's ex-husband worked in Malaysia as an Indonesian Migrant Worker (TKI) while Mardiana and her child lived at their parents' house, Mardiana's ex-husband rarely provided a living for his family. The cost of living provided by the ex-husband is Rp. 350,000/month sometimes ex-husbands don't give money to ex-wives who are left in the village while Mardiana has three children who currently need money for school.

As for the interview with 35-year-old Juminta and her 38-year-old husband Safrizal, the couple married in 2014 and divorced in 2020. There was an argument between the two parties so that the husband committed violence against his wife and immediately dropped his wife's divorce in front of the brother of the other side. the husband. The factors that cause divorce between this couple are economic problems and the high ego of the ex-husband, the ex-husband is addicted to gambling, and violence that is often done by ex-husbands to ex-wives. In this case, the ex-husband is not responsible for himself and his children, so the wife is the backbone of the family.

As for the interview with 36-year-old Abdul Rahman and his 33-year-old wife Jusmaniar, the couple married in 2014 and divorced in 2019. There was a dispute because the wife was cheating on her and the husband immediately dropped the wife's divorce at the husband's mother's house. As for the factors that caused the divorce between this couple, namely the problem of the wife being caught cheating on her ex-boyfriend, they often quarreled over reasons because there was a third person in their household and the wife often fought with the husband's parents in this case the husband was unable to deal with the wife's behavior, the love of the wife is no longer in the family.

In disputes and quarrels between ex-husbands and ex-wives, there are stages in the resolution. As an initial stage, the settlement is carried out by the disputing husband and wife themselves through open communication between the two. Because basically all disputes in the household, no one should know, because household problems are private matters, while the self-esteem of husband and wife is measured by personal secrets that are well guarded.

b. What Are The Legal Consequences For Ex-Husband, Ex-Wife And Children Who Did A Divorce Outside The Shar'iyah Court

Divorce outside the Syar'iyah Court results in the termination of the legal relationship

between the ex-husband and the ex-wife concerned, the husband's status changes to a widower, and the wife becomes a widow. Furthermore, with the breakup of the relationship, it causes the loss of rights and obligations of husband and wife in the household. Both have to live separately and have no relationship with each other. In accordance with the Marriage Law, divorce can only be carried out before a trial of the Syar'iyah Court, after the Syar'iyah Court concerned has tried and failed to reconcile the two parties. Based on these provisions, since the effective enactment of the Marriage Law, that is, since October 1, 1975, it is not possible for divorce to occur outside the procedure of the Syar'iyah Court. For divorce there must be sufficient reason that the husband and wife will not be able to live in harmony as husband and wife. However, it seems that the enactment of the Marriage Law does not have much effect on some people, who are used to divorce outside the procedure of the Syar'iyah Court, even though the divorce can have a negative impact on a divorce. That the divorce status has no legal consequences or legal force as a result of the divorce, because the divorce decision was not made in front of the Syar'iyah Court. That a divorce that is not carried out in court has a very clear legal status, that the divorce is invalid, based on Article 115 of the KHI.

Basically, Islam justifies a husband who will divorce his wife only enough to say in front of his wife or through a letter then talaq has fallen, but in life as a state he must obey government regulations, as long as it does not conflict with Islamic law itself, because he is obedient to the government, It is part of our obligations as Muslims. The government forms a regulation on divorce with the aim of maintaining order in the administration, such as the problem of registering marriages, the birth of children and making divorce difficult. This is basically in accordance with the principles of Islamic law regarding divorce, namely making it difficult for divorce to occur.

According to the provisions of Article 41 of Law Number 1 of 1974, it is stated that the legal consequences of divorce are:

- a. Both mothers and fathers are still obliged to maintain and educate their children, solely based on the interests of the child, if there is a dispute regarding the control of the child, the court gives its decision.
- b. The father is responsible for all costs of maintenance and education needed by the child, if the father is in fact unable to fulfill these obligations, the court can determine that the mother is also responsible for the costs.
- c. The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

Based on the results of interviews conducted by researchers on Rasidansah as a traditional figure in Lawe Kongker Village, it was stated that the occurrence of a divorce outside the Sar'iyah Court would have legal consequences for husbands, wives, and children as well as getting bad impacts on the family and also will lead to changes in the way of life of the community.

1. Legal Consequences for Husbands

The legal consequence of divorce is that the relationship between husband and wife becomes invalid for those who have divorced. From the results of the author's research, the consequences arising from divorces carried out outside the Syar'iyah Court are that it will make it difficult for husbands to carry out further marriages, because they do not have a divorce certificate that has legal force, so that when you want to do the next marriage, you will experience difficulties, because if a man who has been married wants to do a further

marriage, he must be able to show a divorce certificate as authentic evidence or as one of the requirements to carry out a marriage. subsequent marriage. This is experienced by research respondents, the respondent referred to by the researcher is Abdul Rahman, 36 years old, having his address at Lawe Kongker. Mr. Abdul Rahman stated that the divorce which was carried out outside the Syar'iyah Court caused him to be unable to do so did a marriage that was registered at the Office of Religious Affairs (KUA) and finally he did the next marriage with an underhand marriage route on the grounds that the child was still a small child aged 8 months.

2. Legal Consequences on the Wife

Because the divorce which was carried out outside the trial of the Syar'iyah Court did not have a divorce certificate that had legal force, so that the wife who wanted to remarry would have difficulty carrying out the next marriage. Because when a widow wants to have a further marriage, she must be able to show her divorce certificate from the Syar'iyah Court in order to fulfill the requirements for the next marriage. In this case experienced by research respondents, namely on behalf of Ropiana Munte, Mardiana, Juminta based on the results of research conducted by researchers on the 3 people they stated that they stated that it was difficult to remarry through the KUA, because previously they had divorced outside the Sharia Court. 'yes.

3. Legal Consequences on Children

If a divorce has occurred, the victims are always children, especially minors. If the household continues to bicker, it is filled with serious conflicts, then it becomes fractured and will eventually lead to divorce. The breakdown of this household causes the child's heart to be depressed, suffering mentally and mentally due to the actions of both parents. The family is the smallest social unit in providing the primary foundation for the development of children, therefore the good or bad of a household greatly influences the growth of the child's personality.

For a child, a separation or divorce where both parents are things that can interfere with the mental condition, where the child was previously in a harmonious family environment full of love from both parents, lived together by having a father figure, with a mother figure, suddenly found himself in a disorganized family environment which in the end had to live with one of his parents, be it mother or father.

c. The Rights and Obligations of The Ex-Husband On The Ex-Wife Who Talked Out Outside The Shar'iyah Court

The period of Iddah is a term taken from the Arabic word al-'iddah which means calculation. It is called the 'iddah period because a person counts the holy period or months in general in determining the completion of the 'iddah period. According to the scholars, the 'iddah period is a term or the name of a period in which a woman is waiting for or suspending the marriage bond after she is left dead by her husband or after they are divorced. In addition, the end of a predetermined number of months or the end of several quru'. There are several sections of the scholars stating that during the 'iddah period is a term for a woman's waiting period to ensure that she is not pregnant or because of ta'abbud or to relieve sadness for her husband.

Iddah is a period of waiting for women so that it is lawful for other husbands. In

terms of the length of the iddah period, the Act. No. 1 of 1974 almost the same provisions as KHI. That is 130 days for marriages that are dissolved due to death, 90 days for marriages that are discontinued due to divorce, and for marriages that break up when the wife is pregnant, the period of iddah is until she gives birth. These provisions are contained in Article 39 paragraphs 1-3 of the Law. No. 1 of 1974. However, in terms of the process of filing a divorce application until the divorce occurs, Law. No. 1 of 1974 is different from the provisions contained in the KHI. This is as stated in the Act. No. 1 of 1974 articles 14-17.

The iddah period itself is according to the provisions of the law. No. 1 of 1974 did not begin when the Syar'iyah Court issued a certificate of divorce, but rather when the divorce was declared in front of the court. This is based on the UU. No. 1 Year 1974 article 18 "This divorce takes place from the moment the divorce is declared in front of the Syar'iyah Court session". That is, the period of iddah according to this Marriage Law begins when the divorce is declared in front of the divorce witness hearing even though the Syar'iyah Court has not yet issued a certificate of the divorce. So the wife who has been divorced must undergo her iddah period counted from when the divorce filed by the husband is declared at the divorce witnessing session.

Iddah is counted since the causes, namely death and divorce. Iddah has been known to the masses of ignorance. They did not want and left the iddah when Islam came, the iddah was set because it contained benefits. The iddah period for women whose husbands died had an iddah period of 4 months and 10 days, while women whose husbands divorced had an iddah period of 3 months. 10 days and the longest iddah is the iddah of a woman who is pregnant with its prohibitions, including wearing eye patches, decorating oneself, leaving the house except in a state of necessity. The husband's responsibility towards his wife does not only apply when he legally becomes husband and wife, but even after the divorce, the husband is still responsible for the ex-wife, which is the right of the wife to obtain from the ex-husband during the period of iddah as a result of the divorce. As for the rights of this wife, she is entitled to receive maintenance during the period of iddah and mut'ah from her ex-husband for a wife who is divorced by raj'i and does not have nusyauz.

When a divorce occurs, at least the wife will get some of her rights from the ex-husband who was sentenced to divorce on his iddah, the rights that the wife gets are in the form of money according to Lawe Kongker Village customsgiven by the ex-husband to the ex-wife. If after the divorce, there is a child under the age of 21 while the one holding custody of the child is the ex-wife, then the ex-husband is obliged to provide child support to the ex-wife according to the ability of the ex-husband. If the ex-husband does not provide it, whether it is housing or living expenses (spending money), then the ex-wife can submit the problem to the Syar"iyah Court. The purpose of giving alimony is meant to provide help and respect to the wife and avoid the cruelty of divorce imposed by her ex-husband. It can also be understood that the purpose of providing alimony in a network isto avoid the possibility of harm after a divorce, and it is hoped that by providing alimony for the wife, it will be able to create benefits for the wife if she is unable to earn a living on her own and also bring convenience to the ex-wife. Sometimes a divorced wife is poor and there is no one to take care of her, so the divorced ex-husband is obliged to provide maintenance during the period of iddah and separation in order to remarry.

At the time after the divorce or the iddah period has taken place, both parties who have divorced, each still has rights and obligations. When the ex- husband gives birth to his

obligations, various problems will arise, for example the child at school, so that the child becomes abandoned or even homeless. These are the phenomena that often arise from divorce when the husband does not fulfill his obligations towards the rights of his wife and children during the *Idah*. After the divorce, in fact, the husband must provide at least a decent place to live for his ex-wife and children. Regarding the husband's obligations, Compilation of Islamic Law Article 18 paragraph (1) states, "The husband must provide a place to live for his wife and children or his ex-wife who is still in the period of *iddah*."

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