

LEGAL JUSTICE IN DIVORCE LAWSUITS DUE TO FINAL CRIMINAL CONVICTIONS

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Abstract. *This research aims to analyze the implementation and legal justice in the practice of divorce lawsuits filed on the grounds of a final criminal conviction against one of the spouses. This reason for divorce is unique as it uses a criminal verdict as the primary basis for filing the lawsuit. The study examines how Indonesian courts apply relevant legal provisions, weighs the criteria and limitations used by judges in deciding cases, and evaluates whether these decisions reflect the principles of justice for the plaintiff, the defendant serving the sentence, and third parties like children. Using a normative-juridical approach with an analysis of court decisions (jurisprudence), relevant laws, and literature studies, this research identifies potential justice dilemmas that may arise. On one hand, a divorce lawsuit can be considered a right for the innocent party burdened by their spouse's criminal status. On the other hand, the rights of the party serving the sentence also need to be considered, including their right to maintain the marriage and the potential negative impact of divorce on them and their family. The findings of this research are expected to provide a deeper understanding of the concept of justice in the context of divorce due to criminal conviction, identify potential inconsistencies or gaps in legal implementation, and offer recommendations for improving judicial practice and formulating more just and comprehensive legal policies for similar cases. This research also seeks to integrate human rights perspectives and the best interests of the child into the analysis of legal justice related to divorce on the grounds of criminal conviction.*

Keywords: *Legal Justice, Divorce Lawsuit, Criminal Conviction, Final Legal Force, Family Law, Jurisprudence.*

I. INTRODUCTION

According to Article 1 of Law Number 1 of 1974, as amended by Law Number 16 of 2019 concerning Marriage, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the purpose of forming a happy and eternal family (household) based on the belief in One Almighty God. Based on this definition, the clear purpose of marriage under marriage law is to

form a happy and eternal family. According to Article 3 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, "Marriage aims to create a *sakinah, mawaddah, and warrahmah* family life". In reality, the ideal goals of marriage, whether according to Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage or according to Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, are not easy to achieve and often lead to the dissolution of the marital bond.

The dissolution of a marital bond due to the will of the husband or wife, or both, because of disharmony, is called "divorce," which stems from the failure to carry out the rights and obligations as husband or wife as they should be according to applicable marriage law.¹

The Religious Courts are one of the judicial authorities given the power by Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage to examine, adjudicate, and decide on divorce cases.²

In essence, Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage adheres to the principle of making divorce difficult because the main purpose of marriage according to this law is to form a happy, eternal, and prosperous family. This principle can be seen from the strict divorce procedures regulated in Article 39 paragraphs (1-3), which state that: (1) Divorce can only be done before a Court Session after the Court concerned has tried and failed to reconcile the two parties, (2) To carry out a divorce, there must be sufficient reason that the husband and wife will not be able to live in harmony as husband and wife, and (3) The procedure for divorce before a Court session is regulated in a separate law.³

Article 8 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law states that the dissolution of a marriage other than by the death of a spouse can only be proven with a divorce certificate in the form of a Religious Court decision, whether in the form of a divorce decree, *ikrar talak*, *khuluk*, or *taklik talak* decision. Furthermore, Article 39 paragraph (2) states that to carry out a divorce, there must be sufficient reason. The reasons for divorce are stipulated in Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage in conjunction with Article 116 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, these reasons include, a. One party commits adultery or becomes an alcoholic, drug addict, gambler, etc., that is difficult to cure, b. One party leaves the other for a long period (two consecutive years) without the other's permission, without a valid reason, or for other reasons, such as failure, c. One party is sentenced to 5 (five) years or more in prison after the marriage has taken place, d. One party commits severe cruelty or abuse that endangers the other party, e. One party suffers from a physical disability or illness that makes them unable to fulfill their obligations as a husband or wife, f. Continuous disputes and quarrels occur

¹ Dr. Muhamad Syaifuddin, Sri Turatmiyah, Annalisa Yahanan, *Hukum Perceraian*, (Jakarta: Sinar Grafika, 2013,) Hal. 6.

² Ibid; Hlm. 4.

³ Undang-Undang Nomor 16 Tahun 2019 tentang Perkawinan, Pasal 39 ayat (1-3).

between the husband and wife, and there is no hope of living in harmony in the household, g. The husband violates the taklik talak, h. A change of religion or apostasy that causes disharmony in the household.⁴

Of the reasons listed above, the Court requires at least 2 (two) pieces of evidence, including witnesses, to decide whether the divorce should be granted, except for the reason that one party is sentenced to 5 (five) years or more in prison after the marriage has taken place.

According to Article 23 of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage, to obtain a divorce decree based on the reason that one of the spouses has been sentenced to 5 (five) years or more in prison as referred to in Article 19 letter (c), the plaintiff only needs to submit a copy of the Court's decision that sentenced the spouse, along with a statement that the decision has obtained final legal force (*inkracht*). This means that the law provides an opportunity for the party who feels morally, socially, and psychologically harmed by the criminal act committed by their spouse to legally terminate the marital bond. This research seeks to examine whether the legal process of divorce decrees based on *inkracht* criminal convictions reflects the principle of legal justice and what the legal implications are.

II. RESEARCH METHODOLOGY

As the type of research used by the authors is normative and empirical legal research, the data sources and legal materials used are as follows:

1. Data Sources

Legal research requires two types of data: primary data and secondary data.

1) Primary Data

Primary data is obtained through direct interviews and observation involving relevant parties, such as:

- a. The Cirebon Religious Court;
- b. The Sumber Religious Court;
- c. Judges and court clerk staff.

2) Secondary Data

Soerjono Sukamto states that secondary data includes official documents, books, and research results in the form of reports. Secondary data is obtained from library research, which includes:

- a. Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage;
- b. Law Number 7 of 1989 as amended by Law Number 3 of 2006 concerning Religious Courts and Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts;
- c. Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage;
- d. Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law;

⁴ Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 39 ayat (2); Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 19; Kompilasi Hukum Islam, Pasal 116.

- e. Journal articles, books, and other supporting documents.

Data collection techniques are the processes or methods used to gather information, facts, or data from various sources in the context of research, studies, surveys, or analysis. The goal is to collect relevant, accurate, and evidence-based data to answer research questions or achieve specific research objectives.

It is important to plan and find data collection techniques that are relevant to the research objectives. This is a crucial step in the research process because the data collected will form the basis for analysis, findings, and conclusions. The quality of the data collected is very important to ensure accurate and relevant research results. Therefore, choosing appropriate data collection techniques and careful implementation are key to success in the research process.

Qualitative case study research designs can use various data collection approaches. The following strategies can be used to collect data in a case study research design:

- a. Observation

Observation is a data collection technique used to gather data from sources such as places, activities, objects, or image recordings.⁵ Observations were conducted directly at the Religious Courts in Cirebon City and Cirebon Regency.

- b. Interviews

An interview is a conversation with a specific purpose. The conversation is conducted by two parties: the interviewer, who asks questions, and the interviewee, who provides answers to those questions.⁶ Interviews will be conducted in stages with several parties, including the judges who decide the cases.

- c. Documentation

Documentation is the process of searching for data consisting of data and images. Interviews with relevant members related to the research objectives involve the use of this technique.

III. RESULTS AND DISCUSSION

I. The Process of Divorce Lawsuits Due to Final Criminal Convictions.

The practice of divorce lawsuits due to final criminal convictions at the Sumber Religious Court and the Cirebon Religious Court as a whole has met the formal legal requirements as stipulated in Government Regulation 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. This means that the practice of divorce lawsuits due to final criminal convictions at the Sumber Religious Court and the Cirebon Religious Court has reflected the principle of legal certainty. However, from the perspective of the principles of justice and utility, we

⁵ Farida Nugrahani, “*Metode Penelitian Kualitatif Dalam Penelitian Pendidikan Bahasa*”, (Solo: Cakra Books, 2014), hlm. 3-4

⁶ Lexy J. Moleong, “*Metodologi Penelitian Kualitatif*” (Bandung : Remaja Rosdakarya, 2017), hlm. 280.

can see how the judge, as the executor of judicial power, examines, adjudicates, and decides on these divorce cases.

In the Cirebon Religious Court decision case number 691/Pdt.G/2024/PA.CN, it was revealed that the process for a divorce lawsuit based on a final criminal conviction is the same as for other divorce lawsuits during the initial registration. However, the process differs during the evidentiary stage, which is the burden of the plaintiff. A judge can grant a divorce lawsuit filed by the plaintiff even if the plaintiff only provides a written copy of the criminal conviction as evidence. The legal consequences of a divorce lawsuit based on a final criminal conviction are actually the same as a divorce for other reasons as regulated in Article 19 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage in conjunction with Article 116 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. If there is a difference in legal consequences, it is usually due to public perception, which views the plaintiff as divorcing the defendant because the defendant committed a criminal act. This can lead to a negative view of the plaintiff and the plaintiff's family, even though the defendant is the one who committed the crime.⁷ Article 23 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage states that for a divorce lawsuit on the grounds that one of the spouses has been sentenced to 5 (five) years or more in prison as referred to in Article 19 letter c, to obtain a divorce decree as evidence, the plaintiff only needs to submit a copy of the Court's decision that decided the case, accompanied by a statement that the decision has obtained final legal force.⁸

In the Cirebon Religious Court decision case number 80/Pdt.G/2024/PA.CN, it was revealed that the court process for a divorce lawsuit based on a final criminal conviction was somewhat different from case number 691/Pdt.G/2024/PA.CN. This is because in the petitum, the plaintiff not only demanded a divorce from the defendant but also demanded child custody and child support for the children of the plaintiff and defendant, so the panel of judges required additional evidence, both other written evidence and witness evidence.⁹

In this divorce lawsuit, the contradictory mechanism plays an important role in ensuring a fair and transparent process where both parties—the plaintiff (the non-convicted party) and the defendant (the convicted party)—have equal rights and opportunities during the trial to present evidence, arguments, and rebuttals before the judge.

In case numbers 691/Pdt.G/2024/PA.CN, 7119/Pdt.G/2024/PA.Sbr, and 80/Pdt.G/2024/PA.CN, the plaintiff, when filing the divorce lawsuit with the Religious Court, had attached relevant evidence, especially a copy of the final criminal conviction against the defendant as the main basis for the divorce. The court then summoned both parties to attend the trial. However, during the trial process, none of the defendants in case numbers 691/Pdt.G/2024/PA.CN, 7119/Pdt.G/2024/PA.Sbr, and 80/Pdt.G/2024/PA.CN were present. The defendants

⁷ Wawancara dengan Hakim Ketua Majelis Pengadilan Agama Cirebon, Juli 2025.

⁸ Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 23.

⁹ Wawancara dengan Hakim Anggota Majelis Pengadilan Agama Cirebon, Juli 2025

had difficulty attending the trial because they needed permission to leave the prison, and they also had difficulty with the costs of appointing legal counsel to attend the trial.

One of the main problems faced is that the defendant, by not attending the trial, loses their right to respond to and rebut the arguments and claims made by the plaintiff. This results in the principle of justice not being fully interpreted. The defendant's absence due to financial inability to appoint legal counsel should be a special concern so that the contradictory stage proceeds as it should.

The implementation of Article 19 letter (c) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage in conjunction with Article 116 letter (c) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law and the contradictory mechanism in the trial process of divorce lawsuits in case numbers 691/Pdt.G/2024/PA.CN, 7119/Pdt.G/2024/PA.Sbr, and 80/Pdt.G/2024/PA.CN, according to normative-judicial analysis, has interpreted the theory of procedural justice. The theory of procedural justice is reflected in the legal process in the trial, which implements the principle of giving equal rights and opportunities to both parties, objective and transparent examination of evidence and witness testimony, and the judge's decision-making based on applicable formal law.

The legal considerations of the judges who granted the divorce lawsuits in case numbers 691/Pdt.G/2024/PA.CN, 7119/Pdt.G/2024/PA.Sbr, and 80/Pdt.G/2024/PA.CN were not only based on the implementation of formal law (justice according to law) but also on a deep-seated conscience to fulfill a sense of moral justice. The judge's decision to grant the plaintiff's divorce lawsuit juridically and normatively reflects full substantive justice. The judge realizes that a significant prison sentence can disrupt the essence and purpose of a marriage, so it is necessary to grant the non-convicted party, the plaintiff, the right to rebuild their life. Moreover, in these cases, the plaintiff is the wife (a woman) who is in a vulnerable position. The judge's decision to grant the divorce in these cases is a concrete manifestation of the judicial power providing protection to vulnerable groups. The fact that maintaining a marriage with a spouse who is imprisoned for a long time can cause significant psychological and social pressure on the plaintiff is a frequent occurrence.

The judge's legal consideration to grant child custody to the plaintiff while still giving the defendant access to meet with the children in case number 80/Pdt.G/2024/PA.CN is based on Article 105 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, which states that the custody of a child who is not yet mumayyiz (of discerning age) or is under 12 (twelve) years old is the right of the mother, who in this case is the plaintiff. The judge's legal consideration is also based on the defendant's convicted status, who is serving a 13-year prison sentence, and the best interests of the child. The judge considers the plaintiff to be more capable of providing a stable environment for the child's growth and development. In this case, the judge also considers the protection of the defendant's legal rights as the biological father by still providing broad access to his child, as an effort to balance the interests of the defendant as the biological father and the child's interest in maintaining a balanced psychological growth and development. The plaintiff has no reason to eliminate or at least reduce the

defendant's rights as the biological father as long as it does not interfere with the child's education and other interests. Not providing access to the defendant can be a reason for filing a lawsuit for revocation of hadhanah rights (see SEMA RI Number 1 of 2017). From the legal considerations of the judges in this case process, it is clear that the judges have reflected the theories of procedural, substantive, and corrective justice.

The judge's legal consideration to order the defendant to provide child support through the plaintiff of at least Rp1,000,000.00 (one million rupiah) per month, excluding education and health costs, until the child is an adult/independent (21 years old) with an increase of 10% annually in case number 80/Pdt.G/2024/PA.CN, is based on Article 41 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage as a form of the concept of providing compensation, which is an interpretation of the theories of corrective and restorative justice. The purpose of the judge imposing a sentence on the defendant to provide child support is as a form of compensation and restoration of the child's rights and the financial burden borne by the plaintiff due to the criminal conviction that led to the divorce.

By setting the amount of child support and the percentage of the increase, this case process is an interpretation of the theory of distributive justice and a form of protection for vulnerable groups. The judge seeks to balance the increase in the costs of child care and education, ensuring the sustainability of the fulfillment of the child's rights and providing a sense of justice for the plaintiff who carries the responsibility of care.

Based on the case studies in case numbers 691/Pdt.G/2024/PA.CN, 7119/Pdt.G/2024/PA.Sbr, and 80/Pdt.G/2024/PA.CN at the Cirebon Religious Court and the Sumber Religious Court as described above, the practice of divorce lawsuits based on final criminal convictions has, in addition to paying attention to the principles of a simple, fast, and low-cost judiciary, interpreted the values of legal certainty, justice, and utility. However, the value of justice will be fully interpreted if progressive regulations are enacted to better ensure the fulfillment of the rights of the parties, especially in the contradictory process for the defendant who has difficulty with the cost of appointing legal counsel.

II. Legal Implications of Divorce Lawsuits Due to Final Criminal Convictions

The legal implications of a divorce lawsuit based on a final criminal conviction (Inkracht) can be broken down from three main sides: Normative Legal Implications, Practical Legal Implications, and Sociological Legal Implications. The legal consequences that arise are based on the main purpose of a divorce decree, which is to legally terminate the marital bond. However, behind this main purpose, there are legal consequences that are often the focus of the parties who file the lawsuit, including the settlement of rights and obligations such as the division of joint property, child custody, and support.

Divorce caused by a final criminal conviction of 5 (five) years or more in case numbers 691/Pdt.G/2024/PA.CN, 7119/Pdt.G/2024/PA.Sbr, and 80/Pdt.G/2024/PA.CN at the Cirebon Religious Court and the Sumber Religious Court results in legal consequences in the form of the legal termination of the husband-wife relationship, the granting of custody to the plaintiff, the sentence to provide child support through the plaintiff, and the division of joint property.

A criminal conviction of 5 (five) years or more indicates a serious act by one of the spouses that has a major impact, even harming society or other individuals. For the spouse who did not commit the crime, living with someone who has been sentenced to a heavy sentence can cause significant psychological, social, and economic burdens. Giving the right to divorce is a form of protection and a way out of this difficult situation.

The judge, in delivering the decision, will consider all aspects, including the testimony and arguments from the convicted party through the contradictory mechanism. The judge will ensure that all elements of Article 19 letter (c) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage in conjunction with Article 116 letter (c) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law are cumulatively fulfilled.

Overall, the legal consequences that arise from the divorce decrees based on a final criminal conviction in case numbers 691/Pdt.G/2024/PA.CN, 7119/Pdt.G/2024/PA.Sbr, and 80/Pdt.G/2024/PA.CN at the Cirebon Religious Court and the Sumber Religious Court have fulfilled a sense of justice for the parties, especially for vulnerable groups, in this case, the wife and children.

IV. CONCLUSION

Based on the explanation from the previous chapters, the authors present the following summary:

1. Based on the results of the study and normative empirical analysis of the Cirebon Religious Court cases number 691/Pdt.G/2024/PA.CN, 80/Pdt.G/2024/PA.CN, and the Sumber Religious Court case number 7119/Pdt.G/2024/PA.Sbr, it can be concluded that the practice of divorce lawsuits based on final criminal convictions at the Sumber Religious Court and the Cirebon Religious Court has reflected the principle of legal justice. This is because it is in accordance with the Elucidation of Article 39 paragraph (2) letter c of Law Number 1 of 1974 as amended by Law No. 16 of 2019 concerning Marriage in conjunction with Article 19 letter (c) of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law in conjunction with Article 116 letter (c) of the Compilation of Islamic Law in Indonesia (KHI), while still paying attention to moral values and social dynamics. However, it would be more just if the defendant could be present at the trial. Thus, the value of justice will be fully interpreted if progressive regulations are enacted to better ensure the fulfillment of the rights of the parties, especially in the contradictory process for the defendant who has difficulty with the cost of appointing legal counsel.
2. It is known that the decisions in case numbers 691/Pdt.G/2024/PA.CN, 80/Pdt.G/2024/PA.CN, and 7119/Pdt.G/2024/PA.Sbr have reflected the values of legal certainty, justice, and utility. Therefore, it can be concluded that the legal implications arising from these decisions, in the form of the legal termination of the husband-wife relationship, the granting of custody to the plaintiff, and the sentence to provide child support through the plaintiff, have also fulfilled the sense of legal justice for all parties, especially vulnerable groups, in this case, women and children.

BIBLIOGRAPHY

- Dr. Muhamad Syaifuddin, Sri Turatmiyah, "Annalisa Yahanan, Divorce Law," (Jakarta: Sinar Grafika, 2013).
- Farida Nugrahani, "Qualitative Research Methods in Language Education Research," (Solo: Cakra Books, 2014).
- Lexy J. Moleong, "Qualitative Research Methodology" (Bandung: Remaja Rosdakarya, 2017).
- Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Article 23.
- Soejono Soekamto, "Introduction to Legal Research," UI Press, Jakarta, 2007.
- Law Number 16 of 2019 concerning Marriage, Article 39 paragraphs (1-3).
- Law Number 1 of 1974 concerning Marriage, Article 39 paragraph (2); Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, Article 19; Compilation of Islamic Law, Article 116.
- Interview with the Chief Judge of the Panel of the Cirebon Religious Court, July 2025.
- Interview with a Member Judge of the Panel of the Cirebon Religious Court, July 2025.