

Juridical Analysis of the Sustainability of Marriages Experiencing Prolonged Rifts in the Perspective of Islamic Law and Positive Law in Indonesia

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ABSTRACT

Marriage is a social and legal institution that has the purpose of forming a harmonious and sakinah family. But in practice, not all marriages go according to expectations; Many couples face prolonged conflicts that cause serious rifts. These rifts have negative impacts on individuals, children, and the social environment, and raise juridical questions about the feasibility of the continuation of the marriage. This study aims to juridically analyze the continuity of marriages that have experienced prolonged rifts in the perspective of Islamic law and positive law in Indonesia, as well as to compare the principles and mechanisms of conflict resolution in the two legal systems. This study uses normative legal research methods with *statute approach*, *conceptual approach*, and *case approach*. The *statute approach* is carried out through the study of Law Number 1 of 1974 concerning Marriage and the *Compilation of Islamic Law (KHI)*, while the *conceptual approach* is used to analyze legal principles such as the purpose of marriage, divorce as *the ultimate remedium*, and *sharia maqashid*. The *case approach* is applied by reviewing religious court decisions related to prolonged domestic conflicts. The data are analyzed qualitatively through descriptive-analytical methods to produce systematic and comprehensive conclusions. The results of the study show that both legal systems, both Islamic law and positive law, emphasize the importance of maintaining the integrity of the household for as long as possible, but still provide room for divorce if the goal of marriage cannot be achieved. Islamic law emphasizes the benefits and prevention of harm through *ishlah*, *tahkim*, and divorce as a last resort, while Indonesia's positive law emphasizes formal procedures through the courts with consideration of evidence and legal certainty. Thus, decisions regarding the continuation of marriage must consider the balance between justice, benefit, and protection of individual rights.

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1. INTRODUCTION

Marriage is one of the fundamental social institutions in human life. It not only serves as a bond between two individuals, but also serves as the basis for the formation of a harmonious family and society (Niswah, 2024). Through marriage, couples are expected to be able to build strong emotional, moral, and spiritual relationships, as well as support each other in living their daily lives. Domestic harmony is one of the main indicators of the success of this institution in achieving its social, psychological, and spiritual goals (Shofa & Hidayat, 2025).

Apart from being a social institution, marriage also has a strong legal dimension. Each country has regulations governing the rights, obligations, and responsibilities of husband and wife, including procedures for resolving disputes. This regulation is important to provide legal certainty, protect the rights of family members, and maintain community stability. In Indonesia, marriage is regulated through Law Number 1 of 1974 concerning Marriage and *Compilation of Islamic Law (KHI)* for Muslims, so that every problem that arises in the household has a clear legal basis (Tambun et al., 2025).

In real life, many couples face challenges and conflicts that are complex in nature, such as differences in values, poor communication, economic problems, or social and psychological stress. These conflicts if not handled appropriately can develop into prolonged rifts. This condition is one of the factors that affect the stability of the household and the quality of the relationship between husband and wife as a whole (Nurgazali et al., 2025).

The impact of marital fractures is not only felt by the couple, but also by the children and the surrounding social environment. Children who grow up in conflict-filled households are at risk of psychological, emotional, and social problems (Quthny & Hariati, 2025). Household instability can also have an impact on social interaction and productivity of family members in society. Maintaining domestic harmony is not only the responsibility of the couple, but also a broader legal and social concern (Hidayat, 2026).

Modern life's fast-paced and complex life increasingly emphasizes the importance of a deep understanding of the factors that can affect the survival of a marriage. This understanding is not only theoretical, but also the basis for the development of policies, regulations, and mechanisms for resolving domestic conflicts (Shofa & Hidayat, 2025). Thus, the study of marriage dynamics and efforts to maintain its sustainability is relevant to improve the welfare of the family and society as a whole (Suhendra, 2024).

Research by (Yainahu, 2025) affirms that in *Compilation of Islamic Law (KHI)*, especially with regard to the purpose of marriage as stipulated in Article 3, divorce is not only caused by physical disability but also due to prolonged disputes and inability to carry out domestic obligations. Research (Anam & Usman, 2025) shows that smoking behavior can be a trigger for serious conflicts that lead to divorce as analyzed in the Depok Religious Court Decision No. 4245/Pdt.G/2018/PA. Dpk with approach *maqashid syariah*. Research (Husaini et al., 2025) revealed that impotence as a biological factor can also disrupt the stability of the household and become the basis for legal considerations in divorce according to Islamic law. Research (Maulida et al., 2025) in his study criticized the requirement of separation for six months in divorce by emphasizing the principle of benefit in Islamic law, while (Alfarisi, 2025) highlighting the importance of timing *Iddah* in Islamic law and national law to prevent legal uncertainty.

The problem in this study focuses on the unclear juridical boundaries regarding the extent to which a marriage that has experienced a prolonged rift can be maintained or must be terminated based on the provisions of the applicable law. In Law Number 1 of 1974 concerning Marriage, especially Article 39 paragraph (2), it is stated that divorce can only be carried out if there are sufficient reasons, such as disputes and constant quarrels, but the norm is still general and opens up a wide room for interpretation. Article 116 of the *Compilation of Islamic Law (KHI)* also regulates the grounds for divorce, including prolonged conflicts, but does not provide clear limits on indicators of irreparable rifts. This raises problems in the practice of religious justice, especially related to the consistency of judges' decisions and the protection of the rights of the parties in marriage that are no longer harmonious.

This study aims to analyze juridically the continuity of marriages that have experienced prolonged rifts by referring to the provisions of Law Number 1 of 1974 concerning Marriage and *the Compilation of*

Islamic Law (KHI). Specifically, this study aims to identify the normative basis in Article 1 and Article 39 of the Marriage Law as well as Articles 3 and 116 of the *KHI* in assessing the sustainability of a marriage, as well as comparing it with principles in Islamic law such as *maqashid sharia*. This study also aims to provide a comprehensive analysis of the relevance of these legal provisions in answering the dynamics of modern household conflicts.

The urgency of this research is based on the increasing number of divorce cases due to prolonged conflicts that show the existence of a gap between legal norms and social reality. Law Number 1 of 1974 concerning Marriage affirms that the purpose of marriage is to form a happy and eternal family, but in practice many marriages no longer reflect this goal. The provisions in Article 39 of the Marriage Law and Article 116 of the *Criminal Code* of Criminal Procedure are often the legal basis for divorce, but they have not been fully able to provide *legal certainty* and justice for the parties. This research is important to provide a deeper understanding of the application of legal norms in resolving domestic conflicts and to support family law reform in Indonesia to be more responsive to the needs of the community.

The *novelty* in this study lies in the integration of analysis between the provisions in Law Number 1 of 1974 concerning Marriage and the *Compilation of Islamic Law (KHI)* with the conceptual approach of Islamic law, especially *maqashid sharia*, in assessing the sustainability of marriages that have experienced prolonged rifts. In contrast to previous research which focused more on the reasons for partial divorce, this study places the sustainability of marriage as the main focus by critically examining Article 1 and Article 39 of the Marriage Law as well as Articles 3 and 116 of the *Criminal Code*. This study also examines the application of these legal norms in the practice of religious justice so as to produce an analysis that is not only normative, but also empirical and applicable in the *legal system* in Indonesia.

2. METHODS

This study uses normative legal research methods with *statute approaches*, *conceptual approaches*, and *case approaches* which aim to in-depth examine the sustainability of marriages that have experienced prolonged rifts in the perspective of Islamic law and positive law in Indonesia. The *statute approach* is carried out by examining various relevant laws and regulations, especially Law Number 1 of 1974 concerning Marriage and its amendments, as well as the *Compilation of Islamic Law (KHI)* as the main source of law in Islamic family law in Indonesia. Meanwhile, the *conceptual approach* is used to analyze legal concepts such as the purpose of marriage, divorce as *the ultimate remedium*, and the principles of *sharia maqashid* in maintaining the welfare of the household. The *case approach* is carried out by examining religious court decisions related to prolonged domestic conflicts in order to understand the application of legal norms in practice. The sources of legal materials used consist of primary legal materials in the form of laws and regulations and court decisions, secondary legal materials in the form of books, scientific journals, and the results of previous research, and tertiary legal materials in the form of legal dictionaries and encyclopedias. The technique of collecting legal materials is carried out through library *research*, while the analysis technique used is qualitative analysis with a descriptive-analytical method, namely by elaborating, interpreting, and connecting various legal norms and relevant concepts to obtain comprehensive and systematic conclusions. This study also uses a deductive conclusion method, which is to draw conclusions from general norms to the specific problem being studied, so as to produce legal arguments that are logical, systematic, and can be accounted for academically.

3. FINDINGS AND DISCUSSION

3.1 Analysis of the Continuity of Marriages That Have Suffered Prolonged Rifts in the Perspective of Islamic Law Based on the Principles of Sharia Maqashid

Marriage in Islamic law is an institution that has two dimensions: legal and moral-spiritual. It is not only a contract (*The Marriage Contract*) which is legally binding, but also sacred covenant (*mitsaqan ghalizhan*) which demands commitment, responsibility, and moral awareness from both sides. The

Qur'an emphasizes that marriage is a means to realize a harmonious family, which is reflected in the concept of *Savage, Savage, Savage*,. São Paulo marking tranquility and peace in the household; *Mawaddah* It contains the meaning of sincere affection between couples; whereas *Rahmah* emphasizing an attitude of empathy and compassion in household interactions. These three elements are indicators of the success of marriage according to Islamic law, and if they are not achieved, this marks a potential rift that can develop into a prolonged conflict (Saputra, 2025).

In Islamic law, the continuity of a marriage that faces a rift must be analyzed through the principle of benefit (*maslahah*) and harm prevention (*Dar' al-Mafasid*). Islamic law emphasizes that divorce (*Talaq, Khulu'*, or *Fasakh*) is not the first step that is recommended, but the last solution when various attempts at conflict resolution have been taken and have not yielded results. The main settlement mechanisms include *Ishlah* and *Tahkim*. *Ishlah* is a peace effort that is voluntarily undertaken by a couple to improve the relationship, through communication, counseling, and mutual agreement. *Tahkim* engage a neutral third party, such as family members or community leaders who understand Islamic law, to mediate and seek a just solution. The goal is to minimize psychological, social, and economic harm, as well as protect children from the negative effects of prolonged disputes (Ekawati, 2025).

Principle *maqashid syariah* It becomes a normative basis in assessing the feasibility of the continuity of a fractured marriage. According to Imam al-Shatibi, the purpose of Islamic law (*maqashid*) includes five fundamental aspects: religious observance (*hifz al-din*), soul (*hifz al-nafs*), Sense (*Hifz Al-'AQL*), descendants (*Hifz Al-Nasl*), and treasures (*Hifz Al-Mal*). In a fractured household, the main focus is *Hifz Al-Nasl* and *hifz al-nafs*. Protection of children and the mental health of the spouse is a priority, so if divorce is the best way to prevent greater harm, Islamic law views divorce as permissible (*São Paulo*), although it is still considered undesirable (*Makruh*). This shows the flexibility of Islamic law in balancing the interests of the individual with the purpose of marriage (Shofiyah, 2025).

The type of divorce in Islamic law is also relevant for assessing the rift of the household. *Talak* is a divorce pronounced by the husband, with regard to the wife's rights during *the iddah* period. *Khulu'* is a divorce requested by the wife by providing certain compensation to the husband, usually in the form of the handover of dowry or other financial rights. *Fasakh* is the annulment of a marriage by a religious court for a valid reason according to the Shari'a, such as the husband leaving his wife, committing violence, or not carrying out domestic obligations. Each type of divorce has different procedures and consequences, but all are arranged with the aim of preventing greater harm and still maintaining justice for all parties.

Prolonged household rifts have significant psychological and social impacts. Ongoing conflict can cause stress, depression, emotional tension, and behavioral disorders for both spouses and children. Children who grow up in conflict-filled households are at risk of developing emotional and social developmental problems, including difficulties in building interpersonal relationships in the future. Islam emphasizes the importance of preventive and rehabilitative measures, through mediation, counseling, and *Ishlah*, to minimize negative impacts on children and maintain family integrity (Randitha et al., 2026).

Islamic law also emphasizes the protection of women's rights and gender justice in fractured households. Within the framework of *sharia maqashid*, divorce should not be a tool of oppression. Women's rights, including financial rights, custody rights, and the right to file for divorce, must be respected. This is in line with the principles of *adl* (justice) and *ihsan* (kindness) in Islam, which emphasize equal rights and protection of individuals. Decisions regarding the continuation of marriage must consider the balance between the interests of husband, wife, and children, so that neither party is unfairly disadvantaged.

From a practical legal perspective, religious courts in Indonesia often face cases of prolonged domestic rifts. The court's ruling shows that judges emphasize efforts for peace through *ishlah* and mediation, and only grant divorce when there is no possibility of reconciliation. This is in line with the principles of *maqashid sharia*, which places the welfare of the family and the protection of children as

priorities. The court also considers evidence in the form of the couple's behavior, history of conflict, and psychological impact on all parties before deciding on the continuation of the marriage.

In contemporary practice, the issue of household rifts encompasses a variety of complex factors, including economics, communication, differences in life principles, domestic violence, and social pressures. The Islamic legal approach to dealing with this issue emphasizes flexibility, balance, and social attention. Efforts to maintain the household are only recommended if it is still possible to achieve the goals of *sakinah*, *mawaddah*, and *rahmah*; Otherwise, divorce is considered valid and justified, but it is still accompanied by the principles of justice, protection of rights, and the benefit of all parties.

The analysis of the continuation of marriage from the perspective of Islamic law emphasizes the balance between maintaining the integrity of the household and protecting the individual from greater harm. Islamic law places reconciliation and mediation as a priority, but it allows for divorce if prolonged conflicts cannot be resolved. The principles of *maqashid sharia* are the main basis for assessing the feasibility of decisions, emphasizing the benefit, protection of children, and justice for all parties. Thus, the sustainability of marriage in Islam is not only about maintaining the bond, but also emphasizing the importance of a balance between individual rights and the moral, social, and spiritual goals of the institution of marriage.

3.2 Juridical Analysis of the Continuity of Marriages Experiencing Prolonged Rifts in a Positive Legal Perspective in Indonesia Based on Marriage Law and Compilation of Islamic Law

Marriage in positive law in Indonesia is a very fundamental institution for family life and social life of the community. The function of marriage is not only limited to a formal relationship between two individuals, but also the foundation for the formation of a harmonious, emotionally stable, and socially productive family. This is affirmed in Law Number 1 of 1974 concerning Marriage, which states that the main purpose of marriage is to form a happy and eternal family (*The Family of Savages, Savages, and Savages*. in universal value). The Marriage Law affirms that the state has an interest in maintaining the stability of the household as the smallest social unit, as well as as a pillar of the formation of a wider society (Randitha et al., 2026).

The Marriage Law provides a clear normative basis regarding the rights and obligations of husband and wife, the obligation to foster a household, responsibility for children, and the protection of family property and economic interests. Article 6 of the Marriage Law affirms that every marriage must be based on the consent of both parties and the principle of equality. Article 39 explicitly states that divorce can only be done before the courts, indicating that divorce is not an absolute right that can be done arbitrarily. This provision affirms the principle of state prudence in maintaining the sustainability of the household and minimizing the negative impact of divorce on children and society (Atzahra & Siregar, 2026).

In addition to the Marriage Law, *Compilation of Islamic Law (KHI)* is the main guideline in resolving marriage cases for Muslims in Indonesia. Article 116 of the KHI explains various reasons that can be used as the basis for divorce, including disputes and quarrels that continue without any hope of getting along again. KHI provides more specific restrictions on the grounds for divorce, such as physical or psychological violence, the husband's inability to fulfill obligations, or disharmony that endangers the continuity of the household. This shows that Indonesia's positive law adopts normative principles that still take into account social realities, so divorce is not an easy process, but strictly regulated in order to maintain justice and legal certainty (*legal certainty*) (Pratiwi et al., 2025).

In the practice of religious justice, judges have a very important role in assessing the feasibility of the sustainability of marriages that have experienced prolonged rifts. The assessment is carried out objectively through the examination of evidence, witnesses, and statements of the parties, as well as assessing the reconciliation efforts that have been made. Mediation *sessions* are part of the initial procedure to promote peace and the restoration of relations. If mediation fails and it is proven that the conflict has been going on for a long time, the religious court has the authority to grant a divorce as a protection of individual rights, including the rights of women and children. Thus, Indonesia's positive

law places the continuation of marriage not only based on the will of the parties concerned, but also through an objective juridical assessment by the judiciary as the state's representative.

The divorce procedure according to the Marriage Law and KHI involves several important stages. First, the submission of a divorce application by one of the parties through a religious court. Second, mediation hearings to encourage reconciliation, which is carried out by competent judges and mediators. Third, the examination of evidence and witnesses who assess the conflict that occurred, the duration of the dispute, the couple's behavior, and the possibility of relationship recovery. Fourth, court decisions that can grant or reject divorce, taking into account the interests of children and the rights of the legally weaker parties. This mechanism affirms that positive law emphasizes strict formal procedures, but still pays attention to substantial aspects of justice (Pangesti & Santoso, 2025).

The types of divorce in Indonesian positive law that refer to KHI include: *Düsseldorf*, *Khulu'*, and *Fasakh*. *Stuttgart* is a divorce carried out by the husband, with the obligation to pay attention to the wife's rights and the *Iddah*. *Khulu'* is a divorce that is applied for by the wife with certain compensation to the husband, usually in the form of a dowry or other property. *Fasakh* is the annulment of a marriage carried out by a religious court on valid legal grounds, such as violence, neglect, or inability to carry out domestic obligations. Juridical analysis shows that each type of divorce has different legal consequences, including maintenance rights, child custody rights, and property division, so the court is obliged to consider comprehensively before deciding (Umar et al., 2025).

The social and psychological impact of prolonged marital fractures is a significant consideration in positive law. Constant conflict can cause stress, depression, and emotional distress for couples, as well as affect children's psychological development (Chodir & Aspandi, 2023). Children who grow up in conflict-filled households are at risk of interpersonal relationship difficulties, behavioral disorders, and low quality of emotional education. Religious courts often encourage family counseling, mediation, and domestic rehabilitation efforts before granting a divorce judgment. This approach shows that positive law emphasizes a balance between formal legal procedures and the protection of family interests (Abdad, 2025).

The rights of women and children are the main focus in Indonesia's positive law. The wife has the right to file for divorce through *khulu'* or *Fasakh*, demand maintenance rights, and obtain child custody rights, while children receive legal protection so that the rights to education, maintenance, and parenting are guaranteed. This protection shows that the continuation of marriage and the divorce mechanism always take into account the principles of justice, gender equality, and the best interests of the child (*best interest of the child*) (Amsyari et al., 2025).

Legal *certainty* is a key principle in Indonesia's positive law. Every decision of a religious court must be legally accountable, with consideration of evidence, witnesses, and reconciliation efforts. This approach prevents arbitrary divorces and ensures that legal decisions are socially and legally acceptable. This is in line with the purpose of the Marriage Law to form a happy, harmonious, and eternal family, while safeguarding the rights of all parties.

In practice, several religious court rulings show the application of this principle. For example, the judge rejects a divorce application if the couple still has a chance to get along, but grants a divorce if the conflict lasts for many years and has a significant impact on the psychological of the child and the couple. This approach emphasizes that the sustainability of marriage is determined through a thorough juridical evaluation, not a unilateral decision, so that the principle *justice* and *legal certainty* stay awake (Isnawan, 2025).

A juridical analysis of the continuity of marriage that has experienced prolonged rifts in Indonesia's positive legal perspective confirms that the Marriage Law and KHI provide a clear and procedural legal framework. Religious courts are tasked with assessing the feasibility of the continuation of marriage, ensuring the protection of the rights of women and children, and enforcing legal certainty (Afary & Friedland, 2024). The decision on divorce is based not only on the wishes of the individual, but also on objective considerations of the court. Thus, Indonesia's positive law provides a balance between maintaining the continuity of the household and providing a fair legal pathway for

divorce when conflicts cannot be resolved, in line with the principles of justice, legal certainty, and protection of family welfare.

4. CONCLUSION

Based on the results of the analysis, it can be concluded that the sustainability of marriages that have experienced prolonged rifts in the perspective of Islamic law and positive law in Indonesia basically rests on the same principle, namely maintaining the integrity of the household for as long as possible, but still providing space to end the marriage if the main goal is no longer achieved. In Islamic law, the continuity of marriage is greatly influenced by the principle of *maqashid sharia* which emphasizes the benefits and prevention of harm, so divorce is allowed as the last resort when conflicts cannot be resolved through *ishlah* and *tahkim*. Meanwhile, in Indonesia's positive law through Law Number 1 of 1974 concerning Marriage and the *Compilation of Islamic Law (KHI)*, the continuation of marriage is regulated normatively by emphasizing that divorce can only be carried out in front of the court and must be based on sufficient reasons, such as disputes and persistent quarrels as stipulated in Article 39 of the Marriage Law and Article 116 of *the KHI*. Thus, neither Islamic law nor positive law impose absolute permanence of marriage if it actually causes suffering and injustice, but rather places divorce as a legal instrument to protect the rights and interests of the parties. A thoughtful, proportionate, and substantive justice-oriented approach is needed in assessing every case of domestic rift, so that the decisions taken not only meet formal legal aspects, but also reflect human values and benefits in family life.

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