



Development of Progressive Islamic Law in Indonesia Regarding 'Apostasy' as Grounds for Divorce: Insights from Maqasid Sharia

Miftakhul Huda¹, Niska Shofia², Ending Solehudin³, Opik Rozikin⁴,
Hisam Ahyani^{5*}

¹Institut Agama Islam Faqih Asy'ari, Sumbersari, Kec. Kepung, Kabupaten Kediri, Indonesia

²Pengadilan Agama Sidoarjo, Jl. Hasanuddin No.90, Kabupaten Sidoarjo, Indonesia

^{3,4}Universitas Islam Negeri Sunan Gunung Djati, Jl. A.H. Nasution No. 105, Cibiru,
Kota Bandung, Indonesia

⁵Sekolah Tinggi Agama Islam Miftahul Huda Al Azhar, Jl. Pesantren No.2, Kec. Langensari,
Kota Banjar, Indonesia

*(Corresponding author) e-mail: hisamahyani@gmail.com

Abstract

The development of Islamic law in Indonesia, particularly concerning apostasy as a cause of divorce, is significant in the evolution of Islamic law. The complexity of Indonesia's social and legal system poses challenges in integrating Islamic values with societal diversity. This research aims to understand the development of Islamic law in Indonesia regarding apostasy issues through the analysis of maqasid sharia. Using a descriptive-analytical approach, data from various sources are examined to understand the development of Islamic law in Indonesia, focusing on the implications of maqasid sharia regarding apostasy as a reason for divorce. Findings indicate that progressive Islamic law development in Indonesia emphasizes a balance between religion and individual justice, protecting individual rights in divorce and seeking fair solutions through legal reforms considering the principles of maqasid sharia.

Keywords: Islamic Law, Indonesia, Apostasy, Maqashid Sharia, Divorce.

Abstrak

Perkembangan hukum Islam di Indonesia, terutama terkait dengan isu murtad sebagai penyebab perceraian, menjadi penting dalam konteks evolusi hukum Islam. Kompleksitas konteks sosial budaya dan sistem hukum Indonesia menimbulkan tantangan dalam mengintegrasikan nilai-nilai Islam dengan keragaman masyarakat. Penelitian ini bertujuan untuk memahami perkembangan hukum Islam di Indonesia terkait isu murtad dalam analisis maqashid syariah. Dengan menggunakan pendekatan deskriptif-analitis, data dari berbagai sumber digunakan untuk menelaah perkembangan hukum Islam di Indonesia, dengan fokus pada implikasi maqasid sharia terhadap isu murtad sebagai alasan perceraian. Hasil temuan menunjukkan bahwa perkembangan hukum Islam progresif di Indonesia menekankan keseimbangan antara agama dan keadilan individu, dengan perlindungan hak individu dalam perceraian dan solusi yang adil melalui reformasi hukum yang mempertimbangkan prinsip-prinsip maqasid sharia.

Kata Kunci: Hukum Islam, Indonesia, Murtad, Maqasid Sharia, Perceraian.



Introduction

This study explores the dynamic evolution of Islamic law in Indonesia,¹ particularly regarding apostasy as a basis for divorce, which is a significant aspect of the legal landscape in this country.² This evolution is closely related to the socio-cultural background and legal framework of Indonesia, which incorporates various legal traditions. The resolution of divorce based on apostasy, as recently observed in Indonesia, remains a subject of debate regarding the fulfillment of legal justice,³ as evidenced by court decisions that need to refer to various related laws, such as Law Number 1 of 1974 concerning Marriage, and consider the evidence of apostasy and marital discord.

The most significant trend in divorce rates in Indonesia due to apostasy was observed in West Java, East Java, and Central Java as of February 17, 2022, totaling 1,447 cases, with West Java leading at 306 cases, followed by East Java with 206 cases, and Central Java with 188 cases. This trend continued as of February 24, 2021, with East Java having the highest number of cases at 249 out of 1,108 cases, followed by Central Java with 199 cases and West Java with 113 cases. In 2019, East Java Province also recorded a high number of apostasy-related divorces at 238 cases, followed by West Java with 173 cases and Central Java with 170 cases out of a total of 1,185 cases. As of August 7, 2019, there were 869 cases of divorce due to apostasy in Indonesia, with East Java recording 199 cases, Central Java with 170 cases, and West Java with 78 cases.⁴

Furthermore, it discusses apostasy as a reason for divorce, highlighting that a husband remains obligated to provide *mut'ah* (gift) and sustenance to his wife.⁵ For example, the Demak Religious Court has handled divorce cases due to apostasy, resulting in the judge issuing a *Talak Ba'in Sughro* against the apostate husband.⁶ Other research also explores the distribution of assets post-divorce from the perspective of Islamic law, principles, practices, and challenges in Indonesia, where Islam does not regulate joint property. However, according to the Compilation of Islamic Law (KHI), in divorce cases, the division is typically halved, and it can also occur through negotiation or a court decision.⁷ Based on several literature reviews, the author is intrigued to understand the trajectory of Islamic law development in Indonesia regarding divorce triggered by apostasy. This research also aims to delve into the perspective of *maqasid sharia* in the realm of divorce caused by apostasy, with the goal of uncovering its implications for individuals and society at large. Considering the

¹ Rozihan, "The Construction of Islamic Law Benefit in the Perspective of Progressive Law," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 4, no. 1 (November 1, 2020): 51–61, <https://doi.org/10.30659/jua.v4i1.12797>.

² Fauzan, "Progressive Law Paradigm in Islamic Family Law Renewal in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, Dan Keagamaan* 7, no. 2 (2020): 187–202.

³ Farah Pratiwi, "Konstruksi Hukum Perkara Cerai Gugat Yang Salah Satu Penyebabnya Adalah Murdad Dan Implikasinya Terhadap Hak Waris Anak (Studi Putusan Pengadilan Agama Palu Nomor 0249/PDT.G/2016/PA.PAL Dan Putusan Pengadilan Agama Bandung Nomor 147/PDT.G/2012/PA.BDG)," *Indonesian Notary* 3, no. 4 (December 31, 2021), <https://scholarhub.ui.ac.id/notary/vol3/iss4/31>.

⁴ Badan Pusat Statistik Indonesia, "Number of Divorces by Province and Factor, as of 17 February 2022 - Statistical Table," 2022, <https://www.bps.go.id/id/>.

⁵ Rika Fitriani and Abdul Aziz, "Review of Islamic Law on The Imposition of *Mut'ah* and Living *Iddah* against Apostate Husbands (Case Study of Nganjuk Religious Court Decision No: 1830/Pdt.G/2016/PA. Ngj)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (November 20, 2019): 365–77, <https://doi.org/10.22373/sjhk.v3i2.5242>.

⁶ Ahmad Nafhani and Abdullah Arief Cholil, "The Implementation of *Talak Ba'in Sughro* towards Apostate Husband," *Law Development Journal* 2, no. 2 (October 4, 2020): 97–106, <https://doi.org/10.30659/ldj.2.2.97-106>.

⁷ Muhammad Choirun Nizar, "The Religious Court's Decisions on Divorce: A *Maqāṣid Shari'a* Perspective," *Ulumuna* 24 (January 19, 2021): 398–416, <https://doi.org/10.20414/ujs.v24i2.408>.

development of Islamic law in Indonesia, especially regarding apostasy as a reason for divorce, can be understood within the framework of maqasid sharia, which refers to the higher objectives or goals of Islamic law. These objectives include the preservation of religion, life, intellect, progeny, and property.

In Indonesia, Islamic law is interpreted and applied according to the socio-cultural context and the legal system of the state.⁸ This legal system is a combination of customary law, Islamic law, and the legal traditions of colonial Dutch law. From the perspective of maqasid sharia, the preservation of religion is a fundamental objective.⁹ Therefore, in the context of divorce due to apostasy, protecting the identity and religious beliefs of the spouses and their children becomes crucial. The development of progressive Islamic law in Indonesia regarding apostasy as a reason for divorce involves efforts to balance the preservation of religion with justice for individuals.¹⁰ This may include legal reforms that consider the principles of maqasid sharia to create fairer and more sustainable solutions. The development of Islamic law in Indonesia, particularly regarding apostasy as a reason for divorce, can be understood within the framework of maqasid sharia, which refers to the higher objectives or goals of Islamic law.¹¹ These objectives include the preservation of religion, life, intellect, progeny, and property. In the context of divorce, these objectives are crucial in ensuring justice, protection, and the well-being of individuals and society. In Indonesia, as in many other Muslim-majority countries, Islamic law is interpreted and applied in accordance with the socio-cultural context and legal system of the country. The country's legal system is a blend of customary law, Islamic law, and Dutch colonial legal traditions.¹² Regarding apostasy as a reason for divorce, it's important to note that Islamic law recognizes apostasy as a serious offense.¹³ However, the interpretation and application of apostasy laws vary among Islamic scholars and legal systems.¹⁴ In Indonesia, there have been debates and discussions surrounding apostasy and its implications for marriage and divorce.¹⁵

The preservation of religion is crucial in Indonesian divorce law, considering apostasy's impact on family and justice. Balancing religious identity with family preservation requires legal reforms for divorces involving apostasy, ensuring fairness and protection for all parties. This progressive approach considers maqasid sharia principles, socio-cultural context, and

⁸ Evra Willya, Nurlaila Harun, and Afni Anom, "Lawsuits Related to Divorce Due to Apostasy in Bitung Religious Court," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 46, no. 1 (August 29, 2022): 53–69, <https://doi.org/10.30821/miqot.v46i1.877>.

⁹ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought (IIIT), 2008).

¹⁰ Fahrudin Ali Sabri, Arif Wahyudi, and Fatekhul Mujib, "Resistance Strategies of Madurese Moslem Women against Domestic Violence in Rural Society," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (June 27, 2020): 93–116, <https://doi.org/10.19105/al-lhkam.v15i1.3083>.

¹¹ Riza Mulia, "Marital Beslag Outside Divorce Lawsuit in the Maqashid Syari'ah Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (December 28, 2020): 398–415, <https://doi.org/10.22373/sjkh.v4i2.7052>.

¹² Maghfirah et al., "The Legal Tradition in Indonesia: Finding the Middle Way," *Sosiohumaniora: Jurnal Ilmu-Ilmu Sosial Dan Humaniora* 24, no. 1 (2022), <https://doi.org/10.24198/sosiohumaniora.v24i1.35341>.

¹³ Muhammadun Muhammadun, Oman Fathurrohman, and Idris Ahmad Rifai, "Death Penalty for Apostasy: The Perspective of Hadith and Positive Law," *JURNAL INDO-ISLAMIKA* 11, no. 1 (June 30, 2021): 1–20, <https://doi.org/10.15408/jii.v11i1.20360>.

¹⁴ Göran Larsson, "Disputed, Sensitive and Indispensable Topics: The Study of Islam and Apostasy," *Method & Theory in the Study of Religion* 30, no. 3 (2018): 201–26.

¹⁵ Euis Nurlaelawati, "For the Sake of Protecting Religion: Apostasy and Its Judicial Impact on Muslim's Marital Life in Indonesia," *Journal of Indonesian Islam* 10 (June 7, 2016): 89, <https://doi.org/10.15642/JIIS.2016.10.1.89-112>.

individual rights, highlighting the complexities of implementing Islamic law within national legal frameworks.¹⁶ Incorporating Islamic law into national legal systems sparks debates worldwide, with some countries modernizing it to align with contemporary values and human rights, while others uphold traditional principles for cultural identity. Maqasid sharia serves as a framework for understanding Islamic law's core objectives. Progressive development in Indonesia involves examining how maqasid sharia principles apply to apostasy-induced divorces, amidst debates among scholars and practitioners. Social and cultural implications highlight broader impacts on individual rights and welfare. Legal reforms are essential to ensure justice, considering diverse perspectives and addressing challenges in applying maqasid sharia to divorce cases involving apostasy, thus advancing progressive Islamic law in Indonesia.

This article provides a thorough examination of the evolving landscape of Islamic law in Indonesia, specifically focusing on divorce due to apostasy, which has significant legal implications. It explores recent divorce cases related to apostasy, highlighting debates on legal justice, evidenced by court rulings referring to laws like the Marriage Law of 1974 and considering evidence of apostasy and marital discord. Additionally, it discusses the husband's obligations post-divorce, asset distribution under Islamic law principles, and the author's interest in understanding the trajectory of Islamic law development concerning apostasy-triggered divorce. The research aims to uncover maqasid sharia's perspective and its implications for individuals and society, advocating for a balanced approach that considers religious preservation and individual justice. Apart from that, this article also discusses the application of Islamic law in the socio-cultural and legal context in Indonesia, emphasizing the protection of religious identity in the midst of divorce caused by apostasy. Overall, the resolution calls for legal reform that is in line with contemporary values and human rights.

Method

The research method in this article includes a descriptive-analytical approach using primary and secondary data sources. Primary data sources include the results of court decisions regarding divorce cases due to apostasy, while secondary data sources include laws related to marriage and Islamic legal literature. Data collection techniques include literature study and document analysis, with a focus on divorce cases related to apostasy and the implementation of Islamic law in Indonesia. Meanwhile, data analysis techniques are carried out by identifying patterns and trends from the collected data and comparing them with Islamic legal theory, especially the maqasid sharia theory. The reason for using the maqasid sharia theory in this article is to gain a deeper understanding of the legal and social implications of divorce triggered by apostasy, as well as to consider the high goals of Islamic law in resolving these legal conflicts in a fair and sustainable manner.

Development of progressive Islamic law in Indonesia regarding divorce due to apostasy

Analysis of how Islamic law in Indonesia developed progressively, with an emphasis on a broader understanding of the principles of maqasid sharia in the context of cases of apostasy as a reason for divorce. The development of Progressive Islamic Law in Indonesia regarding

¹⁶ Dharmayani Dharmayani et al., "The Urgency of Mediation of the Religious Courts System on Islamic Law Perspective," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 7, no. 1 (June 9, 2022): 15–30, <https://doi.org/10.25217/jm.v7i1.2288>.

divorce due to apostasy is an evolutionary process in the interpretation and application of Islamic law in this country, which aims to achieve law enforcement that is more inclusive, fair, and in accordance with universal values and the developing social context.¹⁷ This involves several significant aspects: Interpretation of Islamic Law, where the development of progressive Islamic law involves a broader and contextual interpretation of the principles of Islamic law, including in cases of divorce due to apostasy. This interpretation can include a deeper understanding of the social context, culture, and modern values. Interpretations of Islamic law in Indonesia regarding divorce due to apostasy can vary depending on the views of ulama, religious authorities, and the existing socio-cultural context.

The following are several points that cover the interpretation of Islamic law in Indonesia regarding divorce due to apostasy: Certain religious leaders and clerics may perceive divorce as a direct consequence of apostasy, given that apostasy is viewed as a grave violation of Islamic doctrines. From this perspective, divorce may be seen as a logical measure to uphold religious integrity and the familial religious identity. Some religious scholars and intellectuals might adopt a contextualized approach when interpreting Islamic jurisprudence concerning divorce arising from apostasy. They may take into account factors such as the motives behind the apostasy, the mental state of the individuals involved, and the well-being of children throughout the divorce proceedings. Various interpretations of Islamic law in Indonesia regarding apostasy-related divorce may draw upon the principles of maqasid sharia, which prioritize the preservation of religion, life, intellect, lineage, and property. Within the realm of divorce, these principles serve as benchmarks for assessing the compatibility or discordance of actions with both religious tenets and societal welfare. Additionally, religious courts in Indonesia wield significant influence in interpreting and implementing Islamic law pertaining to divorce arising from apostasy. Decisions made by courts may derive from interpretations of established Islamic law alongside careful consideration of the interests and rights of all parties implicated. Moreover, the interpretation of Islamic law concerning divorce resulting from apostasy may also be shaped by the prevailing social and cultural milieu in Indonesia. The interpretation and implementation of Islamic law in divorce cases in Indonesia may be influenced by local values, traditions, and cultural norms. Therefore, the handling of divorce cases resulting from apostasy in Indonesia can demonstrate a spectrum of perspectives, contextual nuances, and the impact of maqasid sharia principles, alongside prevalent social and cultural elements. This underscores the significance of meticulous and thorough interpretation when addressing intricate and sensitive legal matters such as this.

Utilizing the maqasid sharia principles, which encompass the aims of Islamic law including the preservation of religion, life, intellect, lineage, and property, serves as a compass in shaping forward-thinking Islamic jurisprudence concerning divorce resulting from apostasy. By adhering to these principles, it ensures that the enacted laws foster fairness and well-being for both individuals and society at large. In handling divorce cases stemming from apostasy, the utilization of maqasid sharia principles entails thorough examination of the fundamental objectives or maqasid inherent in Islamic law.

Based on empirical data, the divorce rate in Sumenep Regency remains high, with various contributing factors. One of them is apostasy, which has reached a total of 15 cases from January to October 2019.¹⁸ Based on empirical data, the most trending divorce rate in

¹⁷ Nurlaelawati, "For the Sake of Protecting Religion."

¹⁸ Abdul Bastri, "15 Divorces Due to Apostasy a Year PA Receives 3,947 Cases - Radar Madura," 15 Perceraian karena Murtad Setahun PA Terima 3.947 Perkara - Radar Madura, 2019,

Indonesia for the reason "Apostasy" occurred in the provinces of West Java and East Java, as well as Central Java as of February 17 2022 with a total of 1,447 cases. In sequence, namely 306 in West Java Province, 206 in East Java Province, and 188 cases in Central Java Province. Apostasy as a reason for divorce in Indonesia as of February 24 2021 is also a trend occurring in 3 provinces, the highest being East Java Province, namely 239 cases out of a total of 1,108 cases. Meanwhile, the next position was in Central Java Province with 199 cases, and 113 cases occurred in West Java Province. Furthermore, as of February 24 2020, as released by the Indonesian Central Statistics Agency, it was recorded that in 2019 East Java Province was one of the highest provinces in terms of the number of divorces due to apostasy, namely 238 cases. Meanwhile, 173 cases occurred in West Java Province, followed by Central Java Province with 170 cases out of a total of 1,185 cases of divorce due to apostasy. Furthermore, as of August 7 2019, there were 869 cases of divorce due to apostasy in Indonesia, of which East Java Province recorded 199 cases, followed by Central Java Province with 170 cases, and West Java Province with 78 cases.¹⁹

Table 1. Data on divorce cases for reasons of 'apostasy' in Indonesia from 2019 to 2022

No	Total Number of Divorce Cases for Reasons of Apostasy in Indonesia	Province with Highest Divorce Cases for Reasons of Apostasy	Year
1	1.447 in Indonesia	306 cases in West Java Province	as of February 17 2022,
2	1.108 in Indonesia	239 cases in East Java Province	as of February 24 2021,
3	1.185 in Indonesia	238 cases in East Java Province	as of February 24 2020,
4	869 in Indonesia	199 cases in East Java Province	as of August 7 2019,

Source: Data obtained from the Central Statistics Agency (BPS - Statistics Indonesia)

From the table above, the author concludes that Apostasy has also emerged as a significant reason for divorce at the national level, particularly in West Java, East Java, and Central Java. As of February 17, 2022, Indonesia witnessed 1,447 cases of divorce due to apostasy, with West Java Province leading at 306 cases, followed by East Java with 206 cases and Central Java with 188 cases. East Java consistently recorded the highest number of apostasy-related divorces, with 239 cases out of 1,108 cases as of February 24, 2021, and 238 cases out of 1,185 cases as of February 24, 2020. This trend continued with 199 cases out of 869 cases as of August 7, 2019. From the table above, East Java Province achieved the highest position for 3 years in a row, namely from 2019 to 2021. Meanwhile, the highest in 2022 is West Java Province.

<https://radarmadura.jawapos.com/sumenep/74905204/15-perceraian-karena-murtad-setahun-pa-terima-3947-perkara>.

¹⁹ Indonesia, "Number of Divorces by Province and Factor, as of 17 February 2022 - Statistical Table."

The religious court system in relation to divorce triggered by apostasy: analyzing judicial considerations

In the religious court system in Indonesia, especially in the context of divorce triggered by apostasy, not all judges' decisions uphold apostasy as a basis for granting divorce. There are several factors that need to be analyzed and considered by judges before making legal decisions. Firstly, judges need to examine the evidence supporting the allegation of apostasy submitted by one party in the divorce case. This may include written evidence, witness testimonies, or statements from relevant parties.

Furthermore, judges also need to consider legal aspects related to apostasy in the context of Islamic law and applicable regulations. This includes examining the consistency of evidence with existing legal provisions and whether the apostasy meets the criteria recognized by Islamic law as an act of apostasy. Moreover, judges also need to review the testimonies and arguments from both parties involved in the case, ensuring that the decision made is not solely based on apostasy but also considers other interests involved, such as the rights of children and shared assets. Additionally, ethical and fairness considerations are also crucial in the decision-making process. Judges must ensure that the decision made is not only legally fair but also provides adequate protection for all parties involved in the case, including providing opportunities for the parties to defend themselves and present their arguments.

Finally, religious courts often conduct mediation between both parties as a final effort to reach an amicable agreement before a final decision is given. This is a step taken to avoid wasting time and costs and to strengthen the harmonious relationship between both parties, especially if children are involved in the case.

The granting of divorce by religious court judges on the grounds of "apostasy" in Indonesia has become a controversial topic, sparking both support and opposition within society. Supporters of the judges' decision argue that apostasy constitutes a serious violation of Islamic teachings and can be a valid basis for divorce according to Islamic law. They contend that allowing divorce in cases of apostasy is necessary to protect religious identity and the well-being of individuals remaining in the marriage. Additionally, they argue that prohibiting divorce in cases of apostasy could lead to conflict and tension within households, negatively impacting family welfare. This aligns with the view of the Deputy Registrar of Legal Affairs of the Religious Court (PA) of Sumenep Regency that apostasy in Islam means leaving the Islamic religion. The term is also used in the Religious Court as one of the factors leading to divorce. For divorce due to conversion of religion, the court only decides on the divorce case. The Religious Court does not intervene in religious beliefs.²⁰

However, there are also those who oppose the judge's granting of divorce based on apostasy. They argue that declaring apostasy as grounds for divorce could be a source of discrimination against individuals who change their religious beliefs. Their argument is that religion is a personal matter, and every individual has the right to choose their own religious beliefs without being subjected to sanctions that could destroy their marriage. They are also concerned about the potential abuse of the law by falsely accusing someone of apostasy as a means to achieve certain goals in divorce.²¹ However, there are also parties opposing the religious court judges' granting of divorce based on "apostasy." They argue that declaring apostasy as a basis for divorce could lead to discrimination against individuals who change

²⁰ Basri, "15 Divorces Due to Apostasy a Year PA Receives 3,947 Cases - Radar Madura."

²¹ Ahmad Nafhani and Abdullah Arief Cholil, "The Implementation of Talak Ba'in Sughro towards Apostate Husband," *Law Development Journal* 2, no. 2 (October 4, 2020): 97–106, <https://doi.org/10.30659/ldj.2.2.97-106>.

their religious beliefs. Their argument is that religion is a personal matter, and every individual has the right to choose their own religious beliefs without facing sanctions that could destroy their household. They also express concerns about the potential misuse of the law by falsely accusing someone of apostasy as a means to achieve specific goals in divorce.

However, on the other hand, there is also an argument that the judge's granting of divorce based on apostasy can be a necessary step in certain contexts, especially if the apostasy has been legitimately proven. In cases where apostasy results in disharmony within the household and threatens the overall well-being of the family, the judge's decision can be a solution to end the conflict and restore peace within the family.²² Overall, the pros and cons regarding the judge's granting of divorce based on apostasy reflect the complexity of this issue within the legal and social values context in Indonesia. Healthy and ongoing discussions are needed to find a balance between protecting religious identity and individual rights, while ensuring justice and equality within the religious justice system.

Understanding the complex implications of divorce triggered by apostasy in Indonesian family law

Divorce due to apostasy has complex and significant implications in the context of family law in Indonesia. As part of the progressive development of Islamic law, it is important to understand the broader impact of divorce resulting from apostasy on individuals, families, and society.²³ One of its impacts is on family and social relationships. Divorce triggered by apostasy can lead to the breakdown of established family and social ties, especially if children are involved. This can negatively affect their emotional and psychological well-being, causing conflicts and tensions within the family and community. Another impact is on individuals' identity and personal lives. For individuals deemed apostates and cited as reasons for divorce, stigma and social pressure can affect their mental and social well-being. They may face discrimination or isolation from their communities, leading to psychological issues and difficulties in adapting to life changes.²⁴

Additionally, divorce due to apostasy can also have economic consequences. The division of shared assets and financial support for divorcing couples becomes a complex issue often requiring legal intervention. This can affect the financial stability of individuals and families, especially if one party becomes economically marginalized after the divorce.²⁵ However, in some cases, divorce due to apostasy can also have positive outcomes, especially if it serves as the best solution to end conflicts and disharmony in marriage. This can pave the way for individuals to start a new, healthier, and happier life, although the divorce process itself may be difficult and challenging. Overall, the impact of divorce due to apostasy encompasses various aspects of individuals', families', and communities' lives. Therefore, it is

²² Hisam Ahyani, Memet Slamet, and Tobroni, "Building the Values of Rahmatan Lil'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 27, 2021): 111–36, <https://doi.org/10.19105/al-lhkam.v16i1.4550>.

²³ Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (June 30, 2022): 68–90, <https://doi.org/10.30984/jis.v20i1.1861>.

²⁴ Stella Laletas and Michelle Khasin, "Children of High Conflict Divorce: Exploring the Experiences of Primary School Teachers," *Children and Youth Services Review* 127 (August 1, 2021): 106072, <https://doi.org/10.1016/j.childyouth.2021.106072>.

²⁵ Zachary Van Winkle and Thomas Leopold, "Family Size and Economic Wellbeing Following Divorce: The United States in Comparative Perspective," *Social Science Research* 96 (May 1, 2021): 102541, <https://doi.org/10.1016/j.ssresearch.2021.102541>.

important for the religious court system and Islamic law in Indonesia to carefully consider the implications and consequences of legal decisions related to this type of divorce in order to maintain a balance between justice, individual interests, and social harmony.

Divorce due to apostasy in Indonesia has profound social and cultural implications, disrupting family dynamics, causing conflicts over beliefs, and stigmatizing non-apostate family members. Children face identity confusion and social stigma, while broader societal shifts affect social networks and religious values. Addressing these challenges demands a paradigm shift in societal attitudes and support systems to foster inclusivity and resilience. A holistic approach is needed to promote understanding, empathy, and support for all affected parties, considering individual well-being, family dynamics, and societal norms.

The analysis of *maqasid sharia* concerning divorce due to apostasy offers deep insights into how Islamic law navigates this complex issue. *Maqasid sharia* underscores the importance of safeguarding religion, life, intellect, lineage, and property. Within this framework, Islamic law aims to protect religion and ensure continuity of life in divorce cases involving apostasy, requiring judges to carefully consider the implications for individuals, families, and society. Ensuring religious adherence and preserving the well-being of apostates is paramount, alongside guaranteeing financial rights, child custody, and psychological support post-divorce. Additionally, progressive legal approaches in Indonesia must align with *maqasid sharia*, evolving to address contemporary social, cultural, and political contexts while prioritizing fairness, well-being, and stigma reduction.

The *maqasid sharia* framework further enriches our understanding, emphasizing the preservation of religion and the welfare of children in apostasy-induced divorces. It stresses equitable asset distribution, financial stability, and emotional support for divorcing parties, especially in cases involving heightened emotional distress due to religious beliefs. By adhering to these principles, Islamic law can ensure justice, individual rights, and societal welfare are upheld while navigating the complexities of divorce within the context of apostasy. This holistic approach integrates legal, ethical, and humanitarian considerations, fostering a fair and supportive environment within the religious court system.

Ulama viewpoints on apostasy as grounds for divorce in Islamic law offer nuanced perspectives with associated pros and cons. The pros state the reasons are: 1) Alignment with Islamic Teachings: Advocates argue it preserves religious beliefs; 2) Protection of Religious Identity: Seen as safeguarding spouses' faith; 3) Child Welfare: May benefit children's religious upbringing; 4) Legal Clarity: Provides clear legal recourse for couples facing apostasy issues, reducing ambiguity. Ulama's perspectives on apostasy as grounds for divorce vary depending on their interpretation of Islamic law and the societal context. Notable figures such as M. Quraish Shihab, Azyumardi Azra, Yusuf Qardhawi, Khaled Abou El Fadl, and Tariq Ramadan offer diverse views, ranging from moderate to progressive. Their contributions enrich the ongoing discourse, showcasing a spectrum of interpretations within contemporary Islamic thought.²⁶

Counterarguments against the use of apostasy as a reason for divorce highlight concerns about potential unfairness and advocate thorough consideration of the evidence and adherence to strict legal standards. Like Mohammad Hashim Kamali who emphasized the importance of ensuring there is strong evidence before taking drastic legal steps such as

²⁶ Abdul Razak Abdulroya Panaemalae and Zaenuddin Hudi Prasajo, "Islam and the West: Tariq Ramadan and the Discourse of Religion of Peace for a Global Understanding," *Al-Albab* 5, no. 2 (December 1, 2016): 237–50, <https://doi.org/10.24260/alalbab.v5i2.507>.

divorce based on apostasy, in order to avoid potential injustice.²⁷ The clerics stressed the importance of avoiding hasty declarations of apostasy, ensuring fair treatment for wrongly accused individuals. Additionally, there is an argument for prioritizing reconciliation and peaceful resolution before opting for divorce, considering it a last resort. Additionally, some clerics expressed concern regarding potential injustices against women and advocated protecting their rights during divorce proceedings, particularly regarding unfounded accusations of apostasy.

These pro and con arguments underscore the intricate nature of addressing apostasy as grounds for divorce within Islamic law, necessitating meticulous consideration of religious principles, justice, and societal welfare. Scholars opposing apostasy as a divorce reason may include: Royal Mufti of Saudi Arabia: As a representative of Saudi Arabia's conservative religious authority, the Royal Mufti may oppose apostasy as a divorce reason in line with the country's strict interpretation of Islam.²⁸ Grand Ayatollah Ali al-Sistani: Serving as a marja' taqlid for the Shia community, Ayatollah Sistani's conservative stance on apostasy and divorce could influence Shia perspectives in Iran and beyond.²⁹ Grand Mufti of Egypt: Representing Egypt's highest religious authority, the Grand Mufti may hold conservative views on apostasy and divorce,³⁰ particularly within the context of Egypt's religious legal framework.³¹ Salafi Clerics: Many Salafi clerics, known for their conservative approach to Islam, may oppose apostasy as grounds for divorce based on traditional interpretations of Islamic law. Indonesian Ulema Council (MUI): Reflecting the conservative stance prevalent in Indonesian Muslim society, the MUI may hold reservations regarding apostasy as a divorce reason. These scholars, along with others, contribute to the diversity of perspectives surrounding apostasy-related divorce, reflecting varied interpretations within Islamic jurisprudence and societal contexts.

Meanwhile, in the development of progressive Islamic law regarding apostasy in divorce and the application of maqasid sharia principles in Indonesia, there are challenges and opportunities. Challenges include reconciling conservative and reformist ideologies, overcoming interpretive complexities among clerics,³² overcoming resistance to change, and resolving conflicts between secular law and Islamic law.³³ Meanwhile, the opportunities that exist lie in increasing legal literacy and education,³⁴ innovating legal frameworks that are in

²⁷ Mohammad Hashim Kamali, *A Textbook of Hadith Studies: Authenticity, Compilation, Classification and Criticism of Hadith* (Kube Publishing Ltd, 2014).

²⁸ Philip L. Reichel, *Comparative Criminal Justice Systems: A Topical Approach* (Pearson Prentice Hall, 2005), 56.

²⁹ Babak Rahimi, "Ayatollah Sistani and the Democratization of Post-Ba'athist Iraq," United States Institute of Peace, 2007, <https://www.usip.org/publications/2007/06/ayatollah-sistani-and-democratization-post-baathist-iraq>.

³⁰ Mona Oraby, "Law, the State, and Public Order: Regulating Religion in Contemporary Egypt," *Law & Society Review* 52, no. 3 (2018): 574–602.

³¹ Ahmed Mohammed, "The Legal Framework Of Apostasy in Egypt: A Manifestation Of Secular Reconstruction Of Sharia By A Modern State," *Theses and Dissertations*, January 31, 2021, <https://fount.aucegypt.edu/etds/1445>.

³² Fatum Abubakar, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan) | Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 2 (2019), <https://doi.org/10.22515/alahkam.v4i2.1667>.

³³ Muhaemin Muhaemin, "The Interrelation between Islamic Law and Regional Regulations in Jember (Examining the Maqāṣid al-Sharī'at-Based Reasoning in Istinbāt al-Ahkām)," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/18330>.

³⁴ Yayan Sopyan, "Urgency of Legal Pluralism Study for Students of Sharia and Law Faculty After Changes of Academic Degree," *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 2 (December 31, 2020): 156–75, <https://doi.org/10.18860/j-fsh.v12i2.10186>.

line with maqasid sharia, developing collaboration between institutions,³⁵ and utilizing globalization and modernization for the transformation of society.³⁶ By addressing this, progressive Islamic jurisprudence regarding divorce due to apostasy can advance justice, compassion and the welfare of society.

Conclusion

Based on the findings and discussion presented earlier, the author concludes that the evolution of Islamic jurisprudence in Indonesia, particularly concerning apostasy-induced divorces, adheres to the framework of maqasid sharia, prioritizing the safeguarding of religion, life, intellect, lineage, and property. Despite Islamic law's adaptation to socio-cultural contexts, there exists discourse surrounding apostasy and its ramifications on marital dissolution. From the perspective of maqasid sharia, the termination of a marriage due to apostasy is viewed as safeguarding religious identity and individual well-being. Nevertheless, considerations must also encompass the preservation of familial ties and offspring, alongside the rights of all parties involved. Hence, the progression of Islamic law in Indonesia pertaining to apostasy-triggered divorces necessitates a comprehensive approach, integrating maqasid sharia principles, socio-cultural dynamics, and the rights and welfare of individuals and society.

This article makes a significant scholarly contribution to family law in Indonesia by highlighting the progressive evolution of Islamic law, particularly regarding divorce triggered by apostasy. By integrating the concept of maqasid sharia, the article provides insights into how Islamic law in Indonesia adapts to the social and cultural context while prioritizing the preservation of religion, life, intellect, lineage, and property. Emphasizing the protection of religious identity and individual well-being in the context of divorce due to apostasy provides a profound understanding of how Islamic law can address contemporary issues by considering principles of balance, justice, and humanity. Thus, the article illustrates the importance of a holistic approach in the development of Islamic law in Indonesia, which not only considers legal aspects but also social, cultural factors, as well as the rights and welfare of individuals and society.

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³⁵ Mohammad Taghi Sheykhi, "Worldwide Increasing Divorce Rates: A Sociological Analysis," *Konfrontasi: Jurnal Kultural, Ekonomi Dan Perubahan Sosial* 7, no. 2 (June 15, 2020): 116–23, <https://doi.org/10.33258/konfrontasi2.v7i2.105>.

³⁶ Kien Thi Pham, Bui Xuan Dung, and Thanh Quang Ngo, "The Impact of Globalization and Modernization of Laws and Theories on the Modernization of Philosophy in Vietnam: Mediating Role of Modern Societies," *Heliyon* 8, no. 9 (September 22, 2022): e10680, <https://doi.org/10.1016/j.heliyon.2022.e10680>.

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