

# Critical Thinking to the Restrictions on Registration of Divorce Lawsuits at the Islamic Courts During the Pandemic in Indonesia

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**ABSTRACT**

The pandemic has changed all human routines in all parts of the world, including law enforcement in Indonesia. One of the most prominent issues is access to public services at the Islamic Courts. Many registrations for divorce have exceeded the capacity of the court waiting room, forcing the court to limit the number of case registrations every day. This was intended by the court to avoid and minimize crowds while waiting in line for the trial process. But, on the other side, people who seek justice experience difficulties in accessing services; this causes the settlement of their cases to be hampered. This situation certainly creates unrest for the community because the case has been neglected for a long time. Does the restriction on the registration of divorce cases in the Islamic court is not contrary to existing legal principles? In this study, the authors used a normative juridical research method. The research results show that the court's efforts to restrict the registration of new cases of divorce lawsuits on the pretext of reducing and preventing the spread of the COVID-19 virus are not a solution. The court should have made a breakthrough or innovation so that the people who seek justice can be served well, because where are the people going to complain about their fate even though the court is the last place for the community to complain about the fate of seeking justice. This situation also certainly goes against the motto "Fiat Justitia Ruat coelum" Let there be justice though the world perish. Besides that, there is a legal principle of fast, simple procedure and low cost; the hope is that court services can still run well while still prioritizing safety and also services for people who seek justice.

**Keywords:** *Divorce lawsuit, case registration restrict, Islamic Court.*

**1. INTRODUCTION**

During the early period of the pandemic, isolation or lockdown (PSBB: pembatasan sosial berskala besar) was imposed by the government in all regions of Indonesia, which caused the cessation of human mobility, including public services. One of them is the Islamic court which also stopped case registration services in anticipation of reducing the spread of COVID-19. By temporarily stopping the service for lawsuits, it turned out to have also been affected on the condition of the people who seek justice. Married couples that are already in trouble are becoming increasingly depressed during the pandemic. The desire to sue for divorce is put on hold during the pandemic. After the government imposed a new habit, or what we know as the new normal, services to public agencies were reopened with strict protocol requirements. As a result of the opening of this service, the people seeking justice, who had previously been silent, were in droves to register for divorce simultaneously. As a result, there was a crowd of divorcees in many Islamic Courts in various regions or districts in Indonesia, especially in Class 1 A Islamic Courts.

The Pandemic period did not dampen the parties whose households were already in trouble, a step away from being divorced. In some people, the pandemic has even added to the complexity of the household, in which the increasingly difficult economic conditions have further triggered the breakdown of the household. There is an increase in the number of claims for divorce during the new normal. Statistical data in the Supreme Court shows an increase in the divorce rate annually until the pandemic started in August 2020. After the implementation of the new normal, the divorce rate has reached 306,688 decisions [1] This increase certainly will continue as cases continue to be registered and examined.

Table. 1 Supreme of Court Data.

Year	Wife petition to divorce	Husband petition to divorce	Sum Total
2015	281.178	113.068	394.246
2016	287.749	113.968	401.717
2017	301.573	113.937	415.510
2018	325.505	118.853	444.358
2019	355.842	124.776	480.618

2020 (Augustus)	228.240	74.448	306. 688
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<https://www.voaindonesia.com/a/cerai-di-masa-pandemi-ditahan-psbb-didorong-ekonomi-/5578035.html>

The increase in the number of divorce lawsuits caused by the restriction on the number of lawsuits at the Islamic Courts in Indonesia during the pandemic is a problem in itself. On the one hand, the policy of the Islamic Courts limiting registration is an effort to support government policies towards preventing the spread of the coronavirus, while on the other hand, it creates unrest among the people seeking justice. How is it possible that this social problem can be left neglected for a long time while those who undergo the household troubles are in a state of physical and mental stress? The desire of people whose households experience fractures is to have a clear legal status, namely a widow or widower, so that later they can continue with their life, either remarrying or choosing to live alone without a partner. Meanwhile, if it is delayed, it will cause mental stress. This certainly contradicts the legal goal that was put forward by Jeremy Bentham, which is to create happiness for as many people as possible in a society, either partially or individually.[2] This means that the Islamic court's policy of restricting the number of registrations every day is a problem for justice seekers.

The limitation of registering cases for divorce every day during the pandemic has resulted in an accumulation of cases; this has led to a longer resolution of cases. This situation is, of course, contrary to the principle of fast, simple, and low-cost judicial administration. The Supreme Court, as the pinnacle of the highest court, must make a new breakthrough to overcome this problem. Courts as state institutions that provide services to the justice-seeking community are expected to provide excellent service. The accumulation of divorcees in the Islamic Courts cannot be allowed to drag on; this is to provide legal certainty to the community. Before the pandemic, the settlement of divorce cases took quite a long time, especially now that there was a pandemic and an accumulation of the cases of divorce lawsuits.

Obtaining legal services is the right of every citizen; this right has been guaranteed in the 1945 Constitution, Article 28D (1), namely that everyone has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law. For this reason, the state, especially the judiciary, has an obligation to provide services to the community of justice seekers who are credible and accountable. Limiting the number of lawsuits in the Islamic Courts per day is not a solution. The psychological condition of the disputing parties can cause negative excesses if the Islamic court does not immediately make a breakthrough, for example, domestic violence, marriages that are not registered with the Office of Islamic Affairs, and others.

Based on the description above, the authors critically examine the steps of the Islamic court in taking case settlement policies at the Islamic Courts in anticipation of the spread of the coronavirus by limiting the number of cases that are entered or registered every day in several Class IA Islamic Courts in Indonesia, for example, the Class IA Islamic Courts Cilacap, Class IA Purwokerto Islamic Court, Klaten Class IA Islamic Court. So that a problem formulation can be made: is the limitation on the number of claims registered at the Islamic Courts not against the principles of the law in force? Then how to anticipate cases that have been put on hold and are piling up in the Islamic Courts?

From the results of the authors' search, the authors can say that there are several writings that are almost similar to previous writers, but this paper has differences with previous writings, for example, the writing of Lili Hidayati in the journal *Khuluqiyya* Volume 3 No. 1 January 2021 titled "Fenomena Tingginya Angka Perceraian Di Indonesia Antara Pandemi dan Solusi." Aris Tristanto wrote in the *Journal of Socio Informa* Vol 6 No. September 3-December 2020, titled "Perceraian Di Masa Pandemi COVID-19 Dalam Perspektif Ilmu Sosial." The previous study highlighted the high divorce rate in Indonesia during the pandemic, while the author examined the legal aspects of the Islamic Courts policy limiting the number of case registrations per day during the pandemic, a critical review of whether the policy is in accordance with applicable legal principles, given the unrest of the seeker of justice because the cases have been stopped and are taking a long time to resolve.

The benefits in this paper are expected to be input for the Supreme Court, especially the Islamic Courts to be able to make a new breakthrough so that divorce lawsuit services can still be provided in a pandemic even though by continuing to use health protocols and or utilizing technology to reduce cases that have stopped during a pandemic or accumulate so that they slowly.

## **2. RESEARCH METHOD**

The method in this research is to use juridical normative, normative juridical research is research conducted on legal principles, legal principles, good legal definitions obtained through the law, judges' decisions, legal documents, and others. They were then presented descriptively, which examines the current legal issues then explained and analyzed according to existing rules or legal principles.

### 3. FINDINGS & DISCUSSION

The main problem in restricting the registration of a lawsuit in the Islamic Courts is that the right of the community to obtain public services in order to seek justice is obstructed. The cases will pile up and will take longer to solve. Even though the community comes to court wanting to finish their household problems. Although the Islamic courts do not only handle divorce cases, most of them are divorce cases. The negative social impacts that often occur as a result of the slow divorce process in the Islamic courts are that the party who is suing or being sued ends up getting married, according to Adat (custom) or sirri. Whereas according to positive law, the parties still have the status of husband or wife. This means that it has the potential to violate criminal law and violate Act Number 1 of 1974 on Marriage. For example, in a lawsuit divorce, because the case is progressing slowly, the wife, as the plaintiff, was of a sirri marriage with another man, the wife became pregnant while still in a legitimate marriage with her husband, and then gave birth to a child. Even though legally, the child is born in a marriage that has not broken up, the biological parents are not legally married. As a result, the child will not be recognized by the sued husband because the child is not his. This condition will cause the child born during the divorce process to not receive legal status as the son of the father in a legal marriage because he does not recognize it and is not his biological child. While, on the other hand, the biological father cannot be included in the birth certificate as the legally recognized father of the child because the mother and father are not yet bound by a legal marriage according to the marriage law.

This pandemic further exacerbates the condition regarding the settlement of cases in Islamic courts because there are new cases submitted each day. The authors can review as follows:

#### 1) Principles of Service in Court

The basic principle of service is to provide convenience to every user. Policies that are centralized in the central government should ideally be delegated to local governments so as to facilitate service delivery. The decisions made in this manner can result in programs and services designed and implemented by the government having a direct impact on society. The paradox, of course, especially in the public service sector, is how, after the formation of a new autonomous region that should bring public services closer to the community, meaning that services should be getting more promptly delivered, they are in fact getting further from the people because the time needed to access the service is getting longer. Public services in every government agency or institution in the Republic of Indonesia continue to be improved and facilitated. Currently, the Supreme Court and its subordinate courts are constantly trying to organize,

improve and simplify public services by implementing a one-stop integrated service system (PTSP=Pelayanan Terpadu Satu Pintu). Through this PTSP performance, the Supreme Court wants to provide excellent service in terms of public services whose management process starts from the initial stage to the end, where the issuance of a document is carried out in one place.[3]

The objectives of One-Stop Integrated Service are implemented based on several principles, namely: a) Realizing a fast, easy, transparent, cheap, secure, and affordable service process in accordance with predetermined standards; b) Providing excellent, accountable, which is anti-corruption, collusion, and nepotism (KKN) services. Providing protection and legal certainty to the public; d) Shorten the service process, and e) Bringing closer and wider services to the community.

Indonesia is a state based on law, and it is appropriate that the right of legal protection with all its conveniences becomes a right that can be accepted by all levels of society in a sustainable time, meaning that it is indefinite. Even in a pandemic situation. Breakthroughs from the courts must be found to provide access to services for the public. Health and safety Courts need to remain functional to discharge key functions while preserving the right to life and health of judges and judicial staff, as well as for all users of court services. Health and safety considerations in courts are required for a range of stakeholders who use the courts, both remotely and in person. There should be clarity on whose responsibility it is to determine health and safety protocols, identify risk and put measures in place. Consideration needs to be given to the suitability of courtrooms for various hearings, bearing in mind their size, accessibility, IT equipment, and ventilation; the availability of waiting rooms and spaces; the availability of other suitable venues. Health and safety protocols for courts will need to include entry, egress, and movement within buildings, sanitation, management of usual security requirements, and the consequent staffing implications. Higher judicial authorities should provide clear guidance on sanctions in the event of non-compliance and on compelling individuals to attend court. [4]

The implementation of trials in Indonesia adheres to the principle of fast, simple, and low-cost. This principle is regulated in Article 2 paragraph (4) of Law Number 48 of 2009 of the authority of judicial. This principle is the most basic principle of the implementation and administration of justice that leads to the principles and principles of effectiveness and efficiency. These three principles have been worked on in such a way as to be implemented properly by the entire judicial system in Indonesia, especially the judicial system that examines civil cases. The service of cases that have been registered is running slowly, especially with restrictions on registration.

Before the pandemic, the principles of service in procedural law had not been implemented optimally; the problem became even worse when a pandemic hit, like today; for example, the principle of a quick settlement. In this principle, it is desired that the trial process be carried out quickly so that justice seekers can obtain legal certainty as soon as possible. The principle of speed does not mean being in a hurry; the principle of being fast must still be guided by precision and caution. Problems that hinder the trial process so that it runs slowly must be immediately anticipated, for example, summons of the parties, notification of decisions, construction of decisions, slow performance, and so on.

The dilemma of slow case resolution becomes worse during a pandemic. Registration restrictions should not be carried out. The Islamic Courts can still serve with a new, safer model, for example, online trials. The principal or the parties are not required to come to the trial, and the trials can be held in a special sterile room or divide the trial schedule by hour and day. So far, the usual schedule is that the trial sessions always begin at 09.00 AM. This scheduling is what causing accumulation and the number of queues. This is certainly a risk of spreading the coronavirus infection. This problem can solve this problem by building into multiple sessions or terms in the trial.

In addition to the principles of fast, simple, and low-cost, there are also other principles that are quite crucial, as stated in Article 10 of Law Number 48 of 2009 of the Judicial Authority. In that article, it is stated that "the Court is prohibited from refusing to examine, hear and decide a case which is filed on the pretext that the law does not exist or is unclear, but is obliged to examine and judge it." It can be interpreted that the court may not reject a case filed on the ground of having no clear rules; the court is obliged to be able to explore the values that live in society. Furthermore, the problem is that the court rejects the new cases under the pretext of a pandemic. The court did not refuse to examine it but postponed it. This delay can also include a rejection to try the case on the same day. You can imagine that if the person filing the case comes from an area quite far from the court, they will have to return disappointed because the quota that day was full, and tomorrow they will have to queue once again.

This situation, whether it is in the category of an emergency or an *overmacht* can, of course, see a comprehensive study. The emergency itself is a state that is out of control and beyond human control. Meanwhile, the authors believe that the pandemic situation in Indonesia is still under control and can still be overcome. Indeed, sometimes policies restricting public services seem excessive because we see that many other activities that create crowds and have the potential to spread and transmit the coronavirus are still happening. This means that the urgency of limiting the service is not really necessary.

## **2) The urgency of postponing lawsuit registration during the pandemic**

Every couple wants integrity in building a household. However, the reality shows that the divorce rate is increasing. The existence of social pressure in society (social pressure) that divorce is not a taboo or disgrace in society, divorce has become a common thing. Whereas in Law Number 1 of 1974, it is emphasized that what is meant by divorce is: "Regardless of the marriage bond between the two parties, after the court decision has a legally binding force which remains in effect since the marriage took place." [5]

Divorce is the deletion of a marriage by a judge's decision on the demands of one of the parties to the marriage. The point is that the law does not allow divorce by consensus alone between husband and wife. Divorce claims must be submitted to the judge on an ordinary basis in a civil case, which must be preceded by asking the head of the local Islamic or District Court for permission to contest. Before permission is granted, the judge must try to reconcile the two parties. [6]

Act Number 7 of 1989 on Islamic Courts regulates two types of divorce, namely Divorce Gugat and Divorce Talak. Divorce Talak is a divorce imposed by a husband against his wife so that their marriage is over. A husband who intends to divorce their wife must first apply to the Islamic Courts for Muslims and the District Courts for non-Muslims. Meanwhile, a Divorce Gugat is a divorce based on a lawsuit filed by the wife, to end the marriage with her husband. This is how the law regulates this matter. So the authority that is owned must be able to be carried out as well as possible.

The adage "*fiat justitia ruat coelum*" can be a study in this paper. The adage is not just a meaningless slogan, just as the similar adage, namely "*fiat justitia pereat mundus*" or let justice be upheld even though the world must perish (Let there be justice though the world perish).<sup>1</sup> It is difficult to imagine what will happen if law enforcement must be stopped or postponed for pandemic reasons. Things can get more and more complicated because the community has the potential to act against the law while the law is not enforced or suspended until things go back to normal.

One critical analogy that the author can convey against this limitation of lawsuit submission is, for example, if there is someone who has violated the rights of others, for example, stealing. Let us imagine a victim reported to the police, and the policeman says, "Sorry, your complaint cannot be processed today, please come back tomorrow." Certainly, this situation can increase unrest in society. Likewise, with a divorce suit that is about to be submitted to the Islamic court, there are rights of the wife or husband that are violated, there are problems that, of course, satisfy the provisions in Article 19 of Government Regulation

Number 9 of 1975 concerning the Implementation of Act Number 1 of 1974 about Marriage.

For this reason, the Islamic court needs to consider and find a solution in providing services; even though the new normal is coming along, some courts still limit the cases that can be submitted. Ideally, this should not be the case. Courts must continue to accept and make breakthroughs so that cases do not stagnate and the justice process can go smoothly. Future efforts should also be made to anticipate what might happen.

Recently, the Supreme Court has been trying to overcome the obstacles that are often faced by the judiciary, namely the slow handling of cases, difficulty in accessing court information, the integrity of the judicial apparatus, especially judges. Therefore, the Supreme Court has issued several strategic policies oriented towards public trust in an effort to overcome these three obstacles.

Then, the Supreme Court evaluates the case handling system according to SK KMA Number 19 of 2013, and the Supreme Court changed the determination of the period for handling cases which was previously set at a maximum of 1 year, now it is a maximum of 250 days or approximately eight months, this is still deemed insufficient so that it continues to be corrected. Currently, the Supreme Court must decide the case in a maximum of 3 months after the case is received by the Chairman of the Cassation Council/Judicial Review. Meanwhile, the settlement of cases at the appeal level and first level must be done no later than three months and five months, respectively.

#### 4. CONCLUSION

The delay in settling divorce suits in the Islamic Courts must immediately be solved. This is especially so during the pandemic, which limits the movement of the community. Restrictions on case registration are not the best solution to reduce the spread of COVID-19. The authority and duty of the court to provide justice for the community must be greatly improved. In fact, these restrictions contradict existing legal principles. Courts must continue to use the principle of fast, simple, and low-cost trial services, and also consider the adage "*Let there be justice though the world perish.*" An emergency or *overmacht* due to COVID-19 can still be anticipated so far. The reconstruction of work patterns and service systems needs to be done to be able to continue to serve the community during the pandemic period. Ideally, Islamic courts should not rigidly apply existing regulations. It takes courage and innovation for Islamic courts to continue to

serve the community, especially those who want to file a divorce lawsuit so that this situation does not stagnate.

Today there has been no effort made by the court, which is felt by the public as improving services during the pandemic. The public still feels that the trial process is running slowly from registration to the verdict with legally binding force. The process is much longer now compared to before the pandemic. The court must find ways to keep good service despite pandemic consideration.

Finally, it is recommended that Islamic courts use a new service system; Islamic courts must be advanced and develop the service system they employ. For example, they could use online platform or Zoom for witness examination, and use e-litigation to speed the process.

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