

Legal Analysis of Religious Transfer As A Reason For Divorce In Islam

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ABSTRACT

This study examines the legal issues of divorce in the context of domestic conflict triggered by religious conversion within Islam, which has not been explicitly regulated as a ground for divorce in Indonesian positive law. The study focuses on how the open-textured norm of Article 116 letter (f) of the Compilation of Islamic Law is interpreted in judicial practice, and its implications for legal certainty. The research method used is normative juridical with a statutory, conceptual, and case-based approach, to analyze the adequacy of the norm and the construction of its application by judges. The results of the discussion indicate that religious conversion cannot be used as a direct reason for divorce, but is only relevant if it causes continuous disputes and quarrels that impact household disharmony. However, the absence of operational parameters in the norm leaves room for judicial discretion and has the potential to lead to inconsistent decisions. Therefore, strengthening through the formulation of operational parameters that can guide judges' assessments in a more structured manner, including by adopting a preventive approach that considers early indications of conflict. These parameters include aspects of conflict escalation, ideological depth, impact on family function, and the possibility of disharmony rationally. Theoretically, this construction aligns with the principles of legal certainty and progressive law that is responsive to social dynamics. For implementation, these parameters should ideally be formulated in a Supreme Court Regulation as an interpretive guideline to improve the consistency, predictability, and quality of decisions in the religious courts.

Keywords: Divorce, Religious Conversion, Legal Certainty, Progressive Law, Compilation of Islamic Law.

1. INTRODUCTION

In Indonesia's national legal system, marriage regulations hold a strategic position as part of private law, governing civil relations between individuals in society. The enactment of Law Number 1 of 1974 concerning Marriage was a significant milestone in the unification of marriage law in Indonesia, which was previously pluralistic. Prior to the enactment of this law, marriage law in Indonesia was divided into several systems: customary law, Islamic law, and Western civil law, each of which applied according to population groups. This situation created legal uncertainty and disparities in the application of norms, necessitating a national regulation that would bind all citizens. (Leawoods, 2000)

The Marriage Law was enacted with the aim of creating uniformity in marriage regulations without eliminating the religious values inherent in society. In this regard, the law still recognizes that the validity of a marriage is determined by the laws of each respective religion. This demonstrates that Indonesian national law is religious in nature and cannot be separated from the values of the beliefs held by its people. Thus, there is a close relationship between state legal norms and religious norms in regulating the institution of marriage. From the perspective of the

Marriage Law, marriage is defined as a physical and spiritual bond between a man and a woman with the aim of forming a happy and eternal family based on the One Almighty God. This definition emphasizes that marriage is not merely a formal or administrative relationship, but rather a bond with spiritual and emotional dimensions. Therefore, the sustainability of a marriage depends heavily on harmony between the physical and spiritual aspects of the husband and wife. (Mahdi et al., 2005)

The Compilation of Islamic Law (KHI), as a source of material law for Muslims in Indonesia, further strengthens the religious dimension of marriage. The KHI emphasizes that marriage is a form of worship to Allah SWT, the implementation of which must be based on sincere intentions and strong responsibility. The marriage contract in Islam holds a strong standing (*mitsaqan ghalizhan*), so it cannot be viewed as an ordinary agreement. The consequences of this contract are not only legal, but also moral and spiritual. In Islamic teachings, the primary purpose of marriage is to create a family that is *sakinah*, *mawaddah*, and *rahmah*. This concept reflects the ideal condition of domestic life, characterized by tranquility, affection, and mercy. Husband and wife are expected to create a harmonious atmosphere and support each other in living together. This harmony not only impacts the couple themselves but also the development of children and social stability within the community. (Mertokusumo, 1999)

To achieve these goals, husbands and wives have rights and obligations that must be fulfilled in a balanced manner. These obligations can be divided into material and immaterial. Material obligations include meeting economic needs such as sustenance, shelter, and other necessities of life. Meanwhile, immaterial obligations encompass emotional and spiritual aspects, such as affection, attention, and religious guidance. These two aspects must go hand in hand to create a harmonious household life. However, the reality of life shows that not all marriages can run according to expectations. Various problems often arise in household life, both internal and external. These problems can range from economic conflicts, differences in character, domestic violence, to differences in ideological and religious views. If these problems cannot be resolved properly, they can lead to divorce. (Mughtar, 1993)

Under Islamic law, divorce is permissible, but strongly discouraged. Divorce is seen as a last resort when marriage is no longer sustainable and is causing harm. Therefore, divorce must be based on strong, rational reasons and carried out through procedures in accordance with applicable legal provisions. Normatively, the Marriage Law stipulates that divorce can only be obtained in court after unsuccessful attempts at reconciliation. This provision demonstrates the state's efforts to maintain the integrity of the household and minimize the occurrence of divorce. The court plays a crucial role in assessing whether the grounds for divorce meet the legal requirements. (Nasution, 2018)

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The Compilation of Islamic Law further regulates in greater detail the grounds that can be used as grounds for filing for divorce. These grounds include adultery, bad habits such as drunkenness and gambling, leaving a spouse without justification, imprisonment, domestic violence, and persistent disputes. Furthermore, there are reasons such as religious conversion or apostasy, which can disrupt marital harmony. However, the regulation of religious conversion as grounds for divorce in the Compilation of Islamic Law (KHI) remains problematic, particularly when linked to the phenomenon of changing one's religious sect within one religion. The KHI only explicitly regulates conversion from Islam to another, but not conversion within Islamic sects. This creates ambiguity in the application of the law in practice. (Rahardjo, 2009)

The phenomenon of religious conversion within Islam is a social reality that cannot be ignored. In Indonesian society, various Islamic sects and groups exist, each with its own distinct interpretation of religious teachings. Conversion from one sect to another can lead to changes in individual thought patterns, religious practices, and values. These changes can significantly impact family life, especially when a husband and wife hold differing views on religious teachings. These differences can trigger prolonged conflict, particularly regarding children's education, religious practices, and family values. Under certain circumstances, such conflict can seriously disrupt household harmony. (Suma, 2004)

As an illustration, there are cases where one partner follows a particular sect, such as the Global Ikhwan or another sect with teachings and practices that differ from the mainstream. This change not only impacts the individual concerned, but also other family members. Disagreements in this regard can create tension that leads to marital discord. In judicial practice, this issue is reflected in Decision Number 2218/Pdt.G/2018/PA.Tng. In this case, the change in religious denomination was the primary factor triggering the conflict in the household. However, the panel of judges did not directly cite the change in religious denomination as grounds for divorce, but instead qualified it as persistent disagreements and quarrels. (Usman, 2001)

This approach demonstrates the limitations of existing legal norms, requiring judges to interpret them to find an appropriate legal basis. This raises the question of whether conversion to a religious denomination can be directly used as grounds for divorce, or whether it must first lead to a protracted conflict. This situation creates legal uncertainty for the public, especially for couples experiencing religious differences within their household. Unclear norms can lead to discrepancies in court decisions, thereby reducing certainty and fairness in law enforcement. (Zainal Asikin, 2014)

On the other hand, not all differences in religious beliefs can be grounds for divorce. In a pluralistic society, differences are natural and must be respected. Therefore, clear boundaries are needed regarding when a difference can be considered a valid reason for divorce. Changing



religious beliefs can be considered relevant grounds for divorce if the change significantly impacts household harmony. These impacts can include disrupted communication, loss of mutual trust, and fundamental differences in family values. In such circumstances, the goal of marriage—to create a family that is peaceful, loving, and compassionate—becomes difficult to achieve. (Abdurrahman, 1992)

Therefore, an in-depth legal study is needed to analyze the position of religious conversion within Islam as a ground for divorce. This study is crucial for filling the existing legal gap and providing guidance for judges in deciding similar cases. With a comprehensive analysis, it is hoped that legal certainty and uniformity in the application of marriage law, particularly for Muslims, will be achieved. Furthermore, the results of this study are expected to contribute to the development of Islamic family law in Indonesia and serve as a consideration for policymakers in formulating clearer and more responsive regulations to societal developments. (Ayyub, 2002)

2. RESEARCH METHODS

This research is a normative legal research with a normative juridical approach, namely in conducting research focusing more on in-depth analysis related to legal norms, legal principles, legal principles, and legal regulations in answering legal issues that are the object of research. The approaches used in this research include the statute approach and the conceptual approach. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions. Secondary legal materials consist of legal literature, books, scientific journals, and expert opinions related to Islamic law and notaries. While tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources. The technique of collecting legal materials is carried out through library studies, while the analysis of legal materials is carried out through interpretive techniques. This is done by examining the relationship and connection between one article and another, both contained in the same law and in different laws and regulations, so that they are understood as a unified whole. (Hadikusuma, 2003).

3. RESULTS AND DISCUSSION (

Analysis of Shifting Religions in Islam as a Reason for Divorce Based on the Compilation of Islamic Law in Indonesia

1. Analysis Based on Philosophical, Sociological, and Juridical Foundations

The regulation of grounds for divorce in Indonesian positive law, particularly in Article 116 letter (f) of the Compilation of Islamic Law (KHI), demonstrates an open-textured norm. This openness provides judges with room to interpret various forms of domestic conflict that develop in society. On the one hand, this flexibility allows the law to adapt to constantly changing social

dynamics. However, on the other hand, this condition also has the potential to create legal uncertainty if not accompanied by clear parameters for its application. From a theoretical framework, legal norms are not sufficient to be merely formally available; they must also have operational clarity to be used effectively in practice. Without directed guidelines, open-text norms can give rise to significant differences in interpretation among judges. As a result, the resulting decisions have the potential to be inconsistent, thereby reducing legal certainty for the parties to the dispute. (Jamaluddin & Amalia, 2016)

At the same time, the law is required to remain responsive to evolving social realities. An overly rigid legal approach has the potential to ignore the complexity of issues occurring in society. Therefore, a balance between legal certainty and flexibility is needed so that the law can provide substantive justice in every case encountered. One form of conflict that has not been explicitly accommodated in normative formulations, but has significant relevance in practice, is domestic conflict arising from religious conversion within Islam. This phenomenon not only concerns differences in religious practices but can also develop into ideological conflict that touches on fundamental aspects of family life. (Leawoods, 2000).

Changing religious beliefs can affect the relationship between husband and wife, including decision-making, child-rearing practices, and the family's value system. Under certain circumstances, these changes can create ongoing tension and lead to difficult-to-resolve conflicts. This type of conflict is not specifically regulated as grounds for divorce under the current legal framework. However, it is often classified as a form of persistent dispute and quarrel, as stipulated in Article 116(f) of the Compilation of Islamic Law (KHI). Therefore, changing religious beliefs is not positioned as a stand-alone reason, but rather as a factor that triggers conflict within the household. (Mahdi et al., 2005)

From a philosophical perspective, the Indonesian legal system strives to maintain a balance between religious freedom and the protection of the family institution. Individual freedom to believe and practice one's religion is guaranteed by the constitution, while family integrity is also protected as a fundamental human right. Both values must be considered proportionally in every divorce case. Marriage in the Indonesian legal system is viewed not only as a civil relationship but also as a bond with moral, social, and religious dimensions. Therefore, harmony between religious values is a crucial factor in maintaining marital harmony. Inconsistencies in this aspect can undermine the purpose of marriage. (Mertokusumo, 1999).

From an Islamic legal perspective, the purpose of marriage is to create a family that is peaceful, loving, and compassionate. This goal is not only related to the fulfillment of material needs, but also encompasses inner peace and spiritual harmony between husband and wife. Fundamental differences in religious understanding can hinder the achievement of this goal. From



a sociological perspective, Indonesian Muslims have a wide diversity of religious understandings. This diversity is part of the dynamics of *ijtihad* in Islam and does not necessarily cause problems. However, in the context of domestic life, these differences can become a source of conflict if not accompanied by an attitude of tolerance and mutual respect. (Mughtar, 1993).

Conflicts arising from religious conversion often stem from differences in religious practices, assessments of religious traditions, and authority in determining family values. In some cases, these differences escalate into a delegitimization of a partner's beliefs, ultimately triggering tension within the household. Furthermore, drastic changes in religious practices can disrupt the balance of the family system. These changes impact not only the marital relationship but also relationships with children and extended family. This situation has the potential to lead to broader and more complex conflicts. (Nasution, 2018).

Ideological conflicts tend to be more intense than technical ones. This is because they touch on fundamental values that underlie individual life. Therefore, their resolution requires a more careful and comprehensive approach. In judicial practice, divorce cases triggered by religious conversion are generally resolved based on ongoing disputes and arguments. This approach demonstrates that existing norms can still be used to accommodate this phenomenon, even if they do not explicitly regulate it. (Rahardjo, 2009).

However, the lack of clear parameters for assessing ideological conflict creates room for subjectivity in judges' deliberations. This situation has the potential to lead to differing assessments of cases with similar characteristics. Consequently, consistency in decisions becomes difficult to achieve. Legally, the existing legal framework already provides a sufficient basis for handling divorce cases. However, when dealing with ideological conflicts such as religious conversion, operational strengthening is needed to ensure more effective implementation of these norms. (Suma, 2004).

Changing religious beliefs cannot automatically be used as grounds for divorce. However, in certain circumstances where such changes create ongoing conflict and diminish the hope of living in harmony, they can be considered within the framework of ongoing disputes. Therefore, the existence of more concrete parameters for assessing conflict resulting from changing religious beliefs is crucial. These parameters can serve as guidelines for judges in assessing whether a conflict has reached a level relevant to being grounds for divorce. Strengthening these interpretative guidelines is expected to maintain a balance between normative flexibility and legal certainty. With clarity in the application of these norms, it is hoped that the law enforcement process in the religious courts will proceed more consistently and provide a sense of justice for the parties involved. (Usman, 2001)

2. Analysis Based on the Theory of Legal Certainty

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From the perspective of the theory of legal certainty, as proposed by Maria SW Sumardjono, legal certainty is not only understood as the formal existence of norms, but also includes the operational aspects and consistency of their application in practice. Normative legal certainty requires the availability of adequate, clear, and effectively enforceable laws and regulations. Meanwhile, empirically, legal certainty demands the consistent application of norms by law enforcement officials so that it can provide predictability for the community. In relation to the regulation of grounds for divorce in Indonesian positive law, this framework is relevant to assess the extent to which existing norms have met the standards of legal certainty. Normatively, the regulation of grounds for divorce is available in Article 39 paragraph (2) of the Marriage Law, Article 19 of Government Regulation Number 9 of 1975, and Article 116 of the Compilation of Islamic Law (KHI). However, the existence of these norms does not fully guarantee the fulfillment of substantive legal certainty. (Abdurrahman, 1992).

Specifically in Article 116 letter (f) of the KHI, the use of the phrase “continuous disputes and quarrels” indicates the norm’s general nature and lack of specific operational parameters. The norm does not explicitly accommodate domestic conflicts stemming from shifts in religious beliefs or differences in schools of thought, even though in practice such conflicts can have a structural impact on marital relations. In Sumardjono’s framework, this condition indicates that although normative instruments are available, the level of adequacy and operationalization of the norms is still not optimal. The general nature of the norm without clear indicators makes it difficult to determine the limits of when a conflict can be qualified as a persistent and irreconcilable dispute. (Ayyub, 2002).

The lack of measurable parameters regarding the intensity of conflict, its impact on household sustainability, and its evidentiary standards makes the application of this norm highly dependent on case-by-case construction. This results in the norm not fully fulfilling the operational character that can provide clear guidance for judges in making decisions. From an empirical dimension, the application of Article 116 letter (f) of the Compilation of Islamic Law (KHI) shows a high dependence on the casuistic judgment of the panel of judges. In judicial practice, religious conflict related to conversion can be considered a significant factor in proving disharmony in a household. However, not all cases with similar conflict patterns receive the same assessment. (Fenwick & Wrba, 2016).

The variation in these decisions demonstrates that consistent application of norms remains a challenge. This situation results in low legal predictability for litigants, as decisions are highly dependent on the judge's subjective assessment of the presented facts. Broad judicial discretion within general norms is an integral part of the modern legal system. However, from the perspective of legal certainty, discretion that is not limited by clear parameters has the potential to lead to

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inconsistent decisions. This can diminish the law's function as a predictable guide to behavior for the public. (Hadikusuma, 2003).

The gap between the normative and empirical dimensions indicates a gap in the legal regulations regarding divorce caused by conflicts based on religious conversion. On the one hand, existing norms are flexible enough to accommodate various forms of conflict, but on the other hand, this flexibility has the potential to reduce legal certainty if not accompanied by clear guidelines. Within the framework of Sumardjono's theory of legal certainty, this condition indicates that the legal system has not fully achieved the ideal quality of legal certainty. This is due to the lack of a balance between the availability of norms, operational clarity, and consistency of application. A more proportional approach to addressing this problem is not to rigidly add new grounds for divorce, but rather to clarify the operational parameters of existing norms. With more structured parameters, judges still have room for discretion, but within more targeted and predictable limits. (Hart, 1994).

Furthermore, Gustav Radbruch's theory of legal certainty provides an additional framework for assessing the quality of a legal norm. Radbruch stated that law must meet four main elements: positive nature, based on concrete facts, clearly and firmly formulated, and relatively stable. From the perspective of law as a positive norm, the regulation of grounds for divorce in Indonesia meets these criteria. The norms governing divorce have been officially established through legislation and are binding on society. Thus, there is no legal vacuum regarding grounds for divorce. However, from a fact-based perspective, although judges in practice have considered the concrete conditions within a household, there has not been specific normative recognition of ideological conflict as a separate category. Consequently, facts related to religious conflict often have to be included in the general category of disputes. (Handayani, 2022).

From the aspect of normative clarity, the formulation of Article 116 letter (f) of the Compilation of Islamic Law (KHI) shows weakness because it does not provide clear indicators regarding the type and level of conflict that can be used as grounds for divorce. This ambiguity opens up wide room for interpretation and has the potential to lead to disparities in court decisions. Meanwhile, from the aspect of stability, the regulation of grounds for divorce has indeed experienced relatively unchanged over the long term. However, this stability is more textual and has not been fully followed by stability in practice. Variations in decisions indicate that the level of legal predictability still needs to be improved. Thus, when viewed from the four Radbruch parameters, the regulation of grounds for divorce in Indonesian positive law formally fulfills the element of legal certainty, but substantively still requires strengthening. This is primarily related to the aspects of normative clarity and consistency of application. (Isnaeni, 2016).

This strengthening can be achieved through the formulation of clearer operational parameters for assessing ideological domestic conflicts, including those caused by religious conversion. These parameters can serve as guidelines for judges in assessing the facts presented in court. In this context, the formulation of interpretive guidelines through regulatory instruments is relevant to consider. These guidelines are expected to clarify indicators of conflict that have reached a level that undermines the purpose of marriage, thereby increasing consistency and predictability in court decisions. By strengthening operational norms, the balance between flexibility and legal certainty can be better maintained. This is crucial to ensure that the law not only responds to social dynamics but also maintains a sense of justice and certainty for the community, particularly in divorce cases within religious courts. (Jamaluddin & Amalia, 2016)

3. Analysis Based on Progressive Legal Theory (Leawoods, 2000)

The concept of progressive law, introduced by Satjipto Rahardjo, stems from the fundamental idea that law must be dynamic and oriented toward human interests. The term "progressive" itself derives from the word "progress," meaning advancement. Therefore, progressive law is defined as law that continually moves forward and avoids being trapped by rigid norms. Within this framework, law is not positioned as an end in itself, but rather as a means to achieve humanitarian values such as justice, prosperity, and happiness. Progressive law places humans at the center of all legal activities. Therefore, the existence of law must be able to provide tangible benefits to human life, rather than limiting or burdening them with rigid rules. This view critiques overly formalistic legal approaches, which adhere solely to regulatory texts without considering the evolving social realities within society. In the context of domestic conflict resulting from religious conversion within Islam, a progressive legal approach provides a broader perspective in understanding the application of divorce norms. The conflicts that arise are not merely superficial in the form of arguments, but often involve deep ideological differences. These differences can impact almost every aspect of domestic life, from religious practices to child-rearing patterns. (Mahdi et al., 2005).

A legal approach that focuses solely on formal aspects, such as the presence or absence of arguments, is inadequate to capture the complexity of the conflict. Therefore, a more substantive approach is needed that examines the actual impact of the conflict on the continuity of the household. In this regard, progressive law encourages the assessment of grounds for divorce to be based not only on the fulfillment of textual normative elements. Through this approach, judges are required to understand the social and psychological context underlying the conflict between husband and wife. Conversion to a different religious denomination can lead to fundamental incompatibilities, particularly when it concerns the basic values embraced in family life. This incompatibility has the potential to undermine the harmony and purpose of marriage itself.

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Progressive law views the law as not static, but rather constantly evolving. The law must be able to adapt to changes occurring in society. Therefore, if existing legal norms are unable to accommodate certain social phenomena, courage is needed to undertake more contextual interpretations or even legal reform. (Mertokusumo, 1999).

In relation to divorce due to ideological conflict, this approach allows judges to interpret the norm of "continuous disputes and quarrels" more broadly. It is not limited to visible physical or verbal conflicts but also encompasses latent ideological tensions that significantly impact marital relations. This view also critiques the legal positivist approach, which views law as a closed system that must be applied rigidly. In progressive law, law cannot be separated from the social realities that underlie it. Instead, law must be able to respond to societal needs flexibly and adaptively. The progressive legal approach also aligns with the concept of responsive law, which places social goals as the primary orientation of law. From this perspective, legal norms are viewed not only from a textual perspective but also in terms of the goals they seek to achieve. These goals include maintaining order, justice, and well-being in society. (Muchtar, 1993).

In the context of the household, this goal can be interpreted as creating a harmonious and prosperous family life. Therefore, when religious conversions create conflict that disrupts this goal, the situation needs to be assessed substantively. The assessment should not be based solely on whether an argument has occurred; it should also consider the impact of the conflict on the ongoing marital relationship. This approach allows judges to explore the values of justice that exist within society. Judges act not only as "mouthpieces of the law" but also as active interpreters of the law in realizing substantive justice. Thus, the resulting decisions not only meet legal requirements but also reflect a sense of justice. Furthermore, progressive law also provides a foundation for legal development through more contextual interpretation. In situations where legal norms do not specifically regulate a problem, responsive interpretation is crucial to bridging the gap between the law and social reality. (Nasution, 2018).

In relation to conflicts resulting from religious conversion, legal development can be achieved through the formulation of clearer operational parameters. These parameters serve as guidelines for assessing whether a conflict has reached a level that warrants divorce. Thus, legal interpretation is not conducted haphazardly, but remains within a structured framework. This approach is not intended to introduce new, normative grounds for divorce, but rather to clarify the application of existing norms. With more concrete parameters, judges can assess cases more objectively and consistently, thereby reducing the potential for disparity in decisions. (Rahardjo, 2009).

Progressive law also emphasizes the importance of protecting human dignity in every legal process. In the context of divorce, this protection includes the right of every individual to live in a

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harmonious environment free from harmful conflict. Therefore, legal decisions must consider the impact on all parties as a whole. In practice, ideological conflicts in households often have broader implications than ordinary conflicts. These conflicts can affect emotional relationships, family stability, and child development. Therefore, the approach used to assess such conflicts must be more comprehensive. Thus, progressive law provides a strong theoretical foundation for understanding that the application of divorce norms cannot be rigid. A more flexible approach oriented toward substantive justice is needed so that the law can provide appropriate solutions to the problems faced by society. Ultimately, the application of law that is responsive to social dynamics is expected to create a balance between legal certainty and justice. The law functions not only as a regulatory tool but also as a means to achieve a better life for humans, including in the context of resolving domestic conflicts resulting from religious conversion. (Suma, 2004)

4. Embodiment of Regulations in Supreme Court Regulations (Usman, 2001)

In the Indonesian marriage law system, divorce is essentially positioned as a last resort (*ultimum remedium*) that can only be taken when all possibilities to maintain the integrity of the household can no longer be realized. This principle is reflected in the provisions of Article 39 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that divorce can only be carried out before a court hearing after efforts for reconciliation have failed. Furthermore, Article 39 paragraph (2) requires there to be sufficient reasons that the husband and wife will not be able to live in harmony as husband and wife. This norm is then further elaborated in Article 19 of Government Regulation Number 9 of 1975 and Article 116 of the Compilation of Islamic Law, especially letter (f) which regulates disputes and quarrels that occur continuously. Although these normative instruments are formally available, the development of social dynamics shows that conflict in the household does not always present in the form of visible or conventional quarrels. In practice, there are more subtle forms of conflict that have a profound impact, namely conflicts rooted in changes in religious orientation that are ideological in nature. Shifts in religious beliefs and changes in Islamic sects can trigger tensions that are not only personal but also structural, as they affect fundamental aspects of family life, such as religious practices, values, and even child-rearing patterns. In this context, the general formulation of Article 116 (f) of the Compilation of Islamic Law raises operational issues. The phrase "continuous disputes and quarrels" does not provide clear definitions regarding the form, intensity, or character of the conflict in question. As a result, ideological conflicts that do not always manifest in open disputes may not be properly identified within the existing legal framework. This situation indicates the need to strengthen norms through more concrete and structured interpretative parameters. (Zainal Asikin, 2014).

The strengthening of these parameters is not intended to broaden or add to the normative grounds for divorce, but rather to concretize existing norms to be more responsive to the

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complexity of contemporary domestic conflict. From the perspective of legal certainty, as argued by Maria SW Sumardjono, a norm must not only be formally available but also have a sufficient level of operationality to be effectively and consistently applied. Thus, clarity of indicators is crucial to ensure that norms do not remain abstract. Empirically, conflicts stemming from religious conversion have distinct characteristics compared to domestic conflicts in general. These conflicts are ideological in nature because they involve beliefs considered fundamental by each party. Furthermore, these conflicts tend to be latent but recurring, so they are not always visible in the form of verbal or physical altercations, but rather manifest in attitudes of rejection, emotional tension, and changes in patterns of interaction within the family. (Abdurrahman, 1992).

In many cases, marital disharmony resulting from ideological conflict manifests itself in rejection of a partner's religious practices, negative labeling of certain beliefs, and restrictions on religious relations within the family. These conflicts often extend to differing views on children's education, ultimately creating prolonged tension in marital relations. This suggests that the narrow definition of "constant fighting" is inadequate to capture the complexity of such conflicts. Therefore, a framework of operational parameters is needed to assist judges in identifying ideological conflicts that have reached a level that impacts the continuity of the household. These parameters must be carefully designed to avoid making differences of faith an automatic basis for divorce, but rather to emphasize the real impact they have on the purpose of marriage. (Ayyub, 2002).

Within the framework of the national legal system, these operational parameters are more appropriately placed in the Supreme Court Regulation (Perma) instrument. Normatively, the existence of the Perma is recognized in the statutory regulatory system as stipulated in Article 8 paragraph (1) of Law Number 12 of 2011. This indicates that the Perma has legitimacy as a regulatory instrument that can be used to fill the gaps or unclear norms in judicial practice. In terms of function, the Perma has the character of an internal and operational regulation, which is intended to provide guidelines for judicial officials in carrying out their duties. In this context, the Perma becomes an appropriate means to formulate interpretative parameters without having to change the substantive norms in the law. Thus, the flexibility of the legal system is maintained, while legal certainty can be increased through standardization of assessments. The Supreme Court's authority in forming Perma also has a clear legal basis, particularly in Article 79 of Law Number 14 of 1985 concerning the Supreme Court. This provision provides space for the Supreme Court to regulate matters necessary for the smooth administration of justice. In the context of ideologically conflict-based divorces, this authority can be used to formulate interpretive guidelines that clarify the application of Article 116(f) of the Compilation of Islamic Law. Furthermore, the Supreme Court Regulation also plays a role in creating uniformity in judicial practice. Without clear guidelines,

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the assessment of domestic conflict relies heavily on the subjectivity of judges, potentially leading to disparities in decisions. With operational parameters, judicial discretion remains, but within a more focused and legally accountable framework. (Fenwick & Wrba, 2016).

Besides being interpretive, these operational parameters can also accommodate a preventative approach in assessing domestic conflict. This approach allows judges to not only assess conflicts that have reached a destructive stage but also consider the potential for escalation based on the existing facts. Thus, the law is not merely reactive but also has a more proactive protective function. This preventative approach is based on the understanding that ideological conflict in the household tends to develop gradually. In the initial stages, the conflict may only be a minor difference of opinion, but over time, it can develop into a deeper conflict if not managed properly. Therefore, it is important to identify early indicators of disharmony that indicate the potential for conflict escalation. (Hadikusuma, 2003).

These indicators include a decline in communication quality, an increase in the frequency of disagreements, and the emergence of intolerance toward one's partner's religious practices. Furthermore, conflict can be characterized by the depth of ideological differences that touch on fundamental aspects of religious life, as well as their impact on family functioning, such as disruptions to joint decision-making and child-rearing patterns. The failure of internal conflict resolution efforts is also an important indicator in assessing the seriousness of the conflict. If various attempts at deliberation or mediation fail to produce significant improvements, this indicates a high level of resistance to peaceful resolution. Under such conditions, the conflict is no longer temporary but has developed into a structural problem within the household. (Hart, 1994).

Furthermore, the parameters also need to consider any indications that it is impossible to live in harmony rationally. This assessment is not based on speculative assumptions, but rather on the facts developing in the parties' relationships, such as uncompromising attitudes, a loss of mutual respect, and the absence of realistic common ground in living together. By fulfilling these indicators, conflicts resulting from religious conversion can be understood as part of a more substantive "continuous dispute and quarrel." This approach does not change existing legal norms, but rather enriches their interpretation to better align with the evolving social realities of society. The existence of these operational parameters ultimately serves as a bridge between abstract norms and their application in concrete cases. The norms in the Compilation of Islamic Law retain their flexibility but gain a higher level of certainty because they are supported by clear and measurable indicators. Thus, the judge's discretion is maintained, but no longer in a state of complete freedom and directionlessness. More broadly, the integration of legal certainty and a progressive approach in the formulation of these parameters demonstrates that the two need not be at odds. Legal certainty can be achieved through clear indicators, while substantive justice is maintained through

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the judge's ability to assess each case contextually. With this construction, the law functions not only as a regulatory tool but also as a protective instrument that adapts to the dynamics of social life. (Handayani, 2022)

5. Implications in the Notary Sector

Within the framework of Indonesian civil law, legal relationships between individuals are not only shaped by coercive public norms, but also through private instruments that provide space for parties to regulate their interests independently. Agreements are one of the main instruments in this context, including in the realm of family law through marriage agreements. The presence of a notary public as a public official plays a crucial role in translating the parties' wishes into an authentic deed with full evidentiary force, making the notarial aspect relevant when discussing potential domestic conflicts. Normatively, the existence of a marriage agreement is recognized in Law Number 1 of 1974 concerning Marriage, specifically Article 29, which provides space for prospective husbands and wives to enter into an agreement before or during the marriage. This provision was later developed through Constitutional Court Decision Number 69/PUU-XIII/2015, which extended the timeframe for making such agreements to include the duration of the marriage. This development demonstrates the flexibility of the law in accommodating the needs of the parties. (Jamaluddin & Amalia, 2016).

In practice, marriage agreements generally focus on the regulation of assets, both inherited and jointly acquired. However, doctrinally, their scope is not limited to this aspect, but can also include the regulation of the rights and obligations of husband and wife as long as they do not conflict with the law, public order, and morality. This reflects the function of the agreement as an instrument that is not only protective, but also preventative in maintaining the stability of family relationships. The authority of a notary to create an authentic deed is affirmed in the Notary Law, which legitimizes notaries to document various legal acts in the form of a deed. This authentic deed has perfect evidentiary force as stipulated in Article 1868 of the Civil Code, making it a very important piece of evidence in the event of a future dispute. (Leawoods, 2000).

When linked to the phenomenon of religious conversion within a household, the issue arises regarding the limits of its regulation within a marriage contract. Constitutionally, freedom of religion is a right that cannot be restricted through private agreements. Therefore, clauses that directly prohibit conversion or impose sanctions for such changes have the potential to conflict with public order and are legally ineffective. Nevertheless, marriage contracts can still accommodate relational aspects arising from differences in religious orientation. The parties can establish agreements regarding children's education patterns, conflict resolution mechanisms, and commitments to respect each other's religious practices. Such arrangements align with the principle of freedom of contract, which allows the parties to determine the content of the agreement as long



as it does not violate the law. From a notarial perspective, drafting such clauses requires careful consideration. Notaries not only function as registrars but also have the responsibility to ensure that the contents of the deed do not conflict with applicable legal provisions. This role places notaries in the role of ensuring the legality of the substance of the agreement by providing legal counsel to the parties. (Mahdi et al., 2005).

The phenomenon of conflict resulting from religious conversion also demonstrates the limitations of agreements in regulating ideological aspects. Agreements are more effective in regulating concrete and material matters, while aspects of belief have a subjective dimension that cannot be fully controlled through contractual mechanisms. In this context, the function of agreements is more appropriately positioned as a means of conflict mitigation. Furthermore, the existence of a prenuptial agreement can play a role in strengthening evidence in the event of a dispute. A pre-existing agreement can serve as an indicator to assess whether the conflict has persisted, particularly when the agreed-upon resolution mechanism is not functioning as intended. This adds value to the agreement in the context of evidence in court. Furthermore, prenuptial agreements also contribute to increasing legal certainty, particularly in conditions of general and open norms. By providing more concrete regulations regarding the relationship between husband and wife, agreements can help clarify the parties' expectations. Within this framework, notarial practice plays a role in building certainty and order in family legal relations. (Mertokusumo, 1999)

4. CONCLUSION

The focus of the assessment is on the impact on the continuity of household relations, not on the conversion itself. However, this norm has an open-textured character that leaves judges open to broad interpretation, potentially leading to inconsistent decisions and legal uncertainty. Therefore, a more operational assessment framework is needed to guide judges' discretion in assessing the concrete circumstances of each case. In this context, a preventive approach becomes relevant, namely by not simply waiting for the conflict to reach a destructive stage but also considering early indications of disharmony that could rationally develop into irreconcilable conflict. In this context, operational parameters include indications of disharmony, conflict escalation, the depth of ideological differences, the impact on family functioning, failure to resolve, and the impossibility of rational harmony, which serve as instruments for concretizing the norm. Theoretically, this construction aligns with the principle of legal certainty because it reduces the incompleteness of the norm and reflects progressive law that is responsive to social dynamics. The formulation of these parameters is most appropriately placed in a Supreme Court Regulation as an interpretive guideline for judges. Thus, the Supreme Court Regulation functions as an instrument to bridge the need for legal certainty with the flexibility of judges' assessments, while

simultaneously strengthening the consistency and quality of decisions in the religious court environment. (Nasution, 2018)

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