

Review of Islamic Law Against Reconciling *Boupah* After Triple Divorce

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ABSTRACT

This research departs from two sub-districts, namely Sungai Beremas and Koto Balingka, sub-districts related to the reconciliation of a husband and his wife who has been divorced three times. In Islam, Allah regulates everything, including the rules of the permissibility of reconciliation. In triple talaq or Bain Kubra, a man is forbidden to reconcile with his wife unless the wife has remarried someone else and has mixed, then has been divorced, and her iddah period has expired, and then the first husband may marry her return. However, this rule does not apply to some people in Sungai Beremas and Koto Balingka sub-districts. The research method used in this study is a normative approach. The results of the study revealed that referring to *boupah* after being divorced three times refers to a husband who has divorced his wife three times, by which the husband must pay another man to marry his wife first with certain fees and agreements. The agreement between the two is that the husband and the man who marries his wife promise not to interfere with it and only marry and then divorce her. As for the review of Islamic law regarding the *boupah* reconciliation event, it is forbidden and considered an act prohibited by religion because it is playing with God's law.

Keywords: Three Divorce, Referto, Islamic Law, *Boupah*

ABSTRAK

Penelitian ini berangkat dari dua kecamatan yaitu Kecamatan Sungai beremas dan Koto Balingka berkaitan dengan rujuknya seorang suami dengan isterinya yang sudah ditalak tiga. Dalam Islam, Allah mengatur segala sesuatunya termasuk dengan aturan diperbolehkannya rujuk. Di dalam talak tiga atau disebut juga dengan Bain Kubra, laki-laki dilarang untuk rujuk lagi dengan isterinya kecuali isterinya tersebut sudah menikah lagi dengan orang lagi serta telah bercampur, kemudian sudah dicerai dan sudah habis pula masa iddahnya, maka barulah sang suami pertama boleh menikahinya kembali. Akan tetapi, aturan tersebut tidak berlaku pada sebagian orang di kecamatan sungai beremas dan koto balingka. Metode penelitian yang digunakan dalam penelitian ini adalah metode pendekatan normatif. Hasil penelitian mengungkapkan bahwa rujuk *boupah* setelah ditalak tiga ialah rujuk seorang suami yang sudah mentalak isterinya sebanyak tiga kali, dengan cara sang suami harus membayar laki-laki lain untuk menikahi isterinya terlebih dahulu dengan bayaran dan kesepakatan tertentu. Kesepakatan keduanya ialah suami dan laki-laki yang menikahi isterinya tersebut berjanji untuk tidak mencampurnya dan hanya menikah saja kemudian menceraikannya. Adapun tinjauan hukum Islam terhadap peristiwa rujuk *boupah* ini adalah diharamkan dan dianggap sebagai perbuatan yang dilarang oleh agama karena mempermainkan hukum Tuhan.

Keywords : Talak Tiga, Rujuk, Hukum Islam, *Boupah*

INTRODUCTION

According to human nature, God equips humans with sexual tendencies (Khasinah, 2013). It is human nature to be created between men and women who are interested in living together (Atabik & Mudhiyah, 2016). Islam has regulated and provided a legal place for implementing this distribution by human degrees. Marriage is a way to channel human instincts. That way, humans can still fulfil the demands of their lust while maintaining the safety of religion. Marriage is important in human life,

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especially in social life (Gustiawati & Lestari, 2018). By getting married, a person can properly manage the life of his household and offspring through Islamic teachings.

Marriage, according to Islam, is a strong contract or also called *miitsaqan ghaliza*; obeying Allah's commands and carrying them out is a form of worship (Bunyamin & Hermanto, 2017). Affinity in a marriage is a strong affinity in life and human life. This affinity is not only with husband and wife but also with offspring, family, and society (Santoso, 2016). However, many families have been destroyed, and many husband-and-wife relationships have finally decided to divorce. This is because the husband and wife no longer feel that the household is *sakinah, mawaddah* and *warahmah*.

In general, divorce in the view of Islam is a necessity that cannot be avoided, because the nature of the human household is impermanent. There will be many problems, conflicts that cannot be resolved so they decide to divorce (Nasution, 2018). In Islamic fiqh, divorce matters are regulated in Islam in such detail, starting from the procedures for divorcing his wife, the ethics of divorcing his wife and the rights that a wife gets when she is divorced. Likewise with reconciliation, Islam has regulated the rules of reconciliation (Za'im Muhibbulloh, Khoiroh, & Darojad, 2021). This is based on the letter al-Baqarah verse 229 which reads;

الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُفِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُفِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

"Divorce (which can be referred to) is two times. (After that, the husband can) hold well, or let go well. It is not lawful for you to take back something that you have given them unless both (husband and wife) are worried that they will not be able to carry out Allah's laws. If you (the guardian) are worried that both of them are unable to carry out Allah's laws, then both of them are innocent of the fee that (must be) given (by the wife) to redeem themselves. These are the laws of Allah, so do not break them. Whoever transgresses Allah's laws, they are the wrongdoers."

Several previous studies regarding the reconciliation process have been investigated by several previous studies such as Abdullah & Ulfa (2019) Researching the Status of Permits to Refer Husbands during the 'Iddah Period. Mohsi (2018) Regarding the Deconstruction of the Sanction System in Law No. 22 of 1946 concerning Marriage Registration, Talak and Refer Reflections. and research conducted by Nurcahaya (2021) regarding Ruju' and its Problems from an Islamic Perspective. From several previous studies, there has been no research on Referral Boupah, so this research can cover the deficiencies of previous research related to Referral *Boupah* in particular.

While the rules in Islam are in cases of triple divorce, it is not permissible to return to his wife again. This is because it has become Islamic law. However, this differs from what happened in Sungai Beremas and Koto Balingka Sub-Districts, where there were many *boupah* reconciliations after three divorces. This study aims to provide an overview of Islamic law on the *boupah* reconciliation in the Koto Balingka and Sungai Beremas sub-districts.

RESEARCH METHOD

The type of research used is field research or field research supported by library research, namely libraries (Diantha & Sh, 2016; Khoiruddin, 2014). Field research means the data obtained, written and oral, from the research object, while library research means research whose object of study uses data from

books as a data source. The approach used as an analytical tool is a normative approach so that an overview of Islamic law regarding boupah reconciliation after being divorced three times can be clearly identified. This research took place in two sub-districts, namely Sungai Beremas and Koto Balingka sub-districts.

RESULT AND DISCUSSION

Overview of Divorce

Definition of Divorce

Divorce, or what is also known as divorce, is the release of the marriage bond with clear words, namely the words of the husband to his wife, "I will divorce you", or also say in satire Go ", go to your family" (Al-Jazairy, 2017). Divorce comes from the word the, which means to let go. In religious terms, divorce is releasing or dissolving marital relations (Muhsin & Wahid, 2021). Meanwhile, according to the term syara' divorce is.

حل ربطة الزواج وإنهاء العلاقة الزوجية

"Removing the marriage rope and ending the husband and wife relationship."

Al-Jaziri defines divorce as relinquishing the marriage bond or reducing the release of the bond by using certain words (Al-Jazairy, 2017). Meanwhile, according to Abu Zakaria Al-Anshari, divorce is releasing the marriage contract with the word divorce and the like (Nasution, 2018).

The definition of talaq in Indonesian is called divorce, while in terms of fiqh, it is called the dissolution of marriage. In reality, divorce harms husbands and wives, not only for both, but the children also feel the impact (Nasution, 2018).

Divorce Terms

For a husband who drops a divorce, he must have the conditions for the party that made the divorce, which is as follows (Nasution, 2018):

1. Balig

According to scholars, those allowed to impose divorce are husbands who have reached puberty and are based on their own choice.

2. Healthy Mind

A condition of common sense is needed by a husband who will drop his divorce on his wife. That way, a husband in a state of madness does not legally impose divorce on his wife. As the words of the Prophet Muhammad SAW

كل طلاق جائز إلا طلق المغلوب على عقله

"Every divorce is permissible except for someone who has no sense."

3. Khiyar

Khiyar is a divorce that is passed in a state of not being forced or based on one's own will. That way, if a husband drops his divorce under forced circumstances due to threats from other people, the divorce is invalid. This is based on the words of the Prophet SAW:

رفع عن أمتي الخطاء والنسيان وما استكرهوا عليه

"Elevated from my ummah mistakes, forgetfulness, and forced.

The conditions for a divorced wife are as follows

1. a wife is still under the protection of her husband's power
2. A divorced wife is a wife who comes from a valid marriage. That is, divorce may not be imposed on a woman who is not a divorcee's wife, or a woman who is no longer his wife because of three divorces, or a woman who is no longer his wife because her marriage has been annulled, or a woman who he divorced before he consummated intercourse, because of this type of divorce. Does not happen in its place, and it has no meaning at all (Al-Jazairy, 2017).
3. Law of Talaq
There are four divorce laws, namely as follows (Rasjid, 2019):
 - a) The law is obligatory if a husband and wife disagree and the two judges handling the case for both of them have deemed it necessary to divorce.
 - b) The law is circumcision if the husband can no longer support his wife or the wife cannot maintain her honour.
 - c) The law is unlawful if divorce is made when the wife is menstruating and the wife is chaste and has been interfered with during that sacred time.
 - d) The law is makruh because that is the original law of divorce.

All kinds of Talak

In Islamic law, there are two types of divorce: divorce in terms of the time of divorce and divorce in terms of the number of divorces (Syaifuddin, 2020). There are two kinds of divorces in terms of the time of divorce. First, divorce sunnah is the permissible or legal divorce, which is then pronounced once and the wife has not had sexual intercourse when she is clean from her period. Second, Bid'ah divorces are divorces that are prohibited or unlawful, that is, when the divorce is dropped when the wife is menstruating, also when the wife is pure from menstruation and then has intercourse with her husband, and it is also classified as *bid'ah* when the husband drops three divorces at once. (Muhammad Syaifuddin, Sri Turatmiyah, & Annalisa Yahanan, 2022).

As for the divorces in terms of the number of divorces, they consist two types of divorces, *raj'i* and divorce *ba'in* (Muhammad Syaifuddin et al., 2022). First, *raj'i* divorce is a divorce that is imposed once by the husband, and the husband can reconcile with his wife, who has been divorced earlier. Second, Talak *ba'in* is a divorce that does not allow them to be reconciled to his wife except by making a new marriage contract. There are also two kinds of divorce *ba'in* divorce *ba'in sugra* and *bain kubro*. *Bain sugra* divorces are one or two divorces imposed on a wife who has not been interfered with. One or two divorces are made at the wife's request by paying *iwad*, or one or two divorces are imposed on a wife who has been interfered with, not on request, nor paying *iwad* after the iddah period expires (Nawawi, 2018). Meanwhile, *ba'in kubro* divorce is a divorce that has been passed three times on his wife and a husband

who has divorced three times may not reconcile with his wife unless the wife has married a man and has had conjugal relations and then a divorce occurs (Muhammad Syaifuddin et al., 2022).

Divorce pronouncement

There are two kinds of pronouncement of divorce, namely: First, divorce shariah, which is pronounced clearly so that it is no longer interpreted, such as "I divorce you or I divorce you". Meanwhile, the second, namely *talaq kinayah*, is a divorce uttered in words that are not clear or through innuendo, such as "You go home" and so on (Bunyamin & Hermanto, 2017).

Refer to Boupah after being divorced three times in Koto Balingka and Beremas sub-districts

West Pasaman Regency has 19 regencies/cities in West Sumatra. West Pasaman is located at 0 03' North Latitude - 0 11' South Latitude and between 99 10' -100 04' East Longitude with an area of around 3,887.77 Km. West Pasaman Regency has 11 sub-districts, including the Koto Balingka sub-district and the Sungai Beremas sub-district.

The word reference in the understanding of society means the return of the wife and husband after her husband divorced (Isnanda & Aksa, 2021). The word Boupah means payment, while the meaning of Rujuk *boupah* is a way for the first husband to pay another man to marry his wife so that the first husband can reconcile with the wife he has divorced three times. After marriage, the paid man must immediately divorce her without having sex. This must be by the agreement, namely only being married without being interfered with, while the payment issued for the agreement between the two is according to the ability of the first husband. This is because the first husband wants to return with his wife, so the husband uses all means to be able to return with his wife.

As for the marriage carried out by the man was carried out in a series, as well as with the *boupah* referral. It was carried out secretly and only known by the family. Not done openly (Gunawan, 2013). This is because her husband does not want to bear the shame of violating the rules of Islamic law. However, people still know this from others but let it go.

In addition, the husband and the man who will marry his wife agree with the two, namely, First, the man must immediately divorce his wife. Second, the man is not allowed to have intercourse with his wife, so after the divorce sentence occurs, the first husband will immediately remarry his wife. In other words, this kind of divorce was premeditated. This means a husband who has divorced his wife three times, then feels remorse and asks someone else to marry his wife, which he pays for himself with an agreement, he cannot have intercourse with her and must immediately divorce her (Interview with Mr Hamidi, Jorong Silawai Timur, on February 2, 2023).

Review of Islamic Law Related to Referring to Boupah After Three Divorces

Everyone who is married then has an unresolved problem between the husband and wife, so he has the right to divorce his wife from one divorce, two divorces, to three divorces (Harahap, 2021). For one and two divorces, the husband may reconcile with his wife before his iddah period, but if his iddah period has expired, he may remarry (Rasjid, 2012). This is based on the word of Allah in the Qur'an in al-Baqarah: 229.

الطَّلَاقُ مَرَّتَيْنِ طَّهْرًا لِمَسَاكِكُمْ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

"Divorce can be referenced twice. After that, you may reconcile in an acceptable way or divorce in a good way."

However, it is different from triple divorce. When a husband has divorced his wife for the third time, he cannot reconcile or return to his wife. If the wife is married to someone else, the second husband also divorces her (Rasjid, 2012). The legal basis is contained in the word of Allah surah al-Baqarah 230.

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ

"Then, if he divorces her (after the second divorce), then she is no longer lawful for him until she marries another husband. Then if the other husband divorces her, then there is no sin for the two (first husband and ex-wife) to remarry if both think they will be able to carry out God's laws."

In the case of the permissibility of remarrying with the first husband, that is, when the woman is already married to another man. The woman has had a relationship like husband and wife. Then the second husband also divorced her, and her iddah period expired. It is permissible to remarry the first husband (Ikrom, 2015). However, the marriage that the two of them entered into was not due to engineering, in the sense that the marriage was carried out at the will of both, truly out of love, not the will of the first husband (Fakhria, 2016). More specifically, the marriage was carried out not to be able to remarry with the first husband but because of the intention and desire to establish a household that is *sakinah*, *mawaddah* and *warohmah*, but for one reason and did not allow the second marriage to last long so they eventually divorced.

In this regard, the case of reconciliation after being divorced three times, which often occurs in the sub-districts of Koto Balingka and Sungai Beremas, is an event that is not permitted by Islam, and even the wrath of Allah SWT. This is based on the hadith narrated by Ahmad, Nasai, and Tirmizi (Rasjid, 2012).

لَعَنَ رَسُولُ اللَّهِ الْمُحَلَّلَ وَالْمُحَلَّلَ لَهُ

"Rasulullah SAW cursed Almuhallil (another husband who made it lawful for his first husband to marry his ex-wife who had been divorced three times) and muhallah-lah (first husband)." (History of Ahmad, Nasai, and Tirmizi).

عن الحسن قال حدثنا عبد الله بن عمر انه طلق امرأته تطليقة وهي حائض ثم اراد ان يتبعها بتطليقتين
آخرتين عند القرأين فبلغ ذلك رسول الله صلى الله عليه وسلم فقال يا ابن عمر ما هكذا امرك الله انك قد اخطأت السنة
والسنة ان تستقبل الطهر فتطلق لكل قرء وقال فامرني رسول الله فراجعتها ثم قال اذا هي طهورت فطلق عند ذلك او
امسك، فقلت يا رسول الله ارايت لو طلقتها ثلاثا اكان يحل لي ان اراجعها؟ قال لا كانت تبين منك وتكون معصية

From Hasan, he said, "Abdullah bin Umar told us that he had divorced his wife by one divorce when she was menstruating and then Abdullah intended to divorce two more divorces during the iddah period. When Abdullah's case was conveyed to Rasulullah SAW, he said, "O Ibn Umar, Allah's command is not that. You have violated the sunnah, which should be divorced during the sacred time. So Abdullah said, "The Messenger of Allah told me to refer to him, so I referred to my wife, then the Messenger of Allah said, If she is pure, divorce at that time, or continue your marriage well. Abdullah asked, O Messenger of Allah, what if I divorce my wife by three divorces? May I refer to him? Rasulullah saw, and he replied, it is not allowed, he is already nain, and you are committing immorality (breaking the law)." (Hadith narrated by Daruqutni)

In the hadith of Rasulullah SAW, it has been emphasized that reconciliation after three divorces violates Islamic law. Thus, *boupah* reconciliation after three divorces in the Sungai Beremas sub-district and the Balingka city sub-district has been deemed to have violated Islamic sharia law and been displeased by Allah SWT because, in essence, marriage is a sacred bond. It cannot be toyed with for any reason (Hafidz, 2022).

In marriage, God forbids the existence of intentions and actions to play with God's law, such as marriage (Syaidun, 2016). Because marriage is Sunnah of Allah It is through marriage that the mixing between the two is halal so that a family that is *sakinah*, *mawaddah* and *warohmah* is created. However, the *boupah* reconciliation in the two sub-districts did not allow the man who married his ex-wife to interfere with or have sex with her. The first husband wanted to get married and then divorce his wife so that the first husband could reconcile or remarry his wife as soon as possible. This act is prohibited and considered to be playing with God's law.

عن ابن عباس ان رسول الله صلى الله عليه وسلم سئل عن المحلل. فقال: لا، النكاح رغبة لادلسة ولا استهزاء
بكتاب الله عز وجل حتى تدوق عسيلته (رواه أبو اسحاق الجرجاني)

From Ibn Abbas, "Rasulullah SAW was once asked about muhallil (blind love marriage), and he replied there should be no deception and should not play with God's law. So you have to feel the little honey (coitus)." (Narrated by Abu Ishaq Al-Jurjani)

Another hadith that intends the same also explains that Abdullah bin Mas'ud said that doing *tahlil* marriage is unlawful. Even Rasulullah SAW cursed the act so that the man and woman are considered to have committed a cursed act (Abdullah & Ahmad Soebani, 2013).

CONCLUSION

Referring to Boupah after being divorced three times that occurred in Koto Balingka and Sungai Beremas sub-districts is a way and reason for a husband to be able to remarry the wife he has divorced for the third time. Boupah means payment, which means the first husband deliberately pays another man to marry the wife he has divorced three times with certain agreements and agreements. The agreement is not to be related like husband and wife. This is because in the agreement only married her and was not permitted by the first husband to interfere with it. After being married by the second husband, he must be divorced immediately so the first husband can remarry his wife. The review of Islamic law regarding the boupah reconciliation event is an event that Islam does not permit. Even Allah SWT is angry because it is considered that the marriage that was carried out was engineered so that the first husband could remarry his wife.

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