

ABSTRACT

This is a normative study on the competence of the *Shari'ah* Court in examining and deciding divorce case in which one party converts to another religion outside Islam (apostate). This topic is interesting to be studied not only due to the issue of the *Shari'ah* court competence but also the legality of the marriage status. The judge of *Shari'ah* court had different perspective in making the decision. Some of them decided it *astalak ba'in sughro* (divorce) but another decided it as *fasakh* (null and voided). The result of this study show that Marriage Law does arrange the rule on legalization of marriage if one party converts to another religion. In other word, marriage does not declare as null and voided as long as husband or wife do not ask for divorce. On the contrary, Islam Law Compilation arranges this matter as one of the reason of divorce. However, this arrangement differs from the norm of Islamic Jurisprudence at which the marriage is *fasakh*. Therefore, The *Shari'ah* Court which decided *talak raj'i* and *talak ba'in sughro* is not *shari'ah* compliance. The *Shari'ah* Court should decide due to *fasakh* and classify that case on the request of marriage cancellation. This case still becomes the competence of the *Shari'ah* Court as long as the party whose request it is *Muslim*. Nevertheless, the *Shari'ah* Court still proceeded the case though the party whose request it was not *Muslim*. The *Shari'ah* Court should not register the case if it is requested by Non-*Muslim* party and The Law of *Shari'ah* Court procedure needs to clarify the limitation of the competence on inter-faith marriage especially due to one party converts to another religion.

Key words : Competence-Court-Divorce-Apostate