



An Analysis of Islamic Law on the Factors of Breaking the Marriage Bond

Nahar Hasibuan*

Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidempuan

naharhasibuan5@gmail.com

Asridiyani

Universitas Islam Negeri Sunan Gunung Djati Bandung

asridayanilubis99@gmail.com

Abstract

This study aims to analyze the factors that cause the breakup of marriage ties in the perspective of Islamic law. The focus of this research is to examine the types of divorce regulated in Islamic jurisprudence, such as identifying internal and external factors that contribute to the breakup of marital relationships. This study uses a qualitative approach with descriptive analysis methods and literature studies. Primary data are drawn from classical and contemporary fiqh literature, while secondary data include jurisprudence studies, marriage laws in Muslim-majority countries, as well as previous research on the topic. The results of the study show that the factors that cause the breakup of marriage bonds in Islamic law include differences in principles between husband and wife, unresolved conflicts, domestic violence, and violations of marital obligations such as alimony or fidelity. External factors such as the influence of the modern social and cultural environment also play a role in increasing the divorce rate. From the perspective of Islamic law, the solution to overcome the breakdown of marriage lies in the emphasis on the mediation and deliberation process, as well as preventive efforts through pre-marital education. This study provides suggestions for future researchers to conduct a more in-depth analysis of the implementation of Islamic law in the context of divorce in countries with pluralistic legal systems.

Keywords: *Islamic Law; Factors of Breaking; Marriage*

Abstrak

Penelitian ini bertujuan untuk menganalisis faktor-faktor penyebab putusnya tali perkawinan dalam perspektif hukum Islam. Fokus penelitian ini adalah mengkaji jenis-jenis perceraian yang diatur dalam fikih Islam, seperti mengidentifikasi faktor internal maupun eksternal yang berkontribusi terhadap putusnya hubungan perkawinan. Penelitian ini menggunakan pendekatan kualitatif dengan metode analisis deskriptif dan studi pustaka. Data primer diambil dari literatur fikih klasik dan kontemporer, sementara data sekunder mencakup kajian yurisprudensi, undang-undang pernikahan di negara mayoritas Muslim, serta penelitian-penelitian sebelumnya terkait topik ini. Hasil penelitian menunjukkan bahwa faktor-faktor penyebab putusnya tali perkawinan dalam hukum Islam mencakup perbedaan prinsip antara suami dan istri, konflik yang tidak terselesaikan, kekerasan dalam rumah tangga, serta pelanggaran terhadap kewajiban pernikahan seperti nafkah atau kesetiaan. Faktor-faktor eksternal seperti pengaruh lingkungan sosial dan budaya modern juga berperan dalam meningkatkan angka perceraian. Dari perspektif hukum Islam, solusi untuk mengatasi putusnya tali perkawinan terletak pada penekanan terhadap proses mediasi dan musyawarah, serta upaya preventif melalui pendidikan pra-nikah. Penelitian ini memberikan saran kepada peneliti berikutnya untuk melakukan analisis yang lebih mendalam mengenai implementasi hukum Islam dalam konteks perceraian di negara-negara dengan sistem hukum pluralistik.

Kata Kunci: *Moderasi; Hukum Islam; Asia Tenggara*

Introduction

Marriage is one of the sunnatullah that applies to all His creatures, both humans, animals and plants. Marriage is the nature and necessity of a creature for its survival, marriage as a

*Corresponding author

human nature is the desire to have offspring that can only be achieved through sexual relations between a man and a woman. The relationship in question must be a relationship that is carried out in accordance with the law of Allah as a Muslim and national law, so this relationship must be based on a valid bond, namely marriage.¹ According to the language of marriage, it is *al-dhammu* or *al-tadakhul* which means gathering or entering each other.² According to Expert Usul, *nikah* means intercourse, and metaphorically it is a contract that legalizes sexual relations between men and women.³ This is the opinion of the Hanafiyah Proposal Expert. Syafi'iyah Usul Expert said that *nikah* was originally a contract that legalized sexual relations between men and women. Meanwhile, according to the meaning of *majazi* (metaphoric) is to have sex. Abu Qasim al-Zayyad, Imam Yahya, Ibn Hazm and some of the proposers of Abu Hanifah's companions argue that *nikah* contains two meanings at once, namely as a contract and sexual intercourse.⁴

Psychologically, everyone who forms a family through a legal institution of marriage gets comfort in meeting their psychological needs.⁵ There they can pour their hearts out to their partners and there is also the possibility to get certainty of the continuation of their offspring.⁶ In the view of the law. Marriage is a bond between a man and a woman to form a happy and eternal household or family based on the One God (Law No. 1/1974, Article 1)., The purpose of marriage itself can be developed into five, obtaining and carrying out offspring.⁷ Fulfilling human desires to channel their orgasm and shed their affection. Fulfilling religious calls, preserving oneself from evil and corruption. Fulfill the seriousness to be responsible for accepting rights and obligations. Building a household to form a peaceful society based on love and affection. Getting married also creates a sense of *mawaddah*, love for the family. Every human being has the desire to love and love the person he covets. If this love is not channeled to a specific person, then he will look for other objects or other things to spill his love, by marrying a couple to get love that is expressed and channeled correctly, not only to his wife and children in the future, but also to the wife's family and relatives. Therefore, in Islamic teachings, the existence of a marriage guardian is required, this shows that marriage is not just a husband and wife but when two families meet each other, there is a place to pour out the love that has become human nature.

¹ Zulfa Annajah Zelviana dan Sadi Eren, "THE CONCEPT OF TOLERANCE IN MARRIAGE AND FAMILY RELATIONS ACCORDING TO ISLAM," *El-Furqania: Jurnal Ushuluddin dan Ilmu-Ilmu Keislaman* 10, no. 02 (2024), <https://ejournal.kopertais4.or.id/madura/index.php/elfurqania/article/view/7535>.

² Ifham Choli, Etika Nailur Rahma, dan Neneng Munajah, "Marriage and Its Lesson From an Islamic Perspective," *Al-Risalah: Jurnal Studi Agama dan Pemikiran Islam* 15, no. 2 (2024): 532-44, <https://jurnal.uia.ac.id/alrisalah/article/view/3830>.

³ Sebnem Akipek Öcal dan Ahmet Arslan, "Overcoming the Non-Acceptance of Civil Marriages in Türkiye The Biggest Problem of the Legal Reception of the Swiss Civil Code," *European Review of Private Law* 32, no. 5 (2024), <https://kluwerlawonline.com/journalarticle/European+Review+of+Private+Law/32.5/ERPL2024045>.

⁴ Fadhilah Bardan, "Marriage Practices From Syafi'iyah Fiqh Perspective," *Jurnal Al-Fikrah* 12, no. 2 (2023): 219-31.

⁵ Bruce C. Hafen, "The constitutional status of marriage, kinship, and sexual privacy: Balancing the individual and social interests," *Michigan Law Review* 81, no. 3 (1983): 463-574, <https://www.jstor.org/stable/1288509>.

⁶ Elin Granholm Valmari dkk., "How police officers juggle work, a life partner, and kids," *Frontiers in Psychology* 14 (2023): 1178314, <https://www.frontiersin.org/articles/10.3389/fpsyg.2023.1178314/full>.

⁷ Nurul Mauludi Buhun dan Fatimawali Fatimawali, "Mature Marriage Age Gives Birth to a Quality Generation," dalam *Proceeding of International Conference on Islamic and Interdisciplinary Studies*, vol. 3, 2024, 376-81, <https://jurnal.uindatokarama.ac.id/index.php/iciis/article/view/3709>.

In living a domestic relationship, a couple must want a harmonious relationship and free from conflict but often that hope has to be extinguished in the middle of the road, many couples who feel incompatible with each other due to several factors and finally make the marriage they have been living so far have to run aground in the middle of the road or we are familiar with the term "divorce". The term divorce juridically means the breakup of marriage that causes the breakup of the relationship as husband and wife or the cessation of men-bini (husband and wife) as interpreted in the Great Dictionary of Indonesian. As it develops, it is necessary to handle a special divorce which can only be done in front of the court after the court concerned has tried and failed to reconcile the two parties.⁸ The number of divorce cases that hit married couples today is a lesson for us to be more selective and introspective in choosing a partner to form and establish a happy household.

For Muslims, the rules regarding divorce are a relatively big obstacle or at least still an unanswered question mark, because it is felt that it is not in line with the legal awareness that has been developing, namely the rules of Fiqh.⁹ Divorce according to jurists is called talaq or firqoh. Talaq is taken from the word itlaq, meaning to let go, or leave. While in sharia terms, talaq is the release of the marriage bond, or the destruction of the marital relationship. Islam has regulated everything in the Quran. Not only rules in worship, such as prayer, zakat, fasting, hajj and others, Islam also gives rules to humans in their social lives. In fact, the Quran also regulates manners and rules in marriage, including how to solve unresolved problems in the household. Islam does allow divorce, but Allah hates it. That means, divorce is the last option for married couples when there is no other way out. In Surah al-Baqarah verse 227 it is stated, "And if they are determined to divorce, then indeed, Allah is Hearing, Knowing." This verse about divorce law continues in Surah al Baqarah verses 228 to 232.

Although in general the divorce regulated by Islamic law and national law is different, on the other hand, we as religious people also cannot be separated from the obligations contained in legal regulations, both Islamic and national law, so that our rights as a people can be realized properly. Juridical and cultural marriage and divorce that apply to a society or nation cannot be separated from the influence of culture and environment where the society is located and the association of its society.¹⁰ Strictly speaking, marriage and divorce can be influenced by the knowledge, experience, beliefs, and religions embraced by the people concerned, for example, the marriage and divorce laws that apply nationally in Indonesia are not only influenced by laws that are derived from the teachings of the religions embraced by the Indonesian people in Islamic, Christian, Catholic, Buddhist, Hindu and Confucian laws, but also influenced by western marriage culture, thus resulting in a variety of marriage laws and cultures that developed in Indonesia. So, even though the Indonesian nation currently has a national marriage law, including the divorce law, there are facts that show that among the Indonesian

⁸ Reza Khojasteh Mehr dkk., "‘Nothing Will Ever Be the Same Again’: The Lived Experience of Reconciliation After Filing for Divorce," *The American Journal of Family Therapy*, 11 Desember 2024, 1–22, <https://doi.org/10.1080/01926187.2024.2436500>.

⁹ Ilyya Muhsin dan Muhammad Chairul Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024): 27–52, <https://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/10522>.

¹⁰ Gusti Yosi Andri dkk., "Marriage legalization: Preserving the customary marriage tradition of the ethnic Chinese community in Cirebon City," *Interdisciplinary Social Studies* 4, no. 1 (2024): 10–20, <https://iss.internationaljournalallabs.com/index.php/iss/article/view/731>.

people it is still valid, not only religious law, but also customary law about marriage and divorce that is different.

Several studies have investigated the factors contributing to the dissolution of marriage from the perspective of Islamic law. These studies provide comprehensive insights into the legal, social, and cultural dimensions that influence the breakdown of marital relationships, as well as the mechanisms outlined in Islamic jurisprudence to address such issues. One prominent study by Syarif Hidayatullah examines the fundamental principles of talaq (divorce), khulu' (divorce initiated by the wife in exchange for compensation), and fasakh (annulment) in Islamic law. The research highlights the procedural requirements and conditions for divorce, emphasizing the significance of reconciliation efforts as a preventative measure.¹¹ Syarif Hidayatullah concludes that the flexibility and justice embedded in Islamic divorce laws aim to balance the rights and responsibilities of both spouses while minimizing the occurrence of divorce.

Another significant contribution is the work of M. S. Anwar dan Fauza Rizki analyze the internal and external factors leading to marital discord. Their findings indicate that financial instability, lack of communication, and societal pressures are among the primary causes of divorce. The study underscores the importance of pre-marital education and counseling as strategies to strengthen marital resilience and reduce divorce rates.¹² Jahid Hossain Bhuiyan, in his research offers a maqasid-oriented perspective on marital dissolution. He argues that divorce laws in Islam should be understood through the lens of their objectives, such as preserving justice, ensuring the welfare of individuals, and maintaining social harmony.¹³ Auda's study bridges the gap between classical Islamic jurisprudence and contemporary realities, advocating for an ethical and balanced approach to addressing marital disputes.

In a comparative analysis, Syaflin Halim explores the gendered dynamics of Islamic divorce laws. He critically examines how the right to pronounce talaq is predominantly granted to men, raising questions about gender equity within Islamic law. Saeed's research highlights the need for reinterpretation of divorce laws in a way that aligns with the principles of fairness and equality while staying true to the objectives of Islamic jurisprudence.¹⁴ Further, a study by Younus investigates the interplay between Islamic legal principles and cultural practices in divorce cases. Their findings reveal that cultural norms often intersect with religious laws, sometimes creating tensions and misunderstandings in the application of Islamic divorce

¹¹ SYARIF HIDAYATULLAH, "ANALYSIS OF THE JUDGE DECISION ON THE DIVORCE OF WOMEN MIGRANT WORKER'S DUE TO SYIQAQ (DECISION NUMBER 8053/PDT. G/2020/PA. IM AND DECISION NUMBER 7217/PDT. G/2021/PA. IM)," diakses 3 Januari 2025, <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/77138/1/MAGFIROH%20-%20FSH.pdf>.

¹² M. S. Anwar dan Fauza Rizki, "Reducing divorce rates: the role of the communicative religious leader in Aceh," *Jurnal Studi Komunikasi* 8, no. 3 (2024): 665-74, <https://ejournal.unitomo.ac.id/index.php/jsk/article/view/8933>.

¹³ Md Jahid Hossain Bhuiyan dan Ann Black, "Freedom of Religion and Religious Diversity," diakses 3 Januari 2025,

¹⁴ Syaflin Halim, Mohammad Najib Jaffar, dan Elma Rida Yanti, "The Communication Patterns of Husband and Wife Couples in Resolving Household Conflicts: Islamic Family Law Perspectives," *KARSA Journal of Social and Islamic Culture* 32, no. 1 (2024): 33-71, <http://ejournal.iainmadura.ac.id/index.php/karsa/article/view/13280>.

principles.¹⁵ This study emphasizes the need to distinguish between cultural practices and authentic Islamic legal guidelines to achieve justice in marital disputes. Lastly, Junus examines the implementation of mediation as a tool to address marital conflicts. The study highlights the effectiveness of mediation in reducing divorce rates by encouraging dialogue and fostering mutual understanding between spouses.¹⁶ Junus research demonstrates how Islamic law emphasizes reconciliation and conflict resolution before divorce becomes an irreversible decision.

Therefore, we can analyze Islamic laws on marriage and divorce through their application in Islamic countries, legal issues in Muslim countries, family issues in general and marriage in particular (which is related to civil law issues) most of them receive a considerable portion of attention, especially if they are associated with the issue of acculturation between Islamic law and local culture which is then formed in a law enacted in a country (known as positive law), including the most crucial issue in a marriage, namely dissolution. There are several reasons that support why this problem has received a large portion of attention in the formation of laws enacted in a country, but in addition to the reasons for different and growing cultures when compared to Arabic culture (classical in particular) which is often referred to as the beginning of the emergence of Islamic law, the tendency of classical Islamic law (fiqh) which is considered to be still a little discriminatory towards the status of women is also a concern in the agenda of the formation of laws and regulations in Muslim countries. In relation to the issue of divorce, in this study, the author tries to see how an Islamic country (or a country with a majority Muslim population) regulates this matter in the form of state legislation (positive law), especially in the aspect of its legal process (procedural law) which takes the object of research in three Muslim countries, namely Pakistan, Egypt and Indonesia. In this descriptive-comparative research, the author will also try to see how sociological and historical factors affect the formation of laws in each of these countries, including the influence of classical laws (fiqh), which the author will then compare by looking for the location of the similarities and differences between the laws in the three countries.

Method

This study uses a qualitative approach, this qualitative research method is used to seek a deep understanding of a phenomenon of Islamic law analysis on the factors of marriage bond breakage. This research is qualitative, where the researcher explains and describes the circumstances and phenomena that occur more clearly.¹⁷ The subjects in this study are scientific journals and other sources that can be accounted for. The data used in this paper are sourced from books, articles, and classic texts which are then verified into a paper that contains an analysis of Islamic law on the factors of breaking the marriage bond. The focus of the

¹⁵ IQRA Younus, "Decision-Making in Complex Environments: A Study of Women Entrepreneurs in Pakistan" (PhD Thesis, Doctoral dissertation, Bilkent University, 2023), <https://repository.bilkent.edu.tr/bitstreams/3c7e84e4-5d49-4f95-a698-4cf118201c0f/download>.

¹⁶ Nirwan Junus dkk., "Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures," *Jambura Law Review* 6, no. 1 (2024): 183–205, <https://ejournal.ung.ac.id/index.php/jalrev/article/view/19370>.

¹⁷ Audrey Alejandro dan Longxuan Zhao, "Multi-Method Qualitative Text and Discourse Analysis: A Methodological Framework," *Qualitative Inquiry* 30, no. 6 (Juli 2024): 461–73, <https://doi.org/10.1177/10778004231184421>.

problem that will be discussed in this study is the analysis of Islamic law in handling divorce and its impact on children. This research was carried out in November 2024. The breakup of the marriage bond due to the will of the husband or wife or both due to disharmony stemming from the non-implementation of the rights and obligations as husband or wife as they should be according to the applicable marriage law. For this reason, it is necessary to investigate what are the factors that cause the breakup of the marriage cord.

In collecting data, literature review is used to obtain valid data and support the researcher's opinion. The instruments in this study are documents, books, journals, articles, and things that are considered challenging to be used in this research. Researchers collect data by reading a number of documents related to the research.¹⁸ This literature study was carried out to deepen what was researched. In this case, the researcher will provide an explanation of the analysis of Islamic law on the factors of the breakup of the marriage bond by conducting analysis and review on various written sources that are consistent and support this research. This analysis is very important to do for the sake of the truth of the research carried out.

Result and Discussion

Factors for the Breakup of the Marriage Bond Leads to Islamic Law

Divorce in Fiqh terms is called "talaq" which means "untie, cancel the agreement". Divorce in fiqh terms is also often called "furqah", which means "to get divorced", which is "the opposite of gathering". Then the two terms were used by jurists as one term meaning "divorce of husband and wife". In the Compilation of Islamic Law in article 113, it is stated that a marriage can be dissolved due to death, divorce, court decision. In article 11 it is explained that: "The breakup of a marriage caused by divorce can occur due to talaq or based on a divorce lawsuit. Furthermore, in article 115 that divorce can only be done in front of a Religious Court session after the Religious Court has tried and failed to reconcile the two parties. If divorce is a path that must be taken for a household that has been built intact before and can no longer be maintained for a while. Islam does not prohibit a husband from divorcing without any procedure that must be passed, if the husband has uttered the words of divorce either sarikh (clear) or kinayah (sarcasm) with the intention of divorce, then the divorce will fall on his wife.¹⁹ Because in Islamic teachings or fiqh, the issue of divorce is a matter between husband and wife alone, it does not require an agency and evidence that there has been a divorce between husband and wife, such as the existence of a divorce certificate or other written evidence.

The same thing is also with customary law or customs in society, that a divorce is not required to have evidence or other deeds as formal evidence of a divorce between husband and wife in a household.²⁰ Furthermore, in the custom of the community, divorce is purely the

¹⁸ Bui Thanh Khoa, Bui Phu Hung, dan Mohsen Hejsalem Brahmi, "Qualitative Research in Social Sciences: Data Collection, Data Analysis and Report Writing," *International Journal of Public Sector Performance Management* 12, no. 1/2 (2023): 187–209, <https://doi.org/10.1504/IJPSPM.2023.132247>.

¹⁹ Kamarudin B. Ahmad, *The qualifications and role of the Qadi in Kedah, Malaysia* (University of St. Andrews (United Kingdom), 1993), <https://search.proquest.com/openview/0b5b31e80534081b01dd5dcc8f2b89ab/1?pq-origsite=gscholar&cbl=2026366&diss=y>.

²⁰ Jane Rutheford, "Duty in divorce: Shared income as a path to equality," *Fordham L. Rev.* 58 (1989): 539, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/flr58§ion=30.

husband's right, not the right of a certain agency or from the existence of formal juridical evidence. Meanwhile, the laws and regulations have regulated matters related to divorce procedures and matters related to the consequences it causes. Divorce results in the legal dissolution of marriage. Abdul Ghofur Anshoru explained that the breakup of marriage means the end of the marital relationship. The breakup of the marriage is in the form of depending on who actually wants to break up the marriage. In this case there are 4 (four) possibilities. The marriage was broken up by the will of God Himself through the death of one of the husband and wife. The existence of death causes the end of the marital relationship by itself. The breakup of the marriage is due to the will of the husband for a certain reason and his will is stated with certain words. Divorce in this form is called talaq. The marriage is broken up by the wife's will because the wife sees something that wants the marriage to be broken, while the husband does not want it. The will to break up the marriage conveyed by the wife in a certain way is accepted by the husband and continued with his words to break the marriage. The breakup of the marriage in this way is called "khulu".

The factors for breaking the marriage bond according to Islamic law are varied such as death, the death of the husband or wife resulting in the marriage breaking up since death occurs if there are no obstacles to sharia if there are no obstacles to the sharia or husband who is left dead is entitled to the right to inheritance of the deceased inheritance.²¹ What is meant by heritage property is the remaining property after it has been taken to meet the needs of organizing the needs of taking care of the body from bathing to burying it, the purpose of paying off the debts left by the deceased husband or wife, then to carry out the will written by him and within the limit of as much as one-third of the remaining property after being taken for the cost of organizing the body and paying off debts. The wife who was left behind by her husband means that she is living a period of mourning for 4 months and 10 days. In this case, the hadith of the Prophet narrated by the pilgrims except Turmudzi from um Athiyyyah taught, "A woman should not mourn the death of a person for more than 3 days except the death of her husband, (a woman who is left dead by her husband) should mourn for 4 months and 10 days, during the time of mourning she should not wear clothes that are mourned, except Yemeni clothes. It should not be blind, use perfume, paint nails and comb unless it is pure from menstruation, it can wear fragrances by burning hundreds.

In Islamic law, the right to pronounce talaq is granted to the husband, based on the rationale that men, in general, are believed to possess a greater capacity for rational decision-making and deliberation. This consideration stems from the perception that men are more likely to weigh the consequences of divorce against the benefits of maintaining the marital bond.²² The assumption is that a husband will take more time to think critically about the implications of divorce, whereas a woman is traditionally viewed as more prone to emotional decision-making. By entrusting the right of talaq to the husband, Islamic law aims to reduce the likelihood of impulsive divorces and ensure that such a significant decision is made with caution and responsibility.

²¹ Alex Kusmardani, "The Dynamics of Divorce in Indonesian Muslim Families," *Daengku: Journal of Humanities and Social Sciences Innovation* 4, no. 5 (2024): 739-52, <https://jurnal.ahmar.id/index.php/daengku/article/view/2756>.

²² Teddy F. Matemu, "Factors influencing divorce in Tanzania" (PhD Thesis, Moshi Co-operative University (MoCU), 2023), <http://41.59.211.104:8080/xmlui/handle/123456789/966>.

Another significant factor in granting talaq rights to the husband is the financial and moral responsibility he bears in the aftermath of divorce.²³ A husband is obligated to provide alimony (nafaqah) during the wife's iddah period (waiting period) and a parting gift known as mut'ah to ease the wife's transition after separation. These responsibilities are designed to act as a deterrent, encouraging the husband to consider the economic and emotional consequences of his decision before pronouncing talaq. This financial burden, coupled with the societal and moral expectations placed on men as providers, reinforces the importance of treating divorce as a last resort rather than a casual decision. Thus, the allocation of the talaq right to the husband serves multiple purposes: to safeguard the stability of the marital institution, to encourage deliberate and responsible decision-making, and to ensure the protection and welfare of the wife in case the marriage ends. While this approach is rooted in traditional gender roles and societal structures, it reflects an effort to balance individual rights with the collective well-being of the family unit. However, such practices and assumptions also invite contemporary discussions on gender equity and the evolving dynamics of marital relationships in modern contexts.

However, this does not mean that wives are not given a way to prioritize separation from their husbands if the situation is very urgent. For example, a wife is treated mistreated by her husband, her rights are not cared for, and so on until she feels that she is no longer able to be together and live like a wife. In this case, Islam provides a way for the wife to file a lawsuit with the judge to be divorced from her husband. According to the opinion of the scholars of the Hanafi madhhab, it is possible for a wife to divorce herself from her husband, if she gets power from her husband or if the marriage contract stipulates that the guarantee of the wife's protection is in the hands of the wife herself.

There are 2 types of talaq, namely talaq raj'i is talaq which still allows the husband to refer to his ex-wife without a new marriage contract. The first and second talaq imposed by the husband against his wife who has been interfered with and not at the request of the wife accompanied by a ransom (iwad) while still in the iddah period.²⁴ Then the second is talaq bain which does not allow the husband to refer to his ex-wife, except by performing a new marriage contract. There are two types of talak bain, namely small bain and big bain, small bain is one or two talaq that is given to the wife who has never been collected, one or two talaq that is imposed at the request of the wife with a ransom payment (iwad) or talaq one or two that is given to the wife who has been collected not at her request and without the payment of iwad, After the expiration of his iddah time, Bain Besar is talaq which has been dropped three times. A husband who has imposed talaq three times should not refer to his ex-wife, except after his ex-wife has married another man and has had sexual intercourse with her new husband.

²³ MUSLIM WOMEN'S RIGHT OF TALAQ, "KNOWLEDGE, ATTITUDE, AND PRACTICE TOWARDS MUSLIM WOMEN'S RIGHT OF TALAQ-E-TAFWEEZ IN LAHORE, PAKISTAN," diakses 3 Januari 2025, <https://www.fccollege.edu.pk/wp-content/uploads/Maliha-Choudhry.pdf>.

²⁴ Agustin Hanapi, Sarina Aini, dan Cut Endang Puspa Sari, "Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 293-308, <http://ejournal.uinmybatusangkar.ac.id/ojs/index.php/Juris/article/view/10712>.

Fasakh which means to cancel or destroy. So fasakh as one of the factors for breaking the marriage bond is to damage or cancel the marriage relationship that has taken place.²⁵ Fasakh can occur for certain reasons, such as marriage between a man and a woman, but it is finally known that the woman still has a marital relationship with another person or is in the iddah period of talaq for another man. Since he found out about it, their marriage was canceled because the legal conditions for marriage were not met. Marriage can also be broken up in another way, namely an oath in which there is a statement of willingness to accept God's curse. This happens when the husband accuses his wife of committing adultery, even though he does not have concrete evidence of adultery committed by his wife. The husband should have been punished for accusing adultery without sufficient witnesses, which is the punishment of 80 times of adultery, but this punishment can be avoided if the husband swears five times, four times he swears, "I testify to Allah that in accusing my wife of adultery, I am on the right side and the child she gives birth to is an adulterous child. not my son," the husband said, the fifth after being advised by the judge. "I am ready to accept Allah's curse when it turns out that I am on the side.

The concept of nusyus in Islamic marital law refers to the act of rebellion or disobedience by either the wife or the husband, resulting in a disruption of the harmony and balance of marital life.²⁶ When nusyus occurs on the part of the wife, it is typically associated with neglecting her responsibilities and duties toward her husband. Examples include leaving the house without her husband's permission (except in cases of necessity or harm), refusing to live together as husband and wife without valid reasons, or behaving in a manner that undermines the marital relationship. Such acts are viewed as violations of the marital contract, which requires mutual respect, cooperation, and commitment from both parties. On the other hand, nusyus can also occur on the part of the husband, and it is equally problematic within the framework of marital obligations. A husband is considered to be in a state of nusyus if he neglects his duties, such as failing to provide financial support (nafaqah), refusing to treat his wife with kindness and fairness, or abandoning his role as a protector and companion.²⁷ In such cases, Islamic teachings emphasize the importance of addressing the issue through dialogue, advice, and reconciliation. The husband should be reminded of his responsibilities and encouraged to return to fulfilling his obligations in accordance with the principles of justice and compassion outlined in Islamic law.

To resolve nusyus, the Qur'an outlines a step-by-step approach, particularly in cases involving the wife, which includes advising her with wisdom and patience, temporarily separating from her in bed as a symbolic gesture of dissatisfaction, and, as a last resort, administering a mild disciplinary action that avoids harm or humiliation. However, in modern interpretations, scholars emphasize the importance of focusing on communication, counseling,

²⁵ ZulFadli Raka Sitompul, Derliana Tanjung, dan Zetria Erma, "Legal Review of Fasakh Divorce Pledge of Divorce Based on Compilation of Islamic Law," *Innovative: Journal Of Social Science Research* 3, no. 4 (2023): 3798-3807, <http://j-innovative.org/index.php/Innovative/article/view/3887>.

²⁶ Maznah Mohamad, "Malaysian sharia reforms in flux: The changeable national character of Islamic marriage," *International Journal of Law, Policy and the Family* 25, no. 1 (2011): 46-70, <https://academic.oup.com/lawfam/article-abstract/25/1/46/914619>.

²⁷ Sanusi Sanusi dkk., "Judges' Ijtihad on Women's Rights after Divorce and its Contribution to Family Law Reform in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity* 3, no. 1 (2023): 1-15, <https://ejournal.radenintan.ac.id/index.php/smart/article/view/16981>.

and mediation to resolve conflicts amicably. Similarly, if nusyus occurs on the husband's part, the wife is encouraged to seek resolution through dialogue and, if necessary, involve trusted family members or mediators to facilitate reconciliation. Ultimately, the concept of nusyus is not intended to favor one party over the other but rather to uphold the sanctity and balance of the marital relationship. It serves as a mechanism to address issues that threaten the stability of the marriage, with an emphasis on mutual accountability and the preservation of family harmony. In contemporary contexts, this concept also invites further discussion on how to adapt traditional interpretations to address the complexities of modern marital challenges, ensuring that justice, respect, and equality remain at the forefront of marital.

Application of Divorce Law in Islamic Majority Countries

In Muslim-majority Pakistan, there is a law that regulates divorce by requiring the husband immediately after the talaq is handed down to write a notice of the occurrence of talaq, then submit it to the chairman of the Arbitration and hand over a copy to the wife. Otherwise, he will be subject to the penalties specified in the ordinance. The chairman of the arbitration board must begin to try to reconcile the two husband and wife within ninety days or 3 months, where talaq only falls after the passage of the ninety days period due to the failure of peace efforts. Of the many reforms and amendments made by the 1961 Ordinance, especially those related to divorce procedures, and the Family Law applicable in Pakistan in general, there is one thing that Ayyub Khan's government actually wants to achieve and is the goal of the Ayyub Khan government in this regard, which is the desire to elevate the dignity and status of women to be more equal (or at least slightly more elevated) with men.

And in the example of the problem in the State of Indonesia, a problem that arises in a marriage such as a divorce case, for example, is considered valid by the state or the law, when the divorce carried out by both parties (Muslim husband and wife) has gone through a judicial process at the institution of the Religious Court (hereinafter referred to as PA). This is in accordance with the main task of the PA as the Judicial Power Enforcement Agency, namely receiving, examining and adjudicating and resolving every case submitted to it, including divorce cases (article 2 paragraph (1) of Law No. 14 of 1970). Regarding the PA itself, the draft law on the PA has existed since K.H. Muh Dahlan and H.A. Mukti Ali were the ministers of Religion. However, the government only responded in 1982 with the issuance of the Decree of the Minister of Justice in 1982 G-164-PR-09.03/1982 which contained a decision to form a team to discuss and draft the plan. Appointed as Chairman is Prof. DR. Bustanul Arifin (at that time still serving as the Deputy Chairman of the Religious Court Environmental Affairs of the Supreme Court), and based on the provisions of Law No. 7 of 1989 concerning Religious Justice, especially articles 1, 2, 49, and general explanation number 2, as well as other applicable laws and regulations, including: Law No. 1 of 1974, Government Regulation No. 28 of 1977, Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, Permenag No. 2 of 1987 concerning guardian judges, the PA is tasked and authorized to provide legal services and justice in the field of family law and marital property for those who are Muslims, based on Islamic Law.

The Compilation of Islamic Law (hereinafter referred to as KHI) which is based on Presidential Instruction (INPRES) No. 1 of 1991, is used as a guideline in resolving marriage

problems, including divorce. In other words, the PA is tasked and authorized to enforce the KHI as a material law that applies to the Islamic community in Indonesia. Keep in mind that the form of divorce in Indonesia consists of divorce, talaq, and divorce. In this case, the right to break or break the marital relationship is not only a monopoly of the husband as often obtained in the doctrine of classical fiqhs, but the wife is also given the right to file for divorce. The thing that tends to aim to raise the rights and status of women is also very evident with the divorce process (talaq) being upgraded to Contentiosa. So far, the process of divorce cases is still predominantly held by the law taught by fiqh books whose nature of the case is similar to Volunter, as a result of which there is a very discriminatory process, the wife is only a spectator without being given the right to defend herself. This case sets aside the upholding of the principles of Audi Et Alteram Partem, and only the husband who has the right to speak in the process. The practice is similar or as if it contains an element of arbitrariness. In a talaq divorce case like this, it seems as if the PA legalized the husband's arbitrariness towards his wife. This should indeed not be appropriate to be maintained if Muslims want to realize equality and order. Therefore, then KHI formulated its definition in article 138 and also in article 66 of Law No. 7 of 1989.

Furthermore, as expressly stated in article 129 of the KHI above, a divorce is considered valid by state legislation, later after the divorce in question has gone through the examination and trial process at the PA institution. Divorces made outside of the PA are considered invalid and non-binding, or often referred to as illegal divorces. And if we look at article 130, then it is very clear that the fall of the divorce is really in the hands or determined by the PA and not by each party (husband and wife). This is of course also different from the opinions of classical fiqh scholars who in the divorce process prioritize the elements of "intention" and "oral speech". It means that talaq or divorce is considered valid when the husband utters the words or words of talaq (either Sarih/clear or Kinayah/satire) with the intention of divorcing his wife even without going through or without a judicial process.

Conclusion

If an unharmonious marriage continues, then the establishment of a peaceful and peaceful household as required by religion is not achieved. In addition, it is also feared that the division between husband and wife will result in a split between the two parties due to several factors including death, talaq, fasakh, and nusyus. Therefore, to avoid the increasingly widespread division of the family, the Islamic religion requires divorce as the last solution for husband and wife who have failed to build their household. In the laws and regulations in a country where the majority of the population is Muslim, marriage and divorce have been regulated in such a way. The source of Islamic law embraced by the majority of the Indonesian population is the revelation of Allah which is poured out in the Qur'an and the sunnah of the Prophet. In Indonesia itself, the Decision of the Religious Court or the District Court is the most effective means to identify divorce law as a subsystem of marriage law, because the court decision itself is the result of the formulation of legal rules. In deciding a divorce case, the judge in the District Court or Religious Court must provide legal arguments that justify the decision. The Court's decision is intended to enforce abstract divorce law norms when what should be in accordance with the divorce law norms does not occur. Islamic law is a direct source of

divorce law for national divorce, without having to go through the process of acceptance first through customary law that applies among customary law communities and Indonesia. Because Islamic Law is in line with customary law and western law (especially BW/Civil Code and HIR/RBg/Civil Procedure Law) as a source and structure that supports the law of the world.

References

- Ahmad, Kamarudin B. *The qualifications and role of the Qadi in Kedah, Malaysia*. University of St. Andrews (United Kingdom), 1993. <https://search.proquest.com/openview/0b5b31e80534081b01dd5dcc8f2b89ab/1?pq-origsite=gscholar&cbl=2026366&diss=y>.
- Alejandro, Audrey, dan Longxuan Zhao. "Multi-Method Qualitative Text and Discourse Analysis: A Methodological Framework." *Qualitative Inquiry* 30, no. 6 (Juli 2024): 461–73. <https://doi.org/10.1177/10778004231184421>.
- Andri, Gusti Yosi, Aris Putra Nandar, Bambang Wibisono, Dharliana Hardjowikarto, Eni Suhaeni, Raymond Angwarmase, dan Murtiningsih Kartini. "Marriage legalization: Preserving the customary marriage tradition of the ethnic Chinese community in Cirebon City." *Interdisciplinary Social Studies* 4, no. 1 (2024): 10–20. <https://iss.internationaljournallabs.com/index.php/iss/article/view/731>.
- Anwar, M. S., dan Fauza Rizki. "Reducing divorce rates: the role of the communicative religious leader in Aceh." *Jurnal Studi Komunikasi* 8, no. 3 (2024): 665–74. <https://ejournal.unitomo.ac.id/index.php/jsk/article/view/8933>.
- Bardan, Fadhilah. "Marriage Practices From Syafi'iyah Fiqh Perspective." *Jurnal Al-Fikrah* 12, no. 2 (2023): 219–31.
- Bhuiyan, Md Jahid Hossain, dan Ann Black. "Freedom of Religion and Religious Diversity." *Diakses* 3 Januari 2025. <https://api.taylorfrancis.com/content/books/mono/download?identifierName=doi&identifierValue=10.4324/9781003458128&type=googlepdf>.
- Buhun, Nurul Mauludi, dan Fatimawali Fatimawali. "Mature Marriage Age Gives Birth to a Quality Generation." Dalam *Proceeding of International Conference on Islamic and Interdisciplinary Studies*, 3:376–81, 2024. <https://jurnal.uindatokarama.ac.id/index.php/iciis/article/view/3709>.
- Choli, Ifham, Etika Nailur Rahma, dan Neneng Munajah. "Marriage and Its Lesson From an Islamic Perspective." *Al-Risalah: Jurnal Studi Agama dan Pemikiran Islam* 15, no. 2 (2024): 532–44. <https://jurnal.uia.ac.id/alrisalah/article/view/3830>.
- Granholt Valmari, Elin, Ulla Nygren, Mehdi Ghazinour, dan Kajsa Gilenstam. "How police officers juggle work, a life partner, and kids." *Frontiers in Psychology* 14 (2023): 1178314. <https://www.frontiersin.org/articles/10.3389/fpsyg.2023.1178314/full>.
- Hafen, Bruce C. "The constitutional status of marriage, kinship, and sexual privacy: Balancing the individual and social interests." *Michigan Law Review* 81, no. 3 (1983): 463–574. <https://www.jstor.org/stable/1288509>.
- Halim, Syaflin, Mohammad Najib Jaffar, dan Elma Rida Yanti. "The Communication Patterns of Husband and Wife Couples in Resolving Household Conflicts: Islamic Family Law Perspectives." *KARSA Journal of Social and Islamic Culture* 32, no. 1 (2024): 33–71. <http://ejournal.iainmadura.ac.id/index.php/karsa/article/view/13280>.
- Hanapi, Agustin, Sarina Aini, dan Cut Endang Puspa Sari. "Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia." *JURIS*

- (*Jurnal Ilmiah Syariah*) 23, no. 2 (2024): 293–308. <http://ejournal.uinmybatusangkar.ac.id/ojs/index.php/Juris/article/view/10712>.
- HIDAYATULLAH, SYARIF. “ANALYSIS OF THE JUDGE DECISION ON THE DIVORCE OF WOMEN MIGRANT WORKER’S DUE TO SYIQAQ (DECISION NUMBER 8053/PDT. G/2020/PA. IM AND DECISION NUMBER 7217/PDT. G/2021/PA. IM).” Diakses 3 Januari 2025. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/77138/1/MAGFIROH%20-%20FSH.pdf>.
- Junus, Nirwan, Mohamad Taufiq Zulfiqar Sarson, Nurul Fazri Elfikri, dan Job Wahidun Muntholib. “Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures.” *Jambura Law Review* 6, no. 1 (2024): 183–205. <https://ejurnal.ung.ac.id/index.php/jalrev/article/view/19370>.
- Khoa, Bui Thanh, Bui Phu Hung, dan Mohsen Hejsalem Brahmi. “Qualitative Research in Social Sciences: Data Collection, Data Analysis and Report Writing.” *International Journal of Public Sector Performance Management* 12, no. 1/2 (2023): 187–209. <https://doi.org/10.1504/IJPSPM.2023.132247>.
- Kusmardani, Alex. “The Dynamics of Divorce in Indonesian Muslim Families.” *Daengku: Journal of Humanities and Social Sciences Innovation* 4, no. 5 (2024): 739–52. <https://jurnal.ahmar.id/index.php/daengku/article/view/2756>.
- Matemu, Teddy F. “Factors influencing divorce in Tanzania.” PhD Thesis, Moshi Co-operative University (MoCU), 2023. <http://41.59.211.104:8080/xmlui/handle/123456789/966>.
- Mehr, Reza Khojasteh, Morteza Najimi, Kelly M. Roberts, dan Mansour Sodani. “‘Nothing Will Ever Be the Same Again’: The Lived Experience of Reconciliation After Filing for Divorce.” *The American Journal of Family Therapy*, 11 Desember 2024, 1–22. <https://doi.org/10.1080/01926187.2024.2436500>.
- Mohamad, Maznah. “Malaysian sharia reforms in flux: The changeable national character of Islamic marriage.” *International Journal of Law, Policy and the Family* 25, no. 1 (2011): 46–70. <https://academic.oup.com/lawfam/article-abstract/25/1/46/914619>.
- Muhsin, Ilyya, dan Muhammad Chairul Huda. “The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women.” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024): 27–52. <https://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/10522>.
- Öcal, Sebnem Akipek, dan Ahmet Arslan. “Overcoming the Non-Acceptance of Civil Marriages in Türkiye The Biggest Problem of the Legal Reception of the Swiss Civil Code.” *European Review of Private Law* 32, no. 5 (2024). <https://kluwerlawonline.com/journalarticle/European+Review+of+Private+Law/32.5/ERPL2024045>.
- Rutheford, Jane. “Duty in divorce: Shared income as a path to equality.” *Fordham L. Rev.* 58 (1989): 539. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/flr58§ion=30.
- Sanusi, Sanusi, Rifqi Qiwiylul Iman, Reza Baihaki, dan Ibnu Farhan. “Judges’ Ijtihad on Women’s Rights after Divorce and its Contribution to Family Law Reform in Indonesia.” *SMART: Journal of Sharia, Traditon, and Modernity* 3, no. 1 (2023): 1–15. <https://ejournal.radenintan.ac.id/index.php/smart/article/view/16981>.
- Sitompul, ZulFadli Raka, Derliana Tanjung, dan Zetria Erma. “Legal Review of Fasakh Divorce Pledge of Divorce Based on Compilation of Islamic Law.” *Innovative: Journal Of Social Science Research* 3, no. 4 (2023): 3798–3807. <http://j-innovative.org/index.php/Innovative/article/view/3887>.
- TALAQ, MUSLIM WOMEN’S RIGHT OF. “KNOWLEDGE, ATTITUDE, AND PRACTICE TOWARDS MUSLIM WOMEN’S RIGHT OF TALAQ-E-TAFWEEZ IN LAHORE, PAKISTAN.” Diakses 3

- Januari 2025. <https://www.fccollege.edu.pk/wp-content/uploads/Maliha-Choudhry.pdf>.
- Younus, IQRA. "Decision-Making in Complex Environments: A Study of Women Entrepreneurs in Pakistan." PhD Thesis, Doctoral dissertation, Bilkent University, 2023. <https://repository.bilkent.edu.tr/bitstreams/3c7e84e4-5d49-4f95-a698-4cf118201c0f/download>.
- Zelviana, Zulfa Annajah, dan Sadi Eren. "THE CONCEPT OF TOLERANCE IN MARRIAGE AND FAMILY RELATIONS ACCORDING TO ISLAM." *El-Furqania: Jurnal Ushuluddin dan Ilmu-Ilmu Keislaman* 10, no. 02 (2024). <https://ejournal.kopertais4.or.id/madura/index.php/elfurqania/article/view/7535>.