



## **From legality to ethics: A Conceptual Effort in Bridging the Gap Between Legal Normative and Social Reality in Divorce**

**Harry Pahlevi Harahap\***

Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidempuan

e-mail: [hpahleviharahap@gmail.com](mailto:hpahleviharahap@gmail.com)

### **Abstract**

*This article aims to examine divorce from the perspective of Islamic law which leads to the need for a paradigm shift from a legalistic approach to an ethical approach. So far, divorce is often understood as a legal action that is legal or illegal, thus ignoring the social reality and the layered impact it causes, especially for women and children. This research departs from anxiety over the distance between epistemological-doctrinal and sociological legal norms of divorce. This research is a qualitative research with a philosophical-paradigmatic conceptual analysis method on the epistemology of Islamic law. The results of the study show that the reduction of divorce in the legality aspect has led to a reduction in the dimensions of ethics, responsibility, and substantive justice in the practice of talaq. The article also asserts that the principles of bi al-ma'rūf and tasrīh bi ihsān need to be positioned as epistemological norms that bridge the gap between normative law and the social reality of divorce. This study concludes that understanding divorce as a socio-legal process requires the involvement of ethical values, empathy, and collective responsibility in each stage of divorce. Thus, Islamic divorce law functions not only as a legal instrument, but also as a conflict resolution mechanism oriented towards substantive justice and social welfare.*

*Keywords: Divorce; Islamic Legal Ethics; Bi al-ma'rūf; tasrīh Bi ihsān*

### **Abstrak**

Artikel ini bertujuan mengkaji perceraian dalam perspektif hukum Islam yang bermuara pada perlunya pergeseran paradigma dari pendekatan legalistik menuju pendekatan etis. Selama ini, perceraian kerap dipahami sebagai tindakan hukum yang sah atau tidak sah semata, sehingga mengabaikan realitas sosial dan dampak berlapis yang ditimbulkannya, terutama bagi perempuan dan anak. Penelitian ini berangkat dari kegelisahan atas jarak antara norma hukum perceraian yang bersifat epistemologi-doktrinal dan sosiologis. Penelitian ini adalah penelitian kualitatif dengan metode analisis konseptual filosofis-paradigmatik terhadap epistemologi hukum Islam. Hasil kajian menunjukkan bahwa reduksi perceraian pada aspek legalitas telah menyebabkan tereduksinya dimensi etika, tanggung jawab, dan keadilan substantif dalam praktik *talak*. Artikel ini juga menegaskan bahwa prinsip *bi al-ma'rūf* dan *tasrīh bi ihsān* perlu diposisikan sebagai norma epistemologis yang menjembatani antara hukum normatif dan realitas sosial perceraian. Kajian ini menyimpulkan bahwa pemahaman perceraian sebagai proses sosial-hukum menuntut keterlibatan nilai etika, empati, dan tanggung jawab kolektif dalam setiap tahap perceraian. Dengan demikian, hukum perceraian Islam tidak hanya berfungsi sebagai instrumen legal, tetapi juga sebagai mekanisme penyelesaian konflik yang berorientasi pada keadilan substantif dan kemaslahatan sosial

Kata Kunci: Perceraian; Etika Hukum Islam; *Bi al-ma'rūf*; *tasrīh Bi ihsān*

\*Corresponding author

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## INTRODUCTION

At the normative level, divorce in Islam is placed as the last resort (*ultimum remedium*) that is permissible when the purpose of marriage such as *sakinah*, *mawaddah*, and *rahmah* can no longer be realized.<sup>1</sup> The Qur'an provides the basic normative framework for divorce by placing it as the final solution that must be taken gradually and ethically.<sup>2</sup> Surah *Al-Baqarah* [2]: 229–231 affirms that *talaq* is limited in number, must be done in a good way (*bi al-ma'rūf*) or end with a dignified release (*tasrīh bi ihsān*).<sup>3</sup> This verse rejects the practice of arbitrary divorce and emphasizes justice on behalf of the wife, including the prohibition of taking back rights that have been given. The principle of protection of women and children is also seen in Surah *At-T alāq* [65]: 1–7 which regulates the period of *iddah*, the obligation of maintenance, residence, and the prohibition of evicting one's wife during the period of *iddah*, as a form of social and psychological security after divorce.<sup>4</sup> However, in contemporary social reality, the practice of divorce often takes place far from the normative spirit.

Many divorces are carried out emotionally, unilaterally, and with little ethical consideration, often even outside the legal mechanism, thus creating legal uncertainty and social vulnerability, especially for women and children.<sup>5</sup> The problem is even more complex when *classical fiqh* norms born in certain social contexts are faced with the dynamics of modern society characterized by changes in family structure, gender relations, economic pressure, and increasing awareness of human rights.<sup>6</sup> In practice, there is still a gap between the ideals of Islamic law that are oriented towards benefits and the implementation of the law at the social and institutional levels.<sup>7</sup> Phenomena such as out-of-court *talaq*, manipulation of divorce reasons, and weak mediation functions indicate a dysfunction between normative law and empirical reality. This condition indicates that divorce law does not always function as an effective instrument of social control, but is often subject to pragmatic interests and power relations in the household.

This research is directed to produce a critical mapping of the epistemological shift of Islamic divorce and its implementation patterns in social reality, and to uncover the

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<sup>1</sup> Dinaryati Rahim, "The Dialectic of Ishlah Principle: Contextualizing Reconciliation on the Dominant Factors of Divorce," *SIGN Jurnal Hukum* 7, no. 1 (2025): 406–20, <https://jurnal.penerbitsign.com/index.php/sjh/article/view/v7n1-23>.

<sup>2</sup> Laura Kalaja, *The Legal Position of Woman in Islamic Law. A Legal-Philosophical Perspective on Sharia And*, 2025, <https://www.researchgate.net>.

<sup>3</sup> Salman Khurshid, *Triple Talaq: Examining Faith* (Oxford University Press, 2018), <https://books.google.com/books>.

<sup>4</sup> Saeed Ismaeel Sieny, *Answering the Controversy Surrounding Islam*, 2016, <http://repository.uin-malang.ac.id/id/eprint/81>.

<sup>5</sup> Rasida Rasida, "IMPLEMENTATION OF POST-DIVORCE PROTECTION OF CHILDREN'S RIGHTS IN PAREPARE CITY FROM AN ISLAMIC LAW PERSPECTIVE" (PhD Thesis, IAIN Parepare, 2025), <https://repository.iainpare.ac.id/id/eprint/10943/>.

<sup>6</sup> AND WORLD PEACE, "ISLAMIC LAW AND SOCIAL DYNAMICS," *Islamic Law and Social Dynamics: Contemporary Perspectives*, CV. Lantern Guitar, 2025, 55,.

<sup>7</sup> Jauhari Jauhari, "The Application of the Principles of Sharia Maqashid in Legislation in Indonesia," *Karimiyah* 4, no. 1 (2024): 1–14, <https://pdfs.semanticscholar.org>.

sociological reasons that influence the distortion of the application of law. In addition, this research is expected to produce a conceptual formulation of a more substantive and benefit-oriented approach to Islamic divorce law, especially in ensuring the protection of the rights of husbands, wives, and children in the midst of the dynamics of contemporary Muslim society. This research is important to critically examine the gap between Islamic divorce law as an ideal norm and its social practice, as well as to formulate a more contextual, fair, and benefit-oriented approach in answering the reality of divorce for Muslims today.

Previous studies on divorce in Islam can generally be classified into two main tendencies, namely normative-doctrinal studies and empirical-sociological studies. In the normative realm, a number of studies such as Novira,<sup>8</sup> Abdul Karim Zaidan,<sup>9</sup> Muhammad Abu Zahrah,<sup>10</sup> and Musthafa al-Siba'i<sup>11</sup> focus on analysis on *the construction of classical divorce* fiqh by examining the concepts of *talak*, *khulu'*, and *fasakh* based on the Qur'an, Sunnah, and the views of *fiqh schools*. These studies have succeeded in explaining the legal framework of Islamic divorce in a systematic and coherent manner, but tend to stop at the level of normative idealism, without deeply linking it to the social dynamics and implementation problems in contemporary Muslim societies.

On the other hand, empirical research has more highlighted the practice of divorce at the community level and religious justice institutions. Among them, Euis Nurlaelawati,<sup>12</sup> Mark E. Cammack,<sup>13</sup> Ratno Lukito<sup>14</sup> on the increasing divorce rate, economic factors and household conflicts, as well as the social impact of divorce on women and children. These studies show that the practice of divorce often takes place outside the ethical spirit of Islamic law, characterized by the rampant out-of-court talaq, weak protection of child support and custody rights, and the suboptimal function of mediation. Although they provide a strong factual picture, these studies generally have not linked their empirical findings to the goals of maqāṣid al-sharī'ah comprehensively. Some recent research has begun to try to integrate normative and sociological approaches by placing maqāṣid al-sharī'ah as an analytical framework for assessing substantive justice in divorce practices, among them Nur Rofi'ah<sup>15</sup> and Siti Musdah

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<sup>8</sup> Nuraeni Novira, "A comparative study of divorce procedures in the Shafii and Hambali schools of thought," *AL-MUNTAQA: Journal of Islamic Studies and Arabic Language* 1, no. 3 (2025): 788–810, <https://journal.stiba.ac.id/index.php/muntaqa/article/view/2432>.

<sup>9</sup> Abdul Karim Zaidan, "Al-Mufashal Fiy Ahkam al-Mar'ah Wa Bayt al-Muslim Fiy Syari'ah al-Islamiyah," *Juz V, Beirut: Muassasah al-Risalah*, 1994.

<sup>10</sup> Muhammad Abu Zahrah, *Al-Ahwal al-Shakhsyiyah* (Dar al-Fikr al-Arabi, 1957).

<sup>11</sup> Mustafa Al-Siba, *Al-Mar'ah Bayn al-Fiqh Wa al-Qanun* (Dar al-salam, 2003).

<sup>12</sup> Euis Nurlaelawati, "Muslim Women in Indonesian Religious Courts," *Islamic Law and Society* 20, no. 3 (2013): 242–71, [https://brill.com/view/journals/ils/20/3/article-p242\\_3.pdf](https://brill.com/view/journals/ils/20/3/article-p242_3.pdf).

<sup>13</sup> Mark E. Cammack and R. Michael Feener, "The Islamic Legal System in Indonesia," *Pac. Rim L. & Pol'y J.* 21 (2012): 13, [https://heinonline.org/hol-cgi-bin/get\\_pdf](https://heinonline.org/hol-cgi-bin/get_pdf).

<sup>14</sup> Ratno Lukito, *Indonesian Legal Tradition*, vol. 1 (the institute for migrant rights press, 2012), <https://digilib.uin-suka.ac.id/id/eprint/29493/>.

<sup>15</sup> Nur Rofi'ah, "Domestic Violence in Islamic Perspective," *Insights: Scientific Journal of Religion and Socio-Cultural* 2, no. 1 (2017): 31–44, <http://103.55.33.27/index.php/jw/article/view/829>.

Mulia.<sup>16</sup> However, these studies are still limited to specific issues, such as the protection of women's rights or family law reform, and have not systematically mapped the gap between ideal norms and social realities and the cultural and institutional factors behind them.

This research offers novelty at the conceptual level by shifting the focus of analysis from formal legality to substantive justice and benefit. Divorce is not understood solely as a legal or illegal act, but as a social-legal process that has a direct impact on the protection of the rights of women and children, family resilience, and the sustainability of the social order. By using *Bi al-ma'rūf* and *tasrīh bi ihsān* as ethical frameworks, this study presents a new perspective in assessing the effectiveness of Islamic divorce laws, namely the extent to which they truly embody the values of justice, protection, and humanity in the context of Muslim societies.

### RESEARCH METHOD

This research uses a type of integrative legal research, which is research that combines epistemological-doctrinal and sociological studies in a balanced and complementary manner. The epistemological aspect of this research lies in the analysis of the construction of divorce law in Islam as formulated in the epistemology of Islamic law which is oriented towards justice and benefit. Meanwhile, the research approaches used include conceptual approaches, and socio-legal approaches. The conceptual approach is used to examine key concepts in Islamic law, such as justice, benefit, as a theoretical framework in assessing divorce norms and practices.<sup>17</sup> The sociological approach aims to understand divorce as a social phenomenon influenced by cultural, economic, gender relations, and legal institutional factors.<sup>18</sup>

The legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an and the Sunnah of the Prophet relating to divorce, as well as Islamic legal thoughts. Meanwhile, tertiary legal materials include academic works, scientific journals, previous research results, and literature that discusses Islamic family law. The technique of collecting legal materials is carried out through library research and document studies, by tracing and reviewing normative sources and relevant scientific literature. The analysis method used is qualitative analysis with a philosophical-paradigmatic pattern.<sup>19</sup> Philosophical-paradigmatic analysis is used to systematically explain Islamic legal thoughts to assess the suitability between ideal norms and empirical implementation based on the principles of substantive justice and benefit. The framework of *maqāṣid al-sharī'ah* is used as the main analytical tool to draw normative conclusions as well as formulate an approach to

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<sup>16</sup> Siti Musdah Mulia, *The Glory of Women in Islam* (Elex Media Komputindo, 2014), <https://books.google.com/books>.

<sup>17</sup> John W. Creswell and Cheryl N. Poth, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (Sage publications, 2016), <https://books.google.com/books>.

<sup>18</sup> Qadriani Arifuddin et al., *Metodologi Penelitian Hukum* (PT. Sonpedia Publishing Indonesia, 2025), <https://books.google.com>.

<sup>19</sup> Elmar Hashimov, "Qualitative Data Analysis: A Methods Sourcebook and The Coding Manual for Qualitative Researchers: Matthew B. Miles, A. Michael Huberman, and Johnny Saldaña. Thousand Oaks, CA: SAGE, 2014. 381 Pp. Johnny Saldaña. Thousand Oaks, CA: SAGE, 2013. 303 Pp.," *Technical Communication Quarterly* 24, no. 1 (2015): 109–12, <https://doi.org/10.1080/10572252.2015.975966>.

Islamic divorce law that is more contextual and responsive to the social dynamics of Muslims today.

## RESULTS AND DISCUSSION

### Divorce as a Social Process

Sociologically this cannot be understood solely as a legal event that ends in the breakdown of the marriage bond.<sup>20</sup> Divorce as a layered social process and a series of social relations, power negotiations, and institutional interactions began long before the *talaq* pledge was pronounced and continued after the legal status of marriage was declared.<sup>21</sup> This shows that the reduction of divorce to a mere legal action causes the loss of the ethical and social dimensions that actually determine the quality of substantive justice for the parties. The results of sociological analysis revealed that divorce decisions are generally formed through the accumulation of structural conflicts, such as economic inequality, unequal gender relations, and socio-cultural pressures that limit the space for negotiation in the household.<sup>22</sup> In this context, divorce becomes an escape mechanism from an unequal relationship, not a rational choice born from ethical considerations and benefits as required by Islamic legal norms. This process shows that the practice of divorce is determined more by the configuration of power in the family than by a normative awareness of the value of justice.

Moreover, so far *talaq* is often perceived as a man's prerogative, while women are placed as parties who must accept the social and economic consequences after divorce. This kind of construction of meaning reinforces the practice of unilateral divorce and obscures the moral responsibility of the husband, so that divorce no longer functions as an instrument of dignified conflict resolution, but rather as a tool of legitimacy for social domination.<sup>23</sup> This condition shows the reduction of divorce legal knowledge from an ethical-normative framework to the legitimacy of gender-based power. Fiqh knowledge of *talaq* is no longer understood as an emergency mechanism limited by the principles of justice and benefit, but is reduced to a normative justification for unequal power relations in the household.<sup>24</sup> As a result, legal authority shifted from the values of Islamic law to the subjective interests of more dominant parties, so that the law lost its corrective function against social injustice.

Furthermore, the unilateral normalization of *talaq* reflects the institutional and cultural failure to transmit the ethics of Islamic law in its entirety. When the law is present only

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<sup>20</sup> Ali Imron, "Reconstruction of the Law on Marriage Breakdown in Marriage Law," *QISTIE* 10, no. 1 (2017), <https://www.academia.edu/download/59104985/1961-3932-1-SM20190501-36918-c9I10a.pdf>.

<sup>21</sup> Muhammad Hanif Muntashir, "DIVORCE OF TALAQ DUE TO NUSYUZ WIFE PERSPECTIVE ON THE SOCIOLOGY OF ISLAMIC LAW (Study of the Decision of the Bengkulu Religious Court)" (PhD Thesis, uinfas bengkulu, 2024), <http://repository.uinfasbengkulu.ac.id/3079/>.

<sup>22</sup> Fathima Sherin Ottakkam Thodukayil et al., "The Causes of Divorce and Its Effects on Women: A Systematic Review," *Marriage & Family Review*, April 18, 2025, 1–36, <https://doi.org/10.1080/01494929.2025.2484781>.

<sup>23</sup> Zulfatun Nimah, "The Violation on Women's Rights in the Unilateral Divorce in Sasak Community From A Feminist Legal Theory," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 1 (2018): 25–48, <https://ejournal.iainmadura.ac.id/alihkam/article/view/1482>.

<sup>24</sup> H. Imron Rosyadi and MH SH, *Reconstructing the Epistemology of Islamic Family Law* (Prenada Media, 2022), <https://books.google.com>.

as a text or procedure, without internalizing the values of responsibility, empathy, and protection, divorce reproduces structural injustices.<sup>25</sup> In this context, divorce law does not play a role as a means of *tahqīq al-'adl*, but rather as a symbolic instrument that legitimizes the practice of social exclusion against women after divorce. In the sense that *talaq* will continue to operate as a mechanism of domination, not as a way to resolve conflicts that are fair and dignified as required by Islamic law.<sup>26</sup> Up to this point, it can be understood that *talaq* does not stop at legitimate or illegitimate issues in religion, but is a social event whose consequences go beyond the legal-formal realm. *Talak* produces layered impacts on family relations, household economic structure, women's social position, and children's growth and development, so that the solution cannot be reduced to fulfilling conditions and harmony alone. When *talaq* is treated only as an individual legal action, the dimension of social responsibility attached to it is neglected, and the law loses its transformative power in maintaining justice and welfare.

Without a comprehensive social approach, *talaq* has the potential to give birth to new injustices that are contrary to the purpose of Islamic law as a means of *tahqīq al-maṣlahah* and the prevention of *mafsadat*. The understanding of *talaq* as a social event demands a paradigm shift in divorce law from legality to ethics and collective responsibility. The state, judicial institutions, religious leaders, and social communities have an epistemic and practical role in ensuring that divorce does not become a reproductive space for social domination and vulnerability. Thus, *talaq* must be positioned as a social-legal process intervened by the values of substantive justice, empathy, and protection, so that Islamic divorce law truly functions as a humanitarian instrument, not just a socially neutral normative device.

### ***Bi al-ma'rūf and tasrīh bi ihsān* as Epistemological Norms: A Shift From Legality To Ethics**

Feminist jurists view that *the fiqh* that has developed so far tends to domesticate women by placing them in a subordinate position in marital relationships.<sup>27</sup> Marriage as a form of contract does give birth to a relationship of rights and obligations between the parties, namely husband and wife, but in the practice of *classical fiqh* interpretation, the relationship is often framed hierarchically and asymmetrically.<sup>28</sup> As a result, the husband's authority is more dominant in determining the direction of domestic relations, while women's experiences and interests are often marginalized in the construction of the law. Although normatively husband and wife are not justified in committing violence and there should be no behavior that degrades the dignity of the spouse, the prohibition often stops at the level of the ideal of the

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<sup>25</sup> Mulida Hayati, "Reconstruction of Regulations on Reasons for Filing for Divorce Due to Domestic Violence Based on Justice Values" (PhD thesis, Sultan Agung Islamic University (Indonesia), 2023), <https://search.proquest>.

<sup>26</sup> Ana Pitria et al., "Out-of-Court Conflict Resolution From an Islamic Law Perspective and Positive Law," *Journal of Comprehensive Islamic Studies* 2, no. 1 (2023): 125–48, <https://journal.centris.or.id/index.php/jocis/article/view/235>.

<sup>27</sup> Dr. Gamal Mohamed Baglan, *Women in Islamic Thought* (Dar Al-Maarifa for Printing and Publishing-Lebanon, 2017), <https://books.google.com>.

<sup>28</sup> Ehsan Alhammami, "'The Powers of the Guardian in the Marriage Contract in Islamic Jurisprudence': A Jurisprudential Study Comparative with Inference by the Principles of Jurisprudence and the Purposes of Sharia," *Usul İslam Araştırmaları* 38, no. 38 (2022): 81–112, <https://dergipark.org.tr/en/pub/usul/issue/72651/1101822>.

text. Cultural legitimacy and certain interpretations of *fiqh* actually open up space for justification for symbolic and structural violence against women, both through the normalization of control, restrictions on movement space, and inequality in decision-making.<sup>29</sup> This condition shows that there is a gap between the ethical principles of Islamic law that uphold justice and benefits and the implementation of *fiqh* that develops in a patriarchal social context. Feminist criticism asserts that the main problem lies not in the normative text of Islam, but in the epistemology of *fiqh* that is constructed in a particular historical context and then treated as if it is ahistorical and gender-neutral. When *fiqh* is positioned as the final product that is closed off from criticism and re-reading, the marital relationship loses the dimension of reciprocity (*mubādalah*) and becomes a mechanism of legitimacy of domination.

In the context of divorce, the term *ma'rūf* can be interpreted as appropriate attitudes and actions, namely behavior that is recognized as good, appropriate, and dignified according to religious moral standards and social judgments that live in society. *Ma'rūf* entrusts relationships that do not cause social disgrace, do not give birth to symbolic or material violence, and do not make divorce a "word of mouth" because of its poor and uncivilized way of implementation.<sup>30</sup> Therefore, divorce that is carried out in a *ma'rūf* manner must be carried out with politeness, respect for the dignity of the spouse, and awareness to set a good social example, not to show domination, anger, or revenge that is legitimized in the name of religion.

Continued the verse which states, "And if you do not like them, then be patient, for you may not like something, but Allah has done much good to it" (QS. *al-Nisā'* [4]: 19), explicitly penetrates the deepest emotional layers of a human being, especially a husband. This verse reminds us that displeasure, irritation, or disappointment with a spouse is not an immediate reason to justify a hasty and unethical divorce.<sup>31</sup> In fact, the verse emphasizes that divorce can only be justified when all ethical efforts of patience, deliberation, relationship improvement, and mediation have been taken seriously.

The passage "*wa in tuḥsinū wa tattaqū fa inna Allāha kāna bimā ta'malūna khabīran*" in the context of divorce shows a fundamental shift from the legalistic paradigm to the ethical paradigm in Islamic family law. This verse affirms that goodness (*iḥsān*) is not merely an individual moral attitude, but a normative standard that must control the exercise of legal rights, including the right to impose *talaq*. This verse also dismantles the logic of one-sided will in divorce by placing every action including divorce under the moral supervision of God

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<sup>29</sup> KH Husein Muhammad, *Islam Agama Ramah Perempuan* (IRCiSoD, 2021), <https://books.google.com/books>.

<sup>30</sup> KH HUSEIN MUHAMMAD, *MU'ASYARAH IN SEXUAL RELATIONS PERSPECTIVE*, N.D., ACCESSED December 18, 2025, <https://repository.uinsaizu.ac>.

<sup>31</sup> Muhammad Saleh Al-Munajjid, *Forty Tips for Repairing Houses* (Obeikan Publishing, 2015), <https://books.google.com>.

Almighty.<sup>32</sup> The awareness that Allah is *khabīr* over all human actions serves as an ethical control mechanism for the potential abuse of the right of *talaq*, especially when divorce is carried out emotionally, hastily, or motivated by domination. In other words, this verse shifts the center of the legitimacy of divorce from right to responsibility.

The principle of *ihsān* also has important implications for the way divorce is conducted. Divorce in accordance with the spirit of this verse requires an awareness that separation is not a value-free space, but a moment of crisis that demands higher ethical maturity.<sup>33</sup> When the marital relationship is at the point of conflict and tension, the tendency to act repressively, manipulatively, or ignore the rights of the wife becomes even greater. This is where *ihsān* serves as a corrective principle that suppresses emotional impulses and demands treatment that remains humane, just, and dignified, even though the husband-wife relationship has been fractured. This verse also emphasizes that the measure of goodness in divorce does not lie in the speed or ease of imposing *talaq*, but on the extent to which the separation process is able to minimize harm and protect vulnerable parties.<sup>34</sup> Fulfillment of alimony, respect for the social dignity of the wife, and attention to the psychological condition and sustainability of the child's life are integral parts of *the practice of ihsān* after divorce.

At this point, *ihsān* can be understood as the epistemological norm that directs the way Muslims understand, interpret, and apply divorce law. This norm demands that divorce be judged not only from the aspect of formal legality, but from its ethical qualities and social impact. This is the important contribution of the verse in reconstructing Islamic divorce law: making it not just an instrument for breaking legal ties, but a conflict resolution mechanism oriented towards substantive justice, the protection of human dignity, and the long-term benefit of all parties involved.

### **Divorce as an Emergency Option**

Divorce in Islamic law or *fiqh munākahāt* is known by two main terms, namely *ṭalāq* and *khulū'*. *Ṭalāq* is a form of divorce whose initiative is in the hands of the husband, while *khulū'* is a divorce filed against the will of the wife with certain legal mechanisms and consequences.<sup>35</sup> These two forms of divorce are understood as legal acts (*taṣarruf syar'ī*) that result in the severance of the marriage bond between husband and wife, which should ideally be done in a *ma'rūf* manner, which is in accordance with the values of propriety, justice, and good customs in society. The divorce process in Islam must actually be pursued through a

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<sup>32</sup> Hermansyah Hermansyah, "The Fundamental Interpretation of Complicating Divorce in the Perspective of Islamic Law," *As-Syar'i: Journal of Family Guidance & Counseling* 6, no. 1 (2024): 1110–21, <https://journal.laaroiba.com/index.php/as/article/view/6307>.

<sup>33</sup> Misfatul Magfiroh, "RECONCILIATION OF COUPLES AFTER DIVORCE TO INCREASE MUTUAL HARMONY IN THE PERSPECTIVE OF MAQASHID SHARI'AH" (PhD Thesis, Sultan Agung Islamic University Semarang, 2025), <http://repository.unissula.ac.id/39104/>.

<sup>34</sup> Budi Kisworo and Ridwan Rifanto bin Ridwan, "Talak in front of the trial in the review of Maqashid Shari'ah and Saddu adz-dzari'ah" (PhD thesis, CURUP STATE ISLAMIC INSTITUTE, 2024), <http://e-theses.iaincurup.ac.id/7629/>.

<sup>35</sup> Alfi Abdul Aziz Irsyadillah, "A Study on the Interpretation of Divorce Verses in the Qur'an from the Perspective of Tafsir Fi Zilal Al-Qur'an by Sayyid Quthb" (PhD thesis, IAIN Kediri, 2024), <https://etheses.iainkediri.ac.id/17660/>.

mature and unhurried dialogue stage, by opening a long and deep conversation space from heart to heart. The principle put forward is not an overflow of emotions or one-sided domination, but deliberation (*syūrā*) based on the spirit of kinship, justice (*'adālah*), and the use of common sense as the values of peace and affection are affirmed in QS. Ar-Rūm (30): 21.

Husbands and wives are required to be actively involved in synergistic and equal communication, without either party feeling more entitled, more dominant, or more respected than the other.<sup>36</sup> Both have balanced rights and positions in determining the future of the household, including in making decisions to separate when the path of peace is no longer possible. This principle of equality is the embodiment of Islamic teachings that reject unequal power relations in the family and insist on shared responsibility in every important decision. The value of deliberation is explicitly affirmed in the Qur'an surah al-Shurā (42) verse 38, "*and their affairs are decided by deliberation among them...*". This verse contains the ethical message that every social decision, including divorce, must be made through a *fair and humane* deliberative process.

Mohammad Syahrur in his work *al-Kitāb wa al-Qur'ān: Qirā'ah Mu'āṣirah* proposes a progressive interpretation of the concept of divorce by asserting that the right to request and decide on divorce should be given equally to husband and wife.<sup>37</sup> This idea is intended to maintain the benefit of both parties, while protecting the integrity and sustainability of family values in a more fair and rational manner. In Syahrur's view, marital relations should not be built on the logic of domination, but on the principle of partnership that ensures a balance of rights and responsibilities. Thus, the wife has equal rights with her husband in the decision-making process related to divorce, both at the stages of submission, consideration, and final determination. This equality is not intended to relativize the institution of marriage, but rather to affirm the ethical dimension of Islamic law that is oriented towards justice and humanity. Syahrur's perspective also criticizes classical *fiqh* practices that tend to place divorce authority predominantly in the hands of the husband, without opening up adequate space for the wife's voice and interests.

In Islam, there are stages that are regulated for a husband when facing *the attitude of nusyūz* (iniquity) from his wife. The first step that must be done is to give advice in a good way (*bi al-ma'rūf*), persuasive, and full of wisdom, with the aim of improving relationships and maintaining the integrity of the household.<sup>38</sup> If the advice does not yield results, the husband is allowed to take the next step, which is to separate the bed as a form of moral and psychological reprimand, not as a repressive act. Many contemporary scholars assert that this stage should be understood within the framework of Islamic ethics that places the protection

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<sup>36</sup> Moh Rosil Fathony, "Forms of Husband and Wife Relationships in the Context of Differences in Economic Status and Their Impact on Household Harmony (Case Study in Masbagik District, East Lombok Regency)," *Al-Afkar, Journal For Islamic Studies* 8, no. 1 (2025): 758–72, [https://mail.al-afkar.com/index.php/Afkar\\_Journal/article/view/1359](https://mail.al-afkar.com/index.php/Afkar_Journal/article/view/1359).

<sup>37</sup> Muhammad Shahrūr, "Al-Kitāb Wa al-Qur'ān: Qirā'ah Mu'āṣirah," *Damshiq: Dār al-Ahālī Li al-Ṭaba'ah Wa al-Nashr Wa al-Tawzī*, 1990.

<sup>38</sup> Abdul Syukur Al-Azizi, *Baiti Jannati: The Complete Book of Advice of Allah and the Prophet on Household* (SAUFA, 2013), <https://books.google.com/books>.

of human dignity (*hifz al-'ird*) and the salvation of the soul (*hifz al-nafs*) as the primary goals of the Shari'a.<sup>39</sup> Therefore, acts of physical violence are seen as contrary to the principles of *maqāsid al-sharī'ah* and the example of the Prophet Muhammad PBUH who never hit his wives. Currently, the resolution of domestic conflicts is more emphasized on dialogue, mediation, and fair legal mechanisms, so that Islamic teachings remain relevant as a source of relational ethics that uphold justice, compassion, and mutual benefit.

## CONCLUSION

Based on the results of this study, it can be concluded that divorce in the practice of contemporary Muslim society cannot be reduced to a mere legal event, but must be understood as a complex socio-legal process, layered, and fraught with power relations. Divorce not only marks the end of the legal-formal marriage bond, but also produces long-term social, economic, psychological, and cultural consequences, especially for women and children. When *talaq* is practiced within a narrow legalistic framework and detached from its ethical dimension, divorce law has the potential to lose its corrective function and transformation, even turning into an instrument of legitimization of gender-based domination. This study shows that the normalization of *unilateral talaq* reflects an epistemological problem in the understanding of *divorce jurisprudence*, where knowledge of Islamic law is reduced to a justification of power, not as an emergency mechanism limited by the principles of justice and benefit. The gap between the normative ideals of Islamic law and the social practice of divorce signifies a cultural and institutional failure in transmitting the ethics of Islamic law in its entirety. As a result, divorce often takes place without moral responsibility, empathy, and protection for the vulnerable, thus reinforcing post-divorce structural injustices.

Through a normative-critical reading of the concepts of *bi al-ma'rūf and tasrīh bi ihsān*, this study emphasizes the need for a paradigm shift in divorce law from a legality orientation to ethics and responsibility. The *principle of ihsān* is positioned as an epistemological norm that directs how to understand, interpret, and apply divorce law, emphasizing the quality of the process, social impact, and the protection of human dignity. In this framework, the right of *talaq* is no longer understood as a unilateral will, but rather as a moral trust that is subject to ethical supervision and the purpose of *maqāsid al-sharī'ah*.

Divorce in Islam should be placed as a last resort that is only justified after all efforts of dialogue, deliberation, and relationship improvement have been taken seriously. The state, judicial institutions, religious leaders, and social communities have a collective responsibility to ensure that the practice of divorce does not become a breeding ground for social domination and vulnerability. Only with a social-legal approach based on substantive justice, empathy, and benevolence, Islamic divorce law can function as a dignified, relevant, and transformative humanitarian instrument in people's lives.

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<sup>39</sup> Jasser Auda, "A Maqāsidī Approach to Contemporary Application of the Sharī 'ah," *Intellectual Discourse* 19, no. 2 (2011), <https://journals.iium.edu.my/intdiscourse/index>.

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*From legality to ethics: A Conceptual Effort in Bridging the Gap Between  
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*Harry Pahlevi Harahap*