



---

## Forced Divorce Polemic: Comparative Analysis of the Hanafi and Shafii Schools of Thought

Muhammad Nirwan Idris

Sekolah Tinggi Ilmu Islam dan Bahasa Arab Makassar, Indonesia

Email: [muhammadnirwanidris@stiba.ac.id](mailto:muhammadnirwanidris@stiba.ac.id)

Kurnaemi Anita

Sekolah Tinggi Ilmu Islam dan Bahasa Arab Makassar, Indonesia

Email: [kurnaemi@stiba.ac.id](mailto:kurnaemi@stiba.ac.id)

---

### Abstract

This article aims to summarize the views of the Hanafi and Shafii madhhabs regarding the status of divorce of a person who is forced and the method of determining it, as well as to find out the method of scholars in *tarjih* opinion between the Hanafi and Shafii schools in this case. To get answers to the problems, this article uses library research that focuses on manuscript and text studies, using case and comparative approach methods. By looking at some coercive *dawābiṭ*, the results of the study found that; First, the Hanafis argue that divorce imposed by a person who is forced is legal, because here he faces two tough choices, namely divorcing his wife or receiving threats from the person who forced him, and in fact, he chooses to divorce his wife. In contrast to the Shafii school of thought, which is not consider valid, because divorce is an absolute right for the husband alone, also because Allah has aborted disbelief in those who are forced to disbelieve. The *istinbāṭ* method of the law used by the Hanafi and Shafii schools is that they both use *kias*. Second, the scholar's method in *tarjih* the opinion between the Hanafi school and the Shafii school regarding forced divorce is by looking at the sanad hadith. In this case, the majority of scholars further strengthen the hadiths used as evidence by the Shafii school because they see the *sīqāh* (trusted) narrators of hadith so that all of their narrators can be used as evidence.

**Keywords:** *comparative, istinbath, forced divorce*

---

Received: 19-09-2023

Revised: 01-05-2024

Accepted: 02-06-2024

Published: 28-06-2024

---

### How to cite

Muhammad Nirwan Idris, Kurnaemi Anita. "Forced Divorce Polemic: Comparative Analysis of the Hanafi and Shafii Schools of Thought", NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam Vol. 10, No. 1 (2024): 1-23. doi: 10.36701/nukhbah.v10i1.1073.

---

Copyright (c) : 2024 Muhammad Nirwan Idris, Kurnaemi Anita



This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

---

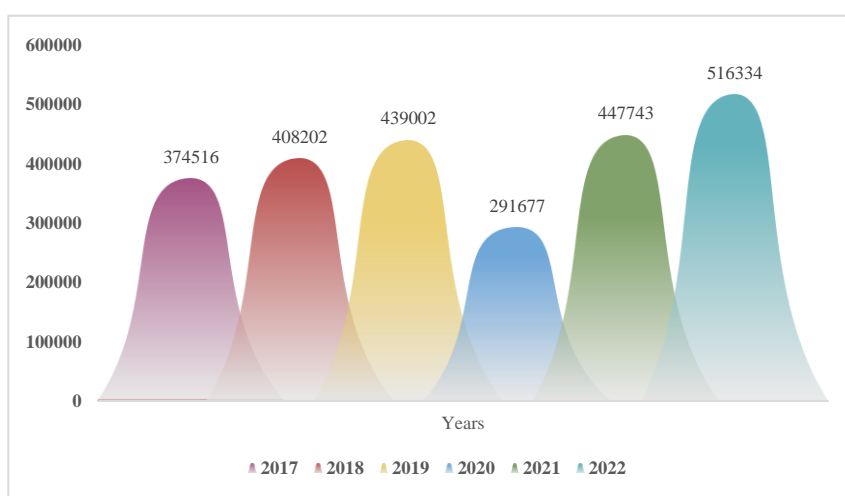
## 1. INTRODUCTION

Based on data from the Central Statistics Agency (*Badan Pusat Statistik*, BPS), there were 447,743 divorce cases in the Muslim community throughout 2021. This figure jumped to 53.5% compared to 291,677 cases in the previous year, where most of the cases were triggered by economic factors, namely 113,343 cases.<sup>1</sup> This was

---

<sup>1</sup> <https://dataindonesia.id/ragam/detail/kasus-perceraian-paling-banyak-di-jawa-barat-pada-2021>.

reinforced by the statement by the Director General of the Religious Courts of the Supreme Court (MA), Aco Nur, that divorce cases that entered court during January-August 2021 were mostly caused by disputes and constant bickering between husband and wife, economic factors, and one party leaving the other. another.<sup>2</sup> Sa'adah in his research also revealed several factors triggering divorce in Indonesian Muslim society, namely the economy, infidelity, sexuality crisis, and domestic violence.<sup>3</sup> This is of course beyond the unrecorded number of divorces as revealed by Faiz, Zulfahmi, and Izzuddin who researched divorce cases in Situbondo found the phenomenon of divorce out of court due to the domination of Islamic legal authority over state law in the practice of divorce for the Muslim community which has negative implications for the rights of - the rights of children and ex-wives.<sup>4</sup>



**Figure 1.** Graph of Divorce Rates Recorded in the Indonesian Religious Courts

Data Source: <https://www.bps.go.id/indicator/27/176/1/.html>

Other cases such as forced divorces from outsiders as revealed by Carlisle through the observation and analysis of the arbitration session in 2017 related to requests for judicial divorce in Damascus where the courts were powerless to oppose the intervention of the angry mother and wife, even though the final decision appears to have been formulated within the parameters stipulated by law.<sup>5</sup> According to a correspondent from the Jakarta Supreme Court Indonesia, Wahyudi stated that these forced divorces have a strong potential to neglect the rights of the wife and children because most of them occur outside the court and only rely on religious norms from one side.<sup>6</sup> Kadir added that this was due to increasing discrimination of women and men in

<sup>2</sup> <https://www.kominfo.go.id/content/detail/29233/disinformasi-angka-perceraian-melonjak-drastis-selama-pandemi-covid-19/0/>.

<sup>3</sup> Mazro'atus Sa'adah, "Economic And Living Issues in The Case of Divorce in Indonesia: The Perspective of Fiqh," in *Annual International Conference on Islamic Studies (AICIS 2021)* (Surakarta: Annual International Conference on Islamic Studies (AICIS 2021), 2021), 25–29.

<sup>4</sup> Ahmad Izzudd Abd. Karim Faiz, Zulfahmi, "Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia," *JIL: Journal of Islamic Law* 3, no. 2 (2022): 176–92, doi:10.24260/jil.v3i2.848.

<sup>5</sup> Jessica Carlisle, "Mother Love: A Forced Divorce in Damascus," *Berghahn Journals; New York Oxford* 2, no. 1 (2017): 178–97, doi:10.3167/ame.2007.020107.

<sup>6</sup> Firman Wahyudi, "Ithbāt Ṭalāq: An Offer of Legal Solutions to Illegal Divorce in Indonesia," *Al-Ahkam* 32, no. 2 (2022): 211–32, doi:10.21580/ahkam.2022.32.2.11720 PDF.

Muslim societies and a lack of religious knowledge.<sup>7</sup>

In release connection marriage conducted by a husband to wife, of course, must fulfill conditions as well as be conducted according to the recommendation religion as ordained by Allah. Divorce or *talaq syar'i* is a divorce carried out according to the basis of Islamic law.<sup>8</sup> Inside it are several pillars of which some people divorce (husbands), objects that divorce (wife), and the pronouncement of divorce.<sup>9</sup> For the validity of the divorce imposed by the husband must meet several requirements, including puberty, good sense, being above his own will, and intending to divorce.<sup>10</sup> As for the conditions for wives who are divorced, they must be women who are legally married, women who are still in a legal marriage bond, and are still in period *'iddah*.<sup>11</sup>

Al-Zuhaili stated that the scholars mentioned some types of divorce which not legitimate, including (1) divorced people who are crazy, (2) divorced angry people, (3) divorced which conducted by no husband, (4) divorced people with nonmuslim, (5) divorced apostates, (6) divorce the ignorant, (7) divorce the forced.<sup>12</sup> Various types of divorce, there are different opinions among school scholars, especially about legitimate or not divorce people which forced to scholars say that status divorce which is spoken by a husband who is forced to do so is illegal and does not result in divorce and this is supported by the Shafi'i scholars.<sup>13</sup>

Furthermore, al-Zuhaili revealed that among the causes that allow divorce is obedience to both parents in case of divorce as stated by Ibn Umar,

كَانَتْ تَحْتِي امْرَأَةٌ وَكُنْتُ أُحِبُّهَا، وَكَانَ عُمَرُ يَكْرَهُهَا، فَقَالَ لِي : طَلِّقْهَا، فَأَبَيْتُ، فَأَتَى عُمَرُ رَضِيَ اللَّهُ عَنْهُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : طَلِّقْهَا  
(رواه الترمذي)<sup>14</sup>

Means:

"I have a wife and love her and Umar does not like my wife. Umar said to me, 'Divorce your wife', then I didn't want to, so Umar came to the Prophet Sallallahu 'alaihi wa sallam and told him about it, then the Prophet Sallallahu 'alaihi wa sallam said to me, 'divorce your wife'." (Narrated by Tirmizi)

Based on the hadith above, Hanafi scholars argue that divorce for a person who is forced by law is valid for a woman who has married because he intends to divorce even though he is not willing to the repercussions, like case people who say divorce with

<sup>7</sup> N. A Kadir, "Evaluating The Rising Trends of Divorces Within Malaysian Community," *Quantum Journal of Social Sciences And Humanities* 2, no. 6 (2021): 1–13, doi:10.55197/qjssh.v2i6.96.

<sup>8</sup> Jamhuri and Zuhra, "Konsep Talak Menurut Ibnu Qayyim Al-Jauziyah (Analisis Waktu Dan Jumlah Penjatuhan Talak)," *Media Syari'ah* 20, no. 1 (2018): 96–122, doi:10.22373/jms.v20i1.6503.

<sup>9</sup> 'Alā'u al-Dīn Abū Bakr bin Mas'ūd al-Kāsānī Al-Hanafī, *Badā'i' Al-Ṣanā'ī' Fī Tartīb Al-Syarā'ī'*, Juz 4, 2nd ed. (Beirut: Dār al-Kutub al-Ilmiyah, 2003).

<sup>10</sup> Abū Ishāq Al-Syīrāzī, *Al-Muḥaḥab Fī Fiqh Al-Imām Al-Syāfi'ī*, Juz 4, 1st ed. (Damaskus: Dār al-Qalam, 2000).

<sup>11</sup> Abū Ishāq Al-Syīrāzī, *Al-Muḥaḥab Fī Fiqh Al-Imām Al-Syāfi'ī*.

<sup>12</sup> Wahbah Al-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, Juz 9, 2nd ed. (Damaskus: Dār al-Fikr, 2002).

<sup>13</sup> Wahbah Al-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhu*.

<sup>14</sup> Muḥammad bin Īsa Al-Tirmizī, *Sunan Al-Tirmizī*, Juz 2, 1st ed. (Beirut: Dār al-Garb al-Islāmī, 2002).

joking.<sup>15</sup> Or as in some areas that adhere to strong customs, customary provisions have coercive power for the bound community when the contract is violated which results in the cancellation of a contract by force.<sup>16</sup>

Responding to this, al-Karni stated that in the Hambali school, a man does not have to obey second people his parents are in problem divorced or prohibited from marrying, although both parents are fair people.<sup>17</sup> Likewise, Shaykh Islam Ibn Taimiyah when asked about someone who already has a wife and children then his mother did not like his wife and hinted at divorcing her, but Ibnu Taimiyah emphasized that it is not permissible for a husband to divorce his wife because follow his mother ordered and it was not including devoted to Mother.<sup>18</sup>

Based on the above, this paper will investigate the Hanafi and Shafi'i schools regarding the status of divorced people who are forced and analyze the methods of the scholars in assessing opinions between the two schools. There is not much literature related specifically to this issue, because the discussion in this paper is more specific and up-to-date than previous studies, but there are some interesting studies about the requirements for determining divorce status according to various perspectives, including research conducted by Mukdin et al in the title "Application of No-Fault Divorce Legal rules as a Basic For Judges Considerations; A Case Study of Indonesia."<sup>19</sup> No-fault divorce is a legal rule in divorce, implying a couple wishing to divorce without proof of cause in court. The concept first appeared in California in 1970 and has been used in Indonesia as legal material for judges considering divorce cases. No-fault divorce is considered to follow the values contained in fiqh. The method used is a comparative descriptive study, which is analyzed qualitatively by comparing the concept of the principle of divorce without fault and its application in the religious courts in Indonesia with the values originating from the fiqh school.

The second research by Ni'mah is entitled "The Violation of Women's Rights in the Unilateral Divorce in Sasak Community From A Legal Feminist Theory."<sup>20</sup> In her research, Ni'mah revealed that there are still many Sasak people in Lombok who practice divorce outside the court, namely by unilateral statements by the husband to the wife. This study describes the forms of violation of the rights of Sasak women who were unilaterally divorced by their husbands either of their own free will or forced, then analyzes them from the perspective of feminist legal theory.

Further research by Salamuddin et al in the title The Impacts of a Fatwa (Edict) From Aceh Scholars Council (MPU) Number 2 of 2015 Concerning Divorce (Divorce)

---

<sup>15</sup> Akmal al-Dīn Al-Bābartī, *Al-'Ināyah Syarḥu Al-Hidāyah*, 3rd ed. (Lebanon: Dār al-Fikr, 2000).

<sup>16</sup> Wardah Nuronyah and Bani Syarif Maula, "Muslim Women Adhering to Minangkabau's Bajapuik Tradition in Cirebon, West Java: Compromizing A Gendered Culture in Islamic Law," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 135–53, doi:10.18326/ijtihad.v22i2.135-153.

<sup>17</sup> Mar'ī bin Yūsuf bin Al-Karmī, *Gāyah Al-Muntaha Fī Al-Jami' Baina Al-Iqnā' Wa Al-Muntaha*, *Juz 3* (Kuwait: Muassasah Girās li Nasyri wa al-Tauzī', 2007).

<sup>18</sup> Taqīyyu al-Dīn Aḥmad bin Taimiyah Al-Ḥarrānī, *Majmu'ah Al-Fatāwā*, *Juz 33*, 2nd ed. (Mesir: Dār al-Wafāi, 2001).

<sup>19</sup> Muhammad Riza Nurdin Khairani Mukdin, Zahrul Bawady, Tarmizi M.Djakfar, "Application of No-Fault Divorce Legalrules As A Basic For Judges Coniderations; A Case Study of Indonesia," *Pelita: Jurnal Kajian Ilmu Hukum Dan Syariah* 7, no. 2 (2022): 80–91, doi:10.22373/petita.v7i2.149.

<sup>20</sup> Zulfatun Ni'mah, "The Violation on Women's Rights in the Unilateral Divorce in Sasak Community From A Feminist Legal Theory," *Al-Ihkam* 13, no. 1 (2018): 25–48, doi:10.19105/al-lhkam.v13i1.1482.

Without Court Proceedings.<sup>21</sup> This research concludes that the Fatwa of the Aceh Scholars Council (MPU) Number 2 of 2015 concerning Divorce, especially in the third point regarding divorce without a trial, does not provide legal certainty and it can also be concluded that the legal impact of divorce without a trial process. According to Salamuddin, the Fatwa of the Aceh Scholars Council can result in losses for wives and children due to unilateral divorce from husbands.

This research is qualitative descriptive research with applied technique study libraries research, with case and comparative approach method. In this study, various fiqh books were used relating to divorce or other literature discussing comparative studies between sects Hanafi and sects Shafi'i related to divorce status because were forced to include the book *al-Hidāyah Syarḥu Bidāyah al-Mubtadī*, the work of Burhān al-Dīn Abū al-Ḥasan Alī bin Abī Bakr al-Margīnānī,<sup>22</sup> is a fiqh work in the Hanafi madhhab. Then the book *al-Muḥaḥab fī Fiqh al-Imām al-Syāfi'ī*, by Abū Ishāq al-Syīrāzī,<sup>23</sup> which discusses jurisprudence sect Shafi'i, di inside containing a summary of the entire opinion of Imam Shafi'i in the contained fiqh issues in his books the main thing, one of them in the book *Al-Umm*.

The book *al-Fiqh al-Islāmī wa Adillatuhu*, by Wahbah al-Zuhailī,<sup>24</sup> discusses science jurisprudence systematically and easily to understand which peeled from various perspectives with a detailed foundation. Besides that, works also have the privilege of covering fiqh discussions from all schools. Next is the book *al-Fiqh 'Alā Mazāhib al-Arba'ah*, by Abdurrahman al-Jazīrī,<sup>25</sup> discussing fiqh issues in comparison to the four schools of thought Ahlu sunnah wal jama'ah and mentions the arguments of each school, and book *Ṭalāq al-Mukrah*, work Mohammed Nu'mān Mohammed 'Alī al-Ba'dānī.<sup>26</sup> In the book, this writer specializes discussion about forced divorce.

This research is expected to be a reference or information material work for other researchers who want to conduct research that is more deeply about the problem related to the difference between the opinion of the Hanafi school of thought and the Shafi'i school of thought in the matter of divorce for someone who forced to from aspect which different. It can also provide recommendations for religious courts in determining the legal status of forced divorces by looking at all the *ḍawābiṭ* and provisions that will be presented.

## 2. DISCUSSION

### 2.1. Overview of Divorce

Divorce or talaq comes from Arabic, namely الطَّلَاق. The word الطَّلَاق is the *ism*

---

<sup>21</sup> Muhammad Salamuddin, "The Impacts of a Fatwa (Edict) From Aceh Ulema Council (MPU) Number 2 of 2015 Concerning Talak (Divorce) Without Court Proceedings," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 25, no. 2 (2020): 25–32, doi:10.9790/0837-2502092532.

<sup>22</sup> Alī bin Abī Bakr Al-Margīnānī, *Al-Hidāyah Syarḥu Bidāyah Al-Mubtadī*, Juz 3, 3rd ed. (Pakistan: Idārah al-Qur'an wa al-„Ulūm al-Islāmiyah, 2003).

<sup>23</sup> Abū Ishāq Al-Syīrāzī, *Al-Muḥaḥab Fī Fiqh Al-Imām Al-Syāfi'ī*, Juz 4, 2nd ed. (Damaskus: Dār al-Qalam, 2000).

<sup>24</sup> Wahbah Al-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, Juz 9.

<sup>25</sup> Abdurrahman Al-Jazīrī, *Al-Fiqh 'Alā Mazāhib Al-Arba'ah*, Juz 4, 2nd ed. (Beirut: Dār al- Kutub al-Ilmiyah, 2003).

<sup>26</sup> Muhammad 'Alī Al-Ba'dānī, *Ṭalāq Al-Mukrah*, 2nd ed. (Kairo: Dār al-Wafāi, 2014).

*maṣḍar* from the word طَلَّقَ - يَطْلُقُ - طَلْأًا which means letting go and leaving.<sup>27</sup> Etymologically, Imam Nawawi in his book *Rauḍatu al-Ṭālibin* suggests the notion of divorce with the breaking of ties.<sup>28</sup> As for terminology, the scholars differed in their definitions. According to the Hanafi school of thought, *talaq* is removing the marriage bond or reducing it with a special pronunciation.<sup>29</sup> The understanding of divorce according to the Maliki school of thought is a legal nature that causes the fall of the *halal* relationship between husband and wife.<sup>30</sup> Meanwhile, according to the Syafi'i school of thought, divorce is letting go of the marriage bond with the pronunciation of divorce and the like.<sup>31</sup> Likewise, the Hambali school defines divorce as letting go of the marriage bond as a whole or so on.<sup>32</sup>

Among the legal grounds for divorce contained in the Qur'an is the word of Allah in Q.S. al-Baqarah/2: 229,

الطَّلَاقُ مَرَّتَانٍ ۖ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ ۗ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا  
إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ ۗ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ  
بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Means:

“Divorce (which can be referred to) twice. After that, you may reconcile in a way that amicably is *ma'ruf* or divorce. It is not lawful for you to take back something that you have given them unless both of them are worried that they will not be able to carry out Allah's laws. If you worry that both (husband and wife) cannot carry out God's laws, then there is no sin on both of them regarding the payment given by the wife to redeem herself. These are the laws of Allah, so do not break them. Those who transgress the laws of Allah are the wrongdoers.”<sup>33</sup>

In the verse above the word مَرَّتَانٍ means it is divorced twice. The meaning of the two times is a divorce that is handed down following the *sunnah* of the Prophet or *sunni* divorce, namely dropping it not two divorces at once, by way of a husband divorcing his wife during the holy period who has not had intercourse between husband and wife, then waiting until the end of her *'iddah* period. It is also permissible for them to reconcile during the period of *'iddah*, but if they do not get peace in the household, the husband may divorce his wife a second time.<sup>34</sup> Meanwhile, according to the Hanafi school of

<sup>27</sup> 'Alāuddīn Abū Bakr bin Mas'ūd Al-Kāsānī, *Badāi' Al-Ṣanāi' Fī Tartīb Al-Syarāi'*, 2nd ed. (Damaskus: Dār al- Kutub al-Ilmiyah, 2002).

<sup>28</sup> Yahyā bin Syaraf Al-Nawawī, *Rauḍatu Al-Ṭālibin Wa 'Umdah Al-Muḥḍīn*, Juz 8, 3rd ed. (Beirut: Maktab al-Islāmī, 2004).

<sup>29</sup> Zain al-Dīn Ibn Nujaim, *Al-Baḥru Al-Rāiq Syarḥu Kanz Al-Daqāiq*, Juz 3, 2nd ed. (Beirut: Dār al-Kutub al-Ilmiyah, 2000).

<sup>30</sup> Al-Ru'ainī al-Syahīr bil Khaṭṭāb, *Mawāhib Al-Jalīl Fī Syarḥ Mukhtaṣar Al-Syaikh Khalīl*, Juz 4, 1st ed. (Mauritāniyā: Dār al-Riḍwān, 2010).

<sup>31</sup> Abū Hāmid Al-Gazālī, *Al-Wasīṭ Fī Al-Maḥab*, Juz 5, 2nd ed. (Mesir: Dār al-Salām, 2005).

<sup>32</sup> Usmān bin Aḥmad 'Auḍ Al-Mardāwī, *Hidāyah Al-Rāgib Li Syarḥ 'Umdat Al-Ṭālib*, 1st ed. (Beirut: Muassasah al-Risālah, 2007).

<sup>33</sup> Ministry of Religion of the Republic of Indonesia, *Al-Qur'an and Translation*, 1st ed. (Bandung: Cordoba, 2018).

<sup>34</sup> Nāṣirudin Abī Sa'id 'Abdullāh bin 'Umar al-Syairāzī Al-Baidāwī, *Tafsīr Al-Baidāwī*, Juz 2, 1st ed. (Beirut: Dār al-Rasyīd, 2000).

thought, collecting two divorces or three at the same time is heresy.<sup>35</sup> This verse at the same time elevates the position of women from what happened in the early days of Islam where a husband could divorce his wife a hundred times, then reconcile while the wife is still in her 'iddah period.<sup>36</sup> Likewise the word of Allah swt. in Q.S. al-Ṭalāq /65: 1,

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ  
مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ ۗ

Means:

“O Prophet! If you divorce your wives, then you should divorce them when they can (face) their (reasonable) iddah, and calculate the iddah period, and fear Allah your Lord. Don't take them out of their house and don't (allow) them to go out unless they have committed a clear heinous act.”<sup>37</sup>

In the verse above Allah swt. said to the Prophet and all Muslims, if they want to divorce their wives, they should divorce them when they can face their 'iddah, and the prohibition of haste in divorcing wives, but they should be divorced in a state of purity that has not been interfered with.<sup>38</sup> The hadiths that directly regulate divorce are as follows,

حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ، حَدَّثَنَا مُعَرِّفٌ، عَنْ مُحَمَّدِ بْنِ أَبِي مُعَرِّفٍ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ:  
مَا أَحَلَّ اللَّهُ شَيْئًا أَبْغَضَ إِلَيْهِ مِنَ الطَّلَاقِ . (رواه أبو داود)<sup>39</sup>

Means:

“Ahmad bin Yunus has told us, Mu'arrif has told us, and Muharib said: Rasulullah said: there is nothing that is made lawful by Allah that He hates more than divorce.” (Narrated by Abū Dāud).

Al-Ṣan'ānī in his book *Subulus Salām* explains that this hadith shows that in permissible things, there are things that Allah hates, and divorce is the most hated halal thing. The meaning of despised here is as a figure of speech, that is, there is no reward and it is not considered a form of worship if this is done.<sup>40</sup> The hadith above is the argument that even though divorce is a lawful or permissible matter, Allah swt. hate this matter so much that it is advisable to avoid it.<sup>41</sup>

Sābiq explained that the fiqh scholars have different opinions regarding the law on divorce, and the most correct in this case is the opinion that prohibits it unless it is accompanied by reasons justified by the shari'a.<sup>42</sup> Among those who forbid divorce are

<sup>35</sup> Burhānuddīn Abū al-Ḥasan Alī bin Abī Bakr Al-Margīnānī, *Al-Hidāyah Syarḥu Bidayah Al-Mubtadī*, Juz 3, 1st ed. (Pakistan: Idārah al-Qur'an wa al-'Ulūm al-Islāmiyah, 2001).

<sup>36</sup> Abū al-Fidā' bin Kaṣīr, *Tafsīr Al-Qur'an Al-'Azīm*, 1st ed. (Beirut: Dār Ibn Ḥazm, 2000).

<sup>37</sup> Indonesia, *Al-Qur'an and Translation*.

<sup>38</sup> Abdurrahman bin Nāṣir Al-Sa'dī, *Taisīr Al-Karīm Al-Raḥman Fī Tafsīr Kalām Al-Mannān*, 1st ed. (Beirut: Muassasah al-Risālah, 2002).

<sup>39</sup> Abū Dāwud Sulaimān bin al-Asy'ats Al-Sijistānī, *Sunan Abī Dāwud*, Juz 2, 2nd ed. (Beirut: Dār al-Kutub al-'Ilmiyah, 2000).

<sup>40</sup> Muḥammad bin Ismā'il al-Amīr Al-Ṣan'ānī, *Subul Al-Salām Syarḥu Bulūgul Marām*, Juz 1, 1st ed. (Mesir: Dār al-Ḥadīṣ, 1999).

<sup>41</sup> Ayesha Gul et al., “Divorce: Causes and Consequences in Islamic Perspective,” *PalArch's Journal of Archaeology of Egypt / Egyptology* 18, no. 4 (2021): 6136–51.

<sup>42</sup> Sayyid Sābiq, *Fiḥu Al-Sunnah*, 1st ed. (Mesir: Dār al-Ḥadīṣ, 2004).

the Hanafi and Hambali schools.<sup>43</sup> One of the wisdom of hating divorce because of the impact it causes is so great as revealed in Leopold's research explaining that mental health, physical health, psychological well-being, change of residence, home ownership, and satisfaction with household chores, social integration with friends and relatives, feelings of loneliness, increased risk of poverty and being a single parent, especially for women are chronic.<sup>44</sup> Nevertheless, sometimes divorce is a solution if the marriage rope can no longer be maintained for a *syar'i* reason.<sup>45</sup>

Maimun also added that the phenomenon of increasing divorce indicates that there has been a shift in perception among women about the meaning of divorce, as a response to the presence of laws and regulations that provide legitimacy for women to file for divorce.<sup>46</sup> Wardatun considers that the right to sue for divorce by women is a form of gender justice legitimized in the Qur'an.<sup>47</sup> Coupled with the statement of Bremmer and Kesselring who found the results of the impulse function analysis showed that the divorce rate would increase as female labor force participation increased and there was such legalization.<sup>48</sup> However, Meryaniwal and Talwasa,<sup>49</sup> and Rasool<sup>50</sup> reveal that it is not uncommon for women to prefer to live a torturous home life rather than opting for divorce on the grounds of social status.

When viewed from the point of view of Islamic law, the jurists argue that divorce is included in the Shari'a which has five laws or commonly referred to as *al-Ahkām al-Taklīfiyyah al-Khamsah*,<sup>51</sup> depending on the circumstances and situations that influence it. First, it becomes obligatory if there is a dispute between the two parties (husband and wife) and two judges see that divorce is better and only with divorce the dispute will end, it is obligatory to separate. Divorce can also be punished obligatory if the wife commits *nusyūz*. Likewise with divorcing a wife who is in *ilā'* after passing the *'iddah* period of four months.<sup>52</sup>

Second, it becomes sunnah if a wife is negligent in fulfilling God's obligatory

---

<sup>43</sup> Syamsu al-Dīn Abū al-Khair Muḥammad bin 'Abdurraḥman Al-Sakhāwī, *Al-Maqāṣidu Al-Ḥasanah*, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyah, 1998).

<sup>44</sup> Thomas Leopold, "Thomas Leopold, Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes, Demography 55 No. 3," *Demography* 55, no. 3 (2018): 769–797, doi:10.1007/s13524-018-0667-6.

<sup>45</sup> Sümevra Yakar and Emine Enise Yakar, "A Critical Comparison between the Classical Divorce Types of Hanbalī and Ja'farī Schools," *Darulfunun Ilahiyat* 31, no. 2 (2020): 275–98, doi:10.26650/di.2020.31.2.803260.

<sup>46</sup> Maimun, "The Women's Rights in Divorce and Gender Equality Discourse in The Dynamics of Divorce in Madura," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 468–492, https://doi.org/10.22373/sjkh.v6i1.12804.

<sup>47</sup> Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna* 24, no. 2 (December 1, 2020): 266–95, doi:10.20414/ujis.v24i2.416.

<sup>48</sup> Dale Bremmer and Randy Kesselring, "Divorce and Female Labor Force Participation: Evidence from Times-Series Data and Cointegration," *Atlantic Economic Journal* 32, no. 3 (2014): 175–90, doi:10.1007/BF02299436.

<sup>49</sup> Sanaa Talwasa and Fazlul Haq Meryaniwal's, "Muslim Women Seeking Divorce: An Analysis on Socio-Religious Practice," *ANTAKIYAT Journal of Social and Theological Studies* 4, no. 1 (2021): 1–20.

<sup>50</sup> Sajal Rasool, "Khula: A Woman's Absolute Right to Divorce and A Remarkable Development Within the Islamic Legal System," *PCL Student Journal of Law* 5, no. 1 (2021): 163–87.

<sup>51</sup> 'Abdul Karīm ibn 'Alī ibn Muḥammad Al-Namlah, *Al-Maḥab Fī 'Ilmi Uṣūl Al-Fiqh Al-Muqāran*, Juz 1, 1st ed. (Riyad: Maktabah al-Rusyd, 2001).

<sup>52</sup> Al-Syīrāzī, *Al-Muḥāḍab Fī Fiqh Al-Imām Al-Syāfi'ī*, Juz 4, 2000.



rights, such as praying and other similar matters. Hidayanti et al reveal the dual role of women in realizing family resilience such as maintaining the chastity of their husbands by increasing spirituality or religiosity and minimizing the negative effects of using social media in the family.<sup>53</sup> If this is not achieved, then it is recommended to divorce him because it has the potential to cause disputes and rifts. Including if the wife is impure, because in that case there is a deficiency in her religion, and cannot guarantee the sanctity of her husband's bed, and ordains a child that is not from her husband, so that Islamic law encourages husbands to divorce and not keep her.<sup>54</sup>

Third, the law is permissible if it is done to avoid the harm that threatens one of the parties, be it husband or wife.<sup>55</sup> This is as stipulated in the divorce laws in Indonesia and Malaysia which allow the wife to sue the husband for divorce if there is domestic violence.<sup>56</sup> Divorce is also permissible if there is a defect in a wife that prevents her from fulfilling her obligations to her husband.<sup>57</sup> Fourth, it is *makruh* if it is done without cause,<sup>58</sup> and also when it is not to avoid harm in the house.<sup>59</sup> Fifth, it becomes unlawful if divorce is handed down without a clear reason and harms one of the parties, either the husband or the wife, and there is no benefit to be achieved.<sup>60</sup> Divorce law can also turn out to be unlawful if it is included in *talaq bid'ī*, divorcing a wife during menstruation.<sup>61</sup> The rise of divorces triggered by extramarital affairs as a result of women working outside the home so that sometimes family resilience cannot be maintained<sup>62</sup> can also be categorized under this law.

Al-Kāsānī explains that the majority of Hanafiyah scholars argue that there is only one pillar of divorce, namely the pronouncement which shows the meaning of divorce, both etymologically, namely *al-Takhliyyah* (leaving or letting), *al-Irsal* (sending), and *raf'u al-qayyid* (raising bonds) in the pronouncement category -another pronouncement in *kināyah* pronouncement, or *syara'* which eliminates the wife's lawfulness in both forms (*raj'ī* and *bā'in*), or anything that occupies the position of pronouncement.<sup>63</sup> Meanwhile, according to Malikiyah scholars, there are four pillars of divorce, namely a person who is competent to pronounce divorce, intention or intention to divorce, lawful women, and the

---

<sup>53</sup> Tri Wahyu Hidayati, Ulfah Susilawati, and Endang Sriani, "Dynamics of Family Fiqh: The Multiple Roles of Women in Realizing Family Resilience," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 219–38, doi:10.18326/ijtihad.v22i2.219-238.

<sup>54</sup> Al-Syīrāzī, *Al-Muḥaḥab Fī Fiqh Al-Imām Al-Syāfi'ī*, Juz 4, 2000.

<sup>55</sup> 'Usmān bin Syaṭā al-Bakrī Abū Bakr, *I'ānatu Al-Ṭālibīn*, Juz 4, 1st ed. (Kairo: Dār Iḥyāi al-Kutub al-'Arabiyah, 1998).

<sup>56</sup> Martina Purna Nisa Jaliensyah, "Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives)," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 1 (2021): 1–23, doi:10.19105/al-ihkam.v16i1.4292.

<sup>57</sup> 'Amrū 'Abdu al-Mun'im Salīm, *Al-Jāmi'u Fī Aḥkāmī Al-Ṭalāq*, 1st ed. (Kuwait: Dār al-Ḍiyāi, 2000).

<sup>58</sup> Abī Zakariyyā Yaḥyā bin Syaraf Al-Nawawī, *Rauḍatu Al-Ṭālibīn Wa 'Umdah Al-Muḥīṭīn*, 2nd ed. (Damaskus: Dār al- Kutub al-Ilmiyah, 2010).

<sup>59</sup> Ahmad Arfah Mansyah Kasman Bakry, Sirajuddi, Musriwan, "Tinjauan Fikih Islam Terhadap Undang-Undang Nomor 1 Tahun 1974 Tentang Talak," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 2, no. 2 (2021): 348–62, doi:10.36701/BUSTANUL.V2I2.374.

<sup>60</sup> Sābiq, *Fiḥu Al-Sunnah*.

<sup>61</sup> Al'auddīn Abū Bakr bin Mas'ūd al-Kāsānī, *Badāi' Al-Ṣanāi' Fī Tartīb Al-Syarāi'*, 1st ed. (Beirut: Dār al Kitāb al 'Arabī, 2000).

<sup>62</sup> Raquel Fernández and Joyce Cheng Wong, "Divorce Risk, Wages and Working Wives: A Quantitative Life-Cycle Analysis of Female Labour Force Participation," *The Economic Journal* 124, no. 576 (2018): 319–58, doi:10.1111/ECOJ.12136.

<sup>63</sup> Al-Kāsānī, *Badāi' Al-Ṣanāi' Fī Tartīb Al-Syarāi'*.

pronunciation, both *ṣarīḥ* as well as *kināyah*.<sup>64</sup>

Ibn Juzā from other Malikiyah scholars said that there are three pillars of divorce, namely *al-Muṭalliḡ* (husband), *al-Muṭallaqah* (wife), and *al-Ṣīgah*, namely utterances in the form of pronunciations and cases that have the same meaning.<sup>65</sup> Meanwhile, the Shafi'i and Hanabilah schools of thought argue that there are five pillars of divorce. Among them is the person who dropped the divorce, the pronouncement of divorce, the intention to drop the divorce, the existence of women who were made lawful, and power.<sup>66</sup> Four pillars of divorce are agreed upon by scholars, namely husband, wife, *ṣīgah* divorce, and *qasd*.

If the issue of divorce is raised to the Religious Court, all decisions taken by judges in determining the status of divorce cannot be separated from the principles of maqāsid sharia.<sup>67,68</sup> The Religious Court will conduct mediation before issuing a divorce verdict based on several pillars including deliberation and building communication between the two spouses.<sup>69</sup> This is done considering that the impact of divorce is not only felt by the married couple but will have an impact on the psychology of children.<sup>70</sup> However, Nusaidah et al revealed that many divorce cases occur outside the court as found in Bekasi City.<sup>71</sup>

## 2.2. Divorce Is Reviewed Based on the Aspect of Pronunciation, When It Occurs, and How to Drop It

Judging from the pronunciation, the first is divorce *ṣarīḥ*, namely, divorce with clear and firm expressions and does not require intention in it, using the pronunciation of *al-Ṭalāq* (divorce), *al-Sarāḥ* (release), and *al-Firāq* (separation),<sup>72</sup> like a husband declaring to his wife, "I divorce (divorce) you", "I let you go (*sarāḥ*)", or "I want to separate (*firāq*)".<sup>73</sup> It says divorced with pronunciation *ṣarīḥ* because these three words

---

<sup>64</sup> Khalīl bin Iṣḥāq Al-Mālikiyyah, *Mukhtaṣar Al-'Allāmah Al-Khalīl*, 2nd ed. (Beirut: Dār al-Fikr, 2000).

<sup>65</sup> Muḥammad bin Aḥmad bin Juzā Al-Garnāṭī, *Al-Qawānīn Al-Fiqhiyyah, Juz 1*, 1st ed. (Beirut: Dār Ibn Ḥazm, 2002).

<sup>66</sup> Muḥammad bin Muḥammad bin Al-Gazālī, *Al-Wajīz Fī Fiqh Al-Imām Al-Syāfi'ī*, *Juz 2*, 2nd ed. (Beirut: Dār al-Arqam, 2001).

<sup>67</sup> Kartini Kartini, "Maqāsid Al-Sharī'ah Perspectives in Solution of Divorce Cases for Early Marriage," *International Journal of Health Sciences*, August 15, 2022, 8685–97, doi:10.53730/ijhs.v6ns5.11775; Muchamad Coirun Nizar, "The Religious Court's Decisions on Divorce: A Maqāsid Sharī'a Perspective," *Ulumuna* 24, no. 2 (December 1, 2020): 398–416, doi:10.20414/ujis.v24i2.408.

<sup>68</sup> Nizar, "The Religious Court's Decisions on Divorce: A Maqāsid Sharī'a Perspective."

<sup>69</sup> Abdullah Taufik, "The Settlement Principles and Effectiveness of Divorce by Mediation of Islamic Civil Perspective: A Critical Review of The Supreme Court Regulation," *Justicia Islamica* 18, no. 1 (June 4, 2021): 168–88, doi:10.21154/justicia.v18i1.2139.

<sup>70</sup> Lucy Pujasari Supratman, "A Qualitative Study of Teenagers Viewpoint in Dealing with Parents' Divorce in Indonesia," *Journal of Divorce & Remarriage* 61, no. 2 (2019): 1–13.

<sup>71</sup> Nursaidah, Adi Nur Rohman, and Panti Rahayu, "The Out of Court Divorce Model and its Legal Implications: A Juridical Study in Babelan District Bekasi," *Syariah: Jurnal Hukum Dan Pemikiran* 20, no. 2 (November 25, 2020): 159–74, doi:10.18592/sjhp.v20i2.3945.

<sup>72</sup> 'Izzu bin 'Abd al-Salām, *Al-Gāyah Fī Ikhtisār Al-Nihāyah, Juz 5*, 1st ed. (Beirut: Dār al-Nawādīr, 2018).

<sup>73</sup> Ibrāhīm bin 'Alī bin Yūsuf al-Fairūz Bādī al-Syīrāzī, *Al-Tanbīh Fī Al-Fiqh Al-Syāfi'īyyah*, 1st ed. (Beirut: 'Ālam al-Kutub, 1998).

are contained in the shari'a and are mentioned repeatedly in the Qur'an.<sup>74</sup> In addition to these reasons, it is said that *talaq ṣarīh* is also because there is no possibility of doubt about the meaning of the pronunciation unless it is only interpreted by the husband's desire to separate or divorce.<sup>75</sup>

The second is *talaq kināyah*, namely divorce which is pronounced with the meaning of divorce and meaning others and must be accompanied by an intention.<sup>76</sup> Examples of *kināyah* pronunciations that contain the meaning of divorce and other meanings are the sentence "*Anti bāin*" (you are separated). This sentence can be interpreted as letting go of the marriage bond and can also be interpreted as breaking away from evil deeds. Another sentence like "you are unclean to me".<sup>77</sup> This sentence can be interpreted that it is unlawful to have intercourse with a wife, it can also be interpreted as unlawful to hurt herself.<sup>78</sup> In this context, if the husband intends it to be a divorce, then a divorce occurs. Meanwhile, if the husband does not intend it to be a divorce, divorce does not occur. The point is satirical pronunciation or *kināyah* still requires clarity of the husband's intentions.<sup>79</sup>

As for divorce in terms of when it happened, the first is divorce *munjiz*, namely divorce that is direct or occurs at that time. For example, a husband says to his wife, "You are divorced" or "I am divorcing you." The law fell at that very moment.<sup>80</sup> Second, divorce *muḍāf*, namely divorce that is based on a future, like a husband saying to his wife "You will be divorced tomorrow" or "You will be divorced next month".<sup>81</sup> And the third divorce *mu'allaq*, namely divorce can be punished when it depends on certain conditions or conditions that will come, by using *ta'līq* pronunciations such as if, when, when, if, and the like. Like a husband saying to his wife "If you don't go into the house, you are divorced", the wife is not divorced until she decides to enter.<sup>82</sup>

Divorce is viewed from the way it was first divorced with words, that is, divorce is conveyed by the husband with words in front of his wife directly and the wife hears the words of her husband directly.<sup>83</sup> Second, divorce in writing, that is, a person is allowed to divorce his wife by writing it, even though the person concerned can speak, on condition that the writing must be clear, meaning that it can be read and written on paper.<sup>84</sup>

Third, divorce with conditions, according to the majority of scholars, people who can speak are not justified to divorce with gestures. As for mute people, the jury of scholars considered their divorce valid with a sign.<sup>85</sup> Meanwhile, among the Shafi'i and

---

<sup>74</sup> Muḥammad bin Abī Bakr al-Asadī, *Bidāyah Al-Muḥtāj Fī Syarḥi Al-Minhāj*, Juz 3, 1st ed. (Jeddah: Dār al-Minhāj Linnasyri wa al-Tauzī', 2011).

<sup>75</sup> Jamhuri and Zuhra, "Konsep Talak Menurut Ibnu Qayyim Al-Jauziyah (Analisis Waktu Dan Jumlah Penjatuhan Talak)."

<sup>76</sup> Muḥammad al-Ḥusainī al-Ḥuṣnī Al-Dimasyqī, *Kifāyatu Al-Akhyār*, Juz 2, 1st ed. (Beirut: Dār al-Khair, 1999).

<sup>77</sup> 'Alāī al-Dīn al-Samarqandī, *Tuḥfatu Al-Fuqahāi*, Juz 2, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2000).

<sup>78</sup> Sābiq, *Fiḥu Al-Sunnah*.

<sup>79</sup> Jamhuri and Zuhra, "Konsep Talak Menurut Ibnu Qayyim Al-Jauziyah (Analisis Waktu Dan Jumlah Penjatuhan Talak)."

<sup>80</sup> Al-Zuhailī, *Al-Fiqh Al-Islāmī Wa Adillatuhu*, Juz 9.

<sup>81</sup> Muḥammad Yusuf Musa, *Aḥkām Al-Aḥwāl Al-Syakhṣiyyah Fī Al-Fiqh Al-Islāmī*, 1st ed. (Mesir: Dār al-Kitab, 1997).

<sup>82</sup> 'Izzu bin 'Abd al-Salām, *Al-Gāyah Fī Ikhtisār Al-Nihāyah*, Juz 5.

<sup>83</sup> Sābiq, *Fiḥu Al-Sunnah*.

<sup>84</sup> Sābiq, *Fiḥu Al-Sunnah*.

<sup>85</sup> Sābiq, *Fiḥu Al-Sunnah*.

Hanafi schools of thought, divorce by sign is not legalized for mute people who can write, because writing is better able to show the intended purpose, except when the condition is not able to write.<sup>86</sup> And the fourth is divorce by messenger, namely divorce conveyed by a husband to his wife through the intercession of another person. Under these conditions, the person sent acts as the person who brings down the divorce so that the divorce is legal.<sup>87</sup>

### 2.3. Coercive *Dawābit*

Etymologically, force or *ikrāh* according to Imam Jurjānī is: *حَمْلُ الْغَيْرِ عَلَى يُكْرَهُ* (There is coercion from other people against something that is not liked accompanied by threats).<sup>88</sup> Meanwhile, according to Shaykh Sayyid Sābiq *ikrāh* is: *حَمْلُ الْإِنْسَانِ عَلَى أَمْرٍ لَا يُرِيدُهُ طَبَعًا أَوْ شَرْعًا* (Forcing someone to carry out an order that is not desired by common sense or by *syara'*).<sup>89</sup> As for *ikrāh* according to Ibn Hajar al-'Asqalānī is: *هُوَ إِلْزَامُ الْغَيْرِ بِمَا لَا يُرِيدُهُ* (Forcing others with something they don't want).<sup>90</sup>

*Al-ikrāh* in fiqh terminology means an act that is carried out without being accompanied by will, will, or of one's own choice. The existence of will and choice is the basis for the enactment of a law. If there is no will and choice, then there is no *taklīf* (legal burden) and the person concerned is not responsible for all the actions he does, because he has no will and he only does the will of the person who forces him.<sup>91</sup> Al-Sarkhasī in *al-Mabsūṭ* defines *al-Ikrāh* as an action carried out by someone because of another person, without being based on their willingness, will, and desire as well as freedom of choice.<sup>92</sup>

According to Thielemans and Mortelmans, coercion does not always come from outsiders of the two partners but sometimes comes from the wife herself who wants a divorce because of dissatisfaction with her husband and is supported by financial independence.<sup>93</sup> Responding to this, Imam al-Suyūṭī explained that if coercion is in place then this does not include *ikrāh*, such as debt collectors who force debtors to pay their debts, coercion of redemption of land for public purposes such as widening roads or expanding mosques, or wives who demands maintenance from her husband.<sup>94</sup>

This is also the case with the right of *ijbār walī*, which is allowed by some schools of thought.<sup>95</sup> Asli and Byouki state that coercion is not based on the full freedom and consent of one or both parties concerned, but rather on the presence of physical pressure

<sup>86</sup> Kamāl ibn al-Sayyid Sālim, *Ṣaḥīḥ Fiqh Al-Sunnah Wa Adillatuhu Wa Tauḍīḥ Mazāhib Al-Aimmaḥ*, Juz 3, 1st ed. (Kairo: al-Maktabah al-Taufīqiyyah, 2003).

<sup>87</sup> Sābiq, *Fiqhu Al-Sunnah*.

<sup>88</sup> 'Alī bin Muḥammad al-Syarīf al-Jurjānī, *Al-Ta'rīfāt*, 1st ed. (Beirut: Maktabah Libanān, 1999).

<sup>89</sup> Sābiq, *Fiqhu Al-Sunnah*.

<sup>90</sup> Ibnu Hajar Al-'Asqalānī, *Fath Al-Bārī*, Juz 2, 1st ed. (Beirut: Dār al-Ma'rifah, 2000).

<sup>91</sup> Sābiq, *Fiqhu Al-Sunnah*.

<sup>92</sup> Syamsu al-Dīn Al-Sarkhasī, *Al-Mabsūṭ*, 1st ed. (Libanon: Dār al-Ma'rifah, 1999).

<sup>93</sup> Gert Thielemans and Dimitri Mortelmans, "Divorce and Female Labour Force Participation: Do Women Who Expect an Upcoming Divorce Increase Their Employment? Evidence from Flanders," *Sage Journals* 65, no. 1 (2021): 187–210, doi:10.1177/0001699321994189.

<sup>94</sup> 'Abdurrahman bin Abi Bakrin Al-Suyūṭī, *Al-Asybah Wa Al-Nazāir*, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyah, 2000).

<sup>95</sup> Syahrul Mubarak Subeitan, "Forced Marriage: Implementation of the Mandatory Provisions of the Bride's Consent in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 64–77, doi:10.31958/juris.v21i1.5581.

or intimidation.<sup>96</sup> So from this definition, it can be explained that forced divorce is forcing someone to release the marriage bond with a special pronouncement, without any rights and consent from the person being forced and from a valid marriage specifically.

According to the scholars, *al-Ikrāh* can be divided into three parts. First, *Ikrāh Tām* or *al-Mulji'* (Severe Force), namely a condition of *ikrāh* which is very threatening to *mukrah 'alaih* (a person who is forced) and he cannot avoid it. Like there is a threat that can cause death or limbs that will be injured. Second, *Ikrāh Nāqīṣ* or *Gairu al-Mulji'* (Light Force) namely the condition of *ikrāh* in the form of threats that do not cause death or disability, such as detention and non-lethal beatings. And third, *Ikrāh Ma'nawī*, namely the condition of *ikrāh* in the form of threats, the form of detention of parents, children, wife, or anyone related to the family.<sup>97</sup>

#### 2.4. Comparative of the Hanafi School and the Syafi'i School of Divorce Forced People and Method Determination

According to the Hanafi school of law, divorcing someone who is forced is legal, because a person who is forced has two choices between divorcing his wife or accepting any threats that endanger himself, but the person who is forced chooses to divorce his wife. This shows intentionality and is his own choice. Even though he does not agree with the choice, that does not reduce its validity, because in this case, the husband is like saying the word divorce jokingly.<sup>98</sup> This opinion was also narrated by Ibn al-Musayyib, Abī Qilābah, al-Zuhrī, Qatādah, Sa'id bin Jubair, and some other scholars.<sup>99</sup>

Likewise, with *khulu'* and freeing slaves who are carried out by force, the law is valid.<sup>100</sup> Unlike the sale and purchase contract, if there is a compulsion to buy and sell then the sale and purchase are not valid. The Hanafī school distinguishes between the law of buying and selling in which there is a compulsion and the law of forced divorce because divorce is an act that must be given an element of teaching and learning so that in this case there is no lightening of the problem.<sup>101</sup>

*Istinbāt* the law of the Hanafī school regarding forced divorce is by using *kiyas* and the hadith of the Prophet Muhammad, as contained in the book *al-Ināyah Syarḥu al-Hidāyah* as follows:

وَذَلِكَ غَيْرُ مُخْلِ بِهٖ كَالْهَازِلِ<sup>102</sup>

Means:

“Because in this case, it is like saying divorce jokingly.”

To clarify the *kiyas* method of the Hanafi school regarding the divorce of a person

---

<sup>96</sup> Mehrdad Rayejian Asli and Mojgan Amrollahi Byouki, “Forced Marriage in Islamic Countries: The Role of Violence in Family Relationships,” in *Women and Children as Victims and Offenders: Background, Prevention, Reintegration*, vol. 1 (Springer International Publishing, 2016), 729–53, doi:10.1007/978-3-319-08398-8\_26.

<sup>97</sup> Sa'd al-Dīn Al-Taftāzānī, *Syarḥ Al-Tauḍīḥ 'ala Al-Tanqīḥ*, Juz 2, 1st ed. (Beirut: Dār al-Kutub al-Ilmiyah, 1998).

<sup>98</sup> Al-Margīnānī, *Al-Hidāyah Syarḥu Bidāyah Al-Mubtadī*, Juz 3.

<sup>99</sup> Al-Ba'dānī, *Ṭalāq Al-Mukrah*.

<sup>100</sup> Al-Sarkhasī, *Al-Mabsūṭ*.

<sup>101</sup> Al-Taftāzānī, *Syarḥ Al-Tauḍīḥ 'ala Al-Tanqīḥ*, Juz 2.

<sup>102</sup> Al-Bābartī, *Al-Ināyah Syarḥu Al-Hidāyah*.

who is forced to be the same as the divorce of a person who is joking, it can be seen from the pillars of *kiyas*, namely:

- a. *Al- Aşl (principal)*, is an event that already has a text,<sup>103</sup> such as the legal divorce of a person who jokes as per the hadith of the Prophet Muhammad.

عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ:  
التَّكَاخُ، وَالطَّلَاقُ، وَالرَّجْعَةُ. (رواه ابن ماجه)<sup>104</sup>

Means:

“From Abu Hurairah ra. he said: Rasulullah said: Three things whose seriousness is serious, and their joking is seriousness, namely marriage, divorce and reconciliation.” (Narrated by Ibn Majah).

The hadith above is the basic foundation of the Hanafi school of thought regarding the validity of divorce imposed by someone who is forced. The Hanafi school analogizes the divorce of a person who is being forced is the same as the divorce that is imposed by a person who is joking.<sup>105</sup> In the sense that divorce is imposed either seriously or jokingly, it will have legal consequences for divorce. Although one of the *rukhsahs* given by Islamic law is when forced, the Hanafi madhhab of thought argues that there is no *rukhsah* in the matter of divorce,<sup>106</sup> because when someone is forced to divorce, it means that he is given a choice and there is a desire to reject evil against him so he is forced to say what the coercive says.<sup>107</sup>

- b. *Far'u* (branches), namely an event that the law wants to equate with *aşl* because no text clearly states the law.<sup>108</sup> In this case, the divorce imposed by a person who is forced does not find any evidence that is *zannī* nor *qaṭ'i*. So this is analogous to the hadith from Abu Hurairah above.
- c. Law, namely *syara'* law which is determined by a text and is intended to become law in *far'u*.<sup>109</sup> The legal status of divorce imposed by people who are joking is valid (fallen), as well as divorce laws imposed by people who are forced to be legal because these two things have the same legal *'illat*.
- d. *'Illat*, that is, the attribute contained in the law of *aşl* and the existence of that attribute in *far'u* can be equated with the law of *aşl*.<sup>110</sup> In the case of divorce handed down by someone who is joking, the *'illat* is that the pronouncement of divorce is said on purpose and is their own choice, as well as in cases of divorce, people who are forced are their own choices, namely choosing to say the pronouncement of divorce or receiving threats from someone who forces it, the pronouncement of divorce is

<sup>103</sup> Muḥammad Abū Zahrah, *Uşūl Al-Fiqh*, 1st ed. (Lebanon: Dār al-Fikr al-'Arabi, 2010).

<sup>104</sup> Muḥammad bin Yazīd al-Qazwīnī Ibnu Mājah, *Sunan Ibnu Mājah*, 1st ed. (Kairo: Ibnul Jauzi, 2014).

<sup>105</sup> 'Abdullāh bin Maḥmūd al-Mūşulī, *Al-Ikhtiyār Lita 'līl Al-Mukhtār, Juz 3*, 1st ed. (Beirut: Dār al-'Ilmiyah, 1996).

<sup>106</sup> Al-Sarkhasī, *Al-Mabsūt*.

<sup>107</sup> Al-Bābartī, *Al- 'Ināyah Syarḥu Al-Hidāyah*.

<sup>108</sup> Muḥammad Abū Zahrah, *Uşūl Al-Fiqh*.

<sup>109</sup> Muḥammad Abū Zahrah, *Uşūl Al-Fiqh*.

<sup>110</sup> 'Abdul Wahhāb Khalāf, *'Ilmu Uşūl Al-Fiqh*, ed. Maktabah al-Da'wah al-Islāmiyyah, 2nd ed. (Kairo, 2000).

pronounced in a conscious state even though he does not want the consequences of his words. So the two cases have the same *'illat*, namely intentional and conscious of their actions.

Meanwhile, the majority of scholars including the Shafi'i school of thought are of the view that the law of divorce for someone who is forced is invalid, like a Muslim who is forced to utter kufr sentences.<sup>111</sup> According to the Syafi'i school of thought, divorce can be said to be valid if it is done by a wise husband, balig, and of his own free will. This means that people who are not illegitimate are not legal, such as small children, people who are crazy or unconscious, and people who are sleeping. Likewise, the divorce of someone who is forced is illegal.<sup>112</sup> This is also the opinion of some scholars who mention divorce imposed by people who are forced, such as the opinion narrated by 'Umar, Alī, Ibn 'Umar, Ibn 'Abbās, Ibn al-Zubair, Jābir bin Samurah, 'Abdullāh bin 'Umar, 'Ikrimah, Hasan, Jābir bin Zaid, and some other scholars who stated that the divorce was not valid or valid.<sup>113</sup>

Table 1. Comparative Opinions of the Hanafi School and the Shafi'i School

School	Legal status	Method	Istidlal
Hanafi	legitimate	figuratively	There is a pronouncement. Either agree or disagree with the legal consequences.
			Pronunciation shows a choice, so it is entitled to legal consequences <i>kias</i> , as the divorce status of people who are joking is legal, so is that of people who are forced
Shafi'i	invalid	figuratively	There is no intention to cancel the validity of the law. <i>kias</i> , just as the disbelief of someone who is forced does not apply, so does the divorce of someone who is forced

Imam Syafi'i stated that a person who divorces his wife because he is forced, cannot be called divorced or divorced because the divorce is his and of his own free will. If a husband has the intention in his heart to want to divorce his wife and pronounces it with the pronouncement of divorce or something that resembles the pronouncement of other divorces, then the divorce is valid and if he does not intend to divorce his wife, then the divorce is not valid.<sup>114</sup> Therefore, in the condition of a person who is forced to divorce without any intention in his heart, divorce does not occur. As the hadith of Rasulullah,

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى. (رواه البخاري)<sup>115</sup>

<sup>111</sup> Al-Syīrāzī, *Al-Muḥaḥab Fī Fiqh Al-Imām Al-Syāfi'ī*, Juz 4, 2000.

<sup>112</sup> Syamsu al-Dīn Al-Syarībīnī, *Muḡnī Al-Muḥtāj Ilā Ma'rifaḥ Ma'anī Al-Fāz Al-Manḥāj*, Cet. I (Beirut: Dār al-Ma'rifaḥ, 1997).

<sup>113</sup> Al-Ba'dānī, *Talāq Al-Mukrah*.

<sup>114</sup> Muḥammad bin Idrīs al-Syāfi'ī, *Al-Ummu*, Juz 5, 1st ed. (Beirut: Dār al-Ma'rifaḥ, 1990).

<sup>115</sup> Muḥammad bin Ismā'il Al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, 1st ed. (Kairo: al-Dār al-'Alamiyyah, 2016).

Means:

“Verily, every deed depends on its intention, and indeed, everyone (will be rewarded) according to what he intended.” (Narrated by al-Bukhārī).

According to Mahmudin, Islamic law provides exceptions in the sense that the Shari'a provides relief for people who are forced, such as lifting their sins when they do something that is forced upon them, or there is no punishment for them in Islamic law. A person may do what is forced upon him on condition that he still believes that what he is doing is prohibited in religion, and he does it to avoid greater danger. Coercion can take various forms, it can be by threats of being killed, abused, imprisoned, destroyed property, tortured, or injured.<sup>116</sup>

In strengthening the opinion of the Shafii school of thought regarding determining the status of forced divorce, there are several methods of *istinbāt* the laws used are:

- a. Divorce must be based on the will of the person giving the divorce, in this case, the husband. Because of what people do being forced does not intend to impose a divorce, but is only limited to a pledge, while the pledge contains two elements, namely elements of truth and lies.<sup>117</sup> This refers to the word of God in Q.S. al-Nah 1/16: 106.

إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ

Means:

“Except for the person who is forced to disbelieve but his heart remains calm in faith (he is innocent).”<sup>118</sup>

If Allah swt. do not impose disbelieving laws on people who are forced to say kufir sentences, while they still have faith in their hearts, then the same goes for divorce, if he denies it in his heart and is not accompanied by intention and does not intend to divorce, then the consequence does not fall.<sup>119</sup> This is because intention is something important in every practice or deed, including in the issue of divorce status, between pronouncement and intention is a unity that must exist in it, even being decisive in its legal validity.

- b. The Syafii school of thought argues for divorce by being forced not to fall because the divorce was handed down not of his own free will. Divorce will fall if it is accompanied by intention, while divorce which is not accompanied by intention does not fall.<sup>120</sup> In this case, the Syafii school of thought refers to the hadith of the Prophet Muhammad.

عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: إِنَّ اللَّهَ وَضَعَ عَنِ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ

<sup>116</sup> Mahmudin, “Ikrah (Paksaan) Dalam Perspektif Hukum Islam,” *Al-Falah* 20, no. 2 (2020), doi:10.47732/alfalahjikk.v20i2.144.

<sup>117</sup> Abū Bakr bin ‘Alī al-Zabīdī, *Al-Jawāhir Al-Nairah*, Juz 2, 1st ed. (Beirut: Dār al-Kutub al-‘Ilmiyah, 2006).

<sup>118</sup> Indonesia, *Al-Qur’an and Translation*.

<sup>119</sup> Al-Syīrāzī, *Al-Muḥaḥab Fī Fiqh Al-Imām Al-Syāfi’ī*, Juz 4, 2000.

<sup>120</sup> Muḥammad bin Idrīs al-Syāfi’ī, *Al-Ummu*, Juz 5.



وَمَا اسْتُكْرَهُوا عَلَيْهِ. (رواه ابن ماجة)<sup>121</sup>

Means:

“From Ibn Abbās ra., From the Prophet, said: Indeed, Allah has forgiven my people mistakes, negligence, and what was forced on them.” (Narrated by Ibn Majah).

In this case, the Shafi'i school also accepts divorce by a person who is forgetful, unconscious, or in a state of sleep and is crazy, because the perpetrator was not intentional in divorcing, and being in that condition was not his choice. So cases of forced divorce are also included in this category.

### 2.5. The Scholar's Method in Tarjih Opinions Between the Hanafi School and the Shafi'i School in Cases of Forced Divorce

The opinion of the majority of scholars in cases of forced divorce generally has a strong basis. In the case of forced divorce, both the Hanafi and Shafi'i schools of thought use the legal basis to support their opinions or arguments. Even though the two look different in determining the status of forced divorce, in the process of taking law the two high priests both use kiyas. From this derogation, a legal conclusion can be drawn even though it is different in interpreting it.

The Hanafi school of thought in determining the status of a forced divorce is by using the kiyas and hadith narrated by Abu Hurairah ra. as previously mentioned, namely that marriage, divorce, and reconciliation are serious matters which if done seriously or jokingly then the law is considered valid. According to the strong opinion that the hadith is *da'if*,<sup>122</sup> the weakness of the above hadith is due to the presence of Ibn Lahī'ah in the sanad and the discontinuity of the sanad between 'Ubaidillāh bin Ja'far and 'Ubādah bin Šāmit. There is no provision that 'Ubaidillāh heard from the Companions.<sup>123</sup> This hadith reminds people not to joke and play around with these three things because that is useless.

As for what is used as a reference by the scholars of the Shafi'i Madzhab, that is derived from the argument of the Al-Qur'an surah Al-Naḥ 1/16: 106, where the verse is still *zannī* so that it is confirmed by the hadith of the Prophet,

عَنْ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرَهُوا عَلَيْهِ. (رواه ابن ماجة)<sup>124</sup>

Means:

“From Ibn Abbās ra., from the Prophet., said: Indeed, Allah has forgiven my people mistakes, negligence, and what was forced on them.” (Narrated by Ibn Majah).

The hadith above is a hasan hadith, although scholars differ in assessing the degree of the hadith. The superior opinion is the acceptance of the hadith above because seeing from the *siqāh* ( trusted ) narrators of the hadith, all of the narrators can be used as

<sup>121</sup> Mājah, *Sunan Ibnu Mājah*.

<sup>122</sup> Al-Šan'ānī, *Subul Al-Salām Syarḥu Bulūḡul Marām, Juz 1*.

<sup>123</sup> 'Abdullāh bin 'Abdurrahmān al-Bassām, *Tauḍīḥ Al-Aḥkām Min Bulūḡi Al-Marām, Juz 5, 5th ed.* (Makkah: Maktabah al-Usarī, 2003).

<sup>124</sup> Mājah, *Sunan Ibnu Mājah*.

evidence.<sup>125</sup> This hadith narrated by Ibn Abbās shows that mistakes, negligence, and coercion in divorce are forgiven by the culprit. Therefore, the person who is forced to issue a divorce does not have legal consequences. This is because the person who is forced to say words that demand a law, but the law cannot be determined because they have no intention of that matter, on the other hand, the person who is forced only intends to avoid danger. There are no legal consequences here because the purpose and intent demanded by the divorce statement also do not exist.<sup>126</sup> This is also the case for women who are forced to submit *khuluk*.

Based on the description above, it can be seen that the arguments related to the law of divorce for people who are forced are not clearly stated in the texts of the Qur'an. However, it is reinforced in the narrations of the Companions, and from the explanation above, so that in this matter the opinion that is more appropriate and stronger based on the arguments that have been mentioned is the opinion of almost all the scholars, one of which is from the Shafi'i school of thought because this opinion has a strong and rational-legal basis. People who are forced to pronounce divorce are just avoiding the bad consequences that will befall them if they don't obey the person who forced them, so they have no other choice but to pronounce the divorce. Imam Syafi'i said that actually, coercion eliminates the nature of *ikhhtiyār* (will) which must exist in the syar'i process, different from a divorce which is just a joke which is his wish in pronouncing divorce.<sup>127</sup>

### 3. CONCLUSION

From the discussion above, the Hanafi school of thought considers that the divorced status of a forced person is still valid (fall) because of the pronunciation of divorce, whether accompanied by intention or not because according to the pronunciation is a valid condition in the validity of the divorce. Whereas the Shafi'i school argues that divorcing people which forced by the law is not legitimate, based on the allusion that when God aborts disbelief to those who are forced to disbelieve, as well as divorce those who are forced and not based on intention but only because compulsion. Method instinct law which used by the Hanafi school is *kiyas*, while the Shafi'i school uses the *istidlal* method. As for the method cleric in *tarjī ḥ* opinion between sects Hanafi and sect Shafi'i related divorce status people who forced to is by assessing the sanad hadiths proposed by both of them, namely by looking at the hadith narrators. This paper is expected could give a contribution which real as an alternative to establishing legal status, especially if a case like this is brought to the religious court.

### 4. REFERENCES

- ‘Abdul Wahhāb Khalāf. *‘Ilmu Uṣūl Al-Fiqh*. Edited by Maktabah al-Da’wah al-Islāmiyyah. 2nd ed. Kairo, 2000.
- ‘Abdullāh bin ‘Abdurrahmān al-Bassām. *Tauḍīḥ Al-Aḥkām Min Bulūgi Al-Marām*, Juz 5. 5th ed. Makkah: Maktabah al-Usarī, 2003.
- ‘Abdullāh bin Maḥmūd al-Mūṣulī. *Al-Ikhtiyār Lita’lil Al-Mukhtār*, Juz 3. 1st ed. Beirut: Dār al-‘Ilmiyah, 1996.
- ‘Alāi al-Dīn al-Samarqandī. *Tuḥfatu Al-Fuqahāi*, Juz 2. 1st ed. Beirut: Dār al-Kutub al-

<sup>125</sup> ‘Abdullāh bin ‘Abdurrahmān al-Bassām, *Tauḍīḥ Al-Aḥkām Min Bulūgi Al-Marām*, Juz 5.

<sup>126</sup> ‘Abdullāh bin ‘Abdurrahmān al-Bassām, *Tauḍīḥ Al-Aḥkām Min Bulūgi Al-Marām*.

<sup>127</sup> Al-Margīnānī, *Al-Hidāyah Syarḥu Bidāyah Al-Mubtadī*, Juz 3.

- ‘Ilmiyyah, 2000.
- ‘Alī bin Muḥammad al-Syarīf al-Jurjānī. *Al-Ta’rīfāt*. 1st ed. Beirut: Maktabah Libanān, 1999.
- ‘Izzu bin ‘Abd al-Salām. *Al-Gāyah Fī Ikhtisār Al-Nihāyah, Juz 5*. 1st ed. Beirut: Dār al-Nawādir, 2018.
- ‘Abdurrahman bin Abi Bakr al-Suyūṭī. *Al-Asybah Wa Al-Nazāir*. 1st ed. Beirut: Dār al-Kutub al-‘Ilmiyah, 2000.
- Abd. Karim Faiz, Zulfahmi, Ahmad Izzudd. “Between State Law and Islamic Law: The Practice of Divorce Outside the Situbondo Religious Courts, Indonesia.” *JIL: Journal of Islamic Law* 3, no. 2 (2022): 176–92. <https://doi.org/10.24260/jil.v3i2.848>.
- Abū Bakr bin ‘Alī al-Zabīdī. *Al-Jawāhir Al-Nairah, Juz 2*. 1st ed. Beirut: Dār al-Kutub al-‘Ilmiyah, 2006.
- Al-‘Asqalānī, Ibnu Ḥajar. *Fath Al-Bārī, Juz 2*. 1st ed. Beirut: Dār al-Ma’rifah, 2000.
- Al-Bābartī, Akmal al-Dīn. *Al-‘Ināyah Syarḥu Al-Hidāyah*. 3rd ed. Lebanon: Dār al-Fikr, 2000.
- Al-Baidāwī, Nāṣirudīn Abī Sa’īd ‘Abdullāh bin ‘Umar al-Syairāzī. *Tafsīr Al-Baidāwī, Juz 2*. 1st ed. Beirut: Dār al-Rasyīd, 2000.
- Al-Ba’dānī, Muhammad ‘Alī. *Ṭalāq Al-Mukrah*. 2nd ed. Kairo: Dār al-Wafāi, 2014.
- Al-Bukhārī, Muḥammad bin Ismā’il. *Ṣaḥīḥ Al-Bukhārī*. 1st ed. Kairo: al-Dār al-‘Alamiyyah, 2016.
- Al-Dimasyqī, Muḥammad al-Ḥusainī al-Ḥuṣnī. *Kifāyat Al-Akhyār, Juz 2*. 1st ed. Beirut: Dār al-Khair, 1999.
- Al-Garnāṭī, Muḥammad bin Aḥmad bin Juzā. *Al-Qawānīn Al-Fiḥiyyah, Juz 1*. 1st ed. Beirut: Dār Ibn Ḥazm, 2002.
- Al-Gazālī, Abū Ḥāmid. *Al-Wasīṭ Fī Al-Maḥab, Juz 5*. 2nd ed. Mesir: Dār al-Salām, 2005.
- Al-Gazālī, Muḥammad bin Muḥammad bin. *Al-Wajīz Fī Fiḥ Al-Imām Al-Syāfi’ī, Juz 2*. 2nd ed. Beirut: Dār al-Arqam, 2001.
- Al-Ḥarrānī, Taqīyyu al-Dīn Aḥmad bin Taimiyah. *Majmu’ah Al-Fatāwā, Juz 33*. 2nd ed. Mesir: Dār al-Wafāi, 2001.
- Al-Jazīrī, Abdurrahman. *Al-Fiḥ ‘Alā Mazāhib Al-Arba’ah, Juz 4*. 2nd ed. Beirut: Dār al-Kutub al-Ilmiyah, 2003.
- Al-Karmī, Mar’ī bin Yūsuf bin. *Gāyah Al-Muntaha Fī Al-Jami’ Baina Al-Iqnā’ Wa Al-Muntaha, Juz 3*. Kuwait: Muassasah Girās li Nasyri wa al-Tauzī’, 2007.
- Al-Kāsānī, Alāuddīn Abū Bakr bin Mas’ūd. *Badā’i’ Al-Ṣanā’i’ Fī Tartīb Al-Syarā’i’*. 1st ed. Beirut: Dār al Kitāb al ‘Arabī, 2000.
- Al-Kāsānī, ‘Alāuddīn Abū Bakr bin Mas’ūd. *Badā’i’ Al-Ṣanā’i’ Fī Tartīb Al-Syarā’i’*. 2nd ed. Beirut: Dār al-Kutub al-Ilmiyah, 2003.
- Al-Kāsānī, ‘Alāuddīn Abū Bakr bin Mas’ūd. *Badā’i’ Al-Ṣanā’i’ Fī Tartīb Al-Syarā’i’*. 2nd ed. Damaskus: Dār al- Kutub al-Ilmiyah, 2002.
- Al-Mālikiyyah, Khalīl bin Ishaq. *Mukhtaṣar Al-‘Allāmah Al-Khalīl*. 2nd ed. Beirut: Dār al-Fikr, 2000.
- Al-Mardāwī, Usmān bin Aḥmad ‘Auḍ. *Hidāyah Al-Rāgib Li Syarḥ ‘Umdat Al-Ṭālib*. 1st ed. Beirut: Muassasah al-Risālah, 2007.
- Al-Margīnānī, Alī bin Abī Bakr. *Al-Hidāyah Syarḥu Bidāyah Al-Mubtadī, Juz 3*. 3rd ed. Pakistan: Idārah al-Qur’an wa al-‘Ulūm al-Islāmiyyah, 2003.
- Al-Margīnānī, Burhānuddīn Abū al-Ḥasan Alī bin Abī Bakr. *Al-Hidāyah Syarḥu Bidāyah Al-Mubtadī, Juz 3*. 1st ed. Pakistan: Idārah al-Qur’an wa al-‘Ulūm al-Islāmiyyah,

- 2001.
- Al-Namlah, ‘Abdul Karīm ibn ‘Alī ibn Muḥammad. *Al-Maḏhab Fī ‘Ilmi Uṣūl Al-Fiqh Al-Muqāran, Juz 1*. 1st ed. Riyad: Maktabah al-Rusyd, 2001.
- Al-Nawawī, Abī Zakariyyā Yaḥyā bin Syaraf. *Rauḍatu Al-Ṭālibin Wa ‘Umdah Al-Muftīn*. 2nd ed. Damaskus: Dār al- Kutub al-Ilmiyah, 2010.
- Al-Nawawī, Yaḥyā bin Syaraf. *Rauḍatu Al-Ṭālibin Wa ‘Umdah Al-Muftīn, Juz 8*. 3rd ed. Beirut: Maktab al-Islāmī, 2004.
- Al-Sa’dī, Abdurrahman bin Nāṣir. *Taisīr Al-Karīm Al-Raḥman Fī Tafsīr Kalām Al-Mannān*. 1st ed. Beirut: Muassasah al-Risālah, 2002.
- Al-Sakhāwī, Syamsu al-Dīn Abū al-Khair Muḥammad bin ‘Abdurrahman. *Al-Maqāṣidu Al-Ḥasanah*. 1st ed. Beirut: Dār al-Kutub al-‘Ilmiyah, 1998.
- Al-Ṣan’ānī, Muḥammad bin Ismā’il al-Amīr. *Subul Al-Salām Syarḥu Bulūgul Marām, Juz 1*. 1st ed. Mesir: Dār al-Ḥadīṣ, 1999.
- Al-Sarkhasī, Syamsu al-Dīn. *Al-Mabsūṭ*. 1st ed. Libanon: Dār al-Ma’rifah, 1999.
- Al-Sijjīstānī, Abū Dāwud Sulaimān bin al-Asy’ats. *Sunan Abī Dāwud, Juz 2*. 2nd ed. Beirut: Dār al-Kutub al-‘Ilmiyah, 2000.
- Al-Syarībīnī, Syamsu al-Dīn. *Mugnī Al-Muḥtāj Ilā Ma’rifah Ma’anī Al-Fāz Al-Manḥāj*. Cet. I. Beirut: Dār al-Ma’rifah, 1997.
- Al-Syīrāzī, Abū Ishāq. *Al-Muḥaḏab Fī Fiqh Al-Imām Al-Syāfi’ī, Juz 4*. 1st ed. Damaskus: Dār al-Qalam, 2000.
- . *Al-Muḥaḏab Fī Fiqh Al-Imām Al-Syāfi’ī, Juz 4*. 2nd ed. Damaskus: Dār al-Qalam, 2000.
- Al-Taftāzānī, Sa’d al-Dīn. *Syarḥ Al-Tauḏīḥ ‘ala Al-Tanqīḥ, Juz 2*. 1st ed. Beirut: Dār al-Kutub al-‘Ilmiyah, 1998.
- Al-Tirmizī, Muḥammad bin Īsa. *Sunan Al-Tirmizī, Juz 2*. 1st ed. Beirut: Dār al- Garb al-Islāmī, 2002.
- Al-Zuḥailī, Wahbah. *Al-Fiqh Al-Islāmī Wa Adillatuhu, Juz 9*. 2nd ed. Damaskus: Dār al-Fikr, 1995.
- Asli, Mehrdad Rayejian, and Mojgan Amrollahi Byouki. “Forced Marriage in Islamic Countries: The Role of Violence in Family Relationships.” In *Women and Children as Victims and Offenders: Background, Prevention, Reintegration*, 1:729–53. Springer International Publishing, 2016. doi:10.1007/978-3-319-08398-8\_26.
- Bakr, ‘Usmān bin Syaṭā al-Bakrī Abū. *I’ānatu Al-Ṭālibīn, Juz 4*. 1st ed. Kairo: Dār Iḥyāi al-Kutub al-‘Arabiyah, 1998.
- Bremmer, Dale, and Randy Kesselring. “Divorce and Female Labor Force Participation: Evidence from Times-Series Data and Cointegration.” *Atlantic Economic Journal* 32, no. 3 (2014): 175–90. doi:10.1007/BF02299436.
- Carlisle, Jessica. “Mother Love: A Forced Divorce in Damascus.” *Berghahn Journals; New York Oxford* 2, no. 1 (2017): 178–97. doi:10.3167/ame.2007.020107.
- Fernández, Raquel, and Joyce Cheng Wong. “Divorce Risk, Wages and Working Wives: A Quantitative Life-Cycle Analysis of Female Labour Force Participation.” *The Economic Journal* 124, no. 576 (2015): 319–58. doi:10.1111/ECOJ.12136.
- Gul, Ayesha, Shereen Younas Khan, Rukhshandazarar, Soniya Shmas, and Muhammad Humayun. “Divorce: Cuses and Consequences in Islamic Pperspective.” *PalArch’s Journal of Archaeology of Egypt / Egyptology* 18, no. 4 (2021): 6136–51.
- Hidayati, Tri Wahyu, Ulfah Susilawati, and Endang Sriani. “Dynamics of Family Fiqh:

- The Multiple Roles of Women in Realizing Family Resilience.” *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 219–38. doi:10.18326/ijtihad.v22i2.219-238.
- Ibrāhīm bin ‘Alī bin Yūsuf al-Fairūz Bādī al-Syīrāzī. *Al-Tanbīh Fī Al-Fiqh Al-Syāfi’iyyah*. 1st ed. Beirut: ‘Ālam al-Kutub, 1998.
- Indonesia, Ministry of Religion of the Republic of. *Al-Qur’an and Translation*. 1st ed. Bandung: Cordoba, 2018.
- Jaliansyah, Martina Purna Nisa. “Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives).” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 1 (2021): 1–23. doi:10.19105/al-lhkam.v16i1.4292.
- Jamhuri, and Zuhra. “Konsep Talak Menurut Ibnu Qayyim Al-Jauziyah (Analisis Waktu Dan Jumlah Penjatuhan Talak).” *Media Syari’ah* 20, no. 1 (2018): 96–122. doi:10.22373/jms.v20i1.6503.
- Kadir, N. A. “Evaluating The Rising Trends of Divorces Within Malaysian Community.” *Quantum Journal of Social Sciences And Humanities* 2, no. 6 (2021): 1–13. doi:10.55197/qjssh.v2i6.96.
- Kamāl ibn al-Sayyid Sālim. *Ṣaḥīḥ Fiqh Al-Sunnah Wa Adillatuhu Wa Tauḍīḥ Mazāhib Al-Aimmah, Juz 3*. 1st ed. Kairo: al-Maktabah al-Tauḥīdiyyah, 2003.
- Kartini, Kartini. “Maqasid Al-Shari’ah Perspectives in Solution of Divorce Cases for Early Marriage.” *International Journal of Health Sciences*, August 15, 2022, 8685–97. doi:10.53730/ijhs.v6ns5.11775.
- Kašīr, Abū al-Fidā’ bin. *Tafsīr Al-Qur’an Al-‘Azīm*. 1st ed. Beirut: Dār Ibn Ḥazm, 2000.
- Kasman Bakry, Sirajuddi, Musriwan, Ahmad Arfah Mansyah. “Tinjauan Fikih Islam Terhadap Undang-Undang Nomor 1 Tahun 1974 Tentang Talak.” *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 2, no. 2 (2021): 348–62. doi:10.36701/BUSTANUL.V2I2.374.
- Khairani Mukdin, Zahrul Bawady, Tarmizi M.Djakfar, Muhammad Riza Nurdin. “Application of No-Fault Divorce Legalrules As A Basic For Judges Conciderations; A Case Study of Indonesia.” *Pelita: Jurnal Kajian Ilmu Hukum Dan Syariah* 7, no. 2 (2022): 80–91. doi:10.22373/petita.v7i2.149.
- Khaṭṭāb, Al-Ru‘ainī al-Syahīr bil. *Mawāhib Al-Jalīl Fī Syarḥ Mukhtaṣar Al-Syaikh Khalīl, Juz 4*. 1st ed. Maurītāniyā: Dār al-Riḍwān, 2010.
- Lawang, Karimuddin Abdullah, Rika Sasralina, Darwin Sagala, J Jalaluddin, and Titin Samsudin. “Woman Representative in Divorce: An Analysis Form Syafi’iyyah Fiqh.” *Athena: Journal of Social, Culture and Society* 1, no. 2 (March 15, 2023): 43–49. doi:10.58905/athena.v1i2.31.
- Leopold, Thomas. “Thomas Leopold, Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes, Demography 55 No. 3.” *Demography* 55, no. 3 (2018): 769–97. doi:10.1007/s13524-018-0667-6.
- Mahmudin. “Ikrah (Paksaan) Dalam Perspektif Hukum Islam.” *Al-Falah* 20, no. 2 (2020). doi:10.47732/alfalahjikk.v20i2.144.
- Maimun. “The Women’s Rights in Divorce and Gender Equality Discourse in The Dynamics of Divorce in Madura.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 468–92. doi:10.22373/sjkh.v6i1.12804.
- Mājah, Muḥammad bin Yazīd al-Qazwīnī Ibnu. *Sunan Ibnu Mājah*. 1st ed. Kairo: Ibnul Jauzi, 2014.
- Maula, Wardah Nuroniyah and Bani Syarif. “Muslim Women Adhering to

- Minangkabau's Bajapuik Tradition in Cirebon, West Java: Compromizing A Gendered Culture in Islamic Law." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 135–53. doi:10.18326/ijtihad.v22i2.135-153.
- Muhammad Abū Zahrah. *Uṣūl Al-Fiqh*. 1st ed. Lebanon: Dār al-Fikr al-'Arabi, 2010.
- Muhammad bin Abī Bakr al-Asadī. *Bidāyah Al-Muhtāj Fī Syarḥi Al-Minhāj, Juz 3*. 1st ed. Jeddah: Dār al-Minhāj Linnasyri wa al-Tauzī', 2011.
- Muhammad bin Idrīs al-Syāfi'ī. *Al-Ummu, Juz 5*. 1st ed. Beirut: Dār al-Ma'rifah, 1990.
- Muhammad Yusuf Musa. *Aḥkām Al-Aḥwāl Al-Syakhṣiyyah Fī Al-Fiqh Al-Islāmī*. 1st ed. Mesir: Dār al-Kitab, 1997.
- Ni'mah, Zulfatun. "The Violation on Women's Rights in the Unilateral Divorce in Sasak Community From A Feminist Legal Theory." *Al-Ihkam* 13, no. 1 (2018): 25–48. doi:10.19105/al-lhkam.v13i1.1482.
- Nizar, Muchamad Coirun. "The Religious Court's Decisions on Divorce: A Maqāṣid Sharī'a Perspective." *Ulumuna* 24, no. 2 (December 1, 2020): 398–416. doi:10.20414/ujis.v24i2.408.
- Nujaim, Zain al-Dīn Ibn. *Al-Baḥru Al-Rāiq Syarḥu Kanz Al-Daqāiq, Juz 3*. 2nd ed. Beirut: Dār al-Kutub al-Ilmiyah, 2000.
- Nursaidah, Adi Nur Rohman, and Panti Rahayu. "The Out of Court Divorce Model and its Legal Implications: A Juridical Study in Babelan District Bekasi." *Syariah: Jurnal Hukum Dan Pemikiran* 20, no. 2 (November 25, 2020): 159–74. doi:10.18592/sjhp.v20i2.3945.
- Rasool, Sajal. "Khula: A Woman's Absolute Right to Divorce and A Remarkable Development Within the Islamic Legal System." *PCL Student Journal of Law* 5, no. 1 (2021): 163–87.
- Sa'adah, Mazro'atus. "Economic And Living Issues in The Case of Divorce in Indonesia: The Perspective of Fiqh." In *Annual International Conference on Islamic Studies (AICIS 2021)*, 25–29. Surakarta: Annual International Conference on Islamic Studies (AICIS 2021), 2021.
- Sābiq, Sayyid. *Fiḥu Al-Sunnah*. 1st ed. Mesir: Dār al-Ḥadīṣ, 2004.
- Salamuddin, Muhammad. "The Impacts of a Fatwa (Edict) From Aceh Ulema Council (MPU) Number 2 of 2015 Concerning Talak (Divorce) Without Court Proceedings." *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 25, no. 2 (2020): 25–32. doi:10.9790/0837-2502092532.
- Salīm, 'Amrū 'Abdu al-Mun'im. *Al-Jāmi'u Fī Aḥkāmī Al-Ṭalāq*. 1st ed. Kuwait: Dār al-Diyāi, 2000.
- Subeitan, Syahrul Mubarak. "Forced Marriage: Implementation of the Mandatory Provisions of the Bride's Consent in Indonesia." *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 64–77. doi:10.31958/juris.v21i1.5581.
- Supratman, Lucy Pujasari. "A Qualitative Study of Teenagers Viewpoint in Dealing with Parents' Divorce in Indonesia." *Journal of Divorce & Remarriage* 61, no. 2 (2019): 1–13.
- Thielemans, Gert, and Dimitri Mortelmans. "Divorce and Female Labour Force Participation: Do Women Who Expect an Upcoming Divorce Increase Their Employment? Evidence from Flanders." *Sage Journals* 65, no. 1 (2021): 187–210. doi:10.1177/0001699321994189.
- Talwasa, Sanaa, and Fazlul Haq Meryaniwal's. "Muslim Women Seeking Divorce: An Analysis on Socio-Religious Practice." *ANTAKIYAT Journal of Social and Theological Studies* 4, no. 1 (2021): 1–20.

- Taufik, Abdullah. "The Settlement Principles and Effectiveness of Divorce by Mediation of Islamic Civil Perspective: A Critical Review of The Supreme Court Regulation." *Justicia Islamica* 18, no. 1 (June 4, 2021): 168–88. doi:10.21154/justicia.v18i1.2139.
- Wahyudi, Firman. "Ithbāt Ṭalāq: An Offer of Legal Solutions to Illegal Divorce in Indonesia." *Al-Ahkam* 32, no. 2 (2022): 211–32. doi:10.21580/ahkam.2022.32.2.11720 PDF.
- Wardatun, Atun, and Bianca J. Smith. "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage." *Ulumuna* 24, no. 2 (December 1, 2020): 266–95. doi:10.20414/ujis.v24i2.416.
- Yakar, Sümeýra, and Emine Enise Yakar. "A Critical Comparison between the Classical Divorce Types of Hanbalī and Ja‘farī Schools." *Darulfunun Ilahiyat* 31, no. 2 (2020): 275–98. doi:10.26650/di.2020.31.2.803260.