



Divorce in Contemporary Islamic Law and the Challenges of its Application in Indonesia in the Context of Contemporary or Modern Society

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ABSTRACT

This field research uses a qualitative approach, the analysis method uses sociological descriptive analysis, primary and secondary data research, data collection through observation, interviews and documentation. Based on the results of the study, divorce is a legal process that ends a marriage relationship between husband and wife. The decision to divorce can be caused by various factors, first one of the parties commits adultery and heinous acts that are difficult to cure, second one of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without valid reasons, third one of the parties gets a prison sentence of 5 (five) years, Fourth One of the parties commits cruelty and persecution Fifth One of the parties gets a disability or illness with the result that he cannot carry out his obligations as a husband or wife, Sixth Between husband and wife there are continuous disputes that there is no hope that they will live in harmony again, seventh The husband violates the taklik talak, eighth The change of religion that causes disharmony in the household. In its development divorce from the perspective of contemporary Islamic law (modern society) demands that Indonesian Muslim husbands and wives, if "forced" to divorce, should comply with the rules of Indonesian madhhab law. A husband, if he wants to divorce his wife, should ask for consideration and judgment and then ask for permission to divorce from the ulil amri (court).

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INTRODUCTION

Hamzah Ya'qub explains that a family is an association of two people of different sexes united by a legal marriage with the aim of raising a family and children resulting from the marriage process. The family is considered a basic unit in society and has a very important role in building a strong foundation for good social life. The family is a good place to establish a peaceful, secure, peaceful and prosperous life between men and women

The concept of family in Islam is based on the teachings of the Qur'an and hadith, which provide guidance on relationships between family members and within them. The family in Islam is expected to be able to educate family members according to Islamic teachings including learning the Qur'an, prayer, and Islamic moral values The importance of a married couple's understanding of family law in Islam is not only limited to the practical aspects of daily life, but also includes spiritual and moral dimensions.

By understanding and following Islamic principles in family life, it is hoped that families can achieve happiness and success in this world and the hereafter. Because Islamic law on the family is a comprehensive life guide for every aspect of life, including family procedures such as marriage, divorce, and post-divorce child care, it helps families in living their daily lives in accordance with religious teachings.

Family law in Islam presents the core of religion and society in general considers obeying these rules as good religious compliance by individuals and groups. Family law is important in Muslim societies because family-related issues such as marriage, divorce and so on cannot be equated with those non-Muslims, so people want Islamic family law that applies specifically in the.

A person who is married needs to apply family law according to Islam with the aim that the family becomes harmonious and becomes a good citizen of society. Family law in Islam is a regulation revealed by Allah to humans to be guided in dealing with God, with others, with the environment and with life

The implementation of Islamic family law in society involves the application of legal rules derived from Islamic teachings related to marriage, divorce, which are influenced by several factors such as culture, tradition, and local interpretations Islamic teachings. Family law has various dimensions that can be applied empirically in the reality of social life with the aim that the rules of family law can be understood and understood.

The implementation of Islamic Family law can strengthen religious values in society, ensuring that family and individual life is based on the teachings of Islam. In addition, the application of Islamic Family law can lead to changes in social norms, especially in relation to marriage, divorce, and other family obligations. The resulting impact of the application of Islamic family law in society is to improve the status of women (equality), become a guideline for implementing family law such as guidelines for marriage activities to form a happy family. Based on this explanation, this theoretical research was conducted to provide an in-depth description and explanation of family law in Islam, especially on the issue of divorce in contemporary Islamic law, a review of the reasons and procedures for divorce in Islamic law and the challenges of its application in Indonesia in the context of contemporary or modern society.

DISCUSSION

CONTEMPORARY ISLAMIC LAW

Before further discussing divorce, we first understand What exactly meant by contemporary Islamic law? If contemporary Islamic law is the equivalent of Masa'il fiqhiyah, then there is a tendency to reduce the understanding of contemporary Islamic law to the area of fiqh studies or issues that have developed in the last period. For example, this can be seen from various books specifically titled Masa'il Fiqhiyah or problems of contemporary Islamic law. In this book there is no explicit definition of contemporary Islamic law, but by looking at the themes raised, it can easily be concluded that what is meant by "Contemporary Islamic Law" is the perspective of law on current and issues.

This tendency of interpretation is adopted by many Muslims in various parts of the world, including in Indonesia. Books written under the title Masa'il Fiqhiyah or Problematics of Contemporary Islamic Law contain many new cases or contemporary problems that have never appeared before. Therefore, it is very logical if the understanding of contemporary Islamic law as such is impressed to be responsive. That is, today's fiqh merely responds to new issues that ask for explanations from the aspect of their legal status (halal-haram).

If we refer to the meaning of "contemporary" as "" as in the Big Indonesian Dictionary, then Contemporary Islamic law can actually also be interpreted as "the development of Islamic legal thought ". This second definition of contemporary Islamic law does not necessarily respond to legal aspects (halal- haram) and new issues, but tries to see significant changes in Islamic law from time to time. These significant changes appear as a result of, among others, the most prominent, the development of the times that always asks for ethics and new paradigms. Yusuf Qardhawi's Contemporary Ijtihad or Muhammad Hisham Al-Ayyubi's AlIjtihad Wa Muqtdhayat Al-Ashr can be classified into second definition of contemporary

Islamic law.

Both the first and second understanding can be said to be one of the most obvious manifestations of the emergence of new awareness in the discourse of the revival of Islamic law. Another phenomenon of the revival of Islamic law is characterized by the rise of comparative fiqh studies (fiqh muqran).

There are several factors behind the emergence of contemporary Islamic law issues. First, the flow of modernization that covers almost most of the countries whose majority of the population are Muslims. The existence of the flow of modernization resulted in the emergence of various kinds of changes in the social order of Muslims, both concerning ideology, politics, social, cultural, and so on. These changes seem to tend to distance Muslims from religious values. This happens because these various changes give birth to social and cultural symbols that are explicitly not owned by established religious symbols, or due to the progress of modernization which is not balanced with the renewal of religious thought. In other words, the flow of modernization has given birth to a number of new challenges that must be answered as an integral part efforts to renew Islamic thought.

Secondly, the emergence of a new situation among contemporary Muslim scholars to challenge the establishment of Western legal systems in many Islamic countries. How can Muslims be governed by a foreign system? Questions like these have made Muslims realize that they must strive to create an Islamic fiqh that is relevant to the times.

Third, there is still a fixation on classical fiqh thinking (contemporary opponents) with textual, ad hoc and partial understanding, so that the systematic framework of study is not comprehensive and actual, as well as less able to adapt to existing developments.

Yusuf Qardhawi explicitly emphasizes the significance of serious studies in contemporary Islamic law. He says: "With these fundamental advances, the question arises, can fiqh face the modern age? Of course we can. as a Muslim will answer that Islamic law is able to face the times and is still relevant to be applied. However, to get there, there is a condition that must be followed consequently, namely the opening of the door to ijtihad."

Divorce In Contemporary Islamic Law

In navigating the household *behtera*, anyone would want the formation of a harmonious and happy family, which in Islam is known as *sakinah*, *mawadah* and *rahmah*. However, it cannot be denied that husbands and wives, as ordinary human beings with different types, dispositions, characters and desires, are not free from mistakes, misunderstandings, quarrels and even disputes. This problem cannot be avoided in every family. More or less, every family must have experienced it. Many factors cause household disharmony

In each family, the factors faced are also different, such as educational background, family economy, biological factors of one party, even political factors can also trigger the unbalanced journey of a family, and so on. Small misunderstandings and disputes may be neutralized by mutual trust, transparency, understanding and mutual attention between husband and wife. But not a few because the misunderstanding grows and ends in divorce

Divorce is the end of a marriage relationship between a husband and wife who do not want to continue their marriage due to several reasons. Divorce is a legal process that officially ends a marriage relationship between husband and wife. The decision to divorce can be caused by various factors, and each couple has their own reasons for taking step. Such as significant differences in values, beliefs, or life expectations between husband and wife can lead to emotional incompatibility. Or recurring conflicts and unresolved arguments can create an unhealthy environment in the marriage. Or even difficulties in having children or infertility can create severe emotional stress in the marriage.

Divorce in contemporary times occurs for the reasons of *talaq* (divorce of the husband's will) and *khuluk* (divorce of the wife's will). In Islam, the husband has the right to give *talaq* to his wife. There are several forms of *talaq*, including *talaq raj'i* (divorce that can be reconciled) and *talaq bain* (divorce that cannot be reconciled). The causes of *talaq* can vary, including incompatibility, disharmony, or other problems in the marriage

Some husbands may feel that giving *talaq* is the best solution to resolve conflict or unhappiness in the marriage. Whereas *khuluk* is a wife-initiated form of divorce in which the wife has the right to request a divorce from her husband. The process involves an agreement between the husband and wife or through the courts if there is no agreement. *Khuluk* occurs when the wife feels unhappy in the marriage and wants to end relationship. Reasons for *khuluk* can include dissatisfaction, disapproval of the husband's behavior, or other issues that make the wife feel unable to continue the marriage.

The divorce process should be carried out by prioritizing deliberation with full kinship, fairness and using common sense. This approach reflects family values and fairness, and demonstrates an effort to resolve conflicts in a thoughtful manner. It can involve all family members to discuss and find solutions together and ensure that decisions are made taking into account the views and interests of all parties involved

This approach can help reduce the potential conflict and harm that can occur in divorce proceedings. In addition, the focus on deliberation, kinship, fairness and common sense can create an environment that is more conducive to a good settlement and support the recovery process for both the divorcing couple and the families involved. Divorce is a court process which the court has the absolute right to decide on a person's marital status. One of the spouses seeking a divorce files a divorce petition with the court. The suit may include certain grounds recognized by local law

The court may then hold a hearing to hear arguments from both parties, review the evidence presented, and make a decision based on the applicable law. After hearing the arguments and reviewing the evidence, the court will make a judgment regarding the divorce. This judgment includes the formal termination of marital status, as well as decisions regarding the rights and responsibilities of the spouses regarding children, joint property, and other issues. Once the judgment is issued, the spouses must comply with the court's decision involving the division of joint property, child support payments, or other actions in accordance with the court's judgment.

Religious court judges who deal directly with religious values must pay proper and careful attention to the reasons why a husband and wife seek divorce. This may include consideration of the provisions of Islamic law relating to divorce, such as the valid grounds for divorce under religious law, the rights and obligations of husband and wife, as well as other issues that may be relevant. The judge may also consider the fairness and welfare of parties involved, especially if there are children involved in the divorce

What can be done is for the judge to conduct interviews with both parties to understand their perspectives, evaluate the evidence, and ensure that the legal process is proceeding in accordance with the principles Islamic law. The judge should give the husband and wife the opportunity to explain the grounds for divorce by asking about any conflicts or problems that may have arisen in their marriage. The judge needs to ensure that the grounds presented are in accordance with the provisions of Islamic law. If there are any concerns regarding the talaq or khuluk procedure, the judge may ask for clarification.

Divorce has a negative impact on children both psychologically and physically. The impact of parental divorce on children such as being quiet, shy, no longer cheerful and their learning achievement decreases. Children who experience parental divorce can experience high emotional stress. Feelings of anxiety, loss or confusion often arise, especially if the divorce process is not going well. In addition, the child may have difficulty interacting with peers or building stable social relationships. Insecurity and uncertainty may affect their ability to socialize

It is important for children experiencing parental divorce to receive family and psychological support. Professional help or support from friends, The principle of the divorce process carried out by the first religious court is the principle of making the divorce process difficult by applying standardized procedures or policies according to the procedural law in court. Standardized or formalized divorce policies may be designed to create families, or teachers may help cope with the emotional impact. The principle of the divorce process carried out by the first religious court is the principle of making the divorce process difficult by applying standardized procedures or policies according to the procedural law in court

A standardized or formal divorce policy may be designed to create a consistent standard for handling divorce matters. This may involve structured legal procedures, official forms, or other guidelines to ensure that each divorce is dealt with fairly and in accordance with the law. While structured procedures may slow down or complicate the divorce process, their real purpose is to provide legal protection and ensure justice for all parties involved. The second principle is the effectiveness of the mediation process conducted by religious courts, the mediation process in religious courts must take into account the values and principles of applicable religious law. The agreement reached should be in line with the relevant religious norms

The mediator must understand the special needs of the divorcing couple, including religious considerations, culture, and the needs of the children. This understanding helps ensure that the resulting solution meets the needs of each party. Third, the principle of reviewing the procedural law of the divorce that has been filed, the review of the procedural law of divorce, also known as judicial review, refers to the process by which a legal judgment or decision in divorce proceedings is re-evaluated by a higher legal authority. The High Court may review whether the legal procedures followed during the divorce proceedings complied with the standards set by the applicable procedural law. This includes the application of evidentiary standards, the use of relevant evidence, and ensuring that the rights of the parties involved have been respected.

Reasons For Divorce

The Compilation of Islamic Law in Indonesia through Article 116 states that divorce can occur for the following reasons:

1. One of the parties commits adultery or becomes a drunkard, junkie, gambler, and so on that is difficult to cure.
2. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without valid reasons or for other reasons beyond his/her control.
3. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage has taken place.
4. One of the parties commits cruelty and serious maltreatment that endangers the other party.
5. One of the parties becomes physically disabled or sick with the result that he or she cannot fulfill his or her duties as husband or wife.
6. There are continuous disputes and quarrels between husband and wife and there is no hope that they will live in harmony again.
7. The husband violates the taklik talak.
8. Change of religion or apostasy that causes domestic disharmony.

Of all the reasons for divorce stated in the KHI, none of them specifically mention nusyuz as a reason for divorce. Meanwhile, in KHI, several articles regulate nusyuz, which is one of the reasons why a husband can file for divorce, among others:

1. The legal consequences of a nusyuz wife are regulated in Article 80 paragraph (7):
"The husband's obligation as referred to in paragraph (5) shall be waived if the wife is nusyuz".
2. Its obligations are set out in Article 83(1):
"The primary obligation of a wife is to be physically and mentally devoted to her husband within the limits of Islamic law".

3. The wife is considered nusyuz in Article 84 paragraph (1):

"The wife can be considered nusyuz if she does not want to carry out the obligations referred to in Article 83 paragraph (1) except with valid reasons".

4. As long as the wife is in a period of nusyuz child maintenance remains in effect which is regulated in Article 84 Paragraph (2) :

"As long as the wife is in nusyuz, the husband's obligations towards his wife as referred to in Article 80 paragraph (4) letters a and b shall not apply except for matters in the interests of his children".

5. The husband's obligation returns if the wife is no longer nusyuz, regulated in Article 84 Paragraph (3):

"The husband's obligation referred to in Paragraph (2) above shall resume after the wife has ceased to be nusyuz".

6. The legal consequences of nusyuz due to divorce are regulated in Article 152 of the Compilation of Islamic Law:

"The former wife is entitled to iddāh maintenance from her former husband unless she is nusyuz".

The meaning of the word Nusyuz itself in a narrow sense is disobedience, opposition, raising, protruding, or acting violently. When associated with the reasons for divorce according to KHI, nusyuz is a summary of the attitude of several reasons described in article 160 of KHI.

However, when viewed through the aspect of the Compilation of Islamic Law, nusyuz is narrowed down to the wife only. A wife can be considered nusyuz if she does not carry out her obligations, namely physical and mental filial piety to her husband in what is justified by Islamic law.

Modern Thinkers' Views on Nusyuz

The term Nusyuz is a legal language listed in the Qur'an which is also one of the subjects in the field of family law. The understanding of nusyuz in the Islamic legal tradition intersects directly with the context of Arab society because of the special revelation of two verses relating to nusyuz[19].

Although nusyuz is a conception of classical Islamic law, it has not been widely discussed in detail, while the perception that develops in the understanding of the community and is regulated in the form of state regulations, this cannot be separated from the influence of patriarchal culture that has influenced the practice of family law in Indonesia.

According to Abu Malik Kamal (in Al Fitri, 2022) said that nusyuz is taken from the word nasyazi, which means "high place". Meanwhile, according to Abu Ubaid nusyuz is something thick and hard. The limitation of the definition of nusyuz is leaving the obligations of husband and wife or an indifferent attitude shown by the husband or wife. However, in general, nusyuz is interpreted as disobedience or disobedience (Dudung Abdul Rohman in Al Fitri, 2022).

A different view emerges from Amina Wadud who says that the word nusyuz cannot be interpreted as disobedience to the husband but has the meaning of disruption of marital harmony."[20] This is based on her view of the word nusyuz, namely the word qanitat which describes a characteristic or personality trait of those who believe in Allah, and the word ta'at, which is a form of obedience among Allah's creatures. Both nafaz nusyuz can be used for both men and women. When referring to women, the word nusyuz can be interpreted as disobedience to the husband, while when referring to the husband, it can be interpreted as an attitude and arbitrary actions of the husband because he does not want to give his rights.

From these various definitions, Muslim scholars and thinkers differ in giving the meaning of nusyuz. Some explain nusyuz as meaning that the term is only found in wives, not the other way around, there is no term nusyuz for husbands. Others explain that nusyuz can happen to both the wife and the husband, but it is not common for the term nusyuz to be applied to the husband.

The phrase nusyuz can be found in the Qur'an at least three times in four surahs, namely Q.S. al-Baqarah verse 259,

أَوْ كَالَّذِي مَرَّ عَلَى قَرْيَةٍ وَهِيَ خَاوِيَةٌ عَلَى عُرُوشِهَا قَالَ أَنَّى يُحْيِي هَذِهِ اللَّهُ بَعْدَ مَوْتِهَا ۚ فَأَمَاتَهُ اللَّهُ مِائَةَ عَامٍ ثُمَّ بَعَثَهُ ۖ قَالَ كَمْ لَبِثْتَ ۖ قَالَ كَمْ لَبِثْتُ يَوْمًا أَوْ بَعْضَ يَوْمٍ ۖ قَالَ بَلْ لَبِثْتَ مِائَةَ عَامٍ فَانْظُرْ إِلَى طُعَمِكُمْ وَشَرَابِكُمْ لَمْ يَتَسَنَّهْ ۖ وَانْظُرْ إِلَى جَمْرِكَ ۖ وَلِنَجْعَلَكَ آيَةً لِلنَّاسِ ۖ وَانْظُرْ إِلَى الْعِظَامِ كَيْفَ نُنشِزُهَا ثُمَّ نَكْسُوهُهَا لَحْمًا ۚ فَلَمَّا تَبَيَّنَ لَهُ ۖ قَالَ أَعْلَمُ أَنَّ اللَّهَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ

Meaning: Or, like one who passes through a land whose (buildings) have collapsed covering (the ruins of) its roofs. He said, "How can Allah revive this (land) after its destruction?" So, Allah put it to death for a hundred years, then revived it. He (Allah) asked, "How long did you stay (here)?" He replied, "I stayed (here) a day or half a day." Allah said, "Actually you have stayed for a hundred years. Look at your food and drink which have not changed, (but) look at your donkey (which has become bones) and We will make you a sign (of Our power) to the people. Look at the bones (of the donkey), how We reconstitute them, then We clothe them with flesh (so that they come to life)." So, when it became clear to him, he said, "I know that Allah is over all things.

Alqur'an surah. al-Mujādalah verse 11.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قِيلَ لَكُمْ تَفَسَّحُوا فِي الْمَجَالِسِ فَافْسَحُوا يَفْسَحَ اللَّهُ لَكُمْ وَإِذَا قِيلَ انشُرُوا فَانْشُرُوا يَرْفَعِ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَالَّذِينَ أُوتُوا الْعِلْمَ دَرَجَاتٍ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

Meaning: O you who believe, when it is said to you, "Make room in the assemblies," make room, and Allah will make room for you. When it is said, "Stand up," (you) stand up. Allah will certainly raise those who believe among you and those who are given knowledge several degrees. Allah is meticulous about what you do.

The normative terminology of nusyuz, which describes the attitude of nusyuz arising from the wife and the options for resolving it, can be seen in Al-Qur'an surah an-Nissa verse 34:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَاتَّقُوا اللَّهَ الَّذِي تَخَافُونَ عَذَابَهُ وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهَوْنَ فَإِنْ أُطِيعُوا فَلا تَبْغُوا عَلَيْهِمْ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

Meaning: "The man (husband) is the protector of the woman (wife) because Allah has preferred some of them (men) over others (women), and because they (men) have provided from their wealth. So the virtuous women are those who obey God and keep themselves in the absence of their husbands, for God has taken care of them. And those women whom you fear may be unfaithful, advise them, leave them in their beds, and (if necessary) beat them. But if they obey you, then do not look for reasons to trouble them. Verily, Allah is the Most High and the Most Great."

If we understand the verse above that there is a reciprocal relationship, namely obedience or obedience of the wife must be balanced with good treatment by the husband to his wife, and vice versa good treatment from the husband, then the wife has an obligation to respect the husband.

In the context of a wife's nusyuz, Abu Malik Kamal said that "a wife's nusyuz is forbidden"[21] because Allah has said that the punishment for a woman who disobeys when she is unconscious is advice. This is also confirmed by Mustafa al-Khin, who said that this woman's nusyuz is forbidden, and is one of the major sins. Thus, it is forbidden for a wife to disobey and boast to her husband and underestimate her rights, because in essence between the relationship between husband and wife there must be mutual respect and mutual exercise of rights and obligations in balance.

From the verse Muhammad Shahrur (in Al Fitri, 2022) said that nusyuz is the wife's departure from affection in leading the family, or in other words out of leadership responsibility for the harmony and integrity of the household.

The concept of nusyuz in the contemporary era is considered detrimental to women, especially by feminism activists. The concept of nusyuz is seen to have overruled the role and interests of women in the household, because it only focuses on wives who do not fulfill their obligations, while we do not find the provisions of nusyuz committed by men (husbands).

Enforcement of Nusyuz in Religious Courts as a Ground for Divorce

The development of society is directly proportional to the development of thinking about the problems that occur in society. An increasingly modern society interprets this nusyuz with various methods, approaches, and modern theories coupled with modern social issues that occur in society. As explained above, the provisions regarding nusyuz in practice are attitudes or actions that are not devoted to the husband both physically and mentally, it is also clear in fiqh or the Compilation of Islamic Law in Indonesia that the scope of nusyuz is narrowed to apply only to women (wives) along with general sanctions.

The narrowing of the enforcement of nusyuz given in fiqh is then accommodated by the Compilation of Islamic Law, so that it automatically has implications for the settlement of nusyuz cases in the Religious Courts and their application in judges' decisions. However, in its application, divorce cases on the grounds of nusyuz are no different from the application in divorce cases in general, in other words, the application of nusyuz is exactly the same as fiqh and KHI because these rules are material law that applies in the Religious Courts.

The paradigm shift in society has made the definition of nusyuz more widespread, the act of nusyuz can grow quickly due to differences in moral attitudes and outlook on life between husband and wife. Nusyuz will also grow very easily due to the higher cost of living, in line with the increasing needs.

In Article 73 paragraph (1) of Law No. 7 of 1989 concerning Religious Courts which has been amended by Law No. 3 of 2006, it is explained regarding the relative competence of the Religious Courts in terms of filing divorce cases, which in essence is a divorce suit filed with the Religious Court whose jurisdiction covers the Plaintiff's residence, except when the plaintiff deliberately leaves the place of joint residence without the defendant's permission (nusyuz).

If the law protects women in the event of domestic problems by allowing them to file for divorce in the Religious Court where the plaintiff is domiciled, then the case is different with divorce cases filed on the basis of the wife committing nusyuz. Likewise, with the rights of the wife in the event of divorce, a woman who is nusyuz is not entitled to maintenance and housing when her nusyuz is valid during the iddah period, unless she obeys her husband, then the maintenance and housing can be reapplied to the wife.

Although nusyūz is a classic legal rule codified in the books of fiqh, its existence remains a study in the family law order in modern Muslim countries. In Indonesia, the norm of nusyūz has been codified in positive law, and is contained in the Legal Rules of Jurisprudence of the Supreme Court number 137 K/AG/2007, dated March 17, 2004 which confirms that a wife who sues her husband for divorce is not always punished by nusyūz. In practice, both cases of divorce and contested divorce so that the husband can avoid the burden of maintenance demanded by the wife, under the pretext that the wife is in a state of nusyūz. However, until now there has been no standardized procedure for filing and resolving nusyūz in the Religious Courts. This standardized procedure is very important because it is a series of specific actions, actions or operations that must be carried out in a standardized way in order to always obtain the same results from the same circumstances.

Divorce Procedures In Indonesian Islamic Law

According to the original law, the right to divorce (mentalak) against his spouse lies with the husband. The husband has the right to divorce his wife so that the husband is the party who has the right to choose whether to impose or not to impose his divorce on his wife. Therefore, the textual and rigid adherents of the salaf (classical) school of Islamic marriage law (fikih munakahat) sometimes argue that the husband is free to divorce his wife anytime, anywhere, for any reason and in any way. The divorce process can be carried out without involving other parties or other institutions. So that the impact, can occur arbitrarily or even without the fulfillment of the rights of the former wife or the rights of the child victims of the divorce.

In addition to this, the wife is then given the right to complain about her husband's treatment to the *umara'* (qadhi) and request that he divorce her. If justified by the qadhi, the husband's divorce would be issued against his wife.

The provisions of Islamic law in Indonesia regarding divorce procedures are as follows:

A. Terms of divorce by the husband

The munakahat fiqh (Islamic marriage law) adopted by the Indonesian school of thought as contained in the Compilation of Islamic Law in Indonesia, which was previously included in Law Number 1 of 1974, determines its firm stance to limit the rights (and authority) of the husband to divorce his wife and then regulate it for the sake of order and benefit. The form of regulation of the rights (authority) of the husband in terms of divorce is:

a). If a husband wishes to divorce his wife, he must seek permission from the state (*umara'* or *ulul amri* or ruler or qadhi). The request for permission to divorce by the husband against his wife is submitted to the authorized state institution, namely the court (judge).

b). An application for permission to divorce can only be granted by the court (judge) if, after careful examination in an official hearing, it is proven that one or more of the grounds for divorce are met. So there is no granting of divorce permission if there is no reason allowed by law. The grounds for divorce are as stipulated in Article 16 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning marriage which is then reaffirmed in Article 116 of the Compilation of Islamic Law. Article 16 of Government Regulation Number 9 of 1975 states that divorce can occur for reasons or reasons: (a). one of the parties commits adultery or becomes a drunkard, junkie, gambler and so on that is difficult to cure; (b). one of the parties leaves the other party for 2 (two) consecutive years without the other party's permission and without valid reasons or for other reasons beyond his/her control; (c). one of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place; (d). one of the parties commits cruelty or serious abuse that endangers the other party; (e) .) one of the parties is physically disabled or sick with the result that he/she is unable to fulfill his/her obligations as a husband or wife; (f). there are continuous disputes and quarrels between husband and wife and there is no hope that they will live in harmony again in the household; Meanwhile, Article 116 of the Compilation of Islamic Law reads exactly the same as Article 16 of the Government Regulation with two more reasons added, namely (g). The husband violates the *taklik talak*, and (h). change of religion or apostasy which causes disharmony in the household.

c). The judge, in examining the divorce petition, should give as much advice as possible and even provide the widest possible opportunity for mediation (*islah*). In other words, as much as possible, *imsak bil ma'rif* efforts should be taken before

the imposition of *tasrih bi ihsan* between husband and wife. Thus, the divorce process is not monopolized by ego-promoting talks, but is given a wide opportunity to discuss it in a family manner.

d). After the judge has thoroughly examined the case and made a professional judgment, the judge will then issue his decision. If the divorce petition filed by the husband is granted by the court then the husband will in due course be given the opportunity to pronounce the divorce. However, if the petition is rejected by the court then the husband must still withhold or delay his decision to divorce.

e). The pronouncement of divorce must be done with an official sentence and in an official place in an official atmosphere. That is, the divorce must be pronounced with a firm statement in the form of a pledge of divorce in front of a judge in a Religious Court session. *Talak* is considered invalid if it is pronounced with an insinuating sentence (a vague sentence) or carried out outside the court session. After the husband officially

divorces his wife, a divorce certificate is issued by the court as authentic evidence of the divorce. The divorce certificate can only be issued by the court that held the hearing to witness the pledge of divorce.

f). The type of divorce is one *raj'i*, not immediately two or three. The first divorce is only permitted in the form of one *raj'i* divorce, even if the husband hates his wife so much that he wants to divorce her immediately. *Talak satu raj'i* means a divorce that still opens the opportunity to be reconciled during the *iddah* (waiting period). Thus, the door to reconciliation is still open for ex-husbands and ex-wives later considering that reconciliation is a beneficial practice for their households, especially for the benefit of children.

g). After a husband has divorced his wife, he may be ordered to give *mut'ah* and *iddah* (post-divorce waiting period) maintenance to his ex-wife. Even in the Religious Courts, if there is a *mut'ah* and *iddah* maintenance award, it is always paid shortly before the husband pronounces the vow of divorce against his wife.

h). The petition filed by the husband must include the wife as the Respondent. The wife is involved in the case filed by her husband, the wife is summoned and questioned in court, treated fairly and given legal rights equal to her husband's legal rights. The husband as the petitioner is positioned as the Petitioner, while

the wife as the complainant is positioned as the Respondent. Thus, the wife is treated as a human being who has legal rights, not like a doll that is only an object of the husband's anger through the imposition of divorce.

Thus, the Indonesian marriage law of the Islamic Law Compilation in Indonesia regulates the husband's authority in the matter of divorce. This arrangement contains a noble goal, namely to prevent the husband from arbitrarily divorcing his wife, which has the opportunity to harm his wife and children. Therefore, such provisions need to be supported with grace and willingness. At first glance, it seems troublesome and complicated, but in fact there are wisdoms and benefits for the parties concerned and in the longer term.

Stipulation of divorce by the wife

Basically, the divorce suit filed by the wife against her husband is only a secondary route to divorce. Because the primary route is that the husband is the one who has the right to impose divorce on his wife. It is the husband who is authorized to impose or not to impose divorce. Therefore, the wife does not have the right to issue a divorce against her husband. The wife only has the right to complain about her husband to the state (court) with a request that the state take over the husband's right to divorce and then impose the divorce. So the divorce suit filed by the wife against her husband does not mean that the wife divorced her husband, but the state (court) heard the wife's complaint and confirmed it so that the state took over the husband's right to divorce and then imposed it on the wife as the complainant.

The wife's obligation is to be dutiful and obedient to her husband as long as he does not invite her to disobey Allah. Meanwhile, the husband's obligation is to be devoted and obedient (obedient) to Allah's commands, including the fulfillment of the husband's obligations towards his wife whom he has married. Among the husband's obligations towards his wife are protecting, guiding, educating and setting an example and inviting his wife to build a *sakinah* household. Daily obligations include providing physical and mental sustenance, providing clothing, food, shelter and household needs.

However, if the husband neglects his obligations and disobeys Allah and defies religious and state laws, instead behaving badly and tyrannizing (tormenting) his wife and children, for example, the husband becomes a drunkard, gambler, commits adultery, beats (cruelty or violence) against his wife, the husband does not provide maintenance, the husband is involved in drug abuse, the husband commits a criminal offense, even the husband goes away for a long time and his address is unknown, of course this condition the husband has damaged the household and torments and tyrannizes his wife and children. The husband has tortured the life and hurt the hearts of his wife and children along with his cunning behavior that does not want to impose a divorce on his wife but does not want to make his wife happy. When the husband is tormenting his wife, the husband does not realize his mistake and leaves his wife in prolonged misery and deliberately hangs on to her status (not divorced but not fulfilling her rights as a wife). In this case, if the wife is content with her husband's behavior, that is better. However, if she is not, then the law gives the wife the right to complain to the court as a state institution to take over (take away) the husband's right to divorce and then impose the divorce. So the wife's divorce suit does not mean that the wife has divorced her husband, but the state takes over the husband's right to divorce and then imposes the divorce on the wife. The state (through the court) takes this action after believing (based on evidence) that the husband is proven to be neglecting his obligations, including his inability to lead his wife and children in the household. The court makes this decision after obtaining the facts and then considering many things including the *maslahat* and *madharat* in the household. Therefore, when filing for divorce, the wife positions herself as the Plaintiff while the husband is the Defendant because the husband is considered negligent in fulfilling his obligations and is unable to carry out his role and function as the leader of the household (wife and child mentor), then the wife is not pleased with it and feels wronged, while the husband has never imposed a divorce on the wife so that her fate hangs, divorced not but fulfilled her rights as a wife is also not.

The salaf schools of Islamic marriage law (fikih munakahat) recognize this type of divorce. In order not to be quick to sue her husband, it is warned that wives should prioritize patience and willingness towards their husbands. Wives are warned not to easily ask for divorce (sue her husband) for trivial reasons. Even wives who sue their husbands (asking for divorce) are punished with a strict sentence, namely being considered as nusyuz (rebellious or rebellious to their husbands) so that they automatically lose the right to mut'ah and iddah maintenance. A penny of money or a piece of property from mut'ah or iddah maintenance is not worthy of being received by the wife from her husband because these rights have been canceled (lost) due to the wife's action of filing a divorce suit.

The munakahat fiqh (Islamic marriage law) adopted by the Indonesian school of thought as contained in the Compilation of Islamic Law, some of which have been included in Law Number 1 of 1974, has attempted to suppress the potential for wives to sue their husbands by tightening the rules of divorce. Among these are:

a). If a wife wants her husband to divorce her, she can only do so through the legitimate means of the state (umara' or ulul amri or ruler or government), namely through the courts. A divorce petition can only be filed with the court to be examined by the judge as the representative of God. A lawsuit cannot be filed with a private person or a family member or a person who is considered a community leader, nor can it be filed with unauthorized state officials. Thus, if a woman claims to have been divorced (from her husband) by an imam or penghulu or community leader, then her divorce is not valid. The woman who claims to be divorced and the person who claims to have divorced her have sinned, are guilty and can even be punished.

b). A lawsuit for divorce can only be granted by the court (judge) if after careful examination in an official hearing it is proven to fulfill one reason or several reasons for divorce, namely as stipulated in Article 16 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning marriage which is then reaffirmed in the Compilation of Islamic Law Article 116. If the divorce petition is granted by the court, the husband's divorce against the wife is imposed. However, if the lawsuit is rejected, the wife is still officially the wife of her husband.

c). The lawsuit filed by the wife must include the husband as the Defendant. The husband is involved in the divorce suit filed by the wife, to be summoned and questioned in court, treated fairly and given legal rights equal to the legal rights of his wife. Thus the husband as the owner of the right to divorce is respected and treated properly as a husband.

Therefore, Indonesian Muslim husbands and wives, if "forced" to divorce, should obey the rules of the Indonesian madhhab law. If a husband wants to divorce his wife, he should ask for consideration and judgment and then ask for permission to divorce from the ulul amri (court). A husband should not simply divorce his wife on his own at home or elsewhere. This is because divorce without a court judgment is very prone to misjudging the condition of the household so that the divorce may be carried out emotionally and unjustly for oneself, the divorced person, and the children of the marriage. Do not let a husband who quarrels with his wife then pronounce a divorce against his wife even when he is still at the place where the quarrel occurred. This is called an emotional and subjective divorce, where the husband is concerned with his own interests and sees fit to divorce his wife. It is called unjust for oneself and for the divorced person and for the children because in divorce the husband tends to be arbitrary, often not giving mut'ah to the divorced wife even though giving mut'ah is an obligation. He also does not provide maintenance to his divorced wife during the iddah period (approximately 3 months) even though it is an obligation. Also often do not provide child support when the child is not yet an adult. Often husbands neglect to provide child support especially if the husband has remarried. Even though children who are victims of divorce need and have the right to maintenance from a father who is no longer at home with them.

If a wife wants her husband to divorce her, she should file a lawsuit with the court. She should not file a lawsuit against her husband with the village priest or an unauthorized person. This is because a claim for divorce against the husband (the owner of the right to divorce) filed with the village priest or an unauthorized person is definitely invalid. In addition, it can cause quarrels and hostility between the legal husband and the village priest (and unauthorized person) and even lead to murder. Divorce in the village is a criminal offense, an act of injustice, and it can damage people's homes. The deprivation of the husband's right to divorce by the village imam or an unauthorized person must have been done emotionally and without justice for the husband and wife's household. The person tends to be subjective by justifying all of the wife's complaints without being legally accountable.

Divorce should be conducted in court in a hearing by a judge. As professionals, judges act as noble representatives of God whose decisions are based on deep consideration and for the sake of justice based on the Almighty God and mentioning the name of Allah. Judges have taken an oath when taking office as God's representative. Every time they act, they always apply the rule of law and fulfill ethics. In examining divorce cases filed by the public, judges are always neutral and impartial, even though they are often assigned to other areas where they do not know or have relatives in the community.

Technically in examining divorce cases, the court always summons the Defendant or Respondent to be heard and defend themselves so that the judge can hear both parties. In fact, it is always advised that the Plaintiff/Petitioner and the Defendant/Respondent get back together and forgive each other so that they can

cancel their desire for divorce. Even provided a means of counseling through mediation guided by a professional mediator. Divorce is not made easy because divorce is an act that Allah hates.

Unfortunately, it is not uncommon for Muslim men in Indonesia today who do not want to be limited in their freedom to divorce their wives, with the excuse of implementing Islamic law. It is not uncommon for husbands with trivial reasons to divorce their wives and send the wife and her children home to the wife's parents and then consider it over. According to the author, this kind of behavior is just taking their own pleasure, not taking the good with the related parties. They say that the divorce is in accordance with Sharia, but if you think deeply, it could be that such behavior is actually emotional behavior wrapped in a narrow understanding of Islamic Sharia. If it is so easy for the husband to take away his right to divorce, why is it not so easy for him to fulfill his obligation to pay mut'ah and nafkah, as well as maskan and kiswah during the iddah period to his ex-wife properly, even though mut'ah and nafkah are the rights of his ex-wife as long as she does not fall into the category of nusyuz? Why is it that the ex-husband does not easily fulfill his obligation to provide for the children and even bear all the costs of childcare, even though this is the right of the children who are his flesh and blood? Out-of-court divorces usually involve the husband wanting to divorce his wife quickly and easily, but there is the potential for the husband to conceal his obligations to his widow and deliberately leave her to bear the economic and social burdens alone. If this is the case, then the divorce is not really based on sincerity in implementing the Shari'ah, but only on indulging in lust and abusive behavior.

Unfortunately, it is also not uncommon for Muslim women in Indonesia today who are not orderly in living in a household until divorce occurs. It is not uncommon for a wife to easily not accept her husband's situation in her household, and dare to act out (do bad) so that conflict with her husband so that divorce is easy. For example, a wife consciously establishes a love relationship with another man, so that her husband gets jealous and then scolds her and fights, thus making it easier to divorce. Such behavior is just a form of not realizing the meaning of a bond, of the meaning of love, which contains the meaning of sacrifice. Therefore, in today's world, more divorce cases are filed in court by wives than by husbands.

Challenges To The Application Of Islamic Law In Indonesia In The Context Of Contemporary Or Modern Society

The implementation of Islamic law in the context of contemporary or modern society in Indonesia is faced with a number of complex challenges. The main challenge is the plurality of laws and differences in interpretation among scholars, which can lead to uncertainty and conflict in the application (implementation) of Islamic law. The complex social and political context is also a challenge, as modern societies have diverse social and political structures, which affect the consistent and fair application of Islamic law. In addition, the influence of secular culture and globalization can pose obstacles to the implementation of Islamic law, as there is friction between Islamic values and modern, more secular values. The influence of social media and public opinion also plays an important role in people's perception of Islamic law, which can affect its implementation.

A major challenge in the application (implementation) of Islamic law in contemporary (modern) societies is the diverse understanding of Islamic teachings. There are various interpretations of what the Qur'an and hadith say, resulting in differences of opinion on certain matters. This can lead to debates on how Islamic law should be applied in diverse social contexts.

There are challenges in adapting Islamic law to the existing legal systems in modern countries. The Islamic legal system is based on sharia principles that cover various aspects of life, including law, family, and economy. However, modern legal systems in many countries are based on secular constitutions and different legal principles. Thus, harmonizing Islamic law with existing legal systems is a complex challenge.

Cultural and social aspects also influence the application (implementation) of Islamic law in contemporary (modern) society. Traditional values and practices that exist in society may conflict with the principles of Islamic law. For example, in some societies, practices such as child marriage, divorce, polygamy, or corporal punishment are still widely practiced, although they can be controversial in the context of contemporary (modern) societies.

Another challenge is how to address the gap between Islamic law and universal human rights. Some aspects of Islamic law, such as the punishment of divorce under the hand, the punishment of stoning for adultery, may be considered as violating human rights in the view of contemporary (modern) society. Finding a balance between Islamic principles and universal human rights is a complicated task.

Another important challenge is the approach in conveying Islamic law to contemporary (modern) society. In the digital age and globalization, information is widespread and diverse opinions are easily accessible. Therefore, it is important to convey Islamic teachings in a relevant and communicative way, so that contemporary (modern) people can understand and accept Islamic law without feeling alienated or coerced.

In the face of these challenges, some countries have tried to adopt a more contextualized and flexible approach in applying Islamic law. Some countries have adopted Islamic law by integrating it into their national legal systems, while maintaining the fundamental principles of Islamic law.

Public education and understanding are also important factors in the application (implementation) of Islamic law in contemporary (modern) society. A good and thorough education about the principles of Islamic

law can help reduce misconceptions and misunderstandings about religion. In addition, dialog between scholars and the community is also important in conveying messages of Islamic law that are appropriate to the social context and needs of contemporary (modern) society.

The challenge of implementing Islamic law in the social context of contemporary (modern) society is not an easy problem to solve. It requires close cooperation between stakeholders, including the government, scholars, academics, and the wider community. Open debates and discussions need to be conducted to reach an agreement that can accommodate the needs and aspirations of contemporary (modern) society, while still maintaining the fundamental principles of Islamic law.

It is important to note that the application (implementation) of Islamic law in the context of contemporary (modern) societies is not homogenous. Each country has different social, political and cultural contexts, which can influence the way the application of Islamic law is carried out. Therefore, there is no one-size-fits-all approach in any country or society. In this ever-evolving era, the challenges of applying (implementing) Islamic law in the social context of contemporary (modern) societies are constantly changing and evolving. Therefore, it is important to continuously evaluate and adjust so that the application (implementation) of Islamic law can remain relevant and in accordance with the demands of the times. With good cooperation and communication between stakeholders, it is hoped that these challenges can be overcome and the application (implementation) of Islamic law can provide benefits to contemporary (modern) society while maintaining integrity and religious principles.

CONCLUSIONS

Divorce is a legal process that officially ends a marriage relationship between husband and wife. The decision to divorce can be caused by various factors, One of the parties commits adultery or becomes a drunkard, addict, gambler, and so on that is difficult to cure, One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without valid reasons or for other reasons beyond his ability, One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place, One of the parties commits cruelty and serious abuse that endangers the other party, One of the parties gets a disability or illness with the result that he cannot carry out his obligations as a husband or wife, Between husband and wife there are continuous disputes and quarrels and there is no hope that they will live in harmony again in the household, The husband violates the taklik talak, Change of religion or apostasy which causes disharmony in the household.

In the development of divorce from the perspective of contemporary Islamic law (modern society) requires Indonesian Muslim husbands and wives, if "forced" to divorce, to comply with the rules of the Indonesian madhhab law. A husband, if he wants to divorce his wife, should ask for consideration and assessment and then ask for permission to divorce from the *ulil amri* (court). A husband should not simply divorce his wife on his own at home or elsewhere. Because divorce without court judgment is very prone to misjudging the condition of the household, so that the divorce may be carried out emotionally and unjustly for oneself, the divorced person, and the children of the marriage.

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