



Perspective of Medan City Scholars on the Law of Wives who Demand Divorce from Husbands with Disabilities Due to Accidents

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Abstract

When a couple is legally married, both have their own rights and responsibilities. The husband, as the leader of the household, acts as the main protector. However, what if the husband loses physical ability due to an accident, so the wife sues for divorce? According to Article 39 of Law No. 1 Year 1974 and Article 110 of the Compilation of Islamic Law (KHI), divorce due to the disability of one of the spouses is allowed if it makes it difficult to fulfil household obligations. However, some Nahdlatul Ulama scholars in bahsul masail consider a wife who sues for divorce from a disabled husband as an act of nusyuz (defiance). This study aims to examine the views of Medan City scholars regarding wives who sue for divorce from husbands who become disabled due to accidents. This empirical research collected primary data from in-depth interviews with scholars in Medan. The results show that divorce is permissible if the husband's disability is severe and causes major impacts, such as abuse or neglect of the wife and children. In such cases, the husband's management responsibility is returned to his family.

Keywords: Disability, Accident, Family, Marriage, Sharia

INTRODUCTION

Marriage is a relationship that is legalized by a contract through ijab qobul between a prospective groom and a prospective bride to gather or mix in a legal and halal bond to have intimate relations as husband and wife. (Turnip, 2021) Marriage is also included in the worship that is prescribed to avoid things that are prohibited by Allah SWT. in the form of adultery, this is as mentioned by Munandar that sharia law requires a Muslim to stay away from all fitnah that can cause him to commit haram

acts and he should lower his gaze, keep his aurat, and direct his desires on the path determined by Allah Subhanahu Wa Ta'ala, namely by marriage. (Munandar, 2023) In addition, marriage is also the longest act of worship to be undertaken, which is for life, where husband and wife must maintain their relationship until the separation of the spirit from the body.

After becoming a legal husband and wife by religion, the two (husband and wife) become a unit, always live together, and support each other. So, when carrying out this worship, ethics become the most prioritized thing so that every thing that is carried out together will be far from disputes, one of these ethics is to respect each other, this is as in QS. Al-Baqarah: 225 which says that, *"It is lawful for you on the night of the fasting day to mix with your wife. They are clothes for you, and you are clothes for them"*. Nurani explained that from the verse mentioned, it is clear that the desired relationship pattern is a relationship of mutual need between husband and wife. Each husband and wife has rights and obligations that must be respected and fulfilled to realize the ideals of marriage, namely a life together (husband and wife) that is Sakinah, Mawaddah wa Rahmah (full of peace and love) both in this world and in the hereafter. (Nurani, 2021)

Islam has regulated human sustainability in running a household in such a way that rights and obligations are one of the things mentioned in sharia. A husband must give his wife her rights by providing maintenance, and a wife must give her husband her rights by serving, nurturing, and educating her children. It is this marriage that must be safeguarded, which always carries out its continuity by considering the rights and obligations of everyone in it. (Darmawan, 2020)

The realization of a happy and peaceful household is the key and purpose of this marriage. Therefore, Allah Swt. hates the occurrence of a divorce in this holy bond. In fact, the law of this country also makes divorce a red line to avoid because it signifies the breakdown of the holy purpose of marriage, full of love and affection which immediately turns into hatred and destroys the relationship between them. It is not uncommon for the impact of divorce to also damage each other's minds and lead to various conflicts, such as fighting over property and child custody, so that it is not only the two parties who feel the bad, but their families and children also come into this dispute.

The breakdown of harmony that exists in the household is often the basis for filing a divorce lawsuit, such as a wife who is disrespectful to her husband, confidentiality between the two, and differences in perspective. However, what is a problem in life is that it is often found that a divorce is demanded by the wife because her husband has a loss of physical function (disability) even though between the two of them they can still run a household. The change in conditions that the wife got at the beginning of the marriage is different from the last time they lived, so that the marriage cracks or is even reluctant to have her husband's condition back who is no longer the same as before. The thing that caught the author's attention was when he

came across Khasari's thesis entitled "Analysis of Islamic Law Against Divorce Due to Disability in the Fikih Book of Strengthening Persons with Disabilities" containing a comparison of legal decisions between the Fikih book of Strengthening Persons with Disabilities by the NU Bahtsul Masail Institute (LBM) with Article 39 of Law Number 1 1974 concerning Marriage, as well as Article 110 of the Compilation of Islamic Law (KHI).

It is stated that the Law and KHI allow such divorce because one of the spouses is disabled and unable to fulfill their obligations. In contrast to the book's view, it has been mentioned that this event is not permitted and considers that a person with a disability is to be protected, thus suggesting not to divorce because the law allows divorce to end in an illegal act in the form of nusyuz due to a wife who cannot accept the condition of her husband who was once normal, but due to an accident found her husband to be disabled and filed a lawsuit. Based on this problem, the author is interested in conducting further analysis of the law between the two based on the views of the Ulama of Medan City in the hope of getting a solution when encountering something like this in Medan City and adding to the knowledge in the academic environment of Islamic family law and in society in general. So that the author raises the theme, "The Law of Wives who Demand Divorce from Husbands with Disabilities due to Accidents According to the Views of Medan City Ulama". The following are the results of a literature review of several previous studies:

1. Cut Hasmiyati (2020), in her research entitled "Kewajiban Nafkah Suami Penyandang Disabilitas (Studi Kehidupan Keluarga di Kelurahan Demangan Kecamatan Gondokusuman Kota Yogyakarta)," focuses more on the obligation of support for husbands with disabilities. Meanwhile, the author's research highlights wives who sue their husbands for divorce. Cut Hasmiyati's research uses field methods, while the author's research is literature-based. (Hasmiyati, 2017)
2. Ranie Luky Khasari (2022), with the title "Analisis Hukum Islam Terhadap Perceraian Sebab Disabilitas Dalam Buku Fikih Penguatan Penyandang Disabilitas" discusses divorce due to disability in general, while the author's research focuses on wives who sue their husbands for divorce due to accidents. Ranie's research uses Islamic Law analysis, while the author's research uses the views of scholars. (Elfariana, 2024)
3. Fauziyah Putri Meilinda (2023), in her work "Analisis Hukum Islam dan UU No. 8 Tahun 2016 tentang Penyandang Disabilitas Terhadap Persoalan Pemenuhan Hak Anak Penyandang Disabilitas," focuses more on the fulfillment of the rights of children with disabilities, while the author's research focuses on husband and wife relationships. (Meilinda, 2023)

4. Hamzah Nur Islam (2024), through his research “Problematika Penyandang Disabilitas Dalam Pelaksanaan Bimbingan Perkawinan di KUA Kecamatan Talang Kabupaten Tegal,” discusses more about marriage guidance for persons with disabilities, while the author's research highlights divorce. (nur Islam, 2024)

Based on the formulation of the problem that has been mentioned, this research aims to answer several important aspects related to the issue of divorce due to husband's disability due to an accident. First, this research will examine the law governing wives who sue their disabled husbands for divorce due to accidents based on the view of positive law. Secondly, this research will also explore the views of Medan City scholars regarding the divorce case, in order to provide a perspective from the perspective of local Islamic law.

METHODS

In general, the methods used in this research can be divided into normative research and empirical research. (Hazmi & SH, 2023) The research that the author conducts is empirical legal research with a qualitative approach, because the author looks into the field of how the actual perceptions or views of the scholars of Medan city are related to the legal status of a wife who demands divorce from her husband who is disabled due to an accident. (Irianto, 2017) Primary data sources are obtained from direct in-depth interviews with a number of informants and scholars of Medan city, both from the Muhammadiyah, Al-Washliyah, Nahdhatul Ulama mass organizations and members of the Medan City Ulama Council. Meanwhile, secondary data sources were obtained from primary and secondary legal materials. Primary legal materials are sourced from Law No. 1 of 1974 and KHI, while secondary legal materials are obtained from a number of fiqh literature and other research results. The data obtained is then analyzed using the qualitative analysis method.

DISCUSSION AND RESULT

Divorce Law Based on Sharia Law and Positive Law

Divorce, according to the Big Indonesian Dictionary, means separation or breakup as husband and wife, as well as separation or division. In Arabic, divorce is known as talak, which comes from the words “ithlaq” and “Tholuqo-Yutolaqu-Tholaaqon”, which means leaving, separating, or untying. In shara'a terms, divorce means letting go of the rope of marriage and ending the relationship between husband and wife. The causes of marriage breakdown, according to Article 38 of Law No. 1/1974 on Marriage and Article 113 of the Compilation of Islamic Law, include the death of one of the parties, divorce, or a judge's decision. (Handayani, 2022)

Divorce is the termination of the marriage relationship between husband and wife that is not caused by the death of one of the parties, but based on the will and

desire of both parties for certain reasons. In practice in the Religious Courts, divorce can occur through a talak or divorce suit, as stipulated in Article 114 KHI. Divorce filed by the husband is called divorce, while that filed by the wife is called divorce. According to Islamic law in the Marriage Law (Law No. 1 of 1974), Article 39 paragraphs (1) and (2) state that divorce can only be carried out in front of a court session after mediation efforts by the court have failed to reconcile the two parties. In addition, in order to carry out a divorce, there must be sufficient grounds that the husband and wife cannot live together as a couple. This regulation emphasizes that both divorce and contested divorce must be carried out in front of a Religious Court session.

In the Compilation of Islamic Law (KHI), the causes of divorce are recognized in Article 116 No. 9 of 1975 based on Government Regulations. Some of the causes are one of the parties committing adultery, intoxication, drug addiction, gambling, and other bad habits that are difficult to cure. In addition, divorce can also occur if one party leaves their spouse for two consecutive years without permission and without valid reasons, or due to factors beyond their ability. If during the marriage one party is sentenced to imprisonment for five years or more, or if one party mistreats or commits cruelty that endangers the other party, these are also grounds for divorce. Other causes include one party suffering from a physical disability or illness that results in an inability to perform the obligations of a married couple. Divorce can also occur due to constant disputes and quarrels with no hope of reconciliation, if the husband violates the taklik talak, or if one of the parties apostatizes resulting in domestic disharmony. (Abdullah, 2023)

So it can be concluded that divorce is an action that occurs between husband and wife who decide to separate from the worship carried out, namely the bond of marriage and there are several reasons for divorce, besides that divorce has rules and cannot be done at will or even made into a game.

Suing for Divorce from a Husband with a Disability Due to an Accident

The religion of Islam has regulated various matters of life, one of which is regarding the law and the continuity of marriage worship, as previously explained that Islam neatly regulates in such a way as this life. However, what becomes the color in carrying out worship is the twists and turns that must be faced by each of His servants because if he is patient then Allah SWT. will reward him. This is as stated in His word in Qs. Al-Anbiya':35 which reads.

وَنَبْلُوكُم بِالشَّرِّ وَالْخَيْرِ فِتْنَةً وَإِلَيْنَا تُرْجَعُونَ

Meaning: "We test you with evil and good as a trial. To us you will be returned"

These words are proof that Allah's love for His servants is unlimited, He created the twists and turns of life so that His servants are able to understand every wisdom of their life journey. However, not all servants on this earth understand that sometimes humans still emphasize ego in their lives like what happens in household relationships. The expected household relationship in this life is with *sakinah*, *mawaddah*, and *warahmah*. This meaning has also been explained in Qs. Ar-Rum: 21 which reads.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ
يَتَفَكَّرُونَ

Meaning: *“And among the signs of Allah's power He created for you wives of your own kind, that you may feel inclined to them, and be at peace with them, and He made between you love and affection; indeed, in such there are signs for those who think.”*

In the above verse there are three concepts: *“sakinah”*, which is described through the language of the heart *“mutual understanding and understanding”*, and *“mawaddah”*, which indicates a mutual desire for love that makes both of them care for each other, completed by *“rahmah”*, which means mutual love. (Jannah, 2021) In addition, in the Marriage Law No.1 of 1947 Chapter I Article (1) states that *“Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God.”* Marriage aims to establish a harmonious family, prosperous, meaning the creation of physical and mental tranquility due to the fulfillment of the needs of physical and mental life, so that happiness arises, namely love between family members.

However, in the reality of life, there are still many who make marriage run aground and destroyed as the term broken home even though religion and the state have regulated and provided guidance with values that are full of learning and easily understood. It is inevitable that this happens, it can even have a futile impact if it is maintained. The causes of this divorce are very diverse, such as because the couple is polygamous or even violence in running the household. However, it is not uncommon for divorce to occur due to encountering physical changes or disabilities in one of the parties that were never intended before, namely one of the spouses having an accident and then having an impact on his physical disability. Because of this change that he had never encountered in his partner, he argued to stop the ark of this household journey for this reason.

In the book *Fikih Penguatan Disabilitas* by the PBNU Bahtsul Masail Institute which discusses marriage in a person with a disability, it is stated that disability is divided into 3, namely the first physical limitations *“qushur jasmaniyah”* including

people with limp legs (a'raj), legs or hands (aqtha'), and second sensory limitations (qushur hissiyah) including people with visual impairments (a'ma), hearing impairments (akhras), and speech disorders (asham). Third, mental limitations (qushur "aqliyah") include people who suffer from mental retardation either permanently or temporarily, idiots, which are discussed in several idioms namely "majnun, ma'tuh, safih, dzu al-'ahah and mubarsam." (Mustika & Pradikta, 2022)

In this book also contains the law of wives who demand divorce from husbands who have an accident and cause the husband to become disabled, namely that if a wife demands divorce from her husband in the midst of their marriage, initially the law of divorce in Islam is permissible but becomes one of the actions hated by Allah Swt. as mentioned in the Hadith of the Prophet Muhammad Saw.

رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَا أَحَلَّ اللَّهُ شَيْئًا أَبْغَضَ إِلَيْهِ مِنَ الطَّلَاقِ

Meaning: "The most hated lawful thing by Allah is Talaq (divorce)." (H.R. Imam Abu Dawud and others).

Then, for the law that contains if the cause is due to one spouse divorcing the other due to accidental disability, it is elaborated again where in this case, if the divorce in question is annulment of marriage (fasakh) due to disability, then the law is not allowed. However, there is an exception if a person has a permanent mental disability. If the divorce in question is a divorce or a complaint for divorce (khulu'), the law is makruh unless there are reasons that make divorce obligatory, recommended or forbidden. Therefore, the marriage should continue without divorce. It is important to note that conditions such as being blind, missing fingers, and having an unattractive appearance are destiny, not choice. However, these conditions do not affect the virtue of marriage. As stated in the book Nihayah al-Muhtaj, which means: "Disadvantages such as blindness, loss of limbs, or unattractive appearance do not affect the equality (kafaah) in marriage, contrary to the opinion of earlier scholars." (Syauqi & Prasetiawan, n.d.)

It is also mentioned here that the act of leaving one's spouse because the husband is disabled due to an accident is morally unethical. Formal law in fiqh explains that if the disability happens to the husband, then the wife's action of leaving her husband who suffers from a disability due to an accident is haram, because this is considered an act of defiance or nusyuz from a wife against her husband. In addition, this book also deplores the action of positive law where it is explained that there is a married couple who were initially non-disabled. However, a few years after marriage, one of them became disabled due to an accident. With this limitation, the non-disabled partner left their spouse outright. This was a severe blow to the disabled spouse, as if he or she was being punished for suffering against his or her will. This description

reflects one of the harsh realities of domestic life. Ironically, Law No. 1 of 1974 on marriage article 39 and the Compilation of Islamic Law article 110 actually support divorce on the grounds that one of the parties has an accident that causes disability and is no longer able to fulfill his or her obligations as husband or wife.

According to the NU Bahtsul Masail Institute, a wife who sues for divorce or leaves her disabled husband can be categorized as an act of nusyuz or defiance. Nusyuz is an act that is forbidden to be committed by a wife, especially when the husband really needs help in his difficult time. Conversely, if a husband abandons his disabled wife, the act is also considered haram. There are two main reasons for this prohibition: first, the husband abandons his responsibility as the wife's leader and protector when she needs his protection; second, the husband neglects his obligation to provide for his wife both physically and mentally. The evidence used is Q.S. an-Nisa (4): 34 which explains the husband's position as the leader of the household who has the obligation to take care of all his wife's needs (Lembaga Bahtsul Masail PBNU et al., 2018). Therefore, according to Nahdlatul Ulama, abandoning, neglecting, or even divorcing a spouse who is disabled is forbidden. This prohibition is based on the concept of nusyuz for wives and abandoning obligations for husbands. (Anshari, 2024)

Nusyuz is the violation or denial of a wife from carrying out her obligations, or in other words the wife's disobedience to her husband, often termed nusyuz. This is widely explained in the books of fiqh, that the defiance of a wife so that she does not want to fulfill her obligations as a wife is called nusyuz. (Khairuddin & Salam, 2021) As for nusyuz in Islamic law, it is also stated in Qs. An-Nisa':34 which reads.

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَنَاطٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ ۚ فَإِنِ أَطَعْتِكُمْ فَلَا تَتَّبِعُوا عَلَيْهِنَّ 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 spent from their wealth. So the righteous women are those who obey (Allah) and guard themselves when (their husbands) are absent, for Allah has guarded (them). 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. Indeed, Allah is Most High, Most Great."

Abu Zuhrah mentions several circumstances that can be categorised as nusyuz, adapted to current conditions. One of them is if the wife refuses to move into her husband's house without a shar'i reason, even though the husband has provided a suitable place to live. In addition, if the wife leaves the house without the husband's

permission and continues to be in a state of nusyuz, then during that time the wife is not entitled to receive maintenance. However, if the wife returns to obey her husband and lives in the house provided by her husband, her right to nafaqah will return. (Khairuddin & Salam, 2021)

Another situation that constitutes nusyuz is when the husband stays in the wife's house with permission, but then the wife forbids the husband from entering the house without asking the husband to move to a house provided by the husband or giving the husband time to look for a house. This prohibition is considered a departure from obedience to the husband and is considered nusyuz. However, if the wife prevents the husband from entering the house after asking the husband to move and giving him sufficient time to look for a house, this action is not considered nusyuz, and the wife is still entitled to receive maintenance. This is because the wife's right is to be provided with a home by her husband, not the other way round. For wives who work and do not live at home, maintenance is not given if the husband asks the wife to stay at home and she refuses. However, if the husband is happy with the wife's condition of working and not always at home, the husband is still obliged to provide maintenance because he has accepted the condition where the wife only spends a short time with her husband.

In this case it can be concluded that the husband has a higher position than the wife in terms of leadership. Nusyuz is an act of disobeying the husband as mentioned earlier about several examples of nusyuz actions.

The Opinion of Medan City Scholars Regarding the Law of Demanding Divorce from Husbands with Disabilities Due to Accidents

With regard to the problematic condition of a disabled husband and then his wife asking for a divorce, it turns out that it has caused a discourse among the scholars, for example among Nadhatul Ulama has made a discussion in the book *Fikih Penguatan Penyandang Disabilitas* saying that a wife who sues for divorce or leaves a husband who becomes disabled can be categorised as an act of nusyuz or defiance. To find out whether or not this condition is true, the researcher has conducted interviews with a number of informants with cases that were initially married in normal conditions, then an accident occurred in the marriage process, resulting in one of them having a disability.

The case that the author got came from a family domiciled on Jl. Bhayangkara, Medan Tembung District with a separated status, in this case the author interviewed his closest neighbour.

"In 2006, the husband (R) was at work driving a pickup truck to lift a racing motorbike in Lholseumawa, Aceh. However, on the same day when he was travelling, there was a single accident that caused his leg to be amputated due to the severity of the accident, which was entering a ravine. Because of this condition, the wife (R) felt increasingly

burdened, but because the wife did not understand and did not have the ability to sue, the wife simply left her husband from home and separated for 8 years. Previously, their household situation had started to get noisy and the husband was known as a person who easily spoke harshly, after the accident and disability, the husband did not change his attitude. So their divorce took place after the accident, but it was on a piece of paper and not through a court process," Mahardi said. (Muhammad Hafiz Antassalam, 2024e)

On the other hand, a similar incident came from a family living on Jl. Benteng Hilir, a family that initially lived in harmony suddenly turned into a divorce.

"I know her because she is my neighbour, she used to live in this alley but now I don't know where she moved to after they separated. At first, the household was good but her husband had an accident about 3 years ago after he came back from work and it was like one hand and one leg died, because of that, her husband did not work because he used to be a construction worker. There were also frequent arguments after this incident, because the wife felt tired of having to work, take care of the children, plus take care of her husband who was already in a wheelchair. They did get divorced after the frequent quarrels, then until the trial was over the husband returned to his parents, his wife too and now I hear that the wife has remarried. Honestly, the ex-husband was a good person, maybe because he was tired and bored, so his wife asked for a divorce," Ita said. (Muhammad Hafiz Antassalam, 2024b)

Not only the two cases above that became the basis of the sample of this research, also the author several times menjuampai similar cases in social media, such as the divorce case of former footballer, Kurnia Meiga who also experienced divorce after he experienced blindness and many other cases.

Then to find out more clearly the legal status of the above phenomenon, the author examines further by asking the scholars in Medan City. As stated by Dr Imam Yazid, MA. as the Secretary of the MUI Fatwa Commission in Medan City said, *"If the husband has a disability, but he does not prevent him from providing for his family either physically or mentally, then the wife is forbidden to sue the husband for divorce because the husband is not like before and has a disability. If the husband's disability prevents him from providing for his family, then this is a permissible reason for the wife to file for divorce because of the mafsadat to the wife's life, and there are many arguments in the books of fiqh. There is no contradiction in the law, as Nahdatul Ulama's opinion suggests, because khulu' can be makruh and the ruling can even change from makruh to sunnah, depending on the context in which it is done."* (Muhammad Hafiz Antassalam, 2024d)

This expression is in accordance with the legal context of divorce, namely in positive law which regulates in the event of divorce, there must be sufficient reasons for the divorce to be carried out. This is in accordance with Article 39 paragraph 2 of Law Number 1 of 1974 concerning Marriage, which states that divorce can only be carried out if there are sufficient reasons that husband and wife cannot live together as husband and wife.

Article 39 paragraph 2 of Law Number 1 of 1974 confirms that divorce can only be done if there is sufficient reason that the husband and wife can no longer live together as a couple. In addition, Government Regulation Number 9 of 1975 Article 19 explains several reasons that can be the basis for divorce. These reasons include: one of the parties commits adultery or becomes a drug addict, drunkard, gambler, and other bad habits that are difficult to cure; one of the parties leaves the other party for two consecutive years without permission and without valid reasons, or for other reasons beyond his ability; one of the parties gets a prison sentence for five years or more after the marriage takes place; one of the parties commits cruelty or serious maltreatment that endangers the other party; one of the parties suffers from a physical disability or illness that results in an inability to carry out obligations as a husband or wife; and there is constant dispute and quarrel between husband and wife, so that there is no hope of living in harmony and peace again in the household. (Yulmina, 2019)

The law on wives demanding divorce from their husbands was also conveyed by Dr Hasan Matsum, S.Ag., M.Ag. as the Chairman of MUI Medan City who stated that:

"The wife has the right to use her khulu'-rights because if she continues to maintain the husband's disability, she will be the one who will be the economic support. When the wife can use her khulu'-right is when she feels that the purpose of marriage is not achieved, which is sakinah mawwaddah warahmah. And fiqh does not talk about morals, but talks about the certainty of a law. And why is this so, because this wife's discomfort has happened before in a hadith narration about Tsabit bin Qais." (Muhammad Hafiz Antassalam, 2024c)

As the words of the Prophet narrated by Imam Bukhari in the Book of Sahih Bukhari which reads:

وَعَنْ أَيُّوبَ بْنِ أَبِي تَمِيمَةَ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: جَاءَتْ امْرَأَةٌ ثَابِتَ بْنِ قَيْسٍ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنِّي لَا أَعْتَبُ عَلَى ثَابِتٍ فِي دِينٍ وَلَا خُلُقٍ، وَلَكِنِّي لَا أُطِيفُهُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: (فَتَرَدِّينَ عَلَيَّ حَدِيقَتَهُ؟) قَالَتْ: نَعَمْ

Meaning: "And from Ayyub bin Abu Tamimah, from 'Ikrimah, from Ibn 'Abbas, who said: The wife of Tsabit bin Qais came to the Messenger of Allah (peace and blessings be upon him) and said: O Messenger of Allah, I do not criticise Tsabit in religion or morals. But I am not able to live with him. The Messenger of Allah (peace and blessings of Allaah be upon him) said, 'Can you give him back his garden?' The woman replied, 'I can.'"

Dr. H. Ahmad Zuhri, M.A. stated that there is a reason why the Nahdatul Ulama Bahtsul Masail Institute issued a legal opinion regarding this study as described above. He stated that there should not be a clash between NU's opinion and

the KHI Law because KHI also has its background reasons. However, he argued that the wife should not be considered to have committed Nusyuz because this is also based on the story of Prophet Job and his wife.

“A good man will say that he is no longer able to provide for his wife because of his circumstances, before his wife makes her demands. In this case, if the wife asks for divorce and the husband is happy with it, it is permissible. However, if the husband is not pleased, then do not clash with the ijtiḥad of Nahdatul Ulama and the government's ijtiḥad in the KHI Law because the government's ijtiḥad is also correct and has a background reason, this should be the rule of law al-Ijtiḥadu la Yunqadhu bi al-Ijtiḥad. So this is a preventive measure in the form of sadduz zarai law. However, we return to the rights of the wife, the wife has the right to demand divorce when she is uncomfortable because she must always be ready to fulfil her husband's needs, it is not appropriate for the husband to declare that the wife is nusyuz. However, if the wife is prepared for this situation, then glory be to the wife. And it is questionable that the wife may not demand divorce from her husband under these circumstances. Why not? There is even the example of the story of Prophet Job, do we issue an opinion that the wife of Prophet Job is included in Nusyuz in terms of leaving because of the circumstances of her husband? This falls under human circumstances.”(Muhammad Hafiz Antassalam, 2024a)

This is in accordance with the position of the KHI Law in Indonesia, namely the Compilation of Islamic Law (KHI) was prepared on the initiative of the state authorities, specifically the chairman of the Supreme Court and the Minister of Religious Affairs, through a Joint Decree. KHI gained recognition from ulama and various elements of society. Officially, KHI is the result of consensus (ijma) of scholars from various groups achieved through national workshops, which then received legalisation from state power. Thus, KHI is not only a legal document, but also a reflection of the agreement and collective thinking of the ulama regarding the practice of Islamic law in Indonesia.(Fikri, 2018)

The preparation of the Compilation of Islamic Law (KHI) was carried out through several systematic paths. First, a review of 38 fiqh books from various madhhabs, covering 160 family law issues, was conducted by experts at seven IAINs. Secondly, interviews were conducted with 181 scholars from ten religious high court jurisdictions, including Aceh, Medan, Padang and others, to obtain their views and opinions. Third, a review of court products within the religious courts, consisting of 16 books, including a collection of PTA decisions and the jurisprudence of the Religious Courts. The fourth track involved comparative studies with legal systems in Morocco, Egypt and Turkey. In formulating the KHI, the formulators referred to the sources of Islamic law, namely the Qur'an and the Sunnah of the Prophet, as well as considering the legislation in force in Indonesia. They also took into account global developments and Western legal orders, as well as customary law relevant to Islamic law. Some elements from other legal orders were modified into the KHI, resulting in

a distinctive manifestation of Islamic law in Indonesia. Thus, KHI reflects the character of Islamic law that is orientated towards the local context and the needs of the Indonesian people.

So it can be concluded that Zuhri argues that KHI is the final decision of an applicable law that represents all Indonesian Ulama, so it is permissible for a wife to sue for divorce because the wife does have the right to sue. But back again how goodness enveloped the story of Prophet Job's wife so that the glory came to her as well as the wife should be able to imitate the patience of Prophet Job's wife. Dr Sulidar, M.Ag gave an answer to this study, he explained that a law and ijtihad decision can be made when looking at the background and time of its occurrence.

"If it is in the maqam of law then what is discussed is the standard of permissibility or forbidden, if it is in the maqam of morals talking about feasibility or unfitness is no longer a proposition like law, and if the maqam 'arif then the standard is mudhorot or mashlahat. If we are discussing the law then we have to fulfil the standard, which is about whether it is permissible or not, in this case if there is too much mudhorot in this law then it is appropriate to demand divorce and it is appropriate for the husband to divorce, if there is a lot of mashlahat then you should keep it. If this is the case, then look at the reason behind the marriage, which is that the purpose of marriage is to bring happiness, then if the divorce is for happiness then go ahead and divorce, but if it is for misery then do not do it. Also look at his accident because of earning a living or because of his negligence or even if he is in the course of sin. So look again at the context subjectively what the case and circumstances are like."(Muhammad Hafiz Antassalam, 2024f)

Furthermore, he stated that the KHI law already represents Indonesian Ulama. He emphasised that the law must look at the context of other maqam until finally it can provide conclusions in accordance with the background and events that the person experienced.

"The law that has been created by KHI has represented Indonesian Ulama, but in sharia law it is not just one thing, but looks at other maqam whether it is feasible or not and mashlahat or mudhorot. Marriage cannot be cancelled except with certain criteria, a holy covenant should be cancelled with something holy too."

This is in accordance with the position of the KHI Law in Indonesia, namely the Compilation of Islamic Law (KHI) was prepared on the initiative of the state authorities, specifically the chairman of the Supreme Court and the Minister of Religious Affairs, through a Joint Decree. KHI gained recognition from ulama and various elements of society. Officially, KHI is the result of consensus (ijma) of scholars from various groups achieved through national workshops, which then received legalisation from state power. Thus, KHI is not only a legal document, but also a reflection of the agreement and collective thinking of the ulama regarding the practice of Islamic law in Indonesia.

So it can be concluded that Sulidar argues that KHI is the final decision of an applicable law that represents all Indonesian Ulama, so it is permissible for a wife to demand divorce but Nusyuz behaviour in the wife is returned to each group to see subjectively from the background and time of the incident.

On the other hand, Prof. Dr. Syukri Al Bani Nasution, M.A. considers that in this study, the wife must have another background, not because she objects to the husband's different circumstances, which are no longer the same as when they started the marriage ark. However, he sees the wife's position as having different reasons, perhaps due to social pressure and cannot be absolutised in the act of Nusyuz.

"In this case we have to look at other factors, marriage guidance is very important at the beginning for mental and physical readiness. I see that talking about social effects is not only fixated on the husband's disability, it could be that he is bearing social effects such as incompatibility due to the unfulfillment of inner sustenance, physical needs that are not met, while he bears an increasing burden of responsibility because in fact marriage is separated by death in Islam adheres to the principle of monogamy. So in this case it must be seen empirically, namely the two parties, not one of them."
(Muhammad Hafiz Antassalam, 2024g)

As said by Prof. Syukri, this case can be analysed that the wife is under social pressure so that there is no longer compatibility in the household. This has a relevant legal basis according to Article 116 point 6 which states that divorce can occur because of continuing disputes that interfere with household harmony, so it is permissible for the wife to sue her husband for divorce even though her husband has a disability because in fact marriage adheres to the principle of monogamy and must be seen empirically based on the views of both parties, not one of them.

From some of the explanations that have been explained above, it can be concluded that the Medan City ulama speakers tend to think it is permissible to sue for divorce from their husbands, nusyuz behaviour should not be directed at the wife if the husband can no longer maintain his obligations. However, if the wife can be pleased and sincerely accept her husband, Allah will surely see her actions as a noble act from a group of wives who are able to pass the severe tests given to their households, because the truth is that accidents can be re-examined whether they are absolute disasters or because of the negligence and disobedience of the husband. If, calamity then the wife should raise her heart to sincerely see this is not the husband's wish but the destiny and test given to him.

CONCLUSION

The ruling on the wife demanding divorce is basically permissible, because the wife has the right to demand divorce in marriage. On the other hand, it is the same as marriage which has the basis of sunnah law, but it is not only limited to the law of obligation, it may change to being punished as haram, makruh, and even mubah

depending on the reasons and background of an act of worship that will be carried out, as in the case of divorce in this study.

The ijthihad that was originally carried out by Nahdatul Ulama in the Book of Strengthening Persons with Disabilities must have a foundation and reasons that are considered so as to provide a legal ijthihad conclusion. However, KHI law also has its standards and backgrounds, therefore the author tends to follow the majority opinion of Medan City scholars who state that the act of Nusyuz should not be imposed on the wife unless a review is made of the reasons behind her actions demanding a divorce. It may be that nusyuz will actually occur if the wife continues to maintain the continuity of this marriage with a state of heart that has begun to object to the condition of her husband.

However, like the story of Prophet Job who was abandoned by his wives because of his severe illness, there was one wife who always faithfully accompanied him even though Prophet Yusuf had told his wife that he was content with being abandoned. From this story, conclusions can be drawn that are relevant to the teachings of the Prophet Muhammad, namely juxtaposing life with morals, so the wife should be strong and sincere in accepting the husband's condition because she believes that Allah will see her sincerity as a form of noble action.

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