

## **The Prophet's Way of Resolving Divorce**

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**Abstract:** Divorce is a longstanding social phenomenon that continues to pose complex challenges in modern society. Islam, as a religion committed to justice and welfare, provides guidelines for resolving divorce through the exemplary conduct of Prophet Muhammad (peace be upon him). This article aims to explore the Prophet's approach to handling divorce in a fair and humane manner, and to examine its relevance to contemporary Islamic legal systems. This research employs a qualitative method based on library research, utilizing sanad and matn analysis of hadiths, along with socio-historical and psychological contextualization. The findings reveal that while Islam acknowledges divorce as the husband's right, Prophet Muhammad consistently emphasized prudence and the pursuit of reconciliation. The case of Hafsa bint Umar, whom the Prophet divorced and subsequently reconciled with, illustrates the importance of promoting peace within marriage. From the perspective of maqaṣid al-shariah, divorce is understood as an emergency measure to prevent greater harm. The key findings of this article show that divorce in Islam is bound by universal moral values and not merely a unilateral right. The original contribution of this study lies in offering a contextual approach to understanding hadiths related to divorce and strengthening the syar'i justification for the Indonesian legal mechanism requiring divorce declarations before the Religious Court. Thus, this article encourages the reinterpretation of divorce-related hadiths to align more closely with principles of justice and the protection of women's rights in contemporary Muslim societies.

**Keywords:** divorce, hadith on divorce, contextualization of hadith, maqaṣid al-shariah, Islamic law

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### **Introduction**

Divorce is a social phenomenon that has existed for a long time and remains a complex issue in contemporary society. Although marriage is considered a sacred bond that must be maintained in Islam, divorce can be a last resort to maintain the well-being of both parties in certain situations. The Prophet Muhammad provided an example of how to resolve divorce

in a fair and humane manner so as not to cause ongoing conflict in society. It is important to understand how the Prophet handled divorce and how it is applied in the Islamic legal system and modern household life.

Articles about divorce are also starting to spread, such as those written by Misbahuzzulam, Umi Sumbulah, and Fauzan Zenrif,<sup>1</sup> Muh. Habibulloh, Erika Putri Hernas, Intan Nur'aini, Rizqi Zakariya,<sup>2</sup> Teti Saputri, Tajul Arifin,<sup>3</sup> Fitri Sari dan Arif Budiman<sup>4</sup> and others. However, those articles are still too shallow in discussing divorce in the hadith. Whereas divorce between husband and wife is rampant in various parts of the world, and the hadith is the second source after the Qur'an<sup>5</sup> which is used as a guide by Muslims. Therefore, the study of divorce in the hadith needs to be discussed more sharply in this article.

In Fath al-Wahhab, Zakariya al-Anshari mentions the definition of divorce, namely breaking the bonds of marriage with the words talak or divorce.<sup>6</sup> The dissolution of a marriage bond means that there is no longer a husband and wife relationship between a man and a woman. In fact, other consequences will arise, such as the iddah period, property, child custody, and so on. Divorce in Indonesia is considered valid if it is carried out in court, so it is not considered trivial. Therefore, in article 117 of the Compilation of Islamic Law, divorce is defined as "The husband's oath before the Religious Court which is one of the reasons for the dissolution of the marriage," as referred to in articles 129, 130, and 131.<sup>7</sup>

As a religion that encompasses all aspects of life, Islam offers a special perspective on how divorce should be carried out fairly and generously.

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<sup>1</sup> Misbahuzzulam, Umi Sumbulah, and Fauzan Zenrif, 'Kesetaraan Gender Dalam Perceraian (Kajian Hadis Tentang Gugat Cerai)', *Dirasat Islamiyah*, 11.2 (2024), pp. 271–91.

<sup>2</sup> Muh. Habibulloh and others, 'Ayat Dan Hadist Tentang Perceraian', *Dahzain Nur: Jurnal Pendidikan, Keislaman Dan Kemasyarakatan*, 13.1 (2024), pp. 63–75, doi:10.69834/dn.v13i1.104.

<sup>3</sup> Teti Saputri and Tajul Arifin, 'Perceraian Dalam Perspektif Hadis Imam Abu Dawud Dan Pasal 39 UU. No. 1/1974', 5.2 (2024), pp. 1–9.

<sup>4</sup> Arif Budiman and Fitri Sari, 'Studi Nalar Hadis Tentang Perceraian (Talak)', *Jurnal Ulunnuha*, 11.1 (2022), pp. 15–26, doi:10.15548/ju.v11i1.3724.

<sup>5</sup> Muhammad Ajaj Al-Khatib, *Usul Al-Hadis: Ulumuh Wa Mustalahuh* (Dar Al-Fikr, 1989); Abdul Mustaqim, 'Teori Sistem Isnad Dan Otensitas Hadis Menurut Perspektif Muhammad Mustafa Azami', in *Wacana Studi Hadis Kontemporer* (Tiara Wacana Yogyakarta, 2002); Suryadi, *Metode Kontemporer Pemahaman Hadis Nabi Perspektif Muhammad Al-Ghazali Dan Yusuf Al-Qaradhwai* (Teras, 2008).

<sup>6</sup> Zakariya Al-Anshari, *Fathu Al-Wahhab Bisyarh Manhaj Al-Thullab* (Dar Al-Kutub Al-Ilmiyah, 1998).

<sup>7</sup> Kementerian Agama RI, *Kompilasi Hukum Islam* (Jakarta, 2018).

To be more focused, the author formulates the problems (1) how is divorce in the historical trajectory?; (2) how is the contextualization of the understanding of the hadith about divorce?. Meanwhile, the objectives of this article are (1) to describe divorce in the historical trajectory; (2) to analyze the contextualization of the understanding of the hadith about divorce.

### **Research Methods**

This research is a library research. In this case, it means that the data supporting this study or research comes from library sources that have been studied optimally. This research is a type of non-interactive qualitative research or research that leads to exploration, excavation and deepening of related data<sup>8</sup> to answer questions in the formulation of the problem with the object of study of the hadith on divorce.

Since this research is a library research, the procedure for obtaining data is done through library studies, namely tracing hadiths that discuss divorce. While the analysis is done by constructing the results of reading hadiths about divorce systematically and logically according to the focus of the research.

### **Results and Discussion**

#### **Divorce in the Course of History**

Divorce has been used and recognized throughout the history of human religion. Divorce was permitted among the Jews without any reason, such as if a husband liked another woman who was more beautiful. Divorce without a valid reason was still considered bad among them. Divorce in the Christian tradition is divided into three groups: Catholics strictly forbid divorce and do not allow divorce for any reason; Orthodox are the second group; and Protestants are the third group. The grounds for divorce consist of moral defects such as rudeness, hostility, stubbornness, and extravagance. Both allow divorce for certain reasons, such as treason, but both prohibit remarriage after divorce.<sup>9</sup>

Divorce in the Arab tradition of Jahiliyah was narrated by Aisha, the wife of the Prophet that long ago (the era of Jahiliyah) a man divorced his wife and took her back as much as he wanted, and as much as he wanted up to a hundred times or more. Then one time the divorced woman met

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<sup>8</sup> M. Djunaidi Ghony and Fauzan Almanshur, *Metode Penelitian Kualitatif* (Ar-Ruzz Media, 2012).

<sup>9</sup> Sayyid Sabiq, *Fiqh Al-Sunnah* (Dar Al-Hadith, 2004).

Aisha to tell her story, Aisha was silent. Then the Prophet came and Aisha told the news. The Prophet was silent<sup>10</sup> so the verse came down (Al-Baqarah [2]: 229):

الطلاق مرتان فامسأك بمعروف أو شریح بالحسان

*Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment.*

The right to divorce in Islam is an absolute right for a husband, not only in Judaism. The Al-Quran itself—through several verses—explains the provisions regarding the right to divorce for husbands.

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلُهُنَّ فَامْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرْحُونَ  
بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِتَعْتَدُو

*And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them] (Al-Baqarah [2]: 231).*

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوْهُنَّ أَوْ تَفْرُضُوا لَهُنَّ فَرِيْضَةً  
وَمَتِّعُوهُنَّ عَلَى الْمُؤْسِعِ قَدْرُهُ وَعَلَى الْمُفْتَرِ قَدْرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًا  
عَلَى الْمُحْسِنِينَ

*There is no blame upon you if you divorce women you have not touched nor specified for them an obligation. But give them [a gift of] compensation - the wealthy according to his capability and the poor according to his capability - a provision according to what is acceptable, a duty upon the doers of good (Al-Baqarah [2]: 236).*

In a history, the Prophet once said about the husband's right to divorce:

عَنْ ابْنِ عَبَّاسٍ قَالَ أَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَجُلٌ فَقَالَ يَا رَسُولَ  
اللَّهِ إِنَّ سَيِّدِي رَوَّجَنِي أَمْتَهُ وَهُوَ يُرِيدُ أَنْ يُفْرِقَ بَيْنِي وَبَيْنَهَا قَالَ فَصَعَدَ  
رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمِنْبَرَ فَقَالَ يَا أَيُّهَا النَّاسُ مَا بَالُ أَحَدِكُمْ  
يُرَوِّجُ عَبْدَهُ أَمْتَهُ ثُمَّ يُرِيدُ أَنْ يُفْرِقَ بَيْنَهُمَا إِنَّمَا الطَّلاقُ لِمَنْ أَخَذَ بِالسَّاقِ

*From Ibn Abbas he said, "A man came to the Prophet and said, "O Messenger of Allah, indeed my master married me to his slave girl, then he wanted to separate me from her." Ibn Abbas said, "The Messenger of Allah then went up to the*

<sup>10</sup> Sabiq, *Fiqh Al-Sunnah*.

pulpit and said, "O people, why does one of you marry his slave to his female slave, then he wants to separate the two? In fact, divorce is the right of the person holding the calf."<sup>11</sup>

What is meant by a person who has the right to take a calf is a husband who has the right to the woman who is his wife, even if the husband is a slave, the right to divorce remains his and not the master's.

In another hadith, the Prophet said that a wife also has the right, namely to demand a divorce as long as the reason is acceptable by the sharia. The hadith includes:

عَنْ ثُوَبَانَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَيْمَأْ امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلاقَ مِنْ غَيْرِ بَأْسٍ فَحَرَامٌ عَلَيْهَا رَأْحَةُ الْجَنَّةِ

From Tsauban, he said, the Messenger of Allah said, "Any woman who asks for a divorce from her husband, not because of something difficult, then the smell of Heaven is forbidden to her."<sup>12</sup>

In another hadith:

عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا تَسْأَلُ الْمَرْأَةَ زَوْجَهَا الطَّلاقَ فِي غَيْرِ كُنْهِهِ فَتَجَدَ رِيحَ الْجَنَّةِ وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا

From Ibn Abbas that the Messenger of Allah said, "No wife asks her husband for divorce without a valid reason, then smells the fragrance of Paradise. Indeed, the fragrance of Paradise can be reached by a journey of forty years."<sup>13</sup>

### Hadith About Divorce

Divorce in the Islamic view is a halal act but is prohibited by Allah SWT based on the hadith of the Prophet:

حَدَّثَنَا كَثِيرُ بْنُ عُبَيْدٍ حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ عَنْ مُعَرْفِ بْنِ وَاصِلٍ عَنْ مُحَارِبِ بْنِ دِتَّارٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَبْغَضُ الْحَالَ إِلَى اللَّهِ تَعَالَى الطَّلاقُ

It has been narrated to us from Katsir bin Ubaid, it has been narrated to us from Muhammad bin Khalid from Mu'arrif bin Washil from Muharib bin Ditsar from Ibn Umar from Messenger of Allah, he said, "Something that is lawful and most

<sup>11</sup> Abu Abdullah Majah, *Sunan Ibn Majah* (Dar Al-Hadharah Li Al-Nasr Wa Al-Tauzi', 2015).

<sup>12</sup> Abu Muhammad Abdullah Darimi, *Sunan Al-Darimi* (Dar Ibn Hazm, 2002).

<sup>13</sup> Majah, *Sunan Ibn Majah*.

*hated by Allah is divorce.”<sup>14</sup>*

This hadith is often quoted by ulama and used in the context of discussing divorce law in Islam. Apart from being found in the book of Sunan Abi Dawud, the above hadith is also found in the book of Sunan Ibnu Majah.<sup>15</sup> The wording of this hadith raises a question as to how something is considered halal and then hated by Allah? Whereas something that is halal means it is permitted and there are no consequences of sin in it.

Several ulama have tried to answer this problem, including Ali al-Harawi who said that the meaning of halal here is not something that is allowed or not to be done but rather something more general than that, because there are several things in religion that are prescribed but hated by Allah such as praying in a place resulting from gasab, eating and drinking in the mosque for people who do not intend to do itikaf. This divorce is considered the most hated thing because it is a counter to the thing that Satan likes most, namely the separation of the two partners.<sup>16</sup>

Muhammad bin Abdul Hadi al-Sindi, a Hanafi fiqh ulama, added that divorce has the potential to destroy the relationship between the two parties who are divorcing. Furthermore, divorce can also be a cause of hostility between families. This understanding emphasizes the importance of understanding the consequences and social impacts of divorce in society. Although divorce itself is a right in Islam, its use must be carried out with full consideration and caution to prevent losses and negative impacts that can harm individuals and society more broadly.<sup>17</sup>

### **Contextualization of Understanding the Hadith on Divorce**

In understanding the hadith about divorce, socio-historical and psychological perspectives will be used. From the socio-historical side, ulama agree that the Prophet once divorced some of his wives.<sup>18</sup> The Prophet himself once divorced Hafsa, as narrated in a history:

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<sup>14</sup> Al-Asy'ab Abu Dawud, *Sunan Abu Dawud* (Dar Al-Hadharah Li Al-Nasr Wa Al-Tauzi', 2015).

<sup>15</sup> Majah, *Sunan Ibn Majah*.

<sup>16</sup> Ali Al-Harawi, *Marqat Al-Mafatih Syarh Misykat Al-Mashabih* (Dar Al-Fikr, 2002); Moh Ahsin and Ahmad Fathonih, 'Kajian Dan Telaah Kritis Tafsir Dan Hadits Tentang Perceraian', *Al-Insaf: Jurnal Ahwal Al-Syakhshiyah*, 3.2 (2024), pp. 16-37.

<sup>17</sup> Al-Harawi, *Marqat Al-Mafatih Syarh Misykat Al-Mashabih*; Ahsin and Fathonih, 'Kajian Dan Telaah Kritis Tafsir Dan Hadits Tentang Perceraian'.

<sup>18</sup> Ibn Abd Al-Barr, *Al-Istidzkar* (Dar Al-Wa'y, 1993).

عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ طَلَقَ حَفْصَةَ ثُمَّ رَاجَعَهَا

From Umar bin Khatab said, "Indeed, the Messenger of Allah once divorced Hafsah and then referred her again."<sup>19</sup>

The Prophet's attempt to refer Hafsah shows that the Prophet remained careful and tried to choose a peaceful way to maintain the marriage as much as possible. The Prophet divorced Hafsah because Hafsah was unable to keep the trust. One day the Prophet was alone with Maria al-Qibtiah in Hafsah's house (in Hafsah's room) and on her turn, Hafsah was known to be very jealous and very angry. To calm her down, the Prophet told her that he forbade Maria and would not approach her again and asked Hafsah to keep it a secret. Hafsah was so jealous that she poured out her feelings (confided) to Aisha. Then Allah informed her that Hafsah did not keep the Prophet's secret, finally the Prophet was angry and divorced Hafsah.<sup>20</sup> The Prophet loved Umar as Hafsah's father, then the Prophet referred to him.

The permission to divorce, which in the eyes of Allah is disliked, is a form of Allah's mercy to His servants to obtain happiness in the household while protecting women. As narrated by Aisha, in the era of Jahiliyah, divorce was something that was greatly underestimated, so they treated women as they pleased. They married women polygamously without any limit on the number, and they divorced their wives without any limit on the number. Islam came to limit the maximum number of women who could become wives. Likewise, Islam came to limit the number of divorces, as an effort to protect women from being treated arbitrarily and to elevate their status.

The Qur'an itself pays special attention to the issue of divorce. In Al-Baqarah [2]: 229:

الْطَّلَاقُ مَرَّتَنِ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيْحٌ بِإِحْسَانٍ ۖ وَلَا يَحْلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا أَتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَاْفَا إِلَّا يُقْيِّمَا حُدُودَ اللَّهِ ۖ فَإِنْ خَتَّمْ أَلَا يُقْيِّمَا حُدُودَ اللَّهِ لَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۖ تُلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you

<sup>19</sup> Majah, *Sunan Ibn Majah*.

<sup>20</sup> Abu Abdillah Al-Ansari Al-Qurtubi, *Al-Jami' Li Ahkam Al-Qur'an* (Muassasah Al-Risalah, 2006).

*have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers.*

The verse above sets the limit for divorce, namely twice. The instructions from the Qur'an are in line with the hadith regarding divorce, whether taken seriously or jokingly. The hadith regarding divorce actually provides a warning for every couple to be careful so as not to cause the husband to say the word divorce more than twice. This warning serves as a guide so that each couple does not regret having already said the third divorce, which means they cannot reconcile again, unless the wife has married her new husband and then divorced. Likewise for the wife, this warning is a control so that she does not make her husband lose control by saying the word divorce.

Considering the hadiths on the permissibility of divorce, scholars have agreed that divorce is something that is permitted due to the existence of a very urgent condition if it is no longer possible to reconcile the husband and wife and there is a breakdown in household harmony. If this breakdown in harmony is left unchecked, it will worsen the situation and cause endless quarrels, while at the same time the husband still bears the consequences by providing a living and a place to live. Of course, such a condition makes both of them suffer from maintaining a marriage in an inharmonious relationship.<sup>21</sup>

Thus, the limit of maintaining a marriage according to the hadiths above is to be as patient as possible through various peace efforts.<sup>22</sup> It is in this context that the provisions regarding the declaration of divorce in court come into play, as stated in Law No. 1 of 1974 Article 39 paragraph (1) which states that "Divorce can only be carried out in court after the court concerned has tried and failed to reconcile the two parties."

Technically, the Religious Court accepts the divorce application by the husband as regulated in Article 66 of the Religious Courts Law (UUPA) Article 70 of 1989. Then the Court examines the application, if both parties cannot be reconciled because the factors causing the divorce have been fulfilled according to sharia and administratively, then the Court

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<sup>21</sup> Al-Muthairi, *Ittihaf Al-Khillan Bi Huquq Al-Zaujain Fi Al-Islam* (Dar Al-Ashimah, 1411).

<sup>22</sup> Al-Muthairi, *Ittihaf Al-Khillan Bi Huquq Al-Zaujain Fi Al-Islam*.

determines that the application is granted. The next step is the implementation of the divorce oath hearing attended by the wife, as stated in Article 70 of Law Number 7 of 1989 concerning Religious Courts. Thus, the Court as a judge tries to help the husband and wife to maintain the marriage as much as possible.

Meanwhile, the hadith about divorce above, when viewed from a psychological perspective, there are some experts who view the hadiths challenging the right to divorce as discriminatory.<sup>23</sup> Because, it seems as if a woman's right to divorce is limited by the husband's power, namely only being allowed to ask for a divorce with ransom and that too is limited by the requirements of reasons that are justified by the sharia. This is as in the story of the wife of Thabit bin Qais who complained about her request for a divorce from her husband to the Prophet, then the Prophet ordered her husband to divorce her and ordered him to take a ransom from his wife. This shows that women do not have the right to divorce, but only have the right to ask for a divorce and that too with a ransom for themselves.

Sayyid Sabiq argues that the right to divorce belongs to men for two reasons. First, men are better able to ensure the continuity of the marriage by spending their wealth in the form of missile maintenance (dowry and general living expenses) or more, even when a husband divorces he bears the compensation for the divorce and provides maintenance to his ex-wife during the iddah period. The implication in the form of material risks after the divorce is a consideration that is really taken into account by the husband so that he does not rush to divorce. Second, psychologically, men have better intellectual abilities and emotional stability than women.<sup>24</sup>

Al-Muthairi further explained that in general, men's minds have more mature considerations of the risks and negative consequences of divorce for their offspring and for himself and his wife. This maturity causes men not to rush to end the marriage bond without thinking it through.<sup>25</sup> This psychological review is very reasonable, considering that women's psyche experiences down times during certain phases such as during menstruation, pregnancy, postpartum and in general have more sensitive feelings than men.

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<sup>23</sup> Abdullah Ahmed Al-Naim, *Dekonstruksi Syariah* (LKiS, 1997).

<sup>24</sup> Sabiq, *Fiqh Al-Sunnah*.

<sup>25</sup> Al-Muthairi, *Ittihaf Al-Khillan Bi Huquq Al-Zaujain Fi Al-Islam*.

Because men bear the cost of maintaining the marriage supported by their intellectual abilities and emotional stability, they will be more patient with something they do not like about their wives so that they do not rush to divorce because of their wives' emotions and badness that burden them. On the other hand, emotionally a woman will act hastily, and she also does not have the implications of post-divorce inheritance like men. Thus, it will be easier for a wife to break off the marriage bond just because of trivial reasons, or inappropriate reasons, if women are given the right to divorce.<sup>26</sup>

In the context of the hadith about divorce, men are given the main right to impose divorce. One of the theological and sociological reasons that is often put forward is the assumption that men have greater emotional stability and intellectual power than women, so they are better able to make important decisions with rational consideration.

From a gender psychology perspective, research shows that men tend to have higher emotional control in stressful situations than women. This is mostly due to biological factors (hormonal differences such as testosterone and estrogen) as well as social factors in the form of gender roles that teach men to be more restrained in emotional expression.<sup>27</sup>

In the sociology of gender, the concept of gendered emotionality explains that women are socially shaped to be more expressive in expressing their feelings, while men are encouraged to appear rational and unemotional.<sup>28</sup> Therefore, in the context of divorce, emotionally unstable decisions are more often associated with women, while men are expected to consider the long-term impact of a decision such as divorce.

Hadiths about restricting women's rights to request divorce (such as the prohibition of asking for divorce without shar'i reasons) can be understood within this framework. Islam seeks to maintain social balance so that divorce decisions are not taken impulsively, but through mature rational consideration. The Prophet Muhammad, in the case of Hafsah's divorce, also showed that although the right of talaq exists, the decision is used with great caution.<sup>29</sup>

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<sup>26</sup> Sabiq, *Fiqh Al-Sunnah*.

<sup>27</sup> Tara M Chaplin and Amelia Aldao, 'Gender Differences in Emotion Expression in Children: A Meta-Analytic Review', *Psychological Bulletin*, 18.2 (2013).

<sup>28</sup> Raewyn Connell, *Gender: In World Perspective* (Polity Press, 2009).

<sup>29</sup> Abdul Mustaqim, *Ilmu Ma'anil Hadis, Paradigma Interkoneksi* (Idea Press Yogyakarta, 2016).

In addition, contemporary psychological studies also show that women experience higher emotional reactivity in interpersonal relationships, including in domestic conflicts.<sup>30</sup> This corroborates that emotional stability is the normative reason for sharia in determining the structure of rights and obligations of divorce. Thus, the regulation of divorce rights in the hadith reflects an early understanding of the psychological and sociological differences between men and women, which to this day is supported by modern scientific research.

Abdul Mustaqim illustrates that the husband's right to divorce is directly proportional to the husband's obligation to provide a dowry. If we look closely, the concept of dowry cannot actually be separated from the socio-historical context at the time when the marriage law came into existence. Islam prescribes a dowry as a reward for women, because in the era of ignorance women did not have the right to own anything. With dowry, Islam raises the dignity of women to own something.<sup>31</sup> Quoting what Abdul Mustaqim said, that with dowry, Islam has changed the status of women who previously did not have any rights (read: like goods) that were only owned to people who can own them.

Abdul Mustaqim quoted the opinion of Ali Ahmad al-Jurajawi, that it is not in accordance with the sense of justice, if the husband has to give the dowry and then the right to issue a divorce is with the wife. Imagine, she has lost the dowry, then divorced. So in the context of balance, Islam then stipulates, if the wife wants to file for divorce ('khulu') she must return the dowry received by her husband.<sup>32</sup> So it can be said that the right to divorce is a logical implication of a man's giving of a dowry to a woman if we look at its historical nature.

The permission for women to ask for divorce ('khulu') comes from Al-Baqarah [2]: 229:

فَإِنْ خَفْتُمُ الَّا يُقْيِمَا حُدُودَ اللَّهِ لَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ

*But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself.*

To be more precise, the Prophet had once ordered the practice of 'khulu' to a friend named Habibah who complained to him that she was

<sup>30</sup> Arshdeep Kaur and others, 'Gender Differences in Emotional Regulation Capacity among the General Population', *International Archives of Integrated Medicine*, 9.1 (2022).

<sup>31</sup> Mustaqim, *Ilmu Ma'anil Hadis*, Paradigma Interkoneksi.

<sup>32</sup> Mustaqim, *Ilmu Ma'anil Hadis*, Paradigma Interkoneksi.

worried that she would not be able to carry out her obligations as a wife because she was not physically attracted to her husband, Thabit bin Qais.

عَنْ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةَ ثَابِتَ بْنَ قَيْسٍ أَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ أَمَّا إِنِّي مَا أَعِيبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ وَلَكِنِّي أَكْرَهُ الْكُفُرَ فِي الْإِسْلَامِ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَتَرْدِينَ عَلَيْهِ حَدِيقَتَهُ قَالَتْ نَعَمْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اقْبِلْ الْحَدِيقَةَ وَطَلَّقْهَا تَطْلِيقَةً

From Ibn Abbas, that the wife of Thabit bin Qais came to the Prophet and said, "O Messenger of Allah, Thabit bin Qais, I do not criticize his morals and religion, but I do not want to commit disbelief in Islam." Then the Messenger of Allah said, "Will you return the garden," he answered, "Yes." The Messenger of Allah said (to Thabit): "Accept his field and divorce him once."<sup>33</sup>

It is said that Habibah did not like her husband who was very dark, short in stature, and had the worst face.<sup>34</sup> The attraction factor is an important factor in marriage to realize the purpose of marriage, namely mawaddah (love and liking). Mawaddah is the initial foundation of marital happiness, when the physical condition of the couple does not trigger mawaddah according to the limits of sharia that allow divorce, either physical defects impotence (husband who has no sexual desire and is not productive), or moral defects then he may file for khulu'. Likewise, if there is a phenomenon of forced marriage and the wife is not interested at all in the husband who was matched, so that her inner sustenance is not fulfilled because she is not interested and even disgusted, then there is no obstacle to filing for divorce to the court. If the husband is not willing to divorce then the one who has the authority to determine the divorce decision is the judge, as in the case of Habibah above, where the Prophet was the judge.

Referring to Al-Rum [30]: 21:

وَمِنْ أَيْتَهُ أَنْ خَلَقَ لَكُمْ مِنْ أَنفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً أَنْ فِي ذَلِكَ لَا يَتَبَتَّلُ قَوْمٌ يَتَفَكَّرُونَ

And of His signs is that He created for you from yourselves mates that you may

<sup>33</sup> Ahmad bin Syu'aib Nasa'i, *Sunan Al-Nasa'i* (Dar Al-Hadharah Li Al-Nasr Wa Al-Tauzi', 2015).

<sup>34</sup> Musa Syahin Lasyin, *Al-Manhal Al-Hadis Fi Syarhi Al-Hadis* (Dar al-Madad al-Islami, 2002).

*find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.*

So, sakinhah, mawaddah and rahmah (read: happiness) are the goals of marriage that must be achieved by both parties, not just one of them. In the verse, the word “azwaja” is mentioned, which means that this verse contains the principle of justice. If marriage is aimed at the happiness of the husband and wife, then divorce must also be a solution for the happiness of both. If divorce is a right for a husband to achieve his happiness, then khulu’ for a wife should also be a way to achieve her happiness. Thus, khulu’ must be understood not only as the right to demand divorce, but as the right to obtain happiness. Therefore, divorce is the gateway to the wife's right to choose her happiness, then divorce will be crippled if it is arbitrarily carried out by the husband.

In Islamic law, the right of divorce is basically given to men, while women have the right of khulu’ (demanding divorce by returning dowry or ransom). From the perspective of justice theory and *maqaṣid al-shariah*, this arrangement is not intended to be discriminatory, but rather as a form of protection for the balance of rights and obligations and maintaining social stability.

In justice theory, as developed by John Rawls in the modern context, it emphasizes that justice is “fairness” – granting to each person rights according to his or her position in the social structure.<sup>35</sup> In the Islamic perspective, the principle of justice (*al-'adalah*) is rooted in a balance between rights and obligations that take into account human nature and social reality. The granting of divorce rights to men correlates with the burden of financial responsibility (alimony) and protection of women, which in Islam is heavier for men. On the other hand, the right of khulu’ for women is a form of corrective justice so that women do not get trapped in marriages that endanger their well-being.<sup>36</sup>

Meanwhile, within the framework of *maqaṣid al-shariah*, as explained by Jasser Auda,<sup>37</sup> The main purpose of the Sharia is to protect the five Points: religion, soul, intellect, heredity, and property. In the

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<sup>35</sup> John Rawls, *A Theory of Justice: Revised Edition*, ed. by Harvard University Press (Cambridge, 2020).

<sup>36</sup> Muhammad Al-Ghazali, *Fiqh Al-Awlaiyyat: Menimbang Prioritas Dalam Hukum Islam* (Alif Press, 2022).

<sup>37</sup> Jasser Auda, *Reclaiming the Maqasid Al-Shariah in the Context of Contemporary Muslim Society* (International Institute of Islamic Thought (IIIT), 2021).

context of divorce, *maqasid* plays a role in (1) safeguarding the soul (*hifz al-nafs*), by allowing the exit from the marriage that damages the soul and psychology of the couple; (2) Maintaining honor and posterity (*Hifz al-'ird wa al-Nasl*), by regulating the divorce process so that it remains dignified and does not damage the rights of children; and (3) Maintaining Property (*Hifz al-Mal*), in *khulu'*, women return some of their property as a fair condition so that there is no exploitation of their husbands.

In the practice of the Prophet Muhammad, as narrated about the wife of Tsabit bin Qais who asked for *khulu'*, the Prophet respected the decision of women to break away from emotionally harmful relationships, while maintaining financial justice between the two parties.<sup>38</sup> Therefore, this arrangement of divorce and *khulu'* shows the flexibility of the sharia in accommodating the differences in emotional, social, and financial needs between men and women, not merely the granting of unilateral privileges.

According to M. Syaifudin, divorce according to Islamic law, Article 38 and 39 of Marriage Law Number 1 of 1974 consists of divorce by talaq, divorce by lawsuit and divorce by death.<sup>39</sup> The divorce suit regulated by law is a manifestation of the practice of *khulu'* as a wife's right.

Regarding the requirement for divorce in the Religious Court, it automatically negates the validity of divorce outside the Religious Court. According to Andi Tahir Hamid, before the birth of the Marriage Law, Article 39, the classical fiqh paradigm was very strong so that husbands easily issued divorce.<sup>40</sup> Such conditions have a negative impact of injustice for wives, because they are divorced at will by their husbands. While when wives feel unable to maintain the marriage, they do not have the authority to. According to Prawirohamidjojo, this article is a preventive measure to suppress arbitrary actions by husbands to divorce their wives without justifiable reasons.<sup>41</sup> Prawirohamidjojo's opinion is a comparison regarding the understanding of the hadith regarding the terms of *khulu'* which are justified by syarak. This means that if a wife demands a divorce (*khulu'*) she must fulfill the conditions, then similarly if a husband wants to divorce he must also fulfill the conditions that are justified. The only party who can act as a mediator between the two parties to ensure a sense

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<sup>38</sup> Mustaqim, *Ilmu Ma'anil Hadis, Paradigma Interkoneksi*.

<sup>39</sup> Muhammad Syaifuddin, *Hukum Perceraian* (Sinar Grafika, 2013).

<sup>40</sup> Andi Tahir Hamid, *Peradilan Agama Dan Bidangnya* (Sinar Grafika, 1996).

<sup>41</sup> Soetojo Prawirohamidjojo and Pohan Marthalena, *Sejarah Hukum Perceraian Di Indonesia Dan Belanda* (Airlangga University Press, 1996).

of justice is the leader through the Religious Court. In this context of justice, the vow of divorce in the Religious Courts has an urgency that is in accordance with the universal value of a sense of justice from the hadiths regarding divorce.

According to Article 39 of the Marriage Law, when a husband wants to divorce, he must submit a request for a divorce vow at the Religious Court. If the husband's request is granted, he can pronounce the divorce vow at the Court. If his request is not granted, then he cannot pronounce the divorce vow to his wife. Then the husband may submit it again to the High Religious Court. Thus, the divorce does not necessarily fall without a divorce vow at the Religious Court, technically this provision seems very different from the divorce vow from the understanding of the hadith by classical fuqaha which does not require a vow in the Court or judge.

In terms of analyzing the evidence, the obligation to declare divorce in court has sharia legitimacy. First, reviewing the fiqh principle of al-dharar yuzalu (dangerous/harmful forms must be eliminated). The hadith about the fall of divorce must be understood as a warning as explained previously. The hadith has a universal value of benefit for couples to be careful so that they do not easily get divorced. Second, the one who is obliged to eliminate the harm of divorce for all Muslims in Indonesia is the leader. His policy also eliminates differences of opinion that also cause harm, as per the fiqh principle:

**حكم الحاكم إلزام ويرفع الخلاف**

*The leader's decision is binding (must be obeyed) and eliminates differences.*

Through the oath of divorce in the Court, official evidence of divorce will be obtained and have permanent legal force. This legal force will guarantee a wife to obtain her rights as an implication after divorce in the form of mut'ah, maintenance during iddah and facilitate her in the process of marriage with another man after that. Likewise for the husband, he will obtain official evidence that makes it easier for him to fulfill the marriage procedure with another woman after that.

Thus, the contextualization of the hadith understanding of divorce shows that the teachings of the Prophet Muhammad in dealing with divorce are full of the values of justice, prudence, and protection of women's rights. The hadiths on divorce, when read with the *maqaṣid al-sharia* and the theory of justice, affirm that divorce is not an absolute right without limits, but a decision that must be taken with consideration of

benefits and avoiding greater harm. The restriction of the right of divorce for the husband and the recognition of the right of khulu' for the wife are proof that Islam has tried to regulate the marriage relationship in a fair and proportionate manner from the beginning. Therefore, the reinterpretation of divorce hadith in the context of modern positive law, such as the pledge of divorce in court, is a step in line with the spirit of substantive justice carried out by Islamic law.

### **Conclusion**

After conducting a comprehensive discussion regarding the Prophet's method in resolving divorce, the author can conclude that divorce is recognized in the history of human religion. Among Jews, divorce is not permitted without an excuse. Meanwhile, in responding to divorce, Christians are divided into three groups. First, Catholics prohibit divorce for any reason. Second, the Orthodox sect. And third, the Protestant sect. Both of these sects allow divorce for certain reasons.

Hadith about divorce from a socio-historical perspective found that the Prophet once divorced Hafsa and then referred her again. The Prophet's efforts to refer Hafsa show that the Prophet remained careful and tried to choose a peaceful path to maintain the marriage as much as possible. Meanwhile, from a psychological perspective, the hadith about divorce can be understood that the hadith has a universal value of benefit for couples to be careful so that they do not easily divorce.

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