

# Analysis of the Rise of Divorce Cases During the COVID-19 Pandemic

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**Abstract:** In Islamic law, divorce is known as talaq and khuluk. Talaq is a divorce whose initiative comes from the husband, while Khuluk is a divorce with the initiative of the wife. However, a family that is divorced using Islamic law will be troublesome for both parties, because the Islamic law of a divorce only uses no verbal one which legally states divorce. Therefore, in Indonesia, a law on divorce has been made so that neither party is harmed by the divorce or does not make it difficult for both parties if they want to remarry and also does not make it difficult for children to earn a living from their biological father. Divorce is a legal event, and then it should be an event carried out in accordance with rules of legal and judicial procedures. Otherwise it will result in lack recognized a divorce, this is in line with what is mandated in Law No. 1 of 1974 on article 38 and 39. Covid 19 has increased divorce in Indonesia by 5%, because some families experience difficulties in the economy. Divorce is often regarded as the best solution to end a marriage even though there will be consequences divorce, especially regarding the problems of the two children both morally and materially. The purpose of this journal is to explain some of the impacts that will be obtained, in the event of a divorce. In conclusion, a divorce has a negative impact, especially on children.

**Keywords:** Talak, Khuluk, Divorce

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## 1. Introduction

Divorce or disbanding of marriage is the severance of the marital bond between a man and a woman. That was caused by one of the two dies, the man and the woman are divorced, and one of the two has left the residence so that the court considers that the person concerned is dead.

Divorce in Islamic law or in *fiqh munakahat* (law of marriage) known as *talaq* and *khuluk*. Talaq is a divorce where the initiative comes from the husband, while khuluk is a divorce with the initiative coming from the wife. Islam regulates the conceptual construction of divorce and its legal consequences in the Qur'anic texts and hadith texts with the principles of justice and full of care.

A good conceptual implementation sometimes leads to a very different understanding of the substance of the construction of divorce in Islam. Understanding the legal consequences of divorce in the *fiqh* of *munakahat* seems to place the wife in a dishonorable and suffering position.

Wives are often victims of divorce [9]. At the end of 2019 the world was shocked by the news that a virus called Covid-19 or often referred to as the Corona Virus was endemic in China, this virus is first reported in an area called Wuhan, where the origin of this virus is not known for certain. However, it is common to feel now that this virus has spread almost all over the world, due to the nature of this virus which is very easy to spread and spread to other people by direct or indirect contact with sufferers, this virus usually spreads through the air and goods that are contaminated with it. When exposed to a patient's sneezes or saliva, this virus survives for several hours in the air and also on surfaces, one of the most effective ways to usually reduce the spread of this virus is to reduce extreme activities and interactions with other people and avoid crowded places.

So, in order to break the chain of spread of disease, the government imposes a lockdown or restrictions on activities outside the home, as a whole, all activities that can cause crowds or gatherings are temporarily suspended, such as

going to work, schools, some tourist attractions and businesses are closed or providing delivery services so that in the end, all activities are carried out at home, people are only allowed to leave the house if there is a very urgent need.

After the lockdown policy was enforced and people stayed at home and met all day for months with the same people. After starting to recover, the civil affairs office received a lot of divorce applications from married couples, the phenomenon of the increasing divorce rate became a side effect of the lockdown policy, many couples felt that after they lived together for several months, all of their time was spent at home.

## 2. Discussion

### 2.1. The Meaning of Marriage

Before discussing divorce in Islamic law, it will be explained the meaning of marriage as a consideration for someone in doing a divorce. The meaning of marriage is an insight that can be used in understanding both etymologically and in terms to be applied in reality.

Etymologically, marriage is a mixture, alignment and bond or it can be said that if someone has married, then both of them already have a relationship between the two. This is based on the word of Allah SWT in QS. Ad-Dukhan: 54 which means "So and we married them to nymphs". Marriage is a translation of the word "marriage" and the word "*zawaj*".

Marriage according to the language has the original meaning (*haqiqat*) namely "damm" which means squeezing, pressing, or gathering. Marriage also has a figurative meaning, namely "*wata'a*" which means "sexual intercourse" or "*aqad*" which means entering into an agreement [15].

Agreements in marriage are carried out by means of *ijab* and *qabul* which are pronounced directly or indirectly in front of the assembly by the prospective husband or wife, if both have the right according to law or can be represented by their guardians if the prospective husband and wife are in a state of insanity or are still under age [10].

Islam teaches marriage as something sacred, aiming at worshipping Allah and following the Sunnah [1]. According to Islamic law, especially as regulated in the Islamic Legislation (*Fiqh*), the definition of marriage or marriage contract is a bond that justifies association and limits rights and obligations as well as mutual assistance between men and women who are not *mahrom*. *Mahrom* is the member of family who are abandoned to get married with [7].

The definition of marriage according to experts is as follows: 1) Scholten: marriage is a legal relationship between a man and a woman to live together eternally, according to Indonesian state of law; 2) R. Subekti: marriage is a legal relationship between a man and a woman for a long time; 3) Wiryono Prodjodikoro: marriage is a life together of a man and a woman who meet certain conditions [5].

Marriage in a normative definition can be seen in the provisions of Article 1 of Law Number 1 of 1974 concerning Marriage which states: marriage is an inner and outer bond

between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on God, the Almighty. According to the provisions of Article 2 of the Compilation of Islamic Law (KHI) Book 1 concerning Marriage Law, it is stated that marriage according to Islamic law is marriage which is a very strong contract or *mitsaaqon gholiidhan* to obey Allah's commands and carry it out is a worship [7].

To realize an ideal marriage full of wisdom and blessings, the bride and groom need physical and spiritual readiness to accept each other in starting a new life. For a man after marriage he will be the husband, the leader in the household and the person who is responsible for the maintenance of his wife and children. Likewise with a woman after marriage, she will be a wife who is ready to accompany her husband in a state of joy or sorrow, being a mother for the children she has given birth to [10].

### 2.2. Divorce in the Marriage

#### 2.2.1. Talaq Divorce

Talaq is the cause of the breaking up of marital bonds, according to the language comes from the Arabic verb, *طلق* which is based on *lafaz* *المرأة* which means divorce. According to the term, from al-Jurjawi as quoted by Tihami and Sohri Sahrani, it is to remove marital ties or reduce the release of ties by using certain words. Then according to Article 117 of the KHI, talaq is the husband's pledge before the Religious Court session which is one of the causes of the breakup of a marriage, in the ways that have been regulated in articles 129, 130, 131.

Based on the definition of *talaq* above, it can be seen that there are several things related to *talaq*. First, the elements in divorce, (1) the person who makes the pledge; (2) certain words that are pronounced as *shighat talaq*; (3) of his own volition or his wife (*khuluk*); (4) held before the Religious Court. Second, the consequences of the divorce where it has implications for the breakup of marital ties [4].

Talaq or Divorce literally means breaking a bond. The term is to end or break the marriage bond. Several caused the divorce are [11] (1) the wife loses her mind, has leprosy, or is striped (2) if after the marriage contract it is known that the wife is a person who is forbidden to marry, such as a sister, parent, aunt, or people whose sister is still married to him, and so on; (3) the person doing the marriage is still not old enough and is not his father or grandfather; (4) the husband converts to Islam while the wife refuses or is still not Muslim; (5) the wife is a Muslim while the husband remains an infidel; (6) between husband and wife one of them apostates; (7) the wife is sexually assaulted by her father or grandfather either by accident or by intent to commit adultery; (8) the two parties cross each other; (9) both apostates; (10) one of them dies, in which case there is no difference regarding the legal provisions; and (11) the absence of a husband for four years.

Terdapat bermacam-macam talak, yaitu talak sunni dan bid'i, talak ba'in dan raji' talak sarih dan kinayah, munjaz dan mu'allaq, talak takhyir dan tamlik, talak wakalah dan

kitabah, talak dengan penghamaran, dan talak haram. Hukum asal talak sendiri adalah makruh karena didasarkan pada sebuah hadis yang diriwayatkan oleh Abu Daud, Ibnu Majah dan Al-Hakim "Perkara halal yang paling dibenci Allah adalah Talak". Kemudian diperkuat oleh hadis selanjutnya yaitu diriwayatkan oleh Ahmad, Abu Daud, Ibnu Majah, dan Tirmidzi "Siapapun wanita yang meminta cerai kepada suaminya, tanpa alasan yang membolehkan, maka haram baginya bau surga."

There are various kinds of *talaq*, namely *sunni* and *bid'i talaq*, *ba'in* and *raji' talaq*, *sarih* and *kinayah talaq*, *munjaz* and *mu'allaq talaq*, *takhyir* and *tamlik talaq*, *wakalah* and *kitabah talaq*, forbidden divorces, and haram divorces. The origin law of divorce itself is *makruh* because it is based on a hadith narrated by Abu Daud, Ibn Majah and Al-Hakim "The halal thing that Allah hates the most is divorce".

Then reinforced by the next hadith narrated by Ahmad, Abu Dawud, Ibn Majah, and Tirmidhi "Any woman who asks her husband for divorce, without a valid reason, it is forbidden for him the smell of heaven."

However, the law of divorce can be obligatory, permissible, forbidden and even sunnah accompanied by reasons that strengthen the occurrence of divorce. Compulsory divorce is a separation that aims to resolve the conflict between husband and wife that never ends, until each takes the path that they think is best, namely by separating so that the conflict ends soon.

Haram talaq is a divorce that is carried out not because of a justified claim and if it is imposed it will cause harm to both parties. Mubah talaq is a divorce that shows a justified demand, such as because of the wife's bad temperament, bad association and others. Meanwhile, sunnah talaq is divorce that is imposed on the wife because she has wronged the rights of Allah, where there have been efforts to awaken her but it has not changed for the better.

Then *khulu'* that is divorce proposed by the initiative of the wife, there are several opinions:

- 1) Imam Shafi'i argues in his new book and the number of scholars, *khulu'* includes *talaq*.
- 2) In the book of Ahkam al-Qur'an, Imam Shafi'i argues that *khulu'* is *fasakh*, not *talaq*.
- 3) If the intention is not get divorced, then there is no divorce at all. This opinion is the last opinion of Imam Shafi'i in his book al-Umm and strengthened as-Subki and Muhammad bin Nasir al-Mawardi in his book Ikhtilaf al-'Ulama'

### 2.2.2. The Law of Divorce

#### (i). According to Conventional Fiqh

In Conventional Fiqh, the law of divorce tends to position women as powerless parties to the arbitrary treatment of a husband. husbands can divorce them at any time, even though they don't really want the ties to be broken.

In any case, if the husband has said the sentence "talaq", then the divorce will occur. Whether drunk, joking, swearing and so on. This concept is very discriminatory so it needs to be reconceptualize [4].

#### (ii). According to Indonesia Contemporary State Law

Divorce in Indonesia is regulated in Law no. 1 of 1974 concerning marriage (UUP), and the Presidential Instruction of the Republic of Indonesia No. 1 of 1991 concerning the Compilation of Islamic Law (KHI) which was confirmed by the Decree of the Minister of Religion No. 154 of 1991 concerning the implementation of the Presidential Instruction of the Republic of Indonesia No. 1 year 1991.21. In KHI it is stated that a marriage can be terminated due to: (1) Death, (2) Divorce, and (3) on the Court's decision. Damage to marital relations caused by divorce can occur because of divorce or because of a divorce lawsuit. Divorce can only be carried out in front of a Religious Court trial, after which it tried and failed to reconcile the two parties. Divorce is calculated from the time the divorce is declared before the court.

Divorce law in Indonesia positions the judge as the only agency that has the right to impose a divorce. In other words, the husband or wife only becomes the applicant for the divorce decision to be implemented. Thus, even though the vow of divorce is the right of the husband, the pledge is only pronounced if he gets permission from the court.

#### 2.2.3. Intellectual Insights on the Enforcement of Divorce Law in Indonesia

There are two forms of divorce that are commonly occurred on mutual agreement between a husband and wife, the most famous of which is *khulu'*, that is the cancellation of marriage by the husband in return for a sum of money from the wife. The second form which in some *ulama'* is considered a variation of the first form is *mubara'ah*, the cancellation of marriage on the basis of mutual consent to share the assets acquired together during the marriage period [2].

However, the most common divorce form occurred is *talaq*, which is the unilateral divorce of the wife by the husband, as we all understand, that under no circumstances give any limitations, even the Hanafi school says that the utterance of divorce made in a drunken state is still valid and has legal force. This means that a husband not only has the right to divorce his wife at any time, but the wives themselves can immediately be divorced by their husbands who in fact they do not want the marriage to end.

At that time, it turned out that it was the wives who were bound by the Hanafi view who were the first to urge the Ottoman government to launch reforms in the field of family law so that they could receive protection.

These reformation greatly elevate the dignity of a wife, in line with the goals to be achieved. It should be remembered that the national resilience of a nation is largely determined by the integrity of the family. The resilience of the Indonesian state depends on the resilience of the small countries in Indonesia, namely the family.

Therefore, to ensure the protection of the family in relation to any practice that could threaten the integrity of a family, as an effort to protect its citizens from actions that could potentially threaten their security and future, the government has therefore enacted the Marriage Law (UUP) and the Compilation of Islamic Law (HKI) which is the handle of the

Religious Courts. In this case, government regulations come in to protect its citizens from negative excesses that may arise.

### 2.3. The Impact of Divorce

One of the foundations so that society can be strong is a marriage, if the marriage collapses then the foundations of society will also collapse. Therefore a marriage must be kept intact, and also husband and wife must be good in building a family [6]. If the family face a problem, it must be resolved properly, because if there is a small problem but cannot be resolved properly it will result in divorce.

We know that the world is currently being hit by a disaster with the presence of a deadly virus, COVID-19, which has a very large impact. One of the influential impacts is the economy, because workers cannot work as usual or experience a decrease in hours and even days, therefore their salaries have decreased and also the income in each factory or company has also decreased.

Then there are many divorces at this time, one of the causes is economic problems, we meet many workers who have been laid off and then they cannot meet the needs of their families which eventually causes small fights and leads to divorce.

The high divorce rate in Indonesia today will cause an increase in the number of children who are abandoned or children who behave naughty due to divorced parents and there is no good guidance from their parents. So this is tantamount to destroying the future of the nation because in fact children are the greatest treasure for the nation's successors in the future, if now children are not educated properly then what kind of children will be in the future.

The impact of divorce for husbands and wives is that if they are divorced not based on applicable laws and only based on Islamic law (through words) then they do not have a divorce certificate or evidence that says that they are officially divorced it will cause difficulties when they will remarry with others [8].

Because the religious court will not allow it until there is a valid letter from the court. Then it will also affect the child's livelihood if there is no letter stating that they are officially divorced and then the father does not regularly provide a living, the mother also cannot force to provide for the child regularly.

Basically, the family is the first step for children to know love, the meaning of life, and socialization. Then if there are problems in the family and cause a divorce, it will cause a big impact, especially if the husband and wife already have children. The love of parents for their children will be lost and also the loss of the figure of a father or mother which will cause psychological problems in the child and will hinder children mental development because there is no good guidance from the parents [6].

The impact of divorce on children, which we often encounter when the children has entered the age of adolescence and also become a victim of the divorce of his parents, the psyche of the child will have problems. Such as feelings of shame, sensitivity, and low self-esteem that cause

the child does not like to blend in with the surrounding environment and withdraw from the environment.

Then, children due to their parents' divorce are feelings of insecurity, unwanted by their parents, sad and lonely, angry, and blaming themselves for feeling guilty and the cause of the divorce [16]. And what we often encounter is that children will be bullied by their friends because they do not have a complete family, this has a huge impact on the psychological condition of the child.

At the emotional level, children also have a big impact, after their parents divorce they tend to be introverted and insecure children, from this emotional change if the child reaches adolescence, it can plunge the child into juvenile delinquency or even become a drug addict [3]. Then if the child feels happiness in his previous family life, it will cause severe trauma. On the other hand, if there was no happiness in the previous family, the child considers divorce as a way out of the problem.

There is also the impact of divorce concerning the validity of the divorce, the meaning here is that if they are divorced based on tradition in Islam and not in line with Indonesian legislation, the divorce does not have a marriage certificate [13], which will cause the husband to want to remarry a woman. otherwise they have a child, it will be difficult for the child to get legal recognition that the child is the child of the couple because the second marriage has no legal force or does not have an official document that says they are legally married.

Divorce also causes an impact on the family property or what is often heard is joint property, in fiqh actually does not recognize joint property, but the scholars affirm it is like the law of *tirkah* in a business that does not have to be divided equally but according to the contribution. However, in Indonesia, Article 126 of the Criminal Code states that "if there is a divorce, where the joint property is dissolved by law by dividing the joint property, their joint wealth is divided in half between husband and wife. And this is what is often used in Indonesia which is also referred to as treasure of *gono-gini* [12].

This division of *gono-gini* property, often makes divorced couples do not get along because they fight for take the property, and it also impact to their children. Sometimes a child whose custody falls to the mother, the mother often forbids her child to meet her biological father and vice versa. Because the selfishness of parents will damage the child's mentality and the child's future, in fact the child still needs love from both parties even though the parents are divorced.

Actually, people think that divorced people violate the sacred values of marriage so that divorced people are seen as lacking in respect for ethics and morals [14]. In addition, people who are divorced are also considered individuals who are unable to control themselves and expose their own family's disgrace. It is also very difficult for divorced people to get support, sympathy or empathy from their closest community, therefore they will tend to withdraw from society.

### 3. Conclusion

From the discussion above, it can be concluded that the foundation of a family is a marriage, where the purpose of marriage itself is the existence of a bond between a woman and a man who lives together, but sometimes when a family is experiencing shocks that cannot be resolved well it will end in divorce. The meaning of divorce is the breakup of a husband and wife relationship for a reason, divorce itself also has a tremendous impact both in terms of the wife, husband or children.

Divorce in Islamic law or *fiqh munakahat* is known as *talaq* and *khuluk*. *Talaq* is a divorce whose initiative comes from the husband, while *khuluk* is a divorce with the initiative coming from the wife. However, if in Indonesia a divorced family uses Islamic law, it will be difficult for both parties, because Islamic law a divorce only uses verbally, there is no letter stating that the divorce is legal.

Therefore, Indonesia has made a law on divorce so that no one party is harmed by the divorce or does not make it difficult for both parties if they want to remarry and also does not make it difficult for the child to earn a living from his biological father.

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