

**THE ANALYSIS OF JUDGE'S VIEW ON HUSBAND'S *NUSYUZ* IN
DIVORCE BY WOMEN CASE AT BANYUWANGI RELIGIOUS COURT
IN THE PERSPECTIVE OF *MUBADALAH***

THESIS

by:

IFADA AZKA AHYU

SIN 19210137



ISLAMIC FAMILY LAW DEPARTMENT

SYARIAH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

2023

**THE ANALYSIS OF JUDGE'S VIEW ON HUSBAND'S *NUSYUZ* IN
DIVORCE BY WOMEN CASE AT BANYUWANGI RELIGIOUS COURT
IN THE PERSPECTIVE OF *MUBADALAH***

THESIS

by:

IFADA AZKA AHYU

SIN 19210137



ISLAMIC FAMILY LAW DEPARTMENT

SYARIAH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

2023

STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**THE ANALYSIS OF JUDGE'S VIEW ON HUSBAND'S NUSYUZ IN
DIVORCE BY WOMEN CASE AT BANYUWANGI RELIGIOUS COURT
IN THE PERSPECTIVE OF *MUBADALAH***

Is truly writer's original work which can be legally justified. If this thesis proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 15 June 2023
Writer,



Ifada Azka Ahyu
SIN. 19210137

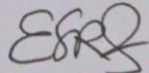
APPROVAL SHEET

After reading correcting thesis of Ifada Azka Ahyu, Student ID 19210137,
Department of Islamic Family Law, Syariah Faculty of The State Islamic University
Maulana Malik Ibrahim Malang entitled:

**THE ANALYSIS OF JUDGE'S VIEW ON HUSBAND'S NUSYUZ IN
DIVORCE BY WOMEN CASE AT BANYUWANGI RELIGIOUS COURT
IN THE PERSPECTIVE OF MUBADALAH**

The supervisor stated that this thesis has met the scientific requirements to be
proposed and to be examined on the Assembly Board of Examiners.

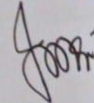
Acknowledged by,
The Head Department of
Islamic Family Law



Erik Sabti Rahmawati, MA.,M.Ag
NIP. 19751182009012003

Malang, 15 June 2023

Supervisor,



Jamilah, MA.
NIP. 197901242009012007

LEGITIMATION SHEET

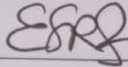
The Assembly Board of Thesis Examiners of Ifada Azka Ahyu, SIN 19210137,
student of Islamic Family Law Department, Syari'ah Faculty of The State Islamic
University Maulana Malik Ibrahim of Malang entitled:

**THE ANALYSIS OF JUDGE'S VIEW ON HUSBAND'S NUSYUZ IN
DIVORCE BY WOMEN CASE AT BANYUWANGI RELIGIOUS COURT
IN THE PERSPECTIVE OF MUBADALAH**


Has been certified to pass with mark:

Board of Examiners:

1. Erik Sabti Rahmawati, MA.,M.Ag
NIP. 19751182009012003
2. Jamilah, MA.
NIP. 197901242009012007
3. Dr. Zaenul Mahmudi, M.A
NIP. 197306031999031001



Chairman



Secretary



Main Examiner

Malang, 15 June 2023

Dean,

Dr. Sudirman, MA.
NIP.197708222003011003

MOTTO

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

Bagaimana kamu akan mengambilnya kembali, padahal sebagian kamu telah bergaul (bercampur) dengan yang lain sebagai suami-isteri. Dan mereka (isteri-isterimu) telah mengambil dari kamu perjanjian yang kuat.¹

How are you going to take it back, even though some of you have been associating (mixed) with others as husband and wife. And they (your wives) have taken from you a strong agreement

¹ Tim Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, (Jakarta: almahira, 2017), 81.

ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil' alamin has given His mercy and servant, so I can finish this thesis entitled “The Analysis of Judge’s View on Husband’s *Nusyuz* in Divorce by Women Case at Banyuwangi Religious Court in The Perspective of *Mubadalah*”. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. *Amin*. From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will express the gratitude which is unequaled to:

1. Prof. Dr. H. M. Zainuddin, MA. as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Dr. Sudirman, MA. as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Hj. Erik Sabti Rahmawati, MA., M.Ag. as the Head of Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang
4. Faridatus Suhadak, M.HI. as the Secretary of the Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang

5. Jamilah, MA. as my thesis supervisor. The writer thanks you for spending time to guide, direct, and motivate me to finish writing this thesis. The writer hopes that she and her family will be blessed by Allah.
6. Dr. Zaenul Mahmudi, MA. was the supervisor lecturer of the writer during his study at the Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
7. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all their charity be part of worship to get the pleasure of Allah SWT.
8. All staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang
9. Thank you to the judges at Banyuwangi Religious Court for helping interview my thesis
10. Big thanks to all my Family who always supported me in my life, my beloved father Abu Hasan, my beloved mother Yusmita, and my beloved sister Fasha Zulfa Ahyu.
11. Thank you to all my friends of The Islamic Family Law Department 2019 (HELIOS) members, Islamic Family Law Class D, dan International Class Program 2019 (ICP) especially Fahmi, Roza, Sallia, Zubaedah, Dhira, Aju, Nindy, Rehan, Izul, Ricky, Yakub, Kaji, Pandu, Ardia, Lala, Adha, Cece, Nisa (N), Pede, Dhea, et al.
12. Thank you to all my roommates 43 Yushi, Dwi, Oki, Uus, Dana, Fia, Nila, Icha, and Salsa in Ma'had Sunan Ampel of The State Islamic University Maulana

Malik Ibrahim and all my friends who lived in Grand Village As-Salam, Arin, Bila, and Nadiya

13. Thank you to All my friends since Senior High School always meet every year, Shelly, Nabila, Frida, Ayu, Zaidah, Sheren, Fina, Rara and for my cat who always disturbs and spends my money, Bobon. A big hug for you, Love you!
14. Finally, I want to thank me for believing in me. I want to thank myself for doing all this hard work. I want to thank myself for having no days off. I want to thank myself for never giving up. I always want to thank myself for just being me.

With the completion of this thesis report, the hope that the knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for forgiveness, criticism and, suggestions from all parties for future improvement efforts.

Malang, 15 June 2023
Writer,

IFADA AZKA AHYU
SIN. 19210137

TRANSLITERATION GUIDENCE

A. General

Transliteration transfers Arabic script into Indonesian (*Latin*) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic words from nations other than Arabic are written as the spelling of the national language or as written in the reference book. Writing the text's title in the footnotes and bibliography still uses the provisions of this transliteration.

There are several provisions in transliteration that can be used in writing scientific papers. Whether it is national or international standards or requirements specifically used by certain publishers. The transliteration guidelines used in the scientific work of sharia students of UIN Malang are based on the provisions of the 2019 thesis writing guidelines for the Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang, namely transliteration based on the *Surat Keputusan Bersama* (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, January 22th 1998, No. 159/1987 and 0543.b/U/1987, as stated in the A Guide Arabic Transliteration, INIS Fellow 1992.

B. Consonant

Arab	Name	Latin	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	Ša	Š	Es (Point Above)

ج	Jim	J	Je
ح	Ĥa	Ĥ	Ha (Point Above)
خ	Kha	Kh	Ka dan Ha
د	Dal	D	De
ذ	Ž	Ž	Zet (Point Above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es dan Ye
ص	Sad	Ş	Es (Point Below)
ض	Dad	Ḍ	De (Point Below)
ط	Ta	Ṭ	Te (Point Below)
ظ	Za	Ẓ	Zet (Point Below)
ع	‘Ain	‘	Inverted apostrophe
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
ء/ا	Hamzah	’	apostrophe
ي	Ya	Y	Ye

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above (‘), turning around with a comma (‘) to substitute for the “ع” symbol.

C. Vocal, long pronounce, and diphthong

Every Arabic writing in the form of latin fathah is written with “a”, kasrah with “i”, dlommah with “u”, while the length of each is written in the following way:

Vocal fathah	= a	
Vocal Kasrah	= i	
Vocal Dlomah	= u	
Long vocal (a)	= Â	Example: قال become Qâla
Long vocal (i)	= Î	Example: قيل become Qîla
Long vocal (u)	= Û	Example: دون become Dûna

Especially for reading ya’ Nisbat, it cannot be replaced with “î”, but is still written with “iy” to describe ya’ Nisbat in the end. Likewise, for the sound of diphthongs, wawu and ya’ after fathah wrote with “aw” and “ay”, as in the example below:

Diphthong	(aw) = و	Example: قول become Qawlun
Diphthong	(ay) = ي	Example: خير become Khayrun

In this thesis, the writer writes vocals, long pronounce, and diphthong. Therefore, the writer cannot provide examples that are in accordance with the thesis.

D. Ta' marbutah (ة)

Ta' marbutah translited as "t" in the middle of word, but if Ta' marbutah in the end of word, it translated as "h" e.g. الرسالة المدرسة become *alrisalat li al-mudarrisah*, or in the standing among two word that in the form of mudhaf and mudlaf ilaih, it transliterated as t and connected to the next word, e.g. في امان الله become *fi amanillah*.

E. Auxiliary Verb and Lafadh al-Jalâlah

Auxiliary verb "al" (ال) written with lowercase form, expect if it located it the position and "al" in lafadh al-Jalâlah which located in the middle of two or being or become idhafah, it removes from writing.

1. Al-Imam al-Bukhariy said.
2. Al-Bukhariy in muqaddimah of his book said.
3. *Masya Allah kana wa ma lam yasya 'lam yakun.*

F. Indonesian Arabic Names and Words

In principle, every word that comes from Arabic must be using the written transliteration system. When the name is the Arabic name of an Indonesian or an Arabic Indonesian, no need to write using the system transliteration.

TABLE OF CONTENT

OUTSIDE COVER	
INSIDE COVER.....	ii
STATEMENT OF THE AUTHENTICITY	iii
APPROVAL SHEET	iv
LEGITIMATION SHEET	v
MOTTO	vi
ACKNOWLEDGMENT	vii
TRANSLITERATION GUIDENCE	x
TABLE OF CONTENT	xiv
ABSTRAK.....	xvi
ABSTRACT.....	xvii
البحث ملخص.....	xviii
CHAPTER I INTRODUCTION	1
A. Research Background.....	1
B. Statement of Problem.....	6
C. Scope of Problem	7
D. Objective of Research	7
E. Benefit of Research	7
F. Operational Definition	8
G. Structure of Discussion	10
CHAPTER II LITERATURE REVIEW.....	12
A. Previous Research	12
B. Theoretical Framework.....	17
1. Divorce	17
2. <i>Nusyuz</i>	44
3. <i>Mubadalah</i>	53
CHAPTER III METHOD OF RESEARCH	63
A. Type of Research.....	63
B. Research Approach	63
C. Data Sources.....	65
D. Research Locations	66
E. Data Collection Method	66
F. Data Processing Method	67

CHAPTER IV DISCUSSION OF RESEARCH.....	68
A. The Judge's View of Husband's <i>Nusyuz</i> on The Divorce by Women Case at Banyuwangi Religious Court	68
B. The Judge's View of Status Husband's <i>Nusyuz</i> on The Divorce by Women Case at Banyuwangi Religious Court.....	75
C. The Judge's View About Husband's <i>Nusyuz</i> on The Divorce by Women Case at Banyuwangi Religious Court Perspective <i>Mubadalah</i>	83
CHAPTER V CLOSING	86
A. Conclusion	86
B. Suggestion.....	87
BIBLIOGRAPHY	88
APPENDIXES	93
CURRICULUM VITAE	102

ABSTRAK

Ifada Azka Ahyu, 19210137, 2023. Analisis Pandangan Hakim Pengadilan Agama Terhadap *Nusyuz* Suami Pada Perkara Cerai Gugat Di Pengadilan Agama Banyuwangi Perspektif *Mubadalah*. Skripsi. Program Studi Hukum Keluarga Islam. Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Jamilah, MA.

Kata Kunci: *Nusyuz* Suami, Cerai Gugat, *Mubadalah*

Mayoritas masyarakat memahami bahwa *nusyuz* hanya dilakukan oleh istri terhadap suami, tidak sebaliknya yaitu *nusyuz* suami terhadap istri. Padahal di dalam Al-Qur'an diatur tentang *nusyuz* suami dan *nusyuz* istri secara setara. Sebenarnya *nusyuz* suami banyak terjadi pada kasus cerai gugat, yaitu ketika suami tidak melaksanakan kewajibannya terhadap istri yang menyebabkan istri menderita, tetapi hal tersebut sering dianggap bukan *nusyuz* suami. Demikian juga para Hakim Pengadilan Agama Banyuwangi mengartikan bahwa kasus cerai gugat yang dilakukan oleh istri justru sebagai *nusyuz* istri, padahal cerai gugat itu karena perbuatan *nusyuz* suami. Hal ini yang menjadi latar belakang peneliti dalam penelitian ini.

Fokus dan tujuan pada penelitian ini adalah untuk menganalisis pandangan Hakim Pengadilan Agama Banyuwangi tentang pemahaman *nusyuz* suami, memaparkan status *nusyuz* suami pada perkara cerai gugat di Pengadilan Agama Banyuwangi, serta menganalisis pandangan hakim tentang *nusyuz* suami dalam perspektif *mubadalah*. Jenis penelitian yang digunakan oleh peneliti adalah penelitian yuridis empiris, dengan menggunakan pendekatan kualitatif melalui wawancara kepada para Hakim Pengadilan Agama Banyuwangi. Data yang digunakan peneliti pada penelitian ini adalah data primer, sekunder, dan tersier.

Hasil penelitian yang dapat diperoleh, yaitu (1) Mayoritas Hakim Pengadilan Agama Banyuwangi memahami tentang *nusyuz* suami serta bentuk *nusyuz* suami dari konsep taklik talak yang terdapat dalam buku nikah. Tetapi terdapat beberapa hakim yang masih kurang dalam memahami tentang *nusyuz* suami. Mereka masih mengartikan *nusyuz* secara sepihak saja, dimana hanya dilakukan pada istri saja. (2) Pada kasus cerai gugat di Pengadilan Agama Banyuwangi, Hakim belum memutuskan bahwa hal tersebut termasuk *nusyuz* suami. Hal tersebut dapat dilihat pada konsekuensi hukum yang mereka terapkan di Pengadilan Agama Banyuwangi pada kasus cerai gugat, dimana hak istri yang suaminya *nusyuz* tidak dicantumkan dalam putusan. Sehingga hak para istri yang mengajukan cerai gugat tidak mereka dapatkan, yaitu *mut'ah*, dan nafkah *iddah*. (3) Mayoritas Hakim Pengadilan Agama Banyuwangi masih kurang paham mengenai konsep *mubadalah*. Para Hakim masih menganggap bahwa istilah *mubadalah* merupakan pengetahuan yang baru. Mayoritas mereka belum mengetahui bahwa *mubadalah* merupakan bentuk kesalingan, sehingga mereka belum bisa menerapkan konsep *mubadalah* tersebut di Pengadilan Agama Banyuwangi. Mereka masih merujuk pada peraturan atau ketetapan majelis itu sendiri.

ABSTRACT

Ifada Azka Ahyu, 19210137, 2023. The Analysis of Judge's View on Husband's *Nusyuz* in Divorce by Women Case at Banyuwangi Religious Court in The Perspective of *Mubadalah*. Thesis. Islamic Family Law Department. Syariah Faculty. State Islamic University Maulana Malik Ibrahim Malang. Supervisor: Jamilah, MA.

Keyword: Husband's *Nusyuz*, Divorce, *Mubadalah*

Most people consider that *nusyuz* only done by the wife against the husband, not vice versa is husband's *nusyuz* to wife. Whereas in the Qur'an it is regulated about husband's *nusyuz* and wife's *nusyuz* equally. Actually, husband's *nusyuz* often occurs in divorce cases, namely when the husband does not do his obligations to his wife which causes the wife to suffer, but this is often considered not husband's *nusyuz*. Likewise, the judges at Banyuwangi Religious Court interpreted that the divorce case do by the wife was precise as wife's *nusyuz*, even though the divorce is due to an act of *n* husband's *nusyuz*. This is the research background of the researchers in this study.

The focus and purpose of this research are to analyze the judge's view regarding at Banyuwangi Religious Court on considering husband's *nusyuz*, display the status of husband's *nusyuz* in the divorce case contested at Banyuwangi Religious Court, as well as analyzing the judge's view of husband's *nusyuz* in perspective *mubadalah*. The type of research used by researchers is empirical juridical research, using a qualitative approach through interviews with the Judges at Banyuwangi Religious Court. The data used by researchers in this study were primary, secondary, and tertiary data.

The research results that can be obtained are (1) The majority of Judges at Banyuwangi Religious Court consider husband's *nusyuz* and form husband's *nusyuz* from the concept of taklik talak found in the marriage book. But some judges are still lacking in considering about husband's *nusyuz*. They mean *nusyuz* still unilaterally, where it is only done to the wife. (2) In the divorce case at the Banyuwangi Religious Court, the Judge has not decided that this included husband's *nusyuz*. This can be seen in the legal consequences they applied at the Banyuwangi Religious Court in the divorce case, where the right of the wife is that of the husband's *nusyuz* not included in the decision. So that the rights of the wives who filed for divorce do not get them, that is *mut'ah* and alimony *iddah*. (3) The majority of Judges at Banyuwangi Religious Court still do not consider the concept of *mubadalah*. The Judges still consider that the term *mubadalah* is new knowledge. Most of them do not know that *mubadalah* is a form of reciprocity, so they had not been able to implement the concept of *mubalah* the trial at Banyuwangi Religious Court. They still refer to the rules or statutes of the assembly themselves.

البحث ملخص

في نوسيزوز بزوح يتعلق فيما القاضي نظر وجهة تحليل .2023، 19210137 القيد رقم ،أحي أزكا إفاد كلية .الشخصية الاحوال قسم .اطروحة .مبادلة بانيووانجي محكمة منظور في الطلاق قضية دعاوى ماجستير جميلة :المشرف .مالنج إبراهيم مالك مولانا الحكومية الإسلامية الجامعة .الشريعة

الكلمة الرئيسية: نشوز الزوج، الطلاق، مبادلة

غالبية الناس يفهمون ذلكنوزيز فقط من قبل الزوجة ضد الزوج ، وليس العكس أينوزيز زوج لزوج .بينما في القرآن ينظمها نشوز الزوج ونشوز الزوجة بالمبادلة .في الحقيقة نشوز غالبًا ما يحدث الأزواج في حالات الطلاق المتنازع عليها ، أي عندما لا يقوم الزوج بتنفيذ التزاماته تجاه زوجته مما يتسبب في معاناة الزوجة ، ولكن هذا لا يعتبر في كثير من الأحيان نشوز زوج .وبالمثل ، فسر قضاة محكمة بانيووانجي الدينية أن قضية الطلاق التي قامت بها الزوجة كانت بالضبط كما يلي نشوز الزوجة وإن كان الطلاق بفلسوز الزوج. هذه هي خلفية الباحثين في هذه الدراسة

يركز هذا البحث والغرض منه على تحليل وشرح آراء قضاة محكمة بانيووانجي الدينية فيما يتعلق بالفهم والمكانة نوزيزوز الزوج في قضية الطلاق دعوى قضائية في محكمة بانيووانجي الدينية التي ستم مراجعتها باستخدام المبادلة. نوع البحث الذي يستخدمه الباحثون هو البحث القانوني التجريبي ، باستخدام نهج نوعي من خلال المقابلات مع قضاة محكمة بانيووانجي الدينية . كانت البيانات التي استخدمها الباحثون في هذه الدراسة هي البيانات الأولية والثانوية والثالثية

نتائج البحث التي يمكن الحصول عليها هي (1) غالبية قضاة محكمة بانيووانجي الدينية يفهمون التعريف والشكلنو زيزوز زوجتكليك الطلاق لكن هناك بعض القضاة الذين ما زالوا يفتقرون إلى الفهمنو نشوز زوج .يقصدوننشوز لا يزال من جانب واحد ، حيث توجد الزوجة فقط (2) في قضية الطلاق المتنازع عليها في محكمة بانيووانجي الدينية ، لم يقرر القاضي عدم إدراجها نشوز زوج يمكن ملاحظة ذلك في التبعات القانونية التي طبقوها في محكمة بانيووانجي الدينية في قضية الطلاق ، حيث يكون حق الزوجة حق الزوج .. نشوز غير مدرج في القرار حتى لا تحصل عليها حقوق الزوجات اللواتي

يطلبن الطلاق (3). لا يزال غالبية قضاة محكمة بانيووانجي الدينية يفتقرون إلى الفهم العميق لمبادلة .
لا يزال قضاة محكمة بانيووانجي الدينية يعتبرون هذا المصطلح لمبادلة هي معرفة جديدة .مبادلة تفسر
على أنها المعاملة بالمثل ، لذلك لم يتمكنوا من تطبيق مفهوم مبادلة قبل محاكمة الدين المغمور . فهي
لا تزال تشير إلى قواعد أو أنظمة الجمعية نفسها.

CHAPTER I

INTRODUCTION

A. Research Background

In marriage, husband and wife have rights and obligations.² Rights are things that someone will receive from other people, while obligations are things that someone must do for others. The husband has obligations towards his wife and the obligations of the husband become the rights of the wife. Otherwise, where the obligation of the wife is the right of the husband. If a husband or wife does not do their obligations or is negligent, then in Islamic law the husband or wife is deemed to have committed *nusyuz*.³

Nusyuz is an obligation left intentionally by the husband or wife. Ulama Maliki define *nusyuz* namely acts of mutual abuse between husband and wife. Ulama Syafi'iyah define *nusyuz* is a dispute that occurs in the household. The act of mutual abuse referred to is an act caused because the husband or wife does not do their obligations, leading to arguments or disagreements that lead to bad behavior towards their partner. Ulama Hambali and Hanafiyah define *nusyuz*, namely the husband's displeasure with his wife or otherwise.⁴ Displeasure here can be explained that there is an attitude of the husband or wife that causes the partner to dislike this attitude, giving rise to this attitude of displeasure. It can be

² Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: Raja Grafiika, 2013), 14733

³ Syaiful Anwar, "Hak Dan Kewajiban Suami Istri Menurut Undang-Undang Nomor 1 Tahun 1974" *Jurnal Kajian Islam Al Kamal Volume 1*, no. 1(2021): 94 [View of HAK DAN KEWAJIBAN SUAMI ISTRI MENURUT UNDANG-UNDANG NOMOR 1 TAHUN 1974 \(staika.ac.id\)](https://doi.org/10.24067/jki.v1i1.94)

⁴ Mokh. Fadlun, "*Nusyuz* Menurut Imam Abu Hanifah Dan Imam Asy-Syafi'i" (Skripsi, Institut Agama Islam Negeri Sunan Kalijaga, 2002), <https://digilib.uin-suka.ac.id/id/eprint/4923/>

concluded that the meaning of *nusyuz* according to the Ulama is an obligation left by the husband or wife that makes the household become disharmonious.

Islam regulates the rights and obligations of husband and wife as found in Al-Qur'an Surat Al-Baqarah verse 228:⁵

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۚ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ

means: "And women have rights that are balanced with their obligations according to a good way. However, husbands have a level of superiority over their wives".

The verse explains that the wife has rights and obligations, and otherwise. The wife's rights as stated in the verse are equal to the husband's rights and position, but the husband's position is still one level higher than the wives. The husband being the head of the family is an example of a husband's level being higher than that of his wife.⁶ In state law, the rights and obligations of husband and wife are regulated as contained in the Compilation of Islamic Law. Article 83 explains the wife's obligations,⁷ where the main obligation of a wife is to be physically and mentally devoted to her husband as contained in Islamic law. The wife also organizes and manages daily household needs as well as possible.

Article 80 explains the husband's obligations, namely⁸ the husband is the guide for his wife and household, but in matters of household matters which are important can be decided by the husband and wife together. The husband has an

⁵ Tim Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, (Jakarta: almahira, 2017), 36.

⁶ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqih Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2006), 159.

⁷ Pasal 83 ayat 1-2 Kompilasi Hukum Islam tentang Kewajiban Istri

⁸ Pasal 80 ayat 1-7 Kompilasi Hukum Islam tentang Kewajiban Suami

obligation to protect and provide all the necessities of household life according to his ability. The husband is also obliged to provide religious education and provide opportunities to learn knowledge that is useful and beneficial to his religion, homeland, and nation. The husband has the obligation to bear alimony, *kiswah*⁹, residence for the wife, household expenses, maintenance, and medical expenses for the wife and children, and educational expenses for the children according to the husband's income. The husband's obligations will take effect after the perfect tamkin of his wife and the wife can free her husband from obligations towards him. The husband's obligation will fall if the wife does *nusyuz*.

Wife's *nusyuz* is better known in society than husband's *nusyuz*. Several studies have discussed more about wife's *nusyuz* to finish. One of the studies that discuss wife's *nusyuz* was found in the research of Saibatul Hamdi and Ahya Ulumiddin. In the research discussed wife's *nusyuz* and the solution when the wife does *nusyuz*. There is one case in the thesis research entitled " *Nusyuz Istri Terhadap Suami dalam Perspektif Hukum Perkawinan Islam* " ¹⁰ by Ema Damayati explains that wife's *nusyuz* case begins where the husband and wife often quarrel because the husband often overdoes it when he is angry and forbids his wife from working. As a result of the quarrel, the wife left her husband from the residence. Even though the husband's reason for forbidding his wife to work,

⁹ *Kiswah* is clothes. Sumber : Super User, "Hak-Hak Perempuan dan Anak Pasca Perceraian," *pa-manna*, 14 November 2022, <https://www.pa-manna.go.id/layanan-publik/layanan-permintaan-informasi/hak-hak-perempuan-dan-anak-pasca-perceraian>

¹⁰ Ema Damayati, "*Nusyuz Istri Terhadap Suami dalam Perspektif Hukum Keluarga Islam*" (skripsi, Institut Agama Islam Negeri Merto, 2018), <https://repository.metrouniv.ac.id/id/eprint/1901/>

is that his wife when working forgets her obligations as a wife. This became a quarrel in the household.

There is also Umes Hujjatul Islam's thesis research in the title "Penyelesaian Perceraian Karena Istri *Nusyuz*"¹¹, which explained that there were several cases of wife's *nusyuz*. In case number 58/Pdt.G/2006/PA.Srg, it was stated that from the start the wife was not open to her husband, the problem was that the jewelry that her husband had bought was never used and when the husband asked about it, his wife would be angry. Every time they fight, the wife will return to her parent's house. Since 2004, the wife has not returned, and the husband has heard that his wife has remarried. In case number 214/Pdt.G/2008/PA.Srg that his wife has a childish character, if their household has problems his wife will come home and complain about this to her mother. His wife has a harsh nature, does not respect her husband, and admits to her friends that she is a widow and when her husband advises her, his wife gets angry. It turned out that his wife was having an affair and in 2008 the husband and wife separated.

It can be concluded from the several studies above that there are many cases that can be said *nusyuz*, but the community knows more wife's *nusyuz*. In fact, these things, such as leaving their obligations, are not only the fault of the wife but also of the husband. There is in The Compilation of Islamic Law article 84 paragraph (1) regarding the obligations of the wife, "Wives can be considered

¹¹ Umes Hujjatul Islam, "Penyelesaian Perceraian Karena Istri *Nusyuz*"(skripsi, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2009), https://repository.uinjkt.ac.id/dspace/bitstream/123456789/7252/1/Uwes%20Hujjatul%20Islam-FSH_NoRestriction.pdf

nusyuz if he does not want to do the obligations referred to in Article 83 paragraph (1) except for a valid reason. The Compilation of Islamic Law also adds reinforcement regarding wife's *nusyuz*, whereas on husband's *nusyuz* there are no rules.

There are several opinions of Judges in the Religious Courts saying that *nusyuz* the husband is there, not only wife's *nusyuz*. One of them was the Judge at the Banyuwangi Religious Court who said that "A husband who does not do his obligations such as being indifferent, arrogant, or miserly is husband's *nusyuz* to wife. But there are those who think that if a wife sues her husband, it is included in the category of a wife who sues *nusyuz*".¹² Many divorce cases are contested at the Banyuwangi Religious Court based on husbands who have been away for a long time who do not know where they have been for more than a year, husbands who do not provide a living for their wives, or husbands who commit violence in their household. it is husband's *nusyuz* that occurs among the community, but many people still do not know about its husband's *nusyuz*.

Husband's *nusyuz* is the attitude of the husband who abandons his obligations, acts hard on his wife, does not have good intercourse with her, does not provide maintenance and is indifferent to his wife.¹³ Husbands who commit violence, insult, speak harshly to their wives, but their wives are obedient and not disobedient to them are included husband's *nusyuz* to wife. In the Qur'an there is also a verse that explains about husband's *nusyuz*, not only wife's *nusyuz*.

¹² Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 3 Agustus 2022)

¹³ M. Abdul Mujieb dkk, *Kamus Istilah Fiqih* (Jakarta: Pustaka Firdaus, 1994), 251

Term from husband's *nusyuz* are also rarely heard by society. Because there are still many who think that "Husband's *nusyuz* does not exist, there is only wife's *nusyuz*. It is impossible for a husband to do *nusyuz* towards his wife, the wife must obey her husband. Obeying the husband is the wife's obligation, but if the husband orders his wife to do bad things, the wife is allowed not to do what she is told.

There is data showing that there are many divorce cases coming in and breaking up in 2022. The cases entered in 2022 are numbered 4073 and the divorce case is justified because the husband left his wife and did not provide for him. The author is interested in discussing the views of the judges at the Banyuwangi Religious Court regarding divorce cases being contested because husbands leave their wives or husbands who do not provide a living. These factors become the main basis in the discussion of research that will be reviewed using *mubadalah*. The research entitled "The Analysis of Judge's View on Husband's *Nusyuz* in Divorce by Women Case at Banyuwangi Religious Court in The Perspective of *Mubadalah*"

B. Statement of Problem

1. What is The Judge's View of Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court?
2. What is The Judge's View of Status Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court?
3. What is The Judge's View About Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court Perspective *Mubadalah*?

C. Scope of Problem

In order for this research to be more focused and not out of the intended discussion, this thesis limits the scope of the research husband's *nusyuz* in the divorce case contested at the Banyuwangi Religious Court and the focus of the discussion of this research lies in the judge's view of husband's *nusyuz*, this study will also interview judges at the Banyuwangi Religious Court which will then be analyzed using perspective *Mubadalah*.

D. Objective of Research

For the research to be more focused and it is hoped that it will be able to find out about the objectives of the research, namely:

1. To analyze The Judge's View of Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court
2. To expose The Judge's View of Status Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court
3. To analyze The Judge's View About Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court Perspective *Mubadalah*

E. Benefit of Research

These benefits are expected to contain two aspects related to this research, as follows:

1. Theoretical Benefits

Benefits in this study by providing additional insight into the husband's *nusyuz*, especially into the husband's negligence in doing his obligations. This research is also expected to provide knowledge for oneself, and academics, as well as a reference for further research or writing scientific papers that are related to the research title, namely, *The Analysis of Judge's View on Husband's Nusyuz in Divorce by Women Case at Banyuwangi Religious Court in The Perspective of Mubadalah.*

2. Practical Benefits

The practical benefits of this research are so that people, especially husbands, can know and consider *nusyuz*, that *nusyuz* is not only for the wife but for the husband as well, and it is hoped that the wife will still get the rights after the divorce. This research is also expected to provide knowledge for the community, and it can be used as a reference in improving households to be more harmonious.

F. Operational Definition

To avoid mistakes in considering and reading the term referred to in the title *The Analysis of Judge's View on Husband's Nusyuz in Divorce by Women Case at Banyuwangi Religious Court in The Perspective of Mubadalah*, it is necessary to have an explanation of some of the terms found in the following topics:

1. *Nusyuz*

Nusyuz is an obligation left intentionally by a husband or wife. According to Ulama Syafi'iyah, *nusyuz* is a dispute that occurs in a household.

It can be concluded, the meaning of *nusyuz* is an obligation left by the husband or wife that makes the household disharmonious.

2. Husband's *Nusyuz*

Husband's *nusyuz* is the attitude of the husband who abandons his obligations, acts hard on his wife, does not have good intercourse with her, does not provide alimony, and is indifferent to his wife.¹⁴ Husband's *nusyuz* will happen, if the husband does not do his obligations to his wife or hurts his wife, either physically or mentally.

3. Divorce

Divorce is the right of a wife to withdraw or demand a divorce from her husband due to the husband's negligence in fulfilling his obligations or in special circumstances.¹⁵

Divorce is contested according to The Law No.7 of 1989 on Religious Justice, explains that a plaint divorce is a divorce suit filed by the wife or her power of attorney to the Court whose jurisdiction covers the plaintiff's place of residence, except when the plaintiff deliberately leaves the joint residence without the defendant's permission.¹⁶

4. *Mubadalah*

¹⁴ Mujieb dkk, *Kamus Istilah Fiqih*, 251

¹⁵ Firdaweri, *Hukum Islam Tentang Fasakh Perkawinan Karena Ketidak-Mampuan Suami Dalam Menunaikan Kewajibannya* (Jakarta: CV Pedoman Ilmu Jaya, 1989), 50-51

¹⁶ Pasal 73 ayat 1 tentang Cerai Gugat Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama

Mubadalah is reciprocity, changing each other, or replacing each other. Reciprocity is defined as deep considering *mubadalah* between two parties that form values, cooperation, reciprocity, and reciprocity. *Mubadalah* there are two parties, namely the state and the people, parents and children, teachers and students, majority and minority, men and men, women and women, or men and women.¹⁷

G. Structure of Discussion

Systematics in this study aims to facilitate reading comprehension, five chapters will be compiled in this study:

Chapter I: This chapter explains the Introduction. This chapter describes the problems that will be discussed later. This chapter is the basis for making the thesis more focused. This chapter discusses the research background, the statement of the problem, the scope of the problem, the objective of the research, the benefit of the research, the operational definition, and the structure of the discussion.

Chapter II: The next chapter discusses the Literature Review. The chapter discusses previous research and its theoretical basis. Previous research will discuss the similarities and differences of the research that will be done, while the theoretical framework discusses the legal basis for solving the problems being discussed in this research.

Chapter III: In this chapter, the research will focus more on where the data source was obtained, namely regarding research methods. This chapter discusses

¹⁷ Faqihuddin Abdul Kodir, *Qira'ah Mubadalah* (Yogyakarta: IRCiSoD, 2019), 59-60

the types of research, research approaches, research locations, types and sources of data, data collection methods, and data processing methods.

Chapter IV: This chapter discusses Results and Discussion. This chapter is the essence of the discussion that is being discussed, namely the judge's views regarding the husband's *nusyuz* who will be associated with the divorce that took place in the Banyuwangi Religious Court and will be analyzed using *mubadalah*.

Chapter V: The last chapter discusses closing. This chapter describes the conclusions and suggestions. The conclusion explains the conclusions of all the discussions that have been described, while the suggestions will explain the next steps for future researchers to become a reference in their research.

CHAPTER II

LITERATURE REVIEW

A. Previous Research

There are several previous studies on *nusyuz* which have similarities and differences in the discussion. In the previous study, it was divided into several groups. Previous research that discusses husband's *nusyuz* uses Islamic Law, namely:

1. In the research of Aisyah Nurlia, Nilla Nargis, and Elly Nurlaili in the 2018 *Pactum Law Journal* with the title "*Nusyuz* Suami Terhadap Istri dalam Perspektif Hukum Islam".¹⁸ Discuss about how the criteria husband's *nusyuz* according to Islamic law, the result of husband's *nusyuz* to wife, and settlement husband's *nusyuz* according to Islamic law. The equation lies in the discussion regarding the criteria of husband's *nusyuz* according to Islamic law. The difference lies in this research focusing on the discussion of legal consequences and legal remedies husband's *nusyuz* according to Islamic law. Meanwhile, this study focuses on the Judges view of husband's *nusyuz* obeys *mubadalah*.
2. In the research of Mohamad Ikrom, M.S.I Jember State Islamic Institute (IAIN) in his 2020 thesis entitled "*Pandangan Hukum Perkawinan Islam Terhadap Nusyuz Suami*".¹⁹ The thesis discusses the concept *nusyuz*

¹⁸ Aisyah Nurlia, Nilla Nargis, dan Elly Nurlaili, "*Nusyuz Suami Terhadap Istri Dalam Perspektif Hukum Islam*" *Pactum Law Journal Volume 1*, No. 04 (2018), 440-443 <http://repository.lppm.unila.ac.id/13091/1/1341-4457-1-PB.pdf>

¹⁹ Mohamad Ikrom, "*Pandangan Hukum Perkawinan Islam Terhadap Nusyuz Suami*" (Skripsi, Institut Agama Islam Negeri (IAIN) Jember, 2020), <http://digilib.uinkhas.ac.id/2900/1/PENELITIAN%20KOMPLIT%20JABFUNG%20IKROM.pdf>

according to Islamic Marriage Law and concept husband's *nusyuz* and its consequences according to Islamic Marriage Law. The similarity lies in the discussion of the concept husband's *nusyuz*. The difference lies in the research method using normative, while this research uses empirical. And the perspective used in this study uses Islamic Marriage Law, while in this study it uses *mubadalah*.

3. In the research of Syarif Hidayatullah State Islamic University (UIN) Hesti Wulandari in his 2010 thesis entitled "*Nusyuz* Suami dalam Perspektif Hukum Islam dan Hukum Positif".²⁰ The thesis discusses the definitions, criteria, causal factors and consequences arising from husband's *nusyuz* according to Positive Law and Islamic Law. The similarity lies in the study discussing the definitions and criteria regarding husband's *nusyuz*. The difference lies in the research discussing about husband's *nusyuz* according to Positive Law and Islamic Law, while in this study it discusses using *mubadalah*. And in this research using normative research methods, while in this study using empirical research methods.

Previous research discussing *nusyuz* gender perspective husband, namely:

1. In Badarudin's research at the State Islamic University (UIN) Raden Intan thesis in 2017 with the title "*Nusyuz* Suami Menurut Perspektif Hukum Islam dan Gender".²¹ In this study discussed about husband's *nusyuz* in Islamic Law

²⁰ Hesti Wulandari, "*Nusyuz* Suami Dalam Perspektif Hukum Islam dan Hukum Positif" (Skripsi, Universitas Islam Negeri (UIN) syarif Hidayatullah, 2010), <https://repository.uinjkt.ac.id/dspace/handle/123456789/2046>

²¹ Badarudin, "*Nusyuz* suami menurut perspektif Hukum Islam dan Gender" (Tesis, Universitas Islam Negeri (UIN) Raden Intan, 2017), <http://repository.radenintan.ac.id/1677/>

and Gender as well as the rationalization of justice from different implications husband's *nusyuz* in Islamic Law and Gender. The research equation lies in the same discussion regarding husband's *nusyuz*. The difference lies in the perspective in this study using Islamic Law and gender, while in this study using *mubadalah*. And the research method in this research uses normative, while in this study uses empirical.

2. In the research of Kawakib of the State Islamic University (UIN) Maulana Malik Ibrahim thesis in 2017 with the title " Konsep *Nusyuz* Suami Istri Pandangan Wahbah Al-Zuhaili Perspektif Gender ".²² The thesis discusses the views of Wahbah Az-Zuhaili about husband's *nusyuz* and wife gender perspective and contribution husband's *nusyuz* on gender perspective fiqh renewal in Indonesia. The similarities lie in the same research discussing the husband's *nusyuz*. The difference lies in the research discussing using a gender perspective, while this research uses perspective *mubadalah*. In that research it discusses the views of Wahbah Al-Zuhaili, while in this research it discusses the views of Hakim. And that research used a normative method, while this research used an empirical method.

Previous research discussing *nusyuz* using the views of Syafi'i and Hanafi, namely:

1. In Saibatul Hamdi's research, Ahya Ulumiddin in the Scientific Journal of Islamic Education in 2019 with the title "Menyikapi *Nusyuz* Dalam Keluarga:

²² Kawakib, "Konsep *Nusyuz* Suami Istri Pandangan Wahbah Al-Zuhaili Perspektif Gender" (Skripsi, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim, 2017), <http://etheses.uin-malang.ac.id/11302/>

Ikhtiar Mewujudkan Keluarga Harmonis (Studi Komparasi Pendapat Imam Syafi'i Dan Hanafi)".²³ The thesis discusses the concept *nusyuz*, criteria *nusyuz*, as well as the completion of the wife who *nusyuz* in family. The similarities in the same research discuss about *nusyuz*. The difference lies in the research using the perspective of Imam Syafi'i and Hanafi, while this research uses perspective *mubadalah*.

Table 1.1 Previous Research

NO.	IDENTITY	SIMILARITIES	DIFFERENCES
1.	Aisyah Nurlia, Nilla Nargis, dan Elly Nurlaili "Nusyuz Suami Terhadap Istri Dalam Perspektif Hukum Islam" Journal in 2018	The similarity lies in the discussion regarding the criteria of husband's <i>nusyuz</i>	The difference lies in this research focusing on the discussion of legal consequences and legal remedies husband's <i>nusyuz</i> according to Islamic law. Meanwhile, this study focuses on the judge's view of husband's <i>nusyuz</i> obeys <i>mubadalah</i> .
2.	Mohamad Ikrom, M.S.I, "Pandangan Hukum Perkawinan Islam Terhadap Nusyuz Suami" Thesis in 2020	The similarities lie in the discussion of the concept husband's <i>nusyuz</i>	The differences lie in the research method using normative, while this research uses empirical. And the perspective used in this study uses Islamic Marriage Law, while in this study it uses <i>Mubadalah</i> .
3.	Hesti Wulandari, "Nusyuz Suami dalam Perspektif Hukum Islam dan	The similarity lies in the study discussing the definitions and criteria regarding husband's <i>nusyuz</i> .	The difference lies in the research discussing about husband's <i>nusyuz</i> according to Positive Law and Islamic Law,

²³ Saibatul Hamdi, Ahya Ulumiddin, "Menyikapi *Nusyuz* Dalam Keluarga: Ikhtiar Mewujudkan Keluarga Harmonis (Studi Komparasi Pendapat Imam Syafi'i Dan Hanafi)" *Al-Mudarris: Jurnal Ilmiah Pendidikan Islam Volume 2*, No. 1, (2019), 77-81 <https://e-journal.iain-palangkaraya.ac.id/index.php/mdr/article/view/1396>

	Hukum Positif” Thesis in 2010		while in this study it discusses using <i>mubadalah</i> . And in this research using normative research methods, while in this study using empirical research methods.
4.	Badarudin, “ <i>Nusyuz</i> suami menurut perspektif Hukum Islam dan gender” Thesis in 2017	The similarity lies in the same discussion regarding husband’s <i>nusyuz</i> .	The difference lies in the perspective in this study using Islamic Law and gender, while in this study using <i>mubadalah</i> . And the research method in this research uses normative, while in this study uses empirical.
5.	Kawakib, “Konsep <i>Nusyuz</i> Suami Istri Pandangan Wahbah Al-Zuhaili Perspektif Gender” Thesis in 2017	The similarity lies in in the same research discussing the husband’s <i>nusyuz</i>	The difference lies in the research discussing using a gender perspective, while this research uses perspective <i>mubadalah</i> . In that research it discusses the views of Wahbah Al-Zuhaili, while in this research it discusses the views of Hakim. And that research used a normative method, while this research used an empirical method.
6.	Saibatul Hamdi, Ahya Ulumiddin “Menyikapi <i>Nusyuz</i> Dalam Keluarga: Ikhtiar Mewujudkan Keluarga Harmonis (Studi Komparasi Pendapat Imam Syafi’i dan Hanafi)” journal in 2019	The similarity is that this research discusses <i>nusyuz</i>	The difference lies in the research using the perspective of Imam Syafi’i and Hanafi, while this research uses perspective <i>mubadalah</i> .

From the research table above, it can be concluded that this study has similarities and differences from previous studies. The differences in these studies are in terms of research methods and their views which make the core of the discussion of each of these studies different.

B. Theoretical Framework

1. Divorce

a. Divorce Concept

Divorce is a term used in legal events when a marriage is broken up between a husband and wife. The legal process has several legal reasons and legal consequences for divorce which must be explained during the trial at the Religious Court. Dissolution of the husband and wife marriage means that there is no position as husband and wife in the eyes of the law and they are no longer living life as husband and wife in the household. Divorce is a termination of the legal relationship between husband and wife according to Islam and the state. Marriages are terminated due to death, divorce, or a court decision.²⁴ Divorce has 3 types, namely *talak* divorce, contested divorce or *khulu'*, and breakdown of marriage or *fasakh*. The discussion on divorce will be examined using two views, Islamic law, and positive law.

The legal basis of divorce in The Marriage Law No.1 of 1974 is found in articles 38 and 40, while in The Compilation of Islamic Law it is found in articles 113-114, and in article 123. In article 38 of The Marriage Law No.1

²⁴ Pasal 38 Undang-Undang no.1 Tahun 1974 tentang Perkawinan

of 1974 on Marriage explains that a marriage can be broken due to:²⁵ a) Death, b) Divorce and c) Court decision. Article 40 explains that divorce lawsuits can be filed in Court and the procedure for filing lawsuits has been regulated in its own legal regulations.²⁶

Article 113 of The Compilation of Islamic Law has the same explanation as article 38 of The Marriage Law No.1 of 1974.²⁷ Article 114 explains that breaking up a marriage caused by divorce can occur due to divorce or based on a divorce lawsuit.²⁸ Article 115 explains that divorce can only be done before the Religious Court hearing after the Religious Court has tried and failed to reconcile the two parties.²⁹ Article 123 explains that divorce occurs when the divorce is declared before the court.³⁰

b. Types of Divorce

The types of divorce found in court are talak divorce and contested divorce. Divorce talak is a request filed by a husband to sue his wife at the Religious Court. Divorce is a claim for the right of the wife to the Religious Courts to ask for a divorce from her husband.

²⁵ Pasal 38 Undang-Undang no.1 Tahun 1974 tentang Perkawinan

²⁶ Pasal 40 Undang-Undang no.1 Tahun 1974 tentang Perkawinan

²⁷ Pasal 113 Kompilasi Hukum Islam tentang Putusnya Perkawinan

²⁸ Pasal 114 Kompilasi Hukum Islam tentang Putusnya Perkawinan

²⁹ Pasal 115 Kompilasi Hukum Islam tentang Putusnya Perkawinan

³⁰ Pasal 123 Kompilasi Hukum Islam tentang Putusnya Perkawinan

1) Talak

a) Concept of Divorce

Divorce is the release of marriage ties or the release of marriage with the pronouncement of talak and the like or lifting the marriage bond directly or suspending it with a special pronouncement. The release of the marriage bond is directly in the form of talak *ba'in*. Meanwhile, the meaning of being suspended with a specific pronouncement is after the end of the period *iddah* which is in the form of talak *raj'i*.³¹

Divorce is something that is indicated in Islam based on the explanations found in the Qur'an and hadist. There are verses in the Qur'an and hadist that form the legal basis of divorce. Ulama Hanafi believes that divorce can be done based on the absoluteness of the Qur'an verse, found in Qs. At-Thalaq verse 1:³²

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ ۖ
وَاتَّقُوا اللَّهَ رَبَّكُمْ ۖ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ
بِفَاحِشَةٍ مُبَيَّنَّةٍ ۗ وَتِلْكَ حُدُودُ اللَّهِ ۗ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ
نَفْسَهُ ۗ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

It means: "O Prophet, when you divorce your wives then you should divorce them when they can (face) their (appropriate) *iddah*

³¹ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Jilid IX (Depok: Darul Fikir, 2011), 318

³² Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 558.

and count the time of that iddah and fear Allah your Lord. Do not take them out of their homes and do not (allow) them to go outside unless they commit a clear abomination. Those are the laws of God and whoever violates the laws of God, then he has indeed done injustice to himself. You do not know that maybe God will do something new after that."

This verse explains that if the husband is going to divorce his wife at the right time or when the wife is in her holy period or is not menstruating, this will make it easier for the wife to calculate the period *iddah*. There is also a hadist that explains about divorce, namely:

وَقَالَ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ عَزَّوَجَلَّ الطَّلَاقُ

It means: *The Prophet SAW said: "The halal thing that Allah SWT hates the most is divorce (divorce)."*³³

The hadist explains that, in lawful cases there are things that Allah SWT hates, and divorce is one of the most hated halal things. The meaning of the word hated is interpreted as a figure of speech, that is, there is no reward and it is not considered a form of worship if the matter is done. Some Ulama give examples of hated halal matters, namely not performing obligatory prayers at the mosque without any obstacles for men.³⁴ Divorce is a case whose actions are not included in the usual acts.

³³ Abu Abdillah Muhammad Al Quzwaini, *Sunan Ibnu Majah, Juz II*, (Kairo: Dar Ihya Kutub Al-Arabiyah, 1995), 647

³⁴ Muhammad Bin Ismail Ash-Shan'ani, *Subulus Salam Jilid III*, (Jakarta: Darussunnah, 2013), 13

Some Ulama interpret divorce. Ibn Abidin argues that, in fact, talak is hated and its halal status is not rejected. The meaning of halal enters makruh because it is something that is hated. Ulama Maliki, Syafi'i, and Hambali stated that, in fact, divorce is a permissible matter and it is better not to do it, because it involves severance of relations, unless there is a cause.

Divorce is included in the four laws consisting of haram, makruh, wajib, and sunnah. And originally, he was *khilaful awla*³⁵. Divorce becomes unlawful when the husband knows that if he divorces his wife, he will fall into adultery due to his dependence on his wife or due to his inability to marry a woman other than him. Talak bid'i is also unlawful, namely divorce made during menstruation, and the like, such as the postpartum period, and the sacred period after sexual intercourse.

Divorce becomes makruh when the husband has the desire to marry or he expects offspring from the marriage and the presence of the wife does not disconnect him from the obligatory worship, but the husband is not afraid of committing adultery if he divorces his wife. Divorce becomes obligatory when the husband finds out that his wife has a sharp mouth and is afraid that his wife's presence could

³⁵ *Khilaful awla* is the legal status that arises when people violate things that are sunnah. Sumber : Ustadz Muafa, "Apa Bedanya Makruh dan Khilaful Aula?," *irtaqi*, 31 Juli 2018, <https://irtaqi.net/2018/07/31/apa-bedanya-makruh-dengan-khilaful-aula/>

make him fall into actions that are unlawful if he continues to be with her. Divorce becomes sunnah when the wife is negligent in fulfilling her obligations to Allah SWT, such as prayer and other similar things. And the husband may not force his wife to carry out these obligations.³⁶

Divorce is also sunnah in the condition of disagreement with the wife that causes a rift and others. Divorce is also recommended due to the harm suffered by the wife by continuing to maintain the marriage bond with her husband due to hatred of the husband or others. And it is sunnah when the divorce that is pronounced is one divorce because one divorce can still be referred to. If the husband wants to impose triple talaq, then this third talaq is separated, in each sacred time one talaq to avoid disputes.

Explanation regarding divorce is contained in The Compilation of Islamic Law verse 117. Article 117 explains that divorce is a husband's pledge before the Religious Court session which is one of the causes of the breakup of a marriage.³⁷ There is also Article 14 of Government Regulation (PP) No.9 of 1975 explaining that when a husband who has married in accordance with the provisions of Islamic law, will then divorce his wife. He can submit a letter to the Court at his place of residence, containing

³⁶ Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid IX, 323-324

³⁷ Pasal 117 Kompilasi Hukum Islam tentang Putusnya Perkawinan

notification that he intends to divorce his wife along with the reasons and requesting the Court to hold a hearing for this purpose.³⁸

b) Pillars & Conditions of Divorce

There are several pillars and terms of divorce that can be known. Pillars are the main points that must be contained in divorce and the realization of divorce depends on the completeness of the matters referred to. Then in each pillar there are conditions that must be met. Some of these requirements have become the consensus of scholars and some are still being debated. There are four pillars of divorce which the scholars agree on, namely:³⁹

a. Husband, husband is a person who has the right to divorce and who has the right to drop it.⁴⁰ There are three conditions for the validity of divorce attached to a husband, namely reason, baligh and of his own free will.⁴¹ These three conditions have the consequence that divorces imposed by young children, insane people, and people who are forced are invalid.

b. Wife, wife is the second pillar of divorce. This shows that divorce is not valid if it is imposed on a woman who is not his wife.⁴²

³⁸ Pasal 14 Peraturan Pemerintah No.9 Tahun 1975 tentang Tatacara Perceraian

³⁹ Tim Al-Manar, *Fiqih Nikah*, (Bandung: Syamail, 2003), 130

⁴⁰ Abdur Rahman Ghozali, *Fiqih Munakahat*, (Jakarta: Kencana, 2008), 201.

⁴¹ Ghozali, *Fiqih Munakahat*, 202

⁴² Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqih Munakahat dan Undang-Undang Perkawinan*, 207.

- c. *Sighat* or pronunciation, *sighat* According to the majority of Ulama, divorce can occur if a husband who wants to divorce his wife utters certain words stating that his wife has been released from his territory. In other words, if the husband only wishes or intends but has not said anything, then divorce has not occurred.⁴³
- d. *Qasad* or will, *qasad* is a statement of divorce that is intended by the person who utters it for divorce, not for others. Therefore, a wrong word that is not intended for divorce is considered not to have happened.⁴⁴ Despite this, it turns out that the Ulama exclude when the divorce is said for fun or joking. According to them such a divorce is still a divorce.

The Ulama explained about the pillars of divorce. According to Ibn Fuzaa, in the pillars of divorce, namely a husband who is divorced, a wife who is divorced and speech. According to the Ulama Hanafi of thought regarding the pillars of divorce, namely the pronunciation that becomes the word for the meaning of divorce in language which is release and delivery. Untying ties in a blatant sense, and breaking ties in a satirical sense. Meanwhile, in terms of *syar'i*, it means eliminating the prohibition or sign that occupies the position of the pronunciation.

⁴³ Ghozali, *Fiqih Munakahat*, 208

⁴⁴ Ghozali, *Fiqih Munakahat*, 204

The Ulama Maliki is of the opinion that, there are four pillars of divorce, namely being able to do it (explaining that the person who dropped it could consist of a husband or his representative or guardian if he is still small), intent (explaining that the utterance is blatant, and clear innuendo, although not intending to release the marriage bond), object (explaining that the marriage owned is the object of divorce), and pronouncement that is either explicit or insinuating. Meanwhile, according to the Ulama Syafi'i and Hambali of thought, there are five pillars of divorce, namely the divorced man, wife, *sighat*, object of power, and intention. So do not fall divorced in the words of a fiqh expert who says it repeatedly, a person who is telling a story, even though he is telling himself.⁴⁵

Divorce also has some terms and conditions, so that it becomes legal. Be found there are several conditions that are debated among the Ulama. Following are the conditions of divorce:

- a. Witness, the Ulama differ in this matter. According to some Ulama, witnesses are a condition for the validity of divorce. While some other scholars say that witnesses are not included in the legal requirements of divorce.
- b. The condition of the husband when pronouncing divorce, some Ulama say that, when pronouncing divorce, the husband is

⁴⁵ Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Jilid IX, 322

required to be in a state of sound mind, not under coercion, not drunk, and not in a state of anger. The condition of the husband being in a state of common sense and not in a state of coercion is included in the legal requirements of divorce, but in the condition that the husband is not allowed to be drunk and not allowed to be angry, the Ulama have a slightly different opinion. According to the Ulama Syafi'i, it is stated that if the husband is drunk on purpose, then he utters divorce words to his wife, divorce will fall on his wife. It's different if the drunk is unintentional, the words of divorce are not considered as divorce.⁴⁶ Meanwhile, regarding the husband not being allowed to be angry, Sayyid Sabiq stated that a divorce handed down by a husband in a state of anger is invalid because it was done without the will of the person making the divorce.⁴⁷ Wahbah az-Zuhaili also mentioned that anger that caused the legality of divorce from a husband was anger that caused someone to be unaware of what he said. If the anger is only at an ordinary level, its validity is still recognized.⁴⁸

c. The condition of the wife at the time of divorce, some Ulama require that, when the husband pronounces divorce, besides, he must pay attention to her condition, he must also pay attention to the condition of his wife. According to Ibn Taimiyah, Ibn Qoyyim

⁴⁶ Zainuddin Bin Abdul Aziz Al-Malibari, *Fathul Mu'in*, (t.tp.: Al-Harmain, t.t.), 112.

⁴⁷ Sayyid Sabiq, *Fiqih sunnah jilid VIII*, (Bandung: Alma'arif, 1987), 22.

⁴⁸ Az-Zuhaili, *Fiqih Islam Wa Adillatuhu, Jilid IX*, 326

Al-Jauziyah, Ibn Hazm, and a group of Syi'ah Imamiyyah, divorce that is imposed by a husband on his wife who is menstruating or is in a state of purity but has had intercourse is punishable by the penalty of not being valid.⁴⁹ For this reason, according to this opinion, if a husband wants to divorce his wife, he must wait for his wife to be pure and not have intercourse.⁵⁰

c) Types of Divorce

Talak is divided into several divisions, namely:

In terms of quantity, namely:⁵¹

- a. Divorce One, the first divorce pronounced by a husband to his wife and only with one divorce.
- b. Divorce Two, a divorce pronounced by a husband to his wife for the second time at the same time as the first divorce. For example, "I divorce you with the second divorce"
- c. Triple Divorce, divorce pronounced by a husband against his wife for the third time simultaneously with the first and second divorces. For example, "I divorce you with the third divorce"

⁴⁹ Dewan Redaksi Ensiklopedi Islam, *Ensiklopedi Islam Jilid V*, (Jakarta: Ichtiar Baru Van Hoeve, 2001), 55

⁵⁰ Sajuti Thalib, *Hukum Kekeluargaan Indonesia: Berlaku bagi Umat Islam*, (Jakarta: UI Press, 1986), 103.

⁵¹ Muslim Pintar, "Macam-Macam Talak Lengkap dengan Penjelasannya," *muslimpintar*, 02 Agustus 2018, <https://www.muslimpintar.com/macam-macam-talak-dalam-islam/>

However, some scholars differ on the matter of the second and third divorces pronounced at the same time. Ibn Taimiyah, Ibn Qayyim, and Syaukani explained that the second and third divorces pronounced by the husband were at the same time invalid, because these had the same status as one divorce.

In terms of whether the husband can consult, that is:⁵²

- a. Talak *Raj'i*, divorce which the ex-husband can reconcile with the ex-wife as long as it is still in the period *iddah*. Which is included in the divorce *raj'i*, that is, the first divorce and the second divorce.
- b. Talak *Ba'in*, the divorce pronounced by the husband and the ex-husband cannot ask for a return unless a new contract is made and is in accordance with the terms and principles of marriage. Divorce *not* there are two kinds, talak *ba'in sughra* and talak *ba'in kubra*. Talak *ba'in sughra* is a divorce which eliminates the former husband's ownership of his wife but does not eliminate the ex-husband's ability to reconcile by entering into a re-marriage contract. That includes talak *ba'in sughra* that is, talak that has not been mixed or *qabla al-dukhul, Khulu'*, talak one and talak two but time *iddah* it's over. Divorce *apart from Kubra* is

⁵² Muslim Pintar, "Macam-Macam Talak Lengkap dengan Penjelasannya," *muslimpintar*, 02 Agustus 2018, <https://www.muslimpintar.com/macam-macam-talak-dalam-Islam/>

a triple divorce that the husband cannot reconcile, unless the ex-wife was married to another man and has been meddled with or *ba'da al dukhul*, then divorced by her husband.

In terms of the condition of the wife, namely:⁵³

- a. Talak *Sunni*, a divorce uttered by a husband to his wife who had been interfered with when the wife was pure and during the holy time, she was pregnant had not been interfered with.
- b. Talak *Bid'i*, a divorce pronounced by a husband to his wife who he has mixed with, but at that time the wife was menstruating, and the wife was pure, but at that time she had been interfered with.

In terms of how the husband conveys divorce, namely:⁵⁴

- a. Divorce with words, divorce conveyed by a husband to his wife in words, in front of his wife and the wife hears it directly and considers what her husband means.
- b. Divorce in writing, divorce conveyed by the husband in written form and the wife reads and considers its contents.

⁵³ Muslim Pintar, "Macam-Macam Talak Lengkap dengan Penjelasannya," *muslimpintar*, 02 Agustus 2018, <https://www.muslimpintar.com/macam-macam-talak-dalam-islam/>

⁵⁴ Muslim Pintar, "Macam-Macam Talak Lengkap dengan Penjelasannya," *muslimpintar*, 02 Agustus 2018, <https://www.muslimpintar.com/macam-macam-talak-dalam-islam/>

- c. Divorce with a sign, divorce delivered by a husband who cannot speak or is mute and the husband conveys it with clear intentions and the wife considers that intention.
- d. Divorce with envoys, divorce using an intermediary of another person who is trusted to convey the intention that the husband is divorcing his wife.

In terms of the time of divorce, namely:⁵⁵

- a. Tanjiz or called Talak Mu'ajjal is a direct divorce that applies when the husband pronounces the sentence of divorce right then and there.
- b. Ta'liq or Talaq Mu'allaq is a ta'liq divorce that depends on a future time. The speech of divorce is usually added the word "if" or "when". For example, "If you leave without my permission, then we divorce"
- c. Idhafah or Talak Mudhaf is a backup of divorce at the time that will come in accordance with the husband's speech. For example, "I divorce you at the beginning of Lebaran next year", the divorce becomes valid if the specified time arrives and the divorce does not take place for the past time.

⁵⁵ Yuniati Rohmah, "Macam-Macam Talak Menurut Hukum Islam dan Penjelasan Masa Iddah Istri," *theAsianparent*, t.t., <https://id.theasianparent.com/macam-macam-talak>

2) *Khulu'*

a. Concept of *Khulu'*

Khulu' according to fiqh terminology, it is a claim for divorce filed by the wife with payment of compensation from him or in other words the wife separates herself from her husband with compensation to him.⁵⁶ Considering *khulu'* according to the Ulama Hanafi, *khulu'* is the elimination of the possession of the marriage bond which depends on the acceptance of the wife, in a verbal way *khulu'* and other sentences that have the same meaning.⁵⁷ Definition *khulu'* According to the Ulama Syafi'i of thought, it is a separation between husband and wife '*iwadh*'⁵⁸ pronunciation of divorce or *khulu'*. According to the Ulama Hambali, namely the separation of a husband from his wife uses '*iwadh*' which he took from his wife or from someone other than his wife with a special pronunciation.⁵⁹ Can be concluded that *khulu'* is a divorce that the wife wants because she sees her husband doing an act that is not pleasing to Allah SWT, while the husband feels no need to divorce his wife. Therefore, the wife can ask her husband for a divorce with compensation. If the husband agrees, then the marriage between the two ends.⁶⁰

⁵⁶ Mahtuf Ahnan dan Maria Ulfa, *Risalah Fiqih Wanita*, (Surabaya: Terbit Terang, t.t), 353-354

⁵⁷ Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid IX, 418

⁵⁸ '*Iwadh* is ransom. Sumber : Ali Abubakar dan Maulizawati, "Persyaratan Hak '*Iwadh Khulu'* (Analisa terhadap pendapat mazhab Maliki)," *Al-Usrah*, Vol. 1 No. 1 (2018): 22 <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/5566/3543>

⁵⁹ Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid IX, 419

⁶⁰ Hassan Saleh, *Kajian Fiqih Nabawi & Fiqih Kontemporer*, (Jakarta: Rajawali Press, 2008), 323.

Legal basis on *khulu'* or contested divorce is regulated in The Compilation of Islamic Law article 132 paragraph (1) and article 162. Article 132 paragraph 1 of The Compilation of Islamic Law explains that the divorce suit is filed by the wife or her attorney at the Religious Court, whose jurisdiction regulates the plaintiff's residence unless the wife leaves the joint residence without the husband's permission.⁶¹

It is contained in article 20 paragraph (1) regarding the explanation for contested divorce, explaining that a divorce suit is filed by the husband or wife or their attorney to the Court whose jurisdiction covers the place of residence of the defendant.⁶² And contained in article 132 paragraph 1 in The Compilation of Islamic Law explains that the divorce suit is filed by the wife or her attorney at the Religious Court, whose jurisdiction determines the plaintiff's residence unless the wife leaves the joint residence without the husband's permission.⁶³ There is article 161 which explains that divorce by way *khulu'* including reducing the number of divorces and non-reference.⁶⁴

There is in the fifth hadist of the narrator:⁶⁵

⁶¹ Pasal 132 Kompilasi Hukum Islam tentang Tatacara Perceraian

⁶² Pasal 20 Peraturan Pemerintah No.9 Tahun 1975 tentang Tatacara Perceraian

⁶³ Pasal 132 Kompilasi Hukum Islam tentang Tatacara Perceraian

⁶⁴ Pasal 161 Kompilasi Hukum Islam tentang Akibat *Khulu'*

⁶⁵ HR. kelima perawi kecuali an-Nasa'i.

عن ثوبان قال: قال رسول الله صلى الله عليه وسلم: ((أبما امرأة سألت زوجها طلاقاً في غير ما بأس, فحرام عليها رائحة الجنة)) [رواه أبو داود وابن ماجه وأحمد]

It means: "Any woman who asks for divorce from her husband without a reason, is forbidden to her the smell of heaven."

Because this is *khulu'* who has no reason, then it becomes makruh. The Hambali school states that: *khulu'* void, and *'iwadh* rejected and the marriage bond is in its original condition under conditions of guardian's obstruction or coercion to do so *khulu'*. Namely by being bad to him with punches and pressure. Or prevent him from his various rights in the form of distribution of shifts and maintenance, and other similar matters. As well as if their rights are unjustly reduced so that the wife wants to redeem herself based on the word of Allah SWT, so is the opinion of the Syafi'i school that *khulu'* may be done to eliminate the ugliness that usually befalls the wife. However, this *khulu'* is makruh because it implies breaking the marriage bond which is demanded by the Syari'ah.

Except in two conditions: first, both of them and one of them feel worried if both of them do not carry out God's decrees, meaning what God has ordained in marriage. Second, taking an oath to drop three divorces for something he must do, for example eating, drinking, and

defecating. He was *khulu'* his wife, then he did the deed he made an oath. After that he remarries his wife, so he does not break his oath, because his oath has been carried out by the first deed and what is considered is only the first deed and the matter that he took as an oath has occurred.⁶⁶

If hatred occurs on the part of the husband, then in his hand lies divorce which is one of his rights, he has the right to use it if it is in accordance with Allah's law. If hatred is on the part of the wife then Islam also allows him to redeem himself by way of *khulu'* namely returning the dowry to her husband to end the bond as husband and wife. It's in QS. al-Baqarah verse 229:⁶⁷

أَطْلُقْ مَرَّتَانِ ۖ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ ۗ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا
 ءَاتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ ۗ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ
 اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا ۗ وَمَنْ
 يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

It means: " Divorce (which can be referred to) twice. After that, you may reconcile in a way that is *ma'ruf* or divorce in an amicable way. It is not lawful for you to take back something that you have given them unless both of them are worried that they will not be able to carry out Allah's laws. If you worry that both (husband and wife) cannot carry out God's laws, then there is no sin on both regarding the payment given by the wife to redeem herself. These are the laws of Allah, so do not

⁶⁶ Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Jilid IX, 422

⁶⁷ Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 36.

break them. Those who transgress the laws of their Allah are the wrongdoers."

From the verse above it is explained that, if there is a woman who hates her husband because of his bad character, his adherence to religion, or because of his arrogance. He himself was worried that he would not be able to fulfill the rights of Allah SWT, so it was allowed for him *khulu'* (by way of compensation in the form of a ransom to redeem himself from it). The ransom is to hand it back all or part of the assets previously received from her husband.

b. Pillars & Conditions of *Khulu'*

There are several rules and conditions from *khulu'* which can be known. Most Ulama agree on the pillars of *khulu'*, namely: a husband divorcing, a wife divorcing *khulu'*, ransom or *'iwadh*, *sighat* or speech *khulu'*, and the reason for its occurrence *khulu'*. Whereas the Ulama Hanafi of thought adds that consent and qabul are in harmony *khulu'*, because this is a contract against divorce that has *'iwadh*, then there is no separation and no right to get *'iwadh* without qabul.⁶⁸ According to Abi Yahya al-Ansari argues that harmonious *khulu'* there are 5 namely:⁶⁹ Someone who is obliged to it *'iwadh*, genital, *'iwadh*, *sighat*, and husband.

⁶⁸ Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid IX, 424

⁶⁹ Abi Yahya Zakariya Al-Ansari, *Fathul Wahhab Juz.II*, (Semarang: Toha Putra, t.t), 66-67

There are several conditions that must be present on the pillar *big'*, namely:⁷⁰

- a. A wife asks her husband to do *khulu'*, if there is danger that threatens and they feel afraid, both will not uphold the law of Allah Swt.
- b. Should *khulu'* the process lasted until it was finished without any acts of abuse or harm committed by the husband against his wife. If a husband hurts his wife, then he should not take anything from his wife.
- c. *Khulu'* comes from the wife and not from the husband. If the husband is not happy living together with his wife, then the husband has no right to take any property from his wife.
- d. *Khulu'* as talak *ba'in*, so that the husband is not allowed to refer it again, except after going through the process of a new marriage contract on the condition that the wife has finished her term *iddah* and she wanted to return to her husband.

Ulama differ on the qualifications *khulu'*. According to Ulama Hanafi and Syafi'i, the conditions of *khulu'*, namely:⁷¹

⁷⁰ Hassan Ayyub, *Fiqih Keluarga*, (Jakarta: Pustaka AlKautsar, 2011), 310.

⁷¹ Az-Zuhaili, *Fiqih Islam Wa Adillatuhu, Jilid IX*, 431

- a. Request *khulu'* wife to her husband, like " *Khulu'* me with what's in my hand" and when my husband *khulu'* her and there is nothing in the hands of his wife, then the husband does not get anything.
- b. Request *khulu'* wife to her husband, like " *Khulu'* me with the treasure in my hand" and when my husband *khulu'* her there is nothing in the hands of his wife, then his wife returns the dowry because the wife mentions property that her husband is not willing to lose except by *'iwadh*.
- c. Request *khulu'* the wife to her husband, like "Third divorce is based on a thousand" and the husband divorces her by one, so the wife gives a quarter of a thousand to her husband.

According to Ulama Maliki, the conditions of *khulu'*, namely:⁷²

- a. *Iwadh* paid to the husband is something that is legal to own and sell.
- b. Can't *khulu'* based on loans, termination of debt or conditions of accelerating a kind of usury.
- c. *Khulu'* what is done must be based on the will of the wife.

According to Ulama Hambali, the conditions of *khulu'*, namely:⁷³

⁷² Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid IX, 432

⁷³ Az-Zuhaili, *Fiqih Islam Wa Adillatuhu*, Jilid IX, 432

- a. Paying *'iwadh*
- b. The legal husband to divorce
- c. Both are not kidding
- d. Doesn't deter him if the wife pays *'iwadh*
- e. Fall *khulu'* with explicit or sarcastic pronunciation
- f. Not declaring the intention to drop divorce
- g. Direct
- h. It can happen to all wives
- i. No deception

3) *Fasakh* or Broken Wedding

a) Concept of *Fasakh*

Fasakh is the destruction of a marriage contract from its origin and eliminates the halalness of something that is permissible in the marriage bond.⁷⁴ *Fasakh* Marriage in Islamic law is recognized as a form of legal termination of marriage. Islamic jurists justify and allow marriage to be annulled if there is a background that causes this to happen. This can be explained in the context of a married couple. One of the spouses has a disgrace or defect that was previously unknown to the partner and the partner knows of the defect or disgrace after the contract is made, then one of the partners

⁷⁴ Wahbah Az-Zuhaili, *Fiqih Islam Wa Adillatuhu, Jilid VII* (Damaskus: Darul Fikir, 2007), 348

has *Khiyar*⁷⁵ to continue her marital relationship or she chooses to *fasakh* get married.⁷⁶

There is a verse in the Qur'an that discusses about *fasakh* Qs. An-Nisa' verses 23-24, yakni:⁷⁷

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبنَاتُكُمْ وَأَخُوتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبنَاتُ الْأَخِ
وَبَنَاتُ الْأَخْتِ وَأُمَّهَاتُ مَن أَرْضَعْتُمْ وَأَخُوتُكُمْ مِّن الرِّضْعَةِ وَأُمَّهَاتُ نِسَائِكُمْ
وَرَبِّبَاتُكُمْ الَّتِي فِي حُجُورِكُمْ مِّن نِّسَائِكُمُ الَّتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ
فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن يَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا
مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا ۝ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ
أَيْمَانُكُمْ ۗ كَتَبَ اللَّهُ عَلَيْكُمْ ۖ وَأُحِلَّ لَكُمْ مَّا وَرَاءَ ذَٰلِكُمْ أَن تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرِ
مُسْلِفِينَ ۖ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً ۖ وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا
تَرْضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

It means: "Forbidden to you (marry) your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, the daughters of your brothers, the daughters of your female relatives, your mothers who breastfeed you, your sisters, the mothers of your wives (in-laws), the children of your wives who are in your care from the wives you have mixed with, but if you have not mixed with your wife (and you have already divorced), then it is not a sin

⁷⁵ *Khiyar* is the right to choose for one partner to continue to marry or not. Sumber : Berita Hari Ini, "Pengertian dan Penyebab Fasakh Pernikahan dalam Islam," *Kumparan*, 13 Mei 2022, <https://kumparan.com/berita-hari-ini/pengertian-dan-penyebab-fasakh-pernikahan-dalam-islam-1y3lqOcsRNR/4>

⁷⁶ Mursyid Djawas, Amrullah, dan Fawwaz Bin Adenan, "Fasakh Nikah dalam Teori Maşlahah Imam Al-Ghazali," *El-Usrah Volume 2*, No.1 (2019): 101 <http://dx.doi.org/10.22373/ujhk.v2i1.7645>

⁷⁷ Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 81-82

for you to marry her, (and it is forbidden for you) the wives of your own children (daughter-in-law), and bringing together (in marriage) two women who are sisters, except for what happened in the past, indeed Allah Most Forgiving and Most Merciful. (23)

And (you are also forbidden to marry) married women, except for the slaves you have (God has established that law) as His decree over you. And it is lawful for you other than that (namely) to find wives with your wealth to marry, not to commit adultery. So the wives that you have enjoyed (mixed) between them, give them their dowry (perfectly), as an obligation, and there is no reason for you for something that you have mutually agreed to, after determining the dowry. Indeed, Allah is All-Knowing and All-Wise. (24)"

From the verse above, it explains that apart from the women mentioned in the verse above, it is lawful to marry. This is permissible, because there is no mahraman relationship unless the man marries a woman with his aunt in a polygamous manner, this is prohibited. Islam prohibits marrying several categories of women, starting from mothers, sisters, to the prohibition of marriage for women who are still married and sisters who are breast-feeding. If the marriage is still carried out, for example because the man does not know that the one he is marrying is his sister because he has been separated for a long time, then in such a case, their marriage must be dissolved by *fasakh* marry.⁷⁸

Articles 70-76 of the Compilation of Islamic Law explain the annulment of marriage. Article 70 explains that a marriage will be void if:

⁷⁸ Ahmad Sarwat, *Ensiklopedia Fikih Indonesia: Pernikahan*, (Jakarta: Gramedia Pustaka Utama, 2018), 469

- a. The husband is married, while he already has a marriage contract and has four wives and even though one of his wives is in his term *iddah talak raj'i*.
- b. The husband who married the ex-wife he had *li'an*.
- c. Husbands who married ex-wives who had been divorced three times by him, unless his ex-wife had married another man who then divorced again *ba'da al dukhul* with the man and has expired *iddah* her.
- d. Marriage is carried out between two people who are related by blood, *semenda* and breastfeeding to a certain degree which precludes marriage according to Article 8 of Law No. 1 of 1974, namely having blood relations in a straight line down or up. Having blood relations in a deviant lineage, namely between siblings, between a person and their parents' siblings and between a person and their grandparents. Having a relationship with parents-in-law, stepdaughter, son-in-law and mother or stepfather. Having a breastfeeding relationship, i.e. breastfeeding parents, breastfeeding children and breastfeeding aunts or uncles. The wife is a sibling or as an aunt or nephew of his wives.⁷⁹

Article 71 explains that a marriage can be annulled if:

⁷⁹ Pasal 70 Kompilasi Hukum Islam tentang Pembatalan Perkawinan

- a. Husband performs polygamy without permission from the Religious Court
- b. It is known that married women are still the wives of other *menmafqud*.
- c. Married women are still in time *iddah* from another husband
- d. Marriages under the age of marriage as stipulated in article 7 of Law No. 1 year 1974
- e. Marriages carried out without a guardian or carried out by a guardian who has no right
- f. Marriages carried out by force.⁸⁰

Article 72 explains when:⁸¹

- a. A husband or wife can apply for an annulment of a marriage if there is a threat of violating the law in the marriage being held.
- b. A husband or wife can apply for an annulment of a marriage if during the marriage there is fraud or misunderstanding about the husband or wife
- c. If the threats have stopped or the guilty party is aware of the situation and within 6 (six) months after that they are still living

⁸⁰ Pasal 71 Kompilasi Hukum Islam tentang Pembatalan Perkawinan

⁸¹ Pasal 72 Kompilasi Hukum Islam tentang Pembatalan Perkawinan

as husband and wife and have not exercised their right to file an application for annulment, then the right to annulment is terminated.

Article 73 explains that those who can apply for an annulment of a marriage are⁸² families in a straight line up and down from husband or wife, husband or wife, officials authorized to oversee the implementation of marriages according to law, interested parties who knows that there is a defect in the pillars and conditions of marriage according to Islamic law and the Legislation as referred to in article 67 which states that the prevention of marriage can be revoked by withdrawing the request for prevention from the Religious Court by those who prevent or can use the decision of the Religious Court.⁸³

Article 74 explains that an application for annulment of a marriage can be submitted to the Religious Court which administers the residence of the husband or wife or the place where the marriage took place. The cancellation of a marriage is calculated after the decision of the Religious Court has permanent legal force and is valid from the time the marriage takes place.⁸⁴

⁸² Pasal 73 Kompilasi Hukum Islam tentang Pembatalan Perkawinan

⁸³ Pasal 67 Kompilasi Hukum Islam tentang Pencegahan Perkawinan

⁸⁴ Pasal 74 Kompilasi Hukum Islam tentang Pembatalan Perkawinan

Article 75 explains that the decision to annul a marriage does not apply to marriages that are void because one of the husbands or wives is an apostate, children born from the marriage, third parties before the decision to cancel the marriage has permanent legal force, they already have rights in good faith.⁸⁵

Article 76 explains that the annulment of a marriage will not break the legal relationship between the child and his parents.⁸⁶

b) Reasons *Fasakh*

Fasakh This can happen for 3 reasons, namely:⁸⁷

- a. *Fasakh* because the conditions are not met when the marriage contract. Unfulfilled conditions.
- b. *Fasakh* what happened after the wedding ceremony. Some things that happen after the marriage ceremony that can be *fasakh*.
- c. *Fasakh* caused by canceling the continuation of the marriage and having to wait for the judge's decision.

2. *Nusyuz*

a. Concept of *Nusyuz*

⁸⁵ Pasal 75 Kompilasi Hukum Islam tentang Pembatalan Perkawinan

⁸⁶ Pasal 76 Kompilasi Hukum Islam tentang Pembatalan Perkawinan

⁸⁷ Slamet Abidin, *Fikih Munakahat II*, (Bandung: Pustaka Setia, 1989), 73

Nusyuz is an obligation left on purpose by a husband or wife. Scholars of the madhhab have many considering about *nusyuz*, Ulama Maliki define *nusyuz* namely acts of mutual abuse between husband and wife. According to Ulama Syafi'iyah, *nusyuz* is a dispute that occurs in the household. According to Ulama Hambali and Hanafiyah define *nusyuz*, namely the husband's displeasure with his wife or otherwise.⁸⁸ It can be concluded that the meaning of *nusyuz* is an obligation left by a husband or wife that makes the household disharmonious.

b. Form of *Nusyuz*

There are several forms of *nusyuz*, namely:

1) Husband's *Nusyuz*

a) Concept of Husband's *Nusyuz*

Husband's *nusyuz* is the attitude of the husband who abandons his obligations, acts hard on his wife, does not have good intercourse with her, does not provide maintenance and is indifferent to his wife.⁸⁹ Husband's *nusyuz* is also interpreted as the husband's attitude of disobedience to God because he left his obligations both materially and non-materially. Husband's *nusyuz* from a broad sense is anything that can interfere with his wife in a bad way, such as speaking harshly,

⁸⁸ Mokh. Fadlun, "*Nusyuz Menurut Imam Abu Hanifah Dan Imam Asy-Syafi'i*" (Skripsi, Institut Agama Islam Negeri Sunan Kalijaga, 2002), <https://digilib.uin-suka.ac.id/id/eprint/4923/>

⁸⁹ Mujieb dkk, *Kamus Istilah Fiqih*, 251

hurting his wife physically and mentally, not having sexual intercourse for a very long period of time and other actions that are contrary to the principles of good relations between husband and wife.⁹⁰ In the Al-Qur'an letter An-Nisa verse 128, explains about husband's *nusyuz*:⁹¹

وَإِنْ أَمْرًا خَافَتْ مِنْ بَعْلِهَا نُشُورًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا
صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ ۗ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا
تَعْمَلُونَ خَبِيرًا

It means: "And if a woman is worried about nusyuz or indifference from her husband, then it is okay for both of them to make real peace, and that peace is better (for them) even if the human being is miserly by nature. And if you associate with your wife well and protect yourself (from nusyuz and indifference), then indeed Allah is All-Knowing of what you do."

The verse above explains that, if the wife is worried about her husband's *nusyuz*, then he can make peace. The wife can file her worried husband's *nusyuz* to the Religious Court, so that the Religious Court can decide peace between the two.

b) Include in Husband's *Nusyuz*

In practice, husband's *nusyuz* can be in the form of words, deeds, or both. In the form of words, namely, a husband who likes to curse and insult his wife. Meanwhile, in the form of action, namely, the husband

⁹⁰ Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqih Munakahat dan Undang-Undang Perkawinan*, 193

⁹¹ Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 99.

ignores his wife's rights over himself, spends his time with other women, considers his wife as if she does not exist.⁹²

Include in husband's *nusyuz* can be:⁹³

- a. The husband's attitude that shows indifference to his wife, such as leaving his wife or having hatred towards his wife, is clearly visible from his attitude.
- b. A husband who leaves an obligation, such as not giving a living on purpose even though the husband is able to support his family.⁹⁴
- c. A haughty husband, arbitrary, and arrogant towards his wife.
- d. Husbands who have abusive actions or actions that can harm the wife. This form of action causes pain in his wife's feelings, such as blaming his wife, betraying promises that have been made, and so on.⁹⁵
- e. The unfair attitude of a husband towards his wife, namely a husband who has more than two to four wives who require him to treat them fairly. Justice in question explains that the husband treats the same thing to all his wives, who are *dhahir* namely in

⁹² Abdul Aziz Dahlan, *Ensiklopedi hukum Islam*, (t.tp.: t.p., t.t.), 1354.

⁹³ Hesti Wulandari, "Nusyuz Suami Dalam Perspektif Hukum Islam Dan Hukum Positif" (Skripsi, Universitas Islam Negeri (UIN) syarif Hidayatullah, 2010), <https://repository.uinjkt.ac.id/dspace/handle/123456789/2046>

⁹⁴ Ali Husain Muhammad Makki Al-Amili, *Perceraian salah siapa?; Bimbingan Islam Dalam Mengatasi Problematika Rumah Tangga* (Jakarta : Lentera, 2001), 156-159

⁹⁵ Muhammad Thalib, *20 Perilaku Durhaka Suami Terhadap Istri* (Bandung: Irsyad Baitus Salam, 1997), 75-77

the provision of living, association, and sexual needs. Whereas in terms of love that is *bathin*, the husband is not required the same as in affairs *dhahir*.⁹⁶

- f. Everything that a husband does to have intercourse with his wife in a bad way, such as being abusive, hurting his wife physically and mentally, not having sexual intercourse for a certain time and other actions that are contrary to the principles of good association.⁹⁷
- g. Not fulfilling the wife's sexual needs and sexual intercourse with the wife during menstruation.⁹⁸
- h. Not wanting to pay off the dowry debt, a husband who does not pay off his dowry debt to his wife means cheating his wife. The husband is able to pay his wife's dowry but does not want to pay it including in its husband's *nusyuz*.⁹⁹
- i. The husband who withdraws the dowry that has been given to his wife, in whole or in part. The dowry that has been given to his wife absolutely belongs to his wife, if the husband takes the dowry back it is the same as seizing the rights of others. The act of usurping the rights of others is a prohibited act.¹⁰⁰

⁹⁶ Thalib, *20 Perilaku Durhaka Suami Terhadap Istri*, 102-103

⁹⁷ Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqih Munakahat dan Undang-Undang Perkawinan*, 193

⁹⁸ Thalib, *20 Perilaku Durhaka Suami Terhadap Istri*, 67

⁹⁹ Thalib, *20 Perilaku Durhaka Suami Terhadap Istri*, 17-20

¹⁰⁰ Thalib, *20 Perilaku Durhaka Suami Terhadap Istri*, 24-28

- j. Driving the wife out of the house or forbidding the wife to live in the same house with her husband. If a woman becomes the wife of her husband, the woman has the right to reside where her husband lives. If the wife has a problem with her husband, then the husband has no right to expel her arbitrarily.¹⁰¹
- k. Accusing his wife of adultery without valid evidence¹⁰²
- l. Divorce arbitrarily.¹⁰³

Husband's *nusyuz* according to Saleh bin Ganim, namely:

- a. Behaving arrogantly, arrogantly, likes to get angry, abuses that is shown to women
- b. Hostility by hitting, hurting, and having unwanted sexual intercourse with women, causing physical and psychological violence.
- c. Reluctant to provide a living, and even limit or reduce the ration to provide a living, so that women and their children are deprived, hungry and neglected.
- d. Did not fulfill his obligations in rotating
- e. Tend to be authoritarian as a leader and ruler in the family, so that women cannot play a role in social life at all and show their power as a leader in the household.

¹⁰¹ Thalib, 20 *Perilaku Durhaka Suami Terhadap Istri*, 110-111

¹⁰² Thalib, 20 *Perilaku Durhaka Suami Terhadap Istri*, 124

¹⁰³ Thalib, 20 *Perilaku Durhaka Suami Terhadap Istri*, 134

c) Consequence of Husband's *Nusyuz*

Husband's *nusyuz* can be used as a reason for a wife to file a divorce lawsuit or contested divorce to the Religious Court to break her marriage bond.

There is Article 116 explaining that divorce can occur for several reasons, namely:¹⁰⁴

- a. Husband or wife commits adultery or becomes a drunkard, addict, gambler and so on which is difficult to cure.
- b. Husband or wife leaves their partner for two consecutive years without the permission of the other party and without valid reasons or for other reasons beyond their control.
- c. Husband or wife can be sentenced to five years in prison or a more severe sentence after the marriage takes place.
- d. Husband or wife commits cruelty or severe abuse that endangers the other party.
- e. Husband or wife gets a disability or illness because of not being able to carry out their obligations as husband or wife.
- f. Husband or wife are constantly fighting and arguing and there is no hope of living in harmony in the household.
- g. Husband broke taklik talak

¹⁰⁴ Pasal 116 Kompilasi Hukum Islam tentang Putusnya Perkawinan

h. Husband or wife converting religion or apostasy which causes disharmony in the household.

2) Wife's *Nusyuz*

a) Concept of Wife's *Nusyuz*

Wife's *nusyuz* is the wife's disobedience to her husband in carrying out anything that God has made obligatory upon her.¹⁰⁵ Sayyid Sabiq define *nusyuz* in the book of Fiqh Sunnah, namely the wife's disobedience to her husband, disobedience or refusing invitations in terms of bed or lack of permission from the husband.¹⁰⁶ It's in Qs. An-Nisa' verse 34 explanation regarding wife's *nusyuz*, namely:¹⁰⁷

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۗ
فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ
وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ ۚ إِنِ اطَّعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ
اللَّهَ كَانَ عَلِيمًا كَبِيرًا

It means: *The men are the leaders of the women, because God has favored some of them (men) over others (women), and because they (men) have spent part of their wealth. That is why a pious woman is one who obeys God and takes care of herself when her husband is not around, because God has taken care of (them). The women whose nusyuz you fear, then advise them and separate them in their beds, and beat them. Then if they obey you, then don't look for ways to trouble them. Indeed, Allah is Most High and Most Great.*

¹⁰⁵ Syarifuddin, *Hukum Perkawinan Islam Di Indonesia: Antara Fiqih Munakahat dan Undang-Undang Perkawinan*, 190- 191

¹⁰⁶ Sayyid Sabiq, *Fiqh Sunnah Juz VII*, (Bandung: PT.Al-Ma'arif, 1978), 145

¹⁰⁷ Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 84

Explain that the verse above, if the husband is worried about his wife's *nusyuz*, then he can advise his wife. Then when still *nusyuz*, then the husband can separate beds from his wife. And if his wife still does *nusyuz*, then the husband can beat him. If your wife has obeyed you, then do not bother them.

b) Include in Wife's *Nusyuz*

Form of wife's *nusyuz* in the form of words and deeds, namely:

- a. Ignoring husband's authority, defying husband's orders, refusing to meet husband's needs, refusing to accompany her husband to sleep, burdening her husband's shopping burden¹⁰⁸
- b. Does not want to dress up for her husband but adorns and perfumes in public which can lead to slander and slander by her non-mahram
- c. Destroying her husband's religion, going out without her husband's permission, neglecting her husband's interests, accepting male guests whom her husband does not like, not rejecting the touch of men who are not her mahram¹⁰⁹

Wahbah Az-Zuhaili explained several forms of wife's *nusyuz*, namely a wife who refuses to touch without an excuse, a wife who

¹⁰⁸ Eneng Susanti, "21 Bentuk Nusyuz Istri Terhadap Suami," *Islampos.com*, 21 Desember 2022, <https://www.islampos.com/bentuk-nusyuz-istri-terhadap-suami-263150/>

¹⁰⁹ Eneng Susanti, "21 Bentuk Nusyuz Istri Terhadap Suami," *Islampos.com*, 21 Desember 2022, <https://www.islampos.com/bentuk-nusyuz-istri-terhadap-suami-263150/>

leaves the house without permission or goes to perform Hajj without her husband's permission, as well as a wife who refuses to serve her husband on the grounds that she is observing a sunnah fast.¹¹⁰

3. *Mubadalah*

a. Concept of *Mubadalah*

The term in *mubadalah* developed in a perspective and deep considering *mubadalah* certain between two parties, which contains the value and spirit of partnership, cooperation, reciprocity, and reciprocity. Good *mubadalah* between humans in general, the state and the people, parents and children, and others. Between men and men, women and women, and both.¹¹¹ The legal basis that can be known from *mubadalah*, which is found in Qs. Ali 'Imran verse 195:¹¹²

فَأَسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَمَلٍ مِّنْكُمْ مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ ۖ بَعْضُكُمْ مِّنْ بَعْضٍ ۖ
فَالَّذِينَ هَاجَرُوا وَأُخْرِجُوا مِن دِيَارِهِمْ وَأُودُوا فِي سَبِيلِي وَقُتِلُوا وَقُتِلُوا لَأَكْفِرَنَّ عَنْهُمْ سَيِّئَاتِهِمْ
وَأَلْأَدْخِلَنَّهُمْ جَنَّاتٍ تَجْرِي مِن تَحْتِهَا الْأَنْهَارُ ثَوَابًا مِّنْ عِنْدِ اللَّهِ ۖ وَاللَّهُ عِنْدَهُ حُسْنُ الثَّوَابِ

It means: *So their Lord allowed his request (by saying): "Indeed I do not waste the deeds of those who work among you, whether male or female, (because) some of you are descendants of others. So those those who emigrated, who were expelled from their hometowns, who were hurt in My path, who fought and who were killed, I will certainly erase their mistakes*

¹¹⁰ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu, Jilid X* (Damaskus: Darul Fikir, 2007), 105-106

¹¹¹ Kodir, *Qira'ah Mubadalah*, 59-60

¹¹² Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 76

and I will certainly enter them into gardens with rivers flowing beneath them, as a reward with Allah. And Allah with Him is a good reward".

Explaining that this verse not only teaches the principle of mutuality, but also equality between men and women in the eyes of religion, law, rules, and policies.¹¹³ Thus, between men and women in order to place equality and equality of both parties.

b. *Mubadalah* on the Rights and Obligations of Husband and Wife

In the explanation of classical fiqh, the rights and obligations of husband and wife only rely on three things, namely: *mubadalah* good things, livelihoods, and sex services. Discussion on *mubadalah* good is shown on both sides, where the husband is asked to do good to his wife, as well as the wife who does good to her husband. *Mubadalah* This must be strengthened so that it can bring goodness to the household. Not this one *mubadalah* the dominant one, but *mubadalah* paired, reciprocity, partnership, and cooperation.¹¹⁴

Discussion on the maintenance of property, is obligatory on the husband towards his wife, even though under certain conditions, the wife is also asked to contribute. Discussion on sex services, fiqh emphasizes more as a wife's obligation to her husband. Fiqh also explains the requirements for the husband to serve his wife's sexual needs to maintain her honor. From this explanation,

¹¹³ Muhammad bin Ahmad Al-Qurthubi, *Al-Jami'li Ahkam al-Qur'an* (Beirut: Dar al-Ilmiyyah, 1993), 230

¹¹⁴ Kodir, *Qira'ah Mubadalah*, 370

it can be concluded that it is relevant in meeting the needs of the world and the demands of biological hormones which are indeed different between men and women. Living is the obligation of the husband and sex is the obligation of the wife. In this discussion it is explained that a man's greatest need is sex, while his wife's greatest need is protection through material income. At Qs. An-Nisa' verse 34 is very relevant, men are given responsibility in providing for their wives.¹¹⁵ This does not apply today, where many women are able to work the same as men and can even produce more wealth. On the other hand, women are also human beings who need sex like men.

In perspective *mubadalah*, subsistence and sex including obligations and rights together. The assets produced by husband and wife are joint assets. Husbands may not have a monopoly in controlling all assets produced by him or by his wife. Likewise, the wife may not monopolize the assets she or her husband produces. The assets of the two that were produced during the marriage, become joint property which is managed for the benefit of the family.¹¹⁶ When in fact a woman or wife is willing to work for a living, then the husband must also be willing to take responsibility for doing domestic work at home. Thus, household burdens are shared together, just as the burden of subsistence is shared. According to the ability and opportunity of each.

With perspective *mubadalah* in this case, the verse that talks about seeking sustenance and living should be addressed to both men and women.

¹¹⁵ Kodir, *Qira'ah Mubadalah*, 369-370

¹¹⁶ Kodir, *Qira'ah Mubadalah*, 371

Both men and women have been encouraged in Islam to work for sustenance to provide for themselves and their families.

وَأُولَادُتُمْ يُرْضَعْنَ ۖ وَاللَّهُنَّ حَوْلِينَ كَامِلِينَ ۖ لِمَنْ أَرَادَ أَنْ يُنَمِّمَ الرِّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۖ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۖ لَا تُضَارُّ وُلْدُهُ بِوَالِدِهَا وَلَا مَوْلُودٌ لَهُ ۖ بِوَالِدِهِ ۖ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۖ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِّنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۖ وَإِنْ أَرَدْتُمْ أَنْ تَسْتَزِجِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۖ وَاتَّقُوا اللَّهَ ۖ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

It means: "Mothers should breastfeed their children for two full years, that is for those who want to perfect breastfeeding. And the father's obligation to feed and clothe the mothers in a *ma'ruf* way. A person is not burdened except according to the level of his ability. A mother should not suffer misery because of her child and a father because of his child, and the heirs are also obligated to do so. If both want to wean (before two years) with their consent and consultation, then there is no sin on both of them. And if you want your child to be nursed by someone else, then there is no sin for you if you give payment according to what is appropriate. Fear God and know that God sees what you do."¹¹⁷

At Qs. Al-Baqarah verse 233, specifically asks men as fathers to be responsible for providing for their children and mothers who breastfeed them. But in principle *mubadalah*, this paragraph can also apply to women, if the one working is a woman or a wife. Nowadays, things like this often happen when men are already working but their income is insufficient, or they are unable to work because of illness, or for other reasons. In principle *mubadalah*, it is a shared responsibility. Husband and wife, father, and

¹¹⁷ Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 37

mother, where each role is to consider each other, complement each other, and strengthen each other in carrying out obligations and mandates in the household.¹¹⁸

c. *Mubadalah* on *Nusyuz*

During household life, there must be problems in his life. A good partner is not necessarily without problems in the household, but one who is able to solve the problems that exist in his life. There are at least four problems *mubadalah* married couples who are often associated with the interpretation of the Qur'an, is *nusyuz*, domestic violence, polygamy, and divorce.¹¹⁹

Nusyuz better known as the wife's disobedience to her husband. This only seems unidirectional, where only the wife disobeys her commitment, there is no disobedience on the part of the husband. Whereas in practice, disobedience can occur from the husband or wife. In the Compilation of Islamic Law, for example, there are only articles that explain about wife's *nusyuz*, not about husband's *nusyuz*. There is in article 84, paragraphs 1-2 which explains that a wife who does not carry out her obligations towards her husband without clear reasons, then the wife is considered *nusyuz*. This results in the loss of the husband's obligations towards his wife. But there is no discussion about the husband not fulfilling his obligations to the wife or when the husband's *nusyuz* result in the death of his wife's obligations towards him.

¹¹⁸ Kodir, *Qira'ah Mubadalah*, 374-375

¹¹⁹ Kodir, *Qira'ah Mubadalah*, 409

In the discussion of the Compilation of Islamic Law it is only unidirectional and unbalanced, so this needs to be re-understood in order to better consider the terms *nusyuz*.¹²⁰

In perspective *mubadalah*, *nusyuz* is the opposite of obedience. *Nusyuz* and obedience is reciprocal, because husband and wife are required to have a joint commitment to bring all the goodness that exists in the household (*Jalbu al-mashalih*) and avoid all evil from him (*dar'u al-mafasid*). This commitment is referred to in the perspective of obedience in religion. *Nusyuz* the opposite of obedient, namely all negative actions in *mubadalah* couples who weaken the pair bond between husband and wife, so that they become far from conditions *sakinah*, *mawaddah*, and *rahmah*. Whether it is done by the wife to the husband, or by the husband to the wife.¹²¹

وَإِنْ أَمْرًا خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا ۖ
وَالصُّلْحُ خَيْرٌ ۗ وَأُخْضِرَتِ الْأَنْفُسُ الشُّحَّ ۗ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

It means: "And if a woman is worried about *nusyuz* or indifference from her husband, then it is okay for both of them to make real peace, and that peace is better (for them) even if the human being is miserly by nature. And if you associate with your wife well and protect yourself (from *nusyuz* and indifference), then indeed Allah is All-Knowing of what you do."¹²²

¹²⁰ Kodir, *Qira'ah Mubadalah*, 409-410

¹²¹ Kodir, *Qira'ah Mubadalah*, 410

¹²² Penerjemah, *Al-Qur'an Hafalan dan Terjemahan*, 99

In Qs. An-Nisa' verse 128 explains about husband's *nusyuz* to wife. *Nusyuz* is interpreted as turning away, reluctant, or no longer paying attention to his wife. It could be because her husband is no longer interested or has started to have an interest in other women. If using perspective *mubadalah*, then the explanation of husband's *nusyuz* is a worry in a *mubadalah* married couple. That is, there are parties who feel uncomfortable, are reluctant or will turn to others. Either done by the wife or done by the husband. The verse invites them both to make peace, to return to their original commitment as a couple who love and care for each other. In this paragraph explains from perspective *mubadalah*, that *nusyuz* this applies to both parties. Under these conditions, Allah SWT recommends that the two of them reconcile, so that they can return to their shared commitment as partners who love and strengthen one another.¹²³

The sentence also applies to husband's *nusyuz* and wife. In these verses it can become norms and principles in considering other verses Qs. An-Nisa' verse 34 concerning wife's *nusyuz* to husband. So that when the wife's *nusyuz* it is not permissible for a husband to beat his wife directly. Because the essence of management *nusyuz* in the Qur'an is how to restore the relationship between husband and wife in *mubadalah* the original, who love each other and love each other. Hitting is a behavior far from words *mubadalah* recommended in the Qur'an. Because of this, many commentators consider

¹²³ Kodir, *Qira'ah Mubadalah*, 411

beating a wife to be immoral or contrary to noble character. So deep *mubadalah* husband and wife, the thing that must be strengthened is commitment and obedience to all things that are good for the family and keep away from defiance towards that commitment. Obedience is obedience and disobedience are *nusyuz*. If *nusyuz* occurs, it is hoped that it can move to *shulh*, *ihsan*, and *taqwa* so that they return to obedient and obedient conditions for the good of the family.¹²⁴

d. *Mubadalah* on Divorce

Divorce is another issue of household problem that often occurs and is unbalanced, because it is more demanding and burdensome on the part of the woman alone. In religion, women are often required not to ask their husbands for a divorce, to always be patient with their husband's behavior, rather than having to ask for a divorce. In perspective *mubadalah*, must be balanced with the same thing, where it must also be addressed to the husband. husband so that it is not easy to divorce and be patient with the attitude or behavior of his wife. So, if a wife who asks for a divorce without cause will be kept away from heaven, then this also applies to husbands who intend to divorce their wife without cause.¹²⁵ *Mubadalah* found in Muslim hadist, namely:¹²⁶

¹²⁴ Kodir, *Qira'ah Mubadalah*, 412

¹²⁵ Kodir, *Qira'ah Mubadalah*, 423

¹²⁶ Kodir, *Qira'ah Mubadalah*, 88

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يَفْرَكُ مُؤْمِنٌ مُؤْمِنَةً إِنْ كَرِهَ
مِنْهَا حُلُقًا رَضِيَ مِنْهَا آخَرَ أَوْ قَالَ غَيْرُهُ

It means: *Abu Hurairah Ra. Says that Rasulullah SAW. said, "Don't hate easily, a believing husband hates his believing wife, if there is something he doesn't like, he can like something else from it."*

In the hadist above, it is explained that the husband should be kind to his wife, be patient so as not to cause problems and divorce. And this hadith is also intended for wives to be kind to their husbands, to be patient so that they do not get angry easily and cause problems until divorce. Until when using *mubadalah*, then the hadith is interpreted to be *"Don't hate easily, a believer to a believer partner (husband to wife and wife to husband), if there is something he doesn't like, he can like something else from it."*

All actions that will lead to divorce must be avoided, from the male or female side. If there is a problem or a fight, then what the husband and wife must think about is a way out and a solution and not placing divorce as the main solution in the settlement. Because, divorce is something that Allah SWT hates the most even though it is lawful to implement it.¹²⁷

¹²⁷ Kodir, *Qira'ah Mubadalah*, 424

عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَبْغَضُ الْحَالِلِ إِلَى اللَّهِ تَعَالَى

الطَّلَاقُ

It means: *From Ibn Umar RA. from the Prophet SAW. who said, "Indeed, the thing that Allah SWT hates the most is divorce".*¹²⁸

The hadist applies to two parties, men and women are not advised to divorce. Divorce is something that is hated by Allah SWT. if someone loves Allah SWT, the husband and wife must take care that the marriage does not end in divorce.¹²⁹

¹²⁸ Kodir, *Qira'ah Mubadalah*, 425

¹²⁹ Kodir, *Qira'ah Mubadalah*, 425

CHAPTER III

METHOD OF RESEARCH

The research method according to Sukandarrumidi is the method used by researchers in achieving goals and determining answers to the problems posed.¹³⁰ According to Mohammad Ali, the research method is a way to consider a problem by investigating or looking for evidence that can get a solution to the problem.¹³¹ According to Sugiyono, the research method is a scientific way to obtain data with a specific purpose.

A. Type of Research

The research entitled *The Analysis of Judge's View on Husband's Nusyuz in Divorce by Women Case at Banyuwangi Religious Court in The Perspective of Mubadalah*, uses empirical juridical research. Empirical juridical research is field research using the enforcement and implementation of laws that occur in every legal event in society.¹³²

B. Research Approach

Approach This research is a qualitative approach method because it presents the data obtained in the form of descriptive data, which is a description of knowledge and considering of husband's *nusyuz* through informants or respondents orally or in writing.¹³³

¹³⁰ Sukandarrumidi, *Metodologi Penelitian: Petunjuk Praktis untuk Peneliti Pemula* (Yogyakarta: Gajah Mada University Press, 2012), 111

¹³¹ Cholid Narbuko dan H. Abu Ahmadi, *Metodologi Penelitian* (Jakarta: Bumi aksara, 2009), 2

¹³² Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004), 134

¹³³ Dyah Ochtorina Susanti dan A'aan Efendi, *Penelitian Hukum* (Jakarta: Sinar Grafika, 2014), 18.

According to experts explaining the qualitative research approach, namely according to Bogdan and Taylor define qualitative research methods as research procedures that produce descriptive data in the form of written or oral words from people and observable behavior. According to Creswell, J. W defines qualitative research as research used to examine human and social problems. Where the researcher will report on the results of the research based on the data view report and data analysis obtained in the field, then describe in a detailed research report. Qualitative research is research that is descriptive in nature and tends to use analysis with an inductive approach. The processes and meanings of the informants are more demonstrated in qualitative research. The qualitative approach according to Creswell & Guetterman explain that qualitative research is a type of research that makes the researcher very dependent on information from objects or participants in a broad scope, general questions, collecting data mostly from text or participant words, and explaining and analyzing subjectively collected text.¹³⁴

It can be concluded that the qualitative research approach is a type of research obtained from field data collection, then analyzed and described from the data that has been obtained from informants or data. The informants referred to in the researcher's discussion are the views of judges at the Banyuwangi Religious Court. The data in question is a decision at the Banyuwangi Religious Court regarding a contested divorce. The qualitative

¹³⁴ Gamal Thabrani, "Metode Penelitian Kualitatif: Pengertian, Karakteristik & Jenis," *Serupa.id*, 13 Desember 2018, diakses 27 April 2022, <https://serupa.id/metode-penelitian-kualitatif/>

approach provides accurate data because the researcher, apart from being involved in the research location, also communicates, or has a direct dialogue with the research subject. The results of the interview will be analyzed according to the discussion discussed in this research.

C. Data Sources

In this research, the data sources used include primary, secondary, and tertiary data. Data sources are things that can be used in collecting data about where the subject is obtained.

1) Primary Data

Primary data is data taken directly by researchers from the object of research under study. The source data obtained was obtained directly through interviews with judges at the Banyuwangi Religious Court class 1A related to the problems discussed.

2) Secondary Data

Secondary data is a source of data used as an explanation of primary data. Secondary data can also be obtained from decisions, The Marriage Law No.1 of 1974, The Compilation of Islamic Law (KHI), Government Regulation (PP) No.9 of 1975, The Law No.7 of 1989, The Supreme Court Circulation Letter (SEMA) No.3 of 2018, the Qur'an, Hadist, journals, articles, and legal books related to the discussion.

3) Tertiary Data

Tertiary data is a data source used to explain primary data and secondary data. The tertiary data sources used are dictionaries, encyclopedias, and non-law books related to the discussion.

D. Research Locations

The location of this research was conducted at the Banyuwangi Religious Court class IA on Jl. Jaksa Agung Suprpto No.52, Penganjuran, Kec. Banyuwangi, Kabupaten Banyuwangi, Jawa Timur 68416. Telp. [\(0333\) 424325](tel:0333424325).

E. Data Collection Method

In the research, data is needed so that it becomes the material used in solving research problems. These data were collected so that the problems in the research were resolved. The types of data used in data collection in this study were primary data, secondary data, and tertiary data. Data collection techniques used are:

1) Interview

Data collection techniques were used in the form of interviews. The interview is a direct question and answer process between two or more people to get answers and information. The data collection technique used in obtaining interview data is in the form of resource persons for the Judges at the Banyuwangi Religious Court. Respondents who were interviewed included:

- a. Dra. Zaenah, S.H., M.H.

b. Drs. H. M. Hayat, S.H., M.H.

c. Drs. Hafiz, M.H.

2) Documentation

Data collection techniques used by reviewing and studying library materials in the form of secondary and tertiary legal materials. The documentation used in data collection is also in the form of reports from the Banyuwangi Religious Court.

F. Data Processing Method

Data processing techniques are the methods used to obtain the required information data. The stages used in data processing are:

- 1) Editing: The process of editing data in the form of interviews with judges at the Banyuwangi Religious Court.
- 2) Verification: Ensure that the themes related to the discussion are in accordance with the results of interviews with Judges at the Banyuwangi Religious Court and other sources such as The Marriage Law No.1 of 1974, The Compilation of Islamic Law, and the Al-Qur'an.
- 3) Analysis: Analyzing the views of the Judges at the Banyuwangi Religious Court on husband's *nusyuz* in divorce cases.
- 4) Conclusion: Conclusions based on the findings of the theme related to interviews with Judges at the Banyuwangi Religious Court husband's *nusyuz* in divorce cases.

CHAPTER IV

DISCUSSION OF RESEARCH

A. The Judge's View of Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court

In this discussion, we will discuss the views of the Judges at Banyuwangi Religious Court on considering husband's *nusyuz*. This discussion includes the definition of husband's *nusyuz*, form of husband's *nusyuz*, the source of the Judge's reference to husband's *nusyuz*, and legal basis husband's *nusyuz* when included in the divorce by Women case.

1. The Judges View of Definition Husband's *Nusyuz* on Divorce by Women Case at Banyuwangi Religious Court

The judges view of the definition husband's *nusyuz* in the divorce by Women case at the Banyuwangi Religious Court. Husband's *nusyuz* is known from Mr. Hayat, one of the Judges at the Banyuwangi Religious Court, namely the attitude of a husband who is indifferent and negligent towards his wife, does not carry out his obligations as the head of the family, cannot protect his wife, does not provide a living both physically and spiritually, and allows his wife when his wife makes a mistake.¹³⁵ Meanwhile, Ms. Zaenah, as one of the Judges at the Banyuwangi Religious Court, has a different opinion on the definition husband's *nusyuz*. He explained about husband's *nusyuz*, namely the husband's negligence in carrying out his obligations, not providing a living for his wife, leaving his wife, and not taking care of his

¹³⁵ Drs. H. M. Hayat, S.H., M.H., Interview, (Banyuwangi, 28 Juli 2022)

wife which is the reason for the divorce being contested, this cannot be said *nusyuz*. If the wife sues for divorce from her husband, then it is considered *nusyuz* is his wife.¹³⁶

It can be concluded that the Judges at Banyuwangi Religious Court defines about husband's *nusyuz* as the husband's negligence in carrying out his obligations, in terms of providing for both physically and spiritually, leaving his wife when his wife makes a mistake, not nurturing and often leaving his wife without guilt. But there is one Judge who argues that when the wife sues her husband for divorce it becomes wife's *nusyuz*. This is the reason why there are still many people who do not know about the considering of husband's *nusyuz*.

In perspective *mubadalah*, *nusyuz* is the opposite of obedience. *Nusyuz* and obedience is reciprocal because husband and wife are required to have a joint commitment to bring all the goodness that exists in the household (*Jalbu al-mashalih*) and avoid all evil from him (*dar'u al-mafasid*). This commitment is referred to in the perspective of obedience in religion. The opposite of obedient is what makes *nusyuz* interpreted as a negative action in *mubadalah* or reciprocity between husband and wife, which can make the bond of husband and wife weaken and the household is far from the situation *sakinah*, *mawaddah*, and *rahmah*. *Nusyuz* can be done by the wife or husband.¹³⁷

¹³⁶ Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 03 Agustus 2022)

¹³⁷ Kodir, *Qira'ah Mubadalah*, 410

In Qs. An-Nisa' verse 128 explains about husband's *nusyuz* to wife. *Nusyuz* This is interpreted as turning away, reluctant, or no longer paying attention to his wife. It could be because her husband is no longer interested or has started to have an interest in other women. If using perspective. Then the explanation regarding husband's *nusyuz* is a worry in a *mubadalah* married couples, where there are parties who feel uncomfortable, are reluctant or will turn to the other. Either done by the wife or done by the husband. The verse invites them both to make peace, to return to their original commitment as a couple who love and care for each other.

In the verse explains from perspective *mubadalah*, that *nusyuz* applies to both parties. Under these conditions, Allah SWT recommends that the two of them reconcile, so that they can return to their shared commitment as partners who love and strengthen one another. This paragraph also applies to husband's *nusyuz* and wife. These verses can become norms and principles in considering other verses, such as in Qs. An-Nisa' verse 34 explains about wife's *nusyuz* to husband. So, when the wife's *nusyuz* husband cannot directly hit his wife.

Because the essence of management *nusyuz* in the Qur'an is how to restore the husband and wife relationship to its original state, which loves and cares for one another. Hitting is a treatment that is far from the word recommended in the Qur'an. Because of this, many commentators consider beating a wife to be immoral or contrary to noble character. So, in a married couple, what must be strengthened is commitment and obedience to all things

that are good for the family and distanced from defiance towards that commitment. Obedience is obedience and disobedience is *nusyuz*.¹³⁸

2. The Judges View Include in Husband's *Nusyuz* on Divorce by Women Case at Banyuwangi Religious Court

The judge's view Include in husband's *nusyuz* in a divorce by Women case at the Banyuwangi Religious Court. Mr. Hayat explained about the form of husband's *nusyuz* where when the husband does not pay alimony, it is included in the category taklik talak. Although not spoken, there is already a signature from the agreement taklik talak. Mr. Hayat said that the form of *nusyuz* the husband does not exist, but there is a husband who is negligent in his obligations.¹³⁹ Ms. Zaenah thinks about the form husband's *nusyuz*, that is, the husband's indifferent attitude towards his wife, miserly, and does not provide a living.¹⁴⁰ Meanwhile, Mr. Hafiz explained about the form husband's *nusyuz* that is, a form of husband's *nusyuz* can be known from taklik talak.¹⁴¹

It can be concluded that the views of the Judges at Banyuwangi Religious Court on the form of husband's *nusyuz* according to Mr. Hayat and Mr. Hafiz is the content of taklik talak. Mr. Hayat also explained that there is no form husband's *nusyuz* in detail because husband's *nusyuz* does not exist, there is only the negligence of the husband in carrying out his obligations. Content of taklik talak, namely leaving his wife for two consecutive years,

¹³⁸ Kodir, *Qira'ah Mubadalah*, 411

¹³⁹ Drs. H. M. Hayat, S.H., M.H., Interview, (Banyuwangi, 28 Juli 2022)

¹⁴⁰ Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 03 Agustus 2022)

¹⁴¹ Drs. Hafiz, M.H., Interview, (Banyuwangi, 03 Agustus 2022)

not providing the obligatory maintenance of his wife for three months, hurting his wife's body or body, and allowing or ignoring his wife for six months or more. Meanwhile, Mrs. Zaenah explained that the form of husband's *nusyuz* that is, the husband's indifferent attitude towards his wife, miserly, and does not provide a living for his wife.¹⁴²

In practice, husband's *nusyuz* can be in the form of words, actions, or both. Husband's *nusyuz* in the form of words can be a husband who likes to curse and insult his wife. While in *nusyuz* in the form of actions, namely, a husband who ignores his wife's rights, has fun with other women, thinks his wife does not exist.¹⁴³ In the cut verse Qs. An-Nisa' verse 128 "*And if a woman is worried about nusyuz or indifference from her husband*" explains that one of the forms of husband's *nusyuz* is the indifferent attitude of the husband towards his wife. Such indifference can be in the form of:¹⁴⁴

- a. His attitude indicates that the lack of concern for his wife
- b. Leaving an obligation. Like not making a living
- c. The arrogance, arbitrariness, and arrogance of a husband towards his wife.
- d. *Nusyuz* as the husband's disobedience, namely those who have violent temperament or actions that endanger the wife. Forms of action that hurt

¹⁴² Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 03 Agustus 2022)

¹⁴³ Dahlan, *Ensiklopedi hukum Islam*, 1354.

¹⁴⁴ Hesti Wulandari, "*Nusyuz Suami Dalam Perspektif Hukum Islam Dan Hukum Positif*" (Skripsi, Universitas Islam Negeri (UIN) Syarif Hidayatullah, 2010), <https://repository.uinjkt.ac.id/dspace/handle/123456789/2046>

the wife's feelings, for example finding fault with the wife, betraying the ability to make promises to the wife, and so on.

- e. The husband's unfair attitude towards his wife, that is, a husband who has 2 or up to 4 wives has an obligation to treat his wife fairly. Justice in question is to treat equally in matters that are *dhahir* in nature, namely in the provision of living, association, and sexual needs.
- f. Everything that a husband does in sexual intercourse with his wife in a bad way, such as not fulfilling his wife's sexual needs and having sex with his wife during menstruation.
- g. Do not want to pay off the dowry debt.
- h. Withdrawing the dowry without the wife's consent.
- i. Driving the wife out of the house means forbidding the wife to live in the same house with her.
- j. Accusing his wife of adultery without valid evidence
- k. Divorce arbitrarily.

Include in husband's *nusyuz* on perspective *mubadalah* explain that *nusyuz* this applies to both parties. Under these conditions, Allah SWT recommends that the two of them reconcile, so that they can return to their shared commitment as partners who love and strengthen one another. This paragraph also applies to husband's *nusyuz* and wife. The verse can be a norm and principle in considering Qs. An-Nisa' verse 34 about wife's *nusyuz* to husband. So that when the wife's *nusyuz* it is not permissible for a husband to beat his wife directly. Because the essence of management *nusyuz* in the

Qur'an is how to restore the relationship between husband and wife in *mubadalah* the original, who love each other and love each other. Hitting is a behavior far from words *mubadalah* recommended in the Qur'an. Because of this, many commentators consider beating a wife to be immoral or contrary to the noble character. So deep *mubadalah* husband and wife, the thing that must be strengthened is commitment and obedience to all things that are good for the family and keeping away from defiance towards that commitment. Obedience is obedience and disobedience are *nusyuz*. If *nusyuz* happens, it is hoped that it can move to *shulh*, *ihsan*, and *taqwa* so that they return to obedient and obedient conditions for the good of the family.¹⁴⁵

3. The Judges Reference Source About Husband's *Nusyuz* on Divorce by Women Case at Banyuwangi Religious Court

The Judges views on reference sources husband's *nusyuz* in the divorce by Women case at the Banyuwangi Religious Court. According to Mr. Hayat, Mrs. Zaenah, and Mr. Hafiz as Judges at the Banyuwangi Religious Court, they argued that they made *taklik talak* as their reference source in knowing about husband's *nusyuz*.

It can be concluded the Judges at Banyuwangi Religious Court consider the source of reference husband's *nusyuz* of contents *taklik talak*. Content of *taklik talak*, namely:¹⁴⁶

¹⁴⁵ Kodir, *Qira'ah Mubadalah*, 411

¹⁴⁶ Drs. H. Nur Mujib, MH., "Ketika Suami Melanggar *Taklik Talak*" *pa-jakartaselatan*, 04 Oktober 2018 <https://www.pa-jakartaselatan.go.id/artikel/260-ketika-suami-melanggar-taklik-talak#:~:text=Taklik%20talak%20menurut%20ketentuan%20pasal,pada%20masa%20yang%20akan%20datang%E2%80%9D>

- a. Abandoned his wife for two years straight,
 - b. Does not provide obligatory maintenance to his wife for three months,
 - c. Hurting the body or body of the wife and allowing or not caring about his wife for six months or more.
4. The Judge's View of the Legal Basis Husband's *Nusyuz* When Entered in Divorce by Women Case at the Banyuwangi Religious Court

The Judges view of the legal basis husband's *nusyuz* when entered in divorce by women case at the Banyuwangi Religious Court. Mr. Hayat, Ms. Zaenah, and Mr. Hafiz as Judges at the Banyuwangi Religious Court have the same opinion as the Judges at Banyuwangi Religious Court regarding reference sources regarding husband's *nusyuz*. Where the Judges make taklik talak as a legal basis husband's *nusyuz* when included in the divorce by women case. It can be concluded that the Judges at Banyuwangi Religious Court made the legal basis husband's *nusyuz* when included in the divorce by women case, namely contained in the contents taklik talak.

B. The Judge's View of Status Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court

This discussion will discuss the views of the Judges at Banyuwangi Religious Court on status husband's *nusyuz* in the divorce by women case at the Banyuwangi Religious Court. This discussion includes the Judges view of the term from husband's *nusyuz* in the divorce by women case at the Banyuwangi Religious Court and the Judges view of the wife's rights because husband's *nusyuz* in the divorce by women case at the Banyuwangi Religious Court.

1. The Judges View of Terminology Husband's *Nusyuz* on Divorce by Women Case at Banyuwangi Religious Court

The Judges view of the term husband's *nusyuz* in the divorce by women case at the Banyuwangi Religious Court. Mr. Hayat is of the opinion that there has not been a case related to the divorce case being contested at the Banyuwangi Religious Court.¹⁴⁷ Ms. Zaenah explained that there had not been any divorce cases contested at the Banyuwangi Religious Court that used the term husband's *nusyuz* in the case. However, in the Jombang Religious Court there was a case where his wife filed for divorce because her husband did not provide a living, then the husband was punished for providing *mut'ah* and alimony *iddah* to his wife and this must be in accordance with the agreement.¹⁴⁸ Meanwhile, Mr. Hafiz's view was in the same opinion that there had not been any divorce cases contested at the Banyuwangi Religious Court using the term husband's *nusyuz*.¹⁴⁹

It can be concluded that according to the Judges at Banyuwangi Religious Court regarding the term husband's *nusyuz* in the divorce by women case at the Banyuwangi Religious Court has not had a case. So that the divorce case that can be the reason because husband's *nusyuz* does not have a term, because many people do not really consider and accept it.

In *mubadalah*, *nusyuz* better known as the wife's disobedience to her husband. This only seems unidirectional, where only the wife disobeys her

¹⁴⁷ Drs. H. M. Hayat, S.H., M.H., Interview, (Banyuwangi, 28 Juli 2022)

¹⁴⁸ Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 03 Agustus 2022)

¹⁴⁹ Drs. Hafiz, M.H., Interview, (Banyuwangi, 03 Agustus 2022)

commitment, there is no disobedience on the part of the husband. Whereas in practice, disobedience can occur from the husband or wife. In The Compilation of Islamic Law, for example, there are only articles that explain about wife's *nusyuz*, not about husband's *nusyuz*. There is in article 84, paragraphs 1-2 which explains that a wife who does not carry out her obligations towards her husband without clear reasons, then the wife is considered *nusyuz*. This results in the fall of the husband's obligation to his wife. But there is no discussion of the husband not carrying out his obligations to his wife or if the husband's *nusyuz* result in the death of his wife's obligations towards him. In the discussion of The Compilation of Islamic Law it is only unidirectional and unbalanced, so this needs to be reunderstood so that it is clearer in considering *nusyuz*.¹⁵⁰

2. The Judges view of wife's rights because Husband's *Nusyuz* on the Divorce by Women Case at Banyuwangi Religious Court

The judges view of the right of the wife because husband's *nusyuz* in the divorce by women case at Banyuwangi Religious Court. Mr. Hayat is of the opinion regarding the wife's rights, that there are post-divorce wife rights to be contested. The wife's rights are obtained in other forms of rights, such as children's rights or the post-divorce husband's obligations are still notified to his wife. However, most divorced wives do not ask for post-divorce rights because many husbands do not come to court, making it difficult to discuss

¹⁵⁰ Kodir, *Qira'ah Mubadalah*, 409-410

post-divorce wife rights.¹⁵¹ Meanwhile Mr. Hafiz is of the opinion regarding the wife's rights that even though regulations allow it and judges have ex-officio rights¹⁵², this matter must still be in accordance with the assembly itself which determines it.¹⁵³ Mr. Hafiz also believes that the wife's rights can be given if it is in accordance with the existing agreement between the husband and wife.¹⁵⁴ According to Ms. Zaenah, if it accommodates The Supreme Court Circulation Letter (SEMA) No.3 of 2018, the assembly can provide a *mut'ah*, and alimony *iddah* and punish the defendant to pay it before the defendant takes the divorce certificate. But the problem is that it will be difficult to execute if there is no agreement. This must be included in the *posita* and *petitum* of the lawsuit by asking for a providing *mut'ah* and alimony *iddah* because if not, it cannot be implemented.¹⁵⁵

It can be concluded according to the Banyuwangi Religious Court judge that the post-divorce wife's rights are due husband's *nusyuz* is still given and there are regulations regarding allowing to give the wife's rights. However, these regulations still must follow the determination of the assembly itself. Most wives also do not ask for post-divorce rights because their husbands do

¹⁵¹ Drs. H. M. Hayat, S.H., M.H., Interview, (Banyuwangi, 28 Juli 2022)

¹⁵² The ex-officio right is a right that is owned by a judge because of his position to grant the rights owned by the ex-wife, even though these rights are not contained in the demands or requests from the wife in a divorce. Sumber : Bayu A Wicaksono, S.H., "Hak Ex Officio Hakim Sebagai Perwujudan Perlindungan Hukum Terhadap Perempuan Dalam Perkara Perceraian," *badilag.mahkamahagung*, 19 Juli 2022, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hak-ex-officio-hakim-sebagai-perwujudan-perlindungan-hukum-terhadap-perempuan-dalam-perkara-perceraian#:~:text=Demi%20kepentingan%20pemenuhan%20hak%2Dhak,pemberian%20hak%2Dhak%20ekonomi%20perempuan>

¹⁵³ Drs. Hafiz, M.H., Interview, (Banyuwangi, 03 Agustus 2022)

¹⁵⁴ Drs. Hafiz, M.H., Interview, (Malang, 11 April 2023)

¹⁵⁵ Dra. Zaenah, S.H., M.H., Interview, (Banyuwangi, 03 Agustus 2022)

not come to the Religious Courts, so it is very difficult to discuss post-divorce wife rights. And the conclusion from Ms. Zaenah regarding the wife's rights is also of the opinion that it can be granted, but difficult to execute if there is no agreement.

There are several cases of contested divorce where the wife does not get her rights after suing for divorce, even though the wife who is suing is because of her husband's *nusyuz*. In the Divorce by Women Case Number 1841/Pdt.G/2023/PA.Bwi explained that since November 2020, between the plaintiff and the plaintiff, there has been a conflict of irresponsibility for providing a living, with the defendant supporting only 20,000 a day. The accused is also lazy and when counseled by the plaintiff, is outraged, and refuses to change his attitude, so the plaintiff works as a home assistant to provide for her family. That causes the plaintiffs to leave their residences by December 2020. And when the decision was made, the plaintiff did not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1913/Pdt.G/2023/PA.Bwi explained that since August 2021 there have been continuous arguments due to the defendant as the head of the less responsible family. Her temperamental, lazy, and rarely shopper to plaintiffs. Sometimes the defendants make a living for 300,000 a month, which is less than what the family needs, so it is still helped by the plaintiff's family to provide for the household. It causes the plaintiffs to leave their homes on December 2021.

And when the verdict has been determined the plaintiff does not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1917/Pdt.G/2023/PA.Bwi explained that since January 2022 there have been frequent clashes between plaintiffs and defendants caused by the irresponsibility of providing a living and able only to provide 700,000 per month, so as to provide for the needs of the plaintiffs working as traders. The defendant was also not open on financial matters, and by January 2022 the accused said the word "talak" to the plaintiffs and had been known by their domestic assistants. It causes the plaintiffs to leave their homes on January 2015. And when the verdict has been determined the plaintiff does not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1499/Pdt.G/2023/PA.Bwi explains that May 2022 of the plaintiffs and defendants often clash because of lack of compatibility and often disagree, the defendants do not provide a living, the lazy, joinistic defendants. As a result, on August 2022 plaintiffs left the settlement together. And when the verdict has been determined the plaintiff does not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1762/Pdt.G/2023/PA.Bwi explained that August 2021 between the plaintiff and the accused often quarreled over the lack of role model, because of the heavy consumption and

drug dealing. The accused also did not provide a living to the plaintiff, often even asking the plaintiff to send money because the defendants are in custody. The result of August 2022 plaintiffs left the residence together and had split up. And when the decision was made, the plaintiff did not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1757/Pdt.G/2023/PA.Bwi explained that December 2022 between the plaintiff and the accused often quarreled because the accused did not provide support to the plaintiff and had a mental disposition. The result of February 2023 plaintiffs and defendants had been separated from their beds for about three months. And when the decision was made, the plaintiff did not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

In the Divorce by Women Case Number 1151/Pdt.G/2023/PA.Bwi explained that October 2022 between the plaintiff and the accused often quarreled, where the plaintiff received severe treatment from the accused, basking and strangling the plaintiff. Consequently, the plaintiffs left the residence together and had been separated for about four months. And when the decision was made, the plaintiff did not get a providing *mut'ah*, and alimony *iddah* and court costs are fully borne by the plaintiff.

It can be concluded from the several cases above, that the wife's rights after the divorce are not sued and the wife still has to pay the full costs of the case. The reason why the wife sues her husband is because the husband did it *nusyuz* against her and because of this, the husband should continue to carry

out his obligations to provide maintenance after the divorce is contested. Because it is contained in the Supreme Court Circular Letter No. 3 of 2018 point 3 concerning husband's obligations due to divorce to wives who do not *nusyuz* accommodate Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Trying Cases Against Women Confronting the Law which contains that, in a divorce case, the wife can be providing *mut'ah*, and alimony *iddah* as long as not doing *nusyuz*.¹⁵⁶ And this is also explained in The Compilation of Islamic Law article 152 that, ex-wife has the right to earn alimony *Iddah* from her ex-husband except him *nusyuz*.¹⁵⁷

In response to SEMA no. 3 of 2018 relating to Article 149 letter b Compilation of Islamic Law that the husband is obliged to provide maintenance, dowry and *kiswah* to ex-wife during inside *iddah* unless the ex-wife has been divorced *not* or *nusyuz* and not pregnant. It can be concluded that the wife can earn a providing *mut'ah*, and alimony *iddah* when the wife is not *nusyuz* and submit this matter in the divorce decision to be contested, so that the Judges at Religious Court can decide in accordance with the agreement. And according to Undang-Undang, the wife can file for divorce from her husband and claim the rights of the wife after the divorce. However, the chances of success are slim, and it rarely happens. In addition, there is an

¹⁵⁶ Point 3 SEMA No.3 Tahun 2018 mengakomodir PERMA No.3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum

¹⁵⁷ Pasal 152 Kompilasi Hukum Islam tentang Akibat Putusnya Perkawinan

opinion that if the wife files a lawsuit, it means she is *nusyuz*. So, he is not entitled to post-divorce rights.¹⁵⁸

C. The Judge's View About Husband's *Nusyuz* on The Divorce by Women Case at Banyuwangi Religious Court Perspective *Mubadalah*

In this discussion, we will discuss the views of the Judge on husband's *nusyuz* us *mubadalah*. The discussion this time includes the Judges considering of husband's *nusyuz* us *mubadalah*, position *nusyuz* on husbands and wives, as well as the views of the Judges at Banyuwangi Religious Court when the husband asked for divorce were included in the category husband's *nusyuz*.

1. The Judges View of Husband's *Nusyuz* Uses *Mubadalah*

A judge's view of considering husband's *nusyuz* uses *mubadalah*. Banyuwangi Religious Court judges do not know about *mubadalah*. Mr. Hafiz argues that for the concept *mubadalah* or reciprocity in respect *nusyuz* it is not yet in the decision at the Banyuwangi Religious Court, so it is only interpreted one-sidedly. Mr. Hafiz is of the opinion that *mubadalah* or reciprocity can be used for reconciliation. Because reconciliation between husband and wife can be granted if the reconciliation is in accordance with the agreement.¹⁵⁹

It can be concluded that the Banyuwangi Religious Court Judges have not understood the concept *mubadalah*, so that the Judges at Banyuwangi Religious Court considering of husband's *nusyuz* in conception *mubadalah* is

¹⁵⁸ M. Khusnul Khuluq, "Perlindungan Hak-Hak Perempuan Pasca Perceraian" *Rahma.id*, 1 November 2021, <https://rahma.id/perlindungan-hak-hak-perempuan-pasca-perceraian/>

¹⁵⁹ Drs. Hafiz, M.H., Interview, (Malang, 11 April 2023)

still one-sided. In perspective *mubadalah*, *nusyuz* is the opposite of obedience, namely all negative actions in *mubadalah* husband and wife weaken the pair bond between husband and wife, so that they become far from conditions *sakinah*, *mawaddah*, and *rahmah*. Whether it is done by the wife to the husband, or by the husband to the wife.¹⁶⁰ So therefore, *mubadalah* in terms of *nusyuz* it does not only happen to the men, but also from the wife's side there is a term.

2. The Judges View of Position *Nusyuz* on Husband and Wife

The Judges view of the position husband's *nusyuz* and wife. Mr. Hafiz, Mr. Hayat, and Mrs. Zaenah explained that *nusyuz* only found in wives, while in husbands there were no cases related to religious courts husband's *nusyuz*. It can be concluded that position *nusyuz* towards the husband and wife are considered only in the same direction. Where there is only *nusyuz* on the wife's side.

In perspective *mubadalah*, in Qs. An-Nisa' verse 128 explains about husband's *nusyuz* to wife and in Qs. An-Nisa' verse 34 explains about wife's *nusyuz*. It can be concluded from the concept *mubadalah*, *nusyuz* applies to both husband and wife. Then the explanation regarding husband's *nusyuz* is a worry in a *mubadalah* married couple. That is, there are parties who feel uncomfortable, are reluctant or will turn to others. Either done by the wife or done by the husband. The two verses invite them both to make peace, to return to their original commitment as partners who love and care for each other.

¹⁶⁰ Kodir, *Qira'ah Mubadalah*, 410

The two verses explain from perspective *mubadalah*, that *nusyuz* applies to both parties. Under these conditions, Allah SWT recommends that the two of them reconcile, so that they can return to their shared commitment as partners who love and strengthen one another.¹⁶¹

3. The Judges View of Husbands Applying for Divorce Includes Categories *Nusyuz* Husband

The Judges view of the husband applying for divorce includes categories husband's *nusyuz*. Mr. Hafiz explained that this could not be categorized husband's *nusyuz*.¹⁶² It can be concluded that husbands who beg for divorce are not included husband's *nusyuz*. In perspective *mubadalah*, when the husband applying for divorce is considered not *nusyuz* applies otherwise, the wife who sued her husband cannot be said *nusyuz* because there is equality between the two. If the husband who asks for divorce is considered not *nusyuz*, then the husband is required to give the wife's rights after divorce, and vice versa if the wife sues her husband for divorce, the wife must continue to carry out her obligations such as carrying out *iddah*. And this is required in accordance with Article 41 of Undang-Undang no. 1 of 1974 concerning Marriage. Whereas if it is not categorized *nusyuz*, then the husband can cancel his obligation to provide a living after the divorce is due wife's *nusyuz* and otherwise.

¹⁶¹ Kodir, *Qira'ah Mubadalah*, 411

¹⁶² Drs. Hafiz, M.H., Interview, (Malang, 11 April 2023)

CHAPTER V

CLOSING

A. Conclusion

Based on the results of research The Analysis of Judge's View on Husband's *Nusyuz* in Divorce by Women Case at Banyuwangi Religious Court in The Perspective of *Mubadalah*, can be concluded that:

1. The Judges at Banyuwangi Religious Court consider husband's *nusyuz* as the husband's negligence in carrying out his obligations in providing a living both physically and spiritually, leaving his wife when his wife makes a mistake, not nurturing and often leaving his wife without guilt. The Judges at Banyuwangi Religious Court also consider include in husband's *nusyuz*, which is the contents of taklik talak. The Judges also established a legal basis for the husband's *nusyuz* that was included in the divorce by women case is also found in taklik talak.
2. The Judges at Banyuwangi Religious Court had not yet implemented a husband *nusyuz* in the case of the divorce settlement to be granted custody after the divorce. While at Point 3 SEMA No.3 of 2018 accommodate The Supreme Court Rules (PERMA) No.3 Tahun 2017 for guidelines in prosecuting women's case against the law that "Wives in the case of divorce can be given iddah and sustained by *mut 'ah*, as long as it is not proved to be *nusyuz*," The Judges at Banyuwangi Religious Court should still follow the establishment of the council itself.

3. In the *mubadalah*, The Judges at Banyuwangi Religious Court had carried out the considering of the husband's *nusyuz*. However, for the application of the case of the divorce to pass the custody of the woman after the divorce, they had not done it legally.

B. Suggestion

Based on the conclusions in this study, the researcher hereby conveys some suggestions and input related to this research:

1. Public

The importance of knowing about *nusyuz*, is not only interpreted unilaterally or only found on the wife's side. The importance of awareness for the community, Religious Court Judges, as well as Education institutions to avoid forms of husband's *nusyuz*. Therefore, the considering of the husband's *nusyuz* can also be included in the rules, so that there is legality with the force of permanent law that can be obeyed by the whole community, especially for husbands who do *nusyuz* towards his wife

2. Further Researcher

It is hoped that by obtaining data from this research, it can help further researchers in doing their research which is felt to be lacking in data collection. Can add insight about husband's *nusyuz* using perspective *mubadalah* expected to be able to develop about the husband's *nusyuz* in his research.

BIBLIOGRAPHY

Book

- Rofiq, Ahmad. *Hukum Perdata Islam di Indonesia*. Jakarta: Raja Grafiika, 2013.
- Ghozali, Abdur Rahman. *Fiqh Munakahat*. Jakarta: Kencana, 2008.
- Syarifuddin, Amir. *Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*. Jakarta: Kencana, 2006.
- Firdaweri. *Hukum Islam Tentang Fasakh Perkawinan Karena Ketidak-Mampuan Suami Dalam Menunaikan Kewajibannya*. Jakarta: CV Pedoman Ilmu Jaya, 1989.
- Kodir, Faqihuddin Abdul. *Qira'ah Mubadalah*. Yogyakarta: IRCiSoD, 2019.
- Ash-Shan'ani, Muhammad Bin Ismail. *Subulus Salam*. Jakarta: Darussunnah, 2013.
- Thalib, Sajuti. *Hukum Kekeluargaan Indonesia: Berlaku bagi Umat Islam*. Jakarta: UI Press, 1986.
- Saleh, Hassan. *Kajian Fiqh Nabawi & Fiqh Kontemporer*. Jakarta: Rajawali Press, 2008.
- Ayyub, Hassan. *Fiqh Keluarga*. Jakarta: Pustaka AlKautsar, 2011.
- Abidin, Slamet. *Fikih Munakahat II*. Bandung: Pustaka Setia, 1989.
- Al-Amili, Ali Husain Muhammad Makki. *Perceraian salah siapa? Bimbingan Islam Dalam Mengatasi Problematika Rumah Tangga*. Jakarta: Lentera, 2001.
- Thalib, Muhammad. *20 Perilaku Durhaka Suami Terhadap Istri*. Bandung: Irsyad Baitus Salam, 1997.
- Al-Qurthubi, Muhammad bin Ahmad. *Al-Jami'li Ahkam al-Qur'an*. Beirut: Dar al-'Ilmiyyah, 1993.
- Sukandarrumidi. *Metodologi Penelitian: Petunjuk Praktis untuk Peneliti Pemula*. Yogyakarta: Gajah Mada University Press, 2012.
- Muhammad, Abdulkadir. *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti, 2004.

- Mujieb, M. Abdul, Mabruri Tholhah, dan Syafi'ah AM. *Kamus Istilah Fiqih*. Jakarta: Pustaka Firdaus, 1994.
- Ahnan, Mahtuf dan Maria Ulfa. *Risalah Fiqih Wanita*. Surabaya: Terbit Terang, t.t.
- Narbuko, Cholid, dan H. Abu Ahmadi *Metodologi Penelitian*. Jakarta: Bumi aksara, 2009.
- Susanti, Dyah Ochtorina, dan A'aan Efendi. *Penelitian Hukum*. Jakarta: Sinar Grafika, 2014.
- Al-Malibari, Zainuddin Bin Abdul Aziz. *Fathul Mu'in*. t.tp.: Al-Harmain, t.t.
- Az-Zuhaili, Wahbah. *Fiqih Islam Wa Adillatuhu*. Depok: Darul Fikir, 2011.
- Al Quzwaini, Abu Abdillah Muhammad. *Sunan Ibnu Majah*. Kairo: Dar Ihya Kutub Al-Arabiyah, 1995.
- Sabiq, Sayyid. *Fiqih sunnah*. Bandung: Alma'arif, 1987.
- Al-Ansari, Abi Yahya Zakariya. *Fathul Wahhab*. Semarang: Toha Putra, t.t.
- Dahlan, Abdul Aziz. *Ensiklopedi hukum Islam*. t.tp.: t.p., t.t.
- Sarwat, Ahmad. *Ensiklopedia Fikih Indonesia: Pernikahan*. Jakarta: Gramedia Pustaka Utama, 2018.
- Dewan Redaksi Ensiklopedi Islam. *Ensiklopedi Islam*. Jakarta: Ichtiar Baru Van Hoeve, 2001.
- Tim Penerjemah. *Al-Qur'an Hafalan dan Terjemahan*. Jakarta: Almahira, 2017.
- Tim Al-Manar. *Fiqih Nikah*. Bandung: Syamail, 2003.

Journal

- Anwar, Syaiful. "Hak Dan Kewajiban Suami Istri Menurut Undang-Undang Nomor 1 Tahun 1974" *Kajian Islam Al Kamal Volume 1*, No. 1 (2021): 94. [HAK DAN KEWAJIBAN SUAMI ISTRI MENURUT UNDANG-UNDANG NOMOR 1 TAHUN 1974 | Al Kamal \(staika.ac.id\)](https://doi.org/10.24127/ai.v1i1.1341-4457-1-PB)
- Nurlia, Aisyah, Nilla Nargis, dan Elly Nurlaili. "Nusyuz Suami Terhadap Istri Dalam Perspektif Hukum Islam" *Pactum Law Journal Volume 1*, No. 04 (2018): 440-443
<http://repository.lppm.unila.ac.id/13091/1/1341-4457-1-PB.pdf>

- Ali Abubakar dan Maulizawati. "Persyaratan Hak 'Iwadh Khulu' (Analisa terhadap pendapat mazhab Maliki)," *Al-Usrah Vol. 1, No. 1* (2018): 22 <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/5566/3543>
- Hamdi, Saibatul, Ahya Ulumiddin. "Menyikapi *Nusyuz* Dalam Keluarga: Ikhtiar Mewujudkan Keluarga Harmonis (Studi Komparasi Pendapat Imam Syafi'i Dan Hanafi)" *Al-Mudarris: Jurnal Ilmiah Pendidikan Islam Volume 2, No. 1*, (2019): 77-81 <https://e-journal.iain-palangkaraya.ac.id/index.php/mdr/article/view/1396>
- Djawas, Mursyid, Amrullah, dan Fawwaz Bin Adenan. "*Fasakh* Nikah dalam Teori Masalah Imam Al-Ghazali," *El-Usrah Volume 2, No.1*, (2019): 101 <http://dx.doi.org/10.22373/ujhk.v2i1.7645>

Website

- Super User, "Hak-Hak Perempuan dan Anak Pasca Perceraian," *pa-manna*, 14 November 2022, <https://www.pa-manna.go.id/layanan-publik/layanan-permintaan-informasi/hak-hak-perempuan-dan-anak-pasca-perceraian>
- Pintar, Muslim "Macam-Macam Talak Lengkap dengan Penjelasan," *muslimpintar*, 02 Agustus 2018, <https://www.muslimpintar.com/macam-macam-talak-dalam-Islam/>
- Berita Hari Ini, "Pengertian dan Penyebab Fasakh Pernikahan dalam Islam," *Kumparan*, 13 Mei 2022, <https://kumparan.com/berita-hari-ini/pengertian-dan-penyebab-fasakh-pernikahan-dalam-islam-1y3lqOcsRNR/4>
- Rohmah, Yuniati "Macam-Macam Talak Menurut Hukum Islam dan Penjelasan Masa Iddah Istri," *theAsianparent*, t.t., <https://id.theasianparent.com/macam-macam-talak>
- Susanti, Eneng "21 Bentuk Nusyuz Istri Terhadap Suami," *Islampos.com*, 21 Desember 2022, <https://www.islampos.com/bentuk-nusyuz-istri-terhadap-suami-263150/>
- Thabroni, Gamal "Metode Penelitian Kualitatif: Pengertian, Karakteristik & Jenis," *Serupa.id*, 13 Desember 2018, diakses 27 April 2022, <https://serupa.id/metode-penelitian-kualitatif/>
- Muafa, Ustadz. "Apa Bedanya Makruh dan Khilaful Aula?," *irtaqi*, 31 Juli 2018, <https://irtaqi.net/2018/07/31/apa-bedanya-makruh-dengan-khilaful-aula/>

Mujib, Nur “Ketika Suami Melanggar Taklik Talak,” *pa-jakartaselatan*, 04 Oktober 2018, <https://www.pa-jakartaselatan.go.id/artikel/260-ketika-suami-melanggar-taklik-talak#:~:text=Taklik%20talak%20menurut%20ketentuan%20pasal,pa da%20masa%20yang%20akan%20datang%E2%80%9D>

Bayu A Wicaksono, S.H., “Hak Ex Officio Hakim Sebagai Perwujudan Perlindungan Hukum Terhadap Perempuan Dalam Perkara Perceraian,” *badilag.mahkamahagung*, 19 Juli 2022, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hak-ex-officio-hakim-sebagai-perwujudan-perlindungan-hukum-terhadap-perempuan-dalam-perkara-perceraian#:~:text=Demi%20kepentingan%20pemenuhan%20hak%20Dhak,pemberian%20hak%20Dhak%20ekonomi%20perempuan>

Khuluq, M. Khusnul “Perlindungan Hak-Hak Perempuan Pasca Perceraian,” *Rahma.id*, 1 November 2021, <https://rahma.id/perlindungan-hak-hak-perempuan-pasca-perceraian/>

Thesis

Fadlun, Mokh. “*Nusyuz* Menurut Imam Abu Hanifah Dan Imam Asy-Syafi’i” Skripsi, Institut Agama Islam Negeri Sunan Kalijaga, 2002. <https://digilib.uin-suka.ac.id/id/eprint/4923/>

Damayati, Ema. “*Nusyuz* Istri Terhadap Suami dalam Perspektif Hukum Keluarga Islam” Skripsi, Institut Agama Islam Negeri Merto, 2018. <https://repository.metrouniv.ac.id/id/eprint/1901/>

Islam, Uwes Hujjatul. “Penyelesaian Perceraian Karena Istri *Nusyuz*” Skripsi, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2009. https://repository.uinjkt.ac.id/dspace/bitstream/123456789/7252/1/Uwes%20Hujjatul%20Islam-FSH_NoRestriction.pdf

Ikrom, Mohamad. “Pandangan Hukum Perkawinan Islam Terhadap *Nusyuz* Suami” Skripsi, Institut Agama Islam Negeri (IAIN) Jember, 2020. <http://digilib.uinkhas.ac.id/2900/1/PENELITIAN%20KOMPLIT%20JABFUNG%20IKROM.pdf>

Wulandari, Hesti. “*Nusyuz* Suami Dalam Perspektif Hukum Islam Dan Hukum Positif” Skripsi, Universitas Islam Negeri (UIN) syarif Hidayatullah, 2010. <https://repository.uinjkt.ac.id/dspace/handle/123456789/2046>

Badarudin. “*Nusyuz* suami menurut perspektif hukum Islam dan gender” Tesis, Universitas Islam Negeri (UIN) Raden Intan, 2017. <http://repository.radenintan.ac.id/1677/>

Kawakib, “Konsep *Nusyuz* Suami Istri Pandangan Wahbah Al-Zuhaili Perspektif Gender” Skripsi, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim, 2017.
<http://etheses.uin-malang.ac.id/11302/>

Law

- Kompilasi Hukum Islam tentang Pencegahan Perkawinan Pasal 67
- Kompilasi Hukum Islam tentang Pembatalan Perkawinan Pasal 70-76
- Kompilasi Hukum Islam tentang Kewajiban Suami Pasal 80 ayat 1-7
- Kompilasi Hukum Islam tentang Kewajiban Istri Pasal 83 ayat 1-2
- Kompilasi Hukum Islam tentang Putusnya Perkawinan Pasal 113-117
- Kompilasi Hukum Islam tentang Putusnya Perkawinan Pasal 123
- Kompilasi Hukum Islam tentang Tatacara Perceraian Pasal 132
- Kompilasi Hukum Islam tentang Akibat Putusnya Perkawinan Pasal 152
- Kompilasi Hukum Islam tentang Akibat *Khulu'* Pasal 161
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Pasal 38
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Pasal 40
- Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama Pasal 73 ayat 1
- Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Tatacara Perceraian Pasal 14
- Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Tatacara Perceraian Pasal 20
- SEMA Nomor 3 Tahun 2018 mengakomodir PERMA Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum Point 3

APPENDIXES

A. INTERVIEW PHOTO

1. Photo with Drs. H. M. Hayat, S.H., M.H. as The Judge at Banyuwangi Religious Court



2. Photo with Drs. Hafiz, M.H. as The Judge at Banyuwangi Religious Court



**3. Photo with Dra. Zaenah, S.H., M.H. as The Judge at Banyuwangi
Religious Court**



B. RESEARCH PAPERS



KEMENTERIAN AGAMA REPUBLIK INDONESIA
UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG
FAKULTAS SYARIAH

Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimile (0341)559399
Website: <http://syariah.uin-malang.ac.id> E-mail: syariah@uin-malang.ac.id

Nomor : B- 2858 /E.Sy.1/TL.01/04/2022
Hal : **Pra-Penelitian**

Malang, 20 Agustus 2022

Kepada Yth.

Drs. H. Mohammad Alirido, M.HES. Pengadilan Agama Banyuwangi Kelas 1A
Jl. Jaksa Agung Suprpto No.52, Penganjuran, Kec. Banyuwangi, Kabupaten
Banyuwangi, Jawa Timur 68416. Telp. (0333) 424325.

Assalamualaikum wa Rahmatullah wa Barakatuh

Dalam rangka menyelesaikan tugas akhir/skripsi mahasiswa kami:

Nama : Ifada Azka Ahyu
NIM : 19210137
Fakultas : Syariah
Program Studi : Hukum Keluarga Islam

mohon diperkenankan untuk mengadakan *Pra Research* dengan judul :

**Analisis Pandangan Hakim Terhadap Nusyuz Suami Pada Perkara Cerai Gugat Di
Pengadilan Agama Banyuwangi Perspektif Hukum Islam**, pada instansi yang
Bapak/Ibu Pimpin.

Demikian, atas perhatian dan perkenan Bapak/Ibu disampaikan terima kasih.

Wassalamualaikum wa Rahmatullah wa Barakatuh

Scan Untuk Verifikasi



Tembusan :

1. Dekan
2. Ketua Prodi Hukum Keluarga Islam
3. Kabag. Tata Usaha

C. LETTERS FROM THE BANYUWANGI RELIGIOUS COURT



PENGADILAN AGAMA BANYUWANGI

Jl. Jaku Agung Suprpto No. 53 Telp. 03330 424825, Fax. Men 412421
E-mail : pa-banyuwangi@gmail.com Website : pa-banyuwangi.go.id

BANYUWANGI

Nomor : W13-A3/2953/HM.01.1/9/2022

Banyuwangi, 05 September 2022

Lamp : -

Hal : Surat Izin Pra - Penelitian

Kepada :

Yth. Wakil Dekan Fakultas Syarif'ah
UIN Maulana Malik Ibrahim Malang
di-

Tempat

Assalamu 'alaikum Wr. Wb.

Menunjuk Surat Saudara Nomor : B-2855/P.Sy.1/TL.01/04/2022, tanggal 20 Agustus 2022 perihal sebagaimana pokok surat, maka dengan ini kami berkenan menerima dan membimbing Mahasiswa yang tersebut di bawah ini :

Nama : Ifada Azka Ahyu
NIM : 19210137
Prodi/Jurusan : Hukum Keluarga Islam
Fakultas : Syarif'ah
Judul : Analisis Pandangan Hakim Terhadap Nasyuz Sesami
Pada Perkara Cerai Gugat
Di Pengadilan Agama Banyuwangi

untuk mengadakan Pra Research di Pengadilan Agama Banyuwangi sebagai salah satu syarat wajib penyelesaian tugas akhir/Skripsi.

Kepada yang bersangkutan diwajibkan:

1. Menghormati dan mentaati peraturan dan tata tertib yang berlaku di Kantor Pengadilan Agama Banyuwangi;
2. Dilarang mengambil data yang tidak ada kaitannya dengan kegiatan kunjungan serta tanpa seizin Dosen Pamong;
3. Melaporkan hasil Penelitian kepada Dosen Pamong yang telah ditunjuk oleh Ketua Pengadilan Agama Banyuwangi.



Wassalamu 'alaikum Wr.Wb.

Ketua

Dr. H. Mohammad Alirido, M.HES.

NIP. 195407181994031006

Profesional Etik Etik, Integritas dan Wawasan

D. LETTERS HAVE DONE RESEARCH



PENGADILAN AGAMA BANYUWANGI
 Jl. Jaka Agung Suprapto No. 52 Kode Pos 68143 Telp. (0333) 424325 Faks (0333)
 412420
 Website : <http://www.pa-banyuwangi.go.id> Email : pabanyuwangi@gmail.com
BANYUWANGI

SURAT KETERANGAN
W13-A3/0401/HM/01/2023

Yang bertanda tangan di bawah ini Ketua Pengadilan Agama Banyuwangi Kelas IA, menerangkan bahwa:

Nama : Ifada Azka Ahyu
 NPM : 19210137
 Program Studi : Hukum Keluarga Islam

Yang bersangkutan telah mengadakan penelitian di Kantor Pengadilan Agama Banyuwangi, guna untuk penyusunan skripsi dengan judul "**Analisis Pandangan Hakim Terhadap Nusyuz Suami Pada Perkara CeraI Gugat di Pengadilan Agama Banyuwangi**".

Demikian surat keterangan ini dibuat untuk dapat dipergunakan sebagaimana mestinya.

Banyuwangi, 10 Januari 2023
 A.n Ketua
 Panitera

Drs. H. Subandi, S.H., M.H. ✍
 NIP. 19650610-199203-1-004

F. CONSULTATION PROOF



KEMENTERIAN AGAMA REPUBLIK INDONESIA
UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG
FAKULTAS SYARIAH

Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimili (0341) 559399
Website Fakultas: <http://syariah.uin-malang.ac.id> atau Website Program Studi: <http://lik.uin-malang.ac.id>

CONSULTATION PROOF

Name : Ifada Azka Ahyu
Student Number : 19210137
Department : Islamic State University Maulana Malik Ibrahim of Malang
Supervisor : Jamilah, M.A.
Thesis Title : **The Analysis of Judge's View on Husband's Nusyuz in Divorce by Women Case at Banyuwangi Religious Court in the Perspective of *Mubadalah***

No	Day/Date	Subject of Consultation	Signature
1	Friday, 4 November 2022	Consultation Chapter I	
2	Tuesday, 8 November 2022	ACC Chapter I	
3	Wednesday, 21 December 2022	Consultation Chapter II	
4	Friday, 13 January 2023	ACC Chapter II	
5	Friday, 20 January 2023	Consultation Chapter III	
6	Thursday, 2 March 2023	ACC Chapter III	
7	Friday, 24 March 2023	Consultation Chapter IV	
8	Thursday, 30 March 2023	ACC Chapter IV	
9	Wednesday, 12 April 2023	Consultation Chapter V and Abstract	
10	Monday, 15 May 2023	ACC Translate and ACC Thesis	

Malang, 15 June 2023
Acknowledged by,
Head Department of Islamic Family Law

Erik Sabti Rahmawati, M.A., M.Ag.
NIP. 197511082009012003

G. GUIDELINE FOR INTERVIEWS

1. What is your father's/mother's considering of the definition of husband's nusyuz?
2. What forms of husband's nusyuz do you know?
3. From what reference/source did you find out about your husband's nusyuz?
4. What is the legal basis for the judges at Banyuwangi religious court to think that it was husband's nusyuz? Why wasn't it included in the verdict?
5. According to you, is there a husband's nusyuz term in the case of divorce at Banyuwangi Religious Court?
6. What do you think about the wife's rights after the divorce by women because of her husband's nusyuz?
7. What do you think about the husband's nusyuz using mubadalah?
8. If the position of the husband's rights is the same as the wife's obligations, vice versa. Does that also apply to nusyuz?
9. If the wife who files for divorce falls into the nusyuz category, does the same apply to the husband?

CURRICULUM VITAE



PERSONAL INFORMATION

Name	Ifada Azka Ahyu
SIN	19210137
Place, Date of birth	Bengkulu, August 13 th 2001
Address	Jalan Hibrida XV RT 10 RW 04, Sidomulyo, Gading Cempaka, Bengkulu, 38229.
Phone Number	+62 812-7961-6922
Email	officialazka13@gmail.com
Religion	Islam
Gender	Female

FORMAL EDUCATION

No	School/Institute	Major	Period
1	TK Dharma Wanita Persatuan - Bengkulu	-	2006-2007
2	SDIT IQRA' 2 - Bengkulu	-	2007-2013
3	SMPIT IQRA' - Bengkulu	-	2013-2016
4	SMAS DAAR EL-QOLAM 2 - Tangerang	Science	2016-2019
5	Strata 1 (S-1) UIN Maulana Malik Ibrahim Malang	Islamic Family Law	2019-2023