

**EXTRAJUDICIAL DIVORCE: A COMPARATIVE STUDY OF
LEGAL PROVISIONS IN INDONESIA AND
SELANGOR MALAYSIA**

THESIS

By:

TAMIMATUN NIHAYAH

SIN 220201110075



ISLAMIC FAMILY LAW DEPARTMENT

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah,

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

EXTRAJUDICIAL DIVORCE: A COMPARATIVE STUDY OF LEGAL PROVISIONS IN INDONESIA AND SELANGOR MALAYSIA

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

Malang, May 6th 2026

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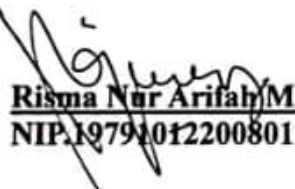
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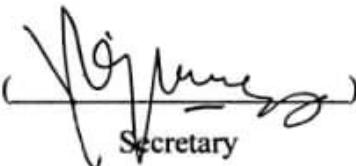
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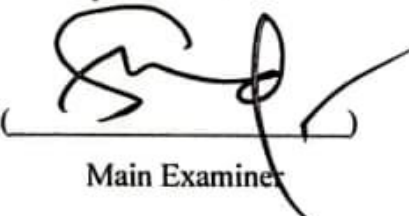
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MOTTO

الطَّلَاقُ مَرَّتَيْنِ فَأَمْسَاكِ بِمَعْرُوفٍ أَوْ تَسْرِيحُ بِإِحْسَانٍ

Divorce is twice. Then (after that), either keep (her) in an acceptable manner or release (her) with good treatment..

(QS Al-Baqarah:229).

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The author acknowledges that the preparation of this thesis was not without various challenges and limitations. However, thanks to the prayers, support, and assistance from various parties, this thesis has been successfully completed. Therefore, the author would like to express gratitude to:

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With the completion of this thesis, it is hoped that it will provide benefits and contribute, both theoretically and practically, particularly to the development of Islamic Family Law studies. The author is aware that this thesis is far from perfect, and therefore the author sincerely welcomes constructive criticism and suggestions for future improvements.

Malang, May 6th 2026

The Author,



Tamimatun Nihayah

SIN 220201110075

TRANSLITERATION GUIDE

In academic writing, the use of foreign terms is often unavoidable. In general, according to the General Guidelines for Indonesian Spelling (Pedoman Umum Ejaan Bahasa Indonesia), foreign words are written (printed) in italics. In the context of the Arabic language, there are specific transliteration guidelines that are internationally applicable. The following table presents transliteration guidelines as a reference for academic writing. The Indonesian–Arabic transliteration system of the Faculty of Sharia at UIN Maulana Malik Ibrahim Malang is based on the model of the Library of Congress (LC) of the United States, as follows:

Arab	Indonesia	Arab	Indonesia
ا	`	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	’
ث	th	غ	gh
ج	j	ف	f
ح	ḥ	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w
س	s	ه	h
ش	sh	ء	`
ص	ṣ	ي	y
ض	ḍ		

To indicate long vowels (madd), a horizontal stroke is written above the letter, such as â, î, and û, corresponding to (.) و, ي, and ا. Arabic diphthongs are transliterated by combining the two letters “ay” and “aw,” as in layyinah and lawwāmah. Words ending with tā’ marbūṭah that function as adjectives or muḍāf ilayh are transliterated with “ah,” whereas those that function as muḍāf are transliterated with “at.” menunjukkan bunyi hidup panjang (madd), maka caranya dengan menuliskan coretan horizontal di atas huruf, seperti â, î, û (.) و, ي, ا Bunyi hidup dobel Arab ditransliterasikan dengan menggabungkan dua huruf “ay” dan “aw” seperti layyinah, lawwāmah. Kata yang berakhiran tā’ marbūṭah dan berfungsi sebagai sifat atau muḍāf ilayh ditransliterasikan dengan “ah”, sedangkan yang berfungsi sebagai muḍāf ditransliterasikan dengan “at”

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ABSTRAK

Tamimatun Nihayah, 220201110075, **Talak di Luar Pengadilan: Studi Komparatif Ketentuan Hukum di Indonesia dan Selangor Malaysia**. Skripsi Jurusan Hukum Keluarga Islam, Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang.

Pembimbing: Risma Nur Arifah M.H.

Kata Kunci: Talak Luar Pengadilan, Perbandingan Hukum, Indonesia dan Selangor.

Fenomena talak di luar pengadilan menunjukkan adanya kesenjangan antara hukum positif dan praktik sosial masyarakat. Dalam perspektif fikih, talak dianggap sah apabila memenuhi rukun dan syarat meskipun dilakukan di luar pengadilan, sedangkan hukum positif di Indonesia mensyaratkan perceraian hanya sah di depan sidang Pengadilan Agama. Perbedaan ini menimbulkan persoalan kepastian hukum serta perlindungan hak perempuan dan anak. Sementara itu, Negeri Selangor Malaysia memiliki mekanisme berbeda dengan tetap mengakomodasi talak di luar mahkamah melalui proses pengesahan. Penelitian ini bertujuan untuk menganalisis ketentuan hukum talak di luar pengadilan di Indonesia dan Selangor berdasarkan Enakmen Undang-Undang Keluarga Islam Negeri Selangor 2003.

Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perbandingan (*comparative approach*). Bahan hukum yang digunakan meliputi bahan hukum primer berupa peraturan perundang-undangan, bahan hukum sekunder berupa literatur hukum dan jurnal ilmiah, serta bahan hukum tersier sebagai penunjang. Pengumpulan bahan hukum dilakukan melalui studi kepustakaan, kemudian dianalisis secara yuridis normatif dengan penalaran deduktif untuk membandingkan pengaturan hukum di kedua wilayah.

Hasil penelitian menunjukkan bahwa dalam hukum positif Indonesia, talak yang diucapkan di luar pengadilan tidak diakui sebagai perceraian yang sah karena tidak memenuhi unsur formil, sehingga tidak menimbulkan akibat hukum dan berimplikasi pada ketidakpastian hukum serta tidak terpenuhinya hak perempuan dan anak. Berbeda dengan itu, di Negeri Selangor, talak yang dilakukan di luar Mahkamah tidak langsung diakui sebagai perceraian yang sah, melainkan dipandang sebagai pelanggaran hukum apabila dilakukan tanpa izin Mahkamah. Suami yang melafazkan talak di luar Mahkamah diwajibkan untuk melaporkannya dalam jangka waktu 7 (tujuh) hari untuk diperiksa keabsahannya. Jika dinyatakan sah, perceraian disahkan dan dicatatkan. Namun, terhadap pelanggaran tersebut tetap dapat dikenakan sanksi berupa denda paling banyak RM1.000 atau pidana penjara paling lama 6 (enam) bulan, atau kedua-duanya. Perbedaan ini menunjukkan bahwa Indonesia menolak keabsahan talak di luar pengadilan secara tegas, sedangkan Selangor mengakomodasinya melalui mekanisme pengesahan yang disertai sanksi.

ABSTRACT

Tamimatun Nihayah, 220201110075, **Extrajudicial Divorce: A Comparative Study of Legal Provisions in Indonesia and Selangor Malaysia**. Thesis Department of Islamic Family Law, Faculty of Sharia. State Islamic University of Maulana Malik Ibrahim Malang.

Supervisor: Risma Nur Arifah M.H.

Keywords: Extrajudicial Divorce, Comparative Law, Indonesia and Selangor.

The phenomenon of extrajudicial divorce highlights a gap between positive law and social practices. From the perspective of Islamic jurisprudence, a divorce is valid if it meets the essential elements and conditions, even if conducted outside of court, whereas positive law in Indonesia requires that a divorce be valid only when pronounced in a Religious Court. This difference raises issues regarding legal certainty and the protection of the rights of women and children. Meanwhile, the State of Selangor in Malaysia has a different mechanism that still accommodates extrajudicial divorce through a validation process. This study aims to analyze the legal provisions regarding extrajudicial divorce in Indonesia and Selangor based on the Enactment of the Selangor State Islamic Family Law Act 2003.

This research is a normative legal study using a comparative approach. The legal materials consist of primary sources, such as statutory regulations; secondary materials, including legal literature and academic journals; and tertiary materials, serving as supporting references. Data were collected through library research and analyzed using a normative juridical method with deductive reasoning to compare the legal regulations in both jurisdictions.

The results of the study show that under Indonesian positive law, extrajudicial divorce is not recognized as a valid divorce because it does not fulfill formal legal requirements, thus producing no legal consequences and leading to legal uncertainty as well as the failure to protect women's and children's rights. In contrast, in Selangor, extrajudicial divorce is not automatically recognized as valid but is considered a legal offense if conducted without the court's permission. The husband is required to report the divorce within seven (7) days for verification. If deemed valid, the divorce will be legalized and officially recorded; however, the offender may still be subject to a sanction, a fine of up to RM1,000, imprisonment of up to six (6) months, or both. This difference indicates that Indonesia strictly rejects extrajudicial divorce, while Selangor accommodates it through a validation mechanism accompanied by legal sanctions.

مستخلص البحث

تقيمة النهائية . ٢٢٠٢٠١١١٠٠٧٥ ، الطلاق خارج المحكمة :دراسة مقارنة للأحكام القانونية في إندونيسيا وسيلانجور بماليزيا. رسالة برنامج الأحوال الشخصية، كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج.

المشرفة ريسما نور عارفة ، الماجستير

الكلمات المفتاحية: الطلاق خارج المحكمة، المقارنة القانونية ، إندونيسيا ، وسيلانجور.

تُظهر ظاهرة الطلاق خارج المحاكم وجود فجوة بين القانون الوضعي والممارسات الاجتماعية للمجتمع. من منظور الفقه الإسلامي، يُعتبر الطلاق صحيحاً إذا استوفى أركانه وشروطه حتى لو تم خارج المحكمة، في حين أن القانون الوضعي في إندونيسيا يشترط أن يكون الطلاق صحيحاً فقط أمام محكمة الشريعة. يؤدي هذا الاختلاف إلى إثارة مشاكل تتعلق باليقين القانوني وحماية حقوق المرأة والطفل. وفي الوقت نفسه، تتبع ولاية سيلانجور الماليزية آلية مختلفة، حيث تسمح بالطلاق خارج المحكمة من خلال عملية المصادقة. تهدف هذه الدراسة إلى تحليل أحكام قانون الطلاق خارج المحكمة في إندونيسيا وسيلانجور استناداً إلى قانون الأسرة الإسلامية لولاية سيلانجور لعام ٢٠٠٣.

تشمل المواد القانونية المستخدمة المواد القانونية الأولية المتمثلة .(النهج المقارن) تعد هذه الدراسة بحثاً قانونياً معيارياً يتبع نهجاً مقارناً في التشريعات، والمواد القانونية الثانوية المتمثلة في الأدبيات القانونية والمجلات العلمية، بالإضافة إلى المواد القانونية الثالثة كمواد داعمة. تم جمع المواد القانونية من خلال دراسة المراجع، ثم تم تحليلها من الناحية القانونية المعيارية باستخدام الاستدلال الاستنتاجي لمقارنة الأنظمة القانونية في كلا المنطقتين.

تشير نتائج الدراسة إلى أنه في القانون الإيجابي الإندونيسي، لا يُعترف بالطلاق الذي يُنطق به خارج المحكمة كطلاق صحيح لأنه لا يستوفي الشروط الشكلية، وبالتالي لا يترتب عليه أي أثر قانوني، مما يؤدي إلى عدم اليقين القانوني وعدم إعمال حقوق المرأة والطفل. وعلى عكس ذلك، في ولاية سيلانجور، لا يُعترف بالطلاق الذي يتم خارج المحكمة مباشرة كطلاق صحيح، بل يُنظر إليه على أنه مخالفة قانونية إذا تم دون إذن من المحكمة. ويلتزم الزوج الذي ينطق بالطلاق خارج المحكمة بالإبلاغ عنه في غضون ٧ (سبعة) أيام لفحص صحته. وإذا أُعلن أنه صحيح، يُصدق الطلاق ويُسجل. ومع ذلك، لا يزال من الممكن فرض عقوبة على هذا الانتهاك في شكل غرامة لا تزيد عن ١٠٠٠ رينغيت ماليزي أو عقوبة السجن لمدة أقصاها ٦ (ستة) أشهر، أو كليهما. ويُظهر هذا الاختلاف أن إندونيسيا ترفض بشكل قاطع صحة الطلاق خارج المحكمة، في حين أن ولاية سيلانجور تستوعبه من خلال آلية المصادقة المصحوبة بالعقوبات.

CHAPTER I

INTRODUCTION

A. Research Background

The legal objective of marriage to establish a family characterized by *sakinah*, *mawaddah*, and *rahmah* is neither simple nor easy to achieve. Husbands and wives are required to possess sufficient understanding to address various household issues effectively. This understanding refers to knowledge of the law, including the rights and obligations of spouses as well as the legal provisions governing the dissolution of the marital bond.¹ The end of a marriage is a possibility, because fundamentally, the marriage contract is a bond or agreement based on a mutual consent between two parties to build a life together. Thus, this bond can be severed when the purpose of the marriage can no longer be maintained.²

Divorce by *talaq* is one of the most common forms of divorce in Muslim societies. From a *fiqh* perspective, *talaq* is understood as the husband's prerogative to dissolve the marriage bond, provided that the prescribed pillars and conditions are met. This understanding is still widely held by the public, so that divorce is often considered religiously valid even if it is carried out outside the judicial system. This view is also in line with the fatwa of the Indonesian Ulema Council, which recognizes the validity of divorce under Islamic law, with the stipulation that the

¹ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia*, (Jakarta: Kencana, 2006), 39.

² Achmad Kuzari, *Nikah Sebagai Perikatan* (Jakarta: Raja Grafindo Persada, 1995), 5.

divorce must still be reported to the court to obtain legal certainty.³ However, in practice, this requirement is not always followed, so divorce is still frequently carried out informally outside the court system. This situation subsequently gives rise to various legal issues, particularly regarding legal certainty and the protection of the rights of the parties involved in the divorce, especially women.⁴

In the Indonesian legal context, Law No. 1 of 1974 on Marriage stipulates that divorce can only be granted in a court hearing.⁵ This is reinforced by the provisions of Article 115 of the Compilation of Islamic Law, which states that divorce can only be granted in a Religious Court hearing after the court has attempted and failed to reconcile the two parties.⁶ These rules aim to maintain legal certainty, protect the rights of women and children, and prevent arbitrary divorce practices.⁷

Divorces granted outside of court are essentially difficult to account for through statistical data because such practices are not officially recorded in either the judicial or civil registration systems. This phenomenon is often referred to as “informal” divorce or “unregistered divorce” carried out unilaterally by the husband

³ Andriansyah Andriansyah dkk., “Talak Di Luar Pengadilan Dalam Perspektif Fatwa Mui No. 4 Tahun 2012, Undang-Undang Perkawinan Dan Kompilasi Hukum Islam,” *Islamitsch Familierecht Journal*, no. 1 (2025): 83, <https://doi.org/10.32923/ifj.v6i1.5784>.

⁴ Khairizzaman, dan Armia, “Talak di Luar Pengadilan dan Implikasinya,” *Jurnal Tahqiqat: Jurnal Pemikiran Hukum Islam*, no.2 (2022): 46 <https://doi.org/10.61393/tahqiqat.v16i2.80>

⁵ Pasal 39 ayat 1 Undang-undang Nomor 1 Tahun 1974 tentang perkawinan.

⁶ Pasal 115 Kompilasi Hukum Islam.

⁷ Nita Azita Zein, Imam Yazid, dan Heri Firmansyah, “*The Dualism of Reconciliation Law After Triple Talaq Outside the Court*,” *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, no.1(2023):187 <http://dx.doi.org/10.29300/mzn.v10i1.4964>

without involving the Religious Court.⁸ The lack of record-keeping makes the exact number of cases impossible to determine, but various empirical studies indicate that the practice of divorce outside the court still occurs in several regions.

Penelitian Field research in Lawe Kongker Village, Lawe Alas Subdistrict (Aceh), found 23 couples who divorced outside the Sharia Court during the 2018–2020 period, with 6 cases in 2018, 8 cases in 2019, and 9 cases in 2020. These informal divorces were conducted without involving the court and were triggered by several factors, including economic issues, infidelity, demands from the wife, and gambling practices, and were reinforced by the community's understanding that a divorce is sufficient if pronounced by the husband without a formal legal process.⁹ Similar findings were documented in an empirical study in Bathin II Babeko Subdistrict (Bungo Regency), which documented the practice of extrajudicial divorce in various villages within that subdistrict. These include the villages of Sepunggur (20 cases in 2020), Sungai Gedang (20 cases in 2020), Kemini (10 cases in 2021), Kampung Baru (20 cases in 2022), and Simpang Empat (23 cases). The study concluded that the main reasons people choose out-of-court divorce are case costs, the distance to religious courts, the influence of customary law, and low awareness and compliance with state legal procedures.¹⁰ This data indicates that the

⁸ Ifdal, "Isbath Talak Terhadap Perceraian Yang Dilakukan diluar Pengadilan" 19 April 2024, diakses 1 September 2025, <https://pa-jakartatimur.go.id/isbath-talak-terhadap-perceraian-yang-dilakukan-diluar-pengadilan>

⁹ Ana Pitria, Fuad Rahman, dan Ramlah, "Resolusi Konflik Talak di Luar Pengadilan Perspektif Hukum Islam dan Hukum Positif," *Journal of Comprehensive Islamic Studies* no.1 (2023): 126-127 <https://doi.org/10.56436/jocis.v2i1.235>.

¹⁰ Umira Umira dkk., "Talak By Husband Outside The Shar'iyah Court (Research Study in Lawe Kongker Village, Lawe Alas District, Southeast Aceh Regency)," *Proceedings of Malikussaleh*

practice of extrajudicial divorce is not an occasional phenomenon, but a recurring and significant social practice. Because it is not recorded in state administration, official national divorce statistics fail to reflect the existence of this phenomenon; thus, empirical evidence from local studies becomes crucial to confirm that there is a significant gap between positive legal norms and social practices, where society still views divorce as a husband's prerogative that can be exercised at any time.

This discrepancy indicates a difference between the perspectives of religious law and positive law in assessing the validity of extrajudicial divorce. This difference subsequently influences societal practices regarding the interpretation of divorce, thereby raising issues related to legal certainty a fundamental principle in ensuring that every legal action has clear and predictable consequences.¹¹ In divorce cases, this principle is vital for protecting the rights of the parties and preventing new disputes. Therefore, divorce proceedings conducted before a court serve as the primary means of achieving legal certainty, as the legal event is documented through an authentic deed issued by an authorized official.¹² From the perspective of public interest, this provision prevents arbitrary divorce and the abuse of power

International Conference on Law, Legal Studies and Social Science (MICoLLS) (2022): 3-4 <https://doi.org/10.29103/micolls.v2i.118>.

¹¹ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Cahaya Atma Pustaka, 2010), 160.

¹² Ratu Salsabila Tutu dan Prahasti Suyaman, "Legal Implications Of Divorce Without A Trial On The Rights Of Divorced Couples," *KRTHA BHAYANGKARA*, no. 2 (2025): 367, <https://doi.org/10.31599/krtha.v19i2.4011>.

by the husband, as well as avoids uncertainty regarding marital status resulting from extrajudicial divorces that lack legal force.¹³

A similar phenomenon also occurs in countries with an Islamic legal background, including Malaysia. Indonesia and Malaysia share historical and cultural ties, where Islam developed through Malay traditions and both have adopted family law systems influenced by Islamic law and positive law. Furthermore, as two countries with Muslim majority populations, issues related to marriage and divorce receive significant attention due to their connection to social needs and public order.¹⁴

Although they share similar historical roots and legal foundations, the two countries apply different legal mechanisms in regulating divorce. Indonesia emphasizes that a divorce is only valid if pronounced before a Religious Court, without criminal penalties for violators. In comparison, Malaysia, through the Enactment of the Selangor State Islamic Family Law Act 2003, also stipulates that a divorce is only valid if pronounced before a Sharia Court and explicitly provides that a divorce conducted outside a Sharia Court and without the court's permission constitutes a legal violation.¹⁵ However, what is interesting is that the legal system in Selangor imposes strict sanctions on husbands who pronounce a divorce outside of court, including criminal fines or imprisonment. This demonstrates a stronger

¹³ Latifah Ratnawaty, "Perceraian Di Bawah Tangan Dalam Perspektif Hukum Islam Dan Hukum Positif," *Yustisi*, no. 1 (2017), 118 <https://doi.org/10.32832/yustisi.v4i1.1126>.

¹⁴ Fatkhul Muin, "Politik Hukum Islam Di Indonesia Dan Malaysia: Suatu Kajian Perbandingan". *Al-Manahij: Jurnal Kajian Hukum Islam* No.2 (2017):279. <https://doi.org/10.24090/mnh.v10i2.938>.

¹⁵ Pasal 125 Enakmen Undang-Undang Keluarga Islam Negeri Selangor Tahun 2003.

effort to enforce the rules and prevent non-procedural divorce practices that could harm women and children.¹⁶

A comparison between Indonesia and Selangor opens up an interesting area of study. Both regions are based on Islamic law but have different legal enforcement mechanisms. Indonesia emphasizes normative regulations with a focus on civil law, while Selangor combines normative regulations with criminal instruments to deter violations. These differences have implications for the level of public compliance, the effectiveness of law enforcement, and the protection of women's rights in divorce.

The urgency of this research lies in the need to conduct a comparative analysis of how two legal systems those of Indonesia and Selangor respond to the phenomenon of extrajudicial divorce. This study is important because it concerns legal certainty and the protection of human rights, particularly regarding women and children, who are often the most vulnerable parties in divorce proceedings. This comparative analysis will also demonstrate to what extent Islamic law can be adapted within the context of a modern state with a different legal system.

Accordingly, this research is expected to contribute to the development of legal science, particularly Islamic family law, and serve as a reference for policymakers to strengthen the regulation and implementation of marriage law in Indonesia. At the same time, this research can also enrich the comparative legal

¹⁶ Rukiah M.Ali, "Efektivitas Pelaksanaan Sanksi Talak di Luar Mahkamah Rendah Syariah," *Pelita*, no.1 (2018): 85 <https://doi.org/10.22373/petita.v3i1.41>.

literature between Indonesia and Malaysia and open a broader discourse on the harmonization of religious law and state law in family matters.

B. Statement of Problem

Based on the background described above, the research questions in this study are as follows:

1. What are the legal provisions regarding extrajudicial divorce under Indonesian legislation?
2. What are the legal provisions regarding extrajudicial divorce according to the Enactment of the Selangor State Islamic Family Law Act 2003?

C. Objectives of Research

Based on the research questions outlined above, the objectives of this study are as follows:

1. To analyze the legal provisions regarding extrajudicial divorce under Indonesian law.
2. To analyze the legal provisions regarding extrajudicial divorce according to the Enactment of the Selangor State Islamic Family Law Act 2003.

D. Benefits of Research

The benefits of this research that the author can outline are at least two: theoretical and practical benefits. The following is a description of these benefits:

1. Theoretical Benefits

This study is expected to contribute to the development of legal science, particularly Islamic family law, with a focus on the issue of legal certainty regarding extrajudicial divorce. This study can also enrich the academic literature on the comparison of Indonesian and Malaysian Islamic Family Law, thereby serving as a reference for students, researchers, and academics conducting similar research in the fields of family law and comparative law.

2. Practical Benefits

a. For the Community

Providing a more comprehensive understanding of the importance of legal certainty in divorce resulting from divorce (talak), so that the public can better recognize the risks of extrajudicial divorce practices and their impact on the rights of women and children.

b. For the Government and Relevant Institutions

Provides input for policymakers, particularly legislative bodies and religious courts, in strengthening marriage law regulations and implementation to more effectively protect vulnerable parties

c. For Future Researchers

To serve as a reference and starting point for research seeking to explore the issue of extrajudicial divorce, whether from the perspective of Islamic law, positive law, or a comparative approach with other countries.

E. Method of Research

Method refers to a specific approach or technique, while research is a scientific activity involving systematic and methodologically consistent analysis.¹⁷ Research methods constitute a field of science that examines the various approaches or steps used in conducting research activities, from problem formulation to the final report stage. Thus, this study employs the following research methods.

1. Type of Research

This study is a type of normative legal research. Normative legal research is legal research conducted by examining literature or secondary data as the primary source. This study focuses on an analysis of legal norms enshrined in legislation, court decisions, and the doctrines of legal experts. The scope of normative legal research includes research on legal principles, legal systematics, the degree of legal synchronization both vertically and horizontally, comparative law, and legal history.¹⁸

Using the normative research method, this study examines legal provisions regarding extrajudicial divorce, with a focus on comparing the legal norms applicable in Indonesia and Malaysia, particularly in Law No. 1 of 1974, the Compilation of Islamic Law, and the Enactment of the Selangor State Islamic Family Law 2003.

¹⁷ Beni Ahmad Saebani, *Metode Penelitian Hukum* (Bandung: Pustaka Setia, 2009), 13.

¹⁸ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pres, 2013), 14.

2. Research Approach

This study employs a comparative approach. According to Peter Mahmud Marzuki in his book *Legal Research*, comparative legal studies are defined as activities aimed at comparing legal systems from two different countries or from two different time periods.¹⁹ Through this approach, the researcher can trace the similarities and differences regarding the regulation and application of extrajudicial divorce in the legal systems of Indonesia and Malaysia.

3. Legal Sources

Referring to the opinion of Soerjono Soekanto, legal materials can be divided into three categories: primary, secondary, and tertiary legal materials.²⁰

a. Primary Legal Sources

According to Peter Mahmud Marzuki, primary legal sources are authoritative sources of law, such as legislation, court transcripts, and court decisions.²¹ In this study, primary legal sources include Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975 on the Implementation of the Marriage Law, the Compilation of Islamic Law, and the Enactment of the Selangor State Islamic Family Law 2003. All of these regulations serve as the primary reference for examining how the provisions regarding

¹⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Revisi (Jakarta: Kencana Prenada Media, 2005), 133.

²⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2006), 51.

²¹ Marzuki, *Penelitian Hukum*, 141.

extrajudicial divorce are regulated normatively in both Indonesia and Malaysia.

b. Secondary Legal Sources

Secondary legal materials are those that provide explanations and analyses of primary legal materials. Peter Mahmud Marzuki explains that secondary legal materials include various legal literature such as books, theses, dissertations, and legal journals. Additionally, secondary sources may also include legal dictionaries and studies or analyses of court decisions.²²

c. Tertiary Legal Materials

Tertiary legal materials are materials that provide guidance or explanations regarding primary and secondary legal materials. Tertiary legal materials include legal dictionaries, legal encyclopedias, news on websites, and other relevant materials.²³ In this study, tertiary legal materials were obtained from court websites.

4. Methods of Collecting Legal Materials

The data collection method in this study was conducted through library research,²⁴ specifically by searching for and collecting primary, secondary, and tertiary legal materials relevant to the research topic. Primary legal materials were obtained from legislation such as Law No. 1 of 1974 on Marriage along with its implementing regulations, the Compilation of Islamic Law, and the

²² Marzuki, *Penelitian Hukum*, 141.

²³ Soekanto, *Pengantar Penelitian Hukum*, 52.

²⁴ Soekanto, *Pengantar Penelitian Hukum*, 66.

Enactment of the Selangor State Islamic Family Law 2003. Secondary legal materials were obtained from legal literature, books, scientific journals, academic articles, and court decisions addressing divorce resulting from extrajudicial divorce. Meanwhile, tertiary legal materials were obtained from legal dictionaries, encyclopedias, legal bibliographies, journal indexes, and relevant non-legal literature. All legal materials were collected from libraries, journal databases, and the official websites of government and judicial institutions to ensure a valid and comprehensive analysis.

5. Method of Processing Legal Materials

The method of processing legal materials in this study constitutes the analytical phase of normative legal research, aimed at processing, interpreting, and drawing legal conclusions from the primary, secondary, and tertiary legal materials that have been collected.²⁵ The processing of legal materials is carried out using normative legal analysis that emphasizes deductive reasoning as the primary method, namely by drawing conclusions from general legal norms to answer concrete legal problems.²⁶

The legal materials obtained were systematically organized and classified according to the subject of study, then analyzed and interconnected to address the research questions. In this process, the author examined the content, structure, and substance of the legal norms governing extrajudicial

²⁵ Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum*, (Yogyakarta: Publika Global Media, 2024), 132.

²⁶ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT RajaGrafindo Persada, 2006), 166.

divorce in Indonesia and Malaysia, thereby obtaining a clear picture of the legal framework within each legal system. Subsequently, the results of the analysis of this legal material are presented in a descriptive-analytical manner to highlight the similarities and differences in the applicable legal provisions, as well as to draw legal conclusions in accordance with the research objectives.

F. Previous Research

Previous research refers to studies conducted by prior researchers on the topic under investigation. The primary objective of this review is to present various findings, similarities, and differences among these studies. Thus, previous research provides a clear picture of the topic's development and establishes a foundation for the upcoming study. Additionally, this review is useful for understanding the contributions made by previous research, as well as for identifying gaps that can still be further explored. The following are several relevant prior studies that offer in-depth insights regarding extrajudicial divorce, which will serve as references in this study:

First, a thesis written by Naufal Ghoni Thifal in 2020 titled "Analysis of Extrajudicial Divorce According to Fiqh Law and Positive Law." This study outlines the fundamental differences between Islamic jurisprudence (fiqh), which considers divorce valid even if not conducted through the courts, and the Indonesian positive law, which only recognizes divorce if it is decided in a religious court hearing. The similarity between this study and the author's research lies in both addressing the issue of extrajudicial divorce. The difference is that this study focuses

on a comparison between Islamic jurisprudence and Indonesian positive law, while the author's research emphasizes the provisions of extrajudicial divorce through a cross-national comparison, specifically between Indonesia and Malaysia.²⁷

Furthermore, The thesis written by Mufham Fikron Kamaluddin (2025), titled "The Issuance of Divorce Outside Religious Courts According to the Perspectives of Religious Court Judges (A Case Study in Karangputat Village, Nusawungu Subdistrict, Cilacap Regency)," examines the practice of issuing divorce outside the court by reviewing the perspectives of Religious Court judges. This study employs a normative legal method combined with an empirical approach through interviews and observations of the local community. The results of the study indicate that the practice of divorce outside the court is still frequently carried out due to low legal awareness and the strong influence of classical fiqh views, which consider divorce valid even if not pronounced in court. In this regard, the judges opine that divorce outside the court is invalid because it lacks the legal validity issued by the court. The similarity with the author's research lies in the focus on the practice of divorce outside the court and its implications for legal certainty, whereas the difference is that the study by Mufham emphasizes the judges' perspectives and the social conditions of the local community (Cilacap), while this study is

²⁷ Naufal Ghoni Thifal, "Analisis Terhadap Talak di Luar Pengadilan Menurut Hukum Fikih dan Hukum Positif" (Undergraduate Skripsi Institut Agama Islam Negeri Ponogoro, 2020), <https://etheses.iainponorogo.ac.id/11437>.

normative-comparative, examining the provisions of divorce outside the court in the contexts of Indonesia and Malaysia (Selangor).²⁸

The next study, a thesis written by Anisah Husna Nabilah (2025) titled “Extrajudicial Divorce According to the Compilation of Indonesian Islamic Law and the Islamic Family Law of Brunei Darussalam,” discusses a comparison of legal regulations regarding extrajudicial divorce between two Muslim countries in Southeast Asia, namely Indonesia and Brunei Darussalam. This study employs a normative-comparative method with a library research approach, focusing on the analysis of legal regulations governing marriage and divorce in both countries. The results of the study indicate that Indonesia’s Compilation of Islamic Law (KHI) does not permit divorce to be conducted outside of court, whereas Brunei Darussalam’s Islamic Family Law allows divorce to be carried out without a court process, although both require the divorce to be registered with the court after it is pronounced. Furthermore, in Indonesia there are no sanctions for those who perform divorce outside of court, whereas in Brunei Darussalam there are legal provisions that impose consequences on violators of this procedure. The similarity with the author’s research lies in the comparative approach and the focus on the issue of legal certainty in the implementation of divorce outside of court. The difference is that in Anisah’s research , she compares Indonesia with Brunei

²⁸ Mufham Fikron Kamaluddin, "Penjatuhan Talak di Luar Pengadilan Agama Menurut Pandangan Hakim Pengadilan Agama (Studi Kasus di Desa Karangputat Kecamatan Nusawungu Kabupaten Cilacap)" (Undergraduate Skripsi Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto, 2025), <http://repository.uinsaizu.ac.id/id/eprint/28893>.

Darussalam, whereas the author's research compares Indonesia with Malaysia, focusing on Selangor.²⁹

Finally, the thesis by Siti Na'ilah Binti Ahmadi (2025) titled "Legalization of Extrajudicial Divorce Under Malaysian Law (A Study of the Divorce Provisions of Ordinance 43 of the Sarawak Islamic Family Law Act 2001)," discusses the legal provisions regarding out-of-court divorce in the state of Sarawak. This study employs a normative method by analyzing Ordinance 43 of 2001 as the primary instrument of Islamic family law in Sarawak. The research findings indicate that Sarawak's Islamic family law provides legal recognition for divorces conducted outside the court, provided they meet certain conditions and are registered with the competent authority after being pronounced. These regulations affirm that a divorce pronounced outside the court is not automatically deemed invalid; rather, its validity depends on the mandatory reporting and registration process in accordance with statutory provisions. The similarity with the author's research lies in the discussion of divorce practices outside the judicial system and their implications for legal certainty, while the difference lies in the scope of the study, as Siti Na'ilah's research only analyzes local provisions in Sarawak, while the author's research is comparative between Indonesia and Malaysia (Selangor), with a theoretical analysis that focuses on the theory of legal certainty in understanding the validity

²⁹ Anisah Husna Nabilah, "Talak di Luar Pengadilan Menurut Kompilasi Hukum Islam Indonesia dan Hukum Keluarga Islam Brunei Darussalam" (undergraduate Skripsi Universitas Islam Negeri Sunan Gunung Djati Bandung, 2025), <https://digilib.uinsgd.ac.id/id/eprint/110135>.

and legal consequences of divorce pronounced outside the court in two different legal systems.³⁰

Tabel 1. 1 Similarities & Differences with Previous Research

No	Title	Similarities	Differences
1.	Naufal Ghoni Thifal, Analysis of Extrajudicial Divorce According to Fiqh and Positive Law, 2020.	Both highlight The issues surrounding divorce outside of court	The study focuses on a comparison of Islamic jurisprudence and Indonesian positive law regarding divorce outside of court; it does not discuss a comparison between Indonesia and Malaysia.
2.	Mufham Fikron Kamaluddin, " The Issuance of Divorce Outside Religious Courts According to the Perspective of Religious Court Judges (Case Study in Karangputat Village, Nusawungu Subdistrict, Cilacap Regency), 2025	Both use a comparative approach and discuss the legal certainty of divorce outside the court.	The research focuses on the views of judges and the social conditions of the community at the local level (Cilacap), and does not discuss cross-country comparisons such as Indonesia and Malaysia (Selangor).
3.	Anisah Husna Nabilah, Divorce Outside the Court According to the Compilation of Indonesian Islamic Law and the Islamic	Both use a comparative approach and discuss the legal certainty of divorce outside of court	The study compares Indonesia with Brunei Darussalam, whereas the author's study compares Indonesia with Malaysia (Selangor).

³⁰ Siti Na'ilah Binti Ahmadi, "Legalisasi Perceraian di Luar Mahkamah Menurut Undang-Undang Malaysia (Studi Terhadap Aturan Perceraian Ordinan 43 Undang-Undang Keluarga Islam Negeri Sarawak Tahun 2001)," undergraduate Skripsi Universitas Islam Negeri Sunan Kalijaga Yogyakarta, (2025), <http://digilib.uin-suka.ac.id/id/eprint/70897>.

	Family Law of Brunei Darussalam, 2025.		
4.	Siti Na'ilah Binti Ahmadi, "Legalization of Divorce Outside the Court According to Malaysian Law (A Study of the Divorce Provisions of Ordinance 43 of the Sarawak State Islamic Family Law Act 2001), 2025.	Both discuss the practice of divorce or talak outside the judicial system and its relevance to legal certainty.	The study focuses on Sarawak's local regulations regarding the legalization of divorce outside the courts and does not employ a cross-national comparative analysis as in the author's research.

Based on previous studies, it can be concluded that research on divorce outside the court has been conducted extensively, both in Indonesia and in Malaysia. However, none of these studies have specifically examined the legal certainty of divorce outside the court through a comparative study between Indonesia and Malaysia. Therefore, this study offers novelty by presenting a comparative analysis of Law No. 1 of 1974 on Marriage and the Enactment of the Selangor State Islamic Family Law 2003, thereby providing both academic and practical contributions to strengthening the literature on comparative Islamic family law.

G. Structure of The Discussion

The structure of this paper is designed to make the discussion easy for readers to understand and more organized. This thesis is organized into four chapters, as follows:

CHAPTER I: Introduction

This chapter contains the background of the issue, explaining the urgency of research on the comparison of extrajudicial divorce arrangements from the perspective of Indonesian and Malaysian marriage law. This chapter also includes the research questions, research objectives, research benefits, research methods, previous studies, and the structure of the discussion.

CHAPTER II: Literature Review

This chapter contains the theoretical and conceptual foundations regarding divorce in Islamic law and its regulation in positive law in Indonesia and Malaysia. These theoretical foundations are used as a basis for examining and comparing legal provisions on divorce according to the Enactment of the Selangor State Islamic Family Law.

CHAPTER III: Results and Discussion

This chapter presents the research findings and an in-depth analysis of the implementation and procedures of divorce in Malaysia, particularly in the State of Selangor, as well as a comparison with positive law in Indonesia. This chapter also analyzes the extent to which the principle of legal certainty is applied in the implementation of divorce under the Selangor State Islamic Family Law Enactment.

CHAPTER IV: Closing

This chapter contains conclusions and recommendations. The conclusions are formulated as concise answers to the research questions. Recommendations are provided as constructive input for the development of Islamic family law in both Indonesia and Malaysia, as well as a reference for future research.

CHAPTER II

LITERATURE REVIEW

A. Divorce from the Perspective of Islamic Law

1. Definition of Talak

Divorce in Arabic is called talak, which etymologically means to release a bond. The word talak is derived from the word *itlāq* meaning to release, *irsāl* meaning to sever, *tarkun* meaning to leave, dan *firāqun* meaning separation. Terminologically, the term talak is defined as the act of dissolving the marital relationship or the termination of the marital bond between husband and wife.³¹ Terminologically, the term talak is:

حُلُّ رَابِطَةِ الزَّوْجِ وَإِنْهَاءُ الْعِلَاقَةِ الزَّوْجِيَّةِ

“To sever the marital bond and end the relationship between husband and wife”.³²

Terminologically, Islamic scholars share a relatively consistent view in defining divorce, albeit with different phrasing. Sayyid Sābiq defines divorce as the dissolution of the marital relationship between husband and wife, which results in the termination of the marriage bond. ‘Abd al-Raḥmān al-Jazīrī explains talak as the act of dissolving or loosening the marital bond through specific words, so that the marital relationship is severed and the wife is no longer.³³ In a similar

³¹ Mahmudin Bunyamin, *Hukum Perkawinan Islam* (Bandung: CV Pustaka Setia, 2017), 175.

³² Abdul Rahman Ghazaly, *Fiqh Munakahat*. (Cet. II; Jakarta: Kencana, 2003), 190.

³³ Khoirul Abror, *Fiqh Munakahat*, (Lampung: Nur Utopi Jaya, 2009), 84.

vein, Zakariyā al-Anṣārī defines talak as the termination of marriage by using the word talak or other similar phrases.³⁴

In the Mālikī school of thought, divorce is understood as a legal status that nullifies the validity of the marital relationship, whereas the Syāfi'ī school views divorce as the dissolution of the marital bond through words that clearly indicate the meaning of divorce. In fact, Syafi'i fiqh explicitly states that a husband may validly pronounce divorce upon his wife even without following a specific procedure or stating a reason.³⁵ From these various definitions, it can be concluded that divorce is the severing of the marital bond between husband and wife, which essentially ends the purpose of marriage to build a household characterized by *sakinah*, *mawaddah*, and *rahmah*.³⁶

2. Legal Basic for Divorce

The legal basis for divorce is explained in two sources of Islamic law, namely the Qur'an and the Hadith. Allah SWT states in the Qur'an, Surah Al-Baqarah, verse 231, which reads:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ ۚ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا ۚ وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ ۚ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا ۚ وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ لِيُعْظِمَكُمْ بِهِ ۚ وَاتَّقُوا اللَّهَ ۚ وَأَعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

³⁴ Ghazaly, *Fiqh Munakahat*, 192.

³⁵ Idris Ahmad, *Fiqh Syafi'i: Fiqh Islam menurut Madzhab Syafi'i*, (Surabaya: Karya indah, 2002), 385.

³⁶ Rusdaya Basri, *Fikih Munakahat 2*, (Parepare: IAIN Parepare Nusantara Press, 2020), 2.

“And when you divorce women and they have (nearly) fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress (against them). And whoever does that has certainly wronged himself. And do not take the verses of Allah in jest. And remember the favor of Allah upon you and what has been revealed to you of the Book (i.e., the Qur’an) and wisdom (i.e., the Prophet’s sunnah) by which He instructs you. And fear Allah and know that Allah is Knowing of all things”.³⁷

This verse emphasizes that a husband who pronounces divorce is not permitted to wrong his wife by intentionally prolonging her waiting period. This provision serves as a rebuke from Allah the Almighty regarding the actions of Thābit bin Basyar, a man from the Ansar, who divorced his wife when her waiting period was nearly over, then took her back only to divorce her repeatedly. This action caused his wife to remain in the iddah period for as long as nine months, which constituted a form of emotional torment. Because of this act, Allah revealed this verse as a prohibition against divorce practices that involve oppression. Thus, this verse also indicates that divorce has a legal basis in Islam, but its implementation must be based on justice and must not be abused.³⁸

Another verse that serves as the legal basis for divorce is Quran Surah At-Talaq verse 1, which reads:

³⁷ Tafsir Web Surat Al-Baqarah Ayat 231, diakses 2 November 2025 <https://tafsirweb.com/920-surat-al-baqarah-ayat-231.html>.

³⁸ Zulkarnain Abdurrahman, *Konsep Talak Perspektif Masalah dan Keadilan*, (Medan: Perdana Publishing, 2022),15.

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

“O Prophet, when you (Muslims) divorce women, divorce them for (the commencement of) their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their (husbands') houses, nor should they (themselves) leave (during that period) unless they are committing a clear immorality. And those are the limits (set by) Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a (different) matter”.³⁹

Then the legal basis for divorce in the Hadith of the Prophet Muhammad (peace be upon him):

عَنِ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ (أَبْغَضُ الْحَلَالِ عِنْدَ اللَّهِ الطَّلَاقُ) رَوَاهُ أَبُو دَاوُدَ , وَابْنُ مَاجَهَ , وَصَحَّحَهُ الْحَاكِمُ , وَرَجَّحَ أَبُو حَاتِمٍ إِسْرَافَهُ

“From Ibn Umar, may Allah be pleased with him, who said: The Messenger of Allah, peace and blessings be upon him, said, ‘The most detestable of all lawful things in the sight of Allah is divorce.’ (Narrated by Abū Dāwūd and Ibn Mājah) and deemed authentic by Al-Hakim, while Abu Hatim praised its mursals nature”.⁴⁰

³⁹ Tafsir Web Surat At-Talaq ayat 1, diakses 2 November 2025 <https://tafsirweb.com/10981-surat-at-talaq-ayat-1.html>.

⁴⁰ Abdullah bin Abdurrahman al-Bassam, *Syarah Bulughul Maram Jilid 5*. (Jakarta: Pustaka Azzam, 2006), 557.

وَعَنْ مُحَمَّدِ بْنِ لَبِيدٍ قَالَ : أَخْبَرُ رَسُولُ اللَّهِ عَنْ رَجُلٍ طَلَّقَ إِمْرَأَتَهُ ثَلَاثَ تَطْلِيقَاتٍ جَمِيعًا فَقَامَ غَضْبَانَ ثُمَّ قَالَ : أَيْلَعَبُ بِكِتَابِ اللَّهِ تَعَالَى وَأَنَا بَيْنَ أَظْهُرِكُمْ حَتَّى قَامَ رَجُلٌ فَقَالَ : يَا رَسُولَ اللَّهِ ! أَلَا أَقْتُلُهُ ؟ - رَوَاهُ النَّسَائِيُّ وَرَوَاتُهُ مُوْتَقُونَ

“It was narrated from Mahmud bin Labid that he said, ‘The Messenger of Allah was informed that a man had divorced his wife with three divorces at once. The Messenger of Allah became angry, then stood up and said, ‘Does he intend to mock the Book of Allah while I am still alive among you?’ Then a man stood up and said, ‘O Messenger of Allah, what if I were to kill him?’ Hadith narrated by al-Nasa’i; these narrators are trustworthy”.⁴¹

3. The Rulling on Divorce

Scholars agree that divorce has a valid legal basis (is prescribed) in Islam.

They also hold that the law of divorce falls under the category of taklifi, meaning laws that may vary according to circumstances and conditions. Thus, divorce may be obligatory, prohibited, recommended, disliked, or permissible, depending on the cause and circumstances at the time it is pronounced. Ibn Qudāmah in al-Mughnī and Khatib al-Syarbīnī in Mughnī al-Muhtāj explain the details of the law of divorce as follows:⁴²

- a. Divorce may become obligatory if the husband who has committed *ila'* refuses to reconcile after his wife's *iddah* period ends, or when a judge, through two mediators, decides that divorce is the best course for a couple who cannot reconcile.

⁴¹ Abdul Qadir Syaibah al-Hamd, *Fiqh al-Islam: Syarah Bulugh al-Maram min Jam'i Adillat al-Ahkam* (Madinah: Mathabi' ar-Rasyid, cet. I, 1402 H/1982 M), 204.

⁴² Abdurrahman, *Konsep Talak Perspektif Maslahat dan Keadilan*, 20-21.

- b. Divorce may be considered makruh if performed without a clear reason or without necessity, especially when the marital relationship remains harmonious.
- c. Divorce becomes permissible (mubāh) if it is deemed necessary, for example, because the wife has a bad temperament, behaves harshly, or is unable to be a good partner to achieve the goals of marriage.
- d. Divorce is mustahab (recommended) if the wife neglects her religious obligations, such as prayer, and the husband is no longer able to advise or correct her, or when the wife does not preserve her honor and falls into sinful acts.
- e. Divorce becomes prohibited if pronounced while the wife is menstruating or in a state of purity after having had sexual intercourse. This type of divorce is called talak bid'ah or talak bid'i, and the scholars agree that it is prohibited.⁴³ Divorce is also prohibited if it is carried out without a valid reason or justifiable claim, as such an action has the potential to cause harm to both the husband and the wife and does not bring benefit to either party. Conversely, it is also prohibited for a wife to request a divorce from her husband if it is not based on a sharia-compliant reason, as this ruling is based on the hadith:

أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ

⁴³ Syaikh Kamil Muhammad Uwaidh, *Fiqh Wanita*, (Jakarta: Alkautsar, 2010), 456.

“Any woman who asks her husband for a divorce without a valid (sharia) reason, the scent of Paradise is forbidden to her” (Narrated by Aḥmad, Abū Dāwūd, Ibn Mājah, and al-Tirmizī, who deemed it sound).⁴⁴

4. Elements of Divorce

The pillars of divorce are the essential elements that must be present in a divorce, and the validity of the divorce depends on the presence and completeness of these elements. There are four pillars of divorce, as follows:⁴⁵

a. The Husband

The husband is the one who possesses the right to divorce and is authorized to pronounce it; no one other than the husband has the right to do so. Since divorce serves to dissolve the marital bond, it cannot take effect unless a valid marriage contract has been established. Therefore, for the validity of the divorce pronounced by the husband, the following conditions are required:

- 1) Sanity, a husband who is insane cannot validly pronounce a divorce.

Insanity in this context refers to the loss of reason or mental impairment due to illness, including (epilepsy), loss of reason due to fever, or memory loss due to brain nerve damage.

- 2) To have reached puberty, a divorce pronounced by a minor is not considered valid.

⁴⁴ Uwaidh, *Fiqh Wanita*, 454.

⁴⁵ Ghazaly, *Fiqh Munakahat*, 201-205.

- 3) Of one's own volition, what is meant by "of one's own volition" here is that the husband has the intention to pronounce the divorce and does so of his own free will, not under coercion from another.
- b. Wife. Each husband has the right to pronounce divorce only against his own wife; a divorce pronounced against another man's wife is not considered valid. For the divorce to be valid, the following conditions apply to the wife who is divorced:⁴⁶
- 1) The wife remains under the husband's authority. A wife undergoing the 'iddah period following a revocable divorce (talak raj'ī) from her husband is, under Islamic law, considered to remain under the husband's authority. Therefore, if the husband issues another divorce during that 'iddah period, it is considered a valid divorce, thereby increasing the number of divorces issued and reducing the husband's remaining right to divorce.
 - 2) The status of the divorced wife must be based on a valid marriage contract.
- c. Formulation of Divorce
- The divorce formula (ṣīghat talak) consists of the words spoken by the husband to his wife that indicate divorce, whether explicit (ṣarīḥ) or implicit (kināyah), whether spoken, written, signaled by a non-verbal husband, or conveyed through a third party. The explanation is as follows:
- 1) Explicit Divorce (ṣarīḥ) This refers to statements that leave no doubt that the intention is to dissolve the marital bond, such as the husband saying,

⁴⁶ Slamet Abidin, dan Aminuddin, *Fiqh Munakahat*, (Bandung: Pustaka Setia, 1999), 66.

“You are divorced” or “I divorce you”. This explicit statement requires no intention. If spoken by the husband, whether he intends it or not, the divorce is finalized provided the statement is not merely a story.

- 2) Divorce by implication (*kināyah*) This refers to ambiguous statements that can be interpreted as divorce, such as when a husband says, “Go back to your family’s home,” or “Leave this place,” and so on. These implied statements depend on intent; that is, if not intended for divorce, no divorce occurs. If intended to effect a divorce, then it constitutes a divorce.⁴⁷

- d. Intentionally means that the utterance of the divorce was indeed intended by the speaker to be a divorce, not for any other purpose. To be valid, a divorce must meet certain conditions, whether related to the *muṭalliq* (the husband who pronounces the divorce), the *muṭallaqah* (the wife who is divorced), or the utterance itself.

5. Types of Divorce

Types of divorce can be classified based on several aspects. When viewed from the timing of its execution, divorce is divided into *sunni* divorce, *bid'ī* divorce, and *lā sunni wa lā bid'ī* divorce. Based on the form of the wording used in its utterance, divorce is distinguished into *ṣarīḥ* divorce and *kināyah* divorce. In terms of the husband’s possibility of reconciliation after the divorce occurs, divorce is divided into *raj'ī* divorce and *bā'in* divorce. Additionally, when viewed from the method of conveying the divorce, it can be performed through direct speech, in

⁴⁷ Beni Ahmad Saebani, *Fiqh Munakahat 2*, (Bandung: Pustaka Setia, 2001), 81.

writing, through gestures, or through an intermediary or messenger. An explanation of each type of divorce is provided below.⁴⁸

- a. Divorce, viewed from the perspective of the timing of the pronouncement, namely:

- 1) Sunnī Divorce

A Sunnī divorce is a divorce pronounced in accordance with the Sunnah. It is considered a Sunnī divorce if it meets the following four conditions:

- a) The wife who is divorced has already been consummated. If it is not pronounced on a wife who has not yet been consummated, it does not count as a divorce.
 - b) The wife can immediately begin her waiting period (iddah) after the divorce, meaning she must be in a state of purity from menstruation.
 - c) The divorce is pronounced while the wife is in a state of purity. During that period of purity, the husband has not had sexual relations with his wife.
- 2) Bid'ī Divorce.

Bid'ī divorce is a divorce pronounced in a manner inconsistent with or contrary to the guidance of the Sunnah; thus, it does not meet the requirements of Sunni divorce outlined above. Examples of bid'ī divorce include:

⁴⁸ Dwi Putra Jaya, *Fiqih Munakahat*, (Bengkulu: Vanda, 2019), 147. https://www.researchgate.net/publication/340871836_FIQIH_MUNAKAHAT.

- a) Divorce pronounced against a wife while she is menstruating.
- b) Divorce pronounced against a wife while she is in a state of purity, but her husband has already had sexual relations with her during that state of purity. The Word of Allah SWT, Surah At-Talaq, verse 1:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ

Meaning: O Prophet, when you (Muslims) divorce women, divorce them for (the commencement of) their waiting period and keep count of the waiting period.⁴⁹

The words of the Messenger of Allah, peace be upon him:

أَخْبَرَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى قَالَ حَدَّثَنَا الْمُعْتَمِرُ قَالَ سَمِعْتُ عُبَيْدَ اللَّهِ بْنَ عُمَرَ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ تَطْلِيْقَةً فَأَنْطَلَقَ عُمَرُ فَأَخْبَرَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِذَلِكَ فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مُرْ عَبْدَ اللَّهِ فَلْيُرَاجِعْهَا فَإِذَا اغْتَسَلَتْ فَلْيُتْرِكْهَا حَتَّى تَحِيْضَ فَإِذَا اغْتَسَلَتْ مِنْ حَيْضَتِهَا الْأُخْرَى فَلَا يَمَسُّهَا حَتَّى يُطَلِّقَهَا فَإِنْ شَاءَ أَنْ يُمَسِّكَهَا فَلْيُمَسِّكْهَا فَإِنَّهَا الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ عَزَّ وَجَلَّ أَنْ تُطَلَّقَ هَا النِّسَاءُ

Meaning: “From Nafi’ ibn Abdullah ibn Umar: Indeed, Abdullah ibn Umar divorced his wife while she was menstruating during the time of the Messenger of Allah. Then Umar asked the Messenger of Allah about that, so the Messenger of Allah replied: ‘Command him to take her back,’ and he succeeded, and she became pure again. Then, if he wishes, he may keep his wife after that. But if he wishes to divorce her before having intercourse

⁴⁹ Tafsir Web Surat At-Talaq ayat 1, diakses 30 Januari 2026 <https://tafsirweb.com/10981-surat-at-talaq-ayat-1.html>.

with her, then that is the ‘iddah prescribed by Allah for divorcing wives. In another narration, it is stated that Ibn Umar divorced one of his wives during her menstrual period with a single pronouncement of divorce, then Umar conveyed this to the Prophet, peace be upon him. Then He said: “Tell him to take her back, and then he may divorce her once she has become pure, or if she is pregnant.” (Narrated by An-Nasa’i, Muslim, Ibn Majah, and Abu Daud)

3) Divorce that is *lā sunnī wa lā bid’ī*. The type of divorce that falls under this category is one that is neither *Sunnī* nor *bid’ī*, namely:

- a) Divorce pronounced against a wife who has never been consummated.
- b) Divorce pronounced against a wife who has passed menopause.
- c) Divorce pronounced against a wife who is currently pregnant.

b. Divorce examined from the perspective of the wording or words used to pronounce the divorce, namely:⁵⁰

1) *Ṣarīḥ* Divorce

A *ṣarīḥ* divorce is a divorce in which a man pronounces divorce upon his wife by using the words “*al-ṭalāq*,” “*al-firāq*,” or “*al-sarāḥ*.” These words are found in the Qur’an or hadith, and their meaning is clearly intended to divorce the wife. By using these phrases, a man who divorces his wife has issued the divorce even without the intention to do so; for example, if a man says to his wife: “*ṭallaqtuki*” (I divorce you); “*wa anti ṭālqun*” (you are divorced); or “*ṭallaqtuki wa anti ṭaliqun*” (I separate you or you are separated). These phrases are called explicit phrases. Some scholars of the Zāhiri school state that a divorce is not finalized unless one of these three phrases is used or their equivalent, because the issue of

⁵⁰ Jaya, *Fiqih Munakahat*, 150.

divorce is an action or the waiting period. Therefore, one must not use anything other than what is prescribed by the Sharia or religion.

2) Divorce by implication or metaphor.

Divorce by implication is a divorce pronounced by a person using words other than the explicit terms mentioned above. A husband divorces his wife by using sarcastic or ambiguous language. A person who uses such implied language only divorces his wife if he intends for his words to constitute a declaration of divorce. For example, a man might say to his wife: “*anti bāinun*”, “You have distanced yourself from me and we have separated” or he might say: “*anti ‘alayya ḥarām*”, “You are forbidden to me”; or he might say: “*amruki biyadiki*”, “Your affairs are in my hands”; or he might say: “*ilḥaqī bi ahliki*”, “Return to your family,” and so on.

- c. Divorce is classified based on whether the husband may reconcile with his wife after she has been divorced, namely:⁵¹

1) Raj‘ī divorce.

Raj‘ī divorce is a divorce pronounced by a husband against his wife whom he has consummated the marriage with. He pronounces the divorce not as compensation for a dowry not yet returned by his wife, and he has never previously pronounced a divorce at all or has only pronounced it once. It makes no difference whether he pronounces the divorce using explicit wording or figurative wording. In short, raj‘ī divorce is a divorce

⁵¹ Jaya, *Fiqh Munakahat*, 151.

pronounced by a husband to his wife as a first or second divorce. If the wife is in the iddah period of a revocable divorce, the husband may reconcile with her without a new marriage contract, without witnesses, and without a new dowry. However, if her iddah has ended, the husband may not reconcile or return to her except through a new marriage contract and by paying a new dowry. As Allah SWT states in Surah Al-Baqarah verse 229:

أَطْلُقْ مَرَّتَانِ ۖ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحُ بِإِحْسَنِ

Meaning: Divorce is twice. Then (after that), either keep (her) in an acceptable manner or release (her) with good treatment.⁵²

From the verse above, it can be concluded that divorce that allows for reconciliation is limited to a maximum of two times, and the prescribed manner of divorce is one at a time, not all at once. As Allah SWT states in Surah Al-Baqarah verse 228:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۚ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ
إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا ۚ وَهُنَّ
مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۚ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Meaning: Divorced women remain in waiting (i.e., do not remarry) for three periods, and it is not lawful for them to conceal what Allāh has created in their wombs if they believe in Allāh and the Last Day. And their husbands have more right to take them back in this (period) if they want reconciliation.

⁵² Tafsir Web Surat At-Talaq ayat 1, diakses 30 Januari 2026 <https://tafsirweb.com/871-surat-al-baqarah-ayat-229.html>.

And due to them (i.e., the wives) is similar to what is expected of them, according to what is reasonable. But the men (i.e., husbands) have a degree over them (in responsibility and authority). And Allāh is Exalted in Might and Wise.⁵³

2) Bā'in divorce: If a wife is in a state of bā'in divorce, the husband may not reconcile with her. The husband may enter into a new marriage contract with his former wife and pay a new dowry, using new conditions and requirements. There are two types of bā'in divorce: bā'in sughra and bā'in kubra.

a) Bā'in sughrā divorce. Bā'in sughrā divorce is a divorce that removes the former husband's right to reconcile with his ex-wife, but does not remove his right to enter into a new marriage with her.

b) Talak bā'in kubrā. Talak bā'in kubrā is a divorce that removes the husband's right to remarry his wife, unless his former wife has remarried another man and has lived with him as husband and wife in a genuine and valid manner. Furthermore, she must have completed her iddah period, and that period must have ended. As Allah SWT states in Surah Al-Baqarah, verse 230:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ ۚ

⁵³ Tafsir Web Surat At-Talaq ayat 1, diakses 30 Januari 2026 <https://tafsirweb.com/869-surat-al-baqarah-ayat-228.html>.

Meaning: And if he has divorced her (for the third time), then she is not lawful to him afterward until (after) she marries a husband other than him.⁵⁴

d. Divorce is classified based on the method of pronouncing it, namely:⁵⁵

- 1) Verbal divorce, which is a divorce conveyed by the husband through spoken words in the presence of his wife, and the wife hears her husband's words directly.
- 2) Divorce by writing, which is a divorce conveyed by the husband in writing and then delivered to his wife, after which she reads it and understands its intent and content.
- 3) Divorce by gesture, which is a divorce performed through gestures by a husband who is mute. Gestures by a mute or speech-impaired husband may be considered a form of communication to convey the intent of his heart. Some jurists state that divorce by gesture for a speech-impaired person is valid if he is illiterate. However, if he can write, he must carry out the divorce in written form. Because this is clearer than a gesture.
- 4) Divorce by Messenger This refers to a divorce conveyed by a husband to his wife through another person acting as his messenger to convey his intention to divorce her.

⁵⁴ Tafsir Web Surat At-Talaq ayat 1, diakses 30 Januari 2026 <https://tafsirweb.com/873-surat-al-baqarah-ayat-230.html>.

⁵⁵ Jaya, *Fiqih Munakahat*, 153.

6. Extrajudicial Divorce.

Extrajudicial divorce is a divorce conducted in accordance with Islamic law but not carried out before a Religious Court in the jurisdiction where the wife resides. Extrajudicial divorce is also referred to as a divorce performed by an individual without going through legal channels or without a divorce proceeding in a Religious Court.⁵⁶

From an Islamic legal perspective, divorce is a husband's prerogative that may be pronounced at any time provided the pillars and conditions established by Islamic law are met. The majority of scholars from the four schools of jurisprudence agree that there is no provision in classical fiqh requiring that the pronouncement of divorce must take place before a judicial body. Therefore, a divorce pronounced by the husband outside of court is still considered valid and has the legal effect of dissolving the marital bond, provided that the words of divorce are spoken by a husband who is legally competent and done of his own free will.

The Syāfi'ī school of thought, which is followed by the majority of Muslims in Indonesia, holds the view that a divorce is finalized as soon as it is pronounced by the husband and does not require the approval of a judge or any specific institution. This view is based on a textual understanding of the evidence from the Qur'an and hadith, particularly the verses regarding divorce that do not link its validity to a judicial forum. This view aligns with the Ḥanafī, Mālikī, and

⁵⁶ Mohd Idris Ramulyono, *Hukum Perkawinan, Hukum Kewarisan, Hukum Acara Peradilan Agama, dan Zakat Menurut Hukum Islam*, (Jakarta : Sinar Grafika, 2006), 14.

Ḥanbalī schools of thought, which fundamentally share the same assessment that a divorce pronounced outside the court remains valid under Islamic law, although each school of thought places different emphasis, whether on procedural aspects, the nature of the divorce, or its legal consequences, such as the possibility of reconciliation depending on the iddah period.⁵⁷ Thus, it can be concluded that under Islamic law, a divorce pronounced outside of court remains valid and has the legal consequence of dissolving the marriage, provided the essential elements and conditions of divorce are fulfilled.

In Islamic jurisprudence, the validity of a divorce is determined by the fulfillment of its essential elements: the presence of the subject (a husband who is of legal age and of sound mind), the object (a lawful wife), and the formula (*ṣīghat*) or wording that conveys the meaning of divorce whether explicitly (*ṣarīḥ*) or implicitly (*kināyah*) accompanied by the requisite intent. The presence of witnesses is not considered a requirement for the validity of divorce; therefore, divorce remains valid even if pronounced without the presence of witnesses, without the presence of the wife, or even in written form, as acknowledged by the majority of scholars

The majority of scholars, both from the Salaf and the Khalaf, hold that the pronouncement of divorce does not require the presence of witnesses, as divorce is the husband's right, and its execution does not necessitate proof or testimony from

⁵⁷ Umu Malikah, Dian Septiandani, dan Muhammad Junaidi, "Keabsahan Talak di Luar Pengadilan Berdasarkan Hukum Islam dan Hukum Positif di Indonesia," *Semarang Law Review (SLR)*, no. 2(2021), 246-258. <https://doi.org/10.26623/slr.v2i2.3961>.

others. This view is based on the absence of any evidence from the Prophet Muhammad (peace be upon him) or his companions that mandates the presence of witnesses in the pronouncement of divorce. Divorce is entirely in the husband's hands and is not granted to another party.⁵⁸ As emphasized in the words of Allah SWT in Surah al-Ahzab verse 49, which states:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا فَمِنْ غَيْرُهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا

“O you who have believed, when you marry believing women and then divorce them before you have touched them (i.e., consummated the marriage), then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release”.⁵⁹

The majority of jurists hold that the pronouncement of divorce may still occur without being witnessed by others, as divorce is a husband's right that may be exercised at any time without the necessity of presenting witnesses. The validity of divorce does not depend on the presence of witnesses, as there are no hadiths from the Prophet Muhammad (peace be upon him) or reports from the Companions that require the presence of witnesses when pronouncing divorce. This view, as explained by Sayyid Sabiq, is as follows:

⁵⁸ Abdul Aziz Muhammad Azzam, *Fiqh Munakahat*, (Jakarta: Amzah, 2011), 277.

⁵⁹ Tafsir Web Surat Al-Ahzab ayat 49, diakses 19 Januari 2026 <https://tafsirweb.com/7661-surat-al-ahzab-ayat-49.html>.

ذَهَبَ جُمْهُورُ الْفُقَهَاءِ مِنَ السَّلَفِ وَالْخِلَافِ إِلَى أَنَّ الطَّلَاقَ يَقَعُ إِشْهَادٍ لِأَنَّ الطَّلَاقَ مِنْ حُقُوقِ
الرَّجُلِ وَلَا يُحْتَاجُ إِلَى بَيِّنَةٍ كَيْ يُبَاشِرَ حَقَّهُ وَمَ يُرَدَّ عَنِ النَّبِيِّ ص.م وَلَا عَنِ الصَّحَابَةِ مَا يَدُلُّ عَلَى
مَشْرُوعِيَّةِ الْإِشْهَادِ

"The majority of jurists, both earlier and later, hold that divorce is valid without the need for witnesses in the presence of others. This is because divorce is a right of the husband. He does not require evidence to exercise his right. And there is no There are statements from the Prophet (peace be upon him) and his companions indicating the necessity of witnesses in pronouncing it".⁶⁰

7. The Wisdom of Divorce

Divorce in Islamic teachings is viewed as an act that is permitted but disliked by Allah SWT. Therefore, divorce is positioned as a last resort that may only be taken if the marital bond can no longer be maintained and the continuation of the household would instead cause harm to the parties involved. This concept underscores the importance of caution for prospective husbands and wives before entering into marriage. Although the encouragement to marry is emphasized in the Qur'an, this does not mean that marriage may be entered into solely to satisfy sexual desire or lust without considering the responsibilities and long-term consequences that could lead to harm.

The essence of marriage itself has been normatively defined in Law No. 1 of 1974, which states that marriage is a physical and spiritual bond between a man and a woman with the aim of forming a happy and lasting family or household

⁶⁰ Syukran, dan Andi Putra. "Saksi Ikrar Talak Menurut Kompilasi Hukum Islam Dan Para Fuqaha." *Hukum Islam*, no. 2 (2017), 103-105 <https://www.neliti.com/id/publications/396449/saksi-ikrar-talak-menurut-kompilasi-hukum-islam-dan-para-fuqaha>.

based on belief in the One and Only God. The establishment of divorce in Islam contains wisdom so that the institution of marriage is not abused or carried out incorrectly, both in terms of procedure and the legal consequences it entails. Therefore, Islam establishes the requirements and pillars of marriage as standards that must be met so that marriage proceeds in accordance with the provisions of sharia. These provisions are intended to ensure that divorce is something that is considered seriously and with great caution by both husband and wife in dealing with the dynamics of married life.

Based on the above discussion, it is clear that a husband's pronouncement of divorce not only affects the continuation of the marital relationship but also has broader implications, particularly regarding the psychological well-being of the children. These implications have the potential to influence the children's personality development, social environment, and future achievements. Therefore, the purpose of marriage as taught in the Qur'an namely, to establish a family characterized by *sakinah*, *mawaddah*, and *rahmah* until the end of life must always serve as the primary foundation of family life.⁶¹

⁶¹ Muhamad Dani Somantri, *Fikih Munakahat: Hukum Perkawinan dalam Islam*, (Tasikmalaya: CV. Hasna Pustaka, 2022) 143-144.

B. Provisions on Divorce in Indonesian Positive Law.

In Indonesia's positive legal system, divorce is part of the legal framework governing the dissolution of marriage as set forth in legislation. Divorce is generally governed by Law No. 1 of 1974 on Marriage, which serves as the primary legal basis for regulating the dissolution of marriage. These provisions are further elaborated in Government Regulation No. 9 of 1975 as implementing regulations governing divorce procedures, including the procedures for filing and adjudicating cases in court.⁶²

Specifically for Muslims, regulations regarding divorce (talak) are also found in the Compilation of Islamic Law, which stipulates that divorce can only be carried out before a Religious Court (Article 115) and that talak constitutes a declaration by the husband uttered before the court (Article 117). These provisions indicate that talak under Indonesian positive law is positioned as part of the divorce mechanism that must go through judicial proceedings, as also affirmed in various legal studies stating that divorce is a legal event falling within the jurisdiction of the Religious Court as the competent institution to validate the dissolution of marriage.⁶³

⁶² Yulisa Fitri, Jamaluddin, dan Faisal, "Analisis Yuridis Perceraian Di Luar Pengadilan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Menurut Pendapat Ahli Fikih Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, no. 1 (2019): 32, <https://doi.org/10.29103/sjp.v7i1.1980>.

⁶³ Muhammad Jalaluddin Ahmad dan Abdullah Afif, "Implementasi Pasal 115 Kompilasi Hukum Islam Perceraian Hanya Dapat Dilakukan Di Depan Sidang Pengadilan Agama (Studi Kasus Di Pengadilan Agama Kabupaten Madiun)," *Millatuna: Jurnal Studi Islam* 1, no. 03 (2024): 165–87, <https://doi.org/10.33752/mjsi.v1i03.6485>

C. Provisions on Divorce in the Enactment of the Selangor Islamic Family Law Act 2003.

In the Islamic family law system of the State of Selangor, Malaysia, provisions regarding divorce are set forth in the Islamic Family Law (State of Selangor) Enactment 2003. This Enactment stipulates that divorce, including talak, falls under the jurisdiction of the Shariah Court as the competent authority to handle Islamic family matters. Under these provisions, a husband who wishes to pronounce talak is required to file a petition with the Shariah Court first before the talak is pronounced. This enactment also stipulates that the execution of talak must follow the procedures established by the court, and there are legal consequences if talak is performed outside the prescribed mechanisms. This provision demonstrates the existence of procedural regulations governing the execution of divorce under Islamic family law in Selangor, as also discussed in various studies that emphasize the role of the Shariah Court in overseeing and validating divorces.⁶⁴

⁶⁴ Rahmah Safinaz Ngspar dan Mohd Norhusairi Mat Hussin, “Amalan Perjanjian Perkahwinan Dan Perceraian Dalam Kes Tuntutan Perceraian: Kajian Di Mahkamah Syariah Negeri Selangor,” *Journal of Shariah Law Research* 8, no. 2 (2023): 143–66, <https://doi.org/10.22452/jslr.vol8no2.3>

CHAPTER III

RESULTS AND DISCUSSION

A. Provisions on Extrajudicial Divorce Under Positive Law in Indonesia

1. Positive Law on Divorce in the Indonesian Legal System.

Marriage law in Indonesia is part of the binding national legal system; therefore, regulations regarding marriage and divorce are not viewed merely as a private matter between husband and wife, but as legal events under state supervision. The codification of marriage law was carried out through Law No. 1 of 1974 on Marriage, which regulates the basic principles regarding the validity of marriage, the obligation to register, and provisions regarding the dissolution of marriage.⁶⁵ These provisions were subsequently reinforced through Government Regulation No. 9 of 1975 as an implementing regulation that further regulates the grounds and procedures for divorce. These regulations apply to all citizens without distinction of religion.⁶⁶

For Muslims, these provisions are supplemented by Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI), which serves as a substantive legal guide for the Religious Courts. The Compilation of Islamic Law systematizes and codifies Islamic family law norms into positive law so that they can be uniformly applied in judicial practice. Thus, Islamic family law in

⁶⁵ Theresia Dyah Wirastri, dan Stijn Cornelis van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *Ahkam: Jurnal Ilmu Syariah*, no.2 (2024): 228 <https://doi.org/10.15408/ajis.v24i2.38424>.

⁶⁶ M. Anshary, *Hukum Perkawinan di Indonesia: Masalah-masalah Krusial*, (Yogyakarta: Pustaka Pelajar, 2010), 75.

Indonesia exists within the framework of a structured national legal system, where the principles of sharia serve as the normative foundation, while the state establishes mandatory formal procedures that must be fulfilled so that both marriage and divorce receive legal recognition and certainty.⁶⁷

This regulatory framework indicates that divorce under Indonesian positive law is not merely a private matter between husband and wife, but a legal event that must be processed through mechanisms prescribed by legislation. This framework serves as the foundation for understanding the status of divorce within the national legal system, particularly when divorce occurs outside the judicial mechanisms established by the state.⁶⁸

Divorce is the dissolution of the marital relationship between husband and wife, established by a court ruling, following the existence of valid grounds that both parties can no longer maintain a harmonious family life. Provisions regarding divorce are regulated in Law No. 1 of 1974, Article 38, as well as the Compilation of Islamic Law (KHI), Articles 113 through , Article 128, which affirm that a marriage may end due to death, divorce, or a court ruling.⁶⁹

⁶⁷ Fathimah, "Pembaharuan Hukum Perkawinan Dalam Kompilasi Hukum Keluarga Islam Inpres No. 1 Tahun 1991". *Jurnal Ikhtibar Nusantara*, no.2 (2023):14-32. <https://doi.org/10.62901/j-ikhsan.v2i2.38>.

⁶⁸ Putri Ayu Agustina, dan Jumni Nelli. 2025. "Perkawinan Dalam Hukum Islam Di Indonesia : Pengertian, Prinsip-Prinsip, Dasar-Dasar Dan Rukun Syarat Perkawinan Dalam UUP Dan KHI". *Jurnal Ilmiah Wahana Pendidikan*, no.11C (2025): 106. <https://www.jurnal.peneliti.net/index.php/JIWP/article/view/11966>.

⁶⁹ Mardani, "*Hukum Keluarga Islam Di Indonesia*", (Jakarta: Prenadamedia Group, 2016), 148-149.

The dissolution of a marriage due to death is a natural cause and does not require proof through a court proceeding. The death of one party automatically terminates the legal relationship between husband and wife, as from that moment onward, a shared domestic life is no longer possible. Thus, the occurrence of death directly results in the legal consequence of the marriage's termination without the need for a court ruling. In this context, a wife whose husband has passed away is required to observe a waiting period (iddah) of four months and ten days, as per applicable regulations.⁷⁰

The second cause of the dissolution of marriage is divorce. Unlike death, which factually and automatically terminates the marital relationship, divorce under Indonesian positive law does not occur immediately but must follow the mechanisms prescribed by legislation. To ensure that divorce is not carried out arbitrarily, the law also limits the grounds that may serve as the basis for divorce. Provisions regarding grounds for divorce are further regulated in Government Regulation No. 9 of 1975 as the implementing regulation of the Marriage Law. Article 19 of Government Regulation No. 9 of 1975 stipulates that a divorce may only be granted if there are specific grounds indicating that it is no longer possible for the husband and wife to live in harmony as husband and wife.⁷¹ These grounds include, among others:

⁷⁰ Umar Haris Sanjaya, dan Aunur Rahim Faqih, *Hukum Perkawinan Islam*, (Yogyakarta: Gama Media, 2017), 104.

⁷¹ Moh. Idris Ramulyo, *Hukum Perkawinan Islam: Suatu Analisis dari Undang-Undang No. 1 Tahun 1974 dan Kompilasi Hukum Islam*, (Jakarta: PT Bumi Aksara, 2004), 129.

- a. One party commits adultery or becomes an alcoholic, drug addict, gambler, or engages in other such behaviors that are difficult to cure;
- b. One party has abandoned the other for 2 (two) consecutive years without the other party's permission and without a valid reason or due to circumstances beyond their control;
- c. One party is sentenced to 5 (five) years in prison or a harsher punishment after the marriage has taken place;
- d. One party commits cruelty or severe abuse that endangers the other party;
- e. One party suffers a physical disability or illness that prevents them from fulfilling their obligations as a spouse;
- f. There are constant disputes and arguments between the husband and wife, and there is no hope of living in harmony within the household again.⁷²

Provisions regarding grounds for divorce are also regulated in the Compilation of Islamic Law (KHI), specifically in Article 116. In that article, the KHI adopts the grounds already stipulated in Government Regulation No. 9 of 1975, with several additions tailored to the characteristics of the Islamic family law system. The grounds that may serve as the basis for divorce between husband and wife include the following:

- 1) One party commits adultery or becomes an alcoholic, drug addict, gambler, or engages in other behaviors that are difficult to cure;

⁷² Pasal 19 Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974.

- 2) One party abandons the other for 2 (two) consecutive years without the other party's permission and without a valid reason or due to circumstances beyond their control;
- 3) One party is sentenced to 5 (five) years in prison or a harsher punishment after the marriage has taken place;
- 4) One party commits cruelty or severe abuse that endangers the other party;
- 5) One party suffers a physical disability or illness that prevents them from fulfilling their obligations as a husband or wife;
- 6) There are continuous disputes and arguments between the husband and wife, and there is no hope of living in harmony within the household again;
- 7) The husband violates the conditions of divorce;
- 8) A change of religion or apostasy that causes discord within the household.⁷³

Article 114 of the Compilation of Islamic Law states that the dissolution of marriage through divorce may occur in two ways: by divorce (talak) or through a divorce lawsuit.⁷⁴ This provision indicates a distinction between forms of divorce in Islamic family law in Indonesia, namely divorce initiated by the husband through a declaration of divorce and divorce initiated by the wife through a divorce lawsuit.⁷⁵ As for the procedures for filing such cases in the Religious Court, as regulated by laws and regulations, they are as follows:

⁷³ Pasal 116 Kompilasi Hukum Islam.

⁷⁴ Pasal 114 Kompilasi Hukum Islam

⁷⁵ Mardani, *Hukum Islam Dalam Hukum Positif Indonesia*, (Depok: Rajawali Pers, 2018), 186-188.

First, the implementation of divorce as referred to in Article 39 of Law No. 1 of 1974 on Marriage in conjunction with Article 19 of Government Regulation No. 9 of 1975 is further regulated in Article 28 of Chapter X on Divorce of Minister of Religious Affairs Regulation No. 3 of 1975. These provisions govern the procedure for the dissolution of the marital relationship by the husband through the mechanism of divorce by repudiation before the Religious Court, namely as follows.⁷⁶

- a) A husband who intends to pronounce a divorce, as referred to in Article 38(b), Article 39 of the Marriage Law in conjunction with Articles 14 through 18 of Government Regulation No. 9 of 1975, shall notify his intention in writing to the Religious Court having jurisdiction over his place of residence, accompanied by the grounds and a request for a hearing to be held for that purpose;
- b) The Religious Court shall review the contents of the letter referred to in paragraph (1) of this article and, within a maximum of 30 (thirty) days, summon the husband who sent the letter and his wife to provide an explanation regarding all matters related to his intention;
- c) After receiving an explanation regarding the intent of the divorce, the Religious Court shall attempt to reconcile both parties and may request assistance from the local Marriage Counseling and Divorce Resolution Board (BP4) so that the

⁷⁶ Moh. Idris Ramulyo, *Hukum Perkawinan Islam: Suatu Analisis dari Undang-Undang No. 1 Tahun 1974 dan Kompilasi Hukum Islam*, (Jakarta: PT Bumi Aksara, 2004), 130.

husband and wife may be advised to live in harmony again within the household;

- d) After receiving an explanation regarding the intent of the divorce, the Religious Court shall attempt to reconcile both parties and may request assistance from the local Marriage Counseling and Divorce Resolution Board (BP4) so that the husband and wife may be advised to live in harmony again within the household;
- e) The husband pronounces the divorce before the Religious Court in the presence of the wife or her representative and signs the declaration;⁷⁷

Second, a wife who wishes to dissolve the marriage may file a divorce petition as provided for in Article 39 of Law No. 1 of 1974 on Marriage. Further provisions regarding the procedure for filing such a divorce petition are set forth in Articles 14 through 18 of Government Regulation No. 9 of 1975, which state that the divorce petition must be filed by the wife with the Religious Court having jurisdiction over her place of residence, accompanied by the grounds for the divorce petition and a request for a hearing to be held for that purpose. Additionally, regulations regarding divorce petitions are also set forth in Minister of Religious Affairs Regulation No. 3 of 1975, with the following provisions:⁷⁸

⁷⁷ Pasal 28 Peraturan Menteri Agama Nomor 3 Tahun 1975 tentang Kewajiban pegawai nikah dan tata kerja Pengadilan Agama dalam melaksanakan peraturan perundang-undangan perkawinan bagi yang beragama Islam.

⁷⁸ Moh. Idris Ramulyo, *Hukum Perkawinan Islam: Suatu Analisis dari Undang-Undang No. 1 Tahun 1974 dan Kompilasi Hukum Islam*, 202.

- a) A divorce granted by a Religious Court is a divorce based on a divorce petition filed by the wife.
- b) The Religious Court shall, at every opportunity, endeavor to reconcile the parties and may request assistance from the local Marriage Counseling and Divorce Settlement Board (BP4). If a reconciliation is reached, the wife may not file a new divorce petition based on the same grounds.
- c) The procedures for divorce related to a lawsuit are conducted in accordance with Article 28 of PMA No. 3 of 1975.
- d) A divorce is deemed to have occurred, along with its consequences, effective from the date the Religious Court's decision becomes final and binding.⁷⁹
- e) Immediately after the divorce is decided, the Clerk of the Religious Court shall deliver a copy of the decision to the husband and wife or their representatives, while retrieving the marriage certificate extracts from each of the husband and wife concerned.
- f) The Clerk of the Religious Court shall, no later than 7 (seven) days after the divorce is decided, submit the final and binding decision to the District Court for ratification.
- g) The Clerk of the Religious Court is obligated to send the final and binding Religious Court decision, which has been ratified without a stamp duty, to the Marriage Registrar in the wife's place of residence for registration.

⁷⁹ Pasal 30 Peraturan Menteri Agama Nomor 3 Tahun 1975 tentang Kewajiban pegawai nikah dan tata kerja Pengadilan Agama dalam melaksanakan peraturan perundang-undangan perkawinan bagi yang beragama Islam.

h) The Clerk of the Religious Court shall issue a certificate to each spouse or their authorized representative stating that the decision referred to in paragraph (1) of Article 31 of PMA No. 3 of 1975 has become final and binding/has been ratified.⁸⁰

The former husband and former wife or their authorized representatives, bringing the aforementioned certificate, shall appear before the Marriage Registrar in the wife's place of residence to obtain an extract from the divorce registration book (KBPC), and the Clerk of the Religious Court shall make a note in the designated space on the relevant marriage certificate stating that they have divorced.⁸¹

Law No. 1 of 1974 on Marriage regulates the legal consequences of the dissolution of marriage due to divorce as set forth in Article 41; the consequences of the dissolution of marriage due to divorce are:⁸²

(1) Both the mother and the father remain obligated to care for and educate their children, solely based on the children's best interests; if there is a dispute regarding custody of the children, the court shall render its decision.

⁸⁰ Pasal 31 ayat 4 Peraturan Menteri Agama Nomor 3 Tahun 1975 tentang Kewajiban pegawai nikah dan tata kerja Pengadilan Agama dalam melaksanakan peraturan perundang-undangan perkawinan bagi yang beragama Islam.

⁸¹ Pasal 31 ayat 5 dan 6 Peraturan Menteri Agama Nomor 3 Tahun 1975 tentang Kewajiban pegawai nikah dan tata kerja Pengadilan Agama dalam melaksanakan peraturan perundang-undangan perkawinan bagi yang beragama Islam.

⁸² Yuliatin, dan Baharuddin Ahmad, *Hukum Perkawinan Di Indonesia: Dalam Bingkai Kompilasi Hukum Islam dan Undang-Undang Perkawinan*, (Malang: PT Literasi Nusantara Abadi Grup, 2024), 312.

- (2) The father is responsible for all costs of maintenance and education necessary for the child; if the father is in fact unable to fulfill this obligation, the court may determine that the mother shall share in these costs.
- (3) The court may require the former husband to provide spousal support and/or impose certain obligations on his former wife.

Furthermore, the KHI discusses the legal consequences of the dissolution of marriage in greater detail, as follows.⁸³

(a) Consequences of Divorce

A marriage that is dissolved because the husband divorces his wife has several legal consequences under Article 149 of the KHI; if the marriage is dissolved by divorce, the former husband is obligated to:

- Provide appropriate mut'ah to his former wife, whether in the form of money or goods, unless the former wife is qobla aldukhul.
- Provide maintenance, food, and clothing to the former wife during the iddah period, unless the former wife has been granted a ba'in or nusyuz divorce and is not pregnant.
- Pay off the entire outstanding dowry, or half of it if the divorce occurred before consummation.
- Providing child support for his children who have not yet reached the age of 21.⁸⁴

⁸³ Yuliatin, dan Baharuddin Ahmad, *Hukum Perkawinan Di Indonesia*, 313.

⁸⁴ Pasal 149 Kompilasi Hukum Islam.

(b) Consequences of Divorce

The consequences of the dissolution of marriage due to divorce, as stipulated in Article 156 of the Compilation of Islamic Law, are explained as follows:

- A child who has not yet reached the age of discernment is entitled to custody by the mother, unless the mother has passed away, in which case custody is transferred to:
 - 1) Women in the direct line of descent from the mother;
 - 2) The father;
 - 3) Women in the direct line of ascent from the father;
 - 4) The child's sisters;
 - 5) Female blood relatives in the collateral line from the mother;
 - 6) Female blood relatives in the collateral line from the father.
- A child who has reached the age of discernment has the right to choose to be under the custody of either the father or the mother;
- If the holder of custody is unable to ensure the child's physical and mental well-being, even though the costs of maintenance and custody have been met, then upon the request of the relevant relatives, the Religious Court may transfer custody rights to another relative who also has custody rights;
- All costs of child custody and support shall be borne by the father according to his ability, at least until the child reaches adulthood and is able to care for themselves (21 years of age);

- In the event of a dispute regarding child custody and support, the Religious Court shall render its decision based on subparagraphs (a), (b), (c), and (d);
- The court may also, taking into account the father's ability, determine the amount of expenses for the maintenance and education of children who do not live with him.⁸⁵

2. The Status of Extrajudicial Divorce.

In the classical Islamic legal tradition, divorce is understood as the husband's right to terminate the marital bond through a declaration that fulfills the pillars and conditions of divorce according to sharia, without requiring the involvement of a state court. This concept originates from fiqh, which positions the utterance of divorce as one of the forms of legally valid dissolution of the marital bond from a religious perspective, provided all conditions are met, such as the presence of intent and clear wording.⁸⁶ However, this understanding is a normative one within the context of religious law and does not automatically equate to state recognition; thus, the term "extrajudicial divorce" emerged to refer to divorce practices conducted without going through a Religious Court hearing and without official state documents acknowledging the dissolution of the marital bond.⁸⁷

⁸⁵ Pasal 156 Kompilasi Hukum Islam.

⁸⁶ Umu Malikah, Dian Septiandani, dan Muhammad Junaidi, "Keabsahan Talak di Luar Pengadilan Berdasarkan Hukum Islam dan Hukum Positif di Indonesia," *Semarang Law Review (SLR)*, no. 2(2021):250. <https://doi.org/10.26623/slr.v2i2.3961>

⁸⁷ Wani Maulida Als, "Divorce outside the Court According to Fiqh," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* no.2 (2022): 15641 <https://doi.org/10.33258/birci.v5i2.5469>.

In social practice, “extrajudicial divorce” refers to a divorce initiated by the husband without following formal proceedings before the Religious Court, and thus is not recorded in state administrative records, even though it is considered valid in a normative sense by certain segments of society based on local religious or customary understandings. Empirical research on this phenomenon indicates that extrajudicial divorce is often understood by some communities as religiously valid, but its administrative consequences are not recognized by state law because it does not follow the positive legal mechanisms established in the Marriage Law and the Compilation of Islamic Law.⁸⁸ This dualistic condition highlights a gap between the public’s understanding of talak as a right derived from religious teachings and the state’s formal requirements for granting legally valid recognition.

This discrepancy essentially stems from differing perspectives between Islamic law and statutory law regarding the validity of divorce. From a fiqh perspective, the majority of scholars hold that a divorce remains valid if pronounced by a husband who fulfills the essential elements and conditions, even if it is not done in the presence of a court.⁸⁹ This view is also consistent with the fatwa of the Indonesian Ulema Council, which states that a extrajudicial divorce can be deemed valid under Islamic law, and the iddah period is calculated from the moment the

⁸⁸ Melvi Rahmi, Endri Yenti, dan Nofiardi, “The Urgency of Recognizing Out-of-Court Divorce in Banuhampu Sub-District from a Maslahah Perspective,” *Modern Islamic Studies and Sharia Research*, no.1 (2025): 25. <https://doi.org/10.30983/missr.v1i1.9632>.

⁸⁹ Andriansyah Andriansyah dkk., “Talak Di Luar Pengadilan Dalam Perspektif Fatwa Mui No. 4 Tahun 2012, Undang-Undang Perkawinan Dan Kompilasi Hukum Islam,” 84.

divorce is pronounced. However, the fatwa also emphasizes that such a divorce must be reported to the Religious Court to obtain legal certainty and avoid harm.⁹⁰

In this context, it must be understood that Indonesia is a state governed by the rule of law (*rechtsstaat*) as affirmed in Article 1, paragraph (3) of the 1945 Constitution. This indicates that all legal matters, including divorce, must be subject to the provisions of laws and regulations.⁹¹ Although the majority of the Indonesian population is Muslim and, sociologically, influenced by the Shafi'i school of thought which recognizes the validity of extrajudicial divorce, Indonesia is not a country that bases its legal system on directly on Islamic law, but rather a rule of law that integrates Islamic values into the national legal system.⁹²

Empirical findings indicate that the practice of extrajudicial divorce remains widespread in society due to a dualistic understanding between religious law and state law. Some members of the public consider a divorce valid under Islamic law even if conducted outside the court, while positive law requires that a divorce be adjudicated by a Religious Court. This situation creates legal uncertainty and results in the failure to fulfill the rights of women and children. Thus, although divorce outside the court may be considered valid from a religious perspective, the

⁹⁰ Adam Firdaus, Mutawali, dan Saprudin, "Kontroversi Antara Fatwa MUI Dan Undang-Undang Perkawinan Di Indonesia Tentang Talak Di Luar Pengadilan Ditinjau Dari Maqhasid Syariah," *MODELING: Jurnal Program Studi PGMI*, no.3 (2024): 237. <https://doi.org/10.69896/modeling.v11i3.2596>.

⁹¹ Marzuki Manurung dkk., "Rule of Law / Negara Hukum," *Jurnal Pendidikan Tambusai* 9, no. 2 (2025): 21257–64, <https://doi.org/10.31004/jptam.v9i2.29915>.

⁹² Ramayanti Ramayanti dkk., "Konsep Negara Hukum Dalam Perspektif Islam Dan Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 4, no. 1 (2026): 1045–53, <https://doi.org/10.62976/ijijel.v4i1.1763>.

practice still requires court validation to have legal force and to avoid causing harm to vulnerable parties.⁹³

The differences between classical fiqh perspectives and these provisions of Indonesian positive law cannot, in essence, be understood merely as a form of contradiction, but rather as part of the dynamics of Islamic legal renewal. In this regard, Abdul Karim Soroush's thought explains that a distinction must be made between religion as an absolute revelation and religious understanding (fiqh), which is the result of human interpretation and is dynamic in nature. Based on this perspective, the provisions in the Compilation of Islamic Law that requiring divorce to be conducted in court can be understood as a form of development (al-Bast) of classical fiqh adapted to the needs of modern society.⁹⁴ From this perspective, the presence of judicial mechanisms in divorce is not a deviation from Islamic law, but rather an adaptation of Islamic law as an effort to realize the public interest, legal certainty, and the protection of the rights of women and children.

In Indonesia's positive legal system, divorce is not viewed as a private matter entirely within the realm of religion or the personal will of the husband and wife, but rather as a legal event under state supervision. This is affirmed in Article 39 of Law No. 1 of 1974 on Marriage, which states:

⁹³ Rahmi, dkk, The Urgency of Recognizing Out-of-Court Divorce in Banuhampu Sub-District from a Masalahah Perspective, 28.

⁹⁴ Muhlasin Muhlasin dan Khasan Alimuddin, "Pendekatan Baru Dalam Proses Talak Di Indonesia: Sebuah Pespektif Dari Abdul Karim Soroush," *Iblam Law Review*, no. 3 (2023): 170, <https://doi.org/10.52249/ilr.v3i3.168>.

“Divorce may only be granted by a court after the court in question has attempted and failed to reconcile the two parties.”⁹⁵

This provision indicates that the state requires a judicial process as a prerequisite for the validity of a divorce, so that every divorce must go through formal mechanisms to have validity and clear legal consequences.⁹⁶

This provision is reaffirmed in Article 115 of the Compilation of Islamic Law, which states:

“Divorce may only be granted in a Religious Court hearing after the Religious Court has attempted, and failed, to reconcile the two parties.”⁹⁷

Under this framework, the Islamic family law in force in Indonesia integrates Sharia principles into the national legal system, whereby the pronouncement of divorce cannot be based solely on the unilateral will of the husband, but must be formalized through judicial mechanisms. By Therefore, within the framework of positive law, the validity of a divorce is not determined solely by the fulfillment of the elements of divorce, but also by compliance with the state’s legal procedures.⁹⁸

⁹⁵ Pasal 39 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁹⁶ Akhmad Muflikhuddin dan Nasrulloh Nasrullah, “Analisis Terhadap Ketentuan UUP NO 1 Pasal 39 Tahun 1974 dan KHI Pasal 117 (Tentang Keharusan Pengucapan Perceraian Di Depan Sidang Pengadilan Agama),” *Jurnal Al-Wasith: Jurnal Studi Hukum Islam*, no. 2 (2016): 22–44, <https://doi.org/10.52802/wst.v1i2.67>.

⁹⁷ Pasal 115 Kompilasi Hukum Islam.

⁹⁸ Achmad Husaini, “Analisis Hukum Perceraian dalam Perspektif Kompilasi Hukum Islam,” *Ainul Haq: Jurnal Hukum Keluarga Islam*, no. 1 (2024): 72–89, <https://www.ejournal.an-nadwah.ac.id>.

Based on the provisions of Article 39 of Law No. 1 of 1974 and Article 115 of the Compilation of Islamic Law, it can be affirmed that a divorce is only recognized if it is carried out through judicial mechanisms. Thus, a divorce pronounced outside the Religious Court does not meet the formal requirements that determined by Indonesian positive law. Therefore, a divorce outside of court has no legal validity and does not give rise to civil legal consequences, even if the pronouncement of divorce has factually occurred.

In addition to regulating divorce procedures, the Compilation of Islamic Law also provides an explanation of the definition of divorce. This is stipulated in Article 117 of the Compilation of Islamic Law, which states:

“Divorce is a declaration by the husband before a Religious Court hearing, which constitutes one of the grounds for the dissolution of marriage in the manner specified in Articles 129, 130, and 131.”⁹⁹

This provision clarifies that, from the perspective of Islamic law as codified in the national legal system, divorce is no longer interpreted solely as a unilateral declaration by the husband, as in classical fiqh, but rather as a legal proceeding that must be conducted before a court. Thus, the validity of divorce under Indonesian law is both formal and substantive.

Based on this normative framework, a divorce pronounced outside a Religious Court hearing is not recognized as a legal event under the perspective of

⁹⁹ Pasal 117 Kompilasi Hukum Islam.

Indonesian positive law.¹⁰⁰ Extrajudicial divorce does not give rise to civil legal consequences, as it is not supported by a court decision or ruling that has binding legal force. Thus, the status of extrajudicial divorce under Indonesian positive law falls outside the state's legal enforcement system; therefore, it cannot serve as a basis for asserting or enforcing the legal rights and obligations of the parties until it is validated through judicial proceedings.¹⁰¹

The practice of divorce conducted outside the court system is not an incidental phenomenon but is still found in the lives of communities across various regions in Indonesia. Research conducted by Umira, Jamaluddin, and Yulia in Lawe Kongker Village, Lawe Alas Subdistrict, Southeast Aceh Regency, indicates that between 2018 and 2020, 23 married couples divorced outside the Sharia Court, with 6 cases in 2018, 8 cases in 2019, and 9 cases in 2020. These divorces were unilaterally pronounced by the husbands without going through a court proceeding and without official registration, thus lacking legal proof in the form of a divorce certificate.¹⁰²

Similar findings were also recorded in a study conducted in Bathin II Babeko Subdistrict, Bungo Regency, which documented a relatively significant

¹⁰⁰ Darlius, "Analisis Putusan Penetapan Isbath Talak dan Konsekuensi Hukumnya," *Ulil Albab: Jurnal Ilmiah Multidisiplin*, no. 2 (2024): 241–252

¹⁰¹ Fuat Hasanudin, "Itsbat Talak: Menegosiasikan Kepastian Hukum Islam Dan Perlindungan Hak Perempuan". *Sahaja: Journal Sharia and Humanities*, no.2 (2025): 354-361. <https://doi.org/10.61159/sahaja.v3i2.320>.

¹⁰² Umira Umira dkk., "Talak By Husband Outside The Shar'iyah Court (Research Study in Lawe Kongker Village, Lawe Alas District, Southeast Aceh Regency)," *Proceedings of Malikussaleh International Conference on Law, Legal Studies and Social Science (MICoLLS)* (2022): 3-4 <https://doi.org/10.29103/micolls.v2i.118>

number of extrajudicial divorce practices in several villages, including 20 cases in Sepunggur Village (2020), 20 cases in Sungai Gedang Village (2020), 10 cases in Kemini Village (2021), 20 cases in Kampung Baru Village (2022), and 23 cases in Simpang Empat Village. These data indicate that the practice of extrajudicial divorce continues to occur repeatedly despite positive law requiring divorce to be processed through the Religious Court.¹⁰³

A similar practice was also found in the study by Nikman Nashirin et al. (2023) in Babalan Subdistrict, Langkat Regency, which showed that out-of-court divorce is still practiced by the community, primarily due to factors such as the cost of the case, the length of the court proceedings, and the belief that a divorce pronounced verbally is valid according to religious law. Although this study does not present detailed quantitative data, its field findings reinforce the picture that extrajudicial divorce is a real and recurring social practice.¹⁰⁴ Another study conducted by Hardilla, Nadya Faizal, and Andi Darna (2024) in Pattimpa Village, Ponre Subdistrict, Bone Regency also confirms that a number of married couples still pronounce divorce outside of court. The study emphasizes that this practice is influenced by limited legal knowledge, economic factors, distance to the court, and a tendency to follow previous divorce practices within the community. Although

¹⁰³ Ana Pitria, Fuad Rahman, dan Ramlah, "Resolusi Konflik Talak di Luar Pengadilan Perspektif Hukum Islam dan Hukum Positif," *Journal of Comprehensive Islamic Studies* no.1 (2023): 126-127 <https://doi.org/10.56436/jocis.v2i1.235>.

¹⁰⁴ Nikman Nashirin, As'ad Badar, dan Abdullah Sani "Problematisasi Talak Suami Kepada Istri Di Luar Pengadilan (Studi Kasus Talak Di Kecamatan Babalan), *Journal Smart Law*, no.2 (2023): 140-150. <https://jurnal.perima.or.id/index.php/JSL/article/view/20>.

not legally recognized by the state, this practice continues and raises legal issues regarding the clarity of marital status and post-divorce rights.¹⁰⁵

A perspective aligned with the provisions of positive law regarding extrajudicial divorce was also expressed by the Chief Judge of the Bondowoso Religious Court, as examined by Muhammad Jufri and A. Muhyiddin Khotib. According to this view, a divorce pronounced outside the Religious Court lacks legal validity both from the perspective of positive law and within the context of Islamic law that has been institutionalized within the national legal system. Although in classical fiqh divorce is viewed as a husband's prerogative that can be pronounced at any time, within the framework of a rule of law state, this right is limited by the obligation to file and pronounce the divorce before the Religious Court to ensure legal certainty and public order. Therefore, under the applicable legal framework in Indonesia, a divorce is only considered to have taken effect and to produce legal consequences if it is pronounced during a hearing before the Religious Court.¹⁰⁶

Based on the above discussion, it can be understood that the provisions of Article 39 of Law No. 1 of 1974 and Article 115 of the Compilation of Islamic Law, which require divorce to be conducted in court, not only affirm the prohibition

¹⁰⁵ Hardilla Hardilla dkk., "Ikrar Talak Di Luar Pengadilan Ditinjau Menurut Hukum Keluarga Islam (Studi Kasus Pada Desa Pattimpa Kecamatan Ponre Kabupaten Bone)," *Jurnal Ar-Risalah* 4, no. 2 (2024): 43–56, <https://doi.org/10.30863/arrisalah.v4i2.5756>.

¹⁰⁶ Muhammad Jufri dan A. Muhyiddin Khotib, "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Status Cerai Talak Di Luar Pengadilan Agama (Pandangan Ketua Pengadilan Agama Bondowoso)," *Al-Hukmi : Jurnal Hukum Ekonomi Syariah Dan Keluarga Islam* 1, no. 2 (2020): 189–97, <https://doi.org/10.35316/alhukmi.v1i2.1189>.

against extrajudicial divorce but also indicate the existence of a mechanism the legal procedures that must be followed for a divorce to be valid and have clear legal consequences. This reaffirms that under Indonesian positive law, the dissolution of a marriage is only recognized as valid if it is decided by a competent court through established procedures. However, in practice, divorce outside the Religious Court proceedings still frequently occurs in society, thereby creating a gap between applicable legal provisions and social reality, and potentially giving rise to issues regarding the certainty of marital status and the protection of the parties' rights following divorce. Thus, it can be affirmed that divorce outside of court exists in two distinct dimensions: it is valid from a religious perspective according to some scholars' views, but it is invalid and lacks legal force from the perspective of Indonesian positive law. Consequently, the validity of divorce in Indonesia is determined not only by the fulfillment of sharia requirements but also by compliance with the state's legal procedures as a consequence of the principle of the rule of law.

3. Legal Consequences of Extrajudicial Divorce.

Under Indonesian positive law, the legal consequences of divorce are regulated in Article 41 of Law No. 1 of 1974 on Marriage, which stipulates that both parents remain obligated to care for and educate their children and to bear the costs of their maintenance and education in the best interests of the children. Additionally, the court may also require the former husband to provide spousal

support or fulfill certain obligations toward the former wife following the divorce.¹⁰⁷ These provisions are further detailed in the Compilation of Islamic Law, specifically Article 149, which establishes the husband's obligations following divorce, such as the provision of mut'ah, iddah maintenance, settlement of any outstanding dowry, and child custody expenses. These provisions indicate that Indonesian positive law has established a clear legal framework regarding the legal consequences of divorce, particularly to ensure the fulfillment of women's and children's rights following the dissolution of marriage.¹⁰⁸

Although Indonesian positive law has clearly regulated the various legal consequences arising after divorce, these provisions can essentially only be applied if the divorce is carried out through judicial mechanisms. Unlike a divorce adjudicated by a court, an informal divorce (talak) lacks legal force within Indonesia's positive legal system; consequently, various rights that should arise following the divorce cannot be effectively enforced. Therefore, the legal consequences of an out-of-court divorce can be examined from the following aspects:

¹⁰⁷ Yani Arfianti Siregar dkk., "Legal Certainty of the Rights of Wives and Children After Divorce," *Jurnal Elsyakhshi*, no. 1 (2023): 25–32, <https://doi.org/10.69637/jelsy.v1i1.10>.

¹⁰⁸ Fadil Fadil dkk., "Fulfillment of Women's Rights After Divorce: Dynamics and Transformation in the Legal Journey," *De Jure: Jurnal Hukum Dan Syar'iah*, no. 1 (2024): 1–20, <https://doi.org/10.18860/j-fsh.v16i1.25713>.

a. Uncertainty Regarding the Legal Status of Divorce

Divorce pronounced outside of court raises the issue of uncertainty regarding the legal status of the divorce within Indonesia's positive legal system. In societal practice, it is not uncommon for a husband to pronounce divorce directly to his wife without going through a trial process in the Religious Court. From a religious perspective, some members of society view such a divorce as valid if it fulfills the pillars and conditions of divorce as understood in classical fiqh. This understanding stems from the fiqh concept that positions divorce as the husband's right to terminate the marital bond through the clear utterance of the divorce formula, provided the conditions stipulated in Islamic law are met.¹⁰⁹

However, from the perspective of Indonesian positive law, divorce is not sufficient based solely on a unilateral pronouncement of divorce; rather, it must be carried out through judicial mechanisms to possess legally binding force. A divorce pronounced outside of court is not automatically recognized as a valid legal event within the state's legal system. As long as there is no court ruling declaring the dissolution of the marriage, the legal relationship between husband and wife is administratively still considered to be in effect.¹¹⁰

¹⁰⁹ Wani Maulida Alsia, "Divorce Outside the Court According to Fiqh," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 5, no. 2 (2022):1545, <https://doi.org/10.33258/birci.v5i2.5469>.

¹¹⁰ Fauziah Hayati dan Nadiyah Seff, "Implikasi Hukum Putusan Cerai Di Luar Pengadilan: Telaah Normatif Atas Legalitas Dan Keabsahan Perceraian Menurut Hukum Islam Dan Peraturan Perundang-Undangan," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 3 (2025): 2996, <https://doi.org/10.62976/ijijel.v3i3.1395>.

This legal uncertainty has the potential to give rise to various legal issues in the future. Without legal evidence in the form of a court ruling or a divorce certificate, the parties lack a clear legal basis to affirm their divorced status. This situation can create difficulties in various legal and administrative matters, such as proving marital status, processing civil registration documents, or when one party wishes to remarry officially. Therefore, the requirement that divorce be processed through the courts is fundamentally intended to ensure legal certainty regarding the parties' marital status and to prevent the emergence of legal disputes in the future.¹¹¹

b. Failure to Uphold Women's Rights.

One of the most common consequences of a divorce conducted outside of court is the failure to fulfill women's rights after the divorce. A divorce granted unilaterally without going through the judicial process results in the absence of a court ruling establishing the husband's obligations toward his former wife. Consequently, women lack a strong legal basis to demand the fulfillment of their rights after the divorce.¹¹² In practice, former wives often do not receive alimony during the iddah period or the mut'ah that should be provided as a form of respect following the end of the marriage.¹¹³

¹¹¹ Fuat Hasanudin, "Itsbat Talak: Menegosiasikan Kepastian Hukum Islam dan Perlindungan Hak Perempuan," *Sahaja: Journal Sharia and Humanities* 3, no. 2 (2024): 358, <https://doi.org/10.61159/sahaja.v3i2.320>.

¹¹² Hayati dan Seff, "Implikasi Hukum Putusan Cerai Di Luar Pengadilan." 2998.

¹¹³ Amru Hasibuan dkk., "Nafkah Istri Pada Masa Iddah Dalam Cerai Hidup Menurut Hukum Islam (Studi Kasus Desa Aek Nabara Tonga Kecamatan Aek Nabara Barumon)," *Jejak Digital: Jurnal Ilmiah Multidisiplin* 1, no. 3 (2025): 192, <https://doi.org/10.63822/s98fd138>.

The absence of a court ruling also makes it difficult to claim other economic rights, including the division of joint property acquired during the marriage. In divorces adjudicated by a court, the division of joint property can be determined through a judicial ruling, thereby providing legal certainty for the parties. Conversely, in divorces conducted outside of court, the division of joint property is often not clearly defined or is not carried out at all due to the absence of an authorized institution to determine and oversee its implementation.¹¹⁴

This situation indicates that extrajudicial divorce not only raises issues regarding the validity of the divorce from the perspective of state law, but also has a direct impact on the protection of women's rights following the divorce. Without a court ruling that governs the rights and obligations of the parties, women risk losing various rights to which they are entitled, making it difficult to achieve the legal objective of providing protection and justice within family relationships.¹¹⁵

c. The Impact of Extrajudicial Divorce on Children

In addition to affecting the fulfillment of women's rights, divorce conducted outside of court also raises various issues regarding the protection of children's rights after divorce. When a divorce is adjudicated through the courts, the judge not only dissolves the marital relationship between husband

¹¹⁴ Hayati dan Seff, "Implikasi Hukum Putusan Cerai Di Luar Pengadilan." 2998.

¹¹⁵ Zamroni Syakir dkk., "Efektivitas Implementasi Undang-Undang Perkawinan Dalam Mengatur Perceraian Di Luar Pengadilan: Implikasi Terhadap Perlindungan Hak Nafkah Istri," *Private Law* 6, no. 1 (2026): 130, <https://doi.org/10.29303/v3kwtv36>.

and wife but also addresses various legal consequences related to the child's best interests, including the determination of child custody and the parents' obligations regarding child support and care.¹¹⁶

However, in the practice of extrajudicial divorce, legal protection for children often does not function optimally due to the absence of a court ruling that clearly regulates the rights and obligations of the parties regarding the child. Without a judicial determination, issues regarding child custody or the obligation to provide child support often lack a clear legal basis.¹¹⁷ Consequently, the fulfillment of children's rights is highly dependent on the parents' agreement or good faith, which in many cases does not always proceed fairly and may even lead to economic neglect and the disregard of children's rights.¹¹⁸

The uncertainty regarding the status of a divorce can also lead to conflicts between parents regarding child custody following an extrajudicial divorce. In court-ordered divorces, the judge has the authority to determine which party is entitled to custody based on the best interests of the child. Conversely, when a divorce is conducted without going through the courts, there is no legal decision that can serve as a reference in determining child

¹¹⁶ Alsa, "Divorce Outside the Court According to Fiqh." 15646.

¹¹⁷ Amelin Heranti Amelin Heranti, "Dampak Perceraian Di Luar Pengadilan Terhadap Hak Nafkah Anak (Studi Kasus Di Desa Mendala Kecamatan Sirampog)," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, 31 Januari 2022, 18–49, <https://doi.org/10.56593/khuluqiyya.v4i1.77>.

¹¹⁸ Hayati dan Seff, "Implikasi Hukum Putusan Cerai Di Luar Pengadilan." 2998.

custody, thereby potentially causing disputes between parents that may ultimately affect the stability of the child's life.¹¹⁹

In addition to legal and economic aspects, extrajudicial divorce can also have psychological impacts on children.¹²⁰ The uncertainty surrounding the parents' divorce status, as well as potential conflicts following the divorce, can affect the child's emotional well-being and social development. Children in unstable family situations are at risk of experiencing psychological distress, especially if their parents' divorce is not accompanied by clear arrangements regarding custody and support responsibilities.¹²¹

This situation demonstrates that the court's involvement in the divorce process is not only crucial for providing legal certainty to the husband and wife but also for ensuring that the child's rights and interests remain protected after the divorce. Through the judicial process, a judge can establish clearer arrangements regarding child custody, child support obligations, and parental responsibilities toward the child, thereby minimizing the potential for conflict and providing better protection for the child.

¹¹⁹ Muhammad Akram dkk., "Dampak Perceraian Di Luar Pengadilan Terhadap Anak Perspektif Hifz Al-Nasl (Suatu Penelitian Di Kota Kendari)," *KALOSARA: Family Law Review* 2, no. 2 (2022): 129-130, <https://doi.org/10.31332/kalosara.v2i2.5240>.

¹²⁰ Fitria Agustin dan Rokilah, "Talak Dalam Tinjauan Psikologis, Teologis, Dan Normatif," *Prosiding Seminar Nasional Komunikasi, Administrasi Negara Dan Hukum* 1, no. 1 (2023): 395, <https://doi.org/10.30656/senaskah.v1i1.232>.

¹²¹ Dedi Kusnandar dan Fitriani Rahma, "Optimizing Legal Protection for Divorce Outside of Court: Study of the Need for Divorce Isbat in the Indonesian Legal System," *Indonesian Journal of Islamic Law* 6, no. 2 (2023): 73-88, <https://doi.org/10.35719/ijil.v6i2.2010>.

d. Legal Administrative Difficulties.

Divorces conducted outside of court also create various difficulties in legal administrative aspects for the divorcing parties. Under Indonesia's marriage law system, a valid divorce must be evidenced by a court decision that has attained final and binding legal force, as well as the issuance of a divorce certificate as official proof of the dissolution of the marital relationship. The divorce certificate serves an important function as a legal document that forms the basis for various administrative matters, such as recording changes in marital status, processing civil registration documents, and proving an individual's legal status in various civil relationships. Without this document, a person's divorced status cannot be administratively recognized by the state.¹²²

In the practice of extrajudicial divorce, the divorce does not result in an official document in the form of a divorce certificate because it does not go through a trial process in the Religious Court. Consequently, administratively, the state continues to record the parties as a legally married couple even though, in fact, they have separated. This situation creates various difficulties in civil registration matters because the marital status recorded in official documents does not align with the actual circumstances in society.¹²³

The absence of a divorce certificate also creates obstacles when one party wishes to remarry officially. Under Indonesia's marriage administration system, a person who has divorced is required to present proof of a court ruling

¹²² Kusnandar dan Rahma, "Optimizing Legal Protection for Divorce Outside of Court." 82.

¹²³ Hasanudin, "Itsbat Talak." 358.

or a divorce certificate as a prerequisite for entering into a subsequent marriage.¹²⁴ When a previous divorce was conducted outside of court, the parties involved do not possess such documents and are therefore legally still considered bound by their previous marriage. Consequently, a new marriage cannot be legally conducted according to state law, and in some cases, this actually leads to unregistered marriages or *nikah siri*.¹²⁵

Furthermore, unregistered divorces can also lead to various issues in other legal administrative matters, such as recording a child's status in civil registry documents, handling inheritance rights, or proving family relationships in various legal contexts.¹²⁶ In some cases, couples who have separated socially remain registered as husband and wife in state administrative documents due to the absence of a status change based on a court ruling. This situation indicates that extrajudicial divorces not only create issues in the legal relationship between husband and wife but also impact the order of legal administration within the state's civil registration system.¹²⁷

Thus, the practice of extrajudicial divorce not only raises issues regarding the legal validity of the divorce but also creates various

¹²⁴ Muhammad Ilham dkk., "Problematika Perceraian Di Luar Pengadilan Dan Implikasinya Terhadap Hak-hak Perempuan Dan Anak (Studi Di Desa Bambu, Kec. Mamuju Kab. Mamuju, Sulawesi Barat)," *Jurnal Review Pendidikan Dan Pengajaran* 7, no. 3 (2024): 7341, <https://doi.org/10.31004/jrpp.v7i3.28946>.

¹²⁵ Hayati dan Seff, "Implikasi Hukum Putusan Cerai Di Luar Pengadilan." 2999.

¹²⁶ Aulia Diningrum dan Rahmad Efendi, "Unregistered Divorce Practices in Rural Indonesian Muslim Communities: Legal and Cultural Dimensions," *DIKTUM: Jurnal Syariah dan Hukum* 24, no. 1 (2025): 46, <https://doi.org/10.35905/diktum.v24i1.14747>.

¹²⁷ Melvi Rahmi dkk., "The Urgency of Recognizing Out-of-Court Divorce in Banuhampu Sub-District from a Maslahah Perspective," *Modern Islamic Studies and Sharia Research* 1, no. 1 (2025): 34, <https://doi.org/10.30983/missr.v1i1.9632>.

administrative difficulties for the parties involved. The absence of a divorce certificate as official proof of divorce results in the parties' legal status becoming unclear within the state's administrative system. Therefore, the requirement that divorce be conducted through the courts also serves to ensure legal administrative order and to guarantee that every instance of divorce can be recorded and legally substantiated within the state's legal system.

e. The Emergence of New Social Problems.

The practice of extrajudicial divorce not only raises issues in legal and administrative aspects but can also give rise to various new social problems in society. When a divorce is conducted without going through a valid legal mechanism, a marital relationship that has socially ended is often not officially recognized by the state. This situation leads to uncertainty regarding the marital status of the parties, both from a legal perspective and in the social life of the community.¹²⁸

One of the social problems that frequently arises due to extrajudicial divorce is the occurrence of new marriages that are not officially registered, known as *nikah siri*. When someone who has divorced informally does not possess a divorce certificate, administratively they are still recorded as the husband or wife of their previous spouse. This situation often leads to new marriages that are not officially registered because, legally, the parties involved are still considered bound by their previous marriage.¹²⁹ This practice can

¹²⁸ Kusnandar dan Rahma, "Optimizing Legal Protection for Divorce Outside of Court." 82.

¹²⁹ Hayati dan Seff, "Implikasi Hukum Putusan Cerai Di Luar Pengadilan." 2999.

ultimately expand the phenomenon of unregistered marriages, which has the potential to create various legal and social problems for the parties involved.

Additionally, extrajudicial divorce can lead to social stigma, particularly against women. In many cases, women who undergo informal divorce are in a more vulnerable position because they lack clear legal proof of their divorced status. This lack of clarity regarding their status can lead to various negative perceptions within society, such as the assumption that the woman is still legally married or that she is violating social norms when entering into a new relationship. This situation demonstrates that divorce not conducted through valid legal procedures can impact a woman's social standing within society.¹³⁰

Extrajudicial divorce also has the potential to trigger new conflicts within the family and the community. The lack of clarity regarding the legal status of the divorce can lead to disputes between former spouses, extended family members, or other interested parties, particularly regarding economic rights, child custody, or social relationships following the divorce. In some cases, these conflicts can even escalate into protracted disputes due to the absence of a legal decision that can serve as a basis for resolution.¹³¹

¹³⁰ Hasanudin, "Itsbat Talak." 358.

¹³¹ Ana Pitria dkk., "Resolusi Konflik Talak di Luar Pengadilan Perspektif Hukum Islam dan Hukum Positif," *Journal of Comprehensive Islamic Studies* 2, no. 1 (2023): 142, <https://doi.org/10.56436/jocis.v2i1.235>.

From the above discussion, it is evident that the practice of extrajudicial divorce not only impacts legal and administrative aspects but also raises various social issues within society. The uncertainty of divorce status, the emergence of unregistered marriages, social stigma against women, and the potential for conflict within the family environment demonstrate that divorce not conducted through judicial mechanisms can have far-reaching effects on social life. This situation demonstrates that the requirement for divorce to be conducted through the courts is not merely a formal procedure, but part of an effort to maintain legal order while providing certainty and protection for the parties involved after the marriage ends.

B. Provisions on Extrajudicial Divorce According to the Enactment of the Selangor State Islamic Family Law Act 2003.

1. Regulations on Divorce in the Selangor Islamic Family Law System.

Malaysia is a federal state, meaning it consists of several states that have the authority to regulate certain matters within their respective territories. Under this system, the law in Malaysia is not entirely centralized; rather, there is a division of authority between the central government and the state governments. One implication of this system is that matters of Islamic family law, including marriage and divorce, fall under the authority of the state governments. Therefore, each state in Malaysia has its own legislation in the field of Islamic family law, known as an enactment.¹³² This situation has led to variations in the regulation of Islamic family law across the states, including in the State of Selangor, which governs these matters through the Selangor State Islamic Family Law Enactment 2003.

In line with Malaysia's character as a federal state, the prevailing legal system reflects a dualism between civil law and Sharia law, which operate side by side within the national legal framework. This system is characterized by the separation of jurisdiction between civil courts and Sharia courts, as stipulated in the provisions of the Malaysian Constitution.¹³³ Civil law applies generally to all citizens, while Sharia law is applied specifically to Muslims, particularly in the field

¹³² Ade Khoirunnisa dkk., "Comparison of Islamic Family Law in Malaysia and Indonesia," *An-Nisa: Journal of Islamic Family Law* 2, no. 2 (2025): 111, <https://doi.org/10.63142/an-nisa.v2i2.226>.

¹³³ Jamadi bin Saleh dkk., "Jurisdictional Overlap Between The Civil Courts and The Syariah Courts: Analysis and Solutions," 3, no. 1 (2025): 1–15, <https://alnadwah.usim.edu.my/cforsjprocedia/paper/view/200>.

of family law such as marriage and divorce. This separation of authority reflects the state's recognition of religious law, while simultaneously positioning Islamic family law as part of the national legal system that possesses formal legitimacy through the existence of Sharia courts.¹³⁴

In this context, the Sharia Court has the authority to adjudicate cases related to Islamic family law, including divorce. This authority encompasses the examination of divorce petitions, the determination of post-divorce rights, and the resolution of disputes arising from the dissolution of marriage. This indicates that divorce under Islamic family law in Malaysia is not viewed merely as a private matter between husband and wife, but as a legal event that must be resolved through judicial mechanisms to secure legal recognition and certainty.¹³⁵ In practice, this authority is exercised in accordance with state-level legislation, notably in the State of Selangor through the Selangor State Islamic Family Law Enactment 2003, which serves as the legal basis for the Shariah Court in regulating and adjudicating marriage and divorce cases for Muslims, including divorce procedures and their legal consequences.

Divorce under Islamic family law in Malaysia, particularly in the State of Selangor, is regulated in the Selangor State Islamic Family Law Enactment 2003

¹³⁴ Muhamad Helmi Md Said dkk., "Muslim Estate Administration: The Locus of Malaysian Syariah Court in Malaysia," *International Journal of Islamic Thought* 19, no. 1 (2021): 73–78, <https://doi.org/10.24035/ijit.19.2021.197>.

¹³⁵ Rahmah Safinaz Ngspar dan Mohd Norhusairi Mat Hussin, "Amalan Perjanjian Perkahwinan Dan Perceraian Dalam Kes Tuntutan Perceraian: Kajian Di Mahkamah Syariah Negeri Selangor," *Journal of Shariah Law Research* 8, no. 2 (2023): 144, <https://doi.org/10.22452/jslr.vol8no2.3>.

under the section on the dissolution of marriage, which establishes divorce as a legal proceeding that must be conducted through the Sharia Court. These provisions stipulate that couples wishing to divorce cannot do so freely but must base their decision on valid grounds and follow established legal procedures. Generally, grounds for divorce include marital discord, domestic violence, adultery, failure to fulfill obligations as a husband or wife, and various other conditions that make it impossible to maintain a harmonious family life.¹³⁶

In practice, Islamic family law in Selangor recognizes several forms of divorce, which are explained as follows:

- a. Talak divorce, namely divorce through talak as regulated in Section 47 of the Enactment of the Selangor State Islamic Family Law 2003, namely;

“A husband or a wife who wishes to divorce shall submit an application for divorce to the Court in the prescribed form, accompanied by a statutory declaration containing:

 - 1) details regarding the marriage and the names, ages, and genders of the children, if any, resulting from the marriage;
 - 2) details regarding the facts that confer jurisdiction on the Court under Section 45;
 - 3) details regarding any previous proceedings concerning matrimonial matters between the parties, including the venue of such proceedings;

¹³⁶ Kamelia Tanjung, “Studi Komparatif Hukum Perceraian Di Negara Muslim: Perspektif Normatif Dan Sosio-Legal,” *Locus Journal of Academic Literature Review* 4, no. 8 (2025): 649, <https://doi.org/10.56128/ljoalr.v4i8.688>.

- 4) a statement of the grounds for the divorce;
- 5) a statement as to whether any, and if so, what steps have been taken to achieve reconciliation;
- 6) the terms of any agreement regarding maintenance and residence for the wife and children of the marriage, if any, provisions for the care and custody of the children of the marriage, if any, and the division of any assets acquired through the joint efforts of the parties, if any, or, if none, such an agreement has been reached, the petitioner's proposals regarding those matters;
- 7) the details of the order sought.¹³⁷

Based on these provisions, it is understood that divorce by talaq in Selangor cannot be carried out directly, but must be initiated by filing a petition with the Selangor Shariah Court in the prescribed form and accompanied by a complete statement regarding the marriage, the grounds for divorce, and the circumstances of the parties. This indicates that divorce is treated as a legal event that must follow formal procedures to obtain legal validation and certainty.

- b. Fasakh Divorce, Divorce through fasakh is the dissolution of the marital bond between husband and wife that occurs upon the wife's petition through a judge's ruling. This mechanism is generally chosen by wives who are in

¹³⁷ Seksyen 47 Enakmen Undang-undang Keluarga Islam Negeri selangor 2003.

abusive situations or experiencing injustice within the household. Fasakh.¹³⁸

Fasakh differs from talak. Fasakh constitutes the annulment of the marriage contract from the outset, thereby nullifying the legality of the marital relationship as a legal consequence. Meanwhile, talak is the termination of the marriage contract; however, in principle, it still leaves open the possibility of the relationship's legality, except in the case of talak ba'in. Additionally, fasakh does not reduce the number of talak the husband possesses, whereas talak does reduce that number.¹³⁹

- c. Divorce by Compensation (khuluk). In this case, Malaysia adopts khuluk under the "divorce by compensation" model, wherein the wife requests a divorce from her husband by providing compensation (typically returning the dowry). The process is filed with the Sharia Court and must be approved by the husband. If the husband refuses without a valid reason, the court may intervene.
- d. Ta'liq Divorce is a conditional agreement made by the husband after the marriage contract in accordance with Sharia law and/or the husband pronounces divorce to his wife under certain conditions. The divorce becomes legally effective if there is a breach of the agreement or conditions by either the husband or the wife.¹⁴⁰.

¹³⁸ Jumita Riska dkk., "Studi Perbandingan Reformasi Hukum Perceraian Di Negara Muslim: Mesir, Pakistan, Malaysia, Dan Indonesia," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 1432, <https://doi.org/10.61104/alz.v4i2.4492>.

¹³⁹ Haszuraidah Ishak dan Kamarul Azmi Jasmi, "Perceraian Pasangan Islam Di Malaysia," *ResearchGate*, t.t., diakses 2 April 2026, https://www.researchgate.net/publication/366216561_Perceraian_Pasangan_Islam_di_Malaysia.

¹⁴⁰ Riska dkk., "Studi Perbandingan Reformasi Hukum Perceraian Di Negara Muslim." 1432.

Furthermore, regarding divorce procedures in Selangor, the process must begin with the filing of a petition with the Sharia Court as stipulated in Section 47 of the Enactment, and generally, the divorce process is conducted through the following stages:

- a) The husband and wife intending to divorce must submit a petition for divorce to the Sharia Court, including a formal statement of their intention to divorce and a submission of authority to the court. The petitioner must also include their personal identification and that of the relevant family members. In their petition, the petitioners are required to state the grounds for divorce as well as any reconciliation efforts that have been made; if there is a prenuptial agreement regarding the division of assets or other matters, it must also be included.
- b) Next, after the administrative process is complete, an examination is conducted. The court serves the complaint on the parties concerned, instructing them to appear in court. The court also summons witnesses to provide testimony during the examination
- c) The next step, after the hearing has taken place and all parties have agreed to the divorce, is for the court to ask the husband to pronounce the divorce in court.
- d) After that, the pronouncement of the divorce is recorded by the court, and a copy is made, which in this context is referred to as the court's judgment. In the case of mediation, under Malaysian divorce regulations, this is only pursued

if one of the parties whether the wife or the husband does not wish to separate.¹⁴¹

2. The Status of Extrajudicial Divorce.

Provisions regarding a divorce pronounced outside the Sharia Court are regulated under Section 57 of the Enactment of the Selangor State Islamic Family Law Act 2003 as follows:¹⁴²

- (1) Notwithstanding section 55, a man who has divorced his wife by the pronouncement of talaq outside the Court and without the permission of the Court, shall within seven days of the pronouncement of the talaq report to the Court.
- (2) The Court shall hold an inquiry to ascertain whether the talaq that was pronounced is valid according to Hukum Syarak.
- (3) If the Court is satisfied that the talaq was pronounced is valid according to Hukum Syarak, the Court shall, subject to section 125
 - a. make an order approving the divorce by talaq;
 - b. record the divorce; and
 - c. send a copy of the record to the appropriate Registrar and to the Chief Registrar for registration.

¹⁴¹ Az-Zahra Aulya Salsabila, “Kepastian Hukum Dalam Proses Perceraian Talak Di Hadapan Dan Melalui Izin Mahkamah Negara Bagian Dan Wilayah Persekutuan Malaysia,” *As-Syar’i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024): 1329, <https://doi.org/10.47467/as.v6i2.6410>.

¹⁴² Seksyen 57 Enakmen Undang-Undang Keluarga Islam Negeri Selangor 2003

Based on these provisions, it is clear that a divorce pronounced outside the Sharia Court is not automatically recognized as a valid divorce under positive law. A husband who pronounces a divorce outside the court remains obligated to report the incident within a certain timeframe, which will then be followed up by the Sharia Court through an examination process. In this process, the court has the authority to assess whether the divorce pronounced meets the legal requirements under Sharia law.

If the Court declares the divorce valid, it will formalize the divorce through an official ruling and record it in the applicable registry. Conversely, if it does not meet the requirements, the divorce cannot be recognized as a valid divorce under state law. This demonstrates that the authority to determine the validity of a divorce remains with the Sharia Court, so that every divorce must go through the established legal mechanisms to ensure legal certainty and the protection of the parties' rights.¹⁴³

In the practice of Islamic family law in Malaysia, particularly in Selangor, a divorce pronounced outside of court can take various forms of expression. Generally, the pronouncement of divorce outside of court can be made orally, in writing, or through modern communication media such as text messages and digital applications. This indicates that divorce does not always occur through formal

¹⁴³ Siti Maimunah Binti Mohd Rijal dan Rukiah Muhammad Ali, "Efektivitas Pelaksanaan Sanksi Talak di Luar Mahkamah Rendah Syariah:," *PETITA: Jurnal Kajian Ilmu Hukum dan Syariah*, no. 1 (2018): 86, <https://doi.org/10.22373/petita.v3i1.41>.

procedures but can also take place spontaneously in the daily lives of married couples.¹⁴⁴

In terms of form, divorce pronouncements outside of court are generally classified into two main categories: explicit (*ṣarīḥ*) and implicit (*kināyah*). An explicit pronouncement is a statement that clearly indicates the intention to divorce, such as the use of the words “divorce” or “talak,” and thus requires no further interpretation. Conversely, *kināyah* statements are indirect or figurative expressions, so their validity depends on the husband’s intent when uttering them and must be proven before the court.¹⁴⁵ In judicial practice, *ṣarīḥ* statements are generally easier to validate, whereas *kināyah* statements require further examination by the judge to assess the presence of the intent to divorce.

The Sharia Court plays a crucial role in assessing the validity of divorce pronouncements made outside the court. Not every pronouncement is automatically considered valid; rather, it must undergo a comprehensive evidentiary process, including an assessment of the circumstances under which the pronouncement was made, the presence of coercion, emotional distress, or intentionality. In fact, in some cases, a divorce statement uttered under duress or without full awareness may be declared invalid. Therefore, the judge’s authority is not merely administrative but

¹⁴⁴ Wan Hanis Qashrina Binti Wan Hussin dan Zanariah Dimon, “Jenis-jenis Lafaz Cerai Luar Mahkamah: Kajian di Mahkamah Rendah Syariah Sepang, Selangor,” conf. paper presented pada International Conference on Syariah & Law, 15 November 2023, https://conference.uis.edu.my/iconsyal/images/2023/eproceeding/1093_.pdf.

¹⁴⁵ Suhaizad Saifuddin, “(PDF) Usah Sembunyikan Lafaz Cerai Luar Mahkamah (KOSMO! 12 JULAI 2019),” ResearchGate, diakses 13 Maret 2026, https://www.researchgate.net/publication/345151071_USAH_SEMBUNYIKAN_LAFAZ_CERAI_LUAR_MAHKAMAH_KOSMO_12_JULAI_2019.

also substantive in ensuring that the divorce truly complies with Sharia law and statutory provisions.¹⁴⁶

Furthermore, in the process of reviewing cases regarding the validation of the divorce pronouncement, the Sharia Court does not focus solely on the form of the pronouncement but also conducts a comprehensive assessment of the various factors underlying the divorce. The judge will examine the facts before, during, and after the pronouncement was made, including the statements of the parties, the evidence submitted, and the psychological condition of the person uttering the pronouncement. This process is part of the judicial review mechanism to ensure that the divorce statement meets the pillars and conditions stipulated by Sharia law before it can be established as a valid divorce.¹⁴⁷

In the context of this assessment, the Sharia Court also clearly distinguishes between explicit (*ṣarīḥ*) and implicit (*kināyah*) statements. If the statement used is classified as explicit, proof of intent is generally not required because its meaning clearly indicates the intention to divorce. Conversely, if the statement falls under the category of *kināyah*, the judge will examine the speaker's intent as a determining factor, making the husband's admission and supporting evidence crucial in the proof process. This approach demonstrates that the Sharia Court does

¹⁴⁶ Wan Hussin dan Dimon, "Jenis-jenis Lafaz Cerai Luar Mahkamah: Kajian di Mahkamah Rendah Syariah Sepang, Selangor."

¹⁴⁷ Muhammad Arif Ishak dan Marina Abu Bakar, "Outside the Court: Decoding Divorce Challenges and Solutions at Shariah Court of Baling, Kedah," *International Journal of Academic Research in Business and Social Sciences* 14, no. 4 (2024): 755-756, <https://doi.org/10.6007/IJARBS/v14-i4/21229>.

not rely solely on textual aspects but also considers contextual dimensions when adjudicating cases.

Furthermore, in determining the legal consequences of a divorce statement, the judge also considers various other factors such as the history of the parties' relationship, the circumstances at the time the statement was made, and any indications of regret or a desire to reconcile. In some cases, these considerations may even influence the determination of the number of divorces pronounced, for example, by not immediately ruling a triple divorce even if the phrase is uttered repeatedly, if there is no clear evidence of the intent to pronounce a triple divorce. This demonstrates that the decision-making process in the Sharia Court is cautious and flexible, rather than rigid, and is oriented toward substantive justice for the parties.¹⁴⁸

3. Legal Consequences of Extrajudicial Divorce

Regarding divorces conducted outside the court and without the court's approval, the husband is deemed to have committed an offense. Nevertheless, the Enactment stipulates that within 7 days of the divorce being pronounced, the divorce must be reported to the court immediately. Such an act constitutes an offense and is punishable by a fine not exceeding one thousand ringgit (RM 1000) or imprisonment not exceeding six months, or both. The provisions regarding

¹⁴⁸ Mahfuzah Abdul Shukor dan Zaini Nasohah, "Penilaian Lafaz Sorih Dan Kinayah Dalam Pengesahan Talak Tiga Sekali Lafaz Di Mahkamah Syariah," *UMRAN - Journal of Islamic and Civilizational Studies* 5, no. 3 (2018): 94–104, <https://doi.org/10.11113/umran2018.5n3.230>.

penalties for such violations are set forth in Section 125 of the Selangor State Islamic Family Law Act 2003, which states:

“Any man who divorces his wife by the pronouncement of talaq in any form outside the Court and without the permission of the Court commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.”¹⁴⁹

The execution of extrajudicial divorce still requires a validation process to ensure that the divorce is valid and has actually taken place according to the law. In practice, although a divorce outside of court may be recognized, judges in Malaysia emphasize that any desire to divorce must be formally submitted through an application to the Sharia Court. Such a petition is submitted in the form of an official form presented to the Chief Registrar of Divorce and must follow the procedures established in the laws and regulations of the State of Selangor. However, although the provisions regarding divorce procedures have been clearly stipulated, the practice of divorce outside the court still occurs in society. Therefore, legal action in the form of sanctions is imposed for such violations as an effort to enforce the law.

The regulation requiring the validation of divorce in court indicates that divorce outside of court carries complex legal implications. Not only does it involve sanctions, but this practice also has the potential to result in several consequences, including:

¹⁴⁹ Seksyen 125 Enakmen Undang-Undang Keluarga Islam Negeri Selangor 2003.

- a. Lack of legal certainty: Neither party (husband or wife) has legal certainty regarding the validity of the divorce. As a result of this lack of legal certainty, if either or both parties wish to remarry someone else, the marriage will not be accepted and will not be valid because they are considered to still be bound by the marital bond with their previous spouse.
- b. Husband's Abuse of Power Over Wife If the divorce is not conducted before a court judge, it will lead to the husband's abuse of power over his wife. Among other things, the wife is likely to be disadvantaged because the husband views divorce as his right, and if this occurs, the husband will act as he pleases.
- c. It will result in the husband taking precedence over the wife. If divorce is conducted outside the court, the husband may divorce his wife arbitrarily, as he views divorce as his right. Consequently, the wife is likely to be disadvantaged, even though a household is founded on love, affection, and the preservation of family unity.¹⁵⁰
- d. Children If the divorcing couple has children, the children in this situation can be assumed to be disadvantaged. Because with the divorce of their parents, the children must receive their rights to live and develop by obtaining a proper education and meeting their daily living needs. However, if the child's parents intend to divorce outside of court and the child does not receive their rights, the child cannot file a lawsuit in court to claim those rights because a divorce

¹⁵⁰ Az-Zahra Aulya Salsabila, "Kepastian Hukum Dalam Proses Perceraian Talak Di Hadapan Dan Melalui Izin Mahkamah Negara Bagian Dan Wilayah Persekutuan Malaysia," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, no. 2 (2024): 1322, <https://doi.org/10.47467/as.v6i2.6410>.

conducted outside of court will not be legally recognized under applicable regulations.

- e. Joint Property In divorce proceedings filed in court, whether through a petition or a lawsuit, joint property is treated as the subject of the lawsuit and can be claimed by both parties to the divorce. However, if both parties divorce outside of court, joint property cannot be claimed, as the Sharia Court is the only authority that can grant legal validity.¹⁵¹

Based on an analysis of legal provisions in Indonesia and Selangor, as well as empirical findings indicating that the practice of extrajudicial divorce continues, it is clear that there are fundamental differences in how the status of such divorce is viewed within each legal system. This difference lies not only in the normative aspects regulated by legislation but is also influenced by religious views and the evolving social realities within society. Therefore, to clarify this comparison in a systematic and comprehensive manner, the following table is presented comparative study that includes key aspects along with the legal basis and findings underpinning them.

¹⁵¹ Gamal Achyar dan Wan Nurul Husna Binti Wan Mohd Husni, "Status Penjatuhan Talak di Luar Mahkamah: Analisis terhadap Enakmen Keluarga Islam Perak 2004 dan Persepsi Hakim Mahkamah Rendah Syariah Gerik, Perak Malaysia," *El-USRAH: Jurnal Hukum Keluarga* 2, no. 1 (2020): 37, <https://doi.org/10.22373/ujhk.v2i1.7641>.

Tabel 3.1 Comparison of the Status of Extrajudicial Divorce

No	Comparison Aspect	Indonesia	Selangor Malaysia
1.	Legal Basis	Divorce is governed by Article 39 of Law No. 1 of 1974, which stipulates that divorce may only be granted in a court of law; this is further clarified in Articles 115 and 117 of the Compilation of Islamic Law (KHI), which state that a divorce (talak) is a declaration made by the husband before a Religious Court.	Regulated in the Enactment of the Selangor State Islamic Family Law Act 2003, specifically Sections 47 and 57, which govern the for divorce and the reporting of divorce.
2.	The Status of Extrajudicial Divorce	A divorce pronounced outside of court is not recognized as a valid divorce because it does not meet the formal requirements specified in Article 39 of the Marriage Law and Articles 115– 115 of the KHI, and therefore it does not produce legal consequences.	A divorce granted outside of court may still be recognized after Reporting and verification by the Sharia Court in accordance with Section 57 of the Enactment of the Selangor State Islamic Family Law Act 2003.
3.	Relationship with Fiqh and Fatwas of Scholars	In terms of fiqh, a divorce is considered valid if it fulfills the pillars and conditions, and this is also affirmed in the fatwa of the Ulama Indonesia , which states that divorce is valid under Islamic law and that the waiting period (iddah) begins from the moment it is pronounced, though it must still be reported to the court.	Fiqh is more accommodating because the divorce is still considered to have Occurred and is subsequently legalized by the court.

4.	Legal Dualism	There is a dualism between fiqh and fatwas that recognize divorce under Islamic law and positive law, which does not recognize it without a judicial process.	This dualism is relatively minor because the legal system accommodates both aspects.
5.	Procedures When Divorce Occurs Outside of Court	There is an automatic validation mechanism; must file a new case in court	Must be reported within 7 days, after which the Court conducts an investigation to determine the validity.
6.	Effective Date of Divorce	Under positive law, the divorce is considered to have taken effect after the court issues a final and binding decision that has become final and binding.	Divorce may be recognized as soon as the words of divorce are spoken, after verification by the court
7.	The Role of Judicial Institutions	The Religious Court as the sole institution with the authority to adjudicate divorce	The Sharia Court has the authority to review, determine the validity of the divorce decree, and finalize the divorce
8.	Sanctions of Extrajudicial Divorce	No specific criminal penalties	A fine not exceeding one thousand ringgit or imprisonment not exceeding six months, or both a fine and imprisonment (Section 125).

Based on the comparison conducted, it can be seen that both Indonesia and Selangor designate the judiciary as the institution authorized to determine the validity of a divorce and to guarantee legal protection for women and children following a divorce. However, the two legal systems adopt different approaches in responding to the practice of extrajudicial divorce. Indonesia takes a stricter approach by stipulating that a divorce is valid only if it is conducted before a

Religious Court, as provided for in Article 39 of Law No. 1 of 1974 and Article 115 of the Compilation of Islamic Law. This approach provides strong legal certainty because it leaves no room for the recognition of extrajudicial divorce. However, on the other hand, this approach still faces challenges in the form of a gap between the applicable law and social reality, given that out-of-court divorce is still widespread in society due to factors such as religious understanding, economic conditions, and access to the judicial system. This situation ultimately gives rise to various legal issues, such as uncertainty regarding marital status and obstacles to the fulfillment of the rights of women and children.

In contrast to Indonesia, Selangor has adopted a more adaptive approach while still recognizing the possibility of extrajudicial divorce through a mechanism of reporting and validation by the Sharia Court, as stipulated in Section 57 of the Enactment of the Selangor State Islamic Family Law Act 2003. This approach has the advantage of bridging the gap between social reality and the need for legal certainty, ensuring that divorces that have taken place can still be verified and officially recorded by the state. Furthermore, Selangor's legal system includes provisions for sanctions against parties who pronounce divorce outside of court without court validation, as stipulated in Section 125 of the Selangor State Islamic Family Law Enactment 2003. The existence of these sanctions demonstrates a preventive effort to encourage public compliance with established legal procedures. Nevertheless, the recognition of extrajudicial divorces still has the potential to lead to abuse if reporting obligations are not fulfilled; thus, the effectiveness of this

system depends heavily on the public's legal awareness and the oversight exercised by the Sharia Court.

Based on the research findings, the author argues that Indonesia should consider establishing a legal mechanism for the validation of extrajudicial divorces to resolve issues arising from such practices. This mechanism is not intended to legitimize extrajudicial divorces but rather to provide legal protection for women and children and to prevent various legal and administrative problems resulting from unregistered divorces. In addition, Indonesia may also consider establishing sanctions against those who grant divorce outside of court, as implemented in Selangor, to increase public compliance with the divorce procedures established by law.

CHAPTER IV

CLOSING

A. Conclusion

Based on the discussion outlined above, the following conclusions can be drawn:

1. Under Indonesian positive law, a divorce pronounced outside a Religious Court hearing is not recognized as a valid legal event. This is because divorce must be conducted before a court, as stipulated in Article 39 of Law No. 1 of 1974 and Article 115 of the Compilation of Islamic Law. Consequently, a divorce pronounced outside of court has no legal force and does not give rise to civil legal consequences, thereby leading to legal uncertainty and the failure to fulfill the rights of women and children. Nevertheless, the practice of extrajudicial divorce still occurs in society, influenced by economic factors, access to the judiciary, and religious understanding, which ultimately reflects a dualism between religious law that recognizes divorce according to Sharia and positive law that requires judicial procedures.
2. Under Islamic family law in Selangor, extrajudicial divorce is not automatically recognized as a valid divorce, but it may still be reviewed and validated by the Shariah Court. A husband who pronounces divorce outside the Shariah Court is required to report it for an examination regarding its validity under Shariah law. If deemed valid, the divorce will be validated and registered, thereby acquiring legal force. This approach

indicates that the law in Selangor accommodates extrajudicial divorce through a validation mechanism, yet strictly regulates it with penalties of a fine not exceeding RM 1,000 or imprisonment for a maximum of 6 months, or both, as well as a reporting obligation within 7 days of the divorce being pronounced.

B. Recommendations

Based on these conclusions, the author offers the following recommendations:

1. For the government and judicial institutions, it is necessary to restructure the legal mechanisms related to divorce, particularly by strengthening reporting obligations and enforcement of regulations regarding extrajudicial divorce practices, to ensure legal certainty and encourage public compliance.
2. For the public, there is a need to raise legal awareness that divorce must be conducted through the courts to ensure legal certainty and protect the rights of all parties.
3. For future researchers, it is hoped that they can further examine the phenomenon of extrajudicial divorce using a broader approach or by comparing it with the legal systems of other countries.

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APPENDIXES

The Law of the Republic of Indonesia Number 1 of the Year 1974 on Marriage



PRESIDEN
REPUBLIK INDONESIA

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 1 TAHUN 1974
TENTANG
PERKAWINAN

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

Menimbang : bahwa sesuai dengan falsafah Pancasila serta cita-cita untuk pembinaan hukum nasional, perlu adanya Undang-undang tentang Perkawinan yang berlaku bagi semua warga negara.

Mengingat : 1. Pasal 5 ayat (1), Pasal 20 ayat (1), Pasal 27 ayat (1) dan Pasal 29 Undang-Undang Dasar 1945;
2. Ketetapan Majelis Permusyawaratan Rakyat Nomor IV/MPR/1973.

Dengan persetujuan Dewan Perwakilan Rakyat Republik Indonesia.

MEMUTUSKAN :

Menetapkan : UNDANG-UNDANG TENTANG PERKAWINAN.

BAB I
DASAR PERKAWINAN

Pasal 1

Perkawinan ialah ikatan lahir bathin antara seorang pria dengan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Mahaesa.

Pasal 2 ...



PRESIDEN
REPUBLIK INDONESIA

- 15 -

Pasal 38

Perkawinan dapat putus karena :

- a. kematian,
- b. perceraian dan
- c. atas keputusan Pengadilan.

Pasal 39

- (1) Perceraian hanya dapat dilakukan didepan Sidang Pengadilan setelah Pengadilan yang bersangkutan berusaha dan tidak berhasil mendamaikan kedua belah pihak.
- (2) Untuk melakukan perceraian harus ada cukup alasan, bahwa antara suami isteri itu tidak akan dapat hidup rukun sebagai suami isteri.
- (3) Tatacara perceraian didepan sidang Pengadilan diatur dalam peraturan perundangan tersendiri.

Pasal 40

- (1) Gugatan perceraian diajukan kepada Pengadilan.
- (2) Tatacara mengajukan gugatan tersebut pada ayat (1) pasal ini diatur dalam peraturan perundangan tersendiri.

Pasal 41

Akibat putusnya perkawinan karena perceraian ialah :

- a. Baik ...
- a. Baik ibu atau bapak tetap berkewajiban memelihara dan mendidik anak-anaknya, semata-mata berdasarkan kepentingan anak; bilamana ada perselisihan mengenai penguasaan anak-

BAB XVI

PUTUSNYA PERKAWINAN

Bagian Kesatu

Umum

Pasal 113

Perkawinan dapat putus karena :

- a. Kematian,
- b. Perceraian, dan
- c. atas putusan Pengadilan.

Pasal 114

Putusnya perkawinan yang disebabkan karena perceraian dapat terjadi karena talak atau berdasarkan gugatan perceraian.

Pasal 115

Perceraian hanya dapat dilakukan di depan sidang Pengadilan Agama setelah Pengadilan Agama tersebut berusaha dan tidak berhasil mendamaikan kedua belah pihak.

Pasal 116

Perceraian dapat terjadi karena alasan atau alasan-alasan:

Islamic Family Law (State of Selangor) Enactment 2003.



NEGERI SELANGOR

Warta Kerajaan

DITERBITKAN DENGAN KUASA

GOVERNMENT OF SELANGOR GAZETTE

PUBLISHED BY AUTHORITY

Jil. 56
No 15

27hb. Julai 2003

*TAMBAHAN
No. 1 ENAKMEN*

Enakmen yang berikut yang telah diluluskan oleh Dewan Undangan Negeri, Selangor, pada 28 April 2003 adalah diisytiharkan untuk makluman umum:-

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Islamic Family Law (State of Selangor) Enactment 2003	221

WARTA KERAJAAN NEGERI SELANGOR

183

UNDANG-UNDANG KELUARGA ISLAM (NEGERI SELANGOR) 35

(2) Jika salah satu pihak kepada sesuatu perkahwinan bukan Islam memeluk agama Islam, maka perbuatan yang demikian tidak boleh dengan sendirinya berkuat kuasa membubarkan perkahwinan itu melainkan dan sehingga disahkan sedemikian oleh Mahkamah.

Perceraian dengan talaq atau dengan perintah

47. (1) Seseorang suami atau seseorang isteri yang hendak bercerai hendaklah menyerahkan suatu permohonan untuk perceraian kepada Mahkamah dalam borang yang ditetapkan, disertai dengan suatu akuan berkanun yang mengandungi—

- (a) butir-butir mengenai perkahwinan itu dan nama, umur dan jantina anak-anak, jika ada, hasil dari perkahwinan itu;
- (b) butir-butir mengenai fakta-fakta yang memberi bidang kuasa kepada Mahkamah di bawah seksyen 45;
- (c) butir-butir mengenai apa-apa prosiding yang dahulu mengenai hal ehwal suami isteri antara pihak-pihak itu, termasuk tempat prosiding itu;
- (d) suatu pernyataan tentang sebab-sebab hendak bercerai;
- (e) suatu pernyataan tentang sama ada apa-apa, dan, jika ada, apakah langkah-langkah yang telah diambil untuk mencapai perdamaian;
- (f) syarat apa-apa perjanjian berkenaan dengan nafkah dan tempat kediaman bagi isteri dan anak-anak dari perkahwinan itu, jika ada, peruntukan bagi pemeliharaan dan penjagaan anak-anak dari perkahwinan itu, jika ada, dan pembahagian apa-apa aset yang diperolehi melalui usaha bersama pihak-pihak itu, jika ada, atau, jika tiada, sesuatu persetujuan tersebut telah tercapai, cadangan pemohon mengenai hal-hal itu; dan
- (g) butir-butir mengenai perintah yang diminta.

(2) Selepas menerima sesuatu permohonan untuk perceraian, Mahkamah hendaklah menyebabkan satu saman diserahkan kepada pihak yang satu lagi itu bersama dengan satu salinan permohonan itu dan akuan berkanun yang dibuat oleh pemohon, dan saman itu

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(3) Jika sesuatu perkahwinan yang diakadnikahkan dalam Negeri Selangor adalah dibubarkan atau dibatalkan dengan suatu perintah Mahkamah yang mempunyai bidang kuasa berwibawa di luar Negeri Selangor, salah satu daripada pihak-pihak itu boleh memohon kepada Pendaftar yang berkenaan itu dan Ketua Pendaftar hendaklah mendaftarkan perintah itu apabila berpuas hati bahawa perintah itu adalah satu perintah yang patut diiktiraf sebagai sah bagi maksud-maksud undang-undang dalam Negeri Selangor.

(4) Jika sesuatu lafaz talaq di hadapan Mahkamah atau sesuatu perintah perceraian atau pembatalan, di mana jua telah diberi, telah membubarkan sesuatu perkahwinan yang telah diakadnikahkan dalam Negeri Selangor dan telah didaftarkan di bawah Enakmen ini atau di bawah mana-mana undang-undang bertulis yang berkuat kuasa sebelum Enakmen ini, Pendaftar yang berkenaan dan Ketua Pendaftar hendaklah, apabila mendaftarkan talaq atau perintah itu, mengarahkan supaya catatan mengenai perkahwinan itu dalam Daftar Perkahwinan ditandakan dengan perkataan "dibubarkan" dan dengan rujukan mengenai perbicaraan dalam mana talaq itu telah dilafazkan atau perintah itu telah dibuat.

(5) Apabila mendaftarkan sesuatu talaq atau perintah perceraian atau pembatalan itu dan apabila dibayar kepadanya fi yang ditetapkan, Ketua Pendaftar hendaklah mengeluarkan surat perakuan cerai dan pembatalan dalam borang yang ditetapkan kepada kedua-dua pihak itu.

Pendaftaran perceraian

56. Tiada apa-apa lafaz talaq atau perintah perceraian atau pembatalan boleh didaftarkan melainkan Ketua Pendaftar berpuas hati bahawa Mahkamah telah membuat perintah muktamad berhubung dengannya.

Pendaftaran perceraian di luar Mahkamah

57. (1) Walau apa pun seksyen 55, seseorang yang telah menceraikan isterinya dengan lafaz talaq di luar Mahkamah dan tanpa kebenaran Mahkamah, hendaklah dalam masa tujuh hari dari pelafazan talaq itu melaporkan kepada Mahkamah.

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(2) Mahkamah hendaklah mengadakan siasatan untuk memastikan sama ada talaq yang dilafazkan itu adalah sah mengikut Hukum Syarak.

(3) Jika Mahkamah berpuashati bahawa talaq yang telah dilafazkan itu adalah sah mengikut Hukum Syarak, maka Mahkamah hendaklah, tertakluk kepada seksyen 125—

- (a) membuat perintah membenarkan perceraian dengan talaq;
- (b) merekodkan perceraian itu; dan
- (c) menghantar salinan rekod itu kepada Pendaftar yang berkenaan dan kepada Ketua Pendaftar bagi pendaftaran.

Mut'ah atau pemberian saguhati kepada perempuan yang diceraikan tanpa sebab yang patut

58. Selain daripada haknya untuk memohon nafkah, seseorang perempuan yang telah diceraikan tanpa sebab yang patut oleh suaminya boleh memohon mut'ah atau pemberian saguhati kepada Mahkamah, dan Mahkamah boleh, selepas mendengar pihak-pihak itu dan apabila berpuas hati bahawa perempuan itu telah diceraikan tanpa sebab yang patut, memerintahkan suami membayar sejumlah wang yang wajar dan patut mengikut Hukum Syarak.

Hak terhadap mas kahwin, dsb., tidak akan tersentuh

59. Tiada apa-apa jua yang terkandung dalam Enakmen ini boleh menyentuh apa-apa hak yang mungkin ada pada seseorang isteri di bawah Hukum Syarak terhadap mas kahwinnya dan pemberian kepadanya atau apa-apa bahagian daripadanya apabila perkahwinannya dibubarkan.

BAHAGIAN VI

NAFKAH ISTERI, ANAK DAN LAIN-LAIN

Kuasa Mahkamah memerintah nafkah bagi isteri, dan efek nusyuz

60. (1) Tertakluk kepada Hukum Syarak Mahkamah boleh memerintahkan seseorang lelaki membayar nafkah kepada isteri atau bekas isterinya.

Poligami tanpa kebenaran Mahkamah

124. Jika seseorang lelaki berkahwin lagi di mana-mana jua pun dalam masa perkahwinannya yang sedia ada masih berterusan tanpa mendapat kebenaran secara bertulis terlebih dahulu daripada Mahkamah maka dia adalah melakukan suatu kesalahan dan hendaklah dihukum denda tidak melebihi satu ribu ringgit atau penjara tidak melebihi enam bulan atau kedua-duanya denda dan penjara itu.

Perceraian di luar Mahkamah dan tanpa kebenaran Mahkamah

125. Jika seseorang lelaki menceraikan isterinya dengan melafazkan talaq dengan apa-apa bentuk diluar Mahkamah dan tanpa kebenaran Mahkamah itu maka dia adalah melakukan suatu kesalahan dan hendaklah dihukum denda tidak melebihi satu ribu ringgit atau penjara tidak melebihi enam bulan atau kedua-duanya denda dan penjara itu.

Tidak membuat laporan

126. (1) Jika seseorang berkewajipan membuat sesuatu laporan di bawah Enakmen ini dan dia bersengaja cuai atau tidak berbuat demikian maka dia adalah melakukan suatu kesalahan dan hendaklah dihukum denda tidak melebihi satu ribu ringgit atau penjara tidak melebihi enam bulan atau kedua-duanya denda dan penjara itu.

(2) Jika seseorang berkewajipan membuat sesuatu laporan atau dikehendaki mengemukakan sesuatu permohonan di bawah Enakmen ini atau dikehendaki memberi sesuatu maklumat atau menyempurnakan atau menandatangani apa-apa dokumen yang perlu di sisi undang-undang bagi maksud melaksanakan pendaftaran dokumen itu dan dia bersengaja cuai atau tidak membuat laporan itu atau mematuhi kehendak itu maka dia adalah melakukan suatu kesalahan dan hendaklah dihukum denda tidak melebihi satu ribu ringgit atau penjara tidak melebihi enam bulan atau kedua-duanya denda dan penjara itu.

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Educational Background

No	Lembaga	Nama Lembaga	Tahun
1.	TK	TK Dharmawanita	2008-2009
2.	SD/MI	SDN BATOR 1	2009-2015
3.	SMP/MTS	SMP Tahfidz Al-Amien Prenduan	2015-2018
4.	SMA/MA	SMA Tahfidz Al-Amien Prenduan	2018-2021
5.	S1	UIN Maulana Malik Ibrahim Malang	2022-2026