



**Physical Handicap as a Reason for Divorce:  
Case Study at the Sharia Court, Banda Aceh, Indonesia**

Ihdi Karim Makinara<sup>1</sup>, Jamhuri<sup>1</sup>, Fitrah Arrazi<sup>1</sup>

<sup>1</sup>Universitas Islam Negeri Ar-Raniry, Banda Aceh

✉ [ihdimakinara@ar-raniry.ac.id](mailto:ihdimakinara@ar-raniry.ac.id)

**Abstract**

In the city of Banda Aceh, Indonesia, divorce is permissible in some circumstances including physical infirmities, such as when a husband experiences an erectile dysfunction. Under the Islamic law, divorce is permissible and the woman has the right to initiate divorce proceedings and pursue legal action. This study aims to examine the perspectives of judges at the Banda Aceh *Syari'iyah* Court regarding divorce cases involving individuals with physical disabilities. This study scrutinizes the practical legal methods employed by analyzing them from the perspective of the Islamic family law principles. This article analyzes the practical legal methods employed by studying the perspectives of the Islamic family law. Conversely, the process of collecting data entails scrutinizing documents, such as legal judgments, pertinent literature, and scholarly papers. According to *Hanafi* and *Maliki* scholars, divorce due to physical inability is classified as *talak ba'in*, as determined by this study. Conversely, the *Shafi'i* and *Hanbali* schools are seen solely as a means to breach the sacrificial pact (*fasakh*). If this divorce is determined to be valid, the husband will have two opportunities to legally execute the divorce in order to remarry this woman. According to this, the Banda Aceh *Sharia* Court concluded that a husband's inability to perform sexually might be considered a valid reason for his inability to fulfill his responsibilities. Testimony from witnesses confirmed this, providing evidence that the legal proceedings adhered to Islamic law. Consequently, this study concludes that divorce occurs when a husband's physical impairment hinders his ability to fulfill his obligations, leading to the breakdown of the marriage. However, the *Sharia* Court provides a remedy (dispensation) to address the medical condition (impotence) so that the judges might take it into account when seeking reconciliation between the two parties, if the condition is resolved.

**Keywords: Divorce, Physical Disability, Islamic Family Law**

**Abstrak**

*Cacat fisik merupakan salah satu alasan diperbolehkan melakukan perceraian sebagai contoh suami yang mengidap penyakit kelamin impotent. Hukum Islam sendiri memperbolehkan perceraian, apabila dibutuhkan maka istri berhak untuk menuntut serta mengajukan perceraian. Penelitian ini bertujuan untuk mengkaji perceraian disebabkan karena cacat fisik sebagai pertimbangan hakim pada Mahkamah Syari'iyah Banda Aceh. Kajian tersebut menggunakan metode hukum empiris yang dianalisis dengan teori-teori hukum keluarga Islam. sedangkan teknik pengumpulan datanya adalah studi dokumentasi yaitu putusan hakim dan artikel jurnal dan buku yang terkait dengan pembahasan. Penelitian ini menyimpulkan bahwa menurut ulama Hanafi dan Maliki bahwa melakukan perceraian dengan alasan cacat fisik merupakan talak ba'in. Sedangkan Mazhab Syafi'i dan Hanbali hanya dianggap sebagai bentuk rusaknya akad nikah (fasakh). Akibatnya, kalau perceraian ini dianggap talak, maka suami memiliki 2 (dua) kesempatan untuk menjatuhkan talak apabila hendak kawin lagi dengan wanita ini. Atas dasar ini Mahkamah Syari'iyah Banda Aceh memutuskan bahwa impotensi dapat dijadikan sebagai salah satu alasan karena suami tidak menjalankan kewajibannya. Hal ini dikuatkan dengan keterangan saksi-saksi, maka gugatan terbukti memenuhi aturan hukum Islam. Oleh karenanya, kajian ini menyimpulkan adanya perceraian disebabkan suami cacat fisik sehingga tidak dapat menjalankan kewajibannya, sehingga perkawinan dapat putus. Akan tetapi, pihak Mahkamah Syar'iyah memberi keringanan (dispensasi) untuk menyembuhkan penyakit (impotensi) agar menjadi pertimbangan para hakim untuk mendamaikan kedua belah pihak jika dapat disembuhkan.*

**Kata Kunci:** *Cerai Gugat, Cacat Fisik, Hukum Keluarga Islam*

**Introduction**

Indonesia is the most populated Muslim country in the world. Indonesia applies and practices three distinct legal systems within the framework of the nation state: the positive law, the customary law, and the Islamic law. The integration of the Islamic law with national legal systems has resulted in significant reforms and advancements, particularly in the realm of Islamic family law, which encompasses areas such as marriage, divorce, *waqf* (endowment), zakat (charitable giving), and donations.<sup>1</sup>

The Islamic family law is a legally recognized aspect of divorce processes in the Indonesian society. In accordance with the Indonesian marital legislation and legal conventions, divorce can be initiated through a legal action known as sued divorce or *talak*, which can be filed by either the husband or the wife. The divorce

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<sup>1</sup> Ahmad Tholabi Kharlie, et.al., "Reforming Islamic Marriage Bureaucracy In Indonesia: Approaches and Impacts," *Al- Jāmi'ah: Journal of Islamic Studies* 59, no. 2 (2021), p. 255-286. Asep Saepudin Jahar, "Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law", *Studia Islamika* 26, no. 2 (2019), p. 207-245.

process in Indonesia is regulated by the Religious Courts, which establish appropriate conditions and requirements.<sup>2</sup> A divorce is a legal proceeding initiated by a woman against her spouse in a court of law, based on certain legal reasons. A court's ruling initiates a divorce proceeding in response to a disputed divorce. Divorce is the legal termination of a marriage by a judge's order or a claim made by one of the spouses.

In Islamic law, divorce is not prohibited; however, it is considered as a final recourse for terminating the marital bond after all other alternatives have been thoroughly explored. Divorce is legally regulated under Article 38 letter (b) of Law Number 1 of 1974 concerning Marriage. It states that a marriage can be terminated due to divorce, death, or court mandates. This rule clearly demonstrates that the termination of a marriage due to divorce is distinct from the termination of the marriage itself.<sup>3</sup>

Articles 20–36 of PP Number 9 of 1975 and Articles 73–83 of Law Number 7 of 1989 both control the divorce process. A divorce is brought about by a claim made to the court by one of the parties (the wife), and it is finalized as a result of a ruling made by the court. The Compilation of Islamic Law states that one person may seek for divorce if the other has a physical impairment. It is further emphasized in Law Number 1 of 1974 Article 39 paragraph (2) and Article 19 Letter (e) PP Number 9 of 1975 that a physical impairment of one party may be a valid basis for divorce. Divorce in the Islamic law is accomplished through a judicial procedure known as *fasakh*, according to the *fiqh* books. *Fasakh*, which translates to "breaking or releasing the bonds of marriage," is the dissolution of a marriage at the request of one of the spouses by a judge in a religious court.<sup>4</sup>

Article 116 letter (e) of the Compilation of Islamic Law states that one of the parties is unable to fulfill his responsibilities as husband and wife due to a physical impairment or disease. Impotence is the term for a sickness that prevents a spouse from fulfilling his responsibilities. In the event that one of the parties suffers from a physical impairment or disease that prevents them from fulfilling their commitments, the spouse may seek for divorce under Government Regulation Number 9 of 1975 Article 19 letter (e) and the Compilation of Islamic Law Article 116 letter (e). A spouse who is incapable of producing children may be the cause of a wife's court-filed divorce.

"When there is a discord between a husband and wife, such as when they do not respect one another or do not keep each other's secrets private, it can lead to a strong desire to leave the marriage through divorce. This is a very principled

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<sup>2</sup> Atun Wardatun and Bianca J. Smith, "Woman-Initiated Divorce and Feminist Fiqh in Indonesia: Narrating Male Acts of Nushūz in Marriage," *Ulumuna: Journal of Islamic Studies* 24, No. 2 (2020). Rusjdi Ali Muhammad and Yulmina Yulmina, "Multi Alasan Cerai Gugat: Tinjauan Fikih terhadap Cerai Gugat Perkara Nomor:0138/Pdt.G/2015/MS.Bna pada Mahkamah Syar'iyah Banda Aceh," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, No. 1 (2019).

<sup>3</sup>Anang Zamroni, *Hukum Perkawinan Nasional*, (Jakarta: Bulan Bintang, 2010), p. 7.

<sup>4</sup>Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

disagreement. In connection with this, divorce is the dissolution of a marriage at the request of one of the parties or by a judge's decree."<sup>5</sup>

One factor contributing to divorce, as mentioned earlier, is the husband's inability to provide emotional and physical support to his spouse, such as due to chronic illness or impotence. This scenario leads to conflict within the household, and the wife possesses the entitlement to seek a divorce if her partner suffers from an untreatable physical disability or disease. A *fasakh* divorce action refers to a legal procedure initiated by a wife against her husband, which gives the wife valid grounds to request a divorce.

The following circumstances warrant the right to initiate a legal petition for divorce against the husband within the context of a divorce, namely in cases where the divorce is being disputed: 1) The spouse violates the conditions of the marriage contract, including the divorce agreement; 2) *Khulu'*, when the wife initiates divorce by offering compensation (*talaq*); 3) *Fasakh*, when the wife seeks divorce due to illness; 4) *Shiqaq* (quarrel), when the wife seeks divorce because of ongoing disputes with her husband.<sup>6</sup>

This is justified by the Islamic law for the reasons outlined above. Divorce is therefore the sole option that needs to be used. According to the phenomenon, there was a 13.11 percent rise in contentious divorce cases in 2018. 5,562 cases total up from 4,917 cases in total—including 1,331 *talak* divorce cases and 3,586 divorce cases in 2017. Then, in 2018, there were 4,000 divorce lawsuits and 1,562 divorces.<sup>7</sup>

Physical disability cases that result in arguments between the parties and the other party feeling disadvantaged due to a partner's incapacity to engage in sexual interactions are why they are challenged. Physical disease or disability can sometimes be cited as grounds for divorce because it may prevent one spouse from fulfilling their commitments. It is not official for a divorce to result from one party's incapacity to have children. When that occurs, it is merely a choice that can be exercised or not. It follows that, in addition to other considerations, this component has a significant impact on human behavior when it comes to marriage.<sup>8</sup>

The author lists various barriers to sexual activities in the description above, which are broken down into two sections:

1. Sexual deformities that preclude having sex, such as impotence, castration, and severed penis in men, or the presence of flesh or bones in a woman's vagina.
2. Defects that do not prohibit sexual interactions; these are illnesses like syphilis, leprosy, lunacy, TB, and leprosy that cannot be contained other than by inciting evil.

<sup>5</sup> Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: Intermasa, 2003), p. 42.

<sup>6</sup> Abdurrahman, *Pengantar Hukum Adat*, (Jakarta: Pustaka Pelajar, 2000), p 116.

<sup>7</sup> Mohd. Kalam Daud, et.al., "Faktor Penyebab Meningkatnya Angka Gugat Cerai (Studi Kasus di Mahkamah Syar'iyah Banda Aceh)," *El-USrah: Jurnal Hukum Keluarga* 3, No. 2 (2020).

<sup>8</sup> Mustofa Hasan, *Pengantar Hukum Keluarga*, (Bandung: Pustaka Setia, 2011), p. 25.

In the words of Imam Mahmud, "no defect in a woman gives a man the right to dissolve a marriage, but madness, leprosy, leukoderma, suffered by a man, give the woman the choice to maintain or break the marriage bond."<sup>9</sup>

The aforementioned explanation illustrates that a woman can terminate her marriage and initiate divorce proceedings in the event that her husband is unwell and incapable of fulfilling his obligations as a spouse. In this situation, the case is deemed valid if the wife is unable to assert her rights as a result of her husband's physical disability.

Another principle of Islamic marriage law is that the couple's partnership must not cause them unhappiness or tempt them to violate the limitations set by Allah. In Islamic jurisprudence, divorce can be obtained by talak or fasakh as a means to uphold the principles of individual liberty and autonomy. This legal provision justifies and facilitates divorce when it is seen more desirable than remaining in a marital union.<sup>10</sup>

According to the statement above, the Islamic law permits one party to dissolve a marriage when it disadvantages the other party and when that person has to safeguard their human freedom. If a woman feels that her husband's physical incapacity (impotence) prevents her from having sexual contact with him, Islam permits divorce. In such a case, the woman may sue him in court. However, initially each party should think about and look for a solution from the other party through mediation. This research delves deeper into the notions and considerations of judges in the context of modern medical knowledge, which can help determine whether a patient is suffering from a sexually transmitted disease (like syphilis) or whether the plaintiff is using the illness as a justification.

The previous sentence makes it clear that Indonesians have been living according to Islamic law, or *fiqh*, on a daily basis. Islamic law, which regulates *waqf*, marriage, divorce, inheritance distribution, and other issues, has developed into a dynamic legal framework that has even impacted custom and culture. The Compilation of Islamic Law (KHI) and the Civil Code (KUHP) are two examples of laws that are applicable in Indonesia that are theoretically comparable to Islamic law.<sup>11</sup>

The empirical legal techniques used in this work are examined through the lens of the Islamic family law views.<sup>12</sup> In the meantime, a documentation study is used to gather data; this includes the judge's ruling as well as books and journal

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<sup>9</sup> Fazi Ahmed, *Pedoman Perkawinan Dalam Islam*, (Jakarta: Darul Ulum Press, 1994), p. 93.

<sup>10</sup> Sudarsono, *Aneka Hukum Perceraian di Indonesia*, (Jakarta: Ghalia Indonesia, 1985), p. 29.

<sup>11</sup> Siti Rohmah and Azka Rasyad Alfatdi, "From Living Law to National Law: Theoretical Reconstruction of Applying Islamic Law in Indonesia," *Peradaban: Journal of Law and Society* 1, No. 1 (2022). Khafid Abadi, "Limiting the Age of Marriage in Indonesia: Harmonization Between Living Law and Positive Law," *Transformatif* 6, No. 2 (2022), p. 211-222.

<sup>12</sup> Faisar Ananda Arfa dan Watni Marpaung, *Metodologi Penelitian Hukum Islam*, Jakarta: Kencana, 2018.

articles that are pertinent to the topic of debate. Judges' rulings are among the most fascinating subjects for inquiry and analysis in the study of Islamic law because they allow for the analysis of both the application and implementation of the law in society as well as legal ideas and concepts.

### **Divorce in Law and the Islamic Family Law**

The dissolution of a married couple's relationship is the only meaning that the term "divorce" is used to describe. It is said that the word "divorce" is the source of this term, which denotes the separation or termination of a marriage between a husband and wife.<sup>13</sup> The term "divorce" (which includes the prefix "per" and the suffix "-an") generally refers to the division, separation, or divorce of a husband and wife. In this instance, you have the option of filing for divorce both from the wife's side (divorce lawsuit) and from the husband's side (*talak*, or sued divorce). The goal of this study is to understand these two meanings.

The definition of divorce can also be found in several perspectives of Imam *Madhab*. According to Imam *Syafi'i*, the term "*talak*" or a comparable utterance signifies the dissolution of the marital agreement. Conversely, according to the Hanafi and Hanbali schools of thought, *talak* is specifically defined as a deliberate and anticipated termination of marital ties, pronounced in a distinct manner. Imam Maliki presented an alternative viewpoint that provides a more comprehensive understanding of *talak*. He perceived *talak* as a distinctive legal characteristic that fractures the *halal* union between a husband and wife.<sup>14</sup>

Islamic jurisprudence outlines multiple reasons for the termination of a marriage, with each reason discussed in a separate section of the *fiqh* scriptures. Some examples of these causes include *khulu'*, *ila'*, *li'an*, and others. However, the *fuqaha* categorize these justifications into two distinct terms: *talak* or *fasakh*. Imam Ahmad's report is categorized as *fasakh*, however the Hanafis label it as *talak ba'in*. Regarding *ila'*, Hanafi maintains that the divorce will occur automatically once the four months have elapsed, whilst *jumhur* advocates for resolving the matter by bringing it back before the judge. In the *Li'an* case, *Jumhur* and Hanafi have differing beliefs regarding divorce. *Jumhur* asserts that divorce occurs automatically and does not require a judge's ruling, but Hanafi maintains that divorce does not occur automatically unless a judge issues a verdict.<sup>15</sup>

Thus, from a *fiqh* standpoint, there are only two types of divorce: *talak* and *fasakh*. Divorce is categorized above into *talak* and *fasakh* in order to distinguish their legal status. The *talak* law will be implemented in cases classified as such; on the other hand, the *fasakh* law will be applied in cases classified as such.

Scholars' classifications of divorce cases into these two groups, however, vary. According to the Hanafi perspective, the following situations qualify as

<sup>13</sup> Tim Pustaka Phoenix, *Kamus Besar Bahasa Indonesia* (Jakarta: Pustaka Phoenix, 2011), p. 38.

<sup>14</sup> Muhammad Jawad Mughniyah, *Al-Fiqh a'al al-Mazhab al-Khamsah*, (terjemahan) (Jakarta: Lentera, 2005), p. 441-442.

<sup>15</sup> Wahbah al-Zuhaili, *Fiqh islam Wa Adillatuhu...*, p. 551

fasakh: (1) When a judge grants a divorce because the woman refuses to follow her husband's Muslim conversion and is a polytheist or Magian. A Muslim cannot wed a polytheist lady, hence the husband and wife must live apart. Since the wife is the one who brought about the situation, it cannot be deemed a divorce because she lacks the legal capacity to do so. Instead, situations such as this one fall under the category of *fasakh*.

However, according to Imam Abu Hanafiah and Muhammad, if the unwillingness to accept Islam originates from the husband's side, it is classified as *talak*; however, Abu Yusuf views it as *fasakh*. (2) One of the spouses is no longer a Christian. (3) Regional differences: for instance, one of them is in an Islamic territory, whether it be a Muslim or *dhimmi* area, while the other is in a conflict area. Unlike Abu Hanafiah, which holds that divorce does not happen if they live in different region, and it is considered as apostates. In this instance, divorce can only take place if it is administered by a judge, in accordance with *Khiyar al-bulugh* (4) (the right to make decisions as an adult).

However, if the woman demands an alternative owing to a physical handicap, such as castration or impotence, this is considered a divorce supervised by a judge. As per the principle of *Khiyar al-Itq*, a liberated female slave has the freedom to choose whether to continue being married or to dissolve her marriage if her husband is still enslaved. (6) Divorce occurs when one of the two parties does not fulfill the conditions of equality, or when the dowry is inadequate. This divorce is categorized as *fasakh in Khiyar Al-Bulugh* due to the fact that it was not initiated by the husband, but rather through an intermediary appointed by a judge, among other reasons. As mentioned before, this falls under the category of *talak*, which also includes *khulu'*, if the husband is the one who initiates it.<sup>16</sup>

In the meantime, there are two types of divorce: *talak* and *fasakh*, depending on whether the divorce is the result of judicial involvement or not. Imam Abu Hanifah states that the following types of *talak* call for legal action:

1. Divorce based on *li'an* does not necessitate judicial intervention, in contrary to the Imam Malik school of thought.
2. Divorce brought on by the husband and wife's shortcomings.
3. Divorce brought on by the antagonistic husband.
4. Islam as it is understood by Muhammad and Abu Hanifah.

Moreover, divorcing without going through court proceedings is: Divorce owing to the incompatibility of spouses, which lead the husband to allow the wife to take control over the divorce process based on an agreement; 2) Divorce owing to *ila'*, as per the schools of Abu Hanifah and Imam Malik; and 3) Divorce owing to *khulu'*, as per the opinions of the majority of *ulama*, with the exception of adherents of the Ahmad bin Hambal school of thought.<sup>17</sup>

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<sup>16</sup> Wahbah Al-Zuhaili, *Fiqh Islam Wa Adillatuhu*, terjemahan) (Depok: Gema Insani, 2011), p. 446.

<sup>17</sup> Wahbah Al-Zuhaili, *Fiqh Islam Wa Adillatuhu...*, p. 46-47.

In the interim, the following types *fasakh* require court intervention:

1. Divorce brought on by conflict.
2. Divorce brought on by unpaid dowry.
3. Divorce brought on by one party's unwillingness to accept Islam; most ulama concur that if the wife's refusal to accept Islam is the reason for the divorce. The majority of the *ulama* concurred that the spouse had declined to become a Muslim convert, but he distinguished this from that of Abu Hanifah and Muhammad; even Abu Yusuf thought this instance qualified as *fasakh*.
4. Divorce brought on by the adult right to vote, or *khiyar al-ifaqah*.
5. Divorce based on *khiyar al-ifaqah* (voting even though one is aware of one's own craziness).

Without judicial involvement, the *fasakh* is as follows:<sup>18</sup>

1. *Fasakh*, which results from a contract that is broken right away, such getting married in front of no witnesses, etc.
2. *Fasakh* when one of the parties is involved in a relationship—such as an in-law relationship—that is forbidden by *Sharia* law.
3. *Fasakh* because, according to Abu Hanifah and Yusuf, the spouse is an apostate; nevertheless, Imam Abu Hanifah holds that if both of them apostatize, they do not need to get a divorce.
4. *Fasakh* because there is *khiyar al-'itq* for the wife.
5. *Fasakh* for marrying two siblings.

According to scholars of the Hanafi and Maliki schools of thought, a divorce that occurs because to defects is still considered a divorce. Nevertheless, the Shafi'i and Hambali schools do not consider it as *talak*, but rather perceive it as a breach of the marriage contract (*fasakh*). Hence, if this divorce is ultimately concluded, the husband's request for a specific divorce settlement must be taken into account if he intends to marry the ex-wife again. Consequently, the man's ability to legally end his marriage will only persist on two occasions if the issue has been rectified and he remarries the same lady, since divorces stemming from this particular imperfection are considered valid divorces.<sup>19</sup>

Alternatively, if one adheres to the belief that divorce caused by a disability is not considered divorce but rather *fasakh*, and then *fasakh* does not affect the amount of divorce that a man is entitled to. Consequently, if he remarries his ex-wife, he will retain the privilege of having offspring while also maintaining the option to dissolve the marriage on three separate occasions. Ultimately, a woman has the right to pursue a divorce if she believes that her safety is at risk, and she is confident that by sufficient effort and resolve, she can prevent such danger. This holds true regardless of whether she was previously unaware of the threat or if it poses a harm to the stability of the marriage.

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<sup>18</sup> Wahbah Al-Zuhaili, *Fiqh Islam Wa Adillatuhu*..., p. 341-342.

<sup>19</sup> Anshori Umar, *Fiqh Wanita*, (Semarang: Asy Syifa', 1986), p. 417-418.



The origin of the word "divorce" can be elucidated by its derivation from the Arabic term "*talak*." This term is examined from two distinct angles: linguistic and terminological. *Talak* denotes the act of departing or relinquishing in the language. Imam Taqiyudin describes *talak* as the act of breaking connections or divorce. The term divorce, in turn, denotes the termination of a marriage either through a judge's ruling or upon the request of one of the parties involved. The Compilation of Islamic Law (KHI) states that divorce, *talak*, or a combination of both can result in the termination of a marriage. Divorce is the legal right of a husband to terminate his marriage with his wife if they are no longer compatible and reconciliation is no longer feasible. Conversely, a wife can initiate a divorce litigation against her husband based on the grounds specified in the Compilation of Islamic Law.<sup>20</sup>

The aforementioned explanation clearly demonstrates that *talak* is a lawful action that can promptly result in the termination of a marriage. It is apparent that a woman possesses the legal entitlement to initiate divorce proceedings against her husband based on the specific grounds outlined in the Compilation of Islamic Law, which provides a definition of these grounds.

As per legal regulations, a contentious divorce refers to a divorce that is carried out against the wife's consent. The regulations regarding religious courts are outlined in Law Number 3 of 2006, which updates Law Number 7 of 1989. According to Article 73, paragraph (1), a divorce complaint can be filed by the wife, using her power of attorney, to the court that has jurisdiction over the plaintiff's dwelling, unless the plaintiff intentionally leaves the shared household without the defendant's consent. According to Article 132 paragraph (1) of the Compilation of Islamic Law, a divorce case initiated by the wife or her representative must be submitted at a religious court that has jurisdiction over the area where the plaintiff resides, unless the wife has left the shared residence without the husband's consent.

Divorce, or *talak*, is defined in Islamic family law as the opposite of reconciliation. Subsequently, jurists began to use this word to refer to a husband and wife's divorce.<sup>21</sup> Divorce, or *talak*, is defined in Islamic family law as the opposite of reconciliation. Subsequently, jurists began to use this word to refer to a husband and wife's divorce.<sup>22</sup>

Divorce is a contributing factor to the failure of marriages. Divorce can occur for various reasons, including when one party is unable to fulfill their duties as a spouse due to a physical disability or illness, as stated in article 116 KHI letter (e).

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<sup>20</sup>Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, Cet.1 (Bandung: Nuansa Aulia, 2008), p. 145.

<sup>21</sup>Kamal Mukhtar, *Asas-asas Hukum Islam Tentang Perkawinan*, (Jakarta: Bulan Bintang, 1993), p. 6.

<sup>22</sup>Abu al-Walid Muhammad bin Ahmad bin Muhammad bin Ahmad bin Rusyd al-Qurtubi al-Andalusi, *Bidayat al-Mujtahid wa Nihayah al-Muqtasid*, Juz II (Beirut: Dar al-Fikr, 2008), p. 43.

According to the Government Regulation Number 9 of 1975, Article 19 letter (e), and the Compilation of Islamic Law, Article 116 letter (e), it is stated that if one of the parties is unable to fulfill their responsibilities as a husband or a wife due to a physical handicap or disease. If a woman's spouse suffers from impotence, she has the option to initiate divorce proceedings with a judge. Shaikh Abdurrahman bin Nashir As-Sa'di advocated for the idea that a wife should let her husband a period of one year to attempt conception, in the event that he is facing difficulties in doing so. If the husband remains impotent after the specified duration, the lady has the right to initiate a legal process known as *fasakh*.<sup>23</sup>

The aforementioned rationale supports the conclusion that the Government Regulations and the Compilation of Islamic Law acknowledge the presence of a basis for divorce if either the husband or wife has a physical disability. This arises from the inability of one of the parties to perform their obligations, resulting in disputes between the husband and wife and unmet biological and financial needs.

### Legal Basis for Divorce

The Islamic law derives not only from the Qur'an, but also from *hadith*, *Ijma'*, and *Qiyas*. These sources align with the objectives of the Islamic law and do not seek to attain the absolute perfection of human comprehension. The Qur'an serves as the principal legal authority, being a divine revelation that is guaranteed to be true and protected from any human tamper. Therefore, this cleansing maintains the Qur'an's position as the principal authority for legislation. The Islamic law serves as the fundamental basis for the implementation of legal *istinbat*. Consequently, this legal source must serve as the basis for everything that is being contested.<sup>24</sup>

1. QS. Al-Baqarah ayat 232:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ذَلِكَ يُوعِظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَمْ أَزْكَى لَكُمْ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

When you divorce women and they have reached the end of their waiting period, do not 'let the guardians' prevent them from re-marrying their ex-husbands if they come to an honourable agreement. This is enjoined on whoever has faith in Allah and the Last Day. This is purer and more dignifying for you. Allah knows and you do not know (Q.S. al-Baqarah: 232).

<sup>23</sup> Windu Siti Candra, *Disfungsi Seksual: Tinjauan Fisiologi dan Patologis Terhadap Seksualitas*, (Yogyakarta: Andi Offset, 2009), p. 104.

<sup>24</sup> Septi Aji Fitra Jaya, "Al-Quran dan Hadis Sebagai Sumber Hukum Islam," *Indo-Islamika* 9, No. 2 (2019). Aji Setiawan ST, "Sumber Hukum Islam Menurut Doktrin Akhlus Sunnah Wal Jama'ah," *The International Journal of Pegon Islam Nusantara Civilization* 5, No. 1 (2021), p. 1-24

2. QS. An-Nisa' ayat 130:

وَأِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كِلَا مِّنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

But if they choose to separate, Allah will enrich both of them from His bounties. And Allah is Ever-Bountiful, All-Wise. (QS. al-Nisa: 130).

The Compilation of Islamic Law (KHI) and Law Number 1 of 1974 regulates divorce as the ultimate recourse for resolving marital matters in Indonesia. Article 34 of the Marriage Law Number 1 of 1974 and Article 77 paragraph 5 of the Compilation of Islamic Law declares that if a husband or wife fails to fulfill marital responsibilities, they have the right to take legal action before the Religious Court. Both a husband and a wife are equally capable of ascending and descending stairs. The Marriage Act of 1974 governs the obligations of both spouses. The wife must provide her commitments to her husband, while the husband must fulfill his obligations towards her. The legal duties are mandatory and unconditional for all parties concerned; nevertheless, the ability of each party to fulfill these commitments depends on their individual capacities. Under Indonesian marriage legislation, neglecting to perform this obligation constitutes a breach within the household.<sup>25</sup>

### **Sharia Court's Decision Regarding Divorce Due to Physical Disability**

The justices of Aceh's Sharia Court or religious court consistently uphold the formal and substantive standards of truth in their rulings. The formal truth principle that is utilized in religious courts is still relevant today since it complies with legal requirements in Indonesian civil courts' civil case evidence system. The judges of Indonesia's High Religious Court have expressed their opinions regarding the application of the formal truth principle in environmental courts of religious justice. Their view is that this principle should be applied as a requirement of the trial process. Judges are supported in their case examinations by the formal truth concept. Nonetheless, there are several other judges who think material truth ought to take the place of the formal truth concept. Consequently, the Sharia Court renders decisions in divorce proceedings involving the parties, which are consented to by all parties.<sup>26</sup>

In the disputed divorce case resulting from a tangible document at the Banda Aceh City Syar'iyah Court, a verdict was reached in 2018. The judges determined that the Plaintiff, through his letter dated January 9, 2018, was officially recorded at the Banda Aceh Syar'iyah Court Case Registry Number 12/Pdt.G/2018Ms.Bna, and on January 10, 2018, he filed a case for divorce against the Defendant, providing the following description/reason:

<sup>25</sup> Muhammad Syaifuddin, *Hukum Perceraian* Cet. 1, (Jakarta: Sinar Grafika, 2014), p. 39.

<sup>26</sup> Abdul Halim Talli, et.al., "Application of the Principle of Truth to Judiciary Institutions: Discourse of Judges at the Makassar Religious High Court, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1 (2023).

1. On July 17, 2017, the Plaintiff and the Defendant were married in accordance with Islamic law or the teachings of the Islamic faith. According to the Marriage Certificate Number 083/20/VII/2017, dated July 17, 2017, the marriage was officially registered at the Jaya Baru Religious Affairs Office (KUA).<sup>27</sup>
2. The Plaintiff and Defendant only spent a few nights together in a motel after being married. They never lived together. At the moment, the Defendant resides on Jalan Teupin Gampong Lancang West, Dewantara District, North Aceh, and the Plaintiff resides on Jalan Sawah Gampong Punge Blang Cut, Jaya Baru District, Banda Aceh City.
3. The Plaintiff and Defendant were together as husband and wife during the marriage period, but they were not blessed with children;
4. The Plaintiff's happiness did not last long after marrying the Defendant, for which there were several reasons. These included: a) The Defendant suffered from impotence and premature ejaculation; b) Defendants and Plaintiffs frequently engage in endless disputes.

In regards to the issues and discord in the home, the plaintiff has attempted to talk to the families of the defendant and the plaintiff in an attempt to find a solution and keep the marriage together, but these attempts have failed. Based on the aforementioned reasons or arguments, the Plaintiff requests that the Chairman of the Banda Aceh Syar'iyah Court, examine and try this case, then hand down a decision which is as follows:

1. Grant the Plaintiff's lawsuit in its entirety;
2. Imposing *talaq ba'in shughra* of the Defendant (AbY) on the Plaintiff (MbR);
3. Charge court costs according to law;
4. Request a decision that is as fair as possible;

On the scheduled trial date, the Plaintiff appeared in person, while the Defendant failed to attend or arrange for a legal representative, despite being summoned twice through the same phone number. Based on the documents 12/Pdt.G/2018Ms.Bna dated 7 February 2018 and 5 March 2018, which were presented during the trial, the Defendant has been officially and correctly notified.

Given that the Defendant is not present, it is not possible to mediate the aquo case. However, the Panel of Judges has attempted to counsel the Plaintiff to be patient and reconcile with the Defendant, but without success. Therefore, the examination will proceed to the litigation stage, specifically the closed trial for the main case. Typically, the process starts by reviewing the letter of claim, which contains the key arguments presented by the Plaintiff.

The Plaintiff has submitted the following documented evidence to support their complaint regarding the arguments of the lawsuit:

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<sup>27</sup> Putusan Mahkamah Syar'iyah Banda Aceh, Nomor 12/Pdt.G/2018/Ms.Bna.

1. Photocopy of Resident Identity Card Number: 1171086609820003, dated 16-12-2011, in the name of the Plaintiff, issued by the Province of Aceh. The evidence has been adequately stamped and has been matched with the original which turns out to be appropriate, then the Chairman of the Tribunal has marked it (exhibit P.1);
2. One copy of original marriage certificate and photocopy of Marriage of Baru District, Banda Aceh City. The evidence has been sufficiently stamped and has been matched with the original which turns out to be appropriate, then the Chairman of the Tribunal has marked it (exhibit P.2);
3. Original letter of recommendation Number: 117/03, dated January 10 2018, issued by the head of Gampong Punge Blang Cut, Jaya Baru District, Banda Aceh City. This proof has been adequately stamped, then the Chairman of the Assembly is given a mark (exhibit P.3);

Considering, apart from the documentary evidence, the plaintiff also presented two witnesses, namely a family witness and a non-family witness, as follows:

1. AbY (aged 55 years), a Muslim, self-employed, residence in Tuan Dipakeh Hamlet, Gampong Punge Blang Cut, Banda Aceh City. Under oath, provide the following statement:
  - a. That, the witness knows the plaintiff's name, Wardiah bint Hajarudin, because the witness is the plaintiff's uncle.
  - b. That, the witness knew the Defendant one day when he was married at KUA Punge Blangcut, his name was Muhammad Yusuf bin Amin.
  - c. That, the Plaintiff and Defendant are husband and wife.
  - d. That, the Plaintiff and Defendant have been married for less than 1 year.
  - e. That, after marriage, Plaintiff and Defendant did not live together, Plaintiff rented a boarding house in Punge Blangcut while Defendant, the witness, did not know where he lived.
  - f. That, the witness did not know the reason why Plaintiff and Defendant did not live together after getting married.
  - g. That, the household problems of the Plaintiff and Defendant were never reconciled by the family.
2. MbR (47 years old), a Muslim, holds a Master's degree, civil servant/teacher job, and resides in Gampong Ajun Jeumpet, Darul Imarah District, Aceh Besar Regency. Under oath, provide the following statement:
  - a. That, the witness knew the Plaintiff, Wardiah bint Hajarudin, as a friend.
  - b. That, the witness knew the Defendant's name, Muhammad Yusuf bin Amin, when Defendant took Plaintiff to teach the Koran at the Grand Mosque,
  - c. That, the Plaintiff and Defendant are husband and wife.

- d. That, after marriage, the Plaintiff and Defendant did not live together, the Plaintiff rented a boarding house in Punge Blang Cut while the Defendant was in Lhokseumawe when the Defendant returned to Banda Aceh, the Plaintiff and Defendant stayed at a hotel and were together (two) months at the hotel. Then for 7 (seven) months Plaintiff and Defendant lived separately
- e. That the Plaintiff and Defendant's household was no longer harmonious as a result of the Defendant's failure to find a house together and his failure to support the Plaintiff, which is why the two did not live together after being married

Upon careful deliberation, the Plaintiff and Defendant explicitly urged for a speedy resolution by allowing the Plaintiff's claim, asserting that no further recourse was available. Given that the study of this matter has been thorough and all details of the trial processes have been documented in the trial minutes, which are an integral element of this conclusion.

Regarding the aforementioned verdict of the *Sharia* Court, it is important to clarify that although divorce is normally strongly discouraged for families, it may become necessary if there is a lack of harmony within the family and if it would result in more harm than benefit. The approach taken by a married couple. Several additional factors played a role in the disagreement between the two parties in this particular case. These included the wife's divorce lawsuit, which was prompted by her husband's physical condition that rendered him unable to engage in sexual intercourse with her, as well as an argument between the two parties.

The author analyzed the divorce dispute based on the observations made in the field. The trial for Case Number 12/Pdt.G/2018/Ms.Bna was presided over by Drs. H. Rokhmadi, M., Hum, and the judge members were Drs. H. Zaini Usman, SH., MH, and Drs. H. Juwaini, SH., MH. The replacement registrar for the trial was Nur Azizah, SH.

The marriage between the plaintiff and defendant took place on July 17, 2017, in the presence of a marriage registration official at the Jaya Baru Banda Aceh Religious Affairs Office. Initially, their marriage was characterized by harmony, like any typical married couple. However, their inability to have children caused their household to deteriorate, leading to persistent conflicts and disagreements that proved challenging to resolve. This decline in their relationship has been ongoing since their marriage in 2017 and has ultimately resulted in the plaintiff's inability to sustain their household.

The plaintiff and the defendant had conflicting views and were often at odds, leading to a dispute that culminated in the lawsuit. Furthermore, the defendant failed to fulfill his responsibility to meet his wife's requirements, resulting in the plaintiff assuming control. In addition, the defendant experienced erectile dysfunction, which hindered his ability to engage in a sexual connection with his spouse. According to the author, the case is considered valid because the defendant's husband did not attend the trial, even though he was officially summoned by the panel of judges.

Following the final procedure, the Judge resolved this issue by issuing a divorce decree known as *talaq ba'in sughro*. The Judge's decision was based on Article 19 letter (e) of PP Number 9 of 1975 in conjunction with Article 116 letter (e) of the Compilation of Islamic Law. According to the findings of the observations and analysis in this case, it is recommended that the Banda Aceh *Syar'iyah* Court Judge utilize Article 116 letter (e) due to the presence of a discernible physical disability in the defendant. According to one of the witnesses. The husband's physical impairment hinders his capacity to engage in sexual intercourse.

### Conclusion

To the preceding discourse, it is permissible to terminate a marital union based on the perspectives of the Hanafi, Maliki, Syafi'i, and Hanbali schools of thought concerning physical abnormalities in men or male impotence as legitimate grounds for divorce under Islamic family law. Based on *fiqh* law, this is permissible as it is typically beneficial. Considering the plaintiff's physical disability, the Banda Aceh *Syar'iyah* Court has ruled in favor of the plaintiff's case completely. The court has also ordered the defendant to issue a divorce (*talaq ba'in shughra*) to the plaintiff, instructed the plaintiff to cover their legal expenses, and requested a fair and just resolution. In the event of divorce resulting from physical impairment, the husband may be exempted from the requirement to provide half of the dowry if the divorce takes place before sexual intercourse. However, if the separation happens after sexual intercourse, the wife is entitled to receive a *musammal* dowry.

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