

**COMPARATIVE ANALYSIS OF TALAQ THAT PASSED OUTSIDE THE COURT  
IN THE PERSPECTIVE OF  
ISLAMIC LAW AND COMPILATION OF ISLAMIC LAW**

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**ABSTRACT**

*Talaq is a termination of marital status which is prescribed under certain conditions, and its procedure has been regulated, both in Islamic Law and in the compilation of Islamic Law (KHI). This is library research which focused on library materials using a qualitative descriptive approach that leads to the textual juridical of Islamic Law and KHI, and examines what has been set in Islamic Law and from various books; then compared with the KHI so that can find out the differences and common ground between the two legal systems then can be a basis to be applied.*

*By using this research method, it is concluded that the Law of fiqh allows talaq divorce based on the willingness of both parties or on the initiative of the husband/wife unilaterally. In fact, talaq divorce can be done without interference from the judiciary. Whereas in the rules of the Compilation of Islamic Laws, talaq outside the Court is not valid according to the perspective of Law No.1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), although fiqh allows talaq outside the Court, it has no power in positive Law.*

**Keywords:** *Talaq; KHI; Islamic Law*

**A. INTRODUCTION**

The breakup of a marriage is a natural thing because the basic meaning of a marriage contract is a bond, or it can also be said that marriage is basically a contract. <sup>1</sup>Consequently, it can survive and can also be severed. One reason for breaking up of marriage is through divorce. As a bond, the marriage must be made intact. In the inevitable circumstances, divorce is permitted for reasons that are permissible and unavoidable except for separation, but Allah is furious with this act.

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<sup>1</sup>Ahmad Kuzari, *Nikah Sebagai Perikatan* (Jakarta : Rajawali Pers, 2015), h. 23.

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Ibn Qayyim said that Divorce is a right for a married person because that is the right to hold a wife, namely referring to her. Husbands do not need testimony to exercise their rights. There is no history from the Prophet Muhammad and his companions that make the arguments and reasons for his witnessing.<sup>2</sup>

Regarding the issue of talaq status outside of the Religious Courts trial, Bahtsul Masail NU in the 28th Congress in Yogyakarta in 1989 gave a legal decision that Divorce is the husband's prerogative that can be imposed anytime and anywhere, even without reason. Therefore, if the husband has not handed down the Divorce outside the Religious Court, then the talaq that has been massaged in front of the Religious Judge is counted the first Divorce and since then the *iddah* (period before the divorce is finalized, as three monthly periods) has also been counted. If the husband has handed down the Divorce outside the Religious Court, then the Divorce imposed in front of the Religious Judge is the second Divorce and so on if it is still in the *'iddah raj'iyyah* period.

Whereas Majelis Tarjih Muhammadiyah in its fatwa which was heard on Friday, 8 Jumadil Ula 1428 H / May 25, 2007 M gave a decision that Divorce must be carried out through a court examination process, talaq divorce was carried out by means of the husband pledging the Divorce in front of the Court hearing. And a divorce was decided by a judge. Divorce that is carried out outside the Court hearing is declared invalid. The views of NU and Muhammadiyah above reflect a contradiction in terms. Each has its own method of decision making.

In Law No. 1 of 1974 concerning marriage, Divorce can only be done in front of a court hearing, the same thing is also explained in the KHI which requires Divorce to Court. Divorces carried out by the Court have the impression that there are witnesses in Divorce as explained in Article 16 PP No. 9 of 1975 that the Court only decides to hold a court hearing to witness the Divorce, whereas in fiqh, jumhur ulama does not require witnesses. Except for the Shiahgroup, which requires two witnesses in talaq.

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<sup>2</sup>Abd. Rahman Ghazaly, *Fiqh Munakahat* (Bogor: Kencana, 2003), h. 209.

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Basically, the dissolution of a marriage occurs because of two things; first because of death, and second because of talaq. In the case of a marriage dissolve due to talaq, then there are statutory provisions in Indonesia and some Muslim countries that require court decisions. Islam gave up the right to divorce entirely to the husband, but Islam is also not as authoritarian. The wife also has the right to sue her husband for Divorce in Court when the husband does not provide physical or mental support. Even according to the Hanafi school of thought, when a wife is married to a man who does not provide physical and mental support or has smallpox which destroys household happiness, she has the right to divorce directly (without going through a lawsuit).<sup>3</sup>

## **B. METHODS**

This research is library research. The initial attempt to collect data in preparing this article was to research books related to legal issues, both from Islamic Law and from the Compilation of Islamic Law. This article is expected to provide a detailed description and objectively describe and classify the data being studied and interpret the data.

To obtain data in compiling a scientific basis by examining and examining the major problems of the literature that support and are related to the discussion of this research. This method comprises two parts; First, Induction, which analyzes the specific problem, then draws general conclusions. The second Deduction, which analyzes the general problem, then takes a specific decision.

## **C. RESULTS AND DISCUSSION**

### **1. Causes of Talaq**

#### **a. Termination of Marriage due to *Syiqaq***

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<sup>3</sup>Tahir Al-Haddad, *Wanita dalam Syariat dan Masyarakat* (Jakarta: Pustaka Firdaus, 2013), h. 94.

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*Syiqāq* is a rising crisis that occurs between husband and wife in such a way that between husband and wife, there is a conflict of opinion and quarrel, becoming two parties that are impossible to reconcile, and the two parties cannot handle it.

QS. al-Nisā'/4:35 state:

وَأَنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

Translation:

And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things].<sup>4</sup>

### b. Termination of Marriage due to cancellation

Suppose a marriage contract has been carried out, and in its implementation, it turns out that there is a prohibition on marriage between husband and wife, for example, due to blood ties. In that case, breastfeeding, sexual relations, or some things are contrary to legal provisions such as not fulfilling the Law or conditions, then the marriage becomes null and void through a court process, and the judge cancels the marriage in question.<sup>5</sup>

### c. Termination of Marriage due to *Fasakh*

Islamic Law obliges the husband to fulfill his wife's rights and to take care of his wife as well as possible, not to abuse his wife and cause harm to her. Husbands are prohibited from tormenting their wives' lives and wasting their rights. Islam does not want harm and forbids causing mutual harm.

### d. Termination of Marriage due to death

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<sup>4</sup>Kementerian Agama Republik Indonesia, *Al-Qur'an dan Terjemahnya*, h.198

<sup>5</sup>Abdul. Rahman Ghazaliy, *Fiqh Munakahat*, h. 243

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If one of the husband or wife dies, or both of them die, in a ship which then sinks into the sea, a burning house, the crash of the plane they were in, and other reasons, then their marriage will be terminated.

A marriage that is broken due to physical death is a death where the body is known so that death is biological. As well as juridical death, that is, in the case of a husband who is *mafqud* (missing and it is not known whether he is still alive or has passed away), then through a court process, the judge can determine the death of the husband.<sup>6</sup>

In the Government Regulation (PP) No. 9 of 1975 Article 19 states the causes of talaq are:

1. One of the parties commits adultery or becomes a drunkard, gambler and so on which is difficult to cure.
2. One of the parties leaves the other party for (2) consecutive years without the other party's permission and valid reasons or for other reasons beyond its capabilities.
3. One party commits cruelty or serious persecution that endangers the other.
4. One of the parties gets a disability or illness resulting in not carrying out his obligations as husband/wife.<sup>7</sup>

## **2. The Legal Status of Talaq Outside the Court of Islamic Law Perspective and KHI**

Several things can cause a marriage to dissolve, and this has been discussed by previous scholars in the books of fiqh. According to Imam Malik, the causes for the dissolution of marriage are *talaq, khulu', khiyar* or *fasakh, syiqāq, nusyūz, ila'* and *zihar*.

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<sup>6</sup>Abdul. Rahman Ghazaliy, Fiqh Munakahat, h. 247-248

<sup>7</sup>Peraturan Pemerintah No.9 Tahun 1975 Pasal 19

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Meanwhile, Imam Syafi'i said the reasons for the dissolution of marriage were *talaq, khulu', fasakh, syiqāq, nusyūz, ila', zihar and li'an*.<sup>8</sup>

Before knowing the position of Divorce outside the Court, both according to Islamic Law and the Compilation of Islamic Law, please be aware that contained in article 39 of Law No. 1 of 1974 on marriage which states that "divorce can only be done in front of the competent Court" is the basis in the Divorce contained in the Law that tends to divorce testimony. Therefore, the divorce position outside the Court is more focused on divorce testimony, as the implementation set forth in article 39 of Law No. 1 of 1974.

Most jurists (jumhur ulama) argue that talaq can occur without witness; that is, it is considered valid by Islamic Law even though the husband passes talaq to his wife without the presence and testimony of two witnesses. Because divorce is the husband's right, so he has the right to exercise his right at any time without having to present two witnesses.<sup>9</sup>

According to the provisions of Islamic Law, talaq is one of the husband's rights; Allah made the right to divorce in the hands of the husband and did not make the right to divorce in the hands of other people, wives, witnesses or the court.<sup>10</sup>

The term talaq outside the judiciary is a popular term to describe breaking a marriage bond between husband and wife who has not gone through the judicial process as regulated in statutory regulations. Substantively, divorce (talaq) passed when it has met the requirements and pillars is legal according to Islamic Law but does not clean up must go through a process of peaceful efforts. It is just that if the peacemakers appointed from the two families of husband and wife as mediators fail to reconcile, Islamic Law allows the couple to separate.

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<sup>8</sup>Khairuddin Nasution, *Status Wanita di Asia Tenggara : Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia dan Malaysia*, seri INISXXXIX, Jakarta: 2002, h.203

<sup>9</sup>Abd. Rahman Ghazaly, *Fiqh Munakahat*, h. 208

<sup>10</sup>Abd. Rahman Ghazaly, *Fiqh Munakahat*, h. 209

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Regarding this, the former and latter groups of fiqh experts argue that divorce is legal without being witnessed in front of others. Because divorce is a husband's right, he does not need evidence to exercise this right. Furthermore, no information from the Prophet or his companions shows the need for witnesses to *passtalaq*,<sup>11</sup> but the Shiah Imamiyah jurisprudence experts differ from the above opinion. They believe that witnessing the divorce is a condition for legal divorce.

The Indonesian Ulema Council at the *ijtima'* held on July 1, 2012, in Tasikmalaya ruled a fatwa that *talaq* outside the religious court is legal on condition that there are sharia reasons whose truth can be proven in court. The reason is that the government, together with the ulama, educate the public to strengthen the institution of marriage and not easily pass *talaq*. Furthermore, if the husband divorces his wife, he must guarantee the rights of the divorced wife and the children's rights.<sup>12</sup>

From the legal basis described above, it can be determined that *talaq* outside the legal court is valid on the condition that there is a sharia reason whose truth is proven in court. *Iddah* *talaq* is counted since the husband dropped the divorce. Moreover, for the benefit of the benefit and ensuring legal certainty, *talaq* outside the court must be reported (*ikhbar*) to the religious court.

The KHI also seems to follow the path used by UUP No. 1 of 1974, although the articles used are more that show more detailed regulations. The KHI contains the issue of Termination of Marriage in Chapter XVI.<sup>13</sup>

Article 113 states that divorce can be terminated because:

- a. Dead,
- b. Divorce and,
- c. on the court's decision.

Then it is described in Article 114 that: Marriage dissolution caused by a divorce can

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<sup>11</sup>Abd. Rahman Ghazaly, *Fiqh Munakahat*, h.201

<sup>12</sup>Basyir, ahmadazhar. *Thalaq di Luar Pengadilan*, Article accessed on agustus 26, 2020 from <http://digilib.uin-suka.ac.id>.

<sup>13</sup>*Kompilasi Hukum Islam* (Jakarta Fokus media, 2005), h. 103

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occur because of talaq or based on a divorce suit.

Unlike the Marriage Law, which does not recognize the term talaq, KHI explains talaq is meant in Article 117.

Talaq is the husband's pledge before the Religious Court hearing, which is one reason for the dissolution up of the marriage, in the manner referred to in articles 129, 130 and 131.

Concerning divorce, it must be carried out before a session of the Religious Court stated in article 115,

Article 115 KHI:

"Divorce can only be carried out before the Religious Court hearing after the Religious Court tried and failed to reconcile the two parties."

Meanwhile, with regard to the reasons for divorce, it is explained extensively in Article 116.

Article 116 KHI:

"Divorce can occur because:

- a. One party commits adultery or becomes a drunkard, gambler and so on.
- b. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without valid reasons or for other reasons beyond its capabilities;
- c. One of the parties is sentenced to 5 (five) years imprisonment or a heavier sentence after the marriage takes place;
- d. One party commits cruelty or serious maltreatment that endangers the other party;
- e. One of the parties has a physical disability or illness resulting in not being able to carry out his obligations as husband or wife;
- f. Between husband and wife, there are continuous quarrels and fights, and there is no hope of living in harmony again in the household;
- g. Husband violates talaq taklik (conditional divorce).
- h. Religious conversion or apostasy causes disharmony in the household.



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Based on Article 116, there are two additional reasons for divorce compared to Article 19 of Government Regulation of 1975; husbands violate *taklik talaq* (conditional divorce) and apostasy. What is meant by *taklik talaq*, KHI explains in Article 1 letter (e) with an explanation:

“*Taklik talaq* is an agreement pronounced by the prospective groom after the marriage contract which is stated in the Marriage Deed as a *talaq* promise that is hung on a certain condition that may occur in the future;”

Regarding the filing of a *talaq* divorce (husband) application to the court, which includes the residence of the defendant (wife), KHI regulates it in Article 129:

Article 129 KHI:

A husband who will impose *talaq* on his wife submits a petition either verbally or in writing to the Religious Court responsible for the wife's residence, accompanied by reasons and requests that a hearing is held for this purpose.

Regarding the petition for divorce, which the wife has submitted to the Court whose jurisdiction covers the place of the wife is contained in Article 132,

Article 132:

1. A divorce lawsuit is filed by the wife or her attorney at the Religious Court, whose jurisdiction covers the area where the plaintiff lives unless the wife leaves the residence.
2. In the event that the defendant resides abroad, the Head of the Religious Court notifies the lawsuit to the defendant through the local representative of the Republic of Indonesia.

The Religious Court can grant or reject the petition, and against the decision, appeal and cassation can be appealed against.

Compilation of Islamic Law distinguishes divorce by sue from *khulu'*. However, it has similarities and differences between the two. The equation is that the desire to divorce comes from the wife's side. The difference is that a divorce suit does not always pay *iwad* (compensation/remuneration), while *khulu' iwad* money (ransom money) becomes the basis for *khulu'* or divorce. *Khulu'* is stipulated in Article 148 KHI.



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Article 148 KHI:

1. A wife who files a divorce suit by way of *khulu*, submits her request to the Religious Court, which is in charge of her place of residence along with the reasons or reasons thereof.
2. At the latest, the Religious Court summons the wife and husband to hear their respective statements.
3. During this trial, the Religious Courts explained the consequences of *khulu* and gave advice.
4. After both parties agree on the amount of *iwadl* or compensation/remuneration, the Religious Court decides the permission of the husband to pledge his divorce before the Religious Court hearing. Against such determination, an appeal and cassation may not be made.
5. The subsequent settlement is pursued as regulated in Article 131 paragraph (5).
6. In the event that no agreement is reached on the amount of ransom or *iwadl*, the Religious Courts shall examine and decide as a usual case.

Then the examination of the petition submitted by the plaintiff or defendant is studied by the Religious Court concerned to determine the suitability of the lawsuit in a trial, regulated in Article 113:

Article 131 KHI:

1. The Religious Court concerned studies the petition referred to in Article 129 and in no later than thirty days summons the applicant and his wife to ask for an explanation of everything related to the intention of bringing down divorce.
2. After the Religious Court failed to advise both parties and it turned out that there was enough reason to drop the divorce and the person concerned could no longer live in harmony in the household, the Religious Courts issued a decision regarding permission for the husband to pledge divorce.
3. After the decision has permanent legal force, the husband pledges his divorce in front of the Religious Court, attended by his wife or attorney.
4. If the husband does not pledge divorce within 6 (six) months as from the



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decision of the Religious Court regarding the permission for him to have permanent legal force, then the husband's right to pledge a divorce void, and the marriage bond remains intact.

5. After the trial for witnessing the pledge of divorce, the Religious Courts decided on the occurrence of quadruple divorce, which was evidence of divorce for the former husband and wife. The first sheet and the divorce pledge letter are sent to the Marriage Registration Officer who is in charge of the husband's residence for registration, the second and third sheets are given to the husband and wife, respectively, and the Religious Court keeps the fourth sheet.

Furthermore, Article 141 explains:

1. The judge's examination of a divorce suit is carried out no later than 30 (thirty) days after the receipt of the divorce lawsuit file or letter.
2. In determining the time for a divorce suit hearing, it is necessary to pay attention to the timing of the summons and receipt of the summons by the plaintiff or defendant or their attorney.
3. If the defendant is in a situation as mentioned in Article 116 letter b, the trial for divorce suit is stipulated at least 6 (six) months from the date the divorce suit is filed at the Registrar's Office of the Religious Court.

A divorce lawsuit examination shall be conducted by the judge no later than 30 (thirty) days after the divorce suit is received. In determining for a divorce suit hearing, it is necessary to pay attention to the timing of the summons and the receipt of the summons by the plaintiff or defendant or their attorney. If one of the parties leaves the other party for 2 (two) consecutive years without the consent of the other party and valid reasons or for other reasons beyond its capabilities, the trial for divorce suit is stipulated at least 6 (six) months from the date the divorce suit is filed at the Registrar's Office of Religious Courts.<sup>14</sup>

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<sup>14</sup>Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia, antara Fiqh Munakahat dan UU Perkawinan*, ( Jakarta:Kencana, 2006), h. 64

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At the trial of a divorce suit, a husband and wife come alone or represent their power of attorney. In the case of a husband or wife representing, for examination, the judge can order the person concerned to appear alone and in the examination of a divorce suit the judge tries to reconcile the two parties as long as the case has not been decided, efforts to reconcile can be made at each trial as long as the case has not yet been decided. If there is peace, then a new divorce suit cannot be filed based on reasons or reasons that existed before the peace and were known to the plaintiff at the time the peace was reached. This is explained in Articles 142, 143 and 144. If the judge does not reach peace, the divorce suit is examined in a closed session.

As for legal action during the ongoing court proceedings, avoiding various possible negative things between husband and wife. This is regulated in Article 136.

Article 136 KHI:

1. As long as a divorce suit is filed at the request of the plaintiff or defendant based on considerations of the dangers that may arise, the Religious Courts may allow the husband and wife not to live in the same house.
2. During the ongoing divorce lawsuit at the request of the plaintiff or defendant, the Religious Courts may:
  - a. Determine the breadth that must be borne by the husband;
  - b. Determine the things that are necessary to ensure the maintenance of goods which are joint rights of husband and wife or items which are the rights of the husband or property

Article 137 of the KHI explains that the lawsuit is null and void if the husband or wife dies prior to the Court's decision regarding the divorce suit. However, if there is peace, a new divorce suit cannot be filed based on existing reasons known to the plaintiff before peace is reached. The said peace effort is possible, considering that it is not limited to before the case examination, but can be attempted at every trial. It is different if no peace is reached. A divorce suit is examined in a closed session.

Every time a Religious Court hearing is held, both the plaintiff and the defendant, or their proxies, will be summoned to attend the trial. Summons are made



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by an officer appointed by the head of the Religious Court by attaching a lawsuit. The summons shall be adequately made and delivered to the plaintiff or defendant if not found to be delivered through the village head or equivalent. This is fully regulated in Articles 138 and 139;

### Article 138 KHI:

1. If the defendant's residence is unclear or the defendant does not have a permanent residence, the summons shall be made by attaching the lawsuit to the bulletin board at the religious court and announcing the negligence of one or several newspapers or other mass media as determined by the religious court.
2. Announcement through newspapers or newspapers or mass media referred to in paragraph (1) is made 2 (two) times with an interval of one month between the first announcement.
3. The time limit between the last summons as referred to in paragraph (2) and the trial shall be at least 3 (three) months.
4. If it has been carried out as referred to in paragraph 2 (two) and the defendant or his attorney remains absent, the claim is accepted without the defendant's presence unless the lawsuit is without rights.

### Article 139 KHI:

1. If the residence of the defendant is unclear or the defendant does not have a permanent residence, the summons shall be made by placing the claim on the bulletin board at the Religious Court and announcing it in one or more newspapers or other mess media as determined by the Religious Court.
2. Announcement through the newspaper or mass media referred to in paragraph (1) shall be made 2 (two) times with an interval of one month between the first and second announcement.
3. The grace period between the last summons referred to in paragraph (2) and the trial, is determined to be at least 3 (three) months.



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4. If it has been carried out as referred to in paragraph (2) and the defendant or his attorney is still not present, the claim is accepted without the defendant's presence, except if the lawsuit is unwarranted or groundless.

If the defendant is abroad, the summons will be conveyed through the local representative of the Republic of Indonesia. A divorce is deemed to have occurred and its consequences as of the date of the ruling of a religious court that has permanent legal force. The verdict was made in an open court. After the divorce case is decided, the clerk of the Court submits a copy of the decision letter to the husband and wife or their attorney, which is then conveyed to the employee of the marriage registrar without a legal status who is in charge of the place of the defendant (wife).

Divorce regulations in Indonesian legislation such as the CL Act, PP No. 9/1975 and the KHI, and the UUPA still contain some fundamental problems, even though the explanation of the articles is written a statement "quite clear."

A crucial issue for further discussion is the position of the religious Court in deciding marriage. For the author, looking at the articles concerning Divorce, eight conclusions can be drawn.

*First*, the presence of a court is to straighten out any actions that are deviating to conform with Islamic teachings.

*Second*, through the court process, it is hoped that the right of talaq is carried out correctly and applied only in an emergency.

Third, the Court functions as a hakam as recommended by Islamic Law.

*Fourth*, the Court is expected to play a role in guaranteeing each party's rights as a result of the talaq, for example, the guarantee of compensation in talaq and mut'ah.

*Fifth*, Divorce is carried out by the party itself, in this case, by pronouncing a talaq vow by the husband. The Court only functions to witness and provide information about the Divorce.

*Sixth*, Divorce in Court makes the Court a witness that must be carried out in front of a court session. So, out-of-court divorce testimony does not appear to be



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permitted.

*Seventh*, implicitly, Divorce, as mentioned above, is only permitted and valid only after obtaining permission from the Court.

*Eighth*, Divorce is considered to have occurred since the husband pronounced the talaq in front of the Court. Of these, eight things seem to be the most dominant.

Indeed, in classical jurisprudence, the husband is given broad rights to drop the talaq so that whenever and wherever he pronounces it, the Divorce falls immediately. This situation is viewed from the perspective of maintaining the family's interests, legal certainty, and public order, which does not create *maslahat* (benefit), and even harms a lot, especially for women (wives). Therefore, for the sake of realizing benefit, Divorce must be processed in Court. So here there is indeed a change in the Law, namely from the ability of the husband to drop the Divorce anytime and anywhere to the necessity to pronounce his Divorce in front of a court. This kind of legal change is legal.

From what is stated above, it can be concluded that,

1. divorce must be carried out through a court examination process: divorce talaq is carried out by means of a husband pledging his Divorce in front of a court session, and a judge decides a suing divorce;
2. Divorces that are carried out outside of court proceedings are declared invalid.

Meanwhile, fiqh gives full rights to the husband to drop talaq anytime and anywhere even though it is playfully. As the hadith from Abu Hurairah narrated by Ahmad, Abu Daud, Ibn Majah, and Tirmizi:

"Three things that seriousness and unseriousness are considered true: Marriage, Talaq, and Reconciliation."

Fiqh does not provide an institution or institution to impose talaq, except for the wife who demands her rights such as physical or mental support, which the husband does not give by reporting to the judge, but the right to divorce remains the right of the husband.

There are no other choices for Muslims in Indonesia not to follow and not carry out restrictions on worship in congregation issued by *Ulil Amri* in this country because

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it is obligatory for Muslims to obey *Ulil Amri*. On the contrary, a person will be given *ata'zir* punishment if he disobeys *Ulil Amri* as long as they order something proper and beneficial.

#### **D. CONCLUSIONS AND SUGGESTIONS**

Talaq is an act of breaking away from the bond of marriage. Divorce occurs because of the absence of husband and wife. In Islam, Divorce is the right of the husband to be safe and at any time. In-Law no. 1 of 1974, there is no term "talaq", but what does exist is the term "dissolve of marriage,", and the procedure for talaq has been regulated both in Islamic Law and the Islamic Law Compilation (KHI).

According to Islamic Law, the legal status of Divorce outside the Court is valid based on the opinion of the ulama. In the rules of fiqh, Divorce is permitted on the basis of the willingness of both parties or at the initiative of the husband or wife unilaterally. Even Divorce can be done without interference from the judiciary. There is no argument that requires a divorce to be carried out in a judicial institution. In contrast to the legal status of Divorce outside the Court according to KHI and Law Number 1 of 1974 on Marriage, it is illegal, so that the rights of both wives and husbands can be fulfilled through the judiciary.



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