

**A Comparative Study of the Fatwas of the Indonesian Ulema Council, Nahdlatul Ulama, and Muhammadiyah on Out-of-Court Divorce**

**Zahrul Fatahillah**

Sekolah Tinggi Ilmu Syari'ah (STIS) Nahdlatul Ulama Aceh

Email: zfatahillah1@gmail.com

**ABSTRACT**

This research is motivated by the many decisions of the Syar'iyah Court and Religious Courts that decide cases of divorce three into one and cancel the divorce pronounced by the husband outside the Court. This research is a normative juridical research that uses a comparative approach, in order to compare legal opinions based on the fatwa of the Indonesian Ulema Council, Nahdlatul Ulama, and Muhammadiyah. These three institutions differ in their opinions on the legal status of divorce pronounced outside the court, the difference is due to different ways of determining the law, but there are similarities, namely recognizing that the utterance of divorce in court is valid and recognizing that the Religious Courts in Indonesia are institutions authorized to hear divorce cases.

**Keywords** : *Indonesian Ulema Council, Nahdlatul Ulama, Muhammadiyah, Talak*

**INTRODUCTION**

Each party between husband and wife has an important role in caring for and achieving the goals of marriage,<sup>1</sup> namely realizing a family that is peaceful, loving, and compassionate within the household. Therefore, every marriage must be well maintained and cared for.<sup>2</sup> In the course of family life, conflicts, disputes, and other family problems often arise, leading to divorce.<sup>3</sup> One of the reasons is the pronouncement of divorce (talak) by the husband, whether done in court or outside the court, meaning the husband pronounces divorce without going through the legal process.

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<sup>1</sup> Slamet Abidin dan Aminudin, (1999). *Fiqh Munakat 1*, Bandung: Pustaka Setia, h. 9.

<sup>2</sup> Bani Ahmad Saebani, *Perkawinan dalam Hukum Islam dan Undang-Undang*, (2008). Bandung: Pustaka Setia, h. 27.

<sup>3</sup> Susylawati, E. (2008). Perselisihan dan Pertengkaran Sebagai Alasan Perceraian di Pengadilan Agama. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 3(1), 81-94.

Lately, there has been a legal controversy<sup>4</sup> among academics, scholars, and the general public regarding the provisions of talak. Some parties, like the Religious Court/Sharia Court, state that saying talak three times is considered one divorce.<sup>5</sup> Others believe that pronouncing talak three times constitutes three divorces due to the numerical mention of three. Some argue that, based on the principle of achieving goodness in law, a good law is a lenient law (*takhfif*),<sup>6</sup> suggesting that especially the judge's decision should follow the lightened opinion, as applied in the laws of Tunisia, Egypt, and Syria, which stipulate that saying talak three times at once is considered one divorce. Thus, judges in the Religious Court/Sharia Court rule that a talak case where talak has been pronounced three times is considered one talak, as in case number 0163/Pdt. G/2016/Ms. Bna.

The issue in practice is that when individuals pronounce talak often outside the legal process, it affects the status of the talak itself. Sometimes, people pronounce talak three times, but during the court hearing, the judge reduces it to one talak.<sup>7</sup> Conversely, when pronouncing one talak outside the court,<sup>8</sup> the judge rules it as the second talak, instructing the talak applicant to pronounce the divorce oath (*ikrar talak*) in front of the court, resulting in the talak being considered the second talak.<sup>9</sup>

For both the former husband and the former wife, there is a desire to obtain a divorce certificate (*akta cerai*). To obtain this divorce certificate through talak, the government, through the Compilation of Islamic Law, Article 115, requires both parties to pronounce the talak oath in court.<sup>10</sup> The dissolution of marriage due to divorce (*talak*) is governed by legal provisions in several Muslim countries, including Indonesia, where every divorce is required to occur through a court decision, as mentioned in Article 115 of the Compilation of Islamic Law. However, fundamentally, the termination of a marriage is within the right of the

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<sup>4</sup> Khotim, A., Qohar, A., Ismail, H., Asnawi, H. S., & Muslimin, A. (2020). Pandangan Ulama Tentang Penerapan Ikrar Talak di Depan Pengadilan Agama (Studi Multi Situs Ulama Salafiyah Paculgowang dan Tambakberas Jombang). *Jurnal Tana Mana*, 1(2), 111-124.

<sup>5</sup> Zainuddin, M. Z. M. (2018). Tinjauan Hukum Islam terhadap Perubahan Talak Tiga Menjadi Talak Satu (Analisis Terhadap Putusan Mahkamah Syar'iyah Banda Aceh Nomor: 0163/Pdt. G/2016/Ms. Bna). *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 2(1), 127-150.

<sup>6</sup> Siregar, S. A. (2019). Keringanan Dalam Hukum Islam. *Jurnal el-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan dan Pranata Sosial*, 5(2), 284-297.

<sup>7</sup> Iskandar, A., & Zaeni, A. (2022). Ikrar Talak di Pengadilan Perspektif Ma'anil Hadis. *Al-Tadabbur: Jurnal Ilmu Al-Qur'an dan Tafsir*, 7(01).

<sup>8</sup> Isnanda, A., & Aksa, F. N. (2021). Pertimbangan Hakim dalam Menjatuhkan Talak Satu Terhadap Talak yang di Ucapkan Tiga Sekaligus (Studi Putusan Nomor 28/PDT. 6/2017/MS LSM). *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, 5(2).

<sup>9</sup> Iskandar, A., & Zaeni, A. (2022). Ikrar Talak di Pengadilan Perspektif Ma'anil Hadis. *Al-Tadabbur: Jurnal Ilmu Al-Qur'an dan Tafsir*, 7(01).

<sup>10</sup> Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam

husband to pronounce.<sup>11</sup>

In Islam itself, the pronouncement of divorce (talak) is not required to go through the Court, and thus it is not regulated in any fiqh (Islamic jurisprudence). This is because divorce pronounced through talak is an absolute right of the husband, allowing him to use it wherever and whenever. It is viewed that divorce matters are of a personal nature and, therefore, do not need to be regulated in public law.<sup>12</sup> The reason reinforcing this is that the Quran and Hadith do not specify detailed procedures for issuing divorce (talak). Hence, there have been differing opinions among scholars regarding the process of pronouncing talak. Some opinions require a strict procedure, such as uttering the pronouncement in front of a judge through a judicial process. On the other hand, there are more lenient views, stating that a husband can issue talak for the smallest of reasons and without the need for witnesses because the pronouncement of talak is the absolute right of the husband.<sup>13</sup> The above opinion states that uttering talak outside the court results in its validity and occurrence. However, this differs from the Marriage Law, which stipulates the necessity for a husband to declare talak before the court. The term "issuing talak outside the court" refers to a divorce that meets the conditions and pillars of talak as prescribed in Islamic law, but the divorce event does not have an official decree from a competent authority as regulated in the legislation.<sup>14</sup> That is, every divorce, whether initiated by the husband (talak) or by the wife (divorce petition/fasakh), must be done in court, as explained in Article 39 paragraph 1 of the Marriage Law. Divorce can only be carried out in a court hearing after the respective court has attempted to reconcile both parties but they remain in disagreement. The same provision is stipulated in Article 65 of the Religious Judiciary Law, stating that divorce can only take place in a hearing at the Religious Court after the respective Religious Court has attempted to reconcile both parties and found them unable to reach an agreement for reconciliation.<sup>15</sup> Furthermore, through Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law Article 115, it is explained that divorce can only be carried out in a court hearing after the judge has failed to reconcile both parties through mediation.<sup>16</sup>

In response to the aforementioned issue, the Indonesian Council of Ulama (Majelis Ulama Indonesia or MUI), Nahdlatul Ulama, and Muhammadiyah hold differing opinions. During the 2012 Ijtima' session in Tasikmalaya, there were

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<sup>11</sup> Muhsin, M., & Wahid, S. H. (2021). Talak Di Luar Pengadilan Perspektif Fiqih Dan Hukum Positif. *Al-Syakhsiyah: Journal of Law & Family Studies*, 3(1), 67-84.

<sup>12</sup> Amir Syarifuddin, (2006). *Hukum Perkawinan Islam di Indonesia: Antara Fiqih Munakahat dan Undang-Undang Perkawinan*, Jakarta: Kencana, , Cet.1, h. 227-228.

<sup>13</sup> Emir, Himpunan Fatwa MUI Sejak Tahun 1975, (2015). Jakarta: Erlangga, h. 1201.

<sup>14</sup> Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan

<sup>15</sup> Undang-undang Nomor 7 Tahun 1989 tentang Peradilan Agama

<sup>16</sup> Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam

varying views. Some asserted that divorcing one's wife outside the court is valid because it is an absolute right of a husband, as long as it aligns with Islamic law, which permits only men to initiate divorce. Islam grants the right of divorce to a husband because men are burdened with the obligation of providing for their wives or families.<sup>17</sup> Additionally, during the Ijtima' session, others argued that divorcing outside the court is not valid, citing reasons to preserve the marital relationship, advocating for making divorce more challenging, and emphasizing the need for a judge's consideration.<sup>18</sup>

Nahdlatul Ulama argues that divorces pronounced outside the court are valid. Therefore, when a husband utters divorce outside the court, and subsequently attends a Religious Court hearing to obtain a divorce certificate through a judge's decree, the divorce is considered a second divorce. The calculation of the waiting period (*iddah*) begins from the utterance of the first divorce and concludes after the last *iddah* period following the final divorce. Additionally, the decision states that a divorce issued in the Religious Court after the *iddah* period has ended or due to necessity is not considered.<sup>19</sup> This viewpoint is documented in the Bahsul Masail decision during the 28th Nahdlatul Ulama Conference held in Krapyak, Yogyakarta, in 1989. Decision Number 3/MNU-28/1989 stipulates that a divorce pronounced outside the court is legally valid.

Muhammadiyah has a different stance on this matter, stating that divorce conducted and pronounced outside the Religious Court is not valid. Through its Council of Islamic Scholars (Majelis Tarjih), Muhammadiyah issued a fatwa in a session dated May 25, 2007, emphasizing that divorce must occur in front of a court hearing. A husband should proclaim the divorce in front of a judge after the judge decides on the case. Among the three Islamic organizations, each with its own fatwa institution, these differing opinions underscore the conflicting views on the legal status of divorce outside the judicial process. In Indonesia, specifically within the Islamic community, the competent authority is the Religious Court, as explained in Article 49 of the Law on Religious Judiciary.<sup>20</sup> Based on the issues outlined above, the author is interested in conducting a comparative study of these three opinions.

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<sup>17</sup> Djamil Latif, *Aneka Hukum Perceraian di Indonesia*, (1982). Jakarta: Ghalia Indonesia, h. 49.

<sup>18</sup> [Rumusan Fatwa MUI, talak diluar pengadilan - المنار Media Da'wah Islam \(wordpress.com\)](http://www.rumusanfatwa.com/2007/05/25/fatwa-mui-talak-diluar-pengadilan/)

<sup>19</sup> <http://repository.iainpurwokerto.ac.id/2792/>.

<sup>20</sup> Undang-Undang Republik Indonesia Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama (Lembaran Negara Republik Indonesia Tahun 2006 Nomor 22, Tambahan Lembaran Negara Republik Indonesia Nomor 4611).

## RESEARCH METHODS

The type of research the author used to analyze the issue in this study is normative juridical research,<sup>21</sup> which discusses doctrines and principles within the field of law.<sup>22</sup> In line with this type of study, the research employs a literature review, utilizing only secondary data. The secondary legal materials used are those found in library literature, including books, journals, and research results that are relevant to the topic of discussion. This research also adopts a comparative approach,<sup>23</sup> comparing the opinions of each institution through their fatwas regarding the legal issue of pronouncing divorce outside the court. The institutions referred to are the Indonesian Ulema Council (Majelis Ulama Indonesia),<sup>24</sup> Nahdlatul Ulama,<sup>25</sup> and Muhammadiyah.<sup>26</sup>

## RESULTS AND DISCUSSION

### **Explanation of the Fatwa of the Indonesian Ulema Council on Divorce Outside the Court.**

The Indonesian Ulema Council (Majelis Ulama Indonesia) held a plenary meeting on July 1, 2012, in Tasikmalaya, during which a fatwa was issued stating that pronouncing divorce outside the court is valid, provided there is a reason justified by Islamic law and its validity can be proven in court. The reasoning behind this is that the government, in collaboration with the community, educates the public to strengthen and preserve marital relationships to prevent easy divorces. In this meeting's decision, it was explained that if a husband divorces his wife, he must ensure the rights of the divorced wife and the rights of their children from the second marriage. The basis for this determination is the words of Allah in Surah Al-Thalaq, verses 1 and 2, and Surah Al-Baqarah, verse 236. It was further elucidated by the saying of the Prophet Muhammad (peace be upon him) in a Hadith narrated by Abu Hurairah (may Allah be pleased with him), where the Prophet Muhammad (peace be upon him) stated that there are three matters, whether serious or not, are considered serious: marriage, divorce, and reconciliation. This means that if a husband utters divorce impulsively,

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<sup>21</sup> Soerjono Soekanto dan Sri Mamudji, (2001). *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta: Rajawali Press, h. 13-14.

<sup>22</sup> Zainuddin Ali, 2014, *Metode penelitian hukum*. Cet. 5. Jakarta: Sinar Grafika h. 24

<sup>23</sup> Peter Mahmud Marzuki, (2014). *Penelitian Hukum*, Jakarta: Kencana Prenada Media, h. 172

<sup>24</sup> Fatwa Majelis Ulama Indonesia Perceraian di Luar Pengadilan sidang Ijtima' pada tanggal 1 Juli 2012 di Tasikmalaya.

<sup>25</sup> Fatwa Bahsul Masail Nahdatul Ulama yang dilaksanakan pada Mukhtamar ke-28 tahun 1989 di Pondok Pesantren Al-Munawwir Krapyak Yogyakarta.

<sup>26</sup> Fatwa Tarjih Muhammadiyah Jum'at, 8 Jumadil ula 1428 H/ 25 Mei 2007 M.

under any circumstances and wherever, the divorce is still considered valid.<sup>27</sup>

Another legal basis that serves as the reason for the fatwa decision is a fiqh principle stating that harm must be avoided. This principle signifies that individuals should be kept away from actions that cause harm, either to themselves or others, and should not pose danger to others.<sup>28</sup> Furthermore, there's another fiqh principle that everything depends on its intention, aligning with the Hadith of the Prophet Muhammad (peace be upon him) which states, "Actions are but by intention, and every man shall have only that which he intended for." (Narrated by Bukhari).<sup>29</sup>

Based on the presented exposition, it can be understood that the Indonesian Ulema Council's opinion on the utterance of divorce outside the court by a husband to his wife is deemed valid or constitutes a divorce, provided that the conditions justified by Islamic law are met, and its validity can be proven in the court of the Islamic Judiciary. Subsequently, the waiting period (*iddah*) for the divorce is counted from the moment the husband pronounces the divorce. To ensure legal certainty and for the benefit of all parties, divorces conducted outside the court should be reported (*ikhbar*) to the competent court, namely the Court of Religion/Islamic Judiciary.

### **The opinion of Nahdlatul Ulama regarding Divorce (*Talak*) that Occurs Outside of Court.**

At the 28th Bahsul Masail Nahdlatul Ulama event in 1989, it was affirmed that a divorce (*talak*) pronounced outside the court is considered valid or accepted. Therefore, if a husband has pronounced divorce outside the court and is later reaffirmed by a judge, the divorce pronounced in front of the judge becomes the second divorce as long as the wife is still within her waiting period (*iddah*). This opinion is explained in the book "Fathul Mu'in," stating that if a husband's two waiting periods for his wife overlap – for instance, he has sexual relations with his wife during the revocable (*raj'i*) waiting period or during the *iddah* of irrevocable (*ba'in*) divorce – then the last waiting period is sufficient.<sup>30</sup>

The legal determination made by the Bahsul Masail Nahdlatul Ulama is based on the opinion that divorce by a husband who is not coerced, and is legally

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<sup>27</sup>Taqiyuddin Abu Bakar Ibnu al-Husni, Kifayatul al-Akhyar, alih bahasa oleh Syarifuddin Anwar, Misbah Mustafa, (Surabaya: Syarikat Nur Amaliyah, tt.), h. 86. Lihat juga; Safrizal, M. A., & Karimuddin, M. A. (2020). Penetapan Jatuh Talak dalam Perspektif Hukum Positif dan Fiqh Syafi'iyah. *Jurnal Ilmiah al-Fikrah*, 1(2).

<sup>28</sup>Faizin, M. Urgensi Fiqih Lingkungan Dalam Perkembangan Fiqih Kontemporer Sebagai Instrumen Pendukung Hukum Lingkungan Mu'adil Faizin Universitas Islam Negeri Sunan Kalijaga. *Nizham Journal of Islamic Studies*, 5(2), 145-155.

<sup>29</sup> Al-Hafizh Ahmad bin 'Ali bin Hajar al-Asqalani, (tt.th). *Fathual-Bari 'Ala Shahihial-Bukhari*, cet. ke-1, jilid 1, h. 15.

<sup>30</sup> Al-Malibari, Zainuddin bin Abdul Aziz, (1993). *Fathul Mu'in*. Beirut: Dar bin Hazm, h. 506.

responsible (*mukhallaf*), meaning a person who has reached adulthood and is of sound mind, only applies to women other than those divorced irrevocably (*ba'in*). This includes divorced women who are revocably divorced (*raj'i*) but have not completed their waiting period. Thus, divorce applies to both previously married women and revocably divorced women who have completed their waiting period.<sup>31</sup>

Another opinion is mentioned in the book "*Nihayah al-Zain Syarah Qurrah al-Ain*," explaining that observing the waiting period (*iddah*) is obligatory for a woman who is separated from her living husband, even if she is certain of her womb being free of sperm.<sup>32</sup> Furthermore, in the book "*Tuhfah al Muhtaj*," it is elaborated that if a husband says to his wife, "I divorce you," three times consecutively, or he repeats the phrase "I divorce you" three times, and between these repetitions, there is a slight pause, such as a breath or a pause in speech, or there is a separation between the husband's words and the wife's words, then this is considered a triple divorce (*talak tiga*), even if the husband intended to confirm or emphasize the divorce with these separations.<sup>33</sup>

Divorce does not occur when someone is coerced due to reasonable fears for their well-being. The level of fear can vary for each individual based on their circumstances, so a light strike in front of many people can be considered coercion for those with high self-esteem, but for others, it may not be considered coercion. Insults to someone with a certain status can be considered coercion, and similar to someone who has a sense of honor, it is categorized as coercion as well. Here, it is explained that everything becomes easier for those who are coerced or forced. Therefore, in the book "*Nihayah al-Zain Syarah Qurrah al-Ain*," it is explained that divorce is not pronounced or does not occur for someone considered to have done it under duress or coercion.<sup>34</sup>

The case experienced by Abdullah bin Umar bin Abi Bakr bin Yahya is recounted in *Bughyah al-Musytarsyidin*. In this case, a husband was asked, "Did you divorce your wife?" and he replied, "yes." If the questioner meant to inquire if the husband intended to divorce his wife, then the answer "yes" constitutes a clear divorce (*talak Sharih*). However, if the questioner was asking about a divorce that had already occurred or if the intention was unknown, then the husband's "yes" response would be considered an affirmation of divorce (*ikrar talak*).<sup>35</sup> In the

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<sup>31</sup> *Ibid.*

<sup>32</sup> Muhammad Nawawi bin Umar al-Jawi, (t.th) *Nihayah al-Zain Syarh Qurrah al-'Ain*, Beirut: Dar al-Fikr, h. 328.

<sup>33</sup> Al-Haitami, Syihabuddin Abu al-'Abbas Ahmad ibn Muhammad ibn Muhammad 'Ali ibn Hajar. *Tuhfah al-Muhtaj fi Syarh al-Minhaj*. Mesir: Mustafa Muhammad, tt. h. 230.

<sup>34</sup> Muhammad Nawawi bin Umar al-Jawi, *Nihayah al-Zain Syarh Qurrah al-'Ain*, (Beirut: Dar al-Fikr, t.th), h. 328.

<sup>35</sup> Al Masyhur, Abdurrahman bin Muhammad (2009). *Bughyah al-Musytarsyidin*. Abu Dhabi: Dar al-Faqih.

book *Fathul Mu'in*, it is further explained that if someone asks, "Did you divorce your wife?" intending to inquire, and the husband responds "yes," then the husband's answer is considered an affirmation of divorce (*ikrar talak*), and legally, the divorce is valid if he is lying and invalid in matters between him and Allah if he is truthful. Then, if the husband is asked, "Did you divorce your wife by triple divorce (*talak tiga*)?" and he answers "yes, I divorced," but he meant a single divorce, he must confirm it with an oath that it is indeed a single divorce.<sup>36</sup>

If the husband has not pronounced divorce outside the court, then the divorce affirmed before the judge during the court proceedings is considered the first divorce, and the waiting period (*iddah*) for the wife is counted from that moment. If the husband has already pronounced divorce outside the court, then the divorce affirmed before the judge is considered the second divorce and so forth as long as it falls within the waiting period (*iddah*) of revocable divorce (*iddah raj'iyah*). The calculation of the waiting period begins from the time of the first divorce and ends after the completion of the last waiting period, which is counted from the time of the last divorce. If the divorce is affirmed before the judge after the completion of the waiting period or it is an irrevocable divorce (*iddah ba'in*), then the divorce is considered null. If the divorce is pronounced before the judge due to coercion (*mukrah*) or merely recounting a previously pronounced divorce, then the divorce is also considered null.

### **Talak (divorce) Outside the Court According to the Muhammadiyah Perspective**

Divorce or talak pronounced outside the court is deemed invalid. According to Muhammadiyah, the matter of divorce is a matter of public interest, involving the tranquility of the household, the future of the children left after their parents separate, and even broader interests concerning the legal certainty for the surrounding community to determine whether the couple is still bound by marriage or not. Therefore, the Muhammadiyah Tarjih Council, through its fatwa during the session held on May 25, 2007, ruled that divorce must be carried out through a judicial process and culminate with the husband proclaiming the divorce in the presence of the court based on the judge's decision. This is to prevent divorce from being done haphazardly; instead, it should be regulated in such a way as to achieve order and benefit within the family and society.

The Prophet Muhammad (peace be upon him) stated that one of the permissible acts most disliked by Allah is divorce. This hadith is narrated by Abu Dawud and al-Baihaqi. Based on this hadith, it is clear that divorce should not be taken lightly and made easy because despite being permissible, it is strongly disliked by Allah. The manifestation of not taking divorce lightly is that it can

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<sup>36</sup> Al-Malibari, Zainuddin bin Abdul Aziz, (1993). *Fathul Mu'in*. Beirut: Dar bin Hazm.



only be done if sufficient legal considerations are met. In this regard, legal considerations can only be made by a judge through a court hearing to ascertain whether the reasons for divorce have been fulfilled. Therefore, modern Islamic legal reasoning, as reflected in Compilation of Islamic Law Article 115, mandates that the procedure for pronouncing talak (divorce) must go through the court, and Article 123 of the Compilation of Islamic Law also states that divorce is effective from the moment the pronouncement of talak is made or the divorce is declared in court.

Muhammadiyah believes that from the perspective of maintaining family interests, the interests of children, legal certainty, and social order, allowing divorce without court involvement does not serve the *maslahat* (public interest). Instead, it often causes harm, especially to women and children of subsequent marriages. Therefore, to achieve benefits and promote welfare, divorce should be conducted through a court hearing. Here we can observe a change in the law. In classical *fiqh*, initially, husbands were given extensive rights to pronounce divorce on their wives anytime and anywhere, and when they pronounced it, it was considered a valid divorce. It is evident that in classical *fiqh*, initially, husbands were given the right to pronounce divorce anywhere and anytime. This provision changed into an obligation to pronounce divorce in front of a court. Muhammadiyah believes that this change in the law is in line with the *fiqh* principle of "legal changes are not denied due to changing times".<sup>37</sup> Ibn Qayyim stated that changes in fatwa and their differences occur according to changes in time, place, circumstances, intentions, and customs.<sup>38</sup> Thus, if someone gives a fatwa without considering these differences and changes, especially by simply quoting from *fiqh* books as is, they are very likely to fall into error.<sup>39</sup>

Furthermore, Muhammadiyah holds onto Surah Al-Anbiya verse 107, which explains that "We have sent you (O Muhammad) not but as a mercy for all the worlds." This verse at first glance affirms that the requirement to pronounce the divorce declaration in front of the court aims to achieve benefits such as protecting the family, the children from subsequent marriages, and safeguarding women. This is achieved by protecting or maintaining the continuity of the marital relationship, making divorce not easily uttered anywhere and anytime. Thus, the divorce pronounced in a court signifies that it has undergone a lengthy examination process based on the judge's considerations regarding reasons in accordance with Islamic Sharia.

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<sup>37</sup> Al-Zuhailiy, Wahbah, (1986). *Ushul al-fiqh Al-islamiy*, Beirut: Dar al-Fikr juz II cet 1, h. 1116.

<sup>38</sup> Muhammad Roy Purwanto dan Johari, (2017). *Perubahan Fatwa Hukum dala Pandangan Ibnu Qayyim al-Jauziyyah*, Yogyakarta: Universitas Islam Indonesia, h. 44.

<sup>39</sup> Ibn Qayyim al-Jauziyyah, (t.th). *Thuruq al-Hukmiyah*, Surabaya: Rabithah Ma'ahid al-Islamiyah al-Markaziyah, h. 67.

Pronouncing the divorce declaration in front of the court ensures legal certainty<sup>40</sup> and compliance with Indonesian Islamic legal guidelines on divorce.<sup>41</sup> Before a judge's decision, a thorough examination is conducted to determine whether the reasons for divorce between the husband and wife are sufficiently valid. Additionally, the court may act as a mediator to reconcile both parties before proceeding with the trial to reach a divorce decision. The concept of *maslahah al-mursalah* is also the foundation for Muhammadiyah's opinion, emphasizing that to preserve an established marital relationship, divorce should not be casually pronounced outside the court without considering valid reasons according to Sharia. Furthermore, to eliminate harm based on the concept of *sadduzari'ah*,<sup>42</sup> it must be stated that pronouncing divorce outside the court should be deemed invalid. This emphasizes that every divorce declaration should be made in front of a court.

### **Comparison of Opinions**

It has become common for differences in opinions to arise in legal determinations. The diverging opinions between the Indonesian Ulema Council (MUI), Nahdlatul Ulama, and Muhammadiyah regarding the legal status of pronouncing divorce outside the court are due to differences in *istinbath al-hukm* (derivation of legal rulings) methods.<sup>43</sup>

Firstly, the Indonesian Ulema Council employs the *Qauliy* method when determining the legal fatwa regarding the status of divorce pronouncements made by a husband to his wife outside the court, citing *fiqh* principles developed by *fiqh* scholars.

Secondly, the Board of Fatwas of Nahdlatul Ulama uses the *Qauliy* method to determine the law concerning divorce pronouncements outside the court, referring to classical *fiqh* texts such as *Fathul Mu'in* by Zainuddin al-Malibari, *Nihayah al-Zain* by Muhammad Nawawi bin Umar al-Jawi, *Tuhfah al-Muhtaj* by Ibn Hajar al-Haitami, and *Bughyah al-Musyтарыsyidin* by Abdurrahman bin Muhammad Ba'lawi.

Thirdly, Muhammadiyah employs the *Qiyas* method to ascertain the legal status of divorce pronouncements outside the court by analogizing unresolved matters based on a shared *illat* (legal reasons). Muhammadiyah accepts the use of the *Qiyas* method with the caveat that it does not apply to *ibadah mahdhah*

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<sup>40</sup> Ainiyah, Q., & Muslih, I. (2020). *Dilema hukum keluarga Di Indonesia (studi analisis kasus perceraian di Indonesia)*. *Jurnal Istiqro*, 6(1), 73-81.

<sup>41</sup> Lihat Undang-undang Perkawinan, Kompilasi Hukum Islam, dan Undang-undang Peradilan Agama

<sup>42</sup> Al-Qarafi, Syihab ad-Din Abu al-Abbas, (1994). *Tanqih al-Fushul fi 'Ilm al-Ushul*, dalam *Kitab Digital al-Marji' al-Akbar li at-Turats al-Islami*, h.295

<sup>43</sup> Fadillah, J. A., Satriani, J., Badrus, M., & Nur, I. (2021). *Madzhab dan Istinbath Hukum*. *Jurnal Studi Agama-Agama*, 7(2), 239.

(specific acts of worship). According to Muhammadiyah's interpretation of Qiyas in its fatwa regarding divorce pronouncements outside the court, pronouncing divorce outside the court is considered invalid due to the potential harm it entails. Another consideration is that, just as marriage and reconciliation require witnesses, divorce should follow the same principle.

The Indonesian Ulema Council (MUI) views that divorce pronounced outside the court is valid, provided it aligns with Sharia regulations and justifiable reasons. Nahdlatul Ulama shares a similar perspective; however, they consider it as the first divorce. If later confirmed in court based on a judge's decision, it is regarded as the second divorce. The waiting period (*iddah*) for the divorced woman is calculated from the last divorce. Muhammadiyah holds a different view, deeming divorce pronounced outside of court as invalid due to the potential harm it may cause. Muhammadiyah believes that allowing divorce outside of court could lead to arbitrary decisions by a husband regarding divorce, anytime and anywhere, which is detrimental to the continuity of marital relationships.

Nahdlatul Ulama and Muhammadiyah share a common perspective in that pronouncing divorce in front of a court is considered a valid divorce. This differs from the Indonesian Ulema Council, which believes that divorce must be confirmed again. Furthermore, all three organizations acknowledge the existence of the court as the authorized institution to adjudicate and decide divorce cases, particularly in Indonesia, where it falls under the jurisdiction of the Religious Court (*Pengadilan Agama/Mahkamah Syar'iyah*).

## **CONCLUSION**

The Indonesian Ulema Council (MUI) holds the opinion that pronouncing divorce outside the court is valid or constitutes a divorce, provided it aligns with Sharia regulations and its correctness can be proven in court. Furthermore, Nahdlatul Ulama maintains the view that the legal status of pronouncing divorce outside the court is valid and constitutes the first divorce. If confirmed in court later, it is deemed the second divorce. On the other hand, Muhammadiyah believes that divorce should be pronounced in court, implying that Muhammadiyah does not consider it valid if pronounced outside the court due to the potential harm it may cause. The Indonesian Ulema Council and Nahdlatul Ulama still adhere to classical *fiqh* texts, thus affirming the validity of divorce pronounced outside the court. In contrast, Muhammadiyah aligns with the concept of *maslahah al-mursalah* within the family institution, hence stating that divorce pronounced outside the court is not valid. Nahdlatul Ulama and Muhammadiyah share a commonality in that divorce pronounced in court is considered a divorce. This differs from the Indonesian Ulema Council, which requires the *isbath* (confirmation) of divorce. All three fatwa institutions

acknowledge the existence of the Religious Court (*Pengadilan Agama*) as the authority to adjudicate and decide divorce cases.

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