



IMPLICATIONS OF THE NORTH SUMATRA MUI FATWA ON *TALAQ* OUTSIDE THE COURT: Harmonization of Islamic Sharia and Positive Law in Indonesia

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Abstract

Out-of-court divorce is a practice that is still often found in Indonesia even though it is contrary to positive laws, such as Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). This study aims to analyze the legal implications of talaq outside the court from the perspective of the Fatwa of the Indonesian Ulema Council (MUI) of North Sumatra. With a normative juridical approach, this study explores the legal provisions of talaq in Islamic law, the relevance of fatwa to laws and regulations, and its impact on legal certainty and the protection of the rights of wives and children. Data was obtained through document studies of MUI fatwas, regulations, Islamic legal literature, and related academic studies. The results of the study show that the fatwa of the North Sumatra MUI recognizes the validity of talaq outside the court religiously if it meets the requirements of sharia, but still recommends its reporting to the religious court to ensure legal certainty. This fatwa educates the public not to impose talaq carelessly and ensures the rights of the parties involved, such as alimony, custody, and the distribution of common property. The legal and social implications of this fatwa show that there is a fundamental difference between Islamic law and positive law, which can affect the protection of family rights. By applying the theory of maqashid shari'ah, this study concludes that the MUI fatwa seeks to harmonize Islamic sharia values with state law in order to realize the benefits of society.

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A. INTRODUCTION

Allah SWT created His creatures certainly not in vain. Humans are created in the best shape and are destined to be paired. Marriage is sunatullah as human nature created in pairs.(Tamam, 2018) Allah swt says in the Qur'an surah Ar-Ruum [30]: 21 namely: Meaning: Among the signs of His greatness is that He created pairs for you from your own (type) so that you may feel at peace with him. He has made among you a sense of love and affection. Indeed, in such things there are signs (of Allah's greatness) for those who think (Nurunnisak, 2023).

Every married couple has the hope that the family that is built will become a family that will be *Compassion*, *Compassion*, and *Compassion*, and endure until death separates.(Firdaus & Ridho, 2024) Family life is the nature of a human being as a social being. A family is a place where two or more individuals who are legally bound by marriage are united with the intention of passing on the lineage. A family must be strong in order to maintain the welfare and peace of all its members. The definition of marriage according to article 2 Chapter II of book I of the Compilation of Islamic Law (KHI) is stated in its definition: Marriage according to Islamic law is a marriage, which is a very strong contract or *Mitsaqan Ghaliza* to obey Allah's commands and carry them out is worship.(Musthafa & Subiono, 2020)

We can also take the meaning of marriage from the first sentence of the formulation of Article 1 of Law Number 1 of 1974 concerning Marriage, namely in the sentence which reads: "marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead".(Latupono, 2020) Meanwhile, the purpose of marriage is contained in article 3 of the Compilation of Islamic Law, namely, "Marriage aims to realize a healthy domestic life. Grace, Grace, and Grace". The explanation of the purpose of marriage cannot always be achieved. Although all prospective husbands and wives have been very careful in making their choices before getting married, not all couples can achieve this goal in their marriage.(Hudafi, 2020)

Many couples have to face various problems in the household, resulting in one of the parties deciding to end the marriage bond by means of divorce. Basically, in Islam it is forbidden to divorce, this can be understood from the Hadith of the Prophet Muhammad PBUH, namely. Meaning: From Ibn Umar r.a. he said: The

Prophet PBUH said, Something that is lawful that Allah hates is talaq / divorce. (Narrated by Abu Daud Ibn Majah and confirmed by Hakim and Abu Daud). (Al-Sijistani, n.d.)

Referring to the hadith, talaq is described as something that, although allowed, is very displeasing to Allah. Talak should be seen as a last resort in resolving household problems and should only be done in urgent situations after various improvement efforts have been made. Therefore, this process needs to be carried out with great caution and consideration so as not to cause new problems in the future. However, it is not uncommon for talaq to be imposed in a hurry for trivial reasons, without careful calculation and not in accordance with the proper rules. Divorce according to Islamic religious law that has been validated in the Marriage Law every divorce must go through the court as in Article 39 paragraph (1) of the Marriage Law which states that every divorce must be carried out before the court so that the divorce is legally recognized, either by religion or by the regulations in force in a country, after the court has tried to reconcile but is unsuccessful.(Scott, et al., 2022)

Likewise, KHI article 115 both require that divorce must be carried out in front of a court hearing, meaning that in the divorce mechanism it is necessary to have someone else to corroborate evidence that both spouses have divorced.(Ulumuddin et al., 2022) With the occurrence of the testimony hearing of the talak pledge. So that the position of the witness plays an important role when talaq occurs. Thus, the Indonesian state stipulates that divorce can only be carried out through a court trial. However, since the enactment of this provision until now, many Muslims still seem to ignore the regulation. They prefer to follow the teachings of "classical" fiqh literally. They think that this rule indirectly rejects the validity of talaq imposed by the husband outside the trial.

The provisions of divorce in this court are not regulated in the fiqh of any madhhab, considering that divorce, especially the so-called talaq, is the absolute right of a husband and he can use it anywhere and anytime.(Amnar, 2020) And for that, there is no need to tell let alone ask anyone's permission. In the view of fiqh, divorce is a private affair and therefore does not need to be regulated by public provisions.(Syarifuddin, 2006) There are scholars who give strict rules, such as having to testify or be done in front of a judge. However, there are also very loose

ones, such as the opinion that the husband can impose talaq for the slightest reason and without witnesses because talaq is the husband's right. The problem is, in the Qur'an there is a verse that commands the existence of testimony in talaq and reference, namely in the letter Al-Talāq (Devy & Mawaddah, 2018).

Meaning: When they are nearing the end of their prayer, reconcile with them well or let them go well and testify with two fair witnesses from you and let your testimony be established for the sake of Allah. This is recommended to those among you who believe in Allah and the Last Day. Whoever fears Allah, surely He will open a way out for him. Q.S.At-Talaq 65: 2). (Devy & Mawaddah, 2018).

Meaning: When they have neared the end of their prayers, consult with them in a good way or release them in a good way and bear witness with two of your just witnesses and establish the testimony for Allah's sake. That is what is advised to those among you who believe in Allah and the Last Day. Whoever fears Allah, He will surely open a way out for him (Q.S.At-Talaq 65:2)..(Devy & Mawaddah, 2018) Based on this verse, Imam Abu Hanifah argues that the testimony of the talaq is mandub (recommended).(Syaukani, n.d.) While Imam Al-Shafi'i is of the opinion that his legal testimony is obligatory in reference, but sunnah in talaq.(Husni, 2017) The same opinion was expressed by Imam Ahmad ibn Hanbal. In fact, in this regard, there is a famous hadith that states

It means: "From Abu Hurairah, the Messenger of Allah (peace and blessings of Allaah be upon him) said: There are three things that if done deliberately or in a way, they still happen, namely: marriage, talaq, and referral".(Sulaiman, n.d.) . Based on this, it can be understood that the husband's talaq to his wife is valid/falls anytime, anywhere and in any atmosphere even if it is done with a joke motive. If it is further explored that for those who are Muslim, the marriage can be decided without going through the court or outside the court. Because in Islam divorce can occur if it is enough to say "I divorce you", with this statement in Islam the divorce has been recognized. However, after the issuance of the Marriage Law, such a thing is no longer allowed. Because in the Marriage Law every divorce must go through the court as in Article 39 paragraph (1) of the Marriage Law which states that every divorce must be carried out before the court so that the divorce is legally

recognized, either by religion or by the regulations that apply in a country, after the court tries to reconcile but is unsuccessful.(Hayati, 2015).

Divorce outside the court is legal according to religion, but the law is not legal according to the law. Talaq outside the Court in question is a divorce that has fulfilled all the requirements and pillars of talaq stipulated in Islamic law, but without an official determination by an authorized agency as stipulated in laws and regulations.(Hayati, 2015) To understand this problem and know the validity of talaq that occurs outside the Religious Court, it is necessary to think of scholars. In addition to having expertise in interpreting the law by using detailed postulates according to the provisions of the Qur'an and Sunnah, scholars are also role models for the community and have a great influence in contributing to Islamic issues. In connection with the practice of divorce outside the court carried out by some people, the Indonesian Ulema Council (MUI) has taken steps to discuss the problem. As a deliberative institution that accommodates scholars, *zu'ama*, and Muslim scholars, as well as acting as a protector for Muslims in Indonesia, MUI has high competence in providing solutions and answers to various socio-religious problems that arise in society.

The credibility of the MUI is widely recognized by the public and the government, making it an institution that plays an important role in dealing with these kinds of issues.(Bahri, 2023) The fatwa of the Indonesian Ulema Council (MUI) of North Sumatra Province Number 04/KF/MUI-SU/IV/2011 concerning Talak Outside the Court states that talaq pronounced by a husband to his wife outside the Religious Court session is considered valid according to the provisions of Islamic law. However, the talaq does not have the legal force recognized in the national legal system. The existence of this fatwa creates a discrepancy between legal theory, which includes formal legal procedures and standards, and the legal practice that is developing in society. This discrepancy has the potential to create a gap in the implementation of rules related to divorce, so that it can affect the principles of justice and legal certainty for interested parties.

B. METHODS

This research uses a qualitative research approach. Research that uses qualitative research aims to explore or build a proposition or explain behind

reality.(Sukmawati & Tarmizi, 2022) The research uses a normative juridical approach, which is used to understand the validity of talaq outside the court based on the Fatwa of the Indonesian Ulema Council (MUI) of North Sumatra, Law Number 1 of 1974 concerning Marriage, and the Compilation of Islamic Law (KHI). Focuses on the study of legal documents, such as fatwas, laws, and regulations related to divorce. In data collection by means of First Document Study: Reviewing and analyzing legal documents such as the North Sumatra MUI Fatwa, Law Number 1 of 1974, Compilation of Islamic Law, and other relevant documents. Second Literature Studies: Using references from classical and contemporary Islamic law books, scientific journals, and academic studies related to the phenomenon of talaq outside the court.

The data obtained were analyzed using a descriptive-analytical method, which aims to elaborate on the content of the MUI Fatwa and positive legal regulations related to talaq, compare the views of classical Islamic law with state law, analyze the social and legal impact of fatwas on legal certainty and protection of family rights. The source of data in this study is the Fatwa of the North Sumatra MUI No. 04/KF/MUI-SU/IV/2011 concerning talaq outside the court, Law Number 1 of 1974, and the Compilation of Islamic Law and other data, namely Islamic legal literature, academic studies, scientific journals, and reference books on maqashid shari'ah and family law.

C. RESULTS AND DISCUSSION

The Concept of Talak in Islamic Law

Talak means divorced, the opposite of gathering. Then this word was used as a term by fiqh scholars which means divorce between husband and wife.(Ainul, 2022) Talak can be reviewed from two aspects, namely language (etymology) and in terms of the term syara'. Talak comes from the Arabic language which is "طلاق" It means the release of a marriage bond and the end of the marital relationship. According to the Islamic encyclopedia in Indonesia, talaq is the termination of the marriage bond carried out by the husband against his wife by using the phrase "Talak" or something similar. In Indonesian, the term divorce or "divorce" is also used, which actually has a broader meaning than talaq.(Abduh & Hamidah, 2021) From the various meanings above, it can be concluded that what is meant by

divorce is the breakdown of the marriage bond between husband and wife by using words or pronouncements of talaq, divorce or words that have the same meaning as the pronunciation. Talak is sharia in the Qur'an, sunnah and ijma'. The basis for allowing Talak include: in Surah At-Thalaq verse 1 which reads:

"O Prophet, if you divorce your wives, divorce them when they are able to (face) their (reasonable) idah, and calculate the time of the idah, and fear Allah your Lord. Do not take them out of their houses and do not go out unless they do a clear abomination. Those are the laws of God. Whoever transgresses the laws of Allah, he has indeed wronged himself. You do not know that Allah may afterwards make a new provision" (Q.S. At Talaq, 65:1).. (Fauziah & Arfan, 2022)

In addition, it is still an understanding *Ma'ruf* is to take care of the wife by fulfilling her rights.(Hidayatulloh, 2019) Regarding the origin of the law of talaq (divorce) of the scholars who have different opinions, Sayyid Sabiq by quoting the opinions of the Hanafi and Hanbali groups said that the law of divorce is forbidden or haram unless there is a great reason. This is because divorce means disbelief in the favor of Allah SWT. Meanwhile, marriage is one of the blessings of Allah and kufr from the blessings of Allah is haram, except for emergencies.(Irawan et al., 2023) Likewise, according to Sayuti Talib, because the purpose of marriage is to perpetuate family life, the original law of talaq is haram. So then because of 'Illahnya, the law becomes halal or mubah. He has the basis that the Qur'an repeatedly mentions talaq with its limits. Thus, talak can be done if there is a reason that legalizes it. In addition, he based his opinion on the hadith of the Prophet PBUH:

Meaning: From Ibn Umar r.a. he said: The Prophet PBUH said, Something that is lawful that Allah hates is talaq or divorce (Narrated by Abu Daud Ibn Majah and confirmed by Hakim and Abu Daud) (Al-Ash'as-Sijistani, n.d.).

This hadith contains about the legalization of talaq when it has fulfilled the restrictions, but even though it has been said that it is halal, the hadith also contains a permanent statement of the displeasure of Allah SWT and the Prophet PBUH towards the talaq. Furthermore, talaq can shift to different laws which in essence have a variety of motives and conditions that exist in the perpetrators of marriage. Therefore based on differences' Divinity, then the law of talaq can be divided into

four parts. First, it is mandatory, if it occurs Syiqaq (irreconcilable marital conflict) and play (the peacemaker of both parties) has considered it necessary to divorce, or when the husband has divorced his wife and the grace period of 4 months has expired.(Al-Ash'as-Sijistan, n.d.)

Second, sunnah if the husband is weak and unable to fulfill his obligations to his wife while the wife is unwilling. This is included in the title of this division because the supernatural sumai is not known to exist and has never provided sustenance or is unable to provide sustenance to the family. The three harams are Talaq bid'iy which consists of divorcing the wife in a state of menstruation and in an impure state that has been interfered with during that holy time.(Fajar Sidiq Widodo, 2022) Fourth, makruh, if it is dropped without any reason at all. Based on the hadith of the Prophet PBUH narrated by Abu Daud above, the meaning of being hated in the hadith shows makruh.

The above is the basis of Islamic religious law that divorce is permissible even though it is hated by Allah.(Dahwadin et al., 2020) As is known, talaq is only considered valid if it has fulfilled its pillars and conditions. As for the pillars of talaq, there are three parts. First, the husband, the husband is the one who has the right of thalak and who has the right to bring it down, besides the husband does not have the right to bring it down. Both wives, talaq imposed by the husband must be addressed to the person who should receive the thalak from her husband, this is reviewed in terms of the lives of the two which are indeed difficult to reconcile, so that it becomes a pillar that must exist. To determine the validity of thalak is the wife and the status of this wife is the most basic basis for the law of thalak. Because of the existence of the thalak. Third, sighat, namely the pronunciation that indicates the existence of talaq, whether it is spoken aloud or done insinuatingly on the condition that it must be accompanied by intention. However, there are also certain sayings that affirm the meaning of talaq and can be understood by the community as well known in the sharia'. The way it is used can be done orally, in writing or in sign (for the mute). There are two types of words that show the meaning of talaq, namely the words Sharih and lafas Kinayah.

As stated above, the authority of talaq in Islamic jurisprudence is in the hands of the husband. Thus, if the talaq pronounced by the husband has fulfilled the pillars and requirements, then the talaq is valid and has legal implications. It is

required for people who do the following things.(Jafar, 2023) First, puberty, the thalak that is dropped by a child is declared invalid, even if he is good enough to do so, according to the agreement of the scholars of the madhhab, except for Hambali. The scholar of Mazdhab Hambali said that talaq imposed by a child who understands is declared valid, even though he has not reached ten years of age. Second, it is common sense, a husband who is insane is not authorized to drop thalak, what is meant by madness here is loss of mind or damage of mind due to illness, including headaches, loss of mind due to heat illness or memory pain due to damage to brain nerves. Third, it is common sense, the husband who is insane is not authorized to drop thalak, what is meant by madness here is loss of mind or damage of mind due to illness, including headaches, loss of mind due to heat illness or memory pain due to damage to the nerves of his brain.

The Basis of Talak Law in Indonesia

Talak in Article 38 of Law Number of 1974 which contains facultative provisions that marriages can be dissolved due to death, divorce, and by court decision. The term divorce according to Law Number 1 of 1974 as a positive legal rule about divorce indicates three actions. First, legal action that can be taken by a husband or wife to break the marital relationship between them. The two legal events that break the relationship between husband and wife, namely: the death of the husband or wife concerned, which is a definite and direct provision applied by God Almighty. Third, the judge's decision is declared by the court which results in the legal termination of the marital relationship between husband and wife.(Maghfiroh, 2019)

Divorce according to article 38 of Law Number 1 of 1974 is the breakdown of marriage. What is meant by marriage is according to Article 1 of Law Number 1 of 1974 is "the innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead".(Kasman Bakry, Zulfiah Sam, 2021) So, divorce is the breakdown of the inner bond between husband and wife which results in the end of the family (household) relationship between the husband and wife. In principle, a man and a woman are bound by their inner birth in a marriage as husband and wife have the right to terminate the marriage by way of divorce based on the applicable divorce law. However, the husband and wife who are going to divorce must have certain

legal reasons and the divorce must be in front of the court session after the court concerned has tried and failed to reconcile the two parties as stipulated in Article 39 of Law Number 1 of 1974 there are three parts.(Kasman Bakry, Zulfiah Sam, 2021)

First, Divorce can only be done in front of a court hearing after the court concerned has tried and failed to reconcile both parties. Second, to get a divorce, there must be enough reason, that the husband and wife will not be able to live together as husband and wife. The validity of divorce procedures in front of the court session is regulated in the laws and regulations themselves. The Compilation of Islamic Law Article 114 states that "the breakup of a marriage caused by divorce can occur due to talaq or based on a divorce lawsuit". Furthermore, in article 115 of the Compilation of Islamic Law, it is stated that "divorce can only be carried out in front of the Religious Court session after the Religious Court has tried and failed to reconcile the two parties". Based on this Article, what is meant by divorce from the perspective of the Compilation of Islamic Law (KHI) is the process of pronouncing the talaq pledge which must be carried out in front of the trial and witnessed by the judges of the Religious Court. If the pronouncement of the talaq pledge is carried out outside the trial, then the talaq is illegal talaq which is considered invalid and does not have binding legal force.

Here KHI refers to the court more specifically as a religious court. More emphatically, KHI article 123 states: The divorce occurs from the moment the divorce is declared in front of the Court session. Furthermore, the talaq procedure is described in the KHI in articles 129, 130 and 131. From the text above, it is clear that the talaq that is taken into account is only talaq that is pledged in front of the Religious Court session. While those who are dropped outside are considered not to have any legal consequences and the couple in question remains intact as husband and wife. This is further strengthened by the provisions on the beginning of the iddah period for talaq raj'i which is calculated from the fall of the Court Decision which has permanent legal force as affirmed in article 153 paragraph (4) which reads that for marriages that are broken up due to divorce, the waiting period is calculated from the fall of the Religious Court Decision which has permanent legal force while for marriages that are broken up due to death, The waiting period is calculated from the death of the husband.

From all the above explanations, it is known that the pledge of talaq from the perspective of laws and regulations is not the same as the pledge of talaq from the perspective of fiqh. Because, talaq according to fiqh is a word of talaq or something like that is said by a husband to his wife in a conscious and free state. When the word talak has been spoken, the words are in the category of Sharih, so at that time the talaq has fallen, even if it is with the intention of joking. Meanwhile, according to laws and regulations, talaq speech will only have a legal impact if it is pledged in front of the Religious Court session. While what is imposed outside it is not considered talak and does not have any legal consequences (Husni, 2017).

MUI Fatwa on Out-of-Court Talaq

The word fatwa in Arabic is called *ijta'*, which means to give an explanation, a law, or a decision.(Adiyes Putra et al., 2022) A fatwa is simply an answer to an event.(Abdur Rahman Adi Saputera, 2020) Fatwa is one of the products of Indonesian Islamic law in addition to three other products, namely fiqh, law and jurisprudence. Fatwas are thoughts in the form of law as an answer to problems that arise in society that are issued by competent parties both individually and institutionally. The position of fatwa in Islamic law can be studied from the meaning of the fatwa itself, so that when talking about the fatwa itself, it will not be separated from the aspect of who or what organization contains the fatwa. So it can be concluded that talking about fatwa, then the discussion is inseparable from the concept *ijtihad*. Fatwas are issued by Islamic scholars or jurists who are able to raise problems due to the needs of those who need a basis for answers as the legal basis for an act or activity that can be religious or non-religious.(Dinar et al., 2025)

Related to MUI, this MUI fatwa is a form of collective fatwa (*Al-fatwa alijma'*) is a fatwa produced by the *ijtihad* of a group of people, teams, or committees that are deliberately formed. Basically, this collective fatwa is produced through a discussion in a scientific institution consisting of individuals who have high abilities in the field of fiqh, understanding religious problems and various other sciences as a support in the sense of the conditions that must be possessed by a person who will be *ijtihad*. Fatwas produced through this scientific institution must be able to establish the law boldly and free from political, social, and cultural influences and pressures embraced by the Nation.(Dinar et al., 2025) The MUI has a fatwa determination system and procedure known as the Stuttgart (understanding,

excavation, and formulation of law. This method of determining fatwa applies in the determination of the three categories of farwa that have been mentioned, namely economic fatwas and halal and religious, unless specifically stated.

The system and procedures applied in the determination of the MUI fatwa are part of ijtihad, as has been introduced by experts of science Ushul Fiqh. The fatwas of the MUI as the fruit of the collective ijtihad carried out by all relevant institutions in the MUI cover religious issues in general, especially legal issues (Fiqh) and the issue of faith concerning the truth and purity of the faith of Indonesian Muslims. MUI fatwas, like fatwas in general, are determined based on the information of the Qur'an, hadith, ijma, and qiyas.(Kartini, 2021) Operationally, MUI fatwas are determined by following the guidelines for determining fatwas which contain four basic provisions as stated in Article 5 as follows

First, before the fatwa is established, a comprehensive study is carried out first to obtain a complete description of the object of the problem (tashawwur al-problem), the formulation of the problem, including the socio-religious impact caused and the critical points of various legal aspects (sharia norms) related to the problem. The two comprehensive studies referred to in paragraph (1) include an examination of the views of past mujtahid fuqaha, the opinions of madzhab imams and mu'tabar scholars, an examination of related fatwas, and the views of fiqh experts regarding the issues that are fatwa. Third, comprehensive studies as referred to in paragraph (1) can be through the assignment of making papers to members of the fatwa commission or experts who have competence in the field related to the issue to be fatwaed.

The determination of fatwas must always pay attention to the authority of legal regulation by the sharia and consider the public interest and maqashid al-sharia. The MUI has a certain basis or foundation that is used to provide rulings or guidelines related to talaq issues that are carried out outside the court based on the provisions of the law, taking into account three aspects. First Talaq outside the court is valid on the condition that there are sharia reasons whose truth can be proven in court. Second Iddah Talak is calculated since the husband imposes talak. Third, for the sake of benefit and ensuring legal certainty, talaq out of court must be reported (Ikhbar) to the religious courts.(Antara et al., 2024) Talak is the right of a husband to divorce his wife in a legal way according to Islamic law. MUI, as

an institution that provides guidance on Islamic law in Indonesia, emphasizes the importance of correct and fair procedures in the implementation of talaq.

Implications of Fatwa on the Legal Certainty of Talak Outside the Court

The Decision of the North Sumatra Ulema Council No. 04 of 2011 which all fatwas said that talaq outside the court is valid. If studied using *Maqashid Shari'ah* presented by As-Syathibi and Al-Zuhaili which is reviewed in terms of its influence on human beings at the level of *Dharuriyat*, which is a primary benefit, on which human life depends very much, both aspects of *Düsseldorf* (religion) and worldly aspects. So this is something that cannot be left out in human life. If it does not exist, human life in this world will be destroyed and the life of the hereafter will be corrupted (tormented). This is the highest level of benefit.

In Islam, Mastodos Dharuriyat It is guarded from two sides: first, its realization and realization, and second, preserving its preservation. For example, the first is to protect religion by realizing and carrying out all religious obligations, and the second is to maintain the preservation of religion by fighting and jihad against the enemies of Islam. The fatwa decision of the Indonesian Ulema Council is the enforcement of the rules of Islamic law in this country. Meaning: O Prophet, when you divorce your wife's wife, then divorce them when they have their iddah (righteous) and count the time of iddah and fear Allah your Lord, and do not take them out of their houses and do not let them go out unless they do a blatant abomination. Those are the laws of God. So he has done wrong to himself. You do not know that perhaps Allah will do something new afterwards. It means: "From Abu Hurairah, the Messenger of Allah (peace and blessings of Allaah be upon him) said: 'There are three things that if done deliberately or in a way, they still happen, namely: marriage, talaq, and referral'".(Al-Ash'as-Sijistani, n.d.)

From the legal basis that has been explained above, it can be determined that talaq outside the court of law is valid. Basically, talaq is the right of the husband to divorce (break the marital relationship), his wife.(Duncan, 2012). This is also the opinion of Sayyid Sabiq, that the right of talaq is only for the husband, because he insists on perpetuating the marital relationship. In the matter of divorce or talaq, there is no provision in classical jurisprudence regarding the necessity of imposing talaq in front of the court. However, talaq has been considered to fall and valid according to the law when the conditions and pillars that have been set by syara'

have been met. In addition, in Islam it is stated that talaq is the prerogative of a husband over his wife.(Bakri, 2017) Talak is pronounced by the husband wherever it is, it still falls or is legal. This opinion is based on the hadith of the Prophet PBUH which says that there are three things that if done seriously will happen and if done by saying that there are three things that if done seriously will happen and if done joking will happen, namely: Marriage, Divorce and Divorce"(Kurniawan, 2018).

If this provision is not implemented, problems will arise that threaten Islam. In general, the problems that arise are three things. First, regarding the fall of talaq and the end of the period of iddah related to the validity of talaq, according to the Islamic Fiqh law, according to Syech Muhammad Shaleh al-Utsyaimin, talaq falls and is legally valid from the moment it is pronounced by the husband or when it is written by the husband. Regarding witnesses, ijma" scholars do not require it, so immediately after it is pronounced, the talaq is valid. During the iddah period, the two can refer back as husband and wife, either by a clear statement from the husband with acceptance by the wife or by performing jimak (intercourse) between husband and wife which shows that both have been referred. However, if until the end of the iddah period, both of them do not make a referral, then both of them have divorced and if they want to return, they must marry. UUP and KHI require that divorce must be by a court decision, so that even if a husband pronounces the word divorce against his wife a thousand times, then it has not fallen into talaq. According to the UUP and KHI, talaq must be pledged before the judge after obtaining permission from the religious court and talaq and the iddah period begins from the pronouncement of the talaq pledge by the husband before the judge. So that something that is haram (zina) according to Islamic fiqh can be halal according to UUP and KHI and vice versa something that is halal according to Islamic fiqh, becomes something haram according to UUP and KHI.

Second, based on Islamic fiqh, talaq three falls after talaq is mentioned and occurs three times. Ibn Taymiyyah and his disciple Ibn al-Qayyim argued that talaq three times in one speech is punishable as haram and is considered only one talaq (not three talaq). This opinion is also the opinion of most traditionalists. Unlike the UUP and KHI, a husband can refer a thousand times to his ex-wife, even there is no iddah period as long as they have not been officially divorced in court. So it is

common in divorce hearings, the wife who postulates that her husband has rejected her three times until according to fiqh he has fallen triple talaq, but the judge only decides that it is only talaq one. Third, this can happen when the couple refers after the iddah period without remarrying on the grounds that the talaq is invalid because it is not done through a court hearing. In state law, there has been no divorce, but in Islamic law, divorce has occurred and the iddah period has passed, so to return must be remarried. If it is not done, then intercourse between the two includes adultery and the child born is a child born of adultery. A person who has a strong religious awareness or faith must be more afraid of religious laws than state laws. Especially those related to worship and sin to Allah SWT. Where adultery in Islam is a great sin.

D. CONCLUSION

The problem of marriage law in Indonesia, especially related to talaq, reflects the complexity of the interaction between Islamic law and state law. In Islamic law, talaq is seen as the last resort to untenable domestic conflicts, although the Qur'an and hadith do not regulate the procedure in detail. As a result, there are differences of opinion among scholars regarding its implementation, ranging from those who require testimony to those who allow talaq without witnesses. On the other hand, the Indonesian government regulates that divorce must be carried out in court to ensure legal certainty and avoid negative impacts such as unclear rights of children and wives. The Indonesian Ulema Council (MUI) stipulates that talaq outside the court is religiously valid if it meets the requirements of sharia, but must still be reported to the court for the benefit and certainty of law. This fatwa aims to educate the public to be more careful in imposing talaq and ensure that the rights of the parties involved are protected. Thus, talaq outside the court is considered a phenomenon that requires serious attention, especially to prevent arbitrariness and maintain harmony in society. The implication is an effort to harmonize Islamic law and state regulations. Although talaq is the husband's prerogative in Islam, its implementation that is not coordinated with the court can cause problems such as unclear iddah period, alimony rights, and official divorce documents. Therefore, an approach that prioritizes education, protection of rights, and legal certainty is

needed to ensure the sustainability of the institution of marriage in accordance with Islamic values and positive Indonesian.

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