



The Law of Taking Talak Outside The Court in The Perspective of Maqashid Al-Syariah

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Abstract: Research problems: What is the maqashid al-syariah perspective regarding someone who gives divorce outside the court? Research purposes: knowing the losses (mafsadat) due to divorce outside of court from the perspective of maqashid al-syariah. Research methods; using normative legal research (library research). Research results show that Divorce outside a court session is not permitted from a maqashid al-syariah perspective, even though it is permitted according to the Qur'an and hadith. Still, both imply indirectly that Islam allows divorce but, on the other hand, hopes that divorce will not occur. Divorce outside of court can disturb children's mental health. Children who were originally in a harmonious and loving family are suddenly in a family environment that is the opposite; their children are also feared to be vulnerable to falling into the company of alcohol and illegal drugs; the status of children is unclear according to the law causing the court to have no legal power to force the ex-husband to provide maintenance to the ex-wife during the iddah period; shelter, clothing, food and to their children too.

Keywords: Divorce, Maqashid al-Syariah

Abstrak: Permasalahan penelitian; bagaimana perspektif maqashid al-syariah mengenai seseorang yang menjatuhkan talak di luar sidang pengadilan? Tujuan penelitian; mengetahui kerugian (mafsadat) akibat talak di luar sidang pengadilan dalam perspektif maqashid al-syariah. Metode penelitian; menggunakan penelitian hukum normatif (library research). Hasil penelitian ditemukan bahwa talak yang dilakukan di luar sidang pengadilan dalam perspektif maqashid al-syariah tidak diperbolehkan, walaupun menurut Al-Qur'an dan hadits membolehkannya tetapi keduanya mengisyaratkan secara tidak langsung bahwa Islam membolehkan perceraian tetapi pada sisi yang lain mengharapkan tidak terjadi perceraian. Sebab talak di luar sidang pengadilan bisa mengganggu kejiwaan anak-anak artinya anak-anak yang semula bersama keluarga yang harmonis dan penuh kasih sayang, tiba-tiba berada dalam lingkungan keluarga yang sebaliknya, anak-anak mereka juga dikhawatirkan rentan terjerumus dalam pergaulan minuman keras dan obat-obatan

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terlarang, status anak yang tidak jelas demi hukum dan menyebabkan pengadilan tidak mempunyai kekuatan hukum untuk memaksa mantan suami memberi nafkah kepada mantan istri selama masa iddah; tempat tinggal, pakaian, pangan dan kepada anak-anaknya juga.

Kata Kunci: Perceraian, Maqashid al-Syariah

Introduction

Marriage is a very sacred bond in our religion because by carrying out marriage, one's sexual desire will be channeled into religious values. Islamic Shari'a makes marriage between husband and wife within a sacred and sturdy rope framework, as the Qur'an gives the term *mitsaqan ghalizha* (Halil, 2018). But because there are problems and household disputes that cannot be resolved and face dead ends, then sometimes the last alternative taken in facing family storms is divorce (Trohna et al., 2019).

However, in Indonesia, there are still Muslims who give divorce outside the courtroom, even though ideally, the divorce is carried out by Islamic law and the laws in force in Indonesia; in reality, there are still many Muslims who divorce outside the courtroom or can be called illegal divorce (Ulumuddin Thoriq & Habibi, 2022). If a divorce outside the court hearing is carried out, it will have a negative impact, namely (Fauziyah, n.d.) First, towards the wife. Divorces carried out outside the court will hurt the wife because divorces carried out outside the court, the wife does not have a divorce certificate that has legal force, so if she remarries, she will face obstacles with the Office of Religious Affairs (KUA). This is because widows who are about to remarry are required to have proof of divorce from the court, so if they want to get married, both ways are through private marriage (Siri marriage). And suppose after the second marriage, another divorce (divorce outside the court again). In that case, he does not get his rights, such as maintenance during the iddah period, namely food, clothing, and shelter after the divorce. Second, to the husband (Pitria et al., 2023). As a result of divorcing outside the court, the husband will encounter difficulties when he is about to remarry to another woman. Divorces that are carried out outside the courtroom do not have a valid proof of divorce and do not have legal force, so when you want to re-marry through the KUA, you will not be allowed to do so until there is a valid proof of a letter from the court. So, if he wants to remarry, he will take the path of underhand marriage (Fajri & Silahuddin, 2022). Third, to children. Divorce will also affect the child's psychological condition, whether the divorce is carried out outside the court or through a court hearing. At first, a child who lives in a harmonious, loving family, then lives in a family full of problems and has to live with only one of the mother or father figures, doesn't even get both (Yudistira et al., 2019). Divorces handed down outside the court do not have legal force, so the court cannot force the father or mother to provide maintenance regularly based on the time to provide support or the amount of material or support provided. Whereas if the divorce is carried out through a religious court, then this matter will be determined by the religious court (Shokhib, 2018).

This research differs from previous studies, focusing on dissecting the problem of divorce under the hand in a review of maqashid al-shariah (Bakri, 2017). Why is this research important? This is considering that there is still little information related to research on the perspective of maqashid al-Syariah on the issue of divorce outside the court. Based on the background of the problems above, researchers are challenged to conduct more in-depth research with the title "Drop divorce outside the courtroom from the perspective of Maqashid al-Syariah.

Scientific works that are by this research, among others: First, a thesis from Muhammad Hilman Tohari, 2016 with the title "A Review of Maqashid Al-Syariah About Ta'lik Talak in Indonesia" Faculty of Sharia and Law UIN Syarif Hidayatullah Jakarta. The results of this study explain that Maqasid al-Syari'ah has an important role in the study of Islamic law; several methods of the Islamic law that are in line with Maqasid al-Syari'ah include Maslahah Mursalah, Khuliya al-Khams, and Saddu Dzari'ah. The implementation of ta'lik talak, especially in Indonesia, has many benefits. So in terms of using Maqashid al-Shari'ah ta'lik, this talak must be carried out (Tohari, 2016).

Second, Ihda Shofiyatun Nisa, Divorce Outside the Religious Courts (According to Maslahat Theory), in The Indonesian Journal of Islamic Law and Civil Law Vol. I, No. I, April 2020. Results from the study showed that divorce outside the court can be seen from two aspects: 1). take advantage, 2). refuse mafsada. Taking maslahat, divorce outside the court is considered valid when prioritizing accurate legal sources (maslahat hereafter, qiyas for sirri marriages, qiyas for divorces which do not require witnesses and documentation of the divorce handed down) (Hakim, 2017). Rejecting mafsada, demanding that divorce be carried out before the court so that there is clear documentation. According to maslahat theory, the meeting point between the two opinions regarding divorce out of court is that divorce must be carried out in court (Shofiyatun, 2020).

Third, an article from Rusli Halil Nasution, 2018, titled Divorce According to Islamic Law, in the Al-Hadi Journal, Volume III No. 2 January-June 2018, stated that marriage is a very sacred bond because, with marriage, human desires can be channeled within the framework of worship and will get offspring that are legitimized by religious law (Dwi Arini Zubaidah, 2022). But don't think the marriage rope is filled with happiness like living in heaven. But there are many obstacles, whether the cause is due to economic problems, parents or their environment. All types of obstacles, as complicated as any that exist, must always be tried to be resolved properly so that the marriage can be maintained and not involved in divorce (talak) (Maryati, 2022). However, if in a married relationship, the longer the togetherness is not obtained, the more unsettled and torturous, and the problems that arise are not getting better. With great compulsion, divorce may be carried out in religion even though Allah does not like this (Tohari, 2016).

What is the perspective of maqashid al-shariah regarding someone who decides to divorce outside the courtroom? This study uses normative legal research methods (Soekanto, 2019). The type of research used is qualitative with a descriptive analysis method.

Results and Discussion

Legal Basis for Divorce

1. Al-Qur'an

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لَتَعْتَبُوهُنَّ وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا وَانْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ لِيُعْطِيَكُمْ بِهِ وَاللَّهُ وَاعِلْمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

Meaning: "If you divorce your wives, then they are nearing the end of their iddah, then acceptably reconcile them or divorce them in an acceptable manner (also). Do not refer them (only) to cause harm because then you will persecute them. Whoever is afraid of doing wrong to himself, do not make Allah's law a game and remember Allah's favor on you; namely, Allah's

wisdom teaches you a lesson with what was sent down. And fear Allah and know that Allah knows all things." (al-Baqarah: 231)

2. Hadith

أَبْغَضُ الْحَلَالِ إِلَيَّ اللَّهُ الطَّلَاقُ

Meaning: "From Ibn Umar, that Rasulullah SAW said: The lawful act that Allah Azza wa Jalla hates is divorce."

3. Basic Indonesian Law

- a. Law no. 1 of 1974 concerning Marriage
- b. PP No. 9 of 1975 concerning the Implementation of the Marriage Law
- c. Law no. 3 of 2006 concerning Religious Courts
- d. Presidential Instruction No. I of 1991 concerning the Compilation of Islamic Law

Based on Islamic law, talak or divorce is permissible, but Islam still wants household life to avoid cracks so that they can live peacefully and love each other. Islamic advice is to prioritize the improvement of husband and wife relations rather than separating the two (Lestari, 2014). Thus, even though divorce is permissible in Islam, Islamic law recommends not doing a divorce. So, Islamic law teaches that if there is a husband and wife who are in conflict and it leads to divorce, send a judge whose job is to reconcile the two so that no divorce occurs, by Surat an-Nisa: 35, (DEPAG, 2005):

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّيهِ اللَّهُ بَيْنَهُمَا بِإِذْنِ اللَّهِ كَانَ عَلِيمًا حَكِيمًا

Meaning: "And if you are worried that there will be a dispute between the two, then send a judge from the male family and a judge from the female family. If the two hakam people intend to make improvements, surely Allah will give taufik to the husband and wife, indeed Allah is All-Knowing, All-Knowing.

Islam also teaches that the law is sin, and it is forbidden to smell heaven if a wife demands a divorce from her husband because she wants a better life. So, Islam teaches that before a divorce occurs, peace efforts are made between the two because the divorce decision is the last alternative. Thus, divorce is an "emergency exit" permitted if the household's integrity cannot be maintained again (Iskandar A, 2022).

Views of Islamic law regarding divorce

According to the view of Islamic law, divorce law is based on the context behind it, namely. (Malik, Abu K bin Salim, 2008):

- a. It is unlawful if a wife is divorced by her husband if she is menstruating or is in a pure state, but she has had intercourse during that sacred period.
- b. Makruh, if the husband passes divorce to the wife there is no good reason or when the relationship between husband and wife is good.
- c. Mubah, namely divorce, may be dropped if the husband has a wife whose behavior is rough, bad in temperament, or cannot be expected to be an ideal partner to achieve the goal of marriage.

- d. Sunnah, that is, if a husband is advised to refuse his wife if a wife is in a condition where she often does not carry out the obligatory prayers, for example, the obligatory prayers, and a husband can't force his wife to carry out these obligations.
- e. Mandatory, that is, if a husband and wife have a conflict and the judge assigns two mediators the task of assessing the situation and conditions of the conflict, and if the two mediators recommend a divorce, then the husband must divorce his wife.

Requirements for a Legal Husband to Drop Divorce

There are four legal conditions or pillars and conditions for a husband to pronounce divorce, namely. (Iskandar A, 2022):

- a. Husband is someone who has the right to divorce and who has the right to impose divorce. The legal requirements for a husband who drops a divorce on his wife are intelligent (not crazy), mature (adult), and of his own free will (not at the behest and coercion of others).
- b. The wife, meaning that the husband only has the right to impose divorce on his wife, provided that the wife's position is still the legal wife of a husband and the wife's position is still in a legal marriage contract.
- c. Sighat Talak is a word uttered by a husband to a wife who contains divorce, whether obvious (sharih) or innuendo (kinayah), both spoken and written. At the same time, sign language can be used by a mute husband or by ordering someone else.
- d. On purpose, the pronouncement of divorce by the husband to the wife is meant for divorce, not for any other purpose

Divorce outside the court in the perspective of Maqashid al-Syariah

According to Islamic law, the termination of the marital relationship at the will of the husband can occur through talak, ila', li'an, and dhihar. The end of a marriage at the wife's will can occur through khiyar disgrace, khulu', and rafa' (complaints). Likewise, the ending of marriage outside the will of the husband can occur because of the initiative or wishes of the judge or the desire of the law and can also occur due to the death of the husband or wife. (Hamid, 1978). Islam gives the husband the right of divorce to divorce his wife and the wife the right of khulu' to divorce her husband. And fasakh rights for both. So thus, the cause of divorce between husband and wife is talak, khulu, fasakh (Yunus, 1983). Divorce can also occur because of talak, fasakh, khulu, ila', and li'an (Rohman, 1990).

Article 115 of the Compilation of Islamic Law (KHI) states that divorce can only be carried out before a court hearing after the court has tried and failed to reconcile the two parties. So, if there is a declaration of divorce (divorce), it must be carried out in front of the Religious Court session and witnessed by the judges. So, if there is a husband who pronounces divorce outside the courtroom, the divorce can be said to be invalid and has no binding legal force (Amelin Heranti, 2022).

The essence of the concept of maqāshid al-syarī'ah in Islamic religious law is to realize benefit (benefit) and avoid harm (harm) (Maimunah, 2019). So, to achieve benefit, maqāshid al-syarī'ah is divided into three priorities (hierarchies), namely al-ḍaruriyyāt, tahsiniyat and hajjiyat. What is meant by al-ḍaruriyyāt is the main (primary) principle of all aspects of life. So, if al-ḍaruriyyāt is not fulfilled, it is impossible for the second hierarchy, tahsiniyat, and third, hajjiyat, to be achieved. (Bakar, 2016).

Therefore, the need for al-ḍaruriyyāt must exist so that human life can continue humanly on the face of God's earth.

The needs and protection of al-ḍaruriyyāt are divided into five, namely. (Syatibi, 2003):

1. Hifdz ad-Din (Guarding Religion)

The context of divorce cases outside the courtroom in the perspective of maqashid shariah in the hierarchy of hifdz ad-din (safeguarding religion) will cause family disharmony for husbands, wives, and their children because there is no legal certainty based on legislation in Indonesia. There is even a Hadith of the Prophet which states (Sulaiman, 1996);

أَبْغَضُ الْحَالِ إِلَى اللَّهِ الطَّلَاقِ

Meaning: The lawful act that Allah Almighty hates is divorce.

The hadith above implies indirectly that Islam allows divorce, but on the other hand, it hopes that husband and wife do not carry out divorce. This is also implied in Islamic law regarding the divorce process, namely when a husband and wife have a dispute which will eventually lead to a divorce process, Islam teaches that a magistrate is sent to reconcile the two, as explained below;

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ- وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Meaning: "And if you are worried that there will be a dispute between the two, then send a judge from the male family and a judge from the female family. If the two hakam people intend to improve, surely Allah will give taufik to the husband and wife. Indeed Allah is All-Knowing, All-Knowing (Q.S.an-Nisa': 35) (Al-Qur'an and its Translation, Ministry of Religion of the Republic of Indonesia, 2010)

Based on the verses of the Qur'an, improving the relationship between husband and wife is more advisable than separating them. Islam wants married life to be peaceful and peaceful and to avoid cracks. Even a wife who demands a divorce from her husband because she wants a better life, the law is a sin, and it is forbidden to smell heaven. Meanwhile, divorce is the last resort as an "emergency exit" that may be done if the integrity of the household can no longer be maintained (Rofiq et al., 2023).

Moreover, because of the rift in the household, then taking shortcuts by carrying out divorce outside the courtroom, the divorce outside the Religious Court (PA) meeting is contrary to maqashid shariah in the hierarchy of hifz al-din because the Religious Courts (PA) are organizations or bodies that carry out the duties and functions of the judiciary in resolving cases between people who are Muslim. As for the duties and powers of the Religious Courts, as stipulated in Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts.

So, suppose there are Muslims who divorce outside the Religious Court (PA) session. In that case, it is contrary to the maqashid shariah in the hifz al-din hierarchy because the establishment of the Religious Court (PA) does not conflict with Islamic Law and contains many benefits and can reduce mafsadat, including in case of divorce (Malikah et al., 2022).

2. Hifz an-Nafs (Guarding the Soul)

The context of divorce cases through court hearings and outside court sessions in the perspective of maqashid shariah contradicts the hierarchy of hifz an-nafs (guarding the soul) especially for their children. Separation (divorce) of both parents, for a child, is something that can disturb his psychological condition. Children who were originally from a harmonious and loving family with a father and mother figure then live with a family that has a lot of problems and even have to live with only one of the father or mother figures or even without both figures (Rusana, 2022).

Thus, if the divorce is carried out through the Religious Court (PA), then their children will not be disturbed by their mental condition because they will get their rights as a result of the divorce as stated in the Compilation of Islamic Law, Article 156, namely;

- a. Children who have not been mumayyiz are entitled to hadhanah from their mothers unless their mothers have passed away. Their positions are replaced by women in a straight line up from mother and father, women in a straight line up from father, sisters of children who are concerned, female relatives according to the mother's side, and blood relatives according to the father's side.
- b. Children who are already mumayyiz have the right to choose to get hadhanah from their father or mother.
- c. If it turns out that the hadhanah holder cannot guarantee the child's physical and spiritual safety, even though the child's maintenance and hadhanah costs are sufficient, then at the request of the relative concerned, the Religious Courts can transfer the hadhanah to another relative, who also has hadhanah rights.
- d. The father bears All costs of hadhanah and child support according to his ability, at least until the child is an adult and can care for himself (21 years).
- e. If there is a dispute regarding hadhanah and child support, the Religious Courts will issue a decision based on letters (a), (b), (c), and (d).
- f. The court can also, bearing in mind the father's ability, determine the costs for the maintenance and education of children who do not share with him.

Based on this, divorce outside the courtroom contradicts maqashid al-shariah in the hierarchy of hifz an-nafs (guarding the soul).

3. Hifz al-'Aqliy (guarding the mind)

The context of divorce cases outside the courtroom in the perspective of maqashid al-shariah in the hierarchy of hifz al-'aqliy (safeguarding the mind) is contrary to Islamic law because reason has a major role and function for the human body. With reason, man knows his God and understands all His commands and prohibitions. And with reason also, a person is said to be mukallaf, which is then imposed on him by Islamic law.

Islam makes it obligatory to seek knowledge to safeguard one's mind, guarantee creativity in thinking and expressing opinions, and maintain a healthy mind for a healthy body. According to Article 41 of Law No. 1 of 1974 concerning Marriage states:

- a. Both mother and father are still obliged to look after and educate their children, solely based on the interests of the child, if there is a dispute regarding child control, the court will give its decision.
- b. The father is responsible for all the maintenance and education costs needed for the child; if the father cannot fulfill these obligations, the court may determine that the mother must share these costs.
- c. The court may oblige the ex-husband to provide living expenses and determine an obligation for the ex-wife.

Meanwhile, to preserve reason, Islam forbids liquor (khomr) and illegal drugs (drugs) prescribed for anyone who drinks khomar and the like. So, if, due to a rift in the household, both parents take a shortcut by divorcing outside the courtroom so that the status of their children is unclear whether to follow their mother or father, then their children fall into drinking (khomr) and drugs, then the divorce outside the courtroom is contrary to maqashid sharia in the hierarchy of hifz al-'aql

4. Hifz an-Nasl (Keeping Offspring)

The context of divorce cases outside the courtroom is contrary to maqashid al-shariah in the hierarchy of hifz an-nasl (safeguarding one's ancestry). To maintain offspring, Islam prescribes marriage according to the Shari'a, forbids adultery, and punishes the perpetrators. Islam also forbids people from not marrying marriages that are considered fasid by religion, for example, mut'ah marriage, because it conflicts with the intent and purpose of marriage itself, namely to protect lineage through legal marriage by Islamic Law and the Marriage Law Article 2 paragraph 1 and verse 2, as the Prophet said:

عن عمرو بن شعيب عن أبيه عن جده قال: قام رجل فقال: يا رسول الله، إن فلاناً ابني، عَاهَرْتُ بِأُمِّهِ فِي الْجَاهِلِيَّةِ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا دَعْوَةَ فِي الْإِسْلَامِ، ذَهَبَ أَمْرُ الْجَاهِلِيَّةِ، الْوَلَدُ لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجَرُ (رواه أبو داود)

It means, "From 'Amr ibn Syu'aib ra from his father from his grandfather he said: someone said: O Messenger of Allah, in fact so and so is my child, I adulterated his mother when I was still in the Jahiliyyah period, Rasulullah SAW also said: "There is no recognition of children in Islam, has passed the affairs in the period of jahiliyyah. The child is for the owner of the mattress/husband of the woman who gave birth (firas) and for the adulterer is a stone (punished)" (HR. Abu Dawud).

Based on this hadith, Imam Ibnu Abdil Barr, in his book, "At Tamhid" (8/183), quoted by the MUI, which was used as his fatwa Number 11 of 2012, namely;

وأجمعت الأمة على ذلك نقلاً عن نبيها صلى الله عليه وسلم، وجعل رسول الله صلى الله عليه وسلم كل ولد يولد على فراش لرجل لاحقاً به على كل حال، إلا أن ينفيه بلعان على حكم اللعان

It means, "The people have ijma' (agreed) on this matter based on the hadith of the Prophet Muhammad, and the Messenger of Allah stipulates that every child born to a mother, and there is a husband, is assigned to the father (her mother's husband), unless he disclaims the child with li'an, then the law is the law of li'an."

Likewise Imam Ibn Qudamah in Kitab al-Mughni (9/123) says;

وأجمعوا على أنه إذا ولد على فراش رجل فدعاه آخر أنه لا يلحقه

It means, "The Ulama have agreed (ijma') on children born to mothers, and there is a husband, then someone else claims (to be the father), so it is not assigned to him.

To Article 42 of Law no. 1 of 1974 concerning Marriage b, "A legitimate child is a child born in or as a result of a legal marriage". Based on the Compilation of Islamic Law Article 99, there are two possibilities for a legitimate child, namely:

- a. children born in or as a result of legal marriages;
- b. the result of the legal husband and wife's actions outside the womb and born by the wife.

Therefore, if there is a divorce out of court, it will hurt them. Because their status, both father, mother, and children, is unclear according to the applicable laws. For example, every widow or widower who is about to remarry must have a divorce certificate from the Religious Court so that if they are going to marry a second time, they will take the marriage route under the hand. So, children born out of wedlock under the status of their children are children out of wedlock unless their parents apply for isbath marriage.

Based on this, divorce outside the courtroom contradicts maqashid al-shariah in the hifz al-nasl hierarchy.

5. Hifdz al-Maal (Maintain property)

Wealth is one of the most important things in human life, because wealth is a ware to live the wheel of life. With assets, other kuliyyatul khamsah can be achieved, for example, hifdz ad-din performing zakat and hajj, hifdz an-nafs in the form of eating, drinking, and living, hifdz an-nasl in the form of marriage, hifdz al-'aql in the form of studying.

To protect wealth, Allah advises humans to try to find wealth, namely;

هُوَ الَّذِي جَعَلَ لَكُمُ الْأَرْضَ تَلْوًا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ وَإِلَيْهِ النُّشُورُ

Meaning: "He is the One who made the earth easy for you, so walk in all directions and eat part of His sustenance. And only to Him you (return after) being resurrected." (Q.S.al-Muluk: 15)

While guarding property from 'Adam's side, Allah forbids stealing as well as all bad deeds that take other people's property in a way that is prohibited by religion, such as corruption, and gives the punishment of cutting off the hands of each thief to a certain degree. Islam also warns people not to be stingy and stingy with their wealth and forbids using wealth to commit disobedience.

For someone who drops a divorce out of court, the division of his property is unclear and hanging. The court has no legal power to compel the father to provide for the wife during the 'iddah period for food, clothing and shelter. Or forcing the father or mother to provide maintenance regularly for their children, either from the time they provide the living or from the amount of the living they give. Whereas if the divorce is carried out in the Religious Court, the Religious Court will determine the consequences of the divorce based on Chapter XVII, Article 149 of the Compilation of Islamic Law, namely:

- a. Giving a proper mut'ah to his ex-wife, either in the form of money or goods, unless the ex-wife is qobla al-dukhl.
- b. Providing maintenance, food, and kiswah to the ex-wife during the iddah period unless the ex-wife has been divorced ba'in or nusyuz and is not pregnant.
- c. Pay off the dowry still owed in full and a half if qobla al dukhl.
- d. Provides hadhanah costs for their children who have not reached the age of 21.

In addition, Allah also commands people to eat and drink, wear clothes, and have a place to live, like Allah obliges a husband to provide maintenance for his divorced wife and is in the period of 'iddah or is in a state of pregnancy. Based on this, divorce outside the courtroom is very contrary to maqashid sharia in the hierarchy of *hifz al-mal*

Conclusion

According to the Qur'an and hadith, divorce outside of a court session is permissible but is not expected to occur. Meanwhile, from the point of view of maqashid al-syariah, this is not allowed because it contradicts the objectives of maqashid al-syari'ah, namely realizing benefits for humans and eliminating harm. Divorce outside the court can affect the mental health of children; children are vulnerable to falling into alcohol and drugs, the status of children and ex-wives does not have legal force, and the court cannot force the former husband to provide for children and his ex-wife during the iddah period in the form of housing, clothing, food.

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