



CONDITIONS OF DIVORCE IN THE PROGRESSIVE VIEW OF FEMALE SCHOLARS FROM NAHDLATUL ULAMA AND MUHAMMADIYAH IN PAMEKASAN DISTRICT

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Abstract: The stereotypes and culture of the Madurese people, steeped in local culture and Sufism, still have minimal understanding of the conditions of divorce in terms of its legal requirements and the urgency of protecting women. Therefore, this research aims to provide a collection of knowledge about the study of Islamic law and positive law regarding the permissibility of conditions of divorce, as well as the views of female scholars who were members of Muslimat Nahdlatul Ulama and Aisyiah Muhammadiyah on the existence of conditions of divorce and its benefits in marriage. This type of empirical legal research uses an anthropological perspective approach and an interpretive sociological perspective. The results of this study, namely, divorce conditions, are permissible in Islam. In contrast, government regulations governing speech, writing, and gestures of conditions of divorce include Law No. 1 of 1974 concerning marriage agreements, Regulation of the Minister of Religion No. 11 of 2007 concerning Marriage Registration, Regulation of the Minister of Religion of the Republic of Indonesia No. 2 of 2000 and Article 45 and the Compilation of Islamic Law (KHI). According to the views of female clerics Aisyiah and Muslimat NU regarding conditions of the divorce, namely as a normative spirit or basis of the Qur'an and Hadith, awareness of rights and obligations, and equality in the household. Then it can be drawn several benefits that arise from the conditions of the divorce, including self-limitation, as a protector, keeping commitments, and avoiding conflict.

Keyword: *conditions of divorce, female scholars, nahdlatul ulama, muhammadiyah.*

A. Introduction

Every human being has the right to have children who will continue their lineage by entering into a marriage.¹ Marriage is one of the religious suggestions attributed to the narration of the Prophet Muhammad SAW. Marriage is a way of enjoyment both physically and spiritually with the aim of preserving and continuing generations.² Based

¹ Putu Indri Sri Giyanthi et al., "Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin," *Jurnal Preferensi Hukum* 3, no. 1 (2022): 37-41, <https://doi.org/10.22225/jph.3.1.4621.37-41>.

² Khoirul Abror, *Hukum Perkawinan Dan Perceraian* (Yogyakarta: Ladang Kata, 2020), 139.

on Chapter I, article 1 of Law Number 1 of 1974 it is stated the definition and purpose of marriage, namely, "marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family or household based on the Supreme Godhead." One." Marriage is not only about an agreement between a man and a woman to be together, but how through the marriage bond can bring grace and blessings to both parties.

In Indonesia, one of the initial frameworks for obtaining legal guarantees in a marriage is registering it with an authorized agency.³ Marriage registration is one of the principles of national marriage law, based on Law Number 1 of 1974 concerning Marriage.⁴ The existence of this institution or institution is a seriousness of the government for how marriages are carried out in line with religious values and as a place to provide direction and solutions when something related to the marriage is carried out.

However, even though marriage is a place for someone, with the hope of being able to form a harmonious family.⁵ Nevertheless, marriage does not always go well, and sometimes, the husband and wife face various obstacles. Therefore, presumably, there are regulations or legal norms as anticipatory steps and regulations listed in the marriage book. The statement is called conditions of divorce as a basis and commitment for husbands to be more careful in treating their wives, for example, a husband's consideration to go out to earn a living or to remarry to another woman. Conditions of divorce rules are also an effort to anticipate bad things that might happen if a prior agreement is not made between husband and wife, and will further minimize the occurrence of violence against women due to misunderstanding, child neglect, domestic violence, and other things that could have happened.

According to Sudarsono's explanation, conditions of divorce is a condition divorce that depends on the occurrence of a divorce based on certain events following the previously agreed agreement between the husband and wife. Sudarsono explained that based on the naqli argument in Surah An-Nisa's verse 128, it is clear that an agreement in conditions of divorce is more appropriate to say if there is a disobedient attitude of a wife towards her husband.⁶ Of course, in this case, the issue of conditions of divorce above cannot be separated from the role of a cleric as a milestone in the inheritance of

³ Maria Ana Liwa, Eli Tri Kursiswanti, and Yanuel Albert Faisan, "Efektifitas Penegakan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terhadap Pernikahan Siri," *Collegium Studiosum Journal* 5, no. 2 (2022): 31-38, <https://doi.org/10.56301/cs.j.v5i2.637>.

⁴ Rachmadi Usman, "Makna Pencatatan Perkawinan Dalam Peraturan Perundang-Undangan Perkawinan Di Indonesia," *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 256, <https://doi.org/https://doi.org/10.54629/jli.v14i3.80>.

⁵ Wildan Zahirul Haq and Nadia Damayanti, "Tinjauan Yuridis Terhadap Peningkaran Perjanjian Perkawinan Dalam Perkawinan Campuran," *Jurnal Ilmu Hukum* 13, no. 1 (2022): 12-28, <https://doi.org/https://doi.org/10.31764/jmk.v13i1.5441>.

⁶ Muhammad Syarifuddin, Sri Turat Miyah, and Annalisa Yahanan, *Hukum Perceraian* (Jakarta Timur: Sinar Grafika, 2014), 141.

the prophets, both male and female clerics, especially in Madura. People use the opinion of Kyai, Nyai, or scholars as good teachers in scholarship. In their social layer, they are positioned as teachers of teachers, namely as a center of religious knowledge, morals, laws, and attitudes towards behavior. The Ulama Nahdlatul Ulama and Muhammadiyah are a fundamental foothold for the Madurese community in seeking enlightenment and understanding of a matter, so these two organizations become an organization that has a vital position in Madura, especially in the Pamekasan area.

This position leads to religious authority and Islamic law.⁷ However, this authority is often attributed to male clerics, so this research will be more directed to the role of female clerics in the implementation of conditions of divorce in the Pamekasan district. The idea of conditions of divorce has become an interesting study to examine from various perspectives, so several previous studies discuss conditions of divorce. Among other things, research by Nur Azizah Hutagalung and Edi Gunawan on conditions of divorce and its legal consequences in the Compilation of Islamic Law from a Feminist Theory Perspective.⁸ Research K N Sofyan Hasan, et. al on the Effectiveness of Sighat Conditions of divorce in Islamic Marriage in Indonesia.⁹ Achmad Baihaqi's Research on Wife's Rights in Conditions of divorce from the Perspective of Islamic Law.¹⁰ As well as Muhamad Abduh and Tutik Hamidah's research on Mashlahah Imam Al-Ghazali's Review of Conditions of divorce in Indonesian Positive Law.¹¹ However, it is different from previous research, which focused on the legal and regulatory side, and this research will provide an in-depth discussion of the views of female scholars and their role in the implementation of conditions of divorce in Pamekasan. Based on the background and identification of the topic above, this research will discuss three main contents: First, divorce conditions in the study of Islamic law and positive law. Second, the progressive views of Nahdlatul Ulama and Muhammadiyah female clerics on the implementation of divorce conditions. Third, the benefits of conditions of divorce for a woman in marriage.

B. Research Method

⁷ Hasanatul Jannah, *Ulama Perempuan Madura* (Yogyakarta: Sampangan, 2020), 127.

⁸ Nur Azizah Hutagalung and Edi Gunawan, "Taklik Talak Dan Akibat Hukumnya Dalam Kompilasi Hukum Islam Perspektif Teori Feminis," *Al-Mizan* 15, no. 1 (2019): 183–202, <https://doi.org/10.30603/am.v15i1.976>.

⁹ K N Sofyan Hasan, Ahmaturrahman Ahmaturrahman, and Sri Turatmiyah, "Efektivitas Sighat Taklik Talak Dalam Perkawinan Islam Di Indonesia," *Batulis Civil Law Review* 3, no. 1 (2022): 113, <https://doi.org/10.47268/ballrev.v3i1.1019>.

¹⁰ Achmad Baihaqi, "Hak Istri Dalam Taklik Talak Di Tinjau Dari Perspektif Hukum Islam," *Khuluqqiya: Kajian Hukum Dan Studi Islam* 3, no. 2 (2021): 74–97, <https://doi.org/https://doi.org/10.56593/khuluqiyya.v3i2.66>.

¹¹ Muhamad Abduh and Tutik Hamidah, "Tinjauan Mashlahah Imam Al-Ghazali Terhadap Taklik Talak Dalam Hukum Positif Indonesia," *DIKTUM: Jurnal Syariah Dan Hukum* 19, no. 2 (2021): 133–48, <https://doi.org/https://doi.org/10.35905/diktum.v19i2.2031>.

This research is a type of empirical legal research (socio legal research), which is a legal research with field data as a primary source.¹² Thus, this study will use primary data sources and secondary data sources. The primary data source consists of the results of structured interviews that have been conducted with several female scholars from Nahdlatul Ulama (Muslimat NU) and female scholars of the Muhammadiyah (Aisyiah) Pamekasan District regarding their views on the implementation of conditions of divorce and the results of direct observations carried out by researchers. While secondary data sources consist of books, journals, and some other literature that has relevance to the main topic of this research.

The approach in this study uses two approaches, namely the anthropological perspective approach and the interpretive sociological perspective.¹³ With these two approaches, researchers will be assisted in obtaining data findings to produce a maximum discussion. In addition, the qualitative descriptive analysis technique was chosen by the researcher in analyzing the data and findings referred to above.¹⁴ In processing the data or analysis process, the researcher first presents primary data obtained from the field or the results of interviews and observations, as well as secondary data used as supporting data in the analysis process. Therefore, with the systematic research above, it is hoped that it will be able to provide a collection of knowledge about conditions of the divorce, and be able to reveal the veil of understanding from the views of female scholars of Nahdlatul Ulama and Muhammadiyah on the implementation of conditions of divorce and its benefits for a woman in a marriage.

C. Discussion

1. Conditions of Divorce in The Study of Islamic Law and Positive Law

Legally, marriage is legitimized by the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage. The definition of marriage is a social contract that is recognized by the state, religious authorities or both.¹⁵ It is stated that a marriage is valid if it is under the rules of each religion and belief.¹⁶ Regardless of a marriage case that already has strong legal legitimacy, both from a legal perspective in religion and in

¹² Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2003), 43.

¹³ Ahmad Faidi, "Pendekatan Antropologi Dalam Studi Islam," *Tsaqofah & Tarikh* 6, no. 2 (2021): 1–8; Yodi Fitriadi Potabuga, "Pendekatan Antropologi Dalam Studi Islam," *Transformatif* 4, no. 1 (2020): 19–30, <https://doi.org/10.23971/tf.v4i1.1807>; Undaris Semarang Ida Zahara Adibah, "Pendekatan Sosiologis Dalam Studi Islam," *Inspirasi: Jurnal Kajian Dan Penelitian Pendidikan Islam* 1, no. 1 (2017): 1–20, <http://ejournal.undaris.ac.id/index.php/inspirasi/article/viewFile/1/1>.

¹⁴ Lexy J. Meleong, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosdakarya, 2007), 331.

¹⁵ Djamilah and Reni Kartikawati, "Dampak Perkawinan Anak Di Indonesia," *Jurnal Studi Pemuda* 3, no. 1 (2015): 1–16.

¹⁶ Moch. Khafidz Fuad Raya, "Online Wedding During Pandemic the Perspective of Maqāṣid Al-Syar'ah Imam Al-Ghazāli," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 22, no. 1 (2022): 1–16, <https://doi.org/10.19109/nurani.v22i1.10658>.

government regulations, usually in a marriage, there is also an agreement made by the parties to be married, namely from the prospective groom and the prospective bride.

Marriage agreements in fiqh do not find special discussion, but among contemporary Muslim thinkers such as shahrur, in *Nahw Ushūl Jadīdah Li al-Fiqih al-Islāmi*, explains that the marriage agreement (mīsthāq al zaujiyyah) is a promise taken by a husband and wife to Allah to fulfill it, and it contains aspects of humanity, and society.¹⁷ Based on this fact, this agreement can be in the form of an agreement not to humiliate each other, not to commit crimes, not to leave alone for a long time, to maintain privacy and other agreements.

As for the explanation, the word agreement comes from the word promise, which means words that express willingness and ability to do. A promise can also be interpreted as an agreement between two parties (each expressing a willingness and ability to do something).¹⁸ One of the agreements usually made in marriage, among others, is in the form of divorce conditions. Based on legal theory in Indonesia, conditions of divorce is a form of the pledge in which the husband depends on the occurrence of divorce on his wife if in the future the wife violates one or all of the vows.¹⁹ Thus, divorce conditions are a promise or oath from a husband to his wife not to do or do anything. If this is violated or not in line with what was promised at the beginning, then the divorce will occur without the presence of a direct word from a husband at that time, so the conditions of divorce are interpreted as an event of suspended divorce.

Conditions of divorce comes from two syllables, namely the word conditional and divorce. Linguistically, the conditional comes from Arabic, namely the masdar form of the word callaqa, yuaclliq, tacliqan which means to depend on something or make it dependent on something. Divorce also comes from Arabic which means to leave, separate, release ties.²⁰ As for the law of conditions of divorce, the law is makruh.²¹ Therefore, this conditions of divorce is an act that is essentially not prohibited and not required in a marriage, but at any time it is required in a situation that allows this conditions of divorce to provide benefits in a marriage.

¹⁷ M. Shahrur, *Nahw Ushūl Jadīdah Li Al-Fiqih Al-Islāmi*, Terj. Sahiron Syamsuddin & Burhanudin, *Metodologi Fiqih Islam Kontemporer* (Yogyakarta: eLSAQ Press, 2004), 439.

¹⁸ Sofyan Yusuf and Moh. Toriql Chaer, "Taklik Talak the Mazhab Ulama Perspectives and the Effect in Household Life," *Anil Islam* 10, no. 2 (2017): 262–84.

¹⁹ Khairil Anwar Al Jufri, Mohd Soberi Awang, and Mualimin Mochammad Sahid, "Maqasid Syariah Menurut Imam Al-Ghazali Dan Aplikasinya Dalam Penyusunan Undang-Undang Islam Di Indonesia," *Malaysian Journal of Syariah and Law* 9, no. 2 (2021): 75–87, <https://doi.org/10.33102/mjsl.vol9no2.315>.

²⁰ Muhammad Idris Abdurrauf Marbawi, *Kamus Idris Marbawi, Juz III* (Singapura: Darul Ulum Islamiyah, n.d.), 39.

²¹ Mohd Na'im Mokhtar Miszairi Sitiris, Mustafa Mat Jubri, Mohamad Sabri bin Zakaria, "Talak Taklik Menurut Fiqah: Analisis Pelaksanaannya Dalam Undang-Undang," *Islamic Family Law* 33, no. 1 (2021): 97–130.

Basically, shîghat conditions of divorce are not a must because it is done voluntarily. However, the conditions of the divorce agreement that has been agreed cannot be revoked because it is binding. In principle, the consequence of conditions of divorce is that if in the future what is stated in the shîghat conditions of divorce happens, then they immediately divorce on condition that the wife pays *iwadh*.²² With the meaning that the conditions of divorce in question do not depart from a compulsion on the part of the parties who are married but on a willingness that departs from a willingness to agree. In the future the agreement will be used as a benchmark for the parties, whether they have carried out their obligations or fulfilled the expected rights.

Sighat conditions of divorce in Indonesia, both in terms of form, conditions and motives for making it, is different from the concept of sighat conditions of divorce in classical fiqh books. The content is no longer a threat by the husband to the wife, but in the form of a husband's promise to do good and have intercourse with mu'asyarah bi al-ma'ruf in accordance with Islamic law.²³ In the provisions of the Compilation of Islamic Law (KHI), conditions of divorce are contained in Article 45, namely, "Both prospective bride and groom can enter into a marriage agreement in the form of: conditions of the divorce, and other agreements that may not interfere with Islamic law (Syara')." It means that conditions of divorce are permissible and have been regulated by the legal regulations in force in Indonesia. Thus, a husband and wife who are going to get married can make an agreement when the marriage ceremony is carried out so that from this agreement, the parties who are married will better understand what kind of responsibilities must be carried out in the future and what rights will be obtained after marriage is said to be valid.

Apart from that, conditions of divorce are regulated in Article 29 Chapter V of Law no. 1 of 1974 concerning marriage agreements, which reads: Paragraph (1) At the time before the marriage takes place, both parties by mutual agreement can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties insofar as the parties are involved. Paragraph (2) The agreement cannot be ratified if it violates the boundaries of law, religion, and decency. Paragraph (3) The agreement is effective when the marriage occurs. Paragraph (4) As long as the marriage lasts, the agreement cannot be changed, except if both parties have an agreement to change, and changes do not harm third parties.

In the description of the marriage agreement in Law no. 1 of 1974, even though there is no explanation regarding conditions of divorce, the intent of the agreement is

²² Rahmad Ibrahim Harahap and Ramadhan Syahmedi Siregar, "Kedudukan Dan Urgensi Shigat Taklik Talak Perspektif Ketentuan KHI Dan Hukum Fiqh Klasik," *Tasyri': Journal of Islamic Law* 1, no. 2 (2022): 351-96, <https://doi.org/10.53038/tsyr.v1i2.28>.

²³ Hibnu Nugroho, "Kedudukan Taklik Talak Menurut Hukum Fikih Dan Kompilasi Hukum Islam," *Virginia Journal of International Law* 15, no. September (1979): 1-50, <https://doi.org/https://dx.doi.org/10.35673/al-bayyinah.v2i1.40>.

the same as conditions of divorce, because both contain elements of the agreement.²⁴ In addition to the above laws and regulations, conditions of divorce are also regulated in the Regulation of the Minister of Religion Number 11 of 2007, which states that: 1) Prospective husband and wife can agree as long as it does not conflict with Islamic law; 2) An agreement in the form of conditions of divorce is considered valid if the agreement is said and signed by the husband after the marriage ceremony is held, and; 3) Sighat conditions of divorce is determined by the Minister of Religion. Apart from that, the condition of divorce has also been determined in the Regulation of the Minister of Religion of the Republic of Indonesia No. 2 of 2000; the pronouncement is not mandatory nor a requirement for a marriage's validity. However, if the sighat conditions of divorce have been pronounced, it cannot be revoked.

As for the contents of the sighat conditions of the divorce, explained in the Compilation of Islamic Law in article 46, namely: Paragraph (1) The contents of divorce conditions may not conflict with Islamic law. Paragraph (2) If the conditions required for conditions of divorce actually occur later, and the divorce does not automatically result in a divorce, the wife must submit a case to the Religious Court. Paragraph (3) The conditions of divorce agreement is not an agreement that must be entered into in every marriage, but once a conditions of divorce has been agreed upon, it cannot be revoked.

2. Perceptions of Female Scholars from Nahdlatul Ulama (Muslimat NU) and Muhammadiyah (Aisyiah) on Conditions of divorce

The role and contribution of Islamic women in the early era of Indonesia is very visible and has become a historical manuscript of how Indonesian women were very tough to fight for their nation and there were no restraints at all in their movements.²⁵ With it, the thoughts and perspectives of a woman are needed in a field that involves a woman herself. In this context, female scholars in each region have different understandings and views, especially regarding divorce conditions which are very close to society in the context of marriage. Some of these views were born from women's organizations under the auspices of community organizations such as NU and Muhammadiyah. One opinion regarding conditions of divorce was conveyed by the Chairperson of the Regional Leadership of Aisyiah Pamekasan District, Robiatul Adawiyah, as follows;

“Conditions of divorce or what is more easily understood as a conditional where conditions of divorce is a statement of the fall of divorce following the promise made for violating the marriage promise. In our religion, our marriage vows to follow what God commands us to do because this marriage is God's commandment

²⁴ Rakhmat Joni Reka Jaya, Ahmad Mukhlisin, Sulastrri, Mufid Arsyad, “Implikasi Pelanggaran Taklik Talak Terhadap Status Perkawinan Perspektif Kitab Fiqih Dan UU Perkawinan,” *At-Tahdzib: Jurnal Studi Islam Dan Mu'amalah* 10, no. 1 (2022): 18–29.

²⁵ Suheri Sahputra Rangkuti, “Patriarki Dalam Perspektif Pesantren,” *Jurnal Madaniyah* 9, no. 1 (2019): 100–116, <https://www.journal.stitpemalang.ac.id/index.php/madaniyah/article/view/117/100>.

and the Prophet's Sunnah because. Therefore, if we intend the marriage because of Allah, then God willing, we will face the marriage or any event with blessings." (Interviewed in Pamekasan, 2022)

From the explanation above, it can be understood that divorce conditions are a statement of the fall of divorce if the agreement or promise that was agreed upon before the marriage is violated. According to Robiatul Adawiyah, the foundation of marriage is a commitment to carry out God's commands so that it gives birth to logical consequences for both of them to take care of each other and face various events in marriage. Meanwhile, according to Fatimatuz Zahra, Deputy I of the Asiyah Leadership of Pamekasan Regency, she considered that conditions of divorce was not necessary, in detail she explained;

"Conditions of divorce, although in essence it is permissible, this does not need to be done, bearing in mind that marriage is based on mutual consent, so there is no need for an agreement anymore. Worried that when she is married, the woman demands to be divorced, understand each other, and understand each other so that (divorce) doesn't happen halfway." (Interviewed in Pamekasan, 2022)

According to Islamic law, marriage is an inner and outer bond between a man and a woman to live together in a household and to have children, which is carried out according to the provisions of Islamic sharia law.²⁶ A marriage should have mutual understanding so that divorce does not fall, so the agreement (conditions of divorce) does not need to be made. On the other hand, the NU organization in Muslimat NU admits that it is a matter that is still taboo in society, as explained by Imamah, Chairperson of PAC Muslimat NU Proppo,

"Regarding the divorce conditions, the essence is that we don't agree because we feel that there is a lack of respect for women, but we return it to the scholars who allow it. It is better if the promise in marriage is enough agreement to live to complement each other without the term conditions of the divorce." (Interviewed in Pamekasan, 2022)

This opinion is in line with the presentation of the Secretary of PAC Muslimat NU Proppo District, Nafisah, who explained that in the conditions of the divorce, marriage is not urgent because women have fasakh or the right to sue if the husband does not perform his obligations, namely;

"This condition of divorce is when the divorce falls due to several things. But actually, it's the same thing because the man has the right to divorce, and the wife has the right to sue so that the court will divorce. So that's why it has been

²⁶ Achmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Islam," *Al-'Adalah* 12, no. 4 (2015): 807-26.

substantially fulfilled in the compilation of Islamic law." (Interviewed in Pamekasan, 2022)

The difference of opinion regarding divorce conditions has contributed to the views of several female clerics, both in Muslimat NU and Aisyiah. According to Fatimatuz Zahra, deputy 1 of the Aisyiah leadership, the view that the problem of divorce depends on the social context in its application.

"The problem with the conditions of divorce view occurs because of differences in society, such as in the Pamekasan area, it is not common. If, for example, there is a problem, one can take the tabayun. It can be resolved through deliberation, not directly deciding to divorce. So that is what is emphasized." (Interviewed in Pamekasan, 2021)

This is in line with Nafisah's view, as the secretary of PAC Muslimat NU, that conditions of divorce are very rare, because society understands that divorce is the right of the husband and the right of the wife to sue,

"Even though there are many views on the conditions of divorce, not many people understand and do not apply it much. The community only knows the rights and obligations of husband and wife, including the husband's right to divorce and the wife's right to sue only when it is felt that the marriage cannot be continued." (Interviewed in Pamekasan, 2022).

According to Gatot Supramono, he explained that a marriage agreement is a bond or agreement between two parties (husband and wife) on something, where the agreement will have legal force if it is carried out with certain conditions.²⁷ Robiatul Adawiyah, chairman of the Aisyiah leadership in the Pamekasan district, also realizes that divorce is often carried out among the upper class with written agreements, but this is not much different from the previous opinion after marriage the husband and wife have their rights and obligations. This is explained as follows;

"There are various kinds of delivery of conditions of the divorce, some in the form of promises, some in the form of oaths, and so on, but be careful because if you issue words that are not following what was promised, then this divorce will take effect. Conditions of divorce are a dubious matter. Namely, it is not clear because, in a marriage, Allah has already determined everything after consent is granted. So the husband is the holder of the mandate and the husband who must be able to guide and teach the wife how to make the household according to what Allah commands and the Prophet teaches his people." (Interviewed in Pamekasan, 2022)

²⁷ Ahmad Sainul, "Konsep Perjanjian Perkawinan Di Indonesia," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 4, no. 1 (2018): 61–73, <https://doi.org/10.24952/el-qonuniy.v4i1.1827>.

On the other hand, according to Dra. Hj. Farhanah, M.H., as representatives of 3 Muslimat NU, conditions of divorce are very necessary, especially in Pamekasan. This is because divorce cases are increasing, one of which is motivated by the many irresponsible men who do not carry out their obligations as husbands. That's why it's important to pronounce conditions of divorce so that the husband remembers his promise, even though amid the current developments, the stability of the household is not measured by the existence of conditions of the divorce, sometimes even though the husband pronounces conditions of divorce the husband often remains irresponsible. It's just that at least a condition of divorce can protect women from arbitrary men.

"In today's development, there are many irresponsible men, and it also feels like faith is getting eroded, so to protect women's rights, I think there needs to be a condition of divorce in marriage. A man always remembers his promise in the divorce conditions, so he doesn't leave his wife. Especially seeing the growing number of divorces in Pamekasan, irresponsible men, their wives just leave and marry unregistered without the first wife's knowledge. In contrast, their obligations in the field of birth to their wives are neglected. Therefore, this condition of divorce is at least a reminder to husbands of their promises to their wives." (Interviewed in Pamekasan, 2022)

3. The Urgency of Conditions of divorce in Marriage Perspective of Female Scholars from Nahdlatul Ulama and Muhammadiyah, Pamekasan District

Domestic life has its own dynamics in which in reality some live harmoniously and some are not harmonious, so that it ends in the dissolution of the marriage.²⁸ It can be underlined that divorce conditions impact and influence marriage. The benefits of conditions of divorce, according to Robiatul Adawiyah the leader of Aisyiah, explained that the existence of conditions of divorce is a warning and concern for both parties, namely the husband and wife, so that both of them are careful and try to protect each other so that this conditions of divorce does not happen, especially for men who, according to him, tend to more easily carried away by emotions.

"So regarding the benefits of divorce conditions, I think it's just a warning for both parties to be careful in their behavior because they already have a marriage promise mutually agreed upon before getting married. So then in the household, especially the husband, he must be careful in what he says or in an emotional state; usually, when he is married, a husband who cannot hold back his emotions utters words of divorce, and this must be a concern so that these words do not come out." (Interviewed in Pamekasan, 2022)

²⁸ Hutagalung and Gunawan, "Taklik Talak Dan Akibat Hukumnya Dalam Kompilasi Hukum Islam Perspektif Teori Feminis."

In marriage, anyone would want to form a harmonious and happy family, known in Islam as *sakinah, mawadah and rahmah*. But it cannot be denied husband and wife, as ordinary human beings who are of different types, temperaments, characters, and desires, cannot be separated from mistakes, misunderstandings, strife, and even disputes.²⁹ This is in line with the explanation of Farimatuz Zahra, Deputy Leader of Aisyiah who emphasizes the function of a conditions of divorce, namely for both of them to maintain their rights and obligations, and emphasizes mutual relations between husband and wife in order to avoid conflict and unilateral domination.

“The existence of *taklik* should both husband and wife know each other's rights and obligations. there is no term but the term mutuality in the household. Complementing each other's shortcomings, and understanding each other, especially before marriage (premarital) are worried that conditions of divorce will become a boomerang for men.” (Interviewed in Pamekasan, 2021)

Marriage law is all the rules governing behavior and also the consequences between two people who have the goal of building a household in the long term.³⁰ The existence of conditions of divorce provides benefits so that men and women have limits or signs of being more careful to avoid falling divorced to maintain the marriage bond. NU Muslimat Secretary Proppo indicated that divorce conditions are beneficial for husbands to maintain their marriage commitments. However, a wife still has to help her husband not to break his promise. The precautionary principle also protects women from being treated arbitrarily in marriage,

“Since the beginning, there has been a conditions of divorce to protect women's rights, to worry that men will not act according to their promises before marriage and to keep both of them committed to making the marriage last longer.” (Interviewed in Pamekasan, 2022)

Through the explanation of the data above, it can be understood that Aisyiah, Pamekasan Regency tends not to advocate divorce with the argument that the urgency of the conditions of divorce is sufficient through awareness of the rights and obligations and the role of each party, both husband and wife. This is in line with the presentation of data from the point of view of Muslimat NU which also emphasizes a basic understanding of the rights and obligations of running a household. Both of them do not deny that divorce conditions benefit women both as a limitation and as protection from arbitrariness. However, this practice is still relatively rarely carried out formally by the Pamekasan people. This is also because each party, both husband and wife, has the right

²⁹ Moh. Afandi, “Hukum Perceraian Di Indonesia: Studi Komparatif Antara Fikih Konvensional, UU Kontemporer Di Indonesia Dan Negaranegara Muslim Perspektif HAM Dan CEDAW,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 7, no. 2 (2014): 191–201, <http://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/1006>.

³⁰ Giyanthi et al., “Status Hukum Harta Perkawinan Jika Terjadi Kepailitan Suami/Istri Tanpa Adanya Perjanjian Kawin.”

to terminate a marriage by divorce conditions or by filing a lawsuit from the wife to resolve the matter in a religious court. Meanwhile, according to Mrs. Farhanah, Deputy 3 Muslimat NU Pamekasan district,

"By itself, with conditions of the divorce, which are read at the time of the marriage contract, it will protect women's rights because the husband who is responsible will always remember his promise. But back again with irresponsible men who still forget their promises." (Interviewed in Pamekasan, 2022)

That is, divorce conditions protect women from being abused by men and are more able to maintain the household because the husband will always be careful about the promises made earlier at the time of marriage. Apart from that, from the views of the NU and Aisyiah Muhammadiyah female Muslim clerics above, they have provided a very suitable position for conditions of divorce in a marriage and emphasized the essence of conditions of divorce in maintaining the stability of the household.

4. Anthropological Analysis of The Views of Female Scholars from Nahdlatul Ulama (Muslimat NU) and Muhammadiyah (Aisyiah) Pamekasan District About Conditions of Divorce

Nahdlatul Ulama is an Islamic community organization that adheres to the fiqh paradigm.³¹ This organization identifies the Al-Quran, As-Sunnah, and the ability of reason, coupled with empirical reality as a source of thought.³² Islamic studies in Muhammadiyah are not only intended within the framework of religious studies *an sich*, but as a process to understand Islam comprehensively so as to present *Islam rahmatan lil alamin* not only at the conceptual level but more applicable in line with the philosophy of *baladun toyyibatun wa rabbun ghofur*.³³ The views of female Muslim scholars from Muslimat NU and Aisyiah of Pamekasan Regency provide an overview of the condition of the people who still do not understand the urgency of divorce conditions in marriage. The culture of a society that is centralized in the aspect of religiosity provides a paradigm of thinking that religious rules and values are sufficient as a fence so that marriage remains intact and survives. Such a culture of society is also motivated by the construction of an unequal society in viewing the position of husband and wife in marriage so that the protection of the rights of wives is still not massively carried out and is centered on the Religious Courts, including the application of

³¹ Asep Achmad Hidayat et al., "Nahdlatul Ulama in Facing the Guided Democracy 1959-1965: An Overview of Social and Political Factors," *Jurnal Lektur Keagamaan* 20, no. 2 (2022): 567-98, <https://doi.org/10.31291/jlka.v20i2.1069>.

³² Muhammad Roy Purwanto, Tamyiz Mukharrom, and Ahmad Munjin Nasih, "Inclusive, Exclusive, Radical and Nahdlatul Ulama," *International Journal of Innovation, Creativity and Change* 9, no. 10 (2019): 94-103.

³³ Bahar Agus Setiawan, "Manhaj Tarjih Dan Tajdid: Asas Pengembangan Pemikiran Dalam Muhammadiyah," *Tarlim: Jurnal Pendidikan Agama Islam* 2, no. 1 (2019): 35, <https://doi.org/10.32528/tarlim.v2i1.2068>.

conditions of divorce and an understanding of the function of conditions of divorce or agreement in marriage.

Madurese people believe that Islamic law is very important and needs to be implemented in all aspects of their lives. However, like Islam in other regions of Indonesia, Islam in Madura is also heavily influenced by Sufism and local culture.³⁴ Such stereotypes and societal culture are due to society's minimal understanding of divorce conditions, both from its legal requirements and urgency in protecting women. This view does not explicitly and clearly outline their views on conditions of the divorce, but as a spirit about the urgency in a marriage/marriage. The spirit or concept of this view as a whole, from the perspective of female clerics Aisyiah and Muslimat NU, can be understood as follows:

1. Normative Spirit or Basis of the Qur'an and Hadith

The presence of Allah's law which is used as a guideline for human life has the main goal (*maqâshid al-syari'ah*), namely to create benefit for human life by bringing prosperity and keeping away danger in human life.³⁵ It must be admitted that all Muslims always try to justify their arguments with the words of Allah and the Sunnah of the Prophet Muhammad.³⁶ From a normative point of view, when a husband enters into a marriage contract, he has promised Allah SWT to be good to his wife (*mu'āsarah bi al-ma'rūf*).³⁷ Conditions of divorce are in line with *maqasid al-shari'ah*, because the contents of conditions of divorce do not conflict with Islamic law itself, protecting the rights of the wife as well as the goals of *maqasid syari'ah*, namely *hifdz ad-din*, *hifdz akl*, *hifdz nafs*, *hifdz nasb* and *hifdz mall*.

Therefore, conditions of divorce in marriage in the view of Pamekasan's female scholars is something that is not too controversial and not a new thing because the significance of the value of *taklik* is essentially alluded to in normative texts, in this case, the Qur'an and Hadith. They consider that divorce conditions are essentially keeping commitments and promises before marriage, which is realized as a consequence after marriage. However, the existence of the conditions of divorce is a limitation so that both of them can maintain a marriage relationship.

2. Awareness of Rights and Obligations

³⁴ Yanwar Pribadi, "Religious Networks in Madura Pesantren, Nahdlatul Ulama and Kiai as the Core of Santri Culture," *Al-Jami'ah* 51, no. 1 (2014): 1-32, <https://doi.org/10.14421/ajis.2013.511.1-32>.

³⁵ Rohmawati, Abdulloh Chakim, and Lilik Rofiqoh, "Perkawinan Lgbt Perspektif Hukum Islam Dan Hukum Positif," *Istinbâth: Jurnal Hukum Dan Ekonomi Islam* 18, no. 1 (2018): 1-264.

³⁶ Alfi Syahrin, "The Polygamy Essence According to Quraish Shihab 'Reject Prejudice, Eliminate Confusion,'" *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 21, no. 1 (2021): 147-58, <https://doi.org/10.19109/nurani.v21i1.8489>.

³⁷ Oleh Saberiani, "Taklik Talak Sebagai Upaya Perlindungan Terhadap Hak Istri" 3, no. 1 (2021): 1-19.

Conditions of divorce is basically a tradition that creates legal consequences for an Islamic marriage.³⁸ The purpose of the conditions of divorce is to protect the wife from the husband's abuse, if the husband violates it, the wife has the right to sue in a religious court).³⁹ Pamekasan people do not use or apply divorce conditions as a written statement as an agreement before marriage. According to the Pamekasan female clerics, after marriage, both husband and wife already have rights and obligations that must be fulfilled in undergoing marriage. It is this awareness of rights and obligations that becomes the spirit of society and explicitly, in certain cases, can be explained by the conditions of the divorce. Therefore, according to Pamekasan female clerics, the conditions of divorce are not massively applied in society.

3. Equality and Mutuality in the Household

The views of Pamekasan female scholars on divorce conditions indicate the urgency of equality and mutuality before choosing to apply the divorce conditions. It is explained earlier that equality of rights and obligations according to the capabilities of both must be the basis so that both can be responsible for each other. This mutuality is also the foundation of maintaining the marriage bond. Husbands have rights such as the right to impose divorce, while a wife can file for or challenge a divorce if the marriage is deemed unsustainable. Therefore, divorce conditions are not urgent if both parties understand this spirit. Even if carrying out the conditions of the divorce before marriage, mutuality between husband and wife is also important to ensure that the agreement is not violated.

In the marriage tradition, after the contract (qabul consent), the groom reads the conditions of divorce listed in the marriage book certificate. The legal consequence for the groom must fulfill all the contents of the promise contained in the conditions of divorce, while for the bride, it can be used as an excuse to file a divorce suit to the Religious Court, if it is violated by the male partner.⁴⁰ The opinion of the Pamekasan female cleric indicates an understanding of the conditions of the divorce, which is not yet massive among the community. This does not show the lack of application of divorce conditions, but people tend to think that divorce conditions are unnecessary. This is based on awareness of rights and obligations, so each must maintain commitments. If a conflict so the marriage cannot be maintained, it can be resolved in the religious court. The community's understanding of the existence of written statements, oaths, and so on has not been massively implemented in society.

³⁸ Suci Prafitri Sukatma, Si Ngurah Ardhya, and Muhamad Jodi Setianto, "Analisis Wacana Kritis: Tinjauan Yuridis Mengenai Urgensi Sighat Taklik Talak Dalam Perkawinan Islam Di Indonesia," *Jurnal Komunitas Yustisia* 4, no. 2 (2021): 283–89, <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/38080>.

³⁹ Nurhadi, "Cerai Bersyarat (Sighat Ta'liq) Menurut Dual Sistem Hukum (Hukum Islam Dan Hukum Perdata)," *Media Keadilan: Jurnal Ilmu Hukum* 11, no. 1 (2020): 22, <https://doi.org/10.31764/jmk.v11i1.1151>.

⁴⁰ Mia Fitriah Elkarimah and Devi Asriani, "Pandangan Kepala KUA Se-Kota Yogyakarta Terhadap Shighat Taklik Talak," *Tasyri': Journal of Islamic Law* 1, no. 1 (2022): 131–65, <https://doi.org/10.53038/tsyr.v1i1.5>.

It is not common for society to apply conditions of divorce even though it is implicitly mentioned in marriage. An adage that has developed in society, namely *bhental pateh*, which means loyalty until death becomes a separator. Technically, divorce conditions are not yet massive. Although the community understands its function, it is influenced by socio-cultural realities. This was consciously acknowledged by the sources, that in the socio-cultural reality in Pamekasan, the conditions of divorce are still not understood substantially; apart from that, the emancipation of women in Pamekasan is still not as massive as in Java, so attention to the protection of the wife's rights in the household has not been paid attention to.

The Madurese culture, which is very thick with religiosity, contributes to the paradigm of people's thinking about the position of men and women in the household. So that if there are irresponsible men, it is often associated with an assessment of personal piety. They do not critically analyze the rife root causes, thus increasing the divorce rates in Pamekasan.

5. Benefits of Conditions of Divorce for Women in Marriage

One form of self-protection is to protect their rights in a marriage relationship. Protection of individual rights in marital relations according to Indonesian positive law can be enforced by making a marriage agreement.⁴¹ As for what has been comprehensively described by the women Muslim scholars of NU and Aisyiah Mauhamadiyah of Pamekasan Regency above, some benefits can be drawn from the conditions of divorce in this marriage, namely among others:

1. As Self Limitation

Marriage has a long term aim to foster a harmonious, peaceful and happy life in the love of two types of creatures created by Allah SWT.⁴² According to Pamekasan female scholars, the existence of conditions of divorce can be a limitation for oneself not to do things that can break a promise until the divorce is broken. This applies to husbands and wives, so that both of them can understand each other in building a household.

The reality of the Qur'an accommodates various problems that arise as a result of the ever-changing development of human culture.⁴³ *Taklik* is not divorce and *taklik* liberates not so that a property right is required first. However, *taklik* is an action, namely an oath that is intended for virtue, namely preventing himself from marrying the

⁴¹ Faradilla Asyatama and Fully Handayani Ridwan, "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 109–22, <https://doi.org/10.30656/ajudikasi.v5i2.3937>.

⁴² Joni Reka Jaya, Ahmad Mukhlisin, Sulastri, Mufid Arsyad, "Implikasi Pelanggaran *Taklik Talak* Terhadap Status Perkawinan Perspektif Kitab Fiqih Dan UU Perkawinan."

⁴³ Ahmad Zaini, "Kedudukan Perempuan Sebagai Saksi Pernikahan Menurut Ibnu Hazm Dan Relevansinya Dengan *Khi*," *Istinbâth Jurnal Hukum Dan Ekonomi Islam* 18, no. 2 (2019): 352–72.

woman he intended.⁴⁴ This self-limitation becomes a corridor so that husbands who tend to act discriminatively against their wives are able to maintain commitments so that they do not act arbitrarily in maintaining the integrity of the marriage.

2. As Protector

Islam is a mercy religion that filled with instructions for achieving the happiness of the afterlife.⁴⁵ In practice, marriage is considered beautiful in the concept of marriage based on Islamic law.⁴⁶ Conditions of divorce is a protector for women so that they get rights and are not treated arbitrarily when they have built a household. Taklik is a guarantee so that the husband does not break the promise of the agreement that was made and agreed upon before marriage. So as to protect the marriage bond so as not to do things that lead to conflict.

Conditions of divorce is a good thing to protect women from bad deeds on the part of the husband. At least a husband has implemented the conditions of divorce agreement, after the marriage contract is carried out with an agreement that has been mutually agreed upon.⁴⁷ The conditions of divorce protect the rights of the wife so that the husband does not dominate her, so that both of them have the responsibility to achieve a sakinah family. Therefore, the conditions of divorce instrument is needed to maintain a balance between the rights and obligations of both.

3. Keep Commitments

The marriage agreement is actually a marriage plan and every couple has the right to prepare it. There are no taboo words to discuss marriage agreements, because precisely such agreements can perpetuate marriages.⁴⁸ The existence of taklik can be a signpost for things that lead to violations of taklik until divorce, so men need to maintain commitments and women support so that men do not violate the conditions in the conditions of divorce.

⁴⁴ Tarmizi M. Jakfar and Mohammad Faiz Bin Jamaludin, "Persepsi Kadi Tentang Keutamaan Melafalkan Taklik Talak (Studi Kasus Di Mahkamah Syar'iyah Kuantan, Pahang)," *El-USRAH: Jurnal Hukum Keluarga* 2, no. 1 (2020): 60, <https://doi.org/10.22373/ujhk.v2i1.7643>.

⁴⁵ Bitoh Purnomo, "Maqâshid Al-Syarî'ah and Human Rights Problems," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, no. 1 (2020): 1–12, <https://doi.org/10.19109/nurani.v20i1.5631>.

⁴⁶ Ican Mandala Halil Khusairi, "Perkawinan Adat: Analisis Hukum Dan Sistem Perkawinan Di Kerinci Dalam Perspektif Hukum Islam," *Istinbáth Jurnal Hukum Dan Ekonomi Islam* 21, no. 2 (2022): 227–42, <https://doi.org/https://doi.org/10.20414/ijhi.v21i2.565>.

⁴⁷ Asriani Asriani and Abdul Wahid Haddade, "Kedudukan Taklik Talak Dalam Pernikahan Perspektif Mazhab Zahiri Dan Kompilasi Hukum Islam," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, 2021, 333–39, <https://doi.org/10.24252/shautuna.v2i2.19348>.

⁴⁸ Afiq Budiawan, "Modernisasi Hukum Keluarga Di Indonesia: Studi Terhadap Diskursus Dan Legislati Perjanjian Perkawinan Islam Indonesia," *Madania: Jurnal Ilmu-Ilmu Keislaman* 4, no. 1 (2014): 14–44.

The wife submits conditions for divorce to clarify her status.⁴⁹ When the reading of marriage and the reading of the conditions of divorce becomes a momentum that the husband is ready to accept all the consequences and commitments while living a household life, it includes a commitment to protect the rights of the wife as well as the wife's commitment to carry out her obligations. So that the agreement seeks to maintain this commitment.

4. Avoid Conflicts

True marriage is a momentum to share happiness with others, to share the legality and romance of happiness as husband and wife.⁵⁰ If the signs are clear with the conditions for divorce, then this should avoid marital conflict caused by the wife's unwillingness to accept several things or disagreements during the marriage. The benefits of the conditions of divorce in marriage are centered on protecting women. The data presentation mentions that each region has different social and cultural constructions. This affects the construction of society regarding the position of men and women in marriage, especially in Madura.

Divorce in Islam is the final way out for a husband and wife to end the domestic crisis.⁵¹ Socio-cultural construction in Pamekasan as part of a district on the island of Madura shows the same thing. Men's higher position in society is often why many men act arbitrarily towards women, especially in carrying out their obligations as a husband, the lack of massive conditions of the divorce, or society's understanding of the conditions of the divorce, which still lacks similar results. Therefore, the most prioritized benefit is that a woman as a wife obtains her rights in the household, and the husband always remembers his obligations as a husband and remembers the promise of the conditions of divorce made at the time of the marriage contract.

D. CONCLUSION

Conditions of divorce are one of the agreements held in marriage. In this case, *sighat taklik* is pronounced by the husband after the marriage contract, where the conditions of divorce are a form of protection for women's rights which Islam upholds. Several regulations regulate competently regarding marriage agreements or divorce agreements, including Article 29 Chapter V of Law No. 1 of 1974 concerning marriage agreements, Regulation of the Minister of Religion No. 11 of 2007 concerning Marriage Registration, Regulation of the Minister of Religion of the Republic of Indonesia No. 2 of

⁴⁹ Moh Nafik and Abdullah Taufik, "Implementasi Taklik Talak Di Desa Plakaran Dan Buduran Kec. Arosbaya Kab. Bangkalan," *Mahakim: Journal of Islamic Family Law* 6, no. 1 (2022): 90–100, <https://doi.org/10.30762/mahakim.v6i1.146>.

⁵⁰ Liwa, Eli Tri Kursiswanti, and Yanuel Albert Faisan, "Efektifitas Penegakan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terhadap Pernikahan Siri."

⁵¹ Nasrullah Abdul Rahim, Muhammad Amar Adly, and Akmaluddin Syahputra, "Studi Pandangan Hakim Pengadilan Tinggi Agama Medan Terhadap Fatwa MUI Sumut Tentang Istbat Talak Di Luar Sidang Pengadilan Agama," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 10, no. 01 (2022): 239, <https://doi.org/10.30868/am.v10i01.2445>.

2000 and Article 45 and Article 46 of the Compilation of Islamic Law. The views of female Muslim scholars from Nahdlatul Ulama and Aisyiah Muhammadiyah in Pamekasan provide an overview of the people who still do not understand the urgency of the divorce conditions in marriage. The culture of a society that is centralized in religiosity provides a paradigm of thinking that religious rules and values are sufficient as a fence so that marriage remains intact and survives. As for the spirit or concept of this view progressively from the views of female scholars Aisyiah and Muslimat NU, namely as a normative spirit or basis of the Qur'an and Hadith, awareness of rights and obligations, and equality in the household. Then it can be drawn several benefits that arise from the conditions of the divorce, among others, namely self-limitation, protector, keeping commitments, and avoiding conflict.

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