

## Perspectives of Islamic Fiqh in the Divorce of Pregnant Women

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### Abstract

*This study aims to find out the Law and Impact of divorce for pregnant women according to the perspective of Islamic jurisprudence and what will be described in this study based on two formulations of the problem, namely: 1) How the law divorces pregnant women in the perspective of Islamic jurisprudence. 2) What is the impact of divorcing a pregnant woman in the perspective of Islamic jurisprudence. In this study, the method used is the library research method, namely research by reviewing and examining data obtained from literature sources such as books, papers, articles and so on related to legal issues and the impact of divorce for pregnant women, so that precise and clear data will be obtained which then the data is compiled after going through in-depth research. The results of this study show: 1) Divorcing a wife while pregnant is permissible. The majority of scholars agree with this view, including the four imams of the madhhab namely, Imam Hanafi, Maliki, Shafi'i and Hanbali. Referring to the hadith of Ibn Umar. When he rejected his menstruating wife. Then the Prophet (peace be upon him) ordered to refer to her and then divorce when she was chaste or when pregnant and who was not allowed to divorce a pregnant woman was during menstruation, not during pregnancy. 2) The impact caused by the law, pregnant women still get a living when divorced and the iddah period is over when giving birth. As for the psychology of pregnant women losing a sense of security and comfort, discomfort is a form of guilt for leaving a partner who has been coloring her life. After divorce they tend to feel feelings such as uncertainty and loss of identity. From a social perspective, some societies consider divorce as a violation of existing moral norms, so pregnant women may experience social isolation. And from an economic point of view, pregnant women experience changes in economic status, if pregnant women depend financially on their ex-husbands.*

**Keywords:** Divorc; Pregnant Women; Impact.

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## Introduction

Having a harmonious family is everyone's desire. As a married couple, Islam teaches to be selfless, learn to love others and have a sense of responsibility. Islam educates each of the two to respect the rights of their spouses so that they feel comfortable with each other.<sup>1</sup> Because with a sense of comfort a person can carry out his obligations to the maximum. Allah SWT says in QS al-Rum/30: 21.

﴿وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ...﴾

Translation:

And among His signs is that He created spouses for you of your own kind, so that you may be inclined and feel at peace with him, and He makes among you a sense of love and affection. Indeed, in such a thing there are really signs (the greatness of Allah SWT) for those who think.<sup>2</sup>

Allah SWT created for men, women who will be their wives of their own kind. If Allah SWT made all Adam's children male and created women of other types, such as those of the jinn or animals, of course there will be no love between them, even There will be dissatisfaction if the partner is different. Then among the

mercies of Allah SWT is to make a couple of their own kind and create a feeling of love and affection between them.<sup>3</sup>

Men and women have psychological differences in terms of cognitive, affective, and psychomotor. In addition, there are differences caused by life experiences, parenting, education, culture and religious behaviors which of course are challenges in domestic life. These differences are often the source of conflict in the household that results in separation. There are many factors that affect the occurrence of separation between married couples. Some of the factors include poor communication and differences in vision and mission between husband and wife.

Communication between husband and wife is very important in building mutual understanding and expressing various problems that occur in the household. With good communication, all problems can be discussed and discussed to find solutions. Poor communication can lead to discomfort and misunderstandings, which can lead to various household problems.

There is a vision and mission in marriage, husband and wife couples have an idea of what kind of marriage they will live. Different visions and missions can Leads to goals live which

<sup>1</sup> Sobri Mersi Al-Faqi, *Solusi Problematika Rumah Tangga Modern* (Cet. I; Bekasi: Sukses Publishing, 2011), h. 46.

<sup>2</sup> Kementerian Agama Republik Indonesia, *Al-Hufaz Al-Quran Hafalan Mudah Terjemahan dan Tajwid Warna* (Bandung: Cordoba, 2019), h. 406.

<sup>3</sup> Abdullah bin Muhammad bin Abdurrahman Alu Syaikh, *Lubaabu al-Tafsir min Ibni Katsir (Tafsir Ibnu Katsir)*, terj. M. Abdul Ghofar dan Abu Ihsan al-Atsari (Cet. XIII; Jakarta: Pustaka Imam Syafi'i, 2019), h. 227.

makes it difficult for them to find bright spots when solving problems, causing conflicts until divorce occurs.

Divorce is an unwanted thing in the household, but sometimes it is a decision that must be taken when a married couple experiences problems that cannot be overcome. Divorce can occur for many reasons, such as incompatibility, infidelity, domestic violence, differences in beliefs, and communication problems.

Islam makes divorce a last resort after trying to repair relationships. This is because divorce is a matter that Allah SWT hates, but it is a halal thing to do. Rasulullah SAW said:

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَبْغَضُ الْحَلَالَ إِلَى اللَّهِ الطَّلَاقُ<sup>4</sup>

Means:

From Abdullah bin Umar ra. said, that the Prophet PBUH said: "The halal matter that Allah SWT hates very much is divorce".

People's views on divorce vary. In some societies, divorce is still considered taboo or considered a failure to maintain the integrity of the family. In some cases, divorce during pregnancy can cause social and psychological stigmatization for pregnant women, as society considers it a violation of religious rules or morality.

However, over time the public's view of divorce has changed, and divorce is considered as a

legitimate option in an irreparable situation in marriage.

Divorce in the household has a great impact on married couples, especially if there are children involved. However, when a woman is pregnant, divorce can have a heavier impact on the health of the mother and the fetus she is carrying.

Looking at the view of Islamic jurisprudence, divorcing pregnant women is a matter that requires a deep understanding of sharia. Because in Islam, marriage is considered a holy covenant that is blessed by Allah SWT and should not be underestimated. So in the case of divorce, whether the woman is pregnant or not, there are different laws and rules that both parties must follow.

Research on divorce for pregnant women is important to gain a deeper understanding of the applicable Islamic law and the impact of divorce. With a better understanding, clear guidance can be produced for individuals facing this kind of divorce situation.

There are differences of opinion regarding the law of divorcing pregnant women in the view of Islamic jurisprudence. This makes many couples who experience problems in their households confused to make decisions. On the one hand, there is an opinion that divorce a pregnant woman is unjustified, on the other hand, there is an opinion that divorce a pregnant woman may be allowed in certain circumstances. However, in this case, it is necessary careful

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<sup>4</sup> Abu Abdillah Muhammad bin Yazid Ibnu Majah, *Sunan Ibnu Majah* (Bait al-Afar al-Dauliyyah, 2013), h. 219.

consideration and assistance from health and religious experts to ensure that the decisions taken will not have a detrimental impact on the health of the mother and the fetus she is carrying.

It is undeniable that pregnancy will bring a number of changes to pregnant women. Hormonal changes that occur in the body of pregnant women will cause several pregnancy disorders. These disorders cause pregnant women to become sensitive and often feel mood swings.<sup>5</sup>

In the first trimester, the growth and development of the fetal brain develops rapidly. If at this time pregnant women often experience stress, then the fetal growth process slows down. In addition, in the last trimester of pregnancy, pregnancy can have an impact on the mother's health, so the pregnancy faced can indirectly increase the risk of higher health complications for the mother and fetus. That is why it is important for us to know the divorce rules for pregnant women, so that married couples can clearly understand the law and the possible consequences and can choose the best decision in maintaining the health of the mother and the fetus they are carrying.

So based on the above presentation, the researcher needs to conduct a thorough and in-depth study on this matter and will be compiled and poured into a thesis entitled "Islamic Fiqh Perspective in Divorce of Pregnant Women".

Based on the background of the above problem, the formulation of the problem that the author can describe in this study is as follows: How is the law of divorcing pregnant women from the perspective of Islamic jurisprudence? What is the impact of divorcing pregnant women in the perspective of Islamic jurisprudence?.

## Methods

This research is a type of qualitative research, namely an effort to explore and understand the meaning of what happens to individuals or groups. This research includes literature research, namely literature research by examining books, journals, manuscripts and other literature. The data sources from this study are primary data sources and secondary data sources. The data collection method used is to collect initial references in the form of books, literature related to the problem being researched, then study and record the materials from the book after which they are classified with the main points of the problem discussed by direct or indirect citations. The data analysis technique by selecting and editing the collected data is then classified, compiled and interpreted based on the approach method used.

## Result and Discussion

### The Law of Divorce a Pregnant Woman in the Perspective of Islamic Fiqh

There is not much difference among scholars in terms of divorcing women

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<sup>5</sup> Liliek Pratiwi dan Diana Dayaningsih, *Kesehatan Ibu Hamil* (Bojonggenteng: CV Jejak, 2021), h. 81.

when pregnant. In general, the difference is divided into two, the first opinion says that divorcing a woman when pregnant is haram, while the second opinion views that divorcing a wife when pregnant is permissible.

**The first opinion** is that some scholars of the Maliki madhhab including al-Qadhi Abu al-Hasan and Ibn Ishaq from the Shafi'i madzhab are of the opinion that divorce is haram if the divorced woman is menstruating or pregnant. They believe that pregnant women can experience menstruation, they believe that the law of pregnant women whose menstruation is haram is the same as the haram of a wife who is talaq in a menstrual state even though she is not pregnant.<sup>6</sup>

The Prophet PBUH explained in a hadith about Ibn Umar divorcing his menstruating wife.

وَعَنْ ابْنِ عُمَرَ أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ فِي عَهْدِ رَسُولِ اللَّهِ ، فَسَأَلَ عُمَرُ رَسُولَ اللَّهِ ﷺ عَنْ ذَلِكَ ، فَقَالَ : مُرَّةٌ ، فَلْيُرَاجِعْهَا ، ثُمَّ لِيُمْسِكْهَا حَتَّى تَطْهُرَ ، ثُمَّ تَحِيضَ ، ثُمَّ تَطْهُرَ ، ثُمَّ إِنْ شَاءَ أَمْسَكَ بَعْدُ وَإِنْ شَاءَ طَلَّقَ قَبْلَ أَنْ يَمَسُ فَبِتِلْكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ أَنْ تُطَلَّقَ لَهَا النِّسَاءُ . مُتَّفَقٌ عَلَيْهِ<sup>7</sup>

Means:

<sup>6</sup> Mohammad Haikal Arfian, "Cerai Gugat Istri Dalam Keadaan Mengandung (Studi Perbandingan Putusan PA Depok No. 2438/Pdt.G/2015/PA.Dpk dan PA Sawahlunto No. 18/Pdt.G/2013/PA.Swl)", *Skripsi* (Jakarta: Fak. Syariah Dan Hukum UIN Syarif Hidayatullah Jakarta, 2021), h. 19.

<sup>7</sup> Al-Hafidzbin Hajar al-'Asqolany, *Bulugul Maram Min Adillati al-ahkam* (Cet. I; Beirut; Dar Ibn Hazim, 2012), h. 283.

From Abdullah bin Umar (may Allah be pleased with him) that he divorced his wife who was menstruating during the time of the Prophet PBUH. Then Umar told the Prophet PBUH about it, then the Prophet PBUH said, "He should refer to her, then keep him until he is pure, then menstruate and then be holy again. After that, if he wants, he can defend it and if he doesn't want to, then please divorce him in a holy state before he associates with him. That is the iddah period as commanded by Allah SWT for women who are talaq". *Muttafaqun 'alaih*.

**The second opinion** is that divorcing the wife while pregnant is permissible. The majority of scholars agree with this view, including the four imams of madzhab, namely, Imam Hanafi, Maliki, Shafi'i and Hanbali. They look at the evidence:<sup>8</sup>

1. Hadith of Ibn Umar ra. when he divorced his wife in a menstruating state. When Umar came out. told the Prophet about it and he replied:

مُرَّةٌ فَلْيُرَاجِعْهَا ثُمَّ لِيَطْلُقْهَا طَاهِرًا أَوْ حَامِلًا<sup>9</sup>

Means:

<sup>8</sup> Mohammad Haikal Arfian, "Cerai Gugat Istri Dalam Keadaan Mengandung (Studi Perbandingan Putusan PA Depok No. 2438/Pdt.G/2015/PA.Dpk dan PA Sawahlunto No. 18/Pdt.G/2013/PA.Swl)", *Skripsi*, h. 19.

<sup>9</sup> Al-Hafidzbin Hajar al-'Asqolany, *Bulugul Maram Min Adillati al-ahkam*, h. 284.

Command him to refer to him and then divorce him when he is chaste or when he is pregnant.

1. Imam Ahmad said in interpreting Salim's hadith from his father which reads, "Then divorce him when he is holy or when he is pregnant" that his command is to divorce it when it is suatau while pregnant, al-Khithabi added that the hadith contains the meaning that divorce when pregnant is sunnah talaq and that itself can be done at any time while pregnant. This is the opinion of the majority of scholars. Allah said in QS al-Thalaq/65: 1.

﴿فَطَلِّمُوهُنَّ إِعْدَتِهِنَّ﴾

Translation:

So divorce them when they can (face) their iddah (which is reasonable).<sup>10</sup>

The verse above explains the parable of a man giving talaq to his wife who is in a state of purity. The sacred meaning here is related to not having sexual intercourse during the period of reference to waiting for certainty of the wife's pregnancy or not. This is in line with the words of the Prophet Rasulullah Shallallahu 'Alaihi Wasallam, "He should divorce his wife when she is chaste or pregnant."<sup>11</sup>

This verse shows that it is permissible for a person to divorce his wife while she is pregnant. Thus, the definition of

pregnancy during menstruation is very contrary to the permissibility of divorce when the wife is pregnant.

If the divorce is carried out when the pregnancy has been formed, it can be ascertained that the woman has been married to her husband before the divorce. The divorce itself has been carefully thought out and it is not predicted that there will be things that he regrets later. Thus the meaning of doubt in the verse is pregnancy, not in other doubts, because in this case there is no doubt about the iddah period for her. However, if she refuses it when the pregnancy has not yet been formed and has not thought about the pregnancy at all, then this can cause problems in the future.

It has been mentioned before that pregnant women will not experience menstruation. If there is blood during pregnancy, then it can be ascertained as disease blood, and the evidence they use is not based on a definite determination. If this is the case, then it cannot be used as the basis of sharia law, because shari'a law cannot be built on mere presuppositions and predictions.<sup>12</sup>

### Legal Views on Divorce of Pregnant Women

In the laws and regulations in Indonesia that regulate marriage and divorce in the first rule, in Law Number 1 of 1974 concerning Marriage and then the second in the rules of the Compilation of Islamic Law in Government Regulation of the

<sup>10</sup> Kementrian Agama Republik Indonesia, *Al-Hufaz Al-Quran Hafalan Mudah Terjemahan dan Tajwid Warna*, h. 558.

<sup>11</sup> Jalaluddin Muhammad Bin Ahmad al-Mahalli dan Jalaluddin Abdurrahman Bin

Abi Bakr al-Suyuti, *Tafsir al-Qur'an al-'Adzim li Imamain al-Jalalain*, Juz 2 (Surabaya: Dar al-'Ilm, t.th.), h. 224.

<sup>12</sup> Yahya bin Abdurrahman al-Khathib, *Fiqh Wanita Hamil*, h. 48.

Republic of Indonesia Number 9 of 1975 in article 19 on the Implementation of Law Number 1 of 1974 concerning Marriage, it is said that divorce can be carried out by the wife to her husband or vice versa the husband to his wife Based on 6 specific reasons, namely:

1. One of the parties commits adultery or becomes a drunkard, a drunkard, a gambler, and so on that is difficult to cure.
2. One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or due to other things beyond its ability.
3. One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place.
4. One party commits cruelty or severe persecution that endangers the other party.
5. One of the parties suffers from a physical disability or illness as a result of not being able to carry out their obligations as a husband/wife.
6. Between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household anymore.<sup>13</sup>

There are 8 reasons in the KHI that can be used as the basis for filing a divorce

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<sup>13</sup> Republik Indonesia, *Undang-Undang Peraturan Pemerintah RI Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan* pasal 19.

lawsuit for both the wife and husband to their spouse, namely:

1. One of the parties commits adultery or becomes a drunkard, a drunkard, a gambler and so on that is difficult to cure.
2. One of the parties leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or due to other things beyond its capabilities.
3. One of the parties gets a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place.
4. One party commits cruelty or severe persecution that endangers the other party.
5. One of the parties suffers from a disability or illness as a result of not being able to carry out his obligations as husband or wife.
6. Between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household anymore.
7. The husband violates the taklik talaq.
8. Religious change or apostasy that causes disharmony in the household.<sup>14</sup>

From the description above, it is important to know that in the Marriage Law, Government

<sup>14</sup> Republik Indonesia, *Kompilasi Hukum Islam*, Bab XVI Tentang Putusnya Perkawinan, pasal 116

Regulation No. 9 of 1975, and the KHI, there is no binding rule regarding the prohibition of divorcing a wife while pregnant.

### The Impact of Divorce on Pregnant Women

If the divorce has been decided by a religious court, the rights and obligations of husband and wife do not exist, but there is an impact caused by divorce, in article 24 of Law number 1 of 1974 as amended by Law number 16 of 2019 concerning Marriage, it is stated:<sup>15</sup>

1. During the course of the divorce lawsuit on the application of the plaintiff or defendant or based on consideration of the harm that may be caused, the court may allow the husband and wife not to live in the same house.
2. During the course of the divorce lawsuit on the application of the plaintiff or defendant, the court may:
  - a. Determine the maintenance that must be borne by the husband.
  - b. Determine the things necessary to ensure the maintenance and education of children.
  - c. Determine the matters necessary to ensure the preservation of the goods that are the rights of the husband or the goods that are the rights of the wife.

<sup>15</sup> Republik Indonesia, Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Pasal 24.

<sup>16</sup> Muhammad bin Mukarram bin Ali Abu al-Fadl Jamal al-Din Ibn Mandzur, *Lisan al-Arab*, Juz 10, h. 358.

### Legal Impact

#### a. Maintenance

In language, it means something given or an effort to find something to meet the needs of oneself and one's family. The word "anfaqa al-maal" means to spend one's wealth. Ibn al-Humam explained that livelihood means spreading what is in him and accepting the rest.<sup>16</sup>

Maintenance is an obligation that must be fulfilled by the husband to be given to his wife and children. The law regulates this as explained in the words of Allah SWT in QS al-Thalaq/65: 7

﴿لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ ۖ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يَكْلِفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا ۚ سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا﴾

Translation:

Let the one who has the breadth give a living according to his ability and the one who has a limited sustenance should give a living from the wealth that Allah has given him. Allah does not burden a person but (in accordance with) what Allah has given him. Allah will give space after narrowness.<sup>17</sup>

In the hadith it is stated:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ : دَخَلَتْ هِنْدُ بِنْتُ عُتْبَةَ - امْرَأَةَ أَبِي سُفْيَانَ - عَلَى رَسُولِ اللَّهِ

<sup>17</sup> Kementerian Agama Republik Indonesia, *Al-Hufaz Al-Quran Hafalan Mudah Terjemahan dan Tajwid Warna*, h. 559.



عَلَيْهِ، فَقَالَتْ : يَا رَسُولَ اللَّهِ إِنَّ أَبَا سُفْيَانَ رَجُلٌ  
شَحِيحٌ لَا يُعْطِينِي مِنَ النَّفَقَةِ مَا يَكْفِينِي وَيَكْفِي  
بَنِيَّ، إِلَّا مَا أَحَدْتُ مِنْ مَالِهِ بِغَيْرِ عِلْمِهِ، فَهَلْ  
عَلَيَّ فِي ذَلِكَ مِنْ جُنَاحٍ؟ فَقَالَ : حُذِي مِنْ مَالِهِ  
بِالْمَعْرُوفِ مَا يَكْفِيكَ، وَيَكْفِي بَنِيكَ مُتَّفَقٌ  
عَلَيْهِ.<sup>18</sup>

Means:

From Aisha ra, she said: Hindun bint Uthbah, the wife of Abu Sofyan, once went to meet the Prophet PBUH and said: O Messenger of Allah, indeed Abu Sufyan is a bastard. Not providing enough for me and my children except for his property that I took without his knowledge. Am I sinning because of it? He replied: Take his wealth to provide for you and your children well. *Muttafaq 'alaih*.

So that from the two legal bases explained in the Qur'an and hadith, it is a consequence of the obligation for the husband to provide for his wife and children. Remembering that as long as they are still a legal husband and wife according to the law and religion, the law is obliged to provide for them. As for children, from any various views it does not cut off the blood relationship between the child and his parents in the event of a divorce.<sup>19</sup>

The most basic thing that must be understood is related to the

<sup>18</sup> Al-Hafidz bin Hajar al-'Asqolany, *Bulugul Maram Min Adillati al-ahkam*, h. 358.

<sup>19</sup> Yahya bin Abdurrahman al-Khathib, *Fiqh Wanita Hamil*, h. 52.

consequences of talaq divorce cases as stipulated in article 41 letter e of Law no. 1 of 1994 concerning marriage states: "The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife." And it is stated in Article 149 of the Compilation of Islamic Law that reads "If the marriage is broken up due to divorce talaq, the ex-husband is obliged:<sup>20</sup>

- 1) Give proper mut'ah to his ex-wife, either in the form of money or in kind, unless the ex-wife is qobla al-dukhul;
- 2) Giving alimony, maskan and kiswah to his ex-wife during iddah, unless the ex-wife has been sentenced to talaq ba'in or nusyuz and is not pregnant.
- 3) Pay off the dowry that is still owed in full, and half if qobla al dukhul;
- 4) Providing hadhanah fees for their children who have not reached the age of 21.

The legal basis is felt to be a binding thing in every divorce case that it is mandatory for the ex-husband to provide alimony. The scholars agree that providing support to a wife who is talaq three or talaq raj'i in a pregnant state is obligatory according to the postulate of the words of Allah QS al-Thalaq/65: 6

﴿وَإِنْ كُنَّ أُولَاتٍ حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى  
يَضَعْنَ حَمْلَهُنَّ﴾

Translation:

<sup>20</sup> Republik Indonesia, *Kompilasi Hukum Islam*, bab XVII, pasal 149.

And if they are pregnant, then give them their sustenance until they give birth.<sup>21</sup>

#### b. Iddah

It is well known that a woman who has been divorced according to religious sharia is still bearing the iddah period. Iddah is one of the consequences or legal impacts if there is a divorce between husband and wife. Viewed from the perspective of maqashid al-sharia, an ex-wife must be given alimony during the iddah period. Because without a living, the ex-wife will be in danger. Associated with dharuriyat al-khams (the five main problems), mashlahah in protecting the ex-wife, namely hifz al-nafs (preserving the soul). One of the dharuriyat al-khamsah is to guard the soul. Nurturing the soul begins in the womb by maintaining the results of fertilization of the ovum and sperm. The protection of the soul continues with the obligation of parents to take care of their children from birth until they are independent for men, there is for women until they get married. After marriage, a woman's responsibility shifts to her husband and if a divorce occurs, the husband remains responsible until the end of the woman's iddah period.

Abu al-Qasim al-Tharqi said, "If a pregnant wife is rejected by her husband or her husband dies, then the woman has completed her iddah by giving birth. This provision applies

generally to women who are free or slave." The scholars agree that if a husband rejects his wife who is pregnant, then the woman's iddah period is completed by giving birth. This provision also applies to all separations that occur while both are still alive.<sup>22</sup> The basis is the word of Allah in the Qur'an, QS al-Thalaq/65: 4

﴿وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ﴾

Translation:

And for pregnant women, their iddah time is until they give birth to their womb.<sup>23</sup>

#### a. Fetal Status After Divorce

Islam stipulates that an ex-husband still has an obligation to serve his ex-wife until the iddah mass ends. Meanwhile, based on the law in Indonesia, in article 28 of the Marriage Law, it is said that the decision does not apply retroactively to:

- 1) Children born from the marriage.
- 2) A husband or wife who acts in good faith, except for common property, if the annulment of the marriage is based on the existence of another previous marriage.
- 3) Other third persons are not included in a and b as long as they acquire rights by Good faith before decision about

<sup>21</sup> Kementrian Agama Republik Indonesia, *Al-Hufaz Al-Quran Hafalan Mudah Terjemahan dan Tajwid Warna*, h. 559.

<sup>22</sup> Abdullah Bin Muhammad Bin Qudamah, Ibnu Qudamah, *al-Mughni*, Juz 11 (Maktabul Qahirah, 1968), h. 364.

<sup>23</sup> Kementrian Agama Republik Indonesia, *Al-Hufaz Al-Quran Hafalan Mudah Terjemahan dan Tajwid Warna*, h. 558.

annulment has permanent legal force.<sup>24</sup>

Divorce does not break the relationship between the ex-husband, wife and children. The rule can also be seen in article 75 of the KHI. Regarding the status of the child in the womb, it is contained in article 2 of the Civil Code which states that, "A child who is still in the mother's womb is considered to have been born, whenever the interests of the child will, if the child has died at birth, he is considered to have never existed".<sup>25</sup> This means that a relationship, whether it is an ex-husband and wife and a child, the relationship will not be severed after the divorce, then in the child in the womb after the divorce is considered to have been born, then the husband is still obliged to meet the needs of the child's interests, different if the baby dies at birth because the baby is considered non-existent.

Based on this rule, a fetus that is still in the womb has the same rights as a child who has been born because based on the Marriage Law, parents still require their children to provide education and maintain them until they grow up, this obligation cannot be broken even though they have been divorced.

When the child is born, the right to custody rests with his mother. The rules regarding the custody of minors can be seen in the Law and the KHI, even though the custody is not in the former However, the ex-husband

is still obliged to provide the maintenance to his children and also his ex-wife, and is also obliged to provide for his ex-wife until the iddah period ends, the income during the iddah period is obtained when the ex-husband divorces his ex-wife, if the wife files a lawsuit, then the obligation of the ex-husband to earn a living will die. However, in some of these cases, the court decision is not always the same but is different.

At the trial, it was carried out because the wife asked for a divorce from her husband, but the judge with various court considerations asked her ex-husband to be willing to help his ex-wife to provide maintenance during the iddah period and her children, therefore if there is a case of filing for divorce from the wife in a state of pregnancy or not, The ex-wife can still ask for income from her ex-husband then the court will consider whether it will be accepted or rejected by looking at the facts that have occurred during the marriage, then apart from that the ex-husband must also finance or support his ex-wife during the trial process if basically the two couples are still tied in one household.<sup>26</sup>

If the plaintiff and the defendant during the marriage have been blessed with two children who are minors or not yet mumayyiz and 1 child who is still in the womb, then legally the children must accompany their mother, as stipulated in article 105 paragraph (1) of the Compilation

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<sup>24</sup> Republik Indonesia, *Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, Pasal 28

<sup>25</sup> Republik Indonesia, *KUHPerdata, bab I Tentang Menikmati Dan Kehilangan Hak Kewargaan*, Pasal 2.

<sup>26</sup> [Bagaimana Status Bayi Dalam Kandungan Saat Terjadi Perceraian – Perceraian Online](#). Diakses 20 Desember 2023.

of Law Islam.<sup>27</sup> And in article 41 of Law number 1 of 1974 as amended by Law number 16 of 2019 concerning marriage, it is also regulated regarding the consequences of the dissolution of marriage due to divorce against children:<sup>28</sup>

- 1) Both mothers and fathers are still obliged to maintain and educate their children, solely based on the interests of the children, if there is a dispute regarding the control of the children, the Court shall give its decision.
- 2) The father who is responsible for all the maintenance and education costs required by the child, if the father is in fact unable to fulfill the obligation, the Court can determine that the mother bears the cost.
- 3) The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

### **Psychological impact**

Specifically, the impact of divorce on the husband or wife is on the psychological side. On this side, the consequences of divorce will be able to give birth to several implications:<sup>29</sup>

- a. Loss of a sense of security and comfort. Like how strong a man or woman is, whoever files a divorce lawsuit will actually become a

boomerang for him. For those who file a lawsuit, they will actually feel a loss of security and comfort when alone or when with their partner. The sense of security is nothing but a sense of comfort that has been built together with the partner of his first choice, while the condition of his new self or household has not found comfort in his past.

- b. Guilt arises. The discomfort is a manifestation of guilt for leaving the partner who has been coloring his life by preferring his new life or someone else. Finally, those who divorce will automatically feel a life pressure (stress) that comes from their own decisions.
- c. Loss of taste. In a case of divorce due to polygamy or the presence of a third party, it may not be pleasant to have sex with the new partner because it reminds him of his former family who has been left behind. On the contrary, what a wife feels is a heartache that because she is abandoned by a husband she loves, therefore it can give rise to a sense of antipathy towards every man who will approach her, and finally prefer to live alone by taking care of her children as a remedy for loneliness.

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<sup>27</sup> Republik Indonesia, *Kompilasi Hukum Islam*, bab XIV Tentang Pemeliharaan Anak, Pasal 105.

<sup>28</sup> Republik Indonesia, Undang-Undang No. 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan, bab VII Tentang

Putusnya Perkawinan Serta Akibatnya, Pasal 41.

<sup>29</sup> Khoirul Abror, *Cerai Gugat Dan Dampaknya Bagi Keluarga*: Jurnal Hukum Ekonomi Syariah, Vol. 11, No. 1, Januari 2019, h. 31.

There are several problems that will arise in each divorced couple, namely:<sup>30</sup>

- a. Psychological problems. After a divorce, both women and men tend to feel erratic feelings and lose their identity.
- b. Emotional problems. In many women, feelings such as guilt, hatred, anger, and shame, resentment, anxiety about the future usually become so dominant in them that they can even change their personality.
- c. Practical problems. This problem arises because the wife has to do all her own household chores even though before the divorce her husband helps a little in the housework.
- d. Problems due to loneliness. When divorced women and men get used to being with their partners, they begin to feel lonely when they no longer associate with people who share the same values and interests.
- e. Problems that arise in the division of child custody. When custody is divided between the two parents after a divorce, it can be difficult for parents to adjust, both to themselves and to their children. For example, problems arise when a child is disobedient to one parent, after he is with the other parent.
- f. Sexual problems. After a divorce, both parties feel a lack of sexual activity normally, unless they remarry soon after the divorce.

Women who have children find it harder to consider this option, so the period after divorce and remarriage tends to be longer for women than for men.

g. Problems changing self-image. Regardless of who is the cause of the problems that lead to divorce, couples usually harbor hatred for each other because their marriage did not work out. These emotions will inevitably affect self-image and lead to personality changes.

### Social Impact

Divorce of a pregnant woman can change her status and social support in society. This can affect the way people see and interact with them. Regarding social support, some family members or friends may be supportive, while others give different attitudes. This can affect their well-being as well as the fetus conceived.

There is support or disapproval from the community because they have certain views or judgments on divorce, especially divorce carried out by pregnant women. Some societies consider divorce to be a violation of existing moral norms, so pregnant women may experience social isolation. Abandoned women become locked out of the outside world so their social lives are limited to activities with relatives and friends or even of the same gender as them.<sup>31</sup>

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<sup>30</sup> Khoirul Abror, *Cerai Gugat Dan Dampaknya Bagi Keluarga*: Jurnal Hukum Ekonomi Syariah, Vol. 11, No. 1, Januari 2019, h. 32.

<sup>31</sup>[https://www.researchgate.net/publication/377187315\\_RIVIEW\\_BUKU\\_PERCERAIAN\\_DI\\_INDONESIA\\_DAN\\_DAMPAKNYA\\_BAGI\\_SOSIAL\\_DAN\\_MASYARAKAT](https://www.researchgate.net/publication/377187315_RIVIEW_BUKU_PERCERAIAN_DI_INDONESIA_DAN_DAMPAKNYA_BAGI_SOSIAL_DAN_MASYARAKAT) diakses 15 Januari 2024.

## Economic Impact

- a. Economic status. Divorce of a pregnant woman can bring about a significant change in economic status, especially if the pregnant woman is financially dependent on her ex-husband.
- b. Maintenance and living expenses. Economic problems. After the divorce, both husband and wife will experience a reduction in income, because the husband's income now has to provide for two households. Often, divorced women have to find work to support the benefits that their husbands may provide, and to meet the living expenses of their children.
- c. Employment or career. Divorce of a pregnant woman can affect her involvement in the career world. This can trigger changes in the working relationship and affect the perception of his colleagues.<sup>32</sup>

## Conclusion

Based on the discussion and description that has been written in the previous chapters on the Perspective of Islamic Fiqh in Divorce of Pregnant Women, the author can draw the conclusion that, divorcing the wife while pregnant is permissible. The majority of scholars agree with this view, including the four imams of madzhab, namely, Imam Hanafi, Maliki, Shafi'i and Hanbali. Referring to the hadith of Ibn Umar when he rejected his wife who was menstruating. Then the Prophet PBUH ordered to refer to him and then

divorce when she is holy or when pregnant. And what is not allowed to divorce a pregnant woman is during menstruation, not during pregnancy. The blood seen from a pregnant woman is not menstrual blood, but dirty blood or disease blood. The impact caused by divorce for pregnant women is very diverse. In terms of legal impact, pregnant women still earn a living when they divorce from their husbands and the iddah period is completed when they give birth. The scholars agree that providing support to a wife who is talaq three or talaq raj'i in a pregnant state is obligatory. As for the psychology of pregnant women, they lose a sense of security and comfort. For pregnant women, their emotions are sometimes uncontrollable so that the discomfort is a manifestation of guilt for leaving the partner who has colored their life so far. After divorce, they tend to feel feelings such as feelings of uncertainty and loss of their identity. The scholars agree that providing support to a wife who is talaq three or talaq raj'i in a pregnant state is obligatory. As for the psychology of pregnant women, they lose a sense of security and comfort. For pregnant women, their emotions are sometimes uncontrollable so that the discomfort is a manifestation of guilt for leaving the partner who has colored their life so far. After divorce, they tend to feel feelings such as feelings of uncertainty and loss of their identity.

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