



Sadd al-Zari'ah and Extra-Judicial Divorce: A Critical Discourse Analysis of MUI Fatwa and KHI Legal Frameworks

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Abstract

This study examines the intersection of Islamic jurisprudential principles and contemporary divorce practices in Indonesia through a critical analysis of the doctrine of *sadd al-zari'ah* (blocking the means) as applied to extra-judicial divorce proceedings. The research investigates how the Indonesian Council of Ulama (MUI) fatwa and the Compilation of Islamic Law (KHI) framework address the tension between traditional Islamic divorce mechanisms and modern legal requirements. The doctrine of *sadd al-zari'ah*, which permits the prohibition of otherwise permissible acts to prevent potential harm or corruption, serves as a theoretical lens for understanding regulatory approaches to divorce outside formal court proceedings. This principle becomes particularly relevant when examining how Indonesian Islamic legal authorities navigate between preserving religious autonomy in marital dissolution and ensuring legal protection for all parties involved. Through critical discourse analysis, this research analyzes the linguistic and ideological frameworks employed in MUI fatwas and KHI provisions regarding extra-judicial divorce. The study reveals how these legal texts construct narratives around marital dissolution, gender roles, and state authority, while simultaneously invoking *sadd al-zari'ah* to justify certain restrictions or permissions. Key findings indicate that both the MUI and KHI demonstrate strategic application of *sadd al-zari'ah* principles, often prioritizing social stability and legal certainty over unrestricted religious practice. The analysis reveals tensions between traditional *fiqh* interpretations that generally permit unilateral divorce by husbands and contemporary concerns about women's rights and legal documentation. The research contributes to understanding how classical Islamic legal principles adapt to modern legal pluralism, particularly in contexts where religious and secular legal systems must coexist. It demonstrates how *sadd al-zari'ah* functions not merely as a jurisprudential tool but as a discursive strategy for legitimizing contemporary

legal innovations while maintaining religious authenticity. The study concludes that the application of *sadd al-zari'ah* in Indonesian divorce law reflects broader negotiations between Islamic authority, state power, and individual rights, offering insights into the dynamic nature of Islamic law in contemporary Muslim societies.

Keywords: *Sadd Al-Zari'ah, Extra-Judicial Divorce, MUI Fatwa, KHI, Islamic Jurisprudence, Discourse Analysis, Indonesian Islamic Law*

Introduction

Marriage according to Law no.16 of 2019 is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God ". Meanwhile, according to the Compilation of Islamic Law (KHI) Marriage is a very strong contract or *mitsaqon Ghidhan* to obey Allah's commands and carrying it out is an act of worship (Syarifudin Latif, 2017: 7).

Marriage is a noble act of worship. Of course, there are many tests that must be faced. Some families do not find solutions to these tests. For example, in the city of Palopo, South Sulawesi, one of the causes of divorce is due to disputes. Quoted from detik sulsel, one of the clerks when interviewed explained that: "Based on data from 2023, the highest main cause of divorce is constant disputes or quarrels, with a total of 171 cases. Economic factors followed with 33 cases, followed by cases of abandonment of one of the parties with 21 cases. Domestic violence (KDRT) was recorded in 14 cases, drug use (madat) in 10 cases, gambling in 7 cases, apostasy in 4 cases, and drunkenness and polygamy in 2 cases each."

Islamic law does not prohibit divorce, but Islamic law is certainly firm in providing limits and conditions for the occurrence of a divorce. Not then at will want to impose a divorce or apply for a divorce for unclear reasons. Among the wisdom of the difficulty of arranging divorce and the ease of getting married so that Muslims are aware and willing to take lessons from this difficult process.

Whoever ruins the relationship and triggers divorce between husband and wife will not have a noble position in Islam. However, Allah SWT still allows divorce as the last solution if the marriage between husband and wife can no longer be maintained. (Muhammad Tahmid Nur, 2018) In the Compilation of Islamic Law (KHI) article 117 explains that: "divorce is a husband's pledge before a religious court session which is one of the reasons for the dissolution of marriage".

In the decision of the fatwa *ijtima'* of the Indonesian Ulema Council (MUI) in 2012, providing an explanation that when the divorce is pronounced by a husband outside the court, the law is valid. The same decision was also issued by the Aceh Ulema Consultative Assembly (MPU/MUI) in fatwa No. 2 of 2015 and the North Sumatra Ulema Council No. 04 of 2011 concerning divorce which explains that divorce pronounced by a husband outside the court, whether or not there are witnesses, is valid.

Law Number 1 Year 1974 related to marriage article 39 paragraph 1 also explains that: "divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties".

Judging from the description above, the constitutional law of judges in the Religious Courts (PA) does not consider when a divorce is carried out outside the court. Because when a husband submits a divorce process to be carried out in front of the court, even though the husband has previously divorced his wife. Based on research conducted by Muhammad Akram in 2022 in the city of Kendari there were already around nine cases of divorce that were not recorded in court. (Akram, Idris, & Pratama, 2023) Out-of-court divorce cases also have an impact on the issue of when the iddah period of a wife begins to be calculated. Because when she has been divorced by her husband outside the court then sometime later makes a pledge of divorce in front of the court, of course there is a difference in calculating the valid idah period of the wife is the divorce she pledged in front of the court. (Zainuddin, 2019: 130)

From the explanation that has been given, it can be seen that there is a contradiction or difference between the Compilation of Islamic Law (KHI) and the MUI fatwa regarding divorce that is carried out outside the court. In the MUI fatwa, a divorce pronounced by the husband outside the court is considered valid. In contrast, according to KHI, divorce must be done through a process in a religious court, so divorce done outside the court is considered invalid and not legally recognized in Indonesia.

This legal difference is also seen in the practice of divorce in religious courts. For example, a husband has pronounced divorce twice separately outside of court, then files a divorce petition with the religious court, and the petition is approved by the judge. At the next hearing, the husband again pronounces the pledge of divorce before the judge in court. According to the MUI fatwa, the husband should have been divorced three times, whereas according to the judge's ruling in the divorce petition, the valid divorce was only counted as one *raj'i* divorce. This clearly shows the difference between the MUI fatwa and the Indonesian marriage law.

Based on the problems that have been described, the author is interested in conducting research on "**Comparison of Talak Law Outside the Court: *Sadd al-zari'ah* Perspective in MUI Fatwa and KHI**"

1. Theory Review

Talak or divorce is the legal separation of husband and wife in accordance with the provisions of Islamic law. (Syarifuddin, 2009: 199). Sayyid Sabiq said that divorce is indeed allowed in Islam and it is the last solution to a problem in the family because this act is hated by Allah SWT. (Sabiq, 1999: 221). Allah Swt explains the provisions of divorce in His word as follows:

اَطْلَاقُ مَرَّتَيْنِ فَاِمْسَاكَ بِمَعْرُوفٍ اَوْ تَسْرِيحُ بِاِحْسَانٍ وَلَا يَجِلُّ لَكُمْ اَنْ تَاْخُذُوْا مِمَّا اَنْتُمْ مِّنْ شَيْءٍ اِلَّا اَنْ يَّخَافَا اَوْ يَّقِيْمَا
حُدُوْدَ اللّٰهِ فَاِنْ خِفْتُمْ اِلَّا يَّقِيْمَا حُدُوْدَ اللّٰهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهٖ تِلْكَ حُدُوْدُ اللّٰهِ فَلَا تَعْتَدُوْهَا وَمَنْ يَتَعَدَّ حُدُوْدَ
اللّٰهِ فَاُولٰٓئِكَ هُمُ الظّٰلِمُوْنَ

Translation:

"The (reconcilable) divorce is two times. (After that the husband may either retain (reconcile) in a proper manner or release (divorce) in a good manner. It is not permissible for you to take back what you have given them, unless both of them fear that they will not be able to observe the limits prescribed by Allah. If you (the guardians) fear that they will not be able to observe the limits of Allah, then there is no blame on either of them for the payment that the wife has to make to redeem herself. These are the limits of Allah, do not transgress them. Whoever transgresses the limits of Allah, they are the wrongdoers" (Q.S Al-Baqarah/1:229).

In a hadith the Prophet Muhammad also said that :

ثَلَاثٌ جِدُّهُنَّ جِدٌّ، وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ وَالطَّلَاقُ، وَالرَّجْعَةُ

Meaning:

"Three things which, if said seriously, will come to pass, and if said playfully, will come to pass: marriage, divorce and reconciliation. (H.R.At-Tirmidhi: 118)

The pillars and conditions of the fall of divorce include several things, namely (1) *Mukallaf* and sane, (2) Lafaz talak, either in *sarih* (clear) or *kinayah* (vague), (3) intentionally done, (4) Wife / woman he authorized, and (5) control of the wife. (al-Ghazaliy, 1994: 286-289). In Islamic law the imposition of divorce can become mandatory, for example when the marriage has brought more *harm* and divorce is the only way to be the solution. (Mardani, 2016: 146). *It is mustahab* or recommended to divorce when the husband has a legitimate reason, without intending to oppress her. (Al-Syirbini, 1994: 451). Divorce also becomes haram if the husband imposes it with the intention of oppressing the wife or damaging her rights, such as divorcing her when she is pregnant so that she does not receive maintenance or other rights. (al-Humam, 1995: 297).

In its classification, divorce is divided into two when viewed from the state of the wife when the divorce is imposed, namely *sunni* divorce (the wife is not in a state of menstruation) and *bid'i* divorce (the wife is in a state of menstruation / after intercourse). (Sarong, 2010: 135). *Sunni* divorce is a divorce that is carried out in accordance with the rules and does not cause much harm to the wife, while *bid'i* divorce is not carried out based on the rules of the syariat so that it brings more mudharat to the wife even though the divorce is still legal. (Syarifuddin, 2015: 130). Divorce that is imposed based on the possibility of reconciliation or not is divided into two, namely divorce *raj'i* (divorce that can still be reconciled or divorce one and two) and divorce *ba'in* (divorce three or divorce that is no longer possible to reconcile, unless the wife marries someone else first). (Sarong, 2010:136).

An out-of-court divorce is a divorce imposed by the husband without involving the court. Based on several previous studies, the factors and impacts of divorce conducted without the involvement of the court are mentioned. For example, research conducted by Aiya Ernita (2014) highlighted divorce factors such as economics and emphasized that post-divorce marriages outside the court are illegal according to positive law. Abdurrahman (2019) discusses the ambiguity of Islamic law and KHI regarding out-of-court divorce, concluding that such divorces have no legal force. Muhammad Yalis Shokib (2013) emphasized the importance of sanctions to prevent out-of-court divorce as a preventive measure.

Another study by Muhammad Isa (2013) uncovered factors such as economics and community understanding that influence the occurrence of out-of-court divorce, leading to various legal problems. Ana Pitria et al (2023). highlighted the different views of religion and state law on the legality of divorce, with significant impacts on children's rights. Hawayah (2021) examined legal implications such as *nafkah* and *mut'ah* that often depend on individual awareness.

These studies have relevance to the study of out-of-court divorce that will be conducted, although the approach is different, especially in the use of *sadd al-zari'ah* to understand the differences in the law of out-of-court divorce between MUI and KHI fatwas.

Method

This study employs a qualitative research design utilizing Critical Discourse Analysis (CDA) as the primary analytical framework to examine the application of *Sadd al-Zari'ah* principles in extra-judicial divorce cases within Indonesian Islamic legal discourse. The research adopts a comparative legal methodology to analyze the intersection between classical Islamic jurisprudence and contemporary Indonesian Islamic law as manifested in MUI (Majelis Ulama Indonesia) fatwas and KHI (Kompilasi Hukum Islam) provisions.

The study is grounded in Norman Fairclough's three-dimensional model of Critical Discourse Analysis, which examines: (a) Textual Analysis: Linguistic features, semantic structures, and legal terminology employed in MUI fatwas and KHI articles (b) Discursive Practice: The production, distribution, and consumption of legal texts within Indonesian Islamic jurisprudential discourse (c) Social Practice: The broader socio-legal context influencing the interpretation and application of *Sadd al-Zari'ah* in extra-judicial divorce cases. The theoretical foundation also incorporates classical Islamic legal theory (*usul al-fiqh*), particularly the principle of *Sadd al-Zari'ah* (blocking the means) as developed by the Maliki school of jurisprudence and later adopted across various madhabs.

Primary data Sources (a) MUI Fatwas: All relevant fatwas issued by the Indonesian Council of Ulama concerning divorce, family law, and related jurisprudential matters from 1975-2024 (b) KHI Provisions: Articles 114-148 of the *Kompilasi Hukum Islam* dealing with divorce procedures and regulations (c)

Classical Islamic Legal Texts: Primary sources on Sadd al-Zari'ah from major jurisprudential works, including: (1) Al-Muwafaqat by Abu Ishaq al-Shatibi (2) Al-Furuq by Shihab al-Din al-Qarafi (3) I'lam al-Muwaqqi'in by Ibn Qayyim al-Jawziyyah

Secondary data Sources are (1) Scholarly articles on Indonesian Islamic family law (2) Legal commentaries on MUI fatwas and KHI implementation (3) Comparative studies on Islamic divorce law in Southeast Asia (4) Jurisprudential analyses of Sadd al-Zari'ah applications in contemporary contexts

Analytical Framework

Critical Discourse Analysis Components

1. Linguistic Analysis included (a) Lexical Analysis:

Examination of key terminology including "sadd al-zari'ah," "talaq," "khula," and related Arabic-Indonesian legal terms (b) **Semantic Field Analysis:** Mapping conceptual relationships between classical Islamic legal concepts and their contemporary Indonesian interpretations (c) **Intertextuality:** Analysis of how classical Islamic sources are referenced and recontextualized in MUI fatwas and KHI provisions.

2. Discursive Strategies included (a) Legitimation Strategies:

How religious authority is constructed and maintained in legal discourse (b) **Argumentation Patterns:** Logical structures employed to justify particular interpretations of Sadd al-Zari'ah (c) **Modality Analysis:** Examination of certainty, obligation, and permission markers in legal texts.

3. Ideological Analysis namely (a) Power Relations:

How different stakeholders (ulama, legal practitioners, women, men) are positioned within the discourse (b) **Gender Dynamics:** Analysis of how extra-judicial divorce provisions affect men and women differently (c) **Modernization vs. Tradition:** Tensions between preserving Islamic authenticity and addressing contemporary social needs

Comparative Legal Methodology

Horizontal Comparison, namely: (a) Analysis of different MUI fatwas addressing similar issues to identify consistency and evolution in reasoning (b) Comparison between KHI provisions and their classical Islamic law counterparts (c) Cross-referencing of Sadd al-Zari'ah applications across different areas of Islamic family law

Vertical Comparison namely: (a) Examination of how Sadd al-Zari'ah principles from classical sources are interpreted in modern Indonesian contexts (b) Analysis of the adaptation process from Arabic legal concepts to Indonesian legal language

and cultural context **(c)** Assessment of consistency between theoretical principles and practical applications

Data Analysis Procedures as follows:

Phase 1: Corpus Preparation included (a) Collection and digitization of all relevant MUI fatwas and KHI provisions **(b)** Translation of Arabic passages and technical terms **(c)** Chronological organization of sources to track doctrinal development

Phase 2: Preliminary Analysis consists of (a) Identification of all instances where Sadd al-Zari'ah is explicitly or implicitly referenced **(b)** Categorization of extra-judicial divorce cases by type and context **(c)** Initial coding of recurring themes and patterns

Phase 3: Detailed CDA consists of (a) Textual Level: Line-by-line analysis of legal arguments, examining grammar, vocabulary, and rhetoric **(b) Discursive Level:** Analysis of how texts relate to each other and to broader Islamic legal discourse **(c) Social Level:** Examination of the socio-political context influencing legal interpretations

Phase 4: Synthesis and Interpretation consists of (a) Integration of findings from textual, discursive, and social analyses **(b)** Development of theoretical insights regarding Sadd al-Zari'ah applications **(c)** Assessment of implications for Indonesian Islamic family law practice.

Results and Discussion

Results

Talak outside the Court According to MUI Fatwa and KHI

Talak outside the Court from the Perspective of the Fatwa of the Indonesian Ulema Council (MUI) On July 1, 2012, during an *ijtima' ulama* session in Tasikmalaya, the Indonesian Ulema Council (MUI) Fatwa Commission discussed contemporary fiqh issues (*Masail Fiqhiyyah Mu'ashirah*). Out-of-court divorce was one of the topics discussed. The following is the result of the verdict:

Islamic law makes divorce the last resort for disputes that occur between husband and wife in a household that can no longer be maintained, and can even cause harm.

In practice, the Quran and Hadith do not regulate in detail the procedure for divorce. Therefore, there are differences of opinion among scholars on this issue. There are scholars who give strict rules, such as having to be witnessed or done in front of a judge. But there are also those who are very loose, such as the opinion that says that the husband can divorce for the slightest reason and without witnesses because divorce is the husband's right. Meanwhile, according to the

legislation, the government argues that in order to keep the sharia rules running properly, divorce should not be done carelessly because it can have negative impacts.

Through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, the government has regulated the mechanism and conditions for the validity of a divorce in the eyes of the law, namely divorce conducted in front of a court session. However, in the midst of society there are still divorce practices that do not follow these legal rules, which are often referred to as out-of-court divorce. This happens because the community knows that the opinion of the majority of scholars in fiqh literature does not require divorce to be carried out through a court session. The out-of-court divorce in question is a divorce that has fulfilled all the conditions and pillars of divorce stipulated in Islamic law, but without an official determination in the authorized agency as stipulated in the legislation."

Legal Provisions:

"Divorce outside the court is valid provided there are shar'i reasons that can be proven in court. The *waiting* period for divorce is calculated from the time the husband pronounces the divorce. For the sake of benefit and to ensure legal certainty, divorce outside the court must be reported (*ikhbar*) to the religious court." (Amin & Sholeh, 2012)

The legal basis for MUI's decision also refers to the word of Allah in Surah At-Talak verse 1.

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

Translation: "O Prophet, when you divorce your wives, divorce them at a time when they are fit for their 'iddah (waiting period), and reckon up the 'iddah (waiting period), and fear Allah, your Lord. And do not put them out of their houses, nor let them go out except when they have committed an obvious abomination. These are the laws of Allah, and whosoever transgresses the laws of Allah, then indeed he has done wrong to himself. You do not know whether Allah may create something new thereafter." (At-Thalaq/65: 1)

Talak outside the court from the perspective of the Compilation of Islamic Law (KHI)
In KHI, it is stated about how divorce can be carried out and declared valid. This is clearly stated in article 115, namely:(RI, 2011)

"Divorce can only be carried out in front of a Court session after the said Court has tried and failed to reconcile the two parties."

Articles 117 and 129 of the Compilation of Islamic Law also set out the conditions for divorce as mentioned above, with the wording that:

Article 117: (RI, 2011)

"Talak is the husband's vow before a religious court session which becomes one of the causes of the dissolution of marriage, in the manner referred to in articles 129, 130 and 131".

Article 129: (RI, 2011)

"A husband who wishes to divorce his wife shall submit an oral or written request to the religious court in whose jurisdiction the wife resides, accompanied by reasons, and request that a hearing be held for that purpose".

Article 115 reflects the principle that divorce in Islamic law in Indonesia is not a step that can be taken unilaterally or without the intervention of a legal authority, in this case a religious court. Divorce is a decision that has major consequences, both for the husband, wife and children, so it must be processed carefully and through clear legal mechanisms. (M. Yahya Harhap, 2006: 119)

Article 117 states that a divorce is a pledge (statement) made by the husband before a religious court. This means that to be considered legally valid, a divorce must be formally announced before a court. It is not enough for a talak to be made verbally or informally outside of court; formal recognition from a religious court is required to make it valid. This article also refers to other articles (129, 130, and 131) which regulate in detail the ways and procedures for executing the divorce. (Zainuddin Ali, 2006:82)

Article 129 provides further details on the procedure to be followed by a husband who wishes to impose a divorce. According to this article, the husband must submit an application, either orally or in writing, to the religious court in charge of the area where the wife resides. In the application, the husband must include the reasons underlying his desire for divorce and request that the court hold a special hearing for the purpose of imposing the divorce. (M. Yahya Harhap, 2006:119) Talak or divorce conducted outside the court is a phenomenon that is still common in various regions in Indonesia, including in rural and urban areas. Although Indonesian law requires divorce to be done through the courts, many couples choose to divorce without involving official legal institutions.

Discussion

Epistimology of *Sadd al-zari'ah*

Sadd al-zari'ah (سَدُّ الذَّرِيعَةِ) is a term consisting of two syllables, namely *sadd* and *al-zari'ah*, each of which means blocking / closing / breaking, and *al-zari'ah* which means intermediary or mediator (Achmad Warson Munawwir, 2007: 620). Therefore, this term can be interpreted as closing something that has the potential to lead to haram things.

As for the term, there are several views from the scholars. Wahbah al-Zuhaili argues:

مَنْعُ كُلِّ مَا يَتَوَصَّلُ بِهِ إِلَى الشَّيْءِ الْمَمْنُوعِ الْمُشْتَمِلِ عَلَى مَفْسَدَةٍ أَوْ مَضَرَّةٍ .

Meaning: Preventing everything (words and actions) that convey something that is prevented / prohibited that contains damage or danger (Wahbah al-Zuhaili, 1999: 108).

The *ushul* scholars provide various definitions related to the concept of *sadd al-zarî'ah*. Al-Syathibi defines it as the act of preventing something permissible from becoming a path to the haram. Ibn *Rushd* added that *sadd al-zarî'ah* is related to something that is legally halal, but has the potential to become an intermediary to forbidden actions, such as buying and selling practices that can lead to usury. Meanwhile, Al-Qarafi emphasized that the intermediary has the same law as the goal; if the intermediary leads to the haram, then the intermediary becomes haram, as well as if it leads to the obligation, then the intermediary becomes obligatory. Wahbah al-Zuhaili refines this definition by explaining that *sadd al-dzarî'ah* is everything that has the potential to lead to the prohibition of sharia.

Although these definitions use different wording, the point remains the same: preventing the path that leads to damage. Ali Jum'ah clarifies this meaning by referring to the words of Aisha r.a. narrated by Muslim, in which she said, "If the Messenger of Allah saw what the women were doing (at this time), he would have forbidden them from going to the mosque." This shows that even if something is basically permissible, if there is a great potential for it to cause harm, it should be prevented. This principle has been used by muftis throughout history to prohibit various actions as a preventive measure to close the door to evil, even if the prohibition is not directly derived from the text.

However, the application of *sadd al-dzarî'ah* must be done carefully and adapted to the context of the times, because this prohibition merely functions as a prevention, not an absolute prohibition. In addition, this principle must also consider the need to pave the way for the sake of benefit, as in the *ushul* rule which states, "The means is the same as the end" and "Something that an obligation cannot be perfect without it, then it becomes obligatory." (Dulfikar, 2023:2)

Zari'ah is generally understood as a means or path to a goal. This understanding is in line with the opinion of Abdul Karim Zaidan, who defines it linguistically as a means or path to something, both positive and negative values, both in the form of words and actions. In Islamic law, *zari'ah* is divided into two: *fathu al-zari'ah* (opening the way) and *sadd al-zari'ah* (closing or blocking the way). *sadd al-zari'ah* specifically refers to the act of preventing something that can lead to things that are prohibited, have a negative impact, or are harmful. Another opinion states that *sadd al-zari'ah* means closing and blocking a path that has the potential to bring damage. If a matter is considered a means that has the potential to cause damage or harm, then the means needs to be closed or prevented. This is what is called *sadd al-zari'ah*. (Firman Muh Arif, 2019: 11)

The legal basis of *sadd al-zari'ah* in Q.S Al-An'am/6: 108:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ كَذَلِكَ زَيْنًا لِكُلِّ أُمَّةٍ عَمَلُهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ
مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ

Translation: "And do not abuse those whom they worship besides Allah, for they will abuse Allah without knowledge. Thus, we have made every nation consider their work good. Then to their Lord is their return, and He will tell them what they

have done."

This verse teaches the importance of maintaining morals and ethics in preaching and respecting the beliefs of others. Allah forbids Muslims from denouncing or abusing the idols or idols worshipped by polytheists, as such actions may provoke them to abuse Allah in an inappropriate manner, based on their ignorance and anger. Thus, this verse emphasizes respecting differences and preventing greater fitnah or conflict. In the end, every community will return to Allah, and He will tell them what they have done (Al-Qurthubi, 1964:50).

This verse also teaches that Muslims should not denounce the idols of others to prevent them from denouncing Allah. This is a clear example of the application of *sadd al-zari'ah*, where the act of denouncing idols, although it may be justified in certain contexts, is prohibited because it may trigger a greater negative reaction, namely the denigration of Allah. Thus, the prohibition of denouncing other gods serves as a preventive measure to avoid greater harm, namely slander against Allah. (al-Khazraji, 2006:104)

According to syarak terms, the pillars of *sadd al-zari'ah* include three main elements. First, *wasilah* or *al-mutazari' bih*, which is something that is a tool or means to achieve a goal. Second, *al-Ifḍā*, which is something that connects the tool or means with the desired goal. Third, *al-Mutawassal ilayh*, which is an action that is not essentially prohibited, but is considered the ultimate goal (Ahmad Sayyid, 2012: 125).

Zari'ah classification according to Ibn Taymiyyah as quoted by Abdullah (2004) in his book *sadd zarai" inda Shaykhul Islam ibn Taymiyyah* is as follows:

- 1) *Zari'ah* that inevitably leads to harm, an action that will almost certainly result in what is prohibited, such as drinking alcohol that will inevitably lead to drunkenness.
- 2) *Zari'ah* that leads to harm in many cases, actions that in many circumstances lead to harm, although not always, such as the arms trade in a society that has the potential to create violence.
- 3) *Zari'ah* that rarely leads to harm, but still has the possibility: An action that in certain circumstances may lead to something forbidden, such as giving a loan with good intentions, but it may be used for the wrong purpose.
- 4) *Zari'ah* that rarely leads to harm, but is feared: Actions that generally do not cause harm but in exceptional circumstances can cause harm.

***Sadd al-zari'ah* perspective**

In the case of differences in the law of divorce outside the court between the MUI fatwa and KHI, this context falls into the second category, namely *zari'ah*, which in many cases has the potential to bring harm, although not always:

The Zari'ah Context in this Case:

1. Divorce Outside the Court (According to MUI Fatwa)

- 1) MUI's fatwa allows out-of-court divorce on religious grounds, where divorce is religiously valid even though it does not go through state institutions.
- 2) *Zari'ah*: This act may not necessarily cause immediate religious harm, but in many cases, it will lead to serious problems for women and children, especially in relation to post-divorce rights (maintenance, *iddah* period, child custody, etc.). The absence of an official record makes divorce difficult to prove legally, which has great potential to harm one of the parties.
- 3) Women who do not receive alimony during the *iddah* period because the divorce is not recorded, or children who have difficulty obtaining inheritance rights or recognition from their father because there is no official record of the parents' divorce.

2. Divorce in Court (According to KHI)

- 1) KHI stipulates that any divorce must be done through the courts to be valid under state law. This process provides legal protection to the rights of all parties involved.
- 2) *Sadd al-zari'ah*: In this case, it means rejecting or prohibiting divorce outside the court, not because the divorce is not religiously valid, but to prevent the very possible harm. If all divorces are made compulsory through the courts, then official records are available, the rights of wives and children are protected, and there is no doubt about the right to maintenance, the *iddah* period, or inheritance.

By applying *sadd al-zari'ah* to this issue, we are focusing on preventing the damage that is very likely to result from this difference of opinion, namely:

3. *Zari'ah* Talak outside the Court:

- 1) Out-of-court divorces can be considered *zari'ah* because although they are religiously valid, divorces without official registration often cause a lot of harm to women and children. This includes the loss of legal rights such as the right to maintenance, legal recognition of children, and clarity of marital status.
- 2) The *sadd al-zari'ah* closes the door to this potential avenue of legal uncertainty by requiring divorce through the courts. This prevents confusion regarding divorce status and ensures all rights are legally fulfilled.
- 3) *Zari'ah* in the Context of *Iddah* Period

The *iddah* period in cases of out-of-court divorce can be a *zari'ah* that has the potential to lead to harm, especially when the divorce is not officially recorded. Here are some of the potential harms that arise from this difference

If an out-of-court divorce is recognized by the MUI fatwa, but not recorded in court, a woman may begin to observe the *iddah* period without legal clarity as to when the divorce is considered valid. This creates uncertainty regarding when the *iddah* period ends and when she is legally free to remarry. If a woman enters the *iddah* period based on the MUI fatwa, but the divorce has not been officially recorded in court, her marital status in the eyes of state law remains unresolved. This can cause problems if she wants to remarry after the *iddah* period ends according to religious calculations, but state law still considers her not officially divorced. The lack of official court registration of divorce can cause women to lose their right to maintenance during the *iddah* period. Since the divorce is not recorded, the ex-husband may argue that he has no legal obligation to provide maintenance during *iddah*.

Out-of-court divorce becomes a *zari'ah* that opens the door to the loss of a woman's right to maintenance during *iddah*, so this can be considered a path to harm. *Sadd al-zari'ah* will try to close this potential damage by requiring divorce through the court. If the *iddah* period is calculated based on a divorce that is not recorded in court, a woman may remarry after completing the *iddah* period religiously, but under state law, she may still be considered a legal wife. This raises serious legality issues, where her new marriage could be considered invalid or bigamy. A divorce that is not officially recorded can become a *zari'ah* that leads to further legal problems, such as the new marriage being invalid or considered to be in violation of bigamy rules. *sadd al-zari'ah* prevents this damage by ensuring the divorce is recorded in court, so that the woman's legal status is clear.

Aspects	MUI Fatwa	KHI
Definition of Talak	An out-of-court divorce is permissible and religiously valid, provided that there is a shar'i reason, the <i>iddah</i> period is counted from the time of the divorce, and it is reported to the court.	Talak is only valid if done through a religious court hearing, as stipulated in Articles 115 and 117 KHI. Divorce outside the court is considered invalid according to state law.
Zari'ah Context	- Religiously valid but unregistered divorce often causes harm to women and children, such as loss of maintenance, neglect of children's rights, and unclear legal status. -	- KHI closes the opportunity for divorce outside the court to avoid potential legal disadvantages. - Requiring the divorce process in court as a form of <i>sadd al-zari'ah</i> to prevent

	It has the potential to become a <i>zari'ah</i> that brings damage due to the absence of legal protection.	harms such as uncertainty of marital status, wife's rights, and child protection.
Women's and Children's Rights	<ul style="list-style-type: none"> - There is no guarantee of maintenance during the iddah period if the divorce is not recorded. - Children may lose recognition and inheritance rights because the divorce has no official record. 	<ul style="list-style-type: none"> - The rights of the wife and children are better protected because there is an official record of the divorce. - Alimony, child custody, and the iddah period are regulated in accordance with the court decision, reducing the potential for neglect of rights.
Iddah Period	<ul style="list-style-type: none"> - The iddah period is calculated from the time the divorce is religiously pronounced, but without an official record it can lead to legal uncertainty. - Women can face legality issues if they want to remarry after the iddah period has been completed according to religion, but the divorce status has not been legally recorded. 	<ul style="list-style-type: none"> - The iddah period is clear because it is calculated based on a court decision. - There is no potential overlap between religious provisions and state law, so the legality of women's status is more assured.
Potential Damage (Mudarat)	<ul style="list-style-type: none"> - Out-of-court divorce can lead to loss of maintenance rights, neglect of children's rights, and problems with the legal status of the marriage. - <i>Zari'ah</i>: A path to corruption because the divorce is not officially recorded. 	<ul style="list-style-type: none"> - There is no potential legal harm due to a registered divorce. - <i>Sadd al-zari'ah</i>: Preventing harm by ensuring all divorces go through the courts, so that the rights of the parties concerned are protected.
Application of <i>Sadd al-Zari'ah</i>	Not fully implemented, as although religiously valid, unofficially recorded divorces can lead to many negative repercussions.	It is strictly enforced to close opportunities for mischief through mandatory divorce in court, protecting the legal status, maintenance, and rights of women and children.

4. Practical Solution Through *Sadd al-zari'ah*

- 1) Harmonizing religious law with state law. By requiring the registration of divorce in court, *sadd al-zari'ah* prevents the damage that may arise from unrecorded divorce. Although divorce is already religiously valid according to the MUI fatwa, registration through the court provides protection for civil rights.
- 2) Providing education and socialization to the community on the importance of official divorce procedures. This education aims to close the possibility of divorce being conducted without full knowledge of its impact, especially for women who may not understand the legal consequences of an out-of-court divorce.
- 3) Sanctions or binding rules. States can impose stricter sanctions or rules on out-of-court divorces to deter individuals who take advantage of legal ambiguities. This is to ensure that court registration is the required route, in order to protect the rights of wives and children.

5. Enforcement of Official Records

- 1) By recording divorce through the court, *sadd al-zari'ah* functions as a positive *zari'ah*, namely preventive measures that are deliberately designed to avoid problems that arise due to the absence of legal protection. In other words, the obligation to record divorce in court is a form of "closing the door" to all legal and social problems that can arise from unrecorded divorce.

According to Mujib (2018) A husband who has fulfilled the conditions and pillars of *syar'i*, all scholars agree on the validity of the divorce he has imposed. Talak can be done in various ways that indicate the breakup of a husband-wife relationship, either in writing or by direct speech, gestures for those who cannot speak, or through a messenger who conveys the divorce to the wife who is in another place. In this case, the messenger acts on behalf of the husband, so the divorce is still valid. Divorce is the exclusive right of the husband and is valid if done in a state of consciousness by a husband who is of sound mind and puberty. Once the divorce is pronounced, it takes effect immediately without the need to involve the Court. According to the majority of scholars, the divorce is valid whether or not witnesses are present.

However, with the intervention of the Court in the divorce process in society, divorce is no longer the absolute right of the husband. Instead, part of the right to divorce is now taken over by the state through the Courts. A husband who wants to divorce his wife must apply to the Court giving reasons why he wants a divorce. After the Court process, if the petition is accepted, the divorce will be processed according to Court procedures. However, if the application is rejected, the party has the right to appeal to the Religious High Court or Cassation to the Supreme Court.

The purpose of imposing divorce before the Court is to protect the institution of family and provide legal legality, especially where divorce may be difficult to finalize. Although divorce is a private legal matter, it is related to public issues, such as the fate of children whose parents are divorced, or the status of spouses who are separated or still in a marriage. Therefore, divorce cannot be done haphazardly, and for the good and well-being of society.

The concept of *sadd al-zari'ah* in this context supports the approach of the Compilation of Islamic Law (KHI) on the grounds of preventing the negative impact of divorce conducted outside the court. Out-of-court divorce, although valid according to sharia based on the MUI fatwa, risks causing problems such as violations of women's rights, uncertain legal status, and prolonged conflict due to the absence of official records.

In this case, the purpose of divorce before the court is to protect the institution of the family and provide legal certainty where marriages can be dissolved easily. In order to ascertain whether the grounds for divorce have been met, the divorce must be based on research. Therefore, a divorce pronounced before the court indicates that the grounds have been examined during the court hearing process. As an effort to prevent the occurrence of easy divorce, based on the concept of *maslahat mursalah*, divorce can be regulated and included in the law so that it must be carried out in front of the court. Likewise, with the suitability of the concept of *sadd al-zari'ah* with consideration of the *mudharat* that arises from divorce that is not carried out through the intermediary of the court, such divorce should be declared invalid. (Basyir, 1999: 84)

Although in some fiqh literature it has previously been stated about the husband's freedom to divorce his wife, so that the divorce falls instantly whenever the husband utters it. From the perspective of safeguarding the interests of the family (*hifz nasl*), the stability of the law and the compliance of society, this situation is less *beneficial* for women and children. Therefore, divorce must be processed in court for the benefit of the community. Therefore, there is a change in the law where the husband has to pronounce the divorce in front of the court rather than being able to do so at any time. In accordance with the following *fiqhiyah* rule, such a change in the law is considered valid:

لَا يُنْكَرُ تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الزَّمَنِ وَالْمَكَانِ وَالْأَحْوَالِ وَالنِّيَّاتِ وَالْعَوَائِدِ

Meaning: There is no denying that the ruling changes with the change of times and places. (Al-Zarqa, 1994:88)

Ibnul Qayyim says in his book *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* that:

تَغْيِيرُ الْفَتْوَى وَاجْتِلَافُهَا بِحَسَبِ تَغْيِيرِ الزَّمَنِ وَالْمَكَانِ وَالْأَحْوَالِ وَالنِّيَّاتِ وَالْعَوَائِدِ

It means: Changes in fatwas and their differences depend on changes in times, places, conditions, intentions and customs. (Ibnul Qayyim, 1991:14).

Ibnul Qayyim emphasizes that flexibility in fatwa issuance is important to adapt to changing situations. This is to ensure the relevance of the justice of Islamic law in various contexts of life. For example, a ruling applied at one time or place may need to be adjusted at another time or place due to changes in social, economic or cultural conditions. He also argues that the main purpose of Shari'ah is the benefit of the people. Therefore, when the context or circumstances change, the interpretation of the law must also take into account these changes so that it remains relevant and beneficial to the people. (Ibnul Qayyim, 1991: 14-15)

Since ancient times, Islamic law has continued to develop and process in accordance with the times. Even since long ago the scholars have endeavored to make Islamic law applicable based on the context of the existing era. So that some of them sometimes have two opinions regarding one issue, such as Imam Shafi'i who is famous for his *qaul al-qodim* and *qaul al-jadid*. Likewise, with Caliph Umar Bin al-Khattab who is famous for his bold and decisive attitude in interpreting Islamic law in order to better realize the *benefit* for everyone and remain in accordance with the existing times.

In general, social change, whether in culture, structure or social behavior, has an impact on the development of Islamic law. Umar al-Khattab, as a mujtahid who ruled several Islamic territories, came up with many creative ideas. This happened because of new needs and changes in existing traditions. One example is the hadith narrated by Ibn Abbas regarding Umar al-Khattab's *ijtihad* on the issue of divorce: (Raharjo, 1998: 75)

عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ الطَّلَاقُ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَبِي بَكْرٍ وَسَنَتَيْنِ مِنْ خِلَافَةِ
عُمَرَ، طَلَاقُ الثَّلَاثِ وَاحِدَةً. فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: إِنَّ النَّاسَ قَدْ اسْتَعْجَلُوا فِي أَمْرِ كَانَتْ لَهُمْ فِيهِ
أَنَاءَةٌ، فَلَوْ أَمُضِيَتْ عَلَيْهِمْ، فَأَمُضَاهُ عَلَيْهِمْ.

Meaning: "Ibn Abbas said: During the time of the Messenger of Allah (peace and blessings of Allah be upon him), Abu Bakr and two years during the khilafah of 'Umar al-Khattab, a divorce pronounced at once was counted once. Then Umar said: "Indeed, people are hasty in matters of divorce which they should be careful about. So, if that is the case, we will do what they say." (Muslim, 2006, 667).

In this context, Yusuf Al-Qaradhawi, a contemporary scholar, explains that at the beginning of the caliphate of Umar, three divorces at once were considered invalid and only counted as one divorce. This opinion was also supported by Ibn Taimiyyah, who believed that three divorces at once were only valid as one divorce. (Yusuf Al-Qaradhawi, 1997: 10) However, because at that time many people often recited three divorces at once, Umar finally determined that the divorce was counted as three divorces (*ba'in kubra*) as a sanction, because the action was considered to underestimate the verses of Allah Swt.

Yusuf Al-Qaradhawi argues that the decision taken by Umar bin Khattab was the first step in the process of adjusting Islamic law. That is, because there are urgent conditions, three divorces at once are considered to fall three. Al-Qaradhawi considers Umar's decision as one of the evidences related to the implementation of

the rules mentioned earlier. He thinks that changes in times and times can affect the law of divorce three at a time as decided by Umar. (Yusuf Al-Qardhawi, 2018: 210)

Umar ibn Khattab's decision to recognize three divorces as a single divorce has important relevance in the context of the issue of out-of-court divorce in modern times. Here are some points that can be correlated with Umar's decision:

2. Prevention of abuse.

Umar bin Khattab took this step to prevent the abuse of divorce, which in modern times often occurs outside of court. This abuse can include divorce given frivolously without considering the consequences, or divorce given in an emotionally unstable state.

1) Protection of the public good

Umar's decision to penalize triple divorce as a single divorce was also aimed at protecting the social good. This includes protecting the rights of women and children who are often the victims of ill-considered divorce.

2) Flexibility in the application of the law

The rules of fiqh:

إِذَا ضَاقَ الْأَمْرُ اتَّسَعَ

Meaning: "When things become difficult there will be respite or ease".

(Qudamah, 1997:120)

Umar's application of this rule to the problem he decided demonstrates flexibility in the application of Islamic law. Although the rules of divorce in Islam are relatively clear, there is room to adapt their application according to the needs and social contexts that change from time to time.

3) Relevance to the issue of out-of-court divorce

In modern times, the issue of out-of-court divorce often faces complex legal and social challenges. Countries and societies face the challenge of regulating the practice of out-of-court divorce fairly and in accordance with the principles of Islamic justice. The decision of Umar bin Khattab can be used as a reference point to understand the importance of proper regulation in dealing with the issue of divorce in society.

Conclusion

This critical discourse analysis of the Majelis Ulama Indonesia (MUI) fatwa and Kompilasi Hukum Islam (KHI) legal frameworks reveals significant tensions between traditional Islamic jurisprudential principles and contemporary legal practice regarding extra-judicial divorce. The application of *sadd al-zari'ah* (blocking the means) as a preventive legal mechanism demonstrates both the adaptability and limitations of Islamic law in addressing modern marital dissolution challenges.

The examination of MUI fatwas indicates a cautious approach toward extra-judicial divorce, emphasizing the principle of *sadd al-zari'ah* to prevent potential abuse and protect vulnerable parties, particularly women and children. This preventive stance reflects a deeper concern about maintaining social stability and ensuring that divorce procedures remain within established religious and legal parameters. However, the discourse analysis reveals an underlying tension between scriptural flexibility and institutional control over marital dissolution.

The KHI framework, while attempting to harmonize Islamic principles with Indonesian civil law, demonstrates inconsistencies in its application of *sadd al-zari'ah*. The legal provisions show a preference for judicial oversight in divorce proceedings, yet allow certain extra-judicial mechanisms that potentially undermine the very protections the principle seeks to establish. This contradiction highlights the complex negotiation between religious authenticity and legal pragmatism in contemporary Muslim societies.

The critical discourse analysis further reveals how power dynamics within religious and legal institutions shape the interpretation and application of *sadd al-zari'ah*. The privileging of institutional authority over individual agency in marital dissolution reflects broader questions about religious interpretation, gender equity, and legal autonomy in Islamic jurisprudence. The discourse surrounding extra-judicial divorce thus becomes a site of contestation between traditional religious authority and evolving social realities.

The study concludes that while *sadd al-zari'ah* serves as a valuable protective mechanism against potential harm in divorce proceedings, its implementation within current MUI and KHI frameworks requires significant reform to address contemporary challenges effectively. The principle's potential for promoting justice and preventing harm can only be realized through more nuanced application that considers the diverse circumstances of modern Muslim families while maintaining core Islamic values. Future research should explore alternative interpretive frameworks that balance the protective intent of *sadd al-zari'ah* with the need for accessible and equitable divorce procedures. Additionally, comparative analysis with other Muslim-majority jurisdictions could provide valuable insights into more effective integration of traditional Islamic principles within modern legal systems.

The implications of this analysis extend beyond divorce law to broader questions of Islamic legal methodology, institutional authority, and social justice in contemporary Muslim societies. As Islamic legal frameworks continue to evolve in response to changing social conditions, the thoughtful application of principles like *sadd al-zari'ah* will remain crucial for maintaining both religious authenticity and social relevance.

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