

# Talak Ba'in Sughra Maşhlahah Perspective in Malaysia and Border Communities in Sambas, West Kalimantan Indonesia

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**Abstract:** This research discusses the legal claims of wives to husbands *Maşhlahah* perspective on the border communities of Indonesia-Malaysia sambas West Kalimantan. This study was based on *maşhlahah al-dharuriyah*, *maşhlahah tahsiniyah* and *maşhlahah hajiyah*. According to the school of Imam Shafi'i *talaq ba'in shughra* is also called *khulu'* where the husband is not allowed to reconcile with the wife during the period of iddah and the husband needs a new marriage contract in order to return to the wife who has mentalized with *ba'in shughra*. In order for this research to be directed and systematic, the subject matter is developed in the research question, namely: What is the benefit aspect of the wife's lawsuit to the husband from the perspective of *maşhlahah*? This type of qualitative research is field *research* with an Islamic legal approach. The informant in this study is the Malay Sambas community who are divorce perpetrators. Based on the results of the research obtained, that the causes of *talaq ba'in shughra* in Sambas based on data obtained from the Malay Sambas community are, household economic problems so that the wife so that the wife is not fulfilled her rights, electrocution and continuous quarrels so that the wife cannot stand the situation and the husband leaves his wife and children for no reason so that there is no news so that the wife feels no Note. with the *talaq ba'in sugra* there will be an element of harm for divorced couples in the Indonesian-Malaysian border communities, such as, it will disrupt the harmony of the family, and the husband cannot return to his ex-wife because the *talaq bain sughra* continues.

**Keywords:** Talaq Ba'in Sughra, maşhlahah, border indonesia-malaysia

**Abstrak:** Penelitian ini membahas tentang tuntutan hukum istri terhadap suami ditinjau dari perspektif *Maşhlahah* studi pada masyarakat perbatasan Indonesia-Malaysia sambas, Kalimantan Barat. Penelitian ini didasarkan pada *maşhlahah al-dharuriyah*, *maşhlahah tahsiniyah* dan *maşhlahah hajiyah*. Menurut mazhab Imam Syafi'i *talaq, ba'in shughra* juga disebut *khulu'* di mana suami tidak diperbolehkan untuk berdamai dengan istri selama masa iddah dan suami membutuhkan kontrak pernikahan baru agar dapat kembali kepada istri yang telah mentalisasi dengan *ba'in shughra*. Agar penelitian ini terarah dan sistematis, pokok bahasan dikembangkan dalam pertanyaan penelitian, yaitu: Apa aspek manfaat dari gugatan istri kepada suami dari perspektif *maşhlahah*? Jenis penelitian ini adalah kualitatif (penelitian lapangan) dengan pendekatan hukum Islam. Informan dalam penelitian ini adalah masyarakat Melayu Sambas yang menjadi pelaku perceraian. Berdasarkan hasil penelitian yang diperoleh, bahwa penyebab talak *ba'in shughra* di Sambas berdasarkan data yang diperoleh dari masyarakat Sambas adalah, masalah ekonomi rumah tangga sehingga istri tidak terpenuhi hak-haknya, menyakiti istri (KDRT) dan pertengkaran terus menerus sehingga istri tidak tahan dengan keadaan serta suami meninggalkan istri dan anak-anaknya tanpa alasan sehingga tidak ada kabar sehingga istri merasa tidak diperhatikan, dengan talak *ba'in sugra* akan ada unsur kerugian bagi pasangan yang bercerai di masyarakat perbatasan Indonesia-Malaysia, seperti, akan mengganggu keharmonisan keluarga, dan suami tidak bisa kembali ke istrinya karena talak bain sughra terus berlanjut.

**Keywords:** Talaq Ba'in Sughra, maşhlahah, perbatasan, indonesia-malaysia

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## Introduction

Islamic teachings teach that in marriage each couple expects a harmonious home life, love and affection, loyalty, and harmonization between husband and wife, so that there is no intention to destroy the marriage that has been built on the basis of the covenant in the marriage itself. The Qur'an has explained and given its exact description in Sura ar-Rūm/30:21<sup>1</sup> that a marriage is an education in forming a peaceful and loving family order as well as love and affection commonly referred to in Islamic teachings by the term *sakinah mawaddah wa rahmah*, which is based on religious norms so as to require communication and interaction between husband and wife so as to protect and protect each other in the family. Marriage law is an integral part of Islamic Shari'a which is inseparable from the dimensions of Islamic creed and morals.<sup>3</sup>

Al-Rāzi explains the purpose and purpose of the explanation of the verse ar-Rūm/30:21 as summarized in the word *litaskunū* which implies the obligation to present a *mawaddah* and *rahmah* atmosphere<sup>4</sup>. Even according to al-Rāzi, with the command *litaskunū* which is also one of its meanings is to multiply offspring in the sense of reproduction that takes place during the marriage that is fostered so as to give birth to the next generation of terms in Islamic teachings amanah or entrustment of Allah SWT. the so-called biological child.<sup>5</sup> Jalāluddīn al-Māhallī in his book explains in the frame of *fiqhīyyāh*, the meaning of marriage using the term an-nikāh or *tazwīj*, which literally means "intercourse or mixing" <sup>6</sup>. Shar'i nikah is a contract that contains justification for conjugal relations using lafadz *inkah* (marrying), or lafaz *tazwīj* (marrying)". From this explanation, marriage is a mission that has a purpose for the happiness of the world and the hereafter because marriage is a long worship.

In the Compilation of Islamic Law Chapter II Article 3, the purpose of marriage has been listed with in-depth study so as to produce an agreement in the form of explaining one of the purposes of marriage is to dream of a harmonious home life in Islamic terms, namely a family that is *sakinah, mawaddah, wa rahmah*. Thus, the existence of marriage, is expected to protect the existence in the formation of the family and as a contribution to the family life that has been fostered, which will eventually give birth to a harmonious and peaceful family that becomes a small part of a sociality life related to the rights and obligations of husband and wife in a dignified community environment. According to Dakhoir, according, the vertical-coordinated relationship between husband and wife in the domestic environment of the household has reduced the relationship between the two as equal

<sup>1</sup> Asman, et, el, *Pengantar Hukum Keluarga Islam* (Jambi: PT. Sonpedia Publishing Indonesi, 2023), 1.

<sup>2</sup> Kementerian Agama RI, *Depetemen Agama RI, Al-Quran Dan Terjemahnya* (Jakarta: Diponegoro, 2019), 324.

<sup>3</sup> Mariani Amberi, "Efforts to Prevent Child Age Marriage in The Study of Islamic Legal Philosophy and Indonesia Positive Law." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7.1 (2023): 239-260. <http://dx.doi.org/10.22373/sjhk.v7i1.12404>.

<sup>4</sup> Abū Abdillāh Muhammad, *Mafātiḥ Al-Gaib, Juz. 12* (Jakarta: CD Maktabah asy-Ṣyamīlāh, 2005), 225.

<sup>5</sup> Taurat Afianti, Ani Wafiroh, and Muhamad Saleh Sofyan. "Efforts of Married Couples to Have No Children in Maintaining Household Harmony (Case Study in Siru Village, West Manggarai Regency, NTT)." *Al-IHKAM: Journal of Family Law Department of Ahwal al-Syakshīyyah Faculty of Sharia IAIN Mataram* 14.2 (2022): 161-184. <https://doi.org/10.20414/alihkam.v14i2.6927>.

<sup>6</sup> Robi'atul Adawiya, *Reformasi Hukum Keluarga Islam Dan Implikasinya Terhadap Hak-Hak Perempuan Dalam Hukum Perkawinan Indonesia Dan Malaysia* (Jawa Barat: Nusa Litera Inspirasi, 2019), 69.

partners in building a family that is sakinah towards servitude to Allah SWT. as the primordial purpose of the marriage itself<sup>7</sup>.

The purpose of marriage in Islam is to protect from conflict with married couples so that peace and harmony are realized in the household that is fostered, a peace in the household will not be achieved if the married couple always unhappy conflicts that result in divorce<sup>8</sup>. Because divorce is a halal act but is hated by Allah SWT<sup>9</sup>. The occurrence of divorce against married couples in Islam is very understanding of the incident, because Islam provides opportunities for guidance, both by divorce talaq and by divorce lawsuit. This is in order to create justice and independence between married couples who are in conflict. In the review of Islamic legal literature, Islamic law permits the breakup of marriages even if it is forced that the divorce case is more beneficial than the marriage itself which has long been bound.

Divorce lawsuit is a divorce lawsuit filed by the wife<sup>10</sup>. Law No. 1 of 1974 and Government Regulation No. 9 of 1975 do not call this "divorce lawsuit" but say that this divorce is a lawsuit. The word "Divorce Lawsuit" as stated in Article 40 of Law Number 1 of 1974 concerning Marriage, and Article 114 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), is intended to apply to husband or wife, this is emphasized in Article 20 (1) of Government Regulation Number 9 of 1975 concerning Marriage, that "A divorce lawsuit is filed by a husband or wife or his attorney to the Court whose jurisdiction includes the place of residence of the defendant". Article 114 of the Compilation of Islamic Law confirms that, the breakup of a marriage caused by divorce, can occur due to 'talaq' and 'divorce suit', but in the Court, a divorce lawsuit filed by the husband is known as divorce talaq, while a divorce lawsuit filed by the wife is better known as "divorce lawsuit". Article 119 of the Compilation of Islamic Law states that talaq *ba'in shughra* is talaq that should not be referred to but may be a new marriage contract with her ex-husband even in iddah. According to *qaul jadid*, the school of imam shafi'i talaq *ba'in shughra* is also called *khulu'*. In Islamic teachings, divorce is explained as based on the hadits of the Prophet SAW. as follows:

"Azhar bin Jamil told us Abdul Wahhab Ats Tsaqafi told us Khalid of Ikrimah from Ibn Abbas that: The wife of Thabit bin Qais came to the Prophet (peace and blessings of Allaah be upon him) and said: "O Messenger of Allah, I am not reproaching Thabit bin Qais for his religion or morals, but I am afraid of kufr in Islam." So the Prophet (peace and blessings of Allaah be upon him) said: "Do you want to return his garden?" He replied: "Yes." The Prophet (peace and blessings of Allaah be upon him) said: "Accept the garden, and divorce it with talaq one"<sup>11</sup>.

The explanation of the above hadith shows that the right of divorce is sued, in the sense that the wife can claim the divorce of her husband by paying damages or *'iwādh* to the

<sup>7</sup> Ahmad Dakhoir and Sri Lumatus Sa'adah. "Meta-Juridical Analysis on the Legal Arguments beyond Changes in Indonesian's Marriage Age Rule." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18.1 (2023): 80-101. <https://doi.org/10.10105/al-lhkam.v18i1.7162>.

<sup>8</sup> Muzakkir Abubakar, "Meningkatnya Cerai Gugat Pada Mahkamah Syar'iyah." *Kanun Jurnal Ilmu Hukum* 22.2 (2020): 302-322. <https://doi.org/10.24815/kanun.v22i2.16103>.

<sup>9</sup> Mirsa Yainahu, "Cacat Badan Sebagai Alasan Perceraian (Undang-undang No. 1 Thn. 1974 Tentang Perkawinan dan KHI)." *Al-Mizan: Jurnal Kajian Hukum dan Ekonomi* (2021): 1-18. <https://doi.org/10.59115/almizan.v7i01.55>.

<sup>10</sup> Khoiruddin Nasution, *Hukum Perkawinan & Warisan Di Dunia Muslim Modern* (Yogyakarta: Academia & Tazzafa, 2012), 184.

<sup>11</sup> Hadits Soft, *Aplikasi Kitab Shahih Bukhari Nomor Hadis 4867 Dalam, Kitab Talaq (Khulu' Dan Apa HubungAannya Dengan Talak)*, 2018, 2671.

husband, and the wife can divorce herself through *talaq ba'in shugra*<sup>12</sup>, Although the right to divorce basically belongs to her husband. In the process of *talaq ba'in shugra* or *khulu'* there is a provision to give compensation '*iwādh*' to the husband, in this case according to the tafsir ulama fiqh this is mandatory and a condition in *talaq ba'in shugra* or *khulu'*<sup>13</sup>.

*Talak ba'in shugra* itself is a solution in Islam namely in the study of fiqh in relieving the heavy burden of domestic problems, an example of the contract is the wife saying to her husband: "divorce me and you will get compensation or '*iwādh*' from me in the form of one thousand dirhams" . This legal agreement has legal implications that the *ba'in shugra* of divorced women<sup>14</sup>. The permissibility of divorce in Islam is a solution for a wife against the arbitrariness of her husband, which leads to a loss of love and affection or the wife's displeasure with the husband's attitude and behavior. On the other hand, the high rate of divorce from wives to their husbands through *talaq ba'in shugra* in Sambas Regency needs a more in-depth study in terms of constituents and in terms of benefits.

From the initial data of this study, which can be revealed, among others, divorce cases from year to year always increase in the latest data taken in December 2023 totaling 6,661 divorce cases, this data was obtained directly from the Sambas Religious court as a result of a brief interview with Mr. Bustani<sup>15</sup> Of particular concern is the large number of wives suing their husbands in the Sambas Religious Court through *talaq ba'in shugra*. Based on the age data of divorce plaintiffs resulting from development in the Religious Court<sup>16</sup> and in the Malay Sambas community can be seen from 20 informants divorced wives to their husbands, the highest age is between 25 years to 35 years with a total of 5 people and a percentage of 50%. While 25 years and under with 3 people and the percentage is 30% and 36 years and over only has 2 people with a percentage of 20%.<sup>17</sup> With this, it can be seen that the average age of divorce plaintiffs is more dominant at the age of 26 to age 35 and age 25 and below, the percentage is 50% and 30%.<sup>18</sup> Based on these data, the divorce rate that occurred in the Class 1B Religious Court of Sambas Regency was dominated by cases of wives filing lawsuits against their mothers. 60-80% of divorce cases occur from *talaq ba'in shugra*.

Based on the case above, by looking at divorce in the border area of Indonesia - Malaysia Sambas every year increases, especially the divorce of the wife to her husband through *talaq ba'in shugra*, the researcher wants to conduct a more in-depth study in finding from the side of truth and benefit in divorce lawsuit of wife to her mother in the form of *talaq ba'in shugra* . Likewise, the values of justice after divorce and divorce and how to overcome the wife's *ba'in shugra* *talaq* to her mother are studied through the benefit of the Sambas Malay community in West Kalimantan.

<sup>12</sup> Sayyid Sabiq, *Fiqh Sunnah, Terj. Moh. Thalib, Jilid 8.* (Bandung: Al-Ma'arif, 1994), 94.

<sup>13</sup> Muhammad Fu'ad Abdul Baqi, *Fathul Bari* (Kairo: Daarul Hadits, n.d.), 5273.

<sup>14</sup> Tirmidzi, "Kumpulan Hadits," Ilmu Islam - Portal Belajar Agama Islam," Portal Belajar Agama Islam, 2022, <https://ilmuislam.id/hadits/35584/hadits-tirmidzi-nomor-1107>.

<sup>15</sup> Bustani (52 years old), As a judge for Handling Divorce at Sambas Religious Court Class 1 Samba Regency, *Interview*, Sambas, December 7, 2023.

<sup>16</sup> Pengadilan Agama Sambas, "Sistem Informasi Penelusuran Perkara', *siap.pa.go.id*. 14 Mei 2020. [https://sipp.pa-sambas.go.id/list\\_perkara/page/333/](https://sipp.pa-sambas.go.id/list_perkara/page/333/) (31 Desember 2023).

<sup>17</sup> Lisa (25 years old), Divorce Handling Administration Staff at Sambas Religious Court Class 1 Sambas Sambas Regency, *Interview*, Sambas, December 5, 2023.

<sup>18</sup> Lisa (25 years old), Divorce Handling Administration Staff at Sambas Religious Court Class 1 Sambas Sambas Regency, *Interview*, Sambas, December 5, 2023.

## Research Methods

This research uses a type of qualitative research that is field research. The purpose of qualitative is research that refers to a purpose or meaning, concepts, definitions, characteristics, symbols, and descriptions of various things<sup>19</sup>. While the purpose of field research is research whose data is obtained from the field, both in the form of oral data and written data (documents)<sup>20</sup>. This qualitative research is characterized by normative law, because this research is carried out in a certain environment and is divided into a positive legal inventory, Islamic legal research in the realm of sources or phenomena, Islamic research in the realm of doctrine, research on the principles of Islamic law, even *istinbat* research, comparative Islamic legal research, comparative history of Islamic law, *siyasa* research, *fiqh* research and *qanun* and *sharia* research<sup>21</sup>. This study focused on finding out the causes of *talaq ba'in shugra*, this study was also studied based on *maşlahah al-dharuriyah*, *maşlahah tahsiniyah* and *maşlahah hajiyah* and efforts to reduce the high divorce of wives to their husbands through *talaq ba'in shugra* in border communities Sambas, West Kalimantan.

The research approach used is an Islamic legal approach, according to Yayan Sopyan explained, that the Islamic law approach is a review to solve a problem by paying attention to various scientific spaces in a family of knowledge known as the product of thought, namely jurisprudence, *ulama* fatwas, court decisions and legislation<sup>22</sup>. The rules of the Islamic legal approach can help summarize the issues in a bind, suggesting that the law was formed to enforce the near or even greater extent<sup>23</sup>. So the Islamic legal approach that has the object and place of study in research that has been directed and appropriate to solve problems about the reality of *talaq ba'in shugra* the impact of *talaq ba'in shugra* or *khulu'*, so as to get a solution to inhibit the high divorce of wives to their husbands through *ba'in shugra* in Sambas Regency.

## Results and Discussion

Related to divorce cases, especially the divorce of the wife suing the husband, this is the highlight in the life journey of a family in the Sambas area, Sambas Regency, West Kalimantan. Before entering the divorce case, researchers want to present data on the number of Sambas Regency Population According to data sources from the Sambas Regency Population and Civil Registration Office, Semester 1 2020 Aggregate Data, namely Islam with 562,298 inhabitants, Christians 11,686 residents, Katolik with 18,231 inhabitants, Hindus with 192 inhabitants, Buddhists with 43,327 inhabitants and Confucians with 3,023 inhabitants<sup>24</sup>. Looking at the population data, Sambas Regency has a majority Muslim population. So that divorce cases are also high in Sambas Regency specifically for the Muslim community.

The divorce rate has increased in Malaysia from 43,936 cases in 2021 to 62,890 divorces in 2022 according to the latest report from the Department of Statistics Malaysia

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<sup>19</sup> Satori dan Aan Komariah, *Metode Penelitian Kualitatif* (Bandung: Alfabeta, 2010), 23.

<sup>20</sup> Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: Rajawali Press, 2005), 12.

<sup>21</sup> Faisar Ananda Arafah dan Watni Warpaung, *Metodologi Penelitian Hukum Islam* (Jakarta: Prenamedia Group, 2018), 85.

<sup>22</sup> Yayan Sopyan, *Tarikh Tasyrik': Sejarah Pembentukan Hukum Islam* (Depok: Rajawali Pers, 2018), 7-8.

<sup>23</sup> Suparman Usman dan Itang, *Filsafat Hukum Islam* (Serang: Laksita Indonesia, 2017), 115.

<sup>24</sup> Satu Data Kalimantan Barat, "Jumlah Penduduk Kabupaten Sambas Menurut Agama Sumber Data Dinas Kependudukan Dan Pencatatan Sipil Kababupaten. Sambas, Data Agregat Semester 1 Tahun 2022," data.kalbarprov. <http://data.kalbarprov.go.id/dataset/jumlah-penduduk-kabupaten-sambas-menurut-agama/resource/06c34046-8b23-4dea-89a2-foaad7f5e46> (26 Desember 2023).

(DOSM). DOSM noted that the general divorce rate among Muslim men increased from 7.1 (2021) to 10.4 per thousand Muslim men aged 18 years and over who married in 2022. Meanwhile, the divorce rate for Muslim women in general was also recorded increasing from 7.3 (2021) to 10.6 for every thousand married Muslim women aged 16 years and over. DOSM said the 2023 Malaysian Marriage and Divorce Statistics report, which presents marriage and divorce statistics for 2021 and 2022, follows demographic characteristics at the national, state and administrative district levels. And it becomes an important input for basic social planning to strengthen family institutions in the country. In the same report, it was also noted that the number of marriages decreased by 0.5 percent in 2022, from previously in 2021 reaching 215,973 to 214,824 marriages.<sup>25</sup> This discussion focuses on the high rate of divorce in Indonesia, especially in the West Kalimantan border area in the Indonesia-Malaysia Sambas area.

The existence of high divorce rate cases is a question mark, why every year increases from 2015 to 2022?, in the initial data sample of this research that can be revealed in this dissertation, including:, Divorce cases from year to year always increase in the latest data taken in December 2023 totaling 6,661 divorce cases, this data was obtained directly from the Sambas Religious court as a result of a short interview with Mr. Bustani<sup>26</sup>, especially at the Sambas Religious Court, the number of divorce lawsuits made by clover wives increases until 2023 every year, reaching 1000 cases of divorce lawsuits from wives to their husbands through *talaq ba'in shugra*<sup>27</sup>. The reasons for divorce according to field researchers are economic factors, no more harmony, lack of religious understanding in the family, layoffs, influence from social media, false reports of wives filing for divorce without the husband's knowledge, and the rest is domestic violence.

Sambas Regency in 2023 ranked top in divorce cases out of 14 districts in West Kalimantan<sup>28</sup>. This was conveyed directly by the Junior Registrar of Religious Court Appeals.<sup>29</sup> Hidayat revealed that there are more than 2000 divorce lawsuit cases per year, the age range that files for divorce from the age of 30-40 years is 65 percent, the young are also many under 30 (years) around 30 percent, those over 50 years old are also around 5 percent<sup>30</sup>.

Furthermore, this divorce complaint case also occurred in young children, namely 16 years. Cases of early divorce of children starting at the age of 16 years are also widespread. In fact, there are some who cannot accept the challenges of today's lifestyle. According to Siti Marhamah,<sup>31</sup> He explained that the plaintiff in the divorce case, namely the wife, already understood the reason for the cause of divorce in their household which ended in the

<sup>25</sup> Tim Redaksi “Angka Perceraian di Malaysia Naik 43,1 Persen” Tahun 2023. [https://voi.id/berita/332501/angka-perceraian-di-malaysia-naik-43-1-persen#google\\_vignette](https://voi.id/berita/332501/angka-perceraian-di-malaysia-naik-43-1-persen#google_vignette). Di Akses 1 Juni 2024.

<sup>26</sup> Bustani (52 years old), As a judge for Handling Divorce at Sambas Religious Court Class 1 Sambas Samba Regency, *Interview*, Sambas, March 7, 2023.

<sup>27</sup> Pengadilan Agama Sambas, “Perkara Di Pengadilan Agama Sambas,” [sipp.pa-sambas](https://sipp.pa-sambas.go.id/statistik_perkaradi), 2022, [https://sipp.pa-sambas.go.id/statistik\\_perkaradi](https://sipp.pa-sambas.go.id/statistik_perkaradi). 5 Desember 2023.

<sup>28</sup> Randi, “Angka Perceraian Di Sambas Tinggi, Capai 300 Kasus Tiap Bulan,” [sambaskini.com](https://sambaskini.com), 2023, <https://sambaskini.com/lokal/angka-perceraian-tinggi-di-sambas-tinggi-capai-300-kasus-tiapbulan/> 23 Desember 2023.

<sup>29</sup> Hamdani (35 years old), Junior Registrar of Religious Court Appeals: High Divorce Rate Case in Sambas, Dominated by Couples 30-40 years old, *Interview*, Sambas, June 17, 2023.

<sup>30</sup> Zulfahmi Dhamiri, “Kasus Angka Penceraian Di Sambas Tinggi, Didominasi Usia Pasutri 30-40 Tahun,” [metro7.co.id](https://metro7.co.id), 2023, <https://metro7.co.id/kasus-angka-penceraian-di-sambas-tinggi-didominasi-usia-pasutri-30-40-tahun/>. 26 Juli 2023.

<sup>31</sup> Siti Marhamah (48 years old), Primary judge at Sambas Court, Sambas, *Interview*, December 4, 2023.

breakup of marriage (divorce). In 2022, Sambas Regency has been ranked highest in divorce cases, especially the divorce of the wife to her husband through *talaq ba'in shugra*<sup>32</sup>. With the data update from 2021 to 2023 on December 20, a total of 6,600 cases of divorce cases filed by wives to their husbands<sup>33</sup>.

Until now, the Commissioner of the Regional Child Protection and Supervision Commission for the West Kalimantan region has coordinated and requested regional assistance regarding the implementation of child protection in Sambas Regency. With the problem of the divorce storm, Nani emphasized that the Sambas Regency government's plan would provide regulations related to premarital education scheduled according to the material provided, this was a requirement to hold a marriage. With the premarital education held at the Office of Religious Affairs (KUA), this is something good for the initial provision of marriage after marrying young. Because the marriage limit is now at least 19 years.<sup>34</sup>

Based on the age data of divorce claimants resulting from developments in the Religious Court and in the Sambas Malay community, it can be seen from 20 informants<sup>35</sup> who divorce their wives to their husbands, the highest age is between 25 years to 35 years with a total of 5 people and the percentage is 50%. While 25 years and under with 3 people and the percentage is 30% and 36 years and over only has 2 people with a percentage of 20%.<sup>36</sup>

With this, it can be seen that the average age of divorce plaintiffs is more dominant at the age of 26 to age 35 and age 25 and below, the percentage is 50% and 30%.<sup>37</sup> Based on these data, the divorce rate that occurred in the Class 1B Religious Court of Sambas Regency was dominated by divorce cases from wives to their husbands. 60-80% of divorce cases that occur, are divorce lawsuits. From statistical data, Sambas Regency has the number one highest divorce rate out of 14 districts in West Kalimantan. For the sub-districts of the 19 sub-districts in Sambas Kabupaten with the highest divorce rates, namely Pemandangan, Tebas, Selakau and Jawai.<sup>38</sup>

On average, those who sue for divorce are actually not ready to marry, finally early divorce also happens a lot. The age of marriage is only 2-5 years divorced. There are even those who just got married in 2021, in 2023 they have divorced. The Sambas religious court also recorded early marriages, due to promiscuity that had been carried out, and the family environment was not supportive. In the end, early divorce occurs because of lack of age, not ready to understand their partner, still often out, less income, still often playing gadgets, mostly because of income, and age maturity level. Thus, the case became a homework for Sambas Regency in arranging it so that there would no longer be a high level of divorce, especially divorce from the wife to her husband.

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<sup>32</sup> Melly, "Kasus Perceraian Di Sambas Tinggi Ini Penyebabnya?," pojokkata.com, 2023, <https://www.pojokkata.com/2020/12/kasus-perceraian-di-sambas-tinggi-ini.html?m=1>. 22 Desember 2023.

<sup>33</sup> Pengadilan Agama Sambas, "Sistem Informasi Penelusuran Perkara," siap.pa.go.id, 2023, [https://sipp.pa-sambas.go.id/list\\_perkara/page/333/](https://sipp.pa-sambas.go.id/list_perkara/page/333/). 5 Desember 2023.

<sup>34</sup> Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

<sup>35</sup> Sambas Religious Court, "Case Tracing Information System," siap.pa.go.id, 2023, [sambas.go.id/list\\_perkara/page/333/](https://sambas.go.id/list_perkara/page/333/). December 28, 2023.

<sup>36</sup> Lisa (25 years old), Divorce Handling Administration Staff at Sambas Religious Court Class 1 Sambas Sambas Regency, *Interview*, Sambas, December 5, 2023.

<sup>37</sup> Lisa (25 years old), Divorce Handling Administration Staff at Sambas Religious Court Class 1 Sambas Samba Regency, *Interview*, Sambas, December 5, 2023.

<sup>38</sup> Siti Marhamah (48 years old), Primary judge at Sambas Court, Sambas, *Interview*, December 4, 2023.

The analysis of this statistical data was taken from 2021, 2022 and 2023, to follow up on analyzing the high number of divorces from wives to husbands in the Malay Sambas community in Sambas Regency sourced from the Sambas Religious Court Class 1B.

**Table 1 :** Data on *divorce of wife lawsuits* in Sambas Religious Court

No	Year	Guguat Divorce Case												Sum Divorce Lawsuit
		Moon												
		Jan	Feb	Mar	Apr	Mei	Jun	Jul	Ags	Sep	Okt	Nop	Des	
1	2021	80	147	80	174	166	174	170	186	166	174	186	80	1.783
2	2022	150	140	170	160	55	78	90	99	102	98	89	81	1.223
3	2023	81	76	85	79	71	76	92	93	83	84	77	81	978

Source: Sambas Religious Court Class 1B

Looking at the divorce data of divorce claims of wives to their husbands through *talaq ba'in shugra* obtained from the Sambas Religious Court data from 2021, 2022 and 2023, it can be seen that the number of divorces divorced by wives to their husbands in Sambas Regency in 2020 the number of divorces divorced from wives to their husbands was 1,783 pairs, in 2021 the number of divorces divorced from wives to their husbands was 1,223 and in 2022 the number of divorces divorced from wives to their husbands was 978 pair. From this data, it can be known the number per month and per year of divorce from a wife to her husband at the Sambas Class 1B Religious Court. The cause of divorce divorce from the wife to her husband is inseparable from those caused by domestic economic problems, disputes and constant quarrels in the household and leaving one of the parties. The source of the cause of the divorce of the wife to her husband was obtained directly from the Sambas Class 1B Religious Court. After the researcher knows the number of divorces divorced from the wife to her husband', the researcher will analyze in terms of age divorcean.

Researchers dug up age data of divorce plaintiffs based on information from the administration handling divorce cases at the Sambas Class 1B Religious Court. Here is the data that the author got.

**Table 2:** Classification of divorce age data in Sambas Religious Court

No	Age	Sum	%
1	25 Tahun kebawah	3	30%
2	26 Tahun s/d 35 Tahun	5	50%
3	36 Tahun keatas	2	20%
	<b>Total (n =10)</b>	10	100%

Source: Sambas Religious Court Class 1B

Based on the age data of divorce from the wife to her husband through *talaq ba'in shugra* above, the results of the development in the Sambas Religious Court Class 1B in the table can be seen from a sample of 10 people obtained from years 2021, 2022 and 2023, That the plaintiff divorced the wife to her husband through *talaq ba'in shugra* performed by the wife, the highest age between 25 years to the age of 35 years with a total of 5 people with a percentage of 50%. Furthermore, the age of 25 years and under with 3 people from the sample with a percentage of 30% and the age of 36 years and over is only 2 plaintiffs with a percentage of 20%. Thus, it can be concluded from the sample obtained that the average age of divorce plaintiffs from their wives to their husbands through *talaq ba'in shugra* is more dominant at the age of 25 to 35 and the age of 25 and below, the percentage is 50% and 30%.



Looking at the conditions for divorce in PP No. 9 of 1975 and the Compilation of Islamic Law. Researchers obtained data on the causes of divorce in Sambas Religious Court Class 1B as a result of the development of interviews and administrative data. From the provisions for divorce in PP No. 9 of 1975 and the Compilation of Islamic Law Article 116. Researchers found that there are 15 most domain cases each year of divorce lawsuits in Sambas Religious Court Class 1B Sambas Regency from 2021, 2022 and 2023. In accordance with point (1) in PP No. 9 of 1975 and the Compilation of Islamic Law Article 116 with the term "unconscious/unrecoverable".

**Table 3:** The most dominant cases of divorce causes of divorce of a wife to her husband in Sambas Court Class 1B from years 2021, 2022 and 2023.

No	The Most Dominant Cases	2021	2022	2023	Sum
1	Disputes and quarrels	270	144	244	658
2	Economic Problems	328	110	210	648
3	Leave either party	501	258	359	1118
4	Drunk	73	53	54	180
5	Nikah siri	73	63	73	209
6	Online gambling	68	25	26	119
7	Domestic violence	67	40	41	148
8	Parenting issues	65	46	47	158
9	Prison	63	43	44	150
10	Third-party interference	55	35	36	126
11	Adultery/Infidelity	53	33	34	120
12	Disability/Incurable Disease	50	30	31	111
13	Polylogamy License	50	40	50	140
14	Crisis of faith, apostasy	50	40	50	140
15	Cultural factors	50	30	31	111
	<b>Total</b>	<b>1.816</b>	<b>990</b>	<b>1.330</b>	<b>4.136</b>

Source: Sambas Religious Court Class 1B

Here are three causes of divorce from a wife to her husband through *talaq ba'in shugra* which dominate the most every year in Sambas Religious Court Class 1B in 2021, 2022 and 2023.

**Table 4:** Cases that dominate the causes of divorce of divorce of a wife to her husband through in Sambas Court Class 1B from years 2021, 2022 and 2023.

No	The Most Dominant Cases	2021	2022	2023	Sum
1	Leave either party	501	258	359	1118
2	Disputes and quarrels	270	144	244	658
3	Economic Problems	328	110	210	648
	<b>Total</b>	<b>1099</b>	<b>512</b>	<b>813</b>	<b>2424</b>

Source: Sambas Religious Court Class 1B

The data above explains that, there is the most dominating case in divorce cases of divorce from wives to their husbands through *talaq ba'in shugra* in Sambas Regency. From

the identification of data there are 15 cases of the dominant causes divorce causes of divorce from the wife to her husband through *talaq ba'in shugra* every year, in the 15 causes of divorce divorce from the wife to her husband through *talaq ba'in shugra* there are 3 cases that dominate the most The cause of divorce of a wife to her husband through *talaq ba'in shugra* is seen from the figure every year. Furthermore, the author draws the most dominating cause based on the highest number of causes of divorce from wives to their husbands through *talaq ba'in shugra* from the years 2021, 2022 and 2023, there are three most dominant causes difficult to overcome, namely, that is, leaving one of the parties, continuous disputes and quarrels and household economic problems.

Marriage Law Number 1 of 1974 in Article 37 states that, if the marriage breaks up due to divorce, joint property is regulated according to their respective laws. According to a statement from Mr. Bustani, Judge of the Sambas Religious Court, he said:

“Property in marriage is divided into three types, namely inheritance, joint property and property acquired, property obtained during marriage is joint property, while property obtained by each party as inheritance or gifts called grant property”.<sup>39</sup>

One of the divorce respondents filed a divorce lawsuit against her husband through *talaq ba'in shugra* conducted by VT (29 years) (wife) and DM (30 years) (husband) related to marital property, VT said :

“The issue of property from our marriage has no demands, each brings his property, I bring my property, and my ex-husband brings his property, but in my ex-husband's property there is a living for his child which is his obligation”.<sup>40</sup>

Furthermore, according to WN (26 years old) a widow has one son from the results of her marriage with her legal husband, she is concerned about marital property after marriage, namely:

"The property I obtained during the marriage was for the needs of me and my child, while the property obtained by my husband was a living from him, after we divorced the problem of my property was to provide for the children only, my husband only demanded ransom for divorce, and regarding foreign property each of us had no demands because it was the inheritance obtained from parents"<sup>41</sup>

According to the explanation from VT (29 years old) and DM (26 years old) the impact of property from their marriage there is no claim related to acquisition property and foreign property, but VT and DM only pay for the child's living expenses because it is still the responsibility of their ex-husband and the impact on the child.

In this context, a *mumayyiz* child means that he can analyze what is good for him and what is not good for him. In *fiqhiyyah*, the *mumayyiz* period starts from the age of seven until reaching puberty. At this time, children are able to distinguish what is not good and what is good for him. Therefore, he is considered to be able to decide for himself whether to obey his father or mother<sup>42</sup>. However, the Ministry of Justice believes that it is merit that judges should consider when determining

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<sup>39</sup> Interview with Bustani as judge of Sambas Religious Court Class 1B. December 7, 2023.

<sup>40</sup> Results of an interview with VT (29 years old) as a plaintiff divorce. December 6, 2023.

<sup>41</sup> Results of an interview with WN as a plaintiff divorce. December 4, 2023.

<sup>42</sup> Satria Effendi, *Problematika Hukum Keluarga Islam Kontemporer* (Jakarta: Prenada Media, 2005), 171.

the interests of children under the age of 11<sup>43</sup>. While the positive impact of divorce from the wife to her husband through *talaq ba'in shugra* in Sambas Regency, as expressed by one of the respondents interviewed by the researcher as a sample in the field, the following is his statement:

WN (26 years old) a widow has one son from her marriage with her legal husband. WN conveyed the impact of divorce to her husband through the *talaq ba'in shugra* that she felt from her divorce:

“During the period of my marriage with my husband I was always depressed, humiliated, sad, and felt not appreciated at all. But after the divorce I was not depressed anymore and felt more relieved, I felt free born and inner because the child was with me.”<sup>44</sup>

Seeing the words of WN (26 years old), she felt the positive impact of her divorce from her husband, WN felt relieved after divorcing from her sister, the existence of conflicts in the household that led to divorce made foreigners who experienced divorce feel calm and relieved after the divorce occurred. The feeling of relief after divorce felt by WN because there are often disputes in the household that make them always conflict in the household that does not end.

Divorce is an event that neither husband nor wife expects. However, the decision of divorce of the wife to her husband through *talaq ba'in shugra* must be taken by the woman because according to her there is no other choice. After the divorce, the economic impact is not reduced because now they can live with their parents, can work again, even if the salary is small, because the job is not fixed. But that does not mean that there are no more problems, although the effects of divorce seem to have been noticed for a long time, psychological problems are the most serious problems felt by a woman. The behavior of husbands who do not maintain fidelity and do not respect household duties is very disappointing.

One example of divorce is a divorce lawsuit from a wife to her husband through *talaq ba'in shugra* carried out by VT (29 years) (wife) and DM (30 years) (husband), whose address is Tebas Kuala Village, Tebas District, Sambas Regency, West Kalimantan, the couple has two children aged 8 and 4 years. VT's husband's job is a fruit trader in the Market and VT is a housewife and also helps her husband sell fruit. During his time as a fruit trader, VT's husband always ignored the income for his children and wife, because what was given by VT's husband met the needs of his children and wife, especially VT's husband who was drunk and liked to play women. The occurrence of a rift in the VT and DM household is that VT's husband was caught giving another woman VT's husband cheating; As VT narrates:

“I filed a lawsuit (divorce) for my husband to the Sambas Religious court and asked for help from the legal institution to facilitate my divorce process, on the grounds that because my DM (husband) was caught cheating on me with another woman outside the home, with the prospect of my husband's inadequate family support and neglecting me and my children. So that I make a living for the family. My husband agreed to divorce him, so my husband asked for a ransom as a condition for returning the dowry he gave me first, and I agreed so that my heart would not stir anymore and could focus on the future of the children at home”.<sup>45</sup>

<sup>43</sup> Slamet Abidin dan Aminuddin, *Fiqh Munakahat 2* (Bandung: Pustaka Setia, 1999), 184.

<sup>44</sup> Results of an interview with WN as a plaintiff divorce. December 4, 2023.

<sup>45</sup> Results of an interview with VT as a divorce plaintiff. December 6, 2023.

With this incident, VT sued her husband DM for divorce because she could no longer bear to see her husband's behavior and also VT often received physical violence by her husband when he was fighting. So VT filed a lawsuit to the court and to facilitate the divorce process, VT asked for help from legal institutions in Sambas so that the divorce case process was not so long waiting. The suit was approved by DM (her husband) on the condition that VT (his wife) return the goods given to VT.

Based on the results of the researcher's interview with the judge of the Sambas Religious Court Class 1B and respondents taken from the administrative data of the Religious Court regarding the impact contained in the divorce of the wife to her husband through talaq *ba'in shugra*, it can be connected with *maşhlahah* to answer and draw conclusions about the issue of divorce from the wife to her husband through talaq *ba'in shugra* in Sambas Regency. If we look at the reasons that a wife can use to ask for a divorce, then they are a form of fulfillment of the wife's *hājiyyah* to her husband. For reasons of losing the purpose of marriage, which is to create a happy family. According to al-Şyātibi, if *al-hājiyyah* is not noticed, difficulties and difficulties arise, but not to the point of inflicting harm, which is usually the case with *al-maşhlahah al-darūriyyāh*. The category *al-hājiyyah* actually leads to the perfection of *al-darūriyyāh*, whereby in truth *al-hājiyyah* all *masaqqah* is lost and balance and rationality are created so as not to give rise to extremism (*al-ifrāt wa al-tāfrīt*).

While maintaining the continuity of the household is *al-maşhlahah al-darūriyyāh*, the effort to maintain the continuity of the household takes precedence over divorce. Thus, the judge must be more careful in investigating divorce cases so that the presence of the defendant in court is imperative for the judge to strive for the fulfillment of *al-maşhlahah al-darūriyyāh* for both the defendant and the plaintiff. As al-Şyātibi asserts, absolutes are *maşhlahah* should not be subjective and relative. Relatability can be based on the nature of comparing *maşhlahah* with circumstances such as *hawa al-nufūs* (personal pleasure), *manāfi* (personal gain), *nal al-shaḥwāt* (fulfillment of bad wishes) and *aḡhrād al-nāfs* (self-interest).

According to al-Şyātibi, all of the above considerations provide a relative and subjective understanding of *maşhlahah*, which is not a sharia consideration of *maşhlahah*, even though it is customary (customary). The second trait of *maşhlahah* is that it must be universal. This universal cannot be influenced by the *takḥallūf* of its individual elements. For example, laws are made based on the universal provision that these penalties usually deter people from committing crimes. However, there are people who, even if convicted, cannot prevent the commission of a crime, but the exclusion does not affect the enactment of the general provisions of the criminal law. *Sāyar'ah al-ḡhalīb al-akḥṡār* (dominant majority), which is the general definitive element in considering *maşhlahah*.

### ***Maşhlahah* Aspects of Wife-to-Husband Lawsuit in Sambas Malay Society**

Judging from the *maşhlahah* aspect, the purpose of the special law of Islam is to realize benefit and avoid harm. Amrullah Hayatudin explained that the context *maşhlahah* seen from the power of its argument to achieve benefit in the establishment of law is divided into three parts, namely *maşhlahah al-dḡharuriyyāh*, *maşhlahah tahsiniyah* and *maşhlahah hajiyah*<sup>46</sup>. Related in this study which discusses the *khulu'* divorce in Sambas *maşhlahah* perspective, the researcher will discuss from the benefit of *khulu'* divorce in Sambas Regency which consists of aspects of *maşhlahah al-dḡharuriyyāh*, aspects of *maşhlahah hajiyah* and aspects of *maşhlahah tahsiniyah*.

<sup>46</sup> Amrullah Hayatudin, *Ushul Fiqh Jalan Tengah Memahami Hukum Islam* (Jakarta: Prenada Media, 2014), 84.

First, the *maşlahah al-dharuriyah* aspect, this aspect is mandatory for humans because it maintains survival in what Allah almighty has given. There are five aspects that need to be protected from the *maşlahah al-dharuriyah* context as explained by As-Şyāthibi, namely: *hifz Al-Dīn* (religion) obedience to worship Allah Almighty, *hifz Al-Nafs* (guarding one's soul/life) guarding the safety of one's persons, *hifz Al-'Aql* (guarding one's intellect) guarding one's conscience, *hifz Al-Nash* (guarding one's offspring) safeguarding one's dignity and honor, *hifz Al-Māl* (guarding one's property) protecting one's possessions or wish to possess.

Such as the case of the cause of divorce of the wife to her husband through *talaq ba'in shugra* has certain reasons, as in the case decided namely Number: 20 / Pdt.G / 2019 / PA. SBS, the handling of the case was chaired by judge H. Ivan Yuzni Amarullah Murtdlo<sup>47</sup>, proposed by W (pseudonym kan) 26 years old to her husband 28 years old. The reason for the wife filing for divorce from her husband through *talaq ba'in shugra* against her husband to the Sambas Religious Court Class 1B is that the husband has no responsibility for his household, often leaves his wife and children for a long time without any news and returns home instead of being indifferent to his wife and children, With this incident, the wife becomes the backbone of the family by working hard with the aim of meeting household needs, the wife is not appreciated by the husband, the husband always says dirty things to the wife, the husband always physically abuses the wife, always gets angry without any reason, and always exaggerates small problems in the household so that it becomes a quarrel.

From this case the *aspect of maşlahah al-dharuriyah* lies in the aspect of *hifz Al-Nafs* (safeguarding the soul/life), because in that case one of the causes of divorce *ba'in shugra* is that the wife always receives physical violence from her husband. In the The concept of *kemaşlahahatan* the wife's actions are appropriate, she sues her mother because a wife is trying to protect her soul or life from the persecution of her mother. So that *hifz Al-Nafs* is preferred to avoid harm that brings benefits to a wife. Furthermore, the factor causing the filing of divorce from the wife to her husband through *talaq ba'in shugra* for another reason is that the wife is not fulfilled by her biological income. This case is as stated in case No. 582/Pdt.G/2019/PA. Sbs, with letter number B-452/Kua.14.05.05/PW.01/06/2019 and date of registration of people, June 21, 2019.<sup>48</sup> On behalf of the wife (pseudonym) as plaintiff age 26 years and husband with (name disguised) as defendant age 29 years. Their marriage has been around for about five years and the wife filed her lawsuit on June 21, 2019 after a peak of disputes occurred between husband and wife. The plaintiff filed a lawsuit against the defendant during the marriage period of approximately five years.

From this case, the aspect of *hifz Al-Nash* lies in the aspect of *hifz Al-Nash* (keeping offspring) because in that case one of the causes of divorce *ba'in shugra* is that the wife does not get satisfaction from her husband so it is difficult to get offspring. In the concept of *kemaşlahahatan* the wife's actions are appropriate, she sues her mother because a wife seeks to obtain biological satisfaction from her husband. So *hifz Al-Nash* is preferred to avoid harm that brings benefits to a wife.

From these two cases, the *maşlahah al-dharuriyah* aspect of the context of *hifz Al-Nafs* (safeguarding the soul/life) and *hifz Al-Nash* (guarding offspring) of both contexts falls into the category of *maşlahah al-dharuriyah* which discharges with primary needs. Therefore, there is no longer any reason not to rush in solving problems that arise in the family. If there is no solution, it can happen in the plaintiff's family and the defendant will

<sup>47</sup> Pengadilan Agama Sambas, "Perkara Pengadilan Agama Sambas," sipp.pa-sambas.go.id, 2022, [https://sipp.pa-sambas.go.id/index.php/detil\\_perkara](https://sipp.pa-sambas.go.id/index.php/detil_perkara). 26 Desember 2023.

<sup>48</sup> Pengadilan Agama Sambas, "Kasus Pengadilan Agama Sambas," sipp.pa-sambas.go.id, 2022, [https://sipp.pa-sambas.go.id/index.php/detil\\_perkara](https://sipp.pa-sambas.go.id/index.php/detil_perkara). December 26, 2023.

not be able to achieve harmony and happiness as desired in building a household. So the decision of the Judge of the Sambas Class 1B Religious Court in the trial is to realize the benefit of the plaintiff and the defendant. If there is no decision, it will cause more harm with the incident, the aggrieved is the wife.

Second, the *maṣhlahah aspect of Hajyah*, an aspect that must be present in human life. *Maṣhlahah Hajj* is required by every individual human being to avoid difficulties and to resist corruption in human life. The main principle in *maṣhlahah hajiyah* is to avoid difficulties, ease the burden of life and facilitate married couples in fostering married life. In essence, the *maṣhlahah aspect of Hajyah* is to maintain the five points of benefit such as safeguarding religion, soul, reason, time and wealth. It's just that the use is in accordance with each other's interests to realize human benefit.

The *maṣhlahah aspect of Hajyah*, for example in maintaining religion, is by carrying out religious provisions such as performing the five daily prayers. In order to avoid conflicts in the household, married couples after marriage in Sambas Regency must bind each other in matters of carrying out obligations such as praying five times because praying five times can prevent evil and bad behavior in the household.

Furthermore, *maṣhlahah hajiyah*, in the soul of his mass seeks halal sustenance and enjoys halal food. In looking for sustenance, you should look for it in a halal way, because halal sustenance will bring chaos in the family so that it can save lives in the family. Therefore, it is expected that the husband as the head of the family must seek sustenance in a halal way and provide children and wives with halal food. As Allah SWT says in QS. Al-Baqarāh/2:168:

“O men, eat what is lawful more good than that which is on earth, and do not follow the steps of Satan; for verily Satan is a real enemy to you.” (QS. Al-Baqarah verse 168)<sup>49</sup>

The above verse explains and teaches those who are building a home life Allah SWT recommends eating halal food and seeking sustenance in a halal way not to follow the path of Satan, actually Satan is a real enemy from the prophet Adam to his current descendants. Furthermore, *maṣhlahah hajiyah* in maintaining reason, for example, married couples are obliged to study science or religious knowledge. This science aims to develop knowledge for married couples in order to avoid difficulties in life and can avoid conflicts in the household. For example, the high divorce rate in Sambas Regency with the science of married couples can think it is better to maintain survival in a family than to break the marriage cord. That is the principle of keeping the intellect because from the intellect man can distinguish what is good and what is good in his life.

Furthermore, *maṣhlahah hajiyah* in maintaining offspring, this aspect is related to the period or upbringing of children. If the parents divorce, it will also have an impact on the child's future. Because in this study the consequences of divorce greatly affect children in Sambas Regency. Thus, maintaining offspring is more important because Nasab is the next generation who needs education from both parents.

Furthermore, *maṣhlahah hajiyah* in the table of wealth, this aspect is related to wealth in marriage. In marriage is inseparable from individual property and innate property. The impact of divorce in Sambas Regency also affects property in marriage, so it is very necessary to maintain property while still being able to maintain the marriage maintain it because it enters the realm of avoiding difficulties in avoiding damage in marriage.

Third, the *maṣhlahah tahsiniyah* aspect, in this aspect *the maṣhlahah* that exists in the needs of human life needs to him does not reach the *dharuri*, nor does it reach the level

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<sup>49</sup> Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya* (Jakarta: Diponegoro, 2019), 25.

of *Hajyah*, but these needs need to be fulfilled in order to give perfection and beauty of life to humans. This aspect must be instilled in the husband couple in Sambas.

*Maşlahah tahsiniyah* in the aspect of maintaining religion, for example following religious instructions aims to uphold dignity as a human being, while carrying out obligations towards Allah SWT. For example, in family life, the wife must cover her body both inside the house and outside the home, the husband and wife must maintain the cleanliness of their bodies, cleanliness of clothes and safety of residence. Therefore, pinning is included in commendable morals in building a household.

*Maşlahah tahsiniyah* in the aspect of guarding the soul, in this body the most emphasized aspect is eating and drinking. This principle relates to the modesty of married couples and the ethics of married couples in the household. Because this will in no way threaten the existence of the soul of the married couple or complicate their lives.

*Maşlahah tahsiniyah in the aspect of maintaining reason*, in this sense the most emphasized aspect avoids delusional of a high level or wanting something beyond ability. For example, today's lifestyle competition, but today's lifestyle if you can keep up with married couples does not threaten the existence of reason like a married couple. So that it can still maintain its home life.

Furthermore, *maşlahah tahsiniyah* in the aspect of maintaining offspring, in this order of offspring things that must be considered are such as the decree of how to ask (*khitbah*) and reception in marriage. This is just to complete the activities of the wedding. Regarding offspring like a married couple, after marriage, there must be a purpose of the marriage, one of which is to get offspring or nasab. But if there are no offspring it does not threaten the existence of time and does not make it difficult, while the married couple is still willing to try to get offspring means that they can still maintain the integrity of the household. But there is also the absence of children, married couples decide to end their marriages as in Sambas Regency, the cause of *divorce* one of which is not having children or time.

Furthermore, *maşlahah tahsiniyah* in the aspect of safeguarding property, in this aspect the most emphasis is on avoiding the deceptive and speculative nature. As a married couple must really be honest in making the household open to each other, especially in terms of marital property. From that, married couples must be able to maintain their wealth in building a household. Because the divorce case in Sambas has a huge impact on property in marriage. Not a few problems of marital property are adequate problems. But if you can maintain the property, it is better to be married, if you cannot maintain it, it must bring benefits so that the breaking of the marriage bond does not adversely affect the dignity of the marriage.

Based on the explanation of three aspects, namely the *maşlahah al-dharuriyah*, the *maşlahah* aspect of *Hajj* and the *maşlahah* aspect of *tahsiniyah* are shari'ah to preserve or maintain the benefit of avoiding *mufsadat* like life. In married life, of course, there are many problems that require a solution, according to what As-Shatibi said, bringing more benefit than bringing harm. Therefore, in the case divorce in Sambas, the settlement must really bring benefits or benefits. The rule that becomes the legal consideration divorce is whether divorce has benefits or even provides benefits like a married couple who will break the marriage cord. As A. Djazuli said, "resisting damage must take precedence over attracting benefit". The point is that when a matter seems to have benefits, but there is also *harm* (damage), it must be prioritized to avoid the mafsadat, because the harm can expand and spread everywhere, so that it can cause greater damage in the household.

Next is the aspect to *maşlahah* which is aimed at the institution of marriage organizers. In organizing marriages, KUA must especially strengthen material on how to realize *sakinah* family and the impact of divorce for prospective brides who will marry. If

you look at the premarital course conducted by KUA Sambas Regency, it is only done as a formality if the requirements are sufficient. The bride and groom's course must be effective and as good as possible before the marriage contract, the material must be improved, the resource person must be able to understand so that the bride and groom can understand the material so that the *maṣhlahah* aspect is clearer.

In addition to *maṣhlahah* there are also *mudharat* from parents' divorce, namely: first, *mudharat* on the psychological husband and wife, second *mudharat* on the development of children and third *mudharat* on wealth. *Mudharat* on husband /wife, namely for ex-husbands and wives, the existence of divorce makes their status widow and widower. *Mudharat in children is that children* will feel restless, confused, embarrassed, worried, upset, and often filled with feelings of hatred, resentment, so that children become rebellious against their families. *Mudharat* on property is the arrangement of property for ex-husbands and ex-wives.

### Conclusion

The reality of divorce is the divorce of the wife to her husband through *talaq ba'in shugra* in Sambas, Sambas Regency, namely: Disputes and quarrels, Economic problems, Leaving one party, Drunkenness, Serial marriage, Online gambling, Domestic violence, Childcare problems, Imprisonment, Third party interference, Adultery/Infidelity, Incurable Defects/Diseases, Polytechnic Permits, Crisis of faith, Apostasy, Cultural factors. Of the 15 (fifteen) constituencies of *ba'in shughra* divorce in Sambas Religious Court Class 1B Sambas Regency, there are 3 (three) constituencies that dominate the most, namely: household economic problems, disputes and quarrels and leaving one party legal. The aspect to *maṣhlahah* tan divorce is inseparable from the aspect of *maṣhlahah al-dharuriyah*, the aspect of *maṣhlahah hajiyyah* and the aspect of *maṣhlahah tahsiniyah*. From these three aspects, solutions emerged in suppressing the high number of *ba'in shughra* divorces in Sambas Regency based on cumulative data in the field that most dominate the causes of the high number of *ba'in shughra* divorces, namely household economic problems, disputes and quarrels and leaving one party. Marriage Guidance for Prospective Brides in implementation provides reinforcement to prospective brides related to learning marriage fiqh, family formation and controlling the economy in the family as well as providing education to brides after marriage about new life. The Marriage Development and Preservation Advisory Board plays a role in this. Mediation properly is very necessary, so that non-litigation resolution efforts can be made before the case is brought to court in the form of settlement. The court mediation process also needs to be optimized before the case is heard, so that it is not limited to formalities and trapped in legal technical regulations. It is necessary to return the mediator's view to the hakam to optimize mediation.

### Bibliography

- Adawiya, Robi'atul. *Reformasi Hukum Keluarga Islam Dan Implikasinya Terhadap Hak-Hak Perempuan Dalam Hukum Perkawinan Indonesia Dan Malaysia*. Jawa Barat: Nusa Litera Inspirasi, 2019.
- Abubakar, Muzakkir. "Meningkatnya Cerai Gugat Pada Mahkamah Syar'iyah." *Kanun Jurnal Ilmu Hukum* 22.2 (2020): 302-322. <https://doi.org/10.24815/kanun.v22i2.16103>.
- Afiati, Taurat, Ani Wafiroh, and Muhamad Saleh Sofyan. "Upaya Pasangan Suami Istri Tidak Memiliki Keturunan Dalam Mempertahankan Keharmonisan Rumah Tangga (Studi Kasus di Desa Siru Kabupaten Manggarai Barat NTT)." *Al-IHKAM: Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyah Fakultas Syariah IAIN Mataram* 14.2



- (2022): 161-184. <https://doi.org/10.20414/alihkam.v14i2.6927>.
- Amberi, Mariani. "Efforts to Prevent Child Age Marriage in The Study of Islamic Legal Philosophy and Indonesia Positive Law." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7.1 (2023): 239-260. <http://dx.doi.org/10.22373/sjhk.v7i1.12404>.
- Aminuddin, Slamet Abidin dan. *Fiqh Munakahat 2*. Bandung: Pustaka Setia, 1999.
- Baqi, Muhammad Fu'ad Abdul. *Fathul Bari*. Kairo: Daarul Hadits, n.d.
- Barat, Satu Data Kalimantan. "Jumlah Penduduk Kabupaten Sambas Menurut Agama Sumber Data Dinas Kependudukan Dan Pencatatan Sipil Kabupaten. Sambas, Data Agregat Semester 1 Tahun 2022." data.kalbarprov, 2022.
- Dakhoir, Ahmad, and Sri Lumatus Sa'adah. "Meta-Juridical Analysis on the Legal Arguments beyond Changes in Indonesian's Marriage Age Rule." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18.1 (2023): 80-101. <https://doi.org/10.19105/al-lhkam.v18i1.7162>.
- Dhamiri, Zulfahmi. "Kasus Angka Perceraian Di Sambas Tinggi, Didominasi Usia Pasutri 30-40 Tahun." metro7.co.id, 2022. <https://metro7.co.id/kasus-angka-perceraian-di-sambas-tinggi-didominasi-usia-pasutri-30-40-tahun/>.
- et,el. Asman. *Pengantar Hukum Keluarga Islam*. Jambi: PT. Sonpedia Publishing Indonesi, 2023.
- Effendi, Satria. *Problematika Hukum Keluarga Islam Kontemporer*. Jakarta: Prenada Media, 2005.
- Hayatudin, Amrullah. *Ushul Fiqh Jalan Tengah Memahami Hukum Islam*. Jakarta: Prenada Media, 2014.
- Itang, Suparman Usman dan. *Filsafat Hukum Islam*. Serang: Laksita Indonesia, 2017.
- Kementerian Agama RI. *Depetemen Agama RI, Al-Quran Dan Terjemahnya*. Jakarta: Diponegoro, 2019.
- Komariah, Satori dan Aan. *Metode Penelitian Kualitatif*. Bandung: Alfabeta, 2010.
- Melly. "Kasus Perceraian Di Sambas Tinggi Ini Penyebabnya?" pojokkata.com, 2022. <https://www.pojokkata.com/2020/12/kasus-perceraian-di-sambas-tinggi-ini.html?m=1>.
- Muhammaḍ, Abū Abdillāh. *Mafātiḥ Al-Gaib, Juz. 12*. Jakarta: CD Maktabah asy-Şyamilāh, 2005.
- Nasution, Khoiruddin. *Hukum Perkawinan & Warisan Di Dunia Muslim Modern*. Yogyakarta: Academia & Tazzafa, 2012.
- Randi. "Angka Perceraian Di Sambas Tinggi, Capai 300 Kasus Tiap Bulan." sambaskini.com, 2022. <https://sambaskini.com/lokal/angka-perceraian-tinggi-di-sambas-tinggi-capai-300-kasus-tiapbulan/>.
- RI, Kementerian Agama. *Al-Qur'an Dan Terjemahnya*. Jakarta: Diponegoro, 2019.
- Sabiq, Sayyid. *Fiqh Sunnah, Terj. Moh. Thalib, Jilid 8*. Bandung: Al-Ma'arif, 1994.
- Sambas, Pengadilan Agama. "Perkara Di Pengadilan Agama Sambas." sipp.pa-sambas, 2022. [https://sipp.pa-sambas.go.id/statistik\\_perkaradi](https://sipp.pa-sambas.go.id/statistik_perkaradi).
- . "Perkara Pengadilan Agama Sambas." sipp.pa-sambas.go.id, 2022. [https://sipp.pa-sambas.go.id/index.php/detil\\_perkara](https://sipp.pa-sambas.go.id/index.php/detil_perkara).
- . "Sistem Informasi Penelusuran Perkara." siap.pa.go.id, 2022. [https://sipp.pa-sambas.go.id/list\\_perkara/page/333/](https://sipp.pa-sambas.go.id/list_perkara/page/333/).
- . "Sistem Informasi Penelusuran Perkara." siap.pa.go.id, 2022. [sambas.go.id/list\\_perkara/page/333/](https://sipp.pa-sambas.go.id/list_perkara/page/333/).
- Soekanto, Soerjono. *Penelitian Hukum Normatif*. Jakarta: Rajawali Press, 2005.
- Soft, Hadits. *Aplikasi Kitab Shahih Bukhari Nomor Hadis 4867 Dalam, Kitab Talaq (Khulu' Dan Apa Hubungannya Dengan Talak)*, 2018.
- Sopyan, Yayan. *Tarikh Tasyrik': Sejarah Pembentukan Hukum Islam*. Depok: Rajawali Pers, 2018.
- Tim Redaksi "Angka Perceraian di Malaysia Naik 43,1 Persen" Tahun 2023.

- [https://voi.id/berita/332501/angka-perceraian-di-malaysia-naik-43-1-persen#google\\_vignette](https://voi.id/berita/332501/angka-perceraian-di-malaysia-naik-43-1-persen#google_vignette). Di Akses 1 Juni 2024.
- Yainahu, Mirsa. "Cacat Badan Sebagai Alasan Perceraian (Undang-undang No. 1 Thn. 1974 Tentang Perkawinan dan KHI)." *Al-Mizan: Jurnal Kajian Hukum dan Ekonomi* (2021): 1-18. <https://doi.org/10.59115/almizan.v7i01.55>.
- Tirmidzi. "Kumpulan Hadits, Ilmu Islam - Portal Belajar Agama Islam." Portal Belajar Agama Islam, 2022. <https://ilmuislam.id/hadits/35584/hadits-tirmidzi-nomor-1107>.
- Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.
- Warpaung, Faisar Ananda Arafah dan Watni. *Metodologi Penelitian Hukum Islam*. Jakarta: Prenamedia Group, 2018.
- Bustani (52 years old), As a judge for Handling Divorce at Sambas Religious Court Class 1 Samba Regency, *Interview*, Sambas, December 7, 2023.
- Lisa (25 years old), Divorce Handling Administration Staff at Sambas Religious Court Class 1 Sambas Sambas Regency, *Interview*, Sambas, December 5, 2023.
- Hamdani (35 years old), Junior Registrar of Religious Court Appeals: High Divorce Rate Case in Sambas, Dominated by Couples 30-40 years old, *Interview*, Sambas, June 17, 2023.
- Siti Marhamah (48 years old), Primary judge at Sambas Court, Sambas, *Interview*, December 4, 2022
- Results of an interview with VT (29 years old) as a plaintiff of *khulu divorce*'. December 6, 2023.
- Results of an interview with WN as a plaintiff of *khulu divorce*'. December 4, 2023.