

CHAPTER III

DIVORCE AND THE LIMITATION OF EPISTEMOLOGY PROBLEM OF INTERPRETATION

A. The Divorce

1. Definition of Divorce

Divorce is the action or an instance of legally dissolving a marriage. To end a marriage with (one spouse) by divorce, to dissolve the marriage contract between husband and wife. Another explanation for terminating an existing relationship or union: is separate from obtaining a divorce.

The concept of Islam, divorce, is usually seen as *thalâq*. It means something a loose or a free. The term *thalâq* decides the marriage. The relationship is a separation between husband and wife. Al-Sayyîd al-Sabîq defines the *thalâq* as divorce as letting go from someone or leaving it. The terms I have released or freed the captives. In Islamic *syari'ât*, divorce means releasing the marriage or ending it.⁴⁴ The book of *kifâyah al-Akhyâr* explains that divorce is a term to decide the marriage. Divorce is the name used in the Jahiliyyah era, now Islam came to use the word for determining marriage.⁴⁵

⁴⁴ Sayyid Sabiq, *Fikih Sunnah-Jilid 4* (Cakrawala Publishing, 2009), 77–79.

⁴⁵ Taqî al-Dîn Abî Bakr ibn Muḥammad al-Ḥussaini, *Kifâyah al Akhyâr*, vol. II (Beirut: Dâr al- Kutub al-‘Ilmiyah, 1993), 84.

Divorce is one of the reasons for the breakup marriage. Divorce is justified by religion, but it is as *tashri'* which is an exception due to emergencies (وإنما الطلاق تشريع استثنائي للضرورة) after failing to take various rescue steps. Also, the household did the divorce; religion still allows returning – even without needing the witnesses – during the ‘iddah period. This understanding is that divorce should be avoided as much as possible.⁴⁶

The word divorce and its derivations are repeated 21 times in the Qur'an. Also, the application of the different meanings;

1. *Thalâq* as a divorce; QS. al-Baqarah /2: 227, 228, 229, 230, 231, 232, 236, 237, 241; QS. al-*Thalâq* /65: 1; QS. al-Tahrim /66: 5; QS. al-Ahzab /33: 49.
2. Depart/ Go; QS. Sad /38: 6; QS. al-Kahfi /18: 71, 74, 77; QS. al-Qalam /68: 23; QS. al-Fath /48: 15; QS. al-Mursalat /77: 29, 30.
3. Fluent in Speech; Q.S. al-Syu'ara/26: 13;

The mapping shows the three meanings if we trace it, and also still related to the initial meaning, to separate. The most common purpose in the Qur'an is divorce, which means breaking up the marriage. The second meaning is going or departing, which means getting away from the situation or its original place. Meanwhile, the purpose of speaking is for someone has let go of his voice.⁴⁷

⁴⁶ Iffah Muzammil, “Fiqh Munakahat: Hukum Pernikahan Dalam Islam” (Tangerang: Tira Smart Anggota IKAPI, 2019), 146.

⁴⁷ Lilik Umami Kaltsum and Abdul Moqsith Ghazali, “Tafsir Ayat-Ayat Ahkam” (Ciputat: UIN Press, 2015), 211.

The scholars agree that there are two kinds of divorce; *ba'in* and *raj'i*. *Thalâq raj'i* means the husband has the right to refer his wife voluntarily, and one of the conditions is that the wife has had sex with him. As for *thalâq ba'in*, it only happens because sex has not occurred, the counting divorces, and the *iwadh* (compensation) in *khulu'*.⁴⁸

Fiqh books codified that the Islamic divorce system has various types of divorce, starting from *zihar*, *'ila*, *thalâq*, and *khulu'*. However, what is used in society commonly is *thalâq* and *khulu'*. A household's running is a shade of calm, affection, and sound association, and each other can carry out their obligations. If the hatred comes to the husband, he has to do a divorce, which is one of his rights as *thalâq*. Moreover, if hatred comes from the wife's side, Islam allows the wife to redeem herself with *khulu'*.

Khulu' is permissible for wages that are determined in Islam. *Khulu'* is the purchase of divorce from a wife to her husband. *Khulu'* is a sign for the wife to return the dowry that her husband has given to her to end the marriage. While fiqh experts define the *khulu'* with فراق الرجل زوجته ببذل يحصل له (Divorce imposed by a husband against his wife for compensation). Other scholars define divorce as accompanying between husband and wife by giving off some assets from the wife.⁴⁹ *Khulu'* ability in Islam, as the term *khal'at-Tsaubâ* means to

⁴⁸ Jaser Auda, *Ringkasan Bidayatul Mujtahid Wa Nihayatul Muqtashid Ibnu Rusyd* (Jakarta: PT Qaf Media Kreatif, 2019), 366.

⁴⁹ Muza mmil, "Fiqh Munakahat," 148.

take off or undress.⁵⁰ The wife is like the husband's clothes, and the husband is the wife's clothes. Allah says,

هُنَّ لِيَاسٌ لَكُمْ وَأَنْتُمْ لِيَاسٌ هُنَّ

Another term from Sayyîd Sabîq, *khulu'*, is ransom. The wife redeems herself from her husband by returning what she has received at first marriage as the dowry. The word appears from *khal'a*, and it means to take off. Fiqh views the *khulu'* as a wife who separates herself from her husband by giving something to him. The basis for the ability of *khulu'* on the hadist that narrated by al-Imâm al-Bukhârî and an-Nasâ'î from Ibn 'Abbâs about the wife of Tsâbit bin Qais bin Syammas.

2. Legal Basis for Divorce

One of the verses for the basis law of divorce, in Q.S. al-Baqarah

2/229:

﴿الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ ۝ ٢٢٩﴾

A divorce is only permissible twice; after that, The parties should either hold together on equitable terms or separate with kindness. It is not lawful for men to take back any gift (from their wives), except when both parties fear that they would be unable to keep the limits ordained by Allah if he (judges) do indeed worry that they would be unable to control the limits ordained by Allah. There is no blame on either of them if she gives something for her freedom; these are the limits ordained by Allah, so do not

⁵⁰ Sabiq, *Fikih Sunnah-Jilid 4*, 79.

transgress them if any do transgress the limits ordained by Allah; such persons are wrong (themselves as well as others).⁵¹

The permissibility of *khulu`* (term of fiqh) for a wife to sue her husband for divorce with a ransom. Most scholars allow the *khulu`* on the argument of the text,

فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ

Dr. Jasser Auda, as for commentator, explains these verses are principles, whereas this hadist is just a decision about a case. *Khulu`* is permissible for wages specified. *Khulu`* is the purchase of divorce from a wife to her husband.⁵² Also, explanation of hadist for legal basis do divorce;

حَدَّثَنَا كَثِيرٌ بْنُ عَبِيدٍ حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ عَنْ مَعْرُوفِ بْنِ وَاصِلٍ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ
إِبْنِ عَمْرٍو عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَبْغَضُ الْحَلَائِلِ إِلَى اللَّهِ تَعَالَى الطَّلَاقُ

Katsîr bin ‘Ubaid has told us Muḥammad bin Khâlid have told us from Mu‘arrif bin Wâshil from Muḥârrib bin Ditsâr from Ibn ‘Umar from the Prophet sallallaahu `alaihi wasallam, and He said: *The halal thing that Allah hates the most is divorce.* (H.R. Abi Dawud).⁵³

This argument is clear that divorce is legal, which Allah SWT hates the most. The perspective of scholars to understand the law of divorce is perhaps in *the khilâfiyyah* problem. Some scholars explain that divorce is unlawful. This opinion comes from the scholars of the Hanafî *mazhab* in the book of *Kitab al-Mabsûth* by Sarkhasi, a book quite representative of

⁵¹ Abdullah Yusuf Ali, *The Holy Qur`an: English Translation Of The Meanings and Commentary* (Arab Saudi: IPCI Islamic Vision, 1934), 99–100.

⁵² Much. Anwar, *Fiqh Islam Tarjamah Matan Taqrib*, (Bandung: PT Al-Ma`arif, 1973), 194-195.

⁵³ Sulaimân bin al-Asy`as al-Sajastanî, *Sunan Abî Dâwud*, 570.

Hanafi *mazhab* that divorce is not permissible except there is an emergency.

Islam allows husband and wife to take a divorce. Religion justifies divorce, but it is *tashri'* that is an exception because of an emergency after failing to take various 'rescue' steps. Islam also gives some “facilitates” for domestic conflict through divorce and reconciliation. Divorce is a suitable separation mechanism (although there is no divorce without dispute), and reconciliation is a mechanism for remarrying a former partner, also in a good way.⁵⁴

3. Divorce Rights

Islam's concept explains that a divorce is a lawful act, but God hates it most. This discussion will not describe at length the extent Islam prohibits or allows divorce. The debate instead will focus more on discussing Islamic alignments in divorce from the perspective of Qur'anic Interpretation. The Qur'an pays attention excellently to the issue of divorce. It is shown in many verses of the Qur'an. Right is qualities (such as adherence to duty or obedience to lawful authority) that constitute the ideal of moral propriety or ethical merit approval. Something to which one has a just claim; as a) the power or privilege to which one is justly entitled, b) the interest that one has in a piece of property _ often used in the plural.

A Qur'anic point tells about divorce, and the commentator examines how the Qur'anic concept of divorce is then discusses how

⁵⁴ Nurrochman Nurrochman, “Al-Qur'an dan Isu Kesetaraan Gender,” *Wahana Akademika: Journal Studi Islam Dan Sosial* 1, no. 2 (2016): 270.

Islamic jurists formulate the divorce issue into fiqh clauses. An in-depth study of Islamic law will find that divorce tends to be androcentric.⁵⁵

Thalâq is a divorce model that gives men space to hold full authority in breaking up marriage relations. Whereas *khulu'* is prescribed explicitly in Islam for the first time, a jurist of fiqh assumed the *khulu'* is a form of significance for women's position in the divorce process. If examined deeper, it still shows a part in the right to divorce or gender bias or the right of *khulu'* or suing for divorce can be described as a hope of pseudo equality. Because the perspective of scholars before, *khulu'* was only a woman's initiative right in divorce, or more precisely, her right to redeem herself to be divorced.⁵⁶ The issue of divorce became complicated because of the cultural customs of the Arab community. The revelation of divorce verses is a response to the phenomenon of divorce in Arab society, in many ways, harms women. For example, Arab men divorce their wives repeatedly, then remarry their wives. It happens every time. Therefore, this condition not surprising that Muslim feminists consider the Islamic legal conception of divorce more meaningful as a historical interest rather than a juridical consequence.⁵⁷

The husband has the authority to divorce his wife because the reasons are the following; the husband is the leader in the household and

⁵⁵ Androcentric is an understanding that makes men the center of the world. See in Nurrochman Nurrochman, "Al- Qur'an dan Isu Kesenjangan Gender," *Wahana Akademika: Journal Studi Islam Dan Sosial* 1, no. 2 (2016): 270

⁵⁶ Mahasiswa Program Pascasarjana, *Isu Isu Gender Kontemporer* (Malang: UIN MALIKI PRESS, 2010), 189–90.

⁵⁷ Nurrochman, "Al-Qur'an dan Isu Kesenjangan Gender," 283.

provides the welfare for the wife and children. Women have subtle feelings and fear that they will easily impose divorce. Divorce implies giving some material, such as dowry payment, maintenance *'iddah*, and *mut'ah*. These obligations are not appropriate for a woman.⁵⁸

The jurists of all *mazhab* declared they agreed with the authority of men to divorce their wives. However, it seems important to note that no explicit statement in the Qur'an justifies this view. One of the causes of male discrimination against women is the phrase "men have a degree over women," according to the Interpretation of Q.S. al-Baqarah verse 228

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَ بِالْمَعْرُوفِ وَلِلرِّجَالِ دَرَجَةٌ عَلَيْهِنَ

“But husbands have degrees over them (women).”

Most mufassir believe that the word "degree" is given to the husband. A form of man has superiority, everything compared to his wife, so consequently, the wife must obey all orders and wishes of the husband even though the wife must do the man's desires under forced circumstances.

Nowadays, women are entering the job market, both formal and non-formal. Life dependency on men is also getting smaller; even not a few women be the head of the family. Unfortunately, Q.S. Al-Baqarah 2/228 is still used as an excuse to consider women lower than men.

History records that even the Prophet tried to eradicate the *Jahiliyah* culture that demeaned and abused women. There are still

⁵⁸ Muzammil, “Fiqh Munakahat,” 129.

groups of people, including the Muslim community, who see women as unequal to men for thousands of reasons and ironically use religious reasons. Musdah Mulia questioned why the *Jahiliyah* culture was still being maintained. The answer is very predictable. The culture benefits certain groups, namely the patriarchs (generally men), to enjoy women's services. A group of people wants the *jahiliyyah* culture because it is profitable and provides comfort to them.⁵⁹

B. Definition of Epistemology Interpretation

1. Definition of Epistemology

Epistemology is the study, or a theory of the nature and grounds of knowledge especially concerning its limits and validity.⁶⁰ The discipline science of philosophy, the problem of expertise revolves around three things, namely the ontological aspect regarding what is the knowledge, the epistemological element regarding how to know the science, and the axiological part regarding what learning is for society. From three factors, the second aspect concerns acquiring knowledge, including sources and procedures for obtaining and developing understanding.

JF Ferrier (1854 AD) introduced the term first and helped clarify the study of epistemology. Epistemology is the study of the branch of Philosophy that investigates the origin, structure, methods, and validity of

⁵⁹ Siti Musdah Mulia, *Kemuliaan Perempuan dalam Islam* (Jakarta: Elex Media Komputindo, 2014), 18.

⁶⁰ Webster, *Webster's New Explorer Encyclopedic Dictionary*, 2006, 613.

knowledge.⁶¹ The mapped systematically, epistemologists want to answer three main questions. First, the issue of the "origin" of knowledge, what are the sources of knowledge? Second, the problem of knowledge's nature (reality) is the question of that knowledge's character (characteristics). Third, the issue of studying the truth, namely whether our understanding is actual and can be held.⁶²

2. Definition of Interpretation

The root word of interpretation is interpreted. Interpretation means 1) to explain or tell the meaning of, present in understandable terms; 2) to conceive in the light of individual belief, judgment, or circumstance; 3) to represent using art; bring to realization by performance or direction; to act as an interpreter between speakers of different languages.⁶³ Islamic concept, Interpretation is a *tafsîr*, the word "tafsîr" is a form *taf'îl* from the word *al-fasr*, etymologically means *al-bayân wa al-kasyf* (explanation and disclosure). *Fassara al-Sya'i* and *fassara-tafsîran* mean explaining something. The word *al-fasr* means *kasyft al-mughaththa* (reveals something closed). At the same time, the word *al-tafsîr* means uncovering the desired meaning of a word, namely the explanation of the word.

Meanwhile, al-Jurjânî defines interpretation as explaining the meaning of the verse, its circumstances, its story, and the reason for the revealed verse, with a clear pronunciation. al-Kibly defines Interpretation

⁶¹ Muhyar Fanani and Kamdani, *Metode Studi Islam: Aplikasi Sosiologi Pengetahuan Sebagai Cara Pandang* (Yogyakarta: Pustaka Pelajar, 2008), 47–48.

⁶² M. Hasbi Ash-Shiddieqy, *Sejarah dan Pengantar Ilmu Al-Qur`an dan Tafsir* (Jakarta: Bulan Bintang, 1986), 178.

⁶³ Webster, *Webster's New Explorer Encyclopedic Dictionary*, 2006, 831.

as stipulating the *Qur'ân*, explaining the meaning of quranic verses, and explaining what he wants with the text or the search.⁶⁴ Meanwhile, according to Nasharuddin Baidan, defining Interpretation is explaining the meanings are difficult to understand from the verses of the *Qur'ân*.⁶⁵

3. Epistemology of Interpretation

Abdul Mustaqim explained that epistemology is a branch of philosophy that explicitly examines the theory of science and includes the study of the nature of knowledge, sources of knowledge, methods, and testing of the truth of science (verification). The term interpretation or *tafsîr* explained as a form of *isim masdar* from *fassara-yufassiru-tafsîran*, means an explanation of something. Interpretation as an activity means explaining, disclosing, and revealing hidden meanings in a text. However, suppose Interpretation is seen as a product. In that case, it can be interpreted as a result of the mufassir's understanding of the verses of the *Qur'an* by using specific methods and approaches chosen by the mufassir.

The explanation of epistemology and Interpretation generally, according to Mustaqim, concludes the meaning of epistemology of Interpretation is research that explains the nature of Interpretation and the methods used and its validity of the Interpretation of the *Qur'an*.⁶⁶

Mustaqim explains in his book, *Pergeseran Epistemologi Tafsir*, the history of the tradition of *Qur'ân* Interpretation since the Prophet

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⁶⁴ Nashruddin Baidan, *Wawasan Baru Ilmu Tafsir*, (Yogyakarta: Pustaka Pelajar, 2011),

⁶⁵ Muqtaqim, *Epistemologi Tafsir Kontemporer*, 11.

⁶⁶ Mustaqim, *Pergeseran Epistemologi Tafsir*, 2009, 33.

Muhammad's life until today; there has been a shift in the epistemology of Interpretation. Part of change and continuity. He divides it into three parts; First, the Interpretation of the formative era based on quasi-critical reasoning, namely the Interpretation of the Qur'an occurred or took place during the time of the Prophet and his companions to the post-companion era; second is told about the Interpretation of the affirmative era is based on ideological reasoning, namely the Interpretation of the *Qur'ân* took place in the Islamic Middle ages based its Interpretation on ideological rationale. Moreover third, the Interpretation of the reformation era is based on critical reasoning. Namely, the Interpretation occurred in the modern-contemporary age.⁶⁷

The science of Interpretation limits the discussion only to methods of understanding and explaining the Qur'an. However, in an epistemology, Interpretation serves as a methodology that includes normative textuality and historical contextualism. First, it intends to draw meaning from the text of the Qur'an. Second, it wants to interpret the Qur'an through an interdisciplinary approach and the influence of certain social conditions.

According to Komaruddin Hidayat, the epistemology of Interpretation occupies a central position in modern scholarship. Then, the development of human civilization is dynamic, so the need to interpret the Qur'an is urgent. On the other hand, al-Qur'an is a source of law and

⁶⁷ Mustaqim, 33.

guidance, and the Qur'an is a place of awareness for all forms of human thought.⁶⁸

The problem research directs the women right for divorce. There is inequality between men and women based on Q.S. al-Baqarah verse 228-229. This research seeks to understand the perspective of Nusantara interpretation, namely the first Indonesian Islamic mufassir figure, syekh Nawawî al-Bantanî in his work *Marâh Labîd*, and contemporary gender figure Zaitunah Subhan in his work *Tafsir Kebencian Studi Bias Gender dalam tafsir Qutr'ân*. Many differences between the two figures, their understanding of divorce rights, generational differences, motivation, and mastery of knowledge, will affect the Interpretation results significantly. It is essential to look at the structure of the epistemology, including the sources of Interpretation, the methods used, and the validity of an interpretation put forward—the two figures in interpreting Q.S. al-Baqarah verse 228.

4. Limitation Of Epistemology Problem Of Interpretation

a. Sources of Interpretation

The epistemology of Interpretation has developed quite dynamically. The scholars of Interpretation from the generation before to the contemporary develop the source and validity of Interpretation systematically. According to Mustaqim, the development of Interpretation begins with an interpretation model that relies directly on

⁶⁸ Komaruddin Hidayat, *Bahasa Agama*, (Jakarta: Penerbit Mizan, 2007), 15.

the Prophet Muhammad SAW what was explained or the results of the Interpretation against the verses of the Qur'an by the Prophet Muhammad SAW interpretation, then taught or presented to the companions. This model is known as the *tafsîr bi al-ma'tsûr* method, which is used in interpretation and is sourced on narration. Therefore the benchmark for the truth of interpretation is determined by *tsiqah* and *muttashil sanad* (like a transmission chain).

The group of *ar-rayi* jurists came, namely Mu'tazilah followers who wanted more than the narration model. This phase uses intellect. Since then, the Interpretation has not developed limited to an explanation or history of a verse of the Qur'an from the Prophet and all friends but is also based on reason and common sense. The parameters of the truth of Interpretation are shifted from the elements of narration and reasoning.

The contemporary era, Interpretation sources combine the text of the Qur'an, reason (*ijtihad*), and empirical reality. The paradigm used in viewing three things is a dialectical functional paradigm. It means the roles of the text, author, and reader are balanced. This paradigm assumes that an interpretation must be carried out continuously. In contrast to most classical arrangements, the paradigms used are structural, which supersede one another.⁶⁹

b. Method of Interpretation

⁶⁹ Abdul Muqtaqim, *Epistemologi Tafsir Kontemporer* (Yogyakarta: LKiS, 2010), 21–22.

Al-Farmawi, in his book *al-Bidayah fi at-Tafsir al-Maudhu'i*, maps the Interpretation in terms of his method into four parts, as follows; 1). *Tafsîr tahlilî* (analysis method), interpreting the meaning in the verses of the Qur'an from all aspects. Following the Mushaf. 2). *Tafsîr Maudhû'i* is an interpretation that collects verses with the same theme. 3) *Tafsîr muqarrîn* presents the Interpretation of Qur'ân verses from some *mufassirs* and then compares and analysis the directions and tendencies of *mufassirs*.⁷⁰ 4) *Tafsîr ijmalî* is a straightforward interpretation of the Qur'an verses. Describing the global meaning of the verse, using the language of the expression of the Qur'an by adding connecting words or sentences to understand easily.⁷¹

Mustaqim explains in his book *Epistemology Tafsir Kontemporer*, a traditional *mufassir*, generally uses the *tahlilî*, while contemporary understanding of the Qur'an verses uses the *maudhû'i* with Interdisciplinary approaches to linguistics, gender analysis, anthropology, socio-historical, to hermeneutic.⁷²

a. Validity of Interpretation

One of the epistemological problems is seeing the Interpretation of the Qur'an as related to the truth of Interpretation, the sense of how far an interpretation product can be said to be true.

This standard needs to analyze the effect of the Interpretation of the

⁷⁰ Yunus Hasan Abidu, *Tafsir Al-Qur'an Sejarah Tafsir dan Metode Para Mufassir* (Jakarta: Gaya Media Pratama, 2005), 5.

⁷¹ Nashruddin Baidan, *Metodologi Penafsiran Al-Qur'an* (Yogyakarta: Pustaka Pelajar, 1998), 2.

⁷² Abdul Mustaqim, *Pergeseran Epistemologi Tafsir* (Yogyakarta: LKiS, 2009), 83.

Qur'an is oriented to be used in life. There are three theories of truth from the perspective epistemology of science philosophy:

1. The coherence theory, the interpretation is declared correct if the interpreter is consistent in thinking about the meaning of a sentence and also the Interpretation is supported by other commentators or interpreters before in a knowledge system that is considered correct.⁷³
2. The Correspondence theory assumes that Interpretation declares the truth if it corresponds, fits, and follows the scientific facts in the field.
3. The Pragmatism theory assumes that Interpretation is declared correct if it can provide solutions practically to the problems of social life appear.⁷⁴

⁷³ Abdul Mustaqim, *Pergeseran Epistemologi Tafsir* (Yogyakarta: LKiS, 2009), 292.

⁷⁴ Abdul Mustaqim, *Epistemologi Tafsir Kontemporer* (Yogyakarta: LKiS, 2012), 83.