

CHAPTER IV

WOMEN RIGHT FOR DIVORCE IN Q.S. AL-BAQARAH VERSE 228-229

A. Syekh Nawawi's Interpretation in *Marâh Labîd*

Some, classical books of fikih, explains the dissolution of marriage on the right to divorce in the power of man. The husband's right to divorce his wife is declared valid in their way. Even though many men act arbitrarily in divorce, when a woman sues for divorce, it is still judged as *nusyûz*. Indeed, this problem is contrary to gender equality.⁷⁵

One of the controversial verses is often misunderstood; there is an authorization for one of the parties can deciding on the marriage. Indeed, it is addressed to the husband because long ago, men had a degree over women, like having superiority over women in terms of the divorce or other rights in life.⁷⁶ There is the Word of Allah SWT in Q.S. Al-Baqarah/2:228

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَهِنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ ٢٢٨﴾

⁷⁵ Hemnel Fitriawati and Zainuddin Zainuddin, "Talak Dalam Perspektif Fikih, Gender dan Perlindungan Perempuan," *Yinyang: Journal Studi Islam Gender Dan Anak* 15, no. 1 (2020): 63.

⁷⁶ Mahasiswa Program Pascasarjana, *Isu Isu Gender Kontemporer*, 203.

Divorced women shall wait for themselves for three monthly periods. Moreover, it is not lawful for them to hide what Allah Hath created in their wombs if they have faith in Allah and the Last Day. Moreover, their husbands can take them back to that period if they wish for reconciliation. Moreover, women shall have right similar to the right against them, according to what is equitable; but men have a degree over them, and Allah is Exalted in power, Wise. (Al-Baqarah/2:228).⁷⁷

Many mufassir understand the word "*darajat*" as a higher level to the husband than the wife. Divorce rights as the husband's prerogative because of their assumption that only the husband has the right to control the marriage when every decision is in the hands of the husband. Syekh Nawawi al-Bantani interprets this sentence,

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ^ط وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ

(And women) they shall have the rights imposed on the husband (similar to the right against them), the rights have granted for husband, (according to an equitable) in *syara'*, regarding *husnûl mu'âsyarah* or a good association, (but men have a degree over them,), i.e., priority in a reason of rights, husband's right are related wives themselves. In contrast, the wife's right borne by the husband is related to the dowry and maintenance. (Al-Baqarah/2:228)⁷⁸

The problem appears when the mufassir interprets the next verse وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ^ط, "but men have a degree over them," first means between husbands and his wife have similar rights. The priority on a reason of rights, husband's rights are related to the wives themselves, while the wife's rights imposed on husbands are in the dowry and subsistence. Because of this, the husband has more rights to be obeyed his wife.⁷⁹

⁷⁷ Ali, *The Holy Qur'an: English Translation Of The Meanings and Commentary*, 98–99.

⁷⁸ al-Jâwî, *Marâh Labîd Li Kasyfî Ma'nâ Al-Qur'ân al-Majîd*, 55.

⁷⁹ al-Jâwî, 55.

According to the explanation, the husband's rights to divorce his wife are obtained from the husband's responsibility in providing dowry and welfare for his wife and family. In this relationship, the husband has the right to receive obedience from his wife. Because of his responsibility to take care of and protect his wife and her welfare.⁸⁰

The interpretation is almost the same as Syekh Nawawi's references, that are *Tanwîr al-Miqbâs*,⁸¹ *Tafsîr Abî Su'ûd*,⁸² and *al-Sirâj al-Munîr*.⁸³ Moreover, *Tafsîr al-Kabîr Mafâtih al-Ghayb*, also agrees that husbands have the superiority over the wives. Even though the first interpretations are more detailed to exaggerate men, including; leadership, knowledge, and physical abilities, men are superior in hard work.⁸⁴

According to the Engineer, looking through the thiInterpretationon seems contradictory. However, it is contradictory to reflect the social reality in Arab before Islam came. The social fact did not easily side with women; the cultural values are made the basis for the rule of law cause these rules would feel normal in the local community where the culture was patriarchal and biased to men's interests.⁸⁵ Syekh Nawawi nterpretationon concludes that

⁸⁰ Syekh Muḥammad Bin 'Umar al-Nawawî, *Syarâh 'Uqud al-Lujayn Etika Rumah Tangga*,...11-12.

⁸¹ Riwayât 'Ibnu 'Abbas, *Tanwîr Al-Miqbâs Min al-Tafsîr 'Ibnu 'Abbas* (Beirut: Dar al-Kutub al-'Ilmiyah, 1412), 44.

⁸² 'Abu Su'ûd bin Muhammad al-'Amadi, *Abû Su'ûd 'Au Irsyâd Al-'Aqlu al-Salîm Ila Mazâyâ al-Kitâb al-Karîm* (Beirut: Maktabah al-Riyâdh al-Haditsah, n.d.), 40.

⁸³ Muhammad bin Muhammad asy-Syarbinî, *Al-Sirâj al-Munîr Fi al-I'ânah 'Ala Ma'rifati Ba'dh Ma'anî Kalam Rabbinâ al-Hakîm* (Beirut: Maktabah al-Riyâdh al-Haditsah, n.d.), 352.

⁸⁴ Fakhr al-Dîn Muḥammad ibn 'Umar al-Razî, *Mafâtih Al-Ghayb al-Mushtâhîr Bi al-Tafsîr al-Kabîr* (University of Toronto: al-Ma'tba'ah al-Misriyah al-'Amiriyah, 1862), 92.

⁸⁵ Mahasiswa Program Pascasarjana, *Isu Isu Gender Kontemporer*, 190.

the degree is the men's responsibility for women. There are dowry, safety, and family welfare.

The next verse Q.S. Al-Baqarah/2:229 is an explanation of *khulu'* as well as the legal basis of law in Islam. Syekh Nawawi also confess this verse became the basis for Islamic recognition of the granting of women's rights in Islamic history, as well as world history.⁸⁶ Q.S. Al-Baqarah/2:229;

﴿الطَّلَاقُ مَرَّتَيْنِ ۖ فَمَسَاكٌ مَّعْرُوفٌ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ وَلَا يَحِلُّ 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 فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ۗ﴾

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 transgress them if any do transgress the limits ordained by Allah; such persons are wrong (themselves as well as others).⁸⁷

At the sentence,

﴿وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ ۗ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ﴾

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.

⁸⁶ al-Jâwî, *Marâh Labîd Li Kasyfî Ma'nâ Al-Qur'ân al-Majîd*, 55.

⁸⁷ Ali, *The Holy Qur'an: English Translation Of The Meanings and Commentary*, 99–

One of the good attitudes when a husband divorces his wife, is that he should not take anything given to a divorced wife, such as dowry, clothes, and all the gifts he gives to the wife. Because He has enjoyed herself and as a reward and what has been shown to him.⁸⁸

However, if the causes from wife in hatred her husband, the wife may give back the gifts that her husband has given her to get away from the marriage so her husband can divorce her. Also, the husband is innocent of receiving the gift back (*iwadh*).⁸⁹

Syekh Nawawi, an expert in *qirâ'at*, there it describes the word "*al-Khauf*" as a worry. Usually, as everyday worries, the feeling of fear that something terrible will happen. Besides that, it can also interpret as *zat* or a substance or guess, as in the *qira'at syazzah*, which is read as '*Illâ Ayyazunna*.

Some of the laws explain husbands' and wives' feelings of worry. For example, sometimes it appears from the wife's, husband's, and both sides simultaneously, or there is no feeling of fear. If worries appear from the wife's side, so she disobeys and hates her husband, then it is permissible for the husband to accept a ransom as compensation from her, and the husband can divorce her. If worries appear from the husband's side, then He hits and hurts the wife, forcing the wife to pay the ransom, then the ransom is forbidden, and also happens if worry appears from both parties.⁹⁰

⁸⁸ al-Jâwî, *Marâh Labîd Li Kasyfî Ma'nâ Al-Qur'ân al-Majîd*, 56.

⁸⁹ Departemen Agama RI, *Al-Qur'an Dan Tafsîrnya* (Jakarta: Widya Cahaya, 2011), 399.

⁹⁰ al-Jâwî, *Marâh Labîd Li Kasyfî Ma'nâ Al-Qur'ân al-Majîd*, 56–57.

Regarding the *asbâb al-nuzûl*, this verse tells story about Tsâbit ‘ibn Qais ‘ibn Syammas with Jamîlah bint ‘Abdullah ibn Ubay. When Jamîlah redeems herself from her husband with the dowry she had received, her husband divorces her.

حدثنا ازهر ابن جميل حدثنا عبد الوهاب الثقفي حدثنا خالد عن عكرمه عن ابن عباس, أَنَّ امْرَأَةً ثَابِتِ بْنِ قَيْسِ أُمَّتِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ : يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتَبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : (أَتُرَدُّينَ عَلَيْهِ حَدِيثَهُ ؟ قَالَتْ : نَعَمْ . قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : اقْبَلِ الْحَدِيثَ وَطَلِّقِيهَا تَطْلِيقًا

Azhar bin Jamîl has told us, ‘Abdu al-Wahhâb al-Tsaqafî has told us, Khâlîd has told us, from ‘Ikrimah from Ibn ‘Abbâs; "One time, the wife of Tsâbit bin Qais bin Syammas comes to the Prophet Sallallahu ‘alaihi wasallam and says, "O Messenger of Allah, I did not denounce Tsâbit for his religion or morals, but I was worried that I would fall into disbelief." So Prophet sallallahu ‘alaihi wa Sallam said: "Then, return his garden." He said, "Yes." so he returned the garden to Tsâbit, and Tsâbit left the woman.⁹¹

In *Marâh Labîd* cites the word of Prophet shallallahu;

خذ منها ما أعطيتها وخلّ سبيلها

“Receive from him what you have given to him and let him choose his path.”

Tsâbit did what the Prophet Muḥammad did, so this story became the origin of *khulu’* in Islam. In *Sunan, Abî Dâwud* explains that the woman's name was Hafshah bint Sahl al-Ansharî.⁹² The hadiths above are also expressed in some references, *Tafsîr ‘Ibn ‘Abbâs*, *Tafsîr Abî Su‘ûd*, and *al-Sirâj al-Munîr*.

⁹¹ ‘Abdullah Muḥammad bin Ismâil bin Ibrahîm bin al-Mugirah al-Bukharî, *Shahîḥ Al-Bukhârî*, vol. 7 (Kairo: al-Sya`ab, 1885), 60.

⁹² al-Jâwî, *Marâh Labîd Li Kasyfî Ma`nâ Al-Qur`ân al-Majîd*, 55.

Generally, Syekh Nawawi al-Bantani explains the word "a husband has a degree of a husband over a wife" or a husband has a higher level. Syekh Nawawi does not mention that the husband is a leader and has differences in intelligence or excellence at work. This interpretation distinguishes Syekh Nawawi al-Bantani in *Marâh Labîd* from *Tafsîr al-Kabîr Mafâtiḥ al-Ghayb* and *Tafsîr Abî Su'ûd*, Such an understanding will give to a negative view of women that husbands have a better level, both in a reason and knowledge and are superior at work, the understanding the wife is under her husband's authority.

The views of gender-biased may come from another book 'Uqud al-Lujjain'. The book is widely studied in many Islamic boarding schools in Indonesia. Syekh Nawawi al-Bantani emphasizes the hadist regarding the prohibition of a wife asking for a divorce;

حدثنا سليمان بن حرب حدثنا حماد عن ايوب عن ابي قلابة عن ابي اسماء عن ثوبان , قال : قال رسول الله صلّى الله عليه وسلم : أيما امرأة سألت زوجها الطلاق في غير ما بأس , فحرامٌ عليها رائحة الجنة

Sulaimân bin Harb has told us, Hammad has told us from Ayyûb from Abî Qilâbah from Abî Asmâ` from Tsaubân. He said: Rasulullah said: "any wife who asks her husband for a divorce without a logical reason is not allowed even though she smells the fragrance of heaven."⁹³ (Narrated by Ahmad, Abu Dawud, Tirmidhi, Ibn Hibban, and Hakim from Tsauban, an assistant to the Messenger of Allah.⁹⁴

Abû Bakr ash-Shiddiq R.A. said, "I once heard the Messenger of Allah say; "If a wife says to her husband, `divorce me,` then on the Day of Resurrection, his face will become fleshless, his tongue protrudes from the

⁹³ Sulaimân bin al-Asy`as al-Sajastanî, *Sunan Abî Dâwud*.

⁹⁴ JpnMuslim, *Kumpulan Hadist Sunan Abu Daud*, 1899, accessed December 19, 2022, http://archive.org/details/Kumpulan_Hadist_Sunan_Abu_Daud.

nape of his neck, and he is launched into the abyss of hell, even though during the day he always fasts and at night he always worships."

The hadist seems to show a strong threat that a woman asks for divorce without any logic reasons. Syekh Nawawi al-Bantani following Ibn Ruslan's opinion, "meanings of a logic reason for divorce is like, when a wife cannot carry out Allah's provisions that have been made obligatory for her, such as getting along well and pleasant treatment, whether there is a factor of hatred towards her husband or aspect of the husband's actions that can hurt him.⁹⁵

حَدَّثَنَا أَحْمَدُ بْنُ الْأَزْهَرِ حَدَّثَنَا مُحَمَّدُ بْنُ الْفَضْلِ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي أَسْمَاءَ عَنْ ثَوْبَانَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ

Ahmad Ibnul Azhar have told us, Muhammad Ibnul Fadl have told us, from Hammad bin Zaid, from Ayyub, from Abu Qilabah, from Abu Asma from Tsauban said, "Rasulullah shallallahu 'alaihi wasallam said: "Any woman who asks her husband for a divorce is not for a justified reason, then she will not get the smell of heaven."⁹⁶

The meaning of hadist tells that doing a divorce is not easy. Because marriage is something sacred and done forever, even though it is permissible for a wife to sue for divorce from her husband, it does not mean that a wife can arbitrarily sue for divorce from her husband. Because of the permissibility implied in several hadist narrated by narrators with various versions, none allow a wife to sue her husband without a logical reason.

⁹⁵ Syekh Nawawî al-Bantânî, *Hak dan Kewajiban Suami Istri*, trans. Syarh 'Uqud al-Lujjain fi Bayâni Huqûq az-Zaujain,...58.

⁹⁶ JpnMuslim, *Kumpulan Hadist Sunan Ibnu Majah*, 2015, http://archive.org/details/Kumpulan_Hadist_Sunan_Ibnu_Majah_201510.

Permissibility is just tolerance for those with no better way out, which in the prediction of suing for divorce, is more beneficial than continuing the household.⁹⁷

The conclusion of Syekh Nawawi al-Bantani's understanding, "Men have a degree over women" in Q.S. Al-Baqarah verse 228. The excess is a responsibility for the dowry and the wife's welfare. He did not mention fundamental differences, such as the weakness of women's minds and emotional nature. This interpretation will reduce the image of more negative gender equality towards women's rights. It distinguishes Syekh Nawawi al-Bantani's understanding from the classic Interpretation as his reference.

Regarding the women's rights to divorce, as a *khulu'*. Syekh Nawawi al-Bantani confesses in QS. Al-Baqarah verse 229 is the basis for Islamic recognition of the granting of divorce rights for women in Islamic history, even world history. Essential, the explanation of the hadist that seems gender-biased, a logical reason must be submitted to the wife not arbitrarily sue her husband. Permissibility is tolerance for those for whom there is no better way out than divorce.

B. Zaitunah Subhan's Interpretation in *Tafsir Kebencian*

All of Adam's children, including men and women, are exalted. Both have the same rights and obligations without any sex differences. The Qur'an

⁹⁷ Iim Fahimah, "Plagiarism Checker X Originality Report Karya Ilmiah: Gugat Cerai Wanita Dalam Perspektif Hadis Nabi Muhammad SAW (Tela'ah Terhadap Hadis-Hadis Khulu')," *article* 2020, 10.

details state that women have equal rights with men. Men have rights over women. Also, women have rights over men.

Zaitunah emphasizes that Islam is the first religion in the world to admit the existence of women's right to divorce and the definition of *khulu'*. The wife's right to *khulu'* is absolute, and no one can prevent it. The habit of divorce rights is still the same as what happened during the *Jahiliyyah* era. To put women in the law position, imposing the divorce rules is arbitrarily detrimental to women's interests. The wife becomes dependent on her husband's power in divorce.

“Islam intends to give equal status to women, not only in determining the choice of husband but also a discrepancy can no longer be reconciled (*ishlâh*) an explanation from another interpretation between the two.”⁹⁸

Ishlâh is an agreement between two parties (representing husband and wife) to settle disputes in a good and peaceful way. The word *ishlâh* refers to the Word of Allah SWT QS. al-Baqarah ayat 2:228

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبِعَوْلَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَهِنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ ٢٢٨﴾

Divorced women shall wait for themselves for three monthly periods. Moreover, it is not lawful for them to hide what Allah Hath created in their wombs if they have faith in Allah and the Last Day. Moreover, their husbands can take them back to that period if they wish for reconciliation. Moreover, women shall have right similar to the right against them, according to what is equitable; but men have a degree over them, and Allah is Exalted in power, Wise.⁹⁹

⁹⁸ Subhan, *Tafsir Kebencian Studi Bias Gender Dalam Tafsir Qur'an*, 138–40.

⁹⁹ Ali, *The Holy Qur'an: English Translation Of The Meanings and Commentary*, 98–99.

Zaitunah also explains, emphasizes the word of *ishlâh* as a study of thematic method in another verses, Q.S. An-Nisâ'4/35;

﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ۝ ٣٥ ﴾

If he fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers. If they seek to set things aright, Allah will cause their reconciliation: for Allah hath full knowledge, and is acquainted with all things.(An-Nisa'/4:35)¹⁰⁰

According to Ali Engineer, the word "Man have superiority over women" is often used to justify the men power over women. He thought, the peoples understand because they ignore the previous sentence, which says that "women have a similiars rights as their obligations", those are talking about rights and obligations for women.¹⁰¹

﴿ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا ۗ ﴾

“And women shall have right similar to the right against them, according to what is equitable,”

Zaitunah explains that the sentence is an announcement of the Qur'an on women's rights, especially the right to divorce. Prioritizing their rights and obligations is seen as an affirmation showing how important the Qur'an verses pay attention. Especially so far, in some tribes of the ignorant society, women are almost said to have no rights at all. A successful marriage will not achieve without mutual care and sacrifice from husband and wife. Every activity is done by two people (husband and wife), needs a person in charge, and takes the final decision if an agreement through deliberation still needs to

¹⁰⁰ Ali, *The Holy Qur'an: English Translation Of The Meanings and Commentary*, 220.

¹⁰¹ Mahasiswa Program Pascasarjana, *Isu Isu Gender Kontemporer*, 190.

be reached. Because a continuation of the verse above confirms that husbands have one degree (level) over them, the wives.¹⁰²

Zaitunah emphasizes his opinion of the women's right to divorce by presenting two authentic hadist from the Book of *Shâhih Bukhârî*. The case of Jamîlah, Tsâbit bin Qais's wife, and revoke of Barîrah's marriage to Mugîth.

حدثنا محمد أخبرنا عبد الوهاب حدثنا خالد عن عكرمة عن ابن عباس أن زوج بريرة كان عبداً يقال له مغيث كأني أنظر إليه يطوف خلفها يبكي ودموعه تسيل على لحيته فقال النبي صلى الله عليه وسلم لعباس (يا عباس ألا تعجب من حب مغيث بريرة ومن بغض بريرة مغيثاً) فقال النبي صلى الله عليه وسلم (لو راجعته) قالت يا رسول الله تأمرني قال (إنما أنا أشفع) قالت لا حاجة لي فيه

Muhammad has told us, ‘Abd al-Wahhab has informed us, Khâlid has told us, from ‘Ikrimah, from ‘Ibn ‘Abbâs, That Barîtah’s husband was an enslaved person, Mughîts. I think I saw him doing *Tawaf* behind him while crying until his tears wet his beard. So the Prophet sallallahu ‘alaihi wasallam said: "O ‘Abbâs, don’t you know Mughîts’ love for Barîrah and Barîrah’s hatred for Mughîts?" Finally, the Prophet Sallallahu ‘alaihi wasallam also said: "If you want to return to it." Barîrah asked, "O Messenger of Allah, did you order me?" he replied, "I just suggesting." Finally, Barîrah said, "Actually, I do not wish him the slightest."¹⁰³

The story of Barîrah's marriage with Mughîth. When Barîrah separates her marriage in a *khulu`*, Mughîth cries. The Prophet SAW asked Barîrah if he could return with her. Barîrah asked the Prophet, "did you order me?", "no," replied the Prophet, "I only recommend ." Then Barîrah said, "I do not need it," and she still demanded to sue the *khulu`*.

¹⁰² Jannah, “Konsep Perempuan Persepektif Zaitunah Subhan,” 63.

¹⁰³ Muḥammad bin Ismâil bin Ibrahîm bin al-Mugîrah al-Bukharî, *Shâhih Al-Bukhârî*, 7:142.

The case of Jamîlah, the wife of Tsâbit bin Qais, Jamîlah is very dissatisfied with her marriage. Even though there were no disputes between husband and wife, this problem was conveyed to the apostle, who allowed him to divorce.

حدثنا ازهر ابن جميل حدثنا عبد الوهاب الثقفي حدثنا خالد عن عكرمه عن ابن عباس، أَنَّ امْرَأَةً ثَابِتِ بْنِ قَيْسِ أُمَّتِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ : يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتَبَ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : (أَتُرَدِّينَ عَلَيْهِ حَدِيثَهُ ؟ قَالَتْ : نَعَمْ . قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : اقْبَلِي الْحَدِيثَ وَطَلَّقِيهَا تَطْلِيقًا

Azhar bin Jamîl has told us, ‘Abdu al-Wahhâb al-Tsaqafî has told us, Khâlîd has told us, from ‘Ikrimah from Ibn `Abbâs; "One time, the wife of Tsâbit bin Qais bin Syammas comes to the Prophet Sallallahu ‘alaihi wasallam and said, "O Messenger of Allah, I did not denounce Tsâbit for his religion or morals, but I was worried that I would fall into disbelief." So Prophet sallallahu ‘alaihi wa Sallam said: "Then, return his garden." He said, "Yes." so he returned the garden to Tsâbit, and Tsâbit left the woman.¹⁰⁴

The examples of the divorce problem show that women have the right to separate a marriage. Women tend to sue, while husbands apply. O other words, both of them have equal in obtaining divorce rights.

Mahmud Yunus explains the word *ishlâh*. If a dispute cannot be resolved between a husband and wife, it is advisable to invite a *Hakîm* as a judge from the respective families to reconcile the dispute. If the dispute fails to reconcile, they decide on one of the two; first, the judge from the husband's side divorces his wife as the husband's representative. Second, the judge from the wife's side divorces her husband as the wife's representative. Thus the two

¹⁰⁴ Muḥammad bin Ismâil bin Ibrahîm bin al-Muġrah al-Bukharî, 7:60.

are legally divorced, *thalâq* is the husband's right, and *khulu`* is the wife's right.¹⁰⁵

The Tafsir Religion of Departement also explains that men are providers and responsible for women who become wives and their families. Therefore, if the husband does not do his obligations, the wife has the right to complain to the judge. The word "*ishlâh*" emphasizes that the wife has equal rights with the husband, the right to complain about the husband who does not fulfill his obligations, and he is not responsible to the authority judge.¹⁰⁶

As the first interpretationon, Tafsir Hamka tells about his father, Dr. Syekh Abdul Karim Amrullah, who has long held a *shigât ta'liq* for helping women. In the kind of *shigât ta'liq*, a wide door is opened for the wife; if she does not like it, she can complain to the *Qâdhî* like the judge. If the *Qâdhî* accepts the complaint and the woman pays the compensation, one divorce will fall automatically.¹⁰⁷

According to Zaitunah, a *shigat ta'liq* will help the women. Because many religious judges are still not brave enough to take this action because they may still hold to fiqh scholars *muta'akhirin syafiiyah*, who claim women are *nusyûz*, women do not have a given a living; many women live adrift. In other words, the woman is married but has never had sex, has not been given

¹⁰⁵ Mahmud Yunus, *Tafsîr Al-Qur'ân al-Karîm* (Malaysia: Klang Book Center, 1988), 144.

¹⁰⁶ Departemen Agama RI, *Al-Qur'an Dan Tafsîrnya*, 162.

¹⁰⁷ Abdulmalik Abdulkarim Amrullah, *Tafsîr Al-Azhar* (Singapura: Pustaka Nasional PTE LTD, n.d.), 1208.

a living, nor has she been divorced. When complaining to the judge, women are blamed (because they are *nusyûz*).¹⁰⁸

Another Zaitunah`s book, *Al-Qur'an dan Perempuan*. Also, she alludes to the KHI (*Kompilasi Hukum Islam*) in 129-132 articles about the terminology differences between husbands and wives in divorce. For husbands "applying for divorce," they have the impression of the right to divorce, while for wives, her stated by "suit for divorce," will impress solely divorced, not the one divorced. The terminology that carries equality should be used, namely "applying for divorce"; both have a similar right to divorce. Using this balanced term has implications for equality in applying for divorce, both wife and husband.¹⁰⁹

Zaitunah explains that divorce between husband and wife must be strictly regulated not to harm women and to avoid a seriousness that must do before justice. This way is well done. The wife gets clear and transparent legal, and the man can revoke the divorce imposed by a man on his wife if it turns out that the wife is pregnant: this safeguards the woman's welfare and the child she is carrying. According to feminists, the authority of divorce in the hands of men is no longer contextual. She sees that the development of KHI allows women to initiate divorce with fash procedures and divorce proceedings (*khulu'*).

Zaitunah explains an understanding of *khulu'*. The basis for the permissibility of *khulu'* is the word of Allah SWT, Q.S. al-Baqarah verse 229.

¹⁰⁸ Subhan, *Tafsir Kebencian Studi Bias Gender Dalam Tafsir Qur'an*, 47.

¹⁰⁹ Subhan, *Al-Qur'an Dan Perempuan: Menuju Kesetaraan Gender Dalam Penafsiran*,

﴿الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ حِفْتُمْ 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 transgress them if any do transgress the limits ordained by Allah; such persons are wrong (themselves as well as others).

The verse shows no obstacle for a wife to apply for *khulu`*. *Khulu`* is the logical reason to return the "gifts" that husbands give at marriage. The condition for marriage is giving a dowry to the prospective wife. The *khulu`*, the wife returns gifts as a sign, returning some "dowry." *Khulu* means the wife has the right to decide on divorce. Islam does not make divorce absolutely in the hands of men and is free from all ties and provisions, but it has provided conditions for women.¹¹⁰

The conclusion from thInterpretationon, women's right to divorce is absolute, and no one can stop it. Zaitunah interprets the announcement on women's rights in Q.S. al-Baqarah 2/228. Prioritizing the mention of their rights and obligations is seen as an affirmation and shows how important to pay attention to those rights. Especially in some tribes of the ignorant society, women are almost said to have no rights at all. A successful marriage will not achieve without mutual attention, sacrifice, and involvement with each other

¹¹⁰ Subhan, 206.

(*ishlâh*). Every activity is carried out between husband and wife, so a person in charge must make a final decision if an agreement through deliberation is not reached because a continuation of the verse confirms that husbands have one degree over the wives.

C. The Epistemology of Syekh Nawawi and Zaitunah Subhan interpretation

Historically, the two figures studied are the same product, from Indonesia. However, the two works' interpretations were born in different centuries with different socio-political and cultural aspects. Syekh Nawawi wrote *Marâh Labîd* compiled in the middle of the latter half of the 19th century A.D. The condition of women is described as not much different from the Jahiliyah Arab culture. Then, Zaitunah Subhan's background, entering the contemporary century, the issue of equality is often discussed. Even Zaitunah Subhan actively discusses this controversial issue and is called a Muslim feminist figure.

The interpretations of Q.S. al-Baqarah verse 228 before are mentioned by the two Indonesian figures, Syekh Nawawi and Zaitunah Subhan. They understand divorce rights. The discussion is considered quite exciting and controversial when asked about the divorce rights for wives. Now, this issue still invites much public debate.

Syekh Nawawi al-Bantani's references are represents various commentator, as follows; *Tanwîr al-Miqbâs* (3 S.H-8 H), *Tafsîr 'Abî Su'ûd 'Au al-'Aqlu al-Salîm 'ila al-Mazayâ* (898-982 H), *Tafsîr al-Sirâj al-Munîr*

(W 577 H), *Tafsîr al-Kabîr Mafâtîh al-Ghayb* (544-606), confirmed that the husband has a degree over the wife. The wife must obey this excess or degree.

Meanwhile, Syekh Nawawi defines the word "superiority of men over women" in Q.S. al-Baqarah verse 228 as the level of excess. Husband's right from his responsibility to pay dowry and substance for his family. He did not describe the differences, like the weakness of women's minds and emotional nature. This interpretation will reduce the image of more negative gender equality towards women's rights. This interpretation distinguishes Syekh Nawawi from the classic interpretation included in his references.

Another commentator, Zaitunah Subhan, interpreted the word "men have a degree over women," first explaining the phrase before that discussed *ishlâh*, namely improvement. If a problem in the household, both partners should be involved. First mentioned the balance of rights and obligations for husband and wife. He cites several interpretations, such as the Tafsir Departement of Religion, Tafsir al-Azhar, and Mahmud Yunus. As for the interpretation of Q.S. al-Baqarah verse 229 as one of the legitimacy of *khulu's* law in Islam.

1. Epistemology of Syekh Nawawi interpretation

a. Sources of Interpretation

Mustaqim explained a formative era based on mythical reasoning, starting from the Prophet's era until approximately the 2nd century H. The mythical reasoning model uses figures' symbols to

overcome problems, such as the Prophet saw, his companions, and *tabi'in*. Second, mythical reasoning tends to be less critical in accepting interpretation products and avoids concrete-realistic ones. That is why in the formative era, the dominant interpretation was *bi al-riwâyah* rather than *bi al-ra'yi* interpretation, which tended to be avoided and suspected.

The sources of Syekh Nawawi's interpretation of Q.S. al-Baqarah 2/228 use hadist texts, and some interpretations seem to use reason (*bi al-ra'yi*)

1) Interpretation of the Hadist

The Islamic confession *khulu'*, *asbâb al-nuzûl* of Tsâbit ibn Qais ibn Syammas and his wife story, Jamîlah Binti 'Abdullah Ibn Ubay, she redeemed herself to her husband with the dowry she had received at first marriage, so her husband would divorce her.

حدثنا ازهر ابن جميل حدثنا عبد الوهاب الثقفي حدثنا خالد عن عكرمه عن ابن عباس ، أَنَّ امْرَأَةً ثَابِتِ بْنِ قَيْسٍ أَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ : يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتَبَ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : (أَتَرُدِّينَ عَلَيْهِ حَدِيثَهُ ؟ قَالَتْ : نَعَمْ . قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : اقْبَلِ الْحَدِيثَ وَطَلِّقْهَا تَطْلِيقَةً

Azhar bin Jamîl has told us, 'Abdu al-Wahhâb al-Tsaqafî has told us, Khâlid has told us, from 'Ikrimah from Ibn 'Abbâs; "One time, the wife of Tsâbit bin Qais bin Syammas comes to the Prophet Sallallahu 'alaihi wasallam and said, "O Messenger of Allah, I did not denounce Tsâbit for his religion or morals, but I was worried that I would fall into disbelief." So Prophet sallallaahu 'alaihi Wa Sallam said: "Then, return

his garden." He said, "Yes." so he returned the garden to Tsâbit, and Tsâbit left the woman.¹¹¹

2) Interpretation with the reason (*ra'yu*)

The explanation of the history of *asbâb al-nuzûl* Q.S. al-Baqarah verse 228. According to Mamat, the Interpretation of *Marâh Labîd* uses a combination of the interpretations of *bi al-Ma'tsûr* and *bi al-Ra'yi*. For example, the Interpretation of the verse above, when mentioning the source of the history of *asbâb al-nuzûl* about the case of Jamîlah Binti ‘Abdullah bin Ubay briefly, it is not accompanied by the sanad as befits the thInterpretationon of *bi al-Ma'tsûr*. This explanation is less relevant if *Marâh Labîd* is referred to as a *bi al-Ma'tsûr* interpretation. However, it is more appropriate for *Marâh Labîd* to combine the interpretations of *bi al-Ma'tsûr* and *bi al-Ra'yi*.¹¹² Same as when presenting the Hadist about Tsâbit bin Qais with his wife, Jamîlah Bint ‘Abdullah. The short excerpt of hadist by Syekh Nawawi;

خذ منها ما أعطيتها وخلّ سبيلها

Receive from him what you gave him and let him choose his path.

b. Method of Interpretation

1) The *Tahlilî* (Analysis Method)

¹¹¹ Muḥammad bin Ismâ‘îl bin Ibrâhîm bin al-Mugârah al-Bukharî, *Shahîḥ Al-Bukhârî*, 7:60.

¹¹² Bahary, "Tafsir Nusantara," 186.

Syekh Nawawi tries to decipher the words from verse to verse, the meaning of the verse, explains the parts, puts forward *asbâb al-nuzûl* in verse explanation, and explains the *qirâ'at* in Qur'an verses. He supposes the Interpretation of the Qur'ân follows the *Mushaf* in terms of various other aspects, such as *qirâ'at*, *asbâb al-nuzûl*, and others. So the method can be suspected firmly using the *tahlilî* method.

The explanation of *qirâ'at*, the word of *al-Khauf*, is worry. This verse can be interpreted as a worry usually appearing, namely the feeling of fear of unwanted things happening. In addition, this feeling can also be interpreted as a substance or suspicion stated in the *qirâ'at syazzah*, reading as *'illa Ayyâzunna*. The book is addressed to priests and judges.

2) The *Ijmalî* (Thematic Method)

The aspects of *asbâb al-nuzûl*, *qirâ'ât*, and various other narrations from *thabi'in* and other scholars have been described in his Interpretation. As explained *qirâ'ât*, Syekh Nawawi explained this aspect at length without doing a *tarjîh* on certain *qirâ'ât* are stronger or superior (*arjâh*). Nawawi al-Bantani also mentions various *ma'tsûr* without mentioning the *sanad* about who poked them.

The description of the method can be seen when syekh Syekh Nawawi tries to explain the Qur'an-based verses and paragraph

verses with concise, clear, and straightforward language; it can be strongly suspected that he is using the *ijmalî* method. Because it can be hypothesized the *Marâh Labîd* is using a combination of *tahlilî bi al-ma'tsûr* and *ijmali*.¹¹³

Mamat explains that the pattern interpretation in *Marâh Labîd* includes the *Sunni* Interpretation in theology and *shafi'iyah* in fiqh. While He explains the verses related to the rules of fiqh law, syekh Nawawi tends to explain them in more detail.

The example, some of the laws explained at Q.S. al-Baqarah 2/228. Suppose husbands and wives are feelings of worry. Sometimes it appears from the wife's, husband's, and both sides simultaneously, or there is no feeling of fear. If worries appear from the wife's side so that she disobeys and hates her husband, then it is permissible for the husband to accept a ransom as compensation from her so that the husband can divorce her. If worries appear from the husband's side, then he hits and hurts the wife, so forcing the wife to pay the ransom, then the ransom is forbidden, and this also happens if worry appears from both parties.

However, Syekh Nawawi al-Bantani was not involved in lengthy discussions and the *furû'* problem. It shows *Marâh Labîd* is included in the Fiqh-patterned Interpretation, even though the interpretations are found with theological and Sufi nuances.

¹¹³ Bahary, 186.

c. Validity of Interpretation

1) The theory of coherence

The theory of interconnectedness, this theory argues that an interpretation is correct if correspondence between a statement and other statements is previously known, accepted, and recognized as valid. Whether from a model interpretation or sources or Interpretation, it is enough to maintain consistency. On the correspondence side, Syekh Nawawi's Interpretation was inconsistent with the reality of society at that time. He interpreted briefly without looking at the condition of women at that time;

Mustaqin explained in his book, the mythical reasoning tends to use the authority of the Prophet and the figures of the Companions. The validity interpretation is measured based on their figures, bearing in mind that they are considered authoritatively closer to the "author" of the text (God).

The mufassir before or as mythical reasoning at the interpretations of the Prophet's time is not intended to give a negative impression but rather shows that the Interpretation of the Prophet was never wrong and was trusted without criticism. The belief of all interpretations of the prophets is a revelation. Even though the Prophets made ijthad, it was not always correct, but it followed the Arab cultural customs of the time so the interpretations would not feel foreign to the people.

Furthermore, the Prophet Muhammad died, and the Companions carried out the traditional Interpretation. Many friends interpret the Qur'an. 'Ibn Abbâs is seen as the most prominent figure. 'Ibnu 'Abbâs titled *tarjumân al-Qur'ân* and is considered the founder of the scientific Interpretation. Moreover, some references in *marâh labîd* more explain the *tanwîr al-Miqbas* and *futûhât al-ilâhiyah*.

Syekh Nawawi maintained a hadist that seemed gender biased, namely;

حدثنا سليمان بن حرب حدثنا حماد عن ايوب عن ابي قلابة عن ابي اسماء عن ثوبان , قال: قال رسول الله صلّ الله عليه وسلم : أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ فِي غَيْرِ مَا بَأْسٍ, فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ

Sulaimân bin Harb has told us, Hammad has told us from Ayyûb from Abî Qilâbah from Abî Asmâ` from Tsaubân; he said: Rasulullah said: "*any wife who asks her husband for a divorce without logical reason is not allowed even though she smells the fragrance of heaven.*"¹¹⁴ (Narrated by Ahmad, Abu Dawud, Tirmidhi, Ibn Hibban, and Hakim from Tsauban, an assistant to the Messenger of Allah).

Syekh Nawawi has admitted in his *muqaddimah* about starting to write the book of Interpretation. He had doubts, but He was due to fulfilling the recommendation for following the footsteps of the *Salaf* scholars. This step always opens the knowledge for the next generation can utilize it. He explained in the Interpretation on no addition of anything. The writing is aimed at oneself in recalling what has been learned and helping other

¹¹⁴ Sulaimân bin al-Asy`as al-Sajastanî, *Sunan Abî Dâwud*.

negligent people like themselves.[41] Thus Mustaqim explains that some mufassir want to maintain "authenticity," eventually objecting to criticizing the legacy of past interpretations.¹¹⁵

2. Epistemology of Zaitunah Subhan interpretation

a. Sources of interpretation

The perspective of sources interpretation, this traditional Interpretation in the contemporary era, is rooted in the text of the Qur'an, reason (*ijtihad*), and reality. The paradigm used the viewing text, reason, and reality tends to be functional, no longer using a structural paradigm that tends to supersede one another.

The source of interpretation is the Qur'an, which emphasizes the context of the past and the Indonesian context of the present. She emphasizes the word of *ishlah* in several Qur'anic verses, hadist and opinions of the previous mufassir, and other contemporary figures.

Zaitunah emphasizes the custom of divorce for a while is still the same as what happened during the Jahiliyah era—namely, demeaning the position of women by imposing arbitrary the divorce rules are detrimental to women's interests. This understanding is caused the justification of the verse Q.S. al-Baqarah verse 228;

﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا

¹¹⁵ Mustaqim, *Pergeseran Epistemologi Tafsir*, 2009, 78.

إِصْلَاحًا وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٢٢٨﴾

Divorced women shall wait for themselves for three monthly periods. Moreover, it is not lawful for them to hide what Allah Hath created in their wombs if they have faith in Allah and the Last Day. Moreover, their husbands can take them back to that period if they wish for reconciliation. Moreover, women shall have right similar to the right against them, according to what is equitable; but men have a degree over them, and Allah is Exalted in power, Wise.¹¹⁶

Ishlâh is an agreement between two parties (representing husband and wife). To settle disputes in a good and peaceful way. Zaitunah explains and emphasizes the word of *ishlâh* as a study of thematic method in another verse, Q.S. An-Nisâ'4/35;

﴿وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ٣٥﴾

If he fears a breach between them twain, appoint (two) arbiters, one from his family and the other from hers. If they seek to set things right, Allah will cause their reconciliation: Allah has full knowledge and is acquainted with everything.¹¹⁷(An-Nisa'/4:35)

Zaitunah explains the *khulu'*. The basis for the permissibility of *khulu'* is the word of Allah SWT, QS. al-Baqarah verse 229;.

﴿الطَّلَاقُ مَرَّتَيْنِ فَامْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا أَتَيْتُمُوهُنَّ 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﴾

¹¹⁶ Ali, *The Holy Qur'an: English Translation Of The Meanings and Commentary*, 98–99.

¹¹⁷ Ali, *The Holy Qur'an: English Translation Of The Meanings and Commentary*, 220

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 transgress them if any do transgress the limits ordained by Allah; such persons are wrong (themselves as well as others).¹¹⁸

The phrase "Men's superiority over women." The wife becomes dependent on the power of her husband in the matter of divorce. When the woman is married but shee has never had sex, she is not given a living or is also divorced. If the wife complains to the judges, women are blamed (because they are *nusyûz*). Even though if we look closely, the sentence Q.S. al-Baqarah 2/228 before;

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

“And women shall have right similar to the right against them, according to what is equitable.”

Prioritizing women's rights and obligations is seen as an affirmation and show how important their rights are. Especially so far, in some tribes of the *jahiliyyah* society, women are almost said to have no rights at all.

Zaitunah puts a hadist that states the women's right to divorce is absolute and cannot be interfered the other people. Namely the hadist of the annulment of Barirah's marriage to Mughith.

¹¹⁸ Ali, *The Holy Qur'an: English Translation Of The Meanings and Commentary*, 100.

حدثنا محمد أخبرنا عبد الوهاب حدثنا خالد عن عكرمة عن ابن عباس أن زوج بريرة كان عبداً يقال له مغيث كأني أنظر إليه يطوف خلفها يبكي ودموعه تسيل على لحيته فقال النبي صلى الله عليه وسلم لعباس (يا عباس ألا تعجب من حب مغيث بريرة ومن بغض بريرة مغيثاً) فقال النبي صلى الله عليه وسلم (لو راجعته) قالت يا رسول الله تأمرني قال (إنما أنا أشفع) قالت لا حاجة لي فيه

Muhammad has told us, 'Abd al-Wahhab has informed us, Khâlid has told us, from 'Ikrimah, from 'Ibn 'Abbâs, That Barîtah's husband was an enslaved person, Mughîts. I think I saw him doing *Tawaf* behind him while crying until his tears wet his beard. So the Prophet sallallahu 'alaihi wasallam said: "O 'Abbâs, don't you know Mughîts' love for Barîrah and Barîrah's hatred for Mughîts?" Finally, the Prophet Sallallahu 'alaihi wasallam also said: "If you want to return to it." Barîrah asked, "O Messenger of Allah, did you order me?" he replied, "I just suggesting." Finally, Barîrah said, "Actually, I do not wish him the slightest."¹¹⁹

Also the hadist about Qais bin Tsâbit with Jamîlah Binti

Abdullah,

حدثنا ازهر ابن جميل حدثنا عبد الوهاب الثقفي حدثنا خالد عن عكرمة عن ابن عباس ، أَنَّ امْرَأَةَ ثَابِتِ بْنِ قَيْسِ أَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ : يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتَبَ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : (أَتُرَدِّينَ عَلَيْهِ حَدِيثَهُ ؟) قَالَتْ : نَعَمْ . قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : اِقْبِلِ الْحَدِيثَ وَطَلِّقِيهَا تَطْلِيقَةً

Azhar bin Jamîl has told us, 'Abdu al-Wahhâb al-Tsaqaffi has told us, Khâlid has told us, from 'Ikrimah from Ibn `Abbâs; "One time, the wife of Tsâbit bin Qais bin Syammas comes to the Prophet Sallallahu 'alaihi wasallam and said, "O Messenger of Allah, I did not denounce Tsâbit for his religion or morals, but I was worried that I would fall into disbelief." So Prophet sallallaahu 'alaihi Wa Sallam said: "Then, return his garden." He

¹¹⁹ Muḥammad bin Ismâ'îl bin Ibrahîm bin al-Mugîrah al-Bukharî, *Shahîḥ Al-Bukhârî*, 7:142.

said, "Yes." so he returned the garden to Tsâbit, and Tsâbit left the woman.¹²⁰

Some of the opinions of previous mufassir, namely the Tafsir of the Ministry of Religion, Mahmud Yunus, and Tafsir al-Azhar, explain the word of *ishlâh*. It means peace that must involve both parties equally, namely, husband and wife.

Some Indonesian mufassir explains the word *ishlâh*, like Tafsir Religion of Departement, Mahmud Yunus, and Tafsir Hamka. They supported that if a dispute cannot be resolved between a husband and wife, it is advisable to invite a *Hakîm* as a judge from the respective two families to reconcile the dispute. If it fails to reconcile, they decide on one of the two; first, the judge from the husband's side to divorce his wife as the husband's representative. Second, the judge from the wife's side divorces her husband as the wife's representative. Thus the two are legally divorced, *talak* is the husband's right, and *khulu`* is the wife's right.

b. Method of Interpretation

Zaitunah Subhan uses the *maudhû'i* method with an interdisciplinary approach, namely gender analysis.¹²¹ The *maudû'i* method is one of the methods of Interpretation of the Qur'ân, collecting messages in various letters related to the gender analysis approach.

Zaitunah explains that she uses the method that al-Farmawi also offered several additional steps, such as (1) Using the *maudû'i* method

¹²⁰ Muḥammad bin Ismâ'îl bin Ibrâhîm bin al-Mughîrah al-Bukharî, 7:60.

¹²¹ Mustaqim, *Epistemologi Tafsir Kontemporer*, 83.

by grouping verses on a particular topic, (2) describing mufassir understanding or intellectuals regarding the grouped verses; (3) looking for hadist that are related with the studied; (4) making the conclusions with critical analysis.¹²²

Mustaqim adds the explanation above, another model interpretation in the contemporary era. Mufassir coined in understanding the Qur'ân verses related to the relationship between men and women. The feminists do not use *tahlilî*, but they take a piece of verses to be interpreted. To obtain gender-equitable interpretations, they generally use gender analysis.¹²³ This analysis aims to make the position of men and women equal. Namely, put forward the phrase "*ishlâh*" or peace.

The book of *Tafsir Kebencian*, first titled as a dissertation "*Kemitrasejajaran Pria dan Wanita dalam Perspektif Islam*" equality of partnerships between men and women in an Islamic perspective," dominated the discussion is the study of the Qur'ân to obtain results of a gender-equitable interpretation that positions men and women equally.¹²⁴ The studying the wife's right to divorce, she took the word of *ishlâh*, which means not only in determining the husband's choice, the husband has advantages over the wife, but also when there is a

¹²² Subhan, *Tafsir Kebencian Studi Bias Gender Dalam Tafsir Qur'an*, 14.

¹²³ Mustaqim, *Epistemologi Tafsir Kontemporer*, 83.

¹²⁴ Choiri and Fathony, "Rekonstruksi Tafsir Kebebasan Perempuan dalam Al-Qur'an,"

discrepancy that cannot be reconciled (*ishlâh*).¹²⁵ The word *ishlâh* refers to Q.S. al-Baqarah verse 2:228. This interpretation is not comprehensive regarding the verse or the interpretation of *khulu'*, but he only takes "one word," namely *ishlâh*.

The pattern or *management* in the book *Tafsir Kebencian* uses *tafsîr bi al-ra'yî*. This method appeared after the Qur'an ordered the Muslims to think and reflect on the verses of Allah. *Tafsîr bi al ra'yî* is a way of interpreting the Qur'an based on reason and understanding in reflecting the meaning and purpose and using the knowledge of special devices as equipment to understand the implied meaning.

Book of *Tafsir Kebencian Studi Bias Gender Dalam Tafsir Qur'an* dominantly talks about gender issues in the discourse of equality between men and women from the perspective of Islam (Qur'an and Hadist). The interpretation of the verses related to women's issues, then the interpretation has the characteristics of gender interpretation to the scientific *lawn*. The scientific interpretation pattern is one of the patterns that explores the laws of *syara'* from the legal verses found in the Qur'an. The reason is categorized as a scientific pattern because, in the discussion of the verse, the writer is more likely to take arguments that are used based on the arguments of science.¹²⁶

c. Validity of Interpretation

1) Correspondence Standards

¹²⁵ Subhan, *Tafsir Kebencian Studi Bias Gender Dalam Tafsir Qur'an*, 140.

¹²⁶ Halimatussa'diyah, "Tafsir Kebencian Studi Bias Gender Dalam Tafsir Al-Qur'an Karya Zaitunah Subhan," 146.

Classical interpretation generally seem Interpretation is a study of science about the technique and how to talk the pronunciation of the Qur'an, what is shown by the pronunciation, and the laws of the pronunciation, both in a word or in sentences, including studying about the meanings contained in it and other things that support perfection interpretation, such as the knowledge of *nasikh mansûkh*, *asbâb al-Nuzûl* et al.

Then different from mufassir in the contemporary century using the functional paradigm, the essence interpretation is the knowledge used to understand the book of God (the Qur'an) and revealed to the Prophet Muhammad, explaining the meanings and digging in existing laws and wisdom. Then, the Qur'an can function as a guide for humans where knowledge of the language is the basis of its footing.

Based on the assumptions, contemporary interpreters have a paradigm; Interpretation must be contextual concerning principles of Universal al-Qur'an, including; justice, equality, and humanity. Interpretation must refer to the spirit of the Qur'an, Interpretation of the Qur'an must be open to criticism, Interpretation of the Qur'an means using a historical approach, sociological, hermeneutical, and others.¹²⁷

¹²⁷Eni Zuhaila, Tafsir Kontemporer: Metodologi, Paradigma dan Standar Validitasnya,...93.

The interpreters of gender assume that verses on gender relations are sociological. The interpretation can be contextual according to social changes. Also, the argument is based on the data and facts disclosed, or if there is conformity between the statement of a decision and the environmental situation it interprets, then the interpretation meets the correspondence standard.¹²⁸

Hamka's father makes a *shigât ta'liq thalâq*. Zaitunah explains that it will help women because there are religious judges who have not dared to take divorce action for their wives because (perhaps) they still adhere to fiqh scholars *Muta'akhirin Syaifiyah*. This step state that the women who are *nusyûz* are not obliged to provide a living; many women live in limbo but are not divorced by their husbands. When complaining to religious judges, women are blamed (because they are *nusyûz*).¹²⁹

The Marriage Law was passed, as Yayan Sopyan describes in the stated PP 9/75. The fiqh doctrine was evident and robust between *thalâq* divorce and sued divorce. Suppose a husband divorces his wife. In that case, he only needs to request or submit a letter to the court where he lives, containing a notification that he intends to divorce his wife, so accompanied by the reasons and asking the court to hold a trial (article 14 PP. 9/1975).

¹²⁸ Seoiono Seomargono, *Pengantar Filsafat* (Yogyakarta: Tiara Wacana, 2004), 176.

¹²⁹ Subhan, *Tafsir Kebencian Studi Bias Gender Dalam Tafsir Qur`an*, 47.

A sued divorce is a request that comes from the wife. However, unlike in the fiqh doctrine, every request for divorce does not always take the form of *khulu`* followed by *iwadh*. However, specific reasons have been regulated in the law, namely article 39 paragraph (2) of Law no. 1/1974, article 19 pp. No. 9/1975 articles 116 and 51 KHI. The final result of the case filing procedure is a judge's decision. Against this decision, each party can file an appeal.¹³⁰

2) The Pragmatic Standards

Feminist Mufassir is consistent in changing the orientation of the gender verses on relations are highly contextual and the biased gender to be more contextual and the moral values of the Qur'an, the values of justice and humanity. This Perfect can go hand with the demands of the times, such as human rights, the flow of globalization, and the demands of scientific and technological developments. One of the formal pragmatics is to empirically provide the solutions for solving the problems of human life.¹³¹

Zaitunah explains in her book that *Al-Qur'an dan Perempuan* also alludes to KHI (Compilation of Islamic Law) articles 129-132 concerning differences in using terminology for husbands and wives for divorce because husband and wife have the same opportunity to

¹³⁰ Yayan Sopyan, "Bias Gender Dalam Perceraian (Studi Perbandingan Antara Talak Dan Cerai Gugat)," *Musawa Jurnal Studi Gender Dan Islam* 3, no. 2 (Septembr, 2004): 223–24.

¹³¹ Eni Zulaiha, "Tafsir Kontemporer: Metodologi, Paradigma dan Standar Validitasnya," *Journal Ilmiah Agama dan Sosial Budaya* 2, no. 1 (June 30, 2017): 25–26, <https://doi.org/10.15575/jw.v2i1.780>.

submit for divorce as Q.S. al-Baqarah verse 228. For the husband, the dictum "filing for divorce" is used to give the impression that he has the right to divorce, while for the wife stated in "suing for divorce," it indicates the only party to be divorced, not the one who divorced. The terminology should be used for the theme of carries equality, namely "filing for divorce." Both the wife and husband have a similar right to divorce. Using this balanced term has implications for equality in filing for divorce, both wife and husband.

Furthermore, Zaitunah explained that the divorce between husband and wife must be in court hearings. There is regulated strictly to avoid being serious so as not to harm women. In a good way, the wife gets clear and transparent legal guarantees. Also, a man who divorced his wife can be revoked by the man if it turns out the wife is pregnant. The meaning is to maintain the welfare of women and conceived children.¹³²

Zaitunah expresses a *shigat ta'liq talak* that made from Hamka's father. This solution will help women. This kind of *ta'liq* opens a wide door for the wife. If the wife does not like it, she can complain to the *Qâdhî*. If the *qâdhî* accepts her complaint and the

¹³² Zaitunah Subhan, *Al-Qur`an dan Perempuan Menuju Kesetaraan Gender dalam Penafsiran*, Jakarta: Prenada Media Group, 2015), 204-206.

woman pays for *khulu's* as a sign, one divorce will fall automatically.¹³³

¹³³ Abdulkarim Amrullah, *Tafsîr Al-Azhar*, 1208.