

***KHULU'* DIVORCE BETWEEN MASLAHAT AND MUDHARAT: A STUDY ON THE SAMBAS COMMUNITY OF THE INDONESIA-MALAYSIA BORDER OF WEST KALIMANTAN**

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ABSTRACT

This study discusses *khulu'* divorce in Sambas between *maslahat* and *mudharat*, in the study of the Indonesia-Malaysia border community in West Kalimantan. According to *qaul jadid*, the school of Imam Syafi'i *Khulu'* is also called *talaq ba'in shughra* where the husband may not reconcile with his wife during the *'iddah* period and the husband needs a new marriage contract in order to return home to the wife who has mentally with *khulu'*. This is the basis of research on the aspects of benefit and bitterness *mudharat khulu'* wife against husband in Sambas. The research method is field research with an Islamic legal approach. Based on the research results obtained, that the cause of *khulu'* between *maslahat* and *mudhrat* in Sambas is known that the average age of the divorce plaintiff is more dominant at the age of 26 years to the age of 35 years, and the age of 25 years and under whose percentages are 50% and 30%. Based on this data, the number of divorces that occur in the Class 1B Religious Court of Sambas Regency is dominated by cases where the wife files a lawsuit against her husband. 60-80% of divorce cases that occur due to *khulu'*, wives who file a lawsuit include (1) household economic problems so that the wife is not fulfilled her rights, constant changes and quarrels so that the wife cannot stand the situation and the husband leaves his wife and children without reason so there is no news so that the wife feels unnoticed. (2) There is a shift in time or lifestyle where the values of marital justice are no longer applied in marriage such as ignoring religious rules, knowing the law but not obeying the law only as a formality so that divorce is easy to occur, (3) the involvement of the Legal Aid Institute (LBH) and the Legal Aid Post (POSBAKUM) in the divorce process of married couples due to divorce.

Keywords: *khulu'*, *maslahat*, *mudharat*, border, and Indonesia-Malaysia.

ABSTRAK

Kajian ini membahas tentang perceraian *khulu'* dalam sambas antara *maslahat* dan *mudharat*, dalam kajian masyarakat perbatasan Indonesia-Malaysia Kalimantan Barat. Menurut qaul jadid, mazhab Imam Syafi'i Khulu disebut juga talaq ba'in shughra dimana suami tidak boleh rujuk dengan istrinya selama masa iddah dan suami memerlukan akad nikah baru agar bisa kembali ke rumah. istri yang telah bermental dengan khulu'. Hal inilah menjadi landasan penelitian tentang aspek kemaslahatan dan kepahitan *mudharat khulu'* istri terhadap suami di Sambas. Metode penelitian merupakan penelitian lapangan dengan pendekatan hukum Islam. Berdasarkan hasil penelitian yang diperoleh, bahwa penyebab khulu' antara *maslahat* dan *mudhrat* di Sambas diketahui bahwa rata-rata usia penggugat talak lebih dominan pada usia 26 tahun hingga usia 35 tahun. dan usia 25 tahun ke bawah yang persentasenya 50% dan 30%. Berdasarkan data tersebut, angka perceraian yang terjadi di Pengadilan Agama Kelas 1B Kabupaten Sambas didominasi oleh kasus istri yang mengajukan gugatan terhadap suaminya. 60-80% kasus perceraian yang terjadi karena khulu', istri yang mengajukan gugatan antara lain (1) permasalahan ekonomi rumah tangga sehingga istri tidak terpenuhi hak-haknya, perubahan terus-menerus dan pertengkaran sehingga istri tidak tahan dengan situasi dan suami meninggalkan istri dan anak-anaknya tanpa alasan sehingga tidak ada kabar sehingga istri merasa tidak diperhatikan. (2) Terjadi pergeseran zaman atau gaya hidup dimana nilai-nilai keadilan perkawinan tidak lagi diterapkan dalam perkawinan seperti mengabaikan aturan agama, mengetahui hukum namun tidak menaati hukum hanya sebagai formalitas sehingga mudah terjadi perceraian, (3) keterlibatan Lembaga Bantuan Hukum (LBH) dan Pos Bantuan Hukum (POSBAKUM) dalam proses perceraian pasangan suami istri akibat perceraian.

Kata Kunci: *khulu'*, *maslahat*, *mudharat*, batas, dan Indonesia-Malaysia.

1. Introduction

Marriage is a sunnah of the Prophet SAW in Islamic teachings that aims to worship and obey Allah SWT and maintain the benefits of marriage between husband and wife in building a harmonious household. Islamic teachings teach that in marriage each couple expects a harmonious home life, love and affection, faithfulness, 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 itself¹. The Qur'an has explained and given its exact description in Sura ar-Rūm/30:21² 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 morals³.

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*⁴. 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. yang disebut anak kandung⁵. Jalāluddīn al-Māhallī in his book explains in the frame of *fiqh'iyyāh*, the *meaning of marriage using the term an-nikāh ortazwīj*, which *literally means* "intercourse or mixing" ⁶. Syar'i nikah is an akad which contains the legalization of having a conjugal relationship using lafadz *inkah*

¹ Muhammad Ishom, "The Loose Interpretation of Dominus Litis Principle in Marriage Dispensation for Underage Marriage in Banten," *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (2023): 329–50, <https://doi.org/10.15408/AJIS.V23I2.29881>.

² Ministry of Religious Affairs of the Republic of Indonesia, Ministry of Religious Affairs of the Republic of Indonesia, *Al-Quran and its Translation* (Jakarta: Diponegoro, 2019), h. 324.

³ 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/sjkh.v7i1.12404>.

⁴ Abū Abdillāh Muhammad, *Mafātih Al-Ga'ib, Juz. 12* (Jakarta: CD Maktabah asy-Şyamīlāh, 2005), h. 225.

⁵ Erfaniah Zuhriah et al., "Dispen-Ku Android-Based Application: Assisting Religious Court Judges in Deciding for Marriage Dispensation," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 2 (December 31, 2023): 519–43, <https://doi.org/10.19105/al-lhkam.v18i2.8773>.

⁶ Robi'atul Adawiya, *Islamic Family Law Reform and Its Implications for Women's Rights in Indonesian and Malaysian Marriage Law* (West Java: Nusa Litera Inspiration, 2019), h. 69.

(married), or *tazwīj* (marriage)". 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 Kurniati, according to Ahmad Dakhoir, the vertical-coordinated relationship between husband and wife in the domestic environment of the household has reduced the relationship between the two as equal partners in building a family that is *sakinah* towards servitude to Allah SWT. as the primordial purpose of the marriage itself⁷.

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 divorce⁸. Because divorce is a halal act but is hated by Allah SWT⁹. The occurrence of divorce against married couples in Islam is very understanding of the incident, because Islam provides opportunities for guidance,

⁷ 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/10.19105/al-lhkam.v18i1.7162>.

⁸ Sheila Fakhria, Moh. Sholeh Afyuddin, and Muhammad Nazir Alias, "The Indigenous Idea of Gender Equality: Husband-Wife Relationship in the Manuscript of Adābul Mu'āsyarah," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023): 317, <https://doi.org/10.31958/juris.v22i2.9475>.

⁹ Dri Santoso et al., "Harmony of Religion and Culture: Fiqh Munākahat Perspective on the Gayo Marriage Custom," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 5, 2022): 199–218, <https://doi.org/10.18326/ijtihad.v22i2.199-218>.

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 a review of Islamic legal literature, Islamic law permits the breakup of marriages even though it is forced that divorce cases bring more benefit than the marriage itself which has long been bound.

A divorce lawsuit is a divorce lawsuit filed by the wife¹⁰. Law No. 1 of 1974 and Government Regulation No. 9 of 1975 do not call this a "divorce lawsuit" but say that this divorce is a lawsuit. The word "Divorce Lawsuit" as stated in Article 40 of Law Number I of 1974 concerning Marriage, and Article 114 of Presidential Instruction Number I of 1991 concerning the Compilation of Islamic Law (KHI), intended to apply to husband or wife, this is affirmed 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". Meanwhile, Article 119 of the Compilation of Islamic Law states that talaq *khulu'* 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 *khulu'* is also called *ba'in shughra*.

In Islamic teachings, divorce is explained based on the hadith of the Prophet (peace be upon him) as follows:

حَدَّثَنَا أَزْهَرُ بْنُ جَمِيلٍ حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ حَدَّثَنَا خَالِدٌ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةً ثَابِتِ بْنِ قَيْسٍ أَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ

¹⁰ Hamidin Hamidin and Alfitri Alfitri, "Safeguarding Women's Constitutional Rights in the Judicial Reviews of Marriage Law on the Minimum Married Age Limit," *Mazahib* 20, no. 1 (July 12, 2021): 103–42, <https://doi.org/10.21093/mj.v20i1.3307>.

مَا أَعْتَبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَتُرِيدِينَ عَلَيْهِ حَدِيثَهُ قَالَتْ نَعَمْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اقْبَلِ الْحَدِيثَ وَطَلِّقْهَا تَطْلِيقَةً (صحيح البخاري)

Means:

We told us Azhar bin Jamil told us Abdul Wahhab Ats Tsaqafi told us Khalid from Ikrimah from Ibn Abbas indeed Tsabit bin Qais's wife came to the Prophet shallallahu'alaihi wa sallam and said: "O Messenger of Allah, I do not denounce Thabit bin Qais for his religion or morals, but I am afraid of kufr in Islam." So the Prophet (peace and blessings of Allah 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."¹¹

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 husband, and the wife can do the divorce herself through *khulu'*¹², Although the right to divorce basically belongs to her husband. In the process of *khulu'* there is a provision to give compensation *'iwādh* to the husband, in this case according to the *tafsir ulama fiqh* this is obligatory and a condition in *khulu'*¹³.

Khulu' 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 *khulu'* women who divorce sue¹⁴. 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 a wife's displeasure with the husband's attitude and behavior. On the

¹¹ Soft Hadith, *Application of Kitab Shahih Bukhari Hadith Number 4867 In, Kitab Talaq (Khulu' and What It Has to Do with Talak)*, 2018, p. 2671.

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

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

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

other hand, the high rate of divorce from wives to their husbands through *khulu'* in the Indonesia-Malaysia border area of Sambas Regency, West Kalimantan, there needs to be a more in-depth study in terms of constituents and in terms of benefits and mudharat.

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, a total of 6,661 divorce cases, This data was obtained directly from the Sambas Religious Court as a result of a brief interview with Mr. Bustani¹⁵, which is of concern to the number of wives who sue their husbands in the Sambas Religious Court through *Khulu'*. Based on the age data of divorce claimants resulting from developments in the Religious Court and in¹⁶ the Sambas Malay community, it can be seen from 20 informants 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%.¹⁷ Dengan ini dapat diketahui bahwa rata-rata usia penggugat perceraian lebih dominan pada usia 26 sampai usia 35 dan usia 25 kebawah yang persentasenya 50% dan 30%.¹⁸ 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 sisters. 60-80% of divorce cases occur from *khulu'*.

Based on the case above, by looking at the divorce in Sambas Regency every year increases, especially the divorce of the wife to her husband through *khulu'*, the researcher wants to conduct a more in-depth study in finding from the side of the

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

¹⁶ Sambas Religious Court, "Case Tracing Information System", *siap.pa.go.id*. May 14, 2020. https://sipp.pa-sambas.go.id/list_perkara/page/333/ (December 31, 2023).

¹⁷ Lisa (25 years old), Divorce Handling Administration Staff at Sambas Religious Court Class 1 Sambas Samba Regency, *Interview*, Sambas, December 5, 2022.

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

truth of the benefit and mudharat in the divorce of the wife to her mother in the form of *khulu'*. Likewise, the values of justice after divorce and divorce and how to overcome the wife's *khulu'* to his mother are studied through benefit and mudharat in the Sambas border community Indonesia-Malaysia West Kalimantan.

2. Method

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 things¹⁹. 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)²⁰. This qualitative research is characterized by normative law, because this research is carried out in a certain environment and is divided into 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, *siyasah* research, *fiqh* research and *qanun* and *sharia* research²¹. This research focuses on examining the causes of *khulu'*, this research is also studied based on *maṣḥlahah* and *mudharat* and solution efforts to suppress the high divorce of wives to their husbands through *khulu'* in the sambas community of the Indonesia-Malaysia border of 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

¹⁹ Satori and Aan Komariah, *Qualitative Research Methods* (Bandung: Alfabeta, 2010), p. 23.

²⁰ Soerjono Soekanto, *Normative Law Research* (Jakarta: Rajawali Press, 2005), p. 12.

²¹ Faisar Ananda Arafah and Watni Warpaung, *Islamic Law Research Methodology* (Jakarta: Prenamedia Group, 2018), p. 85.

legislation²². Kaidah pendekatan hukum Islam bisa membantu meringkas persoalan-persoalan dalam satu ikatan menunjukkan bahwa hukum dibentuk untuk menegakkan maslahan yang saling berdekatan atau menegakkan malahan yang lebih besar²³. So the Islamic legal approach has the object and place of study in research that has been directed and appropriate to solve problems about reality, the impact of *khulu'*, to get a solution to inhibit the high divorce of wives to their husbands through Sambas Regency.

3. Result and Discussion

The Result *Khulu'* Divorce On the Sambas Community of the Indonesia-Malaysia Border

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 Indonesia-Malaysia border area, Sambas, 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, Khatolik with 18,231 inhabitants, Hindus with 192 inhabitants, Buddhists with 43,327 inhabitants and Confucians with 3,023 inhabitants²⁴. Looking at the population data, Sambas Regency has a majority Muslim population. So that divorce cases are also high in Sambas Regency, especially for the Muslim community.

The existence of high divorce rates is a question mark why every year increases from 2015 to 2023? In the initial data sample of this study that can be revealed in this dissertation, among others, divorce cases from year to year always increase in the

²² Yayan Sopyan, *Date of Tasyrik': A History of the Formation of Islamic Law* (Depok: Rajawali Pers, 2018), p. 7-8.

²³ Suparman Usman and Itang, *Philosophy of Islamic Law* (Serang: Laksita Indonesia, 2017), p. 115.

²⁴ One West Kalimantan data, "The number of population of Sambas Regency according to religion data source of the Kabupaten Population and Civil Registration Office. Sambas, Aggregate Data for Semester 1 of 2022," data.kalbarprov, 2022. (December 26, 2023).

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. Bustani²⁵, especially at the Sambas Religious Court, the number of divorce lawsuits made by semangkin wives increases until 2023 every year, reaching 1000 divorce cases of wives claiming their husbands through *khulu*'²⁶. 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 will be ranked at the top in divorce cases out of 14 districts in West Kalimantan²⁷. This was conveyed directly by the Junior Registrar of Religious Court Appeals.²⁸ 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 percent²⁹.

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's mother, ³⁰ she explained that the plaintiff in

²⁵ Bustani (52 years old), As a judge for Handling Divorce at Sambas Religious Court Class 1 Sambas Samba Regency, *Interview*, Sambas, December 7, 2023.

²⁶ Sambas Religious Court, "Cases in Sambas Religious Court," sipp.pa-sambas, 2022, https://sipp.pa-sambas.go.id/statistik_perkaradi. December 5, 2023.

²⁷ Randi, "The Divorce Rate in Sambas Is High, Reaching 300 Cases Every Month," sambaskini.com, 2022, <https://sambaskini.com/lokal/angka-perceraian-tinggi-di-sambas-tinggi-capai-300-cases-every-month/> December 23, 2023.

²⁸ Hamdani (35 years old), Junior Registrar of Religious Court Petitions: High Divorce Rate Case in Sambas, Dominated by Couples 30-40 years old, *Interview*, Sambas, June 17, 2023.

²⁹ Zulfahmi Dhamiri, "The Divorce Rate in Sambas is High, Dominated by Couples 30-40 Years Old," metro7.co.id, 2022, December 26, 2023.

³⁰ Siti Marhamah (48 years old), Primary judge at Sambas Court, Sambas, *Interview*, December 4, 2023.

the divorce case, namely the wife, already understood the reason for the cause of divorce in their household which ended in the breakup of marriage (divorce). In 2023, Sambas Regency has been ranked highest in divorce cases, especially the divorce of the wife to her husband through *khulu*'³¹. With the update of data from 2020 to 2023 on December 20, a total of 6,600 cases of divorce cases filed by wives to their husbands³².

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.³³

Based on the age data of divorce plaintiffs resulting from developments in the Religious Court³⁴ and in the Sambas Malay community, it can be seen from 20 divorce informants who sued their wives to their husbands, The highest age is between 25 years to 35 years with 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%.³⁵

³¹ Melly, "This Divorce Case in Sambas Tinggi Is the Cause?," *pojokkata.com*, 2022, <https://www.pojokkata.com/2020/12/kasus-perceraian-di-sambas-tinggi-ini.html?m=1>. December 22, 2023.

³² Sambas Religious Court, "Case Tracing Information System," *siap.pa.go.id*, 2022, https://sipp.pa-sambas.go.id/list_perkara/page/333/. December 5, 2023.

³³ Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

³⁴ Sambas Religious Court, "Case Tracing Information System," *siap.pa.go.id*, 2022, [sambas.go.id/list_perkara/page/333/](https://sipp.pa-sambas.go.id/list_perkara/page/333/). December 28, 2023.

³⁵ Lisa (25 years old), Divorce Handling Administration Staff at Sambas Religious Court Class 1 Sambas Regency, *Interview*, Sambas, December 5, 2023.

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%.³⁶ 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 ranks number one in the highest divorce rate out of 14 districts in West Kalimantan. For the sub-districts of the 19 sub-districts in Sambas Kabupten with the highest divorce rates, they are Pemangkat, Tebas, Selakau and Jawai.³⁷

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 going 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.

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

Table 1: Data on *khulu'* divorce in Sambas Religious Court

No	Year	Gugat's Divorce Matters												Sum Cerai Gugat
		Moon												
		Jan	Feb	Mar	Apr	Mei	Jun	Jul	Ags	Sep	Okt	Nop	Des	

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

³⁷ Siti Marhamah (40 years old), Primary judge at Sambas Court, Sambas, *Interview*, December 4, 2023.

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 data on divorce from divorce to husband through *khulu'* obtained from the Sambas Religious Court data from 2021, 2022 and 2023, it can be seen that the number of divorce divorce claims of wives to their husbands in Sambas Regency in 2021 the number of divorces divorced claims of wives to their husbands is 1,783 pairs, In 2022 the number of divorced divorces of wives to their husbands is 1,223 and in 2023 the number of divorces of divorces of wives to their husbands is 978 pairs. From this data, it can be known the number per month and per year of divorce from the wife to her husband at the Sambas Class 1B Religious Court. The cause of 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 can be directly from the Sambas Religious Court Class 1B. After the researcher knows the number of divorces divorced from the wife to her husband', *the* researcher will analyze in terms of the age of the perceraian *khulu*.

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 Years old and under	3	30%
2	26 Years to 35 Years	5	50%
3	36 Years and above	2	20%
Total (n =10)		10	100%

Source: Sambas Religious Court Class 1B

Based on the data on the age of divorce from the wife to her husband through *the khulu'* above, the results of the development in the Sambas Class 1B Religious Court in the table can be seen from a sample of 10 people obtained from 2021, 2022 and 2023, That the plaintiff divorced the wife to her husband through *khulu'* committed 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 divorced plaintiffs from their wives to their husbands through *khulu'* 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 (*khulu'*) in Sambas Religious Court Class 1B as a result of the development of interviews and administrative data. From the provisions for divorce reasons 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 "cannot be resuscitated/restored".

Table 3:

The most dominant cases of divorce causes of divorce of wives to their husbands through *khulu'* in Sambas Court Class 1B from 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	Mabuk	73	53	54	180
5	Nikah siri	73	63	73	209
6	Judi online	68	25	26	119
7	KDRT	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	Fromin Deposits	50	40	50	140
14	Crisis of faith, apostasy	50	40	50	140
15	Cultural factors	50	30	31	111
Total		1.816	990	1.330	4.136

Source: Sambas Religious Court Class 1B

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

Table 4:
Dominating cases of divorce causes of divorce of wives to their husbands through *khulu'* in Sambas Court Class 1B from 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
Total		1099	512	813	2424

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 *khulu'* in Sambas Regency. From the identification of data, there are 15 cases of the dominant causes of *khulu'* divorce causes of divorce from the wife to her husband through *khulu'* every year, in the 15 causes of divorce from the wife to her husband through *khulu'* are 3 cases that dominate the most dominating causes of divorce from the wife to her husband through *khulu'* seen from the figures every year. Furthermore, the author concludes that the most dominating cause based on the highest number of causes of divorce from wives to their husbands through *khulu'* from 2021, 2022 and, 2023 there are three

most dominant causes that are difficult to overcome, namely, leaving one party, continuous disputes and quarrels and household economic problems.

Aspects of *Maslahat* and *Mudharat Khulu'* Wife to Husband in the Sambas Indonesian Community

Marriage Law No. 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. In a statement from Mr. Bustani, Judge of the Sambas Religious Court, he said :

"Property in marriage is divided into three kinds, namely property, joint property and property acquired, property acquired during marriage is joint property, while property acquired by each party as inheritance or gifts is called grant property".³⁸

One of the respondents of divorce divorce sued the wife to her husband through *khulu'* 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 ank which is his obligation".³⁹

Furthermore, according to WN (26 years), 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"⁴⁰

³⁸ Interview with Bustani as judge of Sambas Religious Court Class 1B. December 7, 2023.

³⁹ Results of an interview with VT (29 years old) as a plaintiff of *khulu* divorce '. December 6, 2023.

⁴⁰ Results of an interview with WN as a plaintiff of *khulu* divorce '. December 4, 2023.

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 the acquisition of 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 mother⁴¹. However, the Ministry of Justice believes that the benefits that judges should consider when determining the interests of children under the age of 11⁴².

While the positive impact of divorce divorce from the wife to her husband through *khulu'* in Sambas Regency, as expressed by one of the respondents who the researcher interviewed 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 *khulu'* that she felt from her divorce:

"During my marriage to 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 to be born and inner because the child was with me."⁴³

⁴¹ Wahyu Abdul Jafar et al., "The Childfree Phenomenon Based on Islamic Law and Its Respond on Muslim Society," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (November 9, 2023): 389, <https://doi.org/10.29240/jhi.v8i2.7865>.

⁴² Feni Agustina, "Fulfilling Children's Rights Through Post-Divorce Relationships: An Investigation from Bima," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 30, 2023): 158, <https://doi.org/10.14421/ahwal.2023.16108>.

⁴³ Results of an interview with WN as a plaintiff of *khulu'* divorce. December 4, 2022.

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 to divorce the wife to her husband through *khulu'* must be taken by the woman because according to her there is no other choice. After 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 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 *khulu'* carried out by VT (29 years) (wife) and DM (30 years) (husband), whose address is in 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 VT's husband gave 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 that my husband had insufficient family support and ignored 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 to return 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".⁴⁴

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 she 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 lawsuit 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 divorce, divorce, lawsuit of wives to their husbands through *khulu'*, then it can be connected with *maṣḥlahah* to answer and draw conclusions on the issue of divorce of the wife to her husband through *khulu'* in Sambas District. 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-Ṣyātībī, if *al-hājiyyah* is not noticed, difficulties and difficulties arise, but not to

⁴⁴ Results of an interview with VT as the plaintiff of the *khulu* divorce'. December 6, 2023.

the point of causing harm, which usually happens to *al-maṣḥlahah al-darūriyyāh*. The category *la-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-maṣḥlahah 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-maṣḥlahah al-darūriyyāh* for both the defendant and the plaintiff. As al-Ṣyātībī asserts, absolutes are *maṣḥlahah* should not be subjective and relative. Relatability can be based on the nature of comparing *maṣḥlahah* with circumstances such as *hawa al-nufūs* (personal pleasure), *manāfi* (personal gain), *nal al-shaḥwāt* (fulfillment of bad wishes) and *aghṛād al-nāfs* (self-interest).

According to al-Ṣyātībī, all of the above considerations provide a relative and subjective understanding of *maṣḥlahah*, which is not a sharia consideration of *maṣḥlahah*, although it is customary (customary). The second trait of *maṣḥlahah* is that it must be universal. The takḥallūf of its individual elements cannot influence this universal. For example, laws are made based on universal provisions 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-ghalīb al-akḥṭhār* (dominant majority), which is the common definitive element in considering *maṣḥlahah*.

Aspects of *Maslahat* and *Mudharat Khulu'* Wife to Husband in the Sambas Malay Community

Judging from the *maṣḥlahah* aspect, the purpose of the special law of Islam is to realize expediency and avoid harm. Amrullah Hayatudin explained that the *kotek maṣḥlahah* seen from the power of its argument to achieve benefit in the establishment of law is divided into three parts, namely *maṣḥlahah al-dharuriyyāh*,

maṣhlahah tahsiniyah and *maṣhlahah hajiyah*⁴⁵. Related in this study which discusses *the khulu' divorce in Sambas maṣhlahah perspective, the researcher will discuss from the aspects of the benefits of khulu' divorce in Sambas Regency consisting of aspects of maṣhlahah al-dharuriyāh, aspects of maṣhlahah hajiyah and aspects of maṣhlahah tahsiniyah.*

First, the *maṣhlahah al-dharuriyāh* 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 maṣhlahah al-dharuriyāh* kotek as explained by As-Ṣyāthibi, namely: *hifẓ Al-Dīn (religion) obedience to worship to Allah Almighty*, *hifẓ Al-Nafs* (guarding the soul / life) guarding the safety of individuals, *hifẓ Al-'Aql (guarding reason) guarding conscience*, *hifẓ Al-Nash* (guarding offspring) guarding and protecting one's self-esteem and honor, *hifẓ Al-Māl* (guarding property) protects the wealth that one wants to control or wants to own.

Such as the case of the cause of divorce of the wife to her husband through *khulu'* has certain reasons, as in the case decided namely at Number: 20 / Pdt.G / 2019 / PA. SBS, the handling of the case was chaired by judge H. Ivan Yuzni Amarullah Murtadlo⁴⁶, filed by W (pseudonym) 26 years old to her husband An (pseudonym) 28 years old. The reason for the wife filing for divorce from her husband through *khulu'* against her sumnya to the Sambas Class 1B Religious Court 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

⁴⁵ Amrullah Hayatudin, *Ushul Fiqh The Middle Way to Understanding Islamic Law* (Jakarta: Prenada Media, 2014), p. 84.

⁴⁶ Sambas Religious Court, "Sambas Religious Court Case," sipp.pa-sambas.go.id, 2022, https://sipp.pa-sambas.go.id/index.php/detil_perkara. December 26, 2023.

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 *maṣhlahah al-dharuriyāh* aspect lies in the *hifẓ Al-Nafs* (preserving the soul/life) aspect, because in that case one of the causes of *khulu'* divorce is that the wife always receives physical violence from her husband. In the *kotek kemaṣhlahatan* the wife's actions are appropriate, she sues her mother because a wife is trying to protect her soul or her life from the persecution of her mother. So that *hifẓ Al-Nafs* is preferred to avoid harm that brings benefits to a wife.

Furthermore, the factor causing the filing for divorce from the wife to her husband through *khulu'* for another reason is that the wife is not fulfilled by her biological bread. 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, 2019⁴⁷. 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 five years and the wife filed her lawsuit on June 21, 2019 after a peak in the dispute between husband and wife. The plaintiff filed a complaint against the defendant during the marriage period of approximately five years.

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

From these two cases, the *maṣhlahah al-dharuriyāh* aspect of the *hifẓ Al-Nafs* (safeguarding the soul/life) and *hifẓ Al-Nash* (guarding offspring) contexts of both contexts falls into the category of *maṣhlahah al-dharuriyāh* which discharges with

⁴⁷ Sambas Religious Court, "Sambas Religious Court Case," sipp.pa-sambas.go.id, 2022, https://sipp.pa-sambas.go.id/index.php/detil_perkara. December 26, 2023.

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 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 resist the occurrence of corruption in human life. The main principle in *maṣhlahah Hajiyah* is to avoid difficulties, ease the burden of life and facilitate married couples in building a married life. In reality, the aspect of *maṣhlahah hajiyah* is to safeguard the five trees such as safeguarding religion, soul, intellect, time and wealth. It's just that their use is in the best interests of each other to create human vulnerability.

The *maṣhlahah aspect of Hajiyah*, for example in maintaining religion, is by carrying out religious provisions such as performing 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 seeking sustenance, you should look for halal means, 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-Bāqarāh/2:168, i.e.:

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا وَلَا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ إِنَّهُ لَكُمْ
عَدُوٌّ مُبِينٌ

Translation:

"O men, eat what is lawful again good from 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)⁴⁸

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 (humans).

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.

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 marital property, so it is very necessary to maintain property while still being able to maintain the marriage because it falls into the realm of avoiding difficulties in avoiding damage (*mafsadat*) in marriage.

⁴⁸ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an and its Translation* (Jakarta: Diponegoro, 2019), p. 25.

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

Maṣhlahah 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 house, the husband and wife must maintain the cleanliness of their bodies, cleanliness of clothes and the safety of the residence. Therefore, pinning is included in commendable morals in building a household.

Maṣhlahah tahsiniyah in the aspect of guarding the soul, in this body the most emphasized aspect is eating and drinking. This principle relates to the politeness 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 a married couple or complicate their lives.

Maṣhlahah 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, *maṣhlahah tahsiniyah in the* aspect of maintaining offspring, in this order of offspring things that must be considered are such as the decree of the way of asking (*khitbah*) and reception (*walimah*) in marriage. This is just to complete the activities of the wedding. Related to 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 offspring, married couples decide to end their marriages as in Sambas Regency, the cause of divorce *khulu'* one of them has no children or time.

Furthermore, *maṣhlahah tahsiniyah* in the aspect of safeguarding property, in this aspect the most emphasis is on insulting the deceptive and speculative nature. As a married couple, they must be really 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 *khulu'* 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 have a bad impact on the dignity of the marriage.

Based on the explanation of three aspects, namely *the maṣhlahah al-dharuriyāh* aspect, the *maṣhlahah hajj aspect* and the *maṣhlahah tahsiniyah* aspect are shari'ah to maintain 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-Shatībī said, bring more benefit than bring harm. Therefore, in the case of *khulu'* divorce in Sambas, the settlement must really bring benefits or benefits. The rule that becomes a legal consideration in *khulu'* divorce is whether the *khulu'* 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 (maslahat), but there is also *harm* (damage), it must be prioritized to avoid the mafsadat, because keafsadatan can expand and spread everywhere, so that it can cause greater damage in the household.

Furthermore, the aspect of *maṣhlahah tahtan* 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 (suscatin) 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-to-be'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 kemaṣhlahah there are also *mudharat from parents' divorce, namely: first*, mudharat against the psychology of husband and wife, *second mudharat against child development and third mudharat against wealth. Mudharat* on husband wife, namely for ex-husbands and wives, the existence of divorce makes their status widows and widowers. *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.

4. Conclusion

The reality of divorce is the divorce of the wife to her husband through *khulu'* in Sambas, Sambas Regency, namely: (1) Disputes and quarrels, (2) Economic problems, (3) Leaving one party, (4) Drunkenness, (5) Serial marriage, (6) Online gambling, (7) Domestic violence, (8) Parenting problems, (9) Imprisonment, (10) Third party interference, (11) Adultery/Infidelity, (12) Incurable Defects/Diseases, (13) Polytechnic Permits, (14) Crisis of faith, Apostasy, (15) Cultural factors. Of the 15 (fifteen) constituencies of *khulu'* divorce in Sambas Religious Court Class 1B Sambas Regency, 3 (three) constituencies dominate the most, namely: household economic problems, disputes and quarrels and leaving one party legal.

The kemaṣhlahatan aspect of divorce *khulu'* is inseparable from the *maṣhlahah al-dharuriyah aspect, the maṣhlahah hajj aspect and the maṣhlahah tahsiniyah aspect*. From these three aspects, solutions emerged in suppressing the high

number of khulu' divorces *in Sambas Regency based on cumulative data in the field that most dominate the causes of the high number of khulu' divorces, namely household economic problems, disputes and quarrels and leaving one party.* There are also *mudharat from parents' divorce, namely: first, mudharat on the psychological husband 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 widows and widowers. 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. Marriage Guidance for Prospective Brides in implementation provides reinforcement to prospective brides related to learning marriage fiqh, Forming a family and controlling the economy in the family as well as providing education to the bride and groom after marriage about the new humiliation. The Marriage Development and Preservation Advisory Board (BP4) plays a role in this. Mediation (*islah*) properly is very necessary, so that non-litigation resolution efforts can be made before the case is brought to court in the form of a 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 views to the hakam (conjugal family representative) to optimize mediation.

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