

# **TALAQ DIVORCE**

**Its Meaning According to the Actor of Matrilocal  
Residence in Muslim Society**



PUSTAKA PELAJAR



**Dr. Ulin Na'mah, M.H.I.**

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There is no word I can convey other than thousands of gratitude to Allah SWT who has bestowed His blessings upon me. I am aware of all of my prevailing limitations and I would not have been able to finish research and composing this book under the title “Talaq Divorce: It’s Meaning According to the Actor of Matrilocal Residence in Muslim Society”. It is solely afforded to His blessings that I am able to finish this endeavor by confronting all obstacles and unpleasantness, both for myself and for others. This is why the research and composition of this book bears a very deep significance and immense value to the process of my life to come.

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I can only pray that may all those who have assisted in the writing of this book be given multiplied rewards from Allah SWT. Subsequently, this book is dedicated to my beloved husband Abdullah Mahfudz, SH. and my two cherished children, Fazat Nayla Salma and Ahmad Santri Naja Mulya. I am aware that this book is far from perfection and unable to fulfill many expectations, nevertheless I hope that it could benefit others.

## TRANSLITERATION

The following is the Arabic-English transliteration scheme used in the writing of this book:

No	Arab	Indonesia	Arab	Indonesia
1	ا	u	ط	T}
2	ب	B	ظ	Z}
3	ت	T	ع	'
4	ث	Th	غ	Gh
5	ج	J	ف	F
6	ح	H}	ق	Q
7	خ	Kh	ك	K
8	د	D	ل	L
9	ذ	Dh	م	M
10	ر	R	ن	N
11	ز	Z	و	W
12	س	S	هـ	H
13	ش	Sh	ء	,
14	ص	S}	ي	Y
15	ض	D}		

In order to show a long vowel sound (*madd*) by writing a dash above the letters a>I and u>(ا, ي, and و). Sound of double vowel (diphthong) in Arabic is transliterated by combining two letters “ay” and “aw”, such as *layyinah*, *lawwamah*. For words ending in *ta' marbutah* and functioning as *sfah* (modifier) or *mudhaf ilayh* are transliterated with “at”.



# FOREWORD

## THE ISSUE OF DIVORCE IN MOSLEM SOCIETY

By Prof. Dr. Nasaruddin Umar., MA.

The case of divorce in the Islamic community in Indonesia has reached its problematic peak. The government (Ministry of Religious Affairs - MRA) along with its relevant subordinating services (R&D Center for Religious Living and BP4 (Marriage Preserving Fostering and Counselling Agency) in the KUA (Office for Religious Affairs)) is trying to find a solution to impede the surge of divorce rate. What is worrying to the MRA is the rising trend of petitioned divorce (the wife petitioning divorce) in the general public. In 2014, petitioned divorce throughout all Religious Court (*Peradilan Agama* – PA) was as much as 268,382 cases. The MRA is more and more concerned because the number of petitioned divorce is much more than the number of talaq divorce (as much as 113,850 cases).

Furthermore, often times the hypothesis established for the high rate of petitioned divorces are due to the phenomenon of women equity to men. Many women possess access to employment as men do, it is not seldom that women in fact have more income. Among the factors leading to petitioned divorce is that the husband does not provide physical and conjugal needs for the wife. This is an irony of life, women have their own income –bigger even– but why still demand fulfillment of *nafkah* (material sustenance/maintenance) from their husbands? This problem is in accordance to the case discussed in this book. In this era of petitioned divorce,

there is in reality a high soaring number of talaq divorces (divorce from the husband side) in one of the PA in East Java, namely Tuban Regency PA. Interestingly, the most dominant cases are talaq divorces with reason of economic pressure or the husband could no longer provide sufficient nafkah for the wife (family).

Based on the phenomenon above, the obligation of providing welfare bore by the husband –an authority which is taken with pride by men all this time– has become a boomerang for the continuity and actualization of a tranquil, affectionate and merciful (*sakinah, mawaddah* and *rahmah*) family. Subsequently, this book will attempt to provide an alternative in repositioning the identity of “the breadwinner of the family” to the appropriate authority and provide a solution to the high rate of divorces due to reason of demanding sufficient nafkah from the wife. Implementing treatment or an intense *suscatin* (*kursus calon pengantin*– bride-groom course) program without simultaneously attempting to find the roots of the prevailing problem will be pointless. By using this book, it is hoped that the main ideas contained within can be synergized with the implementation of *suscatin* in order to reduce the high rate of divorces particularly in the PA.

Additionally, this book also attempts to capture the relational pattern between husband and wife in the context of marriage. Obviously, all of this could not be separated from the context of the established gender roles that are already very constraining. On the other hand, the Quran actually tends to indicate and allow (indirectly) for human’s rational capacity to arrange distribution of roles among men and women. Quran’s attitude that is indirect, general, and indefinite in discussing an important matter such as gender role distribution in fact indicates that there is human authority in

utilizing the freedom of rights in choosing role distribution pattern for men and women that is mutually beneficial.

The Quran does not negate the biological anatomical differences, however these differences are not considered as basis to prioritize one type of gender over another. The main foundation for a husband and wife relationship is peace that is full of serenity (tranquil, affectionate and merciful). Gender verses provide a general guideline in attaining a harmonious quality of the individual and society. The Quran does not impose the burden of gender rigidly and conclusively upon an individual, but it is more on how the burden of gender can ease humans in attaining a noble aim in life, in this world and the here after. Hence it is highly probable to rearrange the pattern of gender relations based on the context and issues surrounding the matter.

This book consists of six main points of discussions. The first point of discussion explains the phenomenon of talaq divorce in the era of petitioned divorce. In this section, the background of the issue regarding talaq divorce phenomenon by reason of economic strain in Tuban Regency, East Java and its meaning in the development of the concept of man as the nafkah provider will be elaborated. Subsequently, the second topic of discussion contains theoretical perspectives on nafkah, talaq divorce, and conflict in husband and wife relations. This topic of discussion attempts to relate the concept of nafkah, gender relation, loyalty, and hope to the advent of divorce. In addition, conflict theory is also put forward in regards to the existing hierarchical system which lead to domination or subordination that constantly reaps psychological and resistant function effect.

The third discussion topic explains the research method used. It elaborates on phenomenology as a method in finding meanings, particularly empirical phenomenology. This is followed with the fourth topic of discussion that is regarding profile and Tuban Regency Religious Court. Aside from containing information on geographical location, demographic conditions and Tuban Regency Religious Court area of jurisdiction, this chapter will also shed light on descriptions and textual and structural meaning for wives who were petitioned with talaq divorce by their husbands, with emphasis on the problem of husband-wife and in-law relations system after marriage that is connected to the issue of family economy or welfare/nafkah. Subsequently, in the fifth chapter, discussions on the problem of husband-wife and in-law relations system that is related to several gender ideologies and power that woman could possess. Finally, the sixth discussion contains conclusion, theoretical implications, and limitation of study.

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# CHAPTER I

## TALAQ DIVORCE PHENOMENON IN THE ERA OF PETITIONED DIVORCE

### A. Economic Pressures as Reason for Talaq Divorce

In the 1930s and the previous years, Indonesian muslim women felt that petitioning divorce from the wife side was very difficult to be granted by the PA (religious court). In other words, the PA favored divorces that were petitioned by the husband.<sup>1</sup> Even divorce petition from the wife with reason of *shiqaq* did not gain any success. This is because the case of *shiqaq* requires particular resolution procedures which must be fulfilled, namely appointing two *hakkam* (one from the husband's side and another from the wife's). Prior to the 1930s, most Indonesian ulama and religious officials hold to the longstanding opinion (*qawl qadim*)<sup>2</sup> of Imam al-Shafi'i who considered *hakkamayn* must be a representative from both parties, and

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<sup>1</sup>Daniel S. Lev, *Peradilan Agama Islam di Indonesia*, translation by Zaini Ahmad Noeh (Jakarta: PT. Intermasa, 1982), 189 and 211. PA in Java and Madura was initially established by the Dutch East Indies Government based on Stbl. 1882 No.152 under the name *priesteraad* which is usually translated into "*Rad Agama*". The word *priester* means priest, father or monk. That name was used by the Dutch because they thought that ulama in the Indonesian community is a sort of priest or father in Christianity. Meanwhile, *raad* means assembly. Then in the 31<sup>st</sup> of January 1931, through Stbl. 1931 No.53 the form of PA as a *priesteraad* or *Raad Agama* was changed into *Penghoeloe Gerecht* that consisted of a muslim headman as judge, accompanied by two counselors and *agriffier* or clerk. See Zaini Ahmad Noeh et al., *Sejarah Singkat Pengadilan Agama Islam di Indonesia* (Surabaya: PT. Bina Ilmu, 1983), 15 and 35-36.

<sup>2</sup>Based on research I previously conducted, the issue that Imam al-Shafi'i is regarded to have two opinions in the case of position and authority of *hakkam* in the efforts of resolving the matter of *shiqaq* is quite well known, and it is true that the two opinions consists of the *qawl qadim* and the *qawl jadid*. However, the *qawl qadim* opinion is that the "position of the *hakkam* as judge and decision maker" and the *qawl jadid* opinion is that the "position of the *hakkam* as representatives of the concerning husband and wife", and not vice versa.

thus could only provide counsels that is not binding to both husband and wife. However, after so many women chose *riddah* (apostasy) as a reason for divorce,<sup>3</sup> and probably because Islamic religious judges were also attempting to find a solution in overcoming the disorganized law on marriage, in 1938 their perspectives were starting to lean to the second opinion (*qawl jadid*) of Imam al-Shafi'i that positions *hakamayn* as decision maker or judge.<sup>4</sup>

Subsequently, in the 1960s<sup>5</sup> divorce petition to the PA by women was initially easier, and it had reached its peak with the adoption of Law on Marriage No. 1 Year 1974. However, the PA –referring to the religious court procedure code on divorce cases– adheres to the principle of “hampering divorce”,<sup>6</sup> thus it is quite inconsistent when petitioned divorce

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<sup>3</sup>Until the end of the 1930s many women intending to divorce (petitioned a divorce) but did not have sufficient reason or had difficulty in facing the PA had committed apostasy (*murtad*), hence breaking the bond of marriage, although actually in that case it was a false *murtad*. Nevertheless, be it genuine or false *murtad*, that attitude was still considered improper. In 1938 the newly formed MIT (now PTA) initiated to disallow the use of *riddah* as reason to divorce with the decision that the PA is not authorized to decide on marriages in which the woman has committed apostasy, because the PA is only authorized to provide ruling for cases among individuals who are muslims. Therefore, the PA could only accept statement of *riddah*, but once that happened the Pais no longer authorized to serve the *murtad*, so the person must seek the PN (State Court) to settle the case (divorce). Lev, *Peradilan.*, 212 and G. F. Pijper, *Fragmenta Islamica*, translation by. Tadjimah ( Jakarta: UI Press, 1987), 65-78.

<sup>4</sup>Lev, *Peradilan.*, 212-213.

<sup>5</sup>Daniel S. Lev showed that the rise in the number of divorces since the 1960s was not only caused by the rise in the number of marriages, but most possibly also because of the widespread of Indonesian women's awareness on the significance of PA to their case. Not all cases of divorce were talaq divorces, there were petitioned divorces as well, hence reducing the number of talaq divorce, and in his opinion this did not need further research or in other words, the focus of his research is not on why was there an increase in the number of petitioned divorce (Ibid., 186-187)

<sup>6</sup>Muhammad Amin Suma, *Hukum Keluarga Islam di Dunia Islam* (Jakarta: PT. Raja Grafindo Persada, 2004), 160-161. Through this principle, divorce is not to be conducted on a whim or with no significant reason. Aside from that, divorce should also be conducted or be conveyed before the court with efforts in reconciliation at first. The husband and wife that have undergone through reconciliation without success will be those that are allowed to file or petition their divorce, with the consideration of maintaining family life that is

is easily facilitated. Nevertheless, since there were always many women who suffer unhappy marriages, consequently the PA judge tended to be sympathetic and easy to allow the requested divorce, sometimes even when the women who proposed the divorce actually lied or were in the wrong. During this period—the opposite happened— PA was more in favor of the wife by facilitating to grant her divorce petition or claim.<sup>7</sup>

In its development, current divorce cases in Indonesia are actually seeing more husbands being divorced by their wives (through judge's verdict) or there are more petitioned divorces than talaq divorces. According to Nasaruddin Umar, this is the impact of globalization in which the information flow through mass media such as infotainment broadcasts which show public figures of celebrities/actors/actresses –particularly actresses—who proudly reveal their divorce cases.<sup>8</sup> Additionally, it is also caused by the rise in women's independence. This phenomenon is strengthened by statistical data of divorce rate for the past several years in the religious court in Indonesia. Based on data collected in the book *Naskah Evaluasi dan Analisa Statistik Perkara MSy.P/ PTA dan Msy/ PA Seluruh Indonesia Selama Tahun 2001-2005*<sup>9</sup>, it is stated that observed from the types of cases that were decided, most of the decision were

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unharmonious then it is better to end the family life with a better and honorable way. This is the meaning of the word of Allah SWT. "فَامْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ" (a household should be retained in honor or –if unavoidable– then it should be released in kindness as well).

<sup>7</sup>Lev, *Peradilan*, 186-189.

<sup>8</sup>Department of Religious Affairs RI, "Divorce Rate in Indonesia Higher Compared to Other Islamic Countries" in *Ikhlas Beramal*, No. 46, year X 2007, 15. Based on Law No. 1 Th.1974, article 38, it is explained that marriage can be terminated by death, divorce, and court ruling/verdict. In this provision it is obvious that there is a pattern difference between termination of marriage by divorce and termination of marriage by court ruling. Termination of marriage by divorce or husband who divorces his wife uses the term "talaq divorce", while termination of marriage by court ruling or wife who petitions to divorce her husband uses the term "petitioned divorce", this definition is firmly stated in Law No.7 Yr. 1989, article 66 and 73 or chapter IV, part two, paragraph 2 and 3.

<sup>9</sup>[www.badilag.net/data/Naskah%20Statistik%20perkara.pdf](http://www.badilag.net/data/Naskah%20Statistik%20perkara.pdf).(15 August 2009)

regarding petitioned divorce cases which were as much as 432,592 cases. Meanwhile, talaq divorce cases were as much as 281,151 cases and other cases merely 68,053 cases.

In particular, data on the number of petitioned divorce and talaq divorce in PA throughout all of East Java, which covers 37 PA, based on the *Laporan Perkara yang Diterima dan Diputus menurut Jenisnya pada Pengadilan Agama se-Jawa Timur Tahun 2006-2008* also showed that the number of petitioned divorce is higher than talaq divorce. Detail of its comparison is as follows:<sup>10</sup>

1. In 2006, the number of talaq divorce was as much as 17,394 cases (38.8%) and petitioned divorce as much as 27,386 cases (61.2%).
2. In 2007, the number of talaq divorce was as much as 18,340 cases (38.6%) and petitioned divorce as much as 29,229 cases (61.4%).
3. In 2008, the number of talaq divorce was as much as 21,737 cases (37.9%) and petitioned divorce as much as 35,630 cases (62.1%).

Here it can be affirmed that based on the reality above it is currently the era of petitioned divorce. However, it is baffling that in the era of petitioned divorce Tuban Regency PA is actually dominated by talaq divorce. What is even more interesting is that one of the underlying cause for talaq divorce is economic strain in which economic obligation (seeking nafkah) is in the husband's power.

The following is an illustration that could reveal the existing economic strain, aside from what is explained in either the cases' request letter or talaq divorce letter of verdict, which was obtained through observation. In regards to the research subject's residence, it can be said that they generally lived in rural and mountainous areas that have a low level of economic capacity. In addition to that most of them still lived with

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<sup>10</sup> *Laporan Perkara yang Diterima dan Diputus menurut Jenisnya pada Pengadilan Agama se-Jawa Timur Tahun 2006-2008.*

their parents (in-laws). Most of their homes were categorized as a house that is unkempt, without tiles, clothes and agricultural and household equipment were strewn everywhere, with walls made of wood or woven bamboo. Sometimes due to limited living space, they made use of their home simultaneously as a shed for animals such as chickens or goats, some even put their chickens and goats in the same space of the guest room without any partition panel and at times they would have their goats and cows placed in the front or next to the house.

In terms of employment, most of them work in informal sector. Employment in the informal sector are work that is not based on a clear employment contract in which often times the employer worked on his/her own, with unstable and impermanent income.<sup>11</sup>In this context, informal employment was such as limestone miner, farmer and farm worker, *ganco* (digging stony land) and *dangir* (piling up soil for planting) work, fruit seller, traveling snack seller, pedicab driver, pickup truck driver, used mineral water cup collector, hay collector, *gedog* (particular batik from Tuban Regency, East Java) maker, household helper, store sales person, and food and beverages stall. In addition, their motives in carrying out these informal jobs were merely to obtain income, not for profit. In regards to income, they generally found it difficult to say because of the uncertainty in the income acquired daily. Even more so, the type of economic strain illustrated by the husband in his letter requesting talaq divorce was due to

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<sup>11</sup>Henny Wiludjeng et.al., *Dampak Pembakuan Peran Gender terhadap Perempuan Kelas Bawah di Jakarta* (Jakarta: LBH-APIK, 2005), 27. The term informal sector was initially introduced by Keith Hart through his research in Ghana, Africa. This term is subsequently applied and deeper research was conducted in several developing countries including Jakarta in 1972. Meanwhile, the formal sector relates to sector in which its employment demands a high level of skills, which is usually difficult to fulfill by newcomers from rural areas. See Sindung Haryono, *Sosiologi Ekonomi* (Yogyakarta: Ar-Ruzz Media, 2011), 229-230.

his wife's demanding nafkah because his income was low and uncertain, hence incapable of providing sufficient nafkah or any nafkah at all.

In divorce cases or context due to economic strain, it was in fact the husband who initiated to file a divorce (talaq divorce request) rather than the wife, in which commonly this reason or leading factor of economic strain is often considered as the main reason for divorce request by the wife or petitioned divorce. Moreover, in this case the wives who were being divorced often did not attend court which would lead to a *verstek* (default) judgment (judgment decided without defendant's attendance).<sup>12</sup> The wife's absence without due reason or legitimate cause, although she had been properly summoned,<sup>13</sup> showed that the wife has no objection with the talaq divorce. Even when the wife is present in court, they often do not mind or allow their rights to be minimized or even sometimes obtain no rights at all, such as *mut'ah* (a consolatory gift from ex-husband to please ex-wife) and nafkah *'iddah* (maintenance) from the husband.

Is the phenomenon above a form of women's powerlessness or submission as the second sex in a patriarchal culture? How are the relations between men and women in these talaq divorce cases? Since, as understood, Javanese society adheres to a patriarchal system in social life which often gives way to gender inequality such as subordination, marginalization, more burden of work, and stereotyping of women. Hence, in this research, I would like to reveal the meaning of talaq divorce by reason of economic strain from the perspective of the divorced wife.

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<sup>12</sup>Based on opinions of fiqh experts, it is "whoever is summoned to face an Islamic judge and does not present him/herself then he/she is considered a zalim (oppressor), and has forfeited his/her rights".

<sup>13</sup>What is meant by proper summon is that it has been delivered directly to the concerning individual. If the individual could not be met then the summon is forwarded to the head of locality or anyone with similar authority. See Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama* (Yogyakarta: Pustaka Pelajar, 1998), 62.

In this writing I place women as the focus of study, not letting them be sidelined by legal discussions. Therefore, there are five significant ways of thinking utilized in critical legal studies relating to women, namely women's experience, implicit gender bias, double bind and dilemma from difference in reproduction of male dominance model, and opening women's choices. These five ways of thinking is used in data collection or composing interview guide. Hence, it is hoped that the data collected via interviews and observations could support the goal of the research to answer "what is the outlook of talaq divorce in Tuban Regency PA?"; "why is it the husband not the wife, who petitioned divorce with reason of economic strain?"; and "how do the divorced wives interpret talaq divorce proposed by their husbands with reason of economic strain?".

Besides, this research is based on micro analysis –which was conducted in Tuban society of East Java- of divorce issue rooted in muslim community, yet it might be possibly found in other places which have same community. This is because this research attempts to reobserve the concept of nafkah in Islamic jurisprudence. On the one hand, nafkah is an obligation that lies under men's responsibility, however in reality it is not rare to find women bearing that responsibility. While on the other hand, nafkah obligation has a legal implication in the form of rights and obligations in the relation of man (husband) and woman (wife). Hence this research is expected to provide a fiqh emphasis or a possibility in deconstructing the concept of nafkah based on the reality or meaning of talaq divorce with reason of economic strain phenomenon in Tuban Regency.

Expectation on the possibility of changing the concept of nafkah is also based on the postulate that "gender roles are not static and change as the needs of society change"<sup>14</sup>. Additionally, the current reality has reached

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<sup>14</sup>Sylvia Duarte Dantas De Bioggi, *Changing Gender Roles: Brazilian Immigrant Families in the U.S.* (New York: LFB Scholarly Publishing LLC, 2002), 41.

a trend of dual-earner (both husband and wife has jobs),<sup>15</sup> but why is patriarchal ideology remain to be upheld. This obviously becomes an issue of inequity, even causing difficulties in the efforts of resolving family problems relating to crisis in husband-wife relation due to economic hardship. Aside from that, this also tends to move away from the goal of the tranquil, affectionate, and merciful marriage and could lead to divorce.

Practically speaking, this research attempts to reveal anthropological aspect of Islamic divorce law phenomenon in Tuban Regency which is a part of the Islamic family law in Indonesia, since as of current there have been many legal studies which focus the discussion surrounding very normative juridical aspects. Hence, this research is expected to provide consideration points for PA judges who have been basing their decisions on mere formal realities, in order to improve the prevailing legal procedure into a decision based on its material reality.

## B. Identifying Theoretical Gaps

Previous studies mostly discussed the renewal of PA material law (Islamic family law) that is more directed at increasing women's status, such as Khoiruddin Nasution, *Status wanita dalam perundang-undangan perkawinan muslim kontemporer Indonesia dan Malaysia*, which was a research with holistic-qualitative approach that found that the Indonesian Law on Marriage was initiated as a response to the demand of the Indonesian people, particularly from reform and women groups, although there were negative response from the traditional group.<sup>16</sup> There was also re-

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<sup>15</sup>Ibid., 43.

<sup>16</sup>Khoiruddin Nasution, *Status Wanita di Asia Tenggara: Studi terhadap Perundang-undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia* (Leiden-Jakarta: INIS, 2002), M. Atho' Mudzhar (Ed.), *Hukum Keluarga di Dunia Islam Modern: Studi Perbandingan dan Keberanjakan UU Modern dari Kitab-kitab Fikih* (Jakarta: Ciputat Press, 2003), Muhammad Amin Suma, *Hukum Keluarga Islam di Dunia Islam* (Jakarta:

search on the development of PA in Indonesia from a legal institution aspect along with its competency.<sup>17</sup> Additionally, there was also research on the history of Islamic marriage law in Indonesia.<sup>18</sup> Regarding case study research on divorce cases –based on my knowledge–was a group research on a case study in Saberida District, Indragiri Hulu Regency, Riau Province, with the theme “Ignoring Right to Petitioned Divorce in Islamic Legal Perspective”;<sup>19</sup> a dissertation on “Divorce in the Life of Muslim in Surabaya East Java: Study on Meaning of Divorce in Phenomenology Perspective”;<sup>20</sup> dissertation on “Meaning of Marriage to Petitioner of Divorce in Surabaya PA”;<sup>21</sup> undergraduate thesis on “Implementation of Petitioned

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PT. Raja Grafindo Persada, 2004), and Dadan Muttaqien et.al., *Peradilan Agama dan Kompilasi Hukum Islam dalam Tata Hukum Indonesia* (Yogyakarta: UII Press, 1999).

<sup>17</sup>Daniel S. Lev, *Peradilan Agama Islam di Indonesia*, translation Zaini Ahmad Noeh (Jakarta: PT. Intermasa, 1986), Zaini Ahmad Noeh and Abdul Basit Adnan, *Sejarah Singkat Pengadilan Agama Islam di Indonesia* (Surabaya: PT. Bina Ilmu, 1983), M. Yahya Harahap, *Kedudukan, Kewenangan, dan acara Peradilan Agama* (Jakarta: Pustaka Kartini, 1997), and Jaenal Aripin, *Peradilan Agama dalam Bingkai Reformasi Hukum di Indonesia* (Jakarta: Kencana, 2008).

<sup>18</sup>Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: antara Fiqh Munakahat dan Undang-undang Perkawinan* (Jakarta: Kencana, 2006) and Baharuddin Ahmad, *Hukum Perkawinan di Indonesia: Studi Historis Metodologis* (Jambi: Syari'ah Press IAIN STS Jambi).

<sup>19</sup>Ahmad Mujahidin, “Pengabaian Hak Cerai Gugat dalam Perspektif Hukum Islam”, in <http://openlibrary.org/b/OL3604612M> (1 April, 2008).

<sup>20</sup>Hasniah Hasan, “Perceraian dalam Kehidupan Muslim Surabaya Jawa Timur: Studi tentang Makna Perceraian dalam Perspektif Fenomenologi”, in <http://www.adln.lib.unair.ac.id/print.php?id=gdlhub-gdl-s3-2007-hasanhasni-3507&PHPSESSID=4a5098ca21600bae878e3c7be5a83116>. (21 July 2008). Findings in this research: 1) Motives for divorce; 2) Social phenomenon as a motive because; 3) Motives which trigger divorce; and 4) Meaning of divorce according to the definition and understanding of husbands and wives who have experienced divorce. The focus of this research was not merely to uncover the divorce phenomenon and its causal factors, but to uncover motives behind it and the goal which drives them to divorce. The meaning of divorce was seen from the comprehension and understanding of husbands and wives who have carried out talaq divorce and petitioned divorce individually. Alfred Schutz phenomenology was used in the research.

<sup>21</sup>Masykur Makbul, “Makna Nikah bagi Pelaku Cerai Gugat di PA Surabaya”, (Dissertation, IAIN Sunan Ampel, Surabaya, 2006). This research found that the meaning of marriage for those requesting petitioned divorce were 1) Marriage as reinforcement of male dominance; 2) Marriage as institution of violence in practice; 3) Marriage as self-

Divorce based on Law No. 1 Year 1974 jo. PP No. 9 Year 1975 in Surakarta PA”,<sup>22</sup> undergraduate thesis on “the Role of PA in Resolving Petitioned Divorce Case based on Law of RI No. 7 Year 1989 (Case Study on Petitioned Divorce in Bandung PA)”;<sup>23</sup> undergraduate thesis on “Basic Consideration of Judges in Deciding Wife Petitioned Divorce Case (Comparative Study on Demak PA and PN Decision);<sup>24</sup> thesis on “the Issue of Husband’s Right to Talaq Divorce the Wife”<sup>25</sup>; thesis on “the Process of

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protection; and 4) Marriage as worship. These meanings were influenced by internal and external factors of the petitioner. Internal factors relates to life view and perspective of petitioner regarding religious values. Meanwhile, external factor relates to surrounding conditions and parents intervention.

<sup>22</sup>Dedi Irawan, “Pelaksanaan Cerai Gugat Berdasarkan UU No. 1 Th. 1974 jo. PP No. 9 Th. 1975 di PA Surakarta”, in [http:// simta.uns.ac.id/cariTA.php?act=daftTA&new&fr=det&idku=704](http://simta.uns.ac.id/cariTA.php?act=daftTA&new&fr=det&idku=704).(2006). This research found that 1) petitioned divorce procedures based on Law No. 1 Year 1974 jo. PP No. 9 Year 1975 must fulfil requirements among others: petition letter be proposed in writing or can be proposed verbally, bringing along self-identification in the form of KTP (Citizen ID Card) and pay for court fee along with the proposal of petitioned divorce request; 2) Petitioned divorce case examination in the trial of Surakarta PA is conducted based on Article 39: (2) Law No.1 Yr. 1974; and 3) based on the petitioned divorce proposed there were facts revealed leading to violence or abuse (article 19 letter (d) PP No. 9 Yr 1975), however the assembly of judges based the divorce examination on article 19 letter (f) PP No. 9 Yr. 1975 on divorce by reason of continuous strife that is difficult to reconcile.

<sup>23</sup>Yuni Sri Handayani, “Paranan Peradilan Agama dalam Menyelesaikan Cerai Gugat Berdasarkan UU No.7 Th. 1989 (Studi Kasus di PA Bandung)”, in <http://digilib.upi.edu/union/index.php/record/view/4479>. (1 March 2006). This research found that PA has a highly determining role in marriage continuity of the petitioner and the petitioned. By filing claim to the PA according to prevalent procedures and regulations, the PA has the responsibility to assist the petitioner to resolve the case although it is found difficult by the PA particularly in the trial process of getting the couple to meet which hampers attempt at reconciliation. Additionally, the PA attempted to reduce the rate of petitioned divorce, in which the Bandung PA held propagation event regarding divorce which was conducted routinely every year.

<sup>24</sup>Muhammad Aris Rahman, “Dasar Pertimbangan Hakim dalam Memutus Perkara Gugatan Cerai oleh Isteri (Studi Banding Putusan PA dan PN Demak)”, in <http://www.unissula.ac.id/perpustakaan/index.php?option=comcontent&view=article&id=51:dasar-pertimbangan-hakim-dalam-memutus-perkara-gugatan-cerai-oleh-isteri-studi-banding-putusan-pengadilan-agama-dan-pengadilan-negeri-demak-&catid=49:skripsi-hukum&Itemid=58>. (2009).

<sup>25</sup>Kuslan, “Masalah Hak Suami untuk Mentalak Isteri (Tesis: PPs IAIN Sunan Kalijaga, Yogyakarta, 1988). This research found that Islam has provided the concept of household

Talaq Divorce according to Law No. 1 year 1974 on Marriage (a Philo-  
sophical and Socio-Historical Comparative Analysis)”; and undergraduate  
thesis on “Lack of Fulfilling Nafkah as Reason for Divorce (Study on  
Sleman Religious Court Decision Year 2006).<sup>26</sup>

In addition to that, there are also books written based on research  
results written by Yossef Rapoport under the title *Marriage, Money and  
Divorce in Medieval Islamic Society* containing socio-historical study on  
the high rate of divorce and its causing factors during Islam’s medieval  
period.<sup>27</sup> At the time –although a patriarchal system remained prevalent–  
divorce initiated by the wife was already seen equal to divorce initiated by  
the husband, which was also caused by women’s economic independence.  
There is also a book with the title *Family Transformation through Divorce  
and Remarriage: a Systemic Approach* written by Margaret Robinson,<sup>28</sup>  
which is a psychological study on various types of divorce, both from the  
wife’s initiative and the husband’s, which also covers discussions on  
several phases of conditions before and after divorce.

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but it could not be applied throughout all household structure in Java, this is because the  
wife (woman) in Java also take part in doing the husband’s work.

<sup>26</sup>Muhammad Husain, “Kurang Terpenuhinya Nafkah sebagai Alasan Perceraian (Studi  
Putusan Pengadilan Agama Sleman Tahun 2006)”, in [http://digilib.uin-suka.ac.id/gdl.php?  
mod=browse&op=read&id=digilib-uinsuka-muhammadhu-1618](http://digilib.uin-suka.ac.id/gdl.php?mod=browse&op=read&id=digilib-uinsuka-muhammadhu-1618) .(21 September 2009).  
The focus of research in this undergraduate thesis is to reveal legal considerations used by  
judges in divorce cases with reason of lack in fulfilling nafkah in Sleman PA year 2006.  
The research result found that unfulfilled nafkah provision was not the primary reason in  
divorce but it was reason stated in article 1 and article 39verse (2) Law No. 1 Yr. 1974 jo.  
article 19 letter f jo. Article 22 verse (2) PP No. 9 Yr. 1975 that was its primary reason,  
which is that unfulfilling nafkah lead to constant strife, hence the goal of marriage in  
forming a joyful and perpetual family based on the Sovereignty of God could not be  
achieved.

<sup>27</sup>Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society Marriage,  
Money and Divorce in Medieval Islamic Society* (Cambridge: CambridgeUniversity Press,  
2005)

<sup>28</sup>Margaret Robinson, *Family Transformation through Divorce and Remarriage: a  
Systemic Approach* (London and New York: Roulledge, 1991)

Therefore, in regards to writings or research on the meaning of talaq divorce to wives in Tuban Regency PA petitioned by the husbands with reason of economic strain –in which the rate of talaq divorce in Tuban Regency PA is higher than the rate of petitioned divorce–in the era of high rate petitioned divorce have not been conducted. However, there has been a research on “Tradition of Women’s Family Proposing in the Marriage System in Tuban East Java”<sup>29</sup> conducted by Nur Syam that is used as a provisional study regarding the tradition of Tuban women, which is also very beneficial for me to be able of focusing more on the object of observation in the field. A research of accordance is an undergraduate thesis on “Marriage Custom in the Region of Tuban East Java” which particularly took place in Palang Village.<sup>30</sup>

Regarding similar research on the meaning of divorce issue, there was a research conducted by Hasniah Hasan, under the title “Divorce in the Life of Muslim in Surabaya East Java: Study on the Meaning of Divorce in Phenomenology Perspective”. At a glance, the research may be similar to this one. However, I am able to show the differences between the two.

The first difference lies in the area of research and its background of issue. Hasniah began with a background of issues existing in Surabaya, namely due to the rising rate of divorce in Surabaya, with a rate of petitioned divorce higher than talaq divorce, leading her to formulate a number of problems or questions and subsequently attempting to find the answers through research. The research was carried out by conducting interviews to people filing for talaq divorce and petitioned divorce based

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<sup>29</sup>Nur Syam, *Madzhab-madzhab Antropologi* (Yogyakarta: LKiS, 2007), 135-184.

<sup>30</sup>Eli Ermawati MS, “Adat Pernikahan Daerah Tuban Jawa Timur”, in <http://one.Indoskripsi.com/node/8335>. This undergraduate thesis discussed customary marriage—from the proposing stage (by the bride side), marriage preparation, *siraman* unto marriage procession with its distinct customs which was then correlated to the concept of marriage ad its proposal in Islamic perspective.

on their subjectivity without relating it to a particular theme in the form of one of the several reasons from the reasons determined by the PA as those that could allow for divorce. Moreover, shed did not only conduct the interviews on the petitioner but also on their close relatives and friends in order to reveal the petitioner's subjectivity. In other words, the phenomenology method used is very different to the phenomenology method applied in this research. In regards to this research, all attempts have been carried out to maximally obtain the petitioner's genuine subjectivity, by only conducting interviews with the petitioners, unless it is to acquire definition of terms and traditions of local community.

Meanwhile the second difference is in regards to the type of divorce. Hasniah did not choose one from the existing two types of divorces, or did not particularly discuss and analyze meaning of divorce only in petitioned divorce cases or talaq divorce cases; she discussed and analyzed the meaning of divorce in both. Nevertheless, in the end result she did not differentiate the condition of petitioned or talaq divorce in her analysis, which is very likely that there was a difference in the two, referring to the status of men as head of the households and women as the housewife. This research has, however, determined one theme from the number of themes of several existing reasons for divorce, namely economic reasons. In addition to that, this research was specified in analyzing the meaning of divorce from the wife's perspective in talaq divorce type only, due to economic reasons in petitioned divorce not having any issues or uncommon character.

Economic reason in petitioned divorce is not uncommon since it is obvious that a husband fulfill his wife's needs or nafkah that is considered as her rights and his obligation. Because nafkah or economic wellbeing is the wife's rights from her husband then it is only natural that she demands her rights. Therefore, it can be firmly stated that this research is very dif-

ferent from Hasniah's research, both in substance and methodology variations.

## CHAPTER II

### NAFKAH, TALAQ DIVORCE, AND CONFLICT BETWEEN HUSBAND AND WIFE

#### A. Nafkah and Divorce

##### 1. Definition of nafkah

Etymologically nafkah or النفقة is a *ism al-mashar* meaning is الإخراج (expenditure) and الذهاب (gone or lost), and its plural form نفقات and نفاق.<sup>31</sup> By definition it is expenditure or expense spent by a person for good purpose or something spent for people who are under his/her responsibility. <sup>32</sup>Or fulfilment of needs for people who are under his/her care/responsibility including necessities of food, clothing and shelter.<sup>33</sup>

Nafkah is categorized into two, namely nafkah that is obligated to be given to oneself and nafkah that is obligated to be given to others. Obligation to fulfil one's own nafkah must be prioritized from the obligation to provide nafkah for others as Rasulullah saw said:<sup>34</sup>

أَخْبَرَنَا زِيَادُ بْنُ أَيُّوبَ قَالَ: حَدَّثَنَا إِسْمَاعِيلُ قَالَ: حَدَّثَنَا أَيُّوبُ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "إِذَا كَانَ أَحَدُكُمْ فَقِيرًا فَلْيَبْدَأْ بِنَفْسِهِ، فَإِنْ كَانَ فَضْلًا فَعَلَى عِيَالِهِ، فَإِنْ كَانَ فَضْلًا فَعَلَى قَرَابَتِهِ"<sup>35</sup>

<sup>31</sup>Abd al-Rahman al-Jaziri, *Kitab al-Fiqh 'ala al-Madhahib al-Arba'ah* (Mesir: Maktabah al-Tijariyyah al-Kubra, 1969), IV: 553.

<sup>32</sup>Abdul Azis Dahlan (et al.), *Ensiklopedi Hukum Islam*, 1<sup>st</sup> edition (Jakarta: Ichtiar Baru van Hoeve, 1996), IV: 1281.

<sup>33</sup>Wahbah al-Zuhaili, *al-Fiqh al-Islamiyy wa Adillatuh* (Suriya: Da' al-Fikr, 1989), VII: 765.

<sup>34</sup>Ibid., VII: 765.

<sup>35</sup>al-Nasa'i, *Sunan Al-Nasa'i* (Bairut: Da' al-Fikr, 1995), VII: 325.

Meaning: Narrated to us by Ziyād bin Ayyub: narrated to us by Ismaʿīl : narrated to us by Ayyub dari Abu-al-Zubayr from Jabir, the Prophet said: “if among you (husbands) are poor then you should provide for yourself first, then if there is more to spare then provide for your family (wife and child), then if there is more to spare provide for your kinfolk”.

Regarding factors leading to obligation of providing nafkaḥ for others, there are marriage, kinfolk (blood or family relation), and ownership over something that needs nafkaḥ.<sup>36</sup> The obligation of providing nafkaḥ for kinfolk does not apply absolutely, there are three requisites that must be fulfilled, namely:<sup>37</sup>

- a. Kin receiving nafkaḥ is a fakir, with no wealth and is not capable of working or engaging in ventures. That incapability can be due to not having reached maturity, very old, insanity or prolonged illness.
- b. The person with the obligation to provide nafkaḥ is one who is in a comfortable position with full ownership of wealth and more to spare – once it is used to provide nafkaḥ for oneself and family – to provide for kinfolk. That wealth can be taken from one’s existing fortune or from the fruit of his hard labour, since a person capable of work must work in order to provide nafkaḥ for one’s kinfolk who is a fakir.
- c. The person obligated to provide nafkaḥ has kin relation *dha>rahḥm mahḥam minḥ* (prohibited from marriage) with the person obligated to be provided nafkaḥ.

The above is different to the obligation of a father providing nafkaḥ for his child and a husband providing for his wife. Both of these nafkaḥ obligations apply absolutely. The father’s obligation to provide nafkaḥ for the family, because of the child/children’s nafkaḥ he must provide will not be rendered null and void even if the father is under unfavourable condi-

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<sup>36</sup>al-Zuhābilī, *al-Fiqh*, VII: 765.

<sup>37</sup>Ibid., VII: 769-770.

tions (not comfortable/well-to-do or experiencing hardship). As is the husband's obligation in providing his wife with nafkaḥ, it will not cease even if the husband is under unfavourable conditions (not comfortable/well-to-do or experiencing hardship).<sup>38</sup>

Although nafkaḥ is a father's obligation to his children and a husband's to his wife, it remains conditioned to one's respective capacity, i.e. fulfilment or sufficiency of food and clothing necessities, or in accordance to local customary definition of "sufficient". The obligation to provide nafkaḥ is brought about by necessities. And necessities can be fulfilled sufficiently (not excessively),<sup>39</sup> as indicated by the Prophet to Hindun:

حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنَا يَحْيَى عَنْ هِشَامٍ قَالَ أَخْبَرَنِي أَبِي عَنْ عَائِشَةَ أَنَّ هِنْدَ بِنْتَ عُثْبَةَ قَالَتْ يَا رَسُولَ اللَّهِ إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ، وَ لَيْسَ يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي إِلَّا مَا أَخَذْتُ مِنْهُ وَهُوَ لَا يَعْلَمُ فَقَالَ: "خُذِي مَا يَكْفِيكِ وَ وَوَلَدِكَ بِالْمَعْرُوفِ".<sup>40</sup>

Meaning: Narrated to us by Muḥammad bin al-Muthannaḥ narrated to us by Yahya dari Hisham: narrated by my father to me from 'A'ishah that Hindun binti 'Utbaḥ said: O Rasul saw! Abuḥ-Sufyan is actually a man (husband) who is sparing, he doesn't provide nafkaḥ for me according to my child and my sufficient need, thus I have taken it myself without him knowing it, then Allah's Apostle said: "take according to your child and your sufficient needs in kind".

<sup>38</sup>al-Zuhābilī, *al-Fiqh*, VII: 769-770. Even if the husband could not provide nafkaḥ for the following period of time, then the unpaid nafkaḥ up to that period of time is still his obligation which must be fulfilled in the future, or what is called unpaid nafkaḥ/ nafkaḥ of debt. Hence the unpaid nafkaḥ will not terminate the husband's obligation to provide nafkaḥ for the wife. See Ibn al-Qayyim al-Jauziyyah, *Zaḍ al-Ma'ād* (Bairuḥ: Muassasah al-Risalah, 1994), V: 505 and 508.

<sup>39</sup>al-Zuhābilī, *al-Fiqh*, VII:769.

<sup>40</sup>al-Buhārī, *Ṣūḥḥ al-Bukhārī* (Bairuḥ: Daḥ al-Fikr, 1981), VII: 85.

## 2. Husband's obligation to provide nafkah for wife

A husband's nafkah to his wife is an absolute obligation based on al-Qur'an, sunnah, and *ijma'*. The legal basis in the al-Qur'an, sunnah dan *ijma'* are as follows:<sup>41</sup>

### a. Al-Qur'an:

#### 1) QS. al-T<sup>h</sup>alāq (65): 7:

لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ، وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ، فَلْيُنفِقْ مِمَّا آتَاهُ اللَّهُ،  
لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَاتَاهَا، سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا.<sup>42</sup>

Meaning: Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what God has given him. God puts no burden on any person beyond what He has given him. After a difficulty, God will soon grant relief.<sup>43</sup>

#### 2) QS. al-Baqarah (2): 233:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ  
الرِّضَاعَةَ، وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ.<sup>44</sup>

Meaning: The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms.<sup>45</sup>

<sup>41</sup>Muhammad Qadri Basha, *al-Ahkam al-Shar'iyah fi al-Ahwal al-Shakhsiyah* (Mesir: Dar al-Salam, 2006), I: 379-380 and al-Zuhaili, *al-Fiqh*, VII: 786-787.

<sup>42</sup>Depag RI, *Al-Qur'an dan Terjemahnya* (Madinah: Mujamma' al-Malik Fahd li Tiba'at al-Mushaf al-Sharif, 1998), 946.

<sup>43</sup>Ibid.

<sup>44</sup>Ibid., 57.

<sup>45</sup>Ibid.

3) QS. al-Tāḥāq (65): 6:

أَسْكُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا  
عَلَيْهِنَّ.<sup>46</sup>

Meaning: Let the women live (in 'iddat) in the same style as ye live, according to your means: Annoy them not, so as to restrict them.<sup>47</sup>

b. Sunnah:

1)

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَاسْحَاقُ بْنُ إِبْرَاهِيمَ جَمِيعًا عَنْ حَاتِمِ قَالَ  
أَبُو بَكْرٍ حَدَّثَنَا حَاتِمُ بْنُ إِسْمَاعِيلَ الْمَدَنِيُّ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ  
عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ فِي  
خُطْبَتِهِ فِي حَجَّةِ الْوَدَاعِ بِالنِّسْبَةِ لِلزَّوْجَاتِ: "فَاتَّقُوا اللَّهَ فِي النِّسَاءِ  
فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ، وَاسْتَحْلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ. وَلَكُمْ  
عَلَيْهِنَّ أَنْ لَا يُوطِئَنَّ فُرُوشَكُمْ أَحَدًا تَكَرَّهُوهُنَّ. فَإِنْ فَعَلْنَ ذَلِكَ  
فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرَحٍ وَ لِهِنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ  
بِالْمَعْرُوفِ".<sup>48</sup>

Meaning: Narrated to us by Abu>Bakr bin Abi>Shaibah and Ishāq bin Ibrahim, both from Ḥāṣim, Abu Bakr said: narrated to us by Ḥāṣim bin Isma'īl al-Madaniy, from Ja'far bin Muḥammad from his father from Jābir bin 'Abd Allāh, that Allāh's Apostle has said in his sermon while conducting the wada' hajj, regarding the issues of wives: "Be fearful of Allāh in treating your wives since you are essentially bearing the mandate of Allāh, and you have made their honour halal to you through the word of Allāh. Hence your right to your wife is for her to protect her honour and not allow guests who you dislike into the house, and if she violates that, then hit her

<sup>46</sup>Ibid., 946.

<sup>47</sup>Ibid.

<sup>48</sup>Al-Imām Muslim, *Al-Jāmi' al-Sūḥūḥ* (Bairut: Da' al-Fikr, tt.), IV: 41.

without harm. You equally have the obligation to provide wealth (nafkah) and clothing in kind to them”.

2)

أَخْبَرَنَا قُتَيْبَةُ قَالَ: حَدَّثَنَا اللَّيْثُ عَنْ أَبِي الرَّبِيعِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِرَجُلٍ: "ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا، فَإِنْ فَضَلَ شَيْءٌ فَلْأَهْلِكَ، فَإِنْ فَضَلَ مِنْ أَهْلِكَ شَيْءٌ فَلْيَدِي قَرَابَتِكَ".<sup>49</sup>

Meaning: Narrated to us by Qutaibah: narrated to us by al-Laith from Abi>al-Zubayr from Jabir said, Allah’s Apostle said to a man: “begin by providing for yourself first then your wife, and if you have more to spare then use it to provide for your family, and if there is still more to spare then use it to provide for your kinfolk”.

3)

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَالُ، أَخْبَرَنَا الْحُسَيْنُ بْنُ عَلِيٍّ الْجَعْفِيُّ عَنْ زَائِدَةَ، عَنْ شَبِيبِ بْنِ غَرْقَدَةَ، عَنْ سُلَيْمَانَ بْنِ عَمْرٍو بْنِ الْأَحْوَاصِ قَالَ: حَدَّثَنِي أَبِي أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: "أَلَا إِنَّ لَكُمْ عَلَى نِسَائِكُمْ حَقًّا، وَلِنِسَائِكُمْ عَلَيْكُمْ حَقًّا، فَأَمَّا حَقُّكُمْ عَلَى نِسَائِكُمْ فَلَا يُؤْطِنَنَّ فُرُشَكُمْ مَنْ تَكْرَهُونَ، وَلَا يَأْذَنَنَّ فِي بُيُوتِكُمْ لِمَنْ تَكْرَهُونَ، أَلَا وَحَقُّهُنَّ عَلَيْكُمْ أَنْ تُحْسِنُوا إِلَيْهِنَّ فِي كِسْوَتِهِنَّ وَطَعَامِهِنَّ".<sup>50</sup>

Meaning: Narrated to us by al-Hāsan bin ‘Ali>al-Khalal, narrated to us by al-Hūsayn bin ‘Ali>al-Ju’fi from Zaidah, from Shabīb bin Gharqadah, from Sulayman bin ‘Amr bin al-Ahwas said: my father told me that the Prophet said: “Do you not have rights over your wife, as does your wife has rights over you. Your right over your wife is for her to protect her honour from others and to not let guests that you dislike in the house. And your wife’s right over you is for you to provide nafkah of clothing and food in kind.

<sup>49</sup>Al-Nasa’i> Sunan., VII: 324-325.

<sup>50</sup>al-Tirmidhi> Sunan al-Tirmidhi>(Indonesia: Putra Semarang, tt.), II: 315.

c. *Ijmaʿ*:

In this case, the umat has agreed that providing nafkah to the wife is the obligation of the husband. Therefore, the wife is entitled to receive nafkah from the husband, and can demand the husband to provide her with nafkah. Additionally, based on the logic of fiqh, since man or the husband has the right to keep his wife (to remain living with him), then it is absolute that the man or husband is obligated to provide nafkah for the wife, in exchange or as the price for keeping her.<sup>51</sup>

A husband's obligation in providing nafkah to his wife is initiated since the implementation of legal marriage tie between himself and the wife.<sup>52</sup> As for the criteria of a wife entitled to receive nafkah from the husband must comply with the following requirements:<sup>53</sup>

- 1) Preparedness and determination of the wife to accept the husband right after the marriage contract, by submitting herself to the husband or by providing subservience and being obedient to his every order and demand.
- 2) A wife is a mature woman that could be engaged in sexual actions. On the contrary, if the wife has not reached maturity or is still a child which conditions are impossible to be engaged in sexually, then such wife is not entitled to receive nafkah from the husband. This requirement is determined because basically the obligation of nafkah exists when the husband has truly attained pleasure or enjoyment from the wife (الإستمتاع).
- 3) The status of the wife is a wife of legal marriage. If the status of the marriage is one that is irregular (فاسد), then the husband has no obligation to provide nafkah to the wife because *fasakh* must be carried out for the irregular marriage.

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<sup>51</sup>Bashaḡ *al-Ahkam.*, I: 380

<sup>52</sup>Ibid.

<sup>53</sup>al-Zuhḡiliḡ *al-Fiqh.*, VII: 789-790.

- 4) The husband's right to keep his wife because of reasons not allowed by *shara'* such as the wife's *nushuz* or because of external reasons not from her person is not put off. This is because if the right to keep his wife were put off due to reasons not allowable by *shara'* such as the husband's *nushuz* or because of his person, then the wife is still entitled to receive nafka from him.

Conversely, the wife's right to receive nafka from the husband will be abandoned if one of the following matters were to happen:<sup>54</sup>

- 1) The period in which the husband is obligated to provide nafka for the wife has passed without judge's decision that the nafka which has passed has become his debt to his wife. Conversely, if the period in which the husband is obligated to provide nafka for the wife is after the judge's decision, then it will not abandon the wife's right to receive nafka for the time which has passed, but the nafka which has passed has become the husband's debt to her.
- 2) Wife's acquittal from the obligation of providing nafka bore by the husband. Therefore, although the status of the unacquitted nafka becomes a debt shouldered by the husband based on the judge's decision, then –with acquittal from the wife– the husband's obligation to fulfil the unpaid nafka will consequently be dropped. The wife's acquittal from the obligation of providing nafka bore by the husband only applies to unpaid nafka, not the forthcoming one. This is because the obligation to provide nafka is a daily command or obligation, or daily Allah SWT continually reveals the command for the husband to provide nafka to the wife, hence the acquittal can only terminate obligation that was obligated (which has passed). As for obligation which is not obligated yet (forthcoming), the wife's

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<sup>54</sup>Ibid., VII: 778-779.

acquittal does not apply, or in other words no obligation (it has not been obligated) no acquittal.

- 3) The passing of one of the spouses. If the husband were to pass before fulfilling the obligation to provide nafkaḥ for the wife, then the wife may not take the unpaid nafkaḥ from the husband's wealth. Conversely, if the wife were to pass, then her inheritor is not entitled to request nafkaḥ from her husband.
- 4) *Nushuz* of the wife, i.e. the wife's disobedience to her husband in matters that are obligated upon her or which becomes the right of her husband. This is because the obligation of nafkaḥ is existent due to the price of attaining pleasure or enjoyment by the husband from the wife. If the wife were to refuse the husband in attaining enjoyment or pleasure of her husband, the wife is considered to have committed *nushuz* and is no longer entitled to nafkaḥ that is burdened on her husband.

Hence –based on the criteria of wife entitled and not entitled to receiving nafkaḥ from her husband above- it can be reaffirmed that the obligation of nafkaḥ bore by the husband to the wife cannot be terminate simply with the husband's unfavourable economic conditions. The explanation above does not mention the husband's dire economic conditions at all. This is different to a man's obligation of providing nafkaḥ for his kinfolk –as the requirement of capacity or comfortability (well-to-do) is included in the compulsory requisites of a person providing nafkaḥ for his kinfolk- which could be terminated based on his economic conditions.

The husband's obligation of providing nafkaḥ for his wife remains under both favourable and unfavourable conditions. Although the wife's economic condition is favourable, the husband remains obligated to provide her with nafkaḥ. This is different to the nafkaḥ obligation bore by a

man to his kinfolk, namely the obligation remains solely under favourable conditions, and not under unfavourable ones. Additionally, a man is obligated to provide nafkah for his kinfolk only when the kinfolk's economic condition is unfavourable.<sup>55</sup>

Aside from that, the husband's obligation to provide nafkah for the family (children and wife) serves as one of the reasons for the husband's ownership of the household leadership authority. Since the responsibility of maintaining family nafkah is entirely afforded to the husband, consequently Islam allows the leadership of the household to be in the hands of the husband,<sup>56</sup> as stated in the following words of Allah SWT in QS al-Nisa' (4): 34:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا  
أَنْفَقُوا مِنْ أَمْوَالِهِمْ.<sup>57</sup>

Meaning: Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means.<sup>58</sup>

In the above QS al-Nisa' (4): 34 Allah SWT elaborates that He created man to possess a number of superiority over women in the form of physical and mental nature which prepares him to lead a family and carry out various life matters in the family. As compensation, Allah SWT obligates the husband to bear full responsibility for nafkah provision of the family.<sup>59</sup>

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<sup>55</sup>al-Jauziyah, *Za'ad al-Ma'a'd*, V:508.

<sup>56</sup>Fithriyah Wardie Murdani, "Kewajiban dan Hak Suami Isteri dalam Keluarga Islam" in *Al-Insan*, No. 3, Vol. 2, Year 2006 (Jakarta: Lembaga Kajian dan Pengembangan Al-Insan, 2006), 19.

<sup>57</sup>Depag, *Al-Qur'an*., 123.

<sup>58</sup>Ibid.

<sup>59</sup>Murdani, "Kewajiban..."., 19-20.

### 3. Nafkah content considerations

The following is a discussion on unfavourable conditions of the husband which renders him unable to provide daily nafkah for his wife. Regarding the various types of nafkah a wife is entitled to receive consists of food and beverages, clothing and shelter.<sup>60</sup> As to the extent or the amount of nafkah which must be provided by the husband for his wife regarding those three things (food and beverages, clothing, and shelter) there is no accurate and definite limit.<sup>61</sup>

The existing limit merely determines it as “sufficient” (الكفاية). However, “sufficient” means differently for each individual; in accordance to habit and customs, conditions, as well as time and period respectively. Thus, the amount of nafkah may change according to the conditions experienced by the husband and wife or to the rise and fall of food and other daily necessities prices. In this case, there is a distinct type of nafkah which must be bore by a poor or underprivileged husband (نفقة المعسر) and nafkah which must be bore by a wealthy and well-to-do husband (نفقة الموسر). Subsequently, there is also the term of meagre nafkah (نفقة الإيسار) and substantial nafkah (نفقة اليسار).<sup>62</sup>

In determining whether a husband must bear meagre or substantial nafkah provision is based on respective conditions, ulamas have differing opinions regarding the matter. Hānafiyyah Ulama opine that if the conditions of the spouses are mutually wealthy or mutually poor, then it is very easy to determine, that is for spouses who are both wealthy, then it is substantial nafkah which must be provided by the husband for the wife; and as for spouses who are mutually poor, then meagre nafkah should be provided by the husband for the wife. What is difficult is in determining

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<sup>60</sup>al-Jaziriy, *Kitab al-Fiqh.*, IV: 554.

<sup>61</sup>Bashaḥ *al-Ahkam.*, I: 415

<sup>62</sup>Ibid., I: 415-416.

cases in which the spouses are not mutually rich or not mutually poor, that is a wealthy husband with a poor wife or a poor husband and a wealthy wife. In this case Hānafiyyah ulama holds two opinions:<sup>63</sup>

- a. First opinion: the amount of nafkaḥ which must be bore by the husband is determined based on the economic conditions of the concerning husband and wife, hence it can be determined that the amount which must be bore by the husband in a condition where the husband is wealthy and the wife is poor is moderate nafkaḥ ( نفقة (الوسط). Thus is the case for the condition of the poor husband and wealthy wife, the husband continues to provide moderate nafkaḥ, however what must be provided during his time of hardship (poverty) is meagre nafkaḥ and its difference will still be his responsibility in the form of unpaid nafkaḥ. This is also the opinions of Malikiyyah and Hānābilah ulamas.
- b. Second opinion: the amount of nafkaḥ which must be bore by the husband is determined based solely on the economic conditions of the husband. If the husband is wealthy and the wife is poor, then the husband must provide substantial nafkaḥ. Conversely, if the husband is poor and the wife wealthy, then the husband should only provide meagre nafkaḥ.

Meanwhile, Shafi'iyah ulamas are of the opinion that nafkaḥ consists of food nafkaḥ, clothing nafkaḥ, and shelter nafkaḥ. As for the scale of food and clothing nafkaḥ, they are determined based solely on the economic conditions of the husband, be it rich or poor, without considering the wife's economic conditions. Conversely, for the scale of shelter nafkaḥ it is based solely on the wife's economic conditions without considering the husband's economic conditions at all. This is because food and clothing nafkaḥ

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<sup>63</sup>al-Jaziriyy, *Kitab al-Fiqh.*, IV: 563-564.

provided by the husband is regarded as offering with the purpose of ownership (التملك) by the wife, and the husband will not be able to offer food and clothing that exceeds his own capacity. This is different to the shelter nafka which is given with the purpose of pleasing the wife (المتعة), hence it is sensible for it to be aligned to the wife's conditions.<sup>64</sup>

The husband's condition which is poor or insufficient not only causes meagre sum of nafka received by the wife, but it also causes very insubstantial or no receipt of nafka at all. Under the condition where the husband is poor and unable to pay or provide nafka for the wife, ulamas also bear differing opinions on what legal efforts can be accomplished by the wife and also on the status of the unpaid nafka.

Hānafiya ulama does not allow women to request for divorce due to husband's inability to provide nafka, but allows the wife to merely propose the case in order to find a solution for the husband to immediately provide nafka or to acquire status on the unpaid nafka as nafka of debt based on judge's decision. This is because according to Hānafiya ulama with affirmation of the status of unpaid nafka into nafka of debt based on judge's decision it will continue to become responsibility of the husband until it is paid for in the future. The nafka of debt will not be inadvertently terminated or dropped even with the passing of the husband. According to Hānafiya ulama when the wife is forced to breastfeed their own child because of inability to pay another woman to breastfeed, then

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<sup>64</sup>Ibid., IV: 563.

the wife is entitled for her wages. Even so, the wage can only be collected when her husband is under more favourable conditions.<sup>65</sup>

Different to Hānafiyyah ulama's opinion, Maḥkiyyah ulama opines that the wife is entitled to petition a *fasakh*<sup>66</sup> (divorce request) to the judge for the condition of not receiving nafkah from her husband, in which the judge will rule on *tḥlaq raj'i*.<sup>67</sup> However, the *fasakh* request will not be allowed effortlessly, in this case Maḥkiyyah ulama has determined several requirements for allowing the request of *fasakh* by the wife due to the husband not providing nafkah for her as follows.<sup>68</sup>

- a. The husband's inability to provide nafkah for the wife is currently happening (في الحال) or it is forthcoming (في المستقبل). Husband's inability to provide nafkah for the wife in time which has passed could not be considered as a reason for the wife to request *fasakh*,

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<sup>65</sup>Ibid., IV: 581.

<sup>66</sup>*Fasakh* is the termination and acquittal of marriage bond between husband and wife, which is at times caused by irregularity or defect on the marriage contract itself and at times caused by issues forthcoming causing the marriage contract to be discontinued, such reason is due to the husband's incapability to provide nafkah (debated reason). According to fiqh experts, two reasons for the *fasakh* is at times automatically imposed and at times needing the assistance of a judge (including for debated reasoning of *fasakh*). Separation of husband and wife through *fasakh* does not reduce the sum of *talaq*. In this case the husband is not allowed to return to his wife, even in the case of marrying one's own relative, the husband side is forever not allowed to marry the woman who is in fact his relative. See Dahlan (et al.), *Ensiklopedi*, I: 317-319.

<sup>67</sup> Maḥkiyyah ulama has considered divorce for reason of economic hardship or strain as *tḥlaq raj'i*, hence the husband has the right to return to the wife during the period of *'iddah* with the provision that his economic condition has improved. Therefore in this case, Maḥkiyyah ulama has provided a solution for the wife who does not receive nafkah from her husband by allowing her the right to propose *tatliq* (*tḥlaq raj'i*) upon request of the wife to the judge). See al-Zuhḥili, *al-Fiqh*, VII: 513 and Tim, *Mashru' Qanun al-Aḥwāl al-Shakhsīyyah al-Muwahḥḥad li al-Iqlimain al-Misṭ wa al-Suriy* (Bairuḥ: al-Da' al-Shamīyyah, 1996), 189-191.

<sup>68</sup>al-Jaziriy, *Kitab al-Fiqh*, IV: 581.

since it –automatically- becomes the husband’s debt or unpaid nafka.

- b. At the time of the marriage contract, the wife did not at all know the husband’s economic incapability or poverty. If the wife were to know since initiation of the marriage contract, then she is not entitled to propose *fasakh* with the reason that her husband is incapable of providing her nafka, unless if she had accepted his marriage by force.
- c. The husband admitted as a person that is incapable of providing nafka for his wife, but in fact he is actually someone who is wealthy (well-to-do). If it were really proven that he is a person under unfavourable economic conditions then in this case the judge must provide him time in which length is dependent on the judge’s *ijtihad*, which is the length of time possible for someone to put in efforts and achieve results. If the husband remains unable to provide nafka for the wife in the determined time then the judge may allow the wife’s request for *fasakh*.

The three requirements –according to Maḥikiyah ulama- apply if the husband truly does not have enough actual wealth/fortune. Conversely, if in fact the husband possesses sufficient fortune, but admitted as poor, then the judge must decide not to divorce them both, but to acquire nafka for the wife from that wealth by force.<sup>69</sup>

In more detail, Shafi’iyah ulama is of the opinion that if a wife can be patient with her husband’s condition which does not provide or pay her nafka, then the wife has admitted to provide nafka for herself, and

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<sup>69</sup>Ibid., IV: 582.

subsequently the nafkaḥ which is not provided by the husband becomes unpaid nafkaḥ which she will take or request when the husband's condition has become favourable, with the requisite that during the time that she is not provided with nafkaḥ the wife continues to fulfil her obligations as a wife. Nevertheless, the unpaid nafkaḥ only covers food and clothing nafkaḥ. As for shelter and household helper they cannot be claimed as unpaid nafkaḥ when the husband's condition has become favourable, as that right is terminated because it is not included as nafkaḥ for ownership but merely for pleasing the wife.<sup>70</sup>

Conversely, if the wife were impatient with the husband's condition, Shafī'iyah ulama is of the opinion that in this case the wife could demand *fasakh* to the judge.<sup>71</sup> Subsequently the judge must provide a period of up to three days for the husband to admit his incapability in providing nafkaḥ for his wife, to truly know his incapability. In the following day or the fourth day, the judge would decide a ruling of *fasakh* as demanded by the wife. If in the period of three days the husband is capable of providing or paying nafkaḥ for his wife, then the judge could not allow the demand of *fasakh* to stand.<sup>72</sup> In order for the wife's *fasakh* demand based on husband's incapability in providing nafkaḥ to be allowed, Shafī'iyah ulama also established a number of the following requirements:

- a. The husband is unable to provide nafkaḥ at all or basic nafkaḥ to sustain livelihood, i.e. one *mud* every day.

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<sup>70</sup>Ibid.

<sup>71</sup>In this case, Shafī'iyah ulamas are divided in two, one is of the opinion that the wife is entitled to propose *tatliq raj'iyah* to the judge. While the other is of the opinion that the wife could propose *fasakh* to the judge by reason of not receiving nafkaḥ from the husband as included in debated reasons of *fasakh*. See Tim, *Mashruʿ*, 191.

<sup>72</sup>al-Jaziriyy, *Kitab al-Fiqh.*, IV: 582

- b. The husband truly cannot pay nafkaḥ for the wife at the time or the coming future. If it were only by reason of the husband not being able to pay for past nafkaḥ, then the judge cannot allow the *fasakh* demand.
- c. The husband is truly incapable of providing nafkaḥ for the wife, and not incapable of providing nafkaḥ for the household helper.
- d. The husband's incapability covers nafkaḥ for food, clothing and shelter, it does not cover nafkaḥ for side dishes, eating utensils, bedding and so forth or التوايع .

In brief, Ḥanābilah ulama opines that in this case the husband is truly unable of paying any nafkaḥ whatsoever (نفقة الإعسار). If that is the case, then the wife has a choice to continue staying with the husband as spouses, or to live separately by petitioning for *fasakh* to the judge. If the wife prefers to live with the husband, then meagre nafkaḥ (نفقة الإعسار) becomes unpaid nafkaḥ for the wife. Additionally, the husband may not restrain the wife, to go out or seek work, although the wife's economic condition is favourable. In this case, Ḥanābilah ulama does not establish various requirements, as they only require that the husband's unfavourable economic conditions has been prevalent for a long period of time. If the husband's unfavourable economic conditions has just commenced for a while, then the wife is not yet allowed to petition for *fasakh*.<sup>73</sup>

The reason for the (Ḥanafiyah) school in not allowing the wife her right to demand divorce due to not receiving sufficient nafkaḥ from the

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<sup>73</sup>Ibid., IV: 584.

husband who is undergoing economic hardship, is based on the following passages from Companions and Followers:<sup>74</sup>

a.

ذَكَرَ عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سَأَلْتُ عَطَاءَ عَمَّنْ لَا يَجِدُ مَا يَصْلِحُ امْرَأَتَهُ مِنَ النَّفَقَةِ؟ قَالَ: لَيْسَ لَهَا إِلَّا مَا وَجِدَتْ، لَيْسَ لَهَا أَنْ يُطَلِّقَهَا.

Meaning: ‘Abd al-Razzaq mentioned from Ibnu Juraij}said: I asked ‘Ata} regarding men who are unable to provide decent nafkah to their wives. He answered: “a woman (wife) is only entitled for whatever nafkah is available and is not entitled to demand divorce (talaq).

b.

وَرَوَى حَمَّادُ بْنُ سَلَمَةَ عَنْ جَمَاعَةٍ عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ فِي الرَّجُلِ يَعْجِزُ عَنِ نَفَقَةِ امْرَأَتِهِ، قَالَ: تُوَاسِيهِ وَتَتَّقِي اللَّهَ وَتَصْبِرُ، وَيُنْفِقُ عَلَيْهَا مَا سَتَطَاعَ.

Meaning: Hamaad ibn Salamah narrated from Jama’ah from al-Hasan al-Basri}hat he said regarding a man who is unable to provide decent nafkah for his wife, the words were “let the wife help him, be fearful of Allah SWT and be patient (of her husband’s restricted economic conditions), and the husband remain obligated to provide his wife with nafkah within his capacity”.

c.

وَذَكَرَ عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ فِي الْمَرْأَةِ يَعْسِرُ زَوْجَهَا بِنَفَقَتِهَا، قَالَ: هِيَ امْرَأَةٌ ابْتُلِيَتْ، فَلْتَصْبِرْ وَلَا يَأْخُذْ بِقَوْلِ مَنْ فَرَّقَ بَيْنَهُمَا.

Meaning: ‘Abd al-Razaq mentioned from Sufyan al-Thauri}regarding a woman who did not receive decent nafkah from her husband, he (Sufyan al-Thauri} said: “she is indeed a wife who is tested, thus let her be patient and do not follow suggestions of

<sup>74</sup>al-Jauziyah, *Zad.*, V: 516.

people who think the husband and wife should be divorced given those conditions”.

d.

وَدَكَرَ عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْتُ الزُّهْرِيَّ عَنْ رَجُلٍ لَا يَجِدُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ، أَيْفَرَّقُ بَيْنَهُمَا؟ قَالَ: نَسْتَأْنِي بِهِ وَلَا يُفَرِّقُ بَيْنَهُمَا، وَتَلَا: "لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا" -الطلاق: 7-

Meaning: ‘Abd al-Razaq narrated from Ma’mar saying: I asked al-Zuhri regarding a man who is unable to provide nafaḥ for his wife, should they be divorced? He replied: let the wife be patient and don’t divorce the two. Subsequently he read QS. al-Tālaq: 7 which means “God puts no burden on any person beyond what He has given him. After a difficulty, God will soon grant relief”.

Subsequently, Ḥanafiyah ulama –based on QS. al-Tālaq: 7- added that a husband is at times wealthy or well-to-do and at times poor or restricted. When a husband is poor, then the lack or not providing wife with nafaḥ is not an act of cruelty/oppresion (*zulm*). Hence, if the husband is not considered to commit cruelty/oppresion then he is not allowed to be oppressed in return by forcing him to divorce his wife.<sup>75</sup>

As for the reason of (Maḥikiyah, Shafi’iyah, and Ḥanabilah) schools in allowing wife’s right to demand divorce because of not receiving nafaḥ at all or not receiving sufficient nafaḥ from the husband due to economic hardship or difficulty, is based on the following word of Allah SWT and several of stories from Companions and Followers:

- a. By being unable of providing nafaḥ for the wife, the husband has hurt and endangered her and it also means that the husband does not keep

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<sup>75</sup>al-Zuhāliḡ *al-Fiqh*, VII: 512.

and protect her properly. This reasoning is respectively based on the following words of Allah SWT:

1). QS. al-Baqarah (2): 231

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَّغْنَ أَجَلَهُنَّ فَأُمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا، وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ.<sup>76</sup>

Meaning: When ye divorce women, and they fulfil the term of their (Iddat), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if any one does that; He wrongs his own soul.<sup>77</sup>

2). QS. al-Baqarah (2): 229

الطَّلَاقُ مَرَّتَانِ، فإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ.<sup>78</sup>

Meaning: A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness.<sup>79</sup>

b.

رَوَى ابْنُ وَهَبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزَّنَادِ، عَنْ أَبِيهِ، قَالَ: شَهِدْتُ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ يَقُولُ لِرَجُلٍ امْرَأَةٌ شَكَتَ إِلَيْهِ أَنَّهُ لَا يُنْفِقُ عَلَيْهَا: اضْرِبُوا لَهُ أَجَلًا شَهْرًا أَوْ شَهْرَيْنِ، فَإِنْ لَمْ يُنْفِقْ عَلَيْهَا إِلَى ذَلِكَ الْأَجَلِ، فَرَّقُوا بَيْنَهُ وَبَيْنَهَا.<sup>80</sup>

Meaning: Ibnu Wahab narrated from ‘Abd al-Rahman ibn Abi-al-Zana’ from his father saying: I witnessed ‘Umar ibn ‘Abd al-‘Aziz said regarding a case in which a husband whose wife has complained to him that she is not afforded nafkah by the husband:

<sup>76</sup>Depag, *Al-Qur’an.*, 56.

<sup>77</sup>*Ibid.*

<sup>78</sup>*Ibid.*, 55.

<sup>79</sup>*Ibid.*

<sup>80</sup>al-Jauziyah, *Zad.*, V: 516.

“give the husband opportunity for a period of one or two months, and when during the period he has not provided his wife nafkah then divorce them.

c.

قَالَ الشَّافِعِيُّ: قَالَ أَبُو هُرَيْرَةَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَمَرَ الزَّوْجَ بِالنَّفَقَةِ عَلَى أَهْلِهِ، وَقَالَ أَبُو هُرَيْرَةَ: تَقُولُ امْرَأَتُكَ: أَنْفَقْ عَلَيَّ أَوْ طَلِّقْنِي، وَيَقُولُ خَادِمُكَ: أَنْفَقْ عَلَيَّ أَوْ بَعْنِي.<sup>81</sup>

Meaning: Al-Shafi’Isaid: Abu>Hurairah said: indeed the Prophet has commanded for husbands to provide nafkah for his family. And Abu>Hurairah said: your wife says: “provide my nafkah or divorce me”, and your household helper also says: “provide for my nafkah or sell me”.

d.

قَالَ الشَّافِعِيُّ أَخْبَرَنَا سُفْيَانُ عَنْ أَبِي الزَّنَادِ قَالَ: سَأَلْتُ سَعِيدَ بْنَ الْمُسَيَّبِ عَنِ الرَّجُلِ لَا يَجِدُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ، قَالَ: يُفْرَقُ بَيْنَهُمَا. قَالَ أَبُو الزَّنَادِ: فُلْتُمْ: سُنَّةٌ؟ قَالَ سَعِيدٌ سُنَّةٌ وَالَّذِي يُشْبِهُ قَوْلَ سَعِيدِ سُنَّةٌ أَنْ يَكُونَ سُنَّةَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.<sup>82</sup>

Meaning: Al-Shafi’Isaid: Sufyan informed us from Abi>al-Zanael saying: I asked Sa’id ibn al-Musayyab regarding a man who is unable to provide nafkah for his wife, then he replied: “divorce them both”. Then Abu>al-Zanael said: I asked whether that (stipulation) is sunnah? Sa’id replied: “yes it is sunnah.” (and what is meant by Sa’id saying “sunnah” is the Sunnah of the Prophet).

e.

قَالَ! الشَّافِعِيُّ: أَخْبَرَنَا مُسْلِمُ بْنُ خَالِدٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ كَتَبَ إِلَى

<sup>81</sup>al-Shafi’I> *al-Umm*, cet. 1 (Bairuē: Daʿ al-Kutub al-’Ilmiyah, 1993), V: 154.

<sup>82</sup>Ibid.

أَمْرَاءَ الْأَجْنَادِ فِي رَجَالٍ غَائِبُوا عَنْ نِسَائِهِمْ فَأَمَرَهُمْ أَنْ يَأْخُذُوهُمْ بَأْنَ  
يُنْفِقُوا أَوْ يُطَلِّقُوا، فَإِنْ طَلَّقُوا بَعَثُوا بِنَفَقَةٍ مَا حَبَسُوا.<sup>83</sup>

Meaning: Al-Shafi'Isaid: Muslim ibn Khaḍid informed us from 'Ubaidillah ibn 'Umar from Nafi' from Ibn 'Umar: that 'Umar ibn al-Khattab ra wrote a letter to the governors regarding men or husbands who left (neglected) their wives, for them to command these husbands to choose between providing nafkaḥ for their wives again or divorce them. If the husbands choose to divorce them, then command them to pay for the nafkaḥ which has passed (during the period of neglect or as unpaid nafkaḥ).

In this case, Imān al-Shafi'i> also argued that the husband's incapability in providing nafkaḥ for his wife will bring about misery for the wife, it could even endanger or threaten her life, that is death under the condition of being hungry, thirsty and naked.<sup>84</sup> Imān al-Shafi'i also applied *qiyas awlawiy*, in which a wife could demand divorce from her husband through the judge by reason of the husband not able of providing her conjugal nafkaḥ (impotent), while this reasoning will not actually endanger a person's life.<sup>85</sup> Hence, allowing the wife's right to demand divorce for not receiving sufficient (material) nafkaḥ from the husband is more fitting and appropriate than because of not receiving conjugal nafkaḥ.

Imān Maḥik also added supporting argument of wife's right to demand divorce due to reason of not receiving (sufficient) nafkaḥ by explaining the conditions of past Companions who endured economic

<sup>83</sup>Ibid.

<sup>84</sup>al-Shafi'I> *al-Umm*, V:154-155. The husband's economic incapability could even be likened to an act of a husband's *nushuz* to the wife.

<sup>85</sup>Ibid., V: 155. The lack of material nafkaḥ in a brief period of time could endanger a person's life, while the lack of conjugal nafkaḥ in a brief or long period of time would not endanger one's life.

hardships, even so their wives did not always demand divorce. In regard to this case Imam Maḥik said that the conditions of the Companions could not be compared to the current conditions because women or wives of Companions were people of strong hope and determination to attain their best for the hereafter. Hence they –wives of Companions- tended to ignore worldly matters, including their husbands’ poverty which could not provide them with decent nafaḥ. They were all aware of this since the initiation of the marriage contract and they considered it as a marital agreement. As for women of today, they assume –although it is not clearly required in the marriage contract- that a husband must be able to provide decent nafaḥ for the wife as part of the marital agreement.<sup>86</sup>

Observing the two differing opinions above, Ibnu Ḥāzm argued that this is due to the lack of scripture in the al-Qur’an and al-Sunnah which clearly explains on law of divorce brought about by husband’s incapability of providing decent nafaḥ for his wife. Although it is mentioned that there is al-sunnah addressing the matter, it is restricted to a *mursal* hadith (a saying of a person who did not meet the Prophet SAW be it from *ṭabī’* or *ṭabī’ ṭabī’ih*). Even the story from ‘Umar which is considered as *al-sunnah*, may be ‘Umar’s own habit not the Prophet’s. Based on the reason above and based on QS. al-Tālaq: 7, Ibnu Ḥāzm tends to favour the opinion which does not allow the wife’s right to propose or demand divorce, since the wife who is under that condition is actually being tested and should endure it with patience.<sup>87</sup>

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<sup>86</sup>al-Jauziyah, *Zad.*, V: 517.

<sup>87</sup>al-Shafi’i, *al-Umm*, V: 154.

Wahbah al-Zuhāili preferred the opinion of *jumhūr* or the majority of ulamas (Malikiyah, Shafi'iyah, dan Hanabilah). This is because –in his opinion- the reasoning elaborated is very solid, namely one of them is by reason of endangering (إضرار) the wife's life, which is in alignment with the content of the hadith “لَا ضَرَرَ وَلَا ضِرَارَ فِي الْإِسْلَامِ” (there is no harm or reciprocating harm in Islam).<sup>88</sup>

All differences above aside, the husband's obligation to provide nafkah has actually become a boomerang or a cause of conflict in the family life of husband and wife. Subsequently, it is often found that the conflict would end in divorce. Hence, the obligation of providing nafkah being burdened on the shoulder of men serves as a trigger for divorce.

## B. Talaq Divorce in Religious Court

### 1. Talaq divorce: its definition and reasons

Every marriage is certainly expected to last for a life time. At times this expectation is not achieved and the so coveted happy family household through marriage turns to inferno. Thus opens the door to divorce. The prevailing principle to impede divorce adhered by Law on Marriage No. 1 Year 1974 does not mean it has sealed the door to divorce tightly shut, since no matter how solid and special the marital relation is, there remains a possibility to break it.<sup>89</sup>

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<sup>88</sup>al-Zuhāili, *al-Fiqh*, VII: 513.

<sup>89</sup>Iskandar Ritonga, *Hak-hak Wanita dalam Putusan Peradilan Agama* (Jakarta: Program Peningkatan Kualitas Pelayanan Publik Ditjen Bimas Islam dan Penyelenggaraan Haji, 2005), 204.

In the case or matter of divorce, chapter IV, part two, paragraph 2 and 3 in Law No. 7 Year 1989 firmly differentiates “talaq divorce” and “petitioned divorce”. Before differences between the two terms \_tdiv and petitioned divorce- are elaborated, the origin of their use must first be known. Previously, the term utilized in court proceedings are “talaq request” and “divorce by petition”, however, Law No. 7 Year 1989 changed them into the terms used today. Talaq request is called “talaq divorce”, and divorce by petition is “petitioned divorce”. With the advent of these new terms, the form of marriage separation or divorce based on ruling of *Pengadilan Agama* (PA – Religious Court) according to Islamic law has been reaffirmed. The first type, talaq divorce, is a resolution of marriage conflict or divorce in the form of talaq coming from the husband side. As for petitioned divorce, it is a resolution of marriage conflict or divorce proposed by the wife side. The end result of both types of divorce is the same, i.e. divorce, however their process and procedure differ according to Islamic law.<sup>90</sup>

Article 39 in the Law on Marriage LAW regulates that “divorce can only be conducted before the court (article 115 KHI-*Kompilasi Hukum Islam*/Islamic Law (Compilation)). This is meant to regulate talaq in marriage according to Islamic law. The provision that divorce must be conducted before the court (controlled divorce) does not mean that it lessens or removes the husband’s prerogative right to talaq. The authority remains

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<sup>90</sup>M. Yahya Harahap, *Kedudukan, Kewenangan dan Acara Peradilan Agama* (Jakarta: Pustaka Kartini, 1997), 219.

in the hands of the husband. This regulation is aimed to limit divorce by controlling its implementation.<sup>91</sup>

The requisite that divorce be conducted before the court is an *ijthadiyah* issue which is grounded on the habit of husbands who wish to divorce their wives without informing the Religious Court (PA) judge and is aimed at reconciling the couple so that the judge could attempt to reconcile them. Furthermore, using the principle of controlled divorce, also serves as a legal effort in protecting women. In general, there are many divorces that significantly become a burden for women, not only as a psychological strike to women, but they must also seek sustenance (nafkah) not only for themselves but for their children as well, which was actually the responsibility of her ex-husband.<sup>92</sup>

Talaq divorce is divorce desired by the husband or divorce undertaken by request of the husband to the PA with reasons determined for its implementation. Those reasons are:<sup>93</sup>

- a. One of the spouses committed adultery or became a drunkard, drugs user, gambler and other conditions that is difficult to treat.
- b. One of the spouses abandoned the other, for a period of 2 years continuously without permission of the latter and without legitimate reasons or due to other matters beyond his/her capacity.
- c. One of the spouses sentenced to 5 years in prison or heavier punishment after marriage has been initiated.

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<sup>91</sup>Ritonga, *Hak-hak*, 205 and 207.

<sup>92</sup>*Ibid.*, 208.

<sup>93</sup>Explanation of verse 2 from Article 39 Law No. 1 Year 1974 and Article 19 letters a-f PP (Governmental Regulation) No. 9 Year 1975.

- d. One of the spouses committed an act of cruelty or serious assault/battery which endangers the other party.
- e. One of the spouses acquired physical injury/disability or illness causing him/her to be incapable of carrying out responsibility as husband/wife.
- f. Constant strife between husband and wife with no expectation of living harmoniously in the household any longer.

The reasons elaborated in the explanation of verse 2 Article 39 Law No. 1 Year 1974 and Article 19 letters a-f PP (Governmental Regulation) No. 9 Year 1975, actually have not covered all the existing reasons since there are other reasons which are not included in this provision. Hence, the apparent lack of provision is further perfected in the *Kompilasi Hukum Islam* (KHI – Islamic Law (Compilation)). In this case, there are 2 points added in the provision. Firstly, the husband violates taklik-talaq<sup>94</sup> and secondly, apostasy or murtad, which leads to disharmony in the household.<sup>95</sup>

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<sup>94</sup>The content of taklik talaq (conditional divorce) is:

At any given time I (husband):

1. Leave my wife for two years continuously,
2. Or I do not provide obligatory nafkah for her in three months period.
3. Or I induce bodily/ physical harm to my wife.
4. Or I neglect (ignore) my wife for a period of six months,

and my wife is not content and report the matter to the Religious Court and her report is validated and accepted by the Court, and my wife pays money in the sum of Rp 10,000.00 (ten thousand rupiah) as *'iwadh* (compensation) to me, then one of my talaq falls on her. To the Court I relinquish my authority to accept the *'iwadh* money and then give it to the Directorate General for Guidance of the Islamic Community and Hajj Implementation Cq. Directorate of Islamic Affairs for social ritual purposes.

<sup>95</sup>Article 116 letters g and h of *Kompilasi Hukum Islam*.

From several of the divorce reasons above, Religious Court uniformly defined them into 12 causal factors of divorce in the PA, for both talaq divorce and petitioned divorce. Hence every month PA must compose report of divorce cases based on the defined 14 causal factors of divorce. The fourteen factors are as follow:<sup>96</sup>

No.	Causal Factors of Divorce in Religious Court
1	No Responsibility ( <i>Tidak ada tanggung jawab</i> – TAT)
2	No Harmony ( <i>Tidak adakeharmonisan</i> – TAK)
3	Economic Reason ( <i>AlasanEkonomi</i> – EK)
4	Third Party Intervention ( <i>Gangguanpihakketiga</i> – GPK)
5	Moral Crisis ( <i>KrisisAkhlak</i> – KA)
6	Jealousy ( <i>Cemburu</i> – C)
7	Physical Cruelty ( <i>KekejamanJasmani</i> – KJ)
8	Psychological Cruelty ( <i>KekejamanMental</i> – KM)
9	Forced Marriage ( <i>KawinPaksa</i> – KP)
10	Biological Disability ( <i>CacatBiologis</i> – CB)
11	Unfavourable Polygamy ( <i>Poligamitidaksehat</i> – PTS)
12	Underage Marriage ( <i>Kawindibawahumur</i> – KDU)
13	Punished ( <i>Dihukum</i> – D)
14	Political ( <i>Politis</i> – P)

From 157.7771 cases of divorce ruled by PA in 2007, 77.528 cases were triggered by one of the spouses abandoning his/her obligation. Abandonment of obligation is caused by one of the spouses not being responsible (48.623 cases),<sup>97</sup> economic factor in the spouses household

<sup>96</sup>Iskandar, *Hak-hak*, 291.

<sup>97</sup>The factor of no responsibility is a “rubbish bin” factor (its causal factor is unclear or indefinite), because some would only understood it as one party leaving his/her partner. Additionally, there are those who understand it as a form of wife neglect and there is no nafkah from the husband. Therefore, in reality divorce cases due to economic reason or factor were not entirely accounted for, in other words the number of economic factor cases were more than what is stated there. Binsar, “Perspektif Etika Kristen atas Peceraian” in <http://binsar.berteologi.net/?p=867>. (06 July 2009).

(26.510 cases),<sup>98</sup> and due to marriage history of parties that were forced into marriage by their parents (2.395 cases).<sup>99</sup>

The second trigger is constant strife. This factor occurred in 65.818 cases. Strife in marriage which ended in divorce is caused by personal disharmony (55.095 cases), third party intervention (10.444 cases) and political factor (281 cases).<sup>100</sup>

Moral issue also has its fair share in triggering disharmony in the household. Moral factor ranked third in causing spouses to end up in PA court. Based on existing statistical data it is said that 10.090 divorce cases were caused by moral issue. There are 3 forms of modus namely, the husband engaged in polygamy that is not in accordance to regulation or unfavourable polygamy (937 cases), moral crisis (4.269 cases) and excessive jealousy (4.884 cases).<sup>101</sup>

The fourth trigger in breaking the bond of marriage is domestic violence. There were 1.845 divorce cases due to this factor. As for other triggers, there were cases where one of the spouses sustained biological disability causing him/her to be unable of carrying out his/her responsibility (1.621 cases), underage marriage (513 cases), and one of the spouses was sentenced by the criminal court (356 cases).<sup>102</sup>

Muchsinun, Head of East Java Religious High Court, on the 15<sup>th</sup> of February 2002 explained that aside from Banyuwangi, a number of regions

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<sup>98</sup>Economic factor is the most often used by wives when they file for petitioned divorce. The head of Religious Affairs Regional Office Special Capital Region of Jakarta Province, H. Achmad Fauzan Harun, SH. Said that petitioned divorce in almost all major cities in Indonesia are higher than talaq divorce. This signifies that more divorces were proposed by the wife than the husband. "Cerai Gugat di Hampir Semua Kota Besar" in <http://www.hupelita.com/baa.php?id=50079>. (01 April 2009)

<sup>99</sup>Direktorat Jenderal Badan Peradilan Agama MA-RI, "Grafik Penyebab Perceraian di Peradilan Agama Tahun 2007" in [http://www.bwdilag.net/index.php?option=com\\_content&task=view&...](http://www.bwdilag.net/index.php?option=com_content&task=view&...) (08 October 2008).

<sup>100</sup>Ibid.

<sup>101</sup>Ibid.

<sup>102</sup>Ibid.

with high number of divorce cases which were managed by the PA were Jember, Malang, Blitar, Tulungagung, Kediri, Bojonegoro, Lamongan, and Tuban. It was further elaborated that the main cause of divorce was strife in the household, irresponsible husband, and economic issue.<sup>103</sup>

Strife in the household, which is included in the category “no harmony” (disharmony), is often regarded as a “rubbish bin” reason (unclear causal factor). Individuals who divorce often found it difficult to answer what is the real reason causing them to divorce and frequently mentioned “often fights”. Subsequently, when asked what caused the fight, they have difficulty replying to the question. However, referring to the new regulation from the Supreme Court, PA judge does not need to seek out the reason when intending to allow a divorce petition. The standard of broken marriage is given to judges’ discretions respectively. In this case it is sufficient to observe the quality and quantity. How deep is the quality of strife in the house hold? As for quantity, it is sensible to know how often it happens, how long they have been separated, and during the separation were there any communication among them. If –in this case- they insist that the reason for divorce is solely due to strife, without explaining in detail the reason for the fight, then it is telling that the couple are no longer in harmony and thus the judge can allow the divorce petition to pass.<sup>104</sup>

Therefore, among the 14 causal factors of divorce there are 2 “rubbish bin” factors, namely no harmony and no responsibility. Aside from disharmony and irresponsibility, then all the other 12 reasons or causal factors of divorce are due to reason of strife or incompatibility which actual roots can be discovered. Additionally, it seems that frequently

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<sup>103</sup>Gatra.com, “Kasus Cerai di Banyuwangi Tertinggi di Jatim” dalam <http://www.gatra.com/2002-02-18/artikel.php?id=15440>. (03 Juni 2009).

<sup>104</sup>Kelana Kota, “Banyak Minum PIL dan WIL, Gugatan Cerai Capai Seribu Perkara” dalam <http://kelanakota.suarasurabaya.net/?id=c8e0fb08f5fecad457acc1bfb5fe7fd200963902>. (23 Juni 2009)

the reason for divorce on grounds of economic issue ranked between 1<sup>st</sup> to 3<sup>rd</sup> and 4<sup>th</sup>. This factor –economic issue- is a reason that is aligned with the Indonesian phenomenon which remains from then till now as a poverty alleviation agenda that is still unrealized.

In this case, what is meant by the other 12 causal factors being included as clear grounds for divorce is that it is considered as the definitive factor which may not necessarily be the true (genuine truth) reason or factor, since based on the frequently occurring phenomenon, these reasons are often made up in order to ease the aim and purpose of respective individuals. By determining 14 factors which are considered sufficient and adequate to sever marriage bonds in the Religious Court, it in fact widened the opportunity to falsify the reason (fake reason) while there is still the possibility of genuine truth within those factors.

On the one hand, the prevalence of these 14 kinds of divorce causal factor provides legal certainty. As legal certainty is undoubtedly the purpose of the court and legal system. Nevertheless, on the other hand, to those who highly desire divorce they could believe that the petitioned divorce or talaq divorce proposed would certainly be granted with made up reasons which are in accordance to one of the 14 factors, and this is very different to the actual reality (genuine truth).

Genuine truth or material truth in the practice of civil court, including divorce, is indeed not a matter that the judge intends to seek out. The judge only attempts to seek formal truth due to restrictions of formal information and evidences revealed in court. This is in line to the civil court procedure legal principle which stipulates that the judge must be passive, that is the judge does not determine the scope or extent of the conflict brought up before him/her, it is the concerning parties that decide the matter. In this case the judge is prohibited from deciding over issues that are not petitioned or grant more than what is petitioned (Article 178 verse (3) HIR). The judge only accepts, reviews, and assesses materials

provided by the concerning parties and make a decision based on assessment of the proposed materials.<sup>105</sup>

Although what judges seek out in civil cases are formal truth, in its execution there is the possibility of arrangements according to its needs. In court practice, the judge needs to initially observe the case, whether the positions of the concerning parties are of equal (on a par) standing or not. The definition of equal can be observed from various factors, such as level of education, economy, and social status. In examining and presiding over a case in which the positions of the concerning parties are equal, it is indeed formal truth which is sought out by the judge and positive evaluation of evidence is applied. However in a number of particular cases, in which the positions of the concerning parties are unequal or there is quite a significant gap, then the judge should attempt to dig further and examine the case more thoroughly. Thus the decision made in court could fulfil the sense of justice.<sup>106</sup>

In current legal development, although formal truth remains to be the standard in resolving civil cases, theoretically there is the view that applying formal truth one does not need to be too rigid. This view expects the judge to not merely seek formal truth but also seek its material truth. As for material truth, it will only reveal itself when there is contention from the opposing side. In a case where a petitioner presents a witness, the information from the witness should first be connected to witnesses from the petitioned party along with other evidences. Thus, the judge has indirectly attempted to seek out material truth in the court process.<sup>107</sup>

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<sup>105</sup>Bambang Sutiyoso, *Reformasi Keadilan dan Penegakan Hukum di Indonesia* (Yogyakarta: UII Press, 2010), 139-140.

<sup>106</sup>Ibid., 140.

<sup>107</sup>Ibid., 140-141.

## 2. Talaq divorce procedure

The talaq divorce procedure is regulated in Law No. 7 year 1989, PERMA No. 2 Year 2003, HIR and R.Bg. The regulation covers steps which must be taken by the plaintiff (husband) or attorney and the litigation process. Both of the provisions are as follow:<sup>108</sup>

### a. Steps which must be taken by plaintiff (husband) or attorney:

No.	Steps which must be taken by plaintiff (husband) or attorney
1	<ul style="list-style-type: none"><li>a. File a written or verbal request to the religious court/ <i>syar'iyah</i> court (Article 118 HIR, 142 R.Bg jo. Article 66 Law No. 7 Year 1989);</li><li>b. The plaintiff is suggested to seek guidance to the religious court/<i>syar'iyah</i> court regarding the process of making a letter of request (Article 119 HIR, 143 R.Bg jo. Article 58 Law No. 7 Year 1989);</li><li>c. The letter of request can be amended as long as it does not alter <i>posita</i> and <i>petitum</i>. If the defendant has replied to the letter of request and there is amendment, then it must be agreed upon by the defendant.</li></ul>
2	<p>The request is proposed to the religious court/ <i>syar'iyah</i> court:</p> <ul style="list-style-type: none"><li>a. In which its legal area covers the residence of the plaintiff (Article 66 verse (2) Law No. 7 Year 1989);</li><li>b. If the defendant left the place of residence that has been mutually agreed upon without consent from the plaintiff, then the request must be proposed to the religious court/ <i>syar'iyah</i> court in which the legal area covers the residence of the plaintiff (Article 66 verse (2) Law No. 7 Year 1989);</li><li>c. If the defendant resides abroad, then the request is proposed to the religious court/ <i>syar'iyah</i> court in which the legal area covers the residence of the plaintiff (Article 66 verse (3) Law No. 7 Year 1989);</li><li>d. If the plaintiff and defendant reside abroad, then the</li></ul>

<sup>108</sup><http://pa-surakarta.ptasemarang.net/index.php?option=content&task=view&task=view&id=32> (22 March 2009)

	request is proposed to the religious court/ <i>syar'iyah</i> court in which its legal area covers the location the marriage was held in or to the Central Jakarta Religious Court (Article 66 verse (4) Law No. 7 Year 1989).
3	The request contains: <ul style="list-style-type: none"> <li>a. Name, age, occupation, religion and plaintiff and defendant's place of residence;</li> <li>b. <i>Posita</i> (legal and occurring facts);</li> <li>c. <i>Petitum</i> (issues demanded based on <i>posita</i>).</li> </ul>
4	Request on issue of child custody, child welfare ( <i>nafkah</i> ), wife welfare ( <i>nafkah</i> ), and mutual wealth can be proposed along with the request for talaq divorce or after saying the talaq pledge (Article 66 verse (5) Law No. 7 Year 1989).
5	Pay for litigation fee (Article 121 verse (4) HIR, 145 verse (4) R.Bg. jo. Article 89 Law No. 7 Year 1989), for those who cannot afford the fee can proceed with the litigation free of charge ( <i>prodeo</i> ) (Article 237 HIR, 273 R.Bg.).

b. Litigation Process:

No.	Litigation Process
1	The plaintiff registers the talaq divorce request to the religious court/ <i>syar'iyah</i> court.
2	Plaintiff and defendant are summoned by the religious court/ <i>syar'iyah</i> court to attend trial.
3	Trial proceedings: <ul style="list-style-type: none"> <li>a. In the initial trial, the judge tries to reconcile both parties, and both husband and wife must be personally present (Article 82 Law No. 7 Year 1989);</li> <li>b. If it fails, the judge subsequently obligates both parties to firstly undergo mediation (Article 3 verse (1) PERMA No. 2 Year 2003);</li> <li>c. If mediation fails, then case examination is continued by reading the letter of request, replication, reply rejoinder, proving evidence and closing arguments. In the stage of reply rejoinder (prior to proving evidence) the defendant can submit a reconvention (counter claim) (Article 132 a</li> </ul>

	<p>HIR, 158 R.Bg.);</p> <p>The decisions of the religious court/syar'iyah court to the request of talaq divorce are as follow:</p> <ol style="list-style-type: none"> <li>a. Request granted. If the defendant is dissatisfied an appeal can be proposed through the relevant religious court/ syar'iyah court;</li> <li>b. Request denied. The plaintiff can propose appeal through the relevant religious court/ syar'iyah court;</li> <li>c. Request unaccepted. The plaintiff can resubmit a new request.</li> </ol>
4	<p>If the request has been granted and the decision has acquired permanent legal force, then:</p> <ol style="list-style-type: none"> <li>a. Religious court/ syar'iyah court determines the day to witness the talaq pledge;</li> <li>b. Religious court/ syar'iyah court summons the plaintiff and defendant to carry out talaq pledge;</li> <li>c. If in the period of 6 (six) months since the talaq pledge testimony trial is determined, the husband or his attorney does not execute the talaq testimony before the court, then legal force of the decision becomes invalid and the divorce could no longer be submitted based on the same legal reason (Article 70 verse (6) Law No. 7 Year 1989).</li> </ol>
5	<p>Once the talaq pledge has been said the court clerk must issue a Divorce Certificate as proof to both parties at the latest 7 (seven) days after testimony of the talaq pledge (Article 84 verse (4) Law No. 7 Year 1989).</p>

After divorce (talaq divorce), a woman (talaq divorced wife) is entitled to receive assistance to limited sustenance during the 'iddah period or during her pregnancy. Aside from the right to receive *nafkah* (food), *kiswah* (clothing) and *maskan* (residence/shelter), she also bears the right to *mut'ah*. A man who talaq divorced his wife, aside from providing *nafkah*

'iddah must also provide something, which could be in the form of money, clothing or other items as *mut'ah* to please the wife.<sup>109</sup>

In practice, regulations regarding nafkah after divorce (talaq divorce) are very disadvantageous both to the child and ex-wife. As of today there are no technical or firm regulations or provisions on the obligation and procedures of child welfare (nafkah) provision, nafkah 'iddah, or *mut'ah*, in order to secure and guarantee these rights.<sup>110</sup>

Often times after the husband's talaq divorce request has been determined or decided by the panel of judges with the obligation of providing nafkah and *mut'ah*, the husband does not carry out or fulfil the obligation, regardless of whether the husband is wealthy or poor. Under this condition, the woman or ex-wife cannot do much or can only accept it. This is because Indonesian women are very determined in economic activities and enjoy the freedom it entails as well. They are not only determined and vigorous during post-divorce economic endeavours, but are equally enthusiastic and active before or during the marriage.<sup>111</sup> Therefore, women's conviction to be capable of attaining economic independence renders them to be accepting of the husband not fulfilling his post-divorce responsibilities.

In addition to that, the family or parents of the ex-wife feel they are responsible for the wife who has been talaq divorced along with her children. And also because demanding nafkah to the court will be considered as an indication that the family of the ex-wife is included as a poor family, irresponsible or unable to be independent.<sup>112</sup>

In order to alleviate the burden of women, when a divorce occurs, it should be the husband who takes care of the children. However, since it is

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<sup>109</sup>Daniel S. Lev, *Peradilan Agama Islam di Indonesia*, translation Zaini Ahmad Noeh (Jakarta: PT. Intermasa, 1986), 219.

<sup>110</sup>Ibid.

<sup>111</sup>Ibid., 119-221.

<sup>112</sup>Ibid., 221.

customary for the women to be capable of nurturing the children without assistance from the ex-husband (father of the children), then they do not want to hand over child custody to the ex-husband. This happens even though the feelings of the women are truly under pressure or it is heart breaking for them.<sup>113</sup>

### 3. Several causes of divorce

#### a. Gender and divorce

##### 1) The concept of gender relations in Javanese culture

Analysis on the status and role of Javanese women resulted in varied conclusions. This is caused by differences in perspectives and approach in observing gender relations and interaction dynamics occurring within gender relations in Javanese society and culture. Several previous researches on Javanese women generally can be categorized into two differing views.<sup>114</sup>

The first group expressed that Javanese women have great power and high status, both in the community and family. This position is attained by women, among other things, because of existing bilateral family structure, general assumption stating that men and women or husband and wife are mutually complementing beings, and women's quite substantial contribution to the family's economy gained by their active participation in productive activities. The important role of women is also indicated by existing reality that in most Javanese household, women are the ones responsible in managing household income and expenditures. Additionally, women also play an important role in decision making process. This is very different to the conditions and status of women in other developing

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<sup>113</sup>Ibid., 220.

<sup>114</sup>Siti Kusujarti, "Antara Ideologi dan Transkrip Tersembunyi: Dinamika Hubungan Gender dalam Masyarakat Jawa" in Irwan Abdullah, *Sangkan Paran Gender* (Yogyakarta: Pustaka Pelajar, 1997), 82.

countries such as Bangladesh, India and China. These factors show that women have considerable access to various types of resources, both available in the family and community. And the capacity and opportunity to gain access to economic, social, and cultural resources are very important factors in determining the status and role of women.<sup>115</sup>

The second group refutes the opinion that Javanese women have power and high status. Women's important roles in the economic sector and household management are not indicative of their high status and power. Women have double roles since they must seek nafkah for the family and are also expected to complete most of the domestic work so they must allocate their time and resources to fulfil both obligations simultaneously. Women in general do not have control over themselves and their activities; they are more a target of hegemonic gender ideology which causes the subordination of women. A number of research results included in the second group generally show that there is no significant obstacle for Javanese women to actively play a role in the production process, to participate in determining the way the family's economic wheels turn and in making decisions in the household, as well as in having their significant role and position regarding the children's education.<sup>116</sup>

The difference in the two arguments above is afforded to the opinion –according to Safilios-Rothschild as quoted by Baluja- that there are two types of women power/dominance:<sup>117</sup>

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<sup>115</sup>Ibid., 82-85. The weakness of the first group's approach is that it emphasizes on the positive aspects and a number of advantageous factors to Javanese women regarding their role in the family and community, without critically observing the mechanism and structures which separate and obstruct women.

<sup>116</sup>Ibid. Meanwhile, the weakness of the second group is that it emphasizes on the existence of structural and cultural mechanism as well as hegemonic ideologies which brought about the subordination of women. As a result, this perspective lacks in viewing women as active beings who do not just give in to structural and cultural conditions.

<sup>117</sup>Kaari Flagstad Baluja, *Gender Roles at Home and Abroad* (New York: LFB Scholarly Publishing LLC, 2003), 9-10.

- a) Dominance or power that derives from man; such as the function of women's reproductive power, marriage dominance based on unequal love, dominance based on wealth and status of a woman's father, dominance/power based on the status of an older women asexually, and dominance/power based on the wealth and status of her husband. In this case, a woman can direct her younger family members but could not make decisions regarding all matters or household matters entirely.
- b) Dominance or power which derives from women's own productive activities; with a number of indicators such as the capability to make their own decision, ability to control the work of others, ability to control the type of household structure, evident difference in income ratio between men and women for daily activities cost, evident difference in the amount of salary acquired from productive activities between men and women, and ability to make decisions regarding purchase, expenditure, number of family member, and move of location. This type of dominance/power can be realized in the context of women having high mobility, sexual freedom, and kinship system adhering to the women's line of descendants or matrilineal lineage. In addition to that, the form of power/dominance is more in function of economic activities and income which support women's activities, sexual dominance, social population structure, and joint power as well as women's organization. Thus what is meant by "power/dominance deriving from women's own productive activity" is not absolutely free from power influences owned by men.

Therefore, it is clear that the group stating "Javanese woman possesses power" can be validated, namely power which derives from the husband (as a lesser form of woman's power). The same can also be said of the second group stating that it is not adequate to say Javanese woman has

significant power because her power does not derive from her own productive activities (as a higher form of woman's power).

Seeing as there are two perspectives above, then we need to look into Javanese culture –which has hegemonized leadership in Indonesia- itself. Javanese culture is often considered as a stranger to democracy. One of the reasons is that Javanese traditional culture is a monarchical tradition, an absolutist tradition. To be exact, the kings of java only understood one thing in terms of leadership that is absolutism. The experience of Javanese political power in its long history of culture is monarchy. And as the head of state, the king has unlimited authority which cannot be contested. The king is the highest leader and head of state. He is even considered as a descendant or personification of god.<sup>118</sup>

Based on that reality, java's dominance/power is centric in nature and tends to be far from egalitarian. In this context, Javanese society should find it difficult to accept gender equality. However, it is very interesting if subsequently patterns of equality are found in Javanese community, which tends to place the position of every family member (husband or wife) on a more or less equal standing. The indication known as matrilocality in the Javanese community is observed by existing views on equality between men and women in the social role system in general. Even the position and role of a mother is considered important in the Javanese community since mothers not only nurture and educate children as well as accompany the husband, but they are also allowed to get out of the house to engage in economic activities.<sup>119</sup>

The same argument is stated by Koentjoroningrat that the wife's role in managing the household budget has led to women's equal standing to

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<sup>118</sup>Christina S. Handayani and Ardhian Novianto, *Kuasa Wanita* (Yogyakarta: LKiS, 2004), 12.

<sup>119</sup>Ibid., 13.

the husband.<sup>120</sup> Geertz also said that there has been dominance of Javanese woman, namely in regards to domestic matters. Even so, according to Geertz, the effect of women's dominance could spread throughout the community and become "women's dominance network". Women connect their dominance with other women or other people who are connected to her, so that the network becomes significantly strong and women's dominance broadened to a form of real power. Furthermore, Rogers added that male dominance will ultimately stop at "ideology", in which when it is confronted with reality it will be a myth, while women's dominance is actual practical dominance that shows a more lively power. This is also strengthened by Denys Lombard who stated that mothers in Indonesia, that is women, clearly hold very distinct and significant role. Their positions are even far higher than other women in Asia. Their dominance, although kept in the background, is still effective and essentially originates from their group organization.<sup>121</sup>

Based on the above historical outlook, then the two perspectives in previous passages mutually complement each other. Both illustrate two sides of the same coin. On the one hand it can indeed be observed that Javanese women, particularly women in rural Java have significant positions in the family and community. However, on the other hand, women do not gain prestige, opportunities, and power that are equal to that of men. Gender ideology that is hegemonic, familialism ideology which emphasized on the role of women as mother and wife, infiltrate and affect women and men's perspectives and perceptions regarding their daily experiences.<sup>122</sup>

In other words, according to White and Hastuti, women's hidden power in the domestic sphere has structurally been subordinated because they are pressured into making decisions on ideology until the practical

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<sup>120</sup>Ibid.

<sup>121</sup>Ibid., 14.

<sup>122</sup>Kusujiarti, "Antara Ideologi...", 84.

world which by men is made into public dominance. Nevertheless, under such situation Javanese women could still find a way to influence the decision-making process by utilizing their femininity. Although formal structurally speaking they are uninfluenced, informally the influence is highly significant. This tendency is supported by nurturing pattern in Javanese culture which indicates differences between boys and girls. Boys are prepared to be responsible to their wife and children. Boys are educated to be capable of finding nafkah and are provided opportunities to possess high aspirations which orient them to be out of the house and for that they are unburdened from domestic duties. As for girls, since they are small are prepared to become mother and wife who are obedient to their husband. For that reason, girls are provided with practical skills to manage the household.<sup>123</sup>

Javanese woman's femininity plays a big role for women and it is supported by practical concepts which developed in the life of Javanese community, such as parents would choose to live with their daughters rather than their sons since women are more capable of *ngrumat* (nurture). Even more, since Javanese woman is symbolized as bearer of morality, wisdom, self-sacrifice, patience, and responsibility, these values themselves demand to be respected more than anything.<sup>124</sup>

It seems that the concepts above enable women, particularly Javanese women, to confront and respond to Western gender ideology hence keeping her role dominant. Javanese women does not present herself by being someone else, she remains existent with the roles offered by the community, namely in the domestic sector as a wife or mother and remain to behave according to community's expectation; and simultaneously influencing the public sector through her role in the domestic sector.<sup>125</sup>

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<sup>123</sup>Handayani and Novianto, *Kuasa Wanita*, 14-15.

<sup>124</sup>Ibid, 42-43.

<sup>125</sup>Ibid., 47.

It can be affirmed that the character of Javanese women is very identical to Javanese culture, such as polite in speech, calm, quiet, dislike conflict, prioritize harmony, uphold familial values, able to understand and comprehend others, polite, maintain self-control, high level of perseverance, hold economic roles, and loyal.<sup>126</sup> Additionally, Javanese women are able to become protector or even to become the husband's glory because of her ability to *cancut tali wanda* when the family is in difficulty. *Cancut tali wanda* is a Javanese concept which illustrates the character of being involved, taking role even command, and being tactical in confronting problems, not merely in providing ideas and making decisions regarding what steps must be taken, but also in its execution.<sup>127</sup>

It seems that the background in the implementation of the concept of "*cancut tali wanda*" by Javanese women is her willingness to suffer not for her own sake, but for the sake of others, her husband, or child.<sup>128</sup> Her power to sacrifice for others lies in her capacity to carry out *laku tapa* (attempting to control her desires) in order to free oneself from egoism (*pamrih*/self-reservation). Acting with (self) reserve means to put in efforts only for individual interests without acknowledging the interests of the community. Socially speaking, self-reservation is always damaging, because it is an act without consideration to social harmony. The basic character which indicates Javanese perspective of noble character is free from self-reservation (selflessness), *sepi ing pamrih*, which is concurrently one of the feminine strengths. Conversely, egoistic or self-reserved character is a masculine distinction which is usually afforded to men. Therefore, in comparison, Javanese men would be more egoistic than Javanese women. Why don't Javanese men have more power to be *sepi ing pamrih*? Because they are not accustomed to hold back and give in as women do. In Javanese

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<sup>126</sup>Ibid., 130.

<sup>127</sup>Ibid., 139.

<sup>128</sup>Ibid.

culture that tends to be paternalistic, men have a special place. They will become head of the family, they must be respected and their honour protected, hence their desires and expectations are always attempted to be fulfilled. As a result, they are not accustomed to hold back and give in compared to women.<sup>129</sup>

As part of the series of *sepi ing pamrih is rame ing gawe*. *Sepi ing pamrih, rame ing gawe* is defined as a condition in which a person could concentrate entirely in his/her work and not be hindered by concerns of the result; hence leading to include a form of active submission to God in totality. It is actually in this submission lies the secret of women's perseverance to "suffer".<sup>130</sup>

Furthermore, Javanese women's power is not felt as a threat or violence towards their husbands or the wider community, on the contrary, their power is always felt by others as tenderness, warmth, patience, and full of understanding. Eventually it is the husband who in fact becomes dependent on the wife, particularly emotionally, be it aware or unaware, whether he likes it or not. It is at this position that Javanese women will decide on issues in the public sphere through her wife.<sup>131</sup> Women are highly dominant in determining the direction and policy in the family since there is a general assumption that *apiking suami gumantung istri, apiking anak gumantung ibu* (a husband's worth (good or bad) is dependent on the wife, a child's worth (good or bad) is dependent on the mother). Additionally, there is also the concept of *swarga nunut neraka katut* (to paradise she follows, to inferno she is pulled along), which means that if the husband's career or luck is bad, enduring hardship (*neraka*), then the wife will surely be pulled along in his difficulties. Hence, child and husband to the wife are

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<sup>129</sup>Ibid., 179-180.

<sup>130</sup>Ibid., 145.

<sup>131</sup>Ibid., 202.

reflections of her character, success, even failures so she would put in her best efforts in order for her husband's life to be favourable (*swarga*).<sup>132</sup>

The strength of Javanese women is not considered as a threat to men because of her ability in strategizing. In this case, what is meant by strategy is strategy of servitude “*dipangku*” (charm one's heart) which is symbolized with Javanese script in which when it is “*dipangku*” it will be nullified/it will end. Someone whose heart has been charmed will surely do anything for the person who has given all his/her best to him/her (has charmed one's heart). This strategy is also grounded on Javanese women's perseverance to suffer.<sup>133</sup>

The implementation of the “*dipangku*” servitude strategy relates to the principle of respect, which is as much as possible a Javanese woman should not show herself before the public, because normatively a wife should not surpass the husband. A number of public positions such as seeking nafkah, leading the family, or holding positions in the community which should be held by the husband. Even if there is a possibility to present herself or be active in the public sector, if it disrupts the harmony of family and social life, then she would not take that choice. In this context, the wife also strives not to shame her husband. This is due to the understanding that if she were to appear actively in public, while her husband remains, it is similar to degrading him. The principle of *empan papan* is always prioritized by the wife, to constantly respect and honor the husband, to place the husband so highly, and to fulfil all his needs.<sup>134</sup>

Even so, this does not mean that women do not have personal desire and authority. The most important matter is how to fulfil her intent without having to disrupt harmony by stepping out of its cultural arrangement or *menang tanpo ngasorake* (attempt at victory conducted in

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<sup>132</sup>Ibid., 145-146.

<sup>133</sup>Ibid., 144.

<sup>134</sup>Ibid., 143-144.

passivity or silent diplomacy that is very subtle and full of symbols). Hence, nurturing, serving, and total subservience to the husband can actually be categorized as women's diplomatic strategy to gain authority and obtain what becomes their desire. If the wife's attitude is good, full of servitude, and care then it is usually difficult for the husband to object when she requests something.<sup>135</sup> In other words, Javanese women are not prohibited from making decisions as long as it is unapparent.<sup>136</sup>

Addressing the two perspectives above, they should both return to a number of facts on the practical concept of Javanese women. In this case, the groups' two perspectives mutually complement each other. Both illustrate two sides of the same coin. This is based on the conclusion that Javanese women are not prohibited from making decisions as long as it is unobservable. Thus it cannot be said that Javanese women are oppressed, but Javanese women are capable of acquiring their desire (authority) without opposing their community's culture. The most important matter is that the existing conditions do not cause women to feel oppressed, harmed, marginalized and do not hinder their creativity and freedom to express themselves (empowering).

## 2) Gender relation as reason for divorce

Starting with the question "why divorce happens?", then –in this case- a simple answer can be given that divorce happens because one of the couple is dissatisfied with the marriage he/she is going through and considers or feels that by living separately (divorce) it would provide a better life. However, neither the condition nor the answer is that simple. Divorce is –likened to- a form of "revolution" when a regime has committed oppression, but it is not only because of disliking the regime then

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<sup>135</sup>Ibid., 144-146.

<sup>136</sup>Ibid., 146.

attempt to overthrow it is undertaken, it is much more than that –in the case of divorce- there are other reasons which are particular in nature.<sup>137</sup>

Furthermore, there is “transition” in the divorce process, which is a phase that is unpredictable, because it can happen anytime, unlike transitional phase in other cases. Transition in divorce process tends to cause imbalance, and further cause distressing (damaging) crisis. The divorce process does not start with the establishment of a ruling to conduct legal divorce (before the court), it initiated long before that.<sup>138</sup>

Divorce is an internal relation crisis, a problem of core connection that is unresolved in the family, and a problem of family identity beginning to deteriorate. To most people, divorce or the end of a marriage bond is the most soul shattering decision they have to make in their life. A person –in the process of divorce- often acts or engage in undertakings which cannot be felt or thought of by people around him/her. Abigail Trafford accurately calls it as the phase or period of confusion or crazy time.<sup>139</sup>

Stress, crisis, and adaptation are the three concept often used to understand how a family overcome the many difficult occurrences in life, such as suffering from chronic disease, losing a loved one, and being unemployed. Stress happens there is imbalance between what is actually happening and what can be done by family members to overcome it. Crisis happens when stress surpasses the capacity of a person in the family to overcome the cause on his/her own. Divorce ranks the highest on a list of events that could cause stress to a person. A number of stressors in divorce transition overlap each other. All normal capacity in resolving problems is always burdened by several individual and family changes. Added with the

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<sup>137</sup>Ibid., 246.

<sup>138</sup>Constance R. Ahrons, “Divorce an Unscheduled Family Transition” in Betty Carter and Monica McGoldrick (Ed.), *The Expanded Family Life Cycle: Individual, Family, and Social Perspectives* (Boston: Allyn & Bacon A Pearson Education Company, 2005), 384-385.

<sup>139</sup>Ibid., 385.

lack of model or sufficient examples regarding a proper form of divorce, lack of firm and clear rules or rituals that can be used to arrange new and foreign phases in life, and lack of external resources, such as support from local groups or community, prevailing firm social sanctions, and also because crisis is something which is unpredictable. Therefore, the lack of rules, knowledge/understanding and adequate ideal example could incite a family (husband-wife) to divorce.<sup>140</sup>

Although divorces are often conducted on basis of mutual agreement between husband and wife, in the early process of divorce transition this is initiated by one of the spouses, be it wife or husband. Furthermore, the person or party who initiated the transition process tends to be the party with advantage, while the other party tends to be the victim for not having presumption on the advent of divorce. The issue of who will be the first or second party is related to the issue of gender. This is as indicated in current tendency that the rate of petitioned divorce is higher than talaq divorce. This tendency is caused by women's rising economic independence, wherein previously women were not courageous enough to carry out petitioned divorce due to their concern over the continuity of their future life when not receiving money from their husband anymore.<sup>141</sup>

Additionally it is indicated by existing research that the higher women's education level is the higher the rate of petitioned divorce. Conversely, if their education levels are lower, then the rate of petitioned divorce will be lower as well, this is comparative to the rate of divorce carried out by women with higher level of education. This tendency found in women is opposite to the tendency of men (husbands). Men with lower income and education are more likely to carry out talaq divorce compared to men with higher income and education level. In other words, the

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<sup>140</sup>Ibid.

<sup>141</sup>Ibid., 386-387.

tendency of men with low income and education to conduct talaq divorce is higher than men with high level of income and education.<sup>142</sup>

In this case it can be affirmed that the issue which often causes conflict leading to divorce is regarding the issue of gender and power in the family. As for problems which arise among others are family's financial issues, domestic work distribution, and sex (such as a partner's infidelity).<sup>143</sup>

Regarding financial issues in the family, it could be connected to several effects of the variety in the kinfolk system regarding women's wealth, for instance when there is inheritance to the woman from another woman, in which a woman is living together with the women's family (a form of matrilocal residence), then this group of women will seize control over their own wealth. Conversely, women's dominance/power will be reduced if they were to live with her brothers, and undoubtedly her dominance will be non-existent at all once they leave her family's home to live together with the husband's family (*patrilocal residence*).<sup>144</sup>

Based on the rule of residence above, formal familial arrangement (matrilineal, patrilineal, brilliant descent) becomes of no significant importance. In other words, whether the children were officially included in their mother or father's lineage (or both) does not have the slightest effect in real economic power. In several patrilineal communities in West Africa women remain in control of cultivable land and it is develop into horticulture. Hence, the rule of descendant lineage is merely an ideology concealing real economic situations between the sexes or gender.<sup>145</sup>

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<sup>142</sup>Ibid., 382.

<sup>143</sup>Stephen A. Anderson and Ronald M Sabatelli, *Family Interaction: A Multigenerational Developmental Perspective* (Boston: Pearson Education, Inc., 2003), 136 dan 163.

<sup>144</sup>Randall Collins, *Sociology of Marriage and the Family: Gender, Love, and Property* (Chicago: Nelson-Hall Inc., 1987), 385.

<sup>145</sup>Ibid.

Connected to a wider stratification of the community, women do their best within their local communities and in communities which do not broaden its scope. A wide (large) community formation tends to have networks of war and politics dominated by men, and states which tend to intervene in restricting or terminating completely local women's power. In vast agrarian culture, women –in major cities which do not accept higher classes- are usually unapparent and isolated. Meanwhile, women farmers in remote regions have more freedom.<sup>146</sup>

The discussion on dominance–be it by men or women–cannot be separated from the discussion on hierarchical pattern, because hierarchy can be found both the macro and micro levels. Family relation (micro) can be equated to social and political relation (macro) which often use hierarchical mechanism in its implementation, which is at times taken for granted. The hierarchical system often involves and presents forms of domination and subordination, along with injustice. Under the same conditions, subordination can be considered as a form of oppression, which is when one tries to control the desires of the subordinates by using a systematic pattern. Physical oppression in this case is in the context of the issue of race, class, gender, ethnicity, and sexual orientation.<sup>147</sup>

The term oppression is frequently directed at forms or patterns of poverty, powerlessness, marginalization, presumptions, restrictions, pressures, alienation, violence, social abolishment and discrimination which is related to the structure of economic, political and cultural injustice in the society. Furthermore, these forms of oppressions have highly significant implications towards psychological functions, such as identity

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<sup>146</sup>Ibid.

<sup>147</sup>Geraldine Moane, *Gender and Colonialism: A Psychological Analysis of Oppression and Liberation* (London: Palgrave Macmillan, 2011), 13.

loss, fear/apprehension (even traumatic ones), powerlessness, anger, isolation, dilemma and low self-esteem.<sup>148</sup>

Those psychological functions occur to people who have no resistance or those who just accept without care. In other words, aside from causing psychological effects, oppression could also bring out resistance to itself. Furthermore, it could also bring about acts or efforts to conduct change with relentlessness (not giving up or not being frustrated), courage and diligence.<sup>149</sup>

#### b. Expectation and divorce

One of the methods to be able to simultaneously explain the existence of both marriage and divorce is by using the “marriage market” model. Based on the theory of marriage market –in order to marry- a person has various sources of “wealth” respectively in the form of sexual attraction, personality, income, other economic assets, prestige, and culture, which will subsequently be traded in an institution called marriage.<sup>150</sup>

The institution of marriage is a type of permanent trade with the opposite sex. A person marries based on considerations of “wealth” resources owned to be offered to the opposite sex that is his/her partner, which directly encounter sources of “wealth” by that same partner. Mutual trade (exchange) in expecting the respective partners’ “wealth” which will be offered and accepted is the basis for a person to conduct marriage, and conversely –indirectly- this is also the basis for someone to divorce the partner. Divorce –in this case- can happen because there is no agreement in

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<sup>148</sup>Ibid., 13-14.

<sup>149</sup>Ibid., 14.

<sup>150</sup>Collins, *Sociology of ...*, 11.

mutual efforts between the husband and wife leading to gender conflict and consequently it could escalate to the act of divorce.<sup>151</sup>

To complete the theory of marriage market, it must be supported by other research or theories, because marriage market as a theory only covers the issue globally not specifically or in detail explaining several significant factors which actually serve as the background for marriage, particularly divorce. In this case, it can be completed with the perspective of role expectations.

Each married couple or husband and wife continues to have their own particular vision in the relationship, i.e. how they must position and conduct several roles or duties in the household. Subsequently, each partner must negotiate or align the other's expectations on their role. Currently several household roles or duties in contemporary society is undergoing transition, and each partner may find it difficult in reaching a consensus or agreement in placing roles and responsibilities respectively. Hence, conflict potential in the household at the early stages of marriage is very high and unavoidable.<sup>152</sup>

In this case, there are two kinds of role expectations, namely:

1) Traditional role expectation

Traditional role expectation demands the husband to work outside the house, although it is merely doing –cleaning- the back yard, and importantly not doing domestic work. Furthermore, he expects his wife to be responsible for their harmony with each of their extended families. On the one hand, he is very expectant that the financial decision will always be in his hands, while on the other hand, he

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<sup>151</sup>Ibid.

<sup>152</sup>Anderson and Sabatelli, *Family Interaction...*, 164-165.

expects that conjugal sexual relations be the responsibility of both parties.

2) Modern set of role expectation

Regarding modern set of role expectation, a wife also expects the same responsibility in conjugal sexual relations. However, the wife highly disapproves that the household financial management be left solely to the husband. Furthermore, she greatly expects the husband to be willing of doing domestic work.

Subsequently, if each husband and wife has different role expectation, for instance the husband has a traditional role expectation and the wife has a modern set of role expectation, then clearly household conflict is unavoidable. It can be concluded that difference of “expectations” in husband and wife relationship serves as the most significant cause of tension and conflict in the household. Furthermore, researchers truly believe that incompatibility or inaptness of each couple’s expectations is the biggest causal factor for household conflict and strife or divorce.<sup>153</sup>

The belief and conclusion of the research above is acceptable by rationalizing that each couple would constantly hold on to their respective assumptions and expectations in going through marriage. Subsequently, when one of the partners is no longer able or hesitant to fulfil the expectations of the other, then the latter will feel rejected or feel less of a priority to the former.<sup>154</sup>

Moreover, the feeling of being rejected, lowered in priority, or be treated unfairly has the biggest potential for conflict and divorce to occur, preceded by stressful individual conditions and household situation that is distant, tense, or rigid. In other words, unfairness in husband and wife relation has brought about stressful conditions for both of them and distant

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<sup>153</sup>Ibid., 165.

<sup>154</sup>Ibid.

or tense household situation. Eventually, this stressful condition and tense situation would have affected the interaction pattern between husband and wife. There will be times when the couple becomes aware of the situation they are experiencing and tries to fix it, and there are times the couple lets it be or remains under stressful conditions and tense situation which would ultimately lead their life to be full of conflict which most likely will end in the devastation or downfall of marriage.<sup>155</sup> Stressful conditions which turn to situations of conflict can even lead to violent behaviour towards the partner.<sup>156</sup> This situation is exacerbated if perpetrators of domestic violence are under the influence of alcohol which will obviously escalate the use of violence towards the partner as a strategy in conflict management.<sup>157</sup>

### c. Infidelity and divorce

Other than the perspective of role expectation, to complete the marriage market theory, habit and occurrences or stories surrounding the couple could also be presented here. Based on the often occurring reality in the community, what frequently causes devastation of the marriage institution is an illicit sexual affair or sexual infidelity. This is based on research which states that 83% of men and 76% of women have stated that infidelity and illicit affairs are main factors in divorce. Moreover, it is inevitable that someone treats one's partner exclusively (full of loyalty). Therefore, if a husband who is expected to be loyal to his wife had engaged in an illicit affair with another woman, then –in this case- there is double standard. Even so, “infidelity” does not always lead to divorce, because

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<sup>155</sup>Ibid., 167-268.

<sup>156</sup>Anderson and Sabatelli, *Family Interaction...*, 181.

<sup>157</sup>Ibid., 182. Moreover, acts of domestic violence are often affected by work status, low level of education, and low level of income (poverty), which consequently triggers inevitable conflict and escalating it to acts of physical violence. In this case, high intensity in acts of domestic violence is often observed in poor families.

there are also deceived partners who could forgive his/her partner's actions.<sup>158</sup>

It is undeniable that illicit affairs or infidelity is brought about by dissatisfaction of sexual or intimate experience with the legitimate partner. Furthermore, it can be said that divorce here is conducted with the expectation of changing partner in order to find –qualitatively– the expected happiness or satisfaction.<sup>159</sup> This clearly doesn't align to the concept of Islamic law which has provided a resolution through polygamy, not necessarily by marriage, although divorce is also a legitimate means but it is considered as an emergency backdoor. Moreover, a husband's infidelity with another desirable woman or remarriage becomes one of the causes of violence in marriage. Infidelity and remarriage could bring about physical, economic, psychological, and sexual violence upon the legitimate wife.<sup>160</sup>

In regards to facts on polygamy, it indicates that there is a lot of suffering caused by polygamy. Suffering is experienced by both the first and second wife along with their children. From 58 cases of polygamy assisted by LBH-APIK during the period of 2001 up to July 2003, it shows that there are several types of violence on their wives and children, which could take form of psychological pressure, physical abuse, neglecting wife and child, threats and terror, as well as neglecting wife's sexual rights. There was much polygamy undertaken without clear reasoning (35 cases). Additionally, from existing information, polygamy contributes to the high rate of divorce petitioned by the wife (petitioned divorce).<sup>161</sup>

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<sup>158</sup>Collins, *Sociology of...*, 248-249.

<sup>159</sup>Ibid., 249-250.

<sup>160</sup>Fathul Djannah et.al., *Kekerasan terhadap Isteri* (Yogyakarta: LKiS, 2002), 56.

<sup>161</sup>Press Release, LBH APIK Jakarta, "Poligami sebagai Bentuk Kekerasan yang Paling Nyata atas Harkat dan Martabat Perempuan sebagai Manusia di dalam Hukum, Sosial Budaya dan Agama" in <http://www.lbh-apik.or.id/sm-pers-poligami.htm>. (25 May 2009), 1. More information regarding provisions on polygamy in the al-Qur'an, Surat al-Nisa' (4): 3, Nurjannah Ismail has provided the meaning "and if you fear that you shall not be

The fact that there are women who are accepting of polygamy does not mean that it has abolished the substance of sexual discrimination in the polygamy institution. Their acceptance of polygamy is a form of internalized oppression, in which throughout all her life a woman has been acclimatized to discriminative value system. Polygamy is an image form of superior male power construction with the desire to control women, sexual or biological factor is also in effect even for certain prestige. However, it is entirely obvious that polygamy has become an added burden in women's

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able to deal justly with (the rights of) orphans (if you intend to marry them), then marry (other) women of your choice, two, three, or four. And if you fear that you shall not be able to deal justly, then (marry) only one, or the captives that you possess. That will be more suitable to prevent you from doing injustice." This is strengthened with a narration from 'Aishah, the wife of the Apostle of Allah, on the reason of this verse's revelation, because answering the question of Urwah bin Zubair, the child of Asma 'Aishah's elder sibling. Urwah asked: what is the origin of someone being allowed to possess more than one wife by reason of nurturing the wealth of orphans. 'Aishah replied: "O nephew of mine! This verse regarding orphan (girl) who is under the auspices of her guardian, and the wealth of the child has merged with the guardian's. The guardian is interested in her wealth and beauty, and then intends to marry her by not paying her dowry justly, as with other women. Due to this dishonest intent, then he is forbidden to marry the orphan, unless he pays her dowry justly and adequately as he would do to other women. Rather than undertaking his dishonest intention, he is advised to marry other women, even up to four of them." Nevertheless, there are differences between mufassir and Muslim feminists in viewing justice as the requirement of polygamy. Mufassir does not view justice as an absolute requisite in polygamy but as a mere suggestion, hence indirectly polygamy is allowed. Conversely, feminists explicitly forbid polygamy because justice is an absolute requisite which must be fulfilled. Without justice polygamy is forbidden. Muhammad Abduh opined that although there is the statement that "if you fear that you will devour wealth of orphan you marry, then do not marry them, one, two, three, or even four", but this is truly if there is fear on not being able to deal justly to the existing wives, then let him marry only one woman. Even so, Abduh was very against the practice of polygamy in the society. In his opinion, aside from the difficulty in realizing to deal justly among the wives, it is also very difficult to provide guidance for a society which is rampant with polygamy. There is no other cause to this but because peaceful and calm social condition is rooted in the family, and polygamy could not provide such conditions, it would on the contrary create enmity among the wives and children of each family. Regarding the matter, Rashid Ridha is in line with Abduh that polygamy is allowed with the requisite of able to deal justly among the wives so that no crime or injustice is brought about that could have negative effect in the society. See Nurjannah Ismail, *Perempuan dalam Pasungan: Bias laki-laki dalam Penafsiran* (Yogyakarta: LKiS, 2003), 212-223.

suffering out of the many already prevailing burdens, and if that is the reality then polygamy is a concept of women oppression which does not favour the sense of humanity and justice.<sup>162</sup> Furthermore, it is subsequently sensible to equate the practice of polygamy to a form of husband's infidelity to the wife.

In the context of Islamic teaching, some ulama prohibit polygamy because Islam is essentially monogamous. In their opinion polygamy is a form of domestic violence (marital rape) and will eventually be avoided by society<sup>163</sup> which have also been declared by the UN in 1993, namely the Declaration on the Elimination of Violence against Women, Article 1 which states: "Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>164</sup>

Although movement rejecting polygamy with various reasoning has been carried out, polygamy remains to have supporters and activists in support of it. Ulama who support polygamy consider polygamy as a respectable exit strategy if there is a problem in the family which could not be resolved through other means. It is said that polygamy is an alternative for the family and for some men and women who due to certain conditions of protecting their honour are compelled to choose polygamy.<sup>165</sup>

The ideal polygamy cannot be attained because according to theory of love this is very difficult, demanding, needs patience, consistence, and

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<sup>162</sup>Ibid., 2-3.

<sup>163</sup>Syed Ameer Ali, *Api Islam*, translation H.B. Jassin (Jakarta: Bulan Bintang, 1978), 385. Syed Ameer Ali –in this case- said: "As people's thoughts develop with the constantly changing conditions of this world, there will be no further need for polygamy and people will silently abandon it or the practice will be firmly prohibited."

<sup>164</sup>Moh. Roqib, *Harmoni dalam Budaya Jawa (Dimensi Edukasi dan Keadilan Gender)* (Yogyakarta: Pustaka Pelajar, 2007), 208.

<sup>165</sup>Ibid., 208-209.

high level of commitment. In a million, there may be one that could make it work. If compelled to make it into a choice, then it must be based on love that has settled honourably in the husband, the (first) wife, and the wife to be. Aside from love, strong spiritual basis and stable psychological condition, harmonious social relation, and sufficient economic means cannot be ignored. Considering all these requirements, it is obvious that polygamy is not for public consumption, it is an emergency solution which can be understood only by learned individuals.<sup>166</sup>

Why is it love one says to his wife but then polygamy as his reply to the wife? Who is capable of measuring one's love that "I love you therefore I cheat on you" or "because I love you, I marry you". The simple answer is a theological one *wa Allah a'lam*, the one who knows the essence of love is only Allah the creator of love and the individuals themselves. The one who understands and feels the essence of love (loyalty) is each individual.<sup>167</sup>

#### d. Economic condition and divorce

Aside from the discussion above, there is another fact regarding the factor of declining family's economic capacity or even the poverty factor. It is understood that economy is a crucial matter in the family because the institution of marriage is a means to fulfil daily life necessities and it is a joint economic unit. If a marriage remains capable of operating its function, then the marriage would continue regardless of the diminishing element of love. Conversely, if both functions are lost and there is no collaboration between the husband and wife to mutually try and revitalize them, consequently there will be no reason for them to be together or it is better to live separately.<sup>168</sup>

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<sup>166</sup>Ibid., 211.

<sup>167</sup>Ibid., 212.

<sup>168</sup>Collins, *Sociology of...*, 251-252.

In the context of family as a joint economic unit which is constantly supported by hard work, this actually has been affirmed in Islam. According to Islamic view, work is a noble undertaking, which will bring one's self to a position of honour and value before Allah SWT and the followers of Islam. Hence, Islam affirms that work is an obligation (containing values of *ibadah*/religious ritual). People who work will reap their rewards as those who conduct *ibadah*. This is because a person willing to work and make an effort to provide for oneself and his/her family would inevitably live comfortably and peacefully in the society. It is people who are actually passive and lazy to work are not aware that they have lost a part of their honour, as well as causing their life to move backwards.<sup>169</sup>

The following are a number of verses from al-Qur'an demanding individuals to work hard:

1) Q.S. al-Mulk (67): 15

هُوَ الَّذِي جَعَلَ لَكُمْ الْأَرْضَ دَلُولًا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ وَإِلَيْهِ النُّشُورُ.<sup>170</sup>

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<sup>169</sup>[http://www.mojokertokota.go.id/dprd/index.php?title=Artikel+dan+Riset&filecontent=content/artikel\\_detail.php&p\\_id=ag201008180831265](http://www.mojokertokota.go.id/dprd/index.php?title=Artikel+dan+Riset&filecontent=content/artikel_detail.php&p_id=ag201008180831265) (29 March 2011). Weber stated that work is not merely to acquire money for sustenance, but it is a "calling". Only by fulfilling this daily calling, as do monks in their daily life, can salvation (heaven) be attained. Hence, work is a holy duty or "calling" which is a part of religious doctrine, as is the case in the Islamic doctrine. In the Protestant doctrine, a "calling" is much more than work or business. A calling is religious obligation and God's destiny that one undertakes seriously along with a frugal way of life and others. This orientation forms behavioural norms that are known as the Protestant ethic. This ethic, which seeps into the thoughts of all Protestants, subsequently brought about what by followers of Weber is called "ethos". Several expressions such as "time is money" or "never put off for tomorrow what you can do today," originated from this religious condition. Protestants believe that "time is money" hence they consider time spent for socializing, conversing, and excessive sleeping are "immoral" because every hour spent for those activities takes away time which should be spent for work for the glory of God. Laziness is disliked by God, it is better to fulfil the will of God by conducting the calling. See Mohammad Sobary, *Kesalehan Sosial* (Yogyakarta: LKiS, 2007), 21 and 25.

<sup>170</sup>Depag, *Al-Qur'an.*, 956.

Meaning: It is He Who has made the earth manageable for you, so traverse ye through its tracts and enjoy of the Sustenance which He furnishes: but unto Him is the Resurrection.<sup>171</sup>

2) Q.S. Yasin (36): 34-35

وَجَعَلْنَا فِيهَا جَنَّاتٍ مِّنْ نَّخِيلٍ وَأَعْنَابٍ وَقَجْرًا فِيهَا مِنَ الْعُيُونِ.  
لِيَأْكُلُوا مِنْ ثَمَرِهِ وَمَا عَمِلَتْهُ أَيْدِيهِمْ أَفَلَا يَشْكُرُونَ.<sup>172</sup>

Meaning: And We produce therein orchard with date-palms and vines, and We cause springs to gush forth therein That they may enjoy the fruits of this (artistry): It was not their hands that made this: will they not then give thanks?<sup>173</sup>

3) Q.S. al-Kahfi (18): 30

إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ إِنَّا لَا نُضِيعُ أَجْرَ مَنْ أَحْسَنَ عَمَلًا.<sup>174</sup>

Meaning: As to those who believe and work righteousness, verily We shall not suffer to perish the reward of any who do a (single) righteous deed.<sup>175</sup>

4) Q.S. al-Jumu'ah (62): 10

فَإِذَا فَضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ  
وَاذْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ.<sup>176</sup>

Meaning: And when the Prayer is finished, then may ye disperse through the land, and seek of the Bounty of God: and celebrate the Praises of God often (and without stint): that ye may prosper.<sup>177</sup>

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<sup>171</sup>Ibid.

<sup>172</sup>Ibid., 710.

<sup>173</sup>Ibid.

<sup>174</sup>Ibid., 448.

<sup>175</sup>Ibid.

<sup>176</sup>Ibid., 933.

<sup>177</sup>Ibid.

5) Q.S. Nuh}(71):19-20

وَاللَّهُ جَعَلَ لَكُمُ الْأَرْضَ بِسَاطًا. لَتَسْلُكُوا مِنْهَا سُبُلًا فِجَاجًا.<sup>178</sup>

Meaning: And God has made the earth for you as a carpet (spread out), "That ye may go about therein, in spacious roads."<sup>179</sup>

Reading the verses above, it is clear that essentially every Muslim is expected to work hard and to strive in fulfilling his/her sustenance, in order to attain noble life in this world and the hereafter. Additionally, several of the verses above are also supported by many hadith texts elaborating on the priority of work and the significance of people who work relentlessly. Some of the hadith texts are as follow:

1)

حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ حَدَّثَنَا وَهَيْبٌ حَدَّثَنَا هِشَامٌ عَنْ أَبِيهِ عَنْ  
حَكِيمِ بْنِ حِزَامٍ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ  
قَالَ: "الْيَدُ الْعُلْيَا خَيْرٌ مِنَ الْيَدِ السُّفْلَى، وَأَبْدَأْ بِمَنْ نَعُولُ، وَخَيْرُ  
الصَّدَقَةِ عَنْ ظَهْرِ غَنَى، وَمَنْ يَسْتَعْفِفْ يُعِفَّهُ اللَّهُ، وَمَنْ يَسْتَغْنِ  
يُغْنِهِ اللَّهُ."<sup>180</sup>

Meaning: Narrated to us by Musa>bin Isma'îl, narrated to us by Wuhaib, narrated to us by Hisham from his father from Hâkim bin Hizam ra. From the Prophet saw said: "The upper hand is better than the lower hand. One should start giving first to his dependents. And the best object of charity is that which is given by a wealthy pweson (from the money which is left after his expenses). And whoever abstains from asking others for some financial help, Allah will give him and save him from asking others, Allah will make him self-sufficient."

<sup>178</sup>Ibid., 980.

<sup>179</sup>Ibid.

<sup>180</sup>al-Bukhari> *Sûhûh*, II: 139.

2)

حَدَّثَنَا هَذَا أَخْبَرَنَا أَبُو الْأَحْوَاصِ عَنْ بِيَانِ بْنِ بَشْرٍ عَنْ قَيْشِ بْنِ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: "لَأَنْ يَغْدُوَ أَحَدُكُمْ فَيَحْتَطِبَ عَلَى ظَهْرِهِ فَيَتَصَدَّقَ مِنْهُ وَيَسْتَعْنِيَ بِهِ عَنِ النَّاسِ خَيْرٌ لَهُ مِنْ أَنْ يَسْأَلَ رَجُلًا أَعْطَاهُ أَوْ مَنَعَهُ ذَلِكَ فَإِنَّ الْيَدَ الْعُلْيَا خَيْرٌ مِنَ الْيَدِ السُّفْلَى وَأَبْدَأْ بِمَنْ تَعُولُ"<sup>181</sup>

Meaning: Narrated to us by Hanael, narrated to us by Abu>al-Ahwas}from Bayan bin Bishr from Qaish bin Abi>Hāzim from Abu Hurairah said: I have heard the Apostle of Allah said: "If one of you were to get up in the morning and carry firewood on his back, and sell it and meet his own needs from the money and give some away in charity, this would be better for him than coming to a man and begging from him, and either being given something or not. The upper hand (the one which gives) is better than the lower hand (the one that takes), and start with those for whom you are responsible".

3)

حَدَّثَنَا مُوسَى حَدَّثَنَا وَهَيْبٌ حَدَّثَنَا هِشَامٌ عَنْ أَبِيهِ عَنِ الزُّبَيْرِ بْنِ الْعَوَّامِ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَأَنْ يَأْخُذَ أَحَدُكُمْ حَبْلَهُ، فَيَأْتِيَ بِحُرْمَةِ الْحَطَبِ عَلَى ظَهْرِهِ، فَيَبِيعَهَا، فَيَكْفَى اللَّهُ بِهَا وَجْهَهُ، خَيْرٌ لَهُ مِنْ أَنْ يَسْأَلَ النَّاسَ أَعْطَوْهُ أَوْ مَنَعُوهُ"<sup>182</sup>

Meaning: Narrated to us by Musa> narrated to us by Wuhaib, narrated to us by Hisham from his father from al-Zubair ibn al-‘Awwam ra. From the Prophet saw said: "It is better for anyone of you to take a rope and bring a bundle of wood over his back and sell it, and Allah will save his face because of that, rather than to ask the people who may or may not give.

<sup>181</sup>al-Tirmidhi> *Sunan*, II: 94.

<sup>182</sup>al-Bukhari> *Sūhīh*, II: 152.

4)

حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ، حَدَّثَنَا أَبِي، حَدَّثَنَا شُعْبَةُ عَنْ عَاصِمٍ، عَنْ أَبِي الْعَالِيَةِ، عَنْ ثَوْبَانَ قَالَ وَكَانَ ثَوْبَانُ مَوْلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: " مَنْ تَكْفَلَ لِي أَنْ لَا يَسْأَلَ النَّاسَ شَيْئًا فَأَتَكْفَلَ (وَ أَتَكْفَلَ) لَهُ بِالْجَنَّةِ"<sup>183</sup>

Meaning: Narrated to us by ‘Ubaid Allah bin Mu’adh, narrated to us by my father, narrated to us by Shu’bah from ‘Asim, from Thauban, Companion of the Prophet saw said: the Apostle of Allah saw said: “Who will guarantee for me that he will not ask mankind for anything, and I will guarantee for Paradise (in return).”

The decision to live separately between husband and wife does not mean that it is done in a legal manner of divorce (by ruling of the court judge). In this case, when the economic function of a marriage is gone what often transpire is stress and prolonged conflict, leading to one of the spouses leaving his/her partner. The person leaving the other under strained economic situation is usually the man (husband). So under unfavourable economic conditions or poverty divorce is not undertaken, in fact the rate of divorce increases when economic conditions are favourable, for instance during time of harvest. This is because under dire circumstances the person would not be able to afford a legal divorce fee. Or in other words, legal divorce is undertaken when economic conditions are good; conversely, when economic conditions are bad, then what could be done is to merely live separately.<sup>184</sup>

<sup>183</sup> Abu Dawud, *Sunan Abi Dawud* (Bairut: Dar al-Fikr, 1994), I: 385.

<sup>184</sup> Collins, *Sociology of...*, 250-251.

Divorce in urban areas, with more stable level of economy, the issue of economy in husband and wife relationship is not in its discontent or strain, it is found in the trend of modern women possessing aspirations to develop oneself and have a career in the public sphere. This is undertaken by women as a choice so that her life is useful to herself, to the family, religion, and nation. Thus, the Javanese concept of *sepi ing pamrih, rame ing gawe* is still relevant up till today. Although in the current era, men are more open or provide more opportunities for women to have a career, but men still consider that women in this case have chosen to take on double roles.

The double role of women in the middle upper economic class must still be done in alignment to Javanese concept. For instance, if a career woman must carry out a meeting agenda until the afternoon or even late, then she would also have to request permission from the husband. The meeting agenda running till the afternoon or even having to stay over shall not be considered as normality, it must remain to be understood that this will not be a frequently recurring matter. That is why, as a woman, the role undertaken must be aligned to her capacity and there must be compromise with the husband. In this case, the woman must choose and this choice must be right, if it were wrong everyone/everything will be inconvenienced and in disarray (divorce). No matter the case, a wife is *garwa (sigaraning nyawa)* or a slice of the soul (soul mate), meaning a wife must take care of her husband properly, no matter how great and how successful she is, the husband still becomes the priority in a wife's life. Additionally, this is because according to Islamic religion, the husband is the imam.<sup>185</sup>

Different to women, men can attend meetings as long as they want just by calling home and informing that he must be away until night, coming home late or unable to have dinner together. All obstacles in gender

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<sup>185</sup>Tri Mumpuni, "Energi Cahaya" in *Sharing*, 40<sup>th</sup> edition, year. IV April 2010, 23.

issue boils down to how women address them. It will be difficult if she makes it difficult on herself and conversely it will be easy if she takes it easy. The basic principle is to have an easy-going attitude and genuine sincerity, consequently any gender obstacle would be meaningless.<sup>186</sup>

Thus affirms the Javanese women concept of *menang tanpa ngasorake*. Clearly this concept of Javanese women dominance is different to the western women concept which accentuates conflict (revolution) than compromise to win (power and equality). Hoschild –as quoted by DeBiaggi–stated that gender ideology has indeed seeped into the husband-wife relationship, and therefore a formulation on the ideology of marriage roles or duties can be constructed as follow:

- 1) Pure Traditional – women want the identity afforded to her as a domestic worker in the household and the identity afforded to men (husband) as the sole family breadwinners. Additionally, women also prefer less or lower power than men (husbands), and men agree on the matter. In this case, patriarchal values have been internalized by women.
- 2) Pure Egalitarian– mutually, husband-wife couple conduct marriage roles (domestic and public) through voluntary task distribution, or both collaboratively undertaking the two marriage roles in an equal manner.
- 3) Transitional– in this type, women want the identity afforded to her as a domestic worker and person responsible for household activities, as well as assisting the husband in seeking nafkah (public). Even so, the main duty (responsibility) of being the breadwinner of the family remains to be afforded exclusively to the husband. Conversely, men of this type want their wives to be capable of working in the public sphere in order to assist in seeking nafkah, nevertheless he still

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<sup>186</sup>Ibid.

designates the duty (responsibility) of domestic activities exclusively to the wife.

Based on the formulation of the three types of marriage roles ideology above, the concept of *menang tanpa ngasorake* is included in the transitional ideology type. It must be realized that marital relation in this type of ideology is under threat of rupture. Why so? If the marital relation undergoes crisis or conflict caused by economic issues (for the wife) or household activity issues (for the husband), each partner will constantly demand their husband/wife to immediately fulfil their main duties. Subsequently, if each partner is unable to fulfil their duties, what follows is conflict among them and ultimately experiencing relationship crisis which could lead to divorce. Thus the concept of *menang tanpa ngasorake* could become a boomerang to the wife herself, because –once again- the true goal of marriage is to create a tranquil, affectionate, and merciful family that is far from conflict and crisis of husband-wife relationship. Ultimately, traditional and transitional types of ideology cannot be considered as a choice and solution, they may even become a boomerang for each husband and wife, without realizing it they turn it into a tool for controlling each other. Only the egalitarian ideology can keep conflict and crisis away or become a solution in husband-wife relationship.

### C. Conflict Theory in Husband and Wife Relationship

#### 1. Definition of conflict

Conflict can be said as a form of natural dispute produced by individuals or groups of differing ethnicity, because there are differences of attitude, beliefs, values or needs between them.<sup>187</sup> Another definition is that conflict exists because of a prevailing difference which sparks disagreement in the joint decision making process of two parties. In other words,

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<sup>187</sup>Alo Liliweri, *Prasangka dan Konflik* (Yogyakarta: LKiS, 2009), 146.

there remains an alternative which cannot be chosen. This is called substantive or manifest conflict.<sup>188</sup>

Manifest conflict surfaces because there is no agreement or united opinion from the available alternative; hence every conflict definitely has its root. The root of conflict consists of two types: (1) based on criteria of interest and objective; and (2) originating from or caused by beliefs or convictions, theories, or certain assumptions. Generally, the sources or causes of conflict are as follow:<sup>189</sup>

- a. Conflict of value. Most conflict happens because of difference in value. Value is a basis (principle), guide, in which every individual establishes their thoughts, feelings, and actions.
- b. Lack of communication.
- c. Ineffective leadership or unfair decision making.
- d. Incompatibility of role.
- e. Low productivity. Conflict often happens because output and outcome from two or more parties who are working together does not produce benefit from the collaboration. Subsequently, presumptions appear among them.
- f. Change of balance.
- g. Unresolved conflict. Many conflicts occur because of prevailing conflict among two parties which remains unresolved. There is no “mutual apology” and “mutual forgiveness”. This condition is likened to a time bomb which could explode any given time and create a bigger conflict.

A number of the causes of conflict above are preceded or complemented with emotional factor (emotive conflict). If it is still in the

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<sup>188</sup>Ibid., 261.

<sup>189</sup>Ibid., 261-263.

emotive stage, it can still be resolved by paying attention to psychological factors, but it will be more difficult once it is followed by physical actions. This is quite different to substantive or manifest conflict which could be resolved through rational decision making process.<sup>190</sup>

As Loomis stated, and quoted by Alo Liliweri, “Conflict is an ever-present process in human relations”. Human relations can happen anytime anywhere, from the interpersonal, intergroup, and intercommunal, up to international level. Therefore, the frequency of conflict situation always begins in a small scale (micro) up to large scale (macro) in a society between various groups, driven by factors of differences in ethnicity, race, religion, and economy. All of these are developed because of differences in values, convictions, and beliefs, as well as individual or group attitude towards an issue.<sup>191</sup>

Micro conflict or what is called simple conflict is a type of conflict that is still in the emotive stage and it is driven from the feeling of difference in the individual. There are four types of simple conflict:<sup>192</sup>

- a. Conflict of person versus the self, i.e. conflict which happens because what is assumed or expected is not equivalent to reality.
- b. Conflict of person versus another person, i.e. interpersonal conflict rooted in differences in the character of each person.
- c. Conflict of person versus community, i.e. conflict which happens between an individual and community rooted in belief or legal differences.
- d. Conflict of person versus nature, i.e. conflict which happens between one’s existence and the pressure of nature.

Based on the elaboration and types of conflict above, in the context of this research on talaq divorce phenomenon at the PA in Tuban Regency

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<sup>190</sup>Ibid., 263.

<sup>191</sup>Ibid., 263-264.

<sup>192</sup>Ibid., 264-265.

due to economic strain is included as a micro conflict, namely between the husband and wife (family). In this case, it is a conflict of person versus the self, and also conflict of person versus person, as well as conflict of person versus nature (the majority of divorcee's occupation is farmer which is actually unreliable in Tuban Regency due to its rocky natural condition).

## 2. Theory of social conflict in family life

The social conflict approach in analysing family institution is a newer development in family theory, compared to structural functional theory. In this case, the established assumption is that the nuclear family based on personal ownership is the worst form of women oppression. Husband and wife relationship in the family is analogized by Engels as a relationship between the capitalist and proletariat class. Hence, based on the theory of social conflict, relationship that is full of conflict is also found in the family (micro). In accordance to his assumption, every individual tends to fulfil their own self-interest and conflict is constantly prevalent in family life.<sup>193</sup>

Individual unity is not formed through consensus or harmonious principle, it is formed by coercion. The roles institutionalized by the family institution, according to the perception of social conflict, have created a coercive pattern of relations. According to this theory, conflict situation in social life is not considered as something abnormal or dysfunctional, but it is considered as something natural in the social process. The existence of conflict is rooted in the structure and function of the family itself. A husband with his position as head of the family will inevitably cause open conflict with his wife who holds the position of housewife (domestic). This

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<sup>193</sup>Herien Puspitawati, "Teori Konflik Sosial dan Aplikasinya dalam Kehidupan Keluarga" in *Bahan Ajar ke-3: Mata Kuliah Pengantar Ilmu Keluarga*, <http://iirc.ipb.ac.id/jspui/bitstream/123456789/40379/2/teori%20konflik%20sosial%20dan%20aplikasinya%20dalam%20kehidupan%20keluarga.pdf>. (10 October 2010), 26.

is because the underlying assumption is that whoever possesses power will always be considered to oppress whoever is subordinate to his position.<sup>194</sup>

Furthermore, social conflict theory has accused the family institution as an institution which nurtures hierarchical relation considered as oppressive. The superstructure of the family institution is religion, values, and culture. The superstructure is regarded to provide legitimacy to the hierarchical pattern of relations and structures in the family. According to the perspective of social conflict, the individual (woman) should be liberated from the shackles of family, and should be responsible for herself, so that she becomes an individual who is autonomous and independent, and free to pursue self-actualization. One of the means to achieve this is by changing the concept that the head of the family (husband) is the sole breadwinner and protector of the family, because it is not suitable to the conflict model which places the individual as a separate atom from the family.<sup>195</sup>

The social conflict issue which is becoming more prevalent throughout the world, even in Indonesia is the issue of divorce. Indonesia ranks the highest with the highest annual divorce rate compared to other Islamic countries in the world. There are 2 million marriages every year, but sadly the number of divorces has doubled. For every 100 couples getting married, there are 10 couples getting a divorce, and they are generally those who have just married.<sup>196</sup>

In the 2000s there was only 30% talaq divorce, in which the husband divorced the wife, while in 2005 there were 68.5% petitioned divorce, in which the wife petitioned her husband for divorce. In the case of divorce, the number of wives petitioning their husbands for divorce is rising. The causes of these divorces by order among others are household disharmony,

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<sup>194</sup>Ibid.

<sup>195</sup>Puspitawati, "Teori Konflik., 26

<sup>196</sup>Ibid., 28.

economic factor, family crisis, jealousy, polygamy, forced marriage, under-age marriage, and domestic violence or assault. The high rate of petitioned divorce by the wife upon the husband is assumed to be caused by women feeling they possess the same rights as men, or attributed to the current era of globalization.<sup>197</sup>

The main figure in the effort to establish a more synthetic and integrated conflict theory is Randal Collins. His work on sociology of conflict is very integrated, because it is more micro-oriented than the macro conflict theory of Dahrendorf and others. In this case, Collins begins his theory by explaining that the main contribution for a theory of conflict is by supplementing micro level analysis to macro level theory. This –in his opinion- provided understanding that sociology will not succeed if it were only based micro level analysis. Conflict theory cannot achieve anything without social level analysis. However, most conflict theorists believe that social structure exists externally from –and coerced upon- the actors, Collins tends to see social structure more as a pattern of interactions than as an impressive and external unit. Additionally, while most conflict theorists see actors being coerced by external power, Collins is of the opinion that actors constantly recreated social institutions.<sup>198</sup>

Collins effort approaches conflict from an individual perspective, because its theoretical roots lie in phenomenology and ethnomethodology. The application of his conflict theory begins by focusing on the social stratification system because social stratification is the institution which touches on so many life characteristics, such as wealth, politics, career, family, club, community, and lifestyle. Nevertheless, its application on social stratification remains in the spirit of phenomenological sociology. In his opinion, phenomenological sociology is very important as the basis of

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<sup>197</sup> *Ibid.*, 28-29.

<sup>198</sup> George Ritzer and Douglas J. Goodman, *Teori Sosiologi Modern*, translation Alimandan (Jakarta: Kencana Prenada Media Group, 2010), 160-161.

all concepts used to observe daily life because the main object in the study of social stratification is small scale. He views that social stratification, as are all other social structures, can be reduced to the individual level in daily life which mutually interacts according to a patterned method.<sup>199</sup> Subsequently, the idea of social stratification argued by Collings is known as the theory of conflict stratification.

The approach of conflict to stratification can be reduced into three principles. Firstly, Collins believes that individuals live in subjective worlds that they create themselves. Secondly, other individuals have the power to influence or control those who defy them. Thirdly, other individuals often try to control those who defy them, which consequently lead to further interpersonal conflict.<sup>200</sup> Continually, based on this approach, Collins developed five principles of conflict analysis which are applied to social stratification, although he is certain that the five principles can be applied in all sectors of social life, such as relations between the sexes and between various age groups. The five principles are as follow:<sup>201</sup>

- a. Collins believes that conflict theory must focus its attention on real life than abstract formulation. He likened humans to animals which actions are motivated by self-interest, which is observed as a trick to gain benefit so they could attain satisfaction and avoid dissatisfaction. However, different to rational choice and exchange theorists, Collins does not view humans as entirely rational. He conversely admits that humans are vulnerable to emotional temptations in the efforts of attaining satisfaction.
- b. Theory of conflict stratification should thoroughly analyse the material arrangement that influences interactions. In this case, the main variable is resource owned by differing actors. Actors possessing

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<sup>199</sup>Ibid.

<sup>200</sup>Ibid., 163.

<sup>201</sup>Ibid., 163-164.

abundant material resources could challenge or even change existing material obstacles, while actors with limited resources most likely will think and act based on their material conditions.

- c. In a situation of imbalance, the group which controls resources will probably try to exploit the one with limited resources. However, such exploitation does not always lead the advantageous party in that situation of imbalance to make conscious calculations. The exploitative party will solely pursue what they imagine to be in their best interest. In the process they may have taken advantage of the party with limited resources.
- d. Conflict theorists should observe cultural phenomenon such as beliefs and ideas from the viewpoints of interests, resources, and power. There is the possibility that the group with resources and power can enforce their idea system upon the entire community; while the group without resource or possesses the idea system enforced upon them.
- e. Strong commitment to conduct scientific study on stratification and every other aspects of social life. Therefore, a sociologist should not just theorize on stratification but should empirically analyse it, and if possible, comparatively. Ultimately, a sociologist should seek out the cause of social phenomenon, particularly the various causes of every form of social behaviour.

Regarding the application of conflict stratification theory on relations of differing sex and between age groups, Collins explains that family is a conflict arena of differing sex, in which men becomes the winners leading women to be dominated by them and submitting to various unfair treatment. Collins also views the relations between age groups, particularly between the young and the old as an arena of conflict. This idea is different to the theoretical perspective of structural functionalism which views socialization and harmonious internalization in relations between the young and old. Collins tends to look at the resources owned by the various

age groups. In this case, adults have various types of resources, including experience, size, strength, and capacity to fulfil physical necessities of the young. Conversely, one of the few resources that young people possess is physical attraction. This means that young people have the potential to be dominated by adults. However, when they become adults, they acquire more resources and are more capable of confrontation with the escalation of social conflict between the two generations.<sup>202</sup>

Furthermore, in regards to Collins scientific commitment in which sociologist should find the cause of social phenomenon particularly various causes of every form of social behaviour, he has developed the commitment with a set of propositions on relationship between conflict and various particular aspects of social life. A number of those propositions are as follow:<sup>203</sup>

- a. Experience in giving and accepting command is a factor which determines individual's perspectives and actions.
- b. The more a person gives commands, the more he/she will be proud, more confident, more formal, and identify him/herself more with the organization's aspirations and justifies those commands by referring to the organization.
- c. The more a person accepts commands, the more he/she becomes obedient, more fatalistic, more alienated from the organization's aspirations, externally conforms oneself more, be more suspicious of others, think more about rewards that are extrinsic, and amoral.

Another modern theorist, Lewis A. Coser, also created a theory of conflict. His conflict theory is different to Collins'. Coser initiated his conflict theory with a perspective that is ideological or political in nature, i.e. that conflict is positive or tries to combine functionalism and conflict

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<sup>202</sup>Ibid., 164-165.

<sup>203</sup>Ibid., 164.

theory by observing function of social conflict. Contrarily, Collins ignores the ideological level in his conflict theory; he prefers to choose conflict as the focus based on realistic foundation, i.e. that conflict is a central process in social life. Collins view is grounded in his scientific commitment to seek the cause of social phenomenon, particularly various causes of every form of social behaviour. Even so, both have the same focus, namely micro level theory of conflict aside from the macro one.

Coser admitted that some structural arrangements are results of agreement and consensus, which identifies another process, namely social conflict. In discussing various conflict situations, he differentiated realistic and unrealistic conflict. Realistic conflict arises from frustration of specific demands and is pursued as a means toward and from assumptions of participants' possible benefits and is directed at the object of frustration. Employees who are holding a strike against the management is an example of realistic conflict, as long as the management is in power of salary raise and various other labour benefits. Non-realistic conflicts are those not resulting from attainment of antagonistic competition, but from needs to release tension, at least from one of the actors. An example of unrealistic conflict is in intergroup relations in which scapegoating is utilized to illustrate a situation where an actor uses a group substitute as the object of accusation by not revealing their presumptions to the opposing groups.<sup>204</sup>

Coser explained his theory of conflict through a discussion on antagonism in intimate social relations, function of conflict, and conditions influential to conflict with external groups and social group structure, as follows:<sup>205</sup>

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<sup>204</sup>Nasrullah Nazsir, *Teori-teori Sosiologi* (Bandung: Widya Padjadjaran, 2009), 21.

<sup>205</sup>Ibid., 21-23.

- a. Antagonism in intimate social relations. If conflict develops in intimate social relations (micro), then the separation between realistic and unrealistic conflicts are more difficult to maintain. Because the closer a relation is, the bigger the devoted affection is, hence the bigger is the tendency for it to absorb than express antagonism. In secondary relations, such as between business partners, antagonism can relatively still be expressed freely. This cannot happen in primary relations where total involvement of participants would cause expression of such feelings to endanger the relationship. It is paradoxical that the closer a relationship is the more difficult is hostility expressed. However, the more the feelings are pent-up, the more important it is to express them for the sake of maintaining the intimate relation. As a result, when it is no longer bearable then the conflict would really explode, and it may be very deafening.
- b. Function of Conflict. Coser quoted George Simmel's observation results which indicated that conflict may be positive since it can be a tension occurring in the group to establish unity and balance. Furthermore, Coser added that the type of subject issue of the conflict will determine whether a conflict is functional or not. The function of conflict is positive if it does not question basic relations, and its function is negative if it assaults a core value. For instance, if a person conducts marriage because of wanting to become parents, while the partner remains adamant of not wanting children, then the conflict of having or not having children will relate to the agreement on the objective of that very relationship.
- c. Coser is of the opinion that conditions influential to conflict with external group and group structure would assist in affirming structural limitations. Contrarily, conflict with external group can also enhance integration within the group. The level of group consensus before the advent of conflict is the most important mutual

relation in the context of whether the conflict is able to enhance group unity. However, in the case that the basic consensus of a group is low, then external threat could compromise group unity. For instance, research on the impact of depression on the family has shown that families which prior to depression had low internal solidarity will present apathetic response and ultimately break down, while families with high solidarity become stronger.

This research will attempt to combine the two models of conflict theory above. Seen from the commitment of the two respective models, both theories of conflict can be utilized to examine the cause of the talaq divorce conflict phenomenon that is caused by economic pressure in Tuban Regency, specifically in sub B, chapters IV and V. Thus, this research will- truly- be able to find the meaning and truth on the phenomenon of talaq divorce by reason of economic strain in Tuban Regency from the wife's perspective.



## CHAPTER III

### PHENOMENOLOGY AS A METHOD IN FINDING MEANINGS

#### A. Empirical Phenomenology

It is undeniable that in the current era women are the ones who mostly petition for divorce with various reasons, among others in order to maintain her standing for her children, or even because it is the husband who told her to file the divorce.<sup>206</sup> Therefore, in this opportunity, this research attempts to reveal the meaning and essence of the high rate of talaq divorce or husband initiated divorce –which has become an oddity- by reason of economic strain from the wife’s perspective. What is actually experienced and felt by women or wives behind the high number of talaq divorce phenomenon in Tuban Regency PA (Religious Court), which drives men to initiate in filing a divorce by reason of economic strain, in which this reasoning is frequently used by women or wives to file for petitioned divorce. Subsequently, in order to expose the meaning and essence of the talaq divorce by reason of economic strain phenomenon in Tuban Regency PA from the wife’s perspective, a set of methodology in the form of phenomenology is necessary.

According to Kockelmans, the term phenomenology came to use in 1765 in the field of philosophy, specifically through the work of Kant, although it is in Hegel’s era that phenomenology was defined as a technique to construct meaning or essence. According to Hegel phenomenology

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<sup>206</sup>Margaret Robinson, *Family Transformation through Divorce and Remarriage* (London and New York: Routledge, 1991), 74.

refers to knowledge in which knowledge is seen as awareness/consciousness, or a scientific knowledge which tries to illustrate what is actually experienced or acquired, felt, and known by an individual in consciousness and experience at the time something (the phenomenon) is happening. Because what arises based on consciousness is the phenomenon itself or factuality.<sup>207</sup>

The word phenomenon originates from the Greek word *phaenethai*, i.e. to shine, to show, to be manifest or manifest itself. Phenomenology is formed from the word *phaino*. Hence phenomenon means bringing to light (appear), to place into the light (clear), to show itself within itself (its consciousness), and or to show entire events which happened in the now. In other words, phenomenology is knowing or reflecting something to the things themselves. In broad sense, everything which is visible contains or has reasons for its own appearing experience and it could also bring about new knowledge. Phenomenon forms or develops scientific knowledge on man and it is also the basis of all knowledge. Every phenomenon can provide a starting point to conduct research or examination. What we see and think about something is merely limited to what is visible, not what it actually is. That thing in itself is not empty or void of meaning or essence. On the contrary, the thing has provided a significant beginning to knowledge, i.e. to seek valid formulation that is ready to be tested by anyone.<sup>208</sup>

In phenomenology, the reality that is considered important is what people imagine it to be.<sup>209</sup> Phenomenology perspective is the basic concept of qualitative methodology.<sup>210</sup> Because qualitative method allows us to

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<sup>207</sup>Clark Moustakas, *Phenomenological Research Methods* (California: Sage Publication, 1994), 26.

<sup>208</sup>Ibid.

<sup>209</sup>Robert Bogdan and Steven J.Taylor, *Introduction to Qualitative Research Methods: a Phenomenological Approach to the Social Sciences* (New York, London, Sydney and Toronto: a Wikey-Intercience Publication, 1975), 2.

<sup>210</sup>Ibid., 13.

understand a person's standing and to see how that person develops his/her own definition of his/her own world. Therefore, it is as if we are experiencing his/her daily struggle in facing his/her social life.<sup>211</sup>

Intentionality, noema, and noesis are main concepts in phenomenology. Noema is what is experienced, and noesis is how something is experienced or background and the entirety of facts experienced. These two concepts form the meaning of apparent things. The combination of noema and noesis is the intentionality of consciousness. In this case, noema and noesis are inseparable, because in every noema there is always noesis, and in every noesis there is noema. Therefore, the meaning and essence of one's experience can be known if we are able to capture intentionality or noema and noesis from that apparent experience.<sup>212</sup>

There are 2 models of phenomenological approach, namely hermeneutic phenomenology and empirical, transcendental or psychological phenomenology. Regarding hermeneutic phenomenology, Van Manen explained that research on a phenomenon is focussed on life experiences and subsequently interpreted as a life text. In other words, phenomenology is not only an illustration or explanation on experience but also a process of interpretation in which the researcher is the interpreter in order to mediate between several meanings of different life experience within a phenomenon.<sup>213</sup>

As for empirical, transcendental, or psychological phenomenology initiated by Clark Moustakas, it does not prioritize the researcher's interpretation –as hermeneutic phenomenology do- but prioritizes illustration efforts on individual experiences as formerly formulated by Husserl in his phenomenological concept through the concept of epoche. Epoche is a stage in which a researcher must strive to block any personal experiences in

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<sup>211</sup>Ibid., 4-5.

<sup>212</sup>Moustakas, *Phenomenological*, 30.

<sup>213</sup>John W. Creswell, "Qualitative Research Designs: Selection and Implementation" in *The Counseling Psychology*, Vol. 35 No.2, March 2007, 253.

order to attain a new perspective of a phenomenon through research. Furthermore, the term transcendental itself has the meaning of viewing something (phenomenon) right now the same way or how the phenomenon occurred at the time. Although according to Moustakas, to be able to perfectly observe the phenomenon right now exactly the same as when it happened in the past is very difficult to do.<sup>214</sup>

For that reason, Moustakas formulated several stages which should be undertaken in order to conduct approach using empirical phenomenology. Some of those stages are as follow:<sup>215</sup>

1. Identify the phenomenon that will be studied or analysed.
2. Set aside or keep personal experiences away so that it does not influence the researcher's perspective in order to observe a phenomenon as how it was practiced or experienced.
3. Collect data from several people who truly experienced the phenomenon. In other words, phenomenon is seen as an object of experience.
4. Analyse the data collected by reducing the data to find several significant statements or quotes.
5. Arrange those significant statements into the research theme.
6. Compose textural description of several experiences from several people (informants or research subjects), as well as structural description of several experiences covering conditions, situations, or context in which the informant experienced the phenomenon.
7. Finally, create a statement or formulation which consists of textural and structural illustration to attain meaning and essence from the experience.

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<sup>214</sup>Moustakas, *Phenomenological.*, 34.

<sup>215</sup>Ibid., 33-36.

For this research, I chose to use Clark Moustakas empirical phenomenology because his approach concept has systematic steps in conducting analysis and it also indicates how to compose textural and structural description. The phenomenological approach is used in this research because the goal of this research is to find the meaning and essence of talaq divorce by reason of economic strain, which can only be achieved by obtaining data directly from the wives, so the researcher will not be involved in determining its meaning and essence. Essence and meaning, all are formulated based on the experience and understanding of the wives towards the object or the talaq divorce phenomenon.

#### B. Methodology Notes

To determine the location of research, an examination of statistical data available in the Surabaya High Religious Court regarding reports of cases that were granted and given ruling by religious courts throughout East Java based on their types. From the available data it is found that Tuban Regency PA had a higher rate of talaq divorce than petitioned divorce. While PAs other than Tuban Regency all had lower talaq divorce rate than petitioned divorce, which is sensible since it is the era of petitioned divorce.

Subsequently, the data was followed up by directly visiting Tuban Regency PA in order to obtain further data, namely on causal factors of the divorces. Based on the data of the divorces causal factors, it is clear that one of the factors in the high rate of talaq divorce was by reason of economic strain,<sup>216</sup> wherein this reason is frequently used by wives to conduct petitioned divorce. Therefore, it is very interesting to conduct research on talaq divorce by reason of economic strain in Tuban Regency PA,

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<sup>216</sup><http://www.beritakota.net/?p=91>this information has been confirmed directly to the Legal Panmud PA Tuban Regency.

because obviously economic responsibility is shouldered by the husband, but why is it the husband who requested talaq divorce?

Tuban Regency has 20 districts, 328 villages, and 17 localities/ sub-districts.<sup>217</sup> Which district or village became the focus of research was not determined in this research because life and culture of the people in Tuban Regency is very homogenous,<sup>218</sup> and also because this research involved research subjects which in every district on average had their own particular case to analyse. Furthermore, in order to obtain the maximum amount of interview data, interviews needed to be conducted in every district – although not in every village- because adequate and decent research subject was very difficult to find. The difficulty in finding research subject is caused by a number of things, namely the possibility of people who've divorced to reunite, remarry, and move residence for work or because of marriage to people living outside of Tuban Regency.

Based on the reasons above, this research is ultimately limited to talaq divorce by reason of economic factor or economic strain in a period of one year, namely between the month of June 2008 until uly 2009. Consequently, interviews and observations were conducted intensively from the month of December 2009 until July 2010.

The methods used to collect data for this research were interviews, observations, and documentation. Interviews were utilized to find experiences and understandings of wives regarding talaq divorce they experienced. Observation was carried out to reveal life backgrounds of talaq divorcees as citizens of Tuban Regency. And documentation method was

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<sup>217</sup>Seksi Statistik Neraca Wilayah dan Analisis Statistik, *Kabupaten Tuban dalam Angka 2009* (Tuban: BPS Tuban Regency, 2009), 25.

<sup>218</sup>Nur Syam et.al., "Tradisi Keluarga Perempuan Meminang dalam Sistem Perkawinan di Tuban Jawa Timur" in *Laporan Penelitian Kolektif*, based on SK PIMPRO PTA IAIN Sunan Ampel No.: 005/SK/PELITA /SA/ 2001 (Surabaya: Lemlit IAIN Sunan Ampel, 2001), 11.

used to gain information regarding written data which covers annual data report on divorce cases in Tuban Regency PA and also to reveal other secondary data in the form of articles and reports or news from mass media.

I am not originally from Tuban, making it difficult for me to conduct interviews and observations through rocky and mountainous terrains. The continuing rainy season also added difficulty in the landscape because many mud spilt over to the roads and caused them to become very slippery which demanded extreme caution as accidents quite frequently occurred there.

The mode of transport used to reach these regions in order to conduct interviews and observations of talaq divorcees in Tuban Regency was a motorcycle. At times, there were several houses of research subjects located in remote and mountainous areas which only had walking and or rocky pathways making it impossible to ride the motorcycle.

During the interview and observation stage in Tuban Regency, I did not continually remain there, but instead stayed for one week to conduct interviews and observations, then the following week I was scheduled to work as a lecturer at the Kediri State Islamic College. This time was also utilized to transcript voice recording results from interviews and observations. This process continued for approximately eight months. The research was quite time consuming because when some of the research subjects I visited were not present at home which made me visit them again the following day or the day after to conduct interviews and observations.

For this research I only used interview guide which consisted of several questions –not in the form of numerous and structured questions-forwarded to talaq divorcees in order to reveal the meaning of talaq divorce to wives who were divorced by talaq. Subsequently, the interview and questions ran based on stimulation questions in the interview guide. Hence, the role of the researcher in this case was only to listen and let the research

subject tell her story when she was talaq divorced by reason of economic strain.

While visiting the research subjects' residences, I simultaneously conducted observations by viewing their daily life with their children or family, and I often visit the research subjects in their work place; for example while carrying hay to be gathered in a place that has been determined by her employer. I also asked local residents –other than the research subjects- on the prevailing family tradition in the respective villages; for example on the tradition of the son-in-law having to live in the house of the wife's family to "*ngawulo*" or "*kumpulan*". Because based on the conducted interviews, it is telling that the actual cause of talaq divorce was that the husband was no longer comfortable of living together with the parents-in-law and their family. This reason is actually implied in the talaq divorce letter of divorce, that the husband had often lived separately from the wife or had left his wife and lived with or in the house of his own parents for approximately 1 or 2 years.

Actually, my journey in conducting this research or interviews and observations encountered resistance from a number of locals in Tuban Regency, which made the difficulty not only in travelling through the rough terrain but also in confronting these people. For instance, when I asked the addresses of research subjects to local residents they were quite protective and began to question my identity, I was also frequently suspected as a credit developer or debt collector with the question "*saking dealer to mbak?*" and some were even hiding because they were fearful of being claimed for their motorcycle instalments. In such situation I would request assistance from my key informant and was explained that the people of Tuban experienced trauma due to widespread acts of abduction in several villages post the burning of Pendopo Kridho Manunggal and a number of Tuban Regent Haeny Relawati's personal assets which was

caused by public riot on the 29<sup>th</sup> of April 2006. This led them to become suspicious of strangers coming and going in their village.<sup>219</sup>

I have recapitulated talaq divorce cases which happened during one year between the months of June 2008 until July 2009 in Tuban Regency PA. The result of the recap recorded 61 cases of talaq divorce by reason of economic factor or economic strain. In this case, I utilised purposeful sampling, i.e. I conducted my interviews with the research subjects until I was able of gathering data which could form a pattern based on the developed theoretical perspective. Hence, I was not focused on how many research subjects to be interviewed but how much information I succeeded to acquire which made a pattern.

For this research I conducted interviews to as much as 23 wives of the 61 women who were talaq divorced by reason of economic factor. And I conducted interviews of 10 husbands of the 61 men who talaq divorced their wives by reason of economic factor, the small number is because – aside from my focusing on how much information acquired which created a pattern- the research was focused on women providing meaning regarding the experience of talaq divorce, not its meaning to the husbands. Interviews of the husbands were necessary in order to find clarity on the definition of talaq divorce (by reason of economy itself), which is the husband's absolute right. I have placed women as the focus of study in this research and not let it be relegated by legal analysis.

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<sup>219</sup> Tuban Riot 1/HM Aswin/Kompas.co.id-29 April 2006 also explained in an article titled "Sabtu Membara di Bumi Ronggolawe": "the fire which burned and ravaged Pendopo Kridho Manunggal and a number of Tuban Regent Haeny Relawati's personal assets initiated by the public riot on Saturday (29/4) has long been extinguished. The Regional General Election Commission has also announced the final result of the voice count which affirmed the victory of Haeny-Lilik Soehardjono. Nevertheless, the political situation in Tuban Regency as of current still conceals cinders and trauma."

All the names of the research subject –although only their initials not full names are used- are as follow:

**Table III.1.**  
Names of Research Subject

No.	Initials	Age	Status	Period of Marriage	Case Number	Address
1	LL	44 yo	Ex-wife	24 years	2385/Pdt.G/ 2009/PA.Tbn	Bektiharjo Village, Semanding District
2	KC	23 yo	Ex-wife	2 years	1002/Pdt.G/ 2008/PA.Tbn	Bektiharjo Village, Semanding District
3	AK	25 yo	Ex-wife	3 years	2245/Pdt.G/ 2009/PA.Tbn	Semanding, Village, Tuban District
4	SKT	56 yo	Ex-wife	20 years	517/Pdt.G/ 2009/PA.Tbn	Baturetno, Locality, Tuban District
5	STA	34 yo	Ex-wife	8 years	2181/Pdt.G/ 2008/PA.Tbn	GadonVillage, Tambakboyo District
6	SU	35 yo	Ex-wife	23 years	2085/Pdt.G/ 2008/PA.Tbn	SotangVillage, Tambakboyo District
7	SM	33 yo	Ex-wife	11 years	764/Pdt.G/ 2009/PA.Tbn	Kumpulrejo Village, Parengan District
8	MP	32 yo	Ex-wife	13 years	630/Pdt.G/ 2009/PA.Tbn	Bogorejo Village, Merakurak District
9	STM	18 yo	Ex-wife	3 years	626/Pdt.G/ 2009/PA.Tbn	Nguruan Village, Soko District
10	SI	17 yo	Ex-wife	1 years	415/Pdt.G/ 2009/PA.Tbn	Ngandong Village, Grabagan District
11	TA	37 yo	Ex-wife	21 years	2172/Pdt.G/ 2008/PA.Tbn	Ngarum Village, Grabagan District
12	MS	37 yo	Ex-wife	17 years	364/Pdt.G/ 2009/PA.Tbn	Kaligede Village, Senori District
13	IM	22 yo	Ex-wife	3 years	354/Pdt.G/ 2009/PA.Tbn	Penidon, Village, Plumpang District
14	SMD	25 yo	Ex-wife	4 years	2141/Pdt.G/ 2008/PA.Tbn	Jatimulyo Village, Plumpang District
15	SKW	29 yo	Ex-wife	1 years	869/Pdt.G/ 2008/PA.Tbn	PenidonVillage, Plumpang District
16	NK	20 yo	Ex-wife	1 years	2064/Pdt.G/ 2008/PA.Tbn	Bangilan Village, Bangilan District

17	LRD	29 yo	Ex-wife	3 years	1499/Pdt.G/ 2008/PA.Tbn	Banjarworo Village, Bangilan District
18	KS	18 yo	Ex-wife	1 years	1560/Pdt.G/ 2008/PA.Tbn	Bangunrejo, Village, Rengel District
19	KSD	32 yo	Ex-wife	2 years	1355/Pdt.G/ 2008/PA.Tbn	Gaji Village, Kerek District
20	LK	25 yo	Ex-wife	6 years	1154/Pdt.G/ 2008/PA.Tbn	Margorejo Village, Kerek District
21	SWA	23 yo	Ex-wife	5 years	1239/Pdt.G/ 2008/PA.Tbn	Wotsogo Village, Jatirogo District
22	MW	30 yo	Ex-wife	2 years	282/Pdt.G/ 2008/PA.Tbn	Ketodan Village, Jatirogo District
23	DJ	37 yo	Ex-wife	21 years	1165/Pdt.G/ 2008/PA.Tbn	Saringembat Village, Singgahan District
24	DS	25 yo	Ex- Husband	2 years	2410/Pdt.G/ 2009/PA.Tbn	Saringembat Village, Singgahan District
25	AS	25 yo	Ex- Husband	2 years	2245/Pdt.G/ 2008/PA.Tbn	Semanding Village, Tuban District
26	MC	21 yo	Ex- Husband	1 years	415/Pdt.G/ 2009/PA.Tbn	Pekuwon Village, Rengel District
27	MSS	28 yo	Ex- Husband	9 years	186/Pdt.G/ 2009/PA.Tbn	Tobo Village, Merakurak District
28	SS	21 yo	Ex- Husband	1 years	182/Pdt.G/ 2009/PA.Tbn	Prunggahan, Kulon Village, Semanding District
29	FR	33 yo	Ex- Husband	3 years	1499/Pdt.G/ 2008/PA.Tbn	Sendang Village, Senori District
30	PR	28 yo	Ex- Husband	9 years	1326/Pdt.G/ 2008/PA.Tbn	Gaji Village, Kerek District
31	KS	34 yo	Ex- Husband	6 years	1154/Pdt.G/ 2008/PA.Tbn	Margorejo Village, Kerek District
32	AC	27 yo	Ex- Husband	2 years	1002/Pdt.G/ 2008/PA.Tbn	Prunggahan Wetan Village, Semanding District
33	SD	31 yo	Ex- Husband	10 years	2020/Pdt.G/ 2008/PA.Tbn	Bektiharjo Village, Semanding District

The method of analysis in this research covers three stages: (1) phenomenological reduction, (2) imaginative variation, and (3) synthesis between textural and structural description. These three stages of analysis

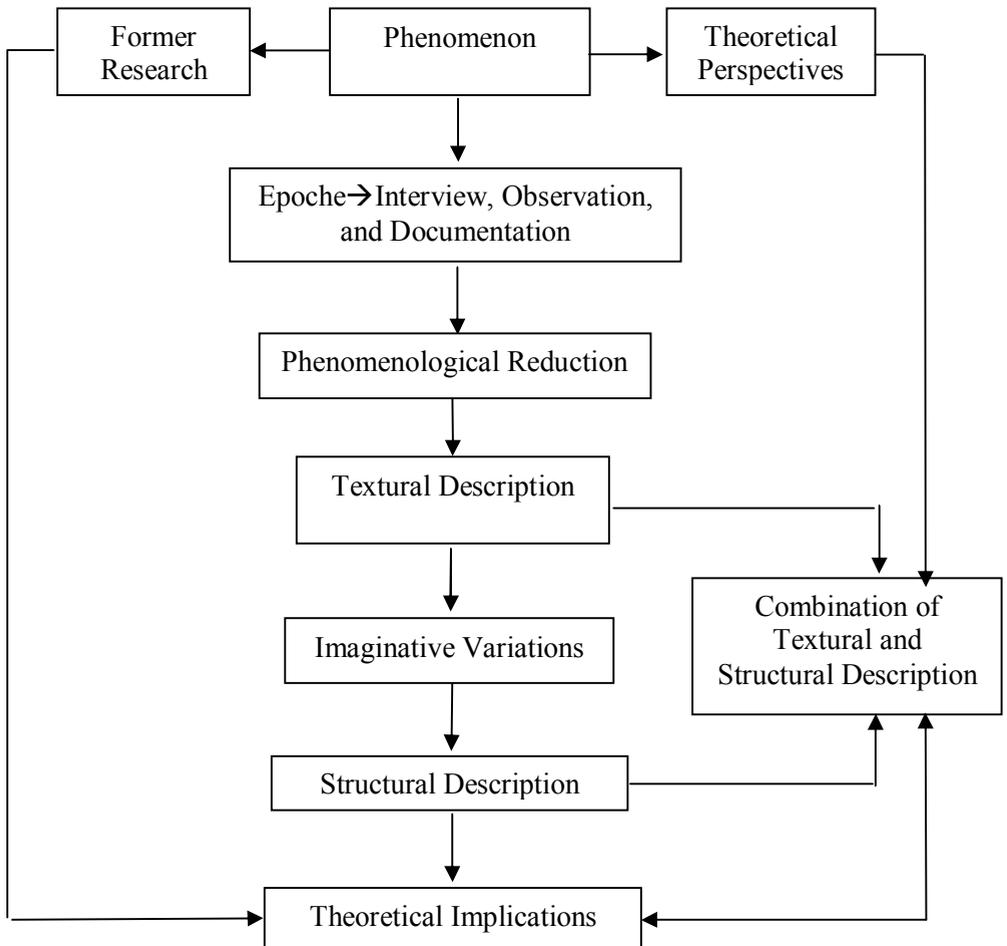
had to be conducted, because of the existence of various understandings, then phenomenological reduction in alignment with the theme must be carried out, so that a single horizon or significance/meaning can be obtained, or what is known as a universal textural description. Subsequently, with the different understandings and experiences in textural description a list of structural quality (imaginative variation) is made in the experiences of each research subject. Then these differing understandings and experiences are put into the research theme in order to obtain a structural illustration from each research subject. The synthesis between the textural and structural description, is namely the final stage to combine textural and structural descriptions in order to create a synthesis or to combine several understandings and essence of a phenomenon or experience.<sup>220</sup>

To simplify the understanding of the entire research process, the following figure is presented:

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<sup>220</sup>Moustakas, *Phenomenological...*, 180-182.

**Figure III.1.**  
**Process of Empirical Phenomenology Research**





## CHAPTER IV

### MATRILOCAL RESIDENCE AND TALAQ DIVORCE CASES IN TUBAN REGENCY

#### A. Tuban Regency's Geographic Location, Demographic Conditions and the PA's Area of Jurisdiction

##### 1. Geographic location

Tuban is one of the Regencies located in the northern shores of Java and its position is situated in the western most region of East Java Province. The region which is very well-known for its *siwalan* fruit and special traditional *tuak* (palm wine) is located at: 111.30 degrees to 112 degrees East longitude and 6.4 degrees to 7.18 degrees South latitude with a distance of 130 km from the East Java Provincial Capital of Surabaya. The borders of Tuban Regency are as follow:<sup>221</sup>

To the North : Java Sea

To the East : Lamongan Regency

To the West : Rembang and Blora Regencies (Central Java)

To the South : Bojonegoro Regency

The area of Tuban Regency generally consists of two types of terrains which are limestone mountainous areas in the south and seashore areas in the north. Because of this advantageous geographical condition Tuban Regency has high potential in the development of limestone industry, as apparent in Districts such as Plumpang, Rengel, Soko, Jatirogo

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<sup>221</sup>Syamsul Hadi Thubany et.al., *Partisipasi Semu: Keterlibatan Warga dalam Pembangunan Desa* (Tuban: Bina Swagiri-CSSP, 2004), 35.

and others. Additionally, Tuban is highly potential for developing fisheries industry both inland and offshore, wherein Tuban has a shoreline spreading for 65 km with sloping seas and reefs, as well as a deeply recessed sea which is ideal to open shipyards and harbour or wharf for industrial purposes or fisheries base. According to the available data Tuban Regency's entire area is 183,994.562 Ha, which consists of agricultural land 54,860.531 Ha (29.82%) and dry land 129,134.031 Ha (70.82%).<sup>222</sup>

Physically, the area of Tuban Regency is positioned at 0-500 meters above sea level and can be distributed into four parts in terms of regional development strategy, namely:<sup>223</sup>

- a. The North Area which is a shoreline area with the potentiality to cultivate marine products and industries, keeping in mind the lack of productivity in development of agricultural activities.
- b. The Central Area which is a potential area for agriculture and mining or quarrying materials (some are limestone which has potential to be used as raw material for the cement industry).
- c. The East Area is an area where the Bengawan Solo River flows through making it potential for developing of agricultural land.
- d. The South Area which is a fertile area with potentiality for developing agricultural land.

As explained above Tuban Regency's agricultural land is 29% and its dry land is 70.28% which means that most of the region is relatively dry, making it very dependent on rainfall or flow of river. Regarding the condition of its soil, it can be distributed into three types, namely:<sup>224</sup>

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<sup>222</sup>Ibid., 36.

<sup>223</sup>Ibid., 41.

<sup>224</sup>Ibid., 41-42 Seksi Statistik Neraca Wilayah dan Analisis Statistik (ed.), *Kabupaten Tuban dalam Angka* (Tuban: BPS Kabupaten Tuban, 2009), 8.

- a. Mediterranean red yellow soil, originating from lime stone deposits in the hills to mountain regions (30% of entire region), is found in the Districts of Semanding, Montong, Kerek, Palang, Jenu, part of Tambakboyo, Widang, Plumpang, and Merkurak.
- b. Alluvial soil, originating from sediments in land areas and basin (34% of entire region), is found in the Districts of Tambakboyo, Bancar, Tuban, Palang, Rengel, Soko, Parengan, Singgahan, Senori, and Bangilan.
- c. Grumusol soil, originating from rock sediments in undulating areas (5% of entire region), is found in the Districts of Bancar, Jatirogo, and Senori.

As one of the seashore cities, in addition to having a broadmarine area (Java Sea), Tuban Regency also has a vast land area covering approximately 1,858.40 Km<sup>2</sup> which is distributed into several sub-regions: (1) residential areas = 205.72 Km<sup>2</sup> (11.07 %); (2) agricultural areas = 573.86 Km<sup>2</sup> (30.88 %); (3) dry soil agricultural areas = 514.48 Km<sup>2</sup> (27.86 %); (4) plantation area = 3.41 Km<sup>2</sup> (0.18 %); (5) productive forest area = 438.86 Km<sup>2</sup> (0.45 %); (6) protected forest area = 8.30 Km<sup>2</sup> (0.45 %); and (7) other areas 113.77 Km<sup>2</sup> (6.12 %).<sup>225</sup>

Observed from its geographical position, Tuban Regency's region can be grouped into three regions:<sup>226</sup>

- a. Shoreline region, with the majority of the population residing along the North shoreline starting from the West (Bulu Village Bancar District) all the way to the East (Ngaglik Village, Palang District), wherein most of the residents' occupation is fisherman.
- b. Semi shoreline region, i.e. the region positioned in the middle, between the shoreline and the mountains (such as the Districts of

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<sup>225</sup>Ibid., 42.

<sup>226</sup>Ibid., 42-43.

Widang, Plumpang, Semanding, Merakurak, and Kerek). The distance of this region to the shoreline is approximately 5 Km.

- c. Inland region, i.e. the region positioned in the Southern part of Tuban (lime stone mountainous area which was formerly a high quality teak forest area), such as the Districts of Soko, Bangilan, Parengan, Jatirogo, Rengel, Kenduruan, Singgahan, Senori, and Montong.

Tuban Regency consists of 20 districts, 328 villages, 909 hamlets, 1.749 RW (Community/Ward Group), dan 6.683 RT (Neighbourhood Group). The respective districts are as follow:<sup>227</sup>

**Table IV. 1.**  
Districts, Villages or Localities as the District Capital,  
Number of Villages, Hamlets, RW and RT in 2008

No.	District	Village/ Locality as District Capital	Number of Villages/ Localities	Hamlets	RW	RT
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Kenduruan	Sidomukti	9	27	46	186
2	Bangilan	Bangilan	14	44	120	324
3	Senori	Sendang	12	30	67	241
4	Singgahan	Mulyoagung	12	36	56	177
5	Montong	Montongsekar	13	47	77	259
6	Parengan	Parangbatu	18	51	63	273
7	Soko	Sokosari	23	60	114	584
8	Rengel	Rengel	16	44	75	369
9	Grabagan	Grabagan	11	36	46	228
10	Plumpang	Plumpang	18	52	113	500
11	Widang	Widang	16	47	67	363
12	Palang	Glodok	18/1	58	114	456
13	Semanding	Bejagung	15/2	55	177	571

<sup>227</sup> Seksi Statistik Neraca Wilayah dan Analisis Statistik (ed.), *Kabupaten Tuban*, 25-26.

14	Tuban	Latsari	3/14	7	102	351
15	Jenu	Beji	17	51	81	225
16	Merakurak	Sambonggede	19	51	101	378
17	Kerek	Margomulyo	17	43	78	334
18	Tambakboyo	Sobontoro	18	42	65	217
19	Jatirogo	Wotsogo	18	59	104	362
20	Bancar	Banjarejo	24	69	83	285
	<b>Total Amount</b>	<b>20</b>	<b>328</b>	<b>909</b>	<b>1,749</b>	<b>6,683</b>

## 2. Demographic Conditions

Tuban Regency with an area of 1.839,94 Km<sup>2</sup>, based on the 2008 Population Census, has a population of 1,137,708 people, consisting of:<sup>228</sup>

- a. Male population : 560,649 people or approx. 49.3 percent.
- b. Female population : 577,059 people or approx. 50.7 percent
- c. Population density : 618.3 people per km<sup>2</sup>

Regarding the development of population in Tuban Regency in the period of 5 years (2004-2008) is as follows:<sup>229</sup>

**Table IV.2.**  
Population Growth in Tuban Regency from 2004 to 2008

No.	Year	Male	Female	Total	Growth
(1)	(2)	(3)	(4)	(5)	(6)
1	2004	508,132	534,586	1,042,718	0.26 %
2	2005	522,120	551,989	1,074,109	3.01 %
3	2006	557,115	567,393	1,124,508	4.69 %
4	2007	555,607	571,809	1,127,416	0.25 %
5	2008	560,649	577,059	1,137,708	0.91 %

<sup>228</sup> Ibid., 40

<sup>229</sup> Ibid.

Based on the table above, it can be ascertained that the average population growth rate in Tuban Regency is 1.82% with a population density of 618 people per km<sup>2</sup>. Regarding population distribution in each of the districts can be observed in detail in the following table:<sup>230</sup>

**Table IV.3.**  
Population Distribution in Districts in 2008

No.	District	Land Area (km <sup>2</sup> )	Total Population (people)	Average Population Density/km <sup>2</sup>
1	Kenduruan	85.73	27,188	317
2	Bangilan	77.27	51,836	671
3	Senori	78.39	42,014	536
4	Singgahan	79.05	39,253	497
5	Montong	147.98	52,035	350
6	Parengan	114.45	52,928	459
7	Soko	96.88	84,555	832
8	Rengel	58.52	58,092	985
9	Grabagan	54.13	36,450	674
10	Plumpang	86.52	77,324	890
11	Widang	107.14	47,396	443
12	Palang	72.70	78,032	1,026
13	Semanding	120.99	94,278	774
14	Tuban	21.29	81,268	3,820
15	Jenu	81.61	49,576	597
16	Merakurak	103.77	54,178	522
17	Kerek	136.55	64,141	470
18	Tambakboyo	72.97	38,673	530
19	Jatirogo	111.98	54,029	479
20	Bancar	112.36	54,462	485
	<b>Total Amount</b>	<b>1,839.94</b>	<b>1,137,708</b>	<b>618</b>

<sup>230</sup>Ibid., 40-41.

The above explanation provides an actual illustration that Tuban Regency has reached a significant level of population density. Even in approximately ten to twenty years to come Tuban will have reached a level of population density that is predicted to increase rapidly. It is predicted the rate of growth is in accordance to the flow of migrating population from outside the region who are seeking commercial economic resources along with the development of Tuban Regency's industrial area that began in the early 90s as an extension of the Surabaya city and its surrounding industrial areas.<sup>231</sup>

Based on its geographical position, Tuban Regency is distributed into three areas: (1) shoreline area; (2) semi shoreline area; and (3) inland area. The villages in the shoreline area are dense residential areas with patterns of communality bonds that are relatively different to residents living along the limestone mountain areas in the south part of Tuban. The shore residents are more open or *blak-blakan* and are notorious for shopping (*lagi along*). Other characters that usually signify shore residents are that they have a cosmopolitan cultural motif and are permissive to changes.<sup>232</sup>

The second area, i.e. semi shoreline area, has most of its population working as seasonal fishermen, if they are no longer busied by work in cultivated or dry fields. To these people, going out to sea is not the main occupation, it is merely a part time job to fill in the period gap after planting paddy or harvest is done.<sup>233</sup>

The third one is the inland area, in which most of its inhabitants work by planting in lush agricultural fields or in arid land areas. However, there are also those who devote themselves to cultivating inland fisheries

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<sup>231</sup>Thubany et.al., *Partisipasi*, 40-41.

<sup>232</sup>Ibid., 42-43.

<sup>233</sup>Ibid., 43.

because there are quite a few who've succeeded in making it into a reliable profession to support the family livelihood.<sup>234</sup>

The following is a table explaining the number of inhabitants above 15 years of age who are working according to their main types of employment:<sup>235</sup>

**Table IV. 4.**  
The Number of Population above 15 Years Old who are Employed According to the Main Sectors of Employment in 2008

No.	Main Sectors of Employment	2006	2007	2008
(1)	(2)	(3)	(4)	(5)
1	Agricultural Farming	271,507	270,199	296,236
2	Mining and Quarry	15,578	18,120	25,058
3	Industry	55,223	55,473	32,853
4	Constructions	27,120	26,275	27,842
5	Trade	84,826	83,300	96,889
6	Transportation & Communication	21,116	18,907	20,603
7	Services	37,367	40,932	49,558
8	Others	4,813	6,046	7,795
	<b>Total Amount</b>	<b>517,550</b>	<b>519,342</b>	<b>556,834</b>

Based on the table above, it is observed that the main type of employment favoured by the population is farming. This is because of the aptness of Tuban's land conditions that is indeed dominated by agricultural land, both cultivated land or dry land, and plantation. Therefore, this also means that the majority of the Tuban population works in the agricultural sector. Actually, the agricultural sector is inappropriate and doesn't need to be relied on, bearing in mind that Tuban's regional condition is relatively arid. Hence, the condition of the available agricultural lands is mostly

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<sup>234</sup>Ibid.

<sup>235</sup>Seksi Statistik Neraca Wilayah dan Analisis Statistik (ed.), *Kabupaten Tuban*, 44.

usable only to cultivate plants that are suitable for dry land and dependent on rainfall.<sup>236</sup>

Nevertheless, the choice to work as a farmer is included as one of the solution for some residents who have low education level and are not accommodated in the industrial sector or other sectors which demand specification of special expertise. The residents who live along the shoreline areas generally work as fishermen because the marine sector also do not demand special expertise, what is most important is the courage to roam the turbulent waves of the ocean. Unfortunately, in the marine sector, most fishermen in the Tuban area remain using traditional catching tools, and have not developed in the direction of marine exploitation which utilizes sophisticated catching equipment supported by a modern marine produce management system in the process.<sup>237</sup>

Additionally, regarding transportation, for residents living in district level regions it is no longer an issue, in terms of transport facilities and viable roads that are run by public transport. This is because each district already has asphalt roads and public transports provide daily service to commuters from villages who intend to travel to the regencies. Conversely, some residents living in remote villages still experience a little difficulty in access to mobility going in and out of their regions due to the lack of land transportation and communication facilities available there.<sup>238</sup>

In most of the literatures it is said that Tuban is a regency with a relatively old age of history. According to existing historical records, this city of saints (*wali*) was built along with the history of the early development of the prominent Kingdom of Mojopahit. To be specific, this shore city of trade with its old wharf (Bom) was established on the 12<sup>th</sup> of November 1293, which is the date of the promotion of Ronggolawe Regent

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<sup>236</sup>Thubany et.al., *Partisipasi*, 51.

<sup>237</sup>Ibid.

<sup>238</sup>Ibid., 43.

as *Adipati Manca Negerain* Kadipaten Tuban.<sup>239</sup> Furthermore, Tuban was also the centre for the proliferation of Islamic teaching, in which it got its name as the city of saints. Hence it is not surprising if the majority of its population are Muslims. Additionally, Tuban is also well known for having many Islamic boarding schools.<sup>240</sup>

Regarding education level, generally elementary school (SD) graduates are the majority. Meaning the number of SD graduates who continued to the intermediate school (SMP) level are much smaller than the number of SD graduates, and so forth up to the higher education (SMA or university) level. However, this condition continues to improve since 2007 –although it is also accompanied by the increase in population- i.e. the number of SD graduates continuing to higher education level is rising. Therefore, most of the school graduates in the population of Tuban from 2006 and prior is dominated by SD graduates.<sup>241</sup>

In addition to that, the waxing and waning of economic and social conditions in Tuban Regency is heavily influenced by the issue of social welfare, which is an unending national issue in Indonesia. The following is a table on the number of people with social welfare issues in 2005 – 2008:<sup>242</sup>

**Table IV .5.**  
People with Social Welfare Issues according to its Types in 2005-2008

No.	Type	2005	2006	2007	2008
(1)	(2)	(3)	(4)	(5)	(6)
1	Abandoned Children	5,302	5,937	7,692	7,719
2	Child Delinquents	402	814	501	506

<sup>239</sup>Ibid., 42.

<sup>240</sup>See Seksi Statistik Neraca Wilayah dan Analisis Statistik (ed.), *Kabupaten Tuban*, 82, 83,85.

<sup>241</sup>Ibid., 62-63 and Seksi Statistik Neraca Wilayah dan Analisis Statistik (ed.), *Kabupaten Tuban dalam Angka* (Tuban: BPS Kabupaten Tuban, 2005), 64-65.

<sup>242</sup>Ibid., 90.

3	Prostitutes	252	287	-	-
4	Vagrants	151	176	367	151
5	Victims of drug abuse	72	91	62	55
6	Disabled	2,348	2,438	5,782	5,783
7	Ex-sufferer of chronic disease	3,546	3,582	1,449	1,451
8	Abandoned senior citizens	5,465	6,005	3,320	3,250
9	Socially economically vulnerable women	6,980	7,695	9,193	9,148
10	Poor families	90,940	102,215	102,188	102,098
11	Family with unlivable housing	4,440	4,390	5,416	5,417
12	Victims of natural disasters and other calamities	-	-	-	-
13	Street children	166	92	149	304
14	Ex-convicts	246	261	210	225
15	Family with Socio-psychological problems	324	444	31	34
16	Community living in disaster prone areas	5,230	5,256	2,496	1,891
17	Psychotic vagrants	17	12	12	27
18	Disabled children	892	929	1,381	1,429
19	Female victims of violence	2	1	2	14
20	Senior citizen as victims of violence	1	-	-	-
21	HIV/ AIDS patient	1	-	-	-
22	Vulnerable families	10,386	10,914	8,041	8,068

Based on the above table it can be observed that several categories of people with social welfare issues are quite high. Among these categories are poor families, vulnerable families, abandoned children, abandoned senior citizens, socially economically vulnerable women, family with unlivable housing, and family living in disaster prone areas. This shows that

the amount of population undergoing economic hardship is quite significant.

### 3. Religious Court Area of Jurisdiction

The history of the establishment of Tuban Regency Religious Court (subsequently Tuban PA) cannot be separated from the establishment of Religious Court as a whole. Its historical classification can be divided into 4 periods:<sup>243</sup>

#### a. Pre-colonial period

Formally, Tuban PA was non-existent in the pre-colonial period. However, substantially it was already in existence. This is indicated by availability of an officer (in charge), i.e. a Muslim headman. The decision rulings were also still very simple, and mostly were fatwa in nature. Even so, the ruling was acknowledged by the community at that time period.

#### b. Colonial period from the Dutch to the Japanese

During this period, Tuban PA was formally still non-existent. Then on the 19<sup>th</sup> of January 1882 based on Stbl. 1882 No. 162, Tuban PA was established under the name *Raad Agama* Tuban. Based on evidence of hand written rulings in 1931, *Raad Agama* Tuban since its establishment in 1882 until the period of independence had not had its own office, it was a part of the administration in Kadipaten Tuban. In the pre-independence period, all religious courts in Indonesia had not known the term head (officer) as its leader, what was more well-known was the term Qadhi Syar'i. In the history of Tuban PA, K.H. Dahlan was a well-known Qadhi Syar'i.

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<sup>243</sup><http://www.pa-tuban.net/sejarah-pengadilan-agama-tuban>. (29 March 2009)

c. Independence period

Based on the source of M. Syuhud (ex-court clerk of Tuban PA), *Raad Agama* Tuban was still operational during the early period of independence. The institution was led by, in order of appearance (without being able to say the years), K.H. Muchid Maksum, K.H. Mustakim, and K.H. Syakur until 1957. Since 1957, *Raad Agama* Tuban began to be led by a head officer named K.H. Moertadji and had its office in one of the rooms of the ball building (former Dutch-owned meeting room) located in the west of the town square and the Tuban Masjid Jami'. From 1968 to 1973, Tuban PA was headed by Kiyai Damiri and was still using the same room. Aside from PA which was located in one of the rooms of the ball building, Tuban Department of Religious Affairs was also held office in one of the other rooms in the ball building. Hence both Tuban PA and Tuban Department of Religious Affairs both held office in the same building.

d. Implementation of Law No. 1 Year 1974 period

Since the implementation of Law No. 1 Year 1974, to be exact on the 2<sup>nd</sup> of January 1974, the Tuban PA system became better. At the time Tuban PA was headed by oleh Sudig, BA. Additionally, in 1978 to be exact, the physical condition of Tuban PA became better. This is indicated with the construction of a new building on Sunan Kalijogo Street No. 27, Tuban. The office building was built with funds from the central government (Department of Religious Affairs).

With the implementation of Law No. 1 year 1974, the amount of cases in Tuban PA increased, because this regulation has provided wider authority to the Religious Court. This is why in 1983 Tuban PA constructed an extension of the Meeting Hall or the Tuban PA office building with funds from the central government.

Tuban Regency with an area of 1,839.94 Km<sup>2</sup>, based on the 2008 Population Census, has a total population of 1,137,708 people, consisting of:<sup>244</sup>

- a. Male population : 560,649 people or approx. 49.3 percent.
- b. Female population : 577,059 people or approx. 50.7 percent
- c. Population density : 618.3 people per km<sup>2</sup>

Regarding the above population, it is a basis in determining classification or in determining class for first level courts. Based on Religious Affairs Ministerial Decree No. 73 Year 1993 on the Establishment of Religious Court Class, it was determined that Tuban PA is included as Religious Court (PA) Class 1A, i.e. class of the first order within the classification of first level courts. The criteria used in determining classes for religious courts are:

- a. Location of the PA
- b. The number of cases per year processed by the PA
- c. Population density in the PA's area of jurisdiction.

The Tuban PA's area of jurisdiction covers the entire area of Tuban Regional Regency Level II, East Java, which consists of 20 districts, 328 villages, 909 hamlets, 1,749 RW, and 6,683 RT. The distance of Tuban PA's area of jurisdiction to each village measured from the position of Tuban PA can be observed in the attachment of this research.

## **B. Talaq Divorce in Tuban Regency**

### **1. General outlook on talaq divorce in Tuban Regency**

Based on data collected in the book *Naskah Evaluasi dan Analisa Statistik Perkara Msy/PTA dan Msy/ PA Seluruh Indonesia Selama Tahun 2001-2005*, is shows that -observed from the types of cases given a ruling-

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<sup>244</sup>Seksi Statistik Neraca Wilayah dan Analisis Statistik (ed.), *Kabupaten Tuban.*, 40

the most decided divorce cases at the national level were petitioned divorce cases, as much as 432,592 cases. Meanwhile, talaq divorce numbered as much as 281,151 cases and other cases were only 68,053 cases.<sup>245</sup>

Data on the number of petitioned divorce and talaq divorce types cases in PA throughout East Java, covering 37 PA, based on Report of Cases Accepted and Decided according to its Types in Religious Court in the entire East Java year 2006 – 2008 is as follows:<sup>246</sup>

- a. In 2006, the number of talaq divorce was as much as 17,394 cases or 38.8% and petitioned divorce as much as 27,386 cases or 61.2%.
- b. In 2007, the number of talaq divorce was as much as 18,340 cases or 38.6% and petitioned divorce as much as 29,229 cases or 61.4%.
- c. In 2008, the number of talaq divorce was as much as 21,737 cases or 37.9% and petitioned divorce as much as 35,630 cases or 62.1%.

Hence it can be summarized that the amount of petitioned divorce type cases throughout East Java was bigger than talaq divorce type cases. Nevertheless, there were three PA with number of talaq divorce type cases higher than the petitioned divorce type cases, namely Bangkalan PA, Situbondo PA and Tuban (Regency) PA. Among the three PA the one with the most significant difference between the amount of petitioned divorce and talaq divorce was Tuban and Bangkalan PA. For this reason I consider the phenomenon of the high rate of talaq divorce in an era of petitioned divorce is very interesting to examine. However, between these two significant cases, I chose to research the high talaq divorce phenomenon in Tuban Regency because based on an interview with Tuban PA Legal Section Junior Clerk, Drs. Mat Busyiril, MH., divorce cases –both talaq

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<sup>245</sup> [www.badilag.net/data/Naskah%20Statistik%20perkara.pdf](http://www.badilag.net/data/Naskah%20Statistik%20perkara.pdf). (2009)

<sup>246</sup> Laporan Perkara yang Diterima dan Diputus menurut Jenisnya pada Pengadilan Agama se-Jawa Timur Tahun 2006-2008.

divorce and petitioned divorce- in Tuban PA is dominated by reason of economic strain.<sup>247</sup> The reason of economic strain is a common reason that is frequently used by wives to request for petitioned divorce. Meanwhile the phenomenon of talaq divorce by reason of economic strain is something unusual and unique, because economic responsibility is shouldered by the husband himself.

The high rate of talaq divorce phenomenon in Tuban Regency has been occurring since 2001.<sup>248</sup> In this case it is in fact the husbands who initiated in using reason of economic strain in submitting his talaq divorce, and not the wife with her petitioned divorce rights. Additionally, according to common practice, economic strain is often used as a reason to file for petitioned divorce by the wife. Why didn't the wives in Tuban (Regency) initiate in filing petitioned divorce by reason of economic strain? For this reason, I am interested in conducting phenomenological analysis of talaq divorce in Tuban Regency, East Java from the wives' perspectives. Even so, the husbands' perspectives are also significant to be explained as written in the facts of the case in their talaq divorce request letters. In addition to that, I have also confirmed on these facts of the cases through my interviews with some of the husbands who carried out talaq divorce by reason of economic strain.

During the harvest season, the amount of divorce cases in Tuban PA increases. At this time, the Tuban community who mostly work as farmers who intend to register for divorce (either talaq divorce or petitioned divorce) can afford down payment for the case fee which amounts to Rp 419,000. Furthermore, Legal Section Junior Clerk, Drs. Mat Busyiril, MHexplained that the rise in divorce cases in 2007 was also influenced by the rise in the price of gasoline on the 24<sup>th</sup> of May 2007. In 2007, the

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<sup>247</sup>Legal Section Junior Clerk, Tuban Regency PA, *Interview*, Tuban, 15 August 2009.

<sup>248</sup>Laporan Perkara yang Diterima dan Diputus menurut Jenisnya pada Pengadilan Agama se-Jawa Timur Tahun 2006-2008.

month of February saw 147 divorce cases decided, March had 151 cases, April decreased to 145 cases, and May increased to 189 cases.<sup>249</sup>

Although the factor in the increase of the divorce rate in Tuban is the advent of harvest season, the main reason for husband and wife to end their family life remained dominated by economic considerations, third party intervention (husband has another woman or wife has another man), no responsibility, disharmony, and arranged marriage. Additionally, the factor of domestic violence in psychological form has also become a consideration for husband and wife to end their marriage.<sup>250</sup>

All cases of divorce submitted in Tuban PA can be said to have almost all ended in dissolution of marriage, although they've actually undergone through mediation process in advance. In this case, the concerning parties only strived to advocate for their rights, such as *nafkah 'iddah* and *mut'ah*.<sup>251</sup> Based on PERMA (Regulation of the Ministry of Religious Affairs) No. 1 year 2008, every case must indeed go through a mediation process. If it doesn't then the ruling will be null and void by law. However, because divorce cases are a matter of the heart or an emotional matter and are often times very subjective, then almost in all divorce cases mediation were unsuccessful. This is in line to one of the principles of Collins' conflict theory, which explained that humans are vulnerable to emotional influence in their effort to attain satisfaction. Moreover, according to Coser, although intimate conflict (between husband and wife) tends to be pent up, it will ultimately be unbearable. Subsequently, this could cause a very fatal emotional outburst, i.e. dissolution (divorce). Conversely, mediation conducted for inheritance cases are very effective

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<sup>249</sup>News document, *Perceraian di Tuban Meningkatkan*. Beritakota.net

<sup>250</sup>Ibid.

<sup>251</sup>Legal Section Junior Clerk, Tuban Regency PA, *Interview*, Tuban, 13 May 2009.

because it only involves issue of material justice, or its objectiveness is highly probable to be upheld.<sup>252</sup>

Talaq divorce request letters submitted by husbands to the Tuban PA by reason of economic strain has various forms of reasoning. The 60 cases of talaq divorce that were successfully collected showed 17 variants of reasoning due to economic strain which is based on the case facts that they wrote in the letter of request:

- a. The wife left the husband without consent and never returned, never sent news, and she was never satisfied with the husband's income.
- b. The husband left the wife, because he felt he has worked as hard as he could and has given his income to her but could not provide for decent necessities.
- c. The husband returned to his parents' house because the wife always felt the nafkah provided for by the husband was lacking although he has given his entire income to his wife after reduction to pay for the motorcycle's credit instalments. Additionally, since the beginning the wife's mother didn't agree to the marriage, leading the husband to always be ignored during his stay at the wife's parents' home.
- d. The husband returned to his parents' house. The wife did not want to live in the husband's parents' house, but she formerly promised him that she would live with his parents once they're married. The wife felt the nafkah provided by the husband was insufficient.
- e. The husband returned to his grandfather's house. The wife could not properly manage money and every time he inquired about it she got mad.

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<sup>252</sup>Interview, on the 22<sup>nd</sup> of June 2009, with one of the Tuban PA judges Drs. Anshori, SH. who is the only Tuban PA judge with legal certification from the Supreme Court to be a mediator.

- f. The wife returned to her parents' house. She felt the naskah provided by the husband was insufficient.
- g. The husband returned to his parents' house. The husband suffered typhus, causing him to be unable of working too hard and leading the wife and family to dislike the husband. The husband had requested the wife to live with his parents but she objected because she was prohibited to by her parents.
- h. Husband and wifeseparated from bed and board. The wife felt naskah was not sufficiently provided by the husband because he often fell ill and could not work too hard.
- i. The husband returned to his parents' house. The husband has worked as hard as he could and provided his income to the wife but still could not provide for adequate living necessities.
- j. The husband was driven away from home and returned to his parents' house. The husband as a farm worker seldom worked causing the wife to often feel her necessities were unfulfilled. Or the husband and wife separated bed and board. The husband has worked as hard as he could to fulfil family needs but the wife always felt it was lacking and was never accepting of the husband's naskah provision. The husband was driven away by the wife and she often asked for divorce.
- k. The husband returned to his parents' house. The wife got angry and had driven him out of the house because he only gave her Rp 350.000.,
- l. The wife returned to her parents' house. The husband owed debts to others for daily necessities but the wife did not want to know about it and she did not help the husband in returning the debts but scolded him instead because of making debts.
- m. The wife asked to return to her parents' house. She was no longer comfortable living in the husband's parents' house because she

couldn't bear leaving her parents. The wife felt nafkah was insufficient because his income is used to buy phone credit and cigarettes.

- n. The husband returned to his parents' house. He has worked as hard as he could but the wife is never satisfied with his nafkah provision. The wife's parents often compare the husband's income with their neighbours.
- o. The husband returned to his parents' house. The wife was always unaccepting of his nafkah provision or always demanded more and often request for divorce (*wis aku pegaten wae tinimbang uripku ora enak*).
- p. The husband returned to his parents' house. The husband was lazy to work so they often fight on a daily basis and the wife requested for divorce. On May 2008, the wife, being upset, went and stayed at her friends' house without telling the husband for two days.
- q. The husband returned to his parents' house. The husband's occupation as farm worker with unpredictable income caused the husband to not be able of providing decent nafkah for his wife. Every time they had an argument, the wife would often ask to be divorced. On the 20<sup>th</sup> of April 2008 the wife drove the husband out of their mutual house.

From the 17 types of talaq divorce reasons based on economic strain above, they could basically be categorized into 3 types of basic reasoning. The three types are:

- a. The husband was unable to provide for adequate life necessities.
- b. The wife left the husband, whether to return to her parents' house or to work out of the city or abroad.
- c. The husband no longer felt comfortable living in his wife's parents' house because he's compared to their neighbours or because he had

to *ngawulo* (be subservient), while the wife was also unwilling to live together in her husband's parents' house.

## 2. Husbands' understanding of talaq divorce by reason of economic strain

The talaq divorce according to DS was because there was a family problem, in which the wife was not satisfied with the husband's *nafkah*, causing her to often be upset. No matter how much she was given it was still insufficient, every month she received Rp 400,000,- worth of *nafkah*. The wife was asked to live with his parents but she didn't want to as well. She even insisted on going to work in Jakarta although prohibited by him. When she got to Jakarta she asked for him to be "*dirasaki*" (divorced). Responding to the matter, DS said:

*Saya sebagai suami melihat isteri yang begitu, tidak ada perubahan dan kesadarannya, merasa tertantang. Telah bertahan sampai 3 tahun ternyata isteri tidak kunjung berubah meskipun telah saya nasehati. Akhirnya, dari pada tidak tenang, maka saya mengabulkan permintaan cerainya, meskipun dengan berat hati. Kalau seorang isteri minta cerai, maka suami harus menuruti atau mengabulkannya jika memang sudah tidak dapat dipertahankan lagi, karena talak atau cerai merupakan tanggungan suami. Talak atau cerai adalah berpisah karena tidak cocok. Isteri yang baik menurut agama dan masyarakat adalah yang menurut atau taat pada suami selama tidak melanggar aturan negara dan agama.* (As a husband seeing such a wife, no change and no understanding, I felt challenged. I have persevered for 3 years and she has not changed although I have given her advices. Finally, rather than feeling unsettled, I granted her request of divorce, although with a heavy heart. If a wife asked to be divorced, the husband should obey or grant it if indeed the marriage is no longer manageable, because talaq or divorce is the responsibility of the husband. Talaq or divorce is separation due to incompatibility. A good wife according to religion and society is one who is obedient or

compliant to the husband as long as it doesn't violate religious or state regulations.)<sup>253</sup>

While according to AS, talaq divorce (divorce from the husband side before the Religious Court) is three times talaq, i.e. talaq which no longer has the opportunity to reconcile again, because if you want to live with your ex-wife again then you must wait for her to remarry with another man and be divorced from him. He said that talaq divorce is three times talaq because the first talaq is separation of bed, second talaq is separation of board, and third talaq is divorce before the court. In his opinion, talaq divorce is an involuntary act not a seasonal tradition, but he himself had undergone through divorce because –in this case- his wife did not want to accept his barely sufficient nafka which was the result of his income. Furthermore, he said that the ideal wife is like the wife of the Prophet SAW; pious, obedient to the husband, and willing to accept nafka according to the husband's capability.<sup>254</sup>

The cases above were different to the one experienced by MC. He was uncomfortable living in his parent-in-law's house, and his wife was also unwilling to live in her in-laws' house (the husband's parents), so there was no solution. The wife's mother often prohibited her from going to MC's parents' house. Finally MC had to leave his wife to work in Jakarta, and upon his return from Jakarta he asked her to live together, but she did not want to because her parents prohibited her to. MC was no longer comfortable living with his in-laws, because he was only working "dangir" and "ganco", so he couldn't buy cigarettes. When the wife had the chance to live in MC's parents' house, she requested to go to her parents' house because she had missed her younger sibling, but subsequently she did not want to return to MC's parents' house again. This is because her mother

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<sup>253</sup>DS, *Interview*, Tuban, 27 March 2010.

<sup>254</sup>AS, *Interview*, Tuban, 9 February 2010.

wanted her to help take care of her younger siblings who were still little and under five years old, so that her mother could work “*ganco*”. MC even imitated his mother-in-law’s saying: “*timbang bojomu ra gelem ganco, senengane mburuli*” (rather than your husband who doesn’t want to plough the field and prefers to work manual labor). What his mother-in-law said is admitted as true by MC because he wants to produce direct cash so he could buy cigarettes or provide food and clothing for his wife. When MC went to work leaving his wife, his father-in-law came to his parents’ house and only met his elder brother. The wife’s father then conveyed that rather than being in this condition it is better to “*ndang resiko wae*” (quickly settle it by divorce). Hence, in the end MC felt challenged and so that he is not accused of “*ngewer*” (abandoning) a person, he agreed to divorce his wife upon the request of his father-in-law.<sup>255</sup>

The case experienced by MSS is another matter. In his opinion, talaq is a result of strife, misunderstandings, and incompatibility. A good wife is one who is obedient to her husband, understands the husband’s condition which is undergoing hardship and is tolerant of his behaviour, because as he mentioned: “when I was well-off she accepted me, but after I had fallen she did not, and finally we fight daily.” MSS had a mediation session before but it did not produce a solution. In his opinion, talaq is actually an act which is haram but allowed, since there was no other way out, he was forced to take make that choice. MSS actually wanted to preserve the marriage but his wife kept asking to be divorced up to three times, subsequently on the third time MSS actually took action (divorced her) which was initiated by living separately bed and board for 2 years. Before the court, MSS had also said that his wife frequently asked him to divorce her. When the examiner inquired on the likely reason for his wife not being present in court which led the judges to take a default judgement, MSS

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<sup>255</sup>MC, *Interview*, Tuban, 26 March 2010.

replied: “the wife would come to the PA if there is discussion of joint property/assets distribution.”<sup>256</sup>

A more direct case is one experienced by SS. He divorced his wife because she demanded adequate nafkah from him and SS felt incapable of fulfilling it, then –based on his grandmother’s counsel- he decided to settle the matter at the PA rather than having to fight and hurt her wife. One of his grandmother’s advice was that “*wong wedok kuwi nggone kalah, dikapak-kapake wong lanang sing kudu ngalali*” (women are always defeated, no matter how you look at it, it is men who must submit), hence – although the economic strain the wife endured was no longer bearable for her- the husband should settle it in the PA.<sup>257</sup>

Another form of reasoning where a husband was not comfortable living in his in-laws’ house is the case experienced by PR. PR said:

*Kanti biasa mawon kulo megat piyambake, lha nopo wong piyambake dewe sing nyuwun pegat. Kene sebagai wong lanang nggih kulo turuti. Adat mriki memang menghendaki mantu lanang manggon ten griyane morotuwo, tapi nggih kulo suwi-suwi pun mboten krasan, trus piyambake nggih mboten purun kulo jak mantuk ten griyane tiang sepuh kulo piyambak. Nggih ngoten niku umume Kerek.*<sup>258</sup>

What is meant above is that PR divorced his wife not with a heavy heart, because she had often asked to be divorced. PR as a man felt challenged and hence decided to actually divorce her. Aside from PR not working or being lazy to work, it was also because PR was no longer comfortable living in his in-laws’ house, in which it is indeed customary that the son-in-law should live with his parents-in-law (*ngawulo*), while the wife conversely was not willing to live in her husband’s parents’ house. Hence, no solution was found between the two and the matter ended at the PA.

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<sup>256</sup>MSS, *Interview*, Tuban, 13 February 2010.

<sup>257</sup>SS, *Interview*, Tuban, 10 February 2010.

<sup>258</sup>PR, *Interview*, Tuban, 13 February 2010.

A definition of talaq was also given by KS regarding the talaq divorce he submitted by reason of economic strain. In this case, KS said that “*Talak niku nggih cerai kerono sering tukar padu, trus pun mboten remen lan mboten cocok malih. Isteri sing sae nggih sing saget sak wontene. Perasaan kulo megat piyambake nggih biasa-biasa mawon. Lha nopo, wong pas tukar padu piyambake sering ngomong nyuwun pegat. Nggih biasane tukar padu masalah ekonomi niku.*”<sup>259</sup> What is meant is that in his opinion talaq is a divorce for having frequent strife and also because the couple no longer like each other and are incompatible with one another. A good wife in his opinion is one who can accept the husband’s economic condition as it is or one that doesn’t demand more than what is provided by the husband. KS divorced his wife without a heavy heart because while they were arguing she often asked to be divorced. Usually the cause of the fight was economic issues.

Another definition of talaq was also stated by AC in the divorce case that he submitted to the PA. AC explained that talaq in Indonesia is divorce. There are three talaq: talaq 1, talaq 2 and talaq 3. Furthermore, AC said:

*Sing wajib nalak niku adalah suami. Suami nalak niku enten beberapa sebab; antara lain isteri mboten cocok dan masalah ma’ishah atau isteri terhadap penghasilan suami mboten trimo. Karena talak niku halal tapi mboten diremeni Gusti Allah, trus suatu masalah mboten enten jalan keluare dan sudah dirembug, maka dengan terpaksa suami menjatuhkan talak. Nek dipertahankan, niku namine nganingoyo, sebab isteri pun mboten kuat malih, senahoso kulo taksih pingin terus. Sak derenge kulo sebagai suami pun berusaha menasehati isteri, bahkan nate kulo tinggal mantuk ten tiang sepah kulo damel medekke, trus kulo dipuruki keluargane, trus mencoba bersama kembali tapi isteri tetep mengungkapkan perasaan mboten kuat melalui surat (tulisan). Trus kulo matur ten keluargane dan ternyata keluarga (pihak isteri) siap mberesi hubungan suami isteri niki. Jan-jane kulo*

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<sup>259</sup>KS, *Interview*, Tuban, 13 February 2010.

*taksih dereng sumerep sebab pastine isteri tidak cocok kalih kulo. Trus kulo mantuk ten tiang sepah kulo malih, lan kulo entosi ngantos 2 tahun kok dereng beres, kulo merasa digantung, terpaksa kulo sing memasukkan surat permohonan cerai talak ten PA, trus ternyata saged putus kanti putusan talak 2.*<sup>260</sup>

Meaning, the person who should divorce or carry out talaq is the husband with several reasons, among others because the wife no longer feels compatible with the husband or the wife cannot accept the husband's income. In his opinion talaq is a halal act that is frowned upon by Allah SWT, however because there is a problem between husband and wife with no solution although it has been discussed, then the husband will be forced to apply his talaq. AC applied his talaq because if the relationship was maintained then he would have committed an act of oppression (zalim) to his wife. His wife was no longer able to bear living together as husband and wife with him, although AC actually still wanted to continue their family life. Previously, AC as a husband had given advice to her, he even left his wife to return to his parents' house in order to intimidate her (*medekke*). Finally the wife's family came to his parents' house and asked him to return to the wife's family's house. And AC tried to live together again, but the wife kept on revealing her feelings through writing on her inability to live together with him. Subsequently AC conveyed the condition of his household to the wife's side of the family, and the wife promised to settle the matter themselves through the PA. But the petitioned divorce effort they promised was not realized and AC felt suspended and AC involuntarily submitted or proposed a talaq divorce letter of request to the PA and ultimately it was decided with talaq 2 ruling.

In addition to that, there is still another understanding, as stated by SD that the talaq he applied was because he no longer favours his wife,

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<sup>260</sup>AC, *Interview*, Tuban, 9 February 2010.

because his wife was too defiant against him. He was also often challenged by his wife to divorce her, so he had done what she said. This was said by SD to the court examiner: “Yes I just divorce her. As a man I felt extremely challenged. My talaq divorce request to the PA is the second time. The first was rejected by the PA because my wife did not want to be divorce. A wife should be obedient to the husband and should not be jealous.”<sup>261</sup>

In this case SD felt a bit reluctant to divorce his wife because he had maintained his family for 10 years along with his wife and only child. He is also aware that talaq or divorce is actually not good according to prevailing customs.<sup>262</sup> The reason he used to file his talaq divorce request letter to the Tuban PA was because he felt he had worked as hard as he could and had given his income to his wife but it still wasn't able to fulfil sufficient life necessities. Subsequently, strife between the two was unavoidable and his wife asked to be divorced.<sup>263</sup>

Thus, basically the understanding of talaq divorce by reason of economic strain according to the husbands –as petitioners- in Tuban is that it was an involuntary (forced) act and it was the responsibility of the husband to divorce the wife because the wife felt unsatisfied with her nafkah or with what was provided by the husband. Subsequently, this led to strife and misunderstandings which often caused the wife to ask to be divorced, and the husband conversely became challenged to do it or actually decided to divorce her.

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<sup>261</sup>SD, *Interview*, Tuban, 10 February 2010.

<sup>262</sup>Ibid.

<sup>263</sup>Case statement in the document on divorce cases verdicts Tuban PA no. 2020 on the 17<sup>th</sup> of November 2008.

### 3. Wives' textural meanings and descriptions on talaq divorce by reason of economic strain.

Different to the meanings or understanding of talaq divorce by reason of economic strain provided by the husbands above, which was viable to be summarized into one meaning from the various existing ones, the meanings provided by the wives tended to provide several different meanings or tended to be difficult to summarize into a single meaning.

The term meaning in this research is referred to the determined conflict theory, to be exact practical implications of some of Collins conflict theory, in which a sociologist should find the cause of social phenomenon (micro), particularly various causes of every form of social (conflict) behaviour. Therefore, in this case meaning is identical with actual motive or cause of talaq divorce (conflict) by reason of economic strain. This is also in accordance to the background and problem statement determined in the beginning. Regardless of the above argumentation, meaning is indeed defined by Weber as "identical with the motive for action. Even so, Schutz did not entirely agree with him. In Schutz opinion, meaning as identical with the motive for action is just one of the existing definitions of meaning. He tends to define meaning as a reflective glance which could provide understanding on past experience and signify as something very meaningful (the reflective glance singles out an elapsed lived experience and constitutes it as meaningful).<sup>264</sup>

It can be affirmed that what is meant by textural meaning in this research is significant quotes obtained from descriptions of what were actually experienced by wives. The significant quotes in this research are in the form of motive or reason. Thus is the case with structural meaning which are significant quotes obtained from description of how things were actually experienced by wives or what context was set as its background.

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<sup>264</sup>Malcolm Waters, *Modern Sociological Theory* (London: SAGE Publications Ltd, 1994), 32-33.

The statements of wives who were talaq divorced by reason of economic strain in Tuban Regency on the meaning of talaq divorce are categorized into several textural meanings as follow:

a. The wife who felt abandoned by the husband

This meaning can be observed from the talaq divorce case which was experienced by STA, a 34 year old wife, when she was talaq divorced by her husband. In this case, STA did ask to be divorced because the husband could no longer provide the family needs sufficiently and he was lazy to work. It is untrue that STA refused to live with the family or at the husband's parents' house. STA was actually not the initiator of the divorce, she asked for divorce because the husband often said "*pegat-pegat*" up to 3 times. In her opinion, saying "*pegat*" too frequently can cause difficulty in seeking food and clothing (sustenance).<sup>265</sup>

STA's divorce to her husband was the second one, and she no longer wants to reconcile. The first divorce she requested from her husband by reason of insufficient provision of necessities and her husband often "*merdalan*" (go out of the house for vague purposes). At the time my husband only worked in the field and it was not rewarding because he was lazy. STA at the same time was still working in the factory as a cook (for ± 7 years), the husband was constantly jealous and in the end she decided to quit. But after STA quit work, as it turned out the husband remained lazy to work and kept on *merdalan* as well as drinking or getting drunk.<sup>266</sup>

Actually, when they still had one child, the husband was still willing to work, but after the second child he became lazy. When their second child was born, he did work in Kalimantan for ± 7 months, but he never sent money at all. Moreover, every time he got drunk, STA and her husband often argued, and at the time they were having arguments he would often

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<sup>265</sup>STA, *Interview*, Tuban, 29 March 2010.

<sup>266</sup>*Ibid.*

say the word *pegat-pegat* (divorce-divorce), ultimately STA asked for a divorce. When she was divorced, STA was given a *nafkah 'iddah* amounting to Rp 500,000.- which is in accordance to the husband's capacity, which should have been more than that, because at the time STA had to sustain her two children who were aged 7 years 5 months and 2 years respectively. In her opinion, a good husband is one who can provide the needs of his two children and not *beneko-neko* (drinking or getting drunk).<sup>267</sup>

When I asked STA regarding having to live in the wife's parents' house, she explained that in the family there is a tradition of "*kumpulan*" (living and working with the in-laws). In this case, usually the *ruju* (last) child is the one "*dikumpul*" or "*dikawulani*" (followed or depended on) or it depends which family has less family members and which has more. Subsequently the family chosen to be *dikawulani* would be the one with less family members. Formerly at the beginning of the marriage, STA lived in the house of the husband's parents, because her family had many members, and when her younger siblings were no longer with her parents, she finally returned home to *kumpulan* with her parents. When STA asked to be divorced, her husband and his family agreed directly without discussion. Currently –after the divorce- STA works as a traveling snack vendor and sometimes sells fish. Her ex-husband has married another woman. She hasn't remarried, not because of being traumatized to marry again, but because she is not thinking about the matter at the moment due to her business in simultaneously taking care of the children and working. As of current, since the divorce, her ex-husband no longer takes care of the children or visits them.<sup>268</sup>

In the case of SM, a 33 year old wife divorced by her husband, she stated that the reason her husband divorced her was "*tirose pun mboten*

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<sup>267</sup>Ibid.

<sup>268</sup>Ibid.

*sanggup malih nafkahi*" (he said that he could no longer provide nafkah). It should be known that after marriage, both of them lived in SM parents' house. When the husband lived in SM's parents' house or his parents-in-law, this meant the parents-in-law or SM's parents must provide him with employment, i.e. take him to work the field, because SM's parents are farmers. In other words, he must help his parents-in-laws to cultivate the field, and the result of his helping them was used by the parents-in-law to build the two of them a home, which construction just finished 5 years into the marriage.<sup>269</sup>

According to SM, the husband is the one responsible to seek nafkah, although she herself also worked the field together with him. During their marriage, arguments were a common thing. Several years before the last two years, the husband still provided her with nafkah, while the last two years -after residing for 7 months in the house built by the parents-in-law- SM was "*digantang*" (abandoned or not provided with nafkah), because the husband did not want to work in the field any longer because he was not strong enough to work the field. Since the last two years, he did not want to return to SM's (parents') house. During the two years, he had worked in Irian Jaya (Papua) and after working there for 1 year, he returned and had given a mere Rp 50,000.-. Subsequently, he went to work in Irian Jaya again and another year he returned and gave Rp 100,000.-. Seeing his husband's behaviour who had worked for 2 years and only giving her Rp 150,000.-, SM was no longer able to live together as husband and wife under the existing conditions (the husband being irresponsible and she felt "*digantang*") and she had asked him to divorce by saying: "*luwih apik resiki wae*" (it's better to just divorce me).<sup>270</sup>

SM chose to live alone or be separated from her husband because she felt living alone is much better than having to endure mental pressure,

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<sup>269</sup>SM, *Interview*, Tuban, 27 March 2010.

<sup>270</sup>Ibid.

because of thinking about her husband's irresponsible behaviour. Additionally SM was very concerned with the future of her children, they could also be abandoned if she constantly thinks about her problem and not pay attention to them. In her opinion, the choice of divorce was the best one, because "*tinimbang ra diopeni ra diingoni, yo piye apike resiko wae*" (rather than not being cared and provided for, what's best is to just divorce). Being abandoned by her husband was a real shock for SM. She thinks that her husband no longer wanted to live with her anymore. While through divorce or after divorce then she thought that "*badhe nopo-nopo tiang jaler misale badhe nikah malih pun mboten gadah tanggungan*" (if the husband wants to do anything such as remarry then he has no more responsibility to SM). Or in other words, SM was not expecting or demanding his responsibilities anymore, and her mind is no longer forced to think about her husband's behaviour or acts. Hence SM could be calm and only focus her mind on the needs or education of her children and her work.<sup>271</sup>

SM is a woman who is tenacious and firm regarding life issues which she encounters. In her opinion, the divorce to his husband was carried out properly or based on mutual agreement. During the divorce process, SM always attended every one of her divorce trial at the PA, only at the end of the husband's talaq pledge reading was she not able to be present because her baby was ill. The divorce decision afforded her with naskah in the amount of mere Rp 1,000,000.-. Initially she asked for Rp 2,000,000.- as her unpaid naskah, but her husband was unable to pay and based on her considerations that the case might not be quickly decided, and rather than

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<sup>271</sup>Ibid.

not be given anything at all, she finally agreed to Rp 1,000,000.- as her unpaid nafkah.<sup>272</sup>

SM added that a good husband is one who is responsible, such as in regards to nafkah and the children's school fee according to his capacity, as long as he is not lazy. Furthermore, when the examiner asked regarding the possibility of remarrying, calmly and firmly she replied that she isn't traumatized so that she would not marry again if she were to meet the right person. After the divorce, she remained dedicated in paying for her children's schooling from the result of her job as a farm worker. Conversely, after the divorce, her ex-husband never again takes care or visits the children.<sup>273</sup>

A bit different to the two previous cases, namely what has been experienced by STA and SM, who tend to show firmness and resolution in facing their divorce, MP, a 32 year old wife, when she was divorced by her husband, faced the divorce with surrender. What she had experienced, MP stated "*Wong pake niki mboten ngurusi, selama ten mriko mboten di-cukupi, trus kulo mantuk tanpo pamit. Wong kulo niku bojo ke-2, bojo pertamane nggih taksih setunggal dusun nanging pun dipegat. Beritane, pake niki pun nikah malih kalih isteri pertamane niku sak wise kulo mantuk. Pas pake niki megat kulo, isteri balene niku pun mbabarne*".<sup>274</sup>

What is meant by her statement is that MP as a wife had run away from the husband's house because she felt abandoned. She was the second wife to her husband, the first wife was divorced and still lived in the same village with her husband. When MP ran away to her parents' house, her husband remarried or reconciled with his first husband, even when he was

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<sup>272</sup>Ibid.

<sup>273</sup>Ibid.

<sup>274</sup>MP, *Interview*, Tuban, 13 February 2010, while MP was working as a farm worker, gathering hay in the field accompanied by her 10 year old child who does not attend school.

submitting their talaq divorce request letter, the first wife who he had remarried already gave birth.

When I further asked her regarding her absence in every divorce trial, MP stated: “*wong kulo niku mboten patos saget ngomong, tiwas mengke mbulet, trus mboten ndang beres-beres, kulo dipegat nggih ikhlas mawon*” (I am not able to express myself well or I am the quiet type, and rather than (the case) turning complicated and causing the divorce process to not be quickly settled, I simply accepted to be divorced).<sup>275</sup>

It was the same case for SWA, she was talaq divorced by her husband when she was 23 years old, wherein prior to the divorce they argued about the issue of daily sustenance. Before the divorce they were living together in SWA’s parents’ house. Her husband worked as a handyman in Surabaya. SWA formerly worked along with her friend as a make-up stylist for weddings and always returned home late. Knowing that she comes home quite late her husband became jealous and forbid her to continue working as a make-up stylist for weddings, although her husband’s income alone was not sufficient to fulfil their daily needs.<sup>276</sup>

Since then, they both started fighting, up to the point that SWA’s mother agreed to take care of their child and told her to go with her husband to work in Surabaya. But the husband did not agree if SWA went along him working in Surabaya. SWA became uneasy because every time her husband came home from work he complained that handyman work in Surabaya is scarce rendering him with insufficient income. Conversely, when her husband had significant income, SWA was not provided for properly. Regarding the matter SWA explained: “*lek rejo dinggo tuku-tuku dewe wat-wet*” (when there are lots of jobs he would use his earnings to buy his own necessities).<sup>277</sup>

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<sup>275</sup>Ibid.

<sup>276</sup>SWA, *Interview*, Tuban, 21 February 2010.

<sup>277</sup>Ibid.

In order to remain obedient to her husband, because his income did not cover expenses for daily necessities, SWA worked “*kerok aqua*” (taking the lid off recycled mineral water bottle) at Pak Sabari’s with very minimum wage. Even so, their argument on the issue of *nafkah* which would have caused or triggered their divorce remained unavoidable. The peak of the argument was when her husband came home from Surabaya with Rp 100,000.-and a new mobile phone bought in Surabaya. At the time the Rp 100,000.-was given to SWA as *nafkah* or grocery money, but since her husband wanted to go back to work in Surabaya and he did not have cash on him at all, he had to ask for transport money from SWA. It was not that she did not want to give her husband money, but it was already spent, hence SWA had no choice but not to give her husband any money.<sup>278</sup>

Because she did not give him money, her husband finally commented: “*wong awakmu yo kerjo kerok aqua di pak Sabari, mosok duwit Rp 100,000.- wis entek*” (but you also work as a mineral water bottle lid opener, how could Rp 100,000.- be all spent), as imitated by SWA. It did not stop there, SWA replied: “*Hp-mu dol wae, sisane pe’en*” (why don’t you sell your mobile phone for transport fee, you could keep the rest for yourself then, I won’t ask for any). The husband answered: “*yen tak dol aku gak iso tuku meneh*” (if I sell this I won’t be able to buy another one), imitated SWA. After the argument the husband immediately “*nyenda!*” (pulled) SWA’s necklace, because he felt it was bought using his hard earned money, SWA couldn’t accept his attitude and tried to fight back, her husband immediately beat, hit, and kicked her.<sup>279</sup>

This act of assault or violence was witnessed directly by SWA’s mother. Seeing her daughter being beaten by her husband, she drove him out of the house immediately, although she felt remorseful afterwards. Her mother’s remorse surfaced when she realized that they have a child.

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<sup>278</sup>Ibid.

<sup>279</sup>Ibid.

Consequently SWA's mother wanted them to reconcile, but SWA was already heart broken and said to her mother: "*luwih apik aku ndang diresiki wae*" (it is better for me to be divorced quickly). Conversely, her husband's family bad mouthed and spread around SWA's family problems to neighbours by saying: "*wong wedok ora kenek ditata, wis tak kon ngresiki wae*" (she's a wife who can't be controlled, I'll just tell my son to divorce her soon), in which the rumour reached the ears of SWA and her family. Soon after, the story had aggravated SWA's parents and responded to it by saying: "*yen gablek duwit yo ndang diresiki ra sah kakean cangkem*" (if you do indeed have money, go and divorce her then, don't just talk about it).<sup>280</sup>

Actually, when SWA's father was still healthy prior to having a heart attack and when he was still working as a driver, her husband was still well behaved because all of his child and wife's (SWA) needs were still shouldered by his father-in-law. But since SWA's father had a heart attack, her husband became dissenting because he felt that his earnings were used up. Her husband was being "*cumpen*" (miser or cheapskate), he did not want or did not like or was concerned that the money given to SWA was also enjoyed by her parents. As for the reason SWA initiated to submit petitioned divorce was because she had already felt burdened having to provide her own nafkah, why should she be the one spending more money for it.<sup>281</sup>

Aside from the above cases, there are 3 more similar cases, as experienced by LK, SKW, and KC. LK was a wife who was talaq divorced by her husband when she was 25 years old, she stated:

*Kulo niki pun nyuwun pegat, keronu piyambake mboten purun merdamel. Bendintene nggih kulo cukupi piyambak, termasuk numbasne rokok nopo. Wong kulo niku merdamel dados karyawan mbatik ten*

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<sup>280</sup>Ibid.

<sup>281</sup>Ibid.

*Pak Kaji Soleh. Tapi sing njalari nggih piyambake riyin nek pas tukar padu sering ngomong bade megat kulo. Dados kulo kalih piyambake pancen pun sepakat pegatan.* (I have asked for divorce, because my husband does not want to work and is lazy. Every day for daily needs I provide for myself, including buying my husband cigarette. I work as a batik employee at Pak Kaji Soleh. But actually my husband started it first, when we argued he would often say that he will divorce me. So in this case there is indeed an agreement between my husband and I to divorce).<sup>282</sup>

Based on LK's statement above, it is clear that the choice to divorce was made with full awareness and agreement. However, it seems that the disadvantaged party was actually LK, but didn't she herself initiate on filing for a petitioned divorce? LK's reply to this question was "*nopo saged tiang istri niku ngajukne cerai ten pengadilan? Semerep kulo sing saged nyerai niku nggih tiang jaler mawon*" (can women submit petitioned divorce to the PA? as far as I know it is men who can carry out divorce).<sup>283</sup> In other words, LK had no understanding whatsoever that a woman also has the rights to submit her divorce initiative to the PA in the form of petitioned divorce.

Moreover, when I asked her about the reason for not being present in the trials, LK answered: "*lha ten nopo, mboten, kersane ndang beres, mboten sah suwi-suwi*" (what for, no, just let it be over with quickly, no need to prolong it). Thus, because LK really wanted divorce, she wanted it to end quickly and not be dragging on, because of this she did not want to attend her divorce trials.<sup>284</sup>

After her divorce, LK became traumatized to remarry, because in her opinion "*bojo kulo riyin niku cendolo, moro tangan, galak, mentolo kalih tiang isteri, kulo nate dikampleng*" (my former husband was someone who

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<sup>282</sup>LK, *Interview*, Tuban, 13 February 2010.

<sup>283</sup>*Ibid.*

<sup>284</sup>*Ibid.*

liked to hit, because I was also hit). Hence, the physical violence she experienced from her husband caused her to become traumatized to marry another man. Furthermore, LK also told me her ideal husband criteria “*kulo mboten mandang sugih, sing penting tanggung jawab, purun merdamel, sebab tiang jaler mboten merdamel niku kurang sae*” (I don’t look at someone’s wealth, what’s important is that he is responsible and willing to work, because a man or husband who is unwilling to work is just not good or not respectable).<sup>285</sup> Based on the said criteria, the most important character in a husband is his willingness to take responsibility and work, because the honour of the family rests in the determination or responsibility of the husband.

The same reason for talaq divorce was also conveyed by SKW, a wife who was talaq divorced by her husband when she was 29 years old. During their marriage, they both lived in SKW’s parents’ house. In this case, it started with her husband returning to his own parents’ house, SKW ultimately asked to be divorced and her husband granted her wish by submitting talaq divorce through his attorney (*modin*). SKW affirmed that the reason she asked to be divorced was because her husband did not want to work. Meanwhile she had to provide for her own life by working the field.<sup>286</sup>

The above cases are quite different to what was experienced by KC, a wife who was talaq divorced by her husband when she was 23 years of age. In her case, the decision to divorce was an agreement between both husband and wife. According to KC, the reason for the divorce was because of differing principles causing them to be unable of understanding one another, and since they still had not known each other that well communication did not go so well. KC wished for a laid back life with expectation of romance from her husband, but her husband was the rigid and serious

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<sup>285</sup>Ibid.

<sup>286</sup>SKW, *Interview*, Tuban, 25 March 2010.

type. According to KC, the reason for talaq divorce because she was demanding for nafkah provision from him was untrue; it was nearly a means for it to be settled promptly. Regarding the divorce she experienced, KC considered it all a *qodar* (fate) and tragedy at the same time. It was a way out from the dark shadow that is her household problems.<sup>287</sup>

b. The wife who felt there was no agreement between herself and her husband regarding their board after marriage.

After marriage, both husband and wife were equally adamant to live together at their respective parents' house. The wife wanted to live and stay at her parents' house, and the husband similarly wanted to live and stay at his own parents' house. This was the case experienced by STM, a wife 18 years of age when she was divorced by her husband.

STM stated: "*dipegat nggih nglenggono, mboten nopo-nopo*" (yes, I'll accept divorce, it is fine). In her opinion, after marriage one should return (live and stay) at one's parents' house, it is even agreed prior to the marriage. During the time that the couple were living in STM's parents' house, her husband often fell ill and in the afternoon he would return to his own parents' house. Furthermore, it was known that the husband wanted to return home to live with his own parents, but STM objected. Additionally, STM's parents also forbid her, because *kumpulan* or the husband's family members are just too many, while STM only has one sibling or she only has a small *kumpulan*.<sup>288</sup>

Moreover, STM explained that her husband did not work or had no employment. She even said: "*wong ken ngarit nggih mboten purun*" (he wouldn't go even if you tell him to cut grass (for livestock)). Her husband's behaviour which was lazy or did not want to work was very disliked by his parents-in-law, although if they were still in one *kumpulan* (the son/

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<sup>287</sup>KC, *Interview*, Tuban, 9 February 2010.

<sup>288</sup>STM, *Interview*, Tuban, 26 March 2010.

daughter-in-law becomes one with the parents-in-law) the parents-in-law are still obligated to provide nafkah for the whole family, nevertheless the child-in-law must still help them.<sup>289</sup>

Actually, STM's parents although with a heavy heart could let her go –as their only daughter- to live in her parents-in-law's house, but it should be done properly, but contrarily, the steps that her husband's family took was not appropriate. What her husband did was in fact he reported the matter to Pak Modin (attorney) and asked for his assistance in requesting STM's parents to let STM live together with her parents-in-law, does her parents allow or permit this? STM's parents were immediately offended and regarded their son-in-law (STM's husband) and his family were mocking them or starting a feud.<sup>290</sup>

Moreover, when I asked her about her absence throughout every trial of her divorce case, she explained that she did that based on the information from the attorney that not attending is fine, *pokoke wis apik-apikan* (what's important is that everything is fine or is acceptable to everyone).<sup>291</sup>

A case with the same tune was experienced by SI, a 17 year old wife when she was talaq divorced by her husband. In her case, SI's family and village tradition compelled the husband to live with the parents on the wife's side of the family after marriage. However it turns out her husband was not *kerasanor* unable to withstand living in his parents-in-law's house and asked for SI to move to his own parents' house. Conversely, SI also could not endure living in her parents-in-law's house.<sup>292</sup>

SI's reluctance to go with her husband is not considered as a fault or a matter of principle, because it is already a long held tradition. This is

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<sup>289</sup>Ibid.

<sup>290</sup>Ayah STM, *Interview*, Tuban, 26 March 2010.

<sup>291</sup>STM, *Interview*, Tuban, 26 March 2010.

<sup>292</sup>Ibid.

affirmed with SI's father who was sitting next to her during the interview through his words "*seje deso mowo coro*" (different villages have different ways) and it is continued with the explanation that the tradition is a general tradition of people from the highlands (mountainous areas) with the expression "*umume tiang gunung nggih ngoten niku*" (generally that is how highlanders are).<sup>293</sup>

It has been previously said that SI's husband was unemployed, he even objected being told to help his parents-in-law *toganco* (plough) the field. Hence during their marriage he did not provide nafkah for her, even for her husband's daily needs, such as cigarettes, was provided for by his parents-in-law. Moreover, it was said that her husband preferred to work as a day labourer (directly receives money as compensation) rather than help his parents-in-law with *ganco* which does not bear direct results. This led him to seek permission to go out of the house and work in the 4<sup>th</sup> month of their marriage.<sup>294</sup>

After 4 months working with no news from her husband, SI's father tried looking for him to his parents' house and he was not there (was not home yet). A few months later, unexpectedly, a summon letter for her divorce trial at the Tuban PA arrived by request of her husband to her. SI and her family were extremely shocked because they felt that there were never any talks regarding matters of principle. Ultimately, a divorce was actually realized or decided. SI responds to the divorce by considering that it was all because they are not meant to be or that it was Allah's given destiny with her expression "*dereng takdire*" (it was not my destiny to be together with her husband).<sup>295</sup>

Her reason for not attending the trials as stipulated in the summon letter is because the distance to court is very far and the lack of available

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<sup>293</sup>SI and her father, *Interview*, Tuban, 11 February 2010.

<sup>294</sup>SI, *Interview*, Tuban, 11 February 2010.

<sup>295</sup>Ibid.

public transport. Furthermore, I also asked SI's father regarding his reason for giving away SI who has not even finished her intermediate school (SMP) into marriage, and her father replied: "*wong pun dugi jodone, yen ditolak malah mangke malati lan yen mboten ndang dinikahne mangke malah rusak*" (well, her destined partner had come, if he was rejected other possible suitors (possible destiny) might not come, and if we don't get her married promptly it may become a stain (in her/family's life)).<sup>296</sup>

STM and SI's case above was also experienced by IM, a 22 year old wife when she was talaq divorced by her husband. She said that after they got married they lived in *budhe kaji's* (IM's aunt who considers her as her own child) house with the expectation that her husband would stop drinking –because her husband was formerly a "*bocah gendayaan*" ("*dugal*"/cavalier)-but instead he asked IM to "*minggat*" (run off without consent) to Jakarta for 5 months. Subsequently, when they returned IM had been pregnant for 1 month and did not want to go to Jakarta anymore. Before marriage IM had been living along with *budhe kaji* or her aunt who has a food stall in which she has the job of cooking rice.<sup>297</sup>

Since 1 month pregnant until giving birth, IM was not provided "*pangan*" (nafkah). After her return from Jakarta with her husband IM no longer had the courage to live with her aunt, she started living with her own mother instead. Her husband also lived in his parents' house which is coincidentally close by to her parents'. Her husband only visited her during the evening, merely to fulfil his biological needs, and when dawn came he would return to his parents' house. In her case, IM likened her husband's attitude to a mere "*sonjo*" (someone who visits momentarily or a guest). During his visits he wanted neither food nor drinks. He even didn't want to do things such as take a bath. Observing his behaviour which was unbecoming of a son-in-law, it was obvious that her husband was not

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<sup>296</sup>SI and her father, *Interview*, Tuban, 11 February 2010.

<sup>297</sup>IM, *Interview*, Tuban, 28 March 2010.

considerate of his mother-in-law's feelings at all. Furthermore, IM said that her husband's behaviour had caused her mother to feel that he did not want anything to do with her because he never did say anything to her.<sup>298</sup>

Soon after her husband went to Jakarta again and when he subsequently returned did not provide a cent. Instead, he went Jakarta again and when he returned this time he had given IM Rp 1,000,000.- for celebrating their new-born. After that he went back to Jakarta for 3 months and when he returned IM requested money from him but he was only able to provide Rp 350,000.- and said that his debts are many so he could only provide a little sum. Contrarily, IM sent him away by saying, "*yen wis ra sanggup ngayani, yo wis sahi wae aku*" (if you can no longer provide for my nafkah, just divorce me). The husband immediately arranged for their divorce and a few days later came a letter of summon from the PA to IM regarding the first trial.<sup>299</sup>

IM attended the trial twice and demanded unpaid nafkah in the amount of Rp 1,000,000.-, which the husband agreed to, but when IM intended to obtain her divorce certificate and unpaid nafkah on the day determined by the PA, her husband did not show up. Ultimately, the divorce certificate could not be obtained if she was not there together with her husband (ex-husband), because he had complied to providing *pangan* (nafkah) of Rp 1,000,000.-. Even to the point that this interview was conducted, her divorce certificate is still not in her hands. Thus, her lack of knowledge and understanding regarding the procedures in the PA has driven IM to think about arranging her divorce again but through petitioned divorce. However, with my visit to her house, I was in the end asked to help her in arranging the release of her divorce certificate.<sup>300</sup>

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<sup>298</sup>Ibid.

<sup>299</sup>Ibid.

<sup>300</sup>Ibid.

When IM attended her divorce trials, she was asked by the panel of judges on the reason for divorce which was proposed by her husband, and she verified her husband's reason that the divorce request was submitted due to IM getting upset and sending away her husband because he only gave her Rp 350,000.-. IM stated that actually her reply which validated her husband's reason was given because she felt resigned and could do nothing about it, rather than having the matter become complicated and lagging in deciding its result. In her opinion, the real reason is that when she sent her husband away it was not merely because "*ra dikayani*" (nafkah was not provided), it was triggered by her husband's behaviour or character which was not respectful of his mother-in-law or was not accepting of IM's family. While in fact, her husband's uncle is also married to IM's relative, but why didn't her husband want to get close with her extended family. Additionally, in her opinion the challenge of divorce was just a bluff or "*medekke*" (to threaten or frighten), because her husband had treated his parents-in-law's house like a hotel. IM, conversely, did not want to have to live together in her parents-in-law's (her husband's parents) house. She said that her reason for not staying in her parents-in-law's house was because her husband's relatives (*kumpulan* or family members) were many. And IM's parents did not have *kumpulane* or were living by themselves.<sup>301</sup>

IM actually tried living together in her parents-in-law's house for 1 week, and it turned out that she was not *kerasan* or could not endure it. So, she opined that her husband's disrespectful attitude while he was staying at his mother-in-law's or IM's mother's house was because IM did not want to go and live with her parents-in-law or her husband's parents. Thus, both were determined in maintaining their respective opinions. According to IM, to live together with her parents-in-law is something unbearable, because if her parents-in-law wakes up early then she should wake up early as well

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<sup>301</sup>Ibid.

and start to help her. In addition to that, IM thinks “*lumrahe*” (most) women easily fall for their feelings. So, generally women before getting married imagine a household life as one which is spent in her parents’ house. Meanwhile the “*kuasane*” (obligation) of men is to work, and men who don’t work are no good, although *nafkah* has been provided by the women’s parents.<sup>302</sup>

Regarding this case, I have also interviewed IM’s mother in which I obtained some clarity from IM’s mother’s statement: “*kasus oyok-oyokan derek tiang sepahe piyambak-piyambak sak wise rabi niki sampun wonten awit riyin, lan kathahe dados pegatan*” (the case of fighting for a place to live after marriage has been around since a long time ago and it usually ends in divorce).<sup>303</sup>

SMD, a wife age 25 years old when she accepted *talaq* from her husband, also experienced the problem of disagreeing on a place to live, however it was not purely a matter of disagreement on a place to live in. after marriage, based on the prevailing tradition, SMD and her husband lived with SMD’s parents, but her husband often returned to his parents’ house which was coincidentally close by.<sup>304</sup>

The problem between SMD and her wife was not only on the frequency of her husband returning to his parents’ house, although it had been decided to live in SMD’s parents’ house. Her husband’s return to his parents’ house had caused their meddling in determining issues and resolving the couple’s household problems, such as in the husband’s employment. This issue surfaced after the birth of their only child because daily necessities started to increase. When her husband was still living together in SMD’s parents’ house, he was requested by his parents to return home and live with them. Meanwhile, SMD did not want to because

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<sup>302</sup>Ibid.

<sup>303</sup>IM, *Interview*, Tuban, 28 March 2010.

<sup>304</sup>SMD, *Interview*, Tuban, 25 March 2010.

*kumpulan* or his family members were many. Additionally, it was also because if the parents-in-law wake up early then the daughter-in-law – which in this case was SMD- should wake up early and so forth. If it was not followed, then it would be talked about by her parents-in-law and neighbours. This is why, generally women after they got married would stay at their own parents' house. SMD felt that her decision to live together with her parents was exactly right, because in her case she was the only child or the family *kumpulan* was few.<sup>305</sup>

During their marriage SMD and her child's needs were provided for by her own parents, they even provided transportation fare and initial fund for her husband's work to Kalimantan by seling their goat. It did not suffice just by selling the goat, SMD's jewellerys were also pawned to add money into the fund. SMD did not really agree to her husband working off to Kalimantan, she preferred if her husband had worked with her parents "*ngedos*" (harvesting rice) in Tuban.<sup>306</sup>

The peak of the problem which brought about the divorce was that her husband's return from working in Kalimantan for 6 months merely resulted in bringing home a sum of Rp 600,000.-. When in fact, they had borrowed as much as Rp 350,000.-. for him to go and work there. Furthermore, SMD –based on the information from her neighbour who also worked in Kalimantan- assumed that all of that was because of her husband's laziness while working in Kalimantan. Since then argument and strife often occur in their household, and they were not just with her husband but also with her husband's family (parents). Finally, her husband returned to his own parents' house.<sup>307</sup>

While they were still together, during the time of constant strife after her husband's return from Kalimantan, SMD had never let out a word

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<sup>305</sup>Ibid.

<sup>306</sup>Ibid.

<sup>307</sup>Ibid.

about requesting divorce, however, she was determined that when she got the chance to meet her husband, she would express her wanting to divorce. It had become SMD's resolution because she felt that she was no longer fond of her husband and felt incompatible with him, what's more was that their marriage was arranged by her parents. Additionally, there was also the consideration to not constantly commit sins by fighting and feeling enmity towards her husband and family. And also the consideration that if the marriage was not promptly "*beres*" (settled/ divorced), she was concerned it would all hinder her child's development because she had registered her child to enter kindergarten at the time. Therefore, she thought she should really concentrate on her child's education so that the child would not be neglected and become a late bloomer.<sup>308</sup>

Ultimately, the statement of requesting a divorce was carried out via a messenger who was asked to convey the matter of SMD wanting to divorce to her husband who was at his parents' home, and if he had no money for the divorce they (SMD's family) would pay for all the fees. Hence, factually SMD really wanted a divorce but was reluctant in choosing to do it by way of petitioned divorce which SMD and the Tuban community recognize with the term *pasakh*. Subsequently, I asked about her reluctance to carry out petitioned divorce, and she stated: "*Wong kulo mboten merdamel, wong kulo kalih anak taksih ditanggung tiang sepah kulo. Nek pancen kulo niat pasakh, nggih kulo kudu merdamel tapi anak taksih alit. Derek sopane mawon, wong mriko wong lanang yo tak reganane. Nek mboten purun nggih kulo nyuwun tiang sepah kulo beresi*" (I don't work, and my child is still being provided for by my parents. If I did intend to petitioned divorce, I would have to work first, but what could I do, my child was but a baby. I did it out of courtesy and in good manners, they were the male side, so, yes I respect him (as a man). However, if his

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<sup>308</sup>Ibid.

side did indeed not want to (propose talaq divorce), then yes, I would have asked my parents to pay for my petitioned divorce). In addition to that, if she were to conduct petitioned divorce (*pasakh*) then it would have meant that she had “*guak*” (thrown away or rejected him). She was also concerned that her husband would seek revenge or any other unpleasantness because he was hurt or unaccepting of her actions, such as by means of witchcraft. She thought that it was common for her to be concerned about those things because it is her husband who has the absolute right to talaq.<sup>309</sup>

SMD attended and followed the entire divorce trial process until it reached a verdict after 4 trials. During the divorce hearing, she did not demand for nafkah at all, with the reason that if she did ask for nafkah, then she would not have to ask her husband to divorce her. Additionally, it is also because she knew her husband was unemployed and so that the trial process could run speedily as she had expected it to.<sup>310</sup>

Moreover, I also asked SMD’s mother regarding her arranging SMD’s marriage with a man from the same locality. Concerning the matter SMD’s mother mentioned that the reason to arrange SMD’s marriage with someone local is that if the parents got ill then the child could still “*disambati*” (be asked for help). According to SMD’s mother, if a person becomes old or of senior age then that person will follow the child, or in other words “*kebo nusu gudel*” (literally: the cow suckling the calf).<sup>311</sup>

A similar case was also experienced by KS, a wife who was 18 years old when she accepted talaq divorce from her husband. However, the case KS experienced involved domestic violence perpetrated by her husband. Nevertheless, the core of the problem was KS and her husband’s disagreement over deciding a place to live after marriage.<sup>312</sup>

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<sup>309</sup>Ibid.

<sup>310</sup>Ibid.

<sup>311</sup>Ibu SMD, *Interview*, Tuban, 25 March 2010.

<sup>312</sup>KS, *Interview*, Tuban, 26 March 2010.

After marriage, KS and her husband were living together in her parents' house. Her husband did not have any steady job. While living in the parents-in-law's house, her husband did unskilled odd jobs along with the parent-in-law looking for used items/junk and *ngedos* (become a labourer harvesting paddy). Her parents subsequently bought him a *pedhet* (calf) as his compensation or income for working with his parents-in-law. However, the calf was not raised at the in-law's home but it was raised at his own parents' home, even though KS's parents also had their own cows and shed. According to KS, her husband's attitude of not raising the calf at her parents' home, let alone the calf was obtained because of work and his parents-in-laws guidance, was a matter which displeased her family. Even so, KS and her family were still patient enough and let her husband be without reprimanding his behaviour.<sup>313</sup>

Furthermore, the calf was actually sold by her husband to buy a motorcycle. The parents-in-law (KS's parents) were actually very caring of their son-in-law (KS's husband). This was indicated when her husband considered his motorcycle shoddy and wanted to trade it with a better one but did not have any money, his parents-in-law did not keep quiet but they gave him money to cover the difference.<sup>314</sup>

However, all the love and affection given by KS and her parents to her husband did not make him become more loving and affectionate towards KS. She would instead receive slaps and hits from him. Her husband did not have any courtesy and was often authoritative towards KS and her family. Aside from that, he is also rude and *moro tangan* (violent) to her. KS often cried in her room because she was often *dikasar* (abused) by her husband, such as being hit with a *kendi* (drinking container made of clay). Nevertheless, KS still loves him, even -after the divorce- when her ex-husband wanted them to reconcile and get back as husband and wife,

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<sup>313</sup>Ibid.

<sup>314</sup>Ibid.

but KS's family prohibited her from accepting his offer to reconcile. Finally KS went to work in Lamongan.<sup>315</sup>

The peak of KS's household problem which ultimately caused the divorce was not KS demanding more nafkah, KS did not even know that she was going to divorce, because there was no prior discussion regarding the matter. The matter began when her husband returned to his parents' house without letting KS and her family know about it for 3 days. Because he had left for 3 days without noticing anyone, KS finally felt concerned and tried to look for him at his parents' house (KS's parents-in-law), but she did not find him there and she returned home to her parents'. The next morning her husband returned home (KS's parents' house) and KS welcomed him with the question "*mas sampeyan tak goleki kok gak enek neng omah, jane ki enek ngendi?*" (dear, I've been looking for you but you weren't you're your parents', where were you actually?). Her husband then replied, "*yo wis lek gak olehi*" (well, it's fine if it's not allowed) as he simultaneously slapped KS. After slapping her, he took all his clothing and put them in a bag and hurriedly went out of the house, then turned on his motorcycle. Seeing all this, KS's mother attempted to tell KS to give in and go along with him on the motorcycle by riding behind him. But what had happened next was that her husband dragged her off the motorcycle to go back into the house and kicked her making her fall and bleed.<sup>316</sup>

Several days later a *Modin* (religious affairs caretaker in the village) came to KS's house to inform her that her husband intends to divorce her. At the time the Modin could still see the bruises made from her husband's kick. Regarding the decision to divorce, KS and her family could only give in to their conviction "*dereng jodhone*" (it was not meant to be).<sup>317</sup>

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<sup>315</sup>Ibid.

<sup>316</sup>Ibid.

<sup>317</sup>Ibid.

KS actually intended to attend the trials at the PA, but both her parents forbid her to –seeing that KS was still young- because they were concerned that it would negatively influence KS’s psychological well-being. As for the fee of the divorce, her husband sold his motorcycle, or in other words –according to KS- used the money which was obtained by working together with his parents-in-law (KS’s parents). Moreover, the matter of divorce which KS had to endure had also caused her mother to fall ill, she was rendered bedridden unable to get out of bed, coughing and gasping.<sup>318</sup>

Furthermore, I also inquired regarding the possibility of KS and her family submit a report regarding the domestic violence she experienced, and KS explained that she would not report the matter to the proper authorities in order not to prolong the matter.<sup>319</sup> KS truly faced the problem she experienced with full resignation.

A similar case also happened to LRD, but there was no violence or physical abuse in this case. After marriage, LRD and her husband were living in LRD’s parents’ house. Not only that, her parents provided and made a house and daily store for the two of them. LRD stated that prior to their marriage her husband worked as a driver and farmer. He came from a large family of 9 siblings.<sup>320</sup>

What LRD’s parents meant by making a daily store for them was so that they could do business or work together. But her husband actually still frequently returned to his parents’ house and he preferred to work with his older sibling selling motorcycle spareparts. This –according to LRD- was done by her husband because his parents-in-law (LRD’s parents) wanted him to live with her family. Meanwhile, LRD’s mother also wanted LRD to

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<sup>318</sup>Ibid.

<sup>319</sup>Ibid.

<sup>320</sup>LRD, *Interview*, Tuban, 13 February 2010.

live with them. Hence there was a tussle (*oyok-oyokan*) regarding where the couple should live after they had gotten married.<sup>321</sup>

LRD and her husband actually still mutually cared and loved each other.<sup>322</sup> However, because LRD gets upset easily, she often could not control herself and expressed wanting to be divorced. Regarding the matter, LRD explained that both sides of the family (hers and her husband's) are a family of *kyai* (Islamic cleric/religious figure), wherein every time there was a problem in her household it would immediately be discussed in her family causing her to become upset which subsequently made her speak indecorously. Furthermore, the problem which was happening in her household also made her mother upset and think that her son-in-law's behaviour which preferred to live together with his parents was because the son-in-law (LRD's husband) considered the initial fund/capital provided for him was not enough. Based on that assumption, LRD's mother told her to ask for a divorce. So –according to LRD– economic strain or her demanding more *nafkah* as a reason for divorce was not true, and it was actually because her husband's family was meddling in their household affairs.<sup>323</sup>

Furthermore, I asked about her reason for not demanding *nafkah* 'iddah or unpaid *nafkah* as well as her reason for not attending the trials of her divorce which subsequently led to a default judgment. Regarding this matter, LRD explained that she actually attended the first trial and did not attend the following trials or demand *nafkah* because of her father's direction not to talk and demand much because if she did she might get

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<sup>321</sup>Ibid.

<sup>322</sup>Even after the divorce, both intended to reconcile and continue the household but LRD's mother disagreed or prohibited her.

<sup>323</sup>LRD, *Interview*, Tuban, 2010.

upset and speak uncontrollably. According to LRD, talaq is terminating the husband's responsibilities/duties to the wife.<sup>324</sup>

Bearing the same conditions, there are still two more cases to be told, i.e. what was experienced by KSD and MW. Regarding her case, KSD stated:

*Wong lanang mulih kerjo gak jujuk omahe sing wedok, tapi malah jujuk omahe wong tuwane dewe. Diempet-empet ngawulo ten moro-tuwo, kulo nggih mboten kuat, wong ibu kulo kantun pyambakan trus sakit struk malih, nggih kulo kedah ngrumat ibu kulo, tapi wong lanang pun mboten krasan manggen ten griyane ibu kulo. Nggih pripun malih, kulo nggih trimo mawon dipegat. Ten nopo dak kulo tumut sidang, pun kersane wong kulo pun trimo dipegat, ngoten mawon.* (my husband upon leaving work did not directly go home to his parents-in-law's house, but instead he returned home to his parents' house. I tried persevering to live together at my parents-in-law's house, but I still couldn't endure it, because my mother lived alone and she was suffering from stroke, so I had to take care of her, but my husband was no longer comfortable living together at my mother's house. Well, what can I do, but just accept being divorced. Why should I attend the trials, just let it be, I accepted being divorced, that's all).<sup>325</sup>

As for MW<sup>326</sup> she explained that the actual reason for her husband to divorce her was because her husband was not “*kerasan*” or could not bear to “*ngawulo*” (live and work together) with his parent-in-law, and he finally returned to his own parents's house. In this case, the parents-in-law still wanted to “*dikawulani*” (be helped and accompanied). No matter the case, living with parents-in-law often “*perasaan*” (made the heart suffer). Subsequently her husband felt he was “*cukup*” (economically able), so he did not want to “*ngawulo*” anymore. Even so, according to MW, the reason of

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<sup>324</sup>Ibid.

<sup>325</sup>KSD, *Interview*, Tuban, 13 February 2010. KSD is the wife who was divorced at the age of 32.

<sup>326</sup>A wife aged 30 when she was divorced by her husband.

economic strain or economic demand was “*niku pun sae*” (quite good and proper).<sup>327</sup>

c. The wife who felt the husband had an affair with another woman and he intended to engage in polygamy

This meaning can be observed from the talaq divorce case experienced by LL, a 44 year old wife when she was divorced by her husband on the 6<sup>th</sup> of January 2009. In her opinion, the reason for the divorce that her husband fell upon her was not because she demanded nafkah or living allowance which exceeds his capacity. She was mindful and patient of her husband, although every 15 days she would only be given nafkah in the sum of Rp 15,000.-, because aside from knowing that her husband’s job as a pick-up car driver was not much, and she was also working by selling fruits so she did not only relied on her husband in fulfilling her daily sustenance. She even felt extremely unwilling or reluctant to be divorced by her husband because still has their marriage certificate. In the past her husband had asked for her permission to engage in polygamy because they both know that her husband had another woman. Regarding this matter LL revealed that: “*Jan-jane Bapake niku taksih tresno keluargane, tapi upruke niku terus godaki mawon. Yen Bapake niliki anak-anake, upruke niku nggih mbuntutu mawon*” (My husband actually still cares for the family, but his other woman kept on chasing him around. Even when my husband was visiting his children, she would follow him).<sup>328</sup>

Because LL did not want to have a polygamous relationship, particularly with a woman who still has familial relation with her, so her husband said to her: “*Wo tak pegat-pegat tenan kowe*” (then I will definitely divorce you), LL imitated, and she replied by saying “*Terserah, wong anakmu akeh, yen mbok pegat yo pegaten*” (up to you, remember

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<sup>327</sup>MW, *Interview*, Tuban, 21 February 2010.

<sup>328</sup>LL, *Interview*, Tuban, 10 February 2010.

that you have many children, go ahead if you really do want to divorce me).<sup>329</sup>

LL explained that her words which showed her resignation to divorce was the expression “...pegaten” (go ahead and divorce (me)) was actually meant to “*nglulu*” (see how far her husband’s desire was and his responsibility to their family) her husband as the head of the household who is responsible for all the children or his family. If he dared leave his responsibility then wouldn’t he be afraid of sin and the bad image it set to his children. LL even hoped to reconcile and forgive her husband, keeping in mind that her four children, particularly the one who was still going to Kindergarten. In addition to that, LL felt during their marriage there was no issue of differing principles, and small arguments were common and regarded as spice in married life. Moreover, LL felt deeply remorseful for not attending all the divorce trials because she had listened and complied with what the woman Modin in her village said: “*teko yo apik, gak teko yo apik*” (attending the trials is good, not attending is also good). LL’s absence in every hearing left her unable to express her desire to maintain their marital relation before the judge, with the expectation that the judge would not allow her husband’s request for talaq divorce. Even though LL remained non-accepting with the divorce ruling, as a woman she could do nothing, ultimately she had to “*mupus*” or acquiesce everything to Allah SWT.<sup>330</sup>

The same tune was stated by AK who was 25 years old when she was divorced by her husband:

*Menurut jenengan nafkah seminggu Rp 5000 niku wajar nopo mboten? Yen maem kulo derek tiang sepah, trus lintu-lintune mosok taksih nyuwun tiang sepah. Tapi kulo nggih mendel mawon, sejatose*

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<sup>329</sup>Ibid.

<sup>330</sup>Ibid.

*alasan nafkah meniko cuma damel kersane cepet putus, wong sakjane bojo kulo niku insya 'allah selingkuh, wong dereng enten setahun pun nikah malih. Tapi kulo nggih mboten nate tangklet: "sopo to pacar-mu kuwi?" Wong nek ten mriki niku kados tiang slintutan, hp disalap ngisor bantale, lek telpon ten jero jeding, trus nek pas ten griyone tiang sepahe piyambak hp disinggahke ten lemari. Bojo kulo niku lek diarani bento niku nggih kepinteren, tapi kok kados bento, sebab nate menek-menek wuwung, trus bade mendet rasukan ten kamar niku pintu kamar dijeboli, pun blas mboten ngajeni tiang sepahe kulo. Kulo nggih kaget pun 3 wulan mboten mriki kok sms kulo: "lek sampeyan duwe bojo kurang ganteng lan kurang sugih yo goleko maneh, iki wis tak lebokke PA." Kulo nggih kaget kok sms ngeten niki? Wong asale niku kulo sms nyuwun arto sebab anake sakit kok malah di-sms ngoten. Dados mboten enten kesepakatan cerai sak derenge lan kulo nggih mboten ngersakne. Wong pas sidang pertama kulo matur ten hakime nyuwun rujuk, tapi bojo kulo nyuwun terus. Setiap sidang ten PA niku pacare nggih mesti tumut, tapi kulo mboten merhatosaken, nembe sak niki kulo nyadari nek niku pacare. Trus ten PA niku enten tiang sing nyajari kulo: "pokoke lek wis mlebu PA kabeh mesti putuse", trus kulo akhire pun nurut mawon karepe bojo nyuwun cerai, wong meskipun kulo taksih tresno, tapi mriko pun mboten tresno, nggih pripun malih. Wong talak niku sing megang tiang kakung, kulo mboten saged nopo-nopo malih. Jane nek kulo gadah arto, kulo pingine banding, tapi kulo mboten gadah nopo-nopo."<sup>331</sup>*

AK's statement above revealed that the reason for talaq divorce which her husband submitted, i.e. she was demanding nafkah provision more than what he had laboured for, merely for the sake of the divorce to promptly be given a verdict. During the marriage AK kept quiet regarding the weekly nafkah of Rp 5000,- given by her husband. In her opinion, the real reason was that her husband had an affair with another woman. After the marriage, AK and her husband both lived in AK's parents' house. The decision to live there was something that AK desired highly as she is the only daughter who is considered to be able of helping her parents because

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<sup>331</sup>AK, *Interview*, Tuban, 9 February 2010.

all of her other siblings were still attending school. Formerly, when AK's father was still alive, her husband's behaviour was still fine, because all of AK's needs were still provided for by her father. After the passing of her father, her husband started to change. AK basically was very reluctant when her husband wanted to live in his parents' house with the reason that she could not bear to leave her mother. AK's reluctance to live in her husband's parents' house did not change her husband's mind keep living in his own parents' house, which led to AK's husband not returning to her parents' house for 3 months, before ultimately her husband submitted a talaq divorce letter of request to the PA and informed AK by text message stating: "*lek sampeyan duwe bojo kurang ganteng lan kurang sugih yo goleko maneh, iki wis tak lebokne PA*" (if you as a wife considers your husband is not handsome and wealthy then go ahead and find another because I've submitted it (divorce request) to the PA).<sup>332</sup>

Regarding the divorce AK experienced, she actually did not want it to happen because at the time her child was only 9 months old. In every trial AK always conveyed to the judge not to divorce them. However, her husband still wanted the divorce, and finally there was a provocation from someone who said "*pokoke lek wis mlebu PA kabeh mesti putuse*" (at any rate, once a divorce case has been submitted to the PA, all will be decided or will end with divorce), since then she would submit to her husband's wish to divorce before the panel of judges although she still cared for him. But since her husband no longer cared for her, she had to accept the decision, aside from that she thinks that talaq is in the hands of the husband absolutely rendering her powerless to do anything. AK's spirit wasn't actually broken because she said that if she had had the money she would have appealed the case. But nothing was done because she didn't have the means to appeal. As of current, ever since the divorce, her ex-

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<sup>332</sup>Ibid.

husband has never taken care or visit his 9 months old baby, let alone provide them with nafkah.<sup>333</sup>

Furthermore, when I asked what her plan is for the future, AK answered: "*Nek 3-5 tahun malih kulo diparingi jodo nggih mboten nopo-nopo, tapi saat meniko kulo kepingin nyambut damel riyin. Mosok klo bade ngejibne ibu kulo, nggih kulo mawon sing taksih nom sing nyambut damel. Tapi yen kulo mangke nikah, kulo nggih ajrih ten anak kulo, sebab kathah kedadosan bapak tiri menganiaya anak tirinya.*"<sup>334</sup> What is meant in the statement is that if in 3 to 5 years she meets her destined partner then it will not be a problem for her to remarry. But what is most important at the moment is to find employment because she shouldn't be dependent to her mother for her daily needs, it should be the opposite because she is still young and should be the backbone of the family. Although she still feels traumatic regarding her bitter experience in family life, she remains concerned of the possibility of a second marriage particularly regarding her child's well-being considering the numerous child abuse cases perpetrated by the step-father.

Another form of divorce was experienced by SKT, a wife aged 56 years old when she was divorced by her husband. She stated:

*Nggih kulo pasrah, dipegat nggih sampun, kulo kantun manut. Lha dos pundi, wong ten mriki pinten-pinten wulan mboten merdamel nggih kulo sing ngingoni. Sejatose kulo mboten nyuwun pegat, tapi surat kawin kulo dicolong piyambake. Lek sanjang ten kulo alasane megat kulo keranten kulo mboten gadah yugo, wong piyambake niku pun gadhah yugo kalih bojone sing riyin. Sing leres, ten mriki dijak minggat "upruke" ten Rengel 2 wulan tapi kulo nggih mboten nopo-nopo, trus mantuk piyambak nggih kulo trimo. Paling sing megatake nggih "upruke" niku, saking gedene dukune. Kulo niki trimo mawon*

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<sup>333</sup>Ibid.

<sup>334</sup>Ibid.

*dipegat, sak nopo riwa-riwi ten PA, mangke kangge bayar angkutan, timbang ngoten kulo dipegat yo sak karepmu. Jan-jane kulo mboten ngertos yen piyambake badhe megat kulo, tapi ujug-ujug diparani pegawai PA. Wong kulo mboten gadhah perkoru nopo-nopo, nggih mboten nek rumongso badhe dipegat, ujug-ujug surat kawine dico-long niku, trus piyambake nembe sanjang: “engko nek enek pegawai PA rene”. Kulo remen dipegat, sebab mboten sah ngoyo pados pangan damel ngingoni. Alhamdulillah, Gusti Allah maringi “pethil pethok” niki.<sup>335</sup>*

What is meant in the statement above is that she was acquiescent when she had to be talaq divorced by her husband, she just went along with it. There was no need to maintain the relationship, it had been months that her husband stopped working and it was a burden for her to conversely provide for his daily necessities. As for the reason her husband stated to divorce her is because SKT could no longer provide an heir, while he already has a child with his former wife.<sup>336</sup>

Actually –in SKT’s opinion- the real reason is because her husband was seduced by a “*upruk*” (another woman), who tempted him to run away from SKT’s house and go to Rengel for 2 months. After that, her husband came back to SKT’s house and she still accepted him. In her opinion, the reason for the divorce was the other woman, particularly because of the expertise of the shaman she employed.<sup>337</sup>

SKT did not actually want, know, or even feel that she would be divorced, suddenly a PA employee came to her house to convey a *relaas* (letter of court summons). She was shocked because she felt she did not have any problems (with her husband), but she received a summons from the PA. It turned out that her husband had stolen her marriage certificate in order to register the divorce case to the PA. Regardless of her surprise,

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<sup>335</sup> SKT, *Interview*, Tuban, 12 February 2010.

<sup>336</sup> Ibid.

<sup>337</sup> Ibid.

SKT was very happy to be divorced from her husband because she no longer had to “*ngoyo*” or work hard to provide nafkah for her husband who was often ill and likes to play around with women, with her expression: “*Ahamdulillah, Gusti Allah maringi pethil pethok niki*” (Praise be to Allah for He has destined her to divorce her husband by having this divorce certificate from the PA).<sup>338</sup>

Regarding the reason for SKT not attending PA summons to follow the court proceedings was because it would be a waste and such a pity if her hard earned money were spent to pay transportation fee to get to and fro the PA. SKT’s reluctance in attending her divorce trials was nothing but her being indifferent about it by her saying “...*dipegat yo sak karepmu*” (you want to divorce it’s up to you, I don’t care), she even felt relieved and happy with the divorce verdict.<sup>339</sup>

An extremely heart-breaking talaq divorce was experienced by MS, a wife aged 37 years old when she accepted the divorce. She said that she actually went to the PA (to attend trials), but when she was going to enter the PA building, her husband sent her away. Her real intent coming to the PA was to ask for nafkah (food) for her children. Although she was driven away by her husband at the time, her desire to attend every court trial she was summoned to remained strong. However, because her husband stopped picking her up or deliberately left her, MS became very upset and burned her marriage certificate.<sup>340</sup>

When the couple were still together, MS was actually the one working. Even so, MS’s husband could neither be thankful or grateful (*nrimakke*) to her. Her husband only looked for fire wood and then laid back. When he wanted to take a bath, MS would prepare warm water for

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<sup>338</sup>Ibid.

<sup>339</sup>Ibid.

<sup>340</sup>MS, *Interview*, Tuban, 30 March 2010. In fact the marriage certificate is a requirement to pick up the divorce certificate from the PA.

him. When MS did not serve him according to his desire, she would often be slapped (*kaplok*) and smacked (*sampluk*). Regarding the matter MS said her husband was “*nyengit*” or “*moro tangan*” (likes to hit or induce physical harm) towards her. There was even one time when MS could not sleep because her husband constantly *nyengit* towards her, she ultimately hid in her father’s house which was close by. At the time, MS and her husband had 4 children and each of them were born without her husband being home, only several weeks after their birth he would then be home.<sup>341</sup>

According to MS, the reason of *nafkah* as cause of the divorce is not true, what really happened was because her wife wanted to remarry and she did not want to engage in polygamous relationship. In the end they argued and her husband said that if she doesn’t want to engage in polygamy then she is asking for divorce, as MS imitated, “... *berarti awakmu jaluk diresiki*” (that means you want to be divorced). MS replied to the challenge by saying: “*yo gak po po, wong anakmu gak dike’i pangan*” (that’s not a problem because your children aren’t provided for). Her husband’s affair had been going on for 7 years, the *upruke* (other woman) was even invited to stay the night at MS’s house and she went out of the house temporarily while her husband and his mistress stayed at her home.<sup>342</sup>

MS also explained that there was no mediation effort from the family, and her mother-in-law instead supported her husband’s action by saying: “*alhamdulillah awakmu keturutan mek maneh*” (Praise be to Allah, you can realize your desire to remarry), as imitated by MS. Currently her husband (ex-husband) is living with and married to his *upruke*. With the divorce, MS becomes traumatic to remarry, because –in her opinion– there’s a great possibility that men will only be nice in the beginning,

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<sup>341</sup>Ibid.

<sup>342</sup>Ibid.

subsequently it will be the same as her former husband who was very ill-behaved.<sup>343</sup>

Another form of talaq divorce caused by the presence of another woman had also befallen SU, a wife who was talaq divorced by her husband when she was 35 years old. Her husband was a pickup truck driver hauling for fish sellers. Prior to the last 1 year,<sup>344</sup> her husband was a good husband figure. But since the last 1 year or since he was “*kecanthol*” (enticed) by the “*upruk*” (mistress), her husband had begun to change. Usually when he returned from work as a pickup truck driver all of his earnings would be given to SU, but since then SU was only allocated Rp 20,000.- every day. Out of the house, as imitated by SU, her husband had been “*kowar-kowar*” (announcing): “*tak jatah Rp 20,000.- sak iki, sebab tak umpamake bojo loro; Rp 20,000.- kene, trus Rp 20,000.- maneh nyimpang rene*” (now I provide nafkah of Rp 20,000.- for SU because I consider myself having two wives; Rp 20,000.- for here or SU, and another Rp 20,000.- for there or the other woman).<sup>345</sup>

According to SU “*angsale pedhot disebabne upruke Karangdowo*” (what caused the divorce was the Karangdowo *upruk*, who was a repeat customer who rides his pickup truck). In SU’s opinion “*bibar pedhot, Pake niku langsung kawinan*” (after the divorce, her husband immediately remarried). SU –based on information from her neighbours- also stated “*sejatose sing megatne nggih upruke niku, teng PA mboten uwal saking upruke*” (actually the one who separated her husband from her was the *upruke* or the other woman, every time they were in the PA he was inseparable from his *upruke*). Meanwhile, SU did not understand at all the real reason used by her husband to submit the talaq divorce request to the PA. This was because of several things, i.e. aside from no notice given to

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<sup>343</sup>Ibid.

<sup>344</sup>Before “*kecanthol*” (enticed) by the “*upruk*” (prostitute, call-girl, and bad women).

<sup>345</sup>SU, *Interview*, Tuban, 29 March 2010.

SU by her husband regarding plan to divorce, it was because she did not attend any of the trials in the PA, even as of current SU has neither taken the divorce certificate from the PA nor have it in her hands.<sup>346</sup>

The divorce process submitted by her husband began with her husband stealing SU's marriage certificate while she was working in the field. Moreover, SU was not informed regarding her husband's intent to divorce her. When a bailiff summoner arrived at her house SU asked whether she should attend the court summons. As imitated by SU, the bailiff summoner replied: "*nek teko iso pedhot, nek ra teko ra iso pedhot*" (if you attend you could be divorced, if you don't attend you couldn't be divorced). Ultimately, SU chose not to attend with the hope and conviction that her husband would not divorce her. Additionally, it was also because "*kulo mengke digambar upruke niku, kulo nggih mboten purun*" (if I go to the PA I will be noticed or seen by the *upruke* or his other woman, and I don't want that), there was also the reason that she didn't have any money for transportation to the PA. What had happened was in fact the opposite, her husband could divorce her. Seeing the reality, SU was very upset with the bailiff summoner for his irresponsible statement. Regardless of her anger, if they were to divorce properly through prior discussions without having to steal her marriage certificate, SU would have been willing to attend every trial in the PA.<sup>347</sup>

In the end, SU admitted that the real reason her husband divorced her was because SU did not want to enter a polygamous relationship, she thought that it would be better alone or divorced, although she never did express any intent to be divorced. When she was divorced, SU was burdened with her husband's debt amounting Rp 4 million, so her son-in-law who was living with her had to bear the debt and settle it. This was because after the divorce, SU lives together or "*kumpulan*" with her

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<sup>346</sup>Ibid.

<sup>347</sup>Ibid.

daughter and son-in-law. Moreover, SU explained the definition of “*kumpulan*” in which if SU was not working or had a debt, then the son-in-law would be responsible for it or would have to settle it, so SU should also work or provide *nafkah*. Before the divorce or at the time of separation bed and board with her husband, SU had worked in Malang for 2 months to release “*sumpek*” (stress).<sup>348</sup>

NK was a wife divorced by her husband when she was 20 years old who experienced a similar case in which there was another woman in her family life. Her husband was a drunkard. He had left her since she was 6 months pregnant until her child was born and 6 months old. Her husband paid more attention to his older sister who was left by her husband with one child. NK’s mother had gone to see her son-in-law at his parents’ house to inquire about not returning to his parents-in-law’s (NK’s parents) house. His answer given to the mother-in-law was very unpleasant, because he said that his not returning to their house had not been 3 months long meaning *talaq 1* had not taken place yet.<sup>349</sup>

After their marriage, NK and her husband lived together at NK’s parents’ house. NK explained that when her husband lived together at the parents-in-law’s house it would be considered as “*ngawulo*” or “*ngenger*”, i.e. he is still provided for by the parents-in-law.<sup>350</sup>

The peak of the problem which caused the divorce was when NK asked for Rp 5,000.- for her routine pregnancy check-up and her husband said that he didn’t have any money because it had all been given to his relatives. NK became upset and “*nanting*” (asked for certainty): “*abot bojo opo keluarga*” (does he prefer his wife or his family/relatives). Her request for certainty was actually meant to be “*medekke*” (bluffing), but what happened next was that her husband instead slapped her. Even before the

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<sup>348</sup>Ibid.

<sup>349</sup>NK, *Interview*, Tuban, 30 March 2010.

<sup>350</sup>Ibid.

divorce –according to NK- her husband had already gotten a secret marriage (*nikah sirri*) with another woman and it was most likely that the woman asked for a legal marriage causing her to be divorced.<sup>351</sup>

In her case, NK always attended all court summons for trials at the PA, she didn't attend just once because her baby was ill. During the trials NK also demanded naskah but her husband got upset. Thus NK finally submitted to her husband's wish. In response to her experience, NK did not regret being divorced by her husband, instead she felt she had been released and freed just like a cow that has been untied. Moreover, once her child has grown, NK would like to work and she hasn't thought about getting remarried although she is still very young. In her opinion, a good husband is one who is responsible, provide material and conjugal naskah, and possess good intentions.<sup>352</sup>

Another case was experienced by DJ, a wife aged 37 years old when she was talaq divorced by her husband. During DJ's marriage, her husband would often "*purik*" (get upset and returned to his parents' house) then "*balik-balik dewe*" (come back as he like). Her husband did not provide naskah for DJ, he used his money only to "*main*" (gamble). Even so, DJ was able to provide for herself because she has her own income. In fact it was her hard earned money that was used to send the children to school and fulfil daily needs.<sup>353</sup>

DJ worked as a "*tukang momong*" (baby sitter) in Parengan. Not happy seeing DJ work, her husband told her to stop working. Her husband was never "*nrimakke*" (thankful and accepting) with her earnings, because her husband was always jealous and accused her of committing indecent acts or having an affair. DJ finally submitted to her husband's wish to stop working. But once DJ truly stopped working, her husband went back to his

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<sup>351</sup>Ibid.

<sup>352</sup>Ibid.

<sup>353</sup>DJ, *Interview*, Tuban, 27 March 2010.

parents' house instead, because DJ did not want to engage in sex although they were still husband and wife. DJ's attitude of not wanting to engage in sex was caused by the condition of their relationship as husband and wife which was "*dewe-dewe*" (individual (relation)), in which if her husband had money, he would hold on to it himself and DJ would not be given any at all.<sup>354</sup>

Nevertheless, DJ actually thought that if possible she would have liked for the responsibility to provide *nafkah* be shouldered by them both as husband and wife. If not then one would have sufficed. Generally in Tuban, husband and wife both work.<sup>355</sup>

According to DJ, her husband divorced her because he had another woman who was still a relative. Aside from that she was planned to be entered into a polygamous relationship with that woman who was still a relative, but she did not want to. DJ did not actually want the divorce, but it was because every time they argued her husband would often say "*tak pegat*" (I'll divorce you), as imitated by DJ. The argument was usually regarding her husband's habit of "*main*" (gambling). She thought that continuously saying "*pegat-pegat*" (divorce) is "*mboten sae*" (improper), and finally she requested divorce. DJ said that she was prepared to sincerely accept divorce from her husband although truthfully she did not want it. Her husband had started it by saying "*DJ ayo neng Tuban, awakmu tak uculi*" (DJ let's go to the Tuban PA, I will divorce you), as imitated by DJ. Hearing her husband's call, DJ replied: "*ra usah melu neng Tuban, sing penting aku jaluk resik, aku ikhlas*" (I don't need to go to Tuban PA, I just want a divorce, I sincerely accept.). Because of the divorce she experienced, DJ concluded that there is no such thing as a good husband in this world, making her traumatized to remarry.<sup>356</sup>

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<sup>354</sup>Ibid.

<sup>355</sup> Ibid.

<sup>356</sup>Ibid.

Additionally there is still one more woman who experienced a similar case, she is a woman named TA who was divorced by her husband when she was 37 years old. TA did not actually want divorce. It is true that she often complained about money or daily nafkah, but it was not because she was dissatisfied with her husband's income, but it was because her husband would always spend it all to be with his *upruk* (a provocative woman who became his mistress). She had to agree to the divorce because aside from not wanting to engage in polygamy, she was also threatened by her husband with the words: "*nek gak gelem tak pegat, kowe ora bakal tak pegat selawase*" (if you don't want to be divorced, then I will never divorce you forever).<sup>357</sup>

The threat made her agree to the divorce, by considering her husband's behaviour which had broken her heart, and if he continued to break her heart without any good will from his part to repent, then would TA be able to endure the relationship in the future? For this reason TA agreed to the divorce petitioned by her husband with the consideration: "*tinimbang ngrasakne weteng loro*" (rather than getting my heart constantly broken).<sup>358</sup>

Furthermore, when I asked about TA's reason for not attending her divorce trials in order to maintain a number of her rights, such as nafkah 'iddah and mut'ah, she provided the explanation that the extremely long distance to the PA and expensive transportation cost was what caused her to be reluctant in attending every trial. She thought her time was more worth it for working to provide for herself and her family. Currently her husband is asking for reconciliation and TA agrees with the condition that he would neither break her heart again nor repeat his past behaviour.<sup>359</sup>

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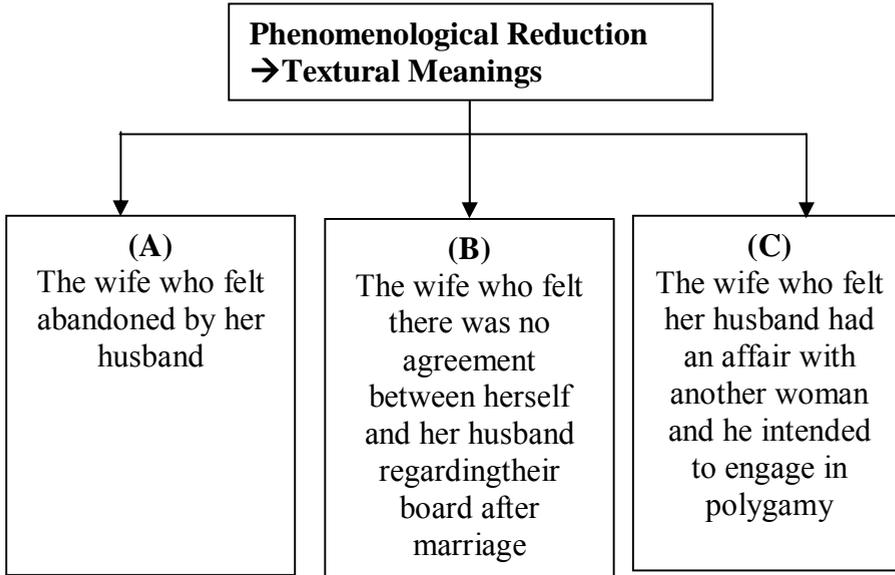
<sup>357</sup>TA, *Interview*, Tuban, 11 February 2010.

<sup>358</sup>Ibid.

<sup>359</sup>Ibid.

From the three textural meanings above, the following figure can be constructed:

**Figure IV.1.**



### C. Biographic Description of People who Conducted Talaq Divorce in Tuban Regency as Structural Meanings Given by the Wife.

It has been elaborated thoroughly in the above passages the chronology of divorce based on (textural) meanings provided by wives (the wife side). As for their life background, it will be elaborated as follows. The background meant covers educational background, economic condition and women's independence, husband-wife relation system after marriage, and relationship between parents and children-in-law based on the interviews and observations that were conducted.

#### 1. Education background, economic condition, and women's independence.

Generally, from the aspect of educational background, the people who conducted talaq divorce both the wives and the husbands mostly have elementary school level education. Very few have intermediate school level education, and high school/vocational school level education is extremely rare. This condition is aligned with Tuban Regency's statistical data, wherein it is recorded that for 2008 the number of population who has kindergarten level education was 14,186 people, elementary school level education was 19,190 people, intermediate school level education was 14,139 people, and high school/vocational school level education was 6,198 people.<sup>360</sup>

They were living as middle to lower class family and they were very rarely in the middle to upper class family. This is because most of them were traditional farmers and even farm workers. Many of them lived in houses that were unacceptable to live in, because aside from being their

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<sup>360</sup>Seksi Statistik Neraca Wilayah dan Analisis Statistik (ed.), *Kabupaten Tuban dalam Angka 2009* (Tuban: BPS Kabupaten Tuban, 2009), 62-63.

residence it was also a shed for their livestock, such as chickens and goats. Usually the view in the guest room was goats or chickens. Additionally, their clothing or work equipment were scattered everywhere as if it were a storage room.

It is not uncommon that they –particularly the women (wives)-before they got married, after finishing elementary or intermediate level education would try to work in the regional city or out of it by getting a job as a domestic house assistant, store salesman/woman, batik *gedog* (Tuban specific) worker, cigarette factory worker, factory cook, and so on.

Such economic condition is in accordance to Tuban Regency's statistical data wherein the most dominant employment was in the agricultural sector in which not all of the lands available are cultivated lands but dry lands.<sup>361</sup> Additionally, as stated in the Tuban Regency statistical data regarding people with social welfare issues according to its types, i.e. among others abandoned children, vagrants and beggars, abandoned senior citizens, socially and economically vulnerable women, poor family, family with unlivable housing, street children, family with socio-psychological issues, community living in disaster prone area, psychotic vagrants, and vulnerable family.<sup>362</sup>

In cases wherein the wife, either before or after she had married, had the opportunity to work in the regency town or out of it as domestic helper, famer and farm worker, or saleswoman, then that woman or wife who was divorced by reason of economic strain tend to be direct and forthright that what caused her husband to divorce her was because she asked him to, as she felt that her husband did not provide nafkah or his income could not fulfil daily needs or because the husband was plain lazy. They are also more firm and resolute facing and responding to the divorce.

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<sup>361</sup>See Table IV.4.

<sup>362</sup>See Table IV.5.

The women or wives in Tuban Regency had to work hard or they had bigger work load compared to the burden the husbands had to bear. It was very seldom finding women or wives who were unemployed. To those who were living in rural areas, although they do not have fixed occupations, they were always making use of available agricultural surroundings, such as becoming farm workers to work the *tegal* (dry land), which compelled them to leave home early in the morning and return home in the afternoon. Additionally, there are also those who work as seller of fruits from surrounding vegetation, traveling snack vendor, or as a stationary fish seller at the market or a mobile one. As reported in *Harian Surya* (newspaper), that a number of mothers or wives in Koro Hamlet, Pongpongan Village, Merakurak District, Tuban Regency could collect money totalling millions of rupiahs monthly by selling teak leaves obtained from the forest. However, to be able to pocket that much money every month, these teak leaves foraging mothers must be prepared to rarely meet their family. Every day, they only have 2 hours on average to be at home. This is because they would leave for the forest at dawn and return home at midday.<sup>363</sup>

Thus it can be concluded that women's economic independence in Tuban Regency led women (wives) to choose being divorced rather than engaging in polygamy or being abandoned (*digantang*).

## 2. Husband-wife relationship and parents and children-in-law relationship system after marriage

Regarding relationships after marriage, since all of the research subjects were husband-wife couples who were originally from the Tuban Regency area, and even from the same village, inter-village, or inter-sub-district, there is a provision or tradition that is still strongly adhered to

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<sup>363</sup> *Harian Surya*, Monday 15<sup>th</sup> of March 2010.

which applies among them, namely the custom of a husband following the wife to live in the wife's parents' house, although this does not disregard the possibility for the wife to voluntarily follow the husband and live in his parents' house. This is caused by a tradition before marriage in which the bride's family is the one who proposes to the groom's family, hence after the marriage the wife would bring the husband to live in her parents' house.

Based on research conducted by Nur Syam, the obligation for women or women's family to propose to men in the wedding proposal traditions in Tuban rural areas is indeed different to the wedding proposal traditions conducted in other Javanese villages wherein the proposal is conducted by men to the women. In the Tuban rural community discourse, the obligation for women to propose to men is expressed in the statement "*larang bawang murah lombok*" (men are expensive while women are cheap). This is why the wives were often tolerant of men or husbands "wrong-doings" as a consequence of how important men are in life and that they are a most needed group.<sup>364</sup>

Ironically, the tradition of women conducted marriage proposal in rural areas of Tuban affected relational patterns of men and women in the household. In this case, women or wives have to work harder or in other words the wives' work load becomes higher. For instance, while the wives is working hard to provide nafkah for the family, the men or husbands merely gather round (*cangkruk*) with their group to drink *tuwak* (alcoholic beverage) or to go with their group doing something of no use at all for their family (*merdalan*) throughout the entire day, and they would come home just to eat, change clothes, or fulfil their biological needs.<sup>365</sup>

The above phenomenon in the perspective of Tuban community is known as women need men (husbands) or in their vernacular "*kok butuh temen karo wong lanang*". It is an expression of women's (wives') frus-

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<sup>364</sup>Nur Syam, *Madzhab-madzhan Antropologi* (Yogyakarta: LKiS, 2007), 161-163.

<sup>365</sup>Ibid., 163-164.

tration over their own self who are forced to work hard while their husbands remain irresponsible. Thus, actually awareness regarding the reality of women being subjugated in life which should employ equal values is beginning to surface. There is a mockery expressed among women when they get together and see such situation, i.e. by doing *rerasan* (reveal feelings by whispering) that the husbands of Tunah, Sari and so forth are merely hanging out at the general store (*cangkruk*) all day and not working or *ongkang-ongkang* and return home only when they need to eat or change clothing. They are considered as not having mercy or affection towards their wife and children. While their wives are working hard doing *ngasak* (finding remaining agricultural products such as corns, paddy, and peanuts), *mburuh* (working the agricultural field), *besik* (cleaning grasses between the plants), or *ganco* (ploughing hard and arid land) and others. Hence women's responsibility in the household of Tuban's community is actually bigger than men (husbands).<sup>366</sup>

Contrarily, it is nothing out of ordinary if the request of talaq divorce by reason of economic strain submitted by the husband –as the initiator– stated that the reason for him in filing the request was due to constant strife, while it was actually caused by his laziness or inability to provide sufficient nafkah. Regardless of whether it is a made up reason in order to speed up the trial process or it was indeed the actual condition.

In this matter, I found that the principle of bringing the husband to the wife's parents' house, aside from man being highly valuable, is in order to conduct *ngawulo*, *kumpulan* or *ngenger* to the parents-in-law. The aim of *ngawulo*, *kumpulan* or *ngenger* is so that the wife can have freedom in her daily life because if she were to live with her parents-in-law, then she would have to follow their routine work or activity, if they were to wake up early then she would also have to wake up early and immediately

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<sup>366</sup> Ibid.

engage in activities helping them. In addition to that, *lumrahe* or generally women have sensitive feelings. Therefore, she would become more restricted. Even in general girls before they got married would always imagine living their familial life in their parents' house.

Several understandings and implementation of the concept of *ngawulo* or *kumpulan* have been collected throughout the research as follow:

- a. *Ngawulo* is *mantu dherek morotuwo* (child-in-law follows parent-in-law), *merdamel kumpul mertuwo* (working together or becoming one with the parents-in-law), and *hasile disukake isteri trus didamel sakeluarga* (the earnings would be given to the wife for fulfilling daily needs of the whole family). If a woman was the only daughter it would mean "*nggih ngrumat sampek tuwek*" (she has to take care of her parents-in-law or *ngawulo* until they are of old age) as a form of *birr al-walidain* (obedience to parents), and sometimes if the parents allow, *ngawulo* can be limited until the couple have a house of their own.<sup>367</sup>
- b. *Ngawulo* applies to men or women, depending on who is the only child in their family. Or who is being depended on by their parents, but it is usually women who the parents depend on.<sup>368</sup>
- c. *Ngawulo* only applies if the husband-wife is a young couple who has no experience in work, because "*arep dipakani opo*" (what daily sustenance would the girl be given (without work)). *Ngawulo* is "*nyambut gawe bareng morotuwo, lek wis nglumpuk nembe dipisah*" (working together and becoming one with the parents-in-law, if much earnings have been collected then they would have their own house built for them). However if the parents-in-law desired to live under the same room, then they would forever live in the same house together. Sometimes a husband-wife couple mutually objects to

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<sup>367</sup>LK's father, *Interview*, Tuban, 13 February 2010.

<sup>368</sup>Samuri, *Interview*, Tuban, 22 February 2010.

*ngawulo* and would remain together with their own parents. If this were to happen, then it could cause a rift in the husband and wife relationship. Sometimes there would even be a tug of war between the husband's parents and the wife's parents who mutually want to *dikawulani*. Ultimately, for a solid couple, they would choose to live independently separate from their own parents such as moving to Kalimantan and other places.<sup>369</sup>

- d. The tradition in Kerek district for men –after marriage- is that they must follow their parents-in-law (wife's parents) to *ngawulo* for approximately 5 years period or until they have their own house. *Ngawulo* is considered as merely assisting the parents-in-law. The tradition of *ngawulo* in Tuban Regency applies in the Western region, such as in Kerek, Tambakboyo, and so forth.<sup>370</sup>
- e. When undergoing *kumpulan (ngawulo)* the one obligated to provide or seek nafkah is the parents-in-law. Nevertheless, the children-in-law must help.<sup>371</sup>
- f. *Ngawulo* is “*Morotuwo tangi isuk, mantu yo kudu melu tangi. Nek ra tangi bakal digunem morotuwo karo tonggo*” (parent-in-law wakes up early, child-in-law wakes up early. Because if that did not happen it would be rumoured by the parent-in-law and neighbours). Because of this, women after marriage live together with their own parents. Additionally, the actual goal of parents wanting *dikawulani* is because of the view that parents when they are old would become “*kebo nusu gudel*” (cows suckling on the calf).<sup>372</sup>

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<sup>369</sup> Ahmad, *Interview*, Tuban, 27 March 2010.

<sup>370</sup> Nuryanto, *Interview*, Tuban, 13 February 2010.

<sup>371</sup> STM's father, *Interview*, Tuban, 26 March 2010.

<sup>372</sup> SMD's mother, *Interview*, Tuban, 25 March 2010.

- g. In anyway, living with parents-in-law (*ngawulo*) is often upsetting. When the husband feels enough, he would often not want to *dikawulani* (followed or depended on) by the parents-in-law.<sup>373</sup>
- h. People nowadays carry out *ngawulo*, but the earnings they keep and use for themselves.<sup>374</sup>
- i. “Parents-in-law *kumpulan* with their children-in-law” this means that if the parents-in-law were not working or have any debt, then the children-in-law should bear responsibility in repaying the debt, and conversely, if the children-in-law did not have any income then the parents-in-law should provide for them.<sup>375</sup>

Based on the illustration of the concept of *ngawulo* above, it becomes clear that generally women always imagine her household would take place in their parents’ house. It is never expected to live together in her parents-in-law’s house, with the reason of not being able to live unrestrictedly because of concerns regarding rumours from her parents-in-law and neighbours if she were to conduct herself inappropriately and could not follow the parents-in-law’s desires. Nevertheless, if her husband is indeed an only child or has few *kumpulane* (family members), then it does not limit the possibility of a woman (wife) to voluntarily live together in her parents-in-law’s house. Conversely, if a woman or wife does not want to or lives involuntarily at her parents-in-law’s, then she would not have to feel guilty at all and she would not violate the custom. This is because the prevailing tradition obligates man or husband to live with his wife in her parents’ house. If this problem persists and *oyok-oyokan* or tug of war actually occurs on determining a place to live, while the husband and wife

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<sup>373</sup>MW, *Interview*, Tuban, 21 February 2010.

<sup>374</sup>DJ, *Interview*, Tuban, 27 March 2010.

<sup>375</sup>SN, *Interview*, Tuban, 29 March 2010.

are also pulled in to the problem by defending and maintaining the standing of their respective parents, it could lead into a divorce.

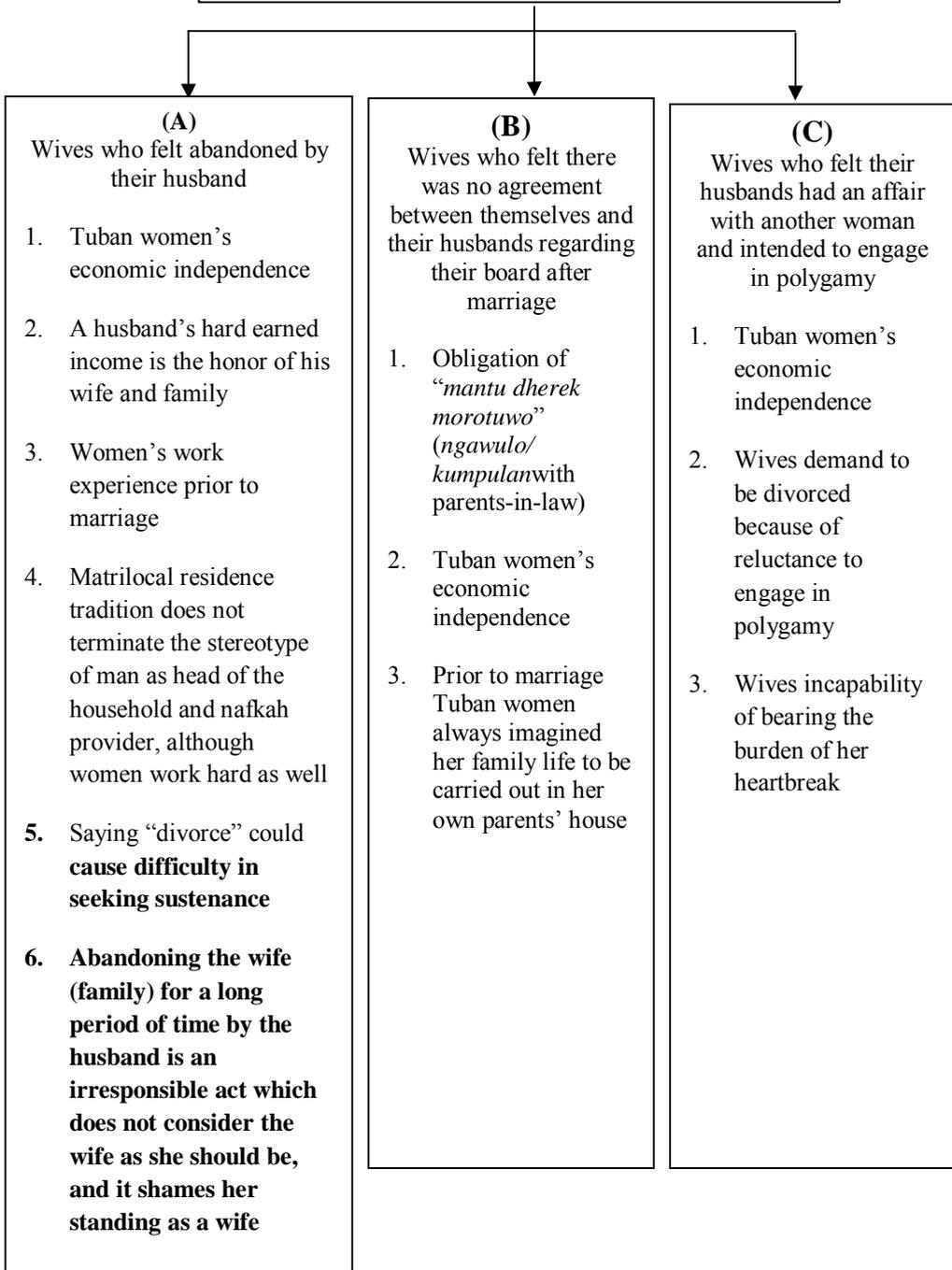
Based on the illustration above, when the husband could no longer bear to *ngawulo* or he has felt enough and does not want to *ngawulo* anymore and strives to be independent, then the issue of *ngawulo* becomes the cause of divorce. It seems that divorces brought about by cases of disagreement on determining a place to live in have been around for a long time.

In this research, the dominant factor –based on the meanings of talaq divorce by reason of economic strain to wives- was the prevailing tradition of *ngawulo*. Nevertheless, there were other reasons as well, such as husbands who liked to get drunk, liked to gamble, and those who were intending to engage in polygamous relationship with their mistresses. All of these reasons did not individually or separately brought about the divorces, it was two or more reasons combined which had caused the divorces. Additionally, all the wives, who had problems regarding household economy, mistresses (other women), or place of residence, revealed that their husband was lazy to work, which forced them to bear their husband's burden.

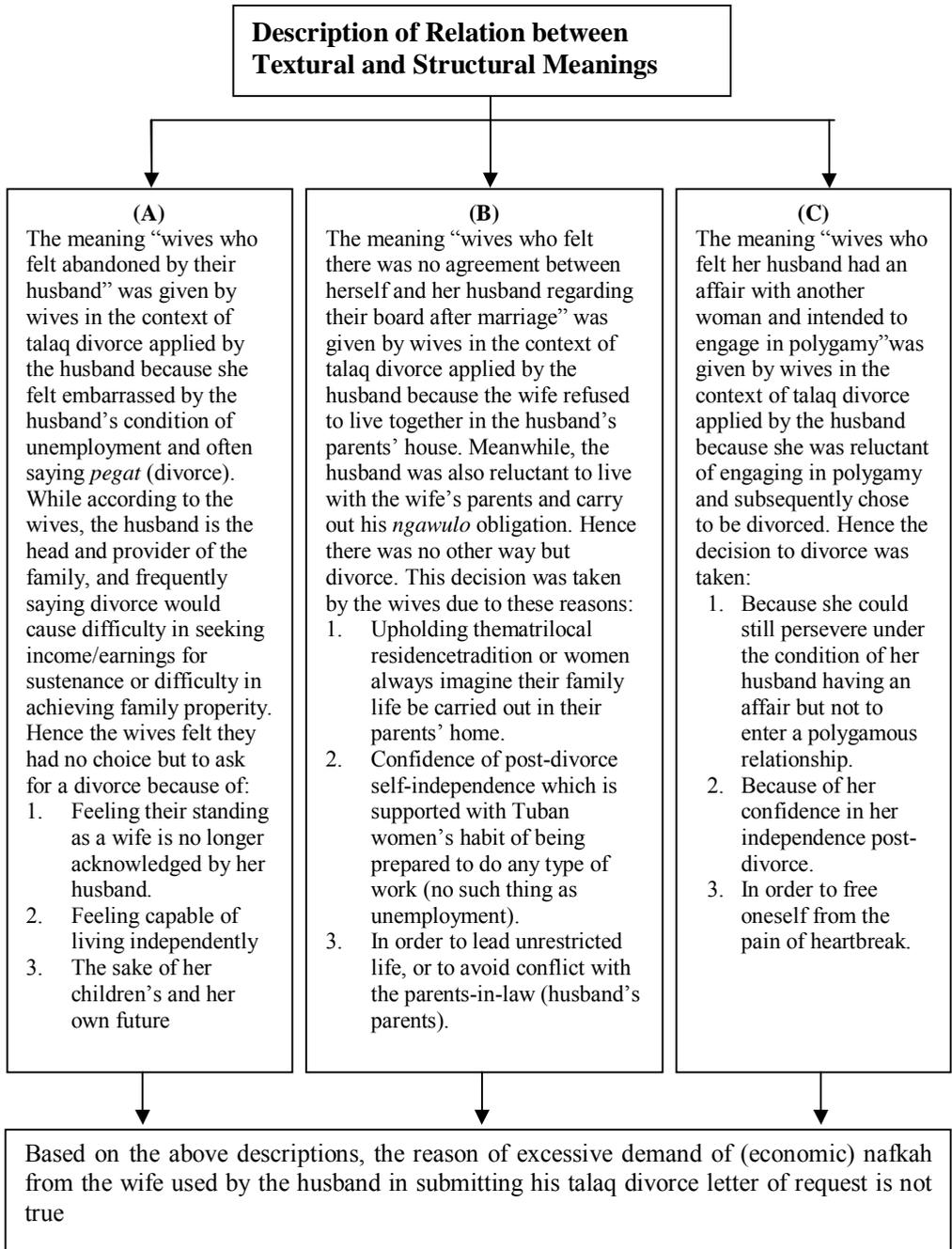
For easier viewing of imaginative variations on the textural meanings, the following figure on list of qualities as structural meanings was made:

**Figure IV.2.**

**Imaginative Variations → Structural Meanings**



**Figure IV.3.**





## CHAPTER V

### TALAQ DIVORCE RESULTED BY ANY STRAINS IN TUBAN REGENCY

#### A. Outlook on Talaq Divorce by Reason of Economic Strain in Tuban Regency

Based on Tuban community's demographic condition, particularly people who conducted talaq divorce, they are farmers with low income, and because of that they are positioned in the middle to lower class in the community.<sup>376</sup> This can be understood with the consideration that actually the agricultural sector in Tuban Regency is inaccurate and unreliable due to its relatively dry geographical conditions. Additionally, the agricultural sector does not provide much income. Hence it is not surprising that there is a phenomenon in the increase of divorce rate during harvest season, namely in January during corn harvest, and April along with May for peanut harvest. It should be known that most of the agricultural lands in Tuban Regency are planted with corn and peanut.

The increase of divorce rated during time of harvest –based on the explanation of Legal Section Junior Clerk Drs. Mat Busyiril, MH.- is because most of the community in Tuban work as farmers –those intending

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<sup>376</sup>As explained in chapter IV that the breadth of Tuban Regency's area which reaches 183,994.562 Ha consists of cultivated lands reaching 54,860.531 Ha (29.82%) and dry lands reaching 129,134.031 Ha (70.82%). Thus its dry lands are much more than its cultivated and this is the reason why the most suitable type of crop to be cultivated in the area are corns or peanuts. Moreover, table IV.4 shows that the type of employment with the highest rate conducted by the population aged 15 and above is the agricultural sector, in which in 2008 the number reached 296,236 people.

to register a divorce (either talaq divorce or petitioned divorce) – will only be able to afford paying the initial fee of the case in the sum of Rp 419,000 during those time. Additionally, the increase of the divorce rate in 2007 was also influenced by the rise in the price of fuel/gasoline on the 24<sup>th</sup> of May 2007. It was not merely the rise in the price of fuel, but I think it was also affected by Indonesia's general economic condition which was very unstable, as an example the rise in the price of chili pepper reaching Rp 150,000,- per kilogram which was a first time phenomenon in my lifetime.

Regarding the matter the general question is how could the harvest season trigger an increase in divorce? To rationalize the issue, based on previous research –Randal Collins- it is shown that economy is a crucial matter in the family, because the institution of marriage is a means to fulfil daily life necessities as a single joint economic unit. If the marriage remains capable of providing that function, then it will continue to develop even if the element of love has subsided. Contrarily, if both functions of marriage is non-existent and there is no longer collaboration between husband and wife to try and restore them, then most of the time there will no longer be any reason for the couple to remain together or it would be better for them to live separately.

The decision to live separately or individually between husband and wife may not necessarily be done by way of legal divorce (a decided ruling from the court judges). In this case, Collins explained that when the economic function of a marriage has gone what often ensues are prolonged stress and conflicts, causing one of the parties to leave the other. The person who decides to leave the other under a situation of economic strain is usually the man (husband). Thus, a legal divorce is not conducted under unfavourable economic conditions or poverty, because of the inability to cover its cost. Meanwhile, the rate or number of (legal) divorce will increase when economic conditions are favourable, for instance during time of harvest. Hence, legal divorce is undertaken when economic conditions

are favourable and when economic conditions are unfavourable, what could be done is merely to live separately bed and board or to live individually.

Thus is the case in the Tuban community, particularly for people who carry out talaq divorce by reason of economic strain. In their cases, it was not immediately during the advent of harvest season that the households in Tuban undergoes a turmoil or crisis leading to divorce, but they were seen coming long before the arrival of the harvest season as the couples had been living separately bed and board or one of the couple has gone and left his/her partner for reasons which will be analysed later. Usually the person leaving the partner is the husband, and it is seldom done by the wife. This is understandable since the marriage tradition of Tuban community adheres to a system of matrilocal residence (after marriage the husband and wife lives together in the wife's parents' house). Nevertheless, this does not rule out the possibility of couples to live together in the husband's parents' house, wherein the wife would be the person leaving the partner behind.

As for the duration of separation prior to it being registered in the form of divorce is varied, some are 1, 2, 3, 4 years long, and even up to 9 years as experienced by MP.<sup>377</sup> Regarding the matter, after marriage, MP lived together in the husband's house and he's former status was actually a divorcee. Because MP felt abandoned or was not provided any nafkah throughout her life with her husband, she ran away or went away without telling her husband. During the separation, aside from MP being pregnant, her husband had remarried (*balen*) his first wife until they had a child. Then after a 9 year period of separation, MP's husband filed for a divorce request to the Tuban Regency PA. This is understandable because MP's husband was a mere farmer. There is also the issue of providing nafkah for his new wife and his new born child as well.

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<sup>377</sup>It can be observed in the attachment page of Tuban Regency PA Ruling on several cases which were analyzed in this research.

The economy or living sustenance as a reason for divorce is initiated exclusively by women (wives) because the obligation to provide *nafkah* is the right women seek from their husband.<sup>378</sup> Thus, when the economy is stated as a reason to request *talaq* divorce by the husband, it is an unusual issue and it warrants interest to be further examined. In order to understand the above outlook regarding the problems urging the husband to submit *talaq* divorce request by economic reason, instead of the wife petitioning for divorce using this reason, it can be known from the following 2 meanings, based on the interviews with wives who were divorced or husbands who divorced.

In this case, SMD –a wife who was divorced by her husband revealed the reason she did not use the issue of insufficient *nafkah* (economic condition) to file for petitioned divorce, by saying: “*kulo mboten purun pasakh, wong kulo mboten merdamel, wong kulo kalih yugo kulo taksih ditanggung tiang sepah kulo, lek kulo badhe pasakh nggih kulo kedah ninggal yugo merdamel, tapi yugo kulo taksih alit. Luwih apik lan derek sopane kersane mriko sing ngejokaken, mriko wong lanang yo tak reganane. Lek mboten purun nggih kulo nyuwun tiang sepah kulo damel beresi*” (I don’t want to petition for divorce because I am not working, my child and I, we are still provided for by my parents, if I want to petition for divorce then I would have to leave my child to work, while the child is still a baby. It is better and more courteous for them (the husband side) to petition the divorce, he’s the man so I respect him for that. If he wouldn’t go through with it then I will request (money) from my parents to file the divorce (petitioned divorce).<sup>379</sup> LK who has a different experience, stated “*nopo saged tiang isteri niku ngejokaken cerai ten pengadilan? Semerep kulo sing saged nyerai niku nggih tiang jaler mawon*” (Can a woman

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<sup>378</sup>Ziba Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law Iran and Morocco Compared* (London – New York: I.B.Tauris & Co Ltd, 1993), 41.

<sup>379</sup>SM, *Interview*, Tuban, 25 March 2010.

petition for divorce to court? As far as I know the one who can carry out the divorce is only the man).<sup>380</sup>

Based on the reason stated by the two wives (SMD and LK) who were divorced by their respective husband, then they were actually reluctant in carrying out petitioned divorce, because they had no work and no money. Nevertheless, the most significant reason was because they are women, and based on customary tradition that they should not overstep the authority of men (husband). This was concluded because based on SMD's statement, the act of petitioned divorce would mean "*guak*" (rejection), meanwhile it is the husband who owns the right to talaq, so she was very concerned that she would hurt her husband's feelings and he would take revenge. The revenge could happen for instance if she were to remarry with another man, then her ex-husband would take revenge by using witchcraft and the likes. That is why in her case, SMD preferred –in her case- to ask another person to inform her husband who was living in his parents' house that she wants to be divorced. SMD's mother even mentioned that if her husband did not have money, then their family (her parents) were prepared to provide money for him to arrange for the divorce process.<sup>381</sup>

Based on SMD's explanation above, she actually had a chance to become the initiator of the divorce but she remained frightened of the prevailing customs or traditions. Therefore, women still adhere to the existing traditions by providing her husband the chance to initiate the divorce and by not hindering his desire to divorce. In other words, whatever its form, even by positioning herself as second class, she would sincerely accept it. Such attitude does not mean that women do not have adequate knowledge on the development of existing laws, but it is conducted based on her conscious choice. Nevertheless, there are also wives who were

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<sup>380</sup>LK, *Interview*, Tuban, 13 February 2010.

<sup>381</sup>SM, *Interview*, Tuban, 25 March 2010.

divorced by economic reason who truly did not know the development of existing laws, such as the statement expressed by LK, that in her opinion the one who can petition for divorce to the PA is limited to men. Women who have this conception means that they have not empowered themselves, because she is conducting her actions or accepting the actions of others based on her state of unawareness/unconsciousness.

Meanwhile, the husbands have an opposite understanding/meaning to what had been revealed by the wives above. Regarding the matter, the husband does not consider it as a form of his wife's respect to him, but instead he felt challenged by the divorce request afforded to him by his wife. Although a small number of husbands considered it as nothing unusual, because they felt that talaq is the family's responsibility which is also shouldered by them, with the consideration "*wong wedok kuwi nggone kalah, dikapak-kapane wong lanang sing kudu ngalahi*" (women are always defeated, no matter how you look at it, it is men who must submit). A more detailed explanation is available in chapter IV.

#### **B. Wives' understanding on Talaq Divorce by Reason of Economic Strain**

The subsequent meaning/understanding is that not all the talaq divorce cases which –formally- used the reason of economic strain in the divorce request letter were really driven by the household's economic problem. At times it is meant to be stated so that the divorce can be promptly granted, because the wives did not actually want the divorce or it implies a contrary meaning. To be exact, based on the classification of the wives textural and structural meanings towards talaq divorce cases –due to economic reasons- which was experienced, as elaborated in chapter IV, it shows that actually the reason of economic strain or demand from the wives could not be validated by the wives. The real reasons according to the wives are as follow:

1. The wife felt abandoned by her husband.
2. The wife felt there was no agreement between herself and her husband regarding their residence after marriage.
3. The wife felt her husband had an affair with another woman and intended to engage in polygamy.

Regarding their detailed discussion, it can be illustrated by using the three basic concepts which relates to act of talaq divorce, as follows:

1. **Women's (wives') economic independence and talaq divorce**

Among the several cases described in chapter IV, some show that economic condition as the reason for her husband to file talaq divorce request was also believed by the wives as the actual reason. Additionally, talaq divorce was conducted not merely based on the husband's intention, but the wife also highly desired it. Regardless of whether the wives were truly unable to bear being abandoned (not receiving adequate amount of sustenance) or not, which eventually led her to request her husband to divorce her. Aside from that, it was also because the husband lured his wife to request divorce, by conveying his desire to divorce her every time they argued about their economic problem. Consequently, the wife responded to the challenge (lure) the husband made by also expressing her wish to be promptly divorced. Nevertheless, the wife's request for divorce has a different meaning compared to the connotation provided by the husband.

The husbands understood it as an improper behaviour of the wife, because in their opinion –as stated by KS- “*isteri sing sae nggih sing saget sak wontene*” or a good wife is one who would accept the husband's condition as it is, although he is incapable or lazy with work. Additionally, it is also understood as a form of disobedience to the husband, as stated by SD “becoming a wife means to be obedient to her husband and not allowed

to be jealous". Meanwhile, the wives understood the decision to request divorce from the husband as follows:

- a. Abandonment by the husband for a long period of time is an irresponsible act which does not consider the wife as she should be.
- b. Saying the word "divorce" or "*pegat-pegat*" could cause difficulty in seeking food and clothing or daily sustenance.
- c. A husband who is lazy to work or unemployed is not respectable or "*kurang sae*".

The three meanings above have their respective reasoning and rationalization. The first meaning given by the wives is because the one actually obligated to provide *nafkah* is the husband, although the wife would also work. Hence, a husband who is brought into the wife's family's house or her parents' house meant that the parents-in-law or the wife's parents should provide employment to the husband, such as farming, because her parents are farmers. In other words, the husband should help his parents-in-law to work the field, and the result of his assistance would sometimes be used by the parents-in-law to build the couple a house or to buy something of value, such as cows or motorcycles, to be given to the son-in-law.

The context of this meaning shows that Tuban women do have power over their husband, however the power does not genuinely originate from her being, it is a power originating from men (family status or the father). In this regard, women or wives are an extension of their father or family, so she is unable to make decisions that are substantial or involves the entire extended family. To be exact, women or wives cannot easily free her husband from the obligation of *ngawulo* to her family. In addition to that, her intimate relationship with her husband begins to be obstructed or threatened by their arguments on the husband's complaint regarding *ngawulo*, in which the husband feels burdened (if not oppressed) to carry out the obli-

gation of *ngawulo*. This is more a matter of the husband not having any rights and authority to manage the earnings of his own hard work. If this condition continues, accompanied by the increasing resistance to *ngawulo* by the husband, then divorce is inevitable.

The meaning/understanding above, was given by SM. In her opinion, fundamentally it was her husband who was obligated to provide *nafkah*, although she would also help work in the field with him. During her marriage, arguments were not unusual. Several years before the last 2 years her husband still provided *nafkah*, as for the last 2 years –after living in the house his parents-in-law made for 7 months- SM was “*digantang*” (abandoned or not provided with *nafkah*) because her husband did not want to work in the field again by reason of not being strong enough to work the field. For 2 years her husband did not return to SM’s (parents’) house. And in those 2 years, her husband worked to Irian Jaya and after one year of working, he returned home and merely gave her Rp 50,000.-. After that he left for Irian Jaya again and after a year he returned again and only gave Rp 100,000.-. Seeing her husband’s behaviour who had worked for 2 years and only provided her with Rp 150,000.-, SM could no longer stand having to live together as husband and wife under such conditions (her husband being irresponsible and she’s feeling “*digantang*”) and asked her husband: “*luwih apik resiko wae*” (it’s better to just divorce me).<sup>382</sup>

SM chose to live alone or divorce from her wife because she felt living alone would be much better than having to undergo mental pressure of thinking about her irresponsible husband’s behaviour. Aside from that, SM was very concerned about the well-being of her children, they could also be abandoned by her if she were to constantly think about her problems instead of paying attention to them. In her opinion, the decision to divorce is the best one, because “*tinimbang ra diopeni ra diingoni, yo*

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<sup>382</sup>SM, *Interview*, Tuban, 27 March 2010.

*piye apike resiki wae*" (rather than not being taken care of and not being provided with nafkah, what's best is to just divorce). With her condition of being abandoned or "*digantang*" by her husband, SM was very shocked because she thought it indicated that her husband no longer wanted to live with her anymore. And with the advent of the divorce or after the divorce, she stated "*badhe nopo-nopo tiang jaler misale badhe nikah malih pun mboten gadah tanggungan*" (if he wanted to do anything, such as remarry, then he would no longer have any responsibility to SM). Or in other words, SM no longer expects or demand her rights any longer, making her less frustrated thinking about her husband's behaviour or actions. Thus, SM could peacefully focus her thoughts only on issues of daily needs or her children's education and her work.<sup>383</sup>

SM is a woman who is resolute and firm towards the life problems that she encounters. In her opinion, her divorce was carried out properly or based on agreement. During the divorce process, SM always attended every trial at the PA, it was just the last trial or the reading of the talaq pledge by her husband that she could not attend because her baby was ill. The divorce verdict stipulated her husband to provide her with Rp 1,000,000.- of nafkah. She initially asked for Rp 2,000,000.- as her unpaid nafkah, but her husband could not afford it, and based on her consideration, rather than arguing and prolonging settlement, and rather than not getting anything at all, she finally conceded to Rp 1,000,000.- as her unpaid nafkah.<sup>384</sup>

Moreover, according to SM, a good husband is one who is responsible, to things such as nafkah and the children's educational cost according to his capacity, as long as he is not lazy. After the divorce, with her earnings doing *matun* and *tandur* or farm work, she remains able and

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<sup>383</sup>Ibid.

<sup>384</sup>Ibid.

unyielding in funding her children's schooling. While instead her husband after the divorce has neither taken care nor visited the children.<sup>385</sup>

From this first meaning/understanding, it has actually become a theme of discussion in Islamic law (fiqh). Regarding the matter, fiqh stipulates that the husband's obligation to provide nafkah for the family (wife and child) serves as the underlying cause for the husband's ownership to the leadership authority in the household. Because the husband is fully burdened with the responsibility to provide nafkah for the family, Islam afforded the role of household leadership to the husband.<sup>386</sup> As stated in the following words of Allah SWT. in QS. al-Nisa' (4): 34:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا  
أَنْفَقُوا مِنْ أَمْوَالِهِمْ.<sup>387</sup>

Meaning: Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means.<sup>388</sup>

In QS. al-Nisa' (4): 34, Allah SWT elaborates that He created man to possess a number of superiority over women in the form of physical and mental nature which prepares him to lead a family and carry out various life matters in the family. As compensation, Allah SWT obligates the husband to bear full responsibility for nafkah provision of the family.<sup>389</sup>

Furthermore, the obligation of the husband to provide nafkah for his wife remains whether he is under favourable or unfavourable conditions.

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<sup>385</sup>Ibid.

<sup>386</sup>Fithriyah Wardie Murdani, "Kewajiban dan Hak Suami Isteri dalam Keluarga Islam" in *Al-Insan*, No. 3, Vol. 2, year 2006 (Jakarta: Lembaga Kajian dan Pengembangan Al-Insan, 2006), 19.

<sup>387</sup>Indonesian Department of Religious Affairs, *Al-Qur'an dan Terjemahnya* (Madinah: Mujamma' al-Malik Fahd li Tiba'at al-Mushaf al-Sharif, 1998), 123.

<sup>388</sup>Ibid.

<sup>389</sup>Murdani, "Kewajiban...", 19-20.

Even if the wife's economic situation is affluent, he remains obligated to provide her with *nafkah*. This is different to the obligation of providing *nafkah* for kinfolks which is also shouldered by men, wherein this obligation would apply only during periods of favourable conditions and not otherwise. Moreover, men are obligated to provide *nafkah* for his kinfolks only if the economic condition of the kinfolks is unfavourable.<sup>390</sup>

Even further, *jumhuḥ* or the majority of ulama is of the opinion that the wife has the right to petition *fasakh* (divorce request) to the judge for her condition of not receiving *nafkah* from her husband, wherein the judge would subsequently apply *tḥlaḳ raj'i*.<sup>391</sup> The existence of *fasakh* rights is because husbands have abused and endangered their wives and they were also being irresponsible to their wives. Imam al-Shafi'i also argued that a husband's incapability to provide *nafkah* for his wife would cause the wife to suffer, it could even endanger or threaten her life, i.e. death under the condition of being hungry, thirsty and naked.<sup>392</sup> Imam al-Shafi'i also used *qiyas awlawiy*, that a wife could petition to divorce her husband through the judge by reasoning that her husband could not provide conjugal/immaterial *nafkah* (impotent), although this reason would not endanger anyone's life.<sup>393</sup> Therefore, giving wives the right to demand divorce by

<sup>390</sup>Ibn al-Qayyim al-Jauziyyah, *Zaḍ al-Ma'ad* (Bairuḥ: Muassasah al-Risalah, 1994), V:508.

<sup>391</sup>Ulama Maḥikiyah had considered it a divorce due to reason of hardship or economic strain as *tḥlaḳ raj'i*, hence the husband has the rights to reconcile during the period of *'iddah* with the requirement that the husband's economic condition is favourable. Thus in this case, Maḥikiyah ulama had given a way out for wives who did not receive *nafkah* from their husbands by providing her the rights to propose *tatliḳ* (*tḥlaḳ raj'i*) on the request of the wife to the judge). See al-Zuhaili, *al-Fiqh*, VII: 513 and Tim, *Mashru' Qanun al-Ahwal al-Shakhsiyyah al-Muwahḥad li al-Iqlimain al-Misḥ wa al-Suriy* (Bairuḥ: al-Da' al-Shamiyyah, 1996), 189-191.

<sup>392</sup>Al-Shafi'i, *al-Umm*, cet. 1 (Bairuḥ: Da' al-Kutub al-'Ilmiyah, 1993), IV:154-155. Even the husband's economic incapability can be regarded as a form of the husband's act of *nushuz* to the wife.

<sup>393</sup>Ibid., IV: 155. The lack of material *nafkah* in a short period of time may endanger a person's life, while lack of immaterial *nafkah* in short or long period of time would not endanger a person's life.

reason of not being provided with adequate material nafkah by the husband is more appropriate and fitting rather than not being able to provide immaterial nafkah. Meanwhile, Wahbah al-Zuhāli>who preferred the opinion of *jumhur* or the majority of ulama (Malikiyah, Shafi'iyah, and Hanabilah) explained that one of the reasons in providing the *fasakh* rights is because the possibility of endangering (إضرار) the wife's life, which is aligned with the content of the hadith “لا ضَرَرَ وَلَا ضِرَارَ فِي الْإِسْلَامِ” (there is no harm and reciprocating harm in Islam).<sup>394</sup>

Regardless of the various differences above, factually the obligation of nafkah provision shouldered by men often becomes a boomerang or cause of conflict in the household life of husband and wife. Subsequently, it is not unusual that the conflict would end in divorce. Therefore, the obligation of nafkah provision on the shoulder of men serves as a trigger for divorce when they are incapable of fulfilling it and the wives constantly demand it (not to work lazily).

Given Tuban's natural conditions which provide many opportunities for informal jobs, women (wives) should also be able to provide sustenance for themselves and their family. Nevertheless, that is not the case, women have internalized in themselves that although women work, the obligation of providing nafkah (sustenance) is only afforded to the husband. This illustrates that the marriage is based on a transitional ideology wherein women desire to be responsible for two roles (carrying out domestic work and simultaneously working to assist the husband in seeking sustenance), however, women still desire and regard men as the sole breadwinner in the family.

Meanwhile, based on the theory of marriage market, basically a person has various sources of “wealth” respectively in the form of sexual attraction, personality, income, other economic assets, prestige, and

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<sup>394</sup> Al-Zuhāli> *al-Fiqh*, VII: 513.

culture, which will subsequently be traded in an institution called marriage.<sup>395</sup> In this case, when the husband who is considered as the breadwinner can no longer provide sustenance then this condition causes the husband to lose his wealth which could have been traded in his household relationship. Subsequently, what happens next –based on the concept of role expectation, or traditional role expectation to be exact<sup>396</sup> - is something which is not favoured by the wife, that is the husband being unemployed and could no longer provided her nafkah, which consequently leads to tension and conflict in the household. In other words, when a husband could not or is reluctant to fulfil the expectation of the partner (wife), then she will feel rejected and treated unfairly. The advent of feeling rejected, being relegated to number two, or being treated unfairly is a huge potential for conflict and divorce, which is preceded by individual stress and drifting relations in the household, such as –in this case- before the execution of the legal divorce, the husband had been away for 2 years as a logical implication of the prevailing matrilocal residence tradition among the community in Tuban Regency.

Additionally, there are other existing realities such as the factor of declining household economy or even poverty. It is well understood that economy is a crucial issue in the family, because the institution of marriage is a means to fulfil daily life necessities as a single joint economic unit. If the marriage remains capable of providing that function, then it will continue to develop even if the element of love has subsided. Contrarily, in this case both functions of marriage is instead non-existent and there is no

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<sup>395</sup>Randall Collins, *Sociology of Marriage and the Family: Gender, Love, and Property* (Chicago: Nelson-Hall Inc., 1987),11.

<sup>396</sup>Traditional role expectation demands the husband to work outside the house, although it is merely doing –cleaning- the back yard, and importantly not doing domestic work. Furthermore, he expects his wife to be responsible for their harmony with each of their extended families. On the one hand, he is very expectant that the financial decision will always be in his hands, while on the other hand, he expects that conjugal sexual relations be the responsibility of both parties.

longer collaboration between husband and wife to try and restore them. Therefore, there will no longer be any reason for the wife to remain together or it would be better for them to live separately. It was under these conditions that the wife finally decided to divorce or to end their marital relationship for the sake of her and her children's future. She even explained that it was also for the good of her husband by saying "*badhe nopo-nopo tiang jaler misale badhe nikah malih pun mboten gadah tanggungan*" (if he wanted to do anything, such as remarry, then he would no longer have any responsibility to SM).<sup>397</sup>

The second meaning/understanding given by the wives is because the husband frequently said the word divorce or *pegat-pegat*. This is because frequent statement of the word "divorce" by the husband in every argument is believed by the wife –or in this case it was experienced and revealed by STA- to cause difficulty in seeking *sandang-pangan* or in fulfilling daily necessities. Although based on STA's statement there were several other unsavoury attributes regarding her husband's attitude and behaviour such as likes to drink alcohol and get drunk, lazy to work, and *merdalan* (going out of the house with vague purposes), but the most fatal blow was the expression of the word "*pegat*" by her husband. Regarding her husband's laziness to work, she still had hope for the future, but when her husband mentioned the word "*pegat*", there was no more hope for any future (together).<sup>398</sup>

The meaning of difficulty in seeking "*sandang pangan*" within the economic context is a crucial issue in the household because the institution of marriage is a means to fulfil daily life necessities as a single joint economic unit. Meanwhile, the word "*pegat*" which was often said by her husband was considered as an obstacle (dead end) to her daily life in the days to come, she would be in constant difficulty. This is what she believes

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<sup>397</sup>SM, *Interview*, Tuban, 27 March 2010.

<sup>398</sup>STA, *Interview*, Tuban, 29 March 2010.

in, and she thought that there is nothing good in maintaining the marital relationship, it would be better to divorce in order to obtain hope for the future or in order to fulfil her daily life necessities without difficulty. She had to do this not just for the sake of her future but also for the sake of her three little children.<sup>399</sup>

Meanwhile, the third meaning was given by the wives because the husband did not provide her with nafkah not because of his physical inability to work but merely because he was lazy. Regarding this matter, the case experienced by LK can be taken as an example, although LK had been capable of making her own money by working at Kaji Soleh's batik company. Furthermore, LK stated her reason in requesting her husband to be divorced "*kulo niki pun nyuwun pegat, keronu pyambake mboten purun merdamel. Bendintene nggih kulo cukupi pyambak, termasuk numbasne rokok nopo, wong kulo niku merdamel dados karyawan mbatik ten pak kaji soleh*" (I have asked for divorce, because my husband does not want to work and is lazy. Every day for daily needs I provide for myself, including buying my husband cigarette. I work as a batik employee at Pak Kaji Soleh). Even when I asked her about the criteria of a good husband, she replied "*kulo mboten mandang sugih, sing penting tanggung jawab, purun merdamel, sebab tiang jaler mboten merdamel niku kurang sae,*" (I don't look at someone's wealth, what's important is that he is responsible and willing to work, because a man or husband who is unwilling to work is just not good or not respectable).<sup>400</sup> It is in tune with what is stated by IM "*kuasane tiang jaler niku nggih merdamel, tiang jaler mboten merdamel nggih mboten sae, senajan nafkah kulo pun ditanggung moro sepah*" (the responsibility of men (husbands) is work, men who do not work is no good,

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<sup>399</sup>Ibid.

<sup>400</sup>LK, *Interview*, Tuban, 13 February 2010.

although my sustenance has already been provided for by my parents-in-law or my husband's parents).<sup>401</sup>

Based on the statements of LK and IM above it shows that actually the demand for husbands to work diligently is not merely a matter of expecting a generous amount of nafkah provision, it is instead rooted in the perspective that the husband is the “breadwinner of the family”. This can be understood by reviewing the Islamic doctrine which firmly elaborated that working for the sake of fulfilling sustenance for oneself along with one's child and wife is a religious ritual (ibadah). In the perspective of Islam, through the holy texts, both al-Qur'an and al-sunnah, work is a noble (holy) duty, which will elevate oneself to a position of respect, value, and goodness before Allah SWT and his community. Furthermore, someone who is willing to work and give their hardest effort to provide for oneself and one's family would obtain rewards in the hereafter as rewards obtained by those conducting religious rituals. Therefore, work becomes a holy duty or “calling” (ibadah) which is a part of religious doctrine.

Sloth is not favoured by Allah SWT and it simultaneously degrades the value of man. Thus, it can be explained that the meaning of “*mboten sahe*” in this case is that men who do not work or are lazy are people who are “immoral” or “have no dignity”. The demand to work hard is not aimed for man to collect wealth, what's most important is to have earnings (work) and this will consequently result in gaining respect. As the Arabic expression “الوقتُ أثمَنُ مِنَ الذَّهَبِ” (time is more valuable than gold). Moreover, a husband who does not work or is lazy would have shamed the wife because of the Javanese conception that “*apiking suami gumantung istri, apiking anak gumantung ibu*” (wherein this context it indicates the weakness of the wife) and “*swarga nunut, neraka katut*” (wherein this

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<sup>401</sup>IM, *Interview*, Tuban, 28 March 2010.

context it indicates how the wife suffers when the husband's behaviour does not bring out results (earnings) or he is not working).

Additionally, based on my observations, women who firmly demand for the husband to divorce her or who accepted to be divorced by her husband –although actually the divorce request was preceded by the husband's intention to divorce in every occurring argument- have the experience of working in the (regional) city or in other cities and or they have experiences as a wife who works while managing her household (married) with her husband. Some of the occupation they had were among others as a domestic helper, baby sitter, and store saleswoman with an average monthly salary of Rp 400,000.-. This phenomenon can be observed in the cases experienced by SMD, IM, STA, LK, SM, and SWA as explained below.

SMD had worked as a domestic helper in Surabaya prior to her marriage with a monthly salary of Rp 500,000.-, meanwhile after marriage she did not work. Related to the tendency of women who requested to be divorced by their husband, it was usually the case that after the wedding the husband is asked to live in the parents-in-law's (wife's parents') house, compelling the parents-in-law to provide him with initial funding/capital or a job. In her case, initially SMD's husband worked along with his parents-in-law doing "*ngedos*", and since he intended to start his own venture SMD and her parents provided him with initial funding –by selling goat and jewelry- to work in Kalimantan for more or less 6 months. After working 6 months in Kalimantan, her husband returned home bringing a meagre sum of of Rp 600,000,-. When in fact, they had borrowed as much as Rp 350,000.-. for him to go and work there. This was a start of SMD's disappointment. Furthermore, SMD also heard that her husband was often indolent (lazy) while working in Kalimantan, which added to her disappointment. Her disappointment was shown through her expression of "*bojo mergawe suwina 6 wulan mung gowo mulih duwit Rp 600,000.-*" (my

husband had worked for 6 months and he returned home only bringing Rp 600,000.-). And then she compared that to her experience working which resulted in a monthly salary of Rp 500,000.-.

From the disappointment she had felt, SMD finally concluded that her husband is irresponsible and subsequently the arguments and strife on economic issues and work began to frequently occur. Ultimately, SMD decided to request divorce from her husband and she was not a bit concerned about the future of her small child because she plans to go and work in Surabaya again once her child has grown.<sup>402</sup>

In regards to the meaning of economic independence which tends to make women become unafraid of being divorced by her husband, is also found in the case experienced by IM. Her story began from the husband's attempt to work in Jakarta. In her husband's first trip to Jakarta, he returned home not bringing or giving a cent of money to her. Soon after he went to Jakarta again, he then returned home and gave Rp 1,000,000.- for "*selamatan*" (celebrating) their new born child. After that he went to Jakarta again for 3 months and returned home being asked for money from IM, but he only gave her Rp 350,000.- while saying that he has many debts so he could only give a little. Subsequently IM responded by saying "*yen pancen wis ra sanggup ngayani, yo wis sahi wae aku*" (if you are no longer capable of providing nafkah, just divorce me). Although her request for divorce was meant to "*medekke*" (bluff or frighten). Another reason which affirmed the word "request divorce" is because her husband did not treat IM's mother as a mother-in-law should be treated (*ra ngajeni* or disrespectful), however, this decision had been thought out thoroughly without being concerned about the future of her child that was still a baby.<sup>403</sup>

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<sup>402</sup>SMD, *Interview*, Tuban, 25 March 2010.

<sup>403</sup>IM, *Interview*, Tuban, 28 March 2010.

She had no concern because she has work experience at *Budhe Kaji's* place. The work opportunity and experience she has had given her optimism on her ability to work. This was proven with the realization of the work opportunity she currently –after the divorce- has as an employee in a cigarette factory. In her case, IM viewed her husband as a person who is lazy to work, because when she asked for money, only Rp 350,000.- was given while saying that his debts are many. IM's view is shown in her statement that *kuasane tiang jaler niku nggih merdamel, tiang jaler mboten merdamel nggih mboten sae, senajan nafkah kulo pun ditanggung moro sepah*" (the responsibility of men (husbands) is work, men who do not work is no good, although my sustenance has already been provided for by my parents-in-law or my husband's parents).<sup>404</sup>

Moreover, the cases of STA, LK, SM, and SWA are also similar to those experienced by SMD and IM. STA during her marriage was working as a factory cook, although she eventually had to quit because her husband was constantly jealous. She decided her intent to be divorced by her husband without any qualms or concern regarding the future of their three children. This is supported with the fact that after the talaq divorce was actually conducted by her husband, she remained resolute and worked as a traveling snack vendor, and when her father returns from sea with fish, she would also sell fish in the market. As for LK, before during and after her marriage, she is an employee at Kaji Soleh's Batik Factory. LK explained that her former husband was a husband who did not want to work or was lazy to work. Meanwhile, SM since during the marriage and after the divorce she remains working as a farm worker or *buruh tandur* and *matun*, in which her earnings are used to raise and school her three children because her ex-husband have never provided any nafkah or visited their children. Such is also the case with SWA, during the marriage and after the

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<sup>404</sup>Ibid.

divorce she is a woman worker. Although initially she worked as a member in a team of wedding beauticians with adequate income, but since she always came home late her husband often felt jealous and asked SWA to quit. Even though she had to quit being a wedding beautician she did not give up working and started to work as a “*pengerok gelas aqua*” with a very meagre income. This was done because her husband’s income as a “handyman” in Surabaya was not always afforded with “*garapan*” (order) and it did not fulfil daily sustenance as her husband did not attempt to seek other side jobs when there was not much “*garapan*”. Before she finally divorced, SWA often argued with her husband regarding their economic conditions because her husband was very tight-fisted with the budget given to her (*cumpen*). As of current, after the divorce, she works in a bakery in order to provide for her child who is still in kindergarten.

Generally, the children of couples in these talaq divorce cases are in the ex-wife’s custody. Moreover, the husbands never visits or provides nafkah for the children. This is understandable, wherein even during the bond of matrimony the husband could not afford to provide sufficient nafkah for them.

Ultimately, it can be affirmed that women are more prepared to take on any kind of work even working as “*pengerok aqua*”. Thus, Tuban women’s (wives’) economic independence is higher than economic independence of men (husbands), regardless of several existing traditions in the Tuban community. Moreover, in the end the women of Tuban’s economic independence has given them courage to be prepared in facing the advent of being divorced or of requesting the husband for divorce due to a particular reason.

## 2. The Concept of “ *mantu dherek morotuwo*” and talaq divorce

*Ngawulo* is  *mantu dherek morotuwo* (son/daughter-in-law following parents-in-law),  *merdamel kumpul mertuwo* (working together or be-

coming one with the parents-in-law), and *hasile disukakne isteri trus didamel sakeluarga* (the results/earnings are given to the wife to be used to fulfil daily needs of the entire family). If the woman (wife) were the only daughter, it would mean “*nggih ngrumat sampek tuwek*” (having to take care of the parents-in-law or *ngawulo* until they are old) as a form of *birr al-walidain* (obedience to parents), and sometimes when the parents allow it, *ngawulo* can be limited until the couple has their own house.<sup>405</sup>

Generally, women of Tuban always imagine their household life to be lived in their parents’ house or living together in their parents’ house. They do not expect to be living together in the parents-in-law’s house, because they feel if they had to live with the parents-in-law, they would be worried about rumours passed around by the parents-in-law or neighbours if they don’t conduct themselves accordingly to the parents-in-law’s desire. Hence living with the parents-in-law could restrict her daily life activities. Nevertheless, it does not rule out the possibility of a woman who voluntary would live together in her parents-in-law’s house if her husband is an only child or has few *kumpulane* (family members). On the contrary, if a woman or wife does not want to (or involuntarily) live along with her parents-in-law, even if the husband’s *kumpulan* is only few, then she would neither feel remorse nor violate any customs. This is because the prevailing custom is for men or husbands to follow his wife living along in her parents’ house. If this problem persists or there is indeed *oyok-oyokan* or tug of war regarding the decision of residence, and the husband and wife are swept into this tug of war by defending and maintaining their parents’ respective position, then it would lead to divorce. Divorces caused by failure to agree on determining residence for newly married couple have been around for a long time.

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<sup>405</sup> LK’s father, *Interview*, Tuban, 13 February 2010.

The problematic tug of war in determining residence can be understood as a conflict because the husband and wife relationship in the family is analogized by Engels as the relationship between the capitalist and the proletariat class. Furthermore, the constructed assumption is that each individual tends to fulfil personal interest, and conflict always exists in family life. This is even more obvious when seen through the provisions on residence wherein once a Tuban woman (after marriage) lives together with her family (matrilocal residence), then she will have control over her own wealth. Conversely, her power/authority subsides or even vanishes completely once she leaves her own family's house to live together with the husband's family (patrilocal residence).

Based on the theory of residence, it can be said that the economic system can determine the power/authority of men and women. Whilst in the Tuban community the matrilocal residence system adhered to is an effort to place women in a safe position, in order for them to be free from the oppression of men. This is the reason why –based on previous research conducted by Nur Syam- there is a bigger work load on Tuban women as it is a logical implication in order to obtain authority over men. Nevertheless, based on Collins principles of conflict theory, the attitude of Tuban women that tends to “exploit” or control men is carried out unconsciously. Moreover, such action undertaken by women is included in the transitional ideology category of husband and wife relationship. Tuban women with their exploitative behaviour merely seek what they imagine to be their best interest.

Actually, to include women as possessor of power/authority by using the term more work load is uncommon. The term bigger work load is generally used as a term which shows the oppression of women by men. The term bigger work load which is considered as the realization of women's authority occurs when men feel they could no longer bear carrying out *ngawulo* at the parents-in-law's house because they have to

work along with the parents-in-law or wife with the ownership of wealth belonging to his wife and her family. The husband would subsequently feel he has no authority and ultimately fell into despair which is then realized with the term “lazy” or reluctant to work together along with the parents-in-law (male resistance). In the end, women’s work load increases because aside from having to carry out domestic duties such as taking care of the children, she must also replace her husband to work along with her parents. Even so, sometimes women would reprimand lazy husbands, which is still preferable to having to live or being taken by her husband to live in his parents’ house.<sup>406</sup> This is because from the perspective of a wider social stratification, women do their best (freely and happily) within their local community and in communities which do not expand their scope. A wide (large) community formation tends to have networks of war and politics dominated by men, and states which tend to intervene in restricting or terminating completely local women’s power. In vast agrarian culture, women in major cities which do not accept higher classes are usually unapparent and isolated. Meanwhile, women farmers in remote regions have more freedom or what Javanese women call “Javanese women’s authority”. The power or authority of Javanese women is existent because of the concept of “*sepi ing pamrih, rame ing gawe*”, “*cancut tali wanda*” and “*menang tanpa ngasorake*” as explained in chapter II.

The concept of *menang tanpa ngasorake* possessed by Javanese women indicates that women should indeed bear double burden if they desire authority without having to blatantly defeat the male ideology

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<sup>406</sup>The meaning above can be perceived from one of women’s understanding regarding the concept of *ngawulo*, i.e. “*Morotuwo tangi isuk, mantu yo kudu melu tangi. Nek ra tangi bakal digunem morotuwo karo tonggo*” (parent-in-law wakes up early, child-in-law wakes up early. Because if that did not happen it would be rumoured by the parent-in-law and neighbours). Because of this, women after marriage live together with their own parents. Additionally, the actual goal of parents wanting *dikawulani* is because of the view that parents when they are old would become “*kebo nusu gudel*” (cows suckling on the calf).

(patriarchal). Instead, the patriarchal ideology could serve as a weapon for women to re-oppress men through their identity as the breadwinner. Nevertheless, women (the wives) have forgotten the aim of building a family, i.e. to create a tranquil, affectionate and merciful family. Thus, a marriage relationship should ideally be founded on egalitarian ideology (husband and wife mutually obligated to carry out domestic and public work at the same time).

Tuban women reprimand their lazy husbands because they are of the view that men are the head of household, the person responsible for the family and its breadwinner. In other words, through their assumptions, women actually attempt to subdue men. Conversely, men also consider themselves as the one responsible for the family who must hold authority. However, they must submit to the stipulations of matrilocal residence, leading them to undergo a prolonged conflict which would bring about their resistance of the matter. Additionally, it could also lead to divorce, particularly when the husband intends to bring his wife to his parents' home and she refuses, or when the husband is reluctant to follow his wife's wish, such as to not be lazy and work. Hence, the respective party (husband and wife) –based on Collins principles of conflict theory- acts based on the material resources each of them own. Even so, these women's transitional attitude could still be accepted as a form of self-empowerment in confronting traditional ideologies which are subordinate to the patriarchal ideology that has been deeply rooted and dominating for a long period of time. Furthermore, it can be said that in these cases a mutual oppression has taken place between husbands and wives or men and women.

Another form of men's resistance is the decision to work in another city/town. Thus what happens is the strengthening of men's refusal to continue following the matrilocal residence system. This can be illustrated through MW's statement, a wife who was divorced, that "In anyway, living with parents-in-law (*ngawulo*) is often upsetting. When the husband feels

enough, he would often not want to *dikawulani* (followed or depended on) by the parents-in-law”.<sup>407</sup> As also revealed by SI, that her husband decided to work in Jakarta, because he no longer wanted to help SI’s parents work as farm workers or he did not want to *ngawulo* to SI’s parents whose daily work is *ganco* (“*luwih seneng mburuh tinimbang ganco*”). Several other statements regarding the practice of *ngawulo* can be observed in chapter IV.<sup>408</sup>

Furthermore, it can be elaborated that what Rogers explained is occurring in Tuban community \_in the context of prevailing matrilocal residence provisions-, that is male dominance ultimately ends at the level of “ideology”, and if it is faced with the actual reality it would merely be a myth, whilst female dominance –although it is limited to be dominance

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<sup>407</sup>MW, *Interview*, Tuban, 21 February 2010.

<sup>408</sup>This occurrence which happened within the Tuban community had also happened during the time of Sahaba. In this case, Athram narrated that there was a man who married a woman, and the woman required him to keep staying in her house. The man then intended to take his wife and move out, but the wife refused and ultimately the man sought counsel to Khalifah Umar. Regarding the matter Umar said that his wife has the right for her requirement to be fulfilled. The man subsequently said, “then you are divorcing us?”, and Umar replied, “the dissolution of rights is dependent on the requirement”.

Regarding the case of the Sahaba above, there are two opinions. Imam Malik, Imam Shafi’i, and Imam Abu Hanifah opined that a requirement as such becomes legally null and void, but the bond of marriage remains legal. Imam Ahmad, Auza’iy, and Abu Ishaq viewed the requirement as legal and must be fulfilled. Hence, if we follow the latter opinion it would mean the marriage will end in divorce once the husband moves from the house, as Umar said “the dissolution of rights is dependent on the requirement”. Meanwhile, if we were to adhere to the former opinion, the issue won’t be settled easily. If the husband ignored the wife’s or her family’s requirement then a psychological problem will surface which could become seeds of *madharat* and *mafsadah* (destruction). For instance, the wife may feel taunted and her rights neglected. She could feel disappointment and consequently conduct acts of *nushuz* (disobedient and rebellious to the husband).

So, there is a complex problem here. A husband intends to be obedient to his parents, particularly his mother, for several weeks, this could cause a problem in both the husband and the wife. The main person that should be obeyed by a man is firstly his parents, particularly his mother. Meanwhile, for a woman the person she must firstly obey after marriage is her husband, as long as it does not violate the law. See Mohammad Fauzil Adhim, *Kupinang Engkau dengan Hamdalah* (Yogyakarta: Mitra Pustaka, 2001), 243-244.

originating from men (her father or family)- is a real and practical dominance which shows a more lively authority, nevertheless, it still threatens the continuity of husband-wife relations.

Furthermore, I asked IM's reluctant attitude to follow the wish of her husband to live together in his parents' house, isn't such a wife one who is disobedient? Is there no obligation for the wife to obey her husband in the Tuban community or isn't the wife afraid of the burden of sin she would bear for not being obedient to her husband? IM replied that actually a wife should be obedient to her husband, but she remained reluctant to follow her husband's wish with the reason that her husband's *kumpulan* or family members were numerous, while IM's family's *kumpulan* was only her mother and herself. Aside from that, she added another reason which strengthened her refusal (disobedience) towards her husband's wish to live in his parent's house by explaining that generally Tuban women prior to marriage would always imagine her household life is carried out in her own parents' home and "*lumrahe*" or commonly women are "*perasaan*" or have sensitive feelings.<sup>409</sup>

In tune with what has been explained by IM, SI –when I asked about her reason for being reluctant to obey or live together with his husband's family- also stated "*umume tiang gunung nggih ngoten niku, seje deso mowo coro*" (that is how people from the highlands or Tuban commonly are, that is after marriage the husband would live together at the wife's parents' house, different village different tradition).<sup>410</sup> Therefore, a Tuban woman who does not heed the desire of her husband in terms of living together at his parents' house is not uncommon, because living together at

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<sup>409</sup>IM, *Interview*, Tuban, 28 March 2010.

<sup>410</sup>SI, *Interview*, Tuban, 11 February 2010.

the home of the wife's parents' house after marriage is a local tradition.<sup>411</sup> On the contrary, something that is out of the ordinary could trigger conflict between husband and wife when the husband returns to his parents' house while his wife remains at her own parents'. This is as stated by KM, "*wong lanang mulih kerjo gak jujuk omahe sing wedok, tapi malah jujuk omahe wongtuwane dewe*" (my husband upon leaving work did not directly go home to his parents-in-law's house, but instead he returned home to his parents' house).<sup>412</sup>

Based on IM and SI's explanation above, this form of women's dominance in Tuban has spread throughout the community and had become a "women dominated network".<sup>413</sup> In this case, Tuban women connects their power/authority with other women or people that are connected to her, making the network extremely strong and broadening women's dominance into a form of real power/authority.

From the discussion above it is obvious that the reality wherein women's work load is more than that of men in Tuban community is not considered as a form of gender inequality by Tuban women. It is instead accepted in order to establish their authority. On the one hand, men (husbands) become frustrated and lazy to work as a realization of their psychological function being dominated (oppressed) by wives, because the wives demand husbands to remain being the breadwinner of the family, although they (the husbands) do not have their own earning result. On the other hand, when a husband refuses to submit to the matrilocal residence provisions or becomes frustrated and lazy to work, then prolonged conflict is inevitable and it could ultimately lead into a divorce.

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<sup>411</sup>Regarding her case, IM's mother even added that the case of "*oyok-oyokan*" or argument over residence after marriage has been going on since a long time ago and it often led to divorce. IM's mother, *Interview*, Tuban, 28 March 2010.

<sup>412</sup>KM, *Interview*, Tuban, 13 February 2010.

<sup>413</sup>A term introduced by Geertz.

### 3. Intent to engage in polygamy and talaq divorce

As of current, polygamy –particularly improper practice of polygamy- has always been mentioned as one of the causes of divorce in religious court. Additionally, based on data from LBH-APIK, it is stated that facts relating to polygamy have shown many suffering brought about by polygamy. The suffering is experienced by the first wife or the other wives as well as their children. Data from 58 polygamy cases assisted by LBH-APIK during the period of 2001 until July 2003 shows several forms of violence on the wives and their children, such as psychological strain, physical abuse, wife and child abandonment, as well as neglecting wife’s conjugal rights. And there were many polygamy relations carried out with vague reasons (35 cases). Meanwhile, existing news coverage informed that polygamy stimulates increase in the rate of divorce petitioned by the wife (petitioned divorce).<sup>414</sup>

Regarding facts in this research, it does not show any existing improper polygamy as a cause of divorce or talaq divorce, however, facts do show that the husband’s desire to engage in polygamy brought about divorce. This meaning can be observed from the talaq divorce cases experienced by LL, AK, SKT, MS, SU, NK, DJ, and TA, as elaborated in chapter IV.

LL –a wife who sell fruits daily- did not want to have a polygamous relationship, particularly with a woman who still has familial relation with her, so her husband said to her: “*Wo tak pegat-pegat tenan kowe*” (then I will definitely divorce you), LL imitated, and she replied by saying “*Terserah, wong anakmu akeh, yen mbok pegat yo pegaten*” (up to you, remember that you have many children, go ahead if you really do want to

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<sup>414</sup>Press Release LBH APIK Jakarta, “Poligami sebagai Bentuk Kekerasan yang Paling Nyata atas Harkat dan Martabat Perempuan sebagai Manusia di dalam Hukum, Sosial Budaya dan Agama” in <http://www.lbh-apik.or.id/sm-pers-poligami.htm>. (25 May 2009), 1.

divorce me).<sup>415</sup> Even so, LL actually did not want the divorce, but she could do nothing if she were truly forced to engage in a polygamous relationship. In this case, she must choose between engaging in polygamy or being divorced. Because she preferred not to engage in polygamy, then she involuntarily accepted to be divorced. Furthermore, LL actually had long known about her husband's affair with another woman who was still a relative, however, she was able to persevere by saying, "*sing penting sih gelem mulih ngomah*" (what's important is that he still returns home every day).

An illustration of injustice is observable in this case. The wife had accepted the husband's oppression in the form of affair or infidelity by expressing his intent to engage in polygamy. In husband and wife relationship, it is a given that one (husband or wife) should treat the partner exclusively or with full loyalty. It is not the polygamy itself, but the intent to engage in polygamy that was expressed is a form of superior male power construction with the impulse to control women. The expression of the husband's intent to engage in polygamy has positioned women in an unacknowledged place which renders them feeling powerless. Such feelings experienced by the women of Tuban is understandable because "Why is it love one says to his wife but then polygamy as his reply to the wife?" Moreover, all this time the wives have put in all their efforts ("wealth" in the context of marriage market) for the family, but was rewarded with something not expected at all (or not aligned with the role expectations she possesses).

Because of feelings of disappointment and tendency to reject the husband's act of polygamy (infidelity), the women (wives) of Tuban attempt to reject it. The form of rejection that they could carry out is limited to accepting the decision of divorce, and subsequently the husband's

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<sup>415</sup>Ibid.

intent to marry could still continue. In other words, realizing the prevailing power of men, women could only conduct “psychological resistance” to the act of polygamy, and not “legal resistance”. This can be observed in the reality of Tuban women who could still accept acts of infidelity, but not the act of being forced into a legal polygamous relation, as stated by LL “*sing penting sih gelem mulih ngomah*” (what’s important is that he still returns home every day).

The above understanding could also be seen in the case experienced by MS. In her marital relation, a bigger work load was shouldered by her. Even so, her husband could not be grateful or thankful (*nrimakke*) towards MS. Her husband only sought firewood, then laid back. In he wanted to take a bath, MS had to prepare warm water for him. If MS did not serve him as he desired, she would often be slapped (*kaplok*) and hit (*sampluk*). In her case MS consider her husband as someone who is “*moro tangan*” or “*nyengit*” (likes to hit or induce physical harm) towards her. There was even one time when MS could not sleep because her husband constantly *nyengit* towards her, she ultimately hid in her father’s house which was close by. At the time, MS and her husband had 4 children and each of them was born without her husband being home, only several weeks after their birth he would then be home.<sup>416</sup>

According to MS, the reason of nafkah as the reason for divorce was not true, the actual reason was that her husband wanted to remarry, but she did not want to engage in polygamy. In the end they argued and her husband said that if she doesn’t want to engage in polygamy then she is asking for divorce, “... *berarti awakmu jaluk diresiki*” (that means you want to be divorced). MS replied to the challenge by saying: “*yo gak po po, wong anakmu gak dike’i pangan*” (that’s not a problem because your children aren’t provided for). Her husband’s affair had been going on for 7

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<sup>416</sup>MS, *Interview*, Tuban, 30 March 2010.

years, the *upruke* (other woman) was even invited to stay the night at MS's house and she went out of the house temporarily while her husband and his mistress stayed at her home.<sup>417</sup>

Even worse than what LL went through, MS besides having to endure bigger work load, must also accept physical violence from her husband. She was capable of persevering not to engage in polygamy even with the burden on her shoulder of providing *nafkah* for her four children, with the physical violence she accepted, and with the blatant infidelity of her husband by taking the other woman to stay the night in her house. Hence, her husband's infidelity was ignored, as long as it did not escalate to the level of polygamy. But once her husband expressed the intent to engage in polygamy, MS resisted the same way LL did, that is "psychological resistance", because she felt that polygamy is indeed a legitimate form of men's authority over women.

Furthermore, aside from being a victim of physical violence, MS also sustained psychological violence in the form of affair or infidelity. In other words, the husband's intent to engage in polygamy –and even worse the act of polygamy it self- was a psychological violence to the wife, wherein she considered the psychological violence to be more substantial than the physical violence she had endured, this is proven with her inability to persevere in the household which had been built all this time just because of the husband's intent to engage in polygamy.

Aside from the above, another understanding could also be seen in the case experienced by DJ. DJ worked as a "*tukang momong*" (baby sitter) in Parengan. Not happy seeing DJ work, her husband told her to stop working. Her husband was never "*nrimakke*" (thankful and accepting) with her earnings, because her husband was always jealous and accused her of committing indecent acts or having an affair. DJ finally submitted to her

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<sup>417</sup>Ibid.

husband's wish to stop working. But once DJ truly stopped working, her husband went back to his parents' house instead, because DJ did not want to engage in sex although they were still husband and wife. DJ's attitude of not wanting to engage in sex was caused by the condition of their relationship as husband and wife which was "*dewe-dewe*" (individual (relation)), in which if her husband had money, he would hold on to it himself and DJ would not be given any at all.<sup>418</sup>

According to DJ, her husband divorced her because he had another woman who was still a relative. Aside from that she was planned to be entered into a polygamous relationship with that woman who was still a relative, but she did not want to. DJ did not actually want the divorce, but it was because every time they argued her husband would often say "*tak pegat*" (I'll divorce you). The argument was usually regarding her husband's habit of "*main*" (gambling). She thought that continuously saying "*pegat-pegat*" (divorce) is "*mboten sae*" (improper), and finally she requested divorce.<sup>419</sup>

DJ said that she was prepared to sincerely accept divorce from her husband although truthfully she did not want it. Her husband had started it by saying "*DJ ayo neng Tuban, awakmu tak uculi*" (DJ let's go to the Tuban PA, I will divorce you). Hearing her husband's call, DJ replied: "*ra usah melu neng Tuban, sing penting aku jaluk resik, aku ikhlas*" (I don't need to go to Tuban PA, I just want a divorce, I sincerely accept.). Because of the divorce she experienced, DJ concluded that there is no such thing as a good husband in this world, making her traumatized to remarry.<sup>420</sup>

In DJ's case, a flagrant act of gender injustice happened, namely the husband's jealousy which was forwarded at DJ while she was working as a baby sitter in Parengan and forcing her to quit. Meanwhile, her husband

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<sup>418</sup>DJ, *Interview*, Tuban, 27 March 2010.

<sup>419</sup>Ibid.

<sup>420</sup>Ibid.

constantly used the money he earned for his own interest, i.e. gambling. The husband had acted inconsistently in this case by forbidding DJ to work out of her village while he himself did not provide her with nafkah, compelling her to remain working in accordance to the nature in her village, i.e. farm work, although farm work does not actually bring promising results. Therefore, a restriction has been placed by the husband for women to work in a broader area.

Seeing her husband's inconsistency, DJ attempted to resist, one of her efforts is by not fulfilling her husband's biological needs. Furthermore, her husband instead had an affair, and subsequently intended to engage in polygamy. However, DJ could not fulfil her husband's wish and preferred to be divorced rather than engage in polygamous relationship with another woman who –in her case- was still a relative. Although actually DJ did not want the divorce to happen, but what else could she have done, –because she did not want polygamy as well- she involuntarily had to support her desire of not engaging in polygamy and accept the divorce instead. Thus, the divorce she accepted as a form of resistance to her husband's polygamous intent, because there is a legitimate authority of men over women (polygamy). The resistance to polygamy could be considered as “psychological resistance to polygamy”, which is preceded by several unresolved conflict.

Furthermore, a similar case was also experienced by TA. In her case, TA had to agree to the divorce because she was about to be involuntarily entered into a polygamous relation with another woman. Additionally, she was also threatened by her husband with the words: “*nek gak gelem tak pegat, kowe ora bakal tak pegat selawase*” (if you don't want to be divorced, then I will never divorce you forever).<sup>421</sup>

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<sup>421</sup>TA, *Interview*, Tuban, 11 February 2010.

The threat made her agree to the divorce, by considering her husband's behaviour which had broken her heart, and if he continued to break her heart without any good will from his part to repent, then would TA be able to endure the relationship in the future? For this reason TA agreed to the divorce petitioned by her husband with the consideration: "*timbang ngrasakne weteng loro*" (rather than getting my heart constantly broken).<sup>422</sup>

Therefore, as in the previous cases, TA's decision to choose divorce rather than engage in polygamy is driven by the pain of being heartbroken. This indicates that there was psychological violence by hurting a woman's heart, namely with the intent of polygamy which was preceded by frequent conflict and strife caused by her husband's earnings which was spent to be with his mistress (*upruk*). In addition to that, because she did not want to constantly be heartbroken by the affair or polygamy, TA decided to choose to be divorced. Hence, the resistance which took place was limited to "women's psychological resistance to polygamy", because she was unable to contest it legally.

Furthermore, with women's psychological resistance to polygamy, it is still women who must endure the suffering, and the husband remains at an advantageous position. As already known, a woman is a figure of God's creation that is prepared to suffer or be miserable (masochistic), and it is this particular character of women that is taken advantage of by men in order to oppress women.<sup>423</sup> This is why, in the cases above the women of Tuban are still in the psychological resistance stage, hence it is the women who was disadvantaged and suffered. Contrarily, in order for women to be

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<sup>422</sup> Ibid.

<sup>423</sup> Randall Collins, *Sociology of Marriage and the Family: Gender, Love, and Property* (Chicago: Nelson-Hall Inc., 1987), 192.

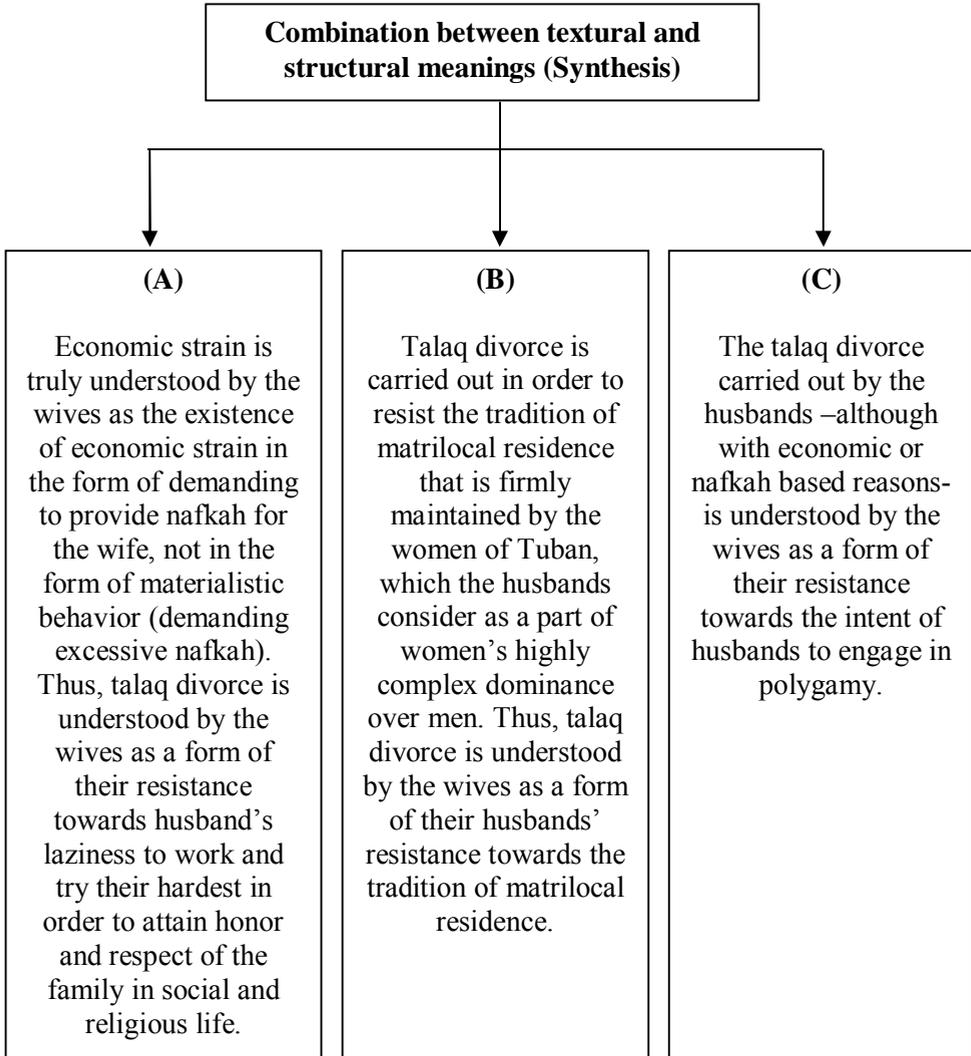
liberated from loss and suffering, they should conduct legal resistance or take the case up legally to court.

The act of psychological resistance still would not cover any chance –no matter how small- on the legalization of polygamy, namely under “certain” conditions. Although, the fact shows that polygamy is often undertaken without fulfilling these particular conditions. Therefore, the law on polygamy remains as elaborated in the interpretation of holy texts. In other words, psychological resistance towards polygamy is directed at its practice which is no longer aligned with “certain conditions”.

Based on the research findings, it can be concluded that this research has supplemented data that it is not just the act of improper polygamy – based on data obtained by LBH-APIK and divorce causal factors determined by the PA- which can lead to divorce, but even the intent or desire to engage in polygamy has also led to divorce.

The entire description above is a synthesis between textural and structural meanings given by the wives regarding the talaq divorce she accepted by reason of economic condition petitioned by the husband. The following is a figure regarding the synthesis between textural and structural meanings:

**Figure V.1.**



Therefore, conflict or dissolution in the framework of talaq divorce by reason of economic strain in Tuban Regency –based on Lewis Coser conflict theory- has been understood by the wives as something which is still positive, for the sake of their future and their children's future.

Additionally, the economic reason used by the husband in the divorce request or the divorce has been understood by the wives as a false reason, which means the court or panel of judges should be more vigilant towards divorce cases with the various reasons that are conveyed by the concerning parties. Therefore, the idea to start paying attention to the process of revealing material truth in civil court cases –particularly divorce- should be reconsidered as a solution to the problem or phenomenon in this research. Furthermore, formal truth which has been considered as absolute in the civil court process must be provided with several explanations and re-interpretations.

## CHAPTER VI

### CLOSING

#### A. Conclusion

Based on previous discussions, it can be concluded that talaq divorce is conducted by husbands during harvest season –because the initial case fee is affordable at this time- and it is preceded by separation of board before the advent of harvest season. Regarding separation of board, the husband would leave his partner (the wife), because Tuban community adheres to a tradition of matrilocal residence or after the wedding the husband and wife would live together in the wife’s family’s (parents’) house. Nevertheless, this does not rule out the possibility of couples to live together in the husband’s parents’ house, wherein the wife would be the person leaving her partner behind. As for the duration of separation prior to it being registered in the form of divorce is varied, some are 1, 2, 3, 4 years long, and even up to 9 years as experienced by MP.

Regarding husband and wife relationship as an economic relationship, the wife shows her authority/power. By means of traditional and transitional ideology women could appropriately take advantage of the husband’s identity as the sole breadwinner of the family to dominate (oppress) men. The realization of this dominance is evident when –under conditions of economic strain- the wife demands or dictates the husband to immediately provide sustenance (nafkah) according to her desire. Concurrently, the husband could not fulfil his wife’s demand, wherein –consequently- conflict arises along with its various forms of psychological function and resistance, until ultimately the relationship would reach a breaking point (as the peak of the unresolved conflict). The outcome would

be different if the relationship were founded on egalitarian ideology, wherein if the family were to experience economic hardship it would not threaten the intimate relationship of the husband and wife. Instead, both of them would collaboratively work together to resolve the problem because within this context, sustenance (nafkah) provision is not only the obligation of one of the couple, it is the obligation of both wife and husband, which then would lead the couple not to engage in mutual domination/oppression.

Furthermore, another unique or distinctive character found in the research is that talaq divorce by reason of economic strain in Tuban Regency is understood by the wife as a form of their resistance towards the husband's laziness to work and try his best in order to attain honour and respect of the family within their social and religious life. Thus, this phenomenon did not merely show forms of gender ideology but it also revealed that gender role distribution in the family or husband and wife relation is not merely determined by ideologies but it is also determined by myths.

Meanwhile, often times the concept "*mantu dherek morotuo*" (*ngawulo*) which is implemented by Tuban women to support their authority as Javanese women would trigger conflicts instead. Actually this concept has become a tradition in Tuban community which is highly supported by women in order for them to remain in the framework of matrilineal residence. However, in accordance with the flow of developing transformation, their struggle or effort has been facing tremendous challenge from men, which leads to household conflict and causing divorce in the end. Even so, conflict which ends in divorce remains able to be perceived/ understood positively as an effort to maintain the culture of Tuban community with its tradition of *mantu dherek morotuwu* or *ngawulo*. Therefore, talaq divorce is understood by wives as a form of the husband's resistance towards the tradition of matrilineal residence.

Moreover, in husband and wife relationship as a relationship of fidelity, the wife does not show any authority at all, since holy texts (al-Qur'an and al-Sunnah) do not provide any gap whatsoever for other interpretations, infinitely women are not allowed to engage in polyandry. In this context, the wife highly expects the husband's treatment exclusively by making her the one and only legal wife. If there were any other condition than this, it would induce psychological violence upon the wife which is more significant than enduring physical violence or the affair itself. In other words, the wife could still cope under the conditions where in the husband has an affair with another woman rather than having the husband engage in polygamy or expressing his intent to enter a polygamous relationship. Thus, when the intent or desire to engage in polygamy has been expressed, the wife choose to be divorced, which subsequently can be defined as "wife's psychological resistance towards polygamous intent".

#### **B. Theoretical Implications**

In reality the obligation of nafka provision shouldered by men often becomes a boomerang or cause of conflict in the household life of husband and wife. Subsequently, it is not unusual that the conflict would end in divorce. Therefore, the obligation of nafka provision on the shoulder of men serves as a trigger for divorce. Based on this, the research implies the need to terminate the concept of nafka obligation (public role) shouldered by men, and subsequently to establish nafka provision as a joint obligation. Additionally, the termination of the concept of domestic roles shouldered by women should also be considered. In other words, this research demands equality in the distribution of domestic work contextually.

Tuban women (wives) who resisted to be involuntarily entered into polygamous relationship by their husbands (psychological resistance towards polygamy) –in this case- are hard-working women figures, whilst

their husbands have no feeling of gratitude and compassion regarding the wives' hard work and efforts, it was not unusual that among the women sustained physical abuse from their husbands. This resistance does not completely abolish the pain and suffering the wives felt, instead the pain and suffering will be forever felt in the form of trauma to remarry. Hence, the resistance carried out should not be limited only to psychological resistance but also legal resistance by means of legal procedures and create a draft regulation to eradicate all unruly polygamy or ones without the wife's consent. If it is possible, the total eradication of polygamy is the goal, as Islam fundamentally adheres to the principles of monogamous marriage.

The realization of inequality to men occurs when the tradition of *mantu dherek morotuwo* compels them to submit to women's rule, without having to subjugate their value, that is still remain as the sole breadwinner of the family. Under such conditions, men have struggled with more load of work, which is not only in providing sustenance for the wife and children, but the entire family that are living under the same roof. While all this time, more work load (simultaneously be nafkah provider and caretaker of house and children) has never been considered by women as more work load, it is instead said to be something natural or common for women. Thus, this research has provided clarity on Nur Syam's research which concluded that because women carry out proposal of marriage, they consequently have more work load and their position becomes subordinated. Based on this research, the work load of Tuban women are bigger than men due to the tradition of matrilocal residence, which instead symbolizes Tuban women's power under the shadows of the continually developing gender ideology, and brought about –in this context- what is called mutual domination/oppression.

Therefore, because –according to the wives- the talaq divorce by reason of economic condition (demand for more nafkah by the wife) peti-

tioned by the husband was not the real reason for divorce, the Tuban Regency PA and judges should pay more attention to matters regarding the process of proving the cases. Divorce cases are included in civil cases in which the judges are passive in nature. Thus, the truth sought by the judge in civil cases is formal truth. Nevertheless, its implementation does not have to be rigidly conducted. There are also opinions which indicate including formal truth in civil court procedures instead of merely seeking out formal truth. Furthermore, the idea to begin examining the process of revealing material truth in civil court trials –particularly divorces- should be reconsidered as a solution to the problem or phenomenon in this research. Furthermore, formal truth which has been considered as absolute in the civil court process must be provided with several explanations and reinterpretations.

### C. Limitation of Study

It is unavoidable that I as a human being possess imperfections, and this book as a product of my humanly efforts has its limitations and imperfections. This research uses a phenomenological approach, which founded the research in the subjective meaning/understanding of actors towards the phenomenon of talaq divorce by reason of economic condition that was brought forth. Hence, in this research, I have conducted interviews with the actors. Nevertheless, I did not conduct interview to all of the actors (of divorce), as it was limited to a part of them until I was able to obtain a pattern which could be developed and analysed scientifically. Thus, this research has opened the opportunity for further research or studies which may acquire differing patterns due to differences in the subject of interview.

Additionally, this research was conducted based on the existing fact between the years 2008 to 2009 that there was a phenomenon of talaq divorce by reason of economic condition, so there are still other possi-

bilities that the fact may change in accordance to changes in the future period of time. Moreover, in this research, the phenomenon analysed was limited to talaq divorce by reason of economic condition, while talaq divorce phenomenon by reasons other than economic condition (such as forced marriages, underage marriage, and so on) could properly supplement and complete the results of this research.

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No.	Title	Additional Information
1	<i>Makna Perempuan Karier dalam Konteks Relasi Suami-Isteri bagi Perempuan Pengaju Cerai Gugat di Kediri</i> (The Meaning of Career Woman in the Context of Husband-Wife Relationship to Women Petitioning for Divorce in Kediri)	<i>Realita</i> , LP3M STAIN Kediri, 2013
2	<i>Kewajiban Nafkah dalam Hubungan Suami dan Isteri</i> (The Obligation of Nafkah Provision in Husband and Wife Relationship)	<i>YUDISIA</i> , Prodi Ahwal Syakhsiyyah STAIN Kudus, 2013
3	<i>Madhhab Akhbari dan Usuli sebagai Proses Munculnya konsep Wilayah al-Faqih dalam Shi'ah Ithna 'Ashariyah</i> (The <i>Akhbari</i> and <i>Usuli</i> School of Thought as a Process in the Advent of the <i>Wilayah al-Faqih</i> concept in <i>Shi'ah Ithna 'Ashariyah</i> )	<i>Empirisma</i> , LP3M STAIN Kediri, 2012
4	<i>Kesetaraan antara Suami dan Isteri dalam Hak Talaq: Sebuah Analisis Gender</i> (Equality between Husband and Wife in Talaq Rights: a Gender Analysis)	<i>Universum</i> , LP3M STAIN Kediri, 2011
5	<i>Metode Penafsiran Teks Bint al-Shati' terhadap al-Qur'an</i> ( <i>Bint al-Shati'</i> Text Interpretation Method on <i>al-Qur'an</i> )	<i>Empirisma</i> , LP3M STAIN Kediri, 2011
6	<i>Qaul Qadim dan Qaul Jadid Imam al-Shafi'i tentang Kedudukan dan Wewenang h̄kam dalam Upaya Penyelesaian Perkara Shiqaq</i> ( <i>Qaul Qadim</i> and <i>Qaul Jadid Imam al-Shafi'i</i> on the Position and Authority of <i>h̄kam</i> in the Effort of Resolving the Case of <i>Shiqaq</i> )	Logung Pustaka, Yogyakarta, 2009.
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9	<i>Trend Reformasi Hukum Keluarga di Dunia Islam: Studi Perbandingan dan Keberanjakan UU Modern dari Kitab-kitab Fiqih</i> (The Trend of Family Law Reform in Islam: Comparative Study and Development of Modern Laws from <i>Fiqih</i> Texts)	<i>Empirisma</i> , LP3M STAIN Kediri, 2008.
10	<i>Analisis Hermeneutis sebagai Kritik Ideologi dalam Perspektif</i> John B. Thompson (Hermeneutical Analysis as Ideological Criticism in the Perspective of John B. Thompson)	<i>Empirisma</i> , LP3M STAIN Kediri, 2007.

