

## **ANALYSIS OF THE LAJNAH BAHTSUL MASAIL NU FATWA METHOD ON DIVORCE JOKES**

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### ***Abstract***

*The Lajnah Bahtsul Masail issued a fatwa regarding jokes about divorce through NU Online. In this case, someone asked whether someone who jokes about divorce has incurred thalak, and NU Online provided an answer to this question. Lajnah Bahtsul Masa'il is an NU discussion forum that explores legal issues arising from the community. Bahtsul Masail. 'Bahtsul' refers to research, discussion, and exploration. Masail, on the other hand, refers to questions, issues, problems, cases and events. Thus, linguistically, 'bahtsul masail' can be interpreted as 'discussion of a problem'. This study aims to understand the Lajnah Bahtsul Masail method of issuing a law from a problem, particularly with regard to the issue of divorce jokes. The research method employed was a literature study involving data collection through the analysis of various scientific sources, such as journals and books. The results of the study show that Bahtsul Masail uses several methods to explore a law, including the Qauli, Ilhaqi, and Manhaji methods. When answering questions about the law of divorce jokes, Bahtsul Masail uses the Manhaji method, applying the rules of Imam As-Suyuti in the book Al-Asybah Wan Nazhair, although initially the answerer refers to the book Fathul Muin.*

**Keywords :** *Bahtsul Masail, Divorce jokes, Fatwa method*

### ***Abstrak***

Lajnah Bahtsul Masail mengeluarkan fatwa tentang hukum gurauan cerai melalui media NU Online. Dalam kasus ini, seseorang bertanya tentang bagaimana hukum tentang seseorang yang bergurau masalah cerai apakah sudah jatuh thalak, maka dalam hal ini NU Online merilis jawaban dari pertanyaan tersebut. Lajnah Bahtsul Masa'il merupakan forum didkusi Nahdatul Ulama untuk menggali hukum dari permasalahan-permasalahan yang datang dari masyarakat. Bahtsu dan Masail. Bahtsul memiliki arti sebagai penelitian, pembahasan, pencarian, riset, diskusi, dan eksplorasi. Sementara itu, Masail merujuk pada pertanyaan, persoalan, isu, problematika, perkara, dan kejadian. Dengan demikian, secara linguistik, bahtsul masail dapat diartikan sebagai pembahasan mengenai sebuah persoalan. Penelitian ini bertujuan untuk memahami bagaimana metode Lajnah Bahtsul Masail dalam

mengeluarkan suatu hukum dari suatu masalah terutama masalah yang dibahas yaitu tentang hukum guraan cerai. Metode yang digunakan adalah studi kepustakaan, yaitu pengumpulan data melalui analisis dari berbagai sumber ilmiah seperti jurnal dan buku. Hasil dari penelitian menunjukkan bahwa bahtsul masail menggunakan beberapa metode dalam menggali suatu hukum, diantaranya adalah metode Qauli, metode Ilhaqi dan Metode Manhaji. Dalam menjawab pertanyaan tentang hukum guraan cerai, Bahtsul Masail menggunakan metode Manhaji dengan menggunakan kaidah dari Imam As-Suyuti dalam kitab Al-Asybah Wan Nazhair sekalipun diawal penjawab merujuk pada kitab Fathul Muin

**Kata kunci:** Bahtsul Masail, Guraan Cerai, Metode Fatwa

## INTRODUCTION

Maintaining a harmonious family relationship is not an easy task. Before that, it is expected that husbands and wives have adequate and morally correct knowledge of values and norms and are mentally prepared to face all problems, obstacles and challenges in the family. Not a few married couples who feel mentally prepared and have adequate knowledge but fail to create and foster a *sakinah mawaddah warahmah* family so that the family becomes disharmonious. In general, everyone intends to enter into a once-in-a-lifetime marriage and it never occurs to them that there will be gloom in their lives that leads to arguments and divorce, so that in the end divorce is the best choice for both of them (Hidayati, 2021). On the one hand, Islam allows divorce even though marriage is defined as an eternal covenant, but on the other hand, Islam also hates divorce. Although the permissibility is very clear and is the last resort by husband and wife after other efforts are unable to restore the integrity of household life (Kharlie, 2013).

NU was founded for religious and nationalistic motives. The religious motive is to maintain the teachings of the Wali Songo who adhere to one of the four *madhhab*s in the Republic of Indonesia based on Pancasila and the 1945 Constitution (Farhoni, 1999). In the Nahdlatul Ulama organisational structure, there is the Bahtsul Masail Institute (LBM) which has an important role. As the name implies, Bahtsul Masail means the study of religious issues. LBM functions as a forum to discuss various religious and legal issues. The main task of the LBM is to collect, discuss and resolve issues that require legal certainty. Therefore, this institution is a very important part of the NU organisation, acting as a discussion

forum for scholars (Syuriah) to determine the law of an issue. The decision taken by the LBM is in the form of a fatwa, which serves as a guide for NU citizens in practising religion in accordance with the teachings of ahlusunnah wal jamaah (Mahfudh, 1926).

The case of jokes in the context of divorce is not new in Islamic legal discourse and often causes confusion among ordinary people. One interesting example arose in a consultation on the NU Online website, where three friends Andi, Bejo and Budi were engaged in a casual conversation. In a joking atmosphere, Andi asked Bejo, 'If your wife was taken by Budi, would you allow it?', to which Bejo replied, 'It's okay.' The answer was delivered without the intention of divorcing his wife, purely in the context of a joke. Budi, who felt that such remarks could be considered as talak according to Islamic law, warned Bejo by saying, 'Don't say that, you'll get talak' (Online, 2024). The remark made Bejo anxious and confused, as he initially felt he did not mean it, but became concerned that the joke could have legal implications for his marital status. This case raises an important question: can the utterance of 'may' in this context be categorised as a valid divorce, given that in fiqh there is an opinion that a divorce pronounced even without serious intent is still considered legally valid? This question is interesting to examine within the framework of Islamic law and positive law in Indonesia. Faced with such a phenomenon, Lajnah Bahtsul Masail Nahdatul Ulama responded to the problem. Through its official website [islam.nu.or.id](http://islam.nu.or.id) in the Bahtsul Masail column, NU scholars formulated and answered the issue of 'The Law of Joke Divorce on the Edge of the Ravine'.

Previously there was previous research, the first research conducted by Jufrizal and Zainal Azwar. In this study, it discusses the *ijtihad* method of the Bahtsul Masail fatwa regarding the prohibition of checking a partner's cellphone, which in this study not only analyses the *ijtihad* method of the Bahtsul Masail fatwa but also explores the law regarding looking at a partner's cellphone in terms of positive law (Jufrizal & Azwar, 2024). The second research conducted by Agus Mahfudin, in this study focuses more on discussing how the Bahtsul Masail Institute uses the legal *istinbath* method from 1992 and 2015, he describes changes in the Bahtsul Masail legal *istinbath* method (Mahfuddin, 2021). In

general, no previous research has discussed the analysis of the fatwa method of Lajnah Bahtsul Masail on divorce jokes such as those released in nuonline on Friday, 4 October 2024 regarding the Law of Divorce Jokes on the Edge of the Ravine.

## **RESEARCH METHODS**

This research uses the library research method, a data collection technique involving the analysis of various literature sources, such as journals, books, magazines, scientific works and the internet, with the aim of connecting the findings obtained from these sources. This descriptive study aims to explain and describe the results of searching for jokes about divorce on the internet.

Secondary data was used in this research, which is data collected by researchers to support scientific research through a series of literature studies. The data collection technique used in this study involves several methods of literature review. The descriptive data obtained in this study can come from oral information, writing, words or observations of a situation.

## **DISCUSSION/RESULTS AND DISCUSSION**

### **History of the Bahtsul Masail Institute**

Bahtsul Masail consists of two words, 'Bahtsu' and 'Masail'. The word 'Bahtsu' refers to activities such as research, discussion, search, research, discussion, and exploration. Meanwhile, 'Masail' means questions, issues, problems, and events. Overall, the term Bahtsul Masail can be interpreted as a discussion of a problem. According to KH Sahal Mahfudz, Bahtsul Masail is a religious discussion forum that aims to respond and provide solutions to various actual problems faced by society (Muhdlor, 1998). Bahtsul Masail was established on 31 January 1926 by KH Hasan Asy'ari. However, substantially, this activity has existed long before the establishment of NU. At that time, discussions held by kiai and santri were published in Lailatul Ijtima Nahdhatul Ulama (LINO) (Aziz, 2005). This forum was first held at the NU Mukhtamar which took place in Surabaya on 21 October. Terminologically, Lajnah Bahtsul Masail Diniyyah (LBM) was recognised at the NU XXVIII Mukhtamar in Yogyakarta in 1989. In that forum, the NU recommended to the PBNU to establish Lajnah Bahtsul Masail Diniyyah. Following this recommendation, the PBNU then issued decree No. 30/A.

105/5/1990 which stipulated the establishment of Lajnah Bahtsul Masail Diniyyah. The term ‘Masail Diniyyah’ itself refers to Bahtsul Masail, which means the study or discussion of various religious issues (Jamil, 2007).

Literally, the term LBM first appeared at the XXVIII NU Mukhtamar in Yogyakarta in 1989, which then recommended to the PBNU to establish Lajnah Bahtsul Masail Diniyyah. Based on this recommendation, the PBNU finally issued a decree with number 30/A.105/5/1990 which established the Lajnah Bahtsul Masail Diniyyah. Masail Diniyyah, which is another term for BM, means research or discussion on religious issues. In the context of NU, BM refers to the discussion of various problems that exist in society, especially those related to religion, social, economic, cultural and politics. As time goes by, contemporary problems are increasing in society, due to the emergence of new things and the lack of public knowledge, especially in terms of religion. Therefore, the BM becomes very important as a reference in determining the law on issues that have never occurred before. BM material usually comes from questions posed by the community or organisations, as well as facts that occur in the surrounding environment (NU, 2002).

### **Talak in Islamic Law**

The term talak is an Arabic term, *al-ṭalā* with the addition of the letter *alif* ‘ا’ in front of the letter lam ‘ل’ taken from the root word, which linguistically means to give away, untie, separate, or divorce. *Al-Jazīrī* and *al-Zuhailī* mentioned that the meaning of divorce in language is to loosen a bond, untie a knot, or separate a bond, whether it is physical, such as the bond of a horse and the bond of a captive, or it is meaningful, such as the bond of marriage. For example, ‘*ṭalāq al-naqah*’ or ‘*nāqatun ṭāliqun*’ means to loosen the bond of a camel and release it, or a camel that is released. Referring to the meaning of the language, it is understood that the word talak (*ṭalāq*: Arabic) contains a general meaning, covering all forms of releasing a bond, both outwardly and inwardly. In the external sense, it means untying something that appears to have a rope, while in the meaning sense, it means a bond that has a meaning, such as family ties, bloodline ties, marriage ties, sibling ties, tribal and cultural ties, and others (Jamhuri & Zuhra, 2018).

As for terminology, the formulation of the meaning of divorce tends to be directed

and specialised only in the meaning of the release of the marriage bond, or divorce between husband and wife. According to *al-Zuhaili*, divorce in terms of terms means removing the bond of marriage with the word *talak* (divorce) or the like. A similar definition is also mentioned by Sayyid Salim. According to him, divorce in Shari'ah is to untie the marriage bond or break the marriage relationship at that time or at a later time with a certain word. These two definitions have the same meaning, that divorce is a divorce or breaking of the marriage bond between husband and wife that occurs immediately after the husband utters the word divorce, or similar phrases. Similar phrases mean all forms of phrases that give a strong indication that the husband's words are intended to divorce, for example with the words, 'I divorce you', 'I no longer want to live with you', and other similar sentences (Jamhuri & Zuhra, 2018).

The original law of divorce in *fiqh* is *makruh*, but it can be found that the law is obligatory, *haram*, and can also be permissible. Divorce is obligatory if it aims to resolve the quarrel between husband and wife, and divorce is the best option in ending the quarrel. Divorce is forbidden if it is not done for a justifiable reason and will cause harm to both parties. Divorce is permissible if it shows things that cannot be tolerated, such as the wife having an affair (Sahrani, 2010). Referring to the original law that divorce is the right of the husband means that it is valid if it is not done in the Religious Court. This is because a very familiar opinion is that the husband can exercise the right to divorce anytime and anywhere. Divorce in *fiqh* is valid when the husband pronounces it to the wife, even if it is not done in the Religious Court. Prior to the existence of the Religious Court with its material law Law No. 1 of 1974 and Presidential Instruction No. 1 of 1991 on KHI, divorce was no longer recognised that occurred outside the Religious Court.

The *fukah* are of the opinion that divorce must be accompanied by intention. The opinions of Imam Hanafi, Imam Shafi'i and Imam Ahmad bin Hanbali, say that a husband who pronounces divorce requires intention or guidance from circumstances. Imam Maliki is of the opinion that it is sufficient for the husband to pronounce the divorce without the intention. The pronouncement of divorce by the husband as regulated in Islamic law which has been formulated in various *fukah* thoughts is considered valid, the marriage relationship has been broken as

husband and wife (Afandi, 2014). Imam Syafi'i's view of divorce means to break the marriage contract with a word that is *zahir* and or a word that is similar to divorce. Imam Hanafi and Hanbali are of the view that divorce is an action in the form of speech with the intention of breaking the marriage bond directly with the use of certain words. another opinion, namely Imam Maliki, said that divorce is an action to a special legal nature that causes the nullification of the relationship between husband and wife (Ernita, 2018).

About the thoughts of the *fuqaha*, it is emphasized that divorce uttered by the husband consciously or unconsciously to his wife is considered valid from a *fiqh* perspective (Hidayat, 2018). This means that during the marriage, the husband must restrain himself from uttering words that lead to divorce such as divorce. As a result of the law of divorce itself, the husband has pronounced divorce and if he wants to reconcile with his wife, it is permissible without a new contract. This is the solution to the consequences of the law of divorce found in the thoughts of the *fuqaha*. *Fuqaha* such as Imam Hanafi, Imam Ahmad bin Hanbali and Imam Syafi'i that divorce is valid with intention. As long as the divorce is pronounced but not with intention, the divorce is invalid. All *fuqaha* provide elaboration on divorce in terms of the time the husband pronounces divorce, there are two types, namely *sunni* divorce and *bid'i* divorce. *Sunni* divorce is a type of divorce carried out according to the guidelines of the *sunnah*. An example is when a wife is divorced after her husband has had intercourse with her, and then she immediately begins the *iddah* period. On the other hand, *bid'ah* divorce is a divorce pronounced by the husband but is contrary to the guidelines of the *sunnah*, such as when the divorce is pronounced when the wife is menstruating after having intercourse. Meanwhile, there is also a category of divorce that is not included in either *Sunni* divorce or *bid'ah* divorce, namely when the husband pronounces divorce even though he has never had intercourse with his wife, the wife has never menstruated, or the wife is still pregnant (Syar'i, 2015). The term divorce is not explicitly mentioned in Law Number 1 of 1974 concerning Marriage, but the substance of its regulation is contained in the provisions concerning divorce. Based on Article 38 and Article 39 of the law, divorce can only be carried out before a Court hearing after unsuccessful peace efforts. A husband who wants to divorce his wife cannot

immediately issue a divorce unilaterally but is obliged to submit a divorce application to the Religious Court and wait for the court's decision. Divorce can only be done if there is a valid reason, such as ongoing quarrels, one party leaving the other, domestic violence, or other bad behaviour that makes the marriage untenable (Indonesia, 1974).

In practice, the rules regarding divorce are explained in more detail in the Compilation of Islamic Law (KHI), which serves as a legal guideline for Muslims in marriage matters in Indonesia. Article 117 of the KHI states that divorce is a statement from the husband delivered before a Religious Court and is one of the causes of the dissolution of the marriage. Divorce pronounced outside the trial has no legal force, as Article 129 of the KHI explains. Therefore, the divorce process must go through the courts as a valid legal procedure, to guarantee legal protection and justice for both parties, especially for the wife (Agama, 2000).

According to Ibn Qayyim, the concept of divorce in Islam includes two main things, namely divorce related to the time of its implementation and divorce in terms of its amount. Regarding time, Ibn Qayyim thinks that the husband must consider the conditions under which the wife can undergo the iddah period. This can only be done in two-time conditions. First, divorce is pronounced when the wife is in a state of purity or not menstruating. Second, divorce is pronounced during the period of purity, but when the wife has not been intimate with (sexed) by the husband. What is meant by "not intimated" is when the husband divorces his wife without having sexual intercourse with her during the period of purity. Meanwhile, in terms of quantity, Ibn Qayyim stated that in Islamic law, divorce is only limited to three times. The husband has the right to divorce his wife up to three times, after which their relationship is no longer halal unless the wife marries another man first. Ibn Qayyim's opinion regarding these two aspects is in line with the views of scholars from various schools of thought, as well as those contained in current marriage law literature. However, interestingly, there are significant differences in the consequences and methods of implementing divorce, both in terms of time and quantity (Jamhuri & Zuhra, 2018).

Divorce, whether expressed directly or indirectly, consists of two types. The first is talak sharih, which is a clear and firm expression, easily understood as an



intention to divorce. This divorce is legally valid if it is uttered consciously and without coercion. The second is talak kinayah, which is an utterance with sarcastic words or indirect expressions that can be interpreted as divorce or vice versa. In the context of talak raj'i according to fiqh, there is an iddah period that allows the husband to return (reconcile) to his wife. However, after the iddah period ends, talak raj'i changes to talak bain, which requires the husband to make a new contract if he wants to return to his wife. Therefore, even though the husband has pronounced talak, as long as the iddah period is still ongoing, he can refer back to his wife, either through words or actions. Reconciliation means that the husband can reconnect the marriage bond as before. Divorce, talak raj'i pronounced by the husband in the current condition is considered valid and accepted by society. On the other hand, the general understanding regarding talak divorce that is not submitted to the Religious Court is that the divorce is considered invalid before a decision is made by the judge (Syar'i, 2015).

Apart from talak raj'i, in fiqh, there is also the concept of talak ba'in, which is a type of divorce that does not give the husband the right to refer to his ex-wife. Talak ba'in is divided into two categories: talak ba'in sughra and talak ba'in kubra. Talak ba'in sughra is a divorce that allows the ex-husband to refer to his ex-wife, but with the condition that he must enter into a new marriage contract, either after the divorce or after the wife's iddah period ends. Meanwhile, talak ba'in kubra occurs when a husband says talaq three times in a row or more on one occasion. In this case, the husband is not allowed to remarry his ex-wife, even if he enters into a new marriage contract unless the wife marries another man and then divorces after the iddah period ends. In Islamic jurisprudence, the understanding of divorce through talak is considered valid as long as the pillars and conditions determined have been met by the husband. The issue of divorce through talak does not have provisions in classical Islamic jurisprudence that require the process to be carried out before the Religious Court. However, talak is considered valid and falls when the husband says it to his wife, either intentionally or unintentionally. In Islamic jurisprudence, talak is seen as the absolute right of the husband towards his wife, and this view is believed by the majority of the Muslim community. Based on the law of talak raj'i, the husband is still obliged to provide for his wife during the

iddah period, because the woman is still considered his wife. Ex-wives who have been divorced through talak can still live in the same house as their husbands and are free to dress up or makeup. The husband has the right to refer to his wife by saying words such as "I want to reconcile with you." If the husband then has sex with his ex-wife, it is considered a sign that the husband has referred her (Fikri et al., 2019).

### **Legal Istinbath Method of Bahtsul Masa'il**

Lajnah Bahtsul Masail Nahdlatul Ulama acts as an institution that provides solutions to various problems that arise along with the development of community life. (Adliyah, 2021) Legal Excavation Method: In the process of determining a law, Lajnah Bahtsul Masail Nahdlatul Ulama uses three legal istinbath methods systematically, namely the qauli, ilhaqi, and manhaji methods: (Mahfuddin, 2021) First, let's discuss the Qauli Method. This method is an approach used to determine the law by referring to the fiqh books written by the imams of the madzhab. As an initial step in solving legal problems, this method focuses on finding lessons from classical works recognized by each imam of the madzhab. This approach is textual; that is, if there is one opinion about the law of a problem, that opinion will be used as the basis for determining the law. However, if there is more than one opinion, the scholars will conduct taqrir ijma'i, which is an effort to choose one opinion through careful consideration (Abshor, 2016). This consideration includes aspects of the benefit and legitimacy of the law, as well as the views of the scholars who are more inclined towards the Shafi'iyah group. This is due to the tendency of Nahdlatul Ulama to maintain the tradition of madzhab that is in line with the teachings of Shafi'iyah (Abshor, 2016). One of the reasons why the qauli method is prioritized over the bayani method is the importance of caution in determining Islamic law. The Bahtsul Masail Nahdlatul Ulama Institution (LBM NU) does not directly refer to the texts of the Qur'an and Hadith consisting of muhkamat and mutasyabihat verses, they prioritize solving problems based on interpretations of the book al-madzahib al-arba'ah, namely the editorial of the four schools of thought. This is done because these works are considered the core of the Qur'an and Hadith. This choice was taken by LBM NU to maintain the sustainability of the transmission of Islamic religious knowledge.

At the taqirir jama'i stage, considerations are made based on the aspect of its benefit (Shofiana, 2022). The Ilhaqi method is the second approach used when the Qauli method cannot be applied. Technically, this method is similar to the Qiyas method in solving problems, but there are differences in how it is applied. If Qiyas links the law of a new problem with the provisions that already exist in the text of the Qur'an and Hadith, then the Ilhaqi method functions to link the law of a new problem with the provisions that are already clear in the wording of the mu'tabar book. In this context, Nahdlatul Ulama is very careful in determining the law of a problem. They argue that Qiyas should only be carried out by mujtahids who have competence in various fields of religious knowledge. Although different from Qiyas, the Ilhaqi method can only be applied by individuals who have knowledge and skills in religious knowledge. The procedure in the Ilhaqi method includes determining mulhaq bih, mulhaq alaih, and wajhul ilhaq (Lintang Ramadhani et al., 2024).

The Manhaji method is applied when in a case no opinion is found that can be used as a legal basis. This method can be understood as an approach to solving problems by following the mindset and rules of legal istinbath adopted by the imams of the madzhab. In determining the law through this method, it is important to continue to pay attention to the principle of benefit. The main focus of this method is to determine the law based on the order of sources of Islamic law, namely the Qur'an, Hadith, Ijma', and Qiyas. This method has been applied since the National Ulama Conference in 1992 in Lampung, where scholars succeeded in resolving legal problems with istinbath jama'i through systematic and directed madzhab procedures (Fatonah k Daud, 2022).

The use of the manhaji method by Lajnah Bahtsul Masail NU not only shows a scientific effort to explore the law in depth from primary Islamic sources but also reflects the flexibility of fiqh in responding to local social and cultural dynamics. In the context of Indonesia which is plural and full of diversity, this method allows scholars to formulate Islamic law that is contextual, relevant, and by the 'urf (local customs) of society. Thus, the manhaji method is a reflection of collective ijtihad that is adaptive to social reality, without abandoning the basic principles of sharia. This flexibility is part of the strength of traditional NU fiqh in

maintaining the continuity of Islamic law while responding to the challenges of the times wisely and responsively.

### **Case Study**

#### **Bahtsul Masail as a Forum for Contemporary Islamic Legal Discourse**

*Bahtsul Masail* is a scholarly forum for deliberation among Islamic intellectuals, particularly those specializing in *fiqh* (Islamic jurisprudence), and is typically held within Islamic boarding schools (*pesantren*) affiliated with *Nahdlatul Ulama* (NU). This forum serves as a venue for in-depth discussions on religious issues that either lack explicit legal precedent or have not been previously addressed by classical scholars.

One illustrative case discussed on NU Online presents a nuanced question regarding the implications of jokingly stated divorce:

*Peace be upon you, I would like to inquire about an issue related to Islamic law. In a casual conversation, three friends—Andi, Bejo, and Budi—were talking. At one point, Andi asked Bejo, "If Budi were to take your wife, would you allow it?" Bejo, in a lighthearted manner, replied, "Sure." In truth, Bejo had no intention of divorcing his wife; he was merely joking, and Budi similarly had no intention of taking Bejo's wife. After the conversation, Budi approached Bejo and said, "You shouldn't say things like that—it could be considered a declaration of divorce." Upon hearing this, Bejo began to feel uncertain. In his mind, it was just a hypothetical joke, introduced with the phrase 'if', and he was confident that Budi had no desire for another man's wife. My question is: Could Bejo's statement be considered a valid pronouncement of divorce in Islamic law?*

*Peace be upon you as well. Thank you for your question. May you and all readers be granted ease and blessings in all aspects of life. Amen. Before directly addressing your question, it is essential to emphasize that a husband should exercise caution in uttering words that carry implications of divorce, even if spoken in jest. As the Prophet Muhammad (peace be upon him) taught...* This case highlights how the *Bahtsul Masail* forum functions not merely as a space for theoretical jurisprudential discourse, but also as a practical mechanism for addressing real-life dilemmas faced by Muslims. It underscores the importance of linguistic intent and the weight Islamic law assigns to spoken

declarations, regardless of the speaker's actual intent, particularly in matters as serious as divorce (*ṭalāq*).

ثَلَاثُ جِدُّهِنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ

The Prophet Muhammad (peace be upon him) is reported to have said:

*"There are three matters whose seriousness is treated as serious, and whose jesting is also treated as serious: marriage, divorce, and reconciliation."*

(Narrated by At-Tirmidhi)

This *ḥadīth* forms a foundational principle in Islamic jurisprudence concerning the gravity of utterances related to marital contracts. Despite Andi's use of the hypothetical term "if" (*seandainya*) indicating that his question was posed in jest, Islamic legal discourse—guided by the above narration—considers even joking references to *ṭalāq* (divorce) as potentially binding and equivalent to a serious declaration. Hence, scholars advise against making jokes involving divorce, as such expressions may carry legal consequences.

However, a distinction is made in classical *fiqh* between casual jest and dramatized or fictionalized portrayals. Joking within the context of storytelling, theatrical performance, or dramatized scenes—such as in a play—is generally not considered legally binding as divorce under Islamic law.

Islamic jurisprudence differentiates between two categories of divorce utterances:

1. **Ṭalāq Ṣarīḥ (Explicit Divorce)** : These are expressions that carry no ambiguity and are universally understood to mean divorce. Examples include statements such as "*I divorce you*" or "*I have pronounced divorce upon my wife.*" In this category, the verbal pronouncement itself—regardless of the speaker's intention—is sufficient to effectuate a divorce. The validity of the declaration does not depend on whether the husband consciously intended to dissolve the marriage.
2. **Ṭalāq Kināyah (Implicit or Allusive Divorce)**: These are ambiguous expressions that can carry multiple meanings, one of which may be divorce. An example is the phrase "*I have separated from my wife.*" The term "*separated*" could imply physical distance or emotional detachment, but also potentially indicate divorce. In such cases, a divorce is not considered valid unless accompanied by a clear, conscious intention

(*niyyah*) to end the marriage.

A parallel case is discussed in *Fath al-Mu'īn*, a classical legal text, which provides precedents aligning with the scenario presented. This illustrates how Islamic legal scholarship carefully delineates the nuances of language, intention, and context in the adjudication of marital status, underscoring the enduring relevance of jurisprudential precision in contemporary Muslim life.

لو قال لوليها: زوجها فمقر بالطلاق

A relevant legal maxim in Islamic jurisprudence states:

*“The contradiction between the literal meaning and the commonly understood meaning occurs only in the Arabic language. For non-Arabic languages, the prevailing interpretation is based on the commonly understood meaning.”*

According to this principle, Bejo’s statement cannot be classified as a formal declaration of divorce, as it was expressed in the Indonesian language, where such wording is not typically used to denote a formal acknowledgment of marital dissolution. In the sociolinguistic context of Bahasa Indonesia, Bejo's utterance does not align with customary or legal expressions of divorce.

Nevertheless, his statement may be interpreted as a form of *ṣīghat ṭalāq kināyah* (an implicit or allusive formulation of divorce), as his verbal permission for his wife to marry another man could be construed as a subtle indication of relinquishing the marital bond. According to Islamic legal methodology, such a *kināyah* expression does not by itself constitute a valid divorce unless accompanied by the explicit *niyyah* (intention) to divorce at the time of the utterance.

Thus, based on the information provided, Bejo’s statement would not result in a legally recognized divorce unless it was made with the deliberate intention of ending the marriage. We hope this explanation offers clarity and is beneficial to readers. Constructive feedback and suggestions for improvement are welcome as part of our ongoing commitment to intellectual rigor and clarity in disseminating Islamic legal thought. Wallāhu a‘lam (And Allah knows best).

### **Legal Reasoning in the Case of a “Joking Divorce at the Edge of a Cliff”: An Analysis of *Istinbāṭ al-Ḥukm***

Peace be upon you. Thank you for your thoughtful question. May you and all

readers always be granted ease and blessings in every aspect of life. *Āmīn*. Before addressing the core of the inquiry, it is essential to emphasize a foundational ethical principle in Islamic family law: a husband must exercise utmost caution in his speech, particularly avoiding any language that may be interpreted as a declaration of divorce—even if such words are uttered in jest or within a humorous context. This caution is grounded in the prophetic tradition:

ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ

"There are three matters whose seriousness is treated as serious, and whose jesting is also treated as serious: marriage, divorce, and reconciliation." (Hadith narrated by At-Tirmidhi)

In light of the aforementioned *\*ḥadīth\**, the use of the word "seandainya" ("if" or "suppose") by Andi—despite indicating that the question was posed jokingly—is treated under Islamic law with the same seriousness as a formal declaration. Therefore, it is strongly advised to avoid making jokes related to *ṭalāq* (divorce). This is distinct from dramatized representations or storytelling that involve divorce scenes, which, according to *fiqh* (Islamic jurisprudence), do not constitute a valid pronouncement of divorce.

The response provided in this case underscores the importance of maintaining careful control over one's speech—particularly concerning expressions related to divorce. In matters of *\*ṭalāq\**, any utterance that employs the terminology of divorce, even in jest, is adjudicated as a serious and binding statement. This legal stance is directly derived from the prophetic tradition narrated by Imām al-Tirmidhī, which equates joking declarations of marriage, divorce, or reconciliation with their formal, serious counterparts.

In Islamic legal doctrine, divorce expressions (*ṣīghat ṭalāq*) are categorized into two primary types. First, *Ṭalāq Ṣarīḥ* (Explicit Divorce): This refers to clear and unequivocal statements that can only be interpreted as divorce, such as "I divorce you" or "I have issued divorce to my wife." When a husband articulates an explicit declaration of divorce, the marital bond is considered dissolved *ipso facto*—regardless of whether he intended the statement to take legal effect. Second, *Talāq Kināyah* (Implicit or Allusive Divorce): This category includes ambiguous expressions that may or may not signify divorce. For instance, a

statement like “I have separated from my wife” could imply either the termination of the marital relationship or a non-legal physical separation due to distance or circumstance. A *kināyah* form of divorce is not deemed valid unless the speaker accompanies it with a clear and deliberate intention (*niyyah*) to end the marriage.

A relevant example of this legal differentiation is discussed in the classical *fiqh* manual *Fath al-Mu‘īn*, which addresses a case analogous to the scenario in question. Such textual references provide interpretive guidance and reinforce the doctrinal framework through which contemporary scholars and jurists analyze the intersection of language, intention, and legal consequence in Islamic family law.

لو قال لوليها: زوجها فمقر بالطلاق

“If a man says to his wife’s guardian, ‘Marry her (my wife),’ then the man has acknowledged (i‘tirāf) that his wife has already been divorced.” (Al-Malībārī, 509)

This ruling is based on the understanding that by granting permission to his wife’s guardian to marry her off, the husband has, implicitly, terminated the marital relationship. One of the essential legal conditions for a woman to validly enter a new marriage is that she must not be bound by an existing marital contract. Thus, such a statement signals the end of the previous marriage.

In this context, the response provided analyzes the classification of divorce (*ṭalāq*) and highlights its division into two primary categories *Ṭalāq Ṣarīḥ* (Explicit Divorce) This refers to a divorce declaration made in unequivocal terms that cannot be interpreted as anything other than a divorce. Examples include, “I divorce you,” or “I have divorced my wife.” Such utterances result in a binding divorce, irrespective of the husband’s intent. *Ṭalāq Kināyah* (Implicit or Allusive Divorce) This involves ambiguous expressions that may carry meanings other than divorce. For instance, a statement like “I have separated from my wife” could refer to either legal divorce or a mere physical separation. In the case of *ṭalāq kināyah*, the presence of the intention (*niyyah*) to divorce is a determining factor in its legal effect. The case in question, concerning Bejo’s response to Andi, appears analogous to the case discussed in *Fath al-Mu‘īn*, as both involve statements that imply permission for the wife to marry another man. However, the critical question arises: Can Bejo’s statement be considered a formal



acknowledgment that he has divorced his wife ? To answer this, reference is made to a linguistic principle articulated by Imām al-Suyūṭī:

إِنَّمَا يَتَجَادَبُ الْوَضْعُ وَالْعُرْفُ فِي الْعَرَبِيِّ، أَمَّا الْأَعْجَمِيُّ فَيُعْتَبَرُ عُرْفُهُ قَطْعًا

"Inconsistency between literal usage and common convention occurs only in the Arabic language. For non-Arabic languages, what is considered is the general convention without exception."

Based on this principle, Bejo's statement cannot be interpreted as a formal confession of divorce. In the Indonesian language, such expressions are not typically used to indicate a formal or legal acknowledgment (*iqrār*) of divorce. Therefore, Bejo's utterance does not constitute *ṭalāq ṣarīḥ*. Nevertheless, Bejo's statement may fall into the category of *ṭalāq kināyah*, as his suggestion that his wife could marry someone else indirectly implies the dissolution of the marriage. Still, as with all *kināyah* forms, the legal effect hinges on the presence or absence of intent (*niyyah*). Thus, Bejo's statement does not lead to an actual divorce unless it was accompanied by a genuine intent to terminate the marriage at the time of the utterance. We hope this explanation is both comprehensible and acceptable. Constructive feedback and suggestions are welcome for continuous improvement.

An analysis of responses published on the NU Online platform indicates that the method of legal derivation (*istinbāṭ al-ḥukm*) employed is predominantly *manhajī* (methodological). This method is invoked particularly when a given case lacks direct precedents in authoritative texts. In such cases, the *manhajī* approach is used to resolve legal questions by adhering to established frameworks and jurisprudential reasoning patterns developed by the Imams of the *madhāhib*.

In the present response, the use of linguistic principles by Imām al-Suyūṭī in *Al-Ashbāh wa al-Naẓā'ir* exemplifies the application of *manhajī* reasoning. While the initial explanation draws from traditional sources such as *Fath al-Mu'īn* to offer an overview of divorce classifications, the final verdict is ultimately based on a linguistic-legal maxim rather than a direct textual ruling—thus aligning with the *manhajī* methodology.

This methodological approach is not limited to classical legal issues; rather, it is consistently applied by the

*Lajnah Baḥth al-Masā'il* Nahdlatul Ulama (LBM-NU) to address modern legal and social challenges. Examples of such applications include Determination of nasab (lineage) using DNA testing, Assessments of unjust land compensation claims, Legal validation of non-Muslim places of worship (Noorhidayah, 2021) Legitimization of charitable donations (*ṣadaqah*) on behalf of the deceased (Darmawati H, 2011).

These cases demonstrate LBM-NU's commitment to applying classical Islamic jurisprudence through a systematic and adaptive framework capable of addressing evolving contemporary realities.

## CONCLUSION

*Bahtsul Masail* serves as a deliberative forum designed to resolve complex legal and social issues emerging within society. In arriving at legal determinations, *Bahtsul Masail* employs various *istinbāt al-ḥukm* (legal reasoning) methodologies, including the ***Qauli***, ***Ilhaqi***, and ***Manhaji*** approaches. In the case under discussion, Bejo's statement qualifies as an instance of *shighat ṭalāq kināyah*—an indirect form of divorce speech. This form suggests, albeit implicitly, the husband's release of marital ties by permitting his wife to marry another man. However, Bejo's expression does **not** legally constitute a divorce, as it lacks an explicit and demonstrable intent (*niyyah*) to end the marriage. The responder in this case, which concerns a joking reference to divorce near a cliff (*gurauan cerai pinggir jurang*), utilizes the **Manhaji method** of legal reasoning. This approach reflects an adherence to methodological jurisprudence when no direct textual precedent is available, allowing for a structured response grounded in established principles of Islamic legal theory. As a practical recommendation, society at large is advised to exercise greater caution when engaging in humor—particularly when such humor touches upon sensitive legal or moral matters such as divorce. Inappropriate or ambiguous jokes may lead to significant misunderstandings and potentially serious legal consequences. Therefore, it is essential to exercise prudence in speech and to be mindful of the implications of one's words, both within familial relationships and in broader social contexts.

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