

The Ambiguity Of "It's Up To You" As Tafwīḍ Al-Ṭalāq And The Concept Of Irādah Nāqīṣah In The Divorce Of Migrant Worker Families
(Case Phenomenology Study in West Lombok)

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Abstract

In classical fiqh, tafwīḍ al-ṭalāq requires two pillars: an adequate utterance (an explicit ṣarīḥ expression or an intended kināyah) and the free will (irādah ḥurrah) of the delegating party. However, classical fiqh did not anticipate the complexity of long-distance communication and the cumulative psychological pressure faced by modern migrant-worker families. This study examines a real case in West Lombok in which a husband—recently unemployed and bearing the entire domestic burden—answered his wife’s request for divorce (she being a female migrant worker in Saudi Arabia) over the telephone with the words “terserah kamu” (“it’s up to you”), which the wife later used as the basis for divorce and a subsequent remarriage. Using a phenomenological case-study approach with in-depth interviews of six informants—family members of both parties, two religious authorities holding opposing rulings, and a witness to the husband’s condition—combined with a normative-juridical analysis of the fiqh of the four schools and Indonesian positive law, the study finds: (1) the phrase “terserah kamu” meets neither the ṣarīḥ nor the kināyah requirement because of the absence of qaṣd ḥaqīqī; (2) the husband experienced what this study terms irādah nāqīṣah—a will significantly diminished by cumulative pressure, distinct from formal ikrāh and from the Hanafī notion of ikrāh nāqīṣ; (3) the dispute between the two authorities reflects a methodological tension between the ṣāḥib al-lafẓ and maqāṣid al-sharī’ah approaches; and (4) the KHI’s silence on tafwīḍ generates a dangerous legal pluralism. The study proposes irādah nāqīṣah as a third category of will in Islamic law and recommends revising the KHI by adding articles on tafwīḍ together with a protocol of psychological verification in the Religious Courts.

Tafwīḍ al-ṭalāq dalam fiqh klasik mensyaratkan dua rukun: lafal yang memadai (lafẓ ṣarīḥ atau kināyah yang diniati) dan kehendak bebas (irādah ḥurrah) dari pihak yang menyerahkan wewenang. Namun fiqh klasik belum mengantisipasi kompleksitas komunikasi jarak jauh dan tekanan psikologis kumulatif yang dihadapi keluarga tenaga kerja migran modern. Penelitian ini mengkaji kasus nyata di Lombok Barat di mana seorang suami yang baru kehilangan pekerjaan dan menanggung seluruh beban domestik menjawab permintaan cerai istrinya (TKW di Arab Saudi) via telepon dengan ucapan “terserah kamu,” yang kemudian digunakan istri sebagai dasar perceraian dan pernikahan kedua. Menggunakan pendekatan fenomenologi studi kasus dengan wawancara mendalam terhadap enam informan—keluarga kedua pihak, dua tokoh agama dengan putusan berbeda, dan saksi kondisi suami—dikombinasikan dengan analisis normatif-yuridis atas kitab fiqh empat mazhab dan hukum positif Indonesia. Temuan menunjukkan: (1) lafal “terserah kamu” tidak memenuhi syarat lafẓ ṣarīḥ maupun kināyah karena ketiadaan qaṣd ḥaqīqī; (2) suami mengalami kondisi irādah nāqīṣah, kehendak yang berkurang secara signifikan akibat tekanan kumulatif, berbeda dengan ikrāh formal maupun konsep Hanafiyah tentang ikrāh nāqīṣ; (3) perdebatan dua tokoh agama mencerminkan ketegangan metodologis antara

pendekatan zāhir al-lafẓ dan maqāṣid al-sharīʿah; (4) kekosongan KHI tentang tafwīḍ menciptakan pluralisme hukum berbahaya yang mengancam kepastian status nikah kedua dan nasib anak. Penelitian ini mengusulkan konsep irādah nāqīṣah sebagai kategori ketiga kehendak dalam hukum Islam dan merekomendasikan revisi KHI dengan penambahan pasal tentang tafwīḍ beserta protokol verifikasi psikologis di Pengadilan Agama.

Kata Kunci: *tafwīḍ al-ṭalāq; irādah nāqīṣah; ambiguity; law pluralism*



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A. INTRODUCTION

West Nusa Tenggara (NTB) is one of the largest sending provinces of women workers (TKW) in Indonesia. Data from the Indonesian Migrant Workers Protection Agency (BP2MI) shows that NTB consistently ranks in the top five migrant worker sending provinces, with the majority working in Saudi Arabia, Malaysia, and the Middle East region. This phenomenon created a fundamental structural shift in the family pattern of the Lombok people: wives became the economic backbone of the family from afar, while husbands took over or were forced to take over domestic roles that were culturally not theirs. Wirawan and Mas'udah found that this new configuration significantly increased the risk of divorce, especially due to weakening of husband authority and long-distance tensions that were difficult to manage.¹

In the midst of this social reality, Indonesian Islamic family law codified in the Compilation of Islamic Law (KHI) based on Presidential Instruction No. 1 of 1991 faces challenges that have not been anticipated by its drafters. One of them is the issue of tafwīḍ al-ṭalāq: the delegation of talaq rights by the husband to the wife. This institution is known and regulated in the classical fiqh of various schools, but the KHI does not have a single article that recognizes, defines, or regulates the mechanism of tafwīḍ. This vacuum creates a dangerous legal loophole when the case of tafwīḍ arises in society—and it does appear, as it did in the case of the subject of this study.

This case occurred in a village in West Lombok. A husband—let's call him Hasan (pseudonym)—who had just lost his job and was forced to take care of his two children and all the household needs alone, answered his wife's divorce request over the phone with the simple words: *"it's up to you."* A few weeks later, his wife—let's call it Siti (pseudonym), a migrant worker in Saudi Arabia—declared: *"yes, we're divorced."* After undergoing the 'iddah period, Siti remarried to another man. The case then divided the local community and religious leaders into two opposing camps: one side viewed tafwīḍ as valid and the second marriage as valid; The other side views tafwīḍ as invalid, talaq does not fall, and the second marriage must be annulled.

Four fundamental problems are exposed by this case. **First, the** problem of pronunciation ambiguity: can the "it's up to you" spoken over the phone be categorized as tafwīḍ al-ṭalāq? Classical fiqh distinguishes between lafẓ ṣarīḥ (explicit) and lafẓ kināyah (implicit), but neither analyzes such pronunciation in the context of modern long-distance

¹Ida Bagus Wirawan dan Siti Mas'udah, "International Migration and Risk of Divorce in Families of Female Migrant Workers," *International Journal of Innovation, Creativity and Change* 13, no. 1 (2020): 1007–1020.

communication. **Second**, the problem of the validity of irādah: does the husband in a state of distress—not physically forced, but psychologically squeezed—have the free will required by fiqh? The classical dichotomy of irādah-ikrāh does not provide a category for such a gradual condition. **Third**, the problem of regulatory vacuum: without a single article on tafwīd in the KHI, the settlement of this case is left entirely to the authorities of local religious leaders who turn out to have different opinions. **Fourth**, the problem of legal certainty: the status of Siti's second marriage depends on whose opinion is followed, while the criminal law threatens with Article 279 of the Criminal Code if the first divorce is invalid. Children born from a second marriage also face unclear legal status.

This study aims to: (1) analyze the validity of the pronouncement of "it's up to you" as tafwīd in the perspective of classical fiqh of the four schools; (2) exploring *the husband's lived experience* and psychological condition through a phenomenological approach of case studies; (3) formulate the concept of irādah nāqīṣah as a new theoretical category in the epistemology of Islamic law; (4) analyze the regulatory vacuum of KHI and its implications for legal pluralism; and (5) recommend concrete and operational regulatory revisions.

B. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

1. Tafwīd al-Ṭalāq in Classical Fiqh

Tafwīd al-ṭalāq (delegation of talaq rights to the wife) is a legal institution recognized by all schools of fiqh, albeit with differences in the details of its legal condition. Etymologically, *tafwīd* comes from the root *f-w-d* which means to hand over or delegate affairs to another party. In fiqh terminology, al-Kāsānī in *Badā'i' al-Ṣanā'i'* defines it as the act of the husband handing over the right of talaq to his wife so that the wife is authorized to impose talaq on herself within the specified limit.² The normative basis refers to the history that the Prophet Muhammad (peace be upon him) once gave a choice (takhyīr) to his wives.

Al-Nawāwī in *Rawḍat al-Ṭalībīn* details that tafwīd has two forms of recitation: (a) *lafẓ ṣarḥ*—explicit recitations that directly refer to the surrender of the right of talaq, such as *malaktu amraki nafsaki* ("I leave your affairs to you") or *ja'altuki ṭāliqan nafsaki* ("I make you entitled to repudiate yourself"), which do not require additional intentions; and (b) *lafẓ kināyah*—implicit recitations that require intention (*qasḍ*) explicit so that tafwīd is carried out.³

Ibn Qudāmah in *al-Mughnī* affirms in the perspective of the Hanbali school that the most fundamental condition of the validity of tafwīd is *the irādah ḥurrah* (free will) of the husband when he surrenders the authority of talaq. He added that if the husband recites tafwīd in a condition that resembles *ghalab al-ghaḍab* (overcome with anger until he is unaware of his words), then the tafwīd is invalid, just as talaq itself does not fall under the same conditions.⁴ Al-Shīrāzī in *al-Muhadhdhab* adds an important condition in the Shafi'i perspective: the intention must be present *fi ḥāl al-lafẓ* (at the time the recitation is uttered), not the intention that is constructed or claimed later.⁵

2. Irādah and Ikrāh: The Classical Dichotomy and Its Gaps

²'Alā' al-Dīn al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, Jilid 3 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1986), 98.

³Yahyā ibn Sharaf al-Nawāwī, *Rawḍat al-Ṭalībīn wa 'Umdat al-Muftīn*, Jilid 8 (Beirut: al-Maktab al-Islamī, 1991), 28–30.

⁴Muwaffaq al-Dīn Ibn Qudāmah, *Al-Mughnī*, Jilid 7 (Cairo: Maktabat al-Qāhirah, 1968), 340–344.

⁵Ibrāhīm ibn 'Alī al-Shīrāzī, *Al-Muhadhdhab fī Fiqh al-Imām al-Shāfi'i*, Jilid 2 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1995), 71–75.

Classical fiqh recognizes the dichotomy of the will that is binary: a person is in the condition of *irādah ḥurrah* (full free will) or *ikrah* (coercion that meets technical requirements). Al-Kāsānī defines *ikrah* as a threat that (a) comes from those who have the ability to carry it out; (b) threatens life or limb; and (c) cause destruction to the threatened if it fails to comply.⁶ Talak that is pronounced in a condition of *ikrah* that meets these requirements does not fall according to the number of fuqaha.

Yet this dichotomy leaves a *grey area* unaccommodated: a condition in which a person is not physically coerced (not eligible for *ikrah*), but whose will is significantly affected by cumulative pressures of a psychological, economic, and social nature. The classical jurists touch on this a little when discussing talaq in the context of *ghaḍab shadid* (anger at its peak), but do not develop a systematic category. This is the epistemological gap that is the starting point of the concept of *irādah nāqīṣah* in this study.

3. Previous Studies and Research Positions

Muda et al. examined the implementation of tafwīd in Malaysia and compared it with the contemporary legislation of several Muslim countries, finding that Malaysia is one of the countries that has integrated tafwīd in legislation, but the focus of the study is limited to the procedural-formal aspects without analyzing the psychological dimension of the will.⁷ Makhlof explored the *tarjih* method as an adaptation of classical Islamic legal doctrine to the modern context and found that it allowed innovation without abandoning the roots of tradition—relevant as a framework of legitimacy for the concept of *irādah nāqīṣah*.⁸

Jusoh discusses the relationship between time and moral choices in Islamic jurisprudence, including the significance of temporality in the formation of the will of law.⁹ Tayob applies phenomenology to analyze legal consciousness in contemporary fatwas, paving the way for a similar approach in family studies.¹⁰ Saifullah analyzes the transformative vision of Islamic jurisprudence in a pluralist society with the framework of *maqāṣid*—relevant to support the policy recommendations of this research.¹¹

On the sociological side, Wirawan and Mas'udah found that women's migration creates *purchased local authority* that triggers role conflicts and divorce.¹² Anam et al. identified six main reasons for divorce of migrant workers in the Religious Court.¹³ Fadilah et al. map

⁶Al-Kāsānī, *Badā'ī' al-Ṣanā'ī'*, Jilid 7, 175–178.

⁷Mohd Zamro Muda et al., “A Study of Talaq Al-Tafwid in Islamic Law and Contemporary Legislations: Should Malaysia Follow Suit?,” *IJUM Law Journal* 28, no. 1 (2020), <http://irep.iium.edu.my/89016/>.

⁸Ahmed Gad Makhlof, “Continuity and Change of Traditional Islamic Law in Modern Times: *tarjih* as a Method of Adaptation and Development of Legal Doctrines,” *Oxford Journal of Law and Religion* 12, no. 1 (2023): 55–74, <https://doi.org/10.1093/ojlr/rwad010>.

⁹Sufian Jusoh, “Time and Moral Choice in Islamic Jurisprudence,” *Canadian Journal of Law & Jurisprudence* 35, no. 1 (2022): 129–165, <https://doi.org/10.1017/cjlj.2021.23>.

¹⁰Abdulkader Tayob, “Suspending Dogma, Structuring Law: Legal Consciousness and the Niqāb Fatwa of Egyptian Scholar Ali Gomaa,” *Indonesian Journal of Sharia and Socio-Legal Studies* 2, no. 1 (2025), <https://doi.org/10.70084/ijssls.v2i1.204>.

¹¹Khalid Saifullah, “Transformative Vision of Islamic Jurisprudence and the Pursuit of Common Ground for the Social Good in Pluralist Societies,” *Asian Journal of Comparative Law* 14, no. 2 (2019): 211–239, <https://doi.org/10.1017/asjcl.2019.21>.

¹²Wirawan and Mas'udah, “International Migration,” 1010.

¹³Achmad Anam et al., “Reasons for Divorce Claims of Female Migrant Workers at Religious Court of ex-Kediri Residency: A Gender Perspective,” *Indonesian Journal of Islam and Society* (2024), <https://journal.uin.ac.id/IJIS/article/view/29070>.

intergenerational conflicts in migrant workers families through *a systematic literature review*.¹⁴ Purnamasari et al. explore the resilience strategies of transnational migrant worker families, but do not touch on the legal implications of remote divorce.¹⁵ Silvey and Parreñas analyze violence against returning migrant workers, but not on the delegative divorce aspect.¹⁶

In the context of Indonesian legal pluralism, Lukito maps the tension between customary law, Islamic law, and state law—a framework that is directly relevant for analyzing the KHI's void of *tafwīd*.¹⁷ The gaps that have not been filled by all of the above literature are: (1) the analysis of the validity of ambiguous pronouncement of *tafwīd* in long-distance communication; (2) the conceptualization of the condition of the will between *irādah ḥurrah* and *ikrāh*; and (3) the relationship between the void of KHI and legal pluralism in the case of concrete *tafwīd*. This research fills these three gaps.

C. RESEARCH METHODS

1. Research Approach and Design

This study uses a *phenomenological case study* design—a methodological hybridization that combines the power of phenomenology in uncovering the meaning of *lived experience* with the power of case studies in analyzing the legal, social, and normative context holistically of a case that has a high theoretical representation.¹⁸ This approach was chosen because: (a) the case is *a critical case* that uniquely exposes epistemological and regulative gaps that cannot be found in ordinary cases; and (b) the multidimensional complexity of the case (the speaker, psychological, fiqh, positive law, and social dimensions) requires a layered analysis that is not facilitated by a single approach.

Three layers of analysis were carried out in parallel: (1) *phenomenological analysis* of *lived experience* and the meaning of informants following van Manen's tradition of *hermeneutic phenomenology*;¹⁹ (2) *normative-juridical analysis* of the classical fiqh books of the four schools and positive law of Indonesia; and (3) *socio-legal analysis* of the practice of religious authority and the dynamics of legal pluralism in society.

2. Research Subjects and Selection Techniques

The subjects were selected using *purposive sampling* with the following criteria: direct involvement or close knowledge of the case, willingness to participate with *signed informed*

¹⁴Wahyuni Oktarima Fadilah and Elsa Zahra Almaghfiro, "Intergenerational Social Conflict in Indonesian Migrant Worker Families," *Journal of Social Sciences and Humanities* 14, no. 4 (2025), <https://doi.org/10.23887/jish.v14i4.103063>.

¹⁵Wulan Purnamasari et al., "Long-Distance Parenting and Family Resilience Strategies of Indonesian Migrant Workers in Taiwan," *Islamic Guidance and Counseling Journal* 9, no. 1 (2026), <https://journal.iaimnumetrolampung.ac.id/index.php/igcj/article/view/7388>.

¹⁶Rachel Silvey dan Rhacel Salazar Parreñas, "Home-bound Precarity: Home Violence on Return Indonesian Migrant Domestic Workers," *Journal of Ethnic and Migration Studies* (2024), <https://doi.org/10.1080/1369183X.2024.2346617>.

¹⁷Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (London: Routledge, 2013), 3–25.

¹⁸Jonathan A. Smith, Paul Flowers, dan Michael Larkin, *Interpretative Phenomenological Analysis: Theory, Method and Research* (London: SAGE Publications, 2009), 4–8. Lihat juga: Robert K. Yin, *Case Study Research and Applications*, 6th ed. (Thousand Oaks: SAGE, 2018).

¹⁹Max van Manen, *Researching Lived Experience: Human Science for an Action Sensitive Pedagogy* (Albany: State University of New York Press, 1990), 40–55.

consent, and ability to communicate experiences verbally. Six informants were interviewed, representing all the main actors in the case.

INF-1 is Ahmad (pseudonym), Siti's cousin and spokesman for the wife's family, who conveys the narrative of the wife and the family's reasons for supporting Siti's decision. INF-2 is Hasan (disguised), the husband who utters the "it's up to you"—the most crucial informant to unearth the true psychological condition and intentions. INF-3 is Religious Leader A who decides on talaq and the second marriage is valid, representing the position of the majority of the community. INF-4 is Religious Leader B who decides that talaq does not fall due to the absence of *fauri* and the condition of the husband who is depressed, representing the position of an argumentative minority. INF-5 is a member of the husband's family who witnessed Hasan's psychological condition at a critical period. INF-6 is a community leader who knows the social development of cases and the dynamics of community responses.

3. Data Collection Techniques

Data were collected through *in-depth phenomenological interviews* with semi-structured characteristics, *open-ended questions*, and focused on the experience, meaning, and perspective of the informant—not on hypothesis validation. The interview guide is prepared per group of informants with different questions according to their respective roles. Interviews lasted 60–90 minutes per session in Sasak-Indonesian.

Data documentation is done through narrative *field notes* written immediately after each interview session, capturing not only verbal content but also significant nonverbal expressions, intonation, and situational context. The field notes (rather than transcript of recordings) approach was chosen due to topic sensitivity and informant comfort considerations, following standard practice in phenomenological research for sensitive family topics.²⁰ *Member checking* is done 1–2 weeks after the interview to confirm the accuracy of the interpretation.

4. Data Analysis

Data analysis using *Interpretative Phenomenological Analysis* (IPA) adapted for the case study design, followed six stages by Smith, Flowers, and Larkin: transcription and re-reading of field notes; *initial noting*; development of *emergent themes*; search for inter-theme connections; identification of patterns; and integration with normative-juridical analysis.²¹ The analysis of classical fiqh texts uses *critical discourse analysis* to identify the argumentation structure, epistemological assumptions, and practical implications of each school's position.

5. Data Validity

The validity of the data is guaranteed through four criteria of Lincoln and Guba:²² (1) *credibility* through triangulation of sources (families of both parties, religious leaders, witnesses), triangulation of methods (in-depth interviews + analysis of fiqh texts + positive legal analysis), member checking, and peer debriefing; (2) *transferability* through *thick description* that allows the reader to assess the applicability of the findings in a similar context; (3) *dependability* through *trail audits* that document all methodological decisions; and (4) *confirmability* through the researcher's reflective journal to minimize subjective bias.

D. RESULTS AND DISCUSSION

1. Case Reconstruction: The Informants' Narrative

a. Narrative of the Wife's Family (INF-1: Ahmad)

²⁰Yvonna S. Lincoln and Egon G. Guba, *Naturalistic Inquiry* (Beverly Hills, CA: SAGE Publications, 1985), 289–301. The use of field notes as an alternative to recording in sensitive research is supported by standard phenomenological research practices.

²¹Smith, Flowers, dan Larkin, *Interpretative Phenomenological Analysis*, 79–107.

²²Lincoln dan Guba, *Naturalistic Inquiry*, 289–331.

Ahmad narrated the case from the perspective of the wife's family with full conviction that tafwīd had occurred:

"At that time, Siti called her husband, asking for a divorce. He said it's up to you, which means it's been handed over. Siti waited a few weeks, then she said yes we divorced. It is legitimate, it has been handed over to him." (INF-1/ Ahmad, interview)

Ahmad added that the family supported Siti's decision not only based on legal judgment, but also because the condition of the marriage was no longer suitable for maintenance. Husbands are considered to have an adequate work ethic—quitting their jobs and not trying to find other incomes:

"Her husband is indeed irresponsible. Siti who works hard in Saudi Arabia, she is not even working here. It is appropriate for Siti to ask for a divorce." (INF-1/ Ahmad, interview)

Ahmad's narrative reveals that the assessment of the validity of tafwīd cannot be separated from the normative assessment of the husband's character. This shows how legal considerations and moral considerations intermingle in society's interpretation of the case—a phenomenon that van Manen calls the *lifeworld embeddedness* of legal experience.²³

b. Husband's Narrative (INF-2: Hasan)

Hasan admitted that he said these words, but firmly rejected the interpretation that it was a deliberate delegation of talaq. The expression on his face when telling the story contains a mixture of guilt and frustration:

"Yes, I said it's up to you. But at that time I couldn't think. Just stopped working, children begged for food, debts everywhere. He calls at night, asking for a divorce again. I don't know what to say." (INF-2/ Hasan, interview)

When the researcher delved deeper into the intent behind the utterance, Hasan gave a phenomenologically significant answer:

"I don't intend to divorce him. I'm just tired. If I had known that it was considered a surrender of talaq, I would not have said that. It's not talaq, it's a person who doesn't know what else to say." (INF-2/ Hasan, interview)

Hasan's narrative indicates a condition that in psychology is referred to as *severe decision fatigue*—a condition in which a person's decision-making capacity is depleted by the accumulation of *stressors*. Hochschild in *The Second Shift* identifies similar conditions in individuals who bear multiple workloads (domestic and economic) at the same time.²⁴ Hasan's condition—bearing the total domestic burden while losing income—is an extreme manifestation of the same dynamic.

c. Religious Leader A (INF-3): Talaq Falls

Religious Leader A decided that talaq had fallen with an argument centered on *ẓāhir al-lafẓ* (the meaning of the word):

"If the husband says 'it's up to you' when his wife asks for a divorce, it has been submitted. The wife already holds that right. He waited a few weeks, then he said divorce—it was legal. It doesn't need to be immediately, the important thing is that it hasn't been revoked." (INF-3/ Religious Leader A, interview)

When the researcher asked about Hasan's depressed psychological state, Religious Leader A replied:

²³Van Manen, *Researching Lived Experience*, 101–103.

²⁴Arlie Russell Hochschild, *The Second Shift: Working Families and the Revolution at Home* (New York: Penguin Books, 1989), 200–218.

"People are depressed does not mean they cannot talk. What is illegal is if it is forced with threats. This is not forced. He himself said it." (INF-3/Religious Leader A, interview)

This position reflects the *approach of ṣāḥib al-lafẓ* which prioritizes legal certainty based on the reality of the pronunciation that is spoken. In the fiqh tradition, this approach has a strong basis, especially to maintain the stability of legal institutions from subjective claims of intention that are difficult to verify.

d. Decision of Religious Leader B (INF-4): Talak Does Not Fall

Religious figure B provides a more layered argument, combining two reasons:

"First, the tafwīd must be used immediately—this is the Shafi'i madhhab. If it has passed the assembly, the right is lost. Second, the husband said that he was in a depressed state. We know that in fiqh, the words of people who are controlled by their emotions are questionable. This is not coercion, but the condition is similar to that of a person who cannot think clearly. The second marriage must be reviewed." (INF-4/Religious Leader B, interview)

Religious figure B also cites the relevant rules of fiqh: *al-umūr bi maqāṣidihā* (all affairs are judged according to their purpose). If the husband's purpose is not to delegate talaq, then his maqāṣid speech does not support the conclusion of tafwīd.

2. Fiqh Analysis: The Validity of the Pronunciation of "It's Up to You"

a. Categorization of Pronunciation: Ṣarīḥ or Kināyah?

Based on the typology of classical fiqh, the pronunciation of "it's up to you" cannot be categorized as lafẓ ṣarīḥ because it does not contain an explicit reference to talaq or the delegation of talaq rights. There is no word *ṭalāq*, no word *tafwīd*, no *malaktu amraki* phrase or the like. This is the minimum requirement set by al-Kāsānī and al-Nawāwī for lafẓ ṣarīḥ.²⁵

Even as a kināyah lafẓ, this pronunciation is problematic. Al-Shīrāzī establishes that kināyah requires *niyyah muqārīnah lil-lafẓ* (the intention that accompanies the recitation at the time of utterance). Based on Hasan's narrative (INF-2) corroborated by a witness to his psychological condition (INF-5), there is no indication of intention accompanying the remarks. Hasan said it in a state of exhaustion and despair—not in a deliberative context that allowed the birth of legal intentions.²⁶

Moreover, in the linguistic context of Sasak-Indonesia, "it's up to you" is an expression that is closer to meaning to resignation, helplessness, or situational surrender than formal delegation. This is fundamentally different from the pronunciation of tafwīd in Arabic which has a well-established semantic convention in the fiqh tradition. This difference in the language context needs to be considered in the application of Islamic law in Indonesia.

b. Faurī Problem: Urgency in the Use of Tafwīd

The Shafi'i school which is embraced by the majority of the people of Lombok distinguishes between *tafwīd muṭlaq* (not limited by time) and *tafwīd muqayyad* (limited by faurī conditions or certain conditions). Al-Nawāwī in *Rawḍat al-Ṭālibīn* explains that the pronunciation containing the word *ikhtari nafsaki* (choose thyself) is muqayyad and only applies in the same assembly, while the more general pronunciation can be muṭlaq depending on the context and intention.²⁷

In this case, the gap of several weeks between Hasan's speech and Siti's divorce declaration creates ambiguity: if tafwīd is considered muqayyad on the condition of faurī, then

²⁵Al-Kāsānī, *Badā'ī' al-Ṣanā'ī'*, Jilid 3, 99; al-Nawāwī, *Rawḍat al-Ṭālibīn*, Jilid 8, 28.

²⁶Al-Shīrāzī, *al-Muhadhab*, vol. 2, 73.

²⁷Al-Nawāwī, *Rawḍat al-Ṭālibīn*, Jilid 8, 33–35.

this pause cancels it; But if it is considered *mutlaq*, the pause is fine as long as there is no explicit revocation. Religious Leader B took the first position; Religious figure A took the second position. Both have a basis in the *fiqh* tradition, but the fundamental problem remains: the validity of *tafwid* itself has not been fulfilled from the beginning.

3. Construction of the Concept of *Iradah Nāqishah*

a. Definition and Characteristics

Based on a phenomenological analysis of the narrative of Hasan (INF-2) and witnesses to his condition (INF-5), as well as a normative analysis of the *fiqh* doctrine of *iradah* and *ikrah*, this study formulates the concept of *iradah nāqishah* (reduced will) as the third category of will in Islamic law.

Iradah nāqishah is defined as a state of will of a person who is technically capable of law (*ahlīyyah al-adā*)—not crazy, not sleeping, not drunk—but psychologically experiencing a significant decrease in deliberative capacity due to cumulative pressure, so that the resulting utterances do not reflect the *qaṣd ḥaqīqī* required for the legality of the legal action in question.

Four characteristics of *iradah nāqishah* can be identified. **First**, there is no external coercion that meets the technical requirements of *ikrah* in *fiqh* (there is no threat to life or limb). **Second**, there are cumulative psychological, economic, and/or social pressures that exceed the normal tolerance limits of the individual. **Third**, speech is delivered in a *state of emotional flooding*—a condition in which the emotional burden exceeds the cognitive capacity for meaningful deliberation. **Fourth**, there is no conscious intention (*qaṣd*) towards the resulting legal action—speech is born as a reactive response, not a deliberative decision.

b. Normative Foundations in Classical *Fiqh*

This concept has a normative basis in the *fiqh* tradition, although it has not been formulated systematically. **First**, Ibn Qudāmah in *al-Mughnī* admits that *talaq* does not fall if it is uttered in a state of *ghalab ‘alaiḥ al-ghaḍab* (being overcome by anger) until one is aware of what is being said.²⁸ It is an implicit recognition that there are conditions in which one's deliberative capacity is impaired without qualifying *ikrah*. **Second**, the rule of *al-umūr bi maqāṣidihā* from al-Suyūṭī in *al-Ashbāḥ wa al-Naẓā’ir* affirms that all legal actions are judged on the basis of their true purpose, not just their outward appearance.²⁹ **Third**, the doctrine of *abl al-taklīf* in *ushul fiqh* stipulates that a person can only be burdened with the law (*mukallaf*) if he has *‘aql kāmil* (a fully functioning intellect). The condition of *iradah nāqishah* is a condition in which the intellect is technically functioning but its capacity is greatly reduced.

c. Distinction from Classical *Ikrāh*

Iradah nāqishah differs from *ikrah* in several fundamental aspects. *Ikrāh* requires specific and direct external threats; *Iradah nāqishah* was born out of cumulative pressure from which no single source could be pinpointed. *Ikrāh* is usually acute (momentary); *Iradah nāqishah* is a chronic condition that develops over time. *Ikrāh* has a clear coercive agent; *Iradah nāqishah* does not have a single agent—it is the product of the accumulation of circumstances. Because of these differences, *ikrah* cannot be applied in this case, but Hasan's condition clearly does not meet the standards of *iradah ḥurrah* required by classical *fiqh*.

d. Application in Case

Hasan at the time of saying "it's up to you" is in a state of *iradah nāqishah* which can be verified from the informant's narrative. He has just lost his job (*economic stressor*), bears all the

²⁸Ibn Qudāmah, *Al-Mughnī*, Jilid 7, 342–343.

²⁹Jalāl al-Dīn al-Suyūṭī, *Al-Ashbāḥ wa al-Naẓā’ir fī Qawā’id wa Furū’ Fiqh al-Shāfi’iyyah* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1990), 8. The first rule: *al-umūr bi maqāṣidihā*.

domestic burden without help (role *stressor*), communicates long distances with his wife who has decided to divorce (*relational stressor*), and is in a state of physical and psychological exhaustion (cumulative *stressor*). These conditions collectively result in what the study calls *collapsed agency*—a condition in which a person's ability to make meaningful decisions and free will collapses under the cumulative burden, even though he is still formally *mukallaf*.

4. Void of KHI Regulation and Legal Pluralism

An analysis of KHI Articles 114–148 on the dissolution of marriage shows that none of the articles recognize or regulate tafwīḍ al-ṭalāq. This differs significantly from: (a) Malaysia integrating tafwīḍ in the *Islamic Family Law (Federal Territory) Act 1984* Section 50; (b) Egypt which regulates it in *Personal Status Law No. 25/1929*; and (c) Jordan, which recognizes it in the *Personal Status Law 1976*.³⁰ Muda et al. show that the integration of tafwīḍ legislatures has been shown to reduce legal uncertainty and provide better protection for women.³¹

The absence of this regulation creates three dangerous consequences. **First**, tafwīḍ is left entirely to the authority of local religious leaders who—as evidenced in this case—can produce conflicting rulings without any mechanism of authoritative resolution. **Second**, a second marriage built on the disputed tafwīḍ of validity faces the threat of retroactive annulment, with consequences for the status of the child. **Third**, without the determination of the Religious Court, the second marriage has the potential to violate Article 279 of the Criminal Code—a condition that puts Siti in a criminal position even though she has acted in good faith based on the decision of a religious figure.

Lukito calls this condition unresolved *legal pluralism* – legal pluralism that cannot be solved due to the absence of a definitive arbitration mechanism between informal Islamic law and formal state law.³² In this condition, the most disadvantaged are always the most vulnerable: the wife and children.

E. CONCLUSIONS, IMPLICATIONS, AND RECOMMENDATIONS

1. Conclusion

This research produced four fundamental findings. **First**, the pronunciation of "it is up to you" does not meet the requirements of classical fiqh as lafẓ tafwīḍ—both ṣarīḥ and kināyah—due to the absence of qaṣd ḥaqīqī at the time of utterance. This reinforces the position of Religious Leader B, although the argument about the faurī he put forward also stands on the premise that is disputed. **Second**, Hasan at the time of uttering "it's up to you" is in a state of irādah nāqīṣah—a state of will that is significantly reduced due to cumulative pressure, which is not accommodated in the classical dichotomy of irādah-ikrāh. **Third**, the debate between the two religious figures reflects a legitimate methodological tension between the ṣāḥir al-lafẓ approach and the maqāṣid al-sharī'ah—both of which have roots in the fiqh tradition, but only a clear regulatory framework can close the resolution gap. **Fourth**, the KHI's total void of tafwīḍ is the structural root of the entire legal uncertainty in this case, and it requires an immediate legislative resolution.

2. Theoretical Implications

The concept of irādah nāqīṣah formulated in this study has theoretical implications that go beyond this case. *First*, he proposes a revision of the epistemology of will in Islamic law from a binary model (irādah ḥurrah vs ikrāh) to a continuum model that more accurately reflects the psychological reality of man. *Second*, he opens a productive dialogue between

³⁰Muda et al., "A Study of Talaq Al-Tafwid," 7–11.

³¹Ibid., 12.

³²Lukito, *Legal Pluralism in Indonesia*, 157–180.

classical fiqh and contemporary legal psychology about deliberative capacity. *Third*, it provides an analytical framework for similar cases in which cumulative psychological distress affects a person's legal action—not only in the context of tafwīḍ, but also in contracts, iqrār, and other legal actions that require irādah ḥurrah.

3. Recommendations

Based on these findings, the study recommends the revision of the KHI through a Presidential Regulation or a Supreme Court Regulation with the addition of three articles.

Article 117A on Tafwīḍ al-Ṭalāq contains the following substances: (1) the husband may delegate the right of talaq to his wife through tafwīḍ al-ṭalāq; (2) tafwīḍ is valid if it meets the conditions: (a) recitation that clearly refers to the delegation of the right of talaq, both explicitly (ṣarīḥ) and implicitly intentional (kināyah); (b) the intention accompanying the recitation at the time of utterance; (c) the husband is in a healthy state of irādah, free from coercion and significant interference of the will; (3) tafwīḍ pronounced under conditions of documented psychological distress can be canceled by the husband by submitting evidence to the Religious Court.

Article 117B on the Assessment of Irādah contains the following substances: (1) in disputes about the validity of tafwīḍ involving claims of psychological conditions, the Religious Court is authorized to order an assessment of the condition of the will (irādah) by a forensic psychologist or competent person; (2) the results of the assessment are one of the evidence in the determination of the Religious Court; (3) the determination of the Religious Court is final and binding on the disputed status of tafwīḍ.

Article 117C on Recognition and Legalization contains the following substances: (1) tafwīḍ carried out outside the Religious Court based on the decision of religious leaders can be submitted for determination by the Religious Court within a period of 90 days; (2) during the process of determination, the second marriage established on the tafwīḍ is in a suspended legal status; (3) The Religious Court shall give priority to the settlement of these cases within a period of not more than 60 working days.

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