

THESIS
NAFAQAH AL-MUT'AH AND NAFAQAH AL-'IDDAH FOR
WIFE AFTER LAWSUIT DIVORCE: PERSPECTIVE OF *FIQH*
MUNAKAHAT



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***NAFAQAH AL-MUT'AH AND NAFAQAH AL-'IDDAH FOR
WIFE AFTER LAWSUIT DIVORCE: PERSPECTIVE OF FIQH
MUNAKAHAT***

THESIS

*Presented to the University of Darussalam Gontor in Partial Fulfilment of
Requirement for Bachelor Degree (S1) in the Departement of Comparative School
of Jurisprudence and Law, Faculty of Sharia University of Darussalam Gontor*

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UNIVERSITAS DARUSSALAM GONTOR



ABSTRAK

NAFAQOH AL-MUT'AH DAN NAFAQOH AL-'IDDAH TERHADAP ISTERI PASCA CERAI GUGAT: PERSPEKTIF FIQIH MUNAKAHAT

Maharani Syahrin

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Penelitian ini berangkat dari kebutuhan akan perlindungan hukum yang adil bagi perempuan pasca perceraian, khususnya dalam cerai gugat yang sering dipersepsikan sebagai bentuk *nusyuz*. Padahal, cerai gugat diajukan atas alasan sah, seperti pelanggaran kewajiban suami, sehingga tidak dapat dikategorikan sebagai *nusyuz*. Penelitian ini bertujuan untuk: (1) mengetahui *nafaqah al-mut'ah* dan *nafaqah al-'iddah* dalam kaitannya dengan norma hukum di Indonesia bagi istri pasca cerai gugat, dan (2) mengetahui pandangan *fiqh munakahat* terhadap *nafaqah al-mut'ah* dan *nafaqah al-'iddah* bagi istri pasca cerai gugat. Dengan pendekatan normatif melalui studi pustaka, penelitian ini menemukan bahwa KHI hanya mengakomodasi hak-hak istri pasca cerai talak, sementara dalam cerai gugat terjadi kekosongan hukum yang berdampak pada ketidakjelasan hak *nafaqoh al-mut'ah* dan *al-'iddah* bagi istri. Hasil penelitian menunjukkan bahwa cerai gugat bukanlah kategori *nusyuz* karena diajukan berdasarkan alasan sah, seperti pelanggaran kewajiban suami. Dari segi pengertian sendiri sudah jelas bahwa cerai gugat tidak termasuk *nusyuz*, yang mana makna dari *nusyuz* ialah pembangkangan atau tidak melaksanakan kewajiban yang seharusnya dilakukan dengan sengaja. *Nafaqoh al-'iddah* dan *al-mut'ah* merupakan hak isteri yang timbul pasca perceraian, termasuk dalam cerai gugat. Seharusnya isteri yang melakukan cerai gugat tetap mendapatkan *nafaqoh al-'iddah* dan *al-mut'ah* dengan alasan: 1. *Nafaqoh al-'iddah* merupakan kewajiban suami selama masa *'iddah* berdasarkan hukum islam, 2. *Nafaqoh al-mut'ah* adalah pemberian wajib sebagai bentuk penghormatan dan penghiburan bagi isteri pasca perceraian, 3. Dalam perspektif fiqih, cerai gugat umumnya dilakukan atas alasan syar'i, sehingga tidak menggunakan hak isteri untuk mendapatkan *nafaqoh al-'iddah* dan *al-mut'ah*. Dari sini terlihat bahwa dalam KHI sendiri adanya kekosongan hukum yang membutuhkan pembaruan (Amandemen), mengenai hak-hak istri pasca cerai gugat dan juga mengenai penegasan bahwasanya cerai gugat tidak termasuk *nusyuz*. Dari segi pendekatan, KHI tetap menyerupai gagasan para peneliti sebelumnya. Perspektif dan konteks umat Islam Indonesia belum tertanam secara baik dalam rumusan perundang-undangan KHI. Penelitian ini merekomendasikan pembaruan konsep *nusyuz* dalam KHI agar mencakup tindakan suami yang melanggar kewajibannya. Dengan demikian, diharapkan sistem hukum keluarga Islam dapat menciptakan perlindungan yang lebih seimbang dan merata.

Kata Kunci: Cerai gugat, *nafaqoh al-mut'ah*, *nafaqoh al-'iddah*, *fiqh munakahat*

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ABSTRACT
NAFAQAH AL-MUT'AH AND NAFAQAH AL-'IDDAH FOR
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This study arises from the need for fair legal protection for women after divorce, particularly in lawsuit divorce, which is often perceived as a form of *nusyuz* (disobedience). In reality, lawsuit divorce is filed based on legitimate reasons, such as a husband's failure to fulfil his obligations, and therefore cannot be categorized as *nusyuz*. This study aims to: (1) examine *nafaqah al-mut'ah* and *nafaqah al-'iddah* in relation to legal norms in Indonesia for wives after lawsuit divorce, and (2) to find the view perspective of *fiqh munakahat* on *nafaqah al-mut'ah* and *nafaqah al-'iddah* for wives after lawsuit divorce. Using a normative approach through literature review, this study finds that the Compilation of Islamic Law (*KHI*) only accommodates the rights of wives after *talaq* divorce, while lawsuit divorce faces a legal vacuum that creates uncertainty regarding the right to *nafaqah al-mut'ah* and *nafaqah al-'iddah*. The findings indicate that lawsuit divorce is not classified as *nusyuz* since it is filed based on valid reasons, such as the husband's failure to fulfil his obligations. *Nafaqah al-'iddah* and *nafaqah al-mut'ah* are rights granted to a wife following divorce, including in lawsuit divorce. A wife who files for lawsuit divorce should still be entitled to these forms of *nafaqah* based on the following reasons: (1) *Nafaqah al-'iddah* is a husband's obligation during the *'iddah* period according to Islamic law, (2) *Nafaqah al-mut'ah* is a mandatory provision as a form of honor and consolation for the wife after divorce, and (3) From the perspective of *fiqh*, lawsuit divorce is generally filed based on *shar'i* reasons, meaning it does not eliminate the wife's right to receive *nafaqah al-'iddah* and *nafaqah al-mut'ah*. This study highlights a legal vacuum within the *KHI* that necessitates reform (amendment) regarding the rights of wives after lawsuit divorce, as well as the need for explicit recognition that lawsuit divorce does not constitute *nusyuz*. In terms of approach, the *KHI* remains similar to previous scholarly perspectives, yet it has not fully incorporated the contextual realities of Indonesian Muslim society into its legal formulations. This study recommends revising the concept of *nusyuz* in the *KHI* to also include instances where the husband neglects his obligations. By doing so, the Islamic family law system in Indonesia can provide more balanced and equitable legal protection.

Keywords: Lawsuit Divorce, *Nafaqah al-Mut'ah*, *Nafaqah al-'iddah*, *Fiqh Munakahat*

DECLARATION

I, hereby,

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Title : *Nafkah Mut'ah* and *Nafkah Iddah* Towards Wife After Divorce:
Plaintiff Perspective of *Fiqh Munakahat*

I sincerely declare that this thesis belongs to my work and not to other researchers for a different degree. Furthermore, this thesis is never published before, except for some parts with their original references.

Otherwise, if it is found that this thesis is plagiarism, I am ready to be ceased academically.

UNIDA, Rajab 5th, 1446 H
January 5th, 2025 M

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Supervisor's Approval Sheet



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كلية الشريعة

SUPERVISOR DECISION LETTER

Honourable to
Dean of Sharia Faculty
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Bismillahirrahmanirrahim

Assalamualaikum Warahmatullah Wabarakatuh

I present this thesis written by

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Title : *Nafkah Mut'ah and Nafkah Iddah Towards Wife After Divorce:*
Plaintiff Perspective of *Fiqh Munakahat*

It has been processed and corrected to meet the practical requirement to obtain the Bachelor's Degree (S1) in the Comparative School of Jurisprudence and Law Departement, Sharia Faculty University of Darussalam Gontor. Therefore, we hope this thesis could be examined.

Hopefully, this thesis will be useful for religion, nation, and the developement of an educational institution.

Wassalamualaikum Warahmatullahi Wabarakatuh

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Decision of the team



Faculty of Syari'ah كلية الشريعة

DECISION OF THE TEAM

The committee of the thesis examination in partial fulfilment of the requirements for the degree of Licentiate in the Comparative School of Jurisprudence and Law Department in the Faculty of Sharia, University of Darussalam Gontor, Indonesia, declared that the thesis written by:

Name : Maharani Syahrin
Reg. Number : 422021318033
Title : *Nafaqah Al-Mut'ah And Nafaqah Al-'Iddah For Wife After Lawsuit Divorce: Perspective Of Fiqh Munakahat*

Has been examined by the board of examiners of the board of examiners of the Bachelor's Degree (S1) on Department of Comparative School of Jurisprudence and Law Faculty of Sharia University of Darussalam Gontor on 1 of February 2025.

The board of examiners has decided to grant her pass in the thesis examination. Hence, she is eligible to be awarded the degree of Licentiate in the Comparative School of Jurisprudence and Law Department in the Faculty of Sharia.

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Supervisor

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Thesis Acceptance Letter



Faculty of Syari'ah كلية الشريعة

THESIS ACCEPTANCE LETTER

Bismillahirrahmanirrahim

Assalamualaikum wr. wb.

The Faculty of Sharia, University of Darussalam Gontor, Ponorogo Indonesia has received a thesis written by:

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Reg. Number : 422021318033

The Title : *Nafaqah Al-Mut'ah And Nafaqah Al-'Iddah For Wife After Lawsuit Divorce: Perspective of Fiqh Munakahat*

In partial fulfilment of the requirement for the degree of Licentiate in Comparative School Of Jurisprudence And Law Department in the Faculty of Sharia, academic year 1445-1446/2024-2025.

UNIDA, Sya'ban 10th, 1446 H
February 9th, 2025 M

Dean of Sharia Faculty

A blue ink signature is written over a large, faint 'UNIDA GONTOR' watermark in the background.

Assoc. Prof. Dr. Imam Kamaluddin, Lc., M.Hum.

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MOTTO

"It may be that you dislike something, while it is good for you, and it may be that you love something, while it is bad for you. Allah knows, while you do not know."
(Q.S. Al-Baqarah: 216)

"So that you may not grieve over what has eluded you and not exult over what He has given you. And Allah does not like those who are arrogant and boastful." (Q.S. Al-Hadid: 23)

"And speak kindly to people." (Q.S. Al-Baqarah: 83)

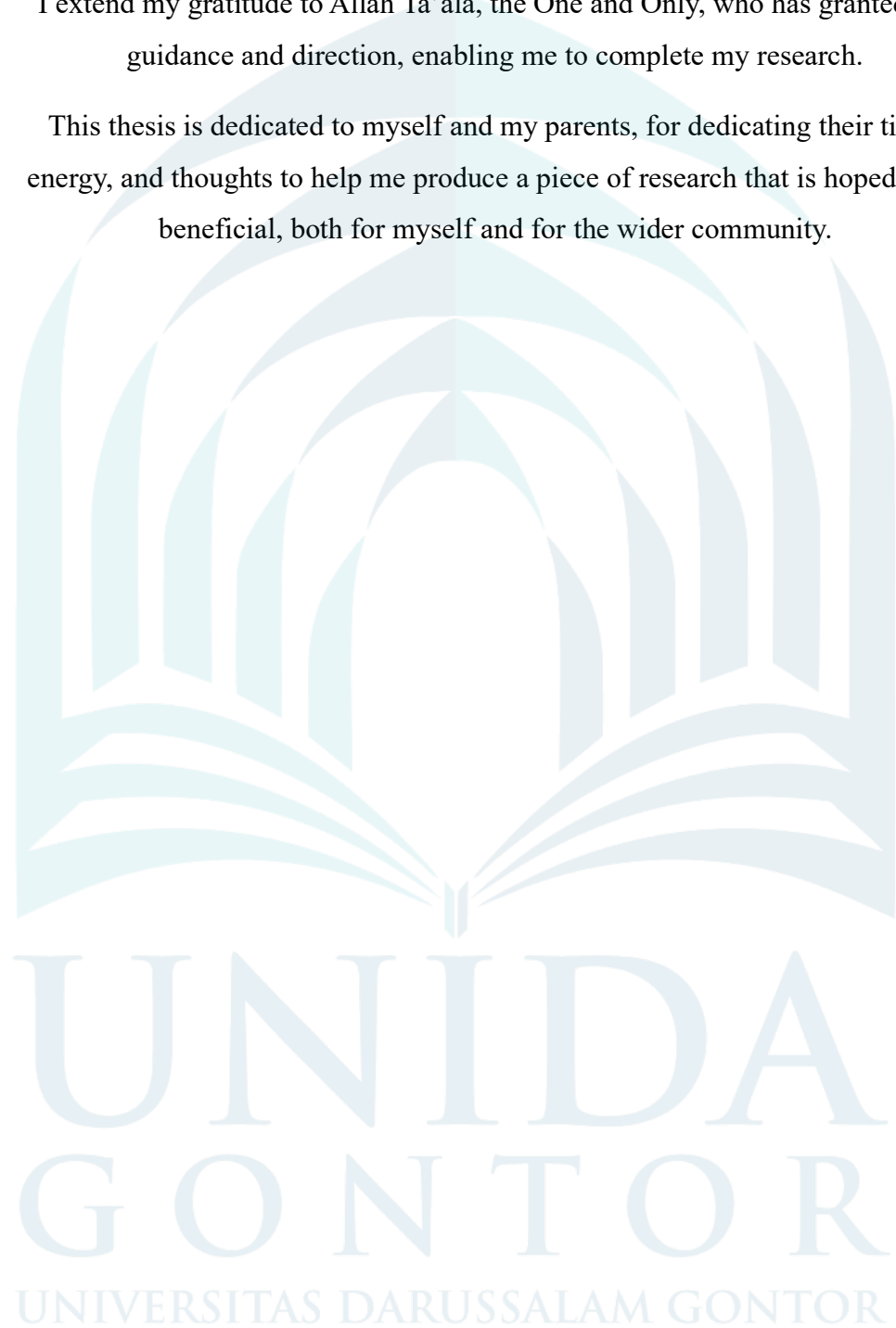
"Then when you have made a decision, put your trust in Allah. Verily, Allah loves those who place their trust in Him." (Q.S. Ali Imran: 159)

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DEDICATION

I extend my gratitude to Allah Ta'ala, the One and Only, who has granted me guidance and direction, enabling me to complete my research.

This thesis is dedicated to myself and my parents, for dedicating their time, energy, and thoughts to help me produce a piece of research that is hoped to be beneficial, both for myself and for the wider community.



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The researcher acknowledges that this thesis is far from flawlessly written. Therefore, the researcher would appreciate feedback on any errors or inadequacies in this thesis's composition. Lastly, the researcher expects that this work will help the society by expanding knowledge and serving as a useful reference.

Mantingan, December 20th 2024

Sincerely,



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