

## CHAPTER I: INTRODUCTION

### **“*Nafaqah Al-Mut'ah And Nafaqah Al-'Iddah For Wife After Lawsuit Divorce: Perspective of Fiqh Munakahat*”**

#### **1.1. Background of Study**

Marriage is a physical and religious bond between man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty, where the definition of marriage itself is regulated in Law No. 1 of 1974 concerning marriage.<sup>1</sup> Then *KHI* itself has an understanding of marriage, namely, “*A strong or sturdy contract or agreement, or mitsaqon ghalidzan, as a means of obeying Allah's commands and carrying it out will be worth a good deed, which is recorded as worship.*”<sup>2</sup>

The purpose of marriage is stated in Article 3 of the Compilation of Islamic Law (*KHI*) to create a household life that is *Sakinah, mawaddah wa Rahmah*, as been regulated in Article 1 of Law No. 1 of 1974 about Marriage, namely to form a lasting and eternal family based on God Almighty (Law No. 1 of 1974, Article 1). But in fact, the journey of household life is not always happy, and harmonious. When the problems occurred are so severe and difficult, so divorce may be allowed as the last solution, as been also regulated in Article 38 of Law No. 1 of 1974 concerning Marriage and Article 113 *KHI* which states that divorce is one form of dissolution of marriage apart from death and court decisions (Law No. 1 of 1974 Article 38).<sup>3</sup>

Divorce is the termination of the marriage rope between husband and wife. As stated in Article 208 of the Civil Code, *divorce is the termination of marriage by a judge's decision, or the claim of one of the parties to the marriage based on the morital law (Article 208 of the Civil Code).*<sup>4</sup> As stated in Article 39, paragraph (1),

---

<sup>1</sup> Pasal 1 Undang-undang No.1 Tahun 1974 Tentang Perkawinan.

<sup>2</sup> Abdur Rahman Ghazali, *Fiqh Munakahat* (Jakarta: Kencana, 2008), p. 11-12.

<sup>3</sup> Uswatun Hasanah, “Nafkah Suami Kepada Istri Dalam Perkara Cerai Gugat Serta Hubungannya Dengan Asas Keadilan Hukum (Analisis Khi Dan Sema No. 2 Tahun 2019)” (UIN Ar-Raniry Darussalam Banda Aceh, 2021), p. 21. <https://repository.arraniry.ac.id/id/eprint/16507/1/Uswatun%20Hasanah,%20170101004,%20FSH,%20HK,%20082354661830.pdf>

<sup>4</sup> Mukhamad Suharto, “Perspektif Hukum Islam-Sosial Terhadap Kontekstualisasi Nafkah Cerai Gugat,” *Khuluqiyya: Jurnal Kajian Hukum dan Studi Islam* 2, no. 1 (January 29, 2020): 45–67, <https://jurnal.staialhikmahdua.ac.id/index.php/khuluqiyya/article/view/39>. DOI. 10.56593/khuluqiyya.v2i1.39.

of Marriage Law No. 1 of 1974 concerning marriage, which mentions: "*Divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties.*" There are many factors that trigger divorce, such as differences of opinion, arguments, and disputes that are inevitable. This quarrel causes dislike for the partner and also a loss of trust.<sup>5</sup>

Divorce according to *Fiqh Munakahat* is the untying or dissolution of the marriage relationship.<sup>6</sup> Divorce is relinquishing the status of marriage and the end of the marital relationship.<sup>7</sup> Based on some of these definitions, it can be understood that divorce is the breaking of marital ties between husband and wife in order to build a complete and eternal household, so that between the two of them it is no longer halal to associate as husband and wife.<sup>8</sup> In Islam, the principle of making divorce difficult is shown in the Prophetic *Hadith*, which explains that divorce is a halal action but is hated by Allah. This is realized in Law No. 1 of 1974, which states the phrase "*physical and mental bonds.*" From this sentence, it is interpreted that the principle of marriage is for life or eternal.<sup>9</sup>

The large number of divorces that occur is a phenomenon that occurs because the meaning and value of marriage have declined in the view of husband and wife due to limited socialization about the Sakinah family. It is caused by obligations that are neglected by the husband and wife which it each party feels that there are rights that are not fulfilled by the husband to the wife or vice versa.<sup>10</sup>

Then divorce itself is classified into two types based on the party who filed it, seen from Law No. 7 of 1989 based on Religious Courts and the Compilation of Islamic Law, called as divorce and lawsuit divorce. A divorce is a divorce that is pronounced by the husband, while a lawsuit divorce is a divorce filed by the woman

---

<sup>5</sup> Winda Fitri et al., "Tinjauan Hukum Pemberian Nafkah Iddah Pada Perkara Nomor 1954/pdt.g/2019/PA.Btm," *Tuturan: Jurnal Ilmu Komunikasi, Sosial dan Humaniora* 1, no. 2 (May 27, 2023): p. 172. <https://e-journal.nalanda.ac.id/index.php/TUTURAN/article/view/195>. DOI. 10.47861/tuturan.v1i2.195.

<sup>6</sup> Zainudin ibn Abdu al-Aziz al-Malibari, *Fath al-Mu'in bi Syarh Qurrah al-Aini* (Surabaya), p. 112.

<sup>7</sup> Abdurrahman Al-Jaziri, *Al-fiqh ala Madzahibil Arba'ah, Jilid IV*, (Mesir: Dar al-Fikr, 1989), 278.

<sup>8</sup> Rusdaya Basri, *Fikih Munakahat 2, Jilid II*, (Pare-Pare: IPN Press, 2020), p. 10.

<sup>9</sup> Abdur Rahman Ghazali, *Fiqh Munakahat* (Jakarta: Kencana, 2008), p. 14.

<sup>10</sup> Bahjah Zal Fitri et al., "Efektivitas Pemenuhan Hak-Hak Perempuan dan Anak Pasca Perceraian Studi di Pengadilan Agama Takalar Kelas II," *JSL: Journal of Lex Generalis* 4, no. 2 (2023): p. 495. <http://pasca-umi.ac.id/index.php/jlg>.

as a wife. According to *KHI*, *Talak* is a husband's pledge before a religious court session, which is one of the causes of marriage termination as described in articles 129, 130, and 131 of the Compilation of Islamic Law.<sup>11</sup>

Article 132, paragraph 1, of the Compilation of Islamic Law (*KHI*) states that *"A divorce suit is filed by the wife or her attorney at the religious court whose jurisdiction covers the lawsuit residence unless the wife leaves the joint residence without the husband's permission."* Based on Article 129 of the Compilation of Islamic Law (*KHI*), it is stated that *"A husband who will impose a divorce on his wife submits an oral or written request to the religious court that has the territory of the wife's residence, accompanied by reasons, and requests that a hearing be held for that purpose."*<sup>12</sup>

The result of divorce obliged that the former husband has to provide *nafaqoh* to the former wife if the marriage is broken up due to divorce as stated in Article 149 of the Compilation of Islamic Law (*KHI*), which stipulates that the former husband is obliged to provide *nafaqah* rights in the form of *nafaqoh al-mut'ah*, *nafaqoh maskan*, and *kiswah*, pay off the dowry, and *nafaqoh hadhanah* costs until a predetermined age limit. In this article, the regulation of the obligation to provide *nafaqoh* from the former husband to the former wife is only required in the article on divorce. Then in Article 41 of Law No. 1 of 1974 concerning marriage, the section also regulates this, *"namely the court obliges of the former husband to provide nafaqoh costs and determine some obligations to his former wife and determine the obligations of the former husband in the form of nafaqoh al-mut'ah, 'iddah, and child nafaqoh"*.<sup>13</sup>

Whereas in the case of a lawsuit divorce it is not mentioned in this article or other articles in the *KHI* and also in the Marriage Law. The husband's *nafaqoh* to the wife in a case of a lawsuit divorce that is not regulated results in the former wife

---

<sup>11</sup> Suci Nurindah, "Nafkah Iddah Perkara Cerai Gugat (Studi Putusan Pengadilan Agama Jakarta Selatan Nomor 1542/Pdt.G/2014/PA.JS)" (UIN Syarif Hidayatullah Jakarta, 2019), p. 3. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/47237/1/SUCI%20NURINDAH-FSH.pdf>.

<sup>12</sup> Bahjah Zal Fitri et al., "Efektivitas Pemenuhan Hak-Hak Perempuan dan Anak Pasca Perceraian Studi di Pengadilan Agama Takalar Kelas II," *JSL: Journal of Lex Generalis* 4, no. 2 (2023), p. 496, <http://pasca-umi.ac.id/indez.php/jlg>.

<sup>13</sup> "Heri Irawan. "Nafkah Pasca Perceraian Dalam Perkara Cerai Gugat (Studi Kritik Pada Pasal 149 KHI Terhadap Perkara Nomor xxxx/Pdt.G/2012 P.A JS)" (UIN Raden Intan Lampung, 2020), p. 21. <https://repository.radenintan.ac.id/15275/1/Tesis%201-2.pdf>.

filing a divorce suit and not getting *nafaqoh* from her former husband, which should in certain cases need to be given. This tends to discriminate against the case of a plaintive divorce where the rules do not regulate the same consequences as a divorce case.<sup>14</sup>

On 27 November 2019, the Supreme Court issued SEMA No. 2 of 2019 concerning the implementation of the formulation of the results of the plenary meeting of the Supreme Court chambers in 2019 as guidelines for the implementation of duties for the Court. There is one very important thing, namely in point C number 1 letter b, where the SEMA provides an opportunity and hope for wives in a case of lawsuit divorce to get their rights, such as *nafaqoh*. In the context of implementing PERMA No. 3 of 2017 concerning guidelines for Adjudicating Women Against the Law to provide legal protection for the rights of women after divorce in the case of lawsuit divorce, the following sentence can be added: "... Which is paid before the defendant takes the divorce certificate," provided that the *nafaqah* is narrated in the statement of claim and petitum. However, in reality, in the implementation of this law, judges rarely grant such requests because the regulation is not explicitly regulated in the law. From these two legal rules, there are differences in the laws governing the husband's *nafaqoh* to the wife in a lawsuit divorce case, where the two laws are used by the judge. This can cause legal uncertainty and judges' decisions to decide the same type of case, namely the husband's *nafaqah* to the wife in a lawsuit divorce case, so that legal justice is not felt by the community, especially for wives who file for divorce.<sup>15</sup>

From this background, the author will conduct the research title, namely ***Nafaqah Al-Mut'ah And Nafaqah Al-'Iddah For Wife After Lawsuit Divorce: Perspective of Fiqh Munakahat.***

---

<sup>14</sup> Uswatun Hasanah, "Nafkah Suami Kepada Istri Dalam Perkara Cerai Gugat Serta Hubungannya Dengan Asas Keadilan Hukum (Analisis Khi Dan Sema No. 2 Tahun 2019)" (UIN Ar-Raniry Darussalam Banda Aceh, 2021), p. 21. <https://repository.arraniry.ac.id/id/eprint/16507/1/Uswatun%20Hasanah,%20170101004,%20FSH,%20HK,%20082354661830.pdf>.

<sup>15</sup> Ibid, p. 24.

## 1.2. Formulation of the Problem

1. How is the *nafaqah al-mut'ah* and *nafaqah al-'iddah* related to legal norms in Indonesia for wives after lawsuit divorce?
2. What is the view of *fiqh munakahat* on *nafaqah al-mut'ah* and *al-'iddah* for wives after lawsuit divorce?

## 1.3. Objective of Research

1. To find out *nafaqah al-mut'ah* and *nafaqah al-'iddah* related to legal norms in Indonesia for wives after lawsuit divorce.
2. To find out the view of *fiqh munakahat* on *nafaqah al-mut'ah* and *nafaqah al-'iddah* for wives after lawsuit divorce.

## 1.4. Benefit of Research

This research can make a new contribution to the academic literature related to civil law, justice, and the determination of the amount *nafaqoh* of lawsuit divorce ; provide an in-depth understanding of the concept of justice in the context of determining the amount *nafaqoh* of lawsuit divorce; and this research can help raise public awareness about the importance of justice in the context of determining the amount of lawsuit divorce *nafaqoh*, which can trigger wider discussion and understanding.

### 1. Theoretical Significance

For the academics: This study contributes new insights to academic literature in the field of civil law, particularly regarding justice and the determination of lawsuit divorce *nafaqoh* amounts. It also deepens the understanding of the concept of justice in the context of lawsuit divorce

### 2. Practical Significance

For the government: Providing recommendations for the improvement or development of legal policies that are more precise and equitable.

For society: Raising public awareness about the importance of justice in determining the amount of lawsuit divorce *nafaqoh*, which can trigger broader discussions and deeper understanding.



## 1.5. Literature Review

Table 2. Literature Review

AuthorYear	Research Title	Research Methodology	Analysis Results	Differences in Research	Novelty
Suci Nurindah, (2019)	Nafkah 'Iddah Perkara Cerai Gugat (Studi putusan Pengadilan Agama Jakarta Selatan Nomor 1542/Pdt. G/2014/P A.JS)	Juridical-Normative	The basis for consideration in deciding Case Number 716/Pdt.G/2021/PA.Mgt refers to Supreme Court Circular Letter Number 3 of 2018, which states that a wife in a divorce petition (Lawsuit divorce) may be granted <i>nafaqoh al-mut'ah</i> and <i>al-iddah</i> as long as it is not proven that she was <i>nusyuz</i> (disobedient) 16	This research explains the relationship between the demand for <i>nafaqoh</i> in divorce cases filed by the wife	My research not only discusses the legal basis of <i>nafaqoh al-'iddah</i> and <i>nafaqoh al-mut'ah</i> but also analyzes them from the perspective of <i>fiqh munakahat</i> , which is not covered in this study.

<sup>16</sup> Suci Nurindah, " Nafkah Iddah Perkara Cerai Gugat (Studi Putusan Pengadilan Agama Jakarta Selatan Nomor 1542/Pdt.G/2014/PA.JS)" (UIN Syarif Hidayatullah Jakarta, 2019),p. 3. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/47237/1/SUCI%20NURINDAH-FSH.pdf>.

Siti Wafiroh (2023)	Pembebanan Nafkah Dalam Perkara Cerai Gugat Perspektif Hukum Progresif (Studi Kasus di Pengadilan Agama Magetan)	Juridical-Empirical	The basis for consideration in deciding Case Number 716/Pdt.G/2021/PA.Mgt refers to Supreme Court Circular Letter Number 3 of 2018, which states that a wife in a divorce petition (lawsuit divorce) may be granted <i>nafaqoh al-mut'ah</i> and <i>al-'iddah</i> as long as it is not proven that she was <b>nusyuz</b> (disobedient) 17	This research will discuss the rights of <i>nafaqoh</i> and its implementation in society from a divorce filed by the wife ( <i>lawsuit divorce</i> ).	My research is normative with a <i>fiqh munakahat</i> approach, not empirical. I compare positive legal norms with classical Islamic legal perspectives regarding <i>nafaqoh al-'iddah</i> and <i>nafaqoh al-mut'ah</i> .
Heri Irawa, (2020)	Nafkah Pasca Perceraian Dalam Perkara Cerai Gugat (Studi Kritik	Juridical-Normative	This research To understand the basis of the judge's considerations in granting <i>nafaqoh</i> for housing (maskan),	This research provides the implementation of <i>nafaqoh</i> rights from a divorce filed by the wife ( <i>lawsuit divorce</i> )	I not only analyze Article 149 of <i>KHI</i> but also discuss it from the perspective of <i>fiqh munakahat</i> , providing a more comprehensive analysis from the standpoint of

<sup>17</sup> Siti Wafiroh, “Pembinaan Nafkah Dalam Perkara Cerai Gugat Perspektif Hukum Progresif (Studi Kasus di Pengadilan Agama Magetan)” (Pascasarjana IAIN Ponorogo, 2023), p. 73.  
<https://etheses.iainponorogo.ac.id/22838/>.

	Pada Pasal 149 <i>KHI</i> Terhadap Perkara Nomor xxxx/Pdt. G/2012 PA JS)		clothing (kiswah), and mut'ah in court rulings. <sup>18</sup>		Islamic jurisprudence.
Uswatun Hasanah, (2020)	Nafkah Suami Kepada Istri Dalam Perkara Cerai Gugat Serta Hubungannya Dengan Asas Keadilan Hukum (Analisis <i>KHI</i> dan SEMA No. 2 Tahun 2019)	Juridical-Normative	This research Examining Husband's <i>nafaqoh</i> to Wife in Divorce Cases lawsuit divorce by the Wife (lawsuit divorce) and Its Relation to the Principle of Legal Justice (Analysis of <i>KHI</i> and Supreme Court Circular Letter No. 2 of 2019). <sup>19</sup>	This research will explain the rights of <i>nafaqoh al-mut'ah</i> and <i>nafaqoh al-'iddah</i> received by the wife after divorce, namely a divorce filed by the wife from lawsuit divorce	I do not only discuss legal justice within the framework of positive law but also analyze it from the perspective of <i>fiqh munakahat</i> , offering a more holistic approach to justice in post-divorce <i>nafaqoh</i> .
Kabila Ahmadi Romli Al Idrus	Nafkah 'Iddah Dan Mut'ah	Juridical-Normative	Reviewing the analysis of the right to receive	This research will discuss the rights to mut'ah and	My research is not limited to a single school of thought but takes a

<sup>18</sup> “Heri Irawan. "Nafkah Pasca Perceraian Dalam Perkara Cerai Gugat (Studi Kritik Pada Pasal 149 KHI Terhadap Perkara Nomor xxxx/Pdt.G/2012 P.A JS)" (UIN Raden Intan Lampung, 2020), p. 21. <https://repository.radenintan.ac.id/15275/1/Tesis%201-2.pdf>.

<sup>19</sup> Uswatun Hasanah, “Nafkah Suami Kepada Istri Dalam Perkara Cerai Gugat Serta Hubungannya Dengan Asas Keadilan Hukum (Analisis Khi Dan Sema No. 2 Tahun 2019)” (UINAR-Raniry Darussalam Banda Aceh, 2021), p. 21. <https://repository.arraniry.ac.id/id/eprint/16507/1/Uswatun%20Hasanah,%20170101004,%20FSH,%20HK,%20082354661830.pdf>.



(2020)	Bagi Istri Ceraai Gugat Perspekti f Fikih Madzhab Syafi'i: Studi Putusan Nomor: 854/Pdt. G/2010/P a/Pas		<i>nafaqoh al- 'iddah</i> and <i>mut'ah</i> for a wife when filing for divorce from her husband in the decision of Case No. 854/Pdt.G/20 10/PA.Pas, from the perspective of the Syafi'i school of thought. <sup>20</sup>	<i>nafaqoh al- 'iddah</i> for the wife after a divorce filed by the wife (lawsuit divorce) from the perspective of fiqh munakahat	broader <i>fiqh munakahat</i> approach, encompassing various Islamic legal perspectives on <i>nafaqoh al- 'iddah</i> and <i>nafaqoh al-mut'ah</i>
--------	---	--	---	---	---

## 1.6. Research Method

### 1.6.1. Types of Research

The type of research is Juridical-Normative, a research conducted based on the main legal material by examining theories, concepts, legal principles, and laws and regulations related to this research.<sup>21</sup>

The reason the author chooses the type of normative juridical research is to assist in understanding existing legal norms, then provide a strong theoretical basis for a legal study by understanding the applicable norms, and also to straighten and maintain the consistency of the norm system against basic norms, principles, doctrines, and laws and regulations.

### 1.6.2. Data Sources

The type of data used by the author in this study is secondary data obtained from written materials.<sup>22</sup> According to Amirussin and Zainal Asikin, the source of normative legal research is only secondary data consisting of primary, secondary,

<sup>20</sup> Kabila Ahmadi Romli, *Nafkah Iddah dan Mut'ah Bagi Istri Ceraai Gugat Perspektif Fikih Madzhab Syafi'i: Studi Putusan Nomor: 854/pdt.G/2010/Pas*, (Malang: 2020), p. 12.  
<http://etheses.uin-malang.ac.id/26920/2/16210045.pdf>.

<sup>21</sup> Muhaimin, *Metode Penelitian Hukum*, (Mataram University Press, Juni 2020), p. 62.

<sup>22</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia, 1986), p. 11.

and tertiary legal articles.<sup>23</sup> The reason the author uses secondary data is to make it easier for the author and faster because it can be accessed easily and does not take much time. The following are detailed of research steps:

#### **1.6.2.1. Primary Data:**

- a. Law No. 1 Year 1974 on Marriage.
- b. Government Regulation No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning marriage.
- c. SEMA No. 2 of 2019 concerning the implementation of the formulation of the results of the plenary meeting of the Supreme Court chambers in 2019 as a guideline for the implementation of duties for the Court.
- d. PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Against the Law.
- e. Article 132 paragraph (1) *KHI* related to lawsuit divorce.
- f. Articles 129, 130, 131 *KHI* related to lawsuit divorce
- g. Books:

- أحكام الأصول الشخصية في الشريعة الإسلامية على وقف مذهبي حنيفة وما عليه العمل بالحكم.
- (فقه المناكحات) الأحوال الشخصية.
- محاضرات في عقد الزواج و آثاره.
- الفقه الإسلامي و أدلته.
- كتاب أحكام الأحوال الشخصية في الشريعة الإسلامية.

#### **1.6.2.2. Secondary Data**

The secondary legal materials used by the author are legal journals, books, academic papers, and court minutes related to the legal issues studied.

---

<sup>23</sup> Amirudin dan H. Zaenal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT. Raja Grafindo Persada, 2006), p. 118.

### 1.6.3. Data Collection Method

The data collection method that will be used by the author is the document study method or literature study, which examines legal materials, both primary legal articles, secondary legal articles, and tertiary legal materials or non-legal articles.<sup>24</sup>

The data collection method that will be used by the author is the document Study method or literature study, which examines legal articles, both primary legal articles, secondary legal articles, and tertiary legal articles or non-legal articles.

### 1.6.4. Data Analysis Method

The data analysis method used by the author in this study are a qualitative analysis method, namely by interpreting the legal articles that have been processed.<sup>25</sup> The reason the author uses qualitative analysis is to interpret the law, whether the legal articles, especially the primary legal articles, contains a vacuum of legal norms and legal norms that are vague or unclear.

### 1.6.5. Research Approach

In this study, the author used an approach in this normative research using a statutory approach and a conceptual approach.

The statutory approach is an approach taken by examining all laws and regulations related to the legal issues being discussed.<sup>26</sup> This approach will see the law as a closed system and has the following characteristics:

- a. *Comprehensive*: meaning that the legal norms in it are logically related to one another.
- b. *All-inclusive*: that the collection of legal norms is sufficient to accommodate existing legal problems, so that there is no lack of law.
- c. *Systematic*: that the legal norms are linked to each other, as well as arranged in a hierarchy.<sup>27</sup>

The reason to use the approach is more accurate when it is completed with another legal considerations. The conceptual approach departs from the views and

---

<sup>24</sup> Muhaimin, *Metode Penelitian Hukumf*, (Mataram University Press, Juni 2020), p. 62.

<sup>25</sup> Ibid, p. 68.

<sup>26</sup> Muhaimin, *Metode Penelitian Hukum*, (Mataram University Press, Juni 2020), p. 53.

<sup>27</sup> Haryono, "Teori dan Metode Penelitian Hukum Normatif," *dalam Johnny Ibrahim* (Bayumedia, Malang, 2005). p. 249

doctrines that develop in legal science. The reason the author uses this approach is in order to find answers to legal issues in legal research.<sup>28</sup>

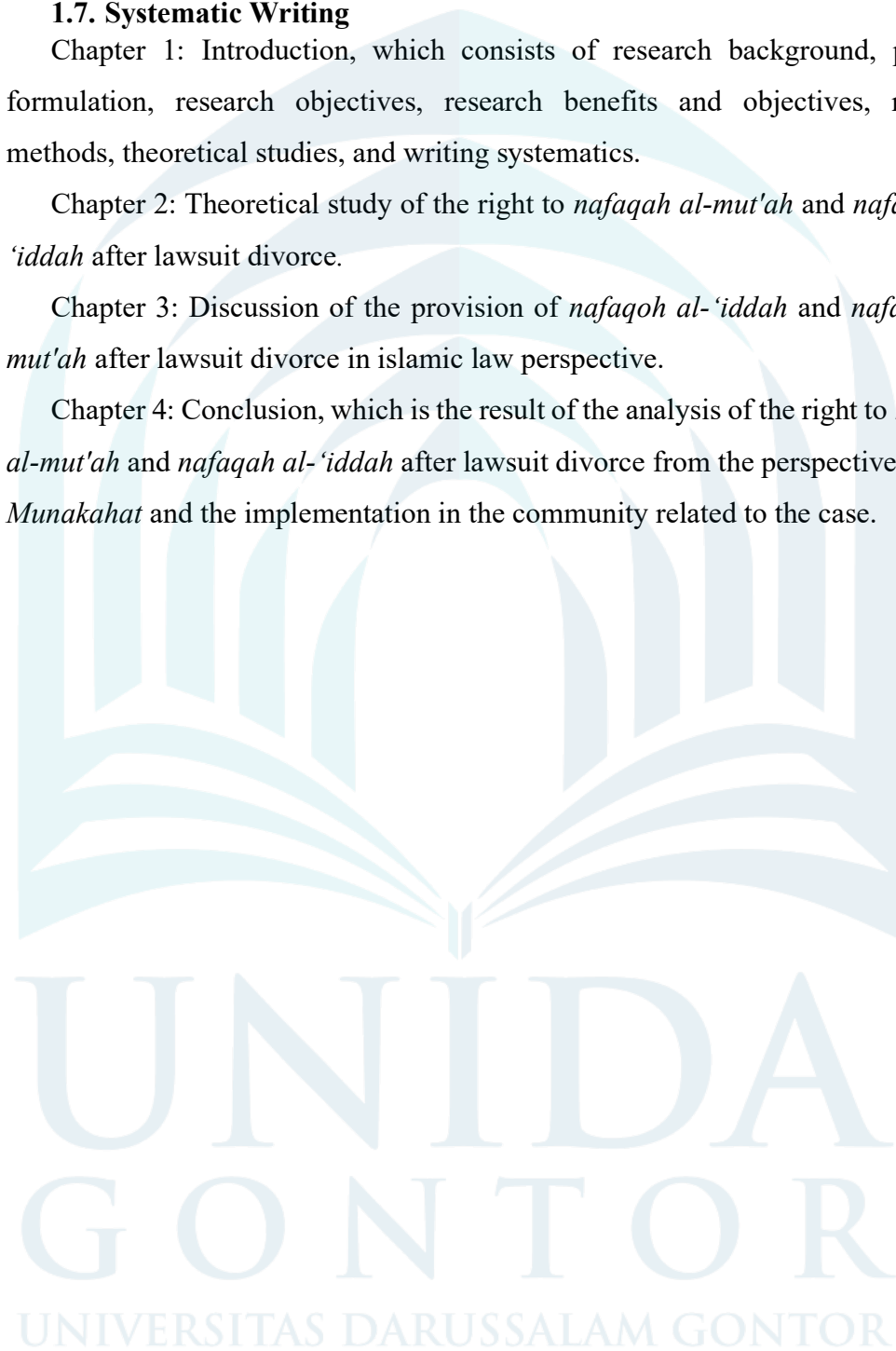
### **1.7. Systematic Writing**

Chapter 1: Introduction, which consists of research background, problem formulation, research objectives, research benefits and objectives, research methods, theoretical studies, and writing systematics.

Chapter 2: Theoretical study of the right to *nafaqah al-mut'ah* and *nafaqah al-'iddah* after lawsuit divorce.

Chapter 3: Discussion of the provision of *nafaqah al-'iddah* and *nafaqah al-mut'ah* after lawsuit divorce in islamic law perspective.

Chapter 4: Conclusion, which is the result of the analysis of the right to *nafaqah al-mut'ah* and *nafaqah al-'iddah* after lawsuit divorce from the perspective of *Fiqh Munakahat* and the implementation in the community related to the case.



---

<sup>28</sup>Ibid, p. 52.