



The Legal Philosophy of 'Iwadh as Divorce Compensation: An Analysis of Islamic Economic Principles Perspective

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Submitted	: 2026-04-24	Accepted	: 2026-05-30
Revision	: 2026-05-02	Publish	: 2026-06-30

Abstract: *This study examines the legal philosophy of 'iwadh (compensation payment) in khulu' divorce from the perspective of Islamic economic principles. 'Iwadh has long been read primarily as a procedural requirement of Islamic family law, causing its economic dimension relating to distributive justice and the restoration of proprietary rights to receive insufficient scholarly attention. Employing a normative legal research methodology through conceptual and statutory approaches, this study finds that 'iwadh embodies three foundational maxims of the Islamic economy: Al-Ghunmu bil Ghurmi (proportionality of risk and benefit), 'Adalah fil 'Uqud (justice in contractual relations), and La Dharar wa La Dhirar (prevention of financial harm). Within Indonesian positive law, 'iwadh performs two substantively distinct functions: as a consent-based compensation instrument in pure khulu', and as a legal symbol carrying the value of maslahah mursalah (public interest) in cases of taklik talak (conditional divorce) violation. This dualism reflects Indonesia's judicial ijtihad in contextually integrating maqashid al-shari'ah into the practice of religious court adjudication.*

Keywords : 'Iwadh, Khulu', Legal Philosophy, Islamic Economy, Contractual Justice, Maqashid al-Shari'ah.

INTRODUCTION

The Qur'an describes marriage as a *misaqan ghalizan* - a solemn covenant - as stated in Surah al-Nisa verse 21. Far more than a religious ceremony, marriage in Islam gives rise to a concrete set of civil rights and obligations, ranging from maintenance (*nafaqah*), housing, and the management of marital assets. When the bond can no longer be sustained, Islamic law provides structured mechanisms for dissolution: *talaq* initiated by the husband, and *khulu'* for a wife who wishes to terminate the marriage of her own volition.

In *khulu'*, the wife requests dissolution from her husband in exchange for surrendering *'iwadh* as compensation.¹ Within the normative-fiqh framework, this mechanism positions the wife as the party "repurchasing" her freedom from a bond she no longer desires. Yet the existing literature on Islamic family law in Indonesia has largely confined itself to the procedural level: who may petition, what the requirements are, and how the process unfolds before the Religious Court (Pengadilan Agama).

There is, however, a more fundamental question that has not been sufficiently explored: why must *'iwadh* exist at all? What is its philosophical basis - not merely its normative one? And does the IDR 10,000 figure established by Ministerial Decree (KMA) No. 411 of 2000 for taklik talak cases still reflect genuine substantive justice?

These questions are made more pressing by religious court data: divorce suits filed by wives have consistently accounted for more than 70 percent of total national divorce cases processed by Religious Courts each year.² At that scale, the *'iwadh* institution is not a peripheral matter. It touches the lives of millions of women seeking a way out of troubled marriages, while also implicating the economic rights of husbands' rights that are often left unaddressed in discussions that tend toward a single perspective.

¹Wahbah az-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Vol. IX (Damascus: Dar al-Fikr, 2011), 6947.

²Statistics Indonesia (BPS), *Statistik Indonesia 2023* (Jakarta: BPS, 2023), 87; see also Annual Report of the Directorate General of Religious Courts, Supreme Court of the Republic of Indonesia, 2022.

This article does not merely describe the law of *'iwadh* in expository terms. It seeks to excavate the institution's philosophical foundations through three core maxims of the Islamic economy, and then to test those foundations against Indonesian positive law including an examination of how Supreme Court jurisprudence has shaped the interpretation of this institution.

This study falls within the category of normative legal research (*doctrinal legal research*), which focuses on the analysis of legal principles, legal maxims, and the systematic structure of law as found in documentary sources.³ As Peter Mahmud Marzuki explains, this type of research aims to identify the applicable law for a given concrete situation through the examination of library materials and secondary data.⁴

Two approaches are employed concurrently: a *conceptual approach* to unpack classical fiqh doctrine across the legal schools (*madhahib*) and the principles of the Islamic economy, and a *statutory approach* to analyse the relevant positive-law regulations, namely Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, the Compilation of Islamic Law (KHI), and KMA No. 411 of 2000.⁵

Primary legal materials comprise the Qur'an, the hadith collections of Sahih al-Bukhari and Sahih Muslim, and the statutory instruments listed above. Secondary materials consist of classical fiqh texts Al-Mughni (Ibn Qudamah), Bada'i' al-Sana'i' (Al-Kasani), Al-Majmu' (Al-Nawawi), and Bidayat al-Mujtahid (Ibn Rushd) together with Indonesian Islamic family law scholarship and contemporary Islamic economics literature. Analysis is conducted qualitatively through descriptive-analytical methods and legal hermeneutics, yielding conclusions that are deductive in character.

The Philosophical Nature of 'Iwadh: A Cross-Madhab Analysis

Khulu' literally means to remove or divest, in the same way one removes clothing. The metaphor is deliberate: Surah al-Baqarah verse 187 describes husbands and wives as

³Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2015), 13–14.

⁴Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011), 35.

⁵Law No. 1 of 1974 on Marriage, Art. 39(2); Government Regulation No. 9 of 1975, Art. 19.

garments for one another. When a wife requests *khulu'*, she intends to divest herself of a bond she no longer wishes to bear.

Its legal basis appears in Surah al-Baqarah verse 229:

.... وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا بِمَا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ

"...It is not lawful for you to take back anything of what you have given them, unless both fear that they may not be able to keep the limits ordained by God..."⁶

This verse is reinforced by the hadith concerning the wife of Thabit ibn Qays, narrated by Imam al-Bukhari. Ibn Hajar al-Asqalani in *Fath al-Bari* affirms that this hadith constitutes conclusive proof (*dalil qath'i*) of the legality of *khulu'* and serves as the primary authority for all madhahib in establishing the ruling on *'iwadh*.⁷

The leading imams of the madhahib are not entirely of one voice on this point, and the divergence is not trivial. Each school proceeds from a different emphasis: some foreground the contractual dimension, others stress the protection of women, and still others maintain that *talaq* is an authority that cannot be reduced to a mere economic transaction:

School	Position on 'Iwadh	Argumentative Basis	Philosophical Implication
Hanafi	'Iwadh is obligatory; its value may consist of any property, including an amount exceeding the original dower.	Al-Kasani (Bada'i' al-Sana'i') : <i>khulu'</i> constitutes a mu'awadah (valuable exchange), making 'iwadh an integral element that cannot be relinquished. ⁸	'Iwadh is the price (thaman) of the wife's freedom; the act of divorce is treated as equivalent to a contract for the sale of a right.
Maliki	'Iwadh is recommended but not an absolute integral element; <i>khulu'</i> remains valid without	<i>Ibn Rushd (Bidayat al-Mujtahid)</i> : a wife-initiated divorce calls for compensation, but the <i>talaq</i>	<i>Talaq</i> remains the husband's prerogative; 'iwadh is more moral in character than a strict legal requirement.

⁶Imam al-Bukhari, *Sahih al-Bukhari*, Kitab al-Talaq, Bab al-Khul' wa Kayfa al-Talaq fihi, Hadith No. 5275 (Beirut: Dar Ibn Kathir, 1987), 1277.

⁷Ibn Hajar al-Asqalani, *Fath al-Bari Sharh Sahih al-Bukhari*, Vol. IX (Beirut: Dar al-Ma'rifah, n.d.), 395.

⁸Al-Kasani, *Bada'i' al-Sana'i'*, Vol. III (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), 227.

School	Position on 'Iwadh	Argumentative Basis	Philosophical Implication
	'iwadh if the husband pronounces talaq.	takes effect regardless of whether 'iwadh is paid. ⁹	
Shafi'i	'Iwadh is obligatory; its value may not exceed the dower originally given by the husband.	<i>Al-Nawawi (Al-Majmu')</i> : the cap on 'iwadh is intended to prevent harm (darar) to women and to foreclose the possibility of extortion. ¹⁰	'Iwadh functions as a counterbalance, not an instrument of exploitation; the protection of women serves as the ceiling on the compensation amount.
Hanbali	'Iwadh is obligatory and a condition for the validity of khulu'; without 'iwadh, no valid khulu' exists.	<i>Ibn Qudamah (Al-Mughni)</i> : 'iwadh is the operative cause ('illah) for the falling of irrevocable divorce (talaq ba'in) in khulu'; the two are inseparable. ¹¹	'Iwadh has a theological rather than merely economic dimension; it is a constitutive shar'i condition for the dissolution of marriage.

Table 1. Comparative Views of the Legal Schools on 'Iwadh

Across all four schools, an *ijma'* (scholarly consensus) emerges that '*iwadh* is a required compensation instrument in *khulu'*, even as they differ on its limits. That divergence in fact mirrors a genuine tension inherent in the institution: between the wife's right to exit a distressing marriage and the husband's right to compensation for the economic capital he has invested. Muhammad Abu Zahrah regards this dialectical tension as the driving force behind the emergence of '*iwadh* as a mediating legal solution one that does not fully satisfy either party, yet is equitable to both.¹²

More broadly, Satjipto Rahardjo reminds us that the function of law is not confined to maintaining order; it also serves as a mechanism for the distributive allocation of justice in interpersonal relations.¹³ From that vantage point, the '*iwadh* institution exemplifies how

⁹Ibn Rushd (Averroes), *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, Vol. II (Beirut: Dar al-Ma'rifah, 1982), 44.

¹⁰Al-Nawawi, *Al-Majmu' Sharh al-Muhadhdhab*, Vol. XVII (Jeddah: Maktabat al-Irshad, n.d.), 6.

¹¹Ibn Qudamah, *Al-Mughni*, Vol. VII (Beirut: Dar al-Kutub al-'Ilmiyyah, 1994), 51.

¹²Muhammad Abu Zahrah, *Al-Ahwal al-Shakhsyiyah* (Cairo: Dar al-Fikr al-'Arabi, 1957), 332–333.

¹³Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006), 45.

Islamic law responds to positional asymmetry by imposing symmetrical obligations: the wife obtains her freedom, the husband receives compensation, and neither party may exit the marriage without bearing a commensurate financial consequence.

Analysis of 'Iwadh Through the Lens of Islamic Economic Principles

Islamic economics encompasses far more than banking and commerce. It is a normative system governing the distribution of wealth, justice in contractual dealings, and the prevention of wrongdoing across all spheres of human *mu'amalah* including the institution of marriage.¹⁴ The three maxims examined below demonstrate that the existence of *'iwadh* is not a historical accident, but rests on a systemic foundation within the logic of the Islamic economy.

1. Al-Ghunmu bil Ghurmi: Risk and Benefit Must Be Proportionate

This maxim is enshrined in Majallat al-Ahkam al-'Adliyyah, Article 85:¹⁵

الْغُنْمُ بِالْغُرْمِ

Meaning: whoever bears the burden (ghurm) is entitled to the benefit (ghunm). This principle of proportionality applies equally to the economics of marriage.

When a husband enters into marriage, he assumes a series of financial obligations: paying the dower (*mahr*), financing the wedding feast (*walimah*), and providing housing, clothing, and sustenance throughout the marriage. M. Umer Chapra explains that this structure of obligations reflects an institutional design in which Islamic law places the husband as *qawwam* the primary financial provider within the family economy.¹⁶ In other words, the husband is the party who bears the capital investment of the marriage from the outset.

When the wife requests *khulu'* without any wrongdoing on the husband's part, she recovers her freedom in full while the husband loses the marital benefits that had served as

¹⁴M. T. Mansoori, *Islamic Law of Contracts and Business Transactions* (Islamabad: Shari'ah Academy, 2011), p. 102.

¹⁵This maxim is enshrined in Majallat al-Ahkam al-'Adliyyah, Art. 85; see also Ali Haydar, *Durar al-Hukam Sharh Majallat al-Ahkam Vol. I* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), 69.

¹⁶M. Umer Chapra, *Islam and the Economic Challenge* (Leicester: The Islamic Foundation, 1992), 213.

the return on his investment. Without *'iwadh*, what would occur is precisely what Western private law calls *unjust enrichment*: one party gains at the other's expense with no corrective mechanism.¹⁷ *'Iwadh* intervenes as the *counter-value* that restores that balance.

2. 'Adalah fil 'Uqud: Symmetrical Contractual Justice

Marriage in Islam is not solely an act of worship (*ta'abbudi*); it is also a civil contract (*mu'amalah*) that demands a just distribution of rights and obligations, including in the event of dissolution.¹⁸ This scheme of justice can be mapped as follows:

Initiating Party	Legal Act	Financial Consequences	Normative Basis
Husband (without justified cause)	Talaq (Repudiation)	Obligatory payment of mut'ah (consolatory gift), 'iddah maintenance, and past maintenance (<i>nafaqah madhiyah</i>) if in arrears. The husband bears financial consequences for unilaterally dissolving the contract.	KHI Arts. 149, 158–159
Wife (without fault of the husband)	Divorce Suit (<i>Khulu'</i>)	Obligatory payment of 'iwadh to the husband as indemnification for initiating the dissolution of the contract.	KHI Art. 148; Al-Baqarah: 229
Husband (having violated the taklik talak conditions)	Divorce Owing to Husband's Default	Wife deposits a symbolic 'iwadh of IDR 10,000 into the Baitul Mal (public treasury). The husband has no entitlement to receive it, as the divorce is attributable to his own default.	KMA No. 411 of 2000

Table 2. The Scheme of Contractual Justice in Islamic Divorce

The scheme above demonstrates that Islamic law tolerates no asymmetry: whichever party initiates the dissolution of the contract bears its financial consequences. Kamali describes this as the application of the principle of *equal but not identical treatment* equal

¹⁷M. H. Kamali, *Freedom, Equality and Justice in Islam* (Cambridge: Islamic Texts Society, 2002), 64.

¹⁸*Ibid.*, 64.

rights, though not necessarily identical ones, because the parties' positions genuinely differ.¹⁹ What matters substantively is that no party can exit a marriage without bearing the economic consequences of that choice.

La Dharar wa La Dhirar: The Bilateral Prohibition of Harm

The maxim *La dharara wa la dhirar* there shall be no harm inflicted upon oneself or upon others operates bilaterally in the context of *khulu'*. This is a dimension that is frequently overlooked when the maxim is discussed.

The first dimension: *'iwadh* protects the husband. It functions as a *daman* (guarantee) mechanism for the marital capital lost as a result of the wife's initiative, so that the husband need not absorb the loss alone. The second dimension, equally important: the husband is prohibited from engaging in *adhal* deliberately oppressing or cornering the wife so that she is compelled to request *khulu'*, thereby enabling the husband to profit from the *'iwadh*. The act of *adhal* is expressly categorised as wrongdoing (*zulm*) and is explicitly forbidden in fiqh.²⁰

The Shafi'i school goes further by imposing a ceiling: the value of *'iwadh* may not exceed the dower previously given by the husband, as affirmed by Al-Nawawi in *Al-Majmu'*.²¹ This ceiling explicitly forecloses the possibility of *'iwadh* degenerating into an instrument of extortion against women who are in a position of vulnerability. Wahbah az-Zuhaili summarises the principle aptly: *La Dharar* in the context of *'iwadh* protects the husband from uncompensated loss while simultaneously protecting the wife from financial pressure that exceeds the bounds of reasonableness.²²

'Iwadh in Indonesian Positive Law: Between Normativity and Judicial Reality

The Compilation of Islamic Law (KHI), which came into force pursuant to Presidential Instruction No. 1 of 1991, is the product of the collective *ijtihad* of Indonesian Islamic scholars who sought to contextually codify Islamic family law.²³ One outcome of that *ijtihad* is the

¹⁹Ibid.

²⁰Wahbah az-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Vol. IX, op. cit., 6972–6974.

²¹Al-Nawawi, *Al-Majmu'*, op. cit., 6.

²²Az-Zuhaili, op. cit., 6972–6974.

²³Supreme Court of the Republic of Indonesia, *Compilation of Islamic Law (KHI)*, Presidential Instruction No. 1 of 1991, Art. 1(i).

dualistic function of *'iwadh* a construction that has no direct equivalent in the classical fiqh of any single madhab. These two forms require critical scrutiny, not mere description.

1. 'Iwadh in Pure Khulu': Compensation Based on Taradhin

Article 1(i) of the KHI defines *khulu'* as a divorce that takes place by agreement between husband and wife upon the payment of a ransom or *'iwadh* by the wife.²⁴ No fixed monetary amount is prescribed; the value is left to the mutual agreement of the parties before the judicial panel.

In practice, Ahmad Rofiq notes that Religious Court judges frequently employ an *ijtihad* approach in determining a proportionate value of *'iwadh*, taking into account the economic capacity of the parties, the duration of the marriage, and the circumstances of any children involved.²⁵ This shows that in this typology, *'iwadh* in fact functions as a mechanism for resolving marital contract disputes, grounded in the principle of *taradhin* mutual consent as the foundation of a valid agreement.

2. 'Iwadh in Taklik Talak: From Economic Instrument to Legal Symbol

This is where Indonesian judicial *ijtihad* is at its most distinctive. Under KMA No. 411 of 2000, the value of *'iwadh* in cases of taklik talak violation is fixed at IDR 10,000.²⁶ If the husband violates one of the taklik talak clauses (for instance, by failing to provide obligatory maintenance for three consecutive months, or by committing domestic violence) and the wife does not pardon him, she may file a petition before the Religious Court and, upon payment of that *'iwadh*, one pronouncement of talaq falls.

Supreme Court Decisions No. 137 K/AG/2007 and No. 16 K/AG/2010 have confirmed the constitutive status of this *'iwadh* as a formal requirement: without its payment, the court

²⁴Ibid.

²⁵Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2003), 269.

²⁶Decree of the Minister of Religious Affairs (KMA) No. 411 of 2000 on the Determination of the 'Iwadh Amount in Taklik Talak.

cannot examine or adjudicate the suit.²⁷²⁸ Accordingly, *'iwadh* in the taklik talak context has undergone a functional transformation it is no longer an economic instrument for risk-balancing, but a procedural prerequisite that opens the door to judicial relief.

This transformation warrants closer analysis. Why does the husband not receive the *'iwadh*? Because the divorce is attributable to his own default. Conferring a financial benefit upon a wrongdoer plainly contradicts the bilateral operation of the *La Dharar* maxim. Where, then, does the payment go? In the practice of Indonesian religious courts, *'iwadh* is remitted to the Baitul Mal or the officially recognised amil zakat body.²⁹ It is transformed into an instrument of *maslahah mursalah* allocated to the benefit of the community at large, rather than returned to any party in the dispute.

Neng Djubaedah regards this construction as a concrete expression of the national law's commitment to protecting women who suffer violence or neglect within marriage.³⁰ The modest sum of IDR 10,000 is not a weakness; it is a deliberate choice to ensure that financial barriers do not prevent economically marginalised women from accessing justice. This is what Islamic legal theorists call *fiqh al-waqi'* jurisprudence that responds to reality, rather than merely reproducing classical doctrine.

CONCLUSION

'iwadh is not a procedural requirement to be read in purely technical terms. Behind its formal provisions lies a distributive logic that integrates Islamic family law with universally applicable Islamic economic principles.

Three findings emerge from this study. **First**, the cross-madhab analysis reveals an *ijma'* on the obligatory character of *'iwadh* in *khulu'*, even as the Hanafi, Maliki, Shafi'i, and

²⁷Supreme Court Decision No. 137 K/AG/2007 on Divorce Suit Based on Taklik Talak Violation.

²⁸Supreme Court Decision No. 16 K/AG/2010 on the Legal Status of *'iwadh* as a Constitutive Formal Requirement in Taklik Talak Suits.

²⁹Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern* (Yogyakarta: Graha Ilmu, 2016), 104.

³⁰Neng Djubaedah, *Perzinaan dalam Peraturan Perundang-undangan di Indonesia Ditinjau dari Hukum Islam* (Jakarta: Kencana, 2010), 109.

Hanbali schools differ in determining its upper limit. That divergence is more than a technical disagreement; it reflects distinct philosophical emphases concerning the nature of marriage — whether it is more akin to an exchange contract, a moral bond, or a theological condition with an element of worship (*ibadah*).

Second, the three Islamic economic maxims analysed *Al-Ghunmu bil Ghurmi*, *'Adalah fil 'Uqud*, and *La Dharar wa La Dhirar* together demonstrate that the existence of *'iwadh* is not merely a historically inherited provision. It is Islam's normative response to a concrete problem: when a wife terminates a marriage of her own accord without fault on the husband's part, an asymmetric distribution of financial risk occurs that must be corrected. *'iwadh* is the corrective mechanism.

Third, within Indonesian positive law, the KHI produces a substantive functional dualism: *'iwadh* as consent-based compensation (*taradhin*) in pure *khulu'*, and as a legally symbolic instrument carrying *masalah mursalah* in taklik talak violation cases. Supreme Court jurisprudence through Decisions No. 137 K/AG/2007 and No. 16 K/AG/2010 has consolidated the constitutive function of *'iwadh* as a requirement that may not be dispensed with.

One further observation deserves mention: the IDR 10,000 amount established by KMA No. 411 of 2000 has now been in effect for over two decades.³¹ Over that period, the purchasing power of the Indonesian rupiah has changed dramatically. If the purpose of a nominal sum is to guarantee access to justice for women of all economic backgrounds, then any regulatory revision must reconsider that figure without betraying its original spirit that *'iwadh* in taklik talak is not an instrument of exploitation, but a key that opens the door to justice.

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³¹KMA No. 411 of 2000, op. cit.

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