

Divorce According to The Compilation of Islamic Law (KHI) and Fiqh

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ABSTRACT

This paper tells about divorce, even though it is permissible in Islamic law but it is an act that is hated by Allah Almighty. This solution is given if there is no way out anymore to solve the problems that occur between husband and wife in their household. In the process of implementation there is a dualism of understanding in society. One side of divorce or thalak is the husband's right so he can freely drop it whenever and wherever he wants. This is done, of course, after careful deliberation and peaceful efforts by both husband and wife families. Such provisions are found in the fiqh of fiqh of the Imam of the sect one of which is the fiqh of the Imam Shafi'i sect. Fall of thalak like this is considered legitimate by people who have long held the understanding of the Imam of his school.

1. Introduction

Islamic religious tradition places Abraham at the center of the mono-theistic ideal constituting the core of Islam. Among the indications of the centrality of Abraham in Islam already from its earliest times is the fact that his name appears 69 times in 25 Surah of the Qur'an. Islamic law is the law that regulates the life of humans in the world to achieve happiness in the world and hereafter. Therefore, Islamic law includes rules that regulate human behavior in the world. Islamic law covers all aspects of human life, both as individuals and members based on court decisions that have obtained permanent legal force.

Islamic law is a series of the words "law" and the word "Islam". Second separately, it is a word used in Arabic and exists in the Koran, also applies in Indonesian. "Islamic law" as a series of words has become a living and used Indonesian language. In essence, what is meant by legal sources is where we can get them to discover or explore the law. The source of Islamic law is the origin (taking place) of Islamic law. Sources of Islamic law are also called propositions Islamic law or the principle of Islamic law or the basis of Islamic law.

The word fiqh linguistically means "knowing, understanding something." In this sense, fiqh is a synonym of the word "understand". The Koran uses the word fiqh in meaning understand in a general sense. This verse suggests that during the time of the Prophet, the term fiqh did not only apply to legal issues but included an understanding of all aspects of Islamic teachings (Ahmad Hanafi, 1970: 11).

Divorce is infinitive and it means to open the knot and release from annoying, it means to release the woman from the marriage contract (Montahal Arb) (Montakhabal loghat) (Zoozani, 1883, P.175). In the Amid Dictionary, the same meanings

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have been mentioned about divorce (verbal noun) [Arabic], so in the dictionaries, numerous meanings have been mentioned for the word of divorce such as freedom, to release, to leave, abandon,.. In the lawful term, divorce consists of dissolving the marriage bound and joint with a special concubine (Taheri, 1997, P.247).

Even though divorce is permitted in Islamic law, it is an act that is very hated by Allah SWT. This solution is given if there is no other way out to resolve problems that occur between husband and wife in a household. In the implementation process, there is a dualism of understanding in society. One the divorce or talak side is the husband's right so he can freely impose it whenever and wherever he wants. This is done of course after doing various things careful consideration and peace efforts have been made by both families husband and wife. Provisions like this are found in the Islamic jurisprudence of one of the schools of thought the fiqh of the Imam Shafi'i school of thought.

The government determines the thalak process based on trial procedures in court Religion. The thalak process independent of the husband is regulated by the government through the trial process in religious courts. According to the government, a process like this needs to be carried out so that there are no arbitrary attempts by either party, especially the husband. The government firmly states "Divorce can only be carried out in front of a court religious Court after Religious Court tried and failed reconcile both parties."

2. Literature Reviews

2.1 Divorce Accordint to the Complication of Islamic Law (KHI)

a. Definition of Divorce

In the Compilation of Islamic Law (KHI) there is no regulation regarding meaning divorce but matters regarding divorce have been regulated in articles 113 to with article 148 of the Compilation of Islamic Law (KHI). By looking at the contents of the articles It can be seen that the divorce procedure is not easy, because you have to have it strong reasons and these reasons must be strictly according to the law. This is confirmed in article 115 of the Compilation of Islamic Law (KHI), the contents of which are as follows as follows: "Divorce can only be carried out in front of a court session after the court attempted and was unsuccessful in reconciling the two parties."

b. Types of Divorce

1. The case of Fasakh, A fasakh case is a divorce case decided by a superior judge wife's lawsuit. the main reason is not because of the husband and wife's quarrel, but because of an obstacle, a certain obstacle that results in the goal of marriage not being achieved materialized, for example, because even though the marriage has been around for quite a long time, but not yet also have offspring, perhaps due to the "mistake" of one of the infertile parties.
2. The case of Taqlík Thalâk, Divorce in the form of taqlik thalak is also commonly referred to as thalak that hanged. The request for this case is based on the wife's request for the Religious Court to determine that "the conditions for pending divorce already exist", namely, the husband has broken the promises made shortly after the hijab was removed. As usual in Muslim weddings, after the ceremony is finished ijab-kabul ("handover" of the bride through her guardian and "acceptance" by groom), the groom who makes related promises with a guarantee of marriage.
3. The case of Syiqaq, the meaning of the word: Division, according to Islamic teachings as stated It is mentioned in the Al-Qur'an, Surah An-Nisa' verse 35, which contains if it occurs disputes between husband and wife, the families of both parties should appoint and lifting the rights of reconciliation for the husband and wife. In Indonesia country this is a continuation of the intention of these rights, an official institution has been formed, namely marriage, Dispute and Divorce Advisory Board (BP 4), in charge to reconcile by Article 31 PP no. 9 of 1975.

c. The Causes of Divorce

1. Death, One party leaves the other party for 2 (two) consecutive years without the permission of the other party and valid reasons or anything other than ability, then to file a lawsuit, it must be filed after the year has passed starting from the time the defendant leaves the house, for the lawsuit to be accepted it is necessary It is proven that the defendant stated or showed an attitude of no longer wanting to do so return to the house together. (lihat PP. No. 9/1975 Pasal19 huruf (h).

2. Based on Court's Decision, Marriage breakdown caused by divorce can occur due to divorce or based on divorce lawsuit. Divorce can only be done in advance religious court hearings after the religious court tried and failed succeeded in reconciling both parties. Divorce can occur for reasons or reasons:
 1. one of the parties commits adultery or becomes a drunkard, cheater, gambler, etc. which are difficult to cure;
 2. one party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or because of something other than that his abilities;
 3. one of the parties receives a prison sentence of 5 (five) years or a similar sentence heavier after the marriage takes place;
 4. one of the parties commits serious cruelty or abuse endanger other parties;
 5. one of the parties has a physical disability or disease resulting in incapacity carry out their obligations as husband or wife.
- d. Divorce for Reasons of Thalaq, Divorce is a husband's vow before the Religious Court that goes wrong one reason for the dissolution of a marriage, in the manner referred to above. Thalak Raj'i is the first or second divorce, where the husband has the right to reconcile as long as the wife is in term iddah. Thalak Ba'in Shughraa is a divorce that cannot be referred to but the marriage contract can be new with her ex-husband even though she is in iddah. Thalak Ba'in Shughra is:
 1. Thalak that occurs qabla al dukhul;
 2. Thalak with ransom or khuluk;
 3. Thalak imposed by the Religious Court.

Thalak Ba'in Kubraa is a divorce that occurs for the third time. This type of divorce cannot be referred to and cannot be remarried unless the marriage occurs after the ex-wife married someone else and then divorced ba'da al dukhul and the iddah period ends. Sunny divorce is a permissible divorce namely divorce which is imposed on a wife who is chaste and has not been interfered with this holy time. Thalak bid'i is a forbidden thalak, namely a divorce that is imposed when the wife is menstruating or the wife is pure but already interfered with at this holy time.

3. Methodology

The type of research that the author uses is comparative analysis approach between KHI on the one hand, Islamic school of thought fiqh, in this case, Imam Shafi'i's fiqh, on the other hand. One of the books in the analysis is the book of Fiqh Kifayatul Akhyar fi Halli Ghayatil Ikhtiyar by Imam Taqiyuddin Abi Bakar bin Muhammad al-Husainy al-Hashany al-Dimasqy al-Shafi'i.

4. Results and Discussion

The description above shows that divorce from a material legal perspective does not exist the difference between KHI and *Kifayatul Akhyar fiqh*. Compilation of Islamic Law (KHI) explains that divorce can occur because of talak, khuluk, and lian, in the book of fiqh It also explains that divorce can occur because of talak, khuluk, and li'an. Apart from that, the book of fiqh still introduces *zihar and ila'* as forms of divorce, However, in KHI this provision is not regulated. This is due to the event of divorce using *ila'* or *zihar* is not known in Indonesian society. Fiqh as a form of understanding of Islamic law compiled by scholars from the Middle East include *ila'* and *zihar* as a form of effort to divorce the husband wives, because they are familiar with this culture in Middle Eastern Muslim communities (Arabic culture).

In terms of formal legal aspects, there are differences between KHI and the book fiqh Kifayatul Akhyar. KHI only recognizes divorces that are processed in front of a court Religious Courts, while the fiqh in the book above does not state that there is a process court in imposing talaq. Divorce carried out by the husband with imposing talaq on his wife is considered valid in fiqh. However, fiqh The sect's imams do not state that thalak must go through a judicial process. This is not it this means that the current divorce process is most appropriate according to the rules contained in fiqh. The divorce process through the courts is considered to narrow the husband's right to impose talaq resulting in heavy costs. The determination of divorce through a trial process is based on benefits, namely protecting women's rights. In the same source, it is said.

فقد قال أبا الصهباء ل بد هلال بن عباس: أما علمت أن الرجل كان إذا طلق امرأته ثالثاً
 قبيل أن يادخل بها ج لنها واحدة عالي عهد رثيل هلال صلى هلال عليه وسلم وأبى بكر
 وصدرامن عمارة عمر؟ قال ابن عباس: بلى

Meaning:

“ Abu al-ḥabba' said to Ibn Abbas: don't you know that the husband who imposes triple talaq on his wife before he interferes only stated one divorce fell during the time of Rasul SAW, Abu Bakr and at the beginning of Umar's reign alone? Ibnu Abbas answered, yes it is true this section is a comparative or descriptive analysis of the study based on the study results, previously literature, etc. The results should be offered in a logical sequence, given the most important findings first and addressing the stated objectives. The author should deal only with new or important aspects of the results obtained. The relevance of the findings in the context of existing literature or contemporary practice should be addressed”.

5. Conclusion

Based on the description above, it can be concluded that divorce goes through a trial process the court is the Ijtihad of Indonesian ulama which is based on the benefit of the law must be realized at the time the rule is implemented. Divorce should be processed through the Religious Courts so that this legal action can be carried out and can operate more fairly and more perfectly. KHI sourcebooks, where in research on fiqh books, the KHI project team collaborates with 7 IAIN spread across throughout Indonesia to study and ask for their opinions, along with their arguments and legal arguments. A total of 38 types of fiqh books from various schools of thought are divided into 7 IAIN the details are as follows :

1. IAIN Arraniri Banda Aceh: Al Bajurl, Fathul Mu'in, Syarqawi alat Tahrier, Mughnil Muhtaj, Nihayah Al MuhtaJ, and Asy Syarqawi;
2. IAIN Syarif Hidayatullah Jakarta; „lanatut Thalibin, Tuhfah, Targhibul Musytag, Bulghat Al Salik, Syamsuri fil Faraidl, and Al Mudawanah
3. IAIN Antasari Banjarmasin; Qalyabi/Mahalli, Fathul Wahab with Syarahnya, Bidayatul Mujtahid, Al Umm, Bughytul Mustarsyidin, and Aqiedah Wa al Syariah;
4. IAIN Sunan Kalijaga Yogyakarta; Al Muhalla, Al Wajiz, Fathul Qadier, Al Fiqhul ala Madzhabil Arbaan, and Fiqhus Sunnah;
5. IAIN Sunan Ampel Surabaya; Kasyf Al Qina, Majmu atu Fatwi Ibn Taymiah, Qawaninus Syariah Lis Sayid Usman bin Yahya, Al Mughni, dan Al Hidayah Syarah Bidayah Taimiyah Muftadi;
6. IAIN Alaudin Ujung Pandang; Qawanin Syar'iyah Lis Sayid Sudaqah Dakhlan, Nawab al Jalil, Al Muwatha, dan Hasyiah Syamsuddin Muh Irfan Dasuki;
7. IAIN Imam Bonjol Padang: Badal al Sannai, Tabyin al Haqaiq, Al Fatwa Al Hindiyah, Fathul Qadier, and Nihayah.

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