

Legality of *Khulu'* Lawsuit for Wives in the Provisions of Legislation in Indonesia

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ABSTRACT

The solution household crisis provided by the wife and accepted by the husband is known as a khulu' in Islamic law. This study examines the legal protection for a wife if the surrender of khulu' is determined and investigated. As well as the relationship between the provisions and the concept of khulu' with the position of women in marriage law which is sourced from the Compilation of Islamic Law related to Marriage Law.. It was decided to apply the research method of normative juridical research in conjunction with a statutory approach. The findings of this study indicate surrender of khulu' to the husband to divorce himself from the marriage bond is accompanied by the payment of 'iwadh', namely the payment of money or goods to the husband from the wife's side as a reward, divorce as a form of legal protection for the wife. The text states that 'iwadh is a system of legal protection given by the state to the wife who proposes khulu'.

Keywords: divorce; Islamic Law; *khulu'*; marriage.

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INTRODUCTION

As a constitutional democracy, Indonesia ensures its citizens enjoy equal standing, rights, and responsibilities before the law (Suhartini, 2019). Article 27 paragraph (1) of the Constitution of 1945 states thus. According to Article 27, Paragraph 1 of the Constitution of 1945, every citizen has a right to equal protection law and representation in government. To maintain the laws and government in place in Indonesia, citizens in the country must adhere to Article 27, paragraph 1. Given Indonesia's predominantly Muslim population, it's no surprise that Islamic law has permeated the country's existing and relevant regulations. This constitutional directly results from the community's demands, particularly among Muslims. The Marriage Law is one example of legislation aimed at bolstering Islamic principles and principles in general (Jahar, 2019).

Indonesia has three legal systems in force, including the Continental European system, the Islamic legal system, and the customary law system. The Continental European system is the most widely used. These three legal systems serve as the raw ingredients for developing the national legal system in Indonesia. In connection with the implementation of the Islamic legal system in Indonesia, it is stated that Islamic law has two distinguishing characteristics: normative and formal juridical (Aditya, 2019).

Because of the state's involvement in the formal legal enforcement of Islamic law, the state has been granted the authority to regulate and impose sanctions on individuals who disobey the law (Butt, 2010; Moustafa, 2017). Among the Islamic law provisions that are legally applicable and have been standardized as favorable legislation for Muslims in Indonesia are, for example, the following; 1) law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974; 2) presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.

A marriage contract is contained in Law Number 1 of 1974 Concerning marriage, which is part of the State of Indonesia's Positive Law on Marriage. By Government Regulation Number 9 of 1975, promulgated on April 1, 1975, Law Number 1 of 1974, relating to marriage, became operational on October 1, 1975. This law is national since, before its enactment, various marriage regulations were applied in Indonesia when the marriage issue was discussed. Indonesia, among other countries, has adopted Law Number 1 of 1974 concerning marriage, which states that: Marriage is an inner and outer relationship formed between a man and woman as husband and wife to build a joyful and eternal family or household on the foundation of the One Godhead.

Marriage is an official venue for both religious and state law, and the marriage of a single man and a single woman is recognized as valid and lawful under both (Adnyani, 2019). At the same time, marriage should fulfill both partners' biological needs, which is a noble goal. It is also true that marriage should form a

household in which both partners are comfortable and harmonious and that the marriage will fulfill every aspect of humans' physical and psychological needs. Marriage is a beautiful objective to establish a family (home), in addition to the physical requirements of every human being in general. The marriage law states that the inner and outer bond between a man and a woman as husband and wife forms a happy and eternal household. Based on the Almighty God is also stated in the marriage law Marriage, according to Islamic law, is a firm and legally binding contract. Obeying Allah's orders and carrying them out is considered a form of worship, or *mitsaqan gholidan*." It is important to note that this formulation emphasizes avoiding the breakdown of marriage, a strong link that must not be broken apart and destroyed. According to Islamic law, marriage and the creation of a household are guided by concepts and purposes of *sakinah*, *mawaddah*, and attachment.

However, it is not uncommon in married life for there to be ups and downs in-household tests, which are frequently cited as one of the reasons for the breakdown of marriages. Divorce is an attempt to let go of the husband and wife bonding of a marriage caused by certain reasons. Divorce occurs because there is no way out (dissolution) marriage) (Manna et al., 2021). In this scenario, the wife's ability to separate from her husband through a divorce is not as straightforward as what the husband can do to his wife. Therefore, it is vital to have legislation in place to govern this situation. In the actual world, it appears that the dissolution of marriages is increasingly becoming a social problem, not only because divorce cases are increasing but also because the grounds for divorce are becoming more diverse and complex. Even if it is legal, divorce is considered a sin in religious communities, particularly Islam, which believes it to be the "most loathed *halal* subject" (the most forbidden *halal* matter).

Because Islam expects every marriage to remain forever, various laws have been established to ensure this expectation is met. The steps of issue solving include finding a suitable partner, arranging the marriage contract, governing each partner's rights and obligations, and what to do when difficulties arise. In any case, Islam does not deny that there are married couples who have challenges in their relationship and find that being together no longer gives bliss but instead brings anguish and unhappiness. Because of this, in addition to ordering the continuation of the Marriage, Islam also provides a brief window of opportunity for couples experiencing marital troubles to seek divorce if the circumstances warrant it. It is permissible for the husband to file for divorce if the issue is on his side and the situation cannot be handled. A woman who feels harassed at home because of her spouse may be justified in bringing a divorce lawsuit, known as *khulu'*, against him.

Article 39 of the Law on Marriage states that: (1) divorce may only be made before a court hearing after the court tried and failed to reconcile both sides. (2) to carry out the divorce, there must be enough reason that between husband and wife

it will not be able to live in harmony as husband and wife. This means that the Law on Marriage adheres to the principle of aggravating the occurrence of divorce. The divorce must have specific reasons and be carried out before the court hearing (Dahwadin et al., 2020).

Forms of Divorce in Indonesia It is well known that there are three types of divorce imposed by the State: 1). Divorce lawsuit: a wife who files a lawsuit against her husband to obtain a divorce from him. This provision covers Muslim people; 2) Divorce talak: a husband who will seek permission before imposing talak on his wife is covered by this provision. This also applies to Muslims; 3) Divorce litigation, in which the plaintiff is a husband or wife with compelling reasons to divorce the defendant. The third category includes non-Muslim communities (Zulkifli, 2019).

In Indonesian law, it has been specifically regulated regarding this divorce. Divorce cases are regulated in law, both state laws (Marriage Law) and the Islamic Law Compilation (KHI). The legal basis for divorce refers to Law No.1 of 1974 concerning Marriage. He stated, "divorce is a final resort in dealing with a chaotic domestic life when no peaceful solution can be found." Uddin (2018) agreed and stated that "divorce is a way out and the last resort" in dealing with a chaotic domestic life. Instead of allowing a marriage to continue amid hell, quarrels, and peacemakers who have tried everything but have failed, the time has come to turn it over to the legal system." Contrary to popular belief, divorce is not a desire but rather the result of one or more issues in a couple's marriage that the husband and wife have been unable to resolve together.

In Islam, if a husband feels wronged by his wife's behavior or condition, he has the right to annul the divorce. And vice versa; if the wife feels aggrieved by her husband's behavior and condition, she can file for divorce, known as khulu". According to jurists, khulu" is a wife seceding from her husband by compensation. Khulu" can be done if there are justifiable reasons, e.g., husbands unable to fulfill their obligations. These physical disabilities can interfere with harmony, the husband behaves ugly, etc., which can prevent achieving the marriage's purpose. Khulu" may occur with consent or without the consent of the husband, otherwise reached the consent of the husband and wife, the court may impose a khulu" to husband (Kusmidi, 2018).

Another justification advanced by scholars is the Prophet Muhammad's remarks in the hadith reported by al-Bukhari, Ibn Majah, and Ibn Hibban regarding the case of Sabit bin Qais's wife. She complained to the Messenger of Allah about her husband's treatment of her. Then, after hearing all of the grievances, Rasulullah SAW inquired: "Would you like to have the garden (Scythe) returned to you?" "I'll do it," Sabit's wife responded. When Sabit bin Qais heard this, Rasulullah SAW ordered him, "Take back your garden and divorce it once." According to this hadith, it is Sunnah for a husband to grant his wife's desire if she has asked for it. The wife of Sabit bin Qais asked for khulu'. She believed that he would not be satisfied and

no happiness would be achieved between them unless he made the demands. "I am not criticizing him for his religious or moral beliefs, but I am concerned that unacceptable attitudes will emerge in our society. I'm not doing well because of his negative association with me." This is because her relationship with her husband is no longer suitable. Sabit's wife decided they should divorce rather than allow the situation to deteriorate to the point where their household would be in a scenario Islam. According to Ibn Qudamah, a Hanbali scholar, both should divorce in such circumstances. However, suppose the wife does not have a compelling reason for seeking a divorce. In that case, she should refrain from proposing *khulu'*, as the Messenger of Allah reminded us in his saying: "Any woman who requests a divorce from her husband without a compelling reason will be denied the fragrance of heaven."

While textual legislation is necessary, carrying out the law with determination, empathy, dedication, and commitment to the nation's suffering are even more critical (Abdurrachman et al., 2021). The mandate of the 1945 Constitution must be done with a willingness to explore alternative means of bringing about people's prosperity (Kawangung, 2019). The beginning of progressive law According to a fundamental notion, the law is an institution whose goal is to transport humanity to a just and prosperous life while also making them happy (Manan, 2018). The law does not reflect the law as an absolute and ultimate institution but rather is determined by its ability to serve humanity in the best possible way (Asshiddiqie, 2022). In the majority of Muslim countries, the first and most important legal change comes in the area of family law. This activity is being conducted to organize a national legal system that is comprehensive and fully integrated (Kischel, 2019). Sharia has not yet been formalized into a set of systematically organized norms and is ready to be applied in a society with various social systems constantly shifting from one to another. Indonesian Islamic law politics take the form of the Compilation of Islamic Law, which was given legal validity by Presidential Instruction No. 1 of 1991 and is one type of Islamic law politics in the country (Mufti, 2019).

A simple definition for the renewal movement in Islam is an endeavor, whether carried out individually or in groups during specific eras and situations, to transform traditional perceptions and practices of Islam into new understandings and practices. Following a review of the literature, Harun Nasution (1979) concluded that change was required to bring various Islamic theological perspectives into conformity with the developments brought about by modern science and technology. This evolution has resulted in shifts in values and systems and new problems (laws) that necessitate the development of definitive answers. The Marriage Law, Government Regulation No. 9 of 1975, and Government Regulation No. 10 of 1983 were the beginning of a new era in Indonesian law, even though it is a Muslim country that is hesitant to modify its laws. It is necessary to express gratitude for the Government Regulation No. 28 of 1977 concerning the

Perwaqaf of Owned Land, as well as for the Compilation of Islamic Law in Indonesia (Inpres No. 1 of 1991), which represent a dynamic of renewal of Islamic legal thought.

There are two main problems in this research. Namely: how is the form of legal protection for wives in filing khulu' based on KHI related to the Marriage Law, and how is the relationship between the provisions and concepts of khulu with the position of women in marriage? According to the Compilation of Islamic Law with Marriage Law.

METHODS

Analysis and construction are essential to research, which is carried out methodically and consistently according to established methodologies. Research can be viewed as a technique for enhancing, fostering, and developing human knowledge in various ways (Suratman & Philips, 2013). Methodological refers to the use of a specific method or procedure; systematic refers to the application of a system, and consistently refers to the lack of contradictory items within a specific framework of thought.

The type of research in writing this journal is normative juridical research that is descriptive-analytical because it is expected to give a detailed picture, systematic, and thorough regarding everything related to the object to be studied, that is, its relation to the khulu. This research is carried out by examining library materials or secondary data related to khulu. In other words, normative juridical research is the research of literature, that is, research on secondary data.

For this scientific article, normative juridical research is defined as research that seeks to determine legal certainty by studying relevant literature and case studies and applying positive legislation. It is the purpose of this study to examine in greater depth what has been determined in the legislation, particularly regarding the form of legal protection provided to the wife in submitting khulu' based on the Compilation of Islamic law about Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

Data analysis is the core of the inside research in writing this journal article because the subject matter in this article is answered by analyzing qualitatively to obtain the data that has been collected and then compiled systematically for further analysis to achieve clarity about the previous.

RESULTS AND DISCUSSION

Khulu's Position in Islamic Law

Etymology suggests that *Khulu'* comes from the word Al-Khul'u, which means undressing, or undressing, because a husband and wife are like clothes for each other, as indicated in the verse of the Qur'an sura Al Baqarah verse 187. "They (women) as clothes for you (men) and you (men) as clothes for them (women) (Al-Baqarah: 187). It's a claim for divorce submitted by the woman with compensation from him, or in other words, she separates herself from her husband by compensating him, by fiqh terminology (Ainiyah & Riza, 2021; Lamrabet, 2018). When a woman asks for a divorce, the word "*talak ransom*" translates into "dissolving the marriage by paying her a sum of money or restoring her dowry."

There are several definitions of *khulu'* put forward by scholars of the school, namely; *First* and foremost, the Hanafi school of thought defines it as "releasing the marriage connection, which is contingent on the acceptance of the wife, by employing the pronunciation of *khulu'* or whatever has meaning with it." As a result of this contract will only take effect if it has the agreement of the wife and specifies compensation for the husband (Rais, 2014).

Second, according to the Maliki school of thinking, *khulu'* is defined as "*talak* with compensation, whether it comes from the wife, guardian or other individuals. In the *khulu'* pronunciation, the aspect of pay plays a significant role in determining the terms of this contract, which demands the separation of the husband and wife in exchange for money. They believe that compensation must be specified if the pronunciation utilized is the same as the pronunciation of *talak*. It is unnecessary to mention compensation if the *khulu'* pronunciation is being used because the *khulu'* pronunciation already incorporates the meaning of the word compensation.

Third, the Scholars of the Syafil School define *khulu'* as "divorce between husband and wife with compensation, both by pronouncing *talak* and by pronouncing *khulu'*." *Khulu'* is pronounced as "divorce between husband and wife with compensation," according to the Scholars of the Syafil School. "I divorce you or I *khulu'* you by paying compensation to me in the amount of...", for example, and the wife agrees to the divorce or compensation.

Fourth, Hanbali scholars define it as "the act of a husband divorcing his wife with recompense received from his wife or someone else using a special pronunciation" and "the act of a husband divorcing his wife with compensation taken from his wife or someone else." According to one account, the Hanbali school of thought tolerated the occurrence of *khulu'* without compensating the affected people. On the other hand, Hanbali scholars consider this viewpoint to be weak.

The Hanbali School holds that the aspect of compensation is the cornerstone of *khulu'*, and this is the strongest point of view among them. The wife or someone else must recompense *khulu'* due to this situation.

According to Wahbah Az-zuhaili, a jurist at the University of Damascus (Syria), of the four definitions above, the one that is most commonly applied is the one put out by the scholars of the Shafi'i School because it is in harmony with the language interpretation of the word *khulu'* itself (Al-Zuhaili, 1989).

According to these definitions, there are two distinct types of *khulu'*: First and foremost, *'iwadh* property is responsible for most cases. Even if it's not based on 'any *'iwadh*', the divorce occurs with the pronunciation of "*khulu*." For example, a husband would say to his wife, "I am *khulu'* you." This means the woman or someone else provides the husband a large sum of money so that he can divorce her. This *khulu'* fall, *talak ba'in*, can be used to make the husband fulfill the wife's rights that must be met (Al-Zuhaili, 1989).

Hidayat (2022), *khulu* as a divorce in which the wife pays *'iwadh* from her side, either by pronouncing *khulu* or *talak*. Fiqh scholars believe that the best way to achieve *khulu'* is for a married woman to ask her husband to divorce her in exchange for payment of *'iwadh*, in the form of money or products, from her husband's side. In exchange for the freedom to divorce granted to men, *Khulu* grants equal rights to women to break away from marriage relationships that are judged to have no advantage. It is designed to prevent the husband from arbitrarily his divorce rights and to make the husband aware that the wife has the same right to dissolve the marriage as he does.' Thus, a wife severely distressed by her husband's behavior or the state of her spouse may be able to bargain for divorce in return for anything else. Even though he did nothing to harm his wife, a husband can be asked for *khulu* by his wife owing to the lack of love the wife feels for him. When a husband no longer feels affection for his wife, he can also use the same right against her by dropping a divorce. A *khulu* divorce, on the other hand, is granted at the woman's request and by her husband's approval, as mentioned in article 1 KHI point i.

Khulu' is a type of divorce in which the wife provides her husband with a large sum of money as an *'iwadh* (ransom) to release him from the marital bond. *Khulu* 'is justified by syara', as Syara says. Al-Hadith, the holy passages of the Qur'an, and the opinions of scholars are the legal foundations.

First, the Holy Qur'an. Regarding *khulu'* Allah says in the Qur'an Surah Al-Baqarah verse 229, which means: "Talak (which can be referred to) is twice. (After that, the husband can) hold well, or let go well. It is not lawful for you to take back what you have given them unless both (husband and wife) fear they will not be able to carry out Allah's laws. If you (the guardian) are worried that both of them are not able to carry out the laws of Allah, then both of them are not guilty of the payment (must) be given (by the wife) to redeem themselves. These are the laws of Allah, so do not break them. Whoever violates the laws of Allah, they are the wrongdoers."

One of the safeguards provided for women in Islamic law, Muslims and ignorant people did not have a limit on the number of divorces that could be granted. Women were persecuted, as they were left without husbands and were not permitted to have husbands any longer until the revelation of this verse. In addition, Allah ordered that the woman be released appropriately and that she should not be allowed to take anything given to her wife in the event of a divorce, including property, dowry, and other items. However, if there are circumstances in a marriage that make it impossible for a husband and wife to carry out Allah's provisions, then *khulu'* can be done by paying a ransom (Taqiuddin, 2021).

Second, the Hadith of the Prophet Muhammad SAW. In addition to the verses of the Qur'an, there is also a hadith that underlies *khulu'*, namely: Hadith narrated by Bukhari and Nasa'i as follows: "From Ibn Abbas, he said: "The wife of Thabit bin Qais bin Shammas came to the Messenger of Allah and said: ' O Messenger of Allah, indeed I do not blame him (her husband) in matters of morality or religion, but I do not like kufr in Islam.' Rasulallah SAW asked: 'Would you like to return his garden to him?' The woman replied: 'Yes'. Then Rasulallah SAW said (to Thabit): 'Accept your garden and divorce your wife with one divorce.'" (H.R. Bukhari and Nasa'i).

It is explained in this hadith that it is permitted for a wife to request *khulu'* if she is fearful of being labeled *kufr* in Islam. The denial of pleasure from association with her husband, the inability to perform her obligations as a wife, and the failure to meet her husband's rights, in exchange for which she is allowed to redeem herself as part of the divorce she got. It is said in the hadith that there is a woman, specifically the wife of Thabit bin Qais, who wishes to file for divorce from her husband. Regarding the reason for the wife of Thabit bin Qais performing *khulu'*, the hadith offers two different interpretations of the situation. First and foremost, it is claimed that the wife of Thabit bin Qais committed this act because she despised her husband's physical looks. In the second instance, *khulu'* occurred because Thabit had harmed or wronged his wife, and she was no longer willing to be treated in this manner, and she protested to the Messenger of Allah (Asman et al., 2021; Jaraba, 2022).

Khulu' wife of Thabit bin Qais' is considered the first *khulu'* in Islamic history, having lived during the time of the Prophet Muhammad (Firdaus & Azwar, 2020). Thabit Bin Qais's wife is Jamilah bint Abdullah bin Salul, and she is the daughter of Abdullah bin Salul. According to Ibn Majah (2008), Jamilah bint Salul is the woman in question. Several sources, including Abu Daud and Nasa'i, claim that she was known as Habibah bint Sahal. When it comes to *khulu'*'s divorce, the Ijma 'of this *khulu'* permissibility is that the scholars have decided to enable the *khulu'* or wife to petition her husband for a divorce. *Khulu'* can be performed if both parties are concerned that they will not be able to follow Allah's laws, if the wife

despises her husband, both in appearance and character, or if the husband has been wronged and the wife despises her husband (I. Majah, 1998).

There are a variety of factors that can be invoked as justifications for applying for divorce from *Khulu'*, including. *First* and foremost, there are obligations on the part of the woman. According to the Qur'an and hadith, the reason for the occurrence of *khulu'* is because the wife is concerned that she would not be able to carry out her responsibilities. As a result, she cannot uphold Allah's law (Nilla & Elly, 2018). By Jumhur fuqaha, *khulu'* may be held based on the willingness of the husband and wife, so long as it does not cause injury to the wife. Abu Qilabah and Hasan Basri believe that a husband should not impose *khulu'* on his wife until he has reason to believe that his wife is engaging in adultery with another man. Because they believe that adultery is defined as "despicable" in Allah SWT's say in Surah An-Nisa verse 19 (which reads: "And do not disturb them because they desire to take back some of what you have given them, unless they do a truly horrible job"). Based on the verse above, Daud believes that husbands should not impose *khulu'* unless when there is a risk that both of them will be unable to carry out Allah's rules in a *zahir* manner. An-Nu'man, on the other hand, believes that *khulu'* can be dropped even when harmful. According to Islamic law, a ransom is paid by women as compensation for divorced property owned by the husband. As a result, if the husband despises his wife, he is granted a divorce, and if the wife despises her husband, she is granted *khulu'*. As a result, there is a healthy balance between the two (Ainiyah & Riza, 2021).

Second, in terms of the condition of the wife's preproduction system. Divorce of Marriage with the *khulu'* way may be done when the wife is in a dirty (menstrual) or clean state, the Prophet SAW. Don't ask a woman who comes to her who wants to be honored, whether she is menstruating or not.

Third, because of the physical and psychological limitations of the husband, *Khulu'* is only permitted when there is a legitimate reason for it, such as a husband who is disabled, has bad morals (ruthless), or is not fulfilling his obligations to his wife. In contrast, the wife is concerned that she will violate Allah's rights due to her disobedient behavior toward her husband. "According to the *zahir* hadiths regarding the issue of *khulu'*, it is permissible for the wife's displeasure to be the reason for *khulu'*, but Ibn Munzir said it is not permissible before the feeling of displeasure occurs on both sides because it adheres to the literal verses of al-Syaukani. - Qur'an," Syaukani explained. Tawus, Sya'bi, and a big group of *tabi'in* believe this is correct." Another set of scholars, such as Tabari, responded that the Qur'an verse implied that if the wife cannot exercise her husband's rights, this has resulted in the husband's hostility toward her. As a result, the wife is the one who is displeased. Another argument in favor of "the husband does not have to be displeased" is that the Prophet SAW did not follow up with Thabit to find out if he was likewise dissatisfied with his wife after she expressed her dissatisfaction with her husband (Sabiq, 2004).

Fourthly, in terms of the husband and wife's willingness to cooperate, Using *Khulu'*, the situation is changed to a point where it is permissible for *Khulu'* to move from a condition that is not permissible to a permissible situation. In Jumhur's opinion, *khulu'* is permitted because it brings pleasure to both the husband and the wife. However, if there is no willingness on the part of the husband and wife, it will be able to hurt one party, even if there is no pleasure on the part of one party. From this statement, it can be concluded that if a husband and wife want to end their marriage, they must be willing to do so.

Fifth, in the event of an emergency. It is acceptable if and when the situation necessitates it, which means that if the marriage is continued, it may occur between the husband and wife, resulting in a scenario that cannot be reconciled. In the case of quarrels/*syiqoq* between husband and wife, for example, they occur regularly. If a couple does not agree to divorce, the conclusion could be that they have been abused.

Sixth, the husband has direct knowledge of his wife's adultery. It is not acceptable until the *khulu'* observes his wife engaging in adultery in his presence. This term means that a husband may divorce his wife if she has committed adultery with someone else. The fact that the husband has witnessed his wife commit adultery and requested *khulu'* (divorce) from him gives the husband, the right to divorce her because adultery is prohibited in Islam.

Seventh, from the standpoint of prudential application of Islamic law. *khulu'* is acceptable if the person is concerned that they would not be able to carry out the provisions or that they will breach Allah's laws (Rusyd, 2007). 'Abdillah Muhammad Ibni 'Abdur Rahman's book *Mizan Kubro* says that it is permitted for the wife to call for *khulu'* when she perceives her husband to be misbehaving or engaging in illicit sexual relations with another (Hasan, 1986).

If the spouse is involved, *khulu'* is not permitted: 1) from the husband's perspective. If the husband causes difficulty for his wife by severing ties with her or purposely withholding her rights and privileges so that the woman must pay him a ransom in the form of a divorce petition; 2). The wife's side of the story. Divorce can be granted even though the marriage is harmonious, there are no conflicts or disagreements, and there are no other *Shar'i* justifications for the divorce to be granted.

Legal Impact of *Khulu'*

Some legal issues may exist or arise after the *khulu'*'s ruling, such as the following. *First* and foremost, *Khulu'* during her menstrual cycle (Sabiq, 2004). *Khulu'* is not attached to a specific period. This is in contrast to divorce, which is prohibited during the holy month of menstruation. To prevent the husband from

prolonging the 'iddah, while *khulu'* is the wife's desire to have the "danger" she is suffering removed from her life. Similarly, Rasulullah SAW did not inquire about the situation of Mukhtali'ah (Tsabit bin Qais' wife) when she requested *Khulu'* from her husband, whether she was in a state of purity or whether she was amid menstruation. In addition, there is no evidence to suggest that asking for *khulu'* is not allowed when one is menstruating. Thus, *khulu'* can be performed at any time, even while the wife is menstruating."

Secondly, *Khulu'* is performed by someone ill (Al-Zuhaili, 1989). *Khulu'* done by a gravely ill person is deemed permissible in most jurisdictions. Because if he drops a divorce that does not include *'iwadh*, the divorce is still valid, even if it is a divorce that does not include *'iwadh* in it. In addition, his heirs will not suffer any financial consequences due to his *khulu'*s conduct. They believe that *khulu'* is done by persons suffering from a concerning ailment, which the Maliki school expresses. As a demonstration that they do not, in principle, prohibit *talak* at this time, which results in the issuing of heirs. A well-known opinion is that when a husband passes away while his wife is *khulu'* owing to a worrying illness, the wife will be awarded an inheritance from her husband. Even though her 'iddah time had been over, she had remarried to someone else. Meanwhile, if a woman dies before her husband and the wife is sick at the time of *khulu'*, the wife does not inherit her husband because the husband loses what should be his right. In the same way, every married couple or one of the two has the authority to represent others in *khulu'* court proceedings (Al-Zuhaili, 1989).

Third, the era of *iddah* for *Khulu'*. *Iddah* is necessary for divorced women, just as it is for those who are divorced (Razali et al., 2020). *Istibra* (to ensure that there is no fetus or other stuff in the womb) is what we're going. How fast are women required to perform their "iddah"? Various academics have come to different conclusions about this issue. Among these is the opinion of the majority of scholars (Hanafiyyah, Malikiyyah, Shafi'iyah, and Hanabilah), who believe that a woman's 'iddah' is the same of an ex-wife, namely three *quru'* (three menstrual periods). Al-Baqarah verse 228: "Women who have been divorced shall refrain (wait) for *quru'*" serves as the foundation. *Iddah* is also three *quru'* because *khulu'* is the separation between a husband and wife after marriage (*dukhul*). One menstruation is sufficient for the 'iddah for women with *khulu'* according to Imam Ahmad's narrations from Ustman bin Affan, Ibn Umar, and Ibn Abbas to the *jumhur* position. Thabit's wife had only one menstruation, according to Imam Nasa'i and Ibn Majah, who related this from the Messenger of Allah (Ghazaly, 2019).

Fourth, *khulu talak* or *faskh*. Scholars disagree on a variety of issues. *khulu'* is described as *thalaq ba'in* by the Hanafiyyah, Malikiyyah, Syafii'yyah, and one narrative from Imam Ahmad. Meanwhile, another narration from Imam Ahmad states that *khulu'* is *faskh*. When a husband divorces his wife twice, then *khulu'* her. The consequence of the difference of opinion above can be seen that for those who consider *khulu'* as divorce, then the triple divorce is void. This means that the

husband is no longer legal to refer back to his wife unless the woman has married another man and was subsequently divorced. So long as people believe that *khulu* is permissible and that the husband can refer to his wife even though she hasn't married another guy when her 'iddah period has expired, the husband can do so (Ghazaly, 2019).

Fifth, refer to after *Khulu'*. There is no point of comparison for a spouse who has split from a wife because of *khulu'* grounds. Whether or not it's for those who believe *khulu'* is *thalaq ba'in* and *faskh*. Returning to his wife will require a new marriage contract and dowry for him to do so. *Khulu'* divorce means that the wife cannot be referred, and the marriage terminates with *talak ba'in*; if you want to reconcile, you have to remarry, according to article 161 of the Compassion of Islamic Law.

Legal Protection for The Wife in Submitting *Khulu'* Based on the Compilation of Islamic Law and the Marriage Law

Amir Syarifuddin (2014) writes that *iwadh*, or ransom, is a critical component of *khulu* because *khulu* cannot exist without *iwadh*. To the point where the majority of scholars regard the '*iwadh*' as a foundation that cannot be disregarded.

Ulama, in general, believes that the compensation should not exceed the spouse's dowry. Having been redeemed by the wife, the husband is no longer eligible to reconcile (Anggraeni & Primadianti, 2021). A *khulu* divorce, on the other hand, is granted at the woman's request and by her husband's approval, as mentioned in article 1 KHI point i. *Khulu'* is a type of divorce in which the wife provides her husband with a large sum of money as an *iwadh* (ransom) to release him from the marital bond.

'Iwadh' is considered an indispensable pillar for the authenticity of *khulu* by most scholars. In the case of *sighat* or divorce, the *talaq* becomes usual if the compensation figure is not mentioned (Dahlan, 1999). Article 116 of the KHI imposes a responsibility on the wife to choose the *khulu'* path if she wants a divorce, which means she will be mistreated, humiliated, and have her rights violated.

Consider a scenario where the wife wants a divorce because her husband has been physically and emotionally abusive. If the wife is allowed to spend time with her husband, he will engage in adultery, gambling, intoxication, or severe physical abuse. Although the wife has shown ample evidence of her husband's abusive behavior towards her in court, she is still compelled to pay a ransom (*iwadh*) to the man who has physically and psychologically abused her. However, errant husbands might still collect a monetary reward from their mistresses. It is, therefore, possible to see how '*iwadh*/ransom' can make the wife's position

vulnerable because the wife who wants divorce through *khulu* must meet the listed requirements in article 116 of the KHI. However, the law of *khulu*' can be seen as a technique to let the wife relax while trying to escape the stress of home responsibilities. A religious court, however, may grant a divorce if a woman can demonstrate to it that her husband's actions have led her to believe that the marriage is no longer viable, as stated in KHI Article 116.

Only for divorce from the wife to the husband, the state law contained in Law No. 16 of 2019 about Marriage mentions Divorce Sue this article 40. Divorce and *Khulu*' are two distinct concepts in the Compilation of Islamic Law (KHI). However, there are some similarities and some variances. Similarities include the fact that the wife is the one who initiates the divorce proceedings. Divorce does not always pay the '*iwadh* (ransom)' that is the basis for *khulu*, the practice of separating and divorcing. Article 148 of the KHI governs *Khulu*'. Even if the husband requests the wife's '*iwadh*/ransom, there are legal protections for the wife who proposes *khulu*, even though the husband has demands and disagreements about the amount of '*iwadh*/ransom that the parties must issue. Wife, if an agreement cannot be reached on the amount of the ransom or '*iwadh*, then Article 148 paragraph (6) of the KHI states that. It's like any other matter in that religious tribunals have full authority to hear and rule on it. As a result of this clause, the case of *khulu*' can be clearly understood as exceptional.

The Relationship Between the Provisions and Concept of *Khulu*' and Women's Place in Marital Law Based on The KHI and The Marriage Law

Khulu' is included value of divorce or Fasakh according to the firmness of the legislation status of *khulu*'. The *khulu*' effect has something to do with it. Do women who embrace the *Khulu*' relationship have to endure the pain of divorce?

Whether *Khulu* is *Talak* or *Faskh* is a religious question. Scholars disagree on a range of issues. *Khulu* is *talak ba'in*, according to Imam Ahmad and the narrations of the Hanafis, Malikis, Syafies, and others. *Khulu* is *faskh*, according to another Imam Ahmad account. Both Abu Hanifah and Al-Muzanniy believe that *khulu*' is equivalent to divorce, as do the Companions of Umar, Uthman, Ali, and the *jumhur* jurists. The Shafi'is, on the other hand, believe that *khulu*' includes *khulu*' as part of the "*qadim*" of *khulu*'.

Similarly, Imam Ahmad and Daud, as well as Ibn Abbas from the company of companions, all had similar views. *Khulu*', according to Imam Shafi'i, satirizes the Prophet's teachings. This means that divorce is only possible if the term *kinayah* demands it; else, it becomes *Fasach*. According to his *qaul*, *khulu*' means divorce (Al-Syafi'i, 2001).

This school of thought asserts that the husband is an active participant in dissolving the marriage contract because of *Faskh*, and that this does not happen of his own free will. At the same time, this *khulu*' is derived from the will to succeed.

It is therefore not *Fasakh* to use the word *khulu'*. Disagreeing jurists contend that Allah SWT mentions "Talak which can be referred to twice" before mentioning divorce in the first verse of the Qur'an, which means that *khulu'* is not divorce. This is followed by the words of Allah: "The lady is no longer lawful for him unless she marries another husband" if he is mentally sick (after the second divorce). So, unless she has had a fourth divorce, the price is divorce, which means the wife is no longer legally wedded to the husband (Ajlan, 2022).

The judges who disagreed with this interpretation stated that the position of ransom in the verse quoted above is identical to divorce, not the difference between them. *Khulu'* is a form of divorce; therefore, when a husband divorces his wife twice and then does so again, the relationship between him and his wife is in *talak ba'in*, which means that they are husband and wife. Unless the lady had married another guy, had sex with him, and then divorced, it is no longer legal for him to refer to his wife. The husband has the right to refer to his wife even if she hasn't remarried during the 'iddah-his time if the terms "*khulu'*" and "*faskh*" are identical.

There is no point of comparison for a spouse who has split from a wife because *to khulu'* grounds. Anyone who thinks "*khulu'*" means "*talak*" or "*faskh*." According to the explanation of *talak ba'in kubro* in article 120 of the KHI, if he wishes to return to his wife, he must do so with a new marriage contract and dowry.

Khulu' is regarded as divorce based on the substance of Article 161 of *Khulu'*'s article, which states that *Khulu'* reduces the number of divorces. As mentioned in article 120 of the KHI, if the husband has been mentally abusive to his wife twice and then gave him *Hulu'* and immediately goes straight to the *talak ba'in kubro* condition, then this has a considerable influence. Article 119 of the KHI states that "*khulu'*" includes "*ba'in sughro*," which is automatically unconstitutional.

According to the fact that there is no clearer article on the position of the third divorce for the wife, were two previous divorces before the *khulu'*. So the husband can return to his wife very simply like a game because *khulu'* is considered *talak*, not *Fasakh*. According to KHI Article 120, divorce number three is *talak ba'in kubro*. After a second divorce, according to Article 10 of Law No. 1 of 1974 on marriage, the state rules that it is not permitted for couples to remarry. Regarding *ba'in kubro* or triple divorce in KHI, the following line is included in Islamic law: "... as long as the law, each religion and belief of the individual concerned does not determine differently."

As a result, a divorce from *Khulu'* has legal ramifications. There is no precedent in the case of a husband and wife divorced for 'khul' reasons. Whether or not it's for those who believe *khulu'* is *thalaq ba'in* and *faskh*. Returning to his wife will require a new marriage contract and dowry for him to do so. The compassion of Islamic Law article 161 states that wives cannot be referred to, ending in *talak*

ba'in; if you wish to reconcile, you must marry anew. In this way, the position of the wife who proposes *khulu'* is legally defined, especially in Islamic law, so that the husband cannot arbitrarily believe that his wife can still be taken back through remarriage or return (refer).

CONCLUSION

First, the submission of *khulu'* to her husband to divorce herself from the marital bond is accompanied by the payment of '*iwadh*,' namely, the payment of money or goods to the husband from the wife's side in exchange for the divorce, which is considered legal protection for the wife. Islamic law argues that "*iwadh* or ransom is the essence of *khulu*," which means "the essence of *khulu*." There is no *khulu'* without the presence of *iwadh*. Although the wife is being sued for '*iwadh*/ransom, if there are demands and debates from the husband's side that result in disagreement about the amount of '*iwadh*/ransom that the wife must issue, For the wife who suggests *khulu'*, there is a legal protection mechanism in place from the government. *Secondly*, the relationship between the provisions and the concept of *khulu'* with the position of women in positive law, especially in terms of the wife's position as the applicant for divorce, it is said that there is no peace for divorced husband and wife. They are separated because of *khulu'* For those who believe that *khulu'* is divorce *ba'in* or *faskh*. If he wants to reconcile with his wife, he must do so under the terms of a new marriage contract and dowry, which falls under the legal implications of divorce with *khulu'* in Pakistan. Wives cannot be referred, as stated in the Compilation of Islamic Law Part Five, Due to *Khulu'* Article 161, which states: "Divorce by *khulu'* reduces the number of divorces and cannot be referred." If you want to reconcile, you must remarry again, as stated in the Compilation of Islamic Law Part Five Due to *Khuluk* Article 161. In contrast, the state declares in Article 10 of Law No. 1 of 1974 addressing marriage that no subsequent marriages may be held following a second divorce. On triple divorce, also known as *ba'in kubro* in KHI, the following language has been written into Islamic law: "... as long as the law, each religion and belief of the person concerned does not determine differently."

The situation of a wife who proposes *khulu'* is therefore clarified under the law, particularly Islamic law, so that the husband would not be able to arbitrarily presume that his wife can still be taken back through remarriage or return (refer). The wife's attitude on the legal ramifications of *khulu'*, which is included in the divorce, is unwavering in her convictions about the matter. This narrows or even eliminates the possibility of a divorce-reconciliation game on the husband's part. At this time, it demonstrates that women have legal protection under the terms and concept of *khulu'*, as evidenced by the status of women as the wife. She presents *khulu* in the positive Indonesian legal system at this moment.

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