

WOMEN'S LAW REJECTS REFERENCE IN THE PERSPECTIVE OF ISLAMIC JURISPRUDENCE AND THE COMPILATION OF ISLAMIC LAW

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Abstract

This study used library research. This study discusses the issue of referencing, that is, legal reference is carried out without the consent of the wife, as long as she is still in the period of 'iddah based on the agreement of the ulama. Meanwhile, in the Compilation of Islamic Law, the legal reference is valid if it has received approval from the wife. From this problem, there are two formulations of problems that will be studied by the author in this study, namely: 1) How women's law rejects reference in the perspective of Islamic jurisprudence. 2) How women's law rejects references in the Compilation of Islamic Law. The objectives in this study are twofold, namely: 1) To know the law of women refusing to refer in the perspective of Islamic jurisprudence. 2) to know the law women refuse to refer to in the perspective of the Compilation of Islamic Law. Based on the results of this study, it can be concluded, namely: 1) In Islamic law, scholars agree that reference is the prerogative of the husband or the absolute right of the husband, so there is no need for consent from the wife. 2) Whereas in the Compilation of Islamic Law it is stated that if a husband is going to make a reference to his ex-wife must first obtain the consent of his ex-wife, and the wife has the right to object to the will of the reference.

Keywords: Law, Women, Reference, Islamic Jurisprudence, Compilation of Islamic Law

Abstrak

Penelitian ini menggunakan penelitian riset kepustakaan (*library research*). Penelitian ini membahas tentang masalah rujuk, yaitu rujuk sah dilakukan tanpa persetujuan istri, selama dia masih dalam masa 'iddah berdasarkan kesepakatan ulama. Sedangkan dalam Kompilasi Hukum Islam, rujuk sah hukumnya apabila sudah mendapat persetujuan dari pihak istri. Dari permasalahan ini, ada dua rumusan masalah yang akan dikaji penulis dalam penelitian ini, yaitu: 1) Bagaimana hukum wanita menolak rujuk dalam perspektif fikih Islam. 2) Bagaimana hukum wanita menolak rujuk dalam Kompilasi Hukum Islam. Tujuan dalam penelitian ini ada dua, yaitu: 1) Untuk mengetahui hukum wanita menolak rujuk dalam perspektif fikih Islam. 2) untuk mengetahui hukum wanita menolak rujuk dalam perspektif Kompilasi Hukum Islam. Berdasarkan dari hasil penelitian ini dapat disimpulkan yaitu: 1) Dalam hukum Islam, ulama sepakat bahwa rujuk merupakan hak prerogatif suami atau hak mutlak suami, sehingga tidak diperlukan adanya persetujuan dari pihak istri. 2) Sedangkan dalam Kompilasi Hukum Islam disebutkan bahwa apabila seorang suami akan melakukan rujuk terhadap mantan istrinya terlebih dahulu harus mendapat persetujuan dari mantan istrinya, serta istri berhak mengajukan keberatan atas kehendak rujuk tersebut.

Kata Kunci: Hukum, Wanita, Rujuk, Fikih Islam, Kompilasi Hukum Islam

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Introduction

Islam requires that marriage always be maintained. This is in accordance with the purpose of marriage, which is to build a harmonious family in which tranquility, love and affection are obtained. As well as making marriage a medium to get as much reward as possible. As Allah Almighty says in QS al-Rum/30:21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Terjemahnya:

And among the signs (of his greatness) is that he created pairs for you of your own kind, that you might be inclined and at ease to them, and he made among you a feeling of love and affection. Indeed, in such there really are signs (of the greatness of God) for the thinking people.¹

In the fiqh munakahat *literature*, in addition to the term '*aqdun-nikah* which means the binding of a marriage , it is also known as *inhilal al-Zawaj* which means the release (termination) of a marriage. *Inhilal al-Zawaj* sometimes occurs by the will of the husband through his talaq vow, but it can also occur based on the decision of the court judge through talaq or divorce in court.

Inhilal al-Zawaj, commonly referred to as *al-furqah* means farewell (*al-iftiraq*). In the context of the fuqas, *al-furqah* is formulated by: "the breaking of the marriage bond and the breaking of the relationship between husband and wife based on one of many causes."²

The main purpose of the household is to create peace and happiness based on the willingness and harmony of living together. However, there are times when husbands and wives have different opinions and desires, there are problems and conflicts that arise. These conflicts can make people introspect themselves, communicate, but sometimes conflicts also have an impact on the rift between husband and wife, making them move away and withdraw from each other, which ultimately leads to divorce.

The term divorce is also explained by the words separation, breaking up relationships, or talaq.³ Talaq according to the term is to break the marriage

¹Kementrian Agama RI, *Al-Qur'an dan Terjemahannya* (Bandung: Cordoba, 2021), h. 406.

²Muhammad Amin Suma, *Hukum Keluarga Islam di Dunia Islam* (Cet. I; Jakarta: Raja Grafindo Persada, 2004), h. 101-102.

³Umar Haris Sanjaya dan Aunur Rahim Faqih, *Hukum Perkawinan Islam di Indonesia* (Yogyakarta: Gama Media, 2017), h. 104.

bond at that time (meaning talaq *ba'in*) or the future (meaning after iddah-waiting time-with talaq *raj'i*) with a certain lafaz.⁴ Although in Islam talaq is permissible, but husband and wife should not be too quick to make a decision to divorce, because the tangled threads are still possible to be reassembled. And when the path of settlement does not bear fruit, then the last path is taken, namely divorce. However, divorce (talaq) although permissible but it is a matter that Allah hates. As the Prophet SAW said.

عن ابن عمر رضي الله عنهما قال: قال رسول الله: (أبغض الحلال إلى الله تعالى الطلاق) (رواه أبو داود)⁵

Means:

From Ibnu Umar r.a, he said: "something that is halal but most hated in the sight of Allah is talaq." (HR. Abu Dawud)

As with the concrete implications of the above mentioned reality, Islam then prescribes a mechanism of disconnection, in which both have the right to end the journey of the household. Which then when the initiative to let go of the relationship comes from the husband's side, it is called talaq. But on the contrary, if the initiative comes from the wife's side, it is called *khulu'*, otherwise known as talaq tebus.

Although the path of divorce has been taken, it does not rule out the possibility that during the waiting period for women who are rejected (talaq *raj'i*), during which a wife cannot marry until that time is over (*'iddah*), their desire to return (reconcile) arises again. Return to the integrity of the marriage bond which is then encouraged by the results of correction of each other's shortcomings and determined to improve them.

Regarding this matter the Ulema have agreed on the obligation of *'iddah*, based on the word of Allah Almighty in QS al-Baqarah/2:228.

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۖ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنْنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا يُوَفَّوهُنَّ مِثْلَ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۚ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Terjemahnya:

⁴Abu Malik Kamal bin As-Sayyid Salim, *Shahih Fikih Sunnah*, terj. Darwis, dkk (Cet. III; Jakarta: Darus sunnah Prees, 2018), h. 269.

⁵Abu Dawud Sulaiman bin al-Asy'as al-Azdi al-Sijistani, *Sunan Abu Dawud*, Kitab al-Thalaq, Bab Fi Karahiati al-Talaq, No. 2177, Juz 3 (Cet. V; Lebanon: Dar ar-Risalah al-'Alamiyah, 2009), h. 504.

And divorced wives (are obligated) to refrain from themselves (wait) three times *quru'*. It is not permissible for them to hide what Allah created in their womb if they have faith in Allah and the Last Day. And their husbands are more entitled to return to them in that (time) if they want improvement. And they (women) have rights in balance with their obligations in a proper manner. But husbands have an advantage over them. Allah is mighty, wise.⁶

The end of a marriage is viewed in terms of the justification of the husband referring his wife back or not divided into two, the first divorce has the status of *raj'i* and the second has the status of *ba'in*. With the *talaq raj'i*, the power of the husband over his ex-wife is reduced, but here there is still a relationship of rights and obligations between the two, as long as it is still in the period of *'iddah*.

This path to return to the sacred bond of marriage is what makes the author interested in studying the position of permission in reference, which then there are differences in terms of its implementation.

Ibn Rushd in his book *Bidayah al-Mujtahid* states that:

وأجمع المسلمون على أن الزوج يملك رجعة الزوجة في الطلاق الرجعي؛ ما دامت في العدة من غير

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اعتبار رضاها لقوله تعالى: (وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ)

Artinya:

Means:

Muslims agree that the husband has the right to refer his wife to *talak raj'i*, as long as she is still in *'iddah*, without requiring or considering the consent of the wife. According to God's Word: "And her husbands have the right to refer to her in that waiting period."

Reference is a common practice in Muslim communities in Indonesia, but there has not been much in-depth discussion about this. This condition has implications for the lack of public knowledge which results in harmonization between the administrative needs of state archives and conditions in the field. The provision of administrative requirements related to the act of reference becomes a valid provision, but does not become a pillar and condition in Islamic jurisprudence.

⁶Kementrian Agama RI, *Al-Qur'an dan Terjemahannya*, h. 36.

⁷Ibnu Rusyd, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid* (Jordania: Baitul Afkar ad-Dauliyah, 2007), h. 612.

Regarding the matter of reference, the discussion of *fuqaha* revolves around the rights and obligations of the wife in the period of talaq *raj'i*, namely with regard to the provision of *'iddah to* which the wife is entitled, and the wife's obligation not to accept proposals from other men. Because according to them reference is the absolute right of the husband, so that the husband can refer his wife without waiting for approval.

Meanwhile, in Islamic Civil Law in force in Indonesia, the procedure for reference is not as easy as what has been conceptualized by previous jurisprudence scholars, because in the Compilation of Islamic Law there is a combination of laws between Islamic law, national law, and customary law. There are several additional procedures that must be done by someone who wants to make a referral, one of which is regarding the permission of reference or consent from the ex-wife. This is stipulated in the Compilation of Islamic Law article 167 paragraph 2: "Reference is made with the consent of the wife in the presence of the Marriage Registration Officer (PPN) or Assistant Marriage Registration Officer (P3N)".⁸ Even the IHL is more emphatic about this, namely if the reference made by the husband is based on coercion from the husband, while the wife refuses the reference, then the rejected reference can be declared invalid by a Religious Court Decision, and this is stated in the Compilation of Islamic Law (KHI) article 165.

With regard to the refusal of a wife who refuses her husband's invitation to refer, which in Islamic jurisprudence it is said that the wife has no right about it, but on the contrary in the Compilation of Islamic Law gives rights to women, where the wife has the right to object to her husband's reference before the Marriage Registration Officer (VAT). Talking about rejection, there are many things that can trigger a wife's rejection other than economic factors, or because they feel there is no compatibility anymore because of frequent disputes or constant quarrels, domestic violence factors committed by husbands while still together can also be very considered to reunite to build a household.

Departing from this background, the author is interested in studying more deeply about women's law, rejecting references in the perspective of Islamic jurisprudence and the Compilation of Islamic Law.

Research Methods

Types of Research

This research is included in the category of literature research, which is a type of research whose main object is literature books related to this subject matter.⁹

⁸Tim Permata Press, *Kompilasi Hukum Islam* (Jakarta: Permata Press,2003), h. 51.

⁹Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2001), h. 13.

Sumber Data

Data Sources

In the discussion of this thesis, the type of research sourced from library books is used and according to the source is divided into two, namely primary and secondary data.¹⁰

a. Primary data source

Primary data sources are data obtained directly from the first source.¹¹ Primary data sources in this study that provide direct data sourced from first hand, for primary data the author uses the book of Jurisprudence Four schools by Shaykh Abdurrahman al-Jaziri, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid by Ibn Rushd*, Fathul Mu'in by Zainuddin bin Abdul Aziz, Islamic Fiqh wa Adillatuhu by Wahbah az-Zuhaili, *al-Ijma'* by Ibn Mundhir, *Fathu al-Qorib al-Mujib fi Sharhi Alfadi at-Taqrif* by Abu Abdillah Shamsuddin Muhammad bin Qosim al-Ghozy, *Kifayatul Akhyar* by Taqiyuddin Abu Bakr bin Muhammad al-Hisni. Meanwhile, Family Law in Indonesia uses the *Compilation of Islamic Law (KHI)* by the Permata Pres Team.

b. Secondary data sources

Secondary data or second-hand data are data obtained by researchers from their research subjects. Secondary data is usually in the form of books, research journals, articles, the internet, documentation data or report data that is already available.¹²

The secondary data sources in this study include, in this case the author obtained data from books:

- 1) Amir Syarifuddin "*Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*".
- 2) Ahmad Rofiq "*Hukum Perdata Islam di Indonesia*".
- 3) Umar Haris Sanjaya dan Aunur Rahim Faqih "*Hukum Perkawinan Islam di Indonesia*".
- 4) Ali Yusuf as-Subki "*Fiqh Keluarga*".
- 5) Boedi Abdullah dan Beni Ahmad Saebani "*Perkawinan dan Perceraian Keluarga Muslim*".
- 6) Satria Effendi M. Zein "*Problematik Hukum Keluarga Islam Kontemporer*".
- 7) Muhammad Hasbi ash-Shiddieqy "*Hukum-Hukum Fiqih Islam*".
- 8) Dwi Dasa Suryantoro dan Ainur Rofiq, jurnal "*Hak Mantan Istri Menolak Rujuk Mantan Suami Menurut Kompilasi Hukum Islam*".

¹⁰Soerjono Soekanto, *Penelitian Hukum Normatif*, h. 13.

¹¹Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2004), h. 30.

¹²Saifuddin Azwar, *Metode Penelitian* (Yogyakarta: Pustaka Pelajar, 1998), h. 91.

- 9) Arifin Abdullah dan Delia Ulfah, jurnal “*Kedudukan Izin Rujuk Suami dalam Masa ‘iddah (Analisis Perspektif Hukum Islam)*”.
- 10) Soemiyati “*Hukum Perkawinan Islam dan Undang-Undang Perkawinan No. 1 Tahun 1974*”.
- 11) Khoirul Abror “*Hukum Perkawinan dan Perceraian*”.

Data Collection Techniques

The first step taken by the researcher was to collect various initial references in the form of open-books, literature, and internet documentation related to the issue of the right to refuse the husband's reference in Islamic jurisprudence and KHI.

The data that has been obtained from the reference search will then go through several stages, namely:

- a. *Data reduction*, at this initial stage, selects, focuses, simplifies, abstracts and transforms raw data into written records. The goal is to obtain findings that are then made the focus of the study.
- b. *Display data*, at this stage the data that has been reduced is then displayed to provide an understanding of the data in order to determine the next step.
- c. *Concluding* (conclusion), after the reduction and display of data is carried out, the next stage is the conclusion or drawing conclusions from the data that has been studied. From these conclusions are presented¹³ New findings from the research conducted.

Data Analysis Techniques

The technical data analysis that the author uses is a qualitative method, which is an effort made by working with data, organizing data, sorting it into manageable units, synthesizing, searching and finding patterns, finding what is important and what is learned and deciding what can be told to others.¹⁴

¹³ Milya Sari dan Asmendi, “*Penelitian Kepustakaan (Library Research) dalam Penelitian Pendidikan IPA*”, *Natural Science: Jurnal Penelitian Bidang IPA dan Pendidikan IPA*, vol. 6, no. 1 (2020): h. 48.

¹⁴ Sandu Siyoto dan M. Ali Sodik, *Dasar Metodologi Penelitian* (Cet. I; Yogyakarta: Literasi Media Publishing, 2015), h. 120.

Results and Discussion

WOMEN'S LAW REJECTS REFERENCE IN ISLAMIC JURISPRUDENCE PERSPECTIVE

According to the agreement of jurisprudence scholars, that the husband who drops talaq on his wife has the right to refer by speech. Also by deeds according to the Hanafi, Hambali, and Maliki schools, as long as the wife is still in the period of 'iddah. This can be done without having to obtain permission or appeasement from the ex-wife.¹⁵ In this regard, jurisprudence scholars have a uniform view of the right of reference that husbands have. The right of reference that the husband has is absolute regardless of the rights of a wife, whether she is willing to reconcile with her husband or not.¹⁶

Although the right of reference is given to the husband absolutely, it does not mean that the right is given completely without any specific purpose. And the goal referred to here is the goal that leads to goodness. As Allah Almighty says in QS al-Baqarah/2: 228.

وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا ۗ

Terjemahnya:

And their husbands are more entitled to return to them in that (time) if they want improvement.¹⁷

Wahbah al-Zuhaili in his tafsir al-Munir, explains that reference is justified by the Shari'a if the husband intends her to improve relations with his wife, not to make her suffer. If it is intended to afflict her and prolong the period of 'iddah and make her like *mu'allaqah* (hanging widow), such an act is forbidden. Word of Allah in QS al-Baqarah/2: 231.

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا ۗ وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ ۗ

Terjemahnya:

And if you divorce (your) wives, then until (the end) of his 'iddah, then hold them in a good way (also). And do not hold them with evil intent to tyrannize them. Whoever does so has tyrannized himself.¹⁸

¹⁵Muhammad Hasbi ash-Shiddieqy, *Hukum-Hukum Fiqih Islam*, edisi II (Semarang: Pustaka Rizki Putra, 1997), h. 290.

¹⁶Mustofa Dib al-Bugha, dkk, *Fikih Manhaji*, terj. Misrah (Yogyakarta: Darul Uswah, 2012), h. 721.

¹⁷Kementrian Agama RI, *Al-Qur'an dan Terjemahannya*, h. 36.

¹⁸Kementrian Agama RI, *Al-Qur'an dan Terjemahannya*, h. 37.

However, if the husband does so, his reference is valid, even if he breaks the law and is self-oppressive, because although this desire cannot be known to us, we treat it according to the outward circumstances. The word *ahaqqu* shows that the husband's right in the waiting period takes precedence over the wife's right over him, because she is entitled to him only after his *'iddah* period has expired.¹⁹

If the husband drops his talaq when the wife is menstruating, then the husband is obliged to refer his wife back, because talaq during menstruation is not in accordance with the guidelines, or called *bid'i* talaq. This provision is in accordance with the hadith of Ibn Umar(ra) that he refused his wife during menstruation, then Umar (ra) asked the Prophet (peace be upon him) about it, then the Prophet said to Umar to order his son to refer his wife.

Thus, the legal status of the husband referring to his wife depends on his motives and objectives and whether or not the method of dropping talaq is appropriate with the guidance of the Sunnah, so that the law of the husband referring to his former wife may be mandatory, may be sunah, may be mubah, may be makruh, and may be haram.²⁰

In the book of *Al-um* written by Imam Shafi'i there is a phrase, as follows:

قال الشافعي : - رحمه الله - لما جعل الله عز وجل الزوج أحق برجعة امرأته في العدة كان بينها أن ليس لها منعه الرجعة ولا لها عوض في الرجعة بحال لأنها له عليها لالهها عليه ولا أمر لها فيما له أو دونه، فلما قال الله

²¹

عز وجل (وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ) (البقرة: ٢٢٨)

Means:

Since Allah Almighty stipulates that the husband is more entitled to refer to his wife while still in the period of *'iddah*, it seems clear that the wife should not forbid the husband to refer, and the wife is not entitled to substitute for reference at all, because reference is the husband's property to the wife, not the wife's right to the husband. There is no authority whatsoever for a wife in a matter to which the husband is entitled.

¹⁹Wahbah az-Zuhaili, *At-Tafsīr al-Munīr Fil 'Aqīdah wasy-Syarī'ah wal-Manhaj*, jilid 1 (Cet. I; Damaskus: Darul Fikr, 2003), h. 696.

²⁰Abd. Rahman Ghazaly, *Fiqh Munakahat* (Cet. 1; Jakarta; Prenada Media, 2003), h. 288-289.

²¹Al-Imam Muhammad bin Idris As-Syafi'i, *Al-Umm*, juz. 6 (Beirut: Dar al-Kutub al-Ilmiyyah, 1993), h. 621.

According to Imam Shafi'i's explanation in his book, it is explained that the matter of reference is the right of the husband to his wife while still in the period of 'iddah, so for the wife does not have the right to refuse and does not have the right to replace her husband's reference because reference is the husband's right to his wife and reference is not the wife's right to her husband. This proves that according to his interpretation the wife has no right to reconciliation. And from this explanation it can also be seen that the wife has no right to refuse nor is given the right to express her opinion when the husband wants to refer to his ex-wife.

Ibn Qudamah states that: "Reference can be made by the way the husband testifies before two Muslim men, "witness that I have referred to my wife," or "I return to her," or "I return to hold it". Although it was without the presence of his guardian, without any additional dowry, and even without the consent of his wife. If the husband courts his wife, it means that he has reconciled with his wife."²²

Ibnu Qoyyim al-Jauziyyah menyatakan dalam kitabnya *Zad al-Ma'ad* bahwasanya rujuk merupakan hak seorang suami sebagaimana dia berhak menjatuhkan talak terhadap istrinya.²³

Ibn Munzir says that the provision of reference is the prerogative of the husband and this is the agreement of the ulama (Ijmak).²⁴

وأجمعوا على أن الحرّ إذا طلق زوجته الحرة وكانت مدخولا تطليقة أو تطليقتين أنه أحق برجعها حتى تنقضي العدة.

Means:

And scholars agree that if a free husband rejects his free wife and has been courted by him, be it talaq one or two, then the man has the right to refer her until the end of his term.

And more emphatically Ibn Munzir says that:

وأجمعوا أن الرجعة الى الرجل ما دامت في العدة وإن كرهت ذلك المرأة.

Means:

²²Ibnu Qudamah al-Maqdisi, *Umdatul Fiqih* (Beirut: Maktabah Ashriyah, 2003), h. 203.

²³Ibnu Qayyim al-Jauziyyah, *Mukhtasar Zad al-Ma'ad*, terj. Kathur Suhardi, *Jalan Menuju Ke Akhirat* (Cet. III; Jakarta: Gema Insani Press, 2011), h. 340.

²⁴Ibnu Mundzir, *al-Ijma'* (Uni Emirat: Maktabah al-Furqon, 1999), h. 126.

And scholars agree that reconciliation is left to men during the period of *'iddah* even if the woman does not like it.

With regard to the above information, if a husband will refer to his wife, he should pay attention to several conditions so that the reference is categorized as valid. In the book of *Fathul Qorib* mentioned several conditions of reference, as follows²⁵:

1. A husband who has divorced his wife (who is not talaq *ba'in*), then the husband can refer to his wife provided that his *'iddah* period has not expired. Reference does not have to get approval from the wife's side.
2. The presence of verbal expressions of reference.
3. Not on hajj or umrah.
4. One who marries on his will.
5. When the wife referred to has expired her *'iddah*, then the husband legalizes her by renewing the marriage vow.

Meanwhile, the requirements for reference based on the book of *Kifayatul Ahyar* are the permanence of reference during *the 'iddah period and the condition* of the husband and wife is still in halal condition (marriage). That is, if one of the wives or husbands apostates, then the husband wants to reconcile with his wife during the *'iddah* period, then the reference is categorized as invalid because it is done under the condition that the husband and wife are not halal (married, because of apostasy). If the period of *'iddah* of the wife is over, then the opportunity for reconciliation is exhausted and talaq *ba'in* occurs. Then if both of them enter into a new marriage contract before the wife marries another man or after marrying another man but has not been jimak or has been jimak, then the wife returns to the first husband while still carrying the remaining talaq from the previous marriage.²⁶

In the book *al-Majmu' Sharh al-Muhadzab* it is said that legal reference is done even without the consent of the wife. And make the husband more entitled to reconcile. Although the husband needs his wife's pleasure. For truly the wife has her own rights. And it is not considered valid to refer except by speech. For the person is able to pronounce (not mute) or through gestures for the mute person. As for when having intercourse or kissing the wife or touching the wife, it is not categorized as a reference, even if he intends to reconcile or does not intend.²⁷

²⁵Abu Abdillah Syamsuddin Muhammad bin Qosim Al-Ghozy, *Fathu Al-Qorib Al-Mujib Fi Syarhi Alfadi At-Taqrif* (Kediri: Maktabah As-Salam, 2017), h. 104.

²⁶Taqiyuddin Abu Bakr Bin Muhammad Al-Hisni, *Kifayatul Al-Akhyar Fi Halli Ghoyati Al-Ikhtishor* (Jeddah: Dar Al-Minhaj, 2008), h. 534.

²⁷Imam Abi Zakariya Muhyiddin Ibnu Syarif An-Nawawi, *al-Majmu' Syarh al-Muhadzab*, juz 18 (Riyadh: Dar Alimul Kutub, t.th), h. 286.

In the jurisprudence of the four imams of the madhhab, there is no mention of the wife's permission to enter as a condition of reference, let alone enter the pillars of reference. Imam Hanafi stated that the pillars of reference are only referencing speech. According to the Maliki school, Shafi'i and Hambali established the pillars of reference i.e. speech and husband. Imam Malik added that husbands may refer by deed with the intention to reconcile. Imam Ahmad, on the other hand, allows reference to deeds even if they are not accompanied by intention. Whereas Imam Shafi'i does not allow by deeds, but by words (speech).²⁸

According to the Ulama Mazhab, both Hanafi, Maliki, Shafi'i and Hanbali, along with their followers, stated that the provisions contained in al-Baqarah verse 228, verse 229, verse 231, then the provisions in surah al-Talaq verse are general ('am). That is, the generality of the verse gives the husband full right to refer his wife without considering the permission and consent of the wife. Meanwhile, there is no specific proposition in either the Qur'an or hadith that requires reference to the wife's permission. For this reason, scholars determine the reference to be the property of the husband who does not need the wife's permission.²⁹

Sharia also does not forget the interests of women and their right to determine divorce. Although the right to divorce is in the hands of the husband, Islam also gives the right to women to determine divorce, if the conditions that have been determined by divorce are met. Usually the wife relinquishes part of her rights to the husband or gives a certain amount of property that has been agreed upon by both, this is called *khulu'*, or divorce by giving a ransom. This happens when the wife sees a good reason to end coexistence with her husband, and if she persists, she is afraid that she will violate the rules set by religion.

Based on the information above, a conclusion can be drawn, that the law of reference based on jurisprudence is a reference made without the consent of his legal wife. A wife does have equal rights in the household regarding her rights and obligations, but in the case of reference, a husband still has a higher level of position than a wife. Taking into account the pillars of reference that have been determined by jurisprudence scholars, the husband is the central factor that determines the realization of reference in a household. In addition to the right of talaq that exists in a husband, the right of reference is also on him without the need for consent from

²⁸ Ibnu Rusyd, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*, ed, in, *Bidayatul Mujtahid: Analisa Fiqih Para Mujtahid* (terj: Imam Ghazali Said dan Achmad Zaidun), cet. 2, jilid 2 (Jakarta: Pustaka Amani, 2007), h. 273.

²⁹ Arifin Abdullah dan Delia Ulfah, "Kedudukan Izin Rujuk Suami dalam Masa 'Iddah (Analisis Perspektif Hukum Islam)", Samarah: Jurnal Hukum Keluarga dan Hukum Islam, vol. 2, no. 2 (Juli-Desember, 2018), h. 426.

the wife in both. A husband may refer to his wife only with a restatement without a new contract and also without any dowry, as long as it is within the period of iddah talaq *raj'i*.

WOMEN'S LAW REJECTS REFERENCE IN ISLAMIC LAW COMPILATION PERSPECTIVE

In Islamic law, the existence of conditions regarding a legal act must exist, so that the intended legal act achieves its desired purpose. According to Wahbah Zuhaili, there are two conditions for forming an action, namely the condition of *shari'i* and the condition of *tawsiqi*. *Shar'i conditions* are those conditions that have been established by Islamic law (*shara'*). While the *tawsiqi requirements* are conditions made by the government for a certain interest and purpose.³⁰ Similarly, according to Shaykh Jad al-Haq Ali Jad al-Haq, that the condition is divided into two, namely the condition of *Shar'i* and the condition of *tawsiqi*. The *Shar'i requirement* is a condition that determines the validity or absence of a legal event. This condition is a regulation that has been set by *Shara'*. While the *tawsiqi* requirement is an additional requirement or regulation.³¹

With regard to the rules regarding the permission of wives in referring husbands, this falls into the category of *tawsiqi* requirements or additional conditions in addition to *Shar'i* requirements. *Shar'i* requirements in reference such as intention, then reference is also prescribed must be with expressions. While the wife's permission in reference is part of the conditions made by the government as an additional condition to the requirements set by *shara'*.

One of the legal products resulting from the results of government rulings is the Compilation of Islamic Law. The compilation of Islamic Law is a decision that is binding on the Muslim community and must be obeyed. For the Islamic community in Indonesia, one of the intended government provisions or rulings is the KHI (Compilation of Islamic Law) which regulates the provisions of reference. These provisions are located in the first book of marriage law and are specifically provided for in Chapter XVIII articles 163 to 169. However, the definition of reference itself is not specifically regulated in it, but there are articles that provide a global picture of

³⁰Wahbah Zuhaili, *al-Fiqh al-Islami Wa Adillatuhu*, terj. Abdul Hayyie al-Kattani, dkk, *Fiqh Islam; Pernikahan, Talak, Khulu', Meng-Ila' istri, Li'an, Zhihar, Masa Iddah*, jilid 9 (Jakarta: Gema Insani, 2011), h. 236.

³¹Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer* (Jakarta; Kencana Prenada Media Group, 2004), h. 33-34.

the definition of reference. As stated in Chapter XVI article 118 and in Chapter XVII article 150 which reads:

Article 118.

Raj'i talaq is the first or second talaq, which the husband has the right to refer to during the wife's period of *'iddah*.³²

Article 150.

The ex-husband has the right to refer to his ex-wife who is still in the period of *'iddah*.³³

As for other provisions relating to reference in the Compilation of Islamic Law are shown in chapters 163, 164, 165, 166.³⁴

Article 163.

1. A husband can refer to his wife who is in the period of *'iddah*.
2. Reference can be made in the following cases:
 1. The breakup of marriage due to talaq, unless talaq has fallen three times or talaq imposed *qabla al-dukhul*;
 2. Marriage decisions are based on court decisions on reasons or reasons other than zina and *khuluk*.

Article 164.

A woman in talaq *raj'i* has the right to object to the will of reference from her ex-husband in the presence of a marriage registrar in the presence of two witnesses.

Article 165.

Referrals made without the consent of the ex-wife may be declared invalid by the decision of the Religious Court.

Article 166.

Reference must be proven by Reference Registration Book Citation and if the evidence is lost or damaged so that it can no longer be used, a duplicate can be requested to the agency that issued it.

With regard to the procedure of reference described in article 167 paragraph (2) which reads: Reference is carried out with the consent of the wife in the presence of the Marriage Registration Officer or Assistant Marriage Registration Officer.³⁵ From

³²Tim Redaksi Nuansa, *Kompilasi Hukum Islam* (Cet. XIII; Bandung: Nuansa Aulia, 2020), h. 35.

³³Tim Redaksi Nuansa, *Kompilasi Hukum Islam*, h. 44.

³⁴Tim Redaksi Nuansa, *Kompilasi Hukum Islam*, h. 47-48.

³⁵Tim Redaksi Nuansa, *Kompilasi Hukum Islam*, h. 48.

the explanation of the articles mentioned earlier, it can be seen that if a husband who will refer to his ex-wife must first get approval from his ex-wife. Even in terms of regulating this issue, the Compilation of Islamic Law further emphasises, that is, if the reference is made by forcing herself by the husband, while the wife does not want the reference (in the sense of rejecting it), then the rejected reference can be declared invalid upon the decision of the Religious Court.

The process of refusal of referral can be carried out by the wife in two forms, namely, first, refusal of referral carried out by the wife before the case reaches the hands of VAT or authorized VAT helpers. In the sense that before the husband comes to VAT or VAT helper first, the husband has asked his wife's consent first. If the wife does not consent and the husband accepts the wife's statement, then the refusal of reconciliation from the wife has taken effect. However, if the wife refuses to refer and the husband does not accept the refusal, then the case can only be resolved after being submitted to the Religious Court.

Second, the refusal of reference made by the wife after the referral case reaches the hands of VAT or VAT helpers. That is, the wife raises an objection to the will of her ex-husband's reference before VAT or the VAT helper witnessed by two witnesses. VAT or VAT helpers only accept the objections of ex-wives, while the decision of the case is in the Religious Court, not on VAT or VAT helpers. This is in accordance with the duties given by the regulation of the Minister of Religious Affairs No. 3 of 1975 article 2 that VAT is only in charge of supervising and recording marriage, talaq, divorce and reference in its environment and checking the conditions related to marriage, talaq, divorce and reference.³⁶

After we consider the previous explanation, important points that can be understood on the provisions stipulated in the Compilation of Islamic Law, especially those contained in articles 164 and 165 which show a change in the concept of reference from classical jurisprudence to Indonesian-based jurisprudence, namely:

1. It can be seen from the start of orderly administration. People who want to make referrals must go through official government institutions, namely Marriage Registration Employees. In contrast to what is spoken by some schools, such as the Shafii school which states that reference can be carried out only through speech, both satire and words.
2. There are legal implications in the form of the concept of reference. Article 165 of the IHL explains that coercion carried out by the husband without considering the wife's rights in the form of the wife's consent, this can have implications for the invalidity of the reference based on the decision of the

³⁶Arini Rufaida, "Hak Istri Menolak Rujuk dalam Perspektif Islam dan Analisis Gender", Yinyang: Jurnal Studi Islam, Gender dan Anak, vol. 14, no. 2 (Desember, 2019), h. 260-261.

Religious Court. This provision is an effort by the state to bridge in order to strengthen the right to protection for wives.³⁷

As we know that the presence of the Compilation of Islamic Law is to positively promote Islamic law in Indonesia, as a foundation and create good values in the midst of legal problems for Muslims in Indonesia. The compilation of Islamic Law complements the rules laid down by jurisprudence, but the difference is quite significant, where we find that in jurisprudence women do not have the right to refuse the reference of their husbands while still in the period of *'iddah*. The compilation of Islamic Law regarding the right of reference is an effort to strengthen the rights of wives, raise the dignity and dignity of wives and maintain and maintain the security of wives, which are feared to be objects of arbitrariness from their husbands.

The establishment of the law means that we are talking about benefit, because the original purpose of establishing a sharia law is goodness. In the hadith it is stated:

لا ضرر ولا ضرار

Means:

Can not create harm and can not retaliate with harm.³⁸

The hadith according to Muhammad Said Ramadan al-Buthi is a short message and has a broad meaning, which includes all deeds and actions, wisdom and decisions must not cause harm both for individuals and for society. In other words, the benefit of the individual and the general good (*al-maslahah al-'ammah*) must always be observed and considered in a decree of law.³⁹

The right of wives to approve or reject the invitation to refer to their husbands while still *in the 'iddah* period is the development of legal thought in the form of adjustment of Islamic law to the social development of Muslim communities in Indonesia. When viewed from the implications for the practice of marriage for Muslim communities in Indonesia, it is that a growing life requires a practical and systematic rule that is easy to handle and guide without any noticeable differences in practice.

Conclusion

Based on the descriptions above, several conclusions can be drawn, namely:

³⁷ A. Satrianingsih, "Perspektif Al-Qur'an Tentang Berkah (Kajian Tafsir Tematik)" (Univeritas Islam Negeri Alauddin ..., 2013).

³⁸ Mukhsin Nyak Umar, *Kaidah Fiqhiyyah dan Pembaharuan Hukum Islam* (Cet II; Banda Aceh: Yayasan WDC, 2017), h. 34.

³⁹ Muhammad Said Ramadhan al-Buthi, *Dhawabith al-Maslahah fi al-Syari'ah al-Islamiyah* (Beirut: Muassah al-Risalah, t.th), h. 79.

1. In Islamic jurisprudence, scholars agree that the right of reference belongs to the husband absolutely regardless of whether the wife is willing to be referred to or not, certainly during the period of iddah talaq *raj'i*.

2. The reconstruction of the concept of the right of the wife to refuse reference in the Compilation of Islamic Law is that a husband who is going to make a reference to his ex-wife must first obtain the consent of his ex-wife. This is regulated in KHI article 162 paragraph (2), "Reference is made with the consent of the wife in the presence of the Marriage Registration Officer or Assistant Marriage Registration Officer". In fact, in regulating this issue, the IHL is even more emphatic, namely a reference made by imposing the will of the husband while his wife does not want the reference (rejecting it), then the rejected reference can be declared invalid by a Religious Court Decision (this is as stipulated in articles 164 and 165 of the KHI).

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