

The Dualism of Reconciliation Law After Triple Talaq Outside the Court

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Abstract: Revocation of divorce (*ruju'*) generally occurs after a husband's first or second pronouncement of divorce (*talak*). However, after the third pronouncement (third *talaq*), Islamic jurisprudence (*fiqh*) prohibits revocation unless specific conditions are met. This study examines the legal dualism regarding *rujuk* after third *talaq*, especially when *talaq* is pronounced outside the Court. Unlike the four major *fiqh* schools, Indonesian law requires *talaq* to be declared in a Religious Court session, as stated in Article 5, Paragraph (1) of the Compilation of Islamic Law. This research aims to comprehensively understand the dualism of the reconciliation law after divorce that often occurs outside the Court. Using normative legal research with a qualitative approach, the findings suggest that Muslims should pronounce *talaq* and *ruju'* in front of a Religious Court to comply with Indonesian law and ensure legal protection and administrative recording of marriage and divorce. The study recommends that the Religious Court consider *talaq* pronounced outside the Court if substantiated with witness testimony.

Keywords: Revocation of Divorce, third pronouncement, Dualism of Law, Religious Court, Indonesian Law, *Fiqh*.

Abstrak: Rujuk umumnya terjadi setelah suami mengucapkan talak pertama atau kedua. Namun, setelah pengucapan talak ketiga, *fiqh* Islam melarang rujuk kecuali memenuhi syarat-syarat tertentu. Penelitian ini mengkaji dualisme hukum terkait rujuk setelah talak tiga, terutama ketika talak diucapkan di luar pengadilan. Hukum Indonesia mengharuskan talak diucapkan dalam sidang Pengadilan Agama, sebagaimana dinyatakan dalam Pasal 5, Ayat (1) Kompilasi Hukum Islam, berbeda dengan empat mazhab utama *fiqh*. Penelitian ini bertujuan untuk mengetahui secara komprehensif dualisme hukum rujuk setelah talak tiga yang sering terjadi di Luar Pengadilan. Dengan menggunakan penelitian hukum normatif dengan pendekatan kualitatif, hasil penelitian menunjukkan bahwa umat Islam sebaiknya mengucapkan talak dan rujuk di depan Pengadilan Agama untuk mematuhi hukum Indonesia serta memastikan perlindungan hukum dan pencatatan administratif pernikahan dan perceraian. Penelitian ini merekomendasikan agar Pengadilan Agama mempertimbangkan talak yang diucapkan di luar pengadilan jika didukung dengan kesaksian yang sah.

Kata Kunci: Rujuk, talak tiga, Dualisme Hukum, Pengadilan Agama, Hukum Indonesia, *Fiqh*.

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Introduction

Between husband and wife causes disagreements between the two, changes in the tendency of the heart in each often causes domestic crises that turn a harmonious atmosphere into a quarrel, compatibility into a dispute, and affection into hatred, all of which are things that must be accommodated and resolved in married life.¹ Divorce is carried out to release a marriage that is considered untenable because the comfort and harmony of the household cannot be felt. So it is impossible to continue the marriage and divorce is the last way of resolving domestic problems that can no longer be resolved.²

In positive law, divorce (*talaq*) and refer are legal acts that must be recorded. Marriage registration for Muslim residents, as stated in Article 8 of Law Number 23 of 2006 concerning Population Administration, stipulates that the obligations of the implementing agency for the registrar of marriage, *talaq*, divorce and referral for Muslim residents at the sub-district level are carried out by the registrar at the Religious Affairs Office in their respective sub-district following the wife's place of residence. The registration of marriage, *talaq*, divorce, and referral is also regulated in Article 129 of the Compilation of Islamic Law, that a husband who will impose *talaq* on his wife must submit an oral or written application to the Religious Court that covers the area of his wife's residence at the sub-district level to be carried out by the registrar at the Religious Affairs Office in the respective sub-district

following the wife's place of residence.³

In contrast to the view of the *fiqh* of the four schools or Islamic law, if the harmony and conditions of *talaq* are met, then whenever and wherever the husband imposes *talaq* on his wife, it will be considered valid and the fall of *talaq* will apply. Thus, the two laws are still running simultaneously until now and at a certain time can cause legal problems because of the dualism of the law of reference after the triple *talaq* that applies and is implemented by the people of Indonesia. In positive law, the determination of the law of *talaq* is different from what is regulated in *fiqh shafi'iyah* while in *fiqh shafi'iyah* that *talaq* will fall where and when the husband pronounces it. However, juridically it has not been said to be valid, because according to Law No. 1 of 1974 which explains things differently from *Fiqh Syafi'iyah*, where in the law it is stated that: "The divorce is only carried out in front of the court after the court has tried and failed to reconcile the two parties."⁴

Thus, divorce often occurs without going through the Court because people who consider marital quarrels to occur result in the annulment of marriage according to the beliefs of each party. Incidents like this are not uncommon, and have even spread to the community, especially rural communities that follow the surrounding environment. The fact that often happens to rural communities, is to get married officially through the local Religious Affairs Office and register a marriage that is legally recognized

¹ Umu Malikah, (et.al), "Keabsahan Talak Di Luar Pengadilan Berdasarkan Hukum Islam Dan Hukum Positif Di Indonesia", *Semarang Law Review (SLR)*, Vol. 2, No. 2, (2021), h. 247.

² Beni A. Saebani, *Perkawinan dan Hukum Islam dan Undang-Undang*, (Bandung: Pustaka Setia, 2008), h. 55.

³ Ibnu Akbar Maliki, dan Lisna Mualifah "Persepsi Pelaku Perceraian Terhadap Cerai di Luar Pengadilan Agama", *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, Vol. 3, No.2, (Desember 2022), h. 2.

⁴ Safrizal, dan Karimuddin, "Penetapan Jatuh Talak Dalam Perspektif Hukum Positif Dan Fiqh Syafi'iyah", *Jurnal Al-Fikrah*, Vol. 9, No. 2, (Desember 2020), h. 203.

in the eyes of the law, but the divorce is not carried out in Court or does not involve the state in its registration.⁵

The court does not require divorce or talaq in Islamic law. The provisions for divorce in the Court or through the trial of the judge's testimony are not regulated in the fiqh of any madhhab, taking into account that divorce, especially the so-called talaq, is the absolute right of a husband, and he can use it anywhere and anytime. For this reason, there is no need to tell, let alone ask anyone's permission. In the view of fiqh, divorce as the case is that marriage is a private matter and therefore does not need to be regulated by public provisions.⁶

Literature Review

Rujuk (Reconciliation) can be interpreted as restoring the legal status of marriage after the occurrence of divorce *raj'i*, which the former husband carries out against his former wife during the 'iddah period. The word *rujuk* linguistically means to return, which means returning to live together as husband and wife between a man and a woman who divorced by way of divorce *raj'i* while still in the iddah period. Regarding the ruling, scholars agree that the husband may refer to his divorced wife. This is based on several provisions of the Qur'an, one of which is in Surah al-Baqarah verses 228-229. Surah al-Baqarah verses 228-229 are the legal basis for the husband being allowed to refer his wife during the iddah period. Related to

this, scholars agree that the iddah of a divorced woman can be referred back in a *ma'ruf* way, meaning that it is referred in a good way.⁷

In Islamic law divides *rujuk* in two kinds, namely *rujuk talak raj'i* and *rujuk talak ba'in*. *rujuk talak raj'i* according to Ibn Rushd's view, the husband has the right to refer his wife, as long as the wife is still in the iddah period, without considering the wife's consent. Meanwhile, the reconciliation of divorce *ba'in* is the reconciliation of a woman who is divorced through *khulu*, with the condition that she is divorced and the divorce is not the third divorce.

Several factors encourage married couples to reconcile, among others: The factor of children who are very influential on the two parents who have divorced due to the emotional nature that has befallen both of them, with the condition of children who are still underage will definitely receive disturbances in the social environment both in the form of ridicule that can frustrate children in the development of their thinking due to their parents having separated. Secondly, the image of the family should be improved from the view of the community so that the relationship continues to run well. Thirdly, divorce cases should be avoided before they are decided by the Court so that a good name is maintained.⁸

Method

This type of research uses a normative

⁵ Nurhadi, "Perceraian di Bawah Tangan Perspektif Hukum Islam dan Hukum Indonesia", *al-Mawarid: Jurnal Syari'ah & Hukum*, Vol. 1, No. 2 (Agustus 2019), h. 182.

⁶ Yunita Damayanti, "Studi Komparatif Tentang Talak Di Luar Pengadilan Antara Fatwa Majelis Ulama Indonesia Dengan Kompilasi Hukum Islam", *Qiyas: Jurnal Hukum Islam dan Peradilan*, Vol. 8, No. 2, (2023), h. 161.

⁷ Arifin Abdullah dan Delia Ulfa, "Kedudukan Izin Rujuk Suami Dalam Masa 'Iddah (Analisis Perspektif Hukum Islam)," *Samarah: Jurnal*

Hukum Keluarga Dan Hukum Islam 2, no. 2 (29 Mei 2019): 417–32, <https://doi.org/10.22373/sjrhk.v2i2.4746>.

⁸ Irwandi Irwandi dan Ibnu Izzah, "Penerapan Tata Cara Rujuk Menurut Hukum Islam Pada Tokoh Masyarakat Dan Kantor Urusan Agama (Kua) Kecamatan Sinjai Selatan Kabupaten Sinjai," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 1, no. 3 (1 September 2020): 171–82, <https://doi.org/10.24252/qadauna.v1i3.14841>.

juridical research method that is qualitative in nature by interpreting the legal materials that have been processed, then providing descriptions of the legal materials obtained. This research uses four approaches, namely the legislative approach, the historical approach, the comparative approach, and the conceptual approach.

The data collection technique of this research is by using literature studies by means of legal materials collected through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems. After that, the problems related to this study are described to conclude. The materials obtained will be analyzed, compared, and combined to form a systematic, integrated, complete study that can answer the questions in this research problem.

Results and Discussion

Views of Scholars of Four Schools Regarding the Law of Reference After Talaq Tiga

In Islam, divorce is allowed, but this does not mean that Islam likes to divorce in a marriage, but Islam still views it as something that is contrary to the basics of Islamic law on marriage. This means that the law of divorce is *mubah* (permissible), but because divorce is an act that Allah SWT hates, divorce has the meaning of the law *makruh* or reprehensible. However, in certain situations and conditions, the divorce law can change; it can be *nada* or *sunnah*, sometimes it can be *mubah* or permissible, sometimes it can be *mandab*, and sometimes it can be *haram*.⁹

If a husband imposes triple talaq on his wife, then he may not return unless his ex-

wife has remarried to another man and has had sexual intercourse with her new husband, divorced, and has completed *'iddah*. The marriage must be a real marriage, not just to legalize the couple who have been divorced three times to become husband and wife again. Marriage that is only intended to legitimize their relationship is called *nikah muhallil*.¹⁰ What is meant by real marriage is being in a valid marriage. Meanwhile, what is meant by marriage in this matter is that intercourse must be carried out.

This is a condition for the first husband to remarry until his ex-wife divorces her new husband. The ex-wife's marriage with another man must be based on willingness and consensuality, not a marriage that is only limited to meet the requirements.¹¹ Several marriages are almost equated to *muhallil* marriages, including *nikah mut'ah*, which is a marriage that has a certain time limit when the divorce will be carried out or known as a contract marriage. The similarity between *nikah mut'ah* and *nikah muhallil* because the marriage of the two is based on the terms of divorce, and both marriages are also included in the marriage that is *fasid* (broken) because the pillars of marriage are not fulfilled.

If according to the view of *madhhab Maliki*, *nikah mut'ah* is forbidden and *muhallil* marriage is invalid and the marriage of the two must be annulled, because it has legal implications of a *fāsīd* marriage that is declared null and void automatically into a broken marriage (*fasakh*). According to *madhhab Shafi'i*, *nikah mut'ah* is included in a marriage that is invalid because the harmony is damaged or not fulfilled, so there is no obligation to *dowry*, maintenance, *nasab*, *'iddah*, and there is no *haram* of *muhadharah*.

⁹Wati Rahmi Ria dan Muhammad Zulfikar, *Ilmu Hukum Islam*, (Bandar Lampung: Gunung Pesagi, 2017), h. 61-63.

¹⁰Iffah Muzammil, *Fiqh Munakahat: Hukum Pernikahan Dalam Islam*, (Tangerang: Tira Smart, 2019), h. 110.

¹¹Sayyid Sabiq, *Fikih Sunnah*, Jilid 3, cet. ke-2 (Jakarta: Cakrawala Publishing, 2011), h. 260.

According to madhhab Maliki and madhhab Shafi'i, *muhallil marriage* will be considered valid when the conditions and pillars of marriage are met.

The ability of *muhallil marriage* according to the Hanafi School and the Shafi'i School, because the intention of marriage is carried out without explicitly stating the conditions for divorce when the implementation of the *kabul ijab* in the marriage contract, what exists is the intention and intention inwardly. When there is only an intention and intention in the mind, then a marriage is valid and *makruh*, because this marriage contract fulfills all its pillars and conditions by birth. According to the Hanafi madhhab, this *muhallil* will also get a reward but is bound by the condition of reconciling both parties, not positioning himself as a legitimate husband, not asking for anything in return, and no *halal* conditions.¹²

In contrast to the opinion of the two madhhabs above, according to the view of the Hambali madhhab, a *fasid marriage* that is annulled from its original is *nikah muhallil*, which is a marriage that is carried out to legitimize the woman to return to her first husband who has divorced her with *talaq* three.¹³ The view of madhhab Hambali is the same as the view of madhhab Maliki, which states that indeed marriage is *muhallil* even without conditions, namely a marriage that is carried out to make it *halal* to be married by her first husband, is an illegitimate, false, and void marriage. So, this marriage was invalid, and she did not become lawful to her first husband through this marriage. It is considered valid when the intention of the person who performs the *tahlil marriage*, not the intention of the woman, is also not the

intention of the person who is allowed to do this *tahlil* marriage.¹⁴

Triple Talaq Outside the Court According to the Perspective of Laws and Regulations

Based on the provisions of Article 12 of the Compilation of Islamic Law, a man is free to propose to a woman, either a virgin or a widow who wants to be his wife, unless the woman is still attached to her marriage with another man. In addition, a man should not propose to a woman who is in the *iddah* period because during the *iddah* period, the ex-husband still has the right to refer to his wife, if it is what her husband wants. In addition, during the *iddah* period, it can also clarify the status of the child if it has been conceived by a widow, and can find out whether or not she is pregnant from a previous marriage.¹⁵

In law enforcement, especially divorce, the background that is a reference is very complex because it is not only viewed from the husband's side, but in a larger scope of social groups from both parties between the husband and wife, the enforcement of the law is expected to really provide justice for both parties.¹⁶ When *talaq* is still pronounced on *talaq raj'i*, it is still possible to refer to it after the *talaq raj'i*. Refer is an opportunity to improve the relationship between husband and wife that has been strained, this is possible when *talaq raj'i* occurs not in big problems such as infidelity, adultery, and domestic violence.

Refer after *talaq raj'i* it is possible to occur when problems are limited to differences of opinion, misunderstandings, and quarrels that may still be tolerated between the two couples. In the Supreme Court Decision

¹²*Ibid.*, h. 166-167.

¹³Muzammil, *Fiqh Munakahat*, p. 105.

¹⁴Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Volume 9, (Depok: Gema Insani, 2011), p. 142.

¹⁵Desminar, *Introduction to Family Law Textbook*, 1st cet., (Padang: UMSB Press, 2021), p. 66.

¹⁶Mohsi, "The Construction of Islamic Divorce Law in Indonesia's Fiqh", *Ulumuna: Journal of Islamic Studies*, Vol. 1, No. 2, (December 2015), p. 246.

Number 237/K/AG/1998 that disputes, quarrels, live separately, not in one place of common residence, one party does not intend to continue living together with the other party, this is a sufficient legal fact to be used as a reason in a divorce.

Marriage is valid if it is carried out according to the laws of each religion and belief, and it needs to be recorded according to the applicable laws and regulations. Marriage registration in Indonesia is regulated in several articles of laws and regulations, namely in Article 2 paragraph (2) of Law 32 of 1954, which states that each marriage is recorded following the applicable laws and regulations. Continued in Article 5 paragraph (1) of the Compilation of Islamic Law, it is stated that in order to ensure the order of marriage for the Islamic community, every marriage must be recorded by a marriage registrar appointed by the Minister of Religion or by an appointed employee as contained in Article 1 of Law Number 22 of 1946 concerning Marriage Registration, Talak, and Refer.

Based on the Compilation of Islamic Law Article 129, the prohibition to marry his wife who has been *talaq* three will be null and void if his ex-wife has married another man, then the marriage is broken *ba'da dukhul* or has intercourse between husband and wife. The Compilation of Islamic Law still describes the marriage issue by referring to the existing Marriage Law. Therefore, with the compilation of Islamic law, it is clear that all the opinions of scholars who used to exist only in the fiqh book have become positive Islamic law in Indonesia.¹⁷

The obligation of the KUA to submit a referral notice to the Court for the collection of the marriage book is eliminated in the

Regulation of the Minister of Religion Number 20 of 2019 concerning Marriage Registration by submitting an excerpt of the reference deed by the husband and wife to the Religious Court to take the Marriage Registration Book or Marriage Book. It can be concluded that when the reference and talaq are not pronounced before the Court session or not recorded to the state, it is considered invalid to refer and talaq, as in the following cases:

1. In Decision Number 50/Pdt.G/2021/PTA. Yk, and Decision Number 314/Pdt.G/2021/PA. Utj, and Decision Number: 511/Pdt.G/2016/PA. Kis, gave the same decision, namely when the husband wants to immediately impose *talaq ba'in kubra* (triple talaq) on his wife without being able to prove that there has been *talaq raj'i*, namely *talaq* one and *talaq* two that has been pronounced or imposed by the husband on his wife in front of the Religious Court session, then the Court decides that the talaq is invalid so that the decision of the judge does not fall became *talaq* three but fell again into *talaq* one.
2. In Decision Number: 163/Pdt.G/2013/PA. JP concluded from the case that there had been *talaq* and *referral* between husband and wife which was carried out outside the Court. *Talaq* and *refer* are only carried out in Islam without recording and do not involve the state. In this case, the Central Jakarta Religious Court imposed *talaq* as one *talaq* not following the second *talaq* that had occurred outside the Court which should have been *talaq* three. Thus, the Religious Court does not consider *talaq* to be valid that is carried out outside the

¹⁷Umar Haris Sanjaya and Aunur Rahim Faqih, *Islamic Marriage Law*, cet. 1, (Yogyakarta: Gama Media, 2017), p. 5.

Court, so that when the first application for *talaq* is made, it will still be imposed as *talaq* one which can still be referred again.

Analysis of Legal Dualism Refers After Talaq Three Outside Court

Refer happens when initially having a valid marriage bond, and then there is a divorce and referral between husband and wife. Divorce does not only affect husband and wife, but involves many parties such as children (if they have children) and the family of the husband and wife. Divorce not only separates the relationship between the two, but can also separate the good relationship between the families of both parties, which was initially on good terms into a relationship that can no longer be united.¹⁸

The opinion of the Maliki *Mutaakhirin* scholars regarding marriage in Islamic law is mandatory for some people, but it becomes *sunnah* (not mandatory) for others and *mubah* for some other groups based on concern for their own hardships or difficulties and from considerations of benefits. If viewed in terms of the condition of the person who performs the marriage and the purpose of the marriage, then carrying out a marriage can be subject to obligatory law, *sunnah*, *haram*, *makruh* or *mubah* according to the condition of the person who will perform the marriage in order to consider the *benefits*.¹⁹

Not all marriages go well, some end in divorce. Divorce in Islamic law is called *Talak*. *Talak* is divided into two parts, namely *talaq raj'i* and *talaq ba'in*. The scholars of the *madhhab* agree that, what is called *talaq raj'i* is the *talaq* of the husband who still has the right to return to his wife (*refer*) as long as the wife is willing to be referred or not, if the

wife who is divorced before being interfered with by her husband, then the divorce does not have a *iddah* period for the wife she divorced.

Talak ba'in kubra is a divorce that cannot be referred back until the divorcing wife performs a valid marriage against another person and the marriage does not fall into the damaged/defective marriage category. Marriage after *talaq* three can be said to be a *fasakh* (defective/damaged) marriage if it is carried out with intentions, conditions and harmony that does not meet. The *fasakh* before or after intercourse is a form of *talaq* (divorce). If after that he repeats the contract correctly, then the *talaq* is only two times left. If he repeats his marriage legally, it means that his marriage is accepted and he only has to continue with the previous marriage.²⁰

Although the status of having sex in a broken (defective) marriage is a vice, according to Hanafiah scholars, by having intercourse there is still the obligatory law of *iddah* on the woman, starting from the time of separation between the two, according to the majority of Hanafiah scholars and this is a strong opinion in the *madhhab*. The scholars agree that a husband who is sensible, mature and independent and is not forced by any party to divorce his wife is allowed to impose *talaq* and be declared valid when said by the husband. This agreement is excluded in certain circumstances, that scholars differ in opinion when *talaq* is in a state of anger, *talaq* is forced, *talaq* is sick and *talaq* is immature, *talaq* is drunk, *talaq* is in a state of playfulness and wrongdoing, and *talaq* is in a state of negligence or forgetfulness.

Imam Shafi'i in *Kitab Al-Umm* argues that the legal conditions for divorce that are the

¹⁸Muslim Zainuddin and Syab"ati Asyarah Agustina, "A Review of Islamic Law on the Change of *Talak* Tiga to *Talak* One", *Samarah: Journal of Family Law and Islamic Law*, Vol. 2, No. 1. (January-June 2018), p. 126.

¹⁹Ahmad Rafi Baihaqi, *Building a Household Paradise*, (Surabaya: Gitamedia, 2006), pp. 10-12.

²⁰Az-Zuhaili, *Islamic Fiqh*, p. 111.

basis for the validity of divorce include the presence of a husband, wife, and a pledge of talaq. Imam Shafi'i does not specify other conditions for the validity of the divorce, such as the obligation to carry out the divorce in front of a judge or in court.²¹ The talaq is said to be talaq carried out outside the Court and divorce that has fulfilled all the conditions and pillars of talaq stipulated in Islamic law, but without an official determination in the authorized agency as stipulated in the laws and regulations. Talaq outside the Court because it is not recognized by the state, even though it is legal according to Islamic law, of course, will cause legal problems, especially if then each of them marries someone else.

However, in Article 115 of the Compilation of Islamic Law, divorce must be carried out in Court, meaning that in Indonesia to resolve the case of dualism of divorce law between Islamic law and positive law of Indonesia must follow state rules, namely divorce must be carried out through the Court. If the divorce is out of Court, the divorce is considered invalid or still husband and wife, with this the woman will get legal protection, and divorce outside the Court (illegal divorce) will clearly not provide legal guarantees and certainty to women.²² So that the results of the analysis of the dualism of the law after the triple talaq that still often occur in Indonesia is an act that should not be followed, because Indonesia is a country of law and all citizens living and living in Indonesia must follow and obey the applicable regulations.

The scholars have agreed that a husband

has the right to three talaqs, the scholars also agree that the husband is forbidden to say the word talaq three times at the same time as the husband said to his wife "you I am talaq three" or by saying the word talaq three times in a row at one time or in one holy time. Their reason is that if the husband drops talaq three times, it means closing the door to return and meet again when he regrets his actions and also violates the provisions of religion (including bid'i talaq), because the talaq is made many times to give him a chance to return when he regrets his actions, and the person who drops the divorce three times means that he has harmed the woman, because he has made the woman with his talaq an illegitimate person for him.²³

Broadly speaking, the rules of talaq in Islamic law are very loose, while the divorce regulations in positive law regulated by the state tend to hold the principle of making divorce difficult. Loose talaq rules can give rise to the practice of free and uncontrolled talaq practices and this is a very dangerous thing. Such practices can lead to the neglect of many households, and there is no guarantee of protection for women and children. The deed of talaq pledge obtained after going through the judicial process based on the opinions of several contemporary mujtahid is more relevant in law enforcement in Indonesia. The urgency here can be seen from the *maslahah* of the talaq pledge in front of the Court, which is referred to as a preventive and repressive benefit.²⁴

²¹Restu Novriandi, "Consequences and Legal Sanctions of Talak Outside the Family Law Court in the Islamic World (Comparative Study of Family Law Laws in Indonesia and Pakistan)", (Jakarta: Syarif Hidayatullah State Islamic University, 2022), p. 72.

²²Yayan Sopyan, *Islam Negara Transformation of Islamic Marriage Law in National Law*, 2nd ed. (Jakarta: RMBooks, 2012), p. 193.

²³ Masykurotus Syarifah, and Mohammad Suad, "Talak Tiga at the Same Time Perspective of Sheikh Wahbah Al Zuhayli and the Compilation of Islamic Law" *The Indonesian Journal of Islamic Law and Civil Law*, Vol. 3, No. 2, (October 2022), p. 110.

²⁴ Lailiyatur Rohmah, "Harmonization of the Imposition of Tatalak in Islamic Law and Positive Law", *Mabahits: Family Law Journal*, Vol. 5, No. 1, (May 2024), p. 69.

Conclusion

According to the fiqh of the four madhabs, when talaq is carried out outside the Court, the talaq falls and the rules of the *'iddah period* also apply when the ex-husband will refer to the ex-wife who was previously in the third talaq, namely by requiring the wife to remarry another man without being accompanied by an element of coercion and intentionality in her marriage because she wants to obtain the referral conditions from her former partner to be able to remarry her ex-husband. Suppose you look at the references and talaq according to the laws and regulations that apply in Indonesia. In that case, talaq that is pronounced or not done in front of a court session, is declared invalid and invalid because in the laws and regulations to perform talaq must be done before a court session (Article 115 of the Compilation of Islamic Law and Article 39 paragraph (1) of the Marriage Law).

Implementing referrals after talaq three outside the court still occurs a lot in society. After all, the public's understanding of divorce law has different opinions, such as that of the Marriage Law and the Compilation of Islamic Law, making the divorce process more difficult because it emphasizes that marriage is eternal. Meanwhile, in Islamic law in the view of scholars of the four schools, the husband can do talaq anywhere and anytime without involving the state in the complicated process.

Credit Authorship Contribution

Nita Azita Zein: study design, investigation, draft preparation, supervision.
Imam Yazid: study design, resources provision, review, editing, Heri Firmansyah: Method.

Declaration of Competing Interest

The authors declare no competing

interests related to this study. No financial or personal conflicts of interest are present.

Data Availability

Data are not available for sharing.

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