

The Determination of *Ṭalāq* Timing: A Comparative Study Between the Compilation of Islamic Law and the *Shafi'i* School Scholars

Alfi¹, Imron Choeri², Amrina Rosyada³

^{1,2,3}Universitas Islam Nahdlatul Ulama Jepara, Indonesia

Correspondence Email: alfialmush@gmail.com

Abstract

This study examines the differences in the determination of the timing of *ṭalāq* between the Compilation of Islamic Law (KHI) – as a codified representation of Islamic law in Indonesia and the views of classical scholars, particularly those of the *Shafi'i* school. The focus of the study lies in how each legal system defines the moment when *ṭalāq* is considered valid and legally effective, as well as its legal implications on the rights of husbands and wives and the integrity of the family institution. This research adopts a juridical-normative approach and applies a descriptive-analytical method, drawing from literature reviews of classical *fiqh* texts, statutory regulations, and relevant scholarly journals. The findings indicate that, according to the *Shafi'i* school, *ṭalāq* is considered to take effect immediately upon the husband's pronouncement of a valid *ṭalāq*, whether expressed explicitly (*ṣarīḥ*), which requires no accompanying intention, or implicitly (*kināyah*), which must be accompanied by intent. In this context, the legal effect of *ṭalāq* does not depend on court proceedings or administrative registration; rather, it hinges on the husband's verbal expression and intention as the substantive conditions for validity. Conversely, under the KHI, *ṭalāq* is only deemed valid if it is formally declared by the husband before a panel of judges during a Religious Court session. Any *ṭalāq* pronounced outside this official mechanism, such as privately or informally, has no legal standing, even if stated verbally by the husband. This divergence reflects a shift in legal paradigms: from a substantive-textual approach in classical jurisprudence to a formal-procedural approach in contemporary, institutionalized Islamic law. The KHI emphasizes women's protection and legal certainty within the household, while the *Shafi'i* school focuses more on the authority of the husband and the spiritual-legal meaning of *ṭalāq*. Therefore, this study highlights the importance of harmonizing classical *fiqh* values with the demands of modern legal frameworks, ensuring that Islamic law remains contextual, just, and responsive to the evolving dynamics of contemporary society.

Keywords: *Ṭalāq* Timing, Compilation of Islamic Law, *Shafi'i* School.

Introduction

Divorce is one of the social events that has a major impact on the structure of family and community life. In the Islamic context, the most well-known form of divorce is *Ṭalāq*, which is the termination of the marital relationship carried out by the

husband against his wife with or without a clear reason. Although allowed in Islamic law, Ṭalāq is seen as an act that is hated by Allah, as the Prophet PBUH said,

أَبْغَضُ الْحَالِ إِلَى اللَّهِ الطَّلَاقُ

“The halal thing that Allah hates the most is Ṭalāq”. This reflects that although Ṭalāq is allowed, it is not the preferred way to resolve domestic conflicts.

Terminologically, Ṭalāq means the release of the marriage bond with certain words spoken by the husband to his wife. In classical Islamic law, there are different types of Ṭalāq, such as Ṭalāq raj’i and Ṭalāq ba’in, each with different legal consequences (Ash-Syirazi, 2009: 365). Meanwhile, in the context of positive law in Indonesia, Ṭalāq must be submitted to the Religious Court and is invalid if it is done unilaterally without going through a legal process (Ministry of Religion of the Republic of Indonesia, 2010: 78). This shows the integration between Islamic law and the state judicial system in regulating divorce issues, especially divorces that occur among Islamic communities.

The underlying integration between the opinions of classical scholars and modern Islamic law regarding Ṭalāq is the need to adapt fiqh norms to contemporary social and legal dynamics. Classical scholars generally rely on normative texts (*Nash*) in determining the laws of Ṭalāq, such as the Qur’an and Hadith, which are strengthened through *ijtihad* from scholars of the schools of fiqh. However, in the modern context, this approach needs to be aligned with the principles of substantive justice, the protection of women’s rights, and the formal and institutional legal system of the state.

One of the bases of this integration is the spirit of the goals of the Shari’a (*maqasid al-syari’ah*), which emphasizes the protection of the soul (*nafs*), Sense (*‘aql*), treasure (*Mall*), the chain round (*NASL*), and religion (*religion*). In the case of Ṭalāq, this approach encourages divorce not to be carried out arbitrarily, but through a fair and measurable legal process (Zarkasyi, 2018: 89). Modern Islamic law later adopted this approach by requiring the filing of Ṭalāq through the courts to ensure protection for all parties, especially wives and children.

One of the main challenges in understanding classical Islamic law is to separate the historical context from the underlying universal principles. Classical scholars established laws based on the social conditions of the people of their time. In this regard, the study of Ṭalāq timing requires attention to how the context influences their interpretation, particularly on issues such as women’s protection, emotional recovery, and family order. On the other hand, contemporary Islamic law faces the demand to be more adaptive to the conditions of today’s society.

In addition, another important factor is the development of contemporary Islamic legal thought that is more contextual and responsive to social realities. Muslim scholars such as Muhammad Hashim Kamali and Khaled Abou El Fadl pushed for the reinterpretation of classical laws to better align with human rights and gender justice

values (Rohmana, 2019: 203). In Indonesia, this integration is manifested in the Compilation of Islamic Law (KHI), which does not strictly follow classical jurisprudence but also considers the principles of social welfare and justice (Hasanah, 2021: 45).

This integration is also strengthened by the need for states to create a uniform legal system and ensure legal certainty. Therefore, *Ṭalāq* is not only a religious matter, but also a public issue that requires formal legal regulation. In this case, Islamic law does not stand alone, but is contextualized so as not to conflict with the constitution and human rights principles (Nasution, 2020: 117).

This comparative study aims to compare the views of classical scholars, especially scholars of the Shafi'i School, regarding the determination of *Ṭalāq* time with a more contextual contemporary approach. This study is not intended to contradict the two, but rather to find common ground that can be the basis for the development of relevant and applicable Islamic law in the modern context. Thus, this research is expected to be able to provide benefits to the community at large, especially in the field of Islamic family law.

In this study, the literature of classical scholars, especially scholars of the Shafi'i School, will be studied in depth to understand the meaning and basis of *Ṭalāq* law and the determination of *Ṭalāq* time itself. In addition, contemporary opinions from modern scholars will also be presented as alternative perspectives that are relevant to the development of the times. This approach allows for a holistic analysis, both normatively and contextually.

Research Methods

Ṭalāq is one of the Islamic legal institutions that applies as a termination of the marriage relationship carried out by the husband to his wife with conditions that have been regulated by Sharia and positive law. This legal tradition has its basis in the Qur'an and Sunnah and is an integral part of the Islamic legal system. This research explores the theological and juridical foundations of *Ṭalāq* time, the philosophical reasons behind it, and its relevance in the reality of modern society. This study uses a qualitative method with a comparative approach, which compares the perspective of classical scholars with the development of contemporary Islamic law related to the determination of *Ṭalāq* time.

The theological-normative approach is used to trace the basis of *Ṭalāq* law in the Qur'an and Hadith by examining the interpretation of classical scholars and the jurisprudence that developed, especially the scholars of the Shafi'i School. Meanwhile, a juridical approach is applied to examine the rules for determining *Ṭalāq* time in the Islamic legal system in the Compilation of Islamic Law (KHI) in Indonesia.

In collecting data, this study uses a literature study method by examining classical fiqh books such as *Al-Muhadzdzab* (Asy-Syirazi), *Al-Fiqhu Al-Islami* (Zuhaili),

and *Al-Majmu'* (Imam Nawawi), as well as modern Islamic law regulations that regulate the determination of Ṭalāq time. In addition, an analysis was carried out on the results of previous research and academic journals.

Data analysis was carried out using the content analysis method (*content analysis*), which aims to explore the theological and philosophical meaning of the determination of Ṭalāq time based on the main sources of Islam. Furthermore, the comparative analysis method is used to see the difference between the views of classical scholars and the implementation of contemporary Islamic law related to the determination of Ṭalāq time. With this analysis, the study can explore the relevance of Ṭalāq time in modern social, cultural, and legal contexts, as well as identify opportunities for reinterpretation of Ṭalāq time-determination rules more in accordance with the principles of justice in Islam without eliminating the basic values that underlie them.

Through a critical analysis of classical literature and the study of modern Islamic law, this study found that classical scholars' interpretation of Ṭalāq timing was greatly influenced by their socio-cultural context, especially regarding the protection of nasab and emotional recovery. On the other hand, modern reinterpretations emphasize the importance of considering aspects such as women's well-being, gender justice, and the complexities of contemporary social life. The results of this research are expected to contribute to the academic discourse on the flexibility and relevance of Islamic law in answering the challenges of the times, as well as encourage the development of *ijtihad* that is more adaptive and responsive to the needs of Muslims in the modern era.

Discussion

Ṭalāq

1. Definition of Ṭalāq

Etymologically (*lughawi*), Ṭalāq comes from the Arabic word Ṭalāq (الطلاق), which means to release a bond or set something free. In its use, this word refers to the act of releasing a wife from the bonds of marriage with her husband, just as a person releases an animal from its bonds (Az-Zubaidi, 2001: 224). This word is also often juxtaposed with the concept of "freedom" or "decision" in the context of social relations.

Terminologically (*Invasion*), Ṭalāq is defined by the scholars of jurisprudence as the termination of the marital relationship between a husband and wife with certain remarks made by the husband or the party who represents him, either explicitly (*Sharīh*) or implicit (*Kinayah*), in accordance with the provisions of sharia law (Ash-Syirazi, 2009: 365). This definition includes the main elements such as the subject (husband), object (wife), statement of Ṭalāq (pronouncement of Ṭalāq), and fulfillment of the requirements of Sharia.

The schools of jurisprudence, although they differ in details, agree that *Talāq* is the right of the husband but must be carried out within the framework of shari'i, especially regarding the wife's time, intentions, and condition. For example, in the Shafi'i Madhhab, a husband is not allowed to impose *Talāq* when his wife is menstruating or in a holy period after being married (An-Nawawi, 2003: 141). This aims to avoid emotional decisions that harm the wife.

From the above definition, *Talāq* can be interpreted as a form of termination of the marriage relationship, which is specifically regulated in Islamic law. It is the right that the husband has in shari'a to terminate the marriage bond, for a specific reason or without reason, although its implementation is still limited by certain conditions in the sharia and modern positive law.

2. Legal Basis of *Talāq*

a. The Qur'an

Talāq is an important institution in Islamic family law that allows the husband to legally terminate the marital relationship, with terms and conditions that have been stipulated in the main sources of Islamic law and accommodated in positive law in various Muslim countries, including Indonesia. Although normatively, *Talāq* is something halal, Islamic sharia places various restrictions to maintain justice and avoid abuse of rights by the husband.

The main legal basis of *Talāq* comes from the Qur'an, the holy book which is the highest legal guideline in Islam. Among the verses that clearly discuss *Talāq* is Surah Al-Baqarah : 229, which states:

الطَّلَاقُ مَرَّتَيْنِ فَاِمْسَاكِ بِمَعْرُوفٍ اَوْ تَسْرِيْحُ بِاِحْسَانٍ

"Talāq (which can be referred to) is twice. (After that) The husband can detain (refer) in a proper manner or release (divorce) well..."

This verse not only confirms the existence of *Talāq* but also outlines that *Talāq* must be carried out gradually and considerately, with good treatment of the wife. *Talāq* is not an impulsive act, but a legal decision that has a social and spiritual impact (Quraish Shihab, 2002: 456).

Another verse that is often used as a reference in performing *Talāq* is Surah At-Talāq: 1, which reads:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ

"O Prophet, if you divorce your wives, divorce them when they have their iddah (righteous), and calculate the time of iddah..."

The above verse shows that divorce is permissible, but it cannot be done carelessly. The time and manner of *Talāq* must be carefully considered, and the rights of the wife, such as the iddah period, must be fulfilled fairly (Ministry of Religion of the Republic of Indonesia, 2010: 231).

b. Al-Hadith

Hadith, as a second source in Islam, also strengthens the provisions of the implementation of *Ṭalāq*. there is a hadith of the Prophet Muhammad that explains the abilities and at the same time confirms Allah's hatred for the implementation of *Ṭalāq*. The hadith is:

أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ

"The halal thing that Allah hates the most is *Ṭalāq*." (H.R. Abu Dawud)

This hadith describes the duality of the law of *Ṭalāq*, legally permissible (halal), but morally and ethically, it is an act that is displeasing to Allah. Therefore, the Prophet PBUH views that *Ṭalāq* must be taken as the last step after there is no longer a path of reconciliation between husband and wife (An-Nawawi, 2003: 147).

c. Positive Law in Indonesia

In the Indonesian context, *Ṭalāq* is regulated through a national legal system that combines sharia principles with modern legal mechanisms. The basis of *Ṭalāq* law in Indonesia is contained in:

- 1) Law No. 1 of 1974 concerning Marriage, especially Article 38, which states that marriage can be dissolved due to divorce, death, or court decision.
- 2) The Compilation of Islamic Law (KHI), Article 117 states: "*Ṭalāq* is a vow of the husband before the Religious Court, which is one of the causes of the breakdown of the marriage."

With this provision, Indonesia's positive law affirms that *Ṭalāq* is invalid if it is only pronounced outside the court. The goal is to ensure that the rights of women and children affected by divorce remain protected by law (Hasanah, 2021: 49). The state has the responsibility to regulate the *Ṭalāq* process so that it does not become a tool of unilateral power from the husband, but rather as a legal decision that is structured and legally accountable.

3. Terms and Principles of *Ṭalāq*

In Islamic jurisprudence, *Ṭalāq* is a legal action that has special provisions so that it is valid and enforceable. For this reason, Islamic law has stipulated a number of pillars and conditions that must be met in order for *Ṭalāq* to be considered valid and have legal consequences. Rukun is related to the main elements that must be present in the *Ṭalāq* process, while the conditions are related to the validity and effectiveness of its implementation. If the harmony is incomplete or the conditions are not met, then *Ṭalāq* is not valid under Sharia law.

a. Conditions of *Ṭalāq*

To ensure validity and justice in its implementation, the scholars set a number of conditions that must be met. These conditions are divided into several aspects

related to husbands, wives, as well as the time and circumstances when *Ṭalāq* is imposed.

1) Conditions Related to Husband.

a) Reason and Puberty

Ṭalāq imposed by a minor or a senseless person (such as a crazy person or a heavy drunkard) is not valid. This is because *Ṭalāq* is a legal action that requires awareness and responsibility. "*Ṭalāq committed by a madman is invalid because he does not have legal awareness*" (Zuhayli, 2007: 499).

b) Voluntary

Ṭalāq that is carried out under duress or pressure is not considered valid according to the majority of scholars. "*Ṭalāq that is pronounced because it is forced has no legal validity, because it is not born from the free will of the perpetrator*" (Ash-Syirazi, 2009: 371).

c) Full Awareness

The husband should not be in a state of extreme anger that takes away consciousness or control of common sense. "*Ṭalāq that is imposed in a state of severe anger that closes the mind can be considered invalid*" (Rohmana, 2019: 210).

2) Conditions Related to Wives.

a) Still A Legal Wife

Ṭalāq does not apply if it is imposed on a woman who is not married, has been rejected three times, or has been divorced with *Ṭalāq ba'in* and has not married a new husband. "*Ṭalāq only applies to wives who are still legally valid, not to foreign women or those who are already ba'in*" (An-Nawawi, 2003: 154).

b) Not in a Menstruating State

Imposing *Ṭalāq* in this situation is called *Ṭalāq bid'i* and is prohibited, although the majority of scholars consider it to be legally valid. "*Ṭalāq bid'i includes Ṭalāq that is not following the Shari'a, such as Ṭalāq that is imposed during menstruation*" (Hasanah, 2021: 53).

3) Conditions and Time Requirements.

a) Performed in a Sacred State and Not Mixed

This is following the Sunnah of the Prophet to give space to the process of reference and clear thinking. "The right time for *Ṭalāq* is when the wife is in a state of purity and has not been married" (Zuhayli, 2007: 500).

b) Do not impose *Ṭalāq* three at once.

This practice, although considered legitimate by the majority of scholars, was condemned as contrary to the principle of prudence and opened the door to

regret. "Imposing three Ṭalāqs at once is makruh tahriman and contrary to the Prophet's method" (Mutmainnah, 2020: 118).

The conditions of Ṭalāq in Islam are designed to ensure that divorce is not an act that is done in a hurry, emotionally, or out of control. Islam emphasizes prudence, justice, and the preservation of women's rights. With this condition, Islam regulates Ṭalāq to remain within the corridor of Sharia and social ethics.

b. Rukun Ṭalāq

In addition to the conditions, harmony is also a part that must be fulfilled as a determinant of the validity and or non-viability of Ṭalāq. Therefore, for Ṭalāq to be considered valid and have legal consequences, it must fulfill its basic elements, called the pillars of Ṭalāq. Scholars from various schools have compiled the pillars of Ṭalāq based on established fiqh principles. Generally, scholars mention the four main pillars in Ṭalāq, namely husband, wife, Ṭalāq, and intention.

1) Husband

The first pillar is the party that imposes Ṭalāq, namely the husband. He must have the status of a legal husband of the wife who will be divorced. A man who is not bound by marriage is not authorized to impose Ṭalāq. In addition, the husband must have the legal capacity, namely, common sense and puberty. Ṭalāq imposed by a madman or a small child is considered invalid because it does not have an intact legal will. "Ṭalāq is invalid if it is imposed by an unreasonable person, such as a child and a madman, because it does not fulfill the elements of a legitimate will in legal acts" (Zuhayli, 2007: 499).

2) Wife

The second pillar is the wife who is the object of Ṭalāq. She must be a legally valid wife, i.e. still in a marriage bond that has not yet ended. Ṭalāq cannot be imposed on women who are not married or who have been divorced ba'in (Ṭalāq three) and are not married to another man. "Ṭalāq does not apply to a woman who is not his wife, either because she is not married or because she has been Ṭalāq ba'in" (An-Nawawi, 2003: 154).

3) Lafaz Ṭalāq

The third pillar is speech or reciting Ṭalāq. In practice, the pronunciation of Ṭalāq is divided into two types:

- a) Sharih (clear), such as saying "I divorce you" or "You are rejected." In this form, Ṭalāq is valid without the need for an intention because the pronunciation is already explicit.
- b) Kinayah (sarcasm), such as "Go back to your parents' house" or "You are not my wife anymore." In this form, the validity of Ṭalāq depends on the intention of the perpetrator. "The sharih recitation shows the meaning of

Ṭalāq directly and does not require intention. Meanwhile, the recitation of kinayah requires the intention to be punished as *Ṭalāq*" (Hasanah, 2021: 54).

4) Intention

The fourth pillar, namely intention, becomes important when the utterance of *Ṭalāq* is pronounced in the form of kinayah. The husband must intend to divorce his wife; if not, then *Ṭalāq* is invalid. However, if the pronunciation is sharih, then *Ṭalāq* is still valid even without intention. "Intention is a requirement in the recitation of kinayah because not all insinuations contain the intention of *Ṭalāq*. Meanwhile, in the pronunciation of sharih, a firm meaning is sufficient" (Rohmana, 2019: 209).

The four pillars of *Ṭalāq* above are essential components for the divorce process to be legal under Islamic law. Each pillar has an important function in ensuring that *Ṭalāq* decisions are made consciously, legitimately, and responsibly. With the defect of one of the pillars, *Ṭalāq* cannot be legally enforced. This shows that although Islam opens the path of *Ṭalāq* as a last resort, the process is still closely monitored so that it is not abused.

4. Various Types of *Ṭalāq*

In Islamic law, *Ṭalāq* has a fairly complex classification. This classification is compiled based on several criteria, such as the form of pronunciation, the time of implementation, and its legal effect on the marital relationship. This classification is important because it has implications for the possibility of referral, the status of the wife after *Ṭalāq*, and the validity of the marital relationship in the future. In general, scholars divide *Ṭalāq* into several classifications as follows:

a. *Ṭalāq*, according to the reference classification, after the *Ṭalāq* is imposed.

1) *Ṭalāq Raj'i*

Ṭalāq raj'i is *Ṭalāq* imposed by a husband on his wife who has been married, but has not reached the third *Ṭalāq*. In this type of *Ṭalāq*, the husband still has the right to refer his wife during the iddah period without a new contract. *Ṭalāq raj'i* is considered a form of *Ṭalāq* that still opens up opportunities for domestic reconciliation (Ash-Syirazi, 2009: 368).

2) *Ṭalāq Ba'in*

On the other hand, *Ṭalāq ba'in* does not give the husband the right to refer except through the conditions following the two divisions of *Ṭalāq ba'in* as follows:

a) *Ba'in Shugra*

That is, the fall of *Ṭalāq* one or two, but the wife has never been married or *Ṭalāq* has been dropped before the marriage is consummated. Referrals can only be carried out with a new contract and dowry.

b) *Ba'in Kubra*

It is *Ṭalāq* imposed by the husband as triple *Ṭalāq*. In this case, the husband cannot refer to his wife unless the wife is married to another man and there has been a legal marital relationship, then divorced again (Quraish Shihab, 2002: 462).

b. *Ṭalāq* According to the Classification of Pronunciation or Form of *Ṭalāq* Speech.

1) *Ṭalāq Sharīh*

It is *Ṭalāq* that is pronounced in firm words and directly points to the meaning of divorce, such as "I divorce you" or "You are talatala." This *Ṭalāq* is considered valid even if it is not accompanied by an intention, because the pronunciation is clear and does not raise doubts (An-Nawawi, 2003: 151).

2) *Ṭalāq Kinayah*

It is *Ṭalāq* that is spoken with words that may or may not have the meaning of divorce, such as "Go home to your parents" or "We are no longer compatible." In this case, *Ṭalāq* is only valid if it is accompanied by the intention of husband to divorce (Zuhayli, 2007: 495).

c. *Ṭalāq* According to the Classification of the Conformity of the Implementation of *Ṭalāq* with the Sunnah of the Prophet.

1) *Ṭalāq Sunnī*

It is *Ṭalāq* that is carried out according to the guidance of the Shari'a, which is imposed when the wife is in a holy state, has not been married during the holy period, and is done once. This *Ṭalāq* is recommended because it provides an opportunity to refer during the iddah period and avoid emotional losses (Hasanah, 2021: 52).

2) *Ṭalāq Bid'i*

It is *Ṭalāq* that is not following the guidance of the Shari'a, such as imposing *Ṭalāq* when the wife is menstruating or during the holy period after being married, or imposing three *Ṭalāqs* at once. Although it is legally punished according to the majority of scholars, *Ṭalāq bid'i* is one of those that is hated and violates the ethics of divorce in Islam (Rohmana, 2019: 207).

d. *Ṭalāq* according to the classification of divorce initiatives.

1) *Ṭalāq Mubarat*

It is *Ṭalāq* that occurs by the agreement of a husband and wife, where both feel uncomfortable and agree to separate. Usually, this *Ṭalāq* is carried out with certain compensation from the wife (Mutmainnah, 2020: 116).

2) *Khulu'*

This type of *Ṭalāq* occurs at the request of the wife by compensating the husband (for example, the return of dowry). In *khulu'*, the initiative for divorce

comes from the wife, but it must still be through the husband's or the court's approval (Zuhayli, 2007: 510).

The classification of the various *Ṭalāqs* above shows that Islamic law is very detailed in regulating domestic matters, not only giving space to the husband but also protecting the rights of the wife and family. In the modern context, understanding these types of *Ṭalāq* is important to ensure that the implementation of *Ṭalāq* is not abused and remains within the framework of justice, which is the main goal of Sharia.

Determination of *Ṭalāq* Time According to The Compilation of Islamic Law

In the Indonesian Islamic legal system, the regulation of *Ṭalāq* does not only refer to classical fiqh law, but is also adjusted through national legislation, one of which is the Compilation of Islamic Law (KHI), which was stipulated through Presidential Instruction No. 1 of 1991. KHI contains technical rules for the implementation of Islamic law, including the time of imposition and the validity of *Ṭalāq*. This is important to ensure the protection of women and order in the administration of family law.

According to Article 117 of the KHI, *Ṭalāq* is considered valid and falls only if it has been pronounced in front of a religious court session by the husband: "*Ṭalāq* can only be done in front of the Religious Court that examines divorce cases." This is different from classical jurisprudence, which basically allows the husband to pronounce *Ṭalāq* orally outside of court, even in a private setting. However, in the Indonesian context, *Ṭalāq* that is not carried out in court has no legal force and is not considered to fall officially. "This article shows that KHI adheres to a positive legal approach that requires all administrative divorces to be carried out through state institutions" (Hasanah, 2021: 56).

Furthermore, Article 119 of the KHI states that after the husband applies for a *Ṭalāq* pledge to the court, he is given time to pronounce his *Ṭalāq* in front of the court. If, within 6 months from the determination of the application for *Ṭalāq*, a pledge is not made, then the husband's right to impose *Ṭalāq* based on the application is lost. "*If the husband does not pledge Ṭalāq within 6 months after the application is granted, then the right is lost.*" This provision shows that the determination of *Ṭalāq* time according to KHI is highly dependent on two legal moments:

1. Submission of Application to the Court
2. A Brief Introduction in Front of the Congregation

Ṭalāq is not considered to fall when the husband intends or pronounces it privately, but when it is pronounced officially before the judge. This provides legal certainty for the wife and children, and prevents unilateral manipulation of *Ṭalāq*. "*This system provides legal protection to women so that they do not become victims of unilateral Ṭalāq carried out secretly by their husbands*" (Rohmana, 2019: 212).

With this mechanism, the Compilation of Islamic Law has codified Islamic family law that prioritizes the protection of women, neat administration, and legal proceduralism. This means that even if a person religiously pronounces *Ṭalāq*, as long as it is not done in front of a judge, the legal status of marriage is still considered valid according to the state. "The imposition of *Ṭalāq* does not necessarily have a legal impact if it does not go through the official channels of religious courts, following the principle of legality" (Mardani, 2014: 88).

The determination of the time of the fall of *Ṭalāq* according to KHI confirms that Islamic law in the Indonesian context has been institutionalized through the judicial system. *Ṭalāq* is only valid and is considered legally binding if it is carried out in front of a religious court session. This is a form of reconstruction of classical Islamic law to be in harmony with the principles of modern justice, women's protection, and orderly administration of family law.

The Determination of the Time of *Ṭalāq* According to the Views of the Scholars of Madzhab Shafi'i.

In classical Islamic jurisprudence, especially in the view of scholars of the Shafi'i School, *Ṭalāq* is a form of legal statement that can be immediately effective if it meets the conditions and harmony. Unlike the modern Islamic legal system in Indonesia, which requires court validity, classical scholars stipulate that *Ṭalāq* is considered to fall (valid and valid) when the husband pronounces the qualified *Ṭalāq*, without having to go through a certain institutional process.

According to the Shafi'i School, *Ṭalāq* falls immediately after the husband pronounces the valid *Ṭalāq*, both with the sharīh and kinayah words, accompanied by intention. This means that there is no need for witnesses, recordings, or endorsements from other parties. "The *Ṭalāq* falls from the moment the husband pronounces it with a valid pronunciation according to the sharia, it is not required to have the consent or presence of the wife" (An-Nawawi, 2003: 157).

Ṭalāq with sharīh words such as "*Anti thaliq*" (You are rejected) is immediately valid even without intention, and is considered to fall at that very moment. Meanwhile, *Ṭalāq* with kinayah words, such as "*Go back to your parents' house*," is only considered to fall if it is accompanied by the intention of husband to divorce. "If a husband says to his wife with the recitation of kinayah and she intends *Ṭalāq*, then *Ṭalāq* falls at that very moment; if there is no intention, then *Ṭalāq* does not occur" (Ash-Syirazi, 2009: 372).

In addition, the Shafi'i school also discusses *Ṭalāq mu'allaq* (conditional *Ṭalāq*), which is *Ṭalāq* that depends on an event or future condition. In this case, *Ṭalāq* does not fall at the time of utterance, but when the stated conditions are met. For example, if a husband says, "*If you leave the house, then you will be rejected*." In this case, *Ṭalāq* is considered to fall not at the time of pronunciation, but when the wife leaves the house.

“Ṭalāq mu’allaq falls when the conditions are met, not when it is pronounced. Therefore, the time of the fall of Ṭalāq follows the realization of these conditions” (Zuhayli, 2007: 507).

The Shafi’i school also recognizes the validity of *Ṭalāq* even though it is imposed under certain circumstances, for example, when angry or emotional, as long as the husband is still conscious and can control himself. However, if the anger has eliminated consciousness, then *Ṭalāq* is not considered to have fallen. *“Ṭalāq imposed in a state of anger is still valid, unless the anger is to the point of eliminating common sense, then it is not considered” (Rohmana, 2019: 210).*

In the view of the scholars of Madzhab Shafi’i, there is no need to pronounce *Ṭalāq* in front of a judge or religious authority. *Ṭalāq* can be valid even if it is done privately at home, even without the presence of the wife. This shows that the timing of *Ṭalāq* in the Shafi’i School relies heavily on pronunciation and intention, not on formal recording or procedures. *“In Shafi’iyyah, Ṭalāq falls with speech, without the need for the approval of the state or other authorities. This is different from a positive legal system based on administration” (Mutmainnah, 2020: 119).*

The determination of the time of the fall of *Ṭalāq* according to the Shafi’i School is direct and automatic once the husband pronounces it with a valid pronunciation. This is in contrast to the modern Islamic legal approach, such as in the Compilation of Islamic Law, which emphasizes legal administration and formality. The Shafi’i School approach emphasizes the substance of the contract and the seriousness of the intention of the perpetrator, which is in accordance with the characteristics of classical fiqh oriented towards *personal accountability*.

Comparative Study on the Determination of the Timing of *Ṭalāq* According to the Compilation of Islamic Law and the Views of Shafi’i School Scholars

Ṭalāq is a form of termination of the legal relationship between husband and wife in Islamic law, which has a private and public dimension at the same time. In practice, the time of the fall of *Ṭalāq* is important because it concerns the legal rights of the spouse, the period of iddah, referral, and the child’s nasab. The Compilation of Islamic Law (KHI) as a positive law in Indonesia and the view of the Shafi’i School as a representation of classical fiqh have quite different approaches regarding when *Ṭalāq* is considered to fall and is legally valid.

To make it easier to understand the location of the difference of opinion about the determination of *Ṭalāq* time, the root of the difference, and its legal implications according to the Compilation of Islamic Law and the views of Madzhab Safi’i, it will be described according to several classifications. As follows:

1. Differences of opinion about the determination of *Ṭalāq* time.

According to KHI, *Ṭalāq* is considered to be legally valid only when pronounced by the husband in front of a Religious Court session. This is regulated in Article 117 of the KHI: *“Ṭalāq can only be done in front of the Religious Court that examines divorce cases.”* This means that even though the husband pronounces *Ṭalāq* outside the court, the *Ṭalāq*

has not been recognized by state law. This provision shows that KHI emphasizes more on administrative aspects and legal formalities, as a form of protection for the wife and efforts to avoid *Ṭalāq* that is carried out carelessly. *"KHI stipulates that Ṭalāq has no legal force until the husband pronounces it in front of the judge, to ensure the order of law and protection of women"* (Hasanah, 2021: 56). Such *Ṭalāq* is even considered to have no legal force. Article 119 of the KHI even states that if the husband does not pronounce *Ṭalāq* in front of the court within six months after the application is granted, the application is null and void, and *Ṭalāq* cannot be carried out on that basis. *"This provision shows that the state places the court as the sole institution that is authorized in declaring the fall of Ṭalāq legally"* (Mardani, 2014: 89).

Meanwhile, scholars of the Shafi'i School are of the view that *Ṭalāq* is valid and immediately falls from the moment it is pronounced by the husband with a valid pronouncement, both *sharih* and *kinayah* with intention. No confirmation of the judge or the presence of witnesses is required. *"In Shafi'iyyah, Ṭalāq falls from the moment it is pronounced, even if it is pronounced at home and not in front of a wife or judge, as long as the recitation is valid"* (An-Nawawi, 2003: 157). In Shafi'i fiqh, the private pronouncement of *Ṭalāq* remains valid and has legal consequences, such as the beginning of the *iddah* period and the prohibition of referring after *Ṭalāq* three. Even if it is said without the wife's knowledge, *Ṭalāq* still falls. *"Ṭalāq performed privately is still legally binding according to the Shafi'i School, even though the wife did not know it at that time"* (Zuhayli, 2007: 502).

2. The Root of the Difference.

The main difference between KHI and the Shafi'i School comes from the context of the application of law, namely the difference taken from the Contextual and Textual application.

The Shafi'i school is oriented to the texts (*nash*) and *ijma'* of classical scholars that are individual and private, where the law of *Ṭalāq* emphasizes more on the will and speech of the husband as the main actor.

Meanwhile, KHI, as a codification of Islamic law in Indonesia, is legal-formal, adopting a modern state of law approach and emphasizing the protection of women's rights and administrative order. *"KHI represents the transformation of classical Islamic law into a national law based on the principles of legality and the protection of civil rights"* (Rohmana, 2019: 213).

3. Legal Implications.

Differences of opinion caused by different contexts of the application of different laws result in consequences on differences in legal implications that are very significant.

According to the Shafi'i School, the wife's rights related to *iddah*, referral, and alimony can run immediately after the recital of *Ṭalāq* is pronounced and has met the requirements and harmony of *Ṭalāq*. A *muadian* wife is no longer permissible for her husband.

Meanwhile, according to KHI, these rights only take effect after the determination of Ṭalāq by the court, so that if the husband divorces his wife orally without legal process, then the wife is not considered a widow under state law, and has no basis to claim alimony, iddah, or *mut'ah*.

Conclusion

Based on the discussion that has been described earlier, it can be concluded that the determination of the timing of Ṭalāq in Islamic law experiences significant differences between the classical fiqh approach, especially the Shafi'i School, and the modern Islamic legal approach codified in the Compilation of Islamic Law (KHI) in Indonesia.

The Shafi'i school, as a representation of classical scholarly thought, places Ṭalāq as a direct and personal legal action. Ṭalāq is considered to fall and has legal consequences as soon as the husband pronounces the valid Ṭalāq, both sharih and kinayah accompanied by intention, without the need to go through formal institutions such as the court. This view is based on the principle that Ṭalāq is the prerogative of the husband which can be done anytime and anywhere, as long as it meets the conditions and harmony. Therefore, the determination of Ṭalāq time in this madhhab is textual and substantive, oriented to the pronouncement and intention of the perpetrator.

Meanwhile, the Compilation of Islamic Law as a positive law in Indonesia emphasizes that Ṭalāq can only be considered valid and falls if it is pronounced by the husband in front of the Religious Court session. This provision is explicitly regulated in Article 117 and Article 119 of the KHI, which emphasizes that Ṭalāq carried out personally or orally without going through the judicial process has no legal force. This is a form of contextual institutionalization of Islamic law, aiming to create legal certainty, protection of women, and administrative order in the realm of Islamic family law in Indonesia.

From this comparison, it can be seen that the fundamental difference between the two approaches lies in the starting point; classical fiqh emphasizes intention and utterance as the essence of the validity of Ṭalāq, while KHI emphasizes legal and state administrative procedures as a condition for the validity of Ṭalāq. Thus, the integration between the two becomes important in formulating contemporary Islamic legal practices that remain rooted in sharia but are also responsive to the needs of social justice and the modern legal system.

This conclusion shows that Islamic law is dynamic and contextual, thus allowing for the reinterpretation and reformulation of rules such as the determination of Ṭalāq time to respond to the challenges of the times, especially in guaranteeing women's rights and distancing society from arbitrary divorce practices.

With a holistic and contextual approach, Islamic law can continue to be a guideline that maintains a balance between the principles of sharia and the needs of modern society. This research is expected to be the basis for the development of Islamic legal policies that are fair and responsive to the needs of the wider community, especially in the field of Islamic family law.

Bibliography

- An-Nawawi. dan Yahya bin Syaraf. (2003). *Raudhah at-Talibin wa Umdah al-Muftin*. Beirut: Dar al-Fikr.
- Asy-Syirazi. dan Ishaq. (2009). *Al-Muhadzdzab fi Fiqh al-Imam al-Syafi'i*. Beirut: Dar al-Fikr.
- Az-Zubaidi. dan Muhammad Murtadha. (2001). *Taj al-'Arus min Jawahir al-Qamus*. Beirut: Dar al-Fikr.
- Departemen Agama RI. (2010). *Kompilasi Hukum Islam di Indonesia*. Jakarta: Dirjen Bimas Islam.
- Hasanah, dan Siti. (2021). Harmonisasi Fikih dan Hukum Positif dalam Kompilasi Hukum Islam. *Jurnal Al-Ahkam*, 31(1), 45.
- Mardani. (2014). *Hukum Perkawinan Islam di Indonesia*. Jakarta: Kencana.
- Mutmainnah. (2020). Analisis Sosial Terhadap Penyebab Perceraian di Indonesia. *Jurnal Al-Ahwal*, 13(2), 118.
- Nasution, dan Saiful. (2020). Ṭalāq dan Perlindungan Perempuan dalam Perspektif Hukum Islam dan HAM. *Jurnal Hukum Islam dan Hak Asasi Manusia*, 8(2), 117.
- Quraish Shihab. (2002). *Tafsir Al-Misbah: Pesan, Kesan, dan Keserasian Al-Qur'an*. Jakarta: Lentera Hati.
- Rohmana, dan Wahyudin Darmalaksana. (2019). Rekonstruksi Hukum Ṭalāq dalam Perspektif Keadilan Gender. *Jurnal Al-Ihkam*, 14(2), 203.
- Wijaya, M., Pratomo, B., Citta, A. B., & Efendi, S. (2025). Metodologi Penelitian: Kombinasi Pendekatan Kuantitatif, Kualitatif dan Mixed Methods. PT. Media Penerbit Indonesia.
- Zarkasyi, dan Hamid Fahmy. (2018). Maqasid al-Shariah sebagai Paradigma Integrasi Fikih dan Hukum Modern. *Jurnal Fikih Nusantara*, 5(1), 89.
- Zuhayli. dan Wahbah. (2007). *Al-Fiqh al-Islami wa Adillatuhu*. Beirut: Dar al-Fikr.