

## Wife's Consent as a Valid Condition for Reconciliation: A Juridical Study of Articles 164 and 165 of the Compilation of Islamic Law

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**Abstract:** This research discusses the issue of a wife's consent as a valid requirement for reconciliation (a legal study on Articles 164 and 165 of the Compilation of Islamic Law). It aims to determine the rights of a wife in reconciliation based on the Compilation of Islamic Law and the Islamic legal perspective on the position of a wife's consent rights in reconciliation as a valid requirement for reconciliation. To gather data on this issue, library research was conducted. The data obtained were analyzed using inductive, deductive, and comparative methods. Furthermore, a juridical-normative and juridical-theological approach was used in analyzing the data. In Islamic law, the authority to reconcile is an absolute right of the husband during the iddah period. Meanwhile, the Compilation of Islamic Law implicitly states that the consent and approval of the wife are valid requirements for reconciliation; in other words, it may be declared invalid by a ruling from the Religious Court. The text regarding the wife's rights in reconciliation, as outlined in the Compilation of Islamic Law, has a contextual meaning that enables the wife to access administrative benefits, guarantees, and legal protection from the state. Because the state only serves and recognizes the event of reconciliation if there is an authentic document in the form of a Marriage Certificate Extract. It does not annul the lawful reconciliation according to Islamic law. On the contrary, the existence of principles in Islamic law actually emphasizes the need to achieve public welfare and to reject or prevent anything that has the potential to cause harm.

**Keywords:** Reference; Wife's Consent; Legal; Compilation of Islamic Law.

### Introduction

In terms of Islamic religious tradition, marriage is an act of worship or part of the sacred teachings of religion aimed at preserving the purity, dignity, and honor of an individual, by adhering to the procedures and requirements stipulated in Islamic law. Marriage is a physical and spiritual bond between a man and a woman as husband and wife<sup>1</sup>, with the purpose of establishing a happy and everlasting family (household) based on the belief in the One Supreme God.<sup>2</sup> More specifically, marriage is a term to legitimize the sexual relationship between a man and a woman, in order to achieve family happiness that is enveloped in tranquility and love that is blessed by Allah swt.<sup>3</sup>

With the enactment of marriage, it has become the only legitimate way to channel sexual desires. As Allah swt. states in Surah an-Nisa (4): 3, 'Then marry those whom you enjoy, two, three, or four. But if you fear that you will not be just, then (marry) only one or those whom your right

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<sup>1</sup> Alfonso Cardinal López Trujillo, "The Nature of Marriage and Its Various Aspects." *Ave Maria L. Rev.* 4 (2006): 297.

<sup>2</sup> Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974*, Pasal I.

<sup>3</sup> Muhammad Hori, Eliva Sukma Cipta. "The Purpose of Marriage in Islamic Philosophical Perspective." *Journal of Islamic Studies*. *Journal of Islamic Studies* 2.1 (2019): 2620-6293

hand possesses. That is more suitable that you may not incline to injustice."<sup>4</sup> Based on the excerpt of the meaning of the verse above, it provides the command to marry the women who are liked, with a maximum limit of four wives, while still considering and adjusting the individual's capability to act justly in fulfilling that trust and responsibility.

In married life, it cannot be denied that there will always be discrepancies between reality and the expectations of a marriage. In fact, in many cases, there are quite a number of couples who fail and end up taking the last resort at the court (divorce) as a last choice, truly severing their marital relationship. According to the latest data updated by the Central Bureau of Statistics (BPS), the number of divorces in Indonesia is 408,347 cases, with the highest contributing factor being ongoing disputes and quarrels at 62%, followed by economic factors at 26%, and others.<sup>5</sup>

Divorce (talak) is the dissolution of a marriage bond through clear words, for example, the husband saying to his wife, 'I divorce you,' or through insinuations where the husband intends to divorce, for example, the husband saying to his wife, 'Go to your family.'<sup>6</sup>

On the other hand, for men who have already divorced their wives but later regret the divorce, religious and legal provisions allow them to reconcile with their wives during the iddah (waiting period) that is specified. The provision states that if the marriage ends in divorce, the waiting period for those who are still menstruating is set at 3 (three) clean periods, with a minimum of 90 (ninety) days, while for those who do not menstruate, it is set at 90 (ninety) days. If the marriage ends in divorce while the widow is pregnant, the waiting period is set until she gives birth.<sup>7</sup>

Similarly, in the sources of Islamic law, the word of Allah SWT in QS. Al-Baqarah (02): 228 means, "Divorced women must wait for three menstrual periods. They are not permitted to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. Their husbands have more right to take them back during that period if they wish for reconciliation. Women have rights similar to those of their obligations in a fair manner. However, husbands have a degree of advantage over them. Allah is All-Mighty, All-Wise."<sup>8</sup> In the explanation of the verse, it is clearly stated that those who have the position and rights to perform the act of reconciliation are the husband and the wife, where the wording of the verse positions the wife as the object of reconciliation by her husband.

Based on the background that has been described, the urgency of this research is found in Islamic law, where in terms of appearance and technically, the husband has the position and right to reconcile during the iddah period, as long as the divorce that was given is a raj'i divorce, thus the husband can reconcile directly and legally. Meanwhile, in the Compilation of Islamic Law, Article 164 states that "a woman in the iddah of a raj'i divorce has the right to object to the reconciliation intention of her ex-husband in front of the Marriage Registrar witnessed by two witnesses." And in Article 165 it is also stated that "reconciliation carried out without the knowledge of the ex-wife can be declared invalid by a ruling of the Religious Court."<sup>9</sup>

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<sup>4</sup> Kementerian Agama Republik Indonesia, *Alquran*, (Bandung: Cordoba, 2021), p. 78.

<sup>5</sup> Badan Pusat Statistik, Jumlah Perceraian Menurut Provinsi dan Faktor, 2023, dalam <https://www.bps.go.id/id/statistics-table/3/YVdoU1IwVmlTM2h4YzFoV1psWkViRXhqTIZwRFVUMDkjMw=/jumlah-perceraian-menurut-provinsi-dan-faktor.html?year=2023>, 06 April 2025.

<sup>6</sup> Abu Bakr Al-Jazairi, *Ensiklopedi Islam Minhajul Islam*, Jayengkusuma, (Cet. I; Jakarta Timur: Darulfalalah, 2019), p. 780.

<sup>7</sup> Republik Indonesia, *Kompilasi Hukum Islam*, Pasal 153.

<sup>8</sup> Kementerian Agama RI, "Terjemahnya".

<sup>9</sup> Republik Indonesia, *Kompilasi Hukum Islam*, Pasal 165

Both articles implicitly state that the woman during the iddah period has the right and position to determine the validity of her husband's declaration of returning (*rujuk*) to her. In other words, the husband's return can be deemed invalid by a Religious Court ruling if it is made without the wife's consent.

## Method

Legally, research on the wife's consent as a condition for valid reconciliation in Articles 164 and 165 of the Compilation of Islamic Law (KHI) can use the method of normative legal research. This approach focuses on the analysis of legal texts, in this case, the Compilation of Islamic Law, as well as other primary and secondary legal sources such as related laws, jurisprudence, Islamic legal doctrines (*fiqh*), and legal theories. The objective is to gain a deep understanding of the applicable legal norms, uncover the legal foundations behind them, and identify potential gaps, ambiguities, or contradictions in the norms.

This method will involve the inventory and classification of relevant legal data, followed by a systematic interpretation of Articles 164 and 165 of the Compilation of Islamic Law, including a comparison with the views of the jurisprudential schools that underpin the compilation. Furthermore, a critical analysis will be conducted to assess whether the spirit of justice and the protection of women's rights, as mandated by the principles of sharia and human rights, has been adequately reflected in these provisions. The results of this analysis are expected to provide recommendations for the improvement or more progressive interpretation of the law regarding the wife's consent in reconciliation.

## Results and Discussion

### General Review on Referral

The term '*rujuk*' comes from Arabic; '*raja'a-yarji'u-ruju'an*' means to return or go back. Since *rujuk* is only related to divorce, the definition of *rujuk* in terms of its meaning is to restore the wife who has been divorced to her position before the divorce.<sup>10</sup> In the Great Dictionary of the Indonesian Language, '*rujuk*' refers to the return of a husband to his wife who has been divorced with one or two pronunciations of divorce, while the wife is still in the waiting period (*iddah*). Ummul Baroroh, in her book, provides an additional definition that '*rujuk*' is the return of a husband to the marital relationship with a wife who has been divorced in a revocable divorce (*raj'i*) and is carried out while the wife is still in her *iddah*.<sup>11</sup> Nadzrah Ahmad, in her research, states that technically, '*rujuk*' means a woman's return to marriage from a temporary divorce (*raj'i*) during the waiting period (*'iddah*) without appealing the marriage contract.<sup>12</sup>

From the several definitions above, it can be understood that '*rujuk*' refers to the return of a husband to his wife who has been divorced in a *raj'i* manner while the wife is still in the waiting period (*iddah*) without the need for a new marriage contract.

<sup>10</sup> Rizem Aizid, *Fiqh Keluarga Terlengkap*, (Cet. I; Yogyakarta: Laksana, 2018), p. 217.

<sup>11</sup> Ummul Baroroh, *Fiqh Keluarga Muslim Indonesia*, (Cet. I; Semarang: CV Lawwana, 2022), p. 167.

<sup>12</sup> Nadzrah Ahmad, Rahmawati Mohd Yusoff, Rohaiza Abd Rokis, Wan Mazwati Wan Yusoff, Norzulaili Mohd Ghazali, Adibah Abdul Rahim. "The Application of Reconciliation in Muslim Divorce Cases Caused by the Domestic Violence: An Analysis Between Islamic and Malaysian Law." *International Journal of Academic Research in Business and Social Sciences*, 11(10) (2021): 263-273.

The legal basis for reconciliation is found in the word of Allah SWT in QS. Al-Baqarah (02): 228.

...وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا يُوَكِّنَنَّ مِثْلَ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ ۝ الْطَّلَاقُ مَرَّتَيْنِ ۚ فَمَا مَسَاكُ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ ...

The translation: "...Their husbands have a better right to take them back during that (period) if they intend to restore (the marriage). They (the women) have rights similar to their obligations in a proper manner. However, the husbands have an advantage over them. Allah is All-Powerful and All-Wise. The (revocable) divorce is twice. (After that, the husband can) retain (the reconciliation) in a proper manner or let go (divorce) in a good way..."<sup>13</sup>

The verse above explains that a wife who has been divorced by her husband is required to abstain or undergo a waiting period of three menstrual cycles or periods of purity. This period also ensures the presence or absence of a fetus in the woman's womb post-divorce, while providing the husband with time to reflect on and consider the divorce that has been executed. If the husband does not want the divorce to proceed and wishes to rectify the situation, he is given the prerogative right or absolute position to immediately reconcile with his wife. The following verse provides a limit to husbands that the type of divorce allowed for reconciliation is the revocable divorce type, namely the first and second talak.

Similarly, in the Compilation of Islamic Law, the *raj'i* divorce is the first or second divorce, where the husband has the right to reconcile as long as the wife is in the iddah period.<sup>14</sup> And among the conditions and pillars of reconciliation are (1) The husband: Muslim, not apostate, of age, sane, based on consent;<sup>15</sup> (2) Wife: Islam, not apostate, a certain wife, if the husband divorces his wife, then he reconciles with one of them without specifying whom he is reconciling with, then that reconciliation is invalid.<sup>16</sup> Before entering the marriage, she is still in the iddah period. If the iddah period ends, a new marriage contract is required with the stipulated conditions and pillars, and it pertains to revocable divorce (first and second divorce); (3) Intention, the husband intends to reconcile with his wife as a legitimate wife. As stated in the legal maxim. *الأمر بمقاصدها* "All actions depend on their intentions or purposes".<sup>17</sup> (3) Sighat (formula), there are 2 (two) types of sighat: (a) Explicit or clear (*sharih*), for example, it is said, 'I return to my wife' or 'I reconcile with you', and (b) Through insinuation, for example 'I hold you' or 'I marry you' and so on, which are phrases that can be used for reconciliation or other purposes. The insinuation sighat refers to a formula that has meanings other than reconciliation, so when that sighat is pronounced, it still requires a statement from the husband about what he intends when uttering that sighat - whether to refer to his wife or not. It is prescribed that this wording does not involve *taqlid*, meaning it is not conditional, for

<sup>13</sup> Kementerian Agama RI, "Terjemahnya" p. 36.

<sup>14</sup> Republik Indonesia, *Kompilasi Hukum Islam*, Pasal 118

<sup>15</sup> Nadzrah Ahmad, Rahmawati Mohd Yusoff, Rohaiza Abd Rokis, Wan Mazwati Wan Yusoff, Norzulaili Mohd Ghazali, Adibah Abdul Rahim. "The Application of Reconciliation in Muslim Divorce Cases Caused by the Domestic Violence: An Analysis Between Islamic and Malaysian Law." p. 266.

<sup>16</sup> Abdul Aziz dan Tirmidzi. "Reconciliation As An Effort To Form A Peaceful (Sakinah) Family In Islamic Law Review." *Usra Jurnal Hukum Keluarga Islam* 2.2 (2021).

<sup>17</sup> Mohammad Sofi dan Tutik Hamidah. "Qawaidhul Fiqhiyyah: Sejarah dan Lima Kaidah Pokok." *Jurnal Pusaka Media Kajian dan Pemikiran Islam* 12.2 (2024): 126-140.

example: 'I reconcile with you if you want', reconciliation like this is invalid even if the wife agrees. A time-limited reconciliation is also invalid, for example: 'I reconcile with you for a month'.<sup>18</sup>

### Iddah and Its Legal Rulings

The word '*iddah*' has not been absorbed into the Indonesian Language Dictionary; linguistically, the word '*iddah*' comes from Arabic, namely from the word *al-'ādad*, which means number. The word *al-'ādad* has the same meaning as the term *al-'iṣā'*, which means count, referring to the days in the menstrual period that a woman counts. The word '*iddah*' also means the days of menstruation or the days of purity for women. Thus, '*iddah*', in terms of language, means the days counted by women.<sup>19</sup>

Terminologically, '*iddah*', according to Wahbah az-Zuhaili, is the waiting period for a woman after divorcing her husband, during which she is not allowed to remarry until the waiting period is over. As stated in the words of Allah SWT in QS. al-Baqarah/02: 228.

وَالْمُطَلَّاتُ يَرْبِضْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ

The translation: "Divorced women (must) remain in waiting for three periods (of purity or menstruation). They are not allowed to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day..."<sup>20</sup>

The verse above establishes the law that a woman who is a wife, when receiving a revocable divorce, is instructed to observe a waiting period or abstain for three menstrual cycles or periods of purity. And it is not permissible for them to conceal if there is a clot of blood (pregnancy) in their womb.

Through the translation of the Al-Maraghi tafsir book, it is stated that the husband of a woman who is divorced has the right to take her back during the waiting period (*iddah*) if he intends to reconcile and treat her well again. However, if his intention of taking her back is to harm her and prevent her from marrying someone else, he has left her in a state of limbo. He does not treat her well as a husband should treat his wife, yet he does not allow her to marry someone else. Thus, he has sinned against Allah through this action.<sup>21</sup>

Even Al-Imam As-Syafi'i may Allah have mercy on him emphasized this in his book Al-Umm, he said: "When Allah Almighty established the husband's right to take back his wife during the *iddah*, it clarifies that the wife does not have the right to prevent the husband from taking her back, and for the wife, there is no compensation in the immediate return because the woman is the right of the man, the woman does not have rights over the man and has no affairs in something that is the man's right over the woman."<sup>22</sup>

And what further reinforces the opinion of Al-Imam As-Syafi'i is that "if a man refers back to his wife while he is present, and the man hides the reference, or the man is in a state of absence and he hides the reference, or he does not hide and it does not reach the woman regarding the reference,

<sup>18</sup> Muhammad Za'im Muhibbulloh, Dewi Niswatin Khoiroh, A. Rofi'ud Darojad. "Hak Istri dalam Rujuk Menurut Fikih Empat Mazhab dan Kompilasi Hukum Islam (Perspektif Maqasid Al-Shari'ah)." The Indonesian Journal of Islamic Law and Civil Law 2.2 (2021): 2809 - 3402.

<sup>19</sup> Arifin Abdullah, Delia Ulfa. "Kedudukan Izin Rujuk Suami dalam Masa 'Iddah (Analisis Perspektif Hukum Islam)." Samarah: Jurnal Hukum Keluarga dan Hukum Islam 2.2 (2018): 2549 - 3167.

<sup>20</sup> Kementerian Agama RI, "Terjemahnya", h. 36.

<sup>21</sup> Ahmad Musthafah Al-Maraghi, *Terjemah Tafsir Al-Maraghi*, Juz II, (Cet. I; Semarang: Toha Putra, 1984), h. 308

<sup>22</sup> Al-Imam Abi Abdullah Muhammad Ibn Idris Asy-Syafi' I Ra, *Al-Umm*, Juz V, (Bairut Lebanon: dar al-Kotob al-ilmiah, 2002), p. 352

until the woman's iddah has passed and she marries another man, whether the husband consummates the marriage with her or not, then she is separated from the second husband. And for the woman, there is the dowry that has been set for her. However, if the man does not consummate the marriage with her, then there is no dowry and no mut'ah.<sup>23</sup>

With the occurrence of changes in Islamic law due to revocable divorce (*talak raj'i*), the authority of the ex-husband over his wife diminishes. However, there still exists a connection of rights and obligations in a physical sense between the two of them during the wife's waiting period (*iddah*), which includes the obligation to provide housing, essential food, and assurance of security, both physically and non-physically – in other words, only physical maintenance, as stipulated in the word of Allah in Surah at-Thalaaq (65): 6.

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَمْرُهُمْ بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمْ فَسَتُضْعِفُ لَهُ أُخْرَىٰ

Translate: "Place them (the wives) where you live according to your means, and do not make it difficult for them to constrain (their hearts). And if they (the wives who have been divorced) are pregnant, then provide for them until they give birth, and if they nurse (your children) for you, then give them their wages, and consult among yourselves (about everything) in a good manner, and if you find it difficult, then another woman may nurse (the child) for her."<sup>24</sup>

And as a counterbalance to the ex-husband, the husband still has the absolute right to refer to his ex-wife in the sense that at any time the ex-husband can reconcile again,<sup>25</sup> and restore her position as a wife from all aspects of needs in a legitimate husband and wife relationship, with the statement of reconciliation it will restore the original legal status concerning the ex-wife, because thus their marital status has returned to what it was before.

Based on the explanation, the scholars concluded that a husband and wife who are divorced under *raj'i* status are not allowed to have sexual relations during the *'iddah* period.<sup>26</sup> Here are some opinions of scholars regarding the bounds of relationships during the *iddah* period of *raj'i* divorce, mentioned in the book of *Fiqh Sunnah*: (1) Abu Hanifah said: in a *raj'i* divorce, the ex-wife is allowed to adorn herself, wear perfume, jewelry, paint her nails, and apply kohl, but the ex-husband is prohibited from entering his ex-wife's room unless he first informs her with words, gestures, or a cough or the sound of his sandals. (2) Shafi'i said: 'the ex-husband is completely forbidden.' (3) Malik said: 'he may not be alone and enter her house without her permission. He may not see her hair, but it is permissible to eat together as long as there is a third person present.' Ibn Qasim narrated that Imam Malik later retracted his opinion that allowed eating together.<sup>27</sup>

The situation in the house after a revocable divorce occurs is that the wife remains in the husband's house to undergo the *iddah* period that has been determined. Because the nature of a revocable divorce does not immediately sever the husband's obligation to provide for his wife

<sup>23</sup> Al-Imam Abi Abdullah Muhammad Ibn Idris Asy-Syifi' I Ra, *Al-Umm*, Juz V, p. 352.

<sup>24</sup> Departemen Agama RI, "Terjemahnya", p. 559

<sup>25</sup> Syeikh Sayyid Sabiq, *Fikih Sunnah*, Jilid VIII, (Cet I; Bairut Lebanon: Darul Fikri, 1992), p. 235.

<sup>26</sup> Abdullah Azzam Alfatih, Ardiansyah, Fauziah Lubis. "Wives' Right to decline Reconciliation to Avoid Detriment in the Review of Islamic Legal Compilation." 8.2 (2023): 2502-3128

<sup>27</sup> Syeikh Sayyid Sabiq, *Fikih Sunnah*, Jilid VIII, p. 236

during the iddah period. At the same time, this serves to give the husband a chance to reconsider the revocable divorce, as he can either take her back immediately or let the iddah period pass.

### **The Wife's Right to Permission in the Reconciliation Perspective of the Compilation of Islamic Law**

The Compilation of Islamic Law (KHI) was organized at the initiative of the state authorities, in this case, the Chief Justice and the Minister of Religious Affairs, through a Joint Decree and received recognition from scholars from various elements. Officially, KHI is the result of the consensus (*ijma'*) of scholars from various groups through a national workshop, which was then ratified by the state authorities.<sup>28</sup> KHI has become a reflection of the characteristics of marriage law designed to meet the legal needs of Muslims in Indonesia while still taking into account the principles of national law. KHI regulates several important aspects of Islamic law, such as marriage, inheritance, and *waqf*.<sup>29</sup>

In marriage law, the KHI gives more emphasis to the issues of women's rights and position regarding the validity of a husband's remarriage to his wife. As mentioned in article 164, which states: "A woman in the iddah of a *raj'i* divorce has the right to object to her ex-husband's intention to remarry in front of the Marriage Registrar (PPN), witnessed by two witnesses. Remarriage conducted without the knowledge of the ex-wife may be declared invalid by a Religious Court's decision."<sup>30</sup>

Article 164 and Article 165 provide provisions for the wife after a revocable divorce to have the right to object to her husband's reconciliation that is conducted without two witnesses and the wife's knowledge in front of the Religious Court. If the matter is litigated in the Religious Court, it can be declared legally invalid or not binding.<sup>31</sup>

The existence of the wife's approval or objection rights in the article is established because the reconciliation process carried out by the husband must be conducted in the presence of the Marriage Registrar. As stated in Article 167 of the Indonesian Compilation of Islamic Law, which reads: (1) A husband who wishes to reconcile with his wife comes together with his wife to the Marriage Registrar or the assistant Marriage Registrar that oversees the residence of the husband and wife, bringing the decree regarding the occurrence of divorce and other necessary documents; (2) Reconciliation is carried out with the wife's consent in front of the Marriage Registrar or the assistant Marriage Registrar; (3) The Marriage Registrar or the assistant Marriage Registrar checks and investigates whether the husband who will reconcile meets the requirements for reconciliation according to marriage law, whether the reconciliation is still within the waiting period of a revocable divorce (*iddah raj'i*), and whether the woman to be reconciled is indeed his wife; (4) After that, the husband declares the reconciliation and each party along with the witnesses signs the Reconciliation Registration Book; (5) After the reconciliation is carried out, the Marriage Registrar or Assistant

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<sup>28</sup> Arip Purkon, Ahmad Hidayat Buang, Mohd Hafiz Jamaludin. "The Strengthening Of Islamic Law Compilation As Material Law In Indonesian Religious Courts." *Jurnal For Islamic Studies* 5.3 (2022): 2614-4905

<sup>29</sup> Abdul Aziz. "Characteristics of The Compilation of Islamic Law In Indonesia: A Study of Marriage Law From The Perspective of Political Law." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2.4 (2024): 3031-0458

<sup>30</sup> Republik Indonesia, *Op.cit*, Pasal 164-165.

<sup>31</sup> Benjamin Shmueli, "Commodifying personal rights and trading the right to divorce: Damages for refusal to divorce and equalizing the women's power to bargain." *UCLA Women's LJ* 22 (2015): 39.

Marriage Registrar advises the husband and wife about the laws and obligations related to the reconciliation.<sup>32</sup>

Also stated in Article 168 of the Islamic Marriage Law is as follows: (1) In the case of a divorce referred to in the presence of the Assistant Marriage Registrar, the divorce list is made in duplicate, filled out and signed by each of the parties involved along with witnesses, one copy is sent to the Marriage Registrar in the relevant jurisdiction, accompanied by the necessary documents for recording in the Divorce Registration Book, and the other copy is kept; (2) The submission of the first copy of the divorce list by the Assistant Marriage Registrar must be made no later than 15 (fifteen) days after the divorce takes place.<sup>33</sup>

Likewise, the continuation in Article 169 of the KHI reads: (1) The Marriage Registrar prepares a certificate regarding the occurrence of reconciliation and sends it to the Religious Court at the location of the divorce in question, and a copy of the Reconciliation Registration Book is provided to both husband and wife according to the example set by the Minister of Religion; (2) The husband and wife or their representatives, bringing the Copy of the Reconciliation Registration Book, shall go to the Religious Court at the location of the previous divorce to process and obtain their respective Marriage Certificate Copies after being noted by the Religious Court in the space provided on the Marriage Certificate Copy, stating that they have indeed reconciled; (3) The note mentioned in paragraph (two) contains the place of reconciliation, the date when the reconciliation was declared, the number and date of the Reconciliation Registration Book Copy, and the signature of the Registrar.

Based on the articles above, it states that the husband's reconciliation to be communicated to his wife must first be registered and carried out in the presence of the Marriage Registrar, witnessed by two witnesses, and then a copy of the reconciliation registration book is provided to be taken to the Religious Court, where a Marriage Certificate excerpt will be issued stating that the concerned couple has reconciled. Because if marriage must be proven with registration and a marriage book, then the status of reconciliation must also be proven with a Marriage Certificate excerpt as authentic evidence officially issued by the Religious Court.

As regulated by Law Number 22 of 1946 concerning the Recording of Marriage, Divorce, and Reconciliation, which states as follows: (1) Marriage conducted according to Islamic law, hereinafter referred to as marriage, is supervised by a marriage registrar appointed by the Minister of Religious Affairs or an officer designated by him. Divorce and reconciliation conducted according to Islamic law, hereinafter referred to as divorce and reconciliation, must be reported to the marriage registrar; (2) The authority to supervise marriage and receive notifications about divorce and reconciliation is granted only to the officers appointed by the Minister of Religious Affairs or to officers designated by him.<sup>34</sup>

It is emphasized in Article 3 which states: (1) Anyone who conducts a marriage contract or marries a woman without the supervision of the officer referred to in paragraph (2) of Article 1 or their representative, shall be punished with a fine of up to R 50,- (fifty rupiah); (2) Anyone who carries out the work mentioned in paragraph (2) of Article 1 without any right to do so, shall be punished with imprisonment for a maximum of 3 (three) months or a fine of up to R 100,- (one

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<sup>32</sup> Republik Indonesia, Pasal 167

<sup>33</sup> Republik Indonesia, Pasal 168

<sup>34</sup> Republik Indonesia, *Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk*, Pasal 1.

hundred rupiah); (3) If a man who pronounces talak or returns as mentioned in paragraph (1) of Article 1, does not inform the relevant officer referred to in paragraph (2) of Article 1 or their representative within a week, he shall be punished with a fine of up to R 50,- (fifty rupiah).<sup>35</sup>

The keywords in Law Number 22 of 1946 concerning the Registration of Marriage, Divorce, and Reconciliation are the supervision of marriage. In this Law, it is explicitly stated that marriage is supervised by the Marriage Registrar appointed by the Minister of Religion. In addition, divorces and reconciliations that are carried out based on Islamic law are reported to the PPN.<sup>36</sup> With the recording of marriage, a legal basis is created that provides official recognition of the husband and wife relationship, affirming that the bond is valid and recognized by the state. Thus, marriage gains legal standing as regulated by law.<sup>37</sup>

The authority and position of women in rejecting the reconciliation with their husbands in the Compilation of Islamic Law is a type of right that is administrative in nature, ensuring certainty and legal protection guaranteed by the government. This is because events that are not legalized by the government find it very difficult to obtain legal protection if unwanted events occur in the future.

The urgency of marriage registration in positive law in Indonesia is merely a supervisory obligation that must be fulfilled to obtain legal-normative validity, meaning that the marriage has met the requirements and pillars according to the laws of each religion and positive law in Indonesia. The registration of marriage will provide recognition and legitimacy from the state. However, conversely, a marriage that is not registered but has met the requirements and pillars is still valid from a normative-theological perspective, meaning that the marriage is only valid according to religious point of view, but not recognized by the state. Therefore, the requirements and pillars of marriage and marriage registration have different legal consequences, thus registration cannot be considered as part of the requirements or pillars of marriage.

The reconciliation carried out with a normative-theological approach is indeed valid from a religious perspective. However, an important note regarding this method of reconciliation is that it is very vulnerable and can harm one party. For example, a husband divorces his wife through a Religious Court decision and is recorded as divorced. However, later during the wife's iddah period, the husband reconciles with his wife without going through the Marriage Registrar. After some time, the husband passes away and leaves his wife as an heir. In managing inheritance, of course, the wife's heirs will encounter difficulties (*masyaqqah*) in inheriting the husband's property if they do not have authentic documents, while the basis for proving the reconciliation and the marital relationship is the Marriage Certificate excerpt.

### **The Position of a Wife's Permission in Divorce from the Perspective of Islamic Law**

In Arabic, rights are called *haq*. The morphological analysis includes *حق - يحق - حقا*. All three derivatives of this word are used for something that is true, real, certain, and permanent. In another sense, rights are interpreted as something that must be done.<sup>38</sup> Rights in the normative concept are

<sup>35</sup> Republik Indonesia, *Undang-Undang Nomor 22 Tahun 1946 Tentang Pencatatan Nikah, Talak Dan Rujuk*, Pasal 3.

<sup>36</sup> Asriadi Zainuddin, Abdul Jamil, Dedi Sumanto. "Marriage Registration Law Reformulation in Indonesia (Studi of Law and Regulations on Marriage)." *SASI* 28.3 (2022): 492-505.

<sup>37</sup> Qadriani Arifuddin. "Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles." *Nurani: Jurnal Kajian syari'ah Dan Masyarakat*, 24.2 (2024): 317-328.

<sup>38</sup> Wikipedia. "Hak dalam Islam". [https://id.wikipedia.org/wiki/Hak\\_dalam\\_Islam#:~:text=Dalam%20bahasa%20Arab%2C%20hak%20disebut,sebagai%20sesuatu%20yang%20wajib%20dikerjakan.](https://id.wikipedia.org/wiki/Hak_dalam_Islam#:~:text=Dalam%20bahasa%20Arab%2C%20hak%20disebut,sebagai%20sesuatu%20yang%20wajib%20dikerjakan.) 24/05/2025.

a set of rights inherent in the nature and existence of human beings as beings created by the One True God and are His gifts that must be respected, upheld, and protected by the state, law, government, and every individual for the honor and protection of human dignity and worth.<sup>39</sup>

This is clarified in Article 3 on Human Rights which states: (1) Every person is born free with equal and equal dignity and rights, and is endowed with reason and a pure heart to live in society, nation, and state in the spirit of brotherhood; (2) Every person has the right to recognition, assurance, protection, and fair legal treatment as well as to legal certainty and equal treatment before the law; (3) Every person has the right to protection of human rights and basic human freedoms, without discrimination.<sup>40</sup>

Similarly, in article 5 it states: (1) Every person is recognized as a human being who has the right to demand and receive treatment and protection that is equal in accordance with their dignity as a human being before the law; (2) Every person has the right to recognition, guarantees, protection, and fair legal treatment, as well as to obtain legal certainty and equal treatment before the law; (3) Every person has the right to protection of human rights and basic human freedoms, without discrimination.<sup>41</sup>

Researchers assess that, based on the substance of the normative concept above, it provides an understanding that the form of the wife's rights in reconciliation is a grant from the state in the form of a highly esteemed respect, manifested in the form of access to administrative legal protection, legal certainty, and security aimed at uplifting human dignity and worth. Therefore, the position of the rights granted to the wife in reconciliation matters is solely to gain access from the state that will provide support and assurance in the form of legal protection through state institutions.

The implementation of forms of support and protection from the state is marked by the endorsement and issuance of a Marriage Certificate to couples who formally refer in front of a Marriage Registrar. Therefore, referrals made not based on articles 164 and 165 of the Compilation of Islamic Law are considered legally ineffective, in other words, the state cannot provide space and access to legal protection and defense for the concerned parties.

In the research by Budiyanto and Andika Mubarok, it is stated that "The legal consequence of not fulfilling the legal rules of marriage registration that have been enacted by the government is that the marriage lacks legal protection in safeguarding the rights and fulfilling the obligations of each party, be it the husband, wife, or children. If in the future a violation occurs by one of the parties, the disadvantaged party cannot claim any rights legally. The party that fails to fulfill their obligations, according to positive law, is not obligated to be accountable for what has been done to their partner."<sup>42</sup>

According to researchers, from the potential reality and such conditions, the wife's authority to grant permission for reconciliation is a necessary condition for the husband's lawful reconciliation, in order to obtain access to support and legal certainty from the state. This does not contradict the values of Islamic teachings that prioritize welfare and prevent harm. The wife's right

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<sup>39</sup> Republik Indonesia, *Undang-Undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia*, Pasal 1.

<sup>40</sup> Republik Indonesia, *Undang-Undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia*, Pasal 3.

<sup>41</sup> Republik Indonesia, *Undang-Undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia*, Pasal 5.

<sup>42</sup> Budiyanto, Andika Mubarok. "Pencatatanpernikahan Perspektif Maqashid Syariah Jasser Auda." *An-Natiq Jurnal Kajian Islam Interdisipliner* 3.2 (2023): 2777-0176.

to give permission for reconciliation is merely a support and legal assurance for legal events by the state, not to negate the husband's absolute rights or annul the conditions and pillars of reconciliation in Islamic law. It is solely a space of access provided by the state to women to obtain certainty and legal protection.

In Islamic law, as previously explained, if the conditions and pillars of revival have been fulfilled, then this state is immediately considered valid. Although, administratively and according to positive law, it has not yet received recognition and legal guarantees. Thus, the legal status of revival does not have sufficient legal power as it only depends on the acknowledgment of both parties. This poses a significant potential for harm if it is not based on strong awareness.

In the review of Islamic law, there are terms and methods of legal interpretation among fuqaha that relate to the provisions of muamalat relations to prevent injustice among humans, especially regarding the interests of recording marriages and re-marriages facilitated by the government, among others:

- a. The word of Allah swt. in QS. al-Baqarah (02): 282.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ  
كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ

The translation: "O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write between you in justice. And let no scribe refuse to write as Allah has taught him. So let him write..."<sup>43</sup>

In the verse above, it is clearly stated that believers are commanded to make recordings when engaging in non-cash transactions and to avoid disputes if disagreements and mistakes arise in the future, with the evidence being two witnesses and a written record. Based on this, the importance of recording and order in the act of a husband reconciling with his wife can be linked, and it serves as a sign of a legal act (legal subjects and legal objects). If these rules are ignored, it is feared that it will open the door to wrongdoing, as seen in previous cases, which is certainly contrary to Islamic law.

- b. It is mentioned in the hadith of the Prophet Muhammad SAW.

أَنَّ عِمْرَانَ بْنَ حُصَيْنٍ سُئِلَ عَنِ الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ ثُمَّ يَقَعُ بِهَا وَلَمْ يُشْهَدْ عَلَى طَلَاقِهَا وَلَا عَلَى رَجْعِهَا فَقَالَ طَلَّقْتَ  
لِعَيْرِ سُنَّةٍ وَرَاجَعْتَ لِعَيْرِ سُنَّةٍ أَشْهَدُ عَلَى طَلَاقِهَا وَعَلَى رَجْعِهَا وَلَا تَعُدْ

Meaning: "From Imran bin Hushain: He was asked about a husband who cheated on his wife, but then immediately got along with her without any witnesses in his rebuttal and reference. He replied, "If you are mentally and refer to the Sunnah of the Prophet, then make it a testimony of the rebuttal and refer to the wife, and do not repeat it."<sup>44</sup> (*Abu Daud Number 2186*)

Based on the hadith above, it is recommended for a Muslim when divorcing and reconciling with his wife to have witnesses at the time these legal events occur. Not to act recklessly and carelessly in taking legal action.

<sup>43</sup> Departemen Agama RI, "Terjemahnya", p. 48

<sup>44</sup> Syarih Abi Daud, 'Aunul Ma'buud, Jilid III (Juz, 5-6; Lebanon: Dar Al-Kotob Al-Ilmiyah, 2002), p. 181

c. Legal istimbath with *sadd adz-Dzari'at*

*Sadd adz-Dzari'ah* is one way to seek or explore Islamic law by preventing, prohibiting, or closing off pathways or means. This action was initially permissible, but it becomes impermissible because it can lead to harm or loss.<sup>45</sup>

Basically, a husband's reconciliation with his wife without going through the Marriage Registrar and without a Marriage Certificate is legally and theologically valid (according to religious law). However, if the facts indicate and harm the involved parties, such practices should be discontinued. On the other hand, if the husband has already expressed reconciliation to his wife during her waiting period without following the procedural regulations, and the wife disagrees with the reconciliation, the wife can seek and file for *khuluk* divorce in the Religious Court.

d. Legal Istimbath with *Mursalah Maslahat*

In Arabic, *maslahah* is defined as goodness and benefit or interest. *Maslahah* in Arabic means doing something good, beneficial, or improving something.<sup>46</sup> Abu Yasid Adnan Quthni quotes the definition of al-Imam al-Ghazali that *maslahat mursalah* is something that brings benefit and avoids harm (danger/damage).<sup>47</sup> With the concept of *maslahat*, the position of recording marriage, divorce, and reconciliation becomes very urgent to truly pay attention to its benefits, and should not be neglected in documenting legal event moments. This is because it will later become an important document for managing and obtaining access to legal services.

In terms of the benefits of the reference recording that aims to be achieved based on the concept of benefits, among them are: (1) Protection of rights and public order.<sup>48</sup>; (2) Authentic evidence legally valid, obtaining legal certainty and avoiding disputes<sup>49</sup>; (3) Forms of obedience to the government<sup>50</sup>; (4) The manifestation of seriousness in organizing and improving oneself; (5) Complying with religious advice to avoid *masyaqqah* (difficulties in marital status); (6) Protection of the rights of wives and children, in managing inheritance and avoiding polygamy.

The potential losses if a marriage is not registered or not recorded by the Marriage Registrar include: (1) Not receiving recognition of the validity of the marriage by the state even though it is legally valid according to religious law. As a result, there will be difficulties in accessing legal rights from state institutions, particularly in the Religious Court.<sup>51</sup>; Did not receive authentic documents from the state agency.<sup>52</sup>; (3) The loss of guaranteed rights as a wife such as the right to maintenance,

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<sup>45</sup> Ainul Yaqin, Muhammad Is'Adur Rofiq. "Saddu Dzari'ah: Islamic Marriage Guidance as a Prevention of Household Violence." *Risalah: Jurnal Pendidikan dan Studi Islam* 9.2 (2023): 542- 51.

<sup>46</sup> Zameri, Alwi, Hatta, Fikri. *Maslahah and Its Application in Islamic Finance*. *International Journal of Islamic Business*. 9.1 (2024): 82-94.

<sup>47</sup> Abu Yazid Adnan Quthny, Nina Agus Hariati. "Implementasi Maslahah Mursalah sebagai Alternatif Hukum Islam dan Solusi Problematika Umat." *Asy-Syari'ah Jurnal Hukum Islam* 5.1 (2019): 2548-5903.

<sup>48</sup> Maulidia Mulyani. "Marriage Registration in the Qur'an: Historical Insights and Contemporary Legal Relevance" 6.2 (2024): 2655-4909.

<sup>49</sup> Abd Gaffar, Agus Muchsin, Fikri, Rusdaya Basri, Zainal Said. "The Phenomenon of Unregistered Marriages Due to Rejection of Marriage Dispensation: Study of the Enrekang Religious Court and KUA Kec. Baroque." 7.1 (2025): 2685-6689.

<sup>50</sup> Rahmat IR. Limbong, Agus Firdaus Chandra, Lukmanul Hakim, Maher Bin Ghazali. "A Fair Leader Perspective Buya Hamka (Review Of The Word 'Ulil Amriin Surah An-Nisa: 59)." *QiST: Journal of Quran and Tafseer Studies*, 2.2 (2023): 2828-2779.

<sup>51</sup> Pijri Paijar. "Problematika Pasca Nikah Siri Dan Alternatif Penyelesaiannya." *Al-Ahwal Al-Syakhsiyyah Jurnal Hukum Keluarga dan Peradilan Islam* 3.1 (2022): 2746-3990

<sup>52</sup> Idris, Raya Lestari, Zetria Erma. "The Problems Of Siri Marriage For Couples Who Have Not Married According To The Law In Marriage Legal Perspective." *Legal Brief*, 11.6 (2023): 3520-3529.

joint property, and lack of legal certainty in the distribution of the husband's inheritance;<sup>53</sup> (4) The status of problematic children because they are considered 'children of adultery' or 'children born out of wedlock' and have difficulty obtaining their rights.<sup>54</sup>; (5) The range of experiencing discrimination; (6) Moral sanctions and beliefs (religion), in certain situations where a man and woman live in the same house with a clear status relationship, it will raise suspicion in the environment as cohabiting partners (adultery) because they cannot prove their marriage through documentation.

Thus, according to the researcher, the scope of the wife's rights in the wording of Article 164, which states that "a woman in *iddah* of *raj'i* divorce has the right to object to her former husband's intention to reconcile in front of the Marriage Registration Officer (PPN) witnessed by two witnesses," can be understood that the type of rights of the wife in that article is a type of right that is solely aimed at obtaining access to legal guarantees promised by the state. This includes administrative matters, public services, and legal protection should any undesirable situation arise later.

The wife's right to submit an objection regarding her husband's remarriage is because the type of remarriage is done without the knowledge of the ex-wife or is not performed in the presence of a Marriage Registrar and without two witnesses. Therefore, it can be legally stated that this remarriage is invalid according to the decision of the Religious Court. Thus, the invalidity of the husband's remarriage does not mean that the conditions and pillars are not fulfilled, but rather that the state cannot provide access to legal certainty and services because the remarriage event is considered to never have occurred due to the lack of authentic evidence in the form of a Marriage Certificate excerpt.

In Islamic law, the position and authority of revocation are placed on the husband as the holder of absolute rights. Therefore, when the husband intends to revoke his wife with the fulfillment of the conditions and pillars of revocation, the law is valid, even without the permission and approval of the wife. However, the binding legal strength depends only on the acknowledgment of both parties involved. Thus, such a situation has the potential to be misused by irresponsible individuals, and if that happens, the state cannot be present to provide protection and legal services.

## Conclusion

Reconciliation is the return of the legal status of marriage in full after a revocable divorce (*talak raj'i*) has been carried out by the husband against his wife during the waiting period (*iddah*), with specific words. In Islamic law, there is no requirement for the wife's permission or consent for the husband's reconciliation during the *iddah* period of *talak raj'i*. This means that the husband who divorced her has more rights to reconcile as long as she is still in the *iddah* period. Meanwhile, in the Compilation of Islamic Law, as one of the sources of substantive law in Religious Courts, the wife's consent is implicitly required for reconciliation; in other words, without the wife's consent as regulated in articles 164 and 165 of the KHI, reconciliation can be declared invalid by the decision of the Religious Court.

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<sup>53</sup> Cholidatul Rizky Amalia, Anggia Vionita Rachman, Nabilla Yahya, Nadya Nur Ivany. "Legality Issuance Of Family Card In Siri Marriage." JCH (Jurnal Cendekia Hukum) 7.2 (2022): : 2355-4657 172.

<sup>54</sup> Nazarudin, Achmad Abubakar, Halimah Basri. "Nikah Sirri dan Problematikanya." Innovative: Journal Of Social Science Research 3.3 (2023): 2807-4238

From the description of the two statements above, the author sees that the wording of the requirement for permission and approval from the former wife in articles 164 and 165 of the KHI has the contextual meaning that the wife can access administration, guarantees, and legal protection from the state. Because the state only serves and recognizes the event of reconciliation if there are authentic documents in the form of a Marriage Certificate Excerpt. Thus, it does not annul the valid law of reconciliation based on Islamic law. On the contrary, the existence of the rules in Islamic law actually emphasizes achieving public benefit and rejecting or preventing anything that has the potential to lead to damage.

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