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## Woman representative in Divorce: An analysis form Syafi'iyah Fiqh

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**Abstract.** The divorce phenomenon that occurs in society is a husband who assigns his wife the authority to file for divorce, giving up his right to file for divorce himself. Moving past these issues, the author is interested in learning more about the legality of a divorce from a husband to his wife based on the legal foundation of fiqh al-syafi'iyah. The writers' method of inquiry is descriptive qualitative research with a normative perspective. The study's findings indicated that the legality of divorce on a wife according to fiqh scholars al-syafi'iyah is valid and the fall of divorce is because there is a need (hajat) and this opinion is a strong opinion to practice. This is different from the case of a husband delegating his wife's divorce to another woman. There is a difference in the opinion of scholars, some fiqh al-Syafi'iyah scholars say it is legal, some others argue that it is illegal on the grounds that there is no intention and women also cannot accept representation.

**Keywords:** divorce legality, wife's representative, fiqh al-syafi'iyah

### 1. Introduction

A harmonious, successful, and happy family is the goal of marriage. Prosperity is the creation of inner and outer peace as a result of meeting basic needs to bring about happiness and peace, specifically a feeling of affection between family members. Prosperity is harmonious in carrying out the rights and obligations of family members. The accomplishment of marital goals is one of the supporting variables that determines [1].

Islam prescribes marriage as a means of establishing a family that bears legitimate offspring when sailing the home ship. Even Islam regulates and maintains life together between husband and wife. Islamic shari'a not only regulates the rights and obligations between the two and forces both of them to continue to live together, it also stipulates various provisions to regulate the household in order to continue to obtain peace, security, and love from the two types of creatures created by Allah SWT [2].

The objective of marriage is to achieve happiness in this world and the hereafter and to form a prosperous household and to fulfill the basic biological life of humans in order to procreate. However, in sailing the ship the household does not always get happiness and prosperity, nor is it always harmonious and peaceful. This is caused by many factors that arise at any time and were completely unexpected before. All of this can affect the state of the household so that the ropes of affection and loyalty that have been woven together are severed and have a negative impact on offspring.

Therefore, by abiding by the guidelines established by Islamic law, every married couple should be able to maintain their home in harmony, peace, and harmony. But not all unions are successful in accomplishing their objectives.

Society's phenomena can occasionally speak a different language; marriages that are supposed to be *sakinah*, *mawadah*, and *warahmah* end up running aground in the middle of the road for a variety of reasons. When problems and arguments arise in the home and a husband and wife are unable to be reconciled, Islam offers divorce as a resolution. The most appropriate solution for both of them to end the disagreement and upheaval between husband and wife is divorce, also known as *talak*. Despite the fact that Allah is able to accept

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it to hate divorce or talak. Basically Islam gives the husband the right to divorce his wife up to three divorces. However, this right may not be used for arbitrarily and without justification [3].

Likewise, a contested divorce allows the wife to formally file for divorce from her spouse after a court hearing. The wife has the legal right to file for divorce from her husband in two ways: khul rights, which allow for a divorce initiated by the wife and followed by payment of the iwadh (fee) to the husband, and fasakh rights, which allow for the dissolution of a marriage with the assistance of religious judges. So, according to Islamic law, both the husband and the wife have the right to divorce the other party. However, there are a number of considerations that must be taken into account while putting these things into practice [4].

The right to divorce belongs to the husband because he must give support and pay a dowry when he marries, well as physical and mental maintenance. Besides that, men are people who are more patient with something that women don't like. Men will not immediately drop divorce when angry or when trouble befalls them. On the other hand, women are quicker to anger, less patient, so that their wives quickly ask for a divorce just because of trivial reasons, because of that women are not given the right to divorce [5].

However, the phenomenon that occurs in society regarding the imposition of divorce, there is a husband who gives up the right of divorce to his wife by delegating divorce to his wife so that the wife later pronounces divorce pronouncement against him. This creates another legal consequence regarding the status or legality of the divorce representative imposed by the wife as the representative of her husband. When the wife has received the divorce from her husband, later the wife will pronounce the divorce for herself, then the problem is whether or not the divorce is valid. From the problems above, the author feels interested in studying more deeply about the legality of the wife imposing divorce as a representative of her husband.

## 2. Research Method

The research strategy the author employs in this instance is a qualitative research strategy. A normative research strategy, or scientific activities based on certain methodologies, systematics, and ideas, is what the author uses in this study. It aims to explore something or several specific legal phenomena by examining them [6].

While the research in this article is descriptive in nature—that is, it seeks to paint an accurate picture or a thorough, factual, and accurate account of the details, traits, and connections between the phenomena under investigation. The Al-Syfi'yyah Fiqh volumes published by Shaykh Ibrahim Al Bajuri, Abu Bakar bin Muhammad Syatha, Jalal al-Din Al-Mahalli, and Zakariyya Al-Anshari serve as the writer's primary sources of data for this study. These books include Al Bajuri, I'nah Al-Tholibin, Al-Mahalli, and Hasyiyah as Syarqowi 'ala Syarh at Tahrir.

The documentation method, which is a technique for finding data about research subjects or variables originating from official records in the form of books, transcripts, books, newspapers, magazines, and so on, is what the author uses to collect data because this research is library research (library) [7].

## 3. Results and Discussion

### 3.1 Power of Representatives and Rights of Divorce

The rank and authority of the power/wal are highly valued in Islamic law. Nearly all traditional fiqh books go into great detail and depth about it. The study of fuqaha gives a lot of attention to wakalah, presumably because it has been practiced extensively since the time of "shadratul Islam." Rasulullah SAW has designated specific representatives to act on his behalf when collecting zakat. The Apostle also gave Urwah al Bariqi the task of purchasing a sacrificial goat. Furthermore, Amru bin Umayyah's marriage to Umi Habibah was performed under the representation of Rasulullah SAW in the marriage contract [1].

Akad al wakalah will come to an end if the following occurs:

- 1) The death of one of the parties to the contract because one of the valid contracts is a reasonable person who is still alive.
- 2) If one of the people in the contract is crazy, because of the conditions for a valid contract, one of the people in the contract has reason.
- 3) Termination of the work in question, because if it has stopped, under these circumstances the wakalah will no longer function.
- 4) Termination by the person who represents the representative even though the representative does not know (opinion of Syafi'i and Hambali). According to Hanafi, the representative must know the decision of the representative. Before knowing that his actions were the same as before they were decided, for all his laws.
- 5) The representative decides on his own, according to the Hanafi Madzhab it is not necessary for the person representing him to know whether he has terminated himself or not
- 6) The resolution or conclusion of the issue, situation, or thing being represented [8] [9] [10].

According to Islamic law, the husband has the right to divorce his wife since men tend to think things through more carefully than women do, who frequently make decisions based solely on emotion. With these factors taken into account, it is hoped that divorce will be less likely to occur than if the woman were granted the right to divorce. The husband must be an individual who is already an individual who is currently an individual who is currently an individual in order for the divorce to be valid. who is already a person who is a person who is in a good faith, namely:

- a) Has reached the age (balgh) at which, even if he is intelligent, a divorce decree issued by a young child is deemed invalid.
- b) With common reason, a divorce ordered by a person who is insane is invalid, regardless of whether the illness was accidental or chronic at the time.
- c) If someone is forced to get a divorce, even if it is c) of his own free will, it is nonetheless invalid. In the meantime, if coercion is real, as in the case of a court ordering a divorce, the legislation is lawful because coercion is acceptable [11].

The following prerequisites must be met for a wife to receive a legal divorce from her husband:

- a) Women who have been married to and are still under the their husbands.
- b) Not a wife who has been divorced bāin or done by khulū', or has not yet finished her waiting period ('iddah) for a woman who is divorced by raj'ī.

According to fiqh, the term "divorce" has two definitions: a general definition and a specific one. According to the general definition, divorce includes all types of divorces, including those that are judge-decided, ones that are imposed by the husband, ones that happen on their own, and divorces brought on by the passing of either the husband or the wife. A divorce that is imposed by the spouse is a specific kind of divorce [12] [13].

As for the prerequisite for shighat, the words the husband says to his wife upon divorcing, they must be phrases that indicate the meaning of divorce either in sharh (a word that clearly shows the meaning of divorce), such as the word "divorce," "sarh," "firq," or "a word rooted in that word," or in kinyah (a word that does not clearly indicate the meaning of divorce), that is, in words other than the word "divorce," "sarh," "firq," or "a word rooted in it" [14]. Because divorce is an utterance in the form of shighat, it is not deemed to have been made or to have the intention of divorce in the language of kinyah talak if it is done without a divorce pledge, such as returning him to his parents without speaking a phrase signaling divorce [15].

### 3.2 The Validity of Advising Wives of Divorce According to Fiqh Al-Syfi'yyah

The right to divorce is entirely within the control of the husband after marriage. Following the signing of a marriage contract, a man has the right to three divorces from his wife, but the opposite is true for the wife. If a husband grants a divorce voluntarily and is of sound mind and maturity, it is regarded lawful in its application. The marriage link between the husband and wife has been instantaneously severed by the word divorce being pronounced (as Thallaqtuki). Anyone who marries her has the option to divorce them. If the option to wed a woman is exercised as a wife, then it is the man who marries her who has the right to impose divorce [16].

In Syafi'iyah fiqh, there is a form of delegating affairs to other parties, known as wakalah or al-wakalah which means al-tafwīth which means handing over or giving a mandate. Islam allows wakalah because humans need it, and because not all humans have the ability to pursue and be able to solve all their affairs personally. Humans need to delegate mandates to others to do so on behalf of them.

In a wakalah contract, the pillars of wakalah are something that must be fulfilled, in the sense that the wakalah is invalid if the pillars do not exist or are incomplete. Pillars are almost the same as conditions, but both have different meanings in terms of pillars being something that is in essence and is a part or element that makes it happen, while conditions are something that is outside it and is not an element of it. Some of these requirements are related to pillars in the sense that they apply to every element that develops into a pillar, but others stand alone in the sense that they do not serve as requirements for pillar elements.

In the wakalah contract, a representative is necessary to be permitted to carry out the representative's instructions, meaning that all activities that are allowed for oneself are also allowed for others. The issue arises if a man (husband) asks a woman to divorce his wife while it is the husband's right to do so. This has ramifications for banning women from pronouncing divorce even if the wife requests one and the husband agrees to it. does not If you say yes, divorce will not occur.

According to the Syafi'iyah Fiqh, there are differences of opinion among the Syafi'iyah Ulama regarding the handing over of power to women to divorce their wives, as stated by al-Syairazi as follows:

*There is a difference of opinion among the scholars regarding the representation (granting power) of women in imposing divorce on other women. Some scholars are of the opinion that it is permissible as it is permissible for a woman (wife) to represent herself. While some others are not allowed because women do not have the right to divorce [17].*



In essence, Al-position Syairazi's above discusses the disagreement among scholars regarding whether it is appropriate to assign a woman to represent the thoughts of other women. He then contrasts this appropriateness to the appropriateness of a wife speaking for herself. Here, it is accepted that a husband may file for divorce while still legally divorcing his wife. More specifically, Imam al-Nawawi said as follows in his book al-Majmu:

*"It is justified to represent a wife to divorce herself only out of necessity." In the meantime, it is not justified to represent a woman in order to influence the thoughts of other women [18].*

Al-Jazir, however, supported the position that it was not permitted, arguing that a representative must be a person who is allowed to carry out actions as ordered by the person representing him, in the sense that all actions that are permissible are done for himself then may be carried out on others. A representative must also be a person who has been assigned that role [19].

According to one interpretation of Syafi'iyah Fiqh, women are not legally the authority of a man (husband) in divorcing his wife, hence if divorce occurs, the divorce is illegal. This is because women are not legally the recipients of the power of divorce (canceled). This means that it is illegal for women to represent and act in another person's name as their power of attorney. This motivation stems from the fact that women are still stigmatized as powerless and incapable of severing their marriages. due to the fact that women are unable to untangle the knots in their own marriages [17].

The author also makes reference to Ibn Rusdy Al-viewpoint Qurtubi's in order to provide Bidayāt al-Mujtahid, even though he is a scholar of Malikiyyah Fiqh but here as a comparison to enrich the treasures of thought. He stated:

*A person who is legally free to act legally in matters that are authorized to him shall not be constrained by the conditions of the power of attorney. Because it is unlawful to have authority over young children, insane individuals, or women, in either the wife's own name or the name of the husband who is the holder of the marriage contract [20].*

According to the explanation given above, women cannot receive the authority to divorce from their husbands or other individuals to declare a divorce vow. due to the perception that women cannot let go of the marriage cord. While this is going on, the husband must take the initiative to break the marriage rope.

This sentence implies that the husband has more role in taking attitude in his marriage. However, Islamic law allows women to file for divorce, where this term is known as khulu'. This indicates that women also have the right to release and terminate marriage ties.

Even though the right to divorce is in the hands of the husband, Islam still provides an opportunity for women to have the right to file a divorce application, which indirectly forces the husband to give up the word divorce. In other words, a woman can do law with the consent of her husband.

On the other hand, the fuqahā classify the giving of power from the husband to other people for the mentality of his wife in three ways, including:

1. With the phrase "I represent you in divorcing my wife," the husband grants another person the authority to act on his behalf to divorce his wife.
2. Tafwidh, which entails giving the wife the authority to divorce herself.
3. irsal / Ithlaq, or the speech of divorce being transferred from a messenger like a husband to another person by saying, "Go to Fatimah and tell her actually your husband said to you: Choose yourself" [21].

This demonstrates that there is legitimacy for a husband to delegate authority to another to impose divorce, even against his wife. The ability of a woman to serve as a power of attorney in divorce situations may be affected by this signal.

As an alternative to the Syafi'iyah fuqah, comparison Imam Hanafi also stated that, women may become the authority in a divorce pledge, and the divorce imposed is legal. And this group allows wakalah in divorce in the form of tafwidh, in which the husband gives his wife the right to divorce herself, and the divorce that is imposed is valid according to law. This departed from his point of view, that women could be witnesses in divorce cases and women could act legally to break up their marital ties and because women had the power to free slaves [19].

Regarding the existence of women as power in divorce cases, Imam al-Nawaw writes in his book Raudhatu al-Thlabin:

*"Giving power to a woman in the mind of her lawful wife is as valid as she is legal in herself" [22].*

Imam al-Rafi" also stated the same thing:

*It is acceptable for a woman to grant authority to divorce another person's wife, just as it is acceptable for a husband to grant his wife's divorce to him, according to the strong opinion from two sides [23].*

Khatib Syarbaini, meanwhile, claimed that the presence of women as divorce attorneys is an exception and that this type of power generally applies to people who are not authorized to act directly for themselves are also not legally authorized as a substitute. And excluded a number of problems regarding this matter, one of which is giving power of attorney ladies should not divorce other people's wives. Ibn Qudamah's remarks support this:

*If a man delegated his divorce to a woman, the representative would be legitimate because, in reality, women are permitted to act as representatives in matters involving the liberation of slaves, and they would also be legitimate representatives in matters involving divorce involving men [16].*

*According to the aforementioned verse, a woman may be given power of attorney in a divorce proceeding because she is morally upright on the subject of tafwadh divorce, which is connected to the topic of liberating slaves because it eliminates ownership on both sides [24].*

The statement refers to whether or not women are allowed to take part in marital disputes and divorce proceedings. Additionally, it leaves open the potential that a woman could stand in for her husband during the recital of the divorce vows in her capacity as the divorcee. Even while, in essence, using women as divorce pledge proxy is a practice that is still relatively new, it hasn't yet been effectively represented in society, per tradition.

It turns out that there are no particular restrictions on who is permitted to work as a divorce attorney, contrary to the opinion that permits the act of representing divorce matters to third parties with the husband's approval. representative in the power of divorce pledge, but only in general it is permissible to represent divorce power on other parties. other. This permissibility does not imply any priority over who has the right to be in power whether a man or a woman, this shows that there is an opportunity if both are equally allowed to represent a divorce pledge.

Because the nature of the statement does not indicate any specific provisions, this indicates that it is permissible for a woman to become the recipient of the divorce authority, in other words as a substitute for the husband to read the divorce vow to his wife.

On the other hand, it is stated that a person has the authority to become the power of another person, including: First, it is required for a representative person, including a reasonable person, if he is a madman or an idiot or a child who cannot distinguish, then the representative contract is invalid as stated in the book Fathu al-Wahāb Syarh Manhaj at-Thullāb:

*That Truly it is illegal to represent a child, a madman, and sluggish individual [25].*

Because it supports a woman's quality and competence in performing her tasks and roles on a physical and mental level, this definitely does not clash with her psychological state. Second, a representative must be a person who has the authority to carry out the deputy head's orders for himself. This implies that he can perform for others anything he can perform for himself. A representative must also be a person who has been assigned that role [16].

In fact, a woman, no matter who she is, cannot be a power of attorney, regardless of the second criteria, which provides an illustration of the permissibility of awarding power of attorney given that the person is able to enforce the law against himself. the authority to pronounce divorce vows on the part of the man (husband). However, this can be answered by Khatib Syarbaini's statement in his book Mughnī Al-Muhtaj, as the author mentioned above, which is permissible because this is an exception [16].

Divorce itself is actually something that is permissible to represent because it fulfills two elements of **the requirements as muwakal fiḥ**. First, divorce is owned by the party giving the power of attorney, namely **the husband who has the right to impose divorce on his wife**. These two talaqs make it possible to be delegated to another person as the representative of the person giving the power of attorney, this is because talaq is not something that a person has to do personally.

Divorce is a man's patent right, but on the other hand it also allows a husband to hand over power to another person to divorce his wife even though the person who is given the power to replace him is a woman. This is as expressed by Imam Al-Rafi'i.

*The strong opinion of the two opinions holds that it is acceptable to grant power to a woman in the mentality of another person's wife, just as it is acceptable for a husband to be granted custody of his wife's divorce [23].*

It is clear from the description above that wakalah talak is just as legitimate as wakalah in other muamalah

situations like buying and selling, grants, weddings, and other related transactions. Except when the spouse expressly informs the agent, a represented divorce is actually not recognized to be one. Representatives must give a sign to the woman, such as saying: "I represent you to divorce my wife, especially the fulanah," or they must use an unique taukl to let her know to grant my wife a divorce" [21]. Imam Al-Nawaw also discussed the legality of taukl, the practice of a woman forcing her husband to get a divorce. This is compared to the legitimacy of granting a woman the right to file for divorce on her own [22].

It can be concluded that women have authority as recipients of power of attorney or representatives, especially in circumstances of divorce, notwithstanding the diverse viewpoints of experts who have differing opinions concerning the permissibility of women as representatives in divorce. Due to her role in this situation as a party repeating the husband's declaration to divorce the wife, a woman can also substitute for the divorce pledge's reciter, which expands her authority as the attorney for a divorce pledge, wife through a wakalah contract. Moreover, if it is based on a strong opinion in the Syafi'iyah Fiqh, regarding the authority of women as representatives of divorce, which is an exception, that is, a form of power that does apply out of the ordinary, then it is legitimate for a woman to be a substitute for imposing divorce as she is legally the recipient of power for independence slave.

#### 4. Conclusion

According to fiqh scholars al-Syafi'iyah, the divorce is valid and the ilat divorce falls because there is a need (hajat), and this opinion is a strong one to put into practice. The legality of the transfer of divorce from a husband to his wife and then the wife says the word divorce as the recipient of the transfer of divorce from her husband. There is disagreement among scholars regarding whether or not this is legal under fiqh al-Syafi'iyah due to the lack of in it and the fact that women cannot accept representation over actions that are specifically carried out by men. This is distinct from the situation where a husband assigns his wife's divorce to another woman. aside from differences of opinion regarding the permissibility of women as representatives of divorce, it can be concluded that women have authority as recipients of power of attorney or representatives, especially in divorce cases themselves.

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