

KHULU' AND THE CONTROVERSY IN ISLAMIC LEGAL THOUGHT: THE DIVERGING PERSPECTIVES OF IMAM BAKR AL-MUZANI AND IMAM AL-SYAFI' I ON SERIOUSLY ILL WOMEN

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Abstract

This research aims to explore the differing opinions of Imam Bakr Al-Muzani and Imam al-Syafi'i concerning the permissibility of *khulu'* – a form of divorce initiated by the wife – particularly in cases where the woman is seriously ill. Given the recent viral phenomenon of *khulu'* leading to marital dissolution, this study seeks to provide a nuanced understanding of these classical Islamic juristic perspectives. A qualitative research design with a comparative approach was employed to investigate the subject matter. Data sources were obtained through observation, documentation, and an extensive literature review. The collected data were analyzed in a systematic manner involving selection, presentation, and conclusion-drawing phases to ensure the robustness of the findings. The findings revealed a significant divergence in the opinions of the two scholars. Imam Bakr al-Muzani opposed the majority scholarly view that considered the verse related to *khulu'* to be abrogated (*mansukhah*). Conversely, Imam al-Syafi'i maintained that *khulu'*, including cases where the woman is seriously ill, is permissible. This difference underscores the broader debate within Islamic jurisprudence regarding the application of *khulu'* in contemporary contexts. This study contributes to the existing body of knowledge by highlighting the relatively underexplored opinions of Imam Bakr al-Muzani on the issue of *khulu'*. It also provides a comparative analysis with the more commonly referenced views of Imam al-Syafi'i, thereby enriching the discourse on women's rights in Islamic law, particularly in situations of severe illness. The research suggests that, based on the strongest opinion, women who are seriously ill may be permitted to perform *khulu'*. This finding has significant implications for contemporary Islamic legal practice, particularly in providing relief and legal options to women in dire health conditions seeking marital dissolution.

Keywords: *Khulu'*, Imam Bakr Al-Muzani, Imam Al-Syafi'i, Serious illness, Islamic jurisprudence

INTRODUCTION

Marriage is God's command to form a peaceful and harmonious family. Allah has explained in the Al-Quran in many verses and also in the Hadith of the Prophet *Sallallahu alaihi wa sallam* to choose a good partner for the continuity of married life. With the command to choose a good partner from the Al-Quran and Hadith, on the other hand, some factors make it difficult to maintain a household, and these factors can arise from the husband or wife.

One of the goals of marriage is to achieve peace or *sakinah* in the household. One of the factors in achieving *sakinah* is mutually understanding the obligations towards both. As the head of the family, the husband is responsible for fulfilling his wife's needs materially and non-materially. Likewise, the wife, as the husband's companion, is obligated to take care of the household, educate the children, and protect the husband's property and honor. The relationship between husband and wife in the household is very important to maintain if both do not fulfill or even ignore their responsibilities and obligations. Therefore, it cannot be denied that the household will experience turmoil and will generally end in divorce.¹

Divorce is permissible in Islamic law, but Allah *Subhanahu wa ta'ala* does not like it, as the Prophet *sallallahu 'alaihi wa sallam* said.

"The most hateful of lawful matters to Allah is divorce."²

Basically, Islam has closed the possibility of divorce except in emergencies so that divorce becomes a solution to problems for couples that can no longer be stopped. Therefore, a household that is a blessing turns into a disaster, so Islam provides a solution in the form of divorce, which can even be a blessing for couples who are no longer able to maintain the household and cannot find a way out of the problems that never end.

Divorce can occur in the following ways, including *talak*, *khulu'*, *fasakh*, *li'an* dan *ila*. Islam gives the husband the right of *talaq* to divorce his wife and, the *khulu'* right to the wife to divorce her husband, and the right of *fasakh* to the wife and husband.³ Therefore,

¹ Ainul Churria Almalachim Husnul Khotimah, "Fenomena Khulu' Akibat Kemampuan Ekonomi Rendah," *Jurnal Kajian Perempuan dan Keislaman* 13, no. 2 (2020): 196-211.

² Abu Dawud Sulaiman bin Asy'ats, *Sunan abi Dawud*, 3 ed. (Bairut: Dar al-Risalah al-Alamiyah, 2009). h. 505.

³ M. Khafidz Akrom, "Ansalisis Pendapat Sayyid Sabiq Tentang Khulu'" (IAIN Walisongo, 2010). h. 2

khulu' is a matter that breaks up a marriage and causes divorce between husband and wife.

The Islamic Law Compilation Article 1 (letter i) explains that *khulu'* is a divorce that occurs at the wife's request by giving a ransom or *iwadl* to the husband and with his consent.⁴ *Khulu'* can be performed by a wife who is healthy or who is seriously ill, but the difference of opinion among scholars is how much ransom or compensation the wife must pay to her husband.⁵

On this issue, the scholars do not differ in their opinions regarding whether it is permissible for women who are seriously ill to perform *khulu'*. Women have the right to perform *khulu'* over their husband, just like a healthy woman. Imam Syafi'i said that if a wife performs *khulu'* in the amount of her mitsil dowry, then it is permissible, and the assets are counted as part of the main assets. If it is more than the mitsil dowry, then the additional must be taken from the one-third.⁶ Meanwhile, Imam Bakr al-Muzani said that there is no *khulu'*. With this, Bakr bin Abdullah al-Muzani disagrees with the scholars' opinion. Based on this information, the author is interested in conducting this research entitled "Analysis of Imam Syafi'i and Imam Bakr Al-Muzani Opinions regarding women who are seriously ill performing *khulu'*".

Many researchers have carried out research on the scholar's views on *khulu'* issues. Research conducted by Khafidz Akrom entitled "*Analysis of Sayyid Sabiq's Opinions about Khulu'*" concluded that Sayyid Sabiq provides tougher conditions for ill women who perform *khulu'*. This is to avoid a wife who has the intention of blocking the distribution of her husband's inheritance.⁷ Another research from Ahmad Hoyir entitled "*Imam Malik Bin Anas' Opinion Regarding Khulu' and Its Relevance to Marriage Law in Indonesia*" concluded that *khulu'*, according to Imam Malik bin Anas, is defined as divorce with a ransom (*iwadl*) paid by the wife.⁸ Then, a research from Ulul Albab Fadhlán entitled "*Khulu' According to Imam Syafi'i and Imam Hambali: Its Relevance in Indonesia*" concluded

⁴ Komarudin, *Kompilasi Hukum Islam* (Yogyakarta: Pustaka Widyatama, 2000).

⁵ Ibnu Rusyd, *Bidayah al Mujtahid Wa Nihayah al Muqtasid Juz 2* (Bairut: Dar al-Ma'rifah, 1986). h. 59.

⁶ Rusyd.

⁷ M. Khafidz Akrom, "Analisis Pendapat Sayyid Sabiq Tentang Khulu'" (IAIN Walisongo, 2010). h. 69.

⁸ Ahmad Hoyir, "Pendapat Imam Mâlik Bin Anas tentang Khulu' dan Relevansinya Dengan Hukum Perkawinan di Indonesia," *Asy-Syari'ah* 16, no. 2 (2014): 159–68.

that Imam Syafi'i and Imam Hambali opinion allows *khulu'* and it is permissible to perform *khulu'* outside the court and does not require the judge however requires two witnesses. However, it is better to perform *khulu'* in court as applied in Indonesia.⁹

The difference between this article and the other articles linked above is that this article focuses on analyzing the scholar's opinions on general problems, namely *khulu'*, and special problems, namely women who are seriously ill performing *khulu'*. In this article, the author analyzes the opinions of two scholars, namely Imam Bakr Al-Muzani and Imam Syafi'i.

METHOD

This research used the library research method, a study method by studying books, books, or other information related to the discussion. The literature study research method was carried out in the following steps, including in terms of data collection methods. First, the data was taken from literature to support research data, the books of Imam Syafi'i and al Muzani. Second, the data obtained from other parties, other works, and books related to research were not directly obtained by the author.

RESULT AND DISCUSSION

1. Biography of Imam As-Shafi'i

Muhammad bin Idris bin Al-Abbas bin Usman bin Syafi' bin Al-Sa'ib bin Ubaid bin Abdul Yazid bin Hasyim bin Al-Muttalib bin Abdul Manaf bin Qusai bin Kilab bin Murrah bin Ka'ab bin Lu'ay bin Ghalib bin Fahr bin Malik bin Al-Nadr bin Kinana, and he met the Prophet *sallallaahu 'alaihi wa sallam*, in Abdul Manaf bin Qusai, his chew is Abu 'Abdillah¹⁰ He was born in Gazah Village, Palestine in 150 AH / 767 AD, and died in Egypt in 204 AH / 819 AD.¹¹ Since he was born, Imam Syafi'i has been an orphan because

⁹ Edi Kurniawan, Ulul Albab Fadhlān, dan Illy Yanti, "Khul' Menurut Imam Syafi'i dan Imam Hanbali: Mencari Relevansinya di Indonesia," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 10, no. 1 (2020): 150–70.

¹⁰ Ibnu Abdilbar, *al-intifa' fi fadhoil al aimmah al-tsalatsah al-fuqoha* (Bairut: Dar al-basyair al-islamiyyah, 2010). h. 66.

¹¹ Abdilbar.

his father died while he was still in his mother's womb, so care and guidance were under the mother's lap.

Imam Syafi'i grew up in Mecca. Since childhood, he has shown a love for the Al-Qur'an. This can be seen from his ability to memorize the Al-Qur'an from the age of 7, when he first studied in the Huzail (inland) area, a place where the people who were most skilled in Arabic. Imam Syafi'i studied with many teachers and studied various branches of knowledge, both related to poetry, grammar, and Arabic literature.¹² When Imam Syafi'i was approaching age 10, his mother was worried that her noble son's lineage from the Quraysh tribe would be forgotten, so her mother took Imam Syafi'i to Mecca.

Among the reasons for this move were because Mecca was the birthplace of Imam Syafi'i's father and ancestors and also because Mecca City was a place for scholars, jurists, poets, and writers so that Imam Syafi'i could develop in pure Arabic.¹³ Even though Imam Syafi'i grew up under the care of his mother and lived in poverty and hardship, his enthusiasm for studying did not fade. His mother sent him to study at Kuttab (an elementary school level). With strong determination and encouragement from his mother, he went to the scholars and wrote what was useful.

From his journey to seek knowledge, Imam Syafi'i was able to learn about various kinds of knowledge developed by scholars, such as the scholars' thoughts, which were based on hadith and *ra'yu*.¹⁴ Imam Syafi'i went to Medina and studied with Imam Malik bin Anas. He was able to complete memorizing the book *al-Muwatta'* by Imam Malik, which was read in front of Imam Malik; this made Imam Malik admire himself. Because to deepen his knowledge, Imam Syafi'i then went to Iraq to further deepen his knowledge of jurisprudence among the remaining students of Abu Hanifah.

Imam Shafi'i was given the title Nasir as-Sunnah, which means defender of the Sunnah, because he highly upholds the Sunnah of Prophet Muhammad *Sallallahu alaihi wa sallam*. Abd al-Halim al-Jundi wrote a book entitled *al-Imam ash-Shafi'i, Nasir as-Sunnah wa Wadi' al-Ushul*. This book describes in detail Imam Syafi'i's attitude and defense of

¹² Az-Zuhaili, *al-Fiqh al-Islami wa Adillatuh* (Beirut: Dar al-Fikr, 1989). h. 35.

¹³ Ahmad Nahrawi, *al-Imam asy-Syafi'i fi Mazhabaih al-Qadim wa al-Jadid, diterbitkan oleh pengarangnya untuk kalangan terbatas*, 1994.

¹⁴ Dayan Fithoroini, "Epistemologi Bayani dalam Kajian Ushul Fiqh," *Opinia de Journal* 2, no. 2 (2022): 1-17.

Sunnah. The main point is that Imam Syafi'i really paid attention to the Sunnah of the Prophet *sallallaahu' alaihi wa sallam* in basing his opinions.

Imam Syafi'i lived in Baghdad for 2 years.¹⁵ Among his teachers, Muslim bin Khalid az-Zanji, a scholar who became mufti in Mecca, Imam Syafi'i gave a fatwa during his stay in Baghdad. The opinions he conveyed in the fatwa were called *qaul qadim*. At that time, Imam Syafi'i's *mazhab* began to spread among the people, and then he left Baghdad and headed for Mecca. Then, Imam Syafi'i expanded his *mazhab*, and armed with enthusiasm and determination, he traveled to Egypt. In Egypt, Imam Syafi'i researched and studied more deeply the provisions of his fatwas, while in Baghdad, new formulations emerged, which later became known as *qaul Jadid* and written in the books *al-Umm*, *al-Imla*, *Mukhtaşar Muzani*, and *al-Buwaiti*.¹⁶

Imam Syafi'i's youth was spent studying in various places, such as Mecca City, Medina City, Kufa City, Syria City, and Egypt City.¹⁷ He traveled from one place to another to study various branches of religious knowledge, such as tafsir, fiqh, and hadith. He studied with teachers who were spread across various corners of his country. Imam Syafi'i's teachers came from various scientific backgrounds. For example, Sufyan bin Uyainah in Mecca and Imam Malik bin Anas were hadith experts. He studied with a *ra'yi* expert in Iraq, namely Imam Hanafi, and al-Auza'i school of jurisprudence in Yemen. Because of these various backgrounds, Imam Syafi'i was known as an imam who was very careful in determining the law, and he was known as an expert in *Qiyas*.

The students of Imam Syafi'i came from various places, such as Abu Bakr al-Humaidi, Ibrahim bin Muhammad al-`Abbas, Abu Bakar Muhammad bin Idris, and Musa bin Abi al-Jarud in Mecca; then, Hasan as-Sa'bah az-Za'farani and Ahmad bin Muhammad in Baghdad. Meanwhile, in Egypt, among his students were al-Buwaiti, Isma'il, al-Muzani, Muhammad bin Abdullāh bin' Abd al-Hakam, and ar-Rabi' bin

¹⁵ Muhammad Aly Mahmudi dan Lalu Fitriyadi Bajuri, "Nalar Dialektika Hegel dalam Transformasi Fikih Qaul Qadim-Qaul Jadid Imam Syafi'i," *Madinah: Jurnal Studi Islam* 10, no. 2 (2023): 255–65.

¹⁶ M Khoirul Hadi al-Asy Ari dan Adrika Fithrotul Aini, "Hak Perempuan Menikah Tanpa Wali Dalam Pandangan Imam Syafi'i Dan Imam Ja'fari," *Musāwa Jurnal Studi Gender dan Islam* 14, no. 1 (2015): 87–100.

¹⁷ Abdullah Abdullah, "Perkembangan Islam di Arab Saudi," *Jurnal Ilmiah AL-Jauhari: Jurnal Studi Islam Dan Interdisipliner* 4, no. 1 (2019): 152–71.

Sulaiman.¹⁸ As a person who has a love of science, Imam Syafi'i has many scientific works. According to the history of al-Ḥasan bin Muhammad al-Marwaziyy, as quoted by an-Nawawi, Imam Syafi'i's works include 113 books on tafsir, fiqh, Arabic literature, and others.

Imam Syafi'i's method of writing books was either to write them directly himself or by reading them to his students and then writing them down. Historians differ in their opinions about when Imam Syafi'i started writing his opinions and thoughts. Whether when he was in Mecca or when he was in Baghdad. According to famous history, he began writing his works while in Mecca. His works are famous for their extensive discussion of material and in-depth analysis, especially the books *ar-Risala* and *al-Umm*. However, what we have now is the second *ar-Risalah*.¹⁹ Then, there is *al-Hujjah* Book. This book is included in the *qaul qadim* in the field of jurisprudence because it was compiled when Imam Syafi'i was in Baghdad.²⁰ The next is *Al-Musnad* Book. Imam Syafi'i's *Musnad* is a book containing the history of Imam Syafi'i's hadiths. The method of compiling and discussing this book follows the method of fiqh books in general in sequence, starting with the issue of worship, then *munakahah*, then the issue of *jihād*, then the issue of *qada'* and *jinayah*. This book is one of the books that was paid attention to by hadith scholars in the second century Hijriah and is the first hadith book that has come down to us using "*mi'yār*" the science of hadith.²¹ Then, *al-Umm* Book. This book contains discussions about fiqh issues, which are discussed based on the main thoughts of Imam Syafi'i contained in the *ar-Risala* book. This book of *al-Umm* is narrated by ar-Rabi' bin Sulaimān al-Muradi.

2. Istinbath Method of Syafi'i School

In establishing a law, Imam Syafi'i, in his work *ar-Risala*, explains that there are four sources for determining a law, namely al-Qur'an, as-Sunnah, Ijma', and Qiyas. The first and main source in establishing law is al-Qur'an oran. If al-Qur'an does not find a law regarding a problem, then he turns to the hadiths of the Prophet *sallallaahu' alaihi wa*

¹⁸ Ahmad Asy-Syurbasi, *Al-Aimmah al-Arba`ah, terjemahan Jalil Huda dan A. Ahmadi* (Jakarta: PT. Bumi Aksara, 1993). h. 151-152.

¹⁹ Nahrawi, *al-Imam asy-Syafi'i fi Mazhabaih al-Qadim wa al-Jadid, diterbitkan oleh pengarangnya untuk kalangan terbatas*. h. 716.

²⁰ Nahrawi. h. 712.

²¹ Nahrawi. h. 210.

sallam. The hadiths that form the basis of law are those that are judged by their quantity, such as those that are *mutawatir* (many narrators) or *ahad* (one narrator), and those that are *sahih* and *hasan*, and even *da'if* hadiths that meet the requirements.²² The requirements for *da'if* hadiths are that they are not too weak, are justified by general rules or the basic *kulli* (general) of *nass*, do not conflict with strong or *sahih* arguments, and are not to determine lawful and unlawful or matters of faith, but simply for the sake of charity (*fada'il al-'a'mal*) or appeal (*targhib*) and recommendation (*tarhib*).²³

In Imam Syafi'i's view, hadith has a very high position after the al-Qur'an as a source of Islamic law that must be implemented. According to Imam Syafi'i, hadith is very closely related to the al-Qur'an, and one thing you need to know is that Imam Syafi'i is not fanatical in his opinions, this can be seen in his words: "If there is an *shahih* hadith, then throw my opinion against the wall. If you see a *hujjah* placed on the road, then that is my opinion."²⁴

The explanations from these sources are as follows:

a. Al-Qur'an

Imam Syafi'i emphasized that al-Qur'an is a guide, explaining what lawful and unlawful, promising rewards in the future is, heaven for those who obey, hell for those who disobey Allah, and provides a comparison with the stories of people who lived before. It is stated in the al-Qur'an is *hujjah* (postulate, argument) and revelation from Allah. According to him, every problem that occurs to a person must have a postulate and guidance in the al-Qur'an.²⁵

b. As-Sunnah

Imam Syafi'i emphasized that Sunnah is proof that a Muslim must follow the same as al-Qur'an.²⁶ In order to support this opinion, he put forward arguments, both in the

²² Budi Suhartawan dan Muizzatul Hasanah, "Memahami Hadis Mutawatir dan Hadis Ahad," *DIRAYAH: Jurnal Ilmu Hadis* 3, no. 1 (2022): 1-18.

²³ Muhammad bin Idris As-Syafi'i, *ar-Risalah* (Beirut: Dar al-Fikr, n.d.). h. 508.

²⁴ Ibnu Taimiyyah, *Majmu' al-Fatawa Juz 30* (Saudi: Majma'a al-Malik Fahd, 2004). h. 70.

²⁵ Muhammad bin Idris As-Syafi'i, *ar-Risalah ditahqiq oleh Ahmad Muhammad Syakir* (Beirut: Dar al-Fikr, 1309). h. 17-20.

²⁶ Eka Tri Wahyuni dan Aprina Chintya, "Pembagian Zakat Fitral Kepada Mustahiq: Studi Komparatif Ketentuan Asnaf Menurut Imam Syafi'i dan Imam Malik," *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 8 (2017): 154-67.

form of *naqli* arguments and *aqli* arguments. Imam Syafi'i stated that Allah emphasized in the al-Qur'an that humans are obliged to obey the Prophet *sallallaahu' alaihi wa sallam*.²⁷ As-Sunnah, apart from being the second source after the al-Qur'an, is also a complement that explains and describes the contents of several verses of the al-Qur'an. Thus, the position of as-Sunnah regarding the al-Qur'an is as follows: first, *Ta'kid* strengthens what is stated in the al-Qur'an. Second, *Tabyin* explains the meaning of the texts in the al-Qur'an. Third, *Tasbit* establishes laws for which there are no provisions in the al-Qur'an.²⁸ Regarding the division of *khobar* (sunnah), the Syafi'i *mazhab* divides it into 3; *khobar mustafid*, *khobar mutawatir* and *khobar ahad*. Al-Mawardi also does not forget to talk about the condition and characteristics of the narrators, *isnad* and *hal-ihwal*. Regarding *khobar mutawātir*, the Syafi'i school views its truth as certain so that the news absolutely must be accepted as evidence. Meanwhile, apart from *khobar mutawātir*, the validity of the *khobar* can be determined through research using certain criteria. In more detail, the requirements for a *shahih* hadith outlined by Imam Syafi'i are as follows: *First*, the hadith chain must be continued up to the Prophet *sallallaahu' alaihi wa sallam*. *Second*, the narrator must be *siqah* (trusted) in religious matters and be known as someone who always speaks the truth. *Third*, the narrator understands the meaning of the hadith he is narrating and knows the conditions that can change the meaning (if he narrates it with meaning) or can convey his hadith exactly as he hears it if he narrates it by rote or preserves his book if he narrates it from a book. *Fourth*, history is always in accordance with the history of experts (*ahl al-hifz wa as-siqat*). *Fifth*, the narrator does not perform *tadlis*, meaning he does not narrate from someone except the hadith that he heard from that person. *Sixth*, this requirement must be fulfilled at every level in the path of transmitting the hadith.²⁹

c. Ijma'

Ijma', according to ushul scholars, is an agreement between mujtahids in a period after the death of the Prophet *sallallaahu' alaihi wa sallam* on a religious matter. Imam Syafi'i emphasized that ijma' is a strong, definite proposition and applies widely in all fields. Something that has been agreed upon by previous generations, even though they

²⁷ As-Syafi'i, *ar-Risalah ditahqiq oleh Ahmad Muhammad Syakir*. h. 79-85.

²⁸ As-Syafi'i.

²⁹ As-Syafi'i. h. 370-372.

did not put forward the arguments of the Book or Sunnah, is seen as the same as the law regulated based on the agreed Sunnah. Imam Syafi'i defines *ijma'* as a consensus of *ulama'* at a certain time on a matter based on what the Prophet *sallallahu 'alaihi wa sallam* explained. Because, according to him, they can't agree on matters that conflict with the Sunnah.³⁰

d. Qiyas

Imam Syafi'i stated that Qiyas are evidence, and there are several types of Qiyas with different levels of clarity and strength. Qiyas is at the strongest level if the existence of the law in the *far'* (branch case) is stronger (*aula*) than its existence in the *ashl* (main case).³¹

3. Biography of Imam Bakr bin Abdullah al-Muzani

Imam Bakr bin Abdullah al-Muzani (d. 106/108 H) was a great scholar from among the *tabi'in*. He narrated many hadiths from the Prophet's friends, namely Mughirah bin Syu'bah (d. 50 H), Abdullah bin' Abbas (d. 68 H), Abdullah bin' Umar (d. 73 H), Anas bin Malik (d. . 93 H), and so on. He also had many students, including Sulaiman at-Taimi (d. 143 AH), Habib al-'Ajami (d. 120s AH), Hamid at-Thawil (d. 142/143 AH), Qatadah (d. 118 H), Ghalib al-Qathhan, 'Ashim al-Ahwal (d. 142 H) and others.³² According to scholars, Imam Bakr al-Muzani is a qualified expert in jurisprudence and hadith. Imam an-Nasai (d. 303 H), Ibnu Ma'in (d. 233 H), and Abu Zur'ah (d. 264 H) do not doubt its *tsiqqah*. Imam Ibnu Sa'd (d. 230 H) describes his expertise by saying:

“Bakr al-Muzani is (a person who is) *tsiqqah* (trusted), *tsabit* (proven expertise), many (memorizes and narrates) hadith, argumentation expert, (and) fiqh expert”.³³

4. Imam Bakr Al-Muzani and Imam Syafi'i Opinions regarding Khulu' Ill Women

Divorce can occur in the following ways, including *talak*, *khulu'*, *fasakh*, *li'an* and *ila*. Islam gives the husband the right of *talaq* to divorce his wife, the *khulu'* right to the wife to divorce her husband, and the right of *fasakh* to the wife and husband.³⁴ Therefore, *khulu'* is a matter that breaks up a marriage and causes divorce between husband and wife.

³⁰ As-Syafi'i. h. 472.

³¹ As-Syafi'i. h. 512-513.

³² Imam Al-Dzahabi, *Siyar A'lam al-Nubala' juz 4* (Beirut: Muassasah al-Risalah, 2001). h. 533.

³³ Imam Ibnu Hajar Al-'Asqalani, *Tahdzib al-Tahdzib Juz 1* (Kairo: Dar al-Kitab al-Islamiy, 1993). h. 484.

³⁴ M. Khafidz Akrom, “Analisis Pendapat Sayyid Sabiq Tentang Khulu'” (IAIN Walisongo, 2010). h. 2.

Khulu' is taken from the expression خلع الثوب, which means taking off clothes. Because figuratively speaking, the wife is the husband's clothing. Meanwhile, the desired meaning of *khulu'* according to fiqh experts is the wife's request to her husband to divorce herself from the marriage bond accompanied by the payment of *'iwadh*, in the form of money or goods to the husband from the wife's side in return for his divorce.³⁵

Imam Bakr bin Abdillah al-Muzani believed that there is no *khulu'* for women who are seriously ill. Imam Bakr al-Muzani was the only one who disagreed with the opinions of the scholars regarding the issue of *khulu'*. He argued that *khulu'* does not exist because the verse about *khulu'* is *mansukhah* (deleted argument). This verse is the word of Allah Ta'ala;

“And if you want to replace one wife with another and you have given one of them a great amount (in gifts), do not take (back) from it anything. Would you take it in injustice and manifest sin?”³⁶

Meanwhile, Imam Syafi'i said that it is permissible for a woman who is seriously ill to perform *khulu'* on her husband because it is the same as buying and selling is permitted in Islam. Imam Syafi'i said that if a wife performs *khulu'* in the amount of her mitsil dowry, then it is permissible, and the assets are counted as part of the main assets. If it is more than the mitsil dowry, then the additional must be taken from the one-third.³⁷

5. An Analysis of Imam Bakr Al-Muzani and Imam Syafi'i Opinions

In Imam Bakr al-Muzani's opinion, he does not allow *khulu'*. The reason is that the verse relating to *khulu'* is *mansukhah* (deleted argument), so it is not permissible for the husband to take any part from his wife. According to Imam Syafi'i, *khulu'* is divorce, so it is not imposed except by saying divorce. If the wife gives *'iwād*, then the husband has divorced his wife even though it does not require intention, and the husband will let go of his wife.³⁸

In this regard, Imam Syafi'i's opinion is in line with his friends who agree on the existence of *khulu'*; among these friends is Umar bin al-Khattab' Ustman bin' Affan, and

³⁵ Darmiko Suhendra, “Khulu’ dalam Perspektif Hukum Islam,” *Asy Syar’iyyah: Jurnal Ilmu Syari’ah dan Perbankan Islam* 1, no. 1 (30 Juni 2016): 219–33.

³⁶ Kementrian Agama RI, *Al-Qur’an Dan Terjemahnya* (Jakarta: PT. Darma Karsa Utama, n.d.). h. 81.

³⁷ Ismail bin Yahya, *Mukhtashar al-Muzani fi Furu’ as-Syafi’iyyah* (Beirut: Dâr Al-Kitab al-’Ilmyah, 1998). h. 254.

³⁸ Imam Syafi'i Abu Abdullah Muhammad bin Idris, *al-Umm*, 10 ed. (Jakarta: Pustaka Azzam, 2014).

none of his friends disagree.³⁹ The majority of ulama also do not differ in their opinion regarding whether it is permissible for a woman who is seriously ill to perform *khulu'* on her husband. A woman has the right to perform *khulu'* over her husband, just like a healthy woman.⁴⁰ Imam as-Syaukaniy denied the words of Imam Bakr al-Muzani that Bakr al Muzani's words contradicted the *ijma'* of the companions.⁴¹ Ibn Rushd also explains in his book *Bidayah al-Mujtahid wa an-Nihayah al-Muqtashid* that Bakr al Muzani differed from the opinion of the majority of ulama on the issue of *khulu'*.

The cause of this difference is, in the view of the verses of the al-Quran, which were mentioned previously between the generality of the verse or the specificity of the verse, the majority of scholars said that there is *khulu'*, while Bakr al-Muzani disagreed by arguing that it is not permissible for a husband to take any part of his wife, he argued that it is the word of Allah:

“Then, there is no blame upon either of them concerning that by which she ransoms herself.”

It has been removed with the words of Allah:

“And if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?”

However, most scholars said that if the wife is not pleased if the wife is pleased, then it is permissible. The scholars also said that the two verses do not contradict each other. In the science of Ushul Fiqh, there is a rule "Problems with the text are not accepted until it is proven that the proposition is impossible to agree with", and the *nasikh* verse comes after it, so that Imam Bakr al-Muzani's reasons regarding the verse *mansukhah* cannot be accepted or proven.⁴² Thus, Imam Bakr al-Muzani's opinion differs from his friends and the majority of scholars, while Imam Syafi'i's opinion does not conflict with *ijma'*, so the strong opinion is that *khulu'* is permissible in Islam and permissible for a woman who is seriously ill to perform *khulu'* on her husband.

³⁹ Ibnu Qudamah Al-Maqdisi, *al-Mughni Juz 7* (Mesir: al-Manar, n.d.). h. 52.

⁴⁰ Ibnu Rusyd, *Bidayah al Mujtahid Wa Nihayah al Muqtasid Juz. II* (Beirut: Dâr Al-Jiil, 1409). h. 51.

⁴¹ Muhammad bin 'Ali As-Syaukaniy, *Fathu al-Qadir, Juz 1* (Bairut: Daar al-Fikr, n.d.). h. 239.

⁴² Iim Fahimah, "Poligami dalam Perspektif Ushul Al-Fiqh," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 4, no. 2 (2018): 99–110.

CONCLUSION

According to most scholars, women who are seriously ill can perform khulu', and Imam Syafi'i also believes so. However, the scholars only have different opinions regarding the issue of compensation for wives given to husbands, as has been explained. Bakr al-Muzani's opinion differs from the ulama on the issue of women who are seriously ill performing khulu'. This is since he believes that khulu' does not exist. He disagrees with the majority of ulama because he considers the verse about khulu' to be mansukhah (deleted argument).

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