

MARRIAGE OF MARRIED COUPLES WHO HAVE BEEN REJECTED 3 WITHOUT DOING MUHALLIL PERSPECTIVE OF IMAM SHAFI'I (Case Study of Kelurahan Perjuangan, Teluk Nibung District, Tanjungbalai City)

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Abstract. The mentality law of wives according to Jumhur Ulama is mubah but the action is better avoided. Shafi'iyah and Hanablah scholars thought that the law of talaq was sometimes obligatory, sometimes haram and sometimes sunnah. Muhallil is the party of a man who marries a woman who is triple rejected by her husband so that the husband can initially return to the wife. In this muhallil marriage, a matter arises, namely engineering when the ex-husband or wife wants to return to the ex-husband, they do a serial marriage without doing the muhallil marriage first by the wife. The type of research used is empirical normative research. Based on the information achieved in primary information and secondary information. In this study, the registrar collected information through interviews. After obtaining the information needed, that the author analyzes qualitatively juridically. His research was conducted in Kelurahan Perjuangan, Teluk Nibung District, Tanjungbalai City. From the results of research conducted in Kelurahan Perjuangan Teluk Nibung District, Tanjungbalai city, information was obtained that there were six married couples who married their wives who had been triple rejected, the wife did not do Muhallil first. The results showed that the marriage of husband and wife who had been rejected was carried out in serial or unwritten marriages at the Office of Religious Affairs..

Keywords: talaq; muhallil; marriage

I. INTRODUCTION

Sunatullah nikah generally applies to God's creatures, including humans, animals, and plants. In the Islamic view, in addition to marriage being a form of love, it is also the sunnah of Allah and the sunnah of the Prophet. What is meant by "the sunnah of the Messenger of Allah" is the custom established by the Prophet for himself and his people, while the "sunnah of Allah" is life in accordance with the qodrat and the iradat of Allah for the creation of this world. (Al-Hamdani [1]). The description of arranged marriage based on Law no.1 of 1974 which is linked to article 1 paragraph 2 of arranged marriage is defined as "The inner bond between the man and the woman through the intention of realizing a family, a happy and eternal marriage based on the One and Only Godhead"[2]. The Indonesian state was established based on Pancasila, whose first precept is the Supreme Godhead. As a result, manufacturing is founded in this belief. It is explained in this section that religion and spirituality are closely related to marriage, meaning that marriage has physical and spiritual components.(Nur ad-Din & Tarigan [3])

No, in law No.1 of 1974 [2] it can be interpreted that marriage is an inner birth relationship between a male individual and a female individual so that a married couple who are serious about realizing a happy and eternal family or family in the light of the One and Only Godhead. In addition, according to Presidential Decree No. Article 2 of the Compilation of Islamic Law in 1991 states, marriage based on the rules of islan is a contract or mithaqan ghalizan that is very

strong in order to follow Allah's commands and for those who carry it out the value of worship [4].

The fundamental reason for family life is that the family is based on the principle of adoration and love between spouses and on standards of justice and mutual understanding, whereby each individual of the husband and spouse is obliged to complete his or her commitment to his or her spouse, so the family lives steadfast. As stated in Q.S. Ar-Ruum/30:21, which means "And one of the signs of His power is that He created for you wives of your own kind, that you might incline and feel at peace with her, and make Him among you love and love," God created wives of your own kind for you. Indeed, there are instructions for believers [5]. In Islam, marriage is a very sacred relationship, because through marriage individual desires can be poured into the hall of worship, along with hedak get its recognized descent from religion. But don't think about living in a marriage relationship full of jokes and laughter like heaven. The many obstacles faced by husband and wife, be it obstacles caused by economic elements, parents or the environment, sometimes all kinds of obstacles, the beginning of difficult obstacles that were very complicated that existed in the family must always be felt to be at the beginning at the same time sorted out properly, so that we can maintain our marriage relationship as well as possible not to participate in divorce (talaq). But if it has been very forced and simultaneously in the relationship increasingly feels unpeaceful, torturous and the existing things are getting worse and worse, then it is very forced to carry out a divorce is welcome even though the matter is not

recognized from Allah SWT. If the woman has been rejected three of her husbands, she cannot be referred again. Even if the husband wants to return together, the woman must first marry another man through a new marriage, but many cases show that carrying out the marriage seems to be just a formality and far from the substance of the marriage. The party who marries a woman who has been rejected three from her husband through the purpose of legalizing her woman to her original husband, this is what is called *nikah muhallil*.

Islam forbids divorce that can tear down the solid bones of the family and spread its ugliness, weaken the unity of the Ummah and form resentment and tear the veil of glory, because separation means separation or division. If the woman has been rejected a third time from her husband, then she cannot be referred again. Even if the husband wants to return to his woman, he must marry first through the man and through his new marriage (Ash-Shabuni [6]). According to Arabic, the Arabic word for "letting go" or "lifting the rope" is *talaq*. Detached is to provide marriage assurance by articulating certain words by the couple. "I divorced you", for example, untied the marriage of husband and wife. Al Jaziry defines divorce as "reducing the untie" or "eliminating the marriage bond" by using specific words. Regarding divorce rules, most academics argue that it is permissible, but it is better to avoid them. Shafi'iyah and Hanablah scholars have the idea that divorce law can be *sunnah*, *haram*, or both. (Azzam & Hawwas [7]) "*Muhallil*" is a type of marriage in which the male side marries the female side who has been divorced three times so that the first man can return with her. When the ex-husband or wife wants to return to her ex-husband, they perform *nikah siri* without first having a *muhallil* marriage with the wife, thus causing problems in this *muhallil* marriage. This kind of behavior is sometimes done through marriages that are not registered with the Office of Religious Affairs. In Perjuangan Village, Teluk Nibung District, Tanjungbalai City, marriage without *muhallil* began on the part of the husband who divorced his wife three times. Later, the husband intended to remarry his wife, but he could not do so because he had been divorced three times. The husband then remarries his wife without the wife performing *muhallil* first (Ash-Shabuni [8]).

According to Imam Shafi'i, *muhallil* marriage is legal. Although there is an intention to legalize the woman to remarry through her former husband, Imam Shafi'i thought that *muhallil* marriage is valid as long as it is not said to be the condition of *ijab qabul* at the time of the contract marriage contract. If the wife does not perform *muhallil* then her marriage with the ex-husband is *haram*. According to the *ijma'* of the scholars, a woman can return to her first husband with the right of triple *talaq* if he cancels triple *talaq* and enters into a new marriage after his wife marries and has intercourse with her second husband. If the second husband divorces the woman and her *iddah* period ends, the woman can return to the first husband. Because, the existence of a husband-and-wife relationship with the next spouse has legitimized marriage with the first husband. In addition, the first contract prevented her from reuniting with her first husband. Therefore, a new deal must be made. (The-Zuhaili [9])

In the implementation of marriages that have been rejected three occurred in Kelurahan Perjuangan Teluk Nibung District, Tanjungbalai City. Where husbands who mentalize their wives three times remarry them without first committing *Muhallil*. This study aims to find out how married couples who divorced three times without doing *muhallil* got married, as well as Imam Syafi'i and Ulama in Struggle Village, Teluk Nibung District, Tanjungbalai City, and the reason they remarried but the wife did not do *muhallil*.

II. RESEARCH METHODS

The method used in this study is normative empirical. Because this research was conducted by collecting data from the field on married couples' marriages, in which the wife has been triple rejected, without committing *muhallil*. Furthermore, the data is reviewed and analyzed using reference materials, literature and laws that have links through cases. Thus, there will be a gap between norms and facts that exist in society, namely the conflict between norms through existing reality. Furthermore, the existing problems will be analyzed by referring to the Compilation of Islamic Law which regulates the marriage of married couples who have divorced three times without *muhallil* in Struggle Village, Teluk Nibung District, Tanjungbalai City. The nature of the research is descriptive. Descriptive research intends to share a complete illustration (description) of the situation of the rules that exist in a location and the timing of specifications in the community. The material for discussing the systematics of married couples in the struggle village of Teluk Nibung District, Tanjungbalai City who have divorced three times without *muhallil* is set forth in this thesis. The problem approach is a method of achieving research objectives by solving problems at certain stages. An empirical juridical approach is used as a problem approach in this study. This study uses an empirical juridical approach by analyzing a problem by combining legal and literary sources with field data, especially the marriage of married couples in Kelurahan Perjuangan Teluk Nibung District, Tanjungbalai City who have divorced three times without *Muhallil*. This research focused on the Struggle Village located in Teluk Nibung District, Tanjungbalai City. The research period is November 2021 to July 2023. In this study, the subject for which data can be obtained is the data source. Interviews were used to orally gather information from participants in the study. The subjects of his research were 6 married couples in which the wife had been rejected 3 and remarried to the husband without *muhallil*.

III. RESULTS AND DISCUSSION

Wedding Concept

Marriage in reference to the Big Word Indonesian, is characterized as digestion, arranged marriage, marriage, tendency. Copulation, according to language, is what is meant by marriage. Marriage according to the term is sexual relations, but based on the meaning of *majazi* or the meaning

of valid is agreement or understanding that makes sexual relations legal as a couple between the man and the woman (Ramulyo [10]). Looking at the previous meaning, if understood, will lead to one conclusion, namely, that intercourse can or may get pleasure (with women) with a certain pronouncement (contract). Based on the substance of the Shari'a, marriage is the spiritual and physical union between husband and wife through the intention of realizing a *sakinah*, *mawaddah*, or *warahmah* family. Sociologically, marriage is the union of two large families and the formation of social institutions that unite several members of two different families on a link. (Izzan & Saehudin [11]). In terminology, marriage is a contract that means the ability to perform intercourse through the use of marriage. Law No.1 of 1974 chapter 1 article 1 explains that "Marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One and Only Godhead". As for *Nikah Muhallil* which legalizes marriage between former wives who have been divorced three times, or is a term for someone who marries a woman who has been divorced by her previous husband three times with the intention of not marrying. start a family. His main hope is to separate from the female after having sex with her so that his most memorable partner is able to mate her again [2].

Provisions For Married Couples Who Have Been Rejected 3 Can Make A Contract Again

Split *talaq* is a separation carried out by a husband and wife. *Talaq* is the most famous split practiced by Muslims. This divorce status does not require the Religious Court to make a decision. In the event that a couple expresses separation in words to their good half, the separation has fallen and fruitful, whereas the choice of the Strict Court is only customary [12]. Divorce, also known as *talaq*, is defined by sharia law as the breakup of a marriage between husband and wife for a set time or forever. What is meant by "independence" in this sentence is the breakup of a marriage as a result of husband and wife becoming independent of each other. *Talaq* literally translates to "freedom." Imam Shafi'i confirmed that the word "*talaq*" refers to the termination of a marriage contract, depending on how it is pronounced and what it means (Army & Nasution [12]). Whoever denounces his wife 3 times, then he is not entitled to the Islamic Sharia regulation that the husband and wife have separated from their lover many times, then it is not legal for the husband to offend the wife he has separated. If the ex-wife is married and lives with another man, the husband can marry his ex-wife. This next marriage was well concluded and there was no hope of legitimizing his most memorable spouse. It is clear that this reasonable marriage was done with the sincere intention of having a happy family as required by law. It turned out that the household could not go according to plan, so the second husband divorced his wife and the wife had completed her *iddah*, so that the first husband could remarry the woman. This is in accordance with the meaning of Allah's word in QS al-Baqarah 2:230. According to this verse, it turns out that a husband who divorces his wife three times may remarry his

ex-wife under the following conditions: first, his wife must marry another man in a reasonable and correct marriage according to customary law and sharia. Secondly, as expected of a husband and wife, the second husband has had sexual intercourse.

In the case of carrying out the marriage of a married couple who have been rejected 3 only carry out *Muhallil*, in the context of the Islamic rules in the KHI which are in force based on presidential decree no.1 of 1991 concerning the dissemination of the KHI, separation because of *talaq* we can see the rule in article 114 which states "The breakup of marriage caused by divorce can occur due to *talaq* or based on a divorce lawsuit". Therefore, if a husband decides to divorce his wife outside the Religious Court, divorce is only valid according to religious law, not Indonesian law. Conjugal marriages have not been legally broken because divorces are settled out of court [4]. Meanwhile, according to the Qur'an Surah Al-Baqarah verse 230, if a husband divorces his wife for the third time, then it is haram for her to marry her before she marries another man. The bottom line is *muhallil* is required to allow remarriage between wife and first husband if you have been divorced three times. *Muhallil* is a person who makes things halal. The point is that the wife must have had conjugal relations with her husband before marrying another man because that is what makes a marriage successful. Another term for men is *muhallil*. The wife may remarry her first ex-husband if the husband and wife are also divorced.

Interview Results

Based on the results of interviews with several residents of Kelurahan Perjuangan Teluk Nibung District, Tanjungbalai City, consisting of 6 wives who were remarried by their ex-husbands who had already done three *mentals*, and the wife had not done *muhallil* first. Where it is known that when the husband mentalizes his wife three times, that they cannot remarry, unless the wife remarries through another man called *muhallil* and the man (*muhallil*) divorces the wife mentally three times then the wife can remarry her first husband. The marital status of married couples who have been rejected 3 do not carry out *muhallil* that occurs in Kelurahan Perjuangan Teluk Nibung District, Tanjungbalai City, is a serial marriage or not written in KUA. As for the practices that occur in the field, the data that the researchers found are as follows:

- 1) Couple J and D, from the interview that the author conducted found the results that, the length of their marriage was 12 years, the length of their divorce was 4 months, the reason they divorced because the husband used drugs, and the reason they remarried because they still loved each other and the husband stopped using drugs.
- 2) Couple S and E, from the results of interviews that the author conducted, it was found that, the length of time they were married was 4 years, the length of time they divorced was 1 year, the reason they divorced was because their parents always interfered in their household affairs, and the reason they remarried was because of children.
- 3) Couples I and Y, from the results of interviews that the author conducted, it was found that, the length of time they

were married was 1 year, the length of time they divorced was 4 years, the reason they divorced was because their husbands were imprisoned, and the reason they remarried was because they did not understand the rules of talaq and ruju'.

- 4) Couple H and M, from the results of interviews that the author conducted, it was found that, the length of time they were married was 21 years, the length of time they divorced was 3.5 years, the reason they divorced was because the husband remarried, and the reason they remarried was because they did not want to separate and the husband divorced his second wife.
- 5) Couples L and I, from the results of interviews that the author conducted, it was found that, the length of time they were married was 28 years, the length of time they divorced was 6 months, the reason they divorced was because the husband was emotional and dropped talaq for the 3rd time, and the reason they remarried was because they were old no one took care of it.
- 6) Couples A and K, from the results of interviews that the author conducted, it was found that, the length of time they were married was 2 years, the length of time they divorced was 2 months, the reason they divorced was because the husband was domestic violence against his wife, and the reason they remarried was because the husband wanted to change.

From the results of the interview above, it can be seen that there are 6 cases of married couples that have been rejected 3 times, the wife did not carry out Muhallil first before remarrying the first husband, due to several factors that influence it, including the lack of understanding of husband and wife religious science, especially related to the terms and harmony of marriage, divorce, and reconciliation. Another factor is that the couple still likes each other and is already doing so because they don't know what will happen if they divorce three times. And the reason the wife does not do muhallil is because the husband does not want his wife to be married or associated with other men. The next factor is the carelessness of certain parties who immediately remarried the ex-husband to the ex-wife without first seeking accurate information from village officials about what happened.

Imam Shafi'i's Opinion on Muhallil Marriage

As for the marriage of the analyst: (It is the one who means a bank that analyzes the divorced woman three times for her husband who divorced her) it is haraam, null and void, for the saying of the Prophet (peace and blessings of Allaah be upon him): May Allaah curse the one who analyzes it. It is a valid marriage, even if it is positive for the sin according to Abu Hanifa and the Shafi'is, because the contract has apparently completed its pillars and conditions for legitimacy Meaning: And as for nikah muhallil (he is the one who means with his marriage the legality of a woman who is rejected by 3 husbands who have mentalized the woman) then the law of marriage muhallil is haram and invalid as the Prophet SAW said (may Allah punish men and women who perform nikah muhallil) as for the difference of opinion from nikah muhallil is according to Abu Haneefa and Shafi'iyah the marriage is

valid even though the perpetrator sins because it is zhohir harmonious and conditional The contract has been perfected

The reason for their difference is their difference in the concept of the previous hadith: "May Allah curse the one who is allowed to do so", so whoever understands from the curse: the sin only, he said: Marriage is valid. Whoever understands from the sin the corruption of the contract, an analogy with the prohibition that indicates the corruption of the forbidden, said: Marriage is corrupt. Meaning: And since the difference of opinion among the Ulema lies in the difference of understanding in the above hadith, those who understand the meaning of anathema is simply sinful then say that the marriage is valid however, those who understand the sin is the destruction of the marriage contract by likening to the prohibition that indicates the breakdown of something forbidden they say that the marriage is broken or defective (The-Zuhaili [9]). The point of the above sentence is that Imam Shafi'i thinks that muhallil marriage is valid. Although it is intended to allow the woman to remarry her previous husband, Imam Shafi'i argues that muhallil marriage is valid as long as there is no mention of the terms of ijab qabul at the time of the contract marriage. The author claims that Imam Shafi'i seems to pay less attention to intention than to external aspects, such as the fact that utterances are considered to annul muhallil marriages. While expectations actually determine an activity. Even if the future husband demands, his intention must exceed his speech if it does not match what he said, or if his intention differs from his speech.

Imam Shafi'i, on the other hand, believes that "speech" can defeat "intention". Imam Shafi'i uses the law of istinbat qiyas, which equates qiyaskan nikah muhallil with ordinary marriage, to determine whether or not nikah muhallil is permissible. Since the purpose of the third party is mainly to provide justification for the marriage between the ex-husband and his wife, the implementation of muhallil marriage seems less profitable in this regard. If a husband beats his wife three times, they cannot remarry. Unless the ex-wife is married to a new man and the new man has sexual relations with her. Also, after the ex-wife's new husband divorced her and she completed her iddah, her ex-husband and wife Nisa made a new contract. Her first husband had the legal right to divorce her three times.(The-Zuhaili [9])

IV. CONCLUSION

Based on the formulation of the problem of this research that concludes in the research are: Nikah Muhallil is a marriage to re-validate an ex-wife who has been rejected 3 by her ex-husband with an agreement. What happened in Kelurahan Perjuangan Teluk Nibung District, Tanjungbalai City, the ex-wife did not marry muhallil first, the ex-wife made another contract with her ex-husband. There are 6 married couples who carry out this marriage, it occurs due to several influencing factors, namely the lack of religious insight, especially in the chapter of marriage, talaq and reference along with other components because the couple can like each other, there are also other elements because they

have already carried out starting on the principle of ignorance about the impact on the triple talaq, and also other elements of behavior that is carried out continuously by remarrying the pasutrinnya can find First, the matter was carried out to the surrounding village apparatus. In Imam Shafi'i's view, carrying out Muhallil marriage is not considered good, because the principle is willing on the third side, namely to validate the marriage between ex-husbands through wives. According to the opinion of Ulama in Kelurahan Perjuangan, Teluk Nibung District, Tanjungbalai City regarding the marriage of married couples who have been rejected 3.without doing muhallil says that a married marriage that has been in triple talaq Just performing muhallil is an invalid marriage and even mentions it as a threat of stoning.

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