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TALAK THROUGH WRITING AND ITS RELEVANCE TODAY: A COMPARATIVE STUDY OF THE PERSPECTIVES OF IBN QUDAMAH AND IBN HAZM

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ABSTRACT Divorce/Talaq is one of the legal instruments in Islam that is prescribed to resolve household conflicts that can no longer be reconciled. In modern times, especially in the digital era, the practice of divorce is not only carried out verbally but also through written media, such as letters, short messages and social media. This raises fiqh issues regarding the validity of divorce through writing. This research examines two different classical views, namely the opinions of Ibn Qudamah and Ibn Hazm, in understanding the law of talak through writing. The research method used is qualitative research with a descriptive analysis approach, namely analyzing in depth the validity of divorce conveyed by a husband to his wife in writing or indirectly. The data sources used are secondary data sources, namely the Book of al-Mughni by Imam Ibn Qudamah and the Book of *Al-Muhalla* Imam Ibn Hazm's writings and books and articles based on OJS (Open Journal System) about divorce. Data processing techniques are carried out by processing library materials (library research). The results of this study Ibn Qudamah allows and acknowledges the validity of divorce through writing if accompanied by a clear intention and explicit wording of the divorce, referring to general evidence and the practices of the companions, including the hadith of Bint Qais. Meanwhile, Ibn Hazm rejects the validity of divorce through writing on the grounds that a valid divorce must be conveyed directly by the husband to the wife without an intermediary, based on the *zahiri* approach to the text. This difference is rooted in the legal *istinbath* method used by both, where Ibn Qudamah is contextual, while Ibn Hazm is textual. This study shows that understanding divorce through writing has great relevance in today's social dynamics, especially in responding to the rise of digital divorce.

KEYWORDS *Divorce, Writing, Ibn Qudamah, Ibn Hazm, Islamic Family Law*

INTRODUCTION / INTRODUCTION

In the reality of modern life, where communication technology is developing rapidly and lifestyles are changing, the practice of divorce is no longer always done verbally in front of the wife or witnesses. In some cases, a husband can issue a divorce simply by writing it on paper, sending a short message via cellphone, or even including it in

an email. (Burhanuddin, 2018). Divorce carried out in this manner raises a serious issue in Islamic law: is writing, which can be done unilaterally, secretly, and without direct confirmation from the wife, truly valid as a form of dissolving the marriage bond?

This phenomenon is not merely technical, but touches on fundamental aspects of protecting women's rights, justice

in the household, and the validity of a contract that was originally built with the vows and presence of two parties.(Asmaret, 2018). Many cases show that divorce through writing actually leaves trauma and legal uncertainty for women, especially if there are no witnesses or accompanying explanations.(Daharis, 2024). In this context, a big debate has arisen: does writing have the legal force of sharia to issue a divorce, or is it only considered as an imperfect statement of intention?

Differences of opinion among classical and contemporary scholars are relevant to be reviewed, especially when Islamic family law is faced with the challenges of the digital era. Divorce, which should be a serious and responsible process, can now take place instantly and privately, opening up room for doubt about its validity and the justice that should be upheld in sharia.

This sharp difference shook the understanding of the people about the validity of a divorce: is it true that only through writing, without sound, without the presence of the wife, a marriage built on the basis of a contract and witnesses can collapse just like that? In this context, moral and legal anxiety arises: how strong is the legitimacy of writing in canceling the sacred bond of marriage according to the perspective of classical fiqh? The debate between Ibn Qudamah and Ibn Hazm not only opened up space for academic discussion, but also challenged the way we understand justice and protection in Islamic family law.

The phenomenon of divorce through writing is not only a problem of communication in the household, but is also closely related to changes in the dynamics of power in the family. In many areas, divorce through text messages, emails, or written letters is often chosen by husbands because it is considered more practical and faster, but it also reflects the gap in the power relationship between husband and wife. In the patriarchal tradition that is still strong in most societies, husbands often feel that they have full control over important decisions in the family, including divorce. The use of written media

as a means to issue a divorce without going through open dialogue shows that this inequality has not been resolved.(Fikri et al., 2019).

Even worse, many women feel they have no say in their household affairs. When a divorce is unilaterally pronounced without involving the wife in the decision, many women feel marginalized, both in the legal context and in the family dynamics.(Daharis, 2024). Many are then caught in confusion, not knowing whether their marriage is still valid or not, and how they should behave legally. Women who receive a divorce in writing often feel they are not given the opportunity to defend themselves or find a solution together before the decision is made.(Daharis, 2024).

In addition, this phenomenon also shows the lack of public awareness regarding the importance of legal procedures in divorce. Divorce carried out in this way risks creating legal uncertainty, both for women and children who may be involved in custody and maintenance issues. This shows the need for legal and social education about women's rights and legal procedures in divorce, so that cases like this do not become more rampant without adequate protection.

From an Islamic legal perspective, divorce is a form of statement or action that terminates the marital status between a husband and wife. Based on the principles of Islamic jurisprudence, divorce is usually done verbally, and this process requires the fulfillment of several conditions, including the ability to reason, sincerity of intention, and clear pronouncement. In this case, divorce through writing, such as text messages or letters, cannot be considered a legitimate practice without fulfilling the applicable provisions. According to the majority of scholars, divorce pronounced by the husband or spoken verbally is a more important form because it contains a clear intention and without doubt. In this context, written divorce can give rise to legal issues, especially if there are no witnesses or other conditions required by Islamic law are not met.(Syaifuddin, 2020).

In Indonesia, divorce practices are regulated in Law Number 1 of 1974 concerning Marriage, which refers to Islamic law as one of the basic considerations. Based on this law, divorce through the courts is a legal and official mechanism. In this case, the divorce process through media such as letters or text messages that do not go through court procedures or witnesses can cause legal uncertainty regarding marital status.(Afifi, 2020). Basically, positive law in Indonesia requires a court to decide on a valid divorce, so that a divorce that is pronounced in writing without the approval of the court or a valid witness can risk causing legal problems in the future, whether related to the rights to maintenance, joint property, or child custody.(Chairunissa & Mustafa Umami, 2023).

Furthermore, in the context of Islamic law, divorce that is not accompanied by clear intention and sincerity, or is carried out without a valid procedure, can cause confusion in the legal status of a married couple. Meanwhile, in the view of some scholars, divorce that is carried out in writing (such as in the form of a text message) that is not accompanied by the correct legal procedure can be considered null and void, especially if it does not comply with the principles that have been established in fiqh.(Imanan et al., 2024).

The discussion regarding divorce has become a hot issue to be studied by academics who produce scientific writing from various points of view and dimensions, first: Opinions of school scholars:(Imanan et al., 2024). Second, positive law in Indonesia:(Harry Kurniawan & Yulia Putri SDW, 2022);(Kamiludin, 2023);(Chairunissa & Mustafa Umami, 2023);(Afifi, 2020);(Fikri et al., 2019). Third, the case of settlement:(Salsabila, 2024);(Azharuddin et al., 2024);(Burhanuddin, 2018). Fourth, Iqar talak via electronic mail (SMS, WA, etc.):(Ropei & Sururie, 2021);(Syaifuddin, 2020);(Asmaret, 2018);(Putri & Mukdin, 2024);(Qomariyah & Hidayatul Hikmiah, 2023);(Yaqin, 2019);(Hariati, 2023). The research that will be discussed complements

the previously existing dimensions, namely studying divorce from the perspective of the opinions of scholars about divorce that is conveyed indirectly or in writing.

In the classical Islamic jurisprudence, two important figures such as Ibn Qudamah from the Hanbali school and Ibn Hazm from the Zhahiri school have discussed divorce through writings with different approaches. Their opinions are important to be studied in depth because they can provide an argumentative basis for contemporary practices. On the other hand, positive law in Indonesia also emphasizes that divorce is only valid if it is carried out before a court, as regulated in Law Number 1 of 1974 and the Compilation of Islamic Law (KHI). Therefore, it is necessary to conduct research that examines and compares the views of classical jurisprudence with the needs of contemporary law in Indonesia.

The urgency of this research lies in the effort to provide a more complete and comprehensive understanding of the validity or otherwise of divorce through writing in a fiqh perspective, while also considering its relevance in the context of modern state law. By examining the opinions of Ibn Qudamah and Ibn Hazm, this research not only presents a rich treasure trove of fiqh knowledge, but also provides a real contribution to the formulation of policies or fatwas related to modern divorce. This research is also important to answer the legal issues faced by contemporary Muslim society and provide a direction for fair and sharia-compliant solutions.

METHODS / METHODS

The research method used is qualitative research with a descriptive analysis approach, namely analyzing in depth the validity of divorce conveyed by a husband to his wife in writing or indirectly. The data sources used are secondary data sources, namely the Book of al-Mughni by Imam Ibn Qudamah and the Book of *Al-Muhalla* Imam Ibn Hazm's writings and books and articles based on OJS (Open Journal System) about divorce. Data processing techniques are

carried out by processing library materials (library research). Techniques in analyzing data analyzed with exploratory descriptive analysis using reduction, display, and verification techniques.

RESULTS / FINDINGS AND DISCUSSION

Divorce and its Legal Basis

Divorce is one of the important concepts in Islamic family law that is directly related to the continuity and harmony of the marriage bond. Etymologically, the term *talak* comes from the Arabic *ṭalaqa-yatliqu-ṭalāqan* (طلق - يطلق - طلاقاً) which means to release, free, or leave something from its bonds (Munawwir, 2007). In the context of marriage, this meaning refers to the act of releasing a woman from the bonds of a valid marriage according to sharia. This word is also used in situations of releasing or breaking other bonds, so that linguistically it has a general meaning, but in Islamic law it is used specifically to refer to the termination of a husband and wife relationship. (Al-Jaziri, 2011).

In the terminological sense or in sharia terms, divorce is the release of the bonds of marriage carried out by a husband to his wife with certain words or statements intended to divorce. (Al-Jaziri, 2011). This definition shows that divorce is not just an emotional decision, but a legal act that has serious consequences in household life, both personally and socially. Islamic jurists agree that divorce is the husband's prerogative, although its use must be carried out with full responsibility and following the manners and provisions outlined by the sharia. (Yuniarti & Saifullah, 2023).

Divorce is also part of the pillars and system of Islamic law which is designed to be the last way out when household conflicts can no longer be resolved through deliberation or mediation. In the view of Islam, although divorce is permitted, it is a lawful matter that is most hated by Allah SWT as mentioned in the hadith. This indicates that Islam views marriage as a sacred bond and ideally should be maintained, but it is also realistic that in

certain situations separation is the best way for both parties. (Ghazaly, 2010).

The legal basis for divorce in Islam has very strong legitimacy, both from the normative-theological and juridical-systematic sides. Divorce is a form of termination of marriage that is explicitly regulated in the main sources of Islamic teachings, namely the Qur'an, the Sunnah of the Prophet Muhammad SAW, and agreed upon by the *ijma'* of scholars.

Textually, the Qur'an places divorce as the last legal solution when conflicts in the household can no longer be reconciled. One of the most fundamental verses is Surah Al-Baqarah verse 229, which reads:

الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكَ تُسْرِيحٌ بِإِحْسَانٍ

Translation:

"Divorce (which can be referred to) is done twice. After that, you can reconcile in a peaceful way or divorce in a good way."

This verse provides a systematic legal structure for divorce: divorce may be carried out twice with the right to reconcile during the *iddah* period, and if a third divorce occurs, the divorce is final (*ba'in kubra*) unless certain conditions are met, namely that the ex-wife marries another man first.

From the Sunnah perspective, the Prophet Muhammad SAW provided a direct example and detailed explanation regarding the valid practice of divorce.

أَبْغَضُ الْحَلَالِ إِلَى اللَّهِ الطَّلَاقُ

Translation:

The thing that Allah SWT hates the most but is permissible to do is divorce.

This hadith shows that divorce, although legally permissible (*halal*), is greatly hated by Allah SWT. This means that divorce is not something that is easy or can be used as the main way out in every household problem. Islam highly prioritizes efforts to resolve conflicts in marriage through deliberation, advice, family mediation, and even through the role of judges from both parties.

Talaq, according to this hadith, is the last resort when all attempts at peace have failed, and when continuing the marriage will only cause greater harm. Therefore, Islam does not forbid divorce because there are certain conditions where separation is the only just and beneficial solution. However, their abilities are still limited by moral ethics, so that they are not done arbitrarily or emotionally

In another hadith narrated by Abu Dawud, Tirmidhi, and Ibn Majah, Rasulullah SAW said:

"ثَلَاثٌ جِدُّهُنَّ جِدٌّ وَهَزْلُهُنَّ جِدٌّ: النِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ"

Translation:

"Three things that if done seriously are valid, and if done playfully are still valid: marriage, divorce, and reconciliation." (HR. Abu Dawud no. 2194, Tirmidhi no. 1184, and Ibnu Majah no. 2039, considered valid by al-Albani)

This hadith shows how serious the consequences are of a husband's statement of divorce, whether consciously, seriously, or playfully. In Islamic law, there is no room for jokes in these three matters, because the impact is very large on a person's legal status: the marriage contract creates a legal bond, divorce dissolves it, and reconciliation restores that bond. Therefore, all statements concerning these three matters are seen as serious actions and have consequences under Islamic law, even if the perpetrators do not have serious intentions.

This shows the principle of caution (ihtiyath) in Islamic law in maintaining the dignity of marriage. Divorce sentences cannot be played with, let alone used as a tool of threat or pressure in household conflicts. Many divorce cases occur due to spontaneous, emotional, or joking divorce statements, but are still valid and have legal consequences, which then cause regret and family breakdown.

In the ulama's ijtihad, through the ushul fiqh and qawa'id fiqhiyyah approaches, divorce is determined as a husband's right which must be carried out according to sharia procedures. The fuqaha agree that talak has conditions and pillars which, if not fulfilled,

then talak can be considered invalid. This shows that Islam does not leave divorce solely to the husband's emotional will, but subjects it to strict normative rules (Nasution, 2007).

In Indonesia, the law of divorce is accommodated in the Compilation of Islamic Law (KHI), especially in Articles 117-129, which require that divorce is only valid if pronounced before a Religious Court hearing. This aims to prevent arbitrary divorce and provide legal protection for women. (Anam & Nelli, 2021).

Opinions and arguments of Imam Ibnu Qudamah and Imam Ibn Hazm regarding divorce through writing

Divorce is one of the legal instruments in Islam that according to sharia serves to end the bonds of marriage. In practice, divorce is usually carried out verbally by the husband to his wife. However, in the increasingly rapid development of society and technology, the practice of divorce is no longer limited to oral, but can also be carried out through written media—either in the form of conventional letters, short messages, or digital media such as WhatsApp, email, or other social media. This change in the method of delivery has given rise to an important discourse in Islamic jurisprudence: does divorce in writing have the same legal force as divorce verbally? Can a written statement containing elements of divorce be considered valid according to sharia even though it is not delivered directly and accompanied by witnesses?

This issue has become a concern among scholars, including two important figures in the classical Islamic legal treasury, namely Imam Ibn Qudamah and Imam Ibn Hazm. Interestingly, these two scholars have conflicting views on the validity of divorce through writing.

Imam Ibnu Qudamah, a great scholar from the Hanbali School, is of the view that divorce through writing can be declared valid, as long as the writing is intended as a statement of divorce and shows clearly the husband's intention to divorce his wife. He

explained that firm writing, whether in the form of a letter or document, has legal force and can represent the husband's intentions and will. Therefore, if a husband writes a divorce to his wife with the intention of divorcing her, then the divorce is declared valid and valid, even though it was not pronounced directly. This view shows Imam Ibnu Qudamah's flexibility in adapting Islamic law to continuously developing social realities. He explains in his book (Qudamah, 1991):

ولنا، أَنَّ الكِتَابَ بَـ حَرْفٍ، يَفْهَمُ مِنْهَا الطَّلَاقُ، فَإِذَا أَتَى فِيهَا بِالطَّلَاقِ، وَفِيهِمْ مِنْهَا، وَنَوَاهُ وَقَعَ كَالْفَلِظِ وَلِأَنَّ الْكِتَابَةَ تَقُومُ مَقَامَ قَوْلِ الْكَاتِبِ

Translation:

In our opinion, these writings are letters that can be understood in terms of the meaning of divorce. If the husband writes the words talak, then it can be understood that the meaning is mental, which contains elements of intending, writing and this is like reciting, because writing is the same as saying it.

Imam Ibnu Qudamah stated that divorce delivered in writing can be considered valid and has legal consequences like divorce pronounced directly by the husband. According to him, if a husband writes the words of talak with the clear intention of divorcing his wife—either through a physical written letter or modern communication media such as SMS, email, or instant messaging applications such as WhatsApp—and the writing can be clearly understood as a form of statement of talak, then the talak is declared valid according to Islamic law. (Qudamah, 1999).

Ibnu Qudamah emphasized that the elements of intention and clarity of pronunciation in writing are the main keys in determining the validity of divorce through writing. If the writing shows a serious intention to divorce and does not contain any ambiguity, then the legal status of divorce is the same as verbal divorce. In his view, divorce is the husband's prerogative as the party who has the authority to bind and dissolve the marriage. Therefore, the method of conveying the talak, either directly or

through written media, does not reduce the substance and validity of the talak itself. (Qudamah, 1991).

Furthermore, Ibnu Qudamah also does not require testimony in the talak process as a legal requirement, but rather emphasizes the clarity of the husband's will and the form in which it is conveyed. This shows his more contextual and flexible approach to forms of communication in family law matters. So that in certain conditions, for example when the husband is far away or finds it difficult to meet his wife in person, a writing containing an explicit statement of divorce and accompanied by a valid intention can be used as a legal basis for establishing a divorce. (Qudamah, 1991).

In strengthening his argument, Ibn Qudamah uses several hadith arguments:

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى قَالَ قَرَأْتُ عَلَى مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّ أَبَا عَمْرٍو بْنَ حَفْصٍ طَلَّقَهَا الْبَيْتَةَ وَهُوَ غَائِبٌ فَأَرْسَلَ إِلَيْهَا وَكَيْلُهُ بِشَعِيرٍ فَسَخَطْنَاهُ فَقَالَ وَاللَّهِ مَا لَكَ عَلَيْنَا مِنْ شَيْءٍ فَجَاءَتْ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَتْ ذَلِكَ لَهُ فَقَالَ لَيْسَ لَكَ عَلَيْهِ نَفَقَةٌ فَأَمَرَهَا أَنْ تَعْتَدَ فِي بَيْتِ أُمِّ شَرِيكِ ثُمَّ قَالَ تِلْكَ أَمْرَةٌ يَغْشَاهَا أَصْحَابِي اعْتَدِي عِنْدَ ابْنِ أُمِّ مَكْتُومٍ فَإِنَّهُ رَجُلٌ أَعْمَى تَضَعِينَ ثِيَابَكَ فَإِذَا حَلَّتْ فَادِينِي قَالَتْ فَلَمَّا حَلَّتْ ذَكَرْتُ لَهُ أَنَّ مُعَاوِيَةَ بْنَ أَبِي سُفْيَانَ وَأَبَا جَهْمٍ خَطَبَانِي فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَمَا أَبُو جَهْمٍ فَلَا يَضُغُ عَصَاهُ عَنْ عَاتِقِهِ وَأَمَا مُعَاوِيَةُ فَصُغْلُوكَ لَا مَالَ لَهُ إِنْ كُجِيَ أَسَامَةٌ بَنَ زَيْدٍ فَكْرَهُتُهُ ثُمَّ قَالَ إِنْ كُجِيَ أَسَامَةٌ فَتَكَحُّنُهُ فَجَعَلَ اللَّهُ فِيهِ حَيْرًا وَاعْتَبَطُتْ

Translation:

Has told us Yahya bin Yahya he said; I read in the presence of Malik from Abdullah bin Yazid, former sahaya Al Aswad bin Sufyan, from Abu Salamah bin Abdurrahman from Fatima bint Qais that Abu Amru bin Hafsh had divorced him with triple talaq, while he was far from him, then he sent a representative to him (Fathimah) with wheat, (Fathimah) refused him. So (Deputy 'Amru) said; By Allah, we have no further obligations towards you. Therefore, Fatima went to the Messenger of Allah sallallaahu 'alaihi wasallam to ask him about this, he said: "Indeed, he is no longer obliged to provide a living." After that, he told him to spend his iddah period at Umm Syarik's house. But then

he said: "She is a woman who is often visited by my friends, therefore, wait for your iddah period at Ibn Umami Maktum's house, because he is a blind man, you are free to put your clothes there, if you are halal (finished the iddah period), tell me." She (Fatimah) said: After my iddah period was over, I told him that Mu'awiyah bin Abi Sufyan and Abu Al Jahm had proposed to me, then Rasulullah sallallahu 'alaihi wasallam said: "Abu Jahm is a person who never leaves his stick from his neck (likes to hit - pent), while Mu'awiyah is a poor person, has no wealth, therefore marry Usamah bin Zaid." But I didn't like it, he still said: "Marry Usamah." Then I married Usamah, Allah has given him an abundance of goodness to make him happy.

عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ طَلَّقَنِي زَوْجِي ثَلَاثًا وَهُوَ غَائِبٌ،
فَأَرْسَلَ إِلَيَّ بِذَلِكَ، فَجَاءَ رَسُولُ زَوْجِي فَقَالَ: إِنَّهُ طَلَّقَكَ الثَّلَاثَ

Translation:

From Fatimah bint Qais radhiyallahu 'anha, she said: "My husband divorced me with three divorces when he was not at home (ghoib), then he sent me the news of the divorce." So my husband's messenger came and said, "He has punished you with three divorces."

Imam Ibnu Qudamah, a great scholar from the Hanbali school, is of the view that the delivery of talak does not have to be done directly by the husband to the wife verbally. In this case, he refers to the authentic hadith narrated by Fatimah bint Qais radhiyallahu 'anha, which is the main argument in justifying the validity of divorce through intermediaries or written media.

In the story, it is told that Fatimah binti Qais was divorced three times by her husband, but her husband did not convey the divorce directly to her. Instead, he sent someone to convey the news of the divorce. Although the divorce was not delivered directly, and was even done when her husband was not in front of Fatimah, the Messenger of Allah ﷺ did not cancel the divorce and considered it valid, and even gave instructions to Fatimah to complete her

iddah period at the house of Ibn Umami Maktum.

Ibnu Qudamah understands this incident as strong evidence that divorce conveyed through a third party remains valid, as long as the intent and wording of the divorce are clear. Therefore, according to Ibn Qudamah, the essence of talak does not lie in the form of delivery, whether oral or written, directly or through an intermediary, but in the intent and clarity of the content of the talak statement.(Qudamah, 1991).

With this analogy, Ibn Qudamah expands the context of this hadith to respond to current developments. He is of the opinion that if someone writes talak explicitly—either through a written letter, electronic message (such as SMS, email, or WhatsApp)—and the writing is intended to divorce the wife, then the talak is valid according to Sharia law. This writing, in his view, replaces direct speech, as long as it is addressed to the wife and the meaning can be clearly understood.

Therefore, according to Ibn Qudamah, a letter or writing that clearly contains a statement of talak and is intended as a form of divorce by the husband, has the same legal force as a direct statement in front of the wife. This shows that Islamic jurisprudence has flexibility in responding to social dynamics, including the development of communication media in household life.(Qudamah, 1999).

On the other hand, Imam Ibn Hazm, a leading figure in the Zhahiri school of thought, actually rejects the validity of divorce conveyed in writing. According to him, divorce is a legal act that must be carried out verbally and explicitly. He emphasized that writing cannot replace the function of words in a legal contract such as divorce. Therefore, even if a husband writes a statement of divorce in clear language, as long as it is not spoken verbally, the divorce is not considered valid in his view. This is in line with the principles of the Zhahiri school of thought which are very strict in understanding the text literally and rejecting interpretations or analogical approaches

(qiyas) that are not written in the text. He explains in his book (Hazm, 1889):

اسم تطليق على أن يكتب إنما يقع ذلك على اللفظ به فصح أن الكتاب ليس طلاقاً حتى يافظ به إذ لم يوجب ذلك نص وبالله تعالى التوفيق

Translation:

What is called talak through a letter actually results in talak if it is pronounced with the word talak, then what is true is that the letter does not cause talak until the talak is pronounced, because it is not required in the text, and may Allah give taufik.

Imam Ibn Hazm, a great scholar from the Zahiri school, firmly stated that divorce delivered in writing, either in the form of a physical letter or through electronic communication media such as short messages (SMS), email, or other modern messaging applications, has no validity under sharia law. According to Ibn Hazm, divorce can only be considered valid if it is pronounced directly by the husband with clear and explicit pronunciation, and delivered verbally in front of the wife. (Hazm, 1889).

In his view, the essence of divorce is a verbal act (qauliyyah), namely direct pronunciation as a form of release from the marriage relationship. Divorce is a serious contract that must be pronounced with full awareness and in conditions that allow for real two-way communication between husband and wife. Therefore, any form of divorce that is done in writing without direct pronunciation is considered an invalid divorce or ghayr mashru' because it does not meet the formal requirements of pronunciation.

Ibn Hazm also rejected the validity of divorce carried out through an intermediary, because according to him, marriage as a noble contract should not be decided only by a gesture or indirect media. In the framework of Zahiri fiqh which is very textual and literal, legal actions such as divorce must be based on explicit evidence from the Qur'an or hadith. Because there is no text that clearly justifies divorce through writing, Ibn Hazm is of the opinion that this practice should not be

carried out and has no legal impact whatsoever, even if the writing is very clear in its intent and purpose. (Hazm, 1889).

Thus, Ibn Hazm pays serious attention to the aspect of verballity and direct presence in the implementation of talaq. This shows his concern about the possibility of misunderstanding, abuse, or even emotional decisions that do not go through a direct communication process between husband and wife. In the modern context, this opinion is important to review, especially in facing the reality of increasingly sophisticated communication technology that dominates human interaction, including in household affairs and family law. (Hazm, 1889).

The evidence used by Imam Ibn Huzamah is the evidence from the Qur'an, Surah al-Baqarah 229.

الطَّلَاقُ مَرَّتَيْنِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ سُبُحًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ حِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Translation:

The divorce (which can be referred) is twice. (After that the husband can) withhold (reconcile) in a proper manner or release (divorce) her in a good manner. It is not lawful for you to take back anything (dowry) that you have given them, unless both (husband and wife) fear that they will not be able to carry out the limits of Allah's provisions. If you (guardians) fear that they will not be able to carry out the limits (of Allah's provisions), then there is no sin on either of them for the payment that (must be) given (by the wife) to redeem herself. Those are the limits (of Allah's provisions), do not transgress them. Whoever transgresses the limits (of Allah's provisions), those are the wrongdoers.

In interpreting the law of divorce, Ibn Hazm—a great scholar from the Zahiri school—showed firmness in limiting the validity of divorce only to divorces uttered verbally by the husband to the wife directly. In this case, he referred to Surah Al-Baqarah verse 229, which reads:

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

"Divorce (which can be referred to) is done twice. After that, you can reconcile in a good way or divorce in a good way." (QS. Al-Baqarah: 229)

Ibn Hazm understands that this verse provides a very clear boundary that divorce is a serious and actual legal act. The word "الطلاق" (ath-thalāq) in the sentence structure indicates that the act of divorce is a direct act carried out by the husband consciously, with the presence of the wife as the party who directly receives the statement. Words in this verse such as "إمساك بمعروف" (holding in a good way) and "تسريح بإحسان" (releasing in a good way) according to Ibn Hazm can only occur in the context of direct communication and full awareness from the husband and wife (Hazm, 1889).

According to Ibn Hazm, there is no evidence from the Qur'an, hadith, or practices of the companions that shows that divorce can be valid only in writing, whether handwritten, letter, or electronic media as occurs in modern practice (for example via SMS or WhatsApp). For Ibn Hazm, writing cannot replace verbal because it does not represent a direct and actual action from the husband to the wife. (Hazm, 1889).

He emphasized that divorce is a form of direct legal communication, not just an expression of intention or thought expressed in writing. According to him, in a legal action that has a major impact on the family structure, such as the end of a marriage, there must be clarity in delivery and acceptance. Writing is ambiguous and can be interpreted differently, not to mention prone to misuse or manipulation.

Ibn Hazm also rejected the analogy with other contracts that can be done in writing, because according to him, divorce is not just a contract, but rather the cancellation of a previously valid contract, and this cancellation process must be carried out in a more careful and clear manner. Therefore, he did not accept the existence of qiyas (analogy) for divorce, and remained steadfast

to the literal text (nash) which stated that divorce is a direct statement from the husband. (Hazm, 1889).

Thus, based on Ibn Hazm's understanding of Surah Al-Baqarah verse 229, divorce is only valid if it is done verbally and directly, not through any written media, even though the content is clear and intended. For him, the absence of direct speech makes divorce have no legal force, because it does not fulfill the elements of real action (fi'liyyah) desired by the sharia in the verse.

Causes of Differences of Opinion

The difference of opinion between Imam Ibn Qudamah and Imam Ibn Hazm regarding the validity of written divorce reflects a fundamental difference in the method of legal istinbath that they use in understanding the texts of the sharia. Both are great scholars in the Islamic tradition, but their approaches to the sharia evidence are very contrasting, which ultimately gave birth to two opposing legal views on the issue of written divorce.

Imam Ibnu Qudamah is of the view that divorce through writing can be considered valid as long as the writing is written in clear sentences and is expressly intended to impose divorce on the wife. According to him, writing is a form of expression of will that can replace speech if it is accompanied by strong intentions and there is no doubt in the wording of the sentence. In this context, letters or other forms of writing, including today's electronic media, can function as a direct statement from a husband to divorce his wife. Ibn Qudamah's understanding shows that there is leeway and flexibility in understanding the media for conveying divorce, as long as the substance still meets the elements of intention, clarity and the legitimate will of the husband.

The basis of Ibn Qudamah's thinking can be seen from his interpretation of the hadith of Fathimah binti Qais, who was divorced by her husband through an intermediary. The Prophet Muhammad SAW

did not cancel the divorce, but instead provided legal provisions relating to Fathimah's rights after the divorce. For Ibn Qudamah, this shows that the delivery of divorce does not have to be directly said by the husband in front of the wife, but can also be done through a messenger or other media. He even understood that the main substance in divorce is not the form of delivery, but the content and intent of the statement itself. Therefore, divorce through writing that is clearly intended and understood has the same legal force as divorce that is pronounced verbally.

Meanwhile, Imam Ibn Hazm took a very literal and strict approach in interpreting the text of the sharia. He rejected the validity of divorce through writing even though the contents of the writing explicitly stated divorce and the husband's intention was also clear. For Ibn Hazm, divorce is a legal act that is not valid unless it is done directly by the husband to the wife verbally, without an intermediary. He rejected all forms of delivery of divorce other than by direct speech, because according to him there is no authentic and explicit text that shows that divorce can be done through writing or messengers.

Ibn Hazm adheres to the apparent meaning of the texts of the Qur'an and hadith. In interpreting Surah Al-Baqarah verse 229, he emphasizes that the divorce process must take place in a direct relationship between husband and wife, not through writing or intermediaries. Because there is no evidence that explicitly permits written divorce, according to him this form of delivery is invalid, even though the substance of the sentence indicates a desire for divorce. His rejection is also based on the basic principle of the Zahiri school of thought which rejects qiyas and the expansion of the meaning of the law that is not explicitly mentioned in the text.

This difference of opinion between Ibn Qudamah and Ibn Hazm is caused by differences in methodology in exploring Islamic law. Ibnu Qudamah uses a more contextual approach and pays attention to

the objectives of the sharia (maqashid al-syari'ah), as well as opening up space for ijtihad based on qiyas and istihsan. He considered social conditions and possible limitations in communication between husband and wife, so that writing could be a valid alternative in conveying divorce. Meanwhile, Ibn Hazm prioritizes a textual and literal approach to the text, and rejects forms of analogy or contextual interpretation that are not explicitly supported by dalil.

Thus, the differences between the two show the existence of a very valuable diversity in Islamic legal thought. On the one hand, Ibn Qudamah provides legal solutions that are relevant to modern conditions, where communication is no longer limited to direct oral communication. On the other hand, Ibn Hazm maintains his steadfastness to the sacred text without having to open up a space that he thinks could damage the purity of Islamic law. This difference is important to study further, especially in the context of contemporary Islamic family law, because it can provide a broader and deeper understanding of how Islamic law responds to developments in the era and technology.

Divorce Through Writing and Its Relevance Today

Divorce through writing is a form of divorce delivery by a husband to his wife not verbally directly, but through written media, either in the form of traditional letters or electronic media such as short messages (SMS), electronic mail (email), or messaging applications such as WhatsApp. In this concept, the writing functions as a representation of the husband's will to end the marriage relationship with his wife, where the substance of the writing clearly contains a statement of divorce and is intended by the husband to separate.

In classical Islamic law, the validity of written divorce is an object of debate among scholars. Some scholars, such as Imam Ibn Qudamah of the Hanbali School, stated that written divorce can be declared valid if the writing is made with the intention of divorce and the sentence used is sharih (clear)

indicating the intention of divorce. For Ibn Qudamah, although oral statements are the main form of declaration of divorce, written statements containing explicit statements with definite intentions can replace direct speech because they still reflect the husband's will firmly.

On the other hand, some other scholars such as Imam Ibn Hazm from the Zahiri School strongly reject the validity of divorce delivered in writing. He is of the view that divorce is a legal act that is only valid if it is pronounced directly by the husband in front of the wife. Ibn Hazm's rejection is rooted in a literal approach to the texts of the Qur'an and hadith. Because there is no text that states that divorce can be done in writing, for him, a written divorce even though its meaning is clear and accompanied by intention—has no legal force and is considered invalid.

In the current context, the relevance of discussing divorce through writing becomes very important, especially considering the rapid development of communication technology. In the digital era, many couples live far apart or have limited direct communication due to work, education, or even household conflicts. In conditions like this, it is not uncommon for divorce to be conveyed via text messages, emails, or other digital platforms. Therefore, it is important to understand whether the delivery of divorce through these media has legal validity according to Islamic jurisprudence.

From a practical perspective, some contemporary scholars and fatwa institutions in several Islamic countries have responded to this phenomenon with a more contextual fiqh approach. They see that modern written media, if used with serious intentions and accompanied by verifiable evidence, can be considered a legitimate form of conveying divorce, as long as the substance and intent of the divorce meet the requirements of sharia. For example, the writing must be made in a conscious state, without coercion, and its contents clearly indicate the desire to divorce the wife. On the other hand, this approach must still be

accompanied by a strong legal mechanism, such as ratification or verification before a judge, so that it is not misused or creates legal uncertainty for women.

Thus, the discussion on written divorce is not only a matter of differences of opinion between classical scholars, but also touches on aspects of relevant and contextual legal needs in the present day. Amid the increasing number of indirect divorces and the use of digital media in everyday life, a proper understanding of the validity of written divorce is essential so that Islamic law can continue to respond to the challenges of the times without ignoring the principles of justice, protection of women's rights, and formal validity in the divorce process.

CONCLUSION

Based on the discussion that has been presented, it can be concluded that there is a fundamental difference between the opinions of Imam Ibnu Qudamah and Imam Ibn Hazm in viewing the validity of divorce delivered in writing. Imam Ibnu Qudamah stated that talak delivered in writing - whether in the form of a letter or electronic media - can be considered valid if the writing contains clear talak editorials and is accompanied by the husband's intention to divorce his wife. This view refers to the generality of the arguments which do not explicitly limit the delivery of talaq only verbally. Ibn Qudamah also refers to the Bint Qais hadith, where divorce delivered through an intermediary is still considered valid, as well as understanding the QS. Al-Baqarah verse 229 flexibly states that the form of conveying talaq can be through media other than verbal as long as the intention and clarity of intent are fulfilled.

On the other hand, Ibn Hazm is of the opinion that divorce through writing, even with clear wording, is not considered valid because according to him, divorce must be conveyed directly and explicitly verbally by the husband to his wife. He rejects the validity of divorce conveyed through an intermediary or written media on the grounds that there is no history that shows that the Prophet

Muhammad SAW or his companions carried out or justified such a form of divorce. Ibn Hazm's understanding of QS. Al-Baqarah verse 229 also emphasizes the importance of direct delivery as a form of clarity and responsibility in the bonds of marriage.

This difference of opinion can be traced from the difference in the *istinbath* (legal exploration) methods they use. Ibn Qudamah, as a representative of the Hanbali school, tends to use a combination approach between texts, *qiyas*, and the practices of the companions, while Ibn Hazm from the Zahiri group is very strict about the *zahir* words of the text and rejects *qiyas*. Ibn Hazm's literal view demands direct conformity with the text without analogy, while Ibn Qudamah opens up space for contextual meaning of the evidence.

In the context of today's life, this difference of opinion has great significance, especially with the increasing use of technology in communication. Cases of divorce via text messages, emails, and social media are increasingly common, especially among couples who are separated by distance or are in emotional conflict. Ibn Qudamah's opinion that allows divorce through writing with the condition of clarity and intention can be a legal reference that is realistic and responsive to the development of the times. Meanwhile, Ibn Hazm's view remains relevant as a normative control so that divorce is not carried out carelessly and continues to prioritize the ethics of direct communication as a form of respect for marriage.

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