

An Analytical Study of Marriage Annulment (Fasakh) in Shāfi'ī Jurisprudence and Its Implementation in the Syar'iyah Court

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ABSTRACT

Objective: Consequently, this research endeavors to deliver a rigorous analysis of *fasakh nikah* through the theoretical lens of the Shāfi'ī school, coupled with a critical evaluation of its practical enforcement in the *Mahkamah Syar'iyah*. **Method:** Adopting a library-based research design, the study utilizes content analysis, hermeneutics, and comparative methodologies to scrutinize primary literature, specifically classical Shāfi'ī treatises and contemporary judicial decrees from the *Mahkamah Syar'iyah*. **Results:** The results indicate that the conceptualization of *fasakh* in Shāfi'ī doctrine exhibits unique structural characteristics, differentiating it fundamentally from *talak* (unilateral repudiation), *khulu'* (divorce initiated by the wife), and *li'an* (mutual imprecation). The legally recognized bases for annulment categorized into physiological anomalies, statutory barriers, and financial inadequacies are universally anchored in the foundational legal maxim of harm mitigation. **Novelty:** A comparative evaluation further highlights that the paramount feature of *fasakh* is its independence from the permissible *talak* quota and the absence of any requisite financial restitution from the wife, thereby cementing its role as a purely equitable instrument of justice. Its operationalization within the *Mahkamah Syar'iyah* demonstrates a broadening of judicial *ijtihad* (independent jurisprudential reasoning) capable of adaptively navigating contemporary socio-legal intricacies.

INTRODUCTION

In Islamic jurisprudence, marriage constitutes a physical and spiritual covenant between a man and a woman, intended to cultivate a family characterized by tranquility (*sakinah*), affection (*mawaddah*), and mercy (*rahmah*). However, practical realities demonstrate that not all marriages succeed in achieving these noble objectives, thereby necessitating legal mechanisms to safeguard the rights of spouses during intractable domestic crises. Islamic law accommodates the dissolution of matrimonial bonds through diverse modalities, notably *fasakh* (annulment). This mechanism exhibits distinct characteristics when compared to *talak* (repudiation), *khulu'* (divorce initiated by the wife), and *li'an* (mutual oath of condemnation), particularly concerning the initiating party, procedural requirements, and subsequent legal ramifications. Within the framework of the Shāfi'ī school of thought the predominant legal tradition among Muslims in Indonesia, particularly in Aceh the concept of *fasakh* has been rigorously examined by scholars. These jurists have formulated explicit justifications for its permissibility, encompassing physical impairments, legal impediments, and economic insolvency, all of which are fundamentally oriented toward protecting the aggrieved party within the union. The existence of the *fasakh* doctrine within Shāfi'ī jurisprudence

serves as evidence of Islam's profound commitment to women's rights, specifically the right to be emancipated from marriages that inflict distress. This commitment is further manifested in Islamic legal maxims that emphasize the principles of mitigating harm and promoting the welfare of all parties involved in the matrimonial covenant [1].

Contemporary socio-cultural developments have engendered unprecedented marital challenges unforeseen by classical Islamic scholars. These include increasingly complex instances of domestic violence, substance abuse by husbands resulting in familial economic and psychological devastation, systematic neglect of wives, and subtle rights violations that evade conventional standards of proof. Such contemporary issues challenge the efficacy of the *fasakh* (marriage annulment) concept as formulated by classical Shafi'i scholars, given that the legal grounds stipulated in classical texts may not adequately encompass the full spectrum of harm experienced by women in modern contexts. Consequently, this reality prompts critical inquiry into whether the existing conceptual framework of Shafi'i jurisprudence regarding *fasakh* remains sufficient to address the equitable needs of modern society, or if it necessitates reinterpretation and conceptual expansion through contemporary *ijtihad* that strictly adheres to the foundational methodologies and principles of the Shafi'i school. Academic discourse surrounding this subject has intensified, propelled by a heightened awareness of women's rights and increased informational accessibility concerning the varied injustices endured by wives in dysfunctional marriages. This paradigm underscores the imperative for a rigorous and comprehensive examination of the flexibility inherent within the *fasakh* doctrine to adapt to continuously evolving social realities [2].

The establishment of the Mahkamah Syar'iyah as a specialized judicial institution enforcing Islamic law in Aceh Province provides an intriguing supplementary dimension for examining the implementation of the *fasakh* concept within Syāfi'ī *fiqh* in contemporary judicial practice. As a transformation of the standard Religious Courts, the Mahkamah Syar'iyah possesses broader jurisdiction to apply Islamic law in accordance with the Aceh Qanun. Consequently, it functions as a unique laboratory for observing the interplay between classical jurisprudential normativity and the demands of modern justice. In practice, judges at the Mahkamah Syar'iyah confront a significant dilemma: whether to uphold the rigidity of the established tenets of the Syāfi'ī school or to forge legal breakthroughs that accommodate social realities unaddressed within classical texts. This predicament becomes particularly acute when adjudicating cases wherein a wife endures demonstrable suffering within her marriage, yet her presented grievances are not explicitly recognized as valid grounds for *fasakh* in classical Syāfi'ī literature. Under such circumstances, judges are required to exercise intellectual fortitude and employ proficient *ijtihad* methodologies to ascertain an appropriate legal foundation. This approach is essential to prevent a reliance on textual formalism that could compromise the substantive justice which serves as the primary objective of the *fasakh* mechanism itself [3].

The complexity of implementing the *fasakh* concept within the Mahkamah Syar'iyah is significantly influenced by the prevailing dualistic legal system. Within this

framework, judges do not rely solely on Shāfi'ī jurisprudence but are equally bound by positive legal provisions, such as the Compilation of Islamic Law and other statutory regulations. In certain instances, this dualism fosters a positive synergy, wherein positive law establishes a more definitive procedural foundation for the operationalization of jurisprudential concepts. Conversely, it can also generate tension when discrepancies emerge between the tenets of *fiqh* and the stipulations of statutory articles. Previous research demonstrates that, in practice, the Mahkamah Syar'iyah has executed various adaptations and modifications to the *fasakh* concept. These include expanding the grounds for *fasakh* through the extensive interpretation of general jurisprudential maxims, even though such initiatives remain insufficiently institutionalized in the form of binding guidelines or regulations. The resulting fragmentation in the application of *fasakh* risks precipitating disparities in judicial rulings, which may subsequently undermine legal certainty and the public's perception of justice. Therefore, a comprehensive investigation is imperative to delineate the patterns of *ijtihad* employed by Mahkamah Syar'iyah judges and to synthesize them into a more coherent and systematic conceptual framework [4]. A systematic approach necessitates the evaluation of all constituent components, taking into account their individual functions and mutual interactions, thereby ensuring the complete realization of the designated objectives [5].

A review of the existing literature indicates that while studies on *fasakh* within Shafi'i jurisprudence are prevalent, they remain predominantly fragmented. Most of these inquiries concentrate on normative-doctrinal dimensions, lacking a profound correlation with their practical execution within judicial institutions. Although some research has attempted to reconcile the dichotomy between theory and practice, it is largely confined to casuistic examinations of court verdicts, failing to comprehensively systematize the patterns of legal reasoning employed by judges. Furthermore, there is a substantial scarcity of research specifically investigating the application of *fasakh* in the Mahkamah Syar'iyah through an in-depth Shafi'i jurisprudential lens that contextualizes it within contemporary social dynamics. This academic void underscores the necessity for a holistic study that analyzes the concept of *fasakh* in Shafi'i law alongside its practical implementation by Mahkamah Syar'iyah judges in addressing modern challenges. Such an inquiry is anticipated to generate not only theoretical advancements in the study of Islamic family law but also practical implications for cultivating a religious judicial framework that is highly responsive to societal demands for justice, all while preserving its foundational scholarly traditions [6].

The academic and practical significance of this research is further underscored by the consideration that Aceh, as a region implementing Sharia law, bears a moral obligation to serve as a model for the development of an Islamic legal framework that is adaptive to contemporary transformations while remaining authentically rooted in traditional jurisprudential schools (*madhhab*). The experience of the Mahkamah Syar'iyah in applying the concept of *fasakh* (annulment of marriage) from a Syāfi'ī perspective can serve as a valuable precedent for religious courts in other regions of Indonesia, which similarly reference the Syāfi'ī school of thought albeit within distinct

legal frameworks. The success of the Mahkamah Syar'iyah in formulating a progressive interpretation of the *fasakh* concept, without departing from the Syāfi'ī paradigm, will bolster the societal legitimacy of Islamic law and demonstrate its capacity to address modern challenges without compromising its fundamental identity. Conversely, a failure to respond to the societal demand for justice could reinforce the perception that Islamic law is rigid and incapable of safeguarding the rights of the oppressed, particularly women, who frequently emerge as victims in dysfunctional marriages. Consequently, an in-depth and comprehensive study analyzing marital *fasakh* within Syāfi'ī jurisprudence and its practical application at the Mahkamah Syar'iyah constitutes an urgent academic necessity, possessing substantial practical relevance for the continuous advancement of the Islamic legal system in Indonesia [7].

This research is predicated on the premise that the grounds for *fasakh* (marriage annulment) articulated within classical Shāfi'ī jurisprudence (*fiqh*) are insufficiently equipped to accommodate the diverse manifestations of contemporary harm such as psychological abuse, substance addiction, and structural economic deprivation experienced by women in modern marital contexts. Furthermore, a substantial analytical gap persists between the extensive normative-doctrinal scholarship on *fasakh* and empirical-juridical investigations detailing how Sharia Court judges interpret and execute these concepts when confronted with complex, multidimensional evidentiary facts. The exigency of this study is rooted in the imperative to delineate the patterns of judicial *ijtihad* (independent legal reasoning) and construct a more responsive conceptual framework to guide the adjudication of *fasakh* proceedings. Such a framework is essential to mitigate judicial disparities and actualize substantive justice for aggrieved parties, particularly women. Consequently, this research aims to conduct an in-depth analysis of the *fasakh* concept from a Shāfi'ī perspective and critically evaluate its judicial application within the Sharia Courts. The ultimate objective is to cultivate a comprehensive understanding of the nexus between classical normativity and contemporary demands for justice, thereby establishing a foundational basis for the progressive development of Islamic family law in Indonesia.

RESEARCH METHOD

This study employs a library research methodology, utilizing literature such as books, academic journal articles, research reports, and other written documents as primary data sources for comprehensive and in-depth analysis. This methodological choice is driven by the normative-doctrinal nature of the subject matter: the concept of *fasakh nikah* (annulment of marriage) within *Shafi'i* jurisprudence, as articulated in both classical and contemporary texts, alongside its practical application within the *Mahkamah Syar'iyah* as documented in legal instruments and judicial verdicts. Furthermore, library research enables the systematic tracing, compilation, and genealogical analysis of the perspectives of *Shafi'i* scholars across various generations. It facilitates the correlation of these jurisprudential viewpoints with the practical execution of the law within judicial institutions, thereby obviating the necessity for direct field data collection. Consequently,

this approach is particularly pertinent to the study of Islamic law, as it affords the researcher the opportunity to conduct a rigorous examination of the authoritative texts that function as the foundational references for legal adjudication in the *Mahkamah Syar'iyah* [8].

The data sources employed in this research are categorized into three fundamental classifications: primary, secondary, and tertiary data sources, each fulfilling a distinct function and role in constructing the research arguments. Primary data sources comprise authoritative texts from the Shāfi'ī school of jurisprudence (*fiqh*), such as *Al-Umm* by Imām Shāfi'ī, *Mughnī al-Muhtāj* by Al-Khaṭīb al-Shirbīnī, and other exegetical works that explicitly address the concept of *fasakh nikah* (annulment of marriage). Furthermore, primary sources encompass official documents from the Mahkamah Syar'iyah (Islamic Courts), including judicial decrees and pertinent regulations like the Compilation of Islamic Law (*Kompilasi Hukum Islam*) and the Aceh Qanun. Secondary data sources consist of contemporary academic literature examining Islamic family law, scholarly journal articles analyzing the evolution of Shāfi'ī jurisprudential thought and religious court practices, as well as research reports relevant to the subject of *fasakh nikah*. Tertiary data sources include legal dictionaries, jurisprudential encyclopedias, and indexes, which assist the researcher in comprehending technical terminologies and locating precise references. The integration of these three types of data sources is intended to cultivate a holistic understanding; primary data provides doctrinal authority, secondary data offers analytical perspectives and contemporary contextualization, while tertiary data delivers the terminological clarity essential for studying Islamic law, a discipline inherently rich in technical vocabulary [9].

Data collection in this study was conducted utilizing a systematic and structured documentary research method, wherein the researcher searched, identified, selected, and compiled literature relevant to the topic of *fasakh nikah* (annulment of marriage) within the perspective of Shāfi'ī jurisprudence and its implementation in the *Mahkamah Syar'iyah* (Sharia Court). The data collection process commenced with comprehensive searches across library catalogs, academic journal databases, and institutional repositories to locate sources directly pertinent to the research focus. Upon identification, these sources were rigorously evaluated and selected based on criteria of relevance, scholarly authority, and publication recency, ensuring that the utilized data reflected contemporary developments in Shāfi'ī jurisprudential discourse and Sharia Court practices. The subsequent stage involved data compilation through the meticulous and critical reading of each selected source. This procedure included documenting relevant textual excerpts, extracting direct and indirect quotations, and formulating reflective notes to synthesize connections among the various materials. Ultimately, this documentary technique facilitated the construction of a comprehensive textual database encompassing not only the foundational viewpoints but also the internal dissenting opinions within the Shāfi'ī school, alongside the dynamics of its judicial application. Consequently, this approach provided the rich multiplicity of perspectives requisite for an in-depth analysis [10]. This study employs content analysis integrated with

hermeneutic and comparative approaches as its primary data analysis technique to establish a profound and comprehensive understanding of the subject matter. Content analysis is conducted by identifying, categorizing, and interpreting salient themes emerging from the data sources. These themes encompass the concept of *fasakh*, the justifications for *fasakh*, its juxtaposition with alternative mechanisms for marriage dissolution, and its implementation within the Mahkamah Syar'iyah.

The hermeneutic approach is applied to interpret classical *fiqh* texts contextually. This method transcends literal comprehension by capturing the underlying legal intent and objectives contained within the texts, thereby establishing their argumentative relevance to contemporary contexts. Simultaneously, the comparative approach is utilized to evaluate diverse perspectives within the Syāfi'ī school of jurisprudence, to contrast Syāfi'ī *fiqh* with the prevailing positive law in Indonesia, and to analyze analogous rulings by the Mahkamah Syar'iyah. This comparative methodology aims to discern the underlying patterns of judicial reasoning and the tendencies of the judges' *ijtihad*. The analytical procedure is interactive and iterative throughout the duration of the research, progressing through data collection, data reduction, data display, and conclusion drawing. Within this continuum, the researcher consistently reflects upon and verifies the findings to ensure argumentative coherence and consistency. Ultimately, the integration of these three analytical frameworks yields an understanding that is not merely descriptive of the textual content, but also explanatory regarding the rationale behind specific jurisprudential stances and their subsequent implications in contemporary judicial practice [11].

The data validity testing techniques in this study were implemented through several strategies adapted from qualitative research methodology to ensure the credibility, transferability, dependability, and confirmability of the research findings. The first strategy involves persistent observation, wherein the researcher repeatedly reads and examines data sources with a high degree of meticulousness to ensure accurate comprehension and prevent the misinterpretation of *fiqh* texts, which frequently utilize the Arabic language with complex sentence structures. The second strategy is source triangulation, executed by comparing and cross-checking information obtained from diverse types of data sources. For instance, this includes juxtaposing perspectives found in classical *fiqh* texts with contemporary books and journal articles, or comparing the normative provisions within Shafi'i *fiqh* with their practical application as documented in the verdicts of the Mahkamah Syar'iyah. The third strategy is peer debriefing or expert consultation, in which the researcher discusses preliminary findings with experts in the fields of Shafi'i *fiqh* and Islamic family law to solicit critical feedback and alternative perspectives that enrich and refine the analysis. The fourth strategy is the establishment of an audit trail, conducted by systematically documenting the entire research process from data collection and analysis to the derivation of conclusions thereby allowing all stages of the research to be retraced and verified by external parties. The comprehensive application of these strategies guarantees that the research findings possess a robust methodological foundation and are academically accountable, both in terms of the

interpretative accuracy regarding primary sources and the validity of the constructed arguments [12].

RESULT AND DISCUSSION

The Concept and Position of *Fasakh Nikah* in the Shafi'i School of Jurisprudence: Definition, Legal Basis, and Distinctions from *Talaq*

In the terminological framework of Shafi'i jurisprudence (*fiqh*), *fasakh nikah* is defined as the legitimate annulment of a marriage contract executed by a judicial or competent authority. This dissolution is necessitated by the discovery of defects, flaws, or incapacities that invalidate the marriage and render its continuation untenable. The concept of *fasakh* diverges fundamentally from *talaq* (standard divorce). Specifically, *fasakh* constitutes a termination of the marital bond that neither diminishes the prescribed quota of *talaq* nor grants the husband the right to unilateral reconciliation (*ruju'*). Should the parties desire to reunite, the execution of an entirely new marriage contract is strictly required. Within the Shafi'i school, *fasakh* is structurally positioned as a protective mechanism for the aggrieved party, predominantly the wife. Whereas *talaq* is recognized as the exclusive prerogative of the husband, *fasakh* empowers the wife to initiate marital dissolution through a formal judicial petition. The legal foundation for *fasakh nikah* in Shafi'i jurisprudence is derived from the Qur'an, the Sunnah, and scholarly consensus (*ijma'*). A primary textual source is Surah Al-Baqarah, verse 229, which mandates that separation be conducted equitably, without inflicting detriment upon either party. This verse provides the philosophical rationale that a marriage engendering suffering for a spouse, particularly the wife, may be legitimately terminated through *fasakh* to avert greater harm. This paradigm is further substantiated by the fundamental jurisprudential maxim stipulating that harm must be eliminated (*al-darar yuzal*). Consequently, when a marriage devolves into a source of distress, *fasakh* serves as a legitimate and sanctioned jurisprudential resolution [13]. The Shafi'i school conceptualizes *fasakh* as an annulment precipitated either by circumstances arising after the solemnization of the marriage or by pre-existing conditions discovered only post-contract. Illustrative examples include concealed physical defects or the subsequently revealed financial incapacity of the husband to provide mandatory maintenance (*nafaqah*).

\The discourse surrounding the concept of *fasakh* within the Shāfi'ī school of jurisprudence is inextricably linked to the understanding that the marriage contract in Islam transcends a mere civil agreement; rather, it constitutes a profound covenant, explicitly designated in the Qur'an as *mīthāqan ghalīẓhan* (a solemn pledge). Consequently, its dissolution cannot be executed unilaterally without legitimate justifications sanctioned by Sharia. This foundational principle positions *fasakh* as an emergency recourse, applicable exclusively when a marital union ceases to fulfill its fundamental objectives: the establishment of tranquility, mutual affection, and the sustenance of a harmonious household. Within the framework of Shāfi'ī thought, the doctrine of *fasakh* is predicated upon profound considerations of welfare (*maṣlahah*), asserting that the preservation of a fundamentally flawed marriage would inflict greater

harm than its termination. This paradigm is congruent with contemporary scholarship, which examines how Islamic law provides an equitable mechanism for women to extricate themselves from marital bonds that compromise their physical and psychological well-being [14]. Furthermore, the evolution of contemporary Islamic legal thought demonstrates that *fasakh* is no longer narrowly construed as an annulment predicated solely upon physical impairments. Instead, its conceptual scope has broadened to encompass various manifestations of incapacity and the violation of spousal rights experienced by wives within the context of modern marital dynamics [1].

Within the framework of Shāfi'ī jurisprudence, the distinction between *fasakh* (annulment) and *ṭalāq* (divorce) encompasses several critical dimensions that yield divergent legal implications. First, concerning the initiator of the marital dissolution, *ṭalāq* constitutes an exclusive prerogative of the husband albeit one that is delegable whereas *fasakh* may be petitioned by the wife and must be adjudicated by a judge following a formal evidentiary process. Second, regarding the impact on the permissible number of divorces, *fasakh* does not diminish the husband's statutory quota of three *ṭalāq* pronouncements. Consequently, should the couple remarry post-*fasakh*, the husband retains his full allocation of three *ṭalāqs*, in stark contrast to both revocable (*raj'ī*) and irrevocable (*bā'in*) *ṭalāq*, which incrementally deplete this quota. Third, in terms of legal validity absent judicial intervention, *ṭalāq* may be executed validly without court involvement, while *fasakh* predominantly necessitates a judicial decree given the requirement to substantiate claims of defect or incapacity. Fourth, pertaining to the right of reconciliation (*rujū*), a husband retains the authority to reconcile with his wife during the waiting period (*'iddah*) of a *ṭalāq raj'ī*; conversely, *fasakh* precludes any inherent right of reconciliation, requiring the parties to execute a completely new marriage contract to reunite. Fifth, concerning the obligations of consolatory gifts (*mut'ah*) and maintenance during the waiting period (*nafkah 'iddah*), there exists a notable divergence of scholarly opinion within the Shāfi'ī school. While certain jurists contend that a wife subjected to *fasakh* due to an inherent defect is ineligible for *mut'ah*, the prevailing and more robust jurisprudential view advocates for the provision of this right as an acknowledgment of the consummated marital duration [15]. Ultimately, these fundamental distinctions elucidate that *fasakh* is structurally designed as a corrective and protective mechanism, contrasting with *ṭalāq* executed without legitimate Islamic justification (*shar'ī*), which operates more as a punitive instrument of marital dissolution.

Within the contemporary landscape, the discourse surrounding the demarcation between *fasakh* (marriage annulment) and *talak* (repudiation) has acquired heightened relevance. This is primarily driven by the emergence of novel paradigms of marital dissolution, such as divorces predicated on continuous discord, where practical application frequently obscures the conceptual boundaries between *fasakh* and *talak*. Consequently, the Mahkamah Syar'iyah the judicial institution responsible for administering Islamic law in Indonesia, particularly in Aceh faces the complex challenge of accurately categorizing these divorce proceedings in alignment with its foundational jurisprudential (*fiqh*) framework. The conceptualization of *fasakh* within the Shāfi'ī school

of Islamic jurisprudence provides a sufficiently adaptable framework to encompass various modern marital tribulations. Issues such as domestic violence, economic deprivation, and substance abuse, while not explicitly delineated in classical jurisprudential texts, are implicitly addressed through the school's inherent protective ethos. This conceptual flexibility functions as a vital asset for the judges of the Mahkamah Syar'iyah in exercising *ijtihad* (independent legal reasoning). It empowers them to respond effectively to the societal imperative for justice while remaining firmly anchored to the Shāfi'ī doctrine as their primary jurisprudential authority [16].

Grounds for Marriage Annulment (*Fasakh*) in Shāfi'ī Jurisprudence: A Classification of Physical Defects, Legal Impediments, and Economic Challenges

Shāfi'ī jurisprudence categorizes the permissible grounds for marriage annulment (*fasakh*) into several primary classifications, each governed by distinct criteria and legal prerequisites. This systematic classification underscores the meticulous attention of Shāfi'ī scholars to the safeguarding of spousal rights within matrimony. Furthermore, it reflects a balanced approach grounded in public interest (*maslahah*), providing legal recourse for an aggrieved party while simultaneously preventing the exploitation of annulment for motives unrecognized by Islamic law. The first category encompasses physical defects, which include illnesses or physiological conditions that fundamentally obstruct the realization of marital objectives. Within classical Shāfi'ī jurisprudential texts, unanimously recognized physical defects warranting *fasakh* include male impotence defined as the physiological incapacity of the male reproductive organ to function normally during sexual intercourse, which constitutes an essential purpose of marriage. In addition to impotence, afflictions such as leprosy, vitiligo, and insanity are legally acknowledged as valid grounds for annulment, given that they pose potential harm to the spouse and impede the maintenance of a functional marital life. This jurisprudential reasoning is substantiated by the Shāfi'ī scholarly paradigm, which posits that matrimony is fundamentally predicated upon principles of mutual comfort and tranquility. Consequently, any condition that elicits profound aversion or the fear of disease transmission is construed as a severe contravention of the foundational tenets of marriage [17].

Advancements in modern medical science have stimulated novel discourse among contemporary Islamic scholars concerning the expansion of the definition of physical defects as justifiable grounds for *fasakh* (marriage annulment) within the Shafi'i school of jurisprudence. Emerging medical conditions such as HIV/AIDS, infectious hepatitis, and severe psychiatric disorders which are not explicitly addressed in classical treatises, have become compelling subjects for modern *ijtihad* (independent legal reasoning). Contemporary scholars employ *qiyas* (analogical deduction) to evaluate these new ailments based on a shared '*illat* (effective cause): specifically, the potential to inflict harm upon a spouse and to impede the fundamental objectives of matrimony. This analogical approach facilitates the adaptability of Islamic law in addressing contemporary developments without deviating from the rigorous methodological framework of the Shafi'i *madhhab*. Within this paradigm, sexually transmitted infections are perceived as

posing a significantly greater threat than the leprosy and vitiligo traditionally cited in classical literature. Consequently, they are deemed highly valid as grounds for *fasakh*, aligning with the fundamental Islamic legal principle of eliminating harm. This contemporary legal reasoning illustrates that the recognized grounds for annulment within Shafi'i jurisprudence do not constitute a rigid, exhaustive list. Instead, they are subject to expansion in response to scientific progress and societal imperatives, provided they remain strictly anchored to the foundational principles delineated by the classical imams [18].

The second category of grounds for *fasakh* (annulment) within Shāfi'ī jurisprudence pertains to legal defects concerning the validity requirements of the marriage contract. These legal flaws encompass various violations of Sharia provisions during the formation of the contract that are only discovered after the marriage has commenced. A prominent form of legal defect in the Shāfi'ī school involves the issue of inequality, or *kafā'ah*, which constitutes a prerequisite for the binding nature (*luzūm*) and continuation of the marriage contract. If a woman is married by her guardian to an unequal partner without her consent, she is entitled to petition a judge for *fasakh*, as the contract is deemed to contain elements of coercion that are detrimental to her. In addition to the issue of *kafā'ah*, deception or fraud (*tadlīs*) within the marriage contract is also classified as a legal defect that justifies *fasakh*. This deception may involve the concealment of material information regarding identity, status, or personal conditions which, had they been known beforehand, would have deterred the opposing party from proceeding with the agreement. For example, if a man falsely claims to possess noble lineage or a respectable profession, the woman reserves the right to seek *fasakh* because the contract was established upon fabricated information that directly influenced the decision to marry. The principles of honesty and transparency in the marriage contract correspond with universal values of good faith in agreements, simultaneously illustrating that Islam rigorously protects the rights of parties disadvantaged by falsehoods within the sacred matrimonial covenant [19].

The third category, highly pertinent to the contemporary socio-economic context, pertains to the issue of financial incapacity, designated in Shāfi'ī jurisprudence as *i'sār*. The Shāfi'ī school maintains a progressive perspective on this issue, wherein a husband's inability to provide obligatory maintenance (*nafkah*) serves as a valid legal ground for a wife to petition a magistrate for the annulment of the marriage (*fasakh*). This assertion is predicated on the principle that the provision of maintenance is a direct corollary of a legally binding marriage contract; thus, a husband's failure to fulfill this fundamental obligation constitutes a profound violation of the wife's right to a dignified standard of living. In his earlier legal pronouncement (*qaul qadīm*), Imām Shāfi'ī contended that a wife could unilaterally execute the annulment without awaiting a judicial decree if the husband was genuinely destitute. However, in his more established later ruling (*qaul jadīd*), the annulment must be mandated through a judicial decision to prevent arbitrary actions and to rigorously verify the legitimacy of the insolvency claim. The discrepancy between these two rulings underscores the dynamic nature of Imām Shāfi'ī's

jurisprudential thought, which seeks to calibrate the equilibrium between the protection of the wife's rights and the preservation of marital stability. In practical application, the adjudicator grants the husband a grace period to demonstrate financial viability or to secure employment; if the incapacity persists beyond this stipulated timeframe, the judge subsequently issues the decree of annulment. This procedural framework reflects the inherent prudence of Islamic jurisprudence, which neither impulsively terminates a marital union due to ephemeral economic hardship nor abandons the wife to a state of indefinite legal ambiguity [20].

Within the increasingly intricate framework of the contemporary economy, the justification of financial incapacity as a foundation for *fasakh* (marital annulment) has been subject to a notable broadening in interpretation. Phenomena such as structural unemployment, mass redundancies, and global economic volatility have generated scenarios wherein numerous husbands despite retaining physical aptitude and professional skills are deprived of their income due to uncontrollable external variables. Consequently, a critical inquiry arises: should a temporary financial incapacity induced by exogenous factors constitute valid grounds for *fasakh*, or are judicial authorities obligated to weigh the husband's prospects for future economic rehabilitation? Contemporary Islamic scholars generally favor a more contextualized methodology, differentiating between permanent financial incapacity, which lacks any prospect of recovery, and temporary incapacity, which presents a likelihood of amelioration. In instances of the latter, judges may allocate a prolonged grace period and advocate for mediation between the spouses to collaboratively devise a resolution, which may encompass the wife's potential contribution to the household finances throughout the period of hardship. Ultimately, this paradigm illustrates that Shafi'i jurisprudence (*fiqh Syāfi'iyyah*), operating through the mechanism of independent reasoning (*ijtihad*), possesses the adaptability to navigate shifting socio-economic landscapes while preserving the core protections afforded to a wife's fundamental marital rights [21].

Comparative Analysis: Intersections and Distinctions among Fasakh, Khulu', and Li'an within the Framework of Shafi'i Jurisprudence

Comprehending *fasakh* within the framework of Shafi'i jurisprudence requires a holistic approach that contextualizes it alongside other mechanisms of marital dissolution, specifically *khulu'* and *li'an*. This is necessary because these three concepts possess overlapping characteristics that frequently engender ambiguity in their practical application. Consequently, a comparative analysis of these mechanisms is imperative to establish conceptual clarity and to furnish operational guidelines for Syar'iyah Court judges in the classification and adjudication of divorce proceedings. Under the Shafi'i doctrine, *khulu'* is defined as a marital dissolution initiated by the wife, which necessitates the provision of compensation or a ransom to the husband. This fundamentally diverges from *fasakh*, wherein the wife is exempt from providing any compensation, given that the annulment of the marriage is precipitated by factors originating from the husband or external circumstances beyond the wife's volition. This foundational distinction yields substantial practical implications; for example, in cases of *fasakh* resulting from the

husband's inability to provide financial maintenance, the wife retains the right to the unpaid balance of her dowry (*mahr*) and is not obligated to return the portion already received. Conversely, in a *khulu'* arrangement, the wife is required to pay a ransom, the quantum of which is subject to mutual negotiation. An accurate comprehension of these disparities is vital to prevent jurisprudential misapplications that could prejudice either party, most notably the wife, who frequently occupies a more vulnerable position throughout the divorce process [22].

The intersection between *fasakh* and *khulu'* frequently emerges in instances where a wife possesses legitimate grounds to petition for *fasakh*. However, driven by practical considerations such as convoluted evidentiary procedures or a desire for an expedited resolution she may opt for *khulu'* by providing financial compensation to her husband. This phenomenon highlights a discrepancy between the normative rights granted to wives and the social realities they encounter, wherein the burden of proof in *fasakh* proceedings often constitutes a substantial impediment. Within the Shāfi'ī school of jurisprudence, substantiating physical defects, such as impotence, necessitates medical examinations and witness testimonies that are both time-consuming and costly. Conversely, *khulu'* offers a more rapid alternative, albeit at a financial disadvantage to the wife. Such circumstances prompt critical inquiries into the efficacy of legal protections for wives under Shāfi'ī jurisprudence and underscore the necessity for procedural reforms within judicial institutions to facilitate women's access to substantive justice. Contemporary scholars advocate for a more gender-responsive approach to the evidentiary process in *fasakh* cases. They suggest that a wife's testimony regarding her husband's incapacity or physical defects should be admitted as preliminary evidence, subsequently corroborated by supplementary proof, thereby relieving the wife of an excessive evidentiary burden. This proposed methodology does not contravene the tenets of Shāfi'ī jurisprudence; rather, it preserves the equilibrium between the rights of both spouses and aligns with the higher objectives of Islamic law (*maqāṣid al-syarī'ah*) in safeguarding the dignity and well-being of women [1].

Furthermore, within the terminology of Shāfi'ī jurisprudence, *li'an* constitutes a specialized legal mechanism established by Islamic law for a husband who accuses his wife of adultery but is unable to produce the requisite four witnesses, and correspondingly, for the accused wife to defend herself against such allegations. Although *li'an* culminates in the permanent dissolution of the marriage, it remains conceptually distinct from both *fasakh* (annulment) and *khulu'* (wife-initiated divorce) due to its unique underlying causes and procedural frameworks. The most profound distinction between *li'an* and *fasakh* pertains to their respective legal ramifications: couples whose marriage is dissolved through *li'an* are perpetually prohibited from remarrying one another, whereas those separated via *fasakh* retain the legal capacity to remarry under a new contract. The irrevocable nature of *li'an* underscores the profound severity with which Islamic law addresses unsubstantiated accusations of adultery within matrimony, as such allegations not only violate the wife's honor but also dismantle the foundational trust that serves as the paramount pillar of marital life. In

certain judicial instances, an intersection emerges between *fasakh* and *li'an*, such as when a husband accuses his wife of adultery while simultaneously petitioning for *fasakh* on the grounds of a severe breach of marital sanctity. Under such circumstances, the presiding judge must meticulously determine whether the dispute is more appropriately adjudicated through the procedural avenues of *li'an* or *fasakh*. An erroneous procedural determination would significantly compromise the legal validity of the judicial decree and the post-divorce rights of the involved parties [23].

A more profound comparative analysis reveals that the distinctions among *fasakh*, *khulu'*, and *li'an* are inextricably linked to the moral and spiritual dimensions inherent in each mechanism. *Fasakh* generally functions as a corrective measure addressing objective conditions that render the continuation of a marriage untenable, without imposing negative social stigma on either party. Conversely, although *khulu'* is legally valid, it is frequently perceived within the social sphere as a manifestation of the wife's failure to sustain the marriage, thereby inflicting an additional psychological burden upon women. Furthermore, *li'an* encompasses a profoundly potent moral dimension, as it necessitates solemn oaths and the invocation of divine malediction from Allah SWT, which elevates *li'an* cases to the highest echelon concerning the severity of marital transgressions. Comprehending these multifarious dimensions is imperative for judges within the Mahkamah Syar'iyah. Such an understanding is essential not only for determining the appropriate legal procedures but also for exercising judicial prudence in their rulings, particularly given that the divergent psychological and social ramifications associated with each form of marital dissolution can exert long-term impacts on the lives of the involved parties. The complex interrelationship among these three mechanisms of marital dissolution requires judges to possess a profound comprehension that extends beyond formal legal aspects to encompass the underlying philosophy and *maqāṣid* (objectives of Islamic law) governing each provision [24].

The Accommodation of Shāfi'ī Jurisprudence in the Regulations and Decisions of the Mahkamah Syar'iyah: Between Classical Normativity and the Demands of Modern Justice

The implementation of Shāfi'ī jurisprudence within the regulations and judicial rulings of the *Mahkamah Syar'iyah* in Indonesia particularly in the Aceh Province, which holds special jurisdiction for the enforcement of Islamic law provides a compelling framework for analyzing the intersection of classical intellectual heritage and contemporary social realities. The Compilation of Islamic Law (*Kompilasi Hukum Islam*), functioning as the principal legal reference for judges within the religious judiciary, including the *Mahkamah Syar'iyah*, has integrated numerous tenets of Shāfi'ī jurisprudence concerning *fasakh* (marriage annulment), albeit with specific modifications and contextual adjustments. For instance, Article 72 of the Compilation of Islamic Law stipulates that either spouse may petition for an annulment if the marriage was contracted under duress, deceit, or a fundamental misunderstanding regarding the spouse's identity. This provision aligns closely with the concept of *tadlīs* (deception) within the Shāfi'ī school of thought. Furthermore, Article 116 of the Compilation of

Islamic Law, which delineates the legal grounds for divorce, incorporates several circumstances traditionally classified as grounds for *fasakh* in Shāfi'ī jurisprudence. These encompass physical impairments or diseases that obstruct the fulfillment of marital duties, the husband's failure to provide financial maintenance (*nafkah*), and the husband's incarceration for a period of five years or more. This harmonization of classical *fiqh* and positive law illustrates the continuity of the Islamic legal tradition, demonstrating its capacity to adapt to a modern legal architecture without compromising its core substance. However, this transformative process demands rigorous scrutiny to ensure that the foundational values of Shāfi'ī jurisprudence are not diminished during legislation, but rather reinforced through a more systematic and accountable framework of law enforcement [25].

In the judicial proceedings of the Mahkamah Syar'iyah, judicial *ijtihad* serves a pivotal function in reconciling the normative doctrines of Shāfi'ī jurisprudence with the empirical realities encountered in court. Classical Shāfi'ī texts including Imām al-Shāfi'ī's *Al-Umm*, Al-Khaṭīb al-Shirbīnī's *Mughnī al-Muḥtāj*, and Al-Bakrī al-Dimyāṭī's *I'ānat al-Ṭālibīn* continue to function as authoritative references for judges in articulating legal reasoning. These texts are primarily utilized to substantiate that judicial decisions are firmly rooted in an established jurisprudential tradition. Nonetheless, complexities arise when judges confront contemporary cases devoid of direct precedents in classical literature. Notable examples include petitions for *fasakh* (marriage annulment) predicated on a husband's narcotic addiction, chronic psychological deprivation of conjugal rights, or psychological abuse leading to the wife's mental impairment. To navigate such cases, judges at the Mahkamah Syar'iyah are compelled to engage in *ijtihad* by employing the methodologies of *qiyās* (analogical deduction) and *istiṣlāḥ* (consideration of public interest) methods inherently recognized within the Shāfi'ī tradition thereby ensuring that the ensuing judgments retain a rigorous *Shari'ah* foundation. Select progressive verdicts from the Mahkamah Syar'iyah illustrate that a husband's drug addiction constitutes a valid ground for *fasakh*. This is achieved by analogizing addiction to the condition of insanity documented in classical texts, acknowledging its destructive effects on cognition and behavior, alongside the pervasive threat it poses to the well-being of the wife and children. Such an approach exemplifies a responsible and contextual paradigm of *ijtihad*, one that transcends the literalism of classical texts to apprehend the underlying 'illat (effective legal cause) and apply it to novel circumstances [26].

One of the most formidable contemporary challenges in the application of Shāfi'ī jurisprudence within the Mahkamah Syar'iyah is the expansion of the grounds for *fasakh* (annulment of marriage) to encompass domestic violence as a distinct category, extending beyond the classically recognized justifications of physical impairment and financial insolvency. Although Shāfi'ī jurisprudence lacks explicit references to violence as a basis for *fasakh*, the overarching principles of this legal school provide a robust framework for its accommodation. The legal maxim *lā ḍarara wa lā ḍirār* (harm shall neither be inflicted nor reciprocated) serves as a foundational premise to establish that a husband who perpetrates violence against his wife contravenes the fundamental tenets

of matrimony, thereby entitling the wife to seek an annulment. Furthermore, the concept of *al-ta'āṣuf fī isti'māl al-ḥaqq* (the abuse of rights), an established doctrine within the Islamic legal tradition, can be invoked to argue that a husband who exploits his authority as the head of the household to inflict violence consequently forfeits the moral and legal legitimacy required to sustain the marriage. Several judicial decisions by the Mahkamah Syar'iyah have adopted this line of reasoning, recognizing domestic violence as a valid ground for *fasakh* predicated on the principle of averting greater harm. Notably, in certain cases, even psychological abuse devoid of physical evidence has been deemed a sufficient justification when corroborated by compelling proof. This development illustrates that the Mahkamah Syar'iyah operates not merely as a mechanical executor of the law, but as a dynamic institution capable of organically advancing Islamic jurisprudence to address the societal demand for justice [27].

The convergence of Shāfi'ī jurisprudence and positive law introduces significant complexities concerning the principles of legality and legal certainty. While modern judicial frameworks necessitate explicit, codified legal foundations for all rulings, Shāfi'ī jurisprudence rooted in the broader Islamic legal tradition exhibits a more fluid nature that grants extensive discretionary authority to adjudicators. This dichotomy becomes particularly pronounced in instances where Mahkamah Syar'iyah (Sharia Court) judges are compelled to issue verdicts based on their assessment of public interest (*maslahah*), even in the absence of explicit statutory provisions, while simultaneously being obligated to justify their decisions within the established positive legal paradigm. To navigate this friction, judges frequently adopt an integrative methodology. They utilize the Compilation of Islamic Law as a formal statutory baseline and subsequently augment their legal reasoning with classical Shāfi'ī texts to establish substantive legitimacy. Such an approach facilitates the Sharia Court's dual mandate: functioning as an executor of state law while preserving the authenticity of Islamic jurisprudence as interpreted by the Shāfi'ī school. Ultimately, addressing these structural tensions necessitates comprehensive, long-term legislative initiatives designed to integrate evolving Islamic legal thought into formal statutory frameworks. This would provide judges with a robust institutional basis to apply progressive principles from Shāfi'ī jurisprudence, thereby mitigating reliance on subjective interpretations that risk precipitating controversy and legal ambiguity [28].

CONCLUSION

Fundamental Finding: Within Shāfi'ī jurisprudence (Fiqh), *fasakh* (annulment of marriage) constitutes a distinctive mechanism for marital dissolution that differs fundamentally from *talāq* (repudiation), *khul'* (divorce initiated by the wife with compensation), and *li'ān* (mutual imprecation). It operates as a corrective and protective pathway initiated by the aggrieved party predominantly the wife through the authority of a judge. Conceptually, the Shāfi'ī school systematically categorizes the grounds for *fasakh* into physical impairments, legal deficiencies (such as deception and lack of equivalence), and economic complications, specifically the husband's inability to provide

financial sustenance. These classifications are inherently anchored in the principle of eliminating harm and preserving the essential objectives of marriage. A comparative analysis demonstrates that the most crucial distinctions between fasakh and other mechanisms of marital dissolution are the non-reduction of the husband's talāq quota, the absence of any requisite compensation from the wife, and the revocation of the husband's right to reconciliation (rujū'). Consequently, fasakh is positioned as a pure instrument of justice designed exclusively to rectify contractual defects. Its application within the Mahkamah Syar'iyah (Islamic Courts) indicates that the classical normativity of Shāfi'ī jurisprudence is adaptively integrated into positive law through the expansion of judicial ijtihād. **Implication:** The implementation of these research findings is intended to serve as a conceptual framework for judges within the Mahkamah Syar'iyah to formulate legal reasoning that embodies substantive justice. In practical terms, the findings of this research can be utilized by legal advocates, mediators, and family law counselors to provide legal education to the public, particularly women. It aims to inform them of their rights to petition for fasakh as a viable resolution to a marriage that inflicts harm, thereby allowing them to circumvent the social stigma and financial detriments typically associated with the khul' mechanism. **Limitation:** This is achieved specifically by adopting a broader interpretation of the grounds for fasakh, moving beyond a rigid adherence to classical texts to explore the legal rationale ('illah) of harm that is relevant to contemporary circumstances. **Future Research:** For academics and researchers in Islamic law, this study provides a foundational basis for the development of integrative curricula and teaching materials in family law, effectively bridging the study of classical Shāfi'ī texts with the dynamics of national legislation. In this context, the grounds for fasakh are interpreted contextually to address contemporary issues, such as domestic violence and substance abuse, while remaining firmly rooted in the foundational legal maxim that "averting harm takes precedence over acquiring benefits" (dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ).

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