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Attitudes and Speeches that Lead to Divorce: Study of the Hadiths on *Ila'*, *Li'an* and *Zhihar* and the Relevance at the Present Time

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ABSTRACT Published	hed Online: April 27, 2023		
Background: The debate about divorce has always been an exciting topic, both state law and religious			
law. Divorce is something a husband and wife would do better to avoid. In Islamic law, in the law of			
marriage, we know divorce and the law of separation, such as <i>ila'</i> , <i>zhihar</i> and <i>li'an</i> .			
Purpose: This research aims to study these three laws of marriage (ila', zhihar and li'an), mainly			
discussed from the perspective of hadith.			
Methods: The method uses a qualitative approach through a literature review to explore hadith			
arguments and then relate them to current problems.			
Results: By comparing the opinions of Ulama (Islamic scholars) with each other regarding the			
arguments of hadith, conclusions are then drawn. Although this problem rarely occurs in Indonesia, it			
is important to examine. This li'an, ila' and zhihar problem may exist in our lives but with a slightly			
different shape or form than today.	Keywords:		
Conclusion: From the results of the discussion, the authors of the paper concluded that the hadiths of	Divorce,	Religious	
ila', zhihar and li'an are related to each other. They both discuss the problem of separation outside the	Law, Law of Marriage,		
rules of divorce or the prevalence of divorce rules.	Ila', Zhihar, Li'an		

1. INTRODUCTION

In the law of marriage, we know divorce and the law of separation, such as *ila*, *zhihar* and *lian*. There is a difference between this separation and divorce, where divorce occurs with the choice and will of the husband. Meanwhile, the separation due to a court decision allows the wife to forcibly terminate her marriage bond with her husband if various alternative methods, such as divorce and Khulu', are unsuccessful (Az-zuhaili, 2010).

For the *zhihar* problem, it is not applied because it needs to be implemented in Indonesia because, in Islamic law, *zhihar* law is already in the text. In Indonesia, only *li'an* law is regulated in the Compilation of Islamic Law (KHI) Articles 127-128. In its application, it is indeed described in the arguments of the Al-Quran, hadith, and books of *fiqh*. However, the consequence that is applied in Indonesia is only permanent separation between husband and wife regarding

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Regarding these three laws, regarding *ila*, *zhihar* and *li'an*, this research aims to study these three laws, mainly discussed from the perspective of hadith. The contribution of this research is to broaden and deepen our understanding of Islamic law, especially our understanding of family law traditions. In this study, a definitive understanding, the argument for hadith, and the opinions of the Islamic scholars regarding the hadith *ila*, zhihar and *lian* were carried out.

II. METHOD

The method uses a qualitative approach through a literature review (Madakir et al., 2022; Zakiudin et al., 2022) to explore hadith arguments and then relate them to current problems (Aziz, 2021). This method discusses a problem by comparing hadiths in terms of content and editorial or between the opinions of Islamic scholars' (Ulama)

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interpretations by highlighting specific differences from the object being compared.

III. RESULTS AND DISCUSSION

A. Hadith about Ila

Etymologically (language), *ilaa'* means to forbid oneself by using an oath. Meanwhile, according to terminology, *ila'* means swearing to no longer interfere with the wife (Sarwat, 2011). *Iilaa'*, according to language, is an oath to prohibit yourself from something. Meanwhile, according to Syar'i terms, a husband who swears not to have intercourse with his wife within a certain period of time. Hambali defines *iilaa'* as an oath of a husband who can have intercourse, in the name of Allah SWT or with one of His characteristics, to leave intercourse with his wife who can be intercourse, if the oath occurs before intercourse occurs *Mutlah* or more than four months (Az-Zuhaili, 2008). The hadith about *ila* is as follows:

Translation:

"from ibn umar RA he said "if it is past four months, then the *muli*' (a husband who is *ila*' to his wife) stops until he is mentally divorced and divorce does not fall on him" (Hadith History of Bukhari No. 5291) (Al Mubarak et al., 1994)

Regarding the oath, the Jumhur Ulama are of the opinion that it is legal for *ila* with all oaths not to have intercourse with the wife whether she swears by saying the name of Allah or other things. Meanwhile, according to Ulama Al-Hadawiyah, it is not valid to take an oath other than mentioning the name of Allah (Ash, 2017).

The Ulama have different opinions about the past. According to the Jumhur Ulama and the Hanafiyah group, *ila* must be more than four months (Mukhlis, 2018). According to Al-Hasan and other Ulama, it is valid for a short or long time. However, this opinion is refuted by proof that there is no argument in this verse because Allah has decreed that the *ila* period is four months. That the missed period of *ila* does not mean that divorce occurs immediately according to Jumhur Ulama. Abu Hanifah said but when the four months had passed, the woman was divorced (N. D. Lestari, 2020).

Fai'ah (return to wife) is the same as reconciliation (Mukhlis, 2018). The Ulama differ on how this could have happened. Some say that the husband's sexual relationship is still strong, while the husband is old, so he expresses his old age "if only I was still strong, I would definitely reconcile." Some argue by saying "I take back my oath". There are also those who think that the way for an old person to return is

with intention, because for that, a strong will is enough for repentance. Scholars differ on whether it is obligatory for divorce or for the husband to return. According to Jumhur, *Kaffarat* is obligatory because it is an oath that has been violated. There are those who argue that *Kaffarat* is not obligatory.

In Indonesia, there has never been a case of *ila'* in terms of cases or legal regulations. However, this *ila'* law can be enforced in Indonesia. Whereas in conditions when husband and wife are far apart, touched because of work conditions or other things that prevent them from having sex. Whether this *ila'* is helpful in household life or actually provides harm to household life, this certainly needs further study.

B. Hadith about Zhihar

Zhihar is taken from the word Azh-Zhahru (back) (Aminah et al., 2021). It is so named because of the resemblance that a husband makes *zhihar* to his wife with his mother's back. It's just that the specialization of the back, not the other limbs because the back is the place to ride on the body of the camel and others. A woman is climbed when she wants to be fucked. It is as if when a husband says, "You are over me like the back of my mother," then this means that riding his wife (having intercourse) is unlawful like climbing my mother for me to have intercourse (Al Bassam et al., 2006). The hadith regarding *zhihar* are as follows:

وعن سلمة ابن صغر قال : دخل رمضان, فخفت أن أصيب امرأتي ، فظهرت منها , فاتكشف لي منها شيء ليلة , فوقعت عليها , فقلي رسول الله صلى الله عليه و سل : حرم رقبة , قلت : ما أملك إلا رقيبتي. قال : فصم شهرين متنا بعين , قلت : وهل أصبت الذي أصبت من إلا من الصيام؟ قال : أطعم عرقا من تمر بين ستين مسكينا.(أخرج أحمد , والأربعة إلا النسا-ي , وصححه ابن خزيمة , وابن الجارود)

Translation:

"From Salamah Bin Shahr, he said, "The month of Ramadan is coming and I'm afraid to mix with my wife, so I'm Zhihar. I fucked her. So Rasulullah SAW said to me, "Free a slave," I said, "I have none but one of my slaves," Then he said, "Fast two months in a row," I said, "Didn't I get fined just for fasting? " He said, "Give one 'araq (15 sha') dates to sixty poor people to eat."" (Hadith History of Ahmad and Four Imams Except An-Nasa'i, This Hadith was authenticated by Ibn Khuzaimah and Ibn Jarud)

The word "slave" is absolute in this verse and likewise in the above hadith, and is not *taqyid* with the word "faith", as the word "slave" has been *taqyid* with the word "faith". Thus, the scholars differed in opinion. Imam Abu Hanifah is of the

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opinion that there is no *taqyid* in this matter, and it is enough with slaves from infidel dhimmi. He is of the opinion that the absence of *taqyid* for slaves here, as is the case in the verse on the killing, is more due to a difference in causes. Meanwhile, according to Imam Asy-Shafi'i and Imam Malik, it was not enough to free the infidel slaves. They argue that this *zhihar* verse is *taqyid* like the murder verse, even though the reason is different.

Differences of opinion regarding *zhihar* towards a female slave. Imam Malik, Ats-Tsauri and a group of Ulama are of the opinion that *zhihar* for slaves can apply the same as *zhihar* for free wives. Syafii, Abu Hanifah, Ahmad and Abu Thaur are of the opinion that *zhihar* does not apply to a female slave. Al Auza'i said that if a master has intercourse with his female slave, then *zhihar* applies to him and if he doesn't have intercourse with her, then it is called an oath and in this case he must pay the vowed vow. Atha' said *zhihar* applies to slaves, but it is only obligatory to do half a *kafaarah* (Rusyd, 2007).

The Ulama have different opinions regarding slaves who are tarnished by defects (Al-Mawardi, 2016). Al-hadawiyah and Dawud: "enough with disabled slaves because he also bears slaves." (Hanapi & Azizan, 2017). Another the Ulama states that invalid slaves who are disabled based on qiyas to hadith with the same element of uniformity as worship to Allah (Aizid, 2018). Imam Syafi'i believes that culture must be fully beneficial or there are no defects, then it will be considered valid (Anam, 2019). Remembering the essence of liberation is beneficial ownership.

Prophet Muhammad SAW ordered to fast for two consecutive months. But it is required to be fulfilled before having sex. If he has had sex during the two months of fasting, then he has to start from the beginning and that is *ijma'* of the Ulama.

If there is a worrying excuse that he is facing in the middle of his fast, then that excuse will disappear. The Ulama have different opinions. According to Imams Imam Malik and Imam Ahmad it was argued that he continued his fast, because he had separated it not because of his will (Azizah, 2019). Meanwhile, according to Abu Hanifah and Imam Syafi'i, they argued that he had to start from the beginning because he chose this separation (Al-Uliyyan, 2019).

Al-Qur'an and Hadith clearly state about feeding 60 poor people (Siregar, 2021), as if it is made for every day for those two months it is like feeding one poor person. The Ulama differ on whether to feed 60 poor people or to feed just one poor person for 60 days. According to Imam Ahmad and Imam Syafii, they are of the opinion that they must give food to 60 poor people (Fuad, 2016). Meanwhile, according to the Hanafiyah, it is enough to feed the poor for 60 days or give more than one person at a rate similar to feeding 60 poor people (Syarifudin, 2014).

There is a difference of opinion regarding the level of provision of food for the poor. According to Hanafiyah, it is obligatory to have 60 sha of dates, corn or wheat, or half of it consisting of wheat (Muiz & Hidarya, 2022). While Imam Syafi'i is of the opinion that it is obligatory for every poor person is one mud and one mud is equal to ¹/₄ sha (Thohari, 2018).

In this hadith there is evidence that *kaffarat* will not be terminated due to old age. Imam Syafii and one of the two narrations of Imam Ahmad are of the opinion that the *kaffarat* did not fall due to incapacity. If the *kaffarat* falls from him due to old reasons, the Prophet Muhammad SAW must have said that this would not help him out of what he had.

The Ulama have different opinions regarding a husband who performs *zhihar* on his wife for a certain period of time and then it is proven that he had intercourse with his wife before the expiration of that period. If he does good and does not cancel *zhihar*, then he must pay *kaffarat* even if he does not approach his wife. While most scholars are of the opinion, there is no obligation for him as long as he does not approach his wife. In the case of temporal *zhihar*, Imam Syafii put forward two opinions, one of which is not *zhihar* (Azizah, 2019).

If you intend divorce with the word *zhihar* then the divorce will not fall but it will become *zhihar*. This is based on the opinion of Imam Syafi'i and Imam Ahmad that if men *zhihar* with the intention of divorce then the law is *zhihar*; if he divorces with the intention of *zhihar* then the law is still divorced (Ridwan & Rusdin, 2022). Ibnul Qayyim gave his reasoning that *zhihar* during the Jahiliyah era was another name for divorce, then this term was deleted (Rusyd, 2007).

Regarding the issue of *zhihar* in Indonesia, it is rarely heard in Indonesia, this is true because this zhihar is a habit of the Arab Jahiliyah, then this *zhihar* after Islam entered was replaced with *talaq*. Even though divorce and *zhihar* actually have different legal consequences from divorce. Even so, many scholars have discussed this matter as material for study in *fiqh* law.

C. Hadith about Li'an

Linguistically, the meaning of *li'an* is to keep away (Putra, 2022). Allah cursed him, meaning dropped him from His mercy. According to the Shari'a, it is specific to the choice of mutual curses that apply between husband and wife for certain reasons and characteristics (Prakasa et al., 2020). *Li'an* is among the symbols of Islam. Its position is the same as *had qadzaf* for the husband (Borotan, 2019).

If the husband lies, he is entitled to anathema just like *had*, so that his testimony cannot be accepted forever after *li'an* (Umam, 2016). And for the wife the position is the same as adultery. For this reason, *li'an* is not determined through the testimony of his testimony nor by the writings of judges and the testimonies of women, exactly the same as *hudūd*, and he has to demand it, because the right is in his hands as in *had qadzaf* (Al-Juzairi, 2017). The hadith regarding *li'an* is as follows:

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و عن ابن عمر قال : سأل فلان فقال : يا رسول الله ! أرأيت أن لو وجد أحدنا امرأته على فحشة , كيف يصنع؟ إن تكلم تكلم بأمر عظيم , وإن سكت سكت على مثل ذلك ! فلم يجبه , فلما كان بعد ذلك أتاه , فقال : إن الذي سألتك عنه قد ابتليت به , فأنزل الله الآية في سورة النور , فتلهن عليه ووعظعه وذكره , وأخبره عن عذاب الدنيا أهونمن عذاب الاخرة. قال : لا , والذي يعتك بالحق ما كذبت عليها , ثم دعاها أنبي صلى الله عيم و سلم فوعظها كذالك, قالت : لا , والذي يعتك بالحق غنه لكاذبن , فدأ بالرجول , فشهد أربع شهادت , ثم تنى بالمرأة , ثم فرق بينهما (رواه المسلم)

Translation:

"From Ibn Umar R.A, he said, "Fulan asked by saying, "O Messenger of Allah! What do you think if one of us finds his wife committing adultery, what should he do? If he spoke then he spoke of a big problem. At that time he did not answer. After that incident, the questioner came again and said, "Indeed, what I used to ask you has happened to me." Then Allah revealed the verses in Surah An-Nuur verses 6-9. He read the verses to him, gave him advice, remembered them and told him that the punishment of this world is lighter than the punishment of the hereafter. The man said, "By Allah who has told you with the truth, I do not lie" Then Allah who has sent you with the truth, he (her husband) is really lying" then told his wife (swearing like her husband). Then he divorced the two of them." (Hadith narrated by Bukhari No. 5350 and No. 1493)

(Al-Asqalani, 2015; Al Bassam et al., 2006)

The words of Ibn Umar "then, he started with the husband." (Putra, 2022). This shows that she started with her accusing husband, so she also came first. Carrying out the *li'an* oath from the husband's side is obligatory. according to the Jumhur Ulama in order to prevent the imposition of had on the husband. If the *li'an* oath starts from the wife then the husband becomes an unclear defender of the case. Meanwhile, according to Abu Hanifah it is okay if a wife first (Ash, 2017).

In the words of Ibn Umar "then he divorced between the two," it is a proof that the divorce will not occur between them. Unless divorced by a judge, not because of the *li'an* itself. Jumhur Ulama are of the opinion that *li'an* is a divorce itself. it's just that they disagree about whether *li'an* is enough only to be said by the husband? according to Imam Syafi'i he thinks that it is enough with a husband (Hafidzi, 2018). Meanwhile, according to Imam Ahmad, both should be husband and wife (Gifriana, 2018).

The Ulama have different opinions about divorce because of this *li'an*, whether it is *fasakh* or *talak bain*. According to

Imam Syafi'i and Imam Ahmad, *li'an* is classified as *fasakh* because it is forbidden forever (Hafidzi, 2018). Meanwhile, according to Abu Hanifah, *li'an* is talak bain based on the argument that divorce from other people occurs apart from the wife's side (W. Lestari, 2021).

In Indonesia, Article 38 of Law No. 1 of 1974 concerning Marriage and Government Regulation No. 9 of 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage and Article 113 of the Compilation of Islamic Law (KHI), classifies the causes of the dissolution of a marriage as: (1) The death of one parties (2) Divorce and (3) Marriage and divorce court decisions are very urgent matters in human life, which is why Islamic law pays significant attention to these two matters. Regarding *li'an*, it is included in *Fasakh* which means releasing the marriage bond between husband and wife which is usually carried out by the wife (Suriyani, 2011).

Based on Article 116 (a) KHI that one party commits adultery and it is proven by taking an oath by the husband and not accompanied by an oath of refusal from the wife, for this reason a divorce can occur, but when the wife replies to her husband's oath of accusation or denial by saying that Allah's curse will be upon her if her husband is one of the righteous people, this is called *li'an*. *Li'an* itself in the Marriage Law can cause divorce as in the Qur'an and Article 125 KHI: Li'an causes the breakup of marriage between husband and wife forever." Continued in Article 126 KHI, *Li'an* occurs because the husband accusing the wife of committing adultery and/or denying the child in the womb or having been born from his wife, while the wife rejects the accusation and/or denial (Suriyani, 2011).

IV. CONCLUSION

From the results of the discussion above, the authors of the paper concluded that the hadiths of *ila'*, *zhihar* and *li'an* are related to each other, namely they both discuss the problem of separation outside the rules of divorce or outside the prevalence of divorce rules. Even though the chapters on *ila'*, *zhihar* and *li'an* actually have their own discussion.

Based on the information above, it can be concluded that like divorce law, the original law of ila' is *makhruh* (disliked or offensive act). An *ila*' will be unlawful if the aim is to mine his wife and to let the wife live in a state of limbo. It is permissible for Ila to give lessons to his wife if it is done for less than four months, and the law for *ila*' is permissible if it does not cause damage or poverty to the wife.

The *zhihar* event is a signpost for Muslims in the context of building a household based on Islamic sharia law. The decline in the argument about *zhihar* which forbids *zhihar* itself which is usually done by husbands to their wives, which not only has a negative impact on the relationship between the two husband and wife in achieving the goal of the marriage contract to become a *sakinah*, *mawadah* and

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warahmah (happy, loving and supportive) family, it even becomes a disaster for the emergence of a new law.

The wisdom that can be taken from the *li*`an oath is that a marriage and a woman's function as a wife for her husband will not be perfect unless there is harmony and mutual love between the two. But if there are already accusations of adultery and injuring their wife with abomination, then their chests will narrow and the wife's trust will disappear so that they both live in envy which will certainly bring bad consequences. Forbid and warn husband and wife not to do bad treatment that will reduce that glory.

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