

## FASHAKH NIKAH DUE TO DEFECTS ('AIB): ANALYSIS OF CRITERIA AND LEGAL IMPLICATIONS ACCORDING TO WAHBAH AZ-ZUHAILI

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### Abstract

*This study analyzes Wahbah Al-Zuhaili's views on defects ('aib) as grounds for fasakh (annulment of marriage) and their relevance to the Compilation of Islamic Law (KHI). A literature review of Al-Fiqh al-Islami wa Adillatuhu reveals that Al-Zuhaili rejects limiting 'aib to the traditional list. He innovatively develops two criteria: functional (defects that hinder the essential objectives of marriage, such as conjugal relations) and harmonization (defects that cause harm, revulsion, or destroy marital tranquility/sakinah). This maqasid-based approach implies an expansion of the right to khiyar al-'aib and clarity in legal consequences, including the status of irrevocable divorce (talak bain), stipulations on dowry, and the possibility of compensation. In a contemporary context, this framework is relevant for accommodating modern chronic illnesses such as HIV/AIDS or severe mental disorders that undermine the foundation of marriage. A comparative analysis with the KHI reveals a principled alignment in Article 75, yet a procedural divergence: the KHI emphasizes formal court proceedings, whereas Al-Zuhaili prioritizes restorative justice. These findings recommend employing Al-Zuhaili's thought as an analytical lens for the progressive interpretation of the KHI, enabling Indonesian Islamic family law to be more responsive and equitable in resolving contemporary marital disputes arising from defects.*

**Keywords:** Fasakh, Khiyar al-'Aib, Islamic Family Law, Wahbah Zuhaili.

### Abstrak

Penelitian ini menganalisis pandangan Wahbah Al-Zuhaili tentang cacat ('aib) sebagai alasan fasakh (pembatalan perkawinan) dan relevansinya dengan Kompilasi Hukum Islam (KHI). Kajian literatur terhadap *Al-Fiqh al-Islami wa Adillatuhu* menunjukkan bahwa Wahbah Al-Zuhaili menolak pembatasan 'aib pada daftar tradisional. Ia mengembangkan dua kriteria inovatif: fungsional (cacat yang menghalangi tujuan esensial perkawinan seperti hubungan suami-istri) dan harmonisasi (cacat yang menyebabkan bahaya, kejijikan, atau merusak sakinah). Pendekatan berbasis maqashid ini berimplikasi pada perluasan hak khiyar al-'aib dan kejelasan konsekuensi hukum, termasuk status talak bain, ketentuan mahar, serta kemungkinan ganti rugi. Secara kontemporer, kerangka ini relevan untuk mengakomodasi penyakit kronis modern seperti HIV/AIDS atau gangguan mental yang merusak fondasi perkawinan. Analisis komparatif dengan KHI mengungkap keselarasan prinsip dalam Pasal 75, namun terdapat perbedaan mekanisme: KHI menekankan prosedur formal pengadilan, sedangkan Wahbah Al-Zuhaili lebih menonjolkan keadilan restoratif. Temuan ini merekomendasikan penggunaan pemikiran Wahbah Al-Zuhaili sebagai pisau bedah untuk penafsiran progresif KHI, sehingga hukum keluarga Islam Indonesia dapat lebih responsif dan berkeadilan dalam menyelesaikan sengketa perkawinan akibat cacat di era kontemporer.

**Kata kunci:** Fasakh, Khiyar al-'Aib, Hukum Keluarga Islam, Wahbah Zuhaili.

## **INTRODUCTION**

From an Islamic legal perspective, marriage is viewed as an implementation of the sunnah of the Prophet Muhammad, who set an example in living a married life. This sunnah provides a moral and spiritual foundation for Muslims to pursue happiness in this world and the hereafter through the sacred bond of marriage (Adharsyah & Sidqi, 2024; Hafis, 2023). To achieve this ideal goal, Islamic law regulates the pillars and conditions of marriage, including the ideal standards for choosing a spouse (Khuluq et al., 2024). The issue of defects ('aib) possessed by one of the parties entering into a marriage contract is an important aspect that is often a concern in fiqh, because these defects have the potential to hinder the achievement of the ideal purpose of marriage, especially in relation to the fulfillment of the rights of husband and wife, such as sexual relations and household harmony (Hafis & Nelli, 2023; Johari & Hafis, 2024). In classical fiqh, scholars differ on the types of defects that can be used as grounds for demanding fasakh (annulment/termination of the marriage contract), demonstrating the complexity and sensitivity of this issue (Al-Jaziri, n.d.).

This study focuses on examining and analyzing Sheikh Wahbah Zuhaili's views in his monumental work, *Al-Fiqh al-Islami wa Adillatuhu* (Az-Zuhaili, 2010a). This book was chosen because it presents a comprehensive comparison of fiqh from the four main schools of thought and the opinions of contemporary scholars, in which Zuhaili discusses in depth the chapter on fasakh due to defects ('aib fi al-zawaj) by reviewing various views and providing a rajih (strong) view based on considerations of benefit and justice (Hafis et al., 2024, 2024). Therefore, this study aims to identify Wahbah Zuhaili's views on the limitations of defects ('aib) that can cause fasakh, as well as analyze the legal implications and the right of choice (khiyar) that couples have according to him, and also discuss the views of contemporary scholars on the circumstances that allow fasakh in marriage.

The issue of defects in marriage has been the subject of several previous studies. Yunianti, for example, in the *Syariati* journal, examined Zuhaili's view of defects as grounds for divorce, concluding that Zuhaili limits defects to weaknesses or dangerous illnesses that hinder sexual relations or make the opposite sex impatient to live with them (Yunianti, 2017). In addition, other studies by Putra (2023) and Atika (2022); Hafis et al., (2025) touch on the issue of defects as part of the study of kafa'ah (equality) in marriage according to Wahbah Zuhaili. This study aims to fill the research gap by offering a more incisive dimension of analysis, focusing not only on the limitations of disability, but also on an in-depth analysis of Wahbah Zuhaili's methodology in determining the rajih view, including his comparisons and critiques of the differences between schools of thought regarding the types of disability and the right of khiyar. This study will also discuss several issues related to contemporary matters that allow for fasakh. By focusing on the

legal implications of defects that have existed since the contract and comparative methodological analysis, this study presents a critical and comparative analysis to fill the gap in the literature with the hope of providing a complete and applicable understanding of Zuhaili's thoughts on marriage caused by defects (Nugroho, 2025).

This study aims to investigate Wahbah Al-Zuhaili's methodology and substance of thought regarding defects ('aib) as grounds for marriage annulment (fasakh) and its relevance in the Indonesian positive law system. First, this study will examine how Al-Zuhaili uses the *tarjih* (selection of strong opinions) methodology in formulating the criteria for 'aib that allow fasakh, particularly in addressing differences of opinion between fiqh schools and the underlying philosophical foundations of *maqashid al-syari'ah*. Furthermore, this study will analyze in depth the substantive legal implications of the application of the right of *khiyar al-'aib* and the decision of fasakh according to Al-Zuhaili's perspective, including the status of marriage after annulment, the settlement of financial rights (mahar), the obligation of 'iddah, and the possibility of compensation. Finally, this study seeks to examine the extent to which Al-Zuhaili's conceptual framework can be contextualized and contribute to the development of the interpretation and application of provisions on marriage annulment in the Compilation of Islamic Law (KHI) in Indonesia, taking into account contemporary challenges and the need for legal certainty.

## METHOD

This research is a descriptive-analytical library study employing a qualitative approach. The primary data source is Wahbah Al-Zuhaili's monumental work, *Al-Fiqh al-Islami wa Adillatuhu*, with a specific focus on the discussions concerning *fasakh* and *'aib*. Secondary data sources include classical fiqh texts across various schools of thought, academic journals, and the Compilation of Islamic Law (KHI) as a representation of positive law in Indonesia. Data was collected through documentary study techniques by comprehensively tracing key concepts. For data analysis, this research adopts a comparative-critical analysis approach.

The comparative approach maps the differences and similarities between Al-Zuhaili's views and the main schools of fiqh regarding *'aib*, *khiyar*, and *fasakh*. The critical approach evaluates the consistency of his arguments, his evidential foundations, and the practical implications of his expanded criteria. The analysis centres on the two frameworks he constructed: functional criteria (hindrance to marital objectives like conjugal relations) and harmonization criteria (causing harm, revulsion, or destroying marital tranquility).

Wahbah Al-Zuhaili is chosen as the primary subject due to the unique, comparative nature of his work (*fiqh muqāran*), which demonstrates his method of *tarjih* (selecting strong opinions). His moderate, maslahah-oriented thought is highly relevant for contemporary issues and widely influential in Islamic legal academia. In this research, the author adopts a critical reading stance, moving beyond exposition to actively analyze Al-Zuhaili's methodology, argumentative consistency, and position within scholarly debates. This dialogical analysis critically engages the text to uncover the strengths, weaknesses, and implications of his concepts, followed by interpretation, comparison with other scholars, and contextualization within Indonesia's legal and social landscape.

## RESULTS AND DISCUSSION

### Definition, Legal Basis, and Consequences of Fasakh

Etymologically, fasakh means to annul. When related to marriage, fasakh means to annul or destroy a marriage (MAWARDI, 2019). Terminologically, fasakh means the husband's right to divorce his wife in order to free himself from a marriage that is considered to be of no benefit (Nurhadi, 2020). According to contemporary fiqh scholars, the definition of fasakh is broader. Wahbah al-Zuhayli, for example, considers fasakh to be included in the category of al-tafriq or separation between husband and wife. Zuhaili defines fasakh as the annulment of a marriage contract or the termination of a marriage contract without affecting the number of talaqs due to the damage to the contract or other reasons. Other scholars such as Abd al-Karim Zaidan agree with Wahbah al-Zuhaili's view and include fasakh in the category of al-tafriq with their own reasons for annulling the marriage between husband and wife (Muthalib, 2023; Nurafifa et al., 2025).

Fasakh is also a divorce caused by problems that are considered serious by one or both spouses, making it impossible for them to live together harmoniously. According to another definition, fasakh nikah is the annulment of a marriage by the wife due to an incurable defect or illness in one of the parties, or because the husband is unable to provide for his family, commits abuse, renounces his faith, or for other reasons. In other words, fasakh means to terminate or annul the marital relationship (Ali & Lubis, 2024).

The law of fasakh is basically permissible or allowed, not required, and not prohibited. The basis of this permissible law is that if one or both spouses feel aggrieved by the other spouse because they cannot fulfill the rights and obligations established by Sharia as husband or wife. As a result, one or both spouses cannot continue their marriage, or even if the marriage continues, the condition of the household is predicted to worsen, so the decision to fasakh is permissible in this case to prevent harm (Nurullah & Fatholla, 2024).

According to the prevailing opinion, a wife may not immediately seek fasakh (annulment) of the marriage before reporting to the judge, as in the case of a husband who has sexual weaknesses. Fasakh due to a husband who is poor and unable to provide for his wife and the like, or to provide a dowry, is not valid before the husband's inability is determined, either by his own declaration or by evidence explaining the husband's current inability (Hafis, 2024). Legal consequences As a specific legal consequence of divorce by fasakh, the husband may not return to his former wife during her iddah period, because divorce in the form of fasakh has the status of bain sughra. If the husband and wife have been divorced and the husband becomes capable, the wife is not returned to the husband and the husband does not have the right to return to his wife during the iddah period. Unless the wife wishes to remarry. Meanwhile, the iddah that must be observed by the wife is like the usual iddah for divorce (Muliani & Puyu, 2023).

The hadith argument that is commonly used in the context of fasakh nikah refers to the hadith narrated by Malik: Malik narrated to me from Yahya bin Sa'id from Sa'id bin Musayyab who said: Umar bin al-Khattab said: "Any man who marries a woman who is insane, or has leprosy, or leprosy, and then has sexual intercourse with her, then the woman is entitled to the full dowry. And as a result, her guardian is obliged to bear the debt of her husband." (HR. Malik) (M. I. Anas, n.d.). The above hadith indicates that a husband and wife have the right to annul the marriage when it is discovered that their spouse has a defect, and that a husband is obliged to bear or pay the dowry if he has consummated the marriage with his wife. Al-Baji, in commenting on this hadith, states that there are at least four laws that arise, namely the law regarding the establishment of khiyar for each husband and wife if they find that one of their partners has a defect or disgrace, the interpretation of the meaning of the above hadith, then the law of obligatory khiyar if there is a case as stated in the hadith. He also adds that the establishment of the option or khiyār to annul the marriage due to this defect is taken by the Maliki and Shafi'i schools of thought (Djawas, 2019; Novi Mayangsari & Muhammad Hafis, 2022).

### **Definition, Criteria, and Classification of 'Shame in Marriage'**

Etymologically, the word al-'Aib (العيب) means deficiency or flaw. In fiqh terminology, 'aib (defect) is a characteristic of the object of the contract (ma'qud 'alaih) that can reduce the value or purpose of the contract, or a characteristic that makes the object of the contract unsuitable for its normal purpose (Al-Khin et al., 1992; Suherman & Hafis, 2022).

In the context of marriage (munakahat), 'aib is defined as anything found in one of the spouses (husband or wife) that prevents the realization of the sharia objectives of the marriage (Az-Zuhaili, 2010a). The main objectives of marriage are to achieve harmony

(sakinah), affection (mawaddah), and offspring, which are the benchmarks for determining whether a condition can be categorized as 'aib, which gives the right of khiyar (option to cancel/terminate the contract) (M. F. Anas et al., 2024).

Defects that can be grounds for fasakh (defects called 'uyub al-fasakh) are the main point of difference between the schools of fiqh. What is meant by defects are physical or mental illnesses that cannot be eliminated or cured, or can be cured but only over a long period of time, resulting in the purpose of marriage not being achieved. Among the types of illnesses that justify fasakh are: first, balak (skin disease); second, canggu (leprosy); third, infectious diseases such as syphilis, tuberculosis, and others. Fourth, because there is a growth on the female genitals that hinders the purpose of marriage (sexual intercourse). Fifth, because of unah, which is impotence (unable to have sexual intercourse), so that the purpose of marriage cannot be achieved (Ulfazah et al., 2025; Umur & Asrul Nizam Bin Mat Nod, 2020).

There are four main types of defects that are generally agreed upon (or recognized by the majority of scholars, including Hanbali, Shafi'i, and some Maliki) that can be grounds for fasakh if found in one of the parties (husband or wife); Insanity (Junun): Loss of sanity, Leprosy (Juzam): a chronic and contagious skin disease, and Vitiligo (Barash) (a skin disease that causes loss of pigment) (Az-Zuhaili, 2010a).

In addition, there are also defects specific to each husband and wife. The defect specific to the husband is impotence/low libido ('innah), which is the inability to have sexual intercourse because the male genitals cannot become erect, resulting in the inability to consummate the marriage. The word impotent has a broader meaning than just the inability to become erect; it can also mean premature ejaculation or the inability to reach orgasm (Prasetyo, 2022). Furthermore, another defect specific to the husband is the severing of the genitals (jabb). When the genitals are severed, sexual relations between husband and wife cannot be performed (Al-Khin et al., 1992).

Meanwhile, Ibn Hazm rejects fasakh on the grounds of impotence, because according to him, divorce is the husband's right, and fasakh without the husband's consent is invalid. On the other hand, al-Syirazi supports the view that impotence is a valid reason for a wife to file for fasakh (Zainal & Irawan, 2024). Al-Syirazi's opinion is in line with the Shafi'i school of thought, which holds that fasakh can be carried out if the purpose of the marriage cannot be achieved if the relationship continues. Then there are defects specific to wives, which prevent them from fulfilling their sexual obligations to their husbands, such as the covering of the genitals by flesh or bone (qarn): the presence of flesh or bone in the vagina that prevents penetration, blockage of the vagina by flesh (ratq), or blockage of the vagina by bone ('ifal) (Sabiq, 1994).

The majority of scholars are of the opinion that the defects mentioned above can be used as grounds for demanding divorce in the form of fasakh. However, they differ on two points: First, regarding the party who has the right to demand divorce, scholars differ in their opinions. The Hanafis are of the opinion that the right to demand divorce in the form of fasakh due to weakness or defect lies only with the wife, not the husband. If the husband finds that his wife has a weakness or defect as mentioned above, the solution is not to demand a fasakh divorce, but to divorce his wife. Meanwhile, the majority of scholars argue that both the husband and wife have the right to demand a fasakh divorce if their spouse is found to have one of these diseases. The reason is that both men and women are equally impatient in dealing with their partners who suffer from one of these diseases (Nilpa Safitri Daulay, 2024).

However, in the Shafi'i school of thought, marriage cannot be annulled due to body odor or underarm odor, *istihadhah* (continuous bleeding in women, known as hemorrhaging), wounds that ooze pus, blindness, severe illness, wetness, or castration, or because the vaginal opening is connected to the urinary and fecal openings. In the Shafi'i Fiqh tradition, a wife is allowed to request the annulment of the marriage (*fasakh nikah*) if the husband is proven to have neglected his obligations in providing for his wife's needs. This is because the husband has not fulfilled the rights of his wife that should have been given. The husband's obligations include providing for his wife, both materially (*nafkah lahir*) and immaterially (*nafkah batin*), because negligence in both of these matters can cause suffering for his wife or children (Zubir, 2024).

Wahbah Zuhaili, after reviewing the views of various schools of thought, tends to reinforce the view (especially from the Hanbali and Maliki schools) which states that the right of fasakh can be granted for any type of defect that can cause harm to the spouse, prevent the realization of the purpose of marriage, or cause disgust that hinders a harmonious life (Yunianti, 2017).

Based on this explanation, Wahbah Zuhaili does not limit the types of defects to only four or five cases that have been agreed upon by the majority of previous scholars, but rather he applies broader and more flexible criteria in viewing 'aib. These criteria include functional aspects, where defects are seen as real obstacles to the main functions of marriage, such as sexual relations and efforts to have children, as well as harmonization aspects that focus on defects that cause physical, psychological, or social harm (*tanfir*). Thus, the expansion of these criteria aims to ensure that the noble purpose of marriage in realizing a family that is *sakinah, mawaddah, wa rahmah* is not hindered by conditions that cause prolonged harm to one of the parties (Az-Zuhaili, 2010a).

Zuhaili's view is relevant to analyze in the contemporary context, where medical advances have identified various genetic or other chronic diseases that could potentially harm spouses or offspring, making it necessary to broaden the definition of 'aib.

### **Mechanism and Law of Khiyar 'Aib in Fasakh Nikah**

Scholars define khiyar 'aib as the right to choose that arises due to certain conditions that have the potential to cause harm in a husband and wife relationship. The main purpose of this concept is to maintain welfare and prevent harm resulting from a lack of disclosure of health conditions prior to marriage (Ahmadi, 2025). This definition shows that Islamic law views marriage as a contract that must be carried out in a state of mutual consent and free from elements of deception.

The basis for the existence of the right of khiyar al-'aib in marriage is to eliminate dharar (harm or loss) that befalls one of the parties due to a hidden defect. The relevant fiqh rule here is: "Harm must be eliminated" (Ad-dhararu yuzal). Wahbah Zuhaili in *Fiqh Islam wa Adillatuhu* emphasizes that the right of fasakh (termination of contract) due to defects is based on the principle of justice and provides a way out for the aggrieved party, especially since the defect can prevent sexual relations (istimta') totally or partially and cause harm and disgust (tanfir), thereby hindering a harmonious life together (Az-Zuhaili, 2010a).

The law of khiyar 'aib in marriage allows for the annulment of a marriage if a defect is found in the spouse that was previously unknown and not accepted. This defect can be a physical disability, a contagious disease, or other shortcomings. Both parties have the same right to choose between continuing or annulling the marriage without any time limit (M. F. Anas et al., 2024). Defects that fall into this category include impotence in the husband, genital defects in the wife, HIV, contagious skin diseases, and insanity (Ilham, 2022).

The mechanism of khiyar 'aib in fasakh nikah requires a specific process so that the decision to annul the marriage is made fairly and without haste. In fiqh literature, this mechanism can be pursued through direct consultation between husband and wife or through a judge's decision, depending on the nature of the defect and the extent to which the couple can agree. If the couple can communicate well and agree to separate, the annulment can be carried out through an internal process. However, if there are differences of opinion or disputes, this process must be submitted to a judge in order to obtain an objective legal decision (Az-Zuhaili, 2010a).

Regarding the parties entitled to exercise this right, husbands and wives have equal standing to file for khiyar al-'aib if the defect in question is found in their spouse. However, an important point to note is the element of immediacy in filing the claim; this right must be exercised immediately once the defect is identified. If the party entitled to

this right chooses to remain silent (*sukut*) and does not act immediately, the right to cancel or continue the marriage becomes void (*saqit*), because their silence is interpreted as a form of acceptance or consent (*ridha*) (Az-Zuhaili, 2010a).

### **Analysis of Wahbah Al-Zuhaili's View on Defects in Marriage and Its Relevance to the Compilation of Islamic Law (KHI) in Indonesia**

A literature review of *Al-Fiqh al-Islami wa Adillatuhu* shows that Wahbah Zuhaili does not limit the defects that constitute grounds for *fasakh* to a narrow list (such as the four defects agreed upon by the majority of Shafi'i and Hanafi scholars). Zuhaili tends to adopt and reinforce a broader view, similar to the Hanbali and Maliki schools of thought, using two main criteria that are functional and harmonizing in nature. Defects categorized as functional criteria are all health conditions that are permanent or difficult to cure, where these conditions prevent the achievement of the main purpose of marriage, namely the realization of sexual relations (*istimta'*), which is an important right and purpose of marriage (Az-Zuhaili, 2010). This includes physical and biological defects, both in the husband (such as *'Innah* or *Jabb*) and in the wife (such as *Qarn* or *Ratq*) (Az-Zuhaili, 2010a). Zuhaili emphasizes that the right of *fasakh* arises due to a loss that prevents the fulfillment of the basic needs of the spouse.

An analysis of Wahbah Al-Zuhaili's views on defects ('*aib*) in marriage shows significant common ground with the principles underlying the Compilation of Islamic Law (KHI) in Indonesia. Both Al-Zuhaili and the KHI are based on the fundamental principles of preventing harm (*dar'u al-mafasid*) and promoting the welfare of the household. Al-Zuhaili emphasizes that defects that prevent the achievement of the objectives of marriage, such as marital relations (*istimta'*) and tranquility (*sakinah*), can be grounds for annulment of marriage (*fasakh*). A similar principle is reflected in the KHI, particularly Article 76, which considers constant disputes and quarrels that essentially cause harm and eliminate *sakinah* as grounds for divorce. Although the KHI does not explicitly mention "defects" as grounds for divorce, the spirit of the law is in line with efforts to prevent harm in marriage.

Defects that fall under the criteria for harmonization are conditions that can cause danger, infectious diseases, or disgust (*tanfir*). In this case, Wahbah az-Zuhaili expands the scope of these defects to include dangerous diseases such as leprosy (*juzam*) and mental disorders (*junun*), as well as conditions that cause social disgust such as vitiligo (*barash*), because these things are considered to hinder the creation of peace or *sakinah* in the household. The essence of this criterion is that if the defect makes it impossible for one of the parties to live patiently with their spouse because it causes extreme discomfort, danger, or embarrassment, then the right of *fasakh* can be applied (Az-Zuhaili, 2010).

More specifically, Al-Zuhaili's concept of the right to annul a marriage (khiyar al-'aib) due to a defect that existed prior to the contract and was concealed finds its positive form in the formal provisions of the KHI. Article 75 of the KHI explicitly stipulates that a marriage can be annulled if one of the parties has a "physical defect or illness" that prevents the consummation of the marriage, provided that the defect existed before the marriage contract. This provision is a direct crystallization of the concept of khiyar al-'aib in classical fiqh, including that expanded by Al-Zuhaili. Furthermore, Al-Zuhaili's expanded definition of defect goes beyond the traditional list of four defects to include anything that functionally prevents *istimta'* or socially eliminates *sakinah*, such as leprosy, severe mental disorders, or conditions that cause disgust, which have room for contextualization in the KHI. The open phrase "physical defect or illness" in Article 75 of the KHI does not provide detailed restrictions, thus opening up the possibility for judges (*ijtihad al-qadhi*) to interpret it dynamically and accommodate contemporary conditions that are essentially the same, such as permanent impotence, advanced HIV/AIDS, or severe addiction that undermines the purpose of marriage.

Zuhaili's expansion of the criteria reflects a fiqh approach based on the principles of *taysir* (ease) and *dar'u al-mafasid* (avoiding harm). He argues that there is no strong basis in sharia to limit 'aib to certain types only, when there are many other defects that equally cause harm (*dharar*) and the inability to maintain a normal household (Az-Zuhaili, 2010a). The existence of a defect that was evident at or before the marriage contract and was concealed gives rise to legal implications in the form of the right of *Khiyar al-'Aib* for the party who was unaware of it. According to Wahbah Zuhaili, the right of *khiyar* (the option to continue or terminate the contract) must be given to the aggrieved party (either the husband or wife) immediately after the defect is discovered.

If the aggrieved party decides to exercise the right of *khiyar* and file a claim for *fasakh* before a judge, the legal consequences are as follows: first, a separation (*furqah*) occurs, which has a similar status to *talak bain*. This means that the separation caused by *fasakh* due to this defect is final, so that the two parties cannot reconcile as in a normal divorce, but must go through a new marriage contract if they wish to reunite (Az-Zuhaili, 2010b). Second, the next consequence relates to the dowry (*shadaq*). If the *fasakh* or annulment of the marriage is decided before sexual intercourse (*dukhul*) has taken place, then legally the husband is not obliged to pay the dowry at all, because the marriage bond is considered to have ended before the right to the dowry became fully binding (Az-Zuhaili, 2010b). If the *fasakh* occurs after the *duhul*, then the wife is entitled to the *mitsl* dowry (a dowry commensurate with women of her age), and the husband can claim compensation for the dowry from the responsible party (for example, a guardian who deceived or concealed a defect) (Al-Jaziri, n.d.). Third, there is an *iddah* (waiting period for the wife in

the event of divorce), and the wife is required to undergo the iddah period as in a normal iddah talak (Nurhayati, 2019).

Zuhaili's view differs significantly from the Hanafi school of thought, which generally rejects khiyar al-'aib in marriage (except for the 'Innah defect in husbands who are given a waiting period), on the grounds that marriage is based on kifaa'ah (equality) and defects can be overcome with willingness (ridha) and patience ('Abidin, 2000). Zuhaili criticizes this Hanafi view because it is considered to ignore the element of dharar (harm) and the fundamental right of spouses to build a normal and healthy household. Zuhaili's argument, which prioritizes the principle of harm prevention (dar'u al-dharar), makes it highly relevant in the establishment of modern family law.

From the perspective of KHI, there are differences in the mechanisms and emphasis between Al-Zuhaili's theoretical framework and the KHI positive legal system. Al-Zuhaili, in the tradition of fiqh, places greater emphasis on individual rights (khiyar) that can be exercised by the aggrieved party, even though the judge's decision is recommended for certainty. Meanwhile, the KHI clearly distinguishes between "Marriage Annulment" (Articles 71-79) and "Divorce" (Articles 116 et seq.), and requires that the annulment process must be pursued through the Religious Court (Article 71 KHI). This shows the KHI's emphasis on legal certainty, evidence, and administrative order. In addition, the KHI also brings a broader sense of social protection, as seen in Article 72, which emphasizes that annulment does not sever kinship ties and the status of children remains valid, thereby maintaining the stability of the secondary family.

To optimize the harmony between the two, Al-Zuhaili's substantive thinking can serve as a theoretical foundation that enriches the interpretation and application of the KHI. Al-Zuhaili's harmonization criteria, which assess defects based on their ability to disrupt domestic harmony, can be used as an argument to interpret "defects or illnesses" in the KHI more comprehensively, including conditions that socially and psychologically undermine the foundations of marriage. Similarly, Al-Zuhaili's detailed discussion of legal consequences, such as the regulation of dowry after annulment and the possibility of compensation claims (ta'widh), can fill the gap in the KHI, which only states in general terms about "returning the parties to their original state" (Article 74). As a result, this study recommends that judges in the Religious Court utilize contemporary fiqh knowledge, including Al-Zuhaili's thoughts, to interpret the provisions of the KHI in a more progressive and equitable manner. On the other hand, for developers of substantive law, it is imperative to formulate more detailed explanations or implementation guidelines regarding the types of defects, medical evidence, and financial consequences after annulment, with reference to in-depth fiqh analysis. Thus, Al-Zuhaili's approach, which is oriented towards maqashid (legal objectives) and substantive justice, is not only

relevant but also vital to ensure that Islamic family law in Indonesia is able to respond to the complexities of modern health and household welfare issues in a more fair and humane manner, while remaining within the confines of the law.

## CONCLUSION

The analysis of Wahbah Al-Zuhaili's thoughts on the concepts of *fasakh* and *'aib* reveals a dynamic and broad approach, extending beyond the traditional list of defects. Al-Zuhaili formulates two main criteria: functional criteria, which emphasize obstacles to the essential objectives of marriage such as conjugal relations, and harmonization criteria, which consider defects that cause harm, revulsion, or destroy marital tranquility (*sakinah*). This approach is rooted in the principles of preventing harm (*dar'u al-mafasid*) and facilitation (*taysir*). Substantively, this view aligns with the spirit of the Indonesian Compilation of Islamic Law (KHI), particularly Article 75, which recognizes "physical defects or illnesses" as grounds for annulment. The open-ended phrasing in the KHI allows for progressive interpretation that can accommodate Al-Zuhaili's criteria, enabling the inclusion of contemporary conditions such as chronic infectious diseases or severe mental disorders. However, there is a procedural difference: the KHI emphasizes legal certainty and formal procedures through the courts, while Al-Zuhaili's jurisprudential framework highlights individual rights and restorative justice. Thus, Al-Zuhaili's thought serves as a vital theoretical foundation for ensuring that Islamic family law in Indonesia remains responsive and just.

Based on these findings, several recommendations emerge. Academically, further research in the form of in-depth comparative studies is needed to map the application of Article 75 of the KHI in court decisions against Al-Zuhaili's criteria. Additionally, interdisciplinary studies with the fields of medicine and psychology are necessary to formulate more measurable parameters for "defects." Exploration into the redefinition of the objectives of marriage (*maqashid al-nikah*) in a modern context is also required to strengthen the argument for expanding the meaning of *'aib*. From a juridical perspective, judges of the Religious Courts are advised to consider Al-Zuhaili's thought as legal considerations when interpreting the provisions of the KHI more substantively. Meanwhile, for lawmakers, it is necessary to consider refining the KHI through official explanations or circular letters that provide interpretive guidelines for "defects," as well as more detailed regulations regarding the legal consequences of annulment, such as the regulation of dowry (*mahr*) and the possibility of compensation (*ta'widh*).

At a practical level, the socialization of the importance of comprehensive premarital health examinations needs to be intensified, not only as a health measure but also as a form of transparency to prevent future disputes. An understanding of the right of option due to defects (*khiyar al-'aib*) and the mechanism of marriage annulment (*fasakh*) must

also be disseminated to the wider public. Overall, the integration between the depth of contemporary fiqh analysis, such as Al-Zuhaili's work, and the positive legal framework of the KHI will enrich the treasury of justice in Indonesian Islamic family law, making it more capable of addressing contemporary challenges without abandoning fundamental sharia principles.

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