

## Legal Construction of the Fatwas of the Tarjih and Tajdid Councils Muhammadiyah Regarding Family Law

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**Abstracts:** At the beginning of the 20th century, Islamic organizations such as Muhammadiyah, Naahdhatul Ulama and others were born, which of course were very concerned with Islamic law. Each organization has a special council in charge of religious fatwas which are practically a guide in everyday life. Family Law is an interesting part of community practice for discussion, among which are the fatwas of the Tarjih Council and the Tajdid Muhammadiyah. The assembly in charge of religious fatwas has a progressive view in several family law cases, such as unregistered marriages or marriages under the hand. This assembly is of the view that marriages that are not registered at state institutions are invalid. Religious texts (bayani) are prioritized in this fatwa and are supported by social science (burhani), and place marriage as a sacred contract ('irfani) which needs to be institutionalized according to legal certainty in order to maintain maqashid al-shari'ah which is fostered by five things: guarding religion, soul, mind, lineage, and wealth

**Keywords:** *Legal Construction, Fatwa, Tajdid Muhammadiyah, Family Law*

**Abstrak:** Di awal abad XX lahir organisasi-organisasi Islam seperti Muhammadiyah, Naahdhatul Ulama dan lain-lainnya yang tentu saja sangat konsen dengan Hukum Islam. Setiap organisasi memiliki majelis khusus yang membidangi tetang fatwa-fatwa keagamaan yang secara praktis menjadi tuntunan dalam kehidupan sehari-hari. Hukum Keluarga adalah bagian dari pengamalan masyarakat yang menarik untuk didiskusikan, di antaranya adalah fatwa-fatwa Majelis Tarjih dan Tajdid Muhammadiyah. Majelis yang membidangi fatwa keagamaan ini memiliki pandangan yang progresif dalam beberapa kasus hukum keluarga, seperti nikah sirri atau nikah di bawah tangan. Majelis ini berpandangan bahwa nikah yang tidak dicatatkan di lembaga negara adalah tidak sah. Nash-nash agama (bayani) menjadi prioritas dalam fatwa ini dan didukung dengan ilmu pengetahuan sosial kemasyarakatan (burhani), serta menempatkan pernikahan sebagai akad sakral ('irfani) yang perlu dilembagakan sesuai kepastian hukum demi menjaga maqashid al-syari'ah yang dibina atas lima hal: menjaga agama, jiwa, akal, keturunan, dan harta.

**Kata Kunci :** *Fatwa, Tajdid Muhammadiyah, Hukum Keluarga*

### Introduction

Islam is a religion that has rules and covers all aspects of human life starting from faith, worship and muamalah. These three are aspects that unite each other and cannot be separated. In the context of muamalah, family law is an important part of the Muslim personality so that daily practices are formed in accordance with Islamic guidance and community customs as long as they do not conflict with the spirit of Islamic teachings themselves.

At the beginning of the 20th century, Islamic organizations such as Muhammadiyah, Naahdhatul Ulama and others were born, which of course were very

concerned with Islamic law. Each organization has a special assembly that deals with religious fatwas which practically serve as guidance in everyday life. Regarding this problem, Fatkhul Mujib explains in his article as follows:

This fact becomes even more interesting when viewed from the existence of mass organizations such as NU and Muhammadiyah whose existence and role have made a major contribution in shaping the religious paradigm of Indonesian Muslim society. The style of this mass organization is then able to provide differentiation when compared to the sectarian mindset that exists in Islamic countries in the Middle East.

Where sectarian issues are more radical in nature, narrowly fanatical, and have very strong political overtones which then form community compartments that are prone to conflict. This is of course inversely proportional to the existence of religious organizations in Indonesia, which, even though they are very deep-rooted and have a big influence in society, but from a historical review it actually shows the big and very accommodating role these mass organizations play in maintaining the stability of the country. Thus, it is not surprising that the strategic position of this mass organization is then reflected in its position which is also considered to have the authority to give fatwas and is even more preferred by the public compared to the MUI which is a more "formal" institution.<sup>1</sup>

The existence of Islamic law in the family context in Indonesia is quite open due to, among other things, the Basic Law or constitution which directs the renewal or development of family law, so that family life becomes the basic pillar of community life, especially the lives of women, wives, mothers and children. which can be protected by legal certainty. Islamic law in the field of family in Indonesia and countries where the majority of the population is Muslim has its own appeal, because family law is what gets the most priority among Muslims in Indonesia.<sup>2</sup>

#### **Formulation of the problem**

1. What is the meaning of the Muhamadiyah tarjih and tajdid councils?
2. What is the method for determining the law of the Muhamadiyah tarjih and tajdid council?
3. What legal products are issued by the tarjih and tajdid councils regarding family law?

#### **Research purposes**

1. To find out what the Muhamadiyah tarjih and tajdid councils mean.
2. To find out what the methodology is for determining the law of the Muhamadiyah tarjih and tajdid council.
3. To find out what legal products and legal constructions were issued by the Muhamadiyah tarjih and tajdid councils regarding family law.

#### **Research methods**

This research is a type of normative legal research. This type of research is qualitative, descriptive in nature using a normative juridical research approach. Apart from that, the data and data sources in this research come from the literature using document study data collection techniques.

In managing the data that has been collected, the author uses deductive thinking, namely starting from a general proposition, the truth of which is known and ending in a specific conclusion (minor premise). Meanwhile, the text analysis used in this research is qualitative descriptive analysis. Synchronized review of Islamic law provisions regarding marriage annulment and positive legal interpretation carried out.

#### **Discussion and Research Results**

##### **Manhaj Tarjih Muhammadiyah**

Muhammadiyah as an Islamic organization has a basic framework of religious thought. Muhammadiyah itself defines itself as an Islamic movement, preaching amar ma'ruf nahi munkar and tajdid, based on the Koran and Sunnah and based on Islam.<sup>3</sup> On a philosophical level, this basic framework is translated through the Muhammadiyah tarjih decision which was interpreted by the Muhammadiyah Central Leadership in 1955, known as problem five ( *al-masā'il al-khams* ). The five basics referred to are: first, religion ( *al-d in n* ). Religion in Muhammadiyah's view is:

The religion of Islam brought by the Prophet Muhammad is what was revealed in the Qur'an and what is in the authentic Sunnah, in the form of commands and

<sup>1</sup>Fatkul Mujib, Development of Fatwa in Indonesia, *Nizham* Vol. 4, Number 1, January-June 2015, p. 96.

<sup>2</sup>Sirajudin, Construction of Islamic Family Law in Indonesia: Analysis of Republic of Indonesia Law no. 1 of 1974 Concerning Marriage, *Istinbath-Jurnal of Islamic Law*, Vol. 14, no. 2, December 2015, p. 159.

<sup>3</sup>Muhammadiyah Articles of Association, article 4 paragraphs 1 and 2.

prohibitions as well as guidance for the good of people in this world and the hereafter.<sup>4</sup>

Second, the world (*al-dunya*) which has the meaning of all things that are not the task of the messenger or affairs that are completely left to human wisdom.<sup>5</sup> Thirdly, worship (*al-ibadah*) is to draw closer to God by obeying His commands and avoiding His prohibitions. In this case, there are two things, namely everything that God has permitted and the special one whose *kaifiyat* has been determined by the Shari'a.<sup>6</sup> Fourth, *sabilillah*, is everything that conveys the pleasure of God, and fifth, *qiyas*. Regarding this *qiyas*, the Tarjih Council at that time formulated as follows:

That the absolute basis for judging in Islam is al-Qur'an and al-Hadith. That wherever it is necessary to deal with the issues that have occurred and it is strongly desired to practice it on matters that are not related to the worship of the Mahdiah, even though for the reason that there is no shari'ah version in the Qur'an and the Sahih Sunnah, then it should be used reason by way of *ijtihad* and *istinbath* from the texts that go through the equation of *illah*, as has been done by the scholars of the Salaf and Khalaf.<sup>7</sup> Looking at the text of the tarjih decision about *qiyas* above, it can be seen that the tarjih council is very careful in using this method. This is seen in the sentence 'highly desired' in the decision above. The next signs are *qiyas* is not allowed to *ijtihad* in the problem of *mahdiah* worship.

Next, the phrase *manhaj tarjih* linguistically means how to do tarjih. As a term, *manhaj tarjih* is more than just a way of performing tarjih. According to Syamsul Anwar, the term tarjih comes from the scientific discipline of Islamic jurisprudence. In this scientific discipline, tarjih means evaluating propositions that appear contradictory or evaluating the opinions of ulama to determine which is superior.

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<sup>4</sup>Muhammadiyah Central Leadership, *Association of Tarjih Muhammadiyah Decisions*, (Yogyakarta: Suara Muhammadiyah, 2009), p. 277.

<sup>5</sup>*Ibid.*

<sup>6</sup>*Ibid.*, p. 278.

<sup>7</sup>*Ibid.*

<sup>8</sup>However, in the Muhammadiyah environment, tarjih has experienced a development in meaning, namely the process of *ijtihad* itself.<sup>9</sup> *Manhaj tarjih* in its meaning is more of a technique or method of performing *ijtihad*.

As for performing *ijtihad*, the Tarjih and Tajdid Councils use three approaches simultaneously or optionally: first, *bayani* (textual-normative). This approach is a philosophical study of the building of knowledge that places religious texts as the first reference. With this approach, *ushul fiqh* and *ijtihad* techniques are the main elements in exploring the law. Second, *burhani* (contextual-argumentative). This approach prioritizes senses and logic to gain understanding. Technically, social sciences are very helpful in gaining complete understanding. Third, *irfani* (spiritual-intuitive). This approach prioritizes the clarity of the soul obtained by *mujāhadah masyrū'ah* so that scientific conclusions do not only rely on logic, but with a deep sense of religion.<sup>10</sup>

#### **Muhammadiyah Tarjih and Tajdid Council fatwas regarding family law**

In this article, several tarjih fatwas are discussed for reasons of limited journal pages. Some of the fatwas in question are as follows:

##### **Marrying a Pregnant Woman.**

This fatwa emerged from a question from the secretary of the Aisyah Regional Leadership of the North Sumatra Tabligh Section. The question in question is as follows:

'Is it legal to marry a prospective wife who is already pregnant?'

The Tarjih and Tajdid Councils are of the view that pregnant women may marry the man who impregnated them. The text of the fatwa reads:

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<sup>8</sup>Syamsul Anwar, *Manhaj Tarjih Muhammadiyah*, (Yogyakarta: Tarjih Muhammadiyah XXX National Deliberation Committee), p. 3

<sup>9</sup>*Ibid.*, p. 5.

<sup>10</sup>*Ibid.*, p. 138.

<sup>11</sup>Muhammadiyah Central Leadership Tarjih and Tajdid Council Team, *Fatwa.*, p. 149.

"If harmony and other conditions are met, a pregnant woman is married to the man who impregnated her, based on the opinion of a seminar held by the Java Tarjih Council in 1986 in Yogyakarta. The law is permissible, as a result the marriage is valid'.<sup>12</sup>

The argument relied upon by the Tarjih and Tajdid Councils in this matter is QS. An-Nisa` (04): 24:

*"And (you are also forbidden to marry) married women, except for the slaves you have. (Allah has established that law) as His decree over you. and Lawful for you other than that, (namely) finding wives with your wealth to marry not to commit adultery. So the wives you have enjoyed (mixed) among them, give them their dowry (perfectly), as an obligation; and There is no reason for you for something that you have mutually agreed upon, after determining the dowry. Indeed, Allah is All-Knowing and All-Wise.*<sup>13</sup>

The sentence that reads "...and is lawful for you other than that.." means other than what is prohibited in verse 23, it is permissible to marry including pregnant women. As for the hadith that seems to prohibit, but there is also an understanding that allows.<sup>14</sup>

The Tarjih and Tajdid Council's views on the issue of marrying pregnant women are more focused on the texts of the Qur'an and hadith or use more of a bayani approach, this can be seen in the text of the fatwa mentioned above. The view of the Tarjih and Tajdid Council is the same as the provisions contained in the Compilation of Islamic Law (KHI) in Indonesia article 53.<sup>15</sup>

### **Interfaith Marriage**

This fatwa answered a question asked by one of the Muhammadiyah members and was heard in 2011. The question reads in full as follows:

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<sup>12</sup>Muhammadiyah Central Leadership Tarjih and Tajdid Council Team, *Fatwa...*, p. 150.

<sup>13</sup>Department of Religion of the Republic of Indonesia, *Al-Qur'an and its Translations*, p. 121

<sup>14</sup>Muhammadiyah Central Leadership Tarjih and Tajdid Council Team, *Fatwa...*, p. 150.

<sup>15</sup>Compilation of Islamic Law in Indonesia article 53.

Assalaamu'alaikum wr.wb.

I am a servant of Allah on Allah's earth who wants to ask about the following case: There was a Muslim man who committed adultery with a Catholic woman so she became pregnant for several months, then he wanted to take responsibility by marrying her with the following conditions:

1. The Catholic woman wanted to get married in church in the Catholic way and then get married in Islam, then the state registration was done with the Catholic administration, whereas in Islam there was no record.
2. Then the two of them after that lived as a family in different religions. In this case, the man is said to be cornered because he has become pregnant, so he MUST marry in that way, while sticking to their respective beliefs.

In the process, the man's parents (father) have tried their best to get married in the Islamic way without conditions, the woman must convert to Islam first. However, the woman (her family) still does not agree. Then finally, with various considerations these parents agreed to the procession. And for the process of repentance, you want to be directed to return to the right path. The man will also call on his wife to convert to Islam. This process has not yet occurred and is still waiting for the big day.

Question:

What is the law in accordance with Islamic law for the case above?

Please explain in very detail, considering that I am still a layman. Thank you in advance.<sup>16</sup>

The law on interfaith marriage according to Islamic law has been explained several times in this religious question and answer column, and has even become a decision of the 22nd Tarjih Congress in 1989 in Malang, East Java. In conclusion, the scholars agree that it is haram for a Muslim woman to marry someone other than a Muslim man. Ulama also agree that it is haram for Muslim men to marry Muslim

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<sup>16</sup>Muhammadiyah Central Leadership Tarjih and Tajdid Council Team, *Fatwa...*

women (such as Buddhists, Hindus, Confucians and others). The proof is the word of Allah:

"And do not marry polytheist women before they believe. Indeed, a slave woman who is a believer is better than a polytheist woman, even if she attracts your heart. And do not marry polytheists (with believing women) before they believe. Indeed, a believing slave is better than a polytheist, even if he attracts your heart. They invite to hell, while God invites to heaven and forgiveness with His permission. And God explains His verses (His commandments) to people so that they take lessons." [QS. al-Baqarah (2): 221]

What scholars disagree about is: Can a Muslim man marry a woman of the People of the Book (i.e. Jews and Christians: Catholic/Protestant)? Some say it is possible, based on God's words in surat al-Maidah verse 5. There are also others who say it is not possible. However, we have reinforced/reinforced the opinion that it is not possible for several reasons, among others:

- a. The Ahlul Kitab that exists today is not the same as the Ahlul Kitab that existed during the time of the Prophet SAW. All the Ahlul Kitab today are clearly polytheists or associating with God by saying that Uzair is the son of God (according to the Jews) and Jesus is the son of God (according to the Christians).
- b. A marriage of different religions is certain that it will not be possible to create a *sakinah* family as the main purpose of the marriage.
- c. God willing, the Muslim Ummah will not lack Muslim women, in fact the number of Muslim women is greater than that of men.
- d. As an effort to *syadz-adz-dzari'ah* (prevent damage), to maintain the faith of the future husband/wife and the children who will be born.

And please note, our country does not recognize interfaith marriages, because according to Law no. 1 of 1974 concerning marriage article 2 paragraph 1 states:

"Marriage is valid, if it is carried out according to the laws of each respective religion and belief." This means, our country does not accommodate and does not recognize interfaith marriages (even if the groom is Muslim). Therefore, as you said, the marriage cannot be carried out and registered in an Islamic manner, namely at the KUA. And all that can be done is to register the marriage in the Civil Registry, just as other non-Muslim residents register their marriages there.

#### **Sirri Marriage Law**

This fatwa answers a question asked by one of the Muhammadiyah members in 2007. The question reads in full as follows:<sup>17</sup>

"Until now there are still Muslims who carry out sirri marriages, namely marriages carried out by the woman's guardian and a man and witnessed by two witnesses, but they are not reported or registered at the Office of Religious Affairs (KUA). What is the law on marriage like this?"

Family law is a topic that is always relevant in various Muslim countries and is being harmonized and updated according to the needs of the times. <sup>18</sup>One of the interesting topics related to family law is marriage registration in state institutions. Until now, sirri marriages or private marriages are still widely practiced by Indonesian people because there is still an opinion that marriage registration is just an administrative matter, and not an obligation required by religious teachings.<sup>19</sup>

In Indonesia the term sirri marriage or better known as underhand marriage, emerged after the emergence of Law no. 1 of 1974 concerning Marriage. The Tarjih and Tajdid Council cited state regulations relating to marriage. In article 2 it is explained that:

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<sup>17</sup>Fatwa Team of the Tarjih and Tajdid Council of PP Muhammadiyah, *Fatwas.*, Volume, 8, p. 45.

<sup>18</sup>Khoiruddin Nasution, et al, *Marriage and Inheritance Law in the Modern Muslim World* , Cet. I (Yogyakarta: Akademika, 2012), p. 3-4.

<sup>19</sup>Suyono, *Family Law: An Anthropological Perspective of Islamic Law* , in the *Asy-Syir'ah Scientific Journal* Vol. 16 No. 1 2018, State Islamic Institute 9 IAIN) Manado.

1) Marriage is valid if it is carried out according to the laws of each religion and belief.

2) Every marriage is recorded according to applicable laws and regulations.<sup>20</sup>

Article 2 paragraph (2) is explained in Government Regulation Number 9 of 1975. The articles related to marriage are as follows; Article 10 paragraph 2 states: "Marriage procedures are carried out according to the laws of each religion and belief." Paragraph 3 states: "By paying attention to the procedures for marriage according to the laws of one's religion and beliefs, the marriage is carried out in the presence of a Marriage Registrar and attended by two witnesses." Furthermore, article 11 regulates in detail the registration of marriages.<sup>21</sup>

According to the Tarjih and Tajdid Council, marriage registration was unknown in the Era of Rasulullah SAW, Friends and afterward. Announcement of marriage (I'lan) to the general public at that time was simply by means of walimah al-'ursy by hitting a tambourine and cutting a goat. This can be taken from several hadiths of the Prophet Muhammad SAW as follows:

*"Announce the marriage and beat the tambourine (HR. Ibnu Majah from `Aishah)*

In further development, times have changed and demand order, benefits, and guarantees for the wife and children related to sustenance, education and the future, so the effort to register marriages in a number of modern Muslim countries as described above was born. Changes in times and places require legal ijihad for the sake of upholding benefits. This is in line with the rule of jurisprudence which reads: *"taghayyur al-ahkam bi taghayyur al-azminah wa al-amkinah"*.<sup>22</sup>

The Tarjih and Tajdid Councils are of the view that marriage registration is a part that cannot be abandoned in efforts to attract benefits ( *jalb al-mashalih* ). Orderliness,

guarantees for the parties, and the benefit of the current era really require the formal legality of marriage registration. In the Qur'an QS. Al-Baqarah (02): 282 explains the importance of recording debts:

*"O you who believe, if you do not pay charity in cash for a specified time, you should write it down..."*

Strengthening this verse, Allah emphasizes that the marriage contract is not an ordinary mu'amalah contract in general. This is stated in QS. An-Nisa` (04): 21:

*"How will you take it back, even though some of you have mixed (mixed) with others as husband and wife. and they (your wives) have taken from you a strong Covenant."*

In QS. Al-Baqarah (02): 282 above, it confirms the general principle that we want to establish that writing down contracts for debts and receivables, especially those that are not paid in cash, is highly recommended (li al-irsyad) even though it is not yet at the mandatory level . More clearly, in this series of verses, it is recommended that both parties appoint a third party scribe to be neutral and fair regarding the contract.

In exploring the law, the Tarjih and Tajdid Councils also use the qiyas method,<sup>23</sup> which, when linked to the recording of the muamalah contract, makes the marriage contract much more noble, majestic and sacred than the debt and receivables contract. <sup>24</sup>The main objective of the marriage contract is to continue the offspring, protect oneself from adultery, establish feelings of love, practice the sunnah of the Prophet Muhammad, maintain the purity of the lineage, and have the principle of deliberation, creating a sense of security for the family, avoiding violence, husband and wife as partners, and the principle of justice , so that there is greater demand for legal certainty to bind both parties in order to maintain the noble ideals of domestic life.

<sup>20</sup>UU no. I of 1974 concerning Marriage.

<sup>21</sup>PP No. 10 of 1975.

<sup>22</sup>Ali Sodiqun, *Ushul Fiqh Fiqh: History, Methodology and Implementation in Indonesia* , Cet. I (Yogyakarta: Home, 2012), p. 96.

<sup>23</sup>Rifyal Ka`bah, *Islamic Law in Indonesia: Muhammadiyah and NU Perspectives* , Cet. I (Jakarta: Yarsi University, 1998), p. 106.

<sup>24</sup>Fatwa Team of the Tarjih and Tajdid Council of PP Muhammadiyah, *Fatwas.*, Volume, 8, p. 51.

According to the Tarjih and Tajdid Council, registration of marriages has a beneficial aim and rejects the evils that if registration is not carried out, it will create uncertainty. This kind of understanding is in line with the fiqh principle "*tasharruf al-imam 'ala ar-ra'iyah manuthun bi al-mashlahah*". Based on the considerations above, the Tarjih and Tajdid Council requires Muhammadiyah members to register marriages.

From the description above, it can be concluded that in the legal issue of unregistered or private marriages, the Tarjih and Tajdid Councils combine three approaches at once, namely bayani, burhani, and 'Irfani. Bayani approach by referring to the religious texts that have been presented in the description above, both the Qur'an and the hadith of the Prophet, burhani by accommodating modern social conditions which are embodied in marriage laws and regulations which regulate the obligation to register marriages. A social approach like this is part of the main community creation efforts that Muhammadiyah aspires to.

<sup>25</sup>Irfani's approach in this matter is that marriage is a sacred and great muamalah institution in the sight of Allah when compared with other muamalah contracts. One more thing, consideration of the benefit of the family and public order in national and state life ( *jalb al-mashalih* ) appears to be the main reference for the Tarjih and Tajdid Council in determining marriage registration as an obligation.

### Giving Divorce to a Wife in an Emotional State

This fatwa answers questions asked by Sucipto Abdullah, a member of Muhammadiyah. The question reads in full as follows:

- What is the law regarding talaq from a husband to his wife at a certain location, while she is in an emotional state?
- What is the reconciliation process if the husband wants to reconcile with his wife?

<sup>25</sup>Jaih Mubarak, *Ijtihad Methodology in Islamic Law*, Cet. I (Yogyakarta: UII Press, 2002), p. 221.

Answer :

There are two things that need to be understood in determining the legal issues above, namely first, about emotions, and second, about the conditions for a divorce.

Emotions are inner feelings that continuously arise from a person's heart, not from the mind (brain). Therefore, an emotion that arises in a person may not close the mind and may also close the mind. If a husband, who is in an emotional state that does not close his mind, divorces his wife, then the divorce will fall. On the other hand, if a husband is in an emotional state that closes his mind, the divorce will not occur.

The argument is that a person who is in an emotional state whose mind is closed is equated with someone who is drunk. If a person is drunk, if he performs an important act such as praying, then his prayer is invalid, because his mind is closed because of his drunkenness. The basis is the words of Allah SWT:

الَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ [QS. an-Nisa (4): 43]  
 انصلاة  
 عَنِ الْمَشْرِقِ وَالْمَغْرِبِ [QS. an-Nisa (4): 43]  
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Artinya: "you who believe, do not pray while you are drunk, so that you understand what you are saying" [QS. an-Nisa (4): 43]

Demikian juga halnya dengan talak yang dijatuhkan suami dalam keadaan emosi yang pikirannya sedang tertutup, maka talaknya tidak jatuh, berdasarkan hadits:

عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: «الطَّلَاقُ إِذَا كَانَ مِنَ الْعَقْلِ وَالْحَيَاةِ وَالْإِسْمَاءِ» [QS. an-Nisa (4): 43]  
 انطلاق  
 عَنِ الْقَوْلِ [QS. an-Nisa (4): 43]  
 انبغاس

Meaning: " It was narrated from Abu Hurairah that the Prophet said: 'Every divorce is valid except that of one who is mentally incapacitated.'" [Reported by at-Turmuzi and al-Bukhari, this hadeeth is mauquf.]

In the meantime, the divorce pronounced by the husband must be official, in the sense that it is complete with its principles and conditions. Among the pillars of divorce is that it is attended by two male witnesses. Allah swt said:

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ  
مُحَمَّدٌ عَبْدُ اللَّهِ  
رَسُولُهُ  
[انطلاقاً]

(56 : 2]

Meaning: "... Be witnessed by two witnesses among you, and bear witness for the sake of Allah. " [QS. al-Talaq (65): 2]

According to Law no. 1 of 1974 articles 30 and 39, then every divorce is carried out before a Religious Court session based on the judge's decree and decision, in conjunction with Law no. 7 of 1989 concerning Religious Courts, part two, paragraph 1 of article 65, and Decree of the Minister of Religion No. 154 of 1991 concerning Implementation of Presidential Instruction no. 1 of 1991 concerning the Compilation of Islamic Law in Indonesia Chapter

From the information above, it can be concluded that: if the divorce is imposed by the husband who is in an emotional state whose mind has been closed, then the divorce is not imposed. And if the divorce was imposed by the husband in an emotional state that was not closed by his mind, then the divorce was also not imposed, because it was not witnessed by two witnesses. If the divorce is carried out officially with the complete meaning of the pillars and conditions, then the divorce is final. Divorce that occurs once or twice can be referred by the husband. If a divorce is carried out outside the court, the divorce is invalid.<sup>26</sup>

### Conclusion

The Tarjih Council, now renamed the Tarjih and Tajdid Council (MTT), was formed in 1927 and has the task and responsibility of resolving religious problems. The Tarjih and Tajdid Council has now issued many religious fatwas both related to faith, worship and muamalah. The Tarjih and Tajdid Council in carrying out ijtihad in principle is based on the analysis of ushul fiqh like ijtihad in general, however, operationally it has a manhaj who technically has a choice, for example, when conflicting arguments occur on one issue, this council prioritizes the path of compromise rather than the path of tarjih or legal annulment. The tarjih and tajdid

councils approach problems with three approaches, namely bayani, burhani, and 'irfani. One thing that can be shown is a fatwa regarding unregistered or unregistered marriages. In this fatwa, religious texts (bayani) occupy the main portion which is strengthened by social science (burhani) which is oriented towards the benefit and order of society. The 'irfani approach in this fatwa places marriage as a sacred teaching so that it has a sacred bond whose sanctity must be upheld by society.

The Tarjih and Tajdid Council in several family law fatwas emphasizes the maqashid al-syari'ah aspect which consists of five basics; protect religion, soul, mind, offspring and property. One of them is a fatwa regarding unregistered or unregistered marriages. On the basis of protecting the benefit of children, wives and legal certainty, the Tarjih and Tajdid Council are of the view that marriages that are not officially registered in the country are invalid. Another example is the fatwa regarding contract marriage, apart from being close to religious texts, it also emphasizes maqashid al-syari'ah. Likewise in the marriage fatwa for pregnant women.

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