

CRITICISM OF *TAKLIK TALAK* AS AN EFFORT TO PROTECT WOMEN'S RIGHTS IN INDONESIAN MARRIAGE LAW

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Abstract: This study aims to analyze and critique the *taklik talak* statement, which is considered an effort to protect women's rights within positive law in Indonesia. The central question of this critique is whether a reform of Islamic family law is necessary as an effort to unify marriage law, elevate the status of women in marital relations, and respond to the consequences of societal developments. This research is descriptive in nature, as the data collected consists of texts, words, or descriptions derived from literature and library studies. It analyzes legal regulations related to the empowerment and protection of women's rights. The findings of the study suggest that if *taklik talak* is to be maintained as a manifestation of protection for women, its wording should be revised to more clearly reflect its support for women. The wife, as the victim, should not only be able to free herself from the bond of her husband, who has violated the *taklik talak*, but should also be entitled to compensation. Legal reform related to *taklik talak* in Indonesia is urgently needed. A commitment from various stakeholders, including the government, non-governmental organizations, and the general public, is required to address existing challenges. It is hoped that this will lead to the creation of a more just legal system that protects women's rights.

Keywords: protection; women; *taklik talak*

Abstrak: Penelitian ini bertujuan untuk menganalisa dan mengkritisi kalimat *taklik talak* yang dinilai sebagai upaya perlindungan perempuan dalam hukum positif di Indonesia. Pertanyaan yang menjadi bahasan utama dari kritis tersebut adalah apakah diperlukan pembaruan hukum keluarga Islam sebagai upaya untuk melakukan unifikasi hukum perkawinan, meningkatkan status perempuan dalam relasi rumah tangga, bahkan sebagai respon terhadap eksis dari perkembangan zaman. Penelitian ini bersifat deskriptif karena data yang di himpun berbentuk teks, kata atau penggambaran yang berasal dari kajian kepustakaan dan literature. Dengan menganalisis regulasi perundang-undangan, yang terkait dengan hak pemberdayaan dan perlindungan perempuan. Hasil penelitian mengemukakan bahwa, jika memang *taklik talak* akan dipertahankan sebagai pengejawantahan perlindungan terhadap perempuan, maka redaksi *taklik talak* sudah seharusnya direvisi agar benar-benar nampak keberpihakannya kepada perempuan. Istri sebagai korban, selain bisa lepas dari ikatan suaminya sebagai pelaku pelanggaran *taklik talak*, seharusnya juga harus mendapatkan kompensasi. Reformasi hukum terkait *taklik talak* di Indonesia sangat diperlukan. Dibutuhkan komitmen dari berbagai pihak, baik pemerintah, lembaga swadaya masyarakat, maupun masyarakat luas, untuk mengatasi berbagai kendala yang ada. Dengan demikian, diharapkan dapat tercipta sistem hukum yang lebih adil dan melindungi hak-hak perempuan.

Kata kunci: perlindungan; perempuan; *taklik talak*

Introduction

The process of formulating policies that benefit women in Indonesia involves several stages, encompassing the roles of the government, legislative bodies, civil society, and non-governmental organizations (NGOs). The initial phase includes research and analysis aimed at understanding the state of gender equality across various sectors, such as education, employment, health, and others. The data and information gathered provide a comprehensive understanding of the challenges faced by women in different regions. Advocacy groups, NGOs, and women's rights activists are often actively involved in campaigns to raise public awareness about gender equality issues. These campaigns play a crucial role in garnering public support and exerting pressure on stakeholders to take appropriate actions.

The reform of Islamic family law serves as an effort to unify marriage regulations, enhance the status of women within domestic relationships, and respond to the societal changes brought about by modern developments. Enhancing the status of women in this context involves ensuring their rights and providing protection against domestic abuse and arbitrary treatment by their husbands, as articulated by Khairuddin Nasution.¹

Legal provisions oriented toward enhancing the status of women within domestic relationships include regulations on *taklik talak* as stipulated in Articles 45 and 46 of the Compilation of Islamic Law (CIL). Article 45 primarily accommodates *taklik talak* as part of a marital agreement, while Article 46 focuses on the technical aspects of its implementation.²

Taklik talak is an agreement within marriage whereby a husband conditions the pronouncement of divorce (*talak*) on the occurrence of a specific event or situation. Its original purpose is to provide protection for the wife in cases where the husband

violates the agreed terms. However, in practice, *taklik talak* is often misused and can instead become a tool for exerting pressure on women.

The practice of *taklik talak* often places women in an unequal position relative to men. Women become more vulnerable to divorce if the agreed-upon conditions are met, without a balanced consideration of the husband's interests. *taklik talak* can be misused by husbands as a means to threaten and control their wives. Women who feel threatened may choose to comply with all of their husband's demands in order to avoid divorce.

The conditions stipulated in *taklik talak* are often vague and subjective, making them difficult to prove legally. This creates challenges for women seeking to file for divorce based on *taklik talak*. The practice of *taklik talak* can be seen as inconsistent with human rights, particularly the right to gender equality and the right to live free from violence.

Positive law in Indonesia, particularly the *Compilation of Islamic Law (CIL)*, recognizes the existence of *taklik talak*. However, in recent years, there has been growing discussion and criticism regarding this practice. Social and cultural changes that increasingly uphold the values of gender equality have led to *taklik talak* being subjected to greater scrutiny.

The prior research used as a comparison in this article is as presented in the following.

The study titled "*Konsekuensi Pengucapan Kalimat Taklik Sebagai Perjanjian Dalam Pernikahan (Studi Analisis dalam Mazhab Imam Syafi'i)*"³ is a library research project, where the data sources were derived from libraries, books, and various scholarly works. The research employed qualitative data, with data collection conducted through book surveys. The primary data utilized were obtained from Imam Shafi'i's *fiqh* texts. The findings of the study indicate that scholars hold differing opinions regarding *taklik talak* statements; some permit them,

¹ Khoeruddin Nasution, "Menjamin Hak Perempuan Dengan Taklik Talak Dan Perjanjian Perkawinan," *Jurnal UNISIA* 31 (2008): 333.

² Dirjen Bimas Islam Kemenag RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Direktorat Bina KUA, 2018), p. 23-24.

³ Muhammad Afandy, "Konsekuensi Pengucapan Sighat Taklik Sebagai Perjanjian Dalam Pernikahan (Studi Analisis Dalam Mazhab Imam Syafi'i)," *Journal of Sharia and Law: Faculty of Syari'ah and Law Sultan Syarif Kasim* 2, no. 3 (2023): 895.

while others prohibit them. The study recommends that marriage officiants provide pre-marital education on *taklik* statements.

The subsequent study by Ahmad Alfin Afadi and Novita Sari, titled “*The Relevance of Taklik Talak*”, employs a normative research method, analyzing issues based on statutory regulations. *Taklik talak*, as a practice governing divorce within Islamic communities, serves as a compelling topic for investigation in the context of contemporary family and marriage dynamics. In an era where gender roles and power dynamics in marital relationships frequently come under scrutiny, it is essential to explore how *taklik talak* impacts modern family dynamics. The study concludes that *taklik talak* is no longer relevant. Instead, pre-marital and post-marital education are deemed more appropriate as preventive measures to avoid undesirable outcomes.⁴

The study by Iswandi Harahap, titled “*Talak Taklik Menurut Perspektif Islam Iswandi*,”⁵ aims to address this issue through a qualitative approach, utilizing library research and referencing classical Islamic texts (*kitab turath*) from various authoritative schools of thought concerning *taklik talak*. The study finds that, although scholars differ in their opinions regarding the legal status of *taklik talak*, the view affirming its validity is more strongly supported than the view rejecting it. This is because *talak* (divorce) is the exclusive right of the husband, which can be pronounced either unconditionally (*munjiz*) or conditionally (*mu'allaq*). Therefore, husbands are advised to exercise caution in matters related to *talak*, even when associated with phrases like “In Sha Allah” or seemingly impossible conditions. In summary, the study emphasizes avoiding *talak* and strengthening family bonds.

Method

The research method employed in this study is library research, which refers to a research approach that relies on written documents as its primary materials. The data sources for this research consist of primary and secondary legal materials. Primary legal materials are binding legal sources that ensure societal compliance with the law, including legal products that function as primary references and instruments for critique. Secondary legal materials include interpretations of primary legal materials, such as expert doctrines found in books, journals, and websites. This study uses a qualitative research method. According to Creswell, qualitative research is an inquiry process aimed at understanding specific phenomena to collect data, information, and textual perspectives from respondents. This approach employs various methodologies to explore social or human phenomena.⁶ This study focuses on the issue of Indonesian legal provisions concerning women's rights that incorporate elements of gender equality. The research is descriptive in nature, as the data collected is in the form of texts, words, or descriptions derived from library research and literature, including the 1945 Constitution, the Penal Code, and regulations related to the empowerment and protection of women's rights. The analysis was conducted using an inductive method, beginning with a discussion of the research subject—namely, *taklik talak* within Indonesia's positive law—and subsequently examining it through the lens of *maslahah mursalah* (public interest). The goal is to determine whether reforms to Islamic family law are necessary as an effort to unify marriage regulations.

Results and Discussion

Taklik talak consists of two words derived from Arabic: *taklik* and *talak*. Etymologically, *taklik* (*al-ta'liq*) means “to link or suspend,” while *talak*

⁴ Ahmad Alfin Afadi and Novita Sari, “The Relevance Of Taklik Talak,” *Proceedings ICES* 1 (2024): 493–500.

⁵ Iswandi Harahap Burhanuddin, “Talak Taklik Menurut Perspektif Islam Iswandi,” *Journal Kulliyah Syariah Dan Undang – Undang* 15, no. 1 (2024): 1–28.

⁶ Rian Vebrianto et al., “Bedelau: Journal of Education and Learning Mixed Methods Research: Trends and Issues in Research Methodology,” *Bedelau: Journal of Education and Learning*, vol. 1, 2020.

(*al-talâq*) refers to “the dissolution of a marital bond.”⁷ In terminological terms, *taklik talak* refers to the conditional dissolution of a marital bond based on a specified event or condition (*muallaq alayh*). The condition that serves as the basis may involve either a time reference or a specific requirement. An example of a time-based condition is the husband saying to his wife, “Tomorrow, I will divorce you.” Meanwhile, an example of a condition-based scenario is the husband saying to his wife, “If you leave this house, my divorce is effective.”

Although divorce (*talak*) is generally pronounced directly and unconditionally (*munajjaz*), resulting in its immediate effect upon declaration, a *talak* that is conditional or linked to an event, as in the two examples above, is considered valid as a pronouncement of divorce. However, such *talak* only takes effect after the specified condition is fulfilled—either when the referenced time arrives (e.g., the beginning of the next day)⁸ or when the stipulated condition occurs (e.g., leaving the house).⁹ However, the *Zahiriyah* scholars and the *Shia Imamiyah* school hold that *taklik talak* has no legal effect, as they view that divorce (*talak*) must be direct and cannot be conditional upon anything. In contrast, Ibn Taymiyah and Ibn Qayyim differentiate between types of *taklik*. If the *taklik* involves a condition or something other than an oath, the divorce is deemed valid. However, if the *taklik* takes the form of an oath, the divorce does not take effect when the *muallaq alayh* (the condition) is fulfilled; instead, the husband is obligated to pay the expiation (*kifarah*) for breaking his oath.

The majority of scholars hold that divorce (*talak*) can take effect from a pronounced *taklik talak*, as instances of *taklik talak* were already present during the time of the companions (*sahabah*). Ibn Umar, for instance, deemed that divorce takes effect when the *muallaq alayh* (the condition) is fulfilled. This is

supported by the following authentic (*sahih*) hadith:¹⁰

وَقَالَ نَافِعٌ: طَلَّقَ رَجُلٌ امْرَأَتَهُ الْبَتَّةَ إِنْ خَرَجَتْ، فَقَالَ ابْنُ عُمَرَ: إِنْ خَرَجَتْ فَقَدْ بَتَّتْ مِنْهُ، وَإِنْ لَمْ تَخْرُجْ فَلَيْسَ بِشَيْءٍ.

Meaning: And Nafi` said, “A husband pronounced a triple divorce against his wife if she left the house.” Ibn Umar opined, “If the wife leaves the house, then she is divorced three times by her husband. However, if she does not leave the house, then nothing happens.”

The primary condition for *taklik talak* is that it must be pronounced by the husband after the marital relationship is officially established. This is because, prior to the formalization of the marriage, no binding relationship exists between the two parties. This aligns with the hadith of the Prophet (peace be upon him):¹¹

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَا طَلَّاقَ إِلَّا بَعْدَ نِكَاحٍ

Meaning: The Messenger of Allah (peace be upon him) said, “There is no divorce except after a marriage has taken place.”

Similarly, the *muallaq alayh* (the condition upon which the *taklik talak* is based) must meet specific criteria to be considered valid under Islamic jurisprudence (*fiqh*). These criteria include: it must involve something that could potentially occur in the future, it must be a conceivable and reasonable event, it must be pronounced consecutively without interruption between the *muallaq* (the conditional statement) and the *muallaq alayh* (the condition), and it must pertain to something that has not yet occurred at the time it is pronounced.¹²

¹⁰ Abû `Abdullâh Muhammad bin Ismâ'il Al-Bukhârî, *Shahîh Al-Bukhârî* (Mesir: Al-Suthaniyah, 1311), j. 7, p. 45.

¹¹ Abu Bakr Ahmad bin al-Husayn bin `Aliy Al-Bayhaqiy, *Al-Sunan Al-Kabir* (Kairo: Markaz Hijrah lil Buhuts, 2011), j. 15, p. 197; Abû `Abdullâh Muhammad Al-Hâkim, *Al-Mustadrak `alâ Al-Shahîhayn* (Kairo: Dâr al-Risâlah al-`Alamiyah, 2018), j. 2, p. 454.

¹² Wizarah al-Awqaf wal- Syu'un Al-Islamiyah, *Al-Mawsu'ah Al-Fiqhiyah Al-Kuwwaytiyah*, 2nd ed. (Kuwait: Dar al-Salasil, 1427), j. 12, p. 310.

⁷ Sa'diy Abu Jayb, *Al-Qâmûs Al-Fiqhy*, 2nd ed. (Suriah: Dâr al-Fikr, 1988), p. 230.

⁸ Wahbah bin Musthafa Al-Zuhayliy, *Al-Fiqh Al-Islamiy Wa Adillatuh* (Damaskus: Dâr al-Fikr, 1433), j. 9, p. 6966.

⁹ Al-Zuhayliy, j. 9, p. 6968 & 6972.

***Taklik Talak* in Marriage Certificate Extracts/ Marriage Books**

The Indonesian Dictionary defines *taklik talak* as a declaration of divorce (*talak*) based on a promise made during marriage, which is invoked when the marital vows have been violated.¹³

Taklik talak, on the other hand, is a declaration (*iqrar*) of consent made by the groom after the marriage contract (*akad nikah*) and recorded in the Marriage Certificate as a conditional promise of divorce, contingent upon specific future events, as stipulated in Article 1(e) of the *Compilation of Islamic Law*.

In general, *fiqh* texts, *taklik talak* is viewed as a mechanism for husbands to discipline and caution their wives who act in a manner deemed *nusyuz* (disobedient). However, the definition and purpose of *taklik talak* have evolved under Indonesian regulations. In Indonesia, *taklik talak* is not regarded as a warning or disciplinary tool for non-compliant spouses but rather as a form of commitment made by the husband to his wife regarding their marital life.¹⁴

In its original concept, *talak* (divorce) was exclusively the husband's right, allowing him to unilaterally dissolve the marital bond if he desired a divorce. This arrangement left the marriage effectively terminated upon the husband's pronouncement of *talak*. However, to ensure fairness for the wife, who does not possess the right to initiate *talak*, there needed to be a solution to accommodate her desire for a divorce. In this context, *taklik talak* serves as a balancing mechanism for the wife's rights in relation to the husband's authority. While subject to specific limitations, *taklik talak* provides a pathway that effectively transfers some authority from the husband to the wife regarding the initiation of divorce. A wife may file for divorce in the Religious Court if she feels distressed in her marital situation and claims that

her husband has violated one of the conditions stipulated in the *taklik talak*.¹⁵

Taklik talak, as an effort to guarantee women's rights and protect them from potential abuse or arbitrariness by their husbands, is formally documented in the extract of the marriage certificate or marriage book. The legal framework for the existence of *taklik talak* is outlined in Chapter VII, Articles 45 and 46 of the *Compilation of Islamic Law*. It is considered part of a marital agreement that can be arranged by both prospective spouses, making its application optional and subject to the choice of the couple.

In Indonesia, divorce agreements can be established based on the following legal grounds:¹⁶

1. Establishment of the *Raad Agama: Staatsblad* 1882 No. 152
2. Regulation of the Minister of Religious Affairs No. 1 of 1955
3. Regulation of the Minister of Religious Affairs No. 4 of 1975
4. Regulation of the Minister of Religious Affairs No. 2 of 1990

This was further reinforced by the *Compilation of Islamic Law* (KHI) as stipulated in Articles 45 and 46 of Presidential Instruction No. 1 of 1991, which regulates *taklik talak* agreements as follows:

In Article 45, both prospective spouses may establish a marital agreement in the form of *taklik talak* or other agreements, provided they do not conflict with Islamic law. Subsequently, Article 46 contains the following:

- 1) The content of *taklik talak* must not contradict Islamic law.
- 2) If the conditions stipulated in the *taklik talak* are fulfilled, divorce does not automatically take effect. For the divorce to become effective,

¹³ Tim Penyusun Kamus, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 2005), 1124.

¹⁴ Kamaal Mukhtar, *Asas-Asas Hukum Islam tentang Perkawinan*, (Jakarta: Bulan Bintang, 1993), 227.

¹⁵ Ismiani Zaida, "Penerapan *Ta'lik Talak* dalam Putusan Perceraian (Studi di Pengadilan Agama Mataram)", (Jurnal Universitas Mataram, 2015), 6.

¹⁶ Zamri, Tesis: "Kedudukan dan Akibat Hukum *Ta'liq Thalaq* dalam Pernikahan (Studi Komparasi Kompilasi Hukum Islam dan Pendapat Ibnu Hazm)", (Pekanbaru: UIN Suska Riau, 2017), 49.

the wife must bring the matter before the Religious Court.

- 3) A *taklik talak* agreement is not mandatory in every marriage; however, once it is agreed upon, it cannot be revoked.

The development of *taklik talak* began with the directive of Sultan Agung Hanyakrakusuma, the King of Mataram (1554 Javanese calendar/1630 CE), aimed at providing women with an easier means of dissolving a marital bond when the husband abandoned his wife and family for a certain period. On the other hand, it also offered assurances for husbands whose absence was related to state duties.

Following the arrival of the Dutch in Indonesia, *taklik talak*, which was already practiced within Indonesian society, was documented by Snouck Hurgronje. In his studies on customary law, he was the first to record the existence of *taklik talak*, referring to it in Dutch as “*voorwaardelijke verstoting*” (conditional divorce).

The Dutch colonial government’s recognition of Islamic law in Indonesia took shape in 1882 through the establishment of the Religious Courts (*Peradilan Agama*), referred to as *Priesterraden*, *Raad Agama*, or Religious Council. This institution was officially enacted on August 1, 1882, as outlined in *Staatsblad* 1882 No. 153. To implement *taklik talak*, the Marriage Registration Ordinance (*Ordonansi Pencatatan Perkawinan*) was issued, recorded in *Stb.* 1895 No. 198, as amended by *Stb.* 1929 No. 348, *Stb.* 1931 No. 348, and *Stb.* 1933 No. 98, specifically applicable in Solo and Yogyakarta.¹⁷

Following the issuance of the Ordinance, a proposal emerged among religious scholars (*ulama*), with the approval of local regents (*bupati*), to institutionalize *taklik talak* as an educational tool for husbands. This initiative aimed to increase their understanding of marital responsibilities, including additional clauses addressing financial obligations and physical abuse.

Subsequently, the *taklik talak* statement was no longer recited by marriage registrars but was instead read or pronounced directly by the husband. As a result, many regional authorities outside Java and Madura adopted the practice within their respective areas. After the enforcement of the Marriage Registration Ordinance for regions outside Java and Madura (*Staatsblad* 1932 No. 482), the application of *taklik talak* became more widespread across these regions. By 1925, *taklik talak* was already in effect in Minangkabau, while in Muara Tembusai, it had been practiced since 1910. Similarly, it was implemented in South Sumatra, West and South Kalibekas, and South Sulawesi.

In its subsequent development, the formulation of *taklik talak* was further refined, particularly to protect the wife’s interests. To ensure that the *taklik talak* could not be revoked by the husband following a divorce decreed in court, the formulation was amended to include provisions for *iwadh* (compensation payment).

Khoiruddin Nasution noted that *taklik talak* first emerged in 1630 CE, originating from a decree by the then King of Mataram, Sultan Agung Hanyakrakusuma. It was introduced as a mechanism to provide women with a means of dissolving their marital bond if their husbands abandoned the family for a specific period while on duty. This form of *taklik talak* was referred to as *Taklek Janji Dalem*, meaning a conditional divorce related to a husband performing state duties. The terms stipulated that if the husband left his wife for seven months on land or two years across the sea—except for state duties—and the wife was unwilling to accept this and filed a complaint (*rafa’*) in the Court of Law, then, after verification through an investigation, one irrevocable divorce (*talak satu*) would be imposed on the husband. This *taklik talak* was recited by the *Penghulu Naib* (marriage official) and affirmed by the husband with the response, “Yes, I agree.”

According to Khoiruddin Nasution, *taklik talak* was implemented in Jakarta and Tangerang in 1931, with several modifications and additions to its clauses. Notably, the inclusion of a compensation or redemption payment (*iwadh*) from the wife was

¹⁷ Zaini Ahmad Noeh, *Pembacaan Sighat Taklik talak Sesudah Akad Nikah, Mimbar Hukum*, (Jakarta: Ditbinbapera, 1997), 65-66.

introduced. Consequently, the content of the *taklik talak* was amended as follows:

1. If I leave my wife solely by land travel for three months or by sea travel for six months;
2. Or if I fail to provide the obligatory financial support for a period of one month;
3. Or if I physically harm her by inflicting painful blows;
4. Then, if my wife is unwilling to accept any of the aforementioned circumstances, she may personally or through her representative file a complaint with the *Raad Agama* (Religious Council) and request a divorce. If my wife pays me an amount of f 0.10 (ten cents) and her claim is validated, she will be divorced from me with one *talak*. Furthermore, I authorize the *Raad Agama* to donate the specified *iwadh* amount as alms to the poor and needy.

Based on Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 2 of 1990, the complete formulation of *taklik talak* is as follows:

After the marriage contract (*akad nikah*), I, bin, sincerely promise that I will fulfill my obligations as a husband and will treat my wife, named binti, with kindness (*mu'âsyarah bil ma'rûf*) in accordance with the teachings of Islamic law (*syari'at Islam*). Furthermore, I pronounce the following *taklik* statement upon my wife: Whenever I (1) Leave my wife for two consecutive years, (2) Or fail to provide her with the obligatory maintenance for three months, (3) Or physically harm my wife, (4) Or neglect (fail to care for) my wife for six months.

If my wife does not consent and files a complaint with the Religious Court or an authorized officer designated to handle such complaints, and her complaint is verified and accepted by the court or officer, and my wife pays the amount of Rp. 1,000 (one thousand rupiah) as *iwadh* (compensation) to me, then one divorce (*talak satu*) is pronounced against her. I authorize the court or the designated

officer to receive the *iwadh* payment and subsequently hand it over to the Central Mosque Welfare Board (*Badan Kesejahteraan Masjid* or BKM) for social welfare purposes.

Taklik talak is also regulated under the Compilation of Islamic Law (KHI), specifically in Article 116, point 7, which states that a violation of *taklik talak* by the husband constitutes grounds for divorce. On 23 Rabiul Akhir 1417 H, corresponding to September 7, 1996, the Indonesian Council of Ulama (*Majelis Ulama Indonesia*, MUI) issued a fatwa regarding *Taklik Talak*. Based on this fatwa, *taklik talak* is no longer deemed necessary in contemporary practice.

Subsequently, the amount of compensation (*iwadh*) was amended through the Decree of the Minister of Religious Affairs of the Republic of Indonesia No. 411 of 2000, concerning the Determination of the Amount of *Iwadh* Payment in the Context of *Taklik Talak* for the Muslim Community, to Rp. 10,000 (ten thousand rupiah). As of the time this study was conducted, no further changes had been made to this amount.

The Response of Indonesian Ulama to *Taklik Talak*

Taklik talak, as a product of *ijtihad* by earlier rulers and ulama of the Nusantara, which was subsequently applied broadly in Indonesia, naturally received responses from various Indonesian scholars. On 23 Rabi'ul Akhir 1417 H (7 September 1996), the Fatwa Commission of the Indonesian Ulama Council (*Majelis Ulama Indonesia*, MUI) convened in the MUI meeting room at Istiqlal Mosque, Jakarta, and decided that the pronouncement of the *taklik talak* statement during the marriage contract was no longer necessary. This decision was made because the *taklik talak* statement was originally intended to protect the rights of wives, which at that time were not yet covered by legislation. However, the provisions in Law No. 7 of 1989 on Religious Courts and Law No. 1 of 1974 on Marriage already include the substance of such protections. Similarly, the *Compilation of Islamic Law* (KHI) (Article 46, paragraph 3) explicitly states that the *taklik talak*

agreement is not mandatory in every marriage. This fatwa was signed by the Chairman of MUI, K.H. Hasan Basri, MUI Secretary Drs. H. A. Nadzri Adlani, and the Chairman of the Fatwa Commission, Prof. H. Ibrahim Hosen, LML.

The MUI fatwa aligns with the resolution of the 3rd *Nahdlatul Ulama* (NU) Congress held in Surabaya on September 28, 1928, which regarded *taklik talak* as a legally valid (*wad'iy*) act but considered it undesirable (*makruh*) from a normative (*taklifi*) perspective.¹⁸ The resolution was issued long before *taklik talak* was widely implemented, although in several regions, many *penghulu* or *naib* (marriage officials) had already instructed grooms to pronounce the *taklik talak* statement immediately after the marriage contract (*akad nikah*) was concluded.

The MUI fatwa, which considers the pronouncement of *taklik talak* after the marriage contract (*akad nikah*) unnecessary, is based on the reasoning that the underlying cause (*'ilat*) for requiring *taklik talak* no longer exists. This is because the protections originally intended by *taklik talak* are already incorporated into Indonesian legislation, specifically Law No. 7 of 1989 on Religious Courts and Law No. 1 of 1974 on Marriage. Consequently, the pronouncement of *taklik talak* is viewed in the context of rhetorical principles (*balaghah*) as an act of *tahsilul hasil* (attempting to achieve something that already exists), which is considered to lack clear benefit. This is encapsulated in the legal maxim:¹⁹

فَلِنَّ الْحُكْمَ يَدُورُ مَعَ عِلَّتِهِ وَسَبَبِهِ وَجُودًا وَعَدَمًا

Meaning: "Indeed, a legal ruling revolves around its cause; it exists or ceases to exist in accordance with the presence or absence of that cause."

The legal maxim underscores that the existence of a legal ruling is contingent upon the presence of its underlying cause. When the cause no longer exists, the ruling ceases to apply. The same principle applies to *taklik talak*: its pronouncement was necessary

when the cause for its existence was present—namely, the need to protect women's rights in the absence of clear legal safeguards. However, once legal frameworks were established to ensure the protection of women's rights, the need for *taklik talak* diminished. Consequently, the pronouncement of *taklik talak* is no longer deemed necessary.

The Relationship Between *Taklik Talak* and *Khulu'*

Khulu' (*al-khul'u*), etymologically, means "to remove" or "to eliminate."²⁰ Terminologically, *Khulu'* refers to the dissolution of marriage between a husband and wife through a form of compensation or redemption for the divorce.²¹ The legal basis for *Khulu'* prior to the establishment of consensus (*ijma'*) is found in the Qur'an (2:229) and in authentic narrations reported by Imam al-Bukhari and Imam al-Nasai, particularly regarding the case of Thabit bin Qais and his wife:²²

عَنِ ابْنِ عَبَّاسٍ أَنَّ امْرَأَةً ثَابِتِ بْنِ قَيْسٍ أَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَتْ: يَا رَسُولَ اللَّهِ، ثَابِتُ بْنُ قَيْسٍ مَا أَعْتَبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَتَرَدِّينَ عَلَيْهِ حَدِيثَهُ قَالَتْ: نَعَمْ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: اقْبَلِ الْحَدِيثَ وَطَلِّقْهَا تَطْلِيقَةً

Meaning: From Ibn 'Abbas, it is narrated that the wife (Habibah/Jamilah bint Sahal) of Thabit bin Qais came to the Prophet (peace be upon him) and said, "O Messenger of Allah, I find no fault in his character or his religion, but I do not wish to commit disobedience (to my husband) in Islam." The Prophet said, "Are you willing to return his garden?" She replied, "Yes." The Prophet then said, "O Thabit, accept the garden and divorce her with one *talak*."

²⁰ Wahbah bin Musthafa Al-Zuhayli, *Al-Fiqh Al-Islamiy Wa Adillatuh* (Damaskus: Dâr al-Fikr, 1433), j. 9, p. 7007.

²¹ Al-Zuhayli, j. 9, p. 7008.

²² Abû 'Abdullâh Muhammad bin Ismâ'il Al-Bukhârî, *Shahîh Al-Bukhârîy* (Mesir: Al-Suthaniyah, 1311), j.7, h. 46; Abu 'Abdurrahman Ahmad bin Syu'ayb Al-Nasâ'iy, *Sunan Al-Nasâ'iy*, 1st ed. (Kairo: Al-Maktabah al-Tijariyah al-Kubra, 1930), j. 6, p. 320.

¹⁸ Nahdlatul Ulama, *Ahkam Al-Fuqaha* (Suraâbaya: Lajnah Ta'lif wa al-Nasyr, 1007), p. 38.

¹⁹ Muhammad bin Abi Bakr bin Ayyub Ibn Qayyim Al-Jawziyah, *I'lam Al-Muwaq'în 'an Rabb Al-'Alamin* (Beirut: Dar al-Kutub al-'Ilmiyah, 1991), j. 4, p. 80.

The case of Thabit bin Qais and his wife marks the first instance of *khulu'* in Islam. Its original legal ruling is *makruh* (discouraged), although it can subsequently change depending on the circumstances to become *sunnah* (recommended), *wajib* (obligatory), or even *haram* (prohibited), thereby rendering the *Khulu'* invalid.²³ *Khulu'* had already existed prior to the advent of Islam, as evidenced by the case within the family of Amir bin al-Zharib, who married his daughter to his nephew, Amir bin al-Harith bin al-Zharib. At that time, he sought a divorce for his daughter from Amir bin al-Harith by returning the previously given dowry (*mahr*).²⁴

The authentic hadith above explains that when Habibah bint Sahal desired a divorce from her husband, the Prophet (peace be upon him), after confirming Habibah's willingness to return the dowry in the form of a garden, summoned her husband, Thabit bin Qais. The Prophet instructed him to accept the returned dowry and to divorce his wife with one *talak*. This instruction to pronounce the divorce is considered an obligatory command, although a minority of scholars interpret it as merely a recommendation.²⁵

Khulu' is essentially a form of divorce initiated by a wife who feels uncomfortable with her husband, whether due to apparent (*zhahir*) or underlying (*batin*) reasons.²⁶ As a legal consequence, the wife is required to return the *mahr* (dowry) that her husband provided at the time of their marriage, which serves as *iwadh* or compensation for the divorce to be pronounced by the husband. The underlying logic is that when a wife requests a divorce from her husband, it is considered that the husband is at a disadvantage, and thus he is entitled to the return of the dowry he had given.

This regulation is constrained by the condition that there must be no element of injustice (*zulm*) by the husband toward his wife. If such injustice occurs, the *Khulu'* becomes invalid,²⁷ and the divorce is considered to be a revocable divorce (*talak satu raj'iy*) instead. Consequently, the compensation becomes null, and it is impermissible for the husband to take the compensation. In such a case, he must return it to his former wife, who has been divorced. The prohibition against the husband taking the compensation is unanimously agreed upon by scholars of the four major schools of thought (*madhhab*), without exception, and it does not affect the validity of the divorce (*talak*).²⁸

Returning to the *taklik talak* clause found in the marriage book at the time of this study, its wording includes the clause: "and my wife pays an amount of Rp. 1,000 (one thousand rupiah) as *iwadh* (compensation) to me" (hereafter referred to as the *iwadh* clause). This clause indicates that *taklik talak* is directed toward a *bain sughra* divorce, specifically of the *khulu'* type. This is because *iwadh* is uniquely associated with the concept of *khulu'* divorce and not with other types of divorce.

The inclusion of the *iwadh* clause in *taklik talak* is speculated to be intended to categorize the resulting divorce as *bain sughra*, which immediately dissolves the marital bond. Consequently, the former husband would no longer have the right to unilaterally reconcile with the former wife. Under the concept of *fiqh munakahat*, a husband's intention to reconcile (*rujuk*) after a revocable divorce (*talak raj'i*) does not require the wife's consent, meaning she cannot refuse, and the marriage would instantly be reinstated.

However, under positive law, while the Marriage Law does not specifically regulate *rujuk*, the *Compilation of Islamic Law* (KHI), Chapter XVIII, Article 165, stipulates that *rujuk* carried out without the knowledge of the former wife can be declared invalid by a ruling of the Religious Court.

²³ Ahmad bin Muhammad bin 'Aliy Ibn Hajar al-Haytamiy, *Tuhfah Al-Muhtaj Fiy Syarh Al-Minhaj* (Mesir: Al-Maktabah al-Tijariyah al-Kubra, 1983), j. 7, p. 457-458.

²⁴ Taqiuddin Al-Hilaliy, *Ahkam Al-Khul'i Fiy Al-Islam*, 2nd ed. (Beirut: Al-Maktabah al-Islamiy, 1395), p. 45-46.

²⁵ Al-Hilaliy, p. 47.

²⁶ Ismail Musa Musthafa 'Abdillah, *Ahkam Al-Khul'i Fiy Al-Syari'ah Al-Islamiyah* (Palestina: Jami'ah al-Najah al-Wathaniyah, 2008), p. 48.

²⁷ Ibn Hajar al-Haytamiy, *Tuhfah Al-Muhtaj Fiy Syarh Al-Minhaj*, j. 7, p. 458.

²⁸ Al-Zuhayliy, *Al-Fiqh Al-Islamiy Wa Adillatuh*, j. 9, p. 7028.

Furthermore, Article 167, Paragraph (2), states that *rujuk* must be conducted with the wife's consent in the presence of a Marriage Registrar or an Assistant Marriage Registrar. These provisions clearly prohibit a former husband from reconciling with his former wife without her approval. In light of this, the rationale for including *iwadh* in *taklik talak* loses its relevance, as the original intent—protecting the wife's rights against unilateral reconciliation by the husband—is already addressed and safeguarded by positive legal provisions.

The Position of *Iwadh* Payment vis-à-vis Gender Sensitivity

Referring to the original purpose of *taklik talak*, which is to enhance the status of women within the family relationship, the wording of *taklik talak* should align with this objective. However, when examining the *taklik talak* clause in the marriage certificate, it becomes evident that it falls far short of this goal. Instead of providing protection for women, the clause requires the wife to pay a sum of money (*iwadh*) for the divorce to take effect. In essence, the woman, who may already be a victim, is further burdened by having to pay for her own freedom. This clearly contradicts the initial purpose of *taklik talak*.

Khulu' and the *Iwadh* clause in *taklik talak* are closely related within the context of divorce in Islamic jurisprudence (*fiqh*), particularly in relation to women's rights. *Khulu'* is a process of divorce initiated by the wife, in which she requests a divorce by offering compensation or the return of the dowry (*mahr*) to her husband. This process empowers women to take the initiative in ending an unhealthy marital relationship while safeguarding their rights. In this context, the *iwadh* clause in *taklik talak* can serve as a mechanism to establish clear conditions within the *khulu'* process, ensuring that women's rights are protected throughout.

The *iwadh* clause in *taklik talak* functions as a mechanism to strengthen the position of women in the *khulu'* process. By establishing specific conditions that must be met before the divorce can proceed,

the *iwadh* clause allows women to outline terms they consider essential in the divorce process. For instance, women can demand that their husbands fulfill certain obligations, such as providing financial support or resolving other rights, before agreeing to the divorce. This arrangement empowers women to maintain greater control in these critical situations, ensuring they are not unduly burdened by unilateral decisions.

However, challenges remain in the implementation of *khulu'* and the *iwadh* clause in *taklik talak*, especially within a patriarchal cultural context. Often, women do not have adequate access to enforce their rights in this process, meaning that the *iwadh* clause in *taklik talak* does not always function as intended. Therefore, it is crucial to raise awareness and provide education about women's rights in the context of divorce, as well as to strengthen legal support that can assist them in the *khulu'* process. In this way, both concepts can work synergistically to create a more just environment, empowering women to face the challenges of divorce.

Furthermore, referring to the rules of *khulu'* in *fiqh* as explained earlier, for *khulu'* to be valid, there must be no element of injustice (*zulm*) from the husband. It can be inferred that wives who file for divorce in the Religious Court, subsequently disclosing their marital issues in the petition, and using it as the basis for their divorce claim, are those who have been victims of their husbands' unjust actions. Therefore, the *khulu'* in such cases does not meet the necessary conditions for validity, as it involves an element of injustice from the husband toward the wife. As a result, from a *fiqh* perspective, the payment of compensation by the wife to the husband becomes invalid, and the husband is prohibited from taking the compensation. Furthermore, when it is then given to the Central Mosque Welfare Board (BKM Pusat), *fiqh* principles state:²⁹

²⁹ Jalaluddin `Abdurrahman Al-Suyuthiy, *Al-Asybah Wa Al-Nazha'ir* (Beirut: Dar al-Kutub al-`Ilmiyah, 1983), p. 150.

مَا حَرَّمَ أَخْذُهُ حَرَّمَ إِعْطَاؤُهُ

Meaning: "What is obtained through unlawful means, giving it away is also unlawful."

Based on the principle above, the transfer of the compensation money to the management of the Central Mosque Welfare Board (BKM Pusat) is also deemed unlawful, because the status of the compensation money is that it is prohibited for the husband to take. Therefore, handing it over to anyone is considered unlawful.

Returning to the issue of protection for women, or the aspect of gender sensitivity, the expectation from *taklik talak*, if it indeed refers to the original intent, should be that when a husband is proven to have violated the *taklik talak*, the consequence should not only be the pronouncement of divorce (*talak*), but also that the former husband must be penalized by paying compensation to the ex-wife. This compensation is meant to acknowledge the harm and victimization she endured while being in the marital bond with her husband. From this perspective, the ambiguous stance of *Nahdlatul Ulama* (NU) and the Indonesian Ulama Council (MUI) regarding the existence of *taklik talak* becomes more understandable, as the benefits of *taklik talak* for women are not clearly defined.

Therefore, if *taklik talak* is to be maintained as a means of protecting women, the wording of *taklik talak* should be revised to clearly reflect its support for women. The wife, as the victim, should not only be able to free herself from the husband's bond, who has violated the *taklik talak*, but she should also receive compensation, rather than being required to pay money. It is not about the amount of money paid, but rather the legal reasoning that it is illogical for a victim to have to pay money to the perpetrator.

If the reason for the compensation money is to categorize the divorce as *khulu'*, thus preventing the former husband from easily reconciling, then isn't the concept of *rujuk* (reconciliation) in our country supposed to be based on the mutual consent of both parties? This means that the former husband cannot simply reconcile without the former wife's

agreement. Moreover, if that is the reasoning, then a divorce decree issued by the court is already sufficient to make the divorce a *bain sughra* divorce, which carries the same consequence as *khulu'*, namely, the divorce cannot be reconciled.

Conclusion

A reform of Islamic family law is necessary as an effort to achieve comprehensive unification of marriage law. If *taklik talak* is to be maintained as a manifestation of protection for women, its wording should be revised to clearly reflect its support for women. The wife, as the victim, should not only be able to free herself from the bond of her husband, who has violated the *taklik talak*, but should also receive compensation. Legal reform related to *taklik talak* in Indonesia is crucial. A commitment from various stakeholders, including the government, non-governmental organizations, and the broader public, is needed to address the existing challenges. It is hoped that this will lead to the creation of a legal system that is more just and protects women's rights. In general, the reform of Islamic Family Law as an effort for legal unification can provide significant benefits, especially in promoting justice, equality, and harmony in society. However, the reform process must be conducted carefully and involve all relevant parties, including legal experts, scholars, and the public.

References

- 'Abdillah, Ismail Musa Musthafa. *Ahkam Al-Khul'i Fiy Al-Syari'ah Al-Islamiyah*. Palestina: Jami'ah al-Najah al-Wathaniyah, 2008.
- Abu Jayb, Sa'diy. *Al-Qâmûs Al-Fiqhy*. 2nd ed. Suriah: Dâr al-Fikr, 1988.
- Afadi, Ahmad Alfin, and Novita Sari. "The Relevance Of Taklik Talak." *Proceedings ICES 1* (2024): 493–500.
- Afandy, Muhammad. "Konsekuensi Pengucapan Sighat Taklik Sebagai Perjanjian Dalam Pernikahan (Studi Analisis Dalam Mazhab Imam Syafi'i)." *Journal of Sharia and Law: Faculty of Syari'ah and Law Sultan Syarif Kasim 2*, no. 3 (2023): 895.

- Al-Bayhaqiy, Abu Bakr Ahmad bin al-Husayn bin `Aliy. *Al-Sunan Al-Kabir*. Kairo: Markaz Hijrah lil Buhuts, 2011.
- Al-Bukhâriy, Abû `Abdullâh Muhammad bin Ismâ`il. *Shahîh Al-Bukhâriy*. Mesir: Al-Suthaniyah, 1311.
- Al-Hâkim, Abû `Abdullâh Muhammad. *Al-Mustadrak `alâ Al-Shahîhayn*. Kairo: Dâr al-Risâlah al-`Alamiyah, 2018.
- Al-Hilaliy, Taqiuddin. *Ahkam Al-Khul`iy Fiy Al-Islam*. 2nd ed. Beirut: Al-Maktabah al-Islamiy, 1395.
- Al-Islamiyah, Wizarah al-Awqaf wal- Syu`un. *Al-Mawsu`ah Al-Fiqhiyah Al-Kuwwaytiyah*. 2nd ed. Kuwait: Dar al-Salasil, 1427.
- Al-Nasâ'iy, Abu `Abdurrahmân Ahmad bin Syu`ayb. *Sunan Al-Nasâ'iy*. 1st ed. Kairo: Al-Maktabah al-Tijariyah al-Kubra, 1930.
- Al-Suyuthiy, Jalaluddin `Abdurrahman. *Al-Asybah Wa Al-Nazha'ir*. Beirut: Dar al-Kutub al-`Ilmiyah, 1983.
- Al-Zuhayliy, Wahbah bin Musthafa. *Al-Fiqh Al-Islamiy Wa Adillatuh*. Damaskus: Dâr al-Fikr, 1433.
- Burhanuddin, Iswandi Harahap. "Talak Taklik Menurut Perspektif Islam Iswandi." *Journal Kulliyyah Syariah Dan Undang – Undang* 15, no. 1 (2024): 1–28.
- Ibn Hajar al-Haytamiy, Ahmad bin Muhammad bin `Aliy. *Tuhfah Al-Muhtaj Fiy Syarh Al-Minhaj*. Mesir: Al-Maktabah al-Tijariyah al-Kubra, 1983.
- Ibn Qayyim Al-Jawziyah, Muhammad bin Abi Bakr bin Ayyub. *I`lam Al-Muwaqî'in `an Rabb Al-`Alamin*. Beirut: Dar al-Kutub al-`Ilmiyah, 1991.
- Kemenag RI, Dirjen Bimas Islam. *Kompilasi Hukum Islam Di Indonesia*. Jakarta: Direktorat Bina KUA, 2018.
- Nasution, Khoeruddin. "Menjamin Hak Perempuan Dengan Taklik Talak Dan Perjanjian Perkawinan." *Jurnal UNISIA* 31 (2008): 333.
- Ulama, Nahdlatul. *Ahkam Al-Fuqaha*. Surabaya: Lajnah Ta'lif wa al-Nasyr, 1007.
- Vebrianto, Rian, Musa Thahir, Zelly Putriani, Ira Mahartika, Aldeva Ilhami, and D Diniya. "Bedelau: Journal of Education and Learning Mixed Methods Research: Trends and Issues in Research Methodology." *Bedelau: Journal of Education and Learning*. Vol. 1, 2020.

