

THE POSITION OF TAKLIK TALAK IN INDONESIAN MARRIAGE LAW: A CASE STUDY OF THE BANGUNTAPAN RELIGIOUS AFFAIRS OFFICE AND THE BANTUL RELIGIOUS COURT

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Abstract: Article 46 paragraph (3) KHI states that taklik talak is not required in every marriage. However, in practice, some marriage registrars and religious court judges, such as in the Banguntapan Religious Affairs Office and Bantul Religious Court, consider that the pronouncement and/or signing of taklik talak is highly recommended and even 'required' for the groom. This shows that there is a gap between written legal provisions and field practices regarding the position of taklik talak in marriage. Therefore, this study aims to examine the position of taklik talak in the perspective of fiqh rules, marriage law in Indonesia, and in practice at the Banguntapan Religious Affairs Office and Bantul Regency Religious Court. This research is a normative-empirical legal research with descriptive-qualitative method. This research uses primary data in the form of interviews with H. Iksan, S.Ag., M.Pd.I., as the Marriage Registrar of Banguntapan Religious Affairs Office and Umar Faruq, S.Ag., M.Si., as the Judge of Bantul Religious Court. Meanwhile, secondary data in this research include laws and regulations, books, scientific journals, and articles related to the topic of this research. This research uses data collection techniques in the form of field studies through interviews and literature studies. This research found that the position of taklik talak according to fiqh rules is permissible and valid as long as it meets certain conditions. According to Indonesian marriage law, taklik talak is only a recommendation and is not required in every marriage. Meanwhile, the Marriage Registrar of Banguntapan Religious Affairs Office and the Judge of Bantul Religious Court have the view that the signing of taklik talak is highly recommended and even 'obligatory' for the groom. Nonetheless, this difference does not cause conflict because taklik talak provides a higher standard in protecting and promoting the rights of wives.

Keywords: Indonesian Marriage Law; Islamic Law; Taklik Talak

INTRODUCTION

Marriage is a very strong bond between a man and a woman to form a family that is *sakinah*, *mawaddah*, and *rahmah* based on the teachings of Allah SWT. Islam makes marriage a solution so that the urge for sexual desire, both psychologically and biologically, from a person can be channeled in a halal manner

and avoid committing adultery.¹This means that marriage is a physical and spiritual need for every human being that

¹ Abdul Rahman Qayyum dan Rini Ekasari. (2020). "Pemahaman Masyarakat terhadap Kedudukan Sunrang di Kecamatan Pallangga Kab. Gowa (Studi Perbandingan Hukum Adat dan Hukum Islam)". *Mazahibuna: Jurnal Perbandingan Mahzab*, 2(1): 122-133.

cannot be avoided. Allah SWT encourages someone who is physically and psychologically fit to get married and promises to expand his sustenance when he is married. This is as Allah SWT says in Surah An-Nur verse 32 which means,

“And give in marriage those who are alone among you and those who are fit for marriage of your male servants and your female servants. If they are poor, Allah will enable them by His grace. Allah is All-Knowing.”²

Therefore, do not use economic limitations as an excuse to postpone marriage because Allah SWT has promised to open the door to halal sustenance and give His grace.³

Every married couple certainly hopes to be able to maintain their marriage until the end of life, but not infrequently there are certain problems that shake up a marriage and cause the marriage to end in divorce. Divorce is the last resort that can be taken by a married couple when there is no longer any reason to maintain their marital relationship. Divorce is an act that is permitted, but is highly hated by Allah SWT. This is as mentioned in one of the traditions narrated by Abu Dawud and Ibn Majah, the Prophet Muhammad SAW said that the most disliked halal action by Allah SWT is divorce.⁴ The hatred of divorce by Allah SWT cannot be separated from the negative impacts caused. The negative impact of divorce is not only felt by the husband and wife, but also by the children

born from their relationship. Some negative impacts on children from divorce, such as children do not have the enthusiasm to learn, children lack sensitivity to the feelings of others, and children become as if they do not care about their surroundings.⁵

The Indonesian government through Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) and the Compilation of Islamic Law (hereinafter referred to as KHI) has formulated certain reasons that must be fulfilled if someone wants to file a divorce application or lawsuit and requires divorce to be carried out in front of a court session as a manifestation of the principle of making divorce difficult. One of the reasons that can be used by one of the parties to file a lawsuit or divorce petition to the religious court is the occurrence of certain circumstances required in the *taklik talak*.⁶

Taklik talak is a promise made by the groom after the marriage contract, which contains certain circumstances that may occur in the future.⁷ The substance of *taklik talak* is a facultative action, meaning that it is not obligatory and can be held or not based on the agreement of the parties. This is as regulated in Article 46 paragraph (3) KHI which states that *taklik talak* is not a mandatory thing to be held in every marriage, but if *taklik talak* has been promised, it cannot be revoked. In other words, the husband actually has the right to refuse the use of *taklik talak* because there is no regulation that

² Kementerian Agama, Wakaf, Dakwah, dan Bimbingan Islam Kerajaan Arab Saudi. (1971). *Al Quran dan Terjemahannya*. Madinah: Mujamma' al Malik Fahd li thiba'at al Mush-af asy Syarif, p. 549.

³ Kementerian Agama Republik Indonesia. (2008). *Al Qur'an dan Tafsirnya (Edisi yang Disempurnakan) Jilid 06*. Jakarta: Widya Cahaya, p. 603-604.

⁴ Ibnu Hajar Atsqalani. (1994). *Terjemah Hadits Bulughul Maram*. Bandung: Gema Risalah Press, p. 359.

⁵ Ayescha Ajrina. “Dampak Perceraian Orang Tua Terhadap Perilaku Sosial Anak di Kecamatan Pontianak Barat Kalimantan Barat”. *Sociologiqu: Jurnal Sosiologi*, 3(3):1-19.

⁶ Article 46 of the Compilation of Islamic Law.

⁷ Hibnu Nugroho. (2018). “Kedudukan Taklik Talak Menurut Hukum Fikih dan Kompilasi Hukum Islam”. *Al-Bayyinah: Journal of Islamic Law*, 7(1): 73-90.

requires the provision of taklik talak.⁸ However, in practice, there are marriage registration officers and/or religious court judges who have a different understanding of the position of taklik talak in marriage. One of the marriage registration officers and judges who have a different understanding of taklik talak is the Marriage Registration Officers of the Banguntapan Religious Affairs Office, Bantul Regency and the Judges of the Bantul Regency Religious Court who consider that the pronouncement and/or signing of taklik talak is something that is highly recommended and even 'required' to be done by the groom.⁹ This shows that there are differences regarding the position of taklik talak in the legislation and its practice in the field.

There are several previous studies that discuss taklik talak. First, a journal written by Hasanuddin entitled "Kedudukan Taklik Talak dalam Perkawinan Ditinjau dari Hukum Islam dan Hukum Positif" or can be translated as "The Position of Taklik Talak in Marriage in Review of Islamic Law and Positive Law". The journal discusses the position of taklik talak as a marriage agreement that functions to provide protection for the wife. The journal also found that the occurrence of taklik talak as a reason for filing a divorce lawsuit is contrary to basic Islamic concepts such as

the principle of *al-musawwa* (equality) and the principle of *al-huriyah* (freedom or independence).¹⁰ Second, a journal written by Hibnu Nugroho entitled "Kedudukan Taklik Talak Menurut Hukum Fikih dan Kompilasi Hukum Islam" or can be translated as "The Position of Taklik Talak According to Fiqh Law and the Compilation of Islamic Laws". The journal found that when the substance of taklik talak occurs, then according to fiqh law, talak *ba'in* has fallen even without a decision from the religious court.¹¹ Third, a journal written by Ahmad Shodikin, *et al* entitled "Sighat Taklik Talak Ditinjau dari Hukum Perjanjian" or can be translated as "Sighat Taklik Talak Reviewed from the Law of Agreement". The journal examines taklik talak from the perspective of the Indonesia Civil Code and concludes that taklik talak is not in accordance with the requirements of the agreement in Article 1320 of the Indonesian Civil Code and there are no special effects for people who do not make taklik talak.¹² The difference between this research and those three journals is that this research does not only look at the position of taklik talak based on literature studies but also explores the perspectives of judges and marriage registration officers regarding the position of taklik talak in marriage, so that this research provides more perspectives on the position of taklik talak in marriage

⁸ Muhammad Afandy, Maghfirah, dan Ahmad Zikri. (2023). "Konsekuensi Pengucapan Sighat Taklik Sebagai Perjanjian dalam Pernikahan (Studi Analisis dalam Mazhab Imam Syafi'i)". *Journal of Sharia and Law*, 2(3): 890-906.

⁹ The results of the author's interview with Iksan as the Marriage Registrar of Banguntapan Religious Affairs Office, Bantul, on Monday, February 12, 2024, at 14.00 WIB, at Banguntapan Religious Affairs Office and Umar Faruq as the Judge of Bantul Religious Court on Tuesday, February 20, 2024, at 10.30 WIB, at Bantul Religious Court.

¹⁰ Hasanudin. (2017). "Kedudukan Taklik Talak dalam Perkawinan Ditinjau dari Hukum Islam dan Hukum Positif". *Medina-Te: Jurnal Studi Islam*, 12(1): 45-60.

¹¹ Hibnu Nugroho. (2018). "Kedudukan Taklik Talak Menurut Hukum Fikih dan Kompilasi Hukum Islam". *Al-Bayyinah: Journal of Islamic Law*, 7(1): 73-90.

¹² Akhmad Shodikin, Ubaidillah, Muhammad Aip Syaripuddin. (2021). "Sighat Taklik Talak Ditinjau dari Hukum Perjanjian". *Mahkamah: Jurnal Kajian Hukum Islam*, 6(2): 181-195.

when compared to those three journals.

Based on the above description, this research aims to examine the position of taklik talak from the perspective of fiqh rules, marriage law in Indonesia, as well as in practice at the Banguntapan Religious Affairs Office, Bantul Regency (hereinafter referred to as KUA Banguntapan) and Bantul Regency Religious Court (hereinafter referred to as Bantul Religious Court).

METHOD

Normative-empirical legal research is research that examines the implementation of statutory provisions in concrete events in society.¹³ This research includes normative-empirical legal research because this research not only uses data taken from legislation and literature related to taklik talak as secondary data but also uses data derived from interviews as primary data to see the position of taklik talak in practice. This research took place at KUA Banguntapan and Bantul Religious Court. The primary data used in this research were the results of interviews conducted with Iksan, S.Ag., M.Pd.I., the Marriage Registrar of KUA Banguntapan, and Umar Faruq, S.Ag., M.Si., the Judge of Bantul Religious Court, who served as respondents. These two people were chosen as respondents because they knew the position of taklik talak in practice at KUA Banguntapan and Bantul Religious Court. Meanwhile, secondary data in this research are laws and regulations, books, scientific journals, and articles related to the topic of this research. The data collection techniques used in this research are field studies and literature studies. Field studies were conducted by interviewing respondents, which can be

done offline or online. Meanwhile, the literature study was carried out by studying and analyzing various laws and regulations, theories, principles, and literature related to the topic under study. This research uses a data analysis method in the form of a descriptive-qualitative method, which is carried out by connecting primary data and secondary data in order to draw a research conclusion.

ANALYSIS AND DISCUSSION

The Position of Taklik Talak According to the Fiqh

The phrase taklik talak comes from the Arabic language which consists of two word elements, namely *ta'liq* and *talaq*. Etymologically, *ta'liq* means to hang, while *talaq* means to untie a rope.¹⁴ In terminology, taklik talak can be interpreted as a statement that uses conditional words, such as when, if, and whenever, regarding certain conditions that may occur in the future. Wahbah Az-Zuhaili exemplifies the taklik talak statement with a husband's statement to his wife that if she is caught entering so-and-so's house, then divorce will fall on her.¹⁵ Therefore, it can be concluded that taklik talak is a statement from the husband uttered after the marriage contract which contains a promise to break the bond of marriage if certain things happen in the future.

There are two forms of taklik talak, namely taklik talak *qasami* and taklik talak *syarti*. In taklik talak *qasami*, divorce will occur on the wife if a person has done or left an action or confirmed an information, while in taklik talak *syarti*, divorce will occur on the wife if certain conditions have been met. The difference

¹³ Abdulkadir Muhammad. (2004). *Hukum dan Penelitian Hukum*. Bandung: PT. CitraAditya Bakti, p. 134.

¹⁴ Abdul Mujieb. (1994). *Kamus Istilah Fiqh*. Jakarta: Pustaka Firdaus, p. 365.

¹⁵ Wahbah Az-Zuhaili. (2001). *al-Usul al-Fiqh Islami Jilid I*. Beirut: Daar al-Fikr, p. 424.

between the two forms of taklik talak is in the thing that is relied upon so that the husband's divorce occurs on the wife. In the taklik talak *qasami*, the husband's divorce will occur on the wife by being based on someone's action, whether the action is done by the wife, the husband, or someone else. An example of taklik talak *qasami* is when the husband says, "If so-and-so comes to you again in the future, then I will divorce you". Meanwhile, in taklik talak *syarti*, the husband's divorce will fall on the wife by relying on something that is not a person's action. An example of taklik talak *syarti* is when the husband says, "when the sun sets, I will divorce you". When looking at the substance, the form of taklik talak applicable in Indonesia, whose format has been determined by the government and written in every marriage book is taklik talak *qasami*. This is because the substance of taklik talak applicable in Indonesia emphasizes the actions of the husband as the cause of the divorce from the wife. Examples of the husband's actions, such as the husband not giving alimony for three months, hurting the wife's body, and leaving the wife for two years in a row.¹⁶ When looking at the substance, the form of taklik talak that applies in Indonesia whose format has been determined by the government and written in every marriage book is taklik talak *qasami*. This is because the substance of taklik talak applicable in Indonesia emphasizes the actions of the husband as the cause of the divorce to the wife. Examples of the husband's actions, such as the husband not giving alimony for three months, hurting the wife's body,

¹⁶ Sofyan Yusuf dan Moh. Toriqul Chaer. (2017). "Taklik Talak Perspektif Ulama Mazhab dan Pengaruhnya dalam Berumah Tangga". *Anil Islam*, 10(2): 262-284.

and leaving the wife for two years in a row.¹⁷

There are differences of opinion among the scholars regarding the ruling on taklik talak. This difference of opinion can be divided into two groups. First, according to the majority of scholars from the Shafi'iyah, Hanafiah, Malikiyah, and Hanabilah schools, taklik talak is permissible and valid if it meets certain requirements. This was stated by Imam An-Nawawi as quoted by Fathurrahman Abdul Hamid, that taklik talak in principle is permissible as is the permissibility of freeing slaves.¹⁸ The permissibility of using taklik talak is based on three things, among others:

1. Surah Al-Baqarah verse 229 does not distinguish between divorce pronounced or done directly by the husband and divorce that occurs due to the violation of the taklik talak so that the husband has the right to divorce his wife with both types of divorce.
2. There are several traditions that show that there were events related to the taklik talak at the time of the Prophet Muhammad SAW. First, one of the Hadiths narrated by Bukhari, that Nafi' said that once a husband divorced his wife because she left the house. Then, Ibn Umar responded to the story and said that if a wife goes out or leaves the

¹⁷ Muhammad Abduh dan Tutik Hamidah. (2021). "Tinjauan Mashlahah Imam Al-Ghazali Terhadap Taklik Talak Dalam Hukum Positif Indonesia". *DIKTUM: Jurnal Syariah dan Hukum*, 19(2): 133-148.

¹⁸ Fathurrahman Abdul Hamid. (2021). *Meninjau Ulang Fatwa Mui Terkait Taklik Talak*. Available from: <https://tanahlaut.kemenag.go.id/read/178/meninjau-ulang-fatwa-mui-terkait-taklik-talak-fathurrahman-abdul-hamid>. [Accessed 06 Februari 2023].

house then she will be divorced and if the wife does not leave the house then she will not be divorced. Secondly, one of the Hadiths narrated by al-Baihaqi that the jurists of Madinah said that the husband said to his wife, "You are divorced if you go out late at night," and then his wife went out late at night without her husband's permission, so she was divorced.

3. Reason and logic. An urgent situation can encourage a husband to declare taklik talak, just as an urgent situation encourages a husband to pronounce divorce to his wife.¹⁹

Meanwhile, certain requirements as desired by the majority of scholars of the Shafi'iyah, Hanafiah, Malikiyah, and Hanabilah mahhabs that determine the validity of taklik talak, including:

1. The condition that is being contingent upon does not yet exist when the taklik talak is pronounced by the husband, but may occur in the future.
2. The taklik talak is pronounced after the marriage contract.
3. The husband and wife are in the same room when the husband pronounces the taklik talak.

Secondly, according to the Zahiriyah and Shi'ah Imamiyah scholars, the taklik talak is invalid. They argue that the taklik talak is an oath and an oath to other than Allah SWT is invalid. They also base their opinion on one of the hadiths narrated by Ibn Qayyim Al-Jauziyah and Ibn Hazm that the oath used for divorce is not valid. This opinion was later refuted by Wahbah Az-Zuhaili who said that naming taklik talak as an oath is only a majaz or not the real meaning so that the law of taklik talak is essentially

different from the law of oaths.²⁰ Based on the description above, it can be understood that the law of taklik talak is permissible and valid as long as it meets certain conditions.

The Position of Taklik Talak According to Indonesian Marriage Law

The permissibility of taklik talak in marriage practice by the majority of mazhab scholars is the basis for the government to make regulations regarding taklik talak. This regulation aims to prevent the taklik talak from being uttered freely and irresponsibly by the husband, causing *mudharat*. In addition, the purpose of regulating taklik talak is also to provide a balance between the husband's right to divorce and efforts to protect the rights of the wife.²¹

The institutionalization and use of taklik talak in Indonesia have occurred since the time of the Islamic kingdom. According to historical records, taklik talak has been known since Sultan Agung Hanyakrakusuma led the Islamic Mataram Kingdom with the term *taklek janji dalem* or *taklek janjiningratu*. The purposes of Sultan Agung Hanyakrakusuma allowing and regulating taklik talak was to make it easier for every wife to release her marital bond when the husband left himself and his family for a certain period of time to carry out something that was not a state duty. In addition, another purpose of the taklik talak at that time was as a guarantee for the husband not to be sued for divorce by his wife if his departure was carried out to carry out state duties. The statement of taklik talak during the Islamic Mataram Kingdom era, namely:

"Mas Penganten, pekenira tompo taklek jangji dalem, samongso

²⁰ Wahbah Az-Zuhaili, *Op. Cit*, p. 430.

²¹ Muh Sudirman Sesse. (2012). "Ta'lik Talak dalam Perspektif Fiqh dan Kompilasi Hukum Islam (Analisis Perbandingan)". *Jurnal Hukum Diktum*, 10(2): 148-155.

¹⁹ *Ibid.*

pekanira nambang rabi pakenira lawase pitung sasi lakon daratan, utawa nyabrang sagara rong tahun, saliyane ngelakoni hayahan dalem, tan terimane rabi pakenira nganti darbe hatur rapak hing pangadilan hukum, sawise terang papriksane runtuh talak pakanira sawijia"

When translated into English, the statement of taklik talak becomes:

"Bride, you have obtained a taklik pledge in the court of law (taklik talak), at any time when you leave your wife named for seven months traveling by land, or crossing the sea for two years, except in the service of the state, and your wife is not willing so that (she) goes to the court of law, after being enlightened in her examination, then your first divorce shall fall".

The statement of taklik talak is not spoken directly by the husband, but by the headman or *naib*. This statement is then answered by the husband with the words, "*hingih sendika*" which means, "yes, I am willing to do this".²²

Over time, the formulation of taklik talak in the Islamic Mataram Kingdom era became less relevant because there was only one element or reason that could be the basis for the wife to file a divorce suit in court, namely the husband leaving the house for a certain period of time. In response to this, the Dutch East Indies Government then reformulated the statement of taklik talak into the following:

"If I leave my wife for three months by land or six months by sea, do not give her the obligatory alimony within one month, or give her a beating that hurts her, then if she does not like any of that, she may go herself or appoint a representative to complain to the religious court. If she asks for a divorce and pays me ten cents and the scythe, then my wife is divorced with one talaq, and from the money I appoint the religious court to give alms to the poor".²³

Based on the formulation of taklik talak, there are additional reasons that can be used by the wife to sue for divorce to the court. The reasons added to the formulation of taklik talak are that the husband does not provide alimony for one month and the husband gives a blow to the wife that is hurtful. In addition, there are also changes in terms of the period of travel, namely from seven months to three months for land travel and from two years to six months for sea travel.

After Indonesia's independence, there were several changes regarding the wording of the sentence used in taklik talak, the period of taklik talak, and the amount of *iwad* payment. First, there are changes in the formulation of taklik talak. In 1950, one of the sentences in the taklik talak stated, "...or I harm my wife by hitting her". In this formulation, the scope of harm was limited to hitting. The scope of harm was later expanded in the 1956 taklik talak formulation to include not only hitting, but also other acts of physical harm, such as pushing down, kicking, banging the head, pulling the hair, and so on. Secondly, the time period was changed. The period of time changed

²² Zaini Ahmad Noeh. (1997). "Pembacaan Sighat Taklik Talak Sesudah Akad Nikah". *Jurnal Mimbar Hukum* 8(30).

²³ Khoiruddin Nasution. (2008). "Menjamin Hak Perempuan Dengan Taklik Talak dan Perjanjian Perkawinan". *Jurnal Unisia*, 31(60): 333-342.

in taklik talak is the period of time the husband leaves his wife and the period of time the husband does not care for his wife. In 1950, 1956, and 1969, the period of time for the husband to leave his wife was set to be longer, namely two years, which was previously three months by land and six months by sea. Meanwhile, in 1950, the period of time for the husband to neglect or abandon his wife was changed to three months, which was previously only one month, then in 1956 the period was again changed to six months. According to Nasution, the change in the taklik talak period was intended to make divorce more difficult by making it more difficult to fulfill the taklik talak requirements.²⁴ Third, the amount of *iwadh* or compensation money. Based on the Decree of the Minister of Religious Affairs of the Republic of Indonesia No. 411 of 2000 concerning the Determination of the Amount of *Iwad* Money in the Series of *Sighat Taklik Talak* for Muslims, there is a change in the amount of *iwadh* payment that must be paid by the wife, which was originally one thousand rupiah to ten thousand rupiah.

Currently in Indonesia, there are several laws and regulations governing taklik talak. First, the Marriage Law. Although the Marriage Law does not provide a detailed regulation of taklik talak, the Marriage Law privileges taklik talak by excluding it from the forms and rules regarding marriage agreements in general. This is as stipulated in the Elucidation of Article 29 of the Marriage Law which states that what is meant by "agreement" in this article (marriage agreement), does not include taklik talak. According to Haris, the exclusion of taklik talak from marriage agreements in general is because if taklik talak has been pronounced and signed by the husband,

then the possibility for both parties (husband and wife) to dissolve the agreement is closed.²⁵ Second, KHI. Article 45 of the KHI divides agreements in marriage into two, namely taklik talak and other agreements that are not contrary to Islamic law. KHI also provides several provisions regarding taklik talak, namely:

1. The contents of the taklik talak must not be contrary to Islamic law.
2. If the circumstances required in the taklik talak actually occur, then the divorce does not automatically fall. In order for the divorce to actually fall, the wife must bring the matter before a religious court.
3. The taklik talak agreement is not an agreement that must be made in every marriage, but once the taklik talak has been promised it cannot be revoked.²⁶

The KHI also stipulates that a violation of taklik talak by the husband can be used as a reason by the wife to file for divorce to the religious court. This is as stipulated in Article 116 letter (g) KHI which states that one of the causes of divorce is the husband violating taklik talak. This is also one of the differences between KHI and the Marriage Law in formulating the reasons that can be the cause of divorce. The Marriage Law does not mention violation of taklik by the husband and apostasy or change of religion as causes of divorce, while KHI mentions violation of taklik by the husband and apostasy or change of religion as causes of divorce.²⁷

Third, Minister of Religious Affairs Regulation No. 11 of 2007 on Marriage Registration (hereinafter referred to as *Permenag* on Marriage Registration).

²⁵ Syaefudin Haris. (2013). "Kedudukan Taklik Talak Dalam Perkawinan Islam Ditinjau dari Hukum Perjanjian", *Arena Hukum*, 6(3): 290-452.

²⁶ Article 46 of the Compilation of Islamic Law.

²⁷ Hasanudin, *Op Cit*.

²⁴ *Ibid*.

Article 23 of the Permenag on Marriage Registration states that taklik talak is considered valid if signed by the husband after the marriage contract has been performed and the sighat of taklik talak is determined by the Minister of Religious Affairs.²⁸

In addition to these three regulations, there is also a fatwa issued by the Indonesian Ulema Council (hereinafter MUI) regarding taklik talak. On 23 Rabi'ul Akhir Year 1417 Hijri or September 7, 1996 AD, the MUI Fatwa Commission issued a Fatwa on the Pronunciation of Sighat Ta'liq Talaq During the Marriage Ceremony. In the fatwa, MUI argues that at this time the pronouncement of taklik talak is irrelevant and no longer needed because there is already a Marriage Counseling and Preservation Agency (BP4) as a body that provides information to prospective husbands about the rights and obligations of wives and provides guidance to prospective husbands and wives about the concept of a happy family. In addition, MUI is also of the opinion that the material in taklik talak has actually been stated in the Marriage Law and Law No. 07 of 1989 concerning Religious Courts (hereinafter referred to as the Religious Courts Law) and according to KHI taklik talak is not a requirement in every marriage.²⁹

Based on the description above, it can be understood that taklik talak in Indonesian marriage law is only a

recommendation and does not have to be present in every marriage. Taklik talak is also different from agreements in marriage in general because taklik talak cannot be canceled or withdrawn by the husband or wife when it has been legally done. On the other hand, the existence of taklik talak in Indonesia has also caused debate. This debate is based on the fact that taklik talak is not a legal agreement.

The Position of Taklik Talak in Practices

The Position of Taklik Talak According to The Marriage Registrar of KUA Banguntapan

Iksan as the KUA Banguntapan Marriage Registrar stated that taklik talak is not regulated in the Marriage Law, but is regulated in the KHI. In addition to referring to the KHI, the KUA Banguntapan Marriage Registrar also uses the Minister of Religious Affairs Regulation and the Circular Letter of the Director General of Islamic Public Guidance as a reference in the technical implementation of taklik talak.³⁰ One of the Circular Letters of the Director General of Islamic Public Guidance referred by the KUA Banguntapan Marriage Registrar is the Circular Letter of the Director General of Islamic Public Guidance No. DJ.II/HK.00/074/2008, one of the substances of which instructs the heads of religious affairs offices throughout Indonesia not to require the recitation of the taklik talak sighat by the groom at the time of the marriage contract and simply sign it because it is feared that it will disturb the solemnity of the

²⁸ Compare with previous regulations (e.g. Minister of Religious Affairs Regulation No. 3 of 1975 and Minister of Religious Affairs Regulation No. 2 of 1990) which state that taklik talak will be valid if it is pronounced and signed.

²⁹ Fatwa of the Indonesian Ulema Council dated 23 Rabi'ul Akhir 1417 AH or 07 September 1996 AD concerning the Pronunciation of Sighat Ta'liq Talaq During the Marriage Ceremony.

³⁰ The results of the author's interview with Iksan as the Marriage Registrar of Banguntapan Religious Affairs Office, Bantul, on Monday, February 12, 2024, at 14.00 WIB, at Banguntapan Religious Affairs Office.

implementation of the marriage contract.³¹

Information about taklik talak has been given to the prospective bride and groom several times before the wedding day, namely when the prospective husband and wife apply for marriage, during marriage guidance, and shortly before the marriage contract takes place. When providing information about taklik talak, the KUA Banguntapan Marriage Registrar will ask several questions related to the implementation of taklik talak. First, whether taklik talak will be held or not. Secondly, if the couple wishes to have taklik talak, the couple will be given a choice about whether to read the taklik talak out loud or quietly. However, there is no option not to read the taklik talak. According to Iksan, this is because if the groom has signed the taklik talak sighat as written in the marriage book, then the groom is considered to have read the contents of the taklik talak in his heart or read it quietly. At the KUA Banguntapan, not all prospective brides agreed to sign and recite the taklik talak sighat. This is evidenced by the fact that there is still a blank taklik talak sheet in the signature column of the groom.³²

The KUA Banguntapan Marriage Registrar considers that taklik talak is an effort by the government to protect wives from injustice or husband's arbitrariness. This protective nature is important to be given by the government so that according to them, signing the taklik talak sighat is something that is highly recommended to be carried out. The KUA Banguntapan Marriage Registrar emphasizes and encourages prospective

husbands to sign the taklik talak as a form of responsibility to their wives. Furthermore, the purpose of holding taklik talak aligns with the five principles of *maqashid* sharia, which include the preservation of religion, soul, mind, offspring, and property.

In practice, the technical implementation of taklik talak at the KUA Banguntapan also refers to the Permenag on Marriage Registration. The Permenag on Marriage Registration states that taklik talak will be valid if signed by the husband after the marriage contract. Previously, Minister of Religious Affairs Regulation No. 3 of 1975 in Article 11 paragraph (3) stated that taklik talak would be valid if pronounced and signed. The use of the word "and" in this article means that the conditions are cumulative and must all be met. However, this provision in Minister of Religious Affairs Regulation No. 3 of 1975 is no longer implemented in consideration of social conditions in the community. Taklik talak read aloud is feared to cause misunderstandings or misperceptions so that it can cause turmoil in the community. This is as stipulated in the Circular Letter of the Director General of Islamic Guidance No. DJ.II/HK.00/074/2008 explained above. Even so, according to Iksan, there are still some religious affairs offices that require the husband to read the taklik talak sighat aloud.³³

From the description above, it can be concluded that the implementation of taklik talak is highly recommended by the KUA Banguntapan Marriage Registrar because it provides protection to the wife and is also in accordance with *maqashid* sharia. In fact, the KUA Banguntapan Marriage Registrar strongly recommends and even seems to require the husband to sign the taklik talak sighat. Even so, in

³¹ Point 1 letter (c) Circular Letter of Director General of Islamic Guidance No. DJ.II/HK.00/074/2008.

³² The results of the author's interview with Iksan as the Marriage Registrar of Banguntapan Religious Affairs Office, Bantul, on Monday, February 12, 2024, at 14.00 WIB, at Banguntapan Religious Affairs Office.

³³ *Ibid.*

fact, the recommendation from the KUA Banguntapan Marriage Registrar does not force the husband so the husband still has the right to reject the proposal to sign the taklik talak.

The Position of Taklik Talak According to The Bantul Religious Court

According to Umar Faruq as the Judge of Bantul Religious Court, the violation of taklik talak as the basis of the lawsuit will make it easier for the judge to decide the divorce case because the violation of taklik can be a reason for the judge to impose divorce on the wife.³⁴ This provision is as stated in Article 116 KHI which states that one of the reasons for divorce is the violation of the taklik talak.

In addition to referring to KHI, Bantul Religious Court Judges also refer to the Supreme Court Circular Letter (SEMA) as a basis for consideration in deciding cases. In 2022, the Supreme Court issued SEMA No. 1 of 2022, which states that divorce cases filed on the grounds of continuous disputes and quarrels must be followed by the husband and wife separating their residence for six months.³⁵ However, if the six months have not been fulfilled and the wife can provide strong evidence that she has not been provided for for three months, then her lawsuit can be granted by the judge because the taklik talak has been violated.³⁶ Thus, the use of the violation

of taklik talak as a reason to sue for divorce is still relevant and allowed to be used.

Bantul Religious Court judges prioritize the positive law approach in deciding cases. In this case, the fatwa from the MUI which considers taklik talak no longer relevant to be applied today, does not affect the judge's decision because the MUI fatwa is not binding on judges in deciding cases. In addition, the violation of taklik talak by the husband is a sufficient reason for the judge to consider and decide the divorce case, without the need to be associated with other reasons for divorce contained in the Marriage Law. Therefore, the violation of taklik talak by the husband can be a valid reason for the wife to file a divorce suit in the religious court.

In relation to the process of implementing taklik talak, the judge of the Bantul Religious Court has the same view as the KUA Banguntapan marriage registrar. The judge of Bantul Religious Court considers that taklik talak is important and highly recommended. This is because taklik talak is seen as providing protection to the wife. In addition, according to Umar Faruq, signing the taklik talak in the marriage book indicates that the husband has read and agreed with the contents of the taklik talak so that the judge no longer needs to prove whether the husband has read the contents of the taklik talak or not.³⁷ The signing of the taklik talak in the marriage book is sufficient to serve as an authentic deed and can be used as perfect evidence in court.

If the taklik talak has been signed, the sighat taklik talak cannot be revoked as stated in Article 46 paragraph (3) KHI which states that the taklik talak

³⁴ The results of the author's interview with Umar Faruq as a Judge of the Bantul Religious Court, on Tuesday, February 20, 2024, at 10.30 WIB, at the Bantul Religious Court.

³⁵ Formulation Section of the Religious Chamber number 1 letter (b) of Supreme Court Circular Letter No. 1 of 2022.

³⁶ The results of the author's interview with Umar Faruq as a Judge of the Bantul Religious Court, on Tuesday, February 20, 2024, at 10.30 WIB, at the Bantul Religious Court.

³⁷ *Ibid.*

agreement is not one that must be held in every marriage, but once the taklik talak has been promised it cannot be revoked. According to Umar Faruq, the husband actually has the right to request the annulment of taklik talak to the religious court if there are indications that he was pressured or forced by other parties to sign the taklik talak. However, up to the time of this writing, there have been no cases relating to the annulment or revocation of taklik talak in Bantul Religious Court.³⁸

Based on the explanation above, it can be seen that there is a difference in the position of taklik talak between what is contained in KHI, MUI Fatwa, and practices in KUA Banguntapan and Bantul Religious Court. KHI states that taklik talak is a right for the husband so that it may be done or not. Meanwhile, the MUI Fatwa states that taklik talak is no longer needed because the substance of taklik talak has been accommodated in the Marriage Law. In contrast, the Marriage Registrar of KUA Banguntapan and the Judge of Bantul Religious Court consider that the signing of taklik talak is highly recommended and even 'obligatory' for the groom. Even so, this difference does not cause conflict. This is because taklik talak provides a higher standard for protecting and promoting the rights of the wife as a manifestation of the balance of rights and position between husband and wife as stated in Point 4 letter (c) of the General Elucidation of the Marriage Law. Therefore, the actions of the KUA Banguntapan Marriage Registrar and the Bantul Religious Court Judges who encourage the signing of taklik talak are not included as actions that are contrary to the Marriage Law because they aim to protect and promote the rights of the wife as mandated in the Marriage Law.

³⁸ *Ibid.*

CONCLUSION

Taklik talak is a statement from the husband uttered after the marriage contract which contains a promise to break the bond of marriage if certain things happen in the future. There is a difference of opinion among the scholars regarding the law of taklik talak. According to the majority of scholars from the Shafi'iyah, Hanafiah, Malikiyah and Hanabilah schools, taklik talak is permissible and valid if it meets certain requirements. However, according to the Zahiriyah and Shi'a Imamiyah scholars, taklik talak is invalid because the nature of taklik talak is the same as an oath and oaths to other than Allah are invalid. But, the opinion of the Zahiriyah and Shi'a Imamiyah scholars was later refuted by Wahbah Az-Zuhaili who said that naming taklik talak as an oath is only a *majaz* or not the real meaning so that the law of taklik talak is essentially different from the law of oaths. Therefore, it can be understood that the position of taklik talak according to fiqh rules is permissible and valid as long as it meets certain conditions.

Meanwhile, the position of taklik talak in Indonesian marriage law is only a suggestion and is not mandatory in every marriage. Taklik talak is also different from agreements in marriage in general because taklik talak cannot be canceled or withdrawn after it has been legally executed. On the other hand, the existence of taklik talak in Indonesia has also caused debate. This debate arose when the MUI Fatwa Commission issued a fatwa dated 23 Rabi'ul Akhir Year 1417 Hijri or 7 September 1996 AD, which considered that currently the existence of taklik talak was no longer needed.

On the other hand, The Marriage Registrar of KUA Banguntapan and the Judges of the Bantul Religious Court, on the other hand, strongly recommend and even consider the signing of taklik talak

as 'obligatory' for the groom. However, this difference does not lead to conflict because taklik talak provides a higher standard for protecting and promoting the rights of the wife. This is a manifestation of the balance of rights and position between husband and wife as stated in Point 4 letter (c) of the General Elucidation of the Marriage Law.

ACKNOWLEDGMENT

The authors would like to thank H. Iksan, S.Ag., M.Pd.I., and Umar Faruq, S.Ag., M.Si., who have agreed to be respondents in this study. The authors also thank Universitas Gadjah Mada and Universitas Indonesia for providing the necessary facilities and resources during the research.

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