



## Comparison of the Law on Pronouncing *Taklik Talak* According to the Kedah Enactment and the Compilation of Islamic Law

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### Abstract

The pronouncement of *taklik talak* after the marriage contract is a well-known practice in Islamic family law traditions in Malaysia and Indonesia. However, its legal status is not uniform in the two countries. This study aims to analyze and compare the legal provisions for pronouncing *taklik talak* in marriage according to the Enakmen of the Islamic Family Law of Kedah State Number 7 of 2008 and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Indonesia. This type of research is qualitative with a normative juridical approach and a comparative legal approach through a literature study of laws and regulations, official documents, and fiqh literature. The results show that in Malaysia (Kedah State), pronouncing *taklik talak* is an administrative obligation that must be carried out after the marriage contract; a husband who refuses to pronounce it cannot be issued a marriage certificate. Meanwhile, in Indonesia, pronouncing *taklik talak* is optional as regulated in the Compilation of Islamic Law and supported by a fatwa from the Indonesian Ulema Council (MUI), because the substance of protection for wives' rights is included in the Marriage and Religious Courts Law. In conclusion, although both legal systems recognize *taklik talak* as a marital agreement, Kedah considers it a formal obligation, while Indonesia considers it a non-binding option. These differences demonstrate the legal adaptations to the social needs and legal structures of each country, while remaining focused on protecting the wife's rights within the household.

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**Abstrak**

Pelafalan taklik talak setelah akad nikah merupakan praktik yang dikenal dalam tradisi hukum keluarga Islam di Malaysia dan Indonesia. Namun, kedudukan hukumnya tidak seragam di kedua negara tersebut. Penelitian ini bertujuan untuk menganalisis dan membandingkan ketentuan hukum melafalkan taklik talak dalam pernikahan menurut Enakmen Undang-Undang Keluarga Islam Negeri Kedah Nomor 7 Tahun 2008 dan Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam di Indonesia. Jenis penelitian ini adalah kualitatif dengan pendekatan yuridis normatif dan perbandingan hukum (comparative approach) melalui studi kepustakaan terhadap peraturan perundang-undangan, dokumen resmi, serta literatur fiqh. Hasil penelitian menunjukkan bahwa di Malaysia (Negeri Kedah), pelafalan taklik talak merupakan kewajiban administratif yang harus dilaksanakan setelah akad nikah; suami yang menolak melafalkannya tidak dapat diterbitkan surat nikah. Sementara itu, di Indonesia, pelafalan taklik talak bersifat pilihan (opsional) sebagaimana diatur dalam KHI dan didukung fatwa MUI, karena substansi perlindungan terhadap hak istri telah tercakup dalam Undang-Undang Perkawinan dan Peradilan Agama. Kesimpulannya, meskipun kedua sistem hukum sama-sama mengakui taklik talak sebagai perjanjian dalam perkawinan, Kedah menempatkannya sebagai kewajiban formal, sedangkan Indonesia menempatkannya sebagai pilihan yang tidak mengikat. Perbedaan tersebut menunjukkan adanya penyesuaian hukum terhadap kebutuhan sosial dan struktur hukum masing-masing negara, namun tetap berorientasi pada perlindungan hak istri dalam rumah tangga.

## A. Introduction

Marriage in Islam is a contract that has the value of worship and has a high social dimension.<sup>1</sup> It is not just a bond between two people, but a sacred covenant (*mitsaqan ghazliza*)<sup>2</sup> which demands moral, legal, and spiritual responsibility. Therefore, Islam regulates marriage comprehensively through sharia provisions derived from the Qur'an and Hadith.<sup>3</sup> In this context, divorce is one of the important instruments in maintaining justice and balance of rights between husband and wife in the household.

Terminologically, *taklik talak* means a divorce agreement that is conditional on certain conditions stated by the husband after the marriage contract. If these conditions are met, the divorce is considered legally binding.<sup>4</sup> In jurisprudence, scholars from the four major Hanafi schools,<sup>5</sup> Maliki,<sup>6</sup> Syafi'i,<sup>7</sup> and Hanbali<sup>8</sup> agreed that divorce is a valid form of agreement if it does not conflict with sharia. They state that divorce can occur directly (divorce *munjiz*) or conditional (divorce *mu'allaq* or *taklik talak*), every contract or agreement made by a believer must be fulfilled. The evidence that is the basis for its validity includes the words of Allah SWT:

الطلاق مَرَّتَنْ مَ فَإِمْسَاكُ بِمَعْرُوفٍ أَوْ تَسْرِيْحٍ  
بِالْحَسَنِ

It means:

“Divorce that can be referred to twice. To hold back in a good manner or to end the relationship in a good way”. (Al-Baqarah/2:229)

<sup>1</sup> Sandy Wijaya et al., “The Problematics Of The Dipasiala Customary Marriage Tradition: A Case Study And Its Implications” 25, no. 1 (2025): 24–41, <https://doi.org/http://dx.doi.org/10.24014/hi.v25i1.31645>.

<sup>2</sup> Akmal Abdul Munir, “Pemikiran Sayyid Sabiq Mengenai Hikmat Al-Tasyri’ Hukum Perkawinan Dalam Kitab Fiqh Al-Sunnah,” *Hukum Islam* 21, no. 2 (2021): 321.

<sup>3</sup> Fadhilah Fadhilah, Siti Zailia, and Syaiful Aziz, “Talak Suami Pada Saat Istri Hamil Menurut Kompilasi Hukum Islam (Khi) Dan Budaya Lokal,” *Muqaranah* 5, no. 1 (2021): 48, <https://doi.org/10.19109/muqaranah.v5i1.9209>.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعَهْدِ

It means:

“It is commanded upon the believers to fulfill the promises you have made.”. (Al-Maidah/5:1)

Pronunciation tradition *taklik talak* has become a custom in Islamic societies, particularly in Indonesia and Malaysia, as an effort to protect women's rights from being abused by their husbands. However, differences in the legal systems in the two countries lead to variations in its implementation.

In Malaysia, the pronunciation *taklik talak* regulated in the Kedah State Islamic Family Law Enactment Number 7 of 2008. Based on these regulations, the pronunciation *taklik talak* mandatory and is part of the administrative procedures of marriage. A husband who refuses to recite *taklik talak* unable to obtain an official marriage certificate from the authorities. This approach shows that the Kedah State government places *taklik talak* as a legal protection mechanism for wives in the event of violations of rights in the household.

Meanwhile, in Indonesia, the pronunciation *taklik talak* regulated in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, specifically Article 46 paragraph (3). In the context of Indonesian positive law, the pronunciation *taklik talak* voluntary and not mandatory.<sup>9</sup> This provision confirms that the existence of *taklik talak* more moral and social in nature, rather than as an administrative requirement for the validity of a marriage. The

<sup>4</sup> Wahbah Zuhaili, *Fiqh Al-Islami Wa Adillatuhu* (Damsyik: Darul Fikri, 1984): 6968.

<sup>5</sup> Alauddin Al-Kasani, *Badai’ Al-Sanai’ Fi Tartib Sharai’* (Beirut: Darul kutub al-Ilmiah, 2010): 30.

<sup>6</sup> Ibnu Rushd, *Bidayah Al-Mujtahid* (Qahirah: Darul Hadith, 2004): 99.

<sup>7</sup> Mustafa Al-Khin, *Fiqh Al-Manhaji ‘ala Mazhab Imam Syafie* (Damsyik: Darul Qalam, 1992): 134.

<sup>8</sup> Ibnu Qudamah, *Al-Mughni* (Riyad: Darul ‘alimul Kutub, 1997): 341.

<sup>9</sup> Hendi Saputra et al., “Subtansi Sighat Ta’lik Talak Guna Menjaga Keutuhan Rumah Tangga Perspektif Hukum Islam,” *Bulletin Of Islamic Law* 1, no. 1 (2024).

difference in approach between these two legal systems raises questions regarding the legal basis, purpose, and implications of the pronunciation *taklik talak* towards the protection of wives' rights.

A comparative study of these two legal systems is crucial for understanding the dynamics of the application of Islamic family law in different contexts. This research not only highlights normative aspects but also illustrates how sharia values are adapted to social needs and state policies. Thus, an analysis of the law of reciting *taklik talak* According to Enakmen, the Kedah State Islamic Family Law and the Compilation of Islamic Law have made a significant contribution to the development of Islamic family law that is just, contextual, and responsive to the protection of women.

## B. Research Methods

This research uses a normative juridical method (normative juridical research) with a comparative legal approach (comparative law), namely an approach that focuses on the study of applicable positive legal norms, whether in the form of statutory regulations, fatwas, or Islamic legal doctrine. This approach is used to examine and compare legal provisions regarding pronunciation *taklik talak* regulated in the Enactment of the Kedah State Islamic Family Law Number 7 of 2008 and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) in Indonesia and supported by secondary sources in the form of books, journal articles, and previous research.<sup>10</sup> Data was collected through a systematic literature review, then analyzed using analytical techniques qualitative descriptive. Descriptively, the researcher explains the legal provisions regarding *taklik talak* in each legal system based on its text and context. Comparatively, this study analyzes the similarities and differences between the two legal systems from a conceptual, normative, and implementative perspective. The results of this analysis are then drawn inductively, namely from a specific understanding of legal regulations and practices to a general

conclusion that describes the legal status of pronunciation *taklik talak* in marriage according to the Kedah State Islamic Family Law Enactment and the Compilation of Islamic Law in Indonesia.

## C. Discussion

### 1. The Position and Purpose of Divorce in Islamic Law

*Taklik talak* is a form of agreement made by the husband after the marriage contract, by depending on the divorce falling on certain conditions.<sup>11</sup> In classical Islamic law, the fuqaha from the four major schools of thought, Hanafi, Maliki, Shafi'i, and Hanbali, agree that *taklik talak* is a form of conditional divorce that is valid if it does not conflict with Islamic law.

a. According to Hanafi school argue that conditional divorce (*taklik talak*) is valid, and the divorce is void if the specified conditions are met:

وَقُوَّةُ الطَّلاقِ أَوِ الْعِتَاقِ الْمُعَلَّقِ عِنْدَ وُجُودِ الشَّرْطِ<sup>12</sup>

It means:

*"The occurrence of divorce or the release of a slave who is hanged when the conditions are met."*

b. Maliki School States that *taklik talak* applies if it is associated with actions in the future and occurs in accordance with the conditions mentioned:

تَعْلِيقُ الطَّلاقِ بِالْأَفْعَالِ الْمُسْتَقْبَلَةِ وَقُوَّةُ الطَّلاقِ فِيهِ عَلَى وُجُودِ الشَّرْطِ<sup>13</sup>

It means:

*"Deferring divorce by future actions causes the divorce to fall depending on the fulfillment of the conditions."*

c. Syafi'i School According to the book of fiqh *manhaji*, it is stated that direct divorce (*munjiz*) is valid, then conditional divorce is also valid as long as it meets the provisions of Islamic law:

<sup>10</sup> Muhammad Ali Sodik, Sandu Siyoto, *Dasar Metodologi Penelitian* (Yogyakarta: Literasi Media Publishing, 2015): 68.

<sup>11</sup> Zuhaili, *Fiqh Al-Islami Wa Adillatuhu*, 68.

<sup>12</sup> Al-Kasani, *Badai' Al-Sanai' Fi Tartib Sharai'*, 30.

<sup>13</sup> Rushd, *Bidayah Al-Mujtahid*, 134.

كَمَا يَصِحُّ الطَّلَاقُ وَيَقُعُّ مُنْجَرًا، فَإِنَّهُ يَصِحُّ  
مُعَلَّقًا<sup>14</sup>

It means:

*"Just as divorce is valid and can take effect immediately, divorce is also valid if it is suspended (on a condition)."*

d. According to the Hanbali school in the book Al-Mughni It is emphasized that the divorce is valid if it is accompanied by certain conditions. If these conditions are met, then the divorce occurs:

صَحَّةُ تَعْلِيقِهِ عَلَى الشُّرُوطِ، وَيَقُعُّ الطَّلَاقُ  
بِوُجُودِ الشُّرُوطِ<sup>15</sup>

It means:

*"The validity of postponing (associating) divorce with conditions, and the divorce falls when these conditions are met."*

In conclusion, the four major schools of thought agree that *taklik talak* is a form of divorce that is valid according to Islamic law with certain conditions. They base their opinion on the evidence of the Quran and hadith which explain the importance of fulfilling the agreement and maintaining the limits of Allah SWT's law, including the following:

a. Evidence from the Quran, Surah Al-Baqarah (2) Verse 229:

الْطَّلَاقُ مَرَّتَنِ— فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيْحٌ  
بِإِحْسَانٍ— وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا أَنْتُمْ  
شِّيَّعْتُمْ إِلَّا أَنْ يَخَافَا إِلَّا يُقِيمَا حُدُودَ اللَّهِ<sup>16</sup> فَإِنْ خَفْتُمُ إِلَّا  
يُقِيمَا حُدُودَ اللَّهِ لَفَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ  
تَنَافِقُ حُدُودَ اللَّهِ لَفَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ  
فَأُولَئِكَ هُمُ الظَّلْمُونَ

It means:

*"The two divorces that can still be reconciled are two. After that, the husband can choose to reconcile amicably or release his wife amicably. A husband is not permitted to take back the dowry he has given his wife, unless*

<sup>14</sup> Al-Khin, *Fiqh Al-Manhaji 'ala Mazhab Imam Syafie*, 134.

<sup>15</sup> Qudamah, *Al-Mughni*, 341.

*both feel they are no longer able to fulfill the boundaries set by Allah. If the family fears that the couple will not be able to comply with Allah's provisions, the wife may offer a ransom or 'iwadh' for separation, and this is not considered a sin for either of them. These rules are boundaries set by Allah, so do not violate them. Those who violate these boundaries are wrongdoers."*

This verse was revealed or called asbabul nuzul expressing the action of a husband who divorces his wife as he pleases, where at that time there was no law that stipulated the number of divorces so that if the divorce was made during the iddah period then she was still considered a wife, even though she had been divorced hundreds of times with evil intentions by saying I divorced you before the iddah period was over I will remarry. Then it was told to the Messenger of Allah (peace and blessings of Allah be upon him) and this verse was revealed. Imam Ibnu Taimiyah stated that knowing the reason for the revelation of the verse is very helpful in understanding its meaning, because understanding the reason will make it easier to understand the consequences that arise from it.

Therefore, the majority of jurists argue with the verse which means: Divorce that can be referred to twice. To withhold in a good manner or to end the relationship in a good way. With this verse in general, the scholars do not distinguish between munjiz (direct) divorce and taklik (conditional) divorce, and do not limit its occurrence to any case so that the husband can pronounce divorce according to his wishes, whether direct divorce, additional divorce, conditional on oath or others.<sup>16</sup>

b. Hadits

عَنْ أُبَيِّ هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ  
عَلَيْهِ وَسَلَّمَ: الصُّلُحُ جَائزٌ بَيْنَ الْمُسْلِمِينَ رَادَ  
أَحْمَدُ، إِلَّا صُلُحًا أَحَلَّ حَرَامًا، أَوْ حَرَمَ حَلَالًا وَرَادَ

<sup>16</sup> Zuhaili, *Fiqh Al-Islami Wa Adillatuhu*, 6972.

سُلَيْمَانُ بْنُ دَاؤَدَ، وَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ<sup>17</sup>

It means:

*“From Abi Hurairah. The Messenger of Allah (peace and blessings of Allah be upon him) said that agreements between Muslims are valid and binding. However, Ahmad added an important exception: the agreement should not make lawful what is forbidden or forbid what is lawful by Allah. Solomon bin David also added that Muslims must obey the conditions they have agreed to.”*

The Prophet's hadith also provides an important basis for stating that every agreement between Muslims is valid and binding, as long as it does not permit what is forbidden or forbid what is lawful. This hadith shows that agreements between husband and wife, including marriage agreements, are valid and binding. *Taklik talak* has legal force as long as its content does not contradict Islamic law. The same goes for *taklik talak*, which is an agreement between husband and wife after the marriage contract. When divorce is made, both husband and wife are bound by that agreement.

The majority of scholars from various schools of jurisprudence try to apply the principle *mura'atul khilaf*, *ihtiyath*, and *khuruj minal khilaf* as a form of caution in dealing with differences of opinion among jurists. The application of this principle is not intended to deny the existence of sunnatullah in differing views, but rather as a preventive measure to safeguard the public interest and respect the results of the ijihad of each mujtahid. Thus, the approach taken by these scholars plays a crucial role in strengthening brotherhood and maintaining the unity of the Muslim community more broadly.

## 2. The Rule of Pronouncing *Taklik Talak* According to the Kedah State Islamic Family Law Enactment Number 7 of 2008

<sup>17</sup> Abu Dawud, *Sunan Abi Dawud Jilid 3* (Beirut: Maktabah 'Ishriyyah, 2009): 304.

<sup>18</sup> Warta Kerajaan Negeri Kedah, “Enakmen Undang-Undang Keluarga Islam Negeri Kedah” 51, no. 7 (2008).

<sup>19</sup> Kedah.

In Malaysia, the implementation of Islamic family law falls under the authority of each state. Kedah is one of the states that has strict provisions regarding pronunciation *taklik talak* after the marriage contract as stated in the Kedah Islamic Family Law Enactment No. 7 of 2008, particularly Article 26 and Article 50.

Article 26 stipulates that:

*“After registering a marriage, the Registrar shall, upon payment of the prescribed fee, issue a certificate of taklik in the prescribed format to each party to the marriage.”<sup>18</sup>*

Meanwhile, Article 50 states that:

*“If a woman is entitled to a divorce based on an agreement made after marriage she can apply to the Syariah Court to confirm the divorce.”<sup>19</sup>*

Pronouncing *taklik talak* is an official or mandatory procedure for husbands who enter into a marriage contract in the State of Kedah.<sup>20</sup> This is a provision set by the Kedah State Islamic Religious Affairs Department as stated in Article 22 Number 1 and 2 of the Kedah State Islamic Family Law Enactment which states: Once the marriage contract has been concluded, the Marriage Registrar is obliged to record the specified details and the specified *taklik* or other *taklik* for the marriage in the marriage book and witnessed by a guardian and two witnesses other than the Marriage Registrar who were present at the time of the marriage.<sup>21</sup> The following is an example of the official pronouncement of divorce which ends with *khulu'* in the State of Kedah:

*“It is I (husband's name) who hereby sign, if:*

*(1) I have not lived with my wife (wife's name) in a manner befitting a married couple, either by leaving her intentionally or by force, or she*

<sup>20</sup> Najibah Mohd Zin, *Siri Perkembangan Undang-Undang Di Malaysia: Undang-Undang Keluarga Islam Jilid 14* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2007): 121.

<sup>21</sup> Kedah, “Enakmen Undang-Undang Keluarga Islam Negeri Kedah.”

*has left me by force for four consecutive months or more, or;*

*(2) I or my representative have not provided maintenance to him for four consecutive months or more and have never been convicted of nusyuz by any sharia court or;*

*(3) I commit acts of bodily harm, abuse or other violations of sharia against her, and if she complains to the judge khadi or sharia judge and her complaint is accepted by the judge khadi or sharia judge and she gives the judge khadi or sharia judge in my name ten Malaysian Ringgits or the equivalent, then she (wife's name) is immediately divorced by divorce khulu'.”<sup>22</sup>*

The above statement states that if any of the conditions of taklik are violated, the wife has the right to file a law suit in court. If the court deems the complaint valid, the wife can choose khulu', which means paying ten ringgit to the court to be given to her husband. Furthermore, the word taklik in Kedah states that if a wife leaves her husband by force for four consecutive Hijrah months or more, the conditions of taklik are considered fulfilled.

This provision confirms that *taklik talak* in Kedah is an administrative obligation and an integral part of the marriage process. According to the Kedah State Religious Affairs Department, Islamic Family Law Administration Division, it is stated: taklik nikah is an agreement made by the husband during the wedding ceremony. This agreement is a form of protection for the wife and sets out certain conditions regarding divorce. If taklik talaq is not pronounced or the husband refuses to pronounce it after the marriage contract, then the marriage certificate cannot be registered and issued by the Kedah State Islamic Religious

<sup>22</sup> Akta Nikah Negeri Kedah.

<sup>23</sup> Wawancara bersama Petugas Jabatan Hal Ehwal Agama Islam Negeri Kedah Divisi Administrasi Undang-Undang Keluarga Islam, “Diskusi Hasil Penelitian”, Email Wawancara ([jheik.uuki@kedah.gov.my](mailto:jheik.uuki@kedah.gov.my)), 16 Juli 2025.

<sup>24</sup> Mohd Na'im Mokhtar Miszairi Sitiris, Mustafa Mat Jubri, Mohamad Sabri bin Zakaria, “Talak Taklik Menurut Fiqah: Analisis Pelaksanaannya Dalam Undang-Undang,” *Kanun: Jurnal Undang-Undang Malaysia* 33, no. 1 (2021): 103.

Affairs Department. This is because the marriage certificate has been legalized together with the taklik deed through the Islamic Family Law Rules (Forms and Fees) 2019.<sup>23</sup>

Based on the discussion of the study on the concept of *taklik talak* in Kedah, it can be concluded that the purpose is to educate the wife, just like the husband who pronounces talaq taklik to his wife who often leaves the house without his permission even though he has been warned not to repeat his actions. Sometimes the husband pronounces talaq taklik to gain the wife's confidence that he will not repeat the bad habits he has done before, such as gambling and so on.<sup>24</sup> In addition, he protects the rights and welfare of the wife, such as the wife asking her husband to pronounce talaq taklik so that he does not beat her or leave her without support and so on, so that the husband is more responsible towards his wife.

Although this practice, from an Islamic perspective, is not something that is obligatory in marriage as explained by the fuqaha,<sup>25</sup> However, its implementation is based on legal provisions that view this taklik in a broader perspective. According to Zulkifli Mohamad al-Bakri, this is due to the law's stated aim of maintaining harmony and protecting the rights of each individual. This view is based on the experiences of several married couples, where problems arose in their marriages that led to the neglect of the wife's rights. Therefore, as *sadd az-zari'ah* (سد الذريعة) This taklik law introduces.<sup>26</sup>

According to Ibnu 'Asyur which quotes the view of Al-Maziri according to him *saddu dzari'ah* is to close something *mubah* so as not to fall into wrong doing.<sup>27</sup> *Taklik talak* if viewed from the concept *maqashid syari'ah* is to avoid danger that comes through all possibilities, is the first step that can be taken by a wife from

<sup>25</sup> Zin, *Siri Perkembangan Undang-Undang Di Malaysia: Undang-Undang Keluarga Islam Jilid 14*: 121.

<sup>26</sup> Google, “Pejabat Mufti Wilayah Persekutuan”, diperbaharui 7 Februari 2015, diakses 18 Juni 2025. <https://www.muftiwp.gov.my/ms/artikel/irsyad-hukum/umum/2060-21>.

<sup>27</sup> Ibnu 'Asyur, *Maqashid Al-Syari'ah Al-Islamiyyah Jilid 2* (Qathar: Wizarah Al-Auqaf, 2003): 305.

unfair treatment, so that her rights are not neglected in terms of needs, physical or mental and so that a peaceful household is created without any default from the husband.<sup>28</sup>

The *taklik talak* law in Kedah plays an important role in protecting wives according to the principle *maqashid syari'ah*. From the point of view *dharuriyyat*, this regulation serves to safeguard five basic needs: religion, life, reason, descendants, and property. The regulation, which stipulates that divorce can occur if the husband fails to provide physical and mental support for four consecutive months, ensures the wife's protection. This protects her from sinful acts and emotional or physical stress.

In context *hajiyat*, the vow of *taklik talak* serves to ease the burden of life and ensure that the needs of the wife and children are met. *Taklik talak* guarantees the fulfillment of physical needs, such as food, clothing, and shelter, as well as spiritual needs such as emotional and psychological well-being. Furthermore, from a religious perspective *tahsiniyyat*, *taklik talak* also upholds the dignity of the wife. This is because *taklik talak* gives the wife the right to file for divorce if the husband does not carry out his responsibilities. Thus, the quality of family life that is harmonious and respectful will increase.<sup>29</sup>

### 3. *Taklik Talak* According to the 1991 Presidential Instruction Concerning the Compilation of Islamic Law

The position of talaq taklik in the compilation of Islamic Law is very clear, where it is recognized as a form of marriage agreement, Article 1 letter e of the Compilation of Islamic Law defines it as a promise of divorce spoken by the groom after the marriage contract, and recorded in the marriage deed. This promise will be valid if a certain condition or circumstance that may occur in the future actually occurs. In other words, the

Compilation of Islamic Law formulates the definition of a marriage agreement in general without mixing it with policies that are fixed or permanent.

In the Compilation of Islamic Law, taklik talaq is regulated in Chapter VII concerning marriage agreements, Articles 45 and 46. These articles state that prospective husband and wife can make a taklik talak agreement or other agreement, although this taklik talaq is not mandatory in marriage, if taklik is pronounced by the husband then it cannot be withdrawn. If the conditions of taklik are met, the wife must file a lawsuit with the Religious Court.<sup>30</sup>

*Taklik talak* is essentially a voluntary promise, not a requirement for marriage. However, once it is pronounced and agreed to, it cannot be revoked because it is legally binding. If the conditions stipulated in the talak agreement are met, the divorce is automatically declared, provided the wife is willing to pay a monetary compensation. To validate this agreement, according to Ministerial Regulation No. 2 of 1990, the husband must sign the talak agreement, which is pronounced after the marriage ceremony.<sup>31</sup>

Since the issuance of Law Number 22 of 1946 which was later amended by Law No. 22 of 1952, the provisions regarding the pledge of taklik talak have been standardized throughout Indonesia. Since the management of the pronunciation of taklik talak was taken over by the Ministry of Religion, the formulation of this pledge has undergone several revisions. These changes not only cover its essential elements, but also relate to the quality of the relevant taklik requirements and the amount of iwadh of the bride price, currently the applicable taklik talak formulation is that stipulated by the Regulation of the Minister of Religion of the Republic of Indonesia Number

<sup>28</sup> Ach.Faisol Syamsu Madyan, Nanda Rizkiya Putra, "Pelaflan Sighot Taklik Talak Dalam Pernikahan Ditinjau Dari Maqashid Al-Syari'Ah," *HIKMATINA Jurnal Ilmiah Hukum* 1, no. 2 (2019): 26.

<sup>29</sup> Muhammad Ikhwan Abrahman et al., "Konsep Dan Aplikasi Taklik Talak Di Terengganu : Analisis Dari Perspektif Maqāṣ Id Al-Sharī ' Ah" 9, no. 2 (2024).

<sup>30</sup> KHI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya, Mahkamah Agung RI*, 2011.

<sup>31</sup> Rahmad Ibrahim Harahap and Ramadhan Syahmedi Siregar, "Kedudukan Dan Urgensi Shigat Taklik Talak Perspektif Ketentuan KHI Dan Hukum Fiqh Klasik," *Tasyri' : Journal of Islamic Law* 1, no. 2 (2022): 359, <https://doi.org/10.53038/tsyr.v1i2.28>.

2 of 1990.<sup>32</sup> The complete formulation is as follows:

*"I (husband's name) promise with all my heart that I will fulfill my obligations as a husband, and I will treat my wife named (wife) well (mu'asyarah bil ma'ruf) according to the teachings of Islamic Sharia. Next, I say sighthat taklik for my wife as follows:*

*Anytime I*

- (1) Left my wife two years in a row,*
- (2) or I do not pay him his obligatory maintenance for three months,*
- (3) or I hurt my wife's body/physically,*
- (4) or I let (ignore) my wife for six months.*

*Then my wife was not pleased and complained about the matter to the Religious Court or the officer who gave her the right to handle the complaint and her complaint was confirmed and accepted by the Court or officer, and my wife paid Rp.1000 (one thousand rupiah) as iwadh (replacement) to me, then my divorce fell to her.*

From the text of sighthat taklik talak above, it can be explained that all agreements are related to these conditions:

- a. According to the Compilation of Islamic Law, if a husband abandons his wife for two consecutive years, this is grounds for divorce. Although the Compilation of Islamic Law does not specifically address this, this case relates to Article 116(b), which states that divorce can occur if one party abandons their partner for two consecutive years without permission, without a valid reason, and without unavoidable obstacles.
- b. Article 80, paragraph 4 of the Compilation of Islamic Law states that a husband is obliged to provide for his wife. If the husband fails to fulfill this responsibility, it is considered a violation of the law:
  - 1) Profession, Kiswah and residence for the wife.

<sup>32</sup> Abdul Hafizh, "Pelaksanaan Taklik Talak Dalam Hukum Perkawinan (Studi Pada Wilayah KUA Kec. Padang Barat Dan Pengadilan Agama Kelas 1A Padang Tahun 2010-2013)," *Ijtihad Jurnal Hukum Islam Dan Pranata Sosial* 35, no. 2 (2019): 87.

- 2) Family expenses, care costs and medical expenses for wife and children.
- 3) School fees for children.
- c. If a wife is physically abused by her husband, resulting in injuries, this could be grounds for divorce. Evidence of these injuries can be seen in a doctor's medical examination, which the judge then uses as a basis for determining the case.
- d. Some judges in the Religious Courts have argued that if a husband ignores his wife for six months or more, it constitutes grounds for a lawsuit. They interpret the word "abandonment" in this context as a situation where the husband's address is known and he can still be contacted, but he refuses to see or visit his wife, thus constituting neglect.

The family law reforms embodied in the Compilation of Islamic Law (KHI) now include the pronouncement of the oath of divorce (taklik talaq), a concept unknown during the early Islamic era. However, Islamic law has long granted the wife the right to *khulu'* (file for divorce) without the husband's consent, or even compensation, especially if the divorce is due to the husband's fault.<sup>33</sup> The promise made by the husband is binding and carries legal consequences. For example, if a wife feels wronged by her husband, whether physically, mentally, or in fulfilling her needs, she has the right to file for divorce with the Religious Court if her rights are not met.

In Indonesia, the recitation of taklik talaq in marriage often causes debate. As a result, the Indonesian Ulema Council (MUI) issued a fatwa on 7 September 1996, which ruled that the recitation of sighthat taklik talaq is no longer obligatory for certain reasons:

- a. The substance of sighthat taklik talak is already covered in the Marriage Law, namely Law Number 1 of 1974. This provision is also strengthened and further regulated in the Religious Courts Law, namely Law Number 7 of 1989 which was later updated by Law Number 3 of 2006.

<sup>33</sup> Muhammad Afandy, Maghfirah, and Ahmad Zikri, "SEBAGAI PERJANJIAN DALAM PERNIKAHAN ( Studi Analisis Dalam Mazhab Imam Syafi 'i )," *Journal of Sharia and Law* 2, no. 3 (2023): 895.

Thus, the elements of sighat *taklik talak* have been completely regulated by the applicable laws and regulations.

- b. A *taklik talak* agreement is not mandatory in every marriage according to the Compilation of Islamic Law.
- c. Historically, the pronunciation of sighat *taklik talak* was intended to protect women's rights in marriage. At that time, there were no laws that specifically regulated *taklik talak*. However, with the existence of modern marriage regulations, the pronunciation of sighat *taklik talak* is no longer a requirement.<sup>34</sup>

It is clear that the practice of *taklik talak* from the perspective of the Compilation of Islamic Law or in Indonesian regulations is not an obligation to be implemented, which is supported by the MUI Fatwa Commission, which believes that *taklik talaq* in marriage is no longer necessary. This is because basically *taklik talak* is realized in defense of the wife from the arbitrary treatment of an irresponsible husband. After the enactment of the marriage legislation, the practice of *taklik talak* is considered irrelevant.

This material is complete and is stated in Law Number 1 of 1974 concerning Marriage in Article 39 paragraph 2 stating that the reasons for divorce are:

- a. In situations where one partner is involved in adultery, alcohol or drug abuse, gambling, or other destructive behavior that is difficult to overcome, these conditions may be a strong reason to consider legal or personal matters.
- b. When one partner is unable to live with their partner for two consecutive years due to circumstances beyond their control, and the separation occurs without the consent of the other partner, then these circumstances can be considered a valid reason.
- c. The newly married couple faces a prison sentence of five years or more.

<sup>34</sup> Komisi Fatwa MUI, "Pengucapan Sighat Ta'liq Talaq Pada Waktu Upacara Akad Nikah," 1996, 334–35.

<sup>35</sup> Ahmad Al-Dardir, *Al-Syarah Al-Kabir Jilid 3*, (Dar Al-Fikri, n.d.): 389.

<sup>36</sup> ISWANDI HARAHAP BURHANUDDIN and MOHD MUSLIM SALLEH, "Talak Taklik

- d. The other party has committed acts of cruelty or serious and dangerous abuse.
- e. A couple can no longer fulfill their marital obligations because one of them suffers from a physical disability or illness.
- f. The endless disputes and arguments between husband and wife have destroyed any hope of harmony in the household, so there is no longer any possibility of them getting back together.

According to Ahmad Dardir, the original law of divorce by *taklik* is makruh and even said to be prohibited,<sup>35</sup> if this practice is carried out without a strong reason or is justified by sharia.<sup>36</sup> Likewise, the implementation of *taklik talak* in Indonesia has no reason to enforce or practice its pronunciation if the material has been fulfilled in the laws and regulations of the country which have defended the rights of both parties if a dispute arises between them.

So for those who want to do this practice, it is appropriate based on articles 45 and 46 of the Compilation of Islamic Law which states that it is permissible to make an agreement through *taklik talaq* whose content does not contradict syara' law and if this *taklik* is done, it cannot be withdrawn. In addition, if the prospective husband is reluctant to read the *taklik*, then before the marriage ceremony takes place, it is necessary to negotiate with the woman's family and the Marriage Registrar regarding the status of *taklik talaq* according to KHI and MUI fatwa which does not require the recitation of *taklik*. divorce. With the conditions set as an option this practice to move in a better direction is worth supporting.<sup>37</sup>

#### 4. Similarities and Differences in the Law of Pronouncing the Taklik Talak in Marriage According to the Enactment of the Islamic Family Law of Kedah State Number 7 of 2008 and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law

Menurut Perspektif," *Journal Kulliyah Syariah Dan Undang – Undang* 15, no. 2 (2024): 10.

<sup>37</sup> Ferry Ardiansyah and Romli SA, "Independensi Kewenangan Kejaksaan Republik Indonesia," *Hukum Ketatanegaraan* 1, no. 1 (2023): 98.

This comparative legal approach to pronouncing the taklik talak (divorce) in marriage is examined from the perspective of the similarities and differences between the Kedah State Islamic Family Law Number 7 of 2008 and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law. Both have a strong legal basis and their own approaches to implementing taklik talak in marriage. Furthermore, both approaches remain based on rights and do not violate Sharia law. Therefore, the author has included a comparative analysis of the similarities and differences below for ease of understanding:

a. Equality

The Kedah Islamic Family Law Number 7 of 2008 stipulates that taklik talaq is the practice of pronouncing divorce that taklik talaq is the practice of pronouncing divorce carried out by the husband after the marriage contract in accordance with the law *Shariawhich* is ratified by a guardian, two witnesses, and the Marriage Registrar. The wife has the right to file a divorce suit and submit it to the court if she feels that the conditions of taklik have been met. In the Compilation of Islamic Law, taklik talaq is recognized as an agreement in marriage whose contents do not contradict *syara'* and is ratified by the Marriage Registrar with two witnesses. If this agreement is realized, the husband cannot withdraw it. If the wife must file a lawsuit to the court if the conditions of taklik have been met.

b. Difference

According to the Islamic Family Law of Kedah State Number 7 of 2015, the practice of pronouncing taklik talak is an official or mandatory procedure for husbands who are going to marry in Kedah State. As stipulated by the Department of Islamic Religious Affairs of Kedah State for every married couple. If the husband refuses to pronounce taklik talak then the marriage certificate cannot be registered and issued. This is because the marriage certificate has been legalized together with the taklik deed through the Principles of the Islamic Family Law (Forms and Fees) 2019. Based on Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, pronouncing

taklik talak in marriage is not an obligation to be implemented, even being an optional means for husbands to carry out the practice and supported by the MUI fatwa commission which stated the reason that: the material of taklik talak is already stated in Law Number 1 of 1974 concerning Marriage and Law Number 7 of 1989 concerning Religious Courts.

Based on the similarities and differences above, it can be concluded that the Enactment of the Kedah State Islamic Family Law Number 7 of 2008 and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law contain similarities and differences regarding the pronouncement of the divorce decree in marriage. In principle, both laws protect the wife's rights from any unfair treatment from her husband throughout her life.

Therefore, after observing the Islamic Family Law of Kedah State Number 7 of 2008, it stipulates that the recitation of taklik talak is a must to be practiced, while Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, does not place taklik talak as something that must be done after the marriage contract on the grounds that all matters regarding taklik talak are already stated in Law Number 1 of 1974 concerning Marriage.

Thus, the author argues that if the legislation is not sufficient and has flaws in defending the fate of the wife, then taklik talaq is a solution to be applied in marriage. If all the material in the legislation is complete, then the practice of pronouncing taklik talaq is no longer a relevant matter to be determined and even given the choice for the husband to carry it out.

#### D. Conclusion

Based on the results of the analysis of legal provisions in Malaysia and Indonesia, it can be concluded that *taklik talak* is an Islamic legal instrument that serves to maintain justice and protect women's rights in marriage. However, the two countries have different approaches to its implementation. The enactment of the Kedah State Islamic Family Law Number 7 of 2008 stipulates the pronunciation of *taklik talak* as an obligation that must be fulfilled after the marriage contract, thus becoming part of the administrative requirements in the Islamic

family law system. This provision affirms the state's commitment to protecting wives and preventing oppressive acts by husbands. Conversely, in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, the pronunciation of *taklik talak* is optional and does not affect the validity of the marriage contract. However, once spoken, the agreement remains legally binding and can be used as grounds for divorce if the husband violates its terms. Thus, these differences demonstrate the diversity in the application of Islamic law, adapted to the social context and legal system of each country. Both systems are fundamentally based on the principle *maqāṣid al-syārī'ah*, namely to uphold justice, maintain honor, and protect the welfare of the family.

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