

Analysis of the Fatwa of the Indonesian Ulema Council on the Legal Consequences of Violations of Divorce Taklik in Momunu District, Buol Regency

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ABSTRACT

Taklik talak is the groom's divorce promise after signing the marriage contract. Taklik divorce is stated in the marriage certificate and is required for a specific event in the future. Seeing the habit of reading taklik talak in the Momunu sub-district, there are not a few cases of violations of taklik talak which are caused by the economy, domestic violence, extramarital affairs, and others, so there is no harmony in a household relationships. This study aimed to analyze the implementation of taklik divorce in Momunu district—research using qualitative methods. The data collection techniques are carried out through observation, interviews, and documentation. At the same time, data analysis is done by reducing, presenting, and verifying data. So that the data obtained has credibility and validity so that processing techniques and data analysis and checking the validity of the data are carried out. This study's results indicate two legal consequences from violations of taklik divorce in the sub-district of Momunu, namely the Khulu divorce lawsuit and the fulfillment of Iwadh Taklik Talak. After deeply analyzing the fatwa of the Indonesian Ulema Council, the authors conclude that the taklik divorce in marriage and its pronouncement has no urgency and is no longer relevant today. Regarding violations of taklik divorce committed by several parties, the wife may impose divorce because the husband has left or the husband's whereabouts are unclear. According to the Malik school of thought, taklik divorce is considered divorce ba'in, while according to the Ahmad school of thought, it is fasakh. This is to prevent harm to the woman. The wife may also ask for a divorce if the husband leaves her.

ARTICLE INFORMATION

Keywords:

Taklik talak, fatwa,
legal consequences,
divorce taklik,
ulema council

1. Introduction

According to the fatwa of the Indonesian Ulema Council regarding the implementation of the marriage contract, which was signed on September 7, 1996, it was stated that "The need for pronouncing *sighat taklik talak*, which was historically used to protect women's rights at a time when there were no laws governing it, was already no longer relevant (Mandal, 2018). However, among the people of the Momunu sub-district, Buol district, divorce is still necessary for every marriage. Even in every marriage ceremony that is carried out, it is certain that *taklik* divorce will occur. After the marriage ceremony, the prospective husband will say the *taklik* divorce written on the marriage certificate before it was signed. In addition, every deed issued by the Office of Religious Affairs also includes the divorce certificate.

Based on the habit of reading *taklik talak* in the Momunu sub-district, there have been many problems with *taklik talak* violations. The cause of the breach of divorce is due to economic reasons, domestic violence, extramarital affairs, and others, so there is no harmony in the household relationship. Thus this study aims to determine the legal consequences of violations of *talak taklik* in Momunu sub-district, Buol district. Then another objective is to analyze the Fatwa of the Indonesian Ulema Council regarding violations of *taklik* divorce in Momunu sub-district, Buol district.

2. Literature Review

2.1 *Taklik Talak*

The word *taklik* in Arabic comes from the word *'allaqa yu'alliqu ta'liqan*, which means to hang. While the word *talak* comes from the Arabic word *tallaqa yutalliqu tatliqan*, which means divorce (Mahmud Yunus, 1973). Meanwhile, from the Big Indonesian Dictionary, the meaning of *taklik* is an agreement, while the word *talak* means divorce between husband and wife. As a result, *taklik* divorce refers to divorce suspended in terms of language. The separation of husband and wife is known as *talak* (divorce), which depends on certain events following the agreement. *Taklik talak* is not a term contained in *fiqh*, but *talak mu'allaq* which means "talak, which depends on the husband with an act that

will be carried out by his wife during his marriage later.

Taklik is separated into two categories in Islamic law: *ta'liq qasami* and *ta'liq syarhi* (Abalos, 2017). It carries the concept of doing work, leaving an action, or verifying news, *ta'liq qasami* is a *taklik* meant to be a promise. In particular, *Ta'liq Syarhi* intended to impose divorce if the conditions were met. The wife must be in the husband's care when the divorce contract is drawn up and remain in the husband's care when the case is legally resolved. The case in question doesn't exist yet, but it could happen later.

2.2 *The Legal Basis of Taklik Talak*

Taklik divorce is understood as a conditional marriage contract with the primary objective of protecting the woman from harm due to the husband's irrational actions. It has a solid legal basis in Q.S Al-Baqarah (2): 229. In addition, there is a legal basis from the hadith that the wife of Thabit bin Qais bin Shams named Jamilah, came to the Messenger of Allah and complained about her concerning her husband "From Ibn Abbas, that the wife of Thabit bin Qais came to the Prophet SAW and said, O Messenger of Allah, I did not denounce Thabit bin Qais for his religion or morals, but I am worried about disbelief in Islam. Then Rasulullah SAW said: Do you want to return his garden? He replied, Yes. Rasulullah SAW said: Accept the garden and divorce it with one divorce. Abu Abdullah said; There is no supporting hadith from Ibn Abbas (HR. Bukhari)." (Muhammad ibn Isma'il al-Bukhari, 1992)

The hadith makes it very clear that Thabit is innocent, while the wife who asks for divorce worries that she will not be able to carry out the orders Allah has given her or fulfill her obligations as a wife. In exchange for the release he had been granted, the Prophet Muhammad enabled the woman to free herself by paying her husband back her dowry. (Abdur Rahman, 1996)

2.3 *Sighat Taklik Talak*

The formulation of *sighat taklik* divorce is a formula determined based on the Regulation of the Minister of Religion of the Republic of Indonesia Number 1990, the complete formulation of which is as follows: After the marriage contract, I.....bin.....promise with all my heart that I will fulfill my obligations as a

husband and I will associate with my wife named.....bin..... properly according to Islamic law. Next, I say sighat taklik divorce for my wife as follows:

During my time:

- a. Left my wife two years in a row.
- b. Or I don't give her the obligatory living for three months,
- c. Or I hurt my wife's body,
- d. Or did I let my wife be for six months

Then my wife disagreed and complained about the matter to the Religious Court or an officer who was given the right to handle the complaint, and the complaint was justified and accepted by the court or the official, and my wife paid Rp. 10,000 (ten thousand rupiahs) as a substitute for me; one divorce shall fall on her.

Following the pledge statement from the husband, if the husband violates the pledge, then the violation can be used as an excuse by the wife to file a divorce claim to the religious court. The judge will give a divorce decision if it turns out that the wife's lawsuit is justified and proven. Suppose you pay attention to the form of the taklik divorce above. In that case, the intention it contains is very good and has positive legal certainty, namely protecting the wife from the arbitrariness of the husband in fulfilling his obligations which are the wife's rights that he must accept. Following Islamic law, a husband must look after his wife as well as possible, meaning that the wife's right is to obtain the best possible care from her husband.

2.4 The Fatwa of the Indonesian Ulema Council Regarding Divorce Taklik

The Ministry of Religion advises local officials to read taklik talak during the marriage following the Decree of the Minister of Religion No. 3 of 1953. The purpose of sighat taklik is to protect wives from their husbands' arbitrary behavior. If the wife does not want to accept the husband's treatment, she can file for divorce if the conditions for taklik talak outlined in sighat taklik are met. As a result, taklik divorce is no longer needed when saying sighat after the law that regulates it is added to the marriage law.

The Indonesian Ulema Council (MUI), through its decision on September 7, 1996, stated that saying sighat taklik divorce is no longer needed. The reasons for this decision are stated in detail as follows:

- a. Law Number 1 of 1974 concerning Marriage and Law Number 7 of 1989 concerning Religious Courts have fulfilled and stated the requirements of sighat taklik divorce.
- b. According to the Compilation of Islamic Law, every marriage does not always require a divorce contract (KHI Article 46 paragraph 3).
- c. Even though the initial intention of the sentence "sighat taklik talak" was to defend women's rights, marriage law did not include taklik talak at that time.

2.5 Consequences of the Taklik Divorce

Even though the taklik talak is carried out voluntarily, if it is done, then the agreement cannot be revoked. Suppose the husband violates the taklik talak agreement he utters. In that case, the legal consequence is the fall of ba'in sughra talak, namely the breakup of the marriage between husband and wife after the word taklik talak is uttered. This is demonstrated by the wife's reporting of her husband's violations to the religious court, the court accepting complaints, and the wife's ability to determine the violation of her husband's rights and the subsequent payment of 'iwad money (Doherty, Kalantar, & Tarsafi, 2021).

After the divorce is finalized, the wife acts differently towards her husband again. Since the couple is no longer a mahram and sex is prohibited, ex-husbands cannot interact with ex-wives for fun. If done, then it is legal to commit adultery. As long as his ex-wife has not married someone else, her ex-husband still has the right to "return" to his ex-wife, who Ba'in Sughra divorced with a new marriage contract and a new marriage contract with a dowry.

According to Minister of Religion Regulation No. 2 of 1990, the taklik divorce uttered by the husband is still valid as long as the terms of the taklik are met, the husband has dropped the raj'i divorce, and the husband has referred his affairs to the time of iddah. If the taklik conditions have been met, the woman can file for divorce because the taklik divorce has been broken. Talak divorce issued by the husband will lose its legal validity in the case of divorce ba'in or remarriage after iddah talak raj'i. Therefore, the taklik divorce agreement must be renewed if the husband and wife want to be enforced.

Scholars try to explain their understanding of divorce law in Islam (Ahmad, 2003). Husband

and wife have a strong experience of each other. Therefore, God created guidelines and ensured that marriages would last. The goal of marriage is often to create a harmonious family. Still, sometimes this goal can be thwarted by the negative attitude of both partners, which can hinder the realization of the harmony desired by Allah SWT. Because maintaining a marriage characterized by a sense of incompatibility between husband and wife is not the goal of sustainable marriage, divorce is prescribed in the way He has determined.

If the husband violates his divorce and the woman informs the Religious Court judge, the wife is automatically granted one divorce. The husband is not allowed to return to his ex-wife unless he remarries because divorce requires money (*iwad*) from the wife. There is no controversy among the scholars; they have all agreed on this (Cohen & Savaya, 2003).

3 Methodology

This research employed a qualitative approach to understand the fatwa of the Indonesian Ulema Council on the Legal Consequences of Violations of Divorce Taklik in Momunu District, Buol Regency. This research was conducted in Buol District, Momunu sub-district, Central Sulawesi.

Qualitative research is characterized by collecting descriptive data, including the informants' words, actions, and feelings, who serve as the needed data sources (Nurdin & Pettalongi, 2022). The collected data is supported by textual and documentary data (files, audio, visual, audiovisual) that support the research (Rusli, Hasyim, & Nurdin, 2021; Rusli & Nurdin, 2022). With this approach, the researcher aims to provide a detailed description of the phenomena occurring in the field, the nature of the phenomena, and all aspects related to the theme under investigation (Nurdin, Stockdale, & Scheepers, 2013).

This study is classified as a case study research. Case study research delves more intensively into the current situation to gather information (Nurdin, Scheepers, & Stockdale, 2022). In other words, the researcher must build good relationships with various individuals and entities to become sources of information within the environment, such as academic units, social groups, individuals, institutions, and

communities. The researcher also immerses themselves in the surrounding environment to gather as much data as possible.

4 Results and Discussion

4.1 Legal consequences that occur in violations of taklik divorce

Saying *shighat taklik talak* is not an obligation in marriage. The existence of a marriage agreement does not guarantee that the marriage can last forever, as is what every prospective bride and groom want at the start of the marriage. However, the existence of *shighat taklik* divorce is intended so that it can be a material concern for husbands to be kind to their wives. The *taklik* divorce agreement is understood as one of the efforts to guarantee the rights of wives and protect them from discriminatory actions and the arbitrariness of husbands.

Forms of divorce violations that occurred in Momunu District, Buol Regency, such as: leaving his wife for more than 6 months, not providing a living, and hurting his wife physically and spiritually. Meanwhile, the impact of divorce violations in the Momunu sub-district occurred, such as wife psychology, child psychology, and finance. Then the legal consequences of breaches of divorce *taklik* in the Momunu sub-district occurred, such as Khulu', Post-Khulu's Wife's Rights, and *Iwadh Taklik Talak*.

4.2 Views of Positive Law and Islamic Law Against Divorce Taklik Violations

Positive Legal View

In Marriage Law No. 1 of 1974, no article specifically mentions and regulates divorce in its capacity as a marriage agreement or as a reason for divorce (Jones, 1997). Article 29 of the law only states that it is permissible for the bride and groom to enter into a written agreement before entering into a marriage. The elucidation of article (29) explains that the marriage agreement in question does not include *taklik* divorce. The full text of Article (29) is as follows:

- At the time before the marriage took place, both parties on the mutual agreement could enter into a written contract that the marriage registrar legalized. After the contents also

apply to third parties as long as third parties are involved.

- The agreement cannot be ratified if it violates the boundaries of law, religion, and decency.
- The agreement is valid since the marriage took place and
- The agreement cannot be changed as long as the marriage lasts, except if both parties have an agreement to change and the changes do not harm third parties.

However, taklik divorce is in the Compilation of Islamic Law which is regulated in article 45 as follows:

The two prospective bride and groom can enter into a marriage agreement: (1) Taklik divorce and (2) Other agreements that do not conflict with Islamic law. Then Article 46 states: (1) The contents of taklik talak may not conflict with Islamic law. (2) If the conditions required in the taklik divorce occur later, divorce does not automatically fall. For the divorce to fall, the wife must file a lawsuit with the Religious Court. (3) The taklik divorce agreement is not an agreement that must be held at every marriage, but once the taklik divorce has been agreed upon, it cannot be revoked.

In Article 51, it is stated that the violation of the agreement gives the wife the right to request an annulment of the marriage and submit it as a reason for a divorce suit to the Religious Courts. Concerning divorce, the Compilation of Islamic Law states that taklik divorce can be used as a reason for a wife to file a divorce suit at the Religious Court. Article 116, Compilation of Islamic Law, mentions several reasons used to carry out a divorce. The reasons stated in Compilation of Islamic Law points a to f are the same as those in Law Number 1 of 1974, explained above. The difference in the Compilation of Islamic Law lies in the addition of the point which states that the husband violates the taklik divorce, which causes disharmony in the household.

Based on the violation of the case above, namely, the husband who left his wife for more than six months, or more precisely between 4 years and 17 years, then at that time it was following Article 116 Compilation of Islamic Law letter b which states that divorce can occur for reasons one party leaves the other party. For two consecutive years without the permission of other parties, without valid reasons, or for other reasons beyond his control. With the formulation of taklik talak regarding the husband's departure, to ensure the wife's status rather than being

abandoned and her fate is not clear, the wife can already file for divorce for her own good.

Then the dispute that makes the husband leave the house causes the violation of taklik divorce. Then the husband only provides compulsory maintenance to his wife for two years or more. So Compilation of Islamic Law article 80 point (2) states that the husband must protect his wife and provide all the necessities of household life according to his ability. A husband should carry out his obligations as the head of the family, not abandon her and make it difficult for his wife. So that for this reason, the wife can file a lawsuit in the religious court, based on article 116 point (g) Compilation of Islamic Law, because he has violated the taklik divorce.

Thus, because the husband left and did not know his whereabouts, his marital status remained, and the wife did not file a lawsuit with the Religious Courts. Because divorce, according to positive law, is a husband's vow pronounced before a religious court hearing. Even if the husband arrives and the mentality is not pronounced outside the court, the divorce is legal according to religious law. Still, it is yet to be permitted under state law if it has not been carried out before a religious court. Because the divorce done outside the court means that the marriage bond between the husband and wife is incomplete, or in other words, both the husband and wife are still legally recognized as husband and wife.

Views of Islamic Law

In the Momunu Taklik sub-district, talak has become a way out so that the wife can release herself from the marriage bond if the husband does not carry out his obligations in the household. It is appropriate if the taklik divorce regulated by the Minister of Religion is recommended to the husband to make a vow after the marriage ceremony is held because it is beneficial for the wife which, among other things:

- a. To protect the interests of the wife.
- b. To anticipate the possibility of arbitrariness by the husband, considering that the right to divorce belongs only to the husband.
- c. Giving wives opportunities to escape from physical and mental torment that can cause disobedience, both to husbands and Allah SWT.

Educating and making husbands aware to be more careful and not act arbitrarily towards their wives, even though the right to divorce lies in the hands of the husbands. If, in a problem, it is seen that there are two conflicting dangers, then the greater danger must be seen, and choose to carry out the lesser risk.

Likewise, if a marriage faces two problems, the wife can sue her husband for violating the divorce decree, including choosing a minor problem. Suppose the wife does not sue her husband. In that case, it will cause an even greater danger, namely the absence of legal and economic certainty, which has the potential to become slander for the wife and can also disturb the child's psychology. If a husband has not provided a living for a long time, hurting his wife physically and spiritually, this problem must be eliminated. The way to get rid of this problem is for the wife to sue her husband for divorce, even though, according to Islamic law, the divorce has fallen into taklik divorce. However, legally, a divorce must be carried out in court.

If a husband commits a crime, such as not providing a living and committing violence, then the wife can sue her husband for divorce. The law of marriage is mubah, and it can be done; it can be abandoned. But the marriage law can turn into sunnah, obligatory, makruh, and haram, depending on whether it causes benefits or problems. In other words, even though marriage is legally mubah at first, if the marriage is seen to bring benefits such as increasing brotherhood, bringing happiness, and causing affection, then the marriage law becomes sunnah. Even if not being married can cause problems such as breaking up a relationship or falling into adultery, the law of marriage becomes mandatory. But if marriage causes issues such as abandoning children and wife, marriage becomes makruh and even unlawful.

4.3 Fatwa of the Indonesian Ulema Council on Divorce Taklik Violations

The phenomenon of taklik divorce is one of the reasons for the issuance of a fatwa by the Indonesian Ulema Council regarding the reading of taklik divorce. Based on the results of the Indonesian Ulema Council Fatwa Commission decision which was issued on September 7, 1996, it was stated that the fatwa gave rise to various interpretations and had been implemented in

society. Some people interpret that taklik divorce is no longer needed because the material contained in taklik divorce is already stated in the statutory regulations. Therefore, the party who interprets this way implements the Taklik Divorce by not pronouncing the taklik divorce, even though the taklik divorce was not signed. Some people interpret that taklik divorce is still needed in marriage.

It's just that the pronouncement is omitted. So, as an implementation of the divorce agreement, it is enough to sign it. Things like this are done as a way out of the notion of "not feeling good" with the pronouncement of taklik divorce after the marriage ceremony or the assumption that the existence of divorce tarnishes the sanctity of the marriage contract.

After deeply analyzing the fatwa of the Indonesian Ulema Council above, the authors conclude that the taklik divorce in marriage and its pronouncement has no urgency and is no longer relevant today. Related to violations of taklik divorce committed by the community, it is permissible to impose divorce because the husband left or the husband's whereabouts are unclear. To prevent harm to the woman, the wife may also ask for a divorce, if the husband leaves her even though the husband has assets to support her, provided that:

- The husband leaves his wife for reasons that are generally not accepted.
- It will cause suffering for the wife if the husband leaves.
- The husband goes to a foreign country, not his own, where he lives.
- It has passed a year, so it is dangerous for the wife.

Article 95 Regulations of the Religious Government state that a marriage is dissolved at the wife's request if the husband violates the promise of divorce or other commitments made at the time of the marriage contract and afterward. If the judge believes that the taklik divorce or additional agreement has been violated, the judge declares divorce on the wife concerned.

In line with the Fatwa of the Indonesian Ulema Council, according to the Compilation of Islamic Law that, taklik divorce is an agreement. This is based on the explanation in the Compilation of Islamic Law in articles 45 and 46 which contains that taklik divorce cannot be contrary to Islamic law. If the taklik divorce has been pronounced then it cannot be revoked.

Then it is reaffirmed in article 51, which contains that violating the taklik divorce agreement gives the wife the right to ask for an annulment of marriage and submit it as a reason for a divorce lawsuit.

Divorce can occur when the wife complains about the husband's violations to the religious court. If the court accepts the complaint and the wife can prove the husband's violation by paying a fine, the wife's lawsuit can be accepted. If the violation or promise that the husband does not fulfil can be proven, then one divorce falls. As stated in the taklik talak formula, this fine is received by the Religious Court on behalf of the husband to be used for social worship purposes.

It is easy for divorce to occur in married life and can be prevented by a vow of taklik divorce. In general, after the procession of the marriage contract, a husband is offered the reading of taklik talak as a form of agreement to his wife because divorce is only in the hands of the husband. For a wife, there is indeed an opportunity to propose taklik talak as a reason for divorce when at one time, the husband denies one of the contents of taklik talak. A wife can protect her rights with the existence of this special agreement. When the husband violates the contract, and the wife is not pleased with it, then the wife has the right to file a lawsuit for divorce because there is a violation of taklik talak.

Taklik divorce means hanging something that will happen, or it can be called a hanging divorce. According to the understanding of Indonesian law, divorce is a kind of pledge whereby the husband interferes with the occurrence of divorce against his wife if it turns out that, in the future, he violates one or all of the agreements made at the time of marriage.

The primary purpose of making sighat taklik divorce is to protect the rights of women (wives) against discriminatory treatment from a man (husband). With this taklik divorce, the wife gets the legality of legal protection if something happens in the future. If there is a violation of the contents of the sighat taklik, the wife can sue her husband in court with the reason for the taklik taklik violation. In Islam, divorce is permissible, but Allah SWT hates this act. Divorce harms the future, namely the continuation of the husband and wife relationship and the future of the children. Therefore Allah hates divorce even though it is lawful to do it.

5 Conclusion

Based on the results of research on the Analysis of the Fatwa of the Indonesian Ulema Council on the Legal Consequences of Violations of Taklik Talak in Momunu District, Buol Regency, the authors conclude that the legal consequences of violations of Taklik Divorce in Momunu District, Buol Regency are khulu' and the rights of post-khulu wives. Divorce through khulu can reduce the number of divorces and can not be reconciled. A direct depiction that the divorce suit (khulu') carried out by the wife releases the rights of the post-divorce wife. The next post-divorce wife's rights are mut'ah because the law views the act of filing for divorce by the wife as causing the release of the husband's responsibility. *Iwadh Taklik* Divorce means that the husband receives iwadh or ransom from the wife, who will file a divorce suit against her husband to the Religious Court.

According to the Fatwa of the Indonesian Ulema Council, the taklik divorce in marriage and its pronouncement has no urgency and is no longer relevant today. Regarding the violation of the committed divorce taklik, it is permissible to impose a divorce because the husband left or the whereabouts of the husband are unclear. Consider it as divorce ba'in, and consider it as fasakh. To prevent harm to the woman, the wife may also ask for a divorce if the husband leaves her, even though the husband has a property to support her.

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