



HUKUM ISLAM



HUKUM YANG HIDUP DI INDONESIA

**Bunga Rampai Tulisan
Para Partisipan 4th ICILI 2019 di Palembang**

Editor :
Heru Susetyo, S.H., M.Si., LL.M., Ph.D.
Vidya Nurchaliza, S.H.
Fahrul Fauzi



2020

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2020

Hukum Islam Hukum Yang Hidup Di Indonesia: Bunga Rampai Tulisan Para Partisipan 4th ICILI 2019 Di Palembang Editor Heru Susetyo, Ph.D., Vidya Nurchaliza, S.H. dan Fahrul Fauzi

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Dipersembahkan untuk Prof Abdullah Gofar, Ketua Panitia 4th ICILI 2019 di Palembang, yang wafat pada Senin, 24 Agustus 2020 di Palembang, semoga konferensi dan buku ini menjadi amal jariyah bagi beliau...



إِنَّا لِلَّهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ

**SEGENAP PENGURUS DAN PENELITI
LKIH FHUI MENYAMPAIKAN
TURUT BERDUKA CITA
ATAS WAFATNYA**



Prof. Dr. Abdullah Gofar, S.H., M.H
[Guru Besar Fakultas Hukum Universitas Sriwijaya]

"Semoga husnul khotimah dan Allah SWT menempatkannya di tempat yang paling indah bersama orang-orang beriman"

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**KATA SAMBUTAN
LEMBAGA KAJIAN ISLAM DAN HUKUM ISLAM**

Assalamualaikum warrahmatullahi wabarakatuh,

Alhamdulillah biidznillah atas ijin Allah SWT buku bungai rampai berisikan tulisan terpilih dari para partisipan 4th ICILI 2019 di Universitas Sriwijaya Palembang dapat juga diterbitkan.

Terimakasih banyak atas kontribusi partisipan, para pengajar dan peneliti Hukum Islam di Indonesia, panitia kegiatan dari Fakultas Hukum Universitas Sriwijaya Palembang (utamanya Bapak Dekan Dr Febrian, Bapak Wakil Dekan Dr Mada, dan segenap pimpinan FH Universitas Sriwijaya serta Bapak Almarhum Prof Dr. Abdullah Gofar, Bapak Taroman Pasya dan tim panitia lokal). Terimakasih juga kami sampaikan kepada Ibu Dr. Wirdyaningsih dan rekan-rekan dari Asosiasi Dosen Hukum Islam Indonesia (ADHII) selaku co-organizer dari 4th ICILI 2019 ini. Ungkapan terimakasih yang sama kami haturkan kepada seluruh pimpinan dan staf FHUI di bawah kepemimpinan Dekan Dr. Edmon Makarim dan the Dream Team, crew LKIH FHUI baik dosen, peneliti, alumni, maupun adik-adik LKIH Muda.

Semoga buku ini membawa pencerahan, kebaikan dan kemanfaatan buat kita semua. Utamanya untuk mendukung berkembangnya Hukum Islam selaku hukum yang hidup di Indonesia.

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Heru Susetyo, SH. LL.M. M.Si. Ph.D
Ketua LKIH FHUI

DAFTAR ISI

Halaman Judul	i
Halaman Penerbitan	ii
Prof Abdullah Gofar, Ketua Panitia 4 th ICILI 2019	iii
Susunan Kepanitiaan	iv
Kata Sambutan LKIH	v
Daftar Isi	vi

A. ARTIKEL ILMIAH

1. Model For Sustainable Forest Management By The Local Government Based on Ecological Wisdom Values in Riau Province
Oleh: Gusliana HB, Ikhsan, dan Ferawati 1

2. Eksistensi Hukum Adat Pasca penerapan Syariat Islam di Nangroe Aceh Darussalam (NAD)
Oleh: Luthfiyah Trini Hastuti, dan Anti Mayastuti 11

3. Penerbitan Wakaf Linked Sukuk sebagai Sarana Pelayanan Publik
Oleh: Anisah Marwah Nabilah, Alya Syafira, dan Dr. Gemala Dewi 21

4. Female Circumcision: A Power Relation between Culture or Religion
Oleh: Dr. Lanny Ramli, Putri Septyaning R.A. 33

5. Implementation Of *Istibdal* In Share Waqf In Indonesia
Oleh: Fahrul Fauzi, Velladia Zahra Taqiya, dan Andini Naulina R 45

6. Batasan Pemberian Wasiat Wajibah dalam Perkembangan Penerima Wasiat Wajibah di Indonesia (Studi terhadap Putusan Hakim di Lingkungan Peradilan Agama)
Oleh: Destri Budi Nugraheni 58

7. Quo Vadis Peraturan Daerah Bermuatan Keagamaan Dalam Kebinekaan Daerah Di Indonesia
Oleh: Ainunnisa Rezky A, Ira Apriyanti, dan M. Raditio Jati U. 72

8.	Due To Pregnant Married Laws By Presidential Instruction No. 1 Of 1991 Concerning Islamic Law Compilation Oleh: Mardalena Hanifah	88
9.	Analysis of Maqashid Shari'ah On Ta'lik Talak Agreement In Marriage Oleh: Anton Afrizal Candra	100
10.	The Blasphemy Agains Religion and The Solution Based on Islamic Law Oleh: Rini Apriyani	113
11.	Implementation of Agricultural Zakat on Food Security Oleh: Palmawati Tahir, dan Muhamad Muslih	126
12.	Tradisi Merariq Kodeq Menurut Hukum Perkawinan Islam (Studi Kasus Pernikahan Dini di Lombok Timur) Oleh: Dr. Wirnyaningih, dan Erizka Permatasari	154
13.	Children's Rights and The Legal Culture of Society On Unregistered Marriage (Case Study in Kampung kedondong, Pesawaran Regency, Lampung Province, Indonesia) Oleh: Amnawaty Hamid, dan Dina Juliana Anwari	175
14.	Reformasi Kekuasaan Peradilan Agama (Studi Telaah UU No. 7 Tahun 1989, UU No. 3 Tahun 2006 Dan UU No. 50 Tahun 2009 Tentang Peradilan Agama) Oleh: Dr. Nunung Rodliyah, Ledy Famulia, dan Ade Oktariatas K.	182

ANALYSIS OF MAQASHID SHARI'AH ON TA'LIK TALAK AGREEMENT IN MARRIAGE

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Abstrack

In Indonesian Marriage Laws there are arrangements regarding marriage agreements. For example in article 46 paragraph (3) KHI which states that the divorce ta'lik talak agreement is not an agreement that must be entered into in every marriage. Ta'lik talak is divorce which falls on a particular case or agreed upon. However, once the divorce agreement has been promised, it cannot be revoked. if the husband violates the divorce ta'lik talak, the wife can file a divorce claim on the grounds that the violation ta'lik talak divorce goes to court The Religious Court makes the ta'lik talak as the reason for determining the termination of marriage based on the fact of the trial in the Religious Court that the ta'lik talak is the reason for the termination of marriage. Unlike the case with a marriage agreement that is regulated in Law No.1 of 1974 concerning Marriage containing maqashid “ *hifzh al-nafs wa al-mal li ikhtiyati wa al-amanah wa al-kitabah li al-mashlahah* ” take care of themselves, treasure for caution so that they keep their promises in writing for the benefit of both parties. However, it is different from ta'lik talak if it is seen as substantially it does not contain a very urgent meaning, because besides its unclear legal basis, it also turns out that talak ta'lik is an ordinary agreement, the talaq taklik case is likened to procedure with divorce. This research is based on normative legal research with a statutory approach and approach maqashid syari'ah

Keywords: *Maqashid Shari'ah, Ta'lik Talak*

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I. Introduction

The break-up of divorce, in Indonesia generally uses the institution of Taklik Talak (divorced). But not a few who broke out because of the court verdict, among them is the defendant to divorce the reason of the violation of the Talak. The institution of Taklik Talak in Indonesia has existed since ancient times. The fact that there is to date also shows almost every marriage in Indonesia that is implemented according to Islamic religion always followed by the pronouncement of Sighat Ta'lik Thalak by husband. Despite his voluntary nature, but in this country, reading Talak Taklik seemed to be the obligation to be performed by the husband. Marriage is sacred. It is in accordance with the word of Allah SWT in Qs. An-Nisa: 19

يَأْتِيهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَحِشَةٍ مُبَيِّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴿١٩﴾

Translate: "O people of faith, not lawful for you to have women with a forced path and do not trouble them for taking back some of what you have given him, unless they do A real vile job. And come with them appropriately. Then if you do not like them, (then be patient) because maybe you do not like something, when God makes him a lot of goodness. (*mu'asyarah bil ma'ruf*)".¹

Allah SWT in this order commanded his servant to do good to his wife and his family. The spouse must know their rights and obligations. For the sake of binding and emphasizing the promise to the aforementioned Ma'ruf, there must be an expression of an appointment by one of the parties in which the pledge is not only a promise for his spouse, but also between himself and Allah ALMIGHTY. Witnessed by Angels when the contract is pronounced.

The essence of marriage is not an everlasting and lasting relationship, because the marriage Mahligai can still be dissolved if it contains principles and greater benefits. It is in line with the provisions of Article 19 of government regulation No. 9 year 1975 on the implementation of Law No. 1 year 1974 on marriage. The number of divorce that occurred today has described that the similarity of perception to the purpose of marriage between husband and wife is not much realized.

It was formulated in such a way that it was intended to protect the wives from being treated arbitrarily by the husband. If the wife is not ridha over the treatment of the husband, then the wife can file a divorce suit based on the embodied terms of Ta'lik mentioned in Ta'lik.

¹ Qs. An-Nisa' : 19 <https://islamedia.web.id/quran/an-nisa-ayat-19/>

There is therefore a rule that allows the holding of a marriage agreement called the Taklik Talak as set out in the compilation of Islamic Law (KHI), with the intention of championing the rights of the generally unknown wife, with To some conditions that have been formulated. It is also aimed at reducing the likelihood of possession of excessive wives, especially reducing domestic violence.

The Taklik Talak apparently gave birth to a contoverision, both among Fuqaha ' and the observers of Islamic law. In the meantime, this problem is necessary and relevant to be discussed so that the application is completely compliant with legislation and can fully fulfill and provide legal certainty for the Seekers of justice.

In Indonesia, the marriage broke out of divorce in court, both husband divorced his wife (divorced) and wife sued her husband (divorce) and not a few who broke down to divorce due to violation of Talak Taklik. The existence of Talak Taklik in Indonesia has existed since the first time, it is proven that almost all the Indonesian marriage that is carried out according to Islamic religion always followed the pronounciation of Taklik Talak shigat by husband. Although the Shigat must be willingly, but it becomes as if the obligation has to be done by the husband Shigat taklik.

Formulated in such a way that the wife obtains an unarbitrary treatment from her husband, if the wife is treated Sewenangwenang by her husband and with certain circumstances, the wife is not Ridha, then she can file a lawsuit Divorce to the religious court by reason husband has violated the Taklik Talak. The discussion of the Talak Taklik as the reason for divorce, has been talked about by Fuqaha in various books of fiqh, and it turns out they are different opinions about it. The difference is still coloring the development of Islamic law. Among other things, there are two opinions, namely one that allows absolute and also allows with certain conditions.

However, whether at this time the rule is still urgent if it is still implemented and how it is relevant to the many cases of divorce in the religious court. Then what is in the direction of the Treaty of Ta'lik Talak in marriage, in other words whether it contains benefits. Therefore, researchers want to research further with a statutory and philosophical approach.

II. Problem formulation

Based on the background that has been outlined, it can be taken a formula of the following problems:

1. Does Ta'lik Talak include a marriage treaty ?
2. How is the Ta'lik Talak in juridical ?
3. How does Maqashid Syari'ah in Ta'lik Talak's setting ?

III. Research methods

Based on the formulation of the problem, then the type of research used

is normative legal research (doctrinal-legal research). Normative legal research is a process to find the rule of law, principles of law and the doctrines of the law to answer the issue of the law faced so that the argument is obtained, a theory or a new concept as a prescription in Solve the problem²

In this study there are 2 (two) methods of approach used, namely of approach and conceptual approach. The of approach is the study of legal products. A conceptual approach is an approach used to gain clarity and scientific justification based on concepts of law sourced from the principles of the Law.³

The way of processing a legal material is inductive is to draw conclusions from a concrete problem that is specific to the abstract problems that are common. Furthermore, the existing legal materials are analyzed deskriptif which begins by grouping the same legal materials according to sub-aspects and subsequent conducting interpretations to give meaning to each sub-aspect and relation to each other.⁴

Data collection is very closely related to the data source, because through the collection of this data will be obtained data needed to be further analyzed as expected. The data collection techniques used in this research are library research.

The literature research aims to examine, research, and trace secondary data including primary materials, binding materials; Secondary materials that provide explanations on primary legal materials; Materials that provide instruction and explanation to primary and secondary legal materials.⁵

Analysis of data is done qualitative normative IE analysis used without using the number or formula of statistics and mathematics means presented in the form of a description. Then after that analysis of the whole aspect to understand the meaning of the relationship between the other aspects and with the whole aspect that is the subject of the research problems conducted inductive so as to give an overview Results in full.⁶

IV. Results And Discussion

A. Ta'lik Talak Marriage Treaty

To measure whether the Taklik is a treaty or not, we must see article 1320 of the civil law that contains the terms of the agreement that is (1) agreed to the binding of himself, (2) the capable of those who bind themselves, (3) a certain matter, and (4) A cause or a lawful reason. The terms of the agreement as mentioned above may be categorized into two categories, which are subjective

² Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2005, hlm. 35.

³ *Ibid*, hlm. 138

⁴ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, hlm. 166.

⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, cetakan 3, 1998) hlm. 52

⁶ Bahder Johan Nasution, *Op.cit.*, hlm. 166.

terms and categories of objective terms. The subjective terms, namely the condition agreed to those who bind themselves and the proficiency requirement to make an agreement. If a subjective condition cannot be fulfilled then the agreement may be cancelled (*Vernietigbaar*). The objective is the condition of a certain thing and the condition of a lawful cause. If in an objective agreement is not met, the agreement is null and void.

The word of agreement for those who bind themselves is a free will as the first requirement for a legitimate agreement. In the *Taklik Talak*, husband and wife have agreed without compulsion to sign the mutual agreement contained in the concept of the *Talac*, because *Taklak* is not a necessity for the continuity of a marriage.

Proficient means that both parties must be legally competent to act alone. In the law of marriage, a person may be able to conduct a marriage if he is 19 years old and 16 years old for women, meaning that the wife is mature and legally competent to do legal action.

A certain point of intent is promised in a covenant must be a thing or an item that is quite clear or certain. In the *Taklik* of the *Talak*, the promised is clear that is drawn from the content of the *Talak*.

A cause or a halal reason means that the Treaty is not prohibited or not contrary to statutory regulations. Because the existence of the *Talak Taklik* to protect the wife from the husband Deeds, the existence of the *Taklik Talak* is not contrary to legislation. Pursuant to article 1320 of the civil law, the divorce is a treaty.

According to *Az-Zaqra*, the Agreement (AKAD) in jurisprudence terminology is a legally binding conducted by two or more parties who alike desire to bind themselves.⁷

Ali Al-Sayis further commented that the Treaty in Islam was not only a party treaty, but also a unilateral agreement, even including a promise to God. In relation to the scope of this agreement Ibn Araby expressed his opinion, there are 5 (five) things that belong to the category of agreement, namely;

- a. Agreement in general.
- b. Oath.
- c. The obligation that God has charged to his servant.
- d. Marriage contract, partnership (*Syirkah*), buying and selling, oath and pledge to Allah.
- e. Alliance on the basis of mutual trust.⁸

Sayid Sabiq elaborates in the *Sunnah* of *fiqh* that the marriage treaty referred to as *TA "lik Talak* is two kinds of forms:

⁷ Abdul Aziz Dahlan (Ed), *Ensiklopedi Hukum Islam Jilid I*, PT. Ichtiar Baru van Hoeve, Jakarta, 2000, hlm. 63.

⁸ Abu Zakariya Muhammad ibn Abdullah Ibn Araby, *Ahkam al-Qu'an Juz II*, Dar al-Ma'rifah, Beriut, hlm. 524-525.

- a. Ta'lik referred to as a promise, because it contains a sense of doing work or leaving an act or strengthening a word.
- b. And Ta'lik Talak like this is called Ta'liq Qasam i.
Ta'lik was meant to drop the Talak when the Ta'liq fulfilled the terms. Ta'liq as this is called Ta'liq Syarti.

Of the two forms of Ta'lik talak above can be distinguished by the words spoken by the husband. At Ta'liq Qasamy, the husband vows for himself. Meanwhile, in the case of the husband and the Talak, he submitted the condition with the intention if the condition is present, the husband's Talak on his wife.

The religious court as a judicial institution for people who are Muslims have given a legal view by justifying the reasons for divorce outside the legislation can be formulated several things:

First, a divorce in its essence as an agreement passed on to the terms with the main purpose of protecting the wife from the act of arbitrary husband, having a strong legal basis, which is the evidence of the book Holy Qur'an and Hadith.

Secondly, as the reason for divorce has been in the Islamic law for a long time, since the time of Sahabat. Most scholars agree on the validity and until now practiced by the Muslims in various parts of the world, especially in Malaysia and Indonesia.

Thirdly, the substance of the talak that has been established by the Minister of Religious AFFAIRS, is deemed adequate enough, viewed from the principle of Islamic law or the soul of the marriage ACT.

Fourth, in Indonesia, a formal juridical Taklik institution has been valid since the Dutch colonial era, based on the Staatblaad 1882 No. 152 until now after independence before the establishment of the marriage ACT even before the retreat UU No. 7 year 1989. Notwithstanding the Staatblad 1882 No. 152 which gives a juridical basis the validity of the law of the Taklik has been revoked by LAW No. 7 year 1989 at present with the enactment of Islamic Law compilation through INPRES No. 1 year 1991 which among others also On the Taklik of Talak, the Taklik Talak can be categorized as written law.

In practice in the religious court either as a treaty or a divorce reason, the judge expressly reconsider it in its verdict. The judges should sharpen efforts to confine, qualify, and classidate the matter, so that the tendency for this to lead or direct the case of divorce is a matter of deductible talak.

Based on the aforementioned matters, the provisions of the event law may be executed correctly, and the provisions as required by article 62 paragraph (1) of LAW No. 7 year 1989, Jo. UU No. 3 year 2006 on religious court namely: any determination and judgment, after containing the reasons or the basics, must also contain certain articles of the relevant regulations, can be fulfilled.

On this basis also the author argues that Taklik Talak as the reason for divorce is relevant and justifiable according to law.⁹

Divorce is the right of a man, provided he applies reasonably to his wife. The reasonable behaviour of a man against his wife was that when he wanted to live with his wife, then he had to properly place it, respecting the rights of his wife, and applying compassion to him. When there was no way for him to continue his life with his wife, he had to politely and kindly divorce him.

In practice in the religious court either he as a marital agreement or as the reason for divorce the judge must expressly recount it in the verdict. So that the tendency to lead or cause the case of divorce is a matter of Taklik Talak can be reduced. Therefore, according to the benefits for both husband and wife, the position of the Talak Taklik in the bonds of matrimony is very important. The opinion of Murtadha Muthahhari, that a normal and normal divorce is like a normal birth, which itself is normally normal, but a divorce from a husband who does not want to fulfill his obligations and neither will divorce His wife was an unnatural and abnormal birth, which required a physician or surgeon (judge). The majority of Islamic scholars Based on. God's Word QS. An-Nisa': 128

وَإِنْ أَمْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا
صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ
كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

translate : “And if a woman is worried about nusyuz or the indifferent attitude of her husband, then it is not why for both of them to hold a truth peace, and the peace is better (for them) even though the man is in the habit of filer. And if you get along with your wife well and nourish you (from Nusyuz and indifferent attitudes), then indeed Allah is omniscient of what you do”.

In the Qur'an it is said that Nusyuz can be done by the wife as well as by the husband. Therefore, understanding that says Nusyuz only about the wife is distorting and violate the verse. Actually nusyuz it is disobedience to God, but Nusyuz is often understood as disobedience to wife on husband. If we return to Q.S. al-Nisa (4): 128 above, Nusyuz precisely imposed on the husband. A husband must fear Allah SWT. So also the wife must fear Allah SWT, not afraid of the husband. Reflection of the fear of Allah SWT is to do good against his spouse. Husbands do well against his wife, as well as vice versa. Both strive to optimally put forward the best attitude to the partner with the belief that it is the command of Allah SWT to man in marital life. The meaning of Nusyuz here is

⁹Pada Pasal 116 (g) Bab VI dalam Kompilasi Hukum Islam dikatakan bahwa alasan perceraian adalah suami melanggar taklik talak. Lihat Mohd. Idris Ramulyo, *Hukum Islam Perkawinan (Suatu Analisis Dari Undang-Undang No.1 Tahun 1974 dan Kompilasi Hukum Islam)*, Bumi Aksara, Jakarta, 1996, hal. 153.

to abandon the obligation of a husband or wife. In the broad sense nusy....¹⁰

B. The foundation of the juridical Talak

Normatively, a man who is married has also promised to God SWT to treat his wife well, keeping the glory Sertatidak persecute it. The power that can be played from a Talak Taklik in securing the rights of the wife and protecting them from the discriminatory and arbitrary treatment of the husband can briefly be described the following. **First**, it is to make a marriage agreement between the prospective husband and the wife when doing the marriage contract so that the two do not do anything that could be a source of unfulfilled women's Rights (wife) and likely to be a source of discriminatory and/or arbitrary treatment. **Second**, certainly in line with the first, listed in the Talak Taklik that can be the reason for separation (divorced) what can be the cause of the wife's rights and/or any treatment that can be the source of treatment Discriminatory and arbitrariness against the wife.¹¹

In the marriage LAW No 1 year 1974 no article is found specifically and governs the taklik of the Talak in its capacity as a marital agreement as well as the reason of divorce. Article 29 This law has been allowed for both brides to enter into a written agreement before marriage. In his explanation in article (29) emphasized that the marriage agreement in question does not include the Taklik Talak in it. The Sound of article (29) is as follows; 1) The time before the marriage held both parties to the Joint Agreement may enter into a written agreement ratified by the Marriage Registrar's officer. After which the content is applicable to third parties as long as the third party is snagged; 2) Such agreement cannot be confirmed when it violates the boundaries of law, religion and morality; 3) The agreement is effective since the marriage is established; and 4) during the marriage...

As for the reasons for divorce LAW No. 1 year 1974 also does not mention the Taklik Talak as the reason of divorce. The reason for divorce according to this act in the explanation of Article 39 paragraph (2) is: one of the parties to commit adultery or to be a drunkard, a divitor, gambler and so forth and difficult to heal. One of the parties left the other two consecutive years without the permission of the other party and for no legitimate reason or because of the matter beyond its terms. One of the parties received a five-year sentence or a more severe punishment after the marriage took place. One of the parties commits an atrocities or severe abuses that harm the other party. Either party got disability or illness that resulted in unable to carry out obligations as husband and wife. Between husband and wife there is a constant and quarrel and there is no more hope in the household.

¹⁰ *Ibid*

¹¹ Hasanuddin, Keduduksn Hukum Taklik Talak dalam Perkawinan Ditinjau dari Hukum Islam dan Hukum Positif, <http://jurnal.radenfatah.ac.id/index.php/medinate>

In the fatwa signed by the chairman of MUI: Hasan Basri, the secretary of MUI: H. A. Nazri Adlani, and the chairman of Ibrahim Hosen's Fatwa commission, said that "*the mention of Sighat Ta'liq Talaq, which historically to protect the rights of women (wives) That is when there is no legislation about it, now this talaq sighat Ta'liq pronunciation is no longer needed. For the construction towards the establishment of a happy family already in the form of BP4 from the central level up to the subdistrict level*".

In the compilation of the Islamic Law (KHI) Taklik Talak is governed by article 45 as follows: Both prospective brides may enter into a marriage agreement in the form of: (1) Taklik Talak, and (2) Other agreements not contrary to Islamic law. Then in article 46 states: (1) The contents of the Talak shall not be contrary to Islamic law. (2) When the conditions required in the Talak Taklik actually occur later, not in itself the Talak falls. In order to seriously fall, the wife must submit her issue to the religious court. (3) The Treaty of divorce is not an agreement that must be held in every marriage, but once the taklik of the Talak has been promised can not be revoked.

According to KHI, the Treaty of Talak is not a necessity in any marriage. This we can read in section 46 of clause (3), "*The Treaty of divorce is not an agreement that must be held on every marriage, but once the Taklik of the Talak was promised to be revoked.*" Accordingly, according to KHI, it clearly mentions that the Treaty of Talak is not a necessity for every Muslim.

In section 51 It is mentioned that the breach of the agreement entitles the wife to request the cancellation of marriage and submit it as the reason of the divorce lawsuit to the religious court. With regard to divorce the Islamic Law compilation (KHI) mentions that the Talak Taklik could be used as a reason for a wife to file a divorce lawsuit into a religious court. Article 116 KHI mentions several reasons used to commit divorce. The reasons mentioned in KHI point A to F are exactly the same as the reason for Law No. 1 of 1974 which has been outlined above. The difference in the value of KHI lies in addition to the points (g) of the husband in violation of the Taklik Talak and (h) the transition of religion or apostasy that causes disharmony in the household.

The Taklik Talak that is valid in Indonesia has been arranged and to facilitate the implementation of the provided text which contains the written conditions and the VAT only offers to the bride whether a Taklik Talak or not read. If it is read, the marriage certificate will be treated as proof of the husband's promise before the wife. If the husband is not willing to read the Talak Taklik, then the text of Taklik Talak available is crossed by the officers as a sign of the husband does not read Taklik Talak. Because the reading of the Talak Taklik was only recommended, the husband was entitled not to read it before the wife's bride¹²

¹² Khoiruddin Nasution, *Menjamin Hak Perempuan dengan Taklik Talak dan Perjanjian Perkawinan*, Jurnal UNISIA, Vol. XXXI No. 70, Desember 2008, hlm. 339.

C. Analysis of Maqashid Shari'a in Ta'lik Talak

The fact in the field is seen as many divorce caused by the husband's neglect of the wife in terms of management, provision, and appreciation for women. In this case it appears to be the function of the Talak Taklik that bind the husband to his wife.

From one side of the husband will be more consistent and responsible for the kelangsungan of the household and on the other side the wife will be much appreciated. The husband's transgression of the matters contained in the Taklik of the divorce is already the reason for the wife to appeal and Sue in Talak.

Although there are still some contradictory opinions on the existence of current Taklik, but the influence of appreciation for women in households is greater.

According to Abdul Karim Amrullah, Taklik Talak institution can help women from deeds arbitrariness men. As many of them took place in the Minangkabau region, many women who are Terkatung-katung, have never been a woman and have never been given a living by a husband, but not also divorced. When they complain to the court, they are actually blamed for the difficulty of the religious judge granting a divorce lawsuit from them, when they are actually abandoned by her husband, then many of them are apostate, by itself Tight marriage with her husband. Therefore in the year 1916, to liberate women from men who were not responsible, on his proposal in the region of Minangkabau enforced Taklik Talak.¹³

Mahmoud Syaltout in the books comparison book explains that Islamic jurists argue that the Treaty of Talak is the best way to protect women from the husband's misdeeds. If a husband has entered into a treaty of divorce, when the marriage contract is executed and the form of the agreement has been agreed together, then the Treaty of the Talak is considered valid for all forms of Taklik. If the husband violates the agreed agreement then the wife may request to be divorced to the judge who has been appointed by the authorities.¹⁴

Therefore, according to the benefits for both husband and wife, the existence of the Taklik Talak is very important. Murtadha Muthahhari illustrates a normal and normal divorce, which is an abnormal birth, which is normally normal, but a divorce from a husband who does not want to carry out its obligations and does not want to divorce His wife is an unnatural and abnormal birth, where a physician or surgeon (judge) is required.¹⁵

In accordance with Islamic teachings, a husband has the obligation to

¹³ Hamka, *Tafsir al-Azhar*, Juz V, Panji Masyarakat, Jakarta, 1981, hal. 71.

¹⁴ Daniel S. Lev, *Islamic Court in Indonesia (Peradilan Agama Islam di Indonesia)*, terjemahan H. Zaini Ahmad Noeh, Cet. II., PT. Intermasa, Jakarta, 1986, hlm.4

¹⁵ Murtadha Muthahhari, *The Rights of Women in Islam*, terjemahan M. Hashem, Penerbit Pustaka, Bandung, 1997, hlm. 197.

nurture his wife best, meaning the right of the wife is to obtain maintenance as good as from her husband. The existence of a Talak Taklik when reviewed from the law of the Agreement, is a treaty that when violated caused juridical consequences that the husband has committed a deed or a wantachievement, so that according to the author of the wife can Sue the husband to court to prosecute his rights that have been deprived by the husband according to the sound of the existing Talak Taklik. It is based on the argument that the Talak's Taklik is a treaty that is mutually agreed upon by the husband or wife.

V. Conclusion

Ta'lik Talak in marriage as one of the marriage agreements. As one of the marriage treaties of Talak has a specificity compared with the marriage treaty in general, that is the Taklik Talak once spoken and promised can not be revoked by any party also including the husband who Pronounce it

Sighat Taklik Talak As the reason of the divorce lawsuit has since become jurisprudence in the courts of religion even to date with a very many number of religious courts decided the divorce due to violation of Talak Taklik.

From the side of the Maqashid Syari'ah Ta'lik Talak for Wives is an attempt to ensure the right of the wife as well as protecting and safeguarding them from discriminatory acts and arbitrariness husbands who have the absolute right in divorce. On the other hand the benefits of Sighat Taklik Talak is as motivation and commitment of the husband to Mu'asyarah bil Ma'ruf for the realization of a family that is Sakinah, Mawaddah and Rahmah.

The author advises that the Talak Taklik is one form of legal protection for the wife of the act arbitrariness husband who does not have any good i'tikad in his household. Therefore, according to researchers it is necessary to make a strong and clear legal umbrella. The arrangement of the Talak Taklik is expected not only in the compilation of Islamic law and the Ministerial regulation of religion, but must also be firmly regulated in the Marriage Act stating that the Taklik Talak is the agreement in Marriage.

References

Book

Abdul Aziz Dahlan (Ed), 2000, *Ensiklopedi Hukum Islam Jilid I*, PT. Ichtiar Baru van Hoeve, Jakarta

Abdul Wahab Khallaf, 1986, *Ilmu Ushul al-Fiqh*, (Kairo:Maktabah al-Da'wah al-Islamiyah

Abu Zakariya Muhammad ibn Abdullah Ibn Araby, tt, *Ahkam al-Qu'an Juz II*, Dar al- Ma'rifah, Beriut

Ahmad Rofiq, 2013, *Hukum Perdata Islam di Indonesia* , Jakarta: Rajawali Pers.

- Ahmad al-Raisuni, 1992, *Nadhariyât al- Maqāšid 'Inda al-Imâm al-Shâthibi*, (Beirut: Muassasah al-Jami'ah
- Al-Ghazali, tth, *Al-Mustashfa min Ilm al-Ushul*, Beirut: Dar al-Fikr,
- Amir Mu'alim dan YUSDANI, 2001, *Konfigurasi Pemikiran Hukum Islam*, Yogyakarta, UII Press
- As-Syathibi, tt, *al-Muwafaqat fi Ushul al-Syari'ah*, (Riyadh: Maktabah al-Riyadh al-Haditsah
- Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung
- C.S.T. Kansil., 1983, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* , Jakarta: PN Balai Pustaka.
- Daniel S. Lev, 1986, *Islamic Court in Indonesia (Peradilan Agama Islam di Indonesia)*, terjemahan H. Zaini Ahmad Noeh, Cet. II., PT. Intermasa, Jakarta
- Hamka, *Tafsir al-Azhar*, 1981, Juz V, Panji Masyarakat, Jakarta
- Khoiruddin Nasution, 2008, *Menjamin Hak Perempuan dengan Taklik Talak dan Perjanjian Perkawinan*, Jurnal UNISIA, Vol. XXXI No. 70, Desember
- Mohd. Idris Ramulyo, 1996, *Hukum Islam Perkawinan (Suatu Analisis Dari Undang-Undang No.1 Tahun 1974 dan Kompilasi Hukum Islam)*, Bumi Aksara, Jakarta
- Murtadha Muthahhari, 1997, *The Rights of Women in Islam*, terjemahan M. Hashem, Penerbit Pustaka, Bandung
- Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta, Kencana
- Sayid Sabiq, 1990, *Fiqh Sunnah*, Jakarta: Gema Insani Press
- Slamet Abidin dan Aminuddin, 1999, *Fiqh Munakahat 1*, Pustaka Setia, Bandung.
- Soerjono Soekanto, 1998, *Pengantar Penelitian Hukum*, Jakarta , UI Press.

Victor Situmorang, 1988, *Kedudukan Wanita di Mata Hukum*, Cetakan I, PT Bina Aksara, Jakarta

Wahbah al-Zuhaili, 1986, *Ushul al- fiqh al-Islamy*, Beirut: Dar al-Fikr

Muhammad Saïd Ramdân al-Bûtiy, *Dawâbit al-Maslahat fî al-Syarāh al-Islâmiyyah*, (Beirut: Muassasah al-Risalah, 2001)

Zainuddin Ali, 2006, *Hukum Perdata Islam di Indonesia*, Jakarta: Sinar Grafika.

Dictionary

M. Abdul Mujieb, dkk., 1994, *Kamus Istilah Fiqih* , Jakarta, Pustaka Firdaus.

Sudarsono, *Kamus Hukum*, tt, Jakarta: Rineka Cipta.

Regulations

R. Subekti dan R. tjitrosudibio, 2008, *Kitab Undang-undang Hukum Perdata*, Jakarta: PT. Pradnya Paramita

Internet

<https://islamedia.web.id/quran/an-nisa-ayat-19/> diakses tanggal 2 September 2019 jam 10:20 WIB

<http://aliranim.blogspot.co.id/2012/04/taklik-talak-dalam-perspektif-islam.html> diakses tanggal 2 September 2019 jam 10:40 WIB

<http://jilbab.or.id/archives/78-sighat-taklik-talakmestikah-di-ucapkan/>, diakses tanggal 3 September 2019 jam 08:00 WIB

<http://jurnal.radenfatah.ac.id/index.php/medinate> diakses tanggal 3 September 2019 jam 09:15 WIB

<http://tafsirq.com/4-an-nisa/ayat-19> diakses tanggal 3 September 2019 jam 13:00 WIB

hukum.unsrat.ac.id/ma/kompilasi.pdf, diakses tanggal 2 September 2019 jam 08:19 WIB



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