

Taklik Talak as a Form of Reforming Islamic Family Law in Indonesia

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Abstract

In the context of family law in Indonesia, *taklik talak* (divorce by mutual consent) is a legal reform that aims to protect the rights of wives and address the imbalances that often occur in divorce cases. However, the effectiveness of this instrument is often hindered by low legal literacy and cultural stigmas that perceive *taklik talak* as a mere formality or even an "ill omen" at the beginning of a marriage. This study aims to analyze *taklik talak* as a legal reform instrument and evaluate the sociological barriers that prevent its optimal implementation. Using a juridical-normative approach through literature study and critical synthesis of various journals and legislation (including the Compilation of Islamic Law), this research yields three main findings. First, *taklik talak* is a written legal innovation that serves as a dual protection tool with a preventive function (*daf' al-mafāsīd*). Second, this instrument effectively realizes gender justice by ensuring the fulfillment of the wife's financial rights as regulated in Article 149 of the KHI. Third, the optimization of the public interest (*maṣlahah*) in *taklik talak* is still hampered by sociological challenges, such as taboo views in society that trigger a gap between progressive regulations and field reality. The conclusion indicates that sociological intervention through in-depth education is required to shift public perception so that *taklik talak* is understood as a family risk management tool to protect women's dignity.

Keywords: Gender Justice, *Maṣlahah*, Legal Reform, *Taklik Talak*, *Takḥṣīs al-Qadā'*.

Abstrak

Dalam konteks hukum keluarga di Indonesia, *taklik talak* hadir sebagai pembaharuan hukum yang bertujuan melindungi hak-hak istri dan mengatasi ketidakseimbangan yang sering terjadi dalam perceraian. Namun, efektivitas instrumen ini sering kali terhambat oleh rendahnya literasi hukum serta adanya stigma kultural yang menganggap *taklik talak* sebagai formalitas atau bahkan "doa buruk" di awal pernikahan. Penelitian ini bertujuan untuk menganalisis *taklik talak* sebagai instrumen pembaharuan hukum dan mengevaluasi hambatan sosiologis yang menghalangi implementasinya secara optimal. Menggunakan pendekatan yuridis-normatif melalui studi pustaka dan sintesis kritis terhadap berbagai jurnal serta perundang-undangan (termasuk Kompilasi Hukum Islam), penelitian ini menghasilkan tiga temuan utama. Pertama, *taklik talak* merupakan inovasi hukum tertulis yang berfungsi sebagai alat perlindungan ganda dengan fungsi preventif (*daf' al-mafāsīd*). Kedua, instrumen ini secara efektif mewujudkan keadilan gender dengan menjamin pemenuhan hak finansial istri sebagaimana diatur dalam Pasal 149 KHI. Ketiga, optimalisasi kemaslahatan *taklik talak* masih terbentur tantangan sosiologis berupa pandangan tabu di masyarakat yang memicu kesenjangan antara regulasi progresif dengan realitas di lapangan. Simpulan penelitian menunjukkan bahwa diperlukan intervensi

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sosiologis melalui edukasi mendalam untuk mengubah persepsi masyarakat agar taklik talak dipahami sebagai manajemen risiko keluarga demi perlindungan martabat perempuan.

Kata Kunci: Keadilan Gender, *Maṣlahah*, Pembaharuan Hukum, Taklik Talak, *Takhṣīs al-Qadā'*.

INTRODUCTION

In Islamic teachings, marriage is not only seen as a sacred bond between two individuals but also possesses legal aspects aimed at forming a harmonious and equitable family. However, in practice, divorce often results in imbalances, particularly for women. Within the Indonesian family law system, *taklik talak* (conditional repudiation) emerged as a legal reform intended to protect the rights of wives in marriage. Generally, the *taklik talak* agreement is a promise uttered by the husband after the marriage contract (*akad nikah*) and is recorded in the marriage certificate, in the form of a divorce that is suspended upon certain conditions that may occur in the future. This vow holds significant value as it functions as a preventive mechanism against unilateral divorce practices and provides legal consequences if the husband fails to fulfill his obligations as required.¹ Therefore, research regarding the implementation of *taklik talak* becomes relevant and important to examine the extent to which this legal instrument is effective in achieving its goals and providing adequate protection for women.

The existence of *taklik talak* needs to be strengthened considering that women's positions are often disadvantaged within household dynamics. Although legal channels through *cerai gugat* (divorce by petition) are available, challenges such as evidentiary hurdles and negative societal perceptions often hinder women's access to justice. Consequently, *taklik talak* serves as a concrete legal solution providing protection for the wife in the event of violations of fundamental obligations by the husband, such as economic exploitation or acts of violence. More than just a promise, *taklik talak* is an embodiment of the state's presence in ensuring gender equality within the domestic sphere. This mechanism is crucial for protecting the wife from deviant husband dominance. Unfortunately, the utilization of this instrument is still constrained by public perceptions that regard it merely as an administrative complement.²

Viewed from a juridical aspect, the presence of *taklik talak* in the Compilation of Islamic Law (KHI) is a manifestation of the adaptation of Islamic Sharia to the sociocultural reality in Indonesia. Through this regulation, the state provides a legal mechanism for the wife to independently terminate the marriage bond if there is a breach of the agreed-upon promise. This is crucial so that the legal position of a wife is no longer

¹ Syaefuddin Haris, "Kedudukan Taklik Talak Dalam Perkawinan Islam Ditinjau Dari Hukum Perjanjian," *Arena Hukum* 6, no. 3 (2022): 342, <https://doi.org/10.21776/ub.arenahukum.2013.00603.3>.

² Noor Izzati Amelia et al., "Gender Justice in Sighat Taklik Talak: Towards Equal Legal Protection for Husband and Wife in Indonesia," *SIGn Jurnal Hukum* 7, no. 1 (2025): 489–500.

under the absolute dominance or dependence of the husband's will in matters of divorce.³ Furthermore, *taklik talak* holds great significance in minimizing the possibility of authority exploitation by the husband, while simultaneously increasing the bargaining power of the wife in fighting for economic rights that are often neglected. Through this mechanism, *taklik talak* transforms into a crucial element that stimulates the emergence of communication based on gender equality in domestic life.

Previous research has made significant contributions to understanding *taklik talak* in Indonesia. In-depth studies regarding *taklik talak* and the protection of women's rights have comprehensively examined various legal and social aspects. Naufal initiated this discourse through a conceptual comparative study comparing the views of various schools of thought (*mazhab*) with positive law to strengthen the legitimacy of *taklik talak*, both from theological and juridical sides.⁴ Continuing this point, Padlianor emphasized that the *taklik* promise is a very important tool for reducing potential family conflicts by providing early mitigation against the possibility of neglecting the wife's rights.⁵ On the other hand, Asrianto et al. (2025),⁶ Farmawati et al. (2024),⁷ Jalil et al. (2025),⁸ and Agustini (2023)⁹ have continuously constructed *taklik talak* as a crucial element in the family resilience scheme to minimize the prevalence of Domestic Violence (KDRT). Through this instrument, the ethical boundaries and behavior of the husband are strictly defined from the beginning of the marriage bond. Analysis from Muthoin also provides reinforcement through a gender justice review, stating that the function of *taklik talak* is to ensure a balanced relationship between husband and wife. This mechanism is crucial in protecting women from the threat of marginalization and unjust dominance in the domestic environment.¹⁰

While the aspects of comparison and gender justice in *taklik talak* have been widely mapped by previous researchers, this study identifies a gap that has not been touched upon in depth. The majority of literature tends to view *taklik talak* only as an administrative legal instrument for dispute resolution but pays less attention to social resistance in the form of taboos within society. Society often misinterprets this vow as a

³ Qurrotul Aini and Wildatus Sholehah, "Peran Taklik Talak Dalam Melindungi Hak-Hak Perempuan Dalam Pernikahan," *Al-Fattah: Jurnal Hukum Dan Pranata Sosial* 1, no. 1 (2024): 40.

⁴ Muhammad Mirza Naufal et al., "Jurnal Pendidikan Agama Islam Al-Amin Taklik Talak Dalam Perspektif Mazhab Zahiri, Fiqih Syafi'iyah Dan Hukum Positif Indonesia: Analisis Komparatif Dan Novelty Konseptual," *Jurnal Pendidikan Agama Islam Al-Amin* 2, no. 1 (2025): 100–110.

⁵ Padlianor, "Urgensi Sighat Taklik Sebagai Upaya Mencegah Disharmoni Dalam Keluarga," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 3 (2025): 83–99.

⁶ Lalu Asrianto et al., "Mencegah Kekerasan Dalam Rumah Tangga (KDRT)," *ASAS WA TANDHIM: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan* 4, no. 2 (2025): 261–74.

⁷ Cintami Farmawati et al., "Gender Aware Therapy Based on Mubadalah for Family Resilience Pasca Domestic Violence," *JOUSIP: Journal of Sufism and Psychotherapy* 4, no. 2 (2024): 133–48, <https://doi.org/10.28918/jousip.v4i2.9495>.

⁸ Abdul Jalil Jalil et al., "Taklik Talak as a Safeguard for Women's Rights within the Family: A Hermeneutic Analysis of Legal Perspectives," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 7, no. 1 (2025), <https://doi.org/10.37876/adhki.v7i1.142>.

⁹ Sri Agustini, "KDRT Dalam Hukum Indonesia Dan Peranan Ketahanan Keluarga Guna Menekankan Kasus KDRT," *Ensiklopedia of Journal* 5, no. 3 (2023): 559–64.

¹⁰ Muthoin, "Taklik Talak Dalam Perspektif Gender," *MUWAZAH* 4, no. 2 (2020): 264–76.

prayer of misfortune for the newlyweds. Herein lies the novelty of this research, namely its effort to offer a solution in the form of a sociological educational revolution. The author views *taklik talak* as a dynamic instrument in family law reform that must be synergized with cultural understanding so that its function as a protector of women's human rights can be realized according to the principles of *maslahah* (public interest).

RESEARCH METHOD

This research employs a juridical-normative approach. This approach was chosen because the focus of the research is to examine legal norms within Islamic family law as well as relevant laws and regulations, particularly those related to *taklik talak*. Therefore, this research is a type of library research, in which data is collected and analyzed from written materials. The research materials consist of primary and secondary data. Primary data are obtained from laws and regulations, such as the Compilation of Islamic Law and other statutes governing marriage. Secondary data are collected from various literatures, including relevant scientific journal articles, books, and other online sources. The data collection procedure is conducted by identifying and examining data from the various sources mentioned. The collected data are then analyzed using qualitative analysis. This analysis involves selecting relevant information, then describing the findings narratively and drawing conclusions to answer the existing research problems.

RESULTS AND DISCUSSION

The Existence of *Taklik Talak* in Indonesia

Taklik talak consists of two words: "*taklik*" and "*talak*." Etymologically, this term originates from Arabic, where "*ta'liq*" means an agreement (especially in the context of marriage), and "*talak*" means release or divorce in Islamic law carried out at the husband's will.¹¹ In Islamic legal terminology, according to Kamal Muchtar, *taklik talak* is a husband's vow that suspends a divorce (*talak*) upon his wife if he violates one or all of the pledged promises. Ahmad Azhar Basyir argues that *taklik talak* is the postponement of the fall of *talak* based on the occurrence of matters mentioned after the marriage contract. In Indonesia, this agreement is recognized and formalized within family law.¹²

It can be concluded that *taklik talak* is a conditional agreement in Islamic marriage where a husband suspends the occurrence of *talak* (divorce) upon his wife if a violation of the conditions pledged after the marriage contract occurs. *Taklik talak* is a practice that has been officially recognized and institutionalized within the context of family law in Indonesia, making it a valid legal instrument to protect the interests of the wife in a marriage.

In Indonesian Islamic family law, *taklik talak* is an important instrument that historically holds crucial meaning. *Taklik talak* has long been known in Indonesia, although it was not initially known by the majority and was limited to certain circles. The

¹¹ Syamsul Hadi, *Kata-Kata Arab Dalam Bahasa Indonesia*, I (Gadjah Mada University Press, 2020).

¹² Sami Faidhullah, "Taklik Talak Sebagai Alasan Perceraian (Tinjauan Hukum Islam Dan Hukum Positif)," *Al-Risalah* 13, no. 1 (2017): 97.

existence of *taklik talak* in Indonesia has been in effect for a long time, even before independence.¹³ The institutionalization of *taklik talak* in Indonesia began during the reign of the Mataram Kings, specifically since the order from Sultan Agung Hanyakrakusuma (1554 Javanese / 1630 AD) as an effort to make it easier for women to release themselves from the marriage bond of a husband who leaves for a certain period. Besides being a guarantee for the wife, *taklik talak* was also part of state duties. At that time, it was famously known as *Taklek Janji Dalem* or *Taklik Janji Ningratu*, meaning *taklik talak* in relation to state duties.¹⁴

After the arrival of the Dutch in Indonesia, the practice of *taklik talak* became known and recognized by society as *voorwaardelijke verstoting* or conditional divorce. The term *taklik talak* in the context of the Dutch language in Indonesia was first discovered by Snouck Hurgronje when discussing customary law issues. Along with the development of Indonesian society, the formulation of *taklik talak* underwent changes in terms of both its elements and its linguistic editorial. At the beginning of its application in the Mataram Kingdom, *taklik talak* had four main elements: the husband leaving the wife, the wife not consenting, the wife complaining to the court, and her complaint being accepted by the court. After Indonesia's independence, the Ministry of Religious Affairs began to develop and establish its own formulation of the *taklik talak* statement.¹⁵ This institutionalization continued until the independence period and was finally officially regulated in the Compilation of Islamic Law (KHI) through Presidential Instruction No. 1 of 1991, Article 1 letter e, which explains that *taklik talak* is an agreement uttered by the groom after the marriage contract, included in the marriage certificate as a divorce promise suspended upon a certain situation, and its provisions are issued by the Supreme Court.¹⁶

It can be concluded that *taklik talak* is a historical and crucial instrument in Indonesian Islamic family law, whose existence was recognized long before the independence era. Its institutionalization officially began during the era of Sultan Agung of Mataram (around 1630 AD) as an effort to facilitate a wife's release from marriage if abandoned by her husband, even being linked to state duties (*Taklek Janji Dalem*). Although initially known only to a limited extent, this practice was later recognized by the Dutch as *voorwaardelijke verstoting* (conditional divorce) and underwent evolutionary changes in its formulation. Ultimately, after independence, *taklik talak* was officially institutionalized and regulated in the Compilation of Islamic Law (KHI)

¹³ Nazrin Atiq Syazlina, "Pemahaman Suami Istri Terhadap Taklik Talak (Studi Kasus Di Dusun Pejaten Desa Jetis Kecamatan Nusawungu Kabupaten Cilacap)," *Skripsi UIN Prof. KH. Saifuddin Zuhri Purwokerto*, 2021, V.

¹⁴ Mukhamad Suharto, "Studi Sejarah Taklik Talak Di Indonesia," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, 2019, 8, <https://doi.org/10.56593/staia.v1i1.15>.

¹⁵ Nihayatul Ifadhloh, "Perkawinan (Studi Analisis Terhadap Kompilasi Hukum Islam Di Indonesia Pasal 45) Hukum Keluarga (Akhwal Syahsiyyah) Fakultas Syari'ah Dan Hukum Universitas Islam Negeri Walisongo," *Uin Walisongo*, 2016, 44–45.

¹⁶ Ecep Nurjamal, "Tinjauan Yuridis Perjanjian Taklik Talak Dalam Hukumperkawinan Di Indonesia," *Jurnal Hukum Tata Negara*, 2022, 2.

through the 1991 Presidential Instruction, establishing it as a conditional agreement uttered by the husband after the marriage contract and recorded in the marriage certificate.

The formal legal basis for *taklik talak* in the Compilation of Islamic Law (KHI) is Article 45, which states that both prospective spouses may enter into a marriage agreement in the form of: (1) *Taklik talak*, and (2) Other agreements that do not conflict with Islamic law.¹⁷ This regulation is based on Islamic principles to realize a peaceful family, grounded in the word of Allah in QS An-Nisa/4:128. This verse indicates that if a wife feels she is being treated poorly by her husband, she should immediately hold negotiations. This verse also emphasizes that humans are naturally stingy, making it difficult to grant forgiveness to others.¹⁸ However, if negotiations have been held, that stinginess will not be prolonged. At the very least, it will bring a resolution rather than leaving matters hanging. This means it provides an opportunity for the wife to seek peace if she fears her husband is being indifferent and serves as a basis for the wife to release herself from a distressing marriage.¹⁹ Thus, *taklik talak* is a legal innovation that complements material *fiqh* law, which traditionally establishes that *talak* falls automatically without having to go to court, transforming it into legally recognized written law.

It can be said that formally, *taklik talak* has a clear legal basis in the Compilation of Islamic Law (KHI), specifically in Article 45, which allows it to be one form of marriage agreement made by prospective spouses, provided it does not conflict with Islamic law. This regulation is rooted in the Islamic principle of creating a peaceful family and is driven by the spirit of QS An-Nisa/4:128, which encourages negotiation and peaceful resolution if a wife feels mistreated, and provides the opportunity for a wife to free herself from a distressing marriage without delay. Consequently, *taklik talak* functions as a written legal innovation that complements and formalizes traditional *fiqh* law, transforming a divorce promise that previously took effect without court intervention into a legally recognized instrument regulated under Indonesian legislation.

From the explanation above, it can be concluded that *taklik talak* is a conditional agreement officially institutionalized in Indonesian Islamic family law as regulated in Article 45 of the KHI, where a husband suspends the fall of *talak* (divorce) upon his wife if certain conditions are violated after the marriage contract. This instrument has been known historically since the era of Sultan Agung of Mataram as a protective measure for wives to release themselves from harmful marriage bonds, making it a written legal innovation that formalizes traditional *fiqh* law into a valid legal instrument in Indonesia.

The Mechanism of *Taklik Talak* in Protecting Women's Rights

¹⁷ Safrizal Safrizal, "Taklik Talak Dalam Perspektif Fiqh Syafi'iyah Dan Hukum Positif," *Jurnal Al-Mizan* 10, no. 1 (2023): 82, <https://doi.org/10.54621/jiam.v10i1.600>.

¹⁸ Ririn Aprinda, *Analisis Hukum Islam Terhadap Bimbingan Perkawinan Dalam Mencegah Perceraian Di Kementerian Agama Kabupaten Soppeng*, 2021, 167–86.

¹⁹ Saifudin, *Membangun Keluarga Sakinah Tanya Jawab Seputar Masalah Keluarga Dan Solusinya*, I, ed. Fulex Bisryi (Qultum Media, n.d.).

The primary function of *taklik talak* in Indonesian positive law is to provide legal protection for women.²⁰ The presence of this *taklik talak* statement is intended to serve as a point of consideration for the husband to act kindly toward his wife (*mu'asharah bil ma'ruf*). The *taklik talak* agreement is understood as an effort to guarantee the wife's rights and protect her from discriminatory acts and the husband's arbitrariness, given that, traditionally, wives have a weaker bargaining position regarding the right of *talak* (divorce). This constitutes a commitment from the husband to practice *mu'asharah bil ma'ruf* for the realization of a happy family.²¹ The implementation of *taklik talak* is carried out through an orderly legal mechanism institutionalized within the Religious Court system. Through this mechanism, the meaning of *taklik talak* shifts from a mere unilateral threat by the husband into a promise and commitment that possesses clear legal power and consequences. The existence of *taklik talak* functions to prevent the husband from acting arbitrarily toward his wife and serves as a form of moral and legal responsibility to treat the wife well. With this provision, the husband will be more cautious in fulfilling his obligations, thereby creating a harmonious and balanced household relationship to achieve the goals of marriage.²²

Thus, the main function of *taklik talak* in Indonesian positive law is as an instrument of legal protection for the wife and an effort to ensure the realization of a harmonious family (*mu'asharah bil ma'ruf*). Through this agreement, which is manifested via strict legal mechanisms in the Religious Court, *taklik talak* functions to bind the husband to a commitment of good treatment and prevents discriminatory acts or arbitrariness, especially since the wife traditionally holds a weaker bargaining position concerning *talak* rights. In other words, *taklik talak* transforms a unilateral promise into clear legal consequences, encouraging the husband to be more careful in carrying out his duties for the sake of maintaining household harmony.

The clauses of the *taklik talak* statement included in the marriage book explicitly mention the conditions that must be met by the husband, as formulated by the Minister of Religious Affairs: (1) Leaving my wife for two consecutive years, (2) Or I do not provide the obligatory maintenance (*nafkah*) to her for three months, (3) Or I hurt my wife's body/physique, (4) Or I neglect my wife for six months; then if my wife is not pleased and reports the matter to the Religious Court or an official authorized to handle such complaints, and the complaint is justified and accepted by the court or official, and my wife pays a sum of one thousand rupiah as *iwadh* (compensation) to me, then a *talak satu* (first-stage divorce) falls upon her. I authorize the court to receive the *iwadh* money and then hand it over to the Directorate of Islamic Religious Affairs and Sharia Development

²⁰ Hasanuddin, "Kedudukan Taklik Talak Dalam Perkawinan Ditinjau Dari Hukum Islam Dan Hukum Positif," *Medina-Te* (2016) 14(1) 47 14, no. 1 (2016): 54.

²¹ Ongki Hosen, *Pelanggaran Sighat Taklik Talak Di Desa Nanjungan Kecamatan Pino Raya Kabupaten Bengkulu Selatan Perspektif Hukum Positif Dan Hukum Islam*, 2020, 4.

²² Rumanatul Jannah, "Kedudukan Taklik Talak Dalam Mewujudkan Keharmonisan Keluarga Prespektif Maqasid Syariah Jasser Auda," *Sustainability (Switzerland)* 11, no. 1 (2025): 2.

for social worship purposes.²³ This provision is in line with Article 46 of the Compilation of Islamic Law (KHI), which states that the content of the *taklik talak* agreement must not conflict with the principles of Islamic law. A marriage can end in divorce if the conditions listed in the *taklik talak* agreement are violated by the husband; however, such a violation does not automatically cause the *talak* to fall. For the divorce to be legally valid, the wife must first bring her case to the Religious Court. Furthermore, it is explained that making a *taklik talak* agreement is not an obligation in every marriage, as the couple may choose whether or not to make one. However, once the *taklik talak* agreement has been agreed upon and uttered, it cannot be revoked.²⁴ This mechanism is a form of *takhsis al-qada'*, namely personal, territorial, jurisdictional, and procedural laws of the state that limit judicial power, where the ruler limits the husband's power of *talak* for the sake of achieving greater goals, namely legal certainty and protection of rights.²⁵

It can be concluded that the *taklik talak* clause included in the marriage book, in accordance with Article 46 of the KHI, contains four explicit conditions which, if violated by the husband—such as leaving the wife for two years or not providing maintenance for three months—can lead to the falling of *talak*. However, the violation does not automatically dissolve the marriage; the wife is required to file a complaint with the Religious Court and pay a certain amount of *iwadh* (compensation) for the *talak satu* to actually take effect. Although this agreement is optional for couples, once made, it cannot be revoked. This mechanism is a form of state limitation on the husband's power of *talak* (*takhsis al-qada'*) institutionalized by the Religious Court to ensure legal certainty and the protection of the wife's rights.

The inclusion of *taklik talak* clearly balances the power relation. If the husband is proven to have violated the promise and the wife files for divorce, then the *talak satu* falls from him, and the husband is obliged to fulfill the wife's post-divorce rights as regulated in detail in Article 149 of the KHI. This provision includes the provision of maintenance. Article 149 of the KHI reads as follows: "Whenever a marriage is dissolved due to *talak*, the ex-husband is obliged to: (1) Provide a reasonable *mut'ah* (consolatory gift) to his ex-wife, either in the form of money or goods, unless the ex-wife is *qobla al-dukhul* (before consummation); (2) Provide maintenance (*nafkah*), housing (*maskan*), and clothing (*kiswah*) to the ex-wife during the *iddah* period, unless the ex-wife has been issued a *talak ba'in* or is in a state of *nusyur* (disobedience) and is not pregnant; (3) Settle the entire outstanding dower (*mahar*), and half if *qobla al-dukhul*; (4) Provide *hadanah* (child maintenance) costs for his children who have not reached the age of 21."²⁶ Thus, *taklik*

²³ Nur Madji, *Akibat Hukum Taklik Talak Prespektif Teori Masalah (Studi Pandangan Hakim Pengadilan Agama Malang Dan Tokoh Agama Di Kota Malang)*, 2021, 29–30.

²⁴ Ibnu Radwan Siddik Turnip, *Hukum Perdata Islam Di Indonesia Studi Tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah Dan Perwakafan*, I, ed. Monalisa (PT Raja Grafindo Persada, 2021).

²⁵ Zezen Zainul Ali and Mega Puspita, *Pembaharuan Hukum Keluarga Di Asia Tenggara Dari Negara Mayoritas Sampai Negara Minoritas Muslim*, I, ed. Khairul Umami (Jejak Pustaka, 2023).

²⁶ Boris Tampubolon, *Panduan Memahami (Masalah) Hukum Di Masyarakat Agar Tidak Menajdi Korban*, I (Kencana, 2021).

talak functions as a double protection instrument in preventing the husband's arbitrariness and ensuring the fulfillment of women's rights in the event of divorce.

Consequently, *taklik talak* serves as a vital instrument to balance the power relations within marriage by providing double protection for the wife. Concretely, if a husband violates the *taklik talak* promise and the wife files for divorce, the falling of that *talak* automatically obligates the husband to fulfill the wife's post-divorce financial and material rights, as regulated in detail in Article 149 of the Compilation of Islamic Law (KHI). This obligation includes the provision of reasonable *mut'ah*, maintenance during the *iddah* period, settlement of outstanding *mahar*, and *hadanah* (childcare) costs, thereby effectively preventing the husband's arbitrariness and ensuring the institutionalized fulfillment of women's rights.

From the explanation above, *taklik talak* is a vital double legal protection instrument in Indonesian positive law, primarily functioning to balance power relations and prevent the husband's arbitrariness for the realization of a harmonious family (*mu'asharah bil ma'ruf*). This agreement, included in the marriage book, contains four explicit conditions such as abandonment or failure to provide maintenance which, if violated, give the wife the right to file for divorce at the Religious Court by paying *iwadh*. This process is a form of state limitation on the husband's *talak* power (*takhsis al-qada'*) that transforms a unilateral promise into clear legal consequences. In addition to facilitating the falling of *talak*, the agreement regulated in Articles 46 and 149 of the Compilation of Islamic Law (KHI) automatically ensures the fulfillment of all the wife's post-divorce financial rights, including *mut'ah*, *iddah* maintenance, *mahar* settlement, and *hadanah* costs, thus guaranteeing legal certainty and the institutionalized protection of women's rights.

Implications of *Taklik Talak*: *Maslahah* or *Mafsadah*

The evaluation of the implementation of *taklik talak* must be conducted based on the principles of *maṣlahah* (public interest/benefit) and *mafsadah* (harm or damage). *Taklik talak* does not merely function as a reaction to domestic conflict; it also plays a vital role as a preventive measure to build an equitable, harmonious, and civilized relationship between husband and wife from the very beginning of the marriage.²⁷ This preventive function has a strong foundation in the concept of *maqāṣid al-syarī'ah*, specifically the principle of *daf' al-mafāsīd* (averting harm), which, according to al-Syātibī, takes precedence over merely seeking benefits (*jalb al-maṣāliḥ*). Thus, *taklik talak* can be understood as an early effort to establish behavioral boundaries in household life to avoid relational imbalances, acts of violence, and the abuse of power within the family.²⁸

²⁷ Asman Asman, "Domestic Violence : National Law and Islamic Law Perspectives Kekerasan Dalam Rumah Tangga : Perspektif Hukum Nasional Dan Hukum Islam," *Abdurrauf Law and Sharia* 1, no. 1 (2024): 14–39.

²⁸ Sokhibul Imam et al., "Ta'lik Talak Sebagai Instrumen Perlindungan Hukum Keluarga Dalam Prespektif Mashlahat Abu Ishak Asy-Syatibi," *SAMAWA: Jurnal Hukum Keluarga Islam* 5, no. 2 (2025): 158.

It can be concluded that the evaluation of *taklik talak* should be rooted in the framework of *maṣlahah*, as this instrument possesses a dual function: reactive and preventive. Its primary function is preventive, aimed at building an equitable and civilized relationship from the onset of marriage. This prevention aligns with the principles of *maqāṣid al-syarī'ah*, particularly *daf' al-mafāsid*, which al-Syātibī argues is more paramount than simply achieving benefits. Therefore, *taklik talak* serves as an early intervention to create effective behavioral boundaries that prevent relational inequality, violence, and the abuse of authority within the family.

One form of *maṣlahah* resulting from the application of *taklik talak* is the realization of the principle of gender justice. Gender justice means providing fair treatment by guaranteeing equal rights, responsibilities, benefits, and opportunities for every individual regardless of gender. This concept recognizes that men and women have different needs and face challenges that are not always the same. Therefore, gender justice is understood as a process that emphasizes fair treatment for both sexes. The achievement of gender equality and justice can be seen in the absence of discrimination against either men or women, ensuring that every individual has access, opportunities to participate, and control over development, while obtaining equal and fair benefits from its outcomes.²⁹ Consequently, *taklik talak* functions as a tangible instrument to balance power relations in marriage. By granting conditional rights to the wife to file for divorce, it ends the dominance of the right of *talak* that traditionally resided solely in the hands of the husband.

Thus, one of the primary implications of *maṣlahah* from *taklik talak* is the realization of gender justice in the household. By providing the wife with the conditional right to petition for divorce, *taklik talak* serves as a concrete instrument to balance the power dynamics in marriage, which were traditionally dominated by the husband's right of *talak*. This action effectively ends discrimination and ensures fair treatment for women, so that each partner has equal access and opportunities within the context of the marital relationship.

The fundamental goal of Islamic Sharia is to create benefit for humanity while simultaneously preventing harm. Scholars explain that all provisions in *fiqh* (Islamic law) are essentially established to bring benefits to mankind, while most of its rules function as efforts to prevent damage. In Islamic teachings, the act of preventing harm takes precedence over the pursuit of benefits, because within the prevention of *mafsadah* (harm) itself lies the value of utility (*maslahat*). Therefore, preventing harm is essentially the same as bringing benefit. In the science of *qawa'id fihiyyah* (legal maxims), the principle "averting harm takes precedence over achieving benefit" is one of the branches of the five great maxims of *fiqh*. This maxim means that every action taken by a *mukallaf* (accountable person) should prioritize efforts to avoid things that have the potential to

²⁹ Rudi Aldianto et al., "Kesetaraan Gender Masyarakat Transmigrasi Etnis Jawa," *Equilibrium Pendidikan Sosiologi* 3, no. 1 (2015): 89.

cause danger or harm, because by preventing harm, benefit is simultaneously realized.³⁰ If a marriage is allowed to drag on without the fulfillment of obligations (such as a husband neglecting his wife for months), it will cause the wife to commit injustice, both toward the husband and toward Allah SWT. *Taklik talak* serves as a way out so that the wife can release herself from such spiritual suffering. The existence of written *taklik talak* clauses recognized by the state through the Compilation of Islamic Law (KHI) makes *taklik talak* an instrument of legal reform that provides certainty and protection for the wife by allowing her to file for divorce at the Religious Court if the husband violates the promises written in the agreement.

It can be concluded that *taklik talak* is an instrument of Islamic legal reform in Indonesia that serves as a vital exit strategy to prevent harm (*mafsadah*) within the household, in line with the principles of *maqāṣid al-syarī'ah* that prioritize the prevention of danger over the acquisition of benefit. When a marriage lingers in the neglect of a husband's duties, it can cause significant *mafsadah* and even lead the wife into injustice. Therefore, the inclusion of written *taklik talak* clauses recognized by the state through the KHI functions as a mechanism for protection and legal certainty, allowing the wife to petition for divorce at the Religious Court, effectively ending spiritual suffering and preventing greater harm.

The negative impact (*mafsadah*) of the implementation of *taklik talak* appears more in the social aspects of society than in the normative legal sphere. Although *taklik talak* is a progressive step from a juridical standpoint, reality on the ground shows that its implementation has not been maximized. Despite its great potential to accelerate the resolution of household conflicts, its practice still faces various obstacles.³¹ The effectiveness of *taklik talak* is heavily influenced by factors such as religious understanding and cultural backgrounds. In many environments, *taklik talak* is still seen as taboo and is often associated only with divorce. A lack of knowledge regarding its function as a problem-solving tool causes many couples to hesitate in using it as a conflict resolution mechanism. Consequently, there is a need for increased education and counseling for the community, especially for young newlywed couples, to understand the meaning and purpose of *taklik talak* comprehensively. Additionally, some segments of society still view the KHI and *taklik talak* as a form of "desacralization" of classical *fiqh*, which ultimately creates a gap between progressive legal policy and the understanding of the general public.³²

Overall, the implications of *taklik talak* lean more toward *maṣlahah* (protection of rights and justice), as it is a response to the urgent needs of modern society to address issues that classical *fiqh* could not answer. However, to optimize this *maṣlahah*,

³⁰ Mohammad Hisyam Yahya and Fairuz Ainun Na'im, "Prinsip Mencegah Kerusakan Sebagai Landasan Pemikiran Hukum Ekonomi Syariah," *Masile Jurnal Studi Keislaman* 5, no. 2 (2023): 62.

³¹ Asman Asman et al., "Existence of Marriage Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia," *Jurnal Ilmiah Al-Syir'ah* 19, no. 1 (2021): 16–29.

³² Hamdiyah, "Taklik Talaq Sebagai Mekanisme Untuk Mempercepat Resolusi Konflik Dalam Pernikahan," *Journal of Dual Legal Systems* 1, no. 2 (2024): 159, <https://doi.org/10.58824/jdls.v1i2.246>.

sociological challenges such as the lack of public understanding must be addressed so that the *mafsadah* resulting from unclear marital status can be minimized.

Thus, although *taklik talak* is a progressive legal instrument with greater *maṣlahah* implications—especially in protecting rights and providing solutions for modern domestic issues—there are sociological *mafsadah* implications in its implementation. The utilization of *taklik talak* on the ground is not yet optimal due to the gap between progressive regulations and public perception, where many communities view it as taboo or a "desacralization" of *fiqh*. Therefore, to optimize benefits and minimize harm caused by marital uncertainty, in-depth education and counseling for the community, particularly young couples, are essential.

From the explanation above, *taklik talak* must be evaluated based on the framework of benefit (*maṣlahah*) because it serves a dual role as both a preventive and reactive instrument in the household, where its primary function is to prevent harm (*mafsadah*) according to the principles of *maqāṣid al-syarī'ah* to build an equitable, civilized, and equal relationship between husband and wife. By providing conditional rights to the wife to file for divorce, *taklik talak* effectively balances power relations, ends the dominance of the husband's right of *talak*, and acts as an Islamic legal reform instrument that provides protection and legal certainty for the wife against the neglect of the husband's obligations. Despite being progressive and holding great potential for modern legal solutions, sociological challenges remain, such as a lack of understanding and taboo views in society; thus, in-depth education is highly necessary to optimize the benefits of this instrument recognized in the KHI.

Relevant solutions must directly target the root causes of *taklik talak* implementation, namely the sociological gap, and strengthen its legal foundation. First, the government should strive to regulate *taklik talak* explicitly and firmly within the Marriage Law, rather than relying solely on the KHI, as elevating its legal hierarchy will provide higher legal certainty and strengthen its legitimacy. Legislative solutions should also include enriching the *sighat* (wording) content to include non-material dimensions of marital commitment, such as *mu'asharah bil ma'ruf* and the fulfillment of spiritual or emotional needs. Second, judicial institutions must optimize their role; the Religious Court (PA) and the Office of Religious Affairs (KUA) should be instructed to change the narrative of *taklik talak* from a mere formality into a commitment with clear legal consequences. Institutionally, the PA must ensure the efficient fulfillment of the wife's rights post-divorce based on Article 149 of the KHI, while the KUA should develop SOPs for mandatory pre-marital education. Third, sociological intervention through education is key, involving the restructuring of pre-marital counseling to frame *taklik talak* as a risk management and *daf' al-mafāsīd* instrument, alongside targeted public campaigns to change taboo perceptions among young couples and community leaders.

The novelty of this research lies in the affirmation of the convergence of three pillars—historical-normative, philosophical (*maqāṣid al-syarī'ah*), and sociological analysis—which collectively explain the unique position of *Taklik Talak* in Indonesian family law reform. The philosophical analysis confirms that *taklik talak* is based on the

principle of *daf' al-mafāsīd*, which prioritizes preventing harm, such as the neglect of the wife and prolonged marital uncertainty, over merely seeking benefit. By providing a conditional right to petition for divorce, it effectively ends spiritual suffering and is justified theologically as an early attempt to build an equitable relationship. Another novelty is the diagnosis that while *taklik talak* is perfect normatively and philosophically, its optimization is hindered by sociological *mafsadah*. The gap between progressive regulations and public understanding, which often views the instrument as taboo or a "desacralization" of classical *fiqh*, creates resistance. Consequently, this research concludes that sociological intervention through in-depth education is vital to bridge this divide and provides specific solutions regarding the implementation of the *sighat taklik talak* itself.

CONCLUSION

Taklik talak is an instrument of Islamic family law reform in Indonesia that primarily functions as a double protection mechanism (*maṣlahah*) for wives. Based on the framework of *maqāṣid al-syarī'ah*, its most vital function is preventive—specifically to prevent harm (*daf' al-mafāsīd*) and neglect within the household to build an equitable and civilized relationship. Its historical (dating back to the Mataram era) and formal institutionalization (regulated in Articles 45, 46, and 149 of the Compilation of Islamic Law) establishes *taklik talak* as a written legal innovation that tangibly balances power relations by granting conditional rights to the wife to petition for divorce at the Religious Court. This mechanism not only facilitates the falling of *talak* but also automatically ensures the fulfillment of the wife's post-divorce financial rights, thereby effectively preventing the husband's arbitrariness. Nevertheless, sociological *mafsadah* implications, such as the lack of public understanding, hinder the optimization of this protective function. Therefore, to maximize the benefit of *taklik talak* in achieving gender justice, in-depth education and counseling for the community and young couples become essential.

Despite these findings, this study is limited by its juridical-normative scope, which focuses primarily on regulatory frameworks and literary analysis without involving direct empirical data from litigants or court practitioners. Future research should consider employing empirical-sociological methods to examine the actual experiences of women utilizing *taklik talak* in various Religious Courts and to explore the effectiveness of pre-marital education programs across different regions. Such studies would provide a more comprehensive mapping of the practical obstacles and psychological impacts associated with this legal instrument in the context of modern Indonesian society.

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