

ISLAMIC JURISPRUDENCE PERSPECTIVE IN THE PRACTICE OF DIVORCE DUE TO TAKLIK TALAK

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Mohammad Fauzan Ni'ami*Universitas Islam Negeri Maulana Malik Ibrahim Malang*Niamifauzan01@gmail.com

Abstract: Apart from being regulated in Islamic law, the concept of taklik talak is also a law regulated in Islamic jurisprudence called fiqh in Indonesia. Taklik talak is a kind of pledge / statement which shows that the husband depends on the existence of divorce from his wife, so if one or all of what has been pledged occurs, the wife can complain to the Religious Court and become the reason for divorce. If the reason is proven, the judge will decide the marriage. Regarding taklik talak in Islamic jurisprudence, it is regulated in Chapter IV of the marriage agreement and in the Regulation of the Minister of Religion No. 2 of 1990 is regulated in the marriage examination. So the research is motivated by the wrong paradigm of divorce that occurs on the basis of the husband violating the taklik talak. With the main issue of the position of divorce on the basis of taklik talak violation in the compilation of Islamic law, what is the paradigm of divorce on the basis of taklik talak violation, and analysis of divorce law on the basis of taklik talak violation according to Islamic jurisprudence.

Keywords: Islamic Jurisprudence, Divorce, Taklik Talak.

Abstrak: Selain diatur dalam hukum Islam, konsep taklik talak juga merupakan hukum yang diatur dalam hukum Islam yang disebut fiqh di Indonesia. Taklik talak adalah sejenis ikrar/ Pernyataan yang menunjukkan bahwa suami menggantungkan adanya talak dari istrinya, sehingga jika terjadi salah satu atau semua yang telah diikrarkan maka istri dapat mengadu ke Pengadilan Agama dan menjadi alasan perceraian. . Jika alasannya terbukti, hakim akan memutuskan pernikahan tersebut. Mengenai taklik talak dalam fikih diatur dalam Bab IV perjanjian perkawinan dan dalam Peraturan Menteri Agama No. 2 Tahun 1990 diatur dalam pemeriksaan perkawinan. Sehingga penelitian ini dilatarbelakangi oleh paradigma yang salah tentang perceraian yang terjadi atas dasar suami melanggar taklik talak. Dengan pokok permasalahan kedudukan perceraian atas dasar pelanggaran taklik talak dalam kompilasi hukum Islam, bagaimana paradigma perceraian atas dasar pelanggaran taklik talak, dan analisis hukum perceraian atas dasar pelanggaran taklik talak menurut kepada yurisprudensi Islam.

Kata Kunci: Fikih Islam, Perceraian, Taklik Talak.

A. Introduction

In the process of marriage contracts in Indonesia, there is a custom known as *sighat taklik talak*. *Sighat taklik talak* or what is known as divorce binding speech is a written promise that is signed and discussed by the husband after the completion of the marriage ceremony in front of the prince, wife, parents/guardians, witnesses and attendees who attended the marriage ceremony.¹

It is called *sighat taklik talak*, because this speech binds divorce to a marriage if the things said are fulfilled

Sighat taklik divorce is said if the marriage contract process has been completed and is valid according to the provisions of Islamic law and religion. In KHI article 1 point E it is stated that *taklik* divorce is an agreement made by the prospective groom after the marriage contract is included in the marriage certificate in the form of a promise of divorce depending on a certain situation that may occur in the future.

Sighat taklik talak uttered by a husband to his wife after the marriage ceremony is as follows as stated in the marriage book:

If one day I:

1. Leaving my wife within two consecutive years,
2. Or I don't give him the obligatory maintenance for three months,
3. Or I hurt my wife's body/physically or I do domestic violence
4. Or I let (don't care about) my wife for six months.

Then my wife was not pleased and complained about it to the religious court or an official who was justified and accepted by the court or the officer and my wife paid Rp. 10,000 as an *iwad* (substitute) for me, then my one divorce falls on him, to the religious court or the officer I authorize to accept the *iwad* (substitute) and then give it for the benefit of social worship.²

If seen from the elements contained in *sighat taklik* divorce there is an element of *iwadh* or what is referred to as replacement money from the wife to her husband so that the husband will divorce his wife. This shows that if in the future it turns out that the husband violates *sighat taklik* divorce, the wife can complain about her husband to court with *khulu* divorce, because it is in *khulu* divorce that the term *iwadh* exists. In Law No. 1 of 1974 concerning marriage does not contain the

¹ Abdurrohman, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Akademika Pressindo, 1995).

² Akta Nikah

taklik divorce whether as a reason for divorce or as a form of marriage agreement.³

Islamic jurisprudence defines taklik divorce clearly and details are discussed, if the husband violates sighat taklik divorce, the wife can file a lawsuit for divorce on the grounds of violation of taklik divorce.

This happens because many husbands are irresponsible, abandoning their wives for months or even years, many husbands do domestic violence, and there are husbands who do not provide for their wives.

The religious court made taklik divorce as the reason for determining the breakup of the marriage based on the fact that the trial in the religious court found taklik divorce as the reason for the breakup of the marriage.

The existence of the concept of taklik talak can be separated from the issue of divorce, because taklik talak which applies in Indonesia is used as a reason that can be submitted for divorce, as stated in Islamic Jurisprudence, that taklik talak is a kind of promise taklik talak. In essence, the marriage law in Indonesia makes it difficult for divorce to occur. As stated in article 39 paragraph 2 of the Marriage Law No. 1 of 1974 and repeated again in PP. No. 9 of 1975 states the reasons that can be used as a divorce, as contained in KHI article 116 points G and H, namely the husband violates the taklik divorce and converts religion or apostasy which causes disharmony in the household. ⁴

If the relationship between husband and wife is no longer able to reconcile between the two, even the household can no longer be maintained or saved by the wife, the wife who wants to stay away because of trauma and hatred that can no longer be stopped against the husband while the husband does not want to divorce him, then the wife may submit khulu' to him and return what has been received from the husband⁵.

In this case the husband may not ask for additional than what he has given. If the husband accepts, then the marriage bond will be released, and each of them will be fulfilled by Allah with His gifts. Some scholars require the submission of the khulu' application to the judge, while some do not require it. Meanwhile, if the husband refuses and continues to make things difficult for his wife and forces the wife to live under his authority, then a Muslim judge must pay attention to this issue and seek certainty about the wife's true feelings and the sincerity of her

³ Hasanudin, "Kedudukan Taklik Talak Dalam Perkawinan Di Tinjau Dari Kompilasi Hukum Islam Dan Hukum Positif," *Medina- Te, Jurnal Studi Islam* 14 (2016).

⁴ "Tentang Perkawinan," dalam *Undang-Undang No. 1 Tahun 1974*, t.t.

⁵ Yusuf Qhardhawi, *Fatwa-Fatwa Kontemporer* (Jakarta: Gema Insani Press, 1995).

hatred. Then the judge forces the husband to accept the payment and determines the law between them.

One of the interviews with the people of Sungai Pinyuh Village, Sungai Pinyuh District, Mempawah Regency, West Kalimantan, who carried out a divorce, which they considered the breakup of the marriage, was due to a violation of taklik talak which was violated by a husband where a husband left his wife for more than two years in a row and before that the husband had treated her a lot against a wife with elements of divorce taklik violation. There were 2 couples who divorced on the basis of violations of this taklik talak, namely Mrs. Intan and Mr. Khaidir where this Khaidir as a husband had never supported his family for more than three months, as well as the couple Mrs. Salbiah and Mr. Trisno, where the husband had left his wife more than two years without a word of divorce from the husband.

One local religious figure is of the opinion that if a husband has left his wife for more than two years, then his divorce falls due to a violation of taklik talak and refers to the Imam Syafi'i school of thought, which states that if a husband has disappeared and has not been with his wife for more than two years, a wife can cancel her marriage. religious court, but due to economic factors and conditions that could not file this case, they carried out the divorce under the hand.

Household problems are a common problem among the community, the triggers are economic, domestic violence, infidelity, etc., so that there is no harmony in the household. Especially in the Sungai Pinyuh sub-district community, when their household harmony has faltered and the cause is a violation of the divorce order that they promised in the marriage contract, a wife already considers their marriage to have been broken up for the violation committed by the husband, so that the community's understanding of violation of taklik talak that exists in the marriage agreement in the marriage contract which is called sighat taklik talak, is an agreement that if violated by the husband then divorce falls which depends on the wife directly.

B. Research Methods

For the approach in discussing this thesis, the researcher uses the *usul al-fiqh* and *qaidah al-fiqh* approaches as well as books and related literature on the Perspective of Islamic Law in the Practice of Divorce Due to Talak.

This type of research is qualitative research. With this type of research it is intended to find existing legal certainty regarding the perspective of Islamic law in the practice of divorce due to taklik talak. while to obtain data or information about the perspective of Islamic law in the practice of divorce as a result of talak divorce, then library research was carried out, so that even this research was called library research. namely research by examining the data in the library relating to this discussion, the data is taken from primary materials and secondary materials.¹

The primary materials include: books on the perspective of Islamic law in the practice of divorce due to divorce, and research on the perspective of Islamic law in the practice of divorce due to divorce. while the secondary materials include dictionaries and bibliographies.

C. Results And Discussion

1. One of the principles of national marriage law that is in line with Islamic religious teachings is to make it difficult for divorce (divorce), because divorce means the failure of marriage to form a happy and eternally prosperous family due to human actions. Divorce is different from breaking up a marriage due to death which is a destiny from God, which cannot be avoided by humans.
2. Marriage Law No. 1 of 1974 defines divorce as breaking up of a marriage, this explanation can be read in chapter VIII (breaking up a marriage and its consequences). In article 38 it is stated that a marriage can break up due to:
 - a. Death.
 - b. Divorce.
 - c. By court decision.

In the eyes of the law, divorce cannot just happen. That is, there must be reasons justified by law for carrying out a divorce. That is very basic, especially for the court which incidentally has the authority to decide whether a divorce is appropriate or not to be carried out. Including all decisions that are the consequences of divorce, are also very much determined by the reasons for carrying out the divorce. In PP. No. 9 of 1975 concerning the implementation of Law no. 1 of 1974 precisely article 19 explained that divorce may be carried out if there are a number of important reasons underlying it.

As stated in article 39 paragraph 2 of the Marriage Law No. 1 of 1974 and repeated again in PP. No. 9 of 1975 states the reasons that can be used as a divorce are:

- a. One party commits adultery or becomes a drunkard, gambler, gambler and so on which are difficult to cure.
- b. One party leaves the other party for two consecutive years without the permission of the other party and without a valid reason or for other reasons and beyond the means.
- c. One of the parties gets a five-year prison sentence or a more severe sentence after the marriage takes place.
- d. One party commits cruelty or serious abuse by endangering the other party.
- e. One of the parties gets a disability or illness as a result of not being able to carry out their obligations as husband and wife.
- f. Between husband and wife there are constant disputes and fights and there is no hope of living in harmony in the household again.

From the above mentioned Islamic Jurisprudence adds two more reasons, namely as contained in article 116 namely:

1. The husband violates the taklik divorce.
2. Conversion of religion or apostasy which causes disharmony in the household.

In marriage there is a marriage agreement that is not obligatory in nature, which is carried out after the marriage contract. The marriage agreement can be in the form of taklik divorce. Islamic jurisprudence regulates two matters regarding marriage agreements, namely related to divorce and related to property. Regarding the marriage agreement taklik divorce regulated in articles 45 and 46 KHI.

Taklik divorce is leaning the fall of divorce on something that will come (mustaqbal), by using conditional words. This aims to prevent the occurrence of arbitrary acts on the part of the husband, this taklik divorce is carried out after the marriage contract, either immediately at that time or on another occasion.

With regard to divorce, KHI stated that taklik talak can be used as a reason for a wife to file a divorce suit to the religious court.

Islamic jurisprudence explains that one of the marriage agreements is taklik divorce, this can be seen in the Marriage Agreement Chapter Article 45 paragraph (1). In Indonesia, taklik divorce is always included in the marriage certificate (registration), so it seems as if it has been treated as a mandatory and normal thing, generally this refers to the view that when someone has declared a vow of taklik divorce, then it is expected will protect the rights of the wife.

Violation of the marriage agreement gives the wife the right to request an annulment of the marriage or apply for it. As the reason for the divorce suit to the Religious Court.

Meanwhile, Minister of Religion Regulation No. 2 of 199, is regulated in Chapter III concerning marriage examinations, in Article 11 and Article 24 which reads:

1. Prospective husband and wife can enter into an agreement as long as it does not conflict with Islamic law and applicable laws and regulations.
3. The agreement referred to in paragraph (1) is made in 4 copies on stamped paper according to applicable regulations. The first sheet is for the husband, the second sheet is for the wife, the third sheet is for VAT and the fourth sheet is for the court.
4. An agreement in the form of taklik divorce is considered valid if the agreement is read and signed by the husband after the marriage ceremony is held.
5. Shighat taklik divorce determined by the minister of religion.
6. Regarding whether or not there is an agreement referred to in paragraph (1) and paragraph (3) is recorded in the marriage examination.

Explanation in Islamic Jurisprudence article 114 explains the breakup of a marriage caused by divorce can occur due to divorce or based on a divorce lawsuit. 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. With regard to divorce, Islamic jurisprudence states that

taklik talak can be used as a reason for a wife to file a divorce suit at the Religious Court.

Divorces handed down due to violations of taklik divorce are carried out by decision of the Religious Court and divorces handed down are always one khul'i divorce, because there is iwadh so the divorce becomes ba'in divorce. In this connection, the High Islamic Court in its decision of March 14, 1950 No. 1 did not approve the suspension of divorce (taklik talak) because the wife had left her husband without his permission. But then in its decision on November 27, 1950 No. 6, the High Islamic Court held another opinion, namely that the wife's nuzuyus did not hinder or was not related to that absolute submission.

In the study of Indonesian jurisprudence, divorce due to violations of taklik talak is included in the category of divorce ba'in sughro (contested divorce), even though the one that falls is the husband's divorce. Talak ba'in sughra is a divorce that cannot be referred to, but a new marriage contract with her ex-husband is permitted, even though it is in iddah. Divorce taklik talak is included in ba'in sughra divorce, for the fall of the husband's divorce the wife must file a lawsuit for violation of taklik talak to the Religious Court and must pay iwadh. For the fall of the husband's divorce it depends on the wife's initiative. Divorce due to violation of taklik talak is talak ba'in sughra. This is as explained in article 119 paragraph (2) letter c. KHI, "talak ba'in sughra as referred to in paragraph (1) is a divorce handed down by a religious court".

Article 119 "talak ba'in shugra is a divorce that may not be reconciled, but a new marriage contract with her ex-husband is permitted, even though it is during the iddah period.

Talak ba'in tends to adopt some parts of the concept of fasakh nikah, which basically does not constitute divorce (does not reduce the number of divorces). Islamic jurisprudence adheres to the notion of the existence of fasakh nikah as talak (reducing the number of divorces). In this talak, the man does not have the possibility to reconcile after pronouncing divorce, as the provisions of ba'in divorce which are adopted from the provisions of Islamic law are differentiated into talak ba'in sughra, and talak ba'in kubro.

The husband is proven to have violated the taklik divorce, the wife complains about this matter to the Religious Court, then the complaint is justified and the wife is willing to pay iwadh as a ransom, so the court considers that there has been khulu' from the wife to her husband. While khulu' in the rules applied to Islamic Jurisprudence (KHI) is divorce which is seen as talak. Khulu' which occurs because of the husband's violation of the taklik divorce that has been vowed after the marriage contract.

D. Conclusion

After the researcher analyzes and describes the perspective of islamic law in the practice of divorce due to divorce taklik, finally the researcher can draw some conclusions:

1. Apart from being regulated in Islamic law, the concept of taklik divorce is also a law regulated in Islamic jurisprudence, which is called fiqh in Indonesia.
2. Taklik divorce is a kind of Pledge / statement which shows that the husband depends on the existence of divorce on his wife, so if one or all of what has been vowed happens then the wife can complain about it to the Religious Court and become the reason for divorce
3. If the reason is proven, the judge will decide the marriage. Regarding taklik divorce in Islamic jurisprudence, it is regulated in Chapter IV of the marriage agreement and in Regulation of the Minister of Religion No. 2 of 1990 regulates the marriage examination.

The difference lies in the amount of distribution, according to Javanese customary law according to each region of Java, as applies in Central Java, adopted children get treasures like this and according to KHI, a maximum of 1/3.

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