

THE URGENCY OF SIGHAT TAKLIQ TALAQ AS A PROTECTIVE MEASURE LAW FOR WIVES

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Abstract

Taklik talaq is a marriage agreement pronounced by the bridegroom after the procession of the marriage contract listed in the marriage book in the form of talaq promises that depend on a certain situation. Sighat taklik talaq aims to protect the rights of wives from the arbitrariness of husbands. Based on the reality on the ground, not all couples take the sighat taklik talaq after the marriage contract. This happens because of the lack of socialization about taklik talaq, causing there are still many married couples who do not understand the purpose of the sighat taklik talaq itself. The research method used is a descriptive method of analysis, Based on the research conducted, researchers found several findings, namely With the existence of talaq wife gets a guarantee of legal protection in marital relationships. Although the legal basis of talaq in marriage itself is mubah, it can guarantee legal certainty for the wife in marriage. Taklik talaq provides legal protection in the form of the right to file a divorce lawsuit if the husband leaves his wife for two consecutive years, legal protection for the wife when the husband does not provide compulsory income for three months, Protection of the wife from the husband who is the husband who hurts the wife physically/spiritually, Protection of the wife whose husband abandons the wife for six months.

Keywords: *Wife Protection, Taklik Talak, Law*

1. INTRODUCTION

According to article 1 of Law Number 1 of 1974 concerning marriage, it is stated that the definition of marriage is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One and Only Godhead.(Republic of Indonesia Marriage Law No. 1 of 1974, n.d.)

The general purpose of marriage itself is: (1) to obtain the tranquility of life, which is full of love (Mawaddah), and affection (Rahmah) as the principal and main purpose, (2) the purpose of reproduction/regeneration, (3) the fulfillment of biological needs, (4) maintaining honor, (5) and worship. All the goals of marriage are unified and integrated (integral and inductive) meaning that all these goals must be put into a whole and interrelated whole.(Nasution, 2004)

The process of implementing marriage in Indonesia is carried out based on their respective religious beliefs. In order for marriage to become a sacred thing and can guarantee the rights of the perpetrators, marriage is carried out marriage registration. The culture that develops in marriage in Indonesia is accompanied by the pronouncement of sighat taklik talaq by the husband after the marriage contract is held. Although voluntary, the reading of sighat taklik becomes important as a form of protection for wives in domestic life. This shows that the commitment built into the marriage contract is not enough to realize the integrity of the family if it is not accompanied by the promise as stated in sighat taklik.

The word taklik talaq consists of two words, namely taklik and talaq. The word taklik from the Arabic word 'Allaqa Yu'alliqu Ta'lîqan, which means to hang. While the word talaq from the Arabic word Tallaqa Yutalliqu Tatlîqan, which means mentalak, divorce or the finished word 'separation'. So in terms of language, taklik talaq means suspended talaq That is, the occurrence of

talaq (divorce) or separation between husband and wife who are dependent on something. (Nasution, 2008)

In the Compilation of Islamic Law chapter (1) letter (e) it is stated that:

"Taklik talaq is an agreement made by the prospective groom after the marriage contract stated in the Marriage Certificate in the form of a talaq promise that depends on a certain condition that may occur in the future."

Then in Article 45 it says that:

"The bride and groom can enter into a marriage agreement in the form of:

- 1). Talaq taklik, and
- 2). Other agreements that do not contradict Islamic law. "

If we look at the legal basis of talaq above, it explains that talaq is a contract that is read after the contract. Therefore, we can interpret that the status of the recitation of sighat taklik talaq must be done by every bridegroom after marriage. In addition, the existence of sighat taklik talaq in a marriage, haris can be understood and understood by every couple in order to protect the rights of wives in the marriage bond.

Referring to article 45 of the Compilation of Islamic Law, talaq talaq is classified into a marriage agreement agreed upon by both parties. After the marriage contract, the talaq taklik automatically applies and cannot be revoked as described in article 46 paragraph 3 of the KHI. In addition, if in the future the marriage agreement in the form of talaq is violated by the husband, then this can be a reason for filing a divorce to the Religious Court by the wife.

In addition, the form of marriage agreement becomes a strength for women in marriage when they get bad treatment from their husbands. So that if the wife is not pleased with the husband's treatment, then the wife can file a divorce lawsuit based on the realization of the taklik requirements as stated in the Compilation of Islamic Law on the Reasons for Divorce Article 116 point (g) "The Husband Violates Taklik Taaq" So with the sighat taklik wife, can file her lawsuit with the Religious Court. This is one indicator of the importance of the role and function of sighat taklik for women in a marriage.

Sighat taklik exists as a form of protection of wives from the arbitrariness of their husbands. Therefore, KUA as an extension of the Ministry of Religious Affairs should socialize about the existence and importance of sighat taklik in marriage. This is then what makes inequality in the midst of society regarding sighat taklik. The formulation of sighat taklik carried out by the Government as an effort to protect women in marriage did not work as it should.

Behind the many benefits of talaq listed in marriage regulations in Indonesia, in practice there are still many KUA that do not apply the reading of talaq after the marriage contract is implemented. The reading of talaq after the marriage contract can be said to be a socialization of the urgency of the talaq taklik.

From the background above, we can understand that sighat taklik talaq is an effort to protect wives provided by the government, in this case the Ministry of Religious Affairs which is realized by the local KUA as an extension of its hands. With no emphasis and socialization of the urgency of talaq that exists in every marriage in Indonesia, it will certainly cause married couples to lack understanding that there is a promise they agreed upon when the marriage was held, this will certainly have a bad impact on family harmony considering that domestic life will certainly not be separated from problems, Whether it's a big or small matter. Disputes in this family will certainly result in victims and most of the victims in family disputes are women or wives. With the existence of talaq, it is expected to limit and reduce the rift in household relationships. But of course, with the lack of awareness of married couples about the existence of sighat taklik talaq, of course, the big goal of preventing disputes in the household will not be realized properly.

2. IMPLEMENTATION METHODS

2.1 Research methods

The research method used in this study is descriptive analysis, which is a method used to describe and analyze a result of research but is not used to draw conclusions as a whole. Therefore, we can understand this descriptive analysis research method as a study that aims to describe a symptom and events that occur based on the most actual or current problems. (Jonaedi Efendi, 2016)

2.2 Data sources

There are two data sources used in this study, namely primary data sources and skunder data sources. The primary source of data in this study is documents related to the study. While secondary data sources in this study are books, Regulation of the Minister of Religious Affairs Number 2 of 1990, magazines, newspapers, laws and regulations related to this study, and other literature related to the problem studied.

2.3 Data analysis techniques

Basically, data analysis is the decomposition of data through stages and classification, comparison and search for relationships between data that are specifically about the relationship between all data. In the first stage, the data that has been collected is selected and then classified according to certain categories. (Bisri, 2003)

The steps of data analysis techniques in this study are as follows;

- a. Review all data that has been collected and obtained from primary data sources and secondary data sources.
- b. Clarifying data, classified according to the need to answer questions, starting from the initial data, problems that occur from informants obtained from the results of interviews in accordance with the problem formulation and research objectives.
- c. Linking data that has been classified with theories that have been put forward in a frame of mind.
- d. As the last step of this study is to draw conclusions the researcher concludes the data, so that it is expected that this researcher will go to the subject matter as stated in the framework and problem formulation, so that it becomes a research answer.

3. RESULTS AND DISCUSSION

3.1 Understanding Taklik Talak

According to the Big Indonesian Dictionary, the word taklik talaq has the meaning of agreement (marriage and so on) and statement. While taklik talaq has the meaning of a statement of the fall of talaq or divorce, in accordance with the promise that has been said (for violating the marriage vow). (P. S. and Y. Salim, 2002) In the dictionary of the term Jurisprudence it is stated that taklik talaq is hanging the fall of talaq on the condition of something, then talaq falls when it happens. (Ihsan, 2002) For example, when a husband says to his wife "you will be deprived if I don't give you a living in three months". So if within three months the husband does not provide shopping for his wife, then the husband's talaq falls.

In terminology, taklik talaq as stated by Wahbah al-Zuhaili in his book *al-Ushul al-Fiqh*, is interpreted as:

"A series of statements whose proof is possible in the future using conditional words, such as if, when, whenever, etc., such as the husband's saying to his wife "if you enter the house of the fulan, then you are rejected". (Zuhaili, 1986)

In addition to the tentant explanation of talaq taklik mentioned by Wahbah al-Zuhaili Sayyid Sabiq also explained talaq as follows:

"Something that is used by the husband as a tool for divorce if the conditions are met, for example the husband says: "If you go somewhere, then you are rejected..."(Sabiq, 1998)

Based on the above sources, it can be understood that talaq is relying on the fall of talaq on a thing, both to a certain word, deed and time. This is intended to guard against arbitrary acts on the part of the husband. This talaq is done after the marriage contract, either directly after the marriage contract or at another time. By taklik talaq this means that the husband depends on his talaq to the agreement he agreed to. When the covenant is broken, it automatically falls talaq to his wife.(Sabiq, 1998)

According to Az-Zaqra, that the agreement of taklik talaq in terms of jurisprudence is a legal bond carried out by two or several parties who both desire to bind themselves. According to Gus Arifin taklik talaq (conditional dicoverce) It is defined by a husband divorcing his wife conditionally for a reason that it is done or happened, then divorce or talaq occurs. In practice, taklik talaq is better understood as the occurrence of talaq (divorce) or separation between husband and wife who are dependent on something.(Arifin, 2016)

The definition of talaq is a series of talaq statements uttered by the husband, where the statement depends on a condition whose proof is possible in the future, while the understanding of talaq in Indonesia is different from the understanding of talaq in Fiqh books. Sayyid Sabiq explained that the marriage covenant in the form of talaq has two forms: first, taklik qasami, which is taklik which is intended as a promise, because it contains the meaning of doing work or forsaking an act or strengthening a message. Second, taklik syarti, which is taklik which is intended to drop talaq when the requirements of taklik have been met.(Sabiq, 1998)

From the two forms of taklik talaq above can be distinguished by the words spoken by the husband. In taklik qasami, the one who does his job is the husband (mu"taliq), wife (mutallaqah), or someone else. For example, the incident of taklik talak qasami done by the husband is when the husband tells his wife "if I go to Fulan's house then you are the one who is rejected". While an example of taklik talaq qasami done by the wife is if the husband tells his wife "if you enter the house of fulan then you are a person who is rejected". An example of taklik talaq qasami done by someone else, is when a husband says to his wife "if you visit you then you are the one who is rejected".

From the three examples above, it can be understood that the fall of talaq does not only depend on the actions of one party, but can be from several parties, both from the actions of husbands, wives, and others. However, this does not change the basic concept of talaq, namely, that the right to drop talaq is only given to the husband. In taklik talaq syarti, the husband submits a condition with the intention that if the condition in question is fulfilled then the husband's talaq falls to his wife¹³. This means that in taklik talaq syarti, there is no reliance on talaq on one's actions. For example, a husband says to his wife, "If it rains tomorrow morning, then you are the one who is rejected"

Taklik talaq can also be interpreted as a speech that is pledged with something as a condition. However, in order to be valid in the use of lafadz and clicked speech, two conditions must be met, namely:

- a. Something that is required at the time of the pledge of talaq is something that cannot happen later
- b. The woman who was dropped from talaq status was the legal wife of the husband.(Dally, 1983) The recitation of taklik talaq is understood as the commitment of the man (husband) to Mu'asyarah Bilma'ruf (treat the wife well) by carrying out his duties and obligations as a husband as well as possible, not being arbitrary towards the wife, protecting the rights of the wife and loving the wife with love.(Sirin, n.d.) The recitation of taklik talaq should be understood as one of the efforts to maintain the permanence of marriage and the creation of a family that is sakinah, mawaddah, wa rahmah.

The purpose of a marriage according to Islamic law is for the benefit of society, more explicitly that the purpose of marriage is to preserve offspring. The law of marriage in general is sunnah, this is the opinion of the majority Ulama Ahlu Sunnah wal Jama'ah. Therefore marriage is highly recommended. With the enactment of Law Number 1 of 1974, on January 2, 1974, the Marriage Law in Indonesia was enacted, especially for Muslims. Marriage referred to in Article 2 paragraph 1 of Law Number 1 of 1974 is "Marriage is a birth and mental bond between a man and a woman as husband and wife with the aim of forming a happy, eternal, eternal family (household) based on God Almighty". In fact, what happens in society is due to circumstances or things as a cause, so that life as husband and wife is impossible to continue. According to the view of Islamic law, divorce is a preventive measure against disturbances of peace in a household. (H. Salim, 1987) Article 38 of Law Number 1 of 1974 states that the breakup of marriage is due to three factors, namely, due to death, due to divorce and due to a court decision. (Djumairi Ahmad, 1987)

3.2 Position of Taklik Talak

The position of Taklik Talak as a marriage agreement, the Compilation of Islamic Law (KHI) Article 1 letter (e) states that a marriage agreement is an agreement pronounced by the prospective groom after the marriage contract stated in the Marriage Certificate in the form of a talaq promise that depends on a certain situation that may occur in the future. The formulation of the definition of the marriage agreement mentioned in the Compilation of Islamic Law. (KHI) is more universal-conceptual which means it does not mix temporal policies with the basic concept of marriage covenant which is permanent and universal.

The Marriage Agreement in the Compilation of Islamic Law (KHI) is contained in Chapter 7 which regulates talaq as contained in Article 45 and Article 46 which: "The bride and groom may enter into a marriage agreement in the form of: (1) Taklik Talak. (2) Other agreements that do not contradict Islamic law. As for the explanation, the word covenant comes from the word promise which means words that express willingness and willingness to do. A promise can also be interpreted as an agreement between two parties (each expressing willingness and willingness to do something). An agreement can also be interpreted as a written or verbal agreement made by two or more parties, each promising to abide by what is said in the agreement.

From the provisions of the marriage agreement contained in the Compilation of Islamic Law Article 45 paragraph (2) that other agreements that do not conflict with Islamic Law, have something to do with the agreement in Article 1320 of the Civil Code states that the Law has determined 4 (four) requirements that must be met in order for an engagement or agreement to be considered valid, namely: 1). Their agreement is self-binding. 2). The ability to make an engagement. 3). A certain thing. 4). A lawful cause. Thus, the marriage agreement stipulated in the Compilation of Islamic Law, although with a different text has the same elements as the agreement in the Civil Code. However, the talaq agreement has a difference from the agreement in general in terms of the closed possibility of both parties to dissolve the agreement as mentioned in Article 46 paragraph (3) of the KHI which states that the talaq agreement is not an agreement that must be entered into every marriage. However, once talaq has been promised, it cannot be revoked.

To measure whether talaq is a covenant or not, we must look at Article 1320 of the Civil Code which contains the conditions for the validity of the agreement, namely (1) agreement of those who bind themselves, (2) Cakap those who bind themselves, (3) a certain thing, and (4) a lawful cause or power. The terms of validity of the agreement as mentioned above can be categorized into two, namely the category of subjective conditions and the category of objective conditions. Subjective conditions are the terms of agreement of those who bind themselves and the conditions of ability to make agreements. If the subjective conditions cannot be fulfilled then the agreement can be canceled (Vernietigbaar). Objective conditions are the conditions of a certain thing and the conditions of a

cause that are lawful. If in the agreement objective conditions are not met, then the agreement is null and void. (Hasanudin, 2016)

3.3 Legal Protection of Sighat Taklik Talak Against Wives in Marriage

Sighat taklik as one of the legal instruments certainly has logical consequences for marriage couples who do it. Although it is not mandatory in every marriage, its influence can be calculated for the continuity of domestic life. Sighat taklik as one of the complements for married couples in order to realize a harmonious family. The marriage contract serves to build a bond for both partners and sighat taklik strengthens the bond. If the contents contained in the sighat taklik are not fulfilled by the husband, then the wife has the right to sue her husband.

The process of filing for divorce in the Religious Court is increasing, this is not a form of negative resistance from a wife, but one of the stern warnings if the husband does not carry out his obligations. From starting to allow domestic violence that often occurs in domestic life, divorce cannot be avoided. Divorce lawsuit is one of the legal remedies filed by women to claim their rights. Because in principle (equality before the law) everyone is equal before the law. Likewise, the legal force of sighat taklik for women is very important to implement.

Some sighat taklik clauses contain the obligation of the husband to carry out his duties as a husband based on the principle of *mu'asyarah bil ma'ruf*. However, in some cases, women and children are often subjected to acts of violence. This is driven by the understanding that a husband considers himself as the head of the family who has full authority in the household. If in every marriage event a married couple is given an understanding of sighat taklik, then in fact they will be earnest to achieve a *sakinah, mawaddah and rahmah* home life. In addition, sighat taklik contains elements of protection for women. This can be seen in several sighat taklik clauses as formulated as follows:

1. Leaving wife for two years in a row

The understanding of a husband leaving his wife, that is, the husband does not fulfill his obligations but also does not divorce his wife. Whereas in the practice of Religious Courts it is interpreted that the husband is unclear of his whereabouts and goes far from the place of residence together.¹⁰⁶ The IHL does not unilaterally regulate the concept of leaving the wife for two consecutive years

Article 116 of the IHL states that one of the reasons for filing a divorce lawsuit is if one party, both husband and wife, leaves without the permission of the other party for two consecutive years without an acceptable reason. Article 116 (b) i.e. "Divorce may occur on the grounds of: either party leaves the other party for two consecutive years without the permission of the other party and without a valid reason or nothing else beyond his ability".

The provisions of article 116 explain that the departure of a husband for two consecutive years cannot necessarily be considered a violation of *talaq* if his departure is approved by the wife or because of something else beyond his ability that cannot be avoided. Article 133 paragraph 1 of the IHL states that, the departure of the husband is counted when the husband leaves home for the first time.¹⁰⁸ To prove this, information from the village head or *lurah* authorized by local officials such as sub-districts is required. Even if the husband is proven to have left his wife for more than two years, the wife still has to make sure that her husband does not have the good faith to return to build a family that is *sakinah mawaddah warrahmah*.

2. Protection for the wife if the husband does not provide compulsory income for three months

The act of a husband leaving his wife and children without news and mental income is a violation of the husband's obligations to his wife and violates the husband's obligations as parents to children under the Marriage Law and KHI. Explained in Qs. Al-Baqarah: 2: 233:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا

"And mothers should breastfeed their children for two full years, for those who want to breastfeed perfectly. And it is the father's duty to bear their livelihood and clothing in a proper manner. A person is not burdened with more than he can afford."

This verse explains that, the income received by the wife can be deliberated so that on the one hand it can fulfill the rights of the wife and on the other hand does not burden the husband beyond the limits of his ability. It is hinted at by pronunciation bil ma'rûf. It means something that has become a tradition of society, so that the husband is not burdened with providing for his wife beyond his ability. (Kaltsum, 2013)

Meanwhile, the income regulation in Law No. 1 of 1974 concerning Marriage can be seen in Article 34 paragraph (1) of the Marriage Law. In the article it is said that the husband is obliged to protect his wife and provide everything necessary for married life according to his ability. In the regulation of the Marriage Law, it is not stipulated the amount of income that must be given, only said according to the ability of the husband.

Meanwhile, according to the IHL, the husband's obligation to his wife is contained in article 80 paragraphs (2) and (4) that the husband is obliged to protect his wife and provide everything necessary for married life in accordance with his ability. In accordance with his income, the husband bears:

- a. Bread, kiswa and residence for the wife
- b. Household expenses, treatment costs and medical expenses for wives and children
- c. Children's education fees

If the husband abandons his obligation to provide for three consecutive months, then the wife has the right to take legal action through the Religious Court. If the husband is found guilty, then the wife is also entitled to recover unpaid income as a debt that must be repaid by the husband

3.4 Protection of the Wife from the Husband Who the Husband Harms the Wife Physically/Spiritually

The husband must protect his wife well, meaning that the husband must not hurt her physically or spiritually. In accordance with the explanation of Qs. An-Nisa: 4: 34:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَفِظْنَ لِنَفْسِنَّ مَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

"Men (husbands) are protectors of women (wives), because Allah has favored some of them (men) over others (women), and because they (men) have provided for their property. So godly women are those who obey (to Allah) and take care of themselves when (their husbands) are not around, because Allah has taken care of (them). Those women whom you are worried about nushuz, you should give them advice, leave them in bed, and (if necessary) beat them. But if they obey you, then don't look for excuses to trouble them. Truly, God is highest, great."

In the Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 2 of 1990, discussing the word hurt is limited to hurting the body or body only. However, PP No. 9 of 1975 states that mental abuse can be used as a reason for divorce.

3.5 Protection of a Wife Whose Husband Lets (Ignores) Her Wife Six Months

The word let can be interpreted as not heeding, not paying attention, not forbidding or not caring. If the husband does not care about the rights of the wife who are his obligations. The judge in the Religious Court interpreted the word "let" to mean that the husband's address was known or contacted. However, the husband does not want to go to his wife's place and does not care about her at all. In Article 34 paragraph 3 of the Marriage Law No. 1 of 1974, a divorce lawsuit can be filed

with the Religious Court on the grounds that one of the parties (husband) has neglected his obligations as a husband.

The author's opinion is that it is true that Taklik talaq provides protection for wives. The 4 elements above make the husband will be more careful in acting to his wife. Given that there is a culture that develops in society that makes the husband free to do anything with his wife, because the wife is under his responsibility. If one or all of the above elements are committed by the husband, then the wife as the victim party can fight back by filing a lawsuit with the religious court to defend her rights as a wife. Therefore, every couple who enters into marriage must both understand that in a domestic relationship there are rights and obligations of husband and wife which then these rights and obligations are strengthened by taklik talaq as a binder so that each spouse can carry out a propriety and worthiness to act in married life.

4. CONCLUSION

Based on the explanation above, it can be concluded that the legal impact for wives in marital relationships with the existence of taklik talaq is that the wife gets protection from the husband's actions that may occur in the future and this harms the wife. Among the protections in talaq are: protection if the husband leaves the wife for two consecutive years, this is connected with Article 116 of the KHI stated that one of the reasons for filing a divorce lawsuit is if one of the parties is good. Protection for wives if the husband does not provide compulsory income for three months, can be seen in Article 34 paragraph (1) of the Marriage Law. In the article it is said that the husband is obliged to protect his wife and provide everything necessary for married life according to his ability. Protection of wives from husbands whose husbands hurt the wife's physique / spirit contained in the Regulation of the Minister of Religious Affairs of the Republic of Indonesia No. 2 of 1990, discusses the word hurt is limited to hurting the body or body only. However, PP No. 9 of 1975 states that mental abuse can be used as a reason for divorce. Protection for wives whose husbands let (ignore) their wives for six months, contained in Article 34 paragraph 3 of the Marriage Law No. 1 of 1974, divorce lawsuits can be filed with the Religious Court on the grounds that one of the parties (Husband) has neglected his obligations as a husband.

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