

Existence of Marriage Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia

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ABSTRACT

This article explains how the Existence of the Marriage Agreement in the Sambas Community of the Indonesia-Malaysia Border. Based on the pros and cons of the Sambas Malay Society, especially about the marriage agreement regarding taklik talak as a marriage agreement in Islam. With qualitative research methods that are phenomenological observations in the field, the author wants to describe how the existence of divorce taklik talak as a marriage agreement in Islam itself and its practice in the Sambas Malay Community and the reasons for the pros and cons of religious leaders. Almost every prospective husband and wife in marriage to the Sambas Malay Community does not say sighat taklik talak by the husband to his wife after the ijab qobul consent. Sighat taklik talak only knowing that it has been written or listed in a marriage book without being notified to the husband and wife. Although divorce taklik talak has written in the marriage certificate is not an obligation to say. Still, once taklik talak has said, the taklik talak cannot be revoked again. If an agreement with a husband and wife did not fulfil by one of the parties, then the other party has the right to submit the matter to the Religious Court to resolve it. The study concludes that the pros and cons of divorce taklik talak as a marriage agreement in Islam cause a lack of knowledge about Marriage Law Number 1 of 1974 article 29 regarding marriage agreements and the Compilation of Islamic Law (KHI) Article 46 concerning taklik talak. And the lack of socialization of related parties from KUA through religious counsellors and BP4 in Sambas.

Keywords: existence, agreement, Marriage, Islam.

INTRODUCTION

In practice, after *ijab qobul* in the marriage of the prospective husband and wife, a divorce agreement is made as a marriage agreement in Islam. In the Compilation of Islamic Law (KHI), although it is not explicit after the *ijab qobul* consent in marriage occurs, marriage divorce *taklik talak* can be held as a condition of Marriage in Islam. Psychologically someone has just finished the *qobul* license, then in the other portions have discussed *talak*, it is a very disturbing soul (Wahid, 2012). All of these marital objectives are unified and integral guidance. All of these objectives must be put into a unified whole and related (Nasution, 2004).

The phenomenon of field facts in the Sambas Malay community is typical for Muslim husbands and wives to say *taklik talak* after the *ijab qobul* consent in marriage. Still, some couples do not know what *taklik talak* and its function and whether a wife wants a *taklik talak* from her husband as a marriage agreement in Islam. So the husband proposes that if this happens, he hurts his wife or ignores her for some time. The wife's complaint is divorced. This data shows that divorce *taklik* has legal consequences on married couples (Lukito, 1998).

The views of the Sambas Malay community on *taklik talak* as an agreement in marriage differ; this difference makes the pros and cons debate in society. The difference of opinion stems from Islamic religious leaders in Sambas and laypeople (Sambas Malay). Some of them allow using *taklik talak* by the rules of Marriage in Islam. However, some do not need *taklik talak* in marriage; the reasons for not requiring *taklik talak* are not a particular article in the Marriage Law.

One of the benefits of *talak taklik* is to protect the wife's rights from the husband's arbitrary actions called *taklik talak* (Furkon, 2013). According to Kamal (2011), the judge will give a divorce decision if it turns out the wife's lawsuit is reasonable and proven, or in other words, *taklik talak* will have legal consequences. In Indonesia, which still upholds traditional oriental. People consider this agreement to be subject sensitive, unusual and considered unusual, rude, materialistic, too selfish, unethical, not by Islamic customs and oriental and others (Happy, 2008).

The result of human reasoning (*al-râyu*) then produces the legal regulations that form the legal basis of marriage, namely Law no. 16 of 2019 concerning marriage, one of which discussed the marriage agreement in article 29 of Law Number 16 of 2019 concerning Marriage and the Compilation of Islamic Law. In Article 29 of the Law, the marriage agreement has been explained.

The regulation of the Minister of Religion in 1975 has indirectly explained a rule that contradicts Law No. 16 of 2019. Compilation of Islamic Law underlines it is in Article 11 of the regulation of the minister of religion in 1975 as stated in Articles 45 to 52. Divorce with the wife's will is called divorce sue in classical fiqh terms called *khulu'* (Bariah & Hermawan, 2018). In the regulation of the Minister

of Religion, it is clear that *taklik talak* is part of the marriage agreement. As described in Article 46 of Islamic Law Compilation, the reading agreement and signing under *sighat taklik talak* are responsible in a legal, juridical manner. As for marriage agreements, if agreed upon by husband and wife, each must fulfil them, as long as there is no form of coercion (Rofiq, 2015).

Taklik talak divorce present to make a pledge agreement to the partner who has executed consent *ijab qobul*. That's because the right to divorce is more identical than the men. Several things cause the emergence of a desire to break the marriage which occurred *nusyuz* of the husband. This *Taklik* is used to anticipate and simultaneously hold *al-shulhu* or a peace agreement formulated in the form of *taklik talak* to resolve the problem when the husband of Husband (Rofiq, 2015).

The term *taklik talak* as a marriage agreement in Islam is indeed not explained in detail to the Sambas Malay community to couples who are going to carry out marriages, but what exists is the marriage requirements that can submit from related parties without explanation. According to Dadang Sukandar (2012), it explained that a marriage agreement was only limited to assets. Therefore, the implementation carried out before the occurrence of something regulated in the Compilation of Islamic Law.

The view of the Sambas Malay community towards *taklik talak* as an agreement in marriage varies; this difference creates a debate for the pros and cons in society. The difference in opinion stems from the idea of Islamic religious leaders in Sambas and some ordinary people. Some of them allow using *taklik talak* according to the rules of Marriage in Islam. But, on the other hand, some do not require *taklik talak* in marriage; it does not need *taklik talak* because no specific article makes it obligatory in the Marriage Law.

From the explanation above, the researcher wants to explore the problem of marriage agreement called *sighat taklik talak* as a marriage contract in Islam which has been a debate for and against the Islamic religious leaders of Malay Sambas, the assumption that after marriage, everything merges into one. This *sighat* makes each couple feel that they do not need to make a marriage agreement in the Islamic religion of *taklik*.

The researcher wants to explore and develop facts to solve these problems and provide suitable solutions. There are no differences of opinion on the theoretical basis that have been regulated in the Compilation of Islamic Law (KHI) and Indonesian Civil Law as well as the Quran and al-Hadith. From this case, the writer is interested in developing how the marriage agreement in Islam is actually in this study.

RESEARCH METHODS

This type of research is qualitative research with descriptive-analytical methods (describing). Analytical descriptive method is a method of problem-solving procedures that investigate by describing the current state of the research subject based on facts that appear as they should (Wijaya, 2007). The research subjects here are in Sambas, West Kalimantan Province. Researchers will dig deeper into the existence of marriage agreements in Islam in the Sambas Malay community, which debated the pros and cons of differences in opinion regarding this study's object. To facilitate this research, the object of this research is for two researchers: the first object is the Islamic religious figure in Sambas, and the second object is the Sambas Malay community.

Meanwhile, according to Sugiono (2010), qualitative research methods are research methods used to examine natural conditions of objects, where the researcher is a crucial instrument. Data collection techniques carry out by triangulation (combined), data analysis is specific, and qualitative research results emphasize the meaning rather than generalization. Whereas in the approach, this research, the researcher will later use the phenomenology approach. With this approach, the researcher seeks to understand the phenomena that arise in society, social situations, and the efforts that apply in forming a sakinah family and the interactions between them (Arikunto, 2009).

According to Richard L. Lanigan in Subur (2016), phenomenology as a methodology has three synergistic process stages. 1) Phenomenological Description. This description explains about, reminds us when we relate to the society that is conscious experience. 2) Phenomenology Reduction. This reduction of phenomenology explains determining which parts of the description are important and which details are unimportant. In a sense, the reduction of phenomenology aims to isolate objects from the consciousness that enters the experience they have. 3) Phenomenological interpretation. Phenomenology interpretation explains more specific or important meanings in reducing and describing the experience of consciousness investigated.

In this study, the researcher wanted to find out about *taklik talak* as an agreement in marriage to the Sambas Malay community in practice after the consent granted for the couple in marriage. *Taklik talak* also debates the pros and cons of Islamic religious leaders in Sambas and Malay people (Sambas Malay). This qualitative research produces descriptive-analytical data in written or oral words from people and behaviours that can mandate (Ahmad, 2009). Therefore, researchers want to get information and an accurate picture of a marriage agreement in Islam in the Sambas Malay community with a phenomenological approach, especially in Sambas Regency, West Kalimantan Province.

RESULTS AND DISCUSSION

Understanding *Taklik Talak*

Etymologically *taklik talak* sentence comes from two syllables, namely *taklik* and *talak*. The word *taklik talak* is a mass form of the word: **عَلَقَ يُعَلِّقُ تَعْلِيقًا** which means to hang something with something or make it dependent on something (Ma'luf, 1996). The scholars provide definitions by Yaltu & Al-Sayis (2000):

رَبِطُ حُصُولِ مَضْمُونِ جُمْلَةٍ بِحُصُولِ مَضْمَلَةٍ أُخْرَى وَتَتَوَّنُ الْجُمْلَةُ الْأُولَى جُمْلَةَ الزَّاءِ وَالَّتِ
نِيَّةُ جُمْلَةَ الشَّرْطِ

Meaning:

"Hang up the results of the amount of content called *jaza'*(effect) with another amount of content called *syara'*".

While the word *talak* comes from the word: **طَلَّقَ يُطَلِّقُ طَلَّاقًا** which means leaving, separating, releasing ties (Yaltu & Al-Sayis, 2000). The scholars define divorce in the language is (Anis, 1976):

تَحْرَرٌ مِنْ قَيْدِهِ وَنَحْوِهِ

Meaning:

"Release from the bond and for example".

From the arrangement, the word *taklik talak* divide into two kinds (Fauzan, 2013); namely, *Taklik* intention is like a promise because it contains the sense of doing work or leaving deeds or reinforcing a message. And divorce is intended is dropped to drop divorce when the conditions have met. Such divorce is called premises *taklik* requirements.

While the Big Indonesian Dictionary explains the term *taklik talak*, which means a statement of the fall of divorce or divorce in accordance with the promise that has made (because of breaking the contract), at the same time, divorce is divorce in Islamic law between husband and wife at the will of the husband . Then in the dictionary of *fiqh* it is stated that *taklik talak* is dependent on the fall of divorce on a matter, then divorce falls when that happens. Thus the word agreement is a legal relationship (Hutagalung & Gunawan, 2019). For example the husband says his wife "You are stunned if I do not give you shopping within three months". So if the husband even three months do not provide for his wife, divorce will fall (Mujid, 1994).

According to Az-Zarqa, *talaq taklik* agreement in *fiqh* terminology is a legal bond made by two or several parties who both want to bind themselves (Muthiah, 2017). According to Gus Arifin *taklik talak* (conditional coveredce), a husband divorcing his wife conditionally with something because it was done or applied,

then divorce or divorce took place. In practice, *taklik talak* is the occurrence of divorce (divorce) or separation between husband and wife dependent on something (specific conditions) (Arifin, 2016).

The explanation above can formulate that *taklik talak* is a series of divorce statements made by the husband. The information hung on a condition whose proof is possible to happen in the future. *Taklik talak* is an agreement that the prospective groom says after the marriage contract included in the marriage certificate in the form of a promise of divorce which hung on a certain condition that may occur in the future. (Faidhullah, 2017). Whereas the understanding of *talak taklik* practised in Indonesia is different from the knowledge of *talak taklik* in the book of *fiqh*. As stated in the Compilation of Islamic Law (KHI), the notion of *talak* divorce is "the agreement which the prospective bridegroom says after the marriage contract included in the marriage certificate in the form of promises of divorce which hung on a certain situation that may occur in the future" (Rajni, 2004).

Even more detailed explained even though divorce *taklik* has written in the marriage certificate, but it is not an obligation to say, but once *taklik talak* has said, then the *taklik talak* cannot be revoked again. The Compilation of Taklik Talak Islamic Law regulates in article 46 (Muthiah, 2017). Ibn Hazm did not legitimize the existence of a divorce that propped up; even in Indonesia, the divorce fell, unless the wife handed it over to the Religious Court (Asriani & Haddade, 2020). According to the benefit of husband and wife, divorce *taklik talak* as an agreement is very important. According to Manan (2005), he provided information about the current *taklik talak* in Indonesia, which has an element of protection for husbands and wives, which is intended to protect the rights of wives and husbands from possible wife fraud or wife's *nusyuz*.

Basic Law *Taklik Talak*

According to The Qur'an

The Muslim jurists differed in their discussion of the law of divorce. Some allow and some refuse; there are pros and cons, and the differences are still colouring the development of Islamic law that is caused by the existence of the divorce *taklik talak* itself as a marriage agreement in Islam. There are two possible forms of marriage agreements: in Islam, *taklik talak* and other agreements that do not conflict with Islamic law. (Anisah, 2020). The evidence used by the ulama to strengthen their opinion about the *taklik talak* is the Word of Allah SWT in the QS. al-Baqarah 2: 229, meaning: Divorce that can refer to is twice, after that may be referred back in a familiar or divorced way with a good.

According to the understanding of the Shari'a, scholars say in many definitions, *taklik talak* is the occurrence of separation (divorce) husband and wife with the pleasure of both and the wife giving payment to the husband. As for Shaykh Al-Bassam, *taklik talak* is a divorce between husband and wife with payments taken

by the husband from his wife, or otherwise with a special *lafazh*. (Kusmidi, 2018). In Islam, if the husband feels aggrieved by the behaviour and condition of his wife, he has the right to impose divorce, and vice versa; if the wife feels disappointed by the behaviour and condition of her husband, she can file for divorce, known as *khulu'*.

The verses that reveal the reconciliation of divorce are all absolute, and the whole becomes a reference as long as there are no other valid propositions. The above verse does not distinguish direct divorce from *taklik*. In the Compilation of Islamic Law (KHI), divorce *taklik* include in the forms of marriage agreements (KHI Article 45). So, in this case, *taklik talak* is a binding marriage agreement between the parties that entered into Allah SWT's contract, said in QS. al-Maidah, 5: 1, meaning: O you who believe, fulfil all binding covenants.

With the existence of the rules of the marriage agreement, it functions to provide guarantees for the protection of human rights, ensure each person's legal position by their respective legal positions, and limit the prohibition of specific orders that must obey in human behaviour. Therefore, this rule is inseparable in providing benefits for realizing the legal function, especially in Islamic law.

The explanation of this verse can be the basis for formulating the procedures and conditions for divorce *taklik* as a marriage agreement in Islam. The fundamental law of *taklik talak* is the same as the *talak* divorce, namely *makruh*. According to the original law, this is, but if the *taklik talak* leads to damage, the law will be *haram* (Rasjid, 2007). For this reason, it feared that it would lead to divorce, so it's okay for the two actually to make peace (Shihab, 2000). *Taklik talak* is the meaning of a divorce which depends on the occurrence of a thing that is indeed possible stated in advance in an agreement promised in advance (Thalib, 2013). From the explanation above, divorce *taklik talak* is a marriage agreement in Islam that is binding according to generally includes all binding, and *taklik talak* is a form of contract.

According to al-Hadith

Binding agreements, in general, include all binding and *takli talak* are binding. As explained in the Quran, *aqad* (covenant) consists of the promise of faithful humanity to God and the covenant made by humans in the fellowship of their neighbours. Qur'an means that Allah's permissible and what is forbidden, and what is intended by Allah and all that determine in the Quran should not be betrayed and violated (Yaltu & Al-Sayis, 2000).

This hadith *taklik* (agreement) marriage in Islam stated that it must ensure harmony with the truth (Al-Baihaqi, 2010). The Prophet's Hadith which reads, meaning: Has told us Azhar bin Jamil Has told us Abdul Wahhab Ats Tsaqafi Has told us, Khalid, from Ikrimah from Ibn Abbas that; Thabit ibn Qais's wife came to the Prophet *Sallallaahu 'Alaihi Wasallam* and said, "O Messenger of Allah, I do not criticize Thabit bin Qais for his religion or character, but I am afraid of kufr in Islam." Then the Prophet *Sallallaahu 'Alaihi Wasallam* said: "Do you want to

restore his garden?" He answered, "Yes," The Messenger of Allaah '*alaihi wasallam* said: "Accept the garden, and divorce it with divorce one." Abu Abdullah said; There are no reinforcing traditions from Ibn Abbas (Bukhari, 2010).

From all the discussions of the Qur'an and the above hadith, it is only natural that *taklik talak* comes to the pros and cons. However, this hadith has fulfilled what the Prophet said about the most appropriate conditions to fulfilled; based on this opinion, the opportunity for a marriage agreement was opened (Syarifuddin, 2014). The reason is that the divorce agreement's text is attached to the copy of the marriage certificate and is valid nationally signed by the husband, so once the *taklik talak* agreement promised, it cannot revoke.

An Analysis of the Arguments of The Sambas Society Pros and Cons of Marriage Agreements ***Malay Society Pros of Marriage Covenants in Islam***

Here, the authors describe the data that the authors obtained through interviews about the object studied in the Malay community: Pros against Marriage Agreements in Islam.

The opinion of Mr H. Heri (religious figure) regarding the divorce of divorce is *taklik talak* divorce is the hanging of divorce. In which case the divorce falls following predetermined conditions, so if the husband violates the contents of the divorce, one falls, with the condition that the wife must submit to the Religious Courts and the Religious Courts grant the wife's demands.

Here, the author also asks the *taklik talak*; according to Mr H. Heri, *taklik talak* is good because it protects the rights of a wife and the husband to carry out his obligations. But, according to him, what needs to be changed is '*iwad* (substitute) because, from the time he was married, the value of '*iwad* is still the same up to now, which is Rp. 10,000.00 (ten thousand rupiahs).

Mr H. Heri also agreed with the divorce *taklik talak* as an agreement in the marriage of his reasons for giving protection to a wife, saying the *taklik talak* during the marriage becomes the husband's obligation to carry out his promises. Mr H. Heri also said that *taklik talak* is very relevant because there are still husbands who do not carry out their obligations towards a wife at this time.

Mr. H. Heri said that after the *qabul* consent, he also said *taklik talak*. His reason was because *taklik talak* was a government decree and the MUI did not forbid his words. Because there was a divorce *taklik talak* in marriage and the contents of the *taklik talak* were not detrimental to both parties in marriage to foster a *sakinah, mawaddah, and warahmah* household. (Interviews with Mr. H. Heri, "Religious Leaders (Malay Sambas)").

Then according to the perception of Mr Santriadi about the content of *sighat taklik* is appropriate because the sentence has gone through selecting the correct sentence. Its formulation carry out by parties who are experts in their fields. The person who makes the *sighat taklik talak* content must be the parties trusted and recognized by the state to formulate a regulation or legal provision. He also shared the opinion of the first respondent about *'iwad* (successor) that needed to be updated.

The author also asks the opinion of Mr Santriadi agree on the existence of divorce taklik as a marriage agreement in Islam; he agreed in marriage for his reasons, so that wife's rights are fulfilled physically and mentally in fostering the household. At the time of marriage, he also said the *taklik talak* with the *taklik talak* was determined to foster good marital relations and could bring peace in the household (The results of an interview with Mr Santriadi "The Public Malay (Malay Sambas)").

So the authors elaborate that, in our country, one of the reasons the government imposes divorce *taklik talak* as a marriage agreement in Islam is to suppress the arbitrary actions of husbands against wives who are often victims of domestic violence. Even though it is voluntary in nature, reading divorce quotes seems to be an obligation that husbands must carry out in this country (Nugroho, 2018). With the adoption of divorce *taklik talak* as a marriage agreement in Islam, the husbands can no longer arbitrarily leave their wives traveling for a long time. Nor can they hurt their bodies or beat their wives without reason because the wife can submit a divorce suit to the Religious Court.

When it comes to pronouncement, factors outside the husband's control of his speech, such as coercive elements, loss of sanity, or loss of control, should be given attention. Islamic law itself has given exemption and relief in certain circumstances. Therefore, clear evidence is needed to help the court make the right decision and benefit the parties involved (Nasohah & Shukor, 2018).

Malay Society cons Marriage Agreement in Islam

The opinion of Mr. H. Husaini Mahmud about *taklik talak* divorce as a marriage agreement in Islam is a divorce holder, meaning that a husband depends on the divorce on his wife's condition. For example, she has just enjoyed it; if that condition occurs, then one divorce falls on his wife. Opinions of Mr. H. Husaini Mahmud about the content of *sighat taklik talak* is that the contents of *taklik* need not said at the time of marriage. Still, a husband should give a better promise to support his wife as well as possible and to each other and love each other forever. He also said that if *taklik talak* is read it is the same as having a prejudice that is not good for the marriage that will live.

Agree or not Mr H. Husaini Mahmud with the existence of *taklik talak* as a marriage agreement in Islam. However, he disapproved of *taklik talak* in marriage because he did not regulate in the Quran and al-Hadith; he said that without reciting,

the taklik talak was legal in marriage because there were no provisions, then the agreement cancelled.

Her perception is whether or not divorce divorce divorce is a marriage agreement; she said that if divorce is irrelevant, the reason for reading it is that the wife's divorce *taklik talak* will have the right to divorce her husband. There will be many divorces because of the divorce *taklik talak*. Isn't divorce an act that God hates. When he was married, he did not say taklik talak because the problem of *taklik talak* was not in Islamic law (Interview with Mr H. Husainai Mahmud, Religious Leaders).

Furthermore, according to Mr Ruspianto, his opinion on divorce is an agreement that hung, meaning that the husband depends on divorce from the married wife; if the conditions occur, then divorce falls on the wife. Mr Ruspianto opinion about the content of *sighat taklik talak* is that *taklik talak* does not need to be said after the *ijab qobul* consent pre-marital socialization BP4 does not explain the *taklik talak* and what it contains. not all husbands read *sighat taklik talak* after carrying out the marriage contract. (Putra, Faisol, & Madyan, 2019). BP4 only explains how to foster a happy home.

Mr Ruspianto disapproved of the divorce *taklik talak* because he did not have a strong law regarding the obligation to read the taklik talak contents. If there were such an agreement, it would cause problems in the household because his word bound him. Relevant to know whether or not the divorce *taklik talak* is a marriage agreement, he said that the *taklik talak* is irrelevant, the reason Mr Ruspianto reads the *taklik talak* will disrupt the marital relationship in the household. When Mr Ruspianto got married, he did not say *taklik talak* because it was already filled in BP4, and did not need to be said again as a marriage agreement in Islam. (The results of an interview with Mr. Ruspianto, "People of the Lay (Malay Sambas)").

After seeing the interviews with respondents who contradict the divorce *taklik talak* as a marriage agreement in Islam, the researcher will conclude from the above analysis that the religious figures and the Sambas Malay community (lay people) residing in Sambas Regency, so the two respondents have different opinions. Still, the respondent did not approve of divorce *taklik talak*.

Both respondents did not approve of divorce *taklik talak* as a marriage agreement in Islam because the reason was that there was no stipulation in the Quran and al-Hadith. Moreover, divorce *taklik talak* made it easier for a divorce between husband and wife to develop a household. The opinion of the two respondents he expressed was entirely rational given one side that with the divorce *taklik talak*, divorce in the family would occur a lot because the wife has the courage to sue for her husband's divorce, so the opinion of the two respondents issued leads to the negative impact that is caused. from the existence of talak taklik in Marriage in Indonesia.

It is true that divorce is something that is lawful but hated by Allah Swt., even though we know that divorce is something that is hated by Allah Swt. as the words of the Prophet Muhammad:

حَدَّثَنَا كَثِيرُ بْنُ عُبَيْدٍ الْحِمَصِيُّ حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ الْوَلِيدِ الْوَصَّافِيِّ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَبْغَضُ الْحَلَائِلِ إِلَى اللَّهِ الطَّلَاقُ

Meaning:

"For telling us Katsir bin Ubaid Al Himshi said; has told us Muhammad bin Khalid from Ubaidullah bin Al Walid Al Washshafi from Muharib bin Ditsar from Abdullah bin Umar he said, "Rasulullah SAW said: "The most halal matter that Allah SWT hates is divorce"(Majah, 2008).

From the reality of the researcher observations, developments in the Sambas Malay community today occur that many problems may be faced by husband or wife, especially in carrying out marital life. So sociologically, reading *sighat taklik talak* in the marriage process can be used as a solution to protect each person's rights, especially a person wife.

In its development, *sighat taklik talak* made not only to focus on material rights or possessions but also on caring social relationships and the inner living obtained from a partner. This *sighat* includes starting a marriage with openness and honesty, the opportunity to express each other's desires, and matters relating to financial problems or birth.

Based on the explanation above, the writer explains that a marriage agreement is essential. The existence of a marriage agreement supported by an apparent legal force in the Quran and the hadith of the Compilation of Islamic Law (KHI) and its influence on the existence of women adds to the importance of the meaning of divorce *taklik* in domestic life.

After the researchers made observations on the Sambas Malay Community to the bride and groom who wanted to hold a marriage contract at the Sambas Religious Affairs Office (KUA), Many couples read and do not read the vision of *taklik talak*. This data proves the pros and cons of reading and signing the *taklik talak talak* described above regarding the respondents selected by the researcher in this study. All married couples have awareness after reading *sighat taklik talak*, before the village head and PPN gives direction to their husbands about *sighat taklik talak*. Thus the *taklik talak* remains valid and still has legal consequences because the *taklik talak* depends on the read and signed *sighat taklik talak* by the husband. So it is obvious what happened in the writer's observation at the Office of Religious Affairs (KUA) Sambas. Almost all wedding couples hold marriages after the *qobul* consent; that's where married couples read and sign the *sighat taklik talak*.

CONCLUSION

There is an understanding in the Malay community (husband and wife couple) who do not know what *taklik talak* is and its function and whether a wife wants *taklik* divorce from her husband as a marriage agreement in Islam. The view of the Sambas Malay community towards *taklik talak* as an agreement in marriage varies, this difference creates a debate for the pros and cons in society. The difference in opinion stems from the idea of Islamic religious leaders in Sambas and some ordinary people. They allow the use of *taklik talak* according to the rules of Marriage in Islam, described in the Quran and al-Hadith regarding the agreement and the existence of regulations in the Islamic Law Compilation (KHI) *taklik* divorce in article 46. While some do not need *taklik talak* in marriage, the reasons that do not require *taklik talak* are no explanation from the verses of the Quran and al-Hadith about *taklik talak*. There is no specific article that makes it mandatory in the Marriage Law. Saying *taklik talak* as an agreement in marriage has psychologically disturbed the husband and wife about the marriage agreement in Islam. The solution from the author to the bride and groom who want to live a household life so that they can become a family of *sakinan*, *mawaddah* and *warohmah*, are as follows: Entering household life requires solid mental preparation so that problems in the household can handle properly in building a family happy in accordance with Islamic law. Furthermore, husband and wife who want to carry out the marriage must have good intentions, and not only as a satisfaction of lust, which can cause cracks in the household. And the role of BP4 should be to provide regular socialization about *taklik talak*, from its provisions to benefits so that it becomes clear about the actual *taklik talak*, especially in the community of Malay Sambas.

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REFERENCES

- Ahmad, T. (2009). *Pengantar Metodologi Penelitian*. Yogyakarta: Teras.
- Al-Baihaqi. (2010). *Sunan Al-Bihaqi Kubro*. Beirut: Dâr Al-Kutub Al-Ilmiyah.
- Anis, I. (1976). *Al-Mu'jâm Al-Washi*. Mesir: Darul Ma'arif.
- Anisah, L. (2020). Kedudukan Perjanjian Perkawinan Menurut Hukum Islam. *Jurnal Hukum Tri Pantang*, 6(2), 11–18.
- Arifin, G. (2016). *Menikah Untuk Bahagia (Fiqih Pernikahan Dan Kamasutra Islami)*. Jakarta: Pt Elex Media Komputindo Kompas Gramedia.

- Arikunto, S. (2009). *Manajemen Penelitian (X)*. Jakarta: Rineka Cipta.
- Asriani, A., & Haddade, A. W. (2020). Kedudukan Taklik Talak Dalam Pernikahan Perspektif Mazhab Zahiri Dan Kompilasi Hukum Islam. *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, 2(2), 333–339.
- Bariah, O., & Hermawan, I. (2018). Analisis Putusan Pengadilan Agama Karawang Tentang Cerai Gugat Karena Pelanggaran Taklik Talak (Studi Perkara No. 0554/Pdt. G. 2015/Pa. Krw). *Al-Afkar, Journal For Islamic Studies*, 1(1), 182–195.
- Bukhari, S. (2010). *Hadis 9 Imam (Terjemahan)*. Jakarta: Lidwa Pustaka.
- Faidhullah, S. (2017). Taklik Talak Sebagai Alasan Perceraian (Tinjauan Hukum Islam dan Hukum Positif). *AL-RISALAH*, 13(1), 91–124.
- Fauzan, M. (2013). *Pengantar Hukum Islam Dan Pranata Sosial*. Bandung: Pustaka Setia.
- Furkon, A. (2013). *Fiqih Munakahat*. Jakarta: Attariyâ.
- Happy, S. (2008). *Pembagian Harta Gono-Gini saat Terjadi Perceraian*. Jakarta: Visimedia.
- Hutagalung, N. A., & Gunawan, E. (2019). Taklik Talak Dan Akibat Hukumnya Dalam Kompilasi Hukum Islam Perspektif Teori Feminis. *Al-Mizan*, 15(1), 183–202.
- Kamal, M. (2011). *Asa-Asas Hukum Islam Tentang Perkawinan*. Jakarta: Bulan Bintang.
- Kusmidi, H. (2018). Khulu' (Talak Tebus) Dan Implikasi Hukumnya Dalam Perspektif Hukum Islam. *El-Afkar: Jurnal Pemikiran Keislaman Dan Tafsir Hadis*, 7(1), 37–50.
- Lukito, R. (1998). *Pergumulan Antar Hukum Islam Dan Adat Di Indonesia*. Jakarta: Inis.
- Ma'luf, L. (1996). *Al-Munjid*. Beirut: Darul Masriq.
- Majah, S. I. (2008). *Hadis 9 Imam (Terjemahan)*. Jakarta: Lidwa Pustaka.
- Manan, H. A. (2005). *Penerapan hukum acara perdata di lingkungan peradilan agama*.
- Mujid, M. A. (1994). *Mabruru Thalhah Syafi'ah Am (Terjemahan)*. Jakarta: Firdaus.
- Muthiah, A. (2017). *Hukum Islam-Dinamika Perkembangan Seputar Hukum Perkawinan Dan Hukum Kewarisan*. Yogyakarta: Pt Pustaka Baru.
- Nasohah, Z., & Shukor, M. A. (2018). Faktor Luar Kawalan Dalam Penentuan Status Talak Tiga Sekali Lafaz di Mahkamah Syariah. *Malaysian Journal of Syariah and Law*, 6(3), 41–48.

- Nasution, K. (2004). *Islam Tentang Relasi Suami Dan Istri (Hukum Perkawinan I)*. Yogyakarta: Academia Dan Tazzfa.
- Nugroho, H. (2018). Kedudukan Taklik Talak Menurut Hukum Fikih dan Kompilasi Hukum Islam. *Al-Bayyinah*, 2(1), 73–90.
- Putra, N. R., Faisol, A., & Madyan, S. (2019). Pelafalan Sighot Taklik Talak Dalam Pernikahan Ditinjau Dari Maqashid Al-Syari'ah. *Jurnal Hikmatina*, 1(2), 23–27.
- Rajni, W. (2004). *Pelanggaran Taklik Talak Menurut Kompilasi Hukum Islam Sebagai Alasan Perceraian Suami Isteri*. UI Sumatera Utara Medan.
- Rasjid, S. (2007). *Fiqh Islam*. Bandung: Sinar Baru.
- Rofiq, A. (2015). *Hukum Perdata Islam Di Indonesia*. Jakarta: Rajawali Press.
- Shihab, M. Q. (2000). *Tafsir Al-Mishbah Vol. 2*. Ciputat: Lentera Hati.
- Subur, A. (2016). *Filsafat Komunikasi Tradisi Dan Metode Fenomenologi*. Jakarta: Pt Remaja Rosda Karya.
- Sugiono, S. (2010). *Metodologi Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif dan R&D (XI)*. Bandung: Alfabeta.
- Sukandar, D. (2012). *Membuat Surat Perjanjian*. Yogyakarta: Andi Offset.
- Syarifuddin, A. (2014). *Hukumperkawinan Islam Di Indonesia, Antara Fiqih Munakahat Dan Undang-Undangperkawinan*. Jakarta: Kencana.
- Thalib, S. (2013). *Hukum Keluarga Indonesia*. Jakarta: Yayasan Penerbit.
- Wahid, W. A. (2012). Kesalahan-kesalahan seputar Tahap-tahap Pernikahan Paling Sering Terjadi. *Jogyakarta: Sabil*.
- Wijaya, H. (2007). *Metodologi Dan Teknik Penulisan Skripsi, Tesis, Dan Disertasi*. Jakarta: Elementera Publising.
- Yaltu, M., & Al-Sayis, A. S. (2000). *Muqaranah Al-Madzâhib Fil Fiqhi, Terj Zakiy Al-Kaaf*. Bandung: Pustaka Setia.