



THE URGENCY OF REGULATION OF SIGHAT TAKLIK TALAK TO PROTECT WIVES' RIGHTS IN MARRIAGE FROM A POSITIVE LEGAL PERSPECTIVE IN INDONESIA

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15 Keywords: <i>Sighat ta'lik talak,</i> <i>marriage law,</i> <i>Compilation of Islamic</i> <i>Law, protection of wife.</i>	<p>Sighat ta'lik talak is an agreement made by a husband after the marriage contract, which gives the wife the right to file for divorce if the husband violates the agreed provisions. In the Islamic legal system in Indonesia, sighat ta'lik talak is recognized in the Compilation of Islamic Law (KHI) and several related regulations, but does not yet have a strong legal basis in Law Number 16 of 2019 concerning Marriage. As a result, sighat ta'lik talak is often viewed as a formality without a deep understanding of its legal implications. In practice, violation of sighat ta'lik talak does not immediately lead to divorce, but must be submitted to the Religious Court to obtain a legal decision.</p> <p>This study uses a normative legal method with a doctrinal-deductive approach and analysis of legal regulations related to sighat ta'lik talak. The results of the study indicate that sighat ta'lik talak has an important role in protecting the rights of wives, especially in cases of neglect of livelihood and domestic violence. However, there are still obstacles in its implementation, including the lack of public understanding and the absence of regulations governing the legal consequences for husbands who violate sighat ta'lik talak. Therefore, it is necessary to strengthen the position of sighat ta'lik talak in Indonesian positive law to be more effective in providing legal protection for wives. In addition, a revision of the sighat ta'lik talak clause to be more relevant to current social and economic conditions is also urgent.</p>

I. INTRODUCTION

Marriage is a sacred bond between husband and wife that aims to form a harmonious, peaceful, and happy family as regulated in Law Number 16 of 2019 concerning Marriage. However, in practice, the bond of marriage does not always go according to expectations. Unresolved household problems often lead to divorce. In the Islamic legal system, divorce is the last resort that can be taken if there is no other solution to maintain the marriage. One form of protection for the rights of wives in the Islamic legal system is sighat ta'alik talak, which is a statement by the husband after the marriage contract containing certain conditions that if violated will result in a divorce.(Muthoin 2012)

In the context of positive law in Indonesia, sighat ta'alik talak has not been explicitly regulated in the Marriage Law, but is regulated in the Compilation of Islamic Law (KHI). Article 45 of the KHI states that both prospective brides and grooms can enter into a marriage agreement in the form of ta'lik talak or other agreements that do not conflict with Islamic law. Furthermore, Article 46 of the KHI emphasizes that sighat ta'lik talak does not automatically result in a divorce when a violation occurs, but must be submitted to the

Religious Court to obtain a legal decision. This shows that although sighat ta'lik talak is recognized in the Islamic legal system in Indonesia, its implementation still requires a legal process involving the judicial institution.(Suharto 2019)

The urgency of regulating sighat ta'alik talak in positive law in Indonesia is increasingly felt considering the many inequalities in marital relations, especially in terms of protecting the rights of wives. In practice, sighat ta'lik talak is often considered only as a tradition without a deep understanding of its legal benefits. Most people see sighat ta'lik talak as a mere formality carried out after the marriage contract, without understanding the legal implications that can protect wives from arbitrary actions by their husbands. In fact, sighat ta'lik talak has great potential in providing legal protection for wives, especially in cases of neglect, domestic violence, or neglect of livelihood.(Zuhrah 2016)

In the context of national law, Law Number 16 of 2019 on Marriage does not regulate sighat ta'lik talak as a reason for divorce or as a form of marriage agreement. Article 29 of the Marriage Law only regulates marriage agreements made before marriage and does not specifically mention

sighat ta'lik talak. Meanwhile, in Article 39 paragraph (2) of the Marriage Law, the reasons for divorce recognized by law include adultery, habits of drunkenness or gambling, leaving a partner for two consecutive years without a valid reason, serving a criminal sentence of five years or more, committing serious domestic violence, having an illness that hinders function as a husband or wife, and irreconcilable disputes and quarrels. The absence of sighat ta'lik talak in the list of reasons for divorce in this law shows that its position as a tool for protecting the rights of wives is still not explicitly recognized in positive Indonesian law.

On the other hand, the Compilation of Islamic Law (KHI) recognizes sighat ta'lik talak as one of the grounds for divorce. Article 116 of the KHI states that one of the grounds for divorce is if the husband violates sighat ta'lik talak. With the recognition in the KHI, a wife who feels that her rights have been violated can file a divorce lawsuit with the Religious Court. However, because the KHI is only a guideline and not a law that has the same legal force as statutory regulations, the implementation of sighat ta'lik talak in legal practice often experiences obstacles. This is further exacerbated by differences in perception among legal experts regarding the position of the KHI in the hierarchy of statutory regulations in Indonesia.

The main problem in sighat ta'lik talak is that its legal consequences do not automatically lead to divorce. Even though the husband violates the contents of sighat ta'lik talak, the wife must still file a lawsuit with the Religious Court to obtain a divorce decision. This is different from the concept of sighat ta'lik talak which is actually preventive in nature to protect the wife from arbitrary actions by the husband. Therefore, there is an urgent need to clarify the regulations regarding sighat ta'lik talak in Indonesian positive law so that it can be more effective in providing legal protection for wives. (Hilmiatun 2021)

In addition, the clauses in the sighat ta'lik talak that are currently used also need to be revised to be more relevant to current social and economic conditions. For example, in the sighat ta'lik talak it is stated that if the husband leaves or ignores his wife for six months without providing maintenance, then the wife can file for divorce. However, this clause does not provide clear legal consequences for the husband regarding his obligation to provide maintenance during the period of neglect. From a civil law perspective, maintenance that is not provided by the husband

should be categorized as a debt that can be claimed by the wife through a civil lawsuit mechanism. Therefore, there needs to be clearer regulations regarding the legal implications of violations of sighat ta'lik talak, including the possibility of imposing sanctions on husbands who neglect their obligations.

In addition to the issue of living expenses, sighat ta'lik talak should also include aspects of protection for wives from domestic violence (KDRT). Currently, cases of domestic violence still often occur in society, but sighat ta'lik talak does not explicitly regulate that acts of domestic violence can be a legitimate reason for a wife to file for divorce without having to go through a long process in court. Therefore, a revision of sighat ta'lik talak is needed to include protection for wives from physical and psychological violence and provide a faster and more effective legal mechanism for wives who are victims of domestic violence.

In the development of modern law, sighat ta'lik talak should not only be a formality in the marriage contract, but also have clear legal force to guarantee the rights of the wife. Therefore, the regulation of sighat ta'lik talak in positive law in Indonesia must be strengthened in order to provide legal certainty and justice for the wife in marriage. This can be done by including sighat ta'lik talak as part of the marriage agreement which has strict legal consequences if violated by the husband. Thus, sighat ta'lik talak is not only a symbolic protection tool, but also has strong coercive power in maintaining the balance of rights and obligations in marriage. (Yana 2022)

Based on the various problems above, this study aims to examine the urgency of regulating sighat ta'lik talak in order to protect the rights of wives in marriage from a positive legal perspective in Indonesia. This study will also analyze how sighat ta'lik talak can be strengthened in the national legal system in order to provide more effective protection for wives and ensure justice in marital relations.

II. RESEARCH METHODS

The research method used in this study is normative legal research with a doctrinal-deductive approach, namely research based on library research that examines the concept of sighat ta'lik talak in positive law in Indonesia. (Yam 2022) This study uses primary data in the form of laws and regulations, such as Law Number 16 of 2019 concerning Marriage, PP

Number 9 of 1975, Compilation of Islamic Law (Presidential Instruction Number 1 of 1991), and Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 75 of 2014, as well as secondary data covering various fiqh books, scientific journals, and related literature. Data collection techniques are carried out through documentation studies, while data analysis uses a content analysis approach to understand the legal substance of *sighat ta'lik talak* and a comparative method to compare the views of related scholars.

III. RESULTS AND DISCUSSION

A. Legality of *Sighat Ta'lik Divorce Regulations in the Indonesian Legal System*

The Compilation of Islamic Law (KHI) was compiled on the initiative of the Chief Justice and the Minister of Religious Affairs through a Joint Decree. KHI has received recognition from scholars and various elements of society.(Suprayogi 2023)Officially, KHI is the result of consensus (*ijma*) of scholars from various groups who went through a national workshop and then received legalization from the state. The preparation of KHI was carried out through several channels:

- The first path, a review of 38 books of Islamic jurisprudence from various schools of thought covering 160 family law issues.
- The second track, interviews with clerics from ten religious court jurisdiction areas.
- The third path, a review of religious court products collected in 16 books.
- The fourth track, a comparative study of family law in Morocco, Egypt and Türkiye.

KHI is a form of Islamic law with Indonesian characteristics. Presidential Instruction Number 1 of 1991 stipulates KHI as a guideline in resolving cases in the Religious Court environment. Its preparation is based on Law Number 32 of 1954, Law Number 1 of 1974, and Government Regulation Number 9 of 1975.

However, even though the KHI is used as a guideline in religious courts, judges have the freedom to explore and understand the legal values that exist in society, as stated in Article 27 paragraph (1) of Law Number 14 of 1970.

Religious Courts have existed since 1882, but before the KHI, judges did not have a uniform legal basis in deciding cases. This is because the applicable Islamic law has not been codified in writing and is still scattered in various yellow books.(Aini and Sholehah 2024)

The reform of Islamic family law in Indonesia aims to create legal certainty and uniformity in religious courts. Before the KHI and the 1974 Marriage Law, marriage law in Indonesia was very diverse, depending on customary law, the Indonesian Christian Marriage Ordinance, and the Civil Code.

KHI is considered a great success for Indonesian Muslims because it created uniform fiqh guidelines and became positive law that must be obeyed. However, there is criticism that the material of KHI is still dominated by the Shafi'i school. Therefore, KHI continues to develop as a result of *ijtihad* that is contextual and relevant to Indonesian society.

KHI does not have an equal position with laws and regulations, but it is still used as a guideline in resolving cases in religious courts. Based on research by the Directorate of Religious Court Development, as many as 71% of Religious Court decisions use KHI explicitly.(Princess 2024)

However, because the KHI is only stipulated through a Presidential Instruction, religious judges are not legally bound absolutely. Therefore, it is necessary to improve the position of the KHI in the hierarchy of laws and regulations, for example through laws or presidential regulations.

1. *Ta'lik Talak as a Marriage Agreement*

Marriage agreements are regulated in Article 29 of Law Number 16 of 2019 concerning Marriage. However, *ta'lik talak* is not included in the category of marriage agreements regulated in the law.

KHI stipulates that *ta'lik talak* is an agreement that cannot be changed or revoked after being declared and signed in a marriage certificate. The Minister of Religion determines the contents or *sighat ta'lik talak* that must be read and signed by the husband after the marriage contract.(Hasanuddin 2016)

Ta'lik talak is regulated in Article 45-52 of the KHI, which states that a marriage agreement can be made in the form of *ta'lik talak* or other agreements that do not conflict with Islamic law. If there is a violation of *ta'lik talak*, the wife has the right to file a lawsuit with the Religious Court.

2. *Consequences of the Law of Ta'lik Divorce*

The legal consequences of *ta'lik talak* include:

- *Khuluk and Wife's Rights After Khuluk*
 - A wife who files for divorce through *khuluk* loses her *iddah*

and mut'ah maintenance rights based on Articles 149 and 161 of the KHI.

- Khuluk causes talak ba'in shughraa, which cannot be referred to except by a new marriage contract.
- Iwadh in Ta'lik Divorce
 - Iwadh or ransom is a condition for the validity of khuluk.
 - Ta'lik talak has set the amount of iwadh at Rp. 10,000, which is handed over to a social agency.

3. Ta'lik Talak in the Perspective of Feminist Legal Theory

Feminist Legal Theory considers that the law tends to favor men and strengthens the patriarchal system. Ta'lik talak, in practice, illustrates the inequality between the rights of husband and wife.

The main criticism of ta'lik talak in the KHI is:

- A wife who files for divorce due to a violation of the ta'lik talak loses her rights to iddah and mut'ah maintenance.
- The husband is not subject to legal consequences for violating the agreement.
- The payment of iwadh by the wife signifies an inequality in the Islamic family law system in Indonesia.

Feminist Legal Theory recommends that Islamic law in Indonesia be more gender-just by providing legal consequences for husbands who violate ta'lik talak and guaranteeing the rights of wives after divorce.

4. The position of Sighat Ta'lik Talak in the Marriage Law

Ta'lik talak is not explicitly recognized in Law Number 16 of 2019 concerning Marriage as a reason for divorce. However, in practice, the Religious Court accepts divorce suits based on violations of ta'lik talak.

To end the debate regarding the legal position of ta'lik talak, further studies need to be carried out to improve its position in the national legal hierarchy, either through laws or presidential regulations.

B. Urgency of Regulation of Sighat Ta'alik Divorce to Protect the Rights of Wives in Marriage from a Positive Legal Perspective in Indonesia

Sighat ta'lik talak in Indonesian marriage law is one aspect that continues to be debated.

Some parties support its implementation because it is considered a mechanism of protection for wives against the arbitrariness of their husbands, while others consider that sighat ta'lik talak does not have a strong legal basis in Islamic teachings.(Dwiyanti 2024)The decision of the Indonesian Ulema Council (MUI) in 1996 stated that sighat ta'lik talak is no longer necessary because the material contained therein has been accommodated in the Marriage Law and the Compilation of Islamic Law (KHI). Article 46 paragraph 3 of the KHI itself states that the ta'lik talak agreement is not a requirement in every marriage. However, despite this, the practice of sighat ta'lik talak is still often carried out in society and is a part that is almost always present in the wedding procession.

In the context of Islamic marriage law in Indonesia, the main purpose of marriage is to create a household that is peaceful, loving, and compassionate as stated in the Compilation of Islamic Law Article 2. However, in reality, not all couples are able to maintain the bonds of marriage until the end of their lives.(Gunawan 2019)There are many factors that cause divorce, such as the inability of one party to fulfill their obligations, infidelity, domestic violence, and economic factors. Based on Article 113 of the KHI and Article 38 of Law Number 16 of 2019 concerning Marriage, a marriage can end for three reasons, namely death, divorce, and court decisions. Divorce in Islamic law itself has various levels of law, from the makruh to the obligatory, depending on the circumstances of the household.(Lie et al. 2019)

One form of divorce that often occurs in Indonesia is talak, which in Islamic law means a husband's vow before a religious court to divorce his wife. Sighat ta'lik talak is basically a vow made by the husband after the marriage contract, which contains a statement that the wife can sue for divorce if the husband violates the provisions that have been vowed. However, the implementation of ta'lik talak does not immediately cause a divorce to occur, but must be submitted to the religious court to obtain a judge's decision. Thus, ta'lik talak is not an absolute requirement in marriage, but if it has been vowed, it binds the husband to fulfill the promise.

In the Compilation of Islamic Law, sighat ta'lik talak is mentioned in Articles 45 and 46, which explain that the contents of the ta'lik talak must not be contrary to Islamic law, and if the conditions required in the ta'lik talak actually occur, then the divorce does not automatically

occur, but must go through a religious court. This agreement is also not mandatory in every marriage, but if it has been agreed upon, it cannot be revoked. Although *sighat ta'lik talak* is not legally required, in practice, it is still often used as a basis for a wife to file for divorce when her husband does not fulfill his obligations. The existence of *sighat ta'lik talak* is further regulated in the Regulation of the Minister of Religion Number 3 of 1975 which emphasizes that *sighat ta'lik talak* must be announced and signed by the husband after the marriage contract.

In Law Number 16 of 2019, there is no article that specifically regulates *sighat ta'lik talak* as part of a marriage agreement or as a reason for divorce. Article 29 only states that prospective husband and wife can enter into a marriage agreement before marriage, and the contents of the agreement must not violate the law, religion, or morality. In this case, *sighat ta'lik talak* is more of a unilateral promise from the husband that gives the wife the right to file for divorce if there is a violation of the promise. Although not explicitly regulated in the marriage law, *sighat ta'lik talak* is still recognized in the Islamic legal system in Indonesia, and its violation can be a reason for the wife to file for divorce. (Siregar 2024)

The effectiveness of *sighat ta'lik talak* in Islamic marriages in Indonesia can be seen from its practice in religious courts. Many divorce cases are filed on the grounds of violation of *ta'lik talak*, especially in cases of neglect of maintenance, domestic violence, or leaving the wife without a valid reason. For example, a wife can file for divorce if the husband does not provide mandatory maintenance for three consecutive months, as regulated in *sighat ta'lik talak*. In addition, if the husband commits physical violence or leaves his wife for more than two years without news, the wife also has the right to file for divorce. Thus, *sighat ta'lik talak* can be a legal instrument that protects the rights of wives in marriage. (Kudzalifah 2022)

From the perspective of *Maqasid Syari'ah*, *sighat ta'lik talak* can be categorized as a form of protection for women in marriage. *Maqasid Syari'ah* aims to achieve benefits for human life, which includes five main aspects, namely protection of religion (*hifz al-din*), soul (*hifz al-nafs*), reason (*hifz al-aql*), descendants (*hifz al-nasl*), and wealth (*hifz al-mal*). In the context of *sighat ta'lik talak*, protection of offspring and souls is the most relevant aspect. With the *sighat ta'lik talak*, women have legal protection if their

husbands commit acts that harm them, such as abandoning their wives or committing domestic violence.

The existence of *sighat ta'lik talak* can also be associated with the concept of gender equality in Islam. Although in Islamic law, the right to divorce is in the hands of the husband, *sighat ta'lik talak* gives the wife the right to file for divorce if the husband violates the agreement that has been sworn. Thus, *sighat ta'lik talak* can be one of the legal instruments that balances the rights and obligations between husband and wife in marriage. In addition, *sighat ta'lik talak* also functions as a social control mechanism that encourages husbands to be responsible in carrying out their obligations. (Nastangin and Huda 2019)

However, in practice, there are various obstacles in the implementation of *sighat ta'lik talak*. One of them is the lack of public understanding of the meaning and legal implications of *sighat ta'lik talak*. Many couples only consider *sighat ta'lik talak* as a formality without understanding its consequences. In addition, there is a tendency that *sighat ta'lik talak* is only used by the wife as a reason for divorce when the household relationship can no longer be maintained. This shows that *sighat ta'lik talak* has not been fully internalized as part of legal awareness in society. (Haris 2013)

In conclusion, *sighat ta'lik talak* has a significant role in protecting the rights of wives in marriage in Indonesia. Although not required by Islamic law, *sighat ta'lik talak* has become part of the practice of marriage law in Indonesia and is often used as a basis for wives to file for divorce. From the perspective of *Maqasid Syari'ah*, *sighat ta'lik talak* can be considered as an instrument that supports the protection of life and descendants, which is part of the main objective of Islamic law. Therefore, it is important for the government and religious institutions to continue to socialize the meaning and legal implications of *sighat ta'lik talak* in order to provide more optimal protection for women in marriage.

IV. CONCLUSIONS AND RECOMMENDATIONS

Sighat ta'lik talak is a legal instrument in Islamic marriage in Indonesia that functions as protection for wives against arbitrary actions by their husbands. Although it has been recognized in the Compilation of Islamic Law (KHI) and regulated in several related regulations, *sighat ta'lik talak* does not yet have a strong position in

Law Number 16 of 2019 on Marriage. In practice, violations of *sighat ta'lik talak* do not automatically result in divorce, but must be through filing a lawsuit at the Religious Court. This shows that although *sighat ta'lik talak* can be a basis for wives to claim their rights, the implementation mechanism still faces legal and social obstacles. In addition, the lack of public understanding of *sighat ta'lik talak* causes the ineffectiveness of this instrument as a form of optimal legal protection for wives.

From the perspective of *Maqasid Syari'ah*, *sighat ta'lik talak* has a purpose that is in line with the principle of protection of life and descendants in Islamic law. With the existence of *sighat ta'lik talak*, the wife has the right to file for divorce if the husband violates his obligations, such as neglecting his wife or committing domestic violence. However, in order for *sighat ta'lik talak* to be more effective in providing legal protection, there needs to be strengthening of regulations in the national legal system as well as wider socialization to the community regarding its meaning and consequences. In addition, revising the *sighat ta'lik talak* clause to be more relevant to current social and economic conditions is an important step to ensure better legal protection for wives in marriage.

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