

Reinterpreting Talik Talak in Indonesia: Harmonizing Fiqh and the Compilation of Islamic Law in Indonesia

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Abstract: This study addresses the conceptual tension between classical fiqh and the Indonesian Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) in regulating ta'lik talak, particularly in relation to the protection of women's rights and marital justice. It aims to reinterpret ta'lik talak through a harmonization framework that integrates classical Islamic jurisprudence with contemporary statutory regulation in Indonesia. Employing a normative comparative method, this research is based on a comprehensive literature review of primary legal sources, including the Quran, hadith, classical fiqh texts, and the KHI, supported by relevant secondary legal materials. The findings reveal that classical fiqh conceptualizes ta'lik talak as a flexible and consensual mechanism grounded in private agreement, whereby divorce takes effect automatically upon the fulfillment of stipulated conditions. In contrast, the KHI institutionalizes ta'lik talak within a formal legal framework that requires judicial intervention through religious courts to activate its legal consequences, thereby prioritizing women's legal protection and procedural certainty. The harmonization of these two approaches illustrates the transformation of Islamic family law from a predominantly moral individual paradigm toward a legal formal system, while maintaining the substantive objectives of Shari'ah in response to Indonesia's socio legal context. This study contributes to the development of Islamic family law by affirming ta'lik talak as a dual legal instrument that is both normative religious and statutory, capable of enhancing women's rights protection, safeguarding marital stability, and operationalizing the principles of maqasid al shari'ah within Indonesia's positive legal order.

Keywords: Family Law, Comparative Law, Ta'lik Talak, Fiqh

Abstrak: Penelitian ini membahas ketegangan konseptual antara fikih klasik dan Kompilasi Hukum Islam (KHI) dalam pengaturan ta'lik talak, khususnya terkait dengan perlindungan hak-hak perempuan dan keadilan dalam perkawinan. Penelitian ini bertujuan untuk menafsirkan ulang ta'lik talak melalui kerangka harmonisasi yang mengintegrasikan yurisprudensi Islam klasik dengan regulasi perundang-undangan kontemporer di Indonesia. Dengan menggunakan metode normatif-komparatif, penelitian ini didasarkan pada kajian literatur yang komprehensif terhadap sumber-

sumber hukum primer, termasuk Al-Qur'an, hadis, kitab-kitab fikih klasik, dan KHI, serta didukung oleh bahan hukum sekunder yang relevan. Hasil penelitian menunjukkan bahwa fikih klasik memandang ta'lik talak sebagai mekanisme yang fleksibel dan bersifat konsensual yang berlandaskan pada perjanjian privat, di mana perceraian terjadi secara otomatis ketika syarat-syarat yang ditetapkan terpenuhi. Sebaliknya, KHI melembagakan ta'lik talak dalam kerangka hukum formal yang mensyaratkan adanya campur tangan peradilan melalui pengadilan agama untuk mengaktifkan akibat hukumnya, sehingga mengedepankan perlindungan hukum bagi perempuan dan kepastian prosedural. Harmonisasi kedua pendekatan tersebut menggambarkan transformasi hukum keluarga Islam dari paradigma moral-individual yang dominan menuju sistem hukum formal, dengan tetap mempertahankan tujuan substantif syariat sebagai respons terhadap konteks sosial-hukum Indonesia. Penelitian ini berkontribusi pada pengembangan hukum keluarga Islam dengan menegaskan ta'lik talak sebagai instrumen hukum ganda yang bersifat normatif-keagamaan sekaligus statuter, yang mampu meningkatkan perlindungan hak-hak perempuan, menjaga stabilitas perkawinan, serta mengoperasionalkan prinsip-prinsip *maqāṣid al-syarī'ah* dalam tatanan hukum positif Indonesia

Kata Kunci: Hukum Keluarga, Hukum Perbandingan, Ta'lik Talak, Fikih

Introduction

Marriage is a fundamental institution in human life that is not only socially valuable but also spiritually and legally valuable (Khairuddin, 2025). From an Islamic perspective, marriage is understood as *mitsaqan ghalizha*, a strong covenant between a man and a woman to live together in a sacred bond based on love and mercy (*mawaddah wa rahmah*) (Chaniago, 2023). The noble purpose of marriage is not merely to fulfill biological needs, but to form a family that is peaceful, loving, and compassionate, and to maintain the social order of society so that it remains stable and dignified.

However, this ideal is not always in line with social reality. Many marriages experience disharmony due to various factors such as economic issues, infidelity, domestic violence, or neglect in fulfilling spousal obligations. When domestic conflicts can no longer be resolved peacefully, divorce becomes the last resort. In the context of national law, Article 38 of Law Number 1 of 1974 concerning Marriage states that marriage can be dissolved by death, divorce, or by court order. Of the three reasons, divorce is the most complex and sensitive issue because it involves moral, religious, and gender justice aspects.

Islam views divorce (*ṭalāq*) as the most permissible act that is most hated by Allah SWT. In a hadith of the Prophet SAW, it is stated: "*The most hated permissible act by Allah is divorce.*" (Narrated by Abu Dawud, Ibn Majah, and Al-Hakim) (Al-Nuri, 2018). This hadith emphasizes that divorce is truly a last resort that should only be pursued if all attempts at reconciliation have failed (Al-Nuri, 2018). Therefore, Islamic law not only regulates the mechanisms of divorce but also provides safeguards to protect the

rights of each party, particularly the wife, so that she is not harmed by the husband's arbitrary actions (Affan, 2025).

One of the protection instruments known in Islamic law is the *ta'lik talak* agreement. Etymologically, the word *ta'lik* means to hang or condition something, while *talak* means divorce (Burhanuddin & Salleh, 2024). Thus, *ta'lik talak* is a promise or statement by the husband that links the occurrence of divorce to the fulfillment of certain conditions (Latif et al., 2023). This practice is commonly done immediately after the marriage contract, where the husband recites the *ta'lik talak* formula as a form of commitment to his wife, for example: if he leaves his wife without providing for her physical and emotional needs for a certain period of time, the divorce automatically takes effect.

From a classical Islamic jurisprudence perspective, the existence of *ta'lik talak* is recognized, although there are differing views among scholars. The Hanafi and Hanbali schools generally permit conditional divorce (*ṭalāq mu'allaq*) as long as the condition does not contradict Islamic law. Meanwhile, the Shafi'i and Maliki schools hold that conditional divorce is only valid if the stipulated condition truly occurs. On the other hand, the Zahiri school strongly rejects the form of *ta'lik talak* because it is considered to contradict the principle of seriousness in pronouncing divorce. This difference in perspective demonstrates the breadth of Islamic legal knowledge in interpreting normative texts and their social context (Zahro, 2023).

As Islam developed in the archipelago, the *ta'lik talak* underwent a process of adaptation to local culture and legal systems. In Indonesia, this practice was then administratively institutionalized thru the Compilation of Islamic Law (KHI), especially in Book I on Marriage (Perpustakaan Mahkamah Agung RI, 2003). Almost all marriage contracts in Indonesia are followed by the groom reciting the *ta'lik talak* formula in front of the religious official. The text is also uniform, as stated in the KHI Appendix and the official marriage certificate of the Ministry of Religious Affairs. This formalization makes the *ta'lik talak* no longer just a personal agreement, but a part of the national legal system. However, this is where the interesting question lies that is worthy of critical study.

Talaq *ta'lik* in classical jurisprudence is essentially flexible, contextual, and arises from the agreement of both parties (husband and wife), whereas in the KHI it is formal, uniform, and does not allow for negotiation regarding the content of the agreement. In fact, the main purpose of *ta'lik talak* is to provide legal protection for women from potential abandonment or violence (Achmad Baihaqi, 2021). When the content of *ta'lik talak* is standardized without considering the social conditions or legal awareness of the couple, the substance of that protection becomes unclear.

Furthermore, there is an epistemological tension between classical jurisprudence and positive Islamic law in Indonesia. Fiqh, as a product of scholarly *ijtihad*, has a normative and theological character, while the KHI, as a result of legal codification, has an administrative and legalistic character. This difference in paradigms is what gives rise to the conceptual gap regarding the meaning, function, and legal

implications of *ta'lik talak* in Indonesia. In practice, there is still confusion among the public and law enforcement regarding when a *ta'lik talak* is considered valid, how it is enforced, and to what extent the agreement can be used as a basis for divorce proceedings.

Therefore, there is a need for a reinterpretation of the concept of *ta'lik talak* to align it with the ideals of justice, public interest, and legal protection for women. This reinterpretation is important not only to reconcile the differences between classical jurisprudence and the KHI, but also to build harmony between religious norms and Indonesia's positive legal system. In the context of modern society, which increasingly demands gender equality and justice, a re-reading of the divorce *ta'lik* becomes relevant as part of the reform of Islamic family law.

This study employs a normative-comparative approach by analyzing fiqh texts from six major schools of thought and the provisions regarding *ta'lik talak* in the Compilation of Islamic Law. This approach allows researchers to see the common ground and differences between classical Islamic legal sources and national legal products. Through this analysis, it is hoped that new formulations can be found that not only maintain the authenticity of Islamic jurisprudence teachings but are also responsive to the socio-legal dynamics of Indonesian society. Thus, this research aims to uncover and reinterpret the meaning of *ta'lik talak* as a legal instrument that is supposed to guarantee justice and well-being, not merely a formal symbol in a marriage contract. This research is expected to contribute to the development of Islamic family law in Indonesia, particularly in the effort to harmonize classical Islamic law and the Compilation of Islamic Law, while also strengthening the principles of justice and protection for women in marriage.

Method

This research uses the normative legal research method or library research (Nur Solikin, 2021) as the main focus of this study lies in the analysis of relevant written legal materials, while the approach used in this research is qualitative-normative (Nurhayati et al., 2021). The qualitative approach allows researchers to delve deeply into the meaning and principles of Islamic law through content analysis of legal texts. The focus is on examining the concept of *ta'lik talak* through a literature review of classical Islamic legal sources and the Compilation of Islamic Law (KHI) in Indonesia. This approach was chosen because the issue being studied is conceptual, not empirical, so the analysis is directed toward the legal norms and doctrines found in fiqh literature and legislation. The approach used is comparative and contextual.

The comparative approach is used to compare the views of the four major schools of thought—Hanafi, Maliki, Shafi'i, and Hanbali—with the provisions of *ta'lik talak* in the KHI. Meanwhile, the contextual approach aims to align the analysis results with the social conditions and legal system in Indonesia to ensure relevance to modern family law practices. The data sources in this study consist of primary legal materials such as the Quran, hadith, classical fiqh books, and the Compilation of Islamic Law, as

well as secondary legal materials including books, journal articles, and related research findings (Armia, 2022). Data was collected thru documentation studies and analyzed descriptively and comparatively (Sofwatillah et al., 2024), meaning by explaining, comparing, and interpreting the concept of *ta'lik talak* from various sources to find a form of harmonization between classical fiqh and national Islamic law.

Results and Discussion

Results

Ta'liq Ṭalāq between Religious Norms and State Law in Indonesia

Ta'liq ṭalāq consists of two terms: *ta'liq* and *ṭalāq*. Etymologically, *ta'liq* derives from the Arabic verb *'allaqa-yu'alliqu-ta'līqan*, meaning “to hang,” “to suspend,” or “to attach” (Munawwir, 1997). In Islamic law, *ṭalāq* refers to the act of releasing the marital bond or terminating the legal relationship between husband and wife (Achmad Baihaqi, 2021). Islamic jurisprudential literature also employs the term *ṭalāq mu'allaq* to denote a form of divorce that is suspended upon the occurrence of a future event or action determined by the husband (Febriyosa & Rahayuningsih, 2021). In this form, the legal effect of divorce is contingent upon the fulfillment of specific conditions, typically introduced by conditional expressions such as “if,” “when,” or “whenever.”

Based on this understanding, *ta'liq ṭalāq* may be defined as a conditional divorce whose effectiveness depends on the occurrence of a particular event or circumstance, whether related to speech, action, or time. In the Indonesian context, *ta'liq ṭalāq* has become a common practice in certain Muslim communities at the time of marriage. During the marriage ceremony, after the groom pronounces the *ijāb-qabūl*, he subsequently recites a *ta'liq ṭalāq* declaration prepared by the Marriage Registrar (Pegawai Pencatat Nikah, PPN) of the local Office of Religious Affairs.

From a normative perspective, *ta'liq ṭalāq* functions as a legal mechanism aimed at balancing the position of women in marriage by providing them with limited agency in determining the continuation of the marital relationship. Through this mechanism, the authority to initiate divorce is partially shifted from the husband to the wife. Consequently, when a wife experiences hardship or injustice within the household, she may submit a divorce claim to the Religious Court on the grounds that the husband has violated one of the conditions stipulated in the *ta'liq ṭalāq* pledge.

Some scholars who use textual evidence to rule on *ta'lik talak* base their arguments on Surah An-Nisaa' verse 128 of the Quran: (Dan Diklat Kementrian Agama RI, 2019)

وَإِنْ أَمْرَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُورًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا ۚ وَالصُّلْحُ خَيْرٌ ۚ وَأُخْضِرَتِ الْأَنْفُسُ الشُّحَّ ۚ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Meaning: And if a woman fears that her husband will be disloyal or indifferent, then the two of them can make a genuine reconciliation, and reconciliation is better (for them), even tho humans are by

nature stingy. And if you improve (your relationship with your wife) and protect yourselves (from disloyalty and indifference), then indeed, Allah is All-Knowing of what you do.

The ḥadīth commonly cited as the legal basis for *ta'liq ṭalāq* is the narration reported by Imām al-Tirmidhī from 'Amr ibn 'Awf al-Muzanī (may Allah be pleased with him), in which the Messenger of Allah (peace and blessings be upon him) stated that reconciliation among Muslims is permissible, except when it renders the lawful unlawful or the unlawful lawful, and that Muslims are bound by the conditions they stipulate, so long as those conditions do not contravene Islamic law (al-Nūrī, 2018). This ḥadīth establishes the general principle that agreements and conditions mutually agreed upon by Muslims are legally binding, provided they remain within the boundaries of Sharī'ah.

With regard to the conditions for the validity of *ta'liq ṭalāq*, the majority of jurists agree that three essential requirements must be fulfilled (Faisal et al., 2025). First, the condition attached to the divorce must concern a future event that has not yet occurred and remains possible; if the condition is impossible, the *ta'liq* is deemed invalid. Second, at the time the husband pronounces the *ta'liq ṭalāq*, the woman must still be legally his wife. Third, when the stipulated condition is fulfilled, the marital relationship must still subsist. These requirements reflect the juristic consensus that a pronouncement of divorce directed at a woman who is not legally a wife is devoid of legal effect.

Classical jurists further classify *ta'liq ṭalāq* into two main types (Shodikin et al., 2021). The first is *ta'liq shartī*, which suspends divorce upon a condition genuinely intended to result in divorce if fulfilled, whether the condition relates to the actions of the husband, the wife, or a third party. Once the stipulated condition occurs, the divorce takes effect automatically; this view is attributed to the majority of both early (*Salaf*) and later (*Khalaf*) scholars. The second type is *ta'liq qasamī*, which resembles an oath and is intended not to effect divorce, but to encourage or prevent certain behavior, or to emphasize a statement, such as when a husband says, "If you leave, then divorce falls upon you," with the intention of prohibition rather than actual dissolution of marriage.

Regarding the legal status of *ta'liq ṭalāq*, scholars of the major schools of Islamic jurisprudence hold differing views. The majority of scholars from the Mālikī, Shāfi'ī, Ḥanafī, and Ḥanbalī schools consider *ta'liq ṭalāq* valid so long as it fulfills the established conditions (Zahro, 2023). This position is supported by Qur'ān, Sūrat al-Baqarah (2:229), which does not distinguish between *ṭalāq munjaz* (immediate divorce) and *ṭalāq mu'allaq* (conditional divorce), nor does it impose restrictions on particular forms of divorce. Moreover, historical practice during the time of the Companions affirms its validity, as narrated by Imām al-Bayhaqī from Ibn Mas'ūd (may Allah be pleased with him), who ruled that a conditional divorce took effect when its condition was fulfilled (Burhanuddin & Salleh, 2024). These differing juristic perspectives

continue to shape contemporary debates and contribute to the dynamic development of Islamic family law.

Second, according to the Mālikī, Shāfi‘ī, Ḥanafī, and Ḥanbalī schools of jurisprudence, *ta’līq ṭalāq* is deemed to have legally taken effect upon the wife when certain conditions are fulfilled (Afadi & Sari, 2024). First, the object of the *ta’līq* must relate to an event that has not yet occurred at the time the declaration is made, but which remains possible in the future. Second, at the time the *ta’līq ṭalāq* is pronounced, the person to whom it is directed must already be the lawful wife of the husband who issues the declaration. Third, the *ta’līq ṭalāq* must be pronounced within a single session (*majlis wāḥid*), in which both the husband and wife are present. Accordingly, a *ta’līq ṭalāq* is considered valid and legally binding only when all of these conditions are satisfied in accordance with the doctrines of the four major Sunni schools of law. Failure to meet any one of these requirements renders the conditional divorce ineffective and without legal consequence.

Beyond the four major Sunni schools, scholars from the Zāhiriyyah and the Imāmiyyah Shī‘a schools articulate a contrasting position regarding *ta’līq ṭalāq*. These schools maintain that *ta’līq ṭalāq*, whether in the form of *qasamī* (oath-based) or *sharṭī* (conditional), is invalid. Their primary argument is that *ta’līq ṭalāq* constitutes a form of oath (*qasam*), and swearing by anything other than the name of Allah is prohibited in Islam (Kasten, 2025). This view is further supported by traditions cited by Ibn Ḥazm and Ibn Qayyim al-Jawziyyah. Overall, the divergence of opinions among the schools of Islamic jurisprudence on *ta’līq ṭalāq* stems from methodological differences in interpreting textual evidence, legal reasoning, and the underlying objectives (*maqāṣid*) of Islamic law.

Table 1. Comparative Views of Islamic Legal Schools on *Ta’līq Ṭalāq*

Mazhab	Views on <i>Ta’līq Ṭalāq</i>	Validity Requirements	Status Hukum	Basic Principles & Evidence
Hanafi	Valid and enforceable if the conditions are clear and possible.	1) The condition has not yet occurred, but it might. 2) The wife is still legally married when the statement is made and when the condition is met.	Divorce occurs when the conditions are met.	QS. Al-Baqarah [2]: 229 the practice of companions like Ibn Mas’ud.
Maliki	Valid provided it does not contradict the objectives of Islamic law.	1) The condition is possible. 2) It is not intended to manipulate the law. 3) The statement was made legally.	Divorce is valid, but it is disliked without a legitimate reason.	The principle of maintaining the common good in contracts.

Syafi'i	Valid and automatically falls if the conditions are met without the need for a new intention.	1) The wording must be clear. 2) The conditions must be possible. 3) The wife is still married.	Divorce automatically occurs if the conditions are met.	The principle of <i>iltizam bi al-syarat</i> (fulfilling conditions in a contract).
Hanbali	Just like Shafi'i, it is valid if the conditions are met	1) The condition is possible. 2) Explicit wording.	Divorce has occurred, but it is recommended to avoid it.	Hadith 'Muslims are bound by their conditions' (Narrated by Tirmidhi).
Zahiri & Syiah Imamiyah	Invalid; rejects the form of conditional divorce.	Considering the condition that makes the divorce void.	Divorce does not occur.	There is no explicit textual evidence; divorce must be pronounced immediately.

Generally, this study identifies at least three principal factors underlying the divergence of opinions among scholars from different schools of Islamic jurisprudence. These factors can be articulated as follows.

First, at the conceptual level, the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools understand *ta'liq ṭalāq* as a valid form of *iltizām* (legal commitment) within the framework of contractual obligations. From this perspective, Islamic law permits the suspension of legal consequences upon the fulfillment of specified conditions, provided that such conditions do not contravene explicit textual evidence (*naṣṣ*) or the rational objectives of the law. In contrast, the Zāhirī and Imāmiyyah Shī'a schools regard *ta'liq ṭalāq* as legally invalid, as they conceptualize it as analogous to an oath (*qasam*), which, in their view, lacks binding legal force in matters of divorce.

Second, with respect to the interpretation of legal evidence, the majority of Sunni jurists argue that the absence of an explicit prohibition in the Qur'ān implies the permissibility of *ta'liq ṭalāq*. This position is further reinforced by historical practice during the era of the Companions, such as rulings attributed to Ibn Mas'ūd and 'Umar ibn al-Khaṭṭāb. Conversely, the Zāhirī and Imāmiyyah Shī'a schools reject this inferential method, insisting instead on the necessity of explicit textual authorization. They view the permissive reasoning employed by the majority as an unwarranted

extension of the law and, consequently, as a form of legal innovation lacking a definitive scriptural basis (Kasten, 2025).

Third, divergences also emerge from differing legal orientations and methodological approaches. The Ḥanafī and Shāfi'ī schools tend toward a textual-formal orientation, emphasizing the linguistic formulation of legal acts and the validity of contractual expressions. The Mālikī school, by contrast, adopts a more ethical and contextual approach, assessing *ta'liq ṭalāq* in light of social welfare (*maṣlaḥah*) and the underlying intentions of the parties. Meanwhile, the Zāhirī and Imāmiyyah Shī'a schools maintain a strict scripturalist stance, recognizing only those legal forms that are explicitly articulated in the primary sources. Sociologically, these methodological differences are also shaped by historical and social contexts: in patriarchal societies, *ta'liq ṭalāq* has often been viewed as a corrective mechanism to enhance women's access to justice, whereas its opponents regard the practice as a potential source of marital instability, insofar as it renders the continuity of marriage contingent upon uncertain future conditions.

In the Indonesian legal context, the position of *ta'liq ṭalāq* is clearly regulated within the Compilation of Islamic Law (*Kompilasi Hukum Islam*—KHI). It is recognized as one of the legally valid forms of marriage agreements in Indonesia's Islamic legal system. In addition to its regulation in the KHI, provisions concerning *ta'liq ṭalāq* are further elaborated in the Regulation of the Minister of Religious Affairs (*Peraturan Menteri Agama*, PMA) No. 2 of 1990, as well as in the Supreme Court Circular Letter No. 2 of 1990 concerning the implementation of Law No. 7 of 1989 on Religious Courts. Within the KHI, *ta'liq ṭalāq* is specifically regulated in Chapter VII on Marriage Agreements, particularly in Articles 45 and 46 (Supreme Court Library of the Republic of Indonesia, 2003).

Article 45 of the KHI stipulates that prospective spouses may enter into a marriage agreement, either in the form of *ta'liq ṭalāq* or other contractual arrangements, provided that such agreements do not contravene Islamic law. Article 46 further emphasizes that the substance of a *ta'liq ṭalāq* agreement must comply with Shari'ah principles. Importantly, the KHI clarifies that a violation of the *ta'liq ṭalāq* agreement does not automatically dissolve the marriage. Instead, the determination of whether a violation has occurred and its legal consequences must be adjudicated by the Religious Court, thereby ensuring procedural certainty and judicial oversight.

Similarly, PMA No. 2 of 1990 regulates *ta'liq ṭalāq* within Chapter III on Marriage Examination, particularly in Articles 11 and 24. These provisions allow prospective spouses to conclude a marriage agreement as long as its contents do not conflict with Islamic law or prevailing regulations. The regulation also outlines the procedural requirements for executing a marriage agreement, including its drafting, recitation, and formal ratification by an authorized marriage registrar at the Office of Religious Affairs (*Kantor Urusan Agama*, KUA). Furthermore, it stipulates that a *ta'liq ṭalāq* agreement lacks legal force if it is not pronounced by the husband before a

competent official or if it is not duly signed in accordance with applicable legal procedures (Ibrahim Harahap & Syahmedi Siregar, 2022).

Although the pronouncement of *ta'liq ṭalāq* is not a mandatory requirement for the validity of a marriage, once it has been pronounced and mutually agreed upon, it becomes legally binding and irrevocable. In principle, the legal consequence of *ta'liq ṭalāq* is that if the stipulated conditions are fulfilled in the future, the divorce may take effect, subject to judicial confirmation and the wife's provision of *iwāḍ* (redemption), where applicable. From the perspective of the objectives of marriage in Islam—particularly the preservation of marital harmony and the prevention of arbitrary divorce—the KHI does not treat *ta'liq ṭalāq* as an automatic ground for divorce. Rather, it situates *ta'liq ṭalāq* within the broader framework of consensual marriage agreements, emphasizing its role as a protective legal mechanism rather than as a tool to facilitate divorce.

In conclusion, both the KHI and PMA No. 2 of 1990 affirm that *ta'liq ṭalāq* occupies a clear and formal position within Indonesia's Islamic legal system as a form of marriage agreement. While it is not mandatory in every marriage, once lawfully pronounced and agreed upon before the marriage registrar, it carries binding legal force and cannot be unilaterally revoked. If a husband subsequently violates the agreed-upon conditions and the wife raises an objection by filing a claim before the Religious Court, *ta'liq ṭalāq* may serve as a valid legal basis for divorce, subject to judicial determination. Thus, *ta'liq ṭalāq* functions as a conditional and procedural legal instrument that balances marital stability with the protection of spouses' rights within Indonesia's positive Islamic law framework.

Discussion

The harmonization between classical jurisprudence and the Compilation of Islamic Law (KHI) in the context of *ta'lik talak* demonstrates a dialectical process between traditional Islamic legal texts and the modern and contextual needs of Indonesian national law. In classical jurisprudence, scholars from the four major schools of thought have differing views regarding the validity and legal status of *ta'lik talak*. The Hanafi and Shafi'i schools generally view *ta'lik talak* as a conditional promise that is legally valid if the specified condition is met, so the divorce falls automatically without the need for a repeated contract (Fizal, 2025). Meanwhile, the Maliki and Hanbali schools are more cautious, as they consider the practice of *ta'lik talak* to contain elements of uncertainty and violate the principle of prudence in divorce (Faisal et al., 2025).

Conceptually, in classical jurisprudence, *ta'lik talak* is defined as *mu'allaq talak*, which is divorce contingent upon an event or action that may occur in the future. When those conditions are met, the divorce automatically takes effect without requiring a judge's decision. This view is held by the majority of scholars from the four major schools of thought (Hanafi, Maliki, Shafi'i, and Hanbali), who base their arguments on the principle of freedom of action (*hurriyyah al-tasarruf*) in contracts, as well as on the

validity of conditions in agreements as long as they do not contradict Islamic law. As stated by Wahbah al-Zuhaili in *al-Fiqh al-Islāmī wa Adillatuhu*, a conditional divorce is valid if it meets logical conditions (Zuhaili, 2016). meaning conditions that are not impossible to occur and do not contradict the laws of Allah. However, according to the Zahiriyah scholars and some Imamiyah Shia scholars, this practice is not valid because it is considered to resemble a profane oath (*qasam*) and has no explicit basis in the Quran or Sunnah (Naufal et al., 2025).

In the context of Islamic law, the concept of *ta'lik talak* is normatively accommodated thru Articles 46 to 47, which stipulate that a husband may pronounce *ta'lik talak* at the time of the marriage contract as a valid agreement as long as it does not contradict Islamic law. However, the KHI emphasizes the administrative and legal protection aspects for women, where the pronouncement of divorce must be decided thru religious courts (KHI Article 115 jo. Article 129). (Perpustakaan Mahkamah Agung RI, 2003) Thus, the KHI does not automatically follow the literal views of classical jurisprudence, but rather adapts to the principle of "*maslahah mursalah*"—namely, social benefit and the protection of women's rights in a modern context (Azhar, 2024).

A comparison of the substance between classical jurisprudence and the KHI can be seen in the following table:

Tabel 2. Table: Legal Characteristics of Ta'liq Ṭalāq in Fiqh and the KHI

Aspek	Classical Jurisprudence (The Four Schools of Thought)	Compilation of Islamic Law (KHI)
Status Hukum	Valid if it meets the requirements and is not impossible to happen.	Officially recognized in the marriage contract (Articles 45–46 KHI)
Actor/Speaker	The husband personally and voluntarily	The husband recited the standard text in front of the religious official.
Conditions for Validity	Divorce automatically takes effect if the conditions are met.	Applies when the wife sues in the Religious Court.
Tujuan Hukum	Imposing consequences for contract terms and moral control	Providing legal protection for wives from abandonment.
Sifat Hukum	Personal (moral and individual)	Legal-formal (judicial and administrative)

The transformation from classical fiqh to the KHI indicates a shift in the legal paradigm from morality-based law to legality-based law. In classical jurisprudence, the validity of divorce depends on the husband's intention and pronouncements, without any external control mechanisms. Meanwhile, in the KHI, the legal force of the *ta'lik*

talak only takes effect after it has been tested and approved by the judiciary. This shift reflects the application of the principle of *taqyīd al-mubāh* (restriction of legal freedom) to protect women's rights and prevent the abuse of divorce by husbands.

The harmonization effort is evident in the KHI approach, which attempts to integrate the normative values of fiqh with the demands of the national legal system. If classical jurisprudence is more oriented toward the personal relationship between husband and wife, then the KHI emphasizes the legal-formal aspects and state legal protection. This difference does not indicate a contradiction, but rather an epistemological adjustment in understanding Islamic law according to the social and institutional context of Indonesia. (Hududillah et al., 2025) According to Amir Syarifuddin, the KHI's step in placing ta'lik talak within the judicial realm is a form of institutional ijtihad that adapts fiqh principles to the national legal structure. (Syarifuddin, 2006) This approach is also in line with the theory of *maqāṣid al-syarī'ah* as put forward by al-Syātibī, namely preserving religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), honor (*ḥifẓ al-'ird*), and offspring (*ḥifẓ al-nasl*) (Asy-Syatibi, 2003). In the context of divorce ta'lik, this orientation is reflected in efforts to protect women from potential spousal injustice and provide a legitimate legal channel for resolving domestic disputes (Shuhufi, 2024).

From the perspective of legal harmonization, the KHI does not reject the basic principles of classical jurisprudence, but rather reinterprets them to remain relevant to Indonesian constitutional values such as justice, gender equality, and social welfare. This shows that Islamic law in Indonesia is adaptive and responsive, as stated by Hasbi Ash-Shiddieqy in his concept of "Indonesian jurisprudence," which is jurisprudence grounded in accordance with the needs of society and the social realities of the nation (Asdar, 2023). Thus, the harmonization of jurisprudence and the KHI in the context of ta'lik talak is a form of contemporary ijtihad that combines the normative authority of jurisprudence with the principles of positive law. This effort not only provides legal certainty but also strengthens the position of women within the Islamic family law system in Indonesia. Conceptually, the KHI successfully affirmed the values of jurisprudence within the framework of modern state law, making the ta'lik talak a dual-function legal instrument: substantively shari'ah and formally legal (Nizar, 2020).

In this context, ta'lik talak is no longer merely a private conditional promise, but also a legal instrument with a social function, namely to protect the wife from potential abandonment and abuse of the right to divorce. When making divorce by talik a means of strengthening the principles of justice and responsibility for the husband, which is substantively still rooted in the objectives of Islamic law, particularly in preserving the honor and welfare of the family.

From the results of this comparison, it can be concluded that the KHI does not negate classical fiqh, but rather performs a contextual reinterpretation so that Islamic law remains relevant to Indonesia's social structure and legal system. This harmonization demonstrates the dynamic nature of Islamic law, which adapts to the times without losing its Sharia identity. More broadly, this reflects the inclusive and

evolutionary model of Islamic law development in Indonesia, which places Islamic law not only as a normative heritage but also as a value system that continues to evolve with societal changes.

Conclusion

Based on the results of the normative-comparative study, it can be concluded that *ta'lik talak* in classical jurisprudence and the Compilation of Islamic Law (KHI) share the same goal of protecting the rights of the wife and upholding justice in marriage, but there are significant differences in terms of concept, procedure, and mechanism of application. In classical jurisprudence, *ta'lik talak* is flexible, based on the personal agreement of the husband and wife, and takes effect automatically when the stipulated condition is met. Its validity is determined by meeting logical requirements and marital status, while differing interpretations of the legal text across different schools of thought lead to a rich but contextual variation in practice.

Conversely, in the KHI, *ta'lik talak* is formal, uniform, and administered through legal institutions, so its effect on the occurrence of divorce is only effective if tested and decided by the Religious Court. This approach affirms legal protection for women and balances the rights of husband and wife, while also adapting Islamic law to the principles of justice, social welfare, and the protection of women's rights in a modern context. This transformation indicates a paradigm shift from morality and individuality-based law toward legality and institution-based law.

This study also shows that the harmonization of classical jurisprudence with the KHI is not merely an administrative adaptation, but a form of contemporary *ijtihad* that maintains the essence of the *shari'ah's ta'lik talak* while making it relevant to the Indonesian socio-legal context. This reflects the responsive, adaptive, and inclusive dynamics of Islamic law: the law remains grounded in the principles of *maqāṣid al-syarī'ah*, but is adapted to societal needs and positive legal mechanisms. This research confirms that *ta'lik talak* should be understood as a dual legal instrument—substantially *shari'ah* and institutionally legal-formal—that serves to protect women's rights, preserve family integrity, and uphold social justice. This synthesis emphasizes the importance of contextual interpretation and institutional *ijtihad* to strengthen the implementation of Islamic family law in Indonesia without losing its sharia identity.

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