**Journal**

**ASPECTS OF LEGAL CERTAINTY IN VIOLATION OF A MARRIAGE AGREEMENT TAKLIK TALAK AS A REASON FOR CANCELLATION OF A MARRIAGE IN INDONESIA**

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**MASTER OF NOTARICAL STUDY PROGRAM**

**GRADUATE PROGRAM**

**PASUNDAN UNIVERSITY**

**BANDUNG**

**2024**

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**ABSTRACT**

Taklik talak is an agreement made by the prospective groom after the marriage ceremony which is included in the Marriage Certificate in the form of a promise of talak which depends on certain circumstances that may occur in the future. If you look at the substance of the norms in Article 51 of the Compilation of Islamic Law, there is legal uncertainty in regulating regulations regarding violations of the marriage agreement of taklik talak as a reason for annulling a marriage. This research is normative juridical legal research using a *statutory approach* and a conceptual *approach* . The specification of this research is descriptive analysis . This research was carried out in two stages, namely library research and field research . All data obtained was then analyzed qualitatively. The results of the research concluded that in order for a violation of the taklik talak marriage agreement to be used as a reason for marriage annulment, the violation of the taklik talak marriage agreement must be included in the provisions regarding reasons for marriage annulment. Regulations on violations of the taklik talak marriage agreement as a reason for annulment of marriage which fulfill the principle of legal certainty can be realized when there is a revision of the provisions regarding reasons for marriage annulment as regulated in Article 70 and Article 71 of the Compilation of Islamic Law by including violations of the taklik talak marriage agreement as a reason annulment of marriage .

**Keywords: Talak Taklik, Marriage Agreement, and Legal Certainty.**

**ABSTRAK**

Taklik talak ialah perjanjian yang diucapkan calon mempelai pria setelah akad nikah yang dicantumkan dalam Akta Nikah berupa janji talak yang digantungkan kepada suatu keadaan tertentu yang mungkin terjadi dimasa yang akan datang. Apabila melihat substansi norma dalam Pasal 51 Kompilasi Hukum Islam, terjadi ketidakpastian hukum dalam mengatur regulasi tentang pelanggaran atas perjanjian perkawinan taklik talak sebagai alasan pembatalan perkawinan. Penelitian ini merupakan penelitian hukum yuridis normatif dengan menggunakan pendekatan perundang-undangan *(statute approach)* dan pendekatan konseptual (*conceptual approach*). Spesifikasi penelitian ini ialah deskriptif analisis. Penelitian ini dilakukan dengan dua tahap yaitu penelitian kepustakaan dan penelitian lapangan. Semua data yang diperoleh kemudian dianalisis secara yuridis kualitatif. Hasil penelitian menyimpulkan bahwa agar pelanggaran atas perjanjian perkawinan taklik talak dapat digunakan sebagai alasan pembatalan perkawinan, maka pelanggaran atas perjanjian perkawinan taklik talak harus termuat dalam ketentuan mengenai alasan-alasan pembatalan perkawinan. Regulasi pelanggaran atas perjanjian perkawinan taklik talak sebagai alasan pembatalan perkawinan yang memenuhi asas kepastian hukum dapat terwujud ketika adanya revisi terhadap ketentuan tentang alasan-alasan pembatalan perkawinan sebagaimana diatur dalam Pasal 70 dan Pasal 71 Kompilasi Hukum Islam dengan memuat pelanggaran atas perjanjian perkawinan taklik talak sebagai alasan pembatalan perkawinan.

**Kata Kunci:** Taklik Talak, Perjanjian Perkawinan, dan Kepastian Hukum.

**RINGKESAN**

Taklik talak ialah perjanjian yang diucapkan calon mempelai pria setelah akad nikah yang dicantumkan dalam Akta Nikah berupa janji talak yang digantungkan kepada suatu keadaan tertentu yang mungkin terjadi dimasa yang akan datang. Nalika ningali substansi norma-norma dina Pasal 51 Kompilasi Hukum Islam, aya kateupastian hukum dina ngatur pangaturan palanggaran perjangjian perkawinan salaku alesan pikeun ngabatalkeun perkawinan. Ieu panalungtikan mangrupa panalungtikan hukum yuridis normatif ngagunakeun pendekatan perundang-undangan (*statute approach*) jeung pendekatan konseptual (*conceptual approach*). Spésifikasi ulikan ieu mangrupa déskriptif analisis. Ieu panalungtikan dilaksanakeun kalawan dua tahap, nyaéta panalungtikan kepustakaan jeung panalungtikan lapangan. Sadaya data anu aya teras dianalisis ku cara yuridis kualitatif. Hasil panilitian nyimpulkeun dina ngalanggar perjangjian pernikahan taklik talak kudu dijadikeun alesan pikeun ngabatalkeun perkawinan, jadi palanggaran perjangjian nikah taklik talak kudu dikandung dina katangtuan ngeunaan alesan- alesan pikeun pembatalan tina perkawinan. Pangaturan palanggaran pikeun kasapukan perkawinan taklik talak salaku alesan pembatalan perkawinan anu minuhan prinsip kapastian hukum bisa diwujudkeun lamun aya révisi kana katangtuan ngeunaan alesan-alesan pikeun pembatalan perkawinan sakumaha diatur dina Pasal 70 jeung Pasal 71 Kompilasi Hukum Islam ku cara kaasup palanggaran perjanjian perkawinan taklik talak minangka alesan pikeun ngabatalkeun perkawinan.

**Kecap Konci:** Taklik Talak, Pasatujuan Perkawinan, jeung Kapastian Hukum.

# **INTRODUCTION**

1. **Background**

Marriage is a human right guaranteed by the constitution as contained in Article 28 B paragraph (1) of the 1945 Constitution (UUD 1945). These provisions are a fundamental basis regarding marriage law in Indonesia, although in practice it turns out that not everything regulated in Article 28 B paragraph (1) is in accordance with reality.

Marriage is very important for individual and group human life. By means of legal marriage, interaction between men and women occurs in a respectful manner in accordance with humans' position as social creatures. Therefore, marital matters must be regulated so that the goal of marriage, namely creating a sakinah, mawadah and warahmah family, can be achieved. For this reason, in Indonesia the issue of marriage is regulated in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law).

One of the important things before a marriage takes place is that prospective husband and wife can enter into a prenuptial *agreement* . An agreement is an act by which one or more people bind themselves to one or more other people. [[4]](#footnote-4)A marriage agreement is an agreement made before the marriage takes place and binds the two prospective bride and groom who will get married. The content concerns the issue of dividing assets between husband and wife, which includes what belongs to the husband or wife and what is the responsibility of the husband and wife, or relates to the assets inherited by each party so that they can differentiate between what is the future wife's property and what is property. prospective husband in the event of divorce or death of one of the partners.

Marriage agreements in Indonesia are regulated in the Marriage Law and the Compilation of Islamic Law (KHI) [[5]](#footnote-5). This is deemed necessary so that the marriage agreement operates within the framework of the law and to guarantee the rights of the parties making the agreement (husband and wife). Marriage agreements in the Marriage Law are regulated in Article 29. The KHI regulates the forms of marriage agreements that can be entered into by the prospective bride and groom as stated in Article 45, namely in the form of:

1. Taklik divorce; And
2. Other agreements that do not conflict with Islamic law.

Taklik-talak is an agreement made by the prospective groom after the marriage contract which is included in the Marriage Certificate in the form of a promise of divorce which is dependent on certain circumstances that may occur in the future.[[6]](#footnote-6)

This taklik talak is usually pronounced after completing the marriage contract. Although pronouncing the divorce agreement is not an obligation under law or regulations because this is done voluntarily. However, once the divorce agreement has been agreed it cannot be revoked.[[7]](#footnote-7) The divorce agreement was held with the aim of protecting the wife's rights from the husband's arbitrary actions.[[8]](#footnote-8)

In the event that a divorce agreement has been agreed upon by both parties, each party is obliged to fulfill it, as long as the agreement does not require other parties to force it. [[9]](#footnote-9)There is no reason not to comply, because this will have legal implications. Furthermore, violation of the marriage agreement of taklik talak can make the marriage unstable and interfere with achieving the goals of the marriage. To anticipate violations of the taklik talak marriage agreement and protect the parties who agreed to the agreement, a violation of the marriage agreement gives the wife the right to request an annulment of the marriage or submit it as a reason for a divorce lawsuit to the Religious Court as regulated in Article 51 of the KHI.

Provisions regarding marriage annulment are regulated in full in Article 71 KHI . However, in this provision, violation of the taklik talak marriage agreement is not mentioned as one of the factors that could be a reason to request an annulment of the marriage. In the provisions of Article 51 of the KHI, it is also not explained in it or in other regulations in detail and clearly regarding violations of the marriage agreement taklik talak which can be used as a reason for canceling the marriage.

Basically, the law was formed to provide legal certainty so that there is no confusion that confuses the public. If you look at the substance of the norms in Article 51 of the KHI as explained above, it certainly does not rule out the possibility of legal uncertainty in regulating regulations regarding violations of marriage agreements taklik talak as a reason for marriage annulment.

In practice, it shows that cases of violation of the marriage agreement of taklik talak are carried out through divorce. This can be seen in the case decided by the Bandung Religious Court based on Decision Number: 2953/Pdt.G/2023/PA.Badg regarding divorce due to reasons that the Plaintiff and Defendant's household was not harmonious, the Defendant was rude, the Defendant left the Plaintiff and did not never returned, there was no news and he did not provide mandatory maintenance to the Plaintiff until this decision was issued. Based on these considerations, the Bandung Religious Court granted the Plaintiff's lawsuit with one of its legal considerations being that the Defendant had been proven to have violated the divorce agreement as stated in the marriage certificate excerpt, especially in numbers 2 and 4, which he himself said shortly after the marriage contract took place. From this case, it can be seen that when a marriage agreement of taklik talak is violated, society in general will resort to divorce rather than annulment of the marriage as regulated in Article 51 of the KHI.

Based on the problems above , the author is interested in conducting more in-depth research regarding the legal certainty of violations of the marriage agreement of taklik talak as a reason for marriage annulment.

1. **Identification of problems**

Based on the background of the problem above, the author identifies the problem as follows:

* 1. How do you overcome a violation of the marriage agreement of taklik talak so that it can be used as a reason for annulling the marriage?
  2. What are the regulations for violation of the marriage agreement of taklik talak as a reason for marriage annulment that fulfills the Principle of Legal Certainty?

1. **Research methods**

The approach method used to answer legal issues in this research is normative juridical using a *statutory approach* and a conceptual *approach* .[[10]](#footnote-10)namely literature material relating to violations of the marriage agreement of taklik talak as a reason for annulment of marriage.

The specification of this research is descriptive analysis, namely research that describes a legal regulation that regulates legal provisions regarding violations of the marriage agreement of taklik talak as a reason for the annulment of the marriage and then analyzes it based on principles, legal theories, doctrines that are carried out carefully .

This research was carried out in two stages, namely library research to search for secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. Field research was conducted to obtain primary data to support research only.

Data collection techniques were carried out by means of document study, interviews and observation . Document studies were carried out on archival data, official data from government agencies, published data such as court decisions and Supreme Court jurisprudence. [[11]](#footnote-11)Interview and observation techniques were used in the field research stage. Interviews and observations are ways to obtain information by asking questions directly to the interviewee and direct observation. Interviews and observations are a process of interaction and communication. [[12]](#footnote-12)In this research, interview activities will be carried out with resource persons at the Religious Courts.

This research uses qualitative juridical analysis, because the research data obtained from the literature is in the form of principles, theories, doctrines and regulations and research data obtained in the field, which are experienced, felt and thought by the participants/data sources involved. Initially scattered, then simplified so that it could finally be understood easily through legal analysis without using mathematical or statistical formulas.[[13]](#footnote-13)

# **DISCUSSION**

1. **How to Overcome Violations of the Taklik Talak Marriage Agreement so that it can be used as a reason for canceling the marriage**

Taklik talak in marriage is an agreement made by the husband after the marriage contract which is included in the Marriage Certificate in the form of a promise of talak which depends on certain circumstances that may occur in the future. The purpose of taklik talak is simply to provide space for the husband to be more careful in carrying out his rights and obligations and to try to provide rights and obligations to his wife.

In Article 46 paragraph (3) KHI it is stated that the taklik talak agreement is not an agreement that must be entered into at every marriage, but once the taklik talak has been agreed it cannot be revoked. This means that if the shigat taklik divorce has been pronounced by a husband, then his position is binding and has legal consequences.

According to Ibn Hazm, taklik talak is categorized into two types, namely taklik talak *syarthi* and taklik talak *qosamy* . From this division, both of them do not have any legal consequences, the reason is that Allah has clearly regulated talak, while the taklik talak has no guidance in the Al-Quran or Sunnah. The same thing was also stated by Ibn Taimiyah that taklik talak *qasamy* which contains the meaning of an oath, does not have the effect of causing a divorce. However, if someone has submitted a divorce which is within their authority and the conditions have been fulfilled according to their respective wishes, then the divorce is considered valid for all forms of divorce, because the person who is accepting the divorce does not impose the divorce when that person pronounces it. However, talak depends on the fulfillment of the conditions contained in the taklik statement.[[14]](#footnote-14)

Of the two types of divorce taklik above,The taklik talak that exists in Indonesia and is formulated in the marriage certificate looks more similar to the taklik talak *syarthi* because the taklik talak *syarthi* relies more on certain conditions, meaning when the husband's actions fulfill one of the conditions in the content of the sighattaklik talak, then it can be said that talak will fall (provided that a lawsuit is filed with the Religious Court). However, if we look at the meaning of taklik talak *qosamy* , which is encouraging someone to do something or preventing someone from doing something, it seems that it is not the same as the formulation of the contents of taklik talak which is prepared in the marriage certificate, because at the beginning of the sighat taklik talak there is the sentence "if I" means that time. shows things to come.[[15]](#footnote-15)

In Arab culture, it is generally understood that taklik talak is a weapon for the husband to give warnings and lessons to his wife who is *nusyuz* and often gives khlawat.with other men, such as "when you leave the house without my permission, you are divorced" this applies to Arabs, and is considered to only favor men. Therefore, the reason why Indonesia uses a different system is because it is seen that this will only further weaken women, because what if the husband breaks the rules, on this basis the divorce agreement appears in the Indonesian formula. The meaning of taklik talak is unified with the culture that has existed since the time of the orders of Sultan Agung Hanyakrakusuma, King of Mataram (1554 Java/1630 AD) in an effort to make it easier for women to release the marriage ties from husbands who leave their wives (family) away for a certain period of time, then enforced as a rule to society.[[16]](#footnote-16)

The taklik talak that applies in Indonesia is like a form of threat from a wife to a husband if he denies one of the contents of the taklik talak. [[17]](#footnote-17)Indeed, this is very different from what is found in fiqh books, because in general classical fiqh explains life in Arab and Indonesian culture which is certainly very different, so that the provisions of taklik talak that are understood in Indonesia, especially in the KHI, are standardized with the culture that exists in Indonesia in when the history of taklik talak was first held.

In Indonesia, the taklik talak is always included in the marriage book, so it seems like it is something that is mandatory and then it is also very rare for the groom to refuse to read the vow of taklik talak, and this is increasingly becoming a culture, and increasingly giving the impression to society that Taklik talak must be said at every wedding event. Even though it is clear according to the KHI that the divorce agreement is not mandatory, it is only an option, but once it is said it cannot be revoked as stated in Article 46 paragraph (3) of the KHI.

In the sighat formulationtaklik talak, when a wife wants a divorce from her husband, she must pay *iwadh* of IDR 10,000 (ten thousand rupiah) to the court which will be given to the husband. In general, Islamic jurists from all schools of thought believe that divorce is the exclusive domain of a man, and that when a woman files for divorce, she must provide compensation ( *iwadh* ) to the husband. [[18]](#footnote-18)This opinion is used to formulate the sighatTaklik talak requires compensation.

The substance of taklik talak according to KHI can be seen from two aspects, namely as a marriage agreement and as a reason for divorce, but it turns out that KHI emphasizes taklik talak more with the issue of marriage agreements, because this can be seen from the provisions of Article 45 number 1 KHI which provides more special space regarding agreements. one of which is talik talak.

Sighat taklik talak referred to in the KHI is a form of marriage agreement in Islam which states several conditions that must be fulfilled by the husband. If the husband does not comply, then the wife is not willing to do so and can submit it to court as a reason for divorce. [[19]](#footnote-19)Thus, the legal remedy given to the wife in accepting divorce is a lawsuit for divorce, not another legal remedy, namely annulment of the marriage. This problem is of concern to the author, namely that there is a lack of synchronization of the norms contained in the KHI regarding legal remedies in the event of a violation of the taklik talak marriage agreement.

The position of taklik talak in the KHI is an agreement that is read after the marriage contract is carried out by a husband. This can be seen explicitly in Article 1 letter e and Article 46 paragraph (3) KHI. Considering the position of taklik talak as an agreement, this can be constructed as a marriage agreement as regulated in Article 29 of the Marriage Law. The definition of a marriage agreement in the Marriage Law is an agreement made by the prospective husband and wife before the marriage takes place ( *prenuptial agreement* ), but after [the Constitutional Court Decision Number 69/PUU-XIII/2015](https://www.hukumonline.com/pusatdata/detail/lt5818598634393/npts/lt49f802e3c8757/putusan-mk-no-69_puu-xiii_2015-tahun-2015-pengujian-undang-undang-nomor-5-tahun-1960-tentang-peraturan-dasar-pokok-pokok-agraria-dan-undang-undang-nomor-1-tahun-1974-tentang-p) , the meaning of a marriage agreement was expanded to not only mean an agreement made before the marriage ( *prenuptial agreement* ), but can also be made during the marriage bond ( *postnuptial agreement* ). On this basis, it is very clear and unequivocal that the position of taklik talak is as a form of marriage agreement.

Juridically, there is a provision in the KHI, namely Article 116 letter g, which states that divorce can occur because the husband violates the divorce agreement. However, this provision contradicts Article 51 of the KHI which states that a violation of a marriage agreement gives the wife the right to request an annulment of the marriage. Thus, the KHI regulates that when a marriage agreement of taklik talak is violated, it is as if a wife can take 2 (two) legal remedies, namely a lawsuit for divorce or annulment of the marriage.

Examining the provisions regarding divorce makes it clear that when the divorce agreement is violated by the husband, the wife has the right to file a divorce suit at the Religious Court in accordance with the applicable provisions. However, if you examine the provisions regarding marriage annulment as regulated in the KHI, they are contained in CHAPTER

Article 70 KHI states that a marriage is void if:

1. "The husband carries out the marriage, while he does not have the right to carry out the marriage contract because he already has four wives, even though one of the four wives is in the iddah talak raj`i;
2. A person marries his ex-wife whom he has divorced;
3. A person marries his ex-wife who has been given three divorces by him, unless the ex-wife was married to another man and then divorced again ba`da al dukhul and that man and her iddah period has expired;
4. Marriage is between two people who are related by blood; sexual intercourse and sexual intercourse to a certain degree which prevents marriage according to Article 8 of Law No. 1 of 1974, namely:
5. Blood related in a straight downward or upward lineage.
6. Blood relations in a deviant lineage, namely between siblings, between a person and their parents' siblings and between a person and their grandmother's siblings.
7. Family relations, namely in-laws, stepchildren, sons-in-law and mother or stepfather.
8. Breast-feeding relationships, namely breast-feeding parents, breast-feeding children and breast-feeding aunts or uncles.
9. The wife is the sibling or aunt or niece of the wife or wives."

Furthermore, Article 71 KHI states that a marriage can be annulled if:

1. “A husband commits polygamy without permission from the Religious Court;
2. The woman he married was later discovered to be the wife of another man who was mafqud.
3. The woman he married turned out to be still in iddah and had another husband;
4. Marriages that violate the age limit for marriage as stipulated in Article 7 of Law No. 1 of 1974;
5. The marriage was entered into without a guardian or was carried out by a guardian who had no rights;
6. Marriages carried out by force.”

The provisions regarding reasons for marriage annulment above show that the legal norms regulated in the KHI regarding violations of the marriage agreement taklik talak do not appear to be consistent or harmonious with the provisions on reasons for marriage annulment. This problem of course stems from the provisions of Article 51 KHI which states that a violation of a marriage agreement gives the wife the right to request an annulment of the marriage.

A comparison regarding the marriage agreement between the KHI and the Marriage Law shows that the provisions of the marriage agreement in the KHI are very broad, namely the existence of the divorce agreement. The following are the results of the author's comparative analysis:

|  |  |
| --- | --- |
| **KHI** | **Marriage Law** |
| The prospective bride and groom can enter into a marriage agreement in the form of:   * + 1. Taklik divorce   The contents of the divorce agreement must not conflict with Islamic law. If the conditions implied in the divorce agreement actually occur later, the divorce does not automatically occur. In order for divorce to actually occur, the wife must submit the matter to the religious court. The taklik talak agreement is not one that must be entered into at every marriage, but once the taklik talak has been agreed upon it cannot be revoked.   * + 1. Other agreements that do not conflict with Islamic law.   The agreement can include the mixing of personal assets and the separation of each other's livelihood assets as long as this does not conflict with Islam. In addition to these provisions, the contents of the agreement may also stipulate the authority of each individual to enter into a mortgage bond on personal and joint assets or company assets. ( *vide* Article 45, Article 46, and Article 47) | At or before the marriage takes place, both parties, by mutual agreement, can enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved. The agreement cannot be ratified if it violates the boundaries of law, religion and morality. The agreement comes into effect from the time the marriage takes place. As long as the marriage lasts, the agreement cannot be changed, unless both parties agree to change it and the change does not harm a third party. ( *see* Article 29) |

*Source: Author's Analysis Results*

From the comparison above, it shows that KHI has regulated in detail regarding marriage agreements, including measures when each party violates the marriage agreement. This is different from the provisions of the agreement regulated in the Marriage Law which only regulates this matter in 1 (one) article and there is no effort when each party violates the marriage agreement, because all of this must be stated in the contents of the agreement made by the parties.

Juridically, the KHI has regulated in detail regarding marriage agreements, however the provisions regarding legal remedies for violations of the marriage agreement taklik talak still appear to be inconsistent/in line with the provisions regarding marriage annulment as regulated in Articles 70 to Article 76 of the KHI. Therefore, in order for a violation of the taklik talak marriage agreement to be used as a reason for the annulment of the marriage, the violation of the taklik talak marriage agreement must be contained in the provisions regarding the reasons for the annulment of the marriage as regulated in Article 70 and Article 71 of the KHI.

The inclusion of violations of the taklik talak marriage agreement as a reason for annulment of marriage in the KHI is in line with the principle of implementing taklik talak, especially in this case taklik talak *syarthi* which contains the meaning of an oath (promise) which must be fulfilled by a husband according to the conditions specified in the marriage book , so that if the conditions or things agreed upon are violated by the husband, the result will be a divorce for his wife . This should be the ideal concept of marriage annulment which should be applied when there is a violation of the marriage agreement of taklik talak. This is not the case today, when the marriage agreement of taklik talak is violated, a wife has the right to file a divorce suit against her husband based on Article 116 letter g KHI. Thus, in the future, the provisions regarding marriage annulment and divorce lawsuits must be harmonized so that there is no overlapping of norms with each other.

1. **Regulations on Violations of Marriage Agreements Taklik Talak as a Reason for Cancellation of Marriage that Meets the Principles of Legal Certainty**

The Indonesian state is a rule of law as confirmed in Article 1 paragraph (3) of the 1945 Constitution. As a country that adheres to the principle of the rule of law, Indonesia guarantees legal certainty. Legal certainty is one of the most important principles in the rule of law.

According to the Theory of Legal Certainty, it is explained that the element of certainty is a characteristic that cannot be separated from Legal Positivism. Certainty is the minimum legal goal that must be achieved through the assumptions of Legal Positivism. Because law without the value of certainty will lose meaning, because it can no longer be used as a guide to behavior for everyone, meaning that where there is no legal certainty, there is no law ( *ubi jus incertum, ibi jus nullum).*

Basically, laws are made to provide comfort, tranquility, safety and protection for every citizen, including to provide signs or limits for both actions/actions as citizens and as government administrators. For this reason, the laws that are made must contain noble values such as divine values, ethics, morals, manners, so that the above objectives truly provide the best service for all levels of society.[[20]](#footnote-20)

Law without the value of certainty will lose the identity and meaning of the true presence of law, because it can no longer be used as a guide for everyone's existence in controlling daily behavior. Therefore, legal certainty is one of the most important principles in a legal state as a guarantee that a law must be implemented well and precisely because one of the goals of law is certainty.

To achieve certainty, legal norms must contain openness and clarity, so that everyone can interpret the same meaning of a legal norm provision. One legal norm and another legal norm must not be contradictory *,* because if this happens, it will actually become a source of doubt, and if a contradiction or conflict occurs, it must be ended immediately through mechanisms within the legal system itself. Therefore, by measuring the dimensions of development, legal theory is born, grows and develops in accordance with the diverse conditions in Indonesia.[[21]](#footnote-21)

In the context of contradictions in regulations regarding violations of the taklik talak marriage agreement as contained in the KHI, it is necessary to carry out a normative study so that these provisions have the value of legal certainty. On this basis, it is first necessary to carry out a series of substantive concepts related to the taklik talak marriage agreement from a theoretical aspect before finally determining the appropriate regulations to regulate violations of the taklik talak marriage agreement as a reason for marriage annulment that fulfills the principle of legal certainty .

* + 1. **Taklik Talak is a form of marriage agreement**

The specific definition of taklik talak is contained in Article 1 letter e KHI which states that taklik talak is an agreement made by the prospective groom after the marriage ceremony which is included in the marriage certificate in the form of a promise of talak which is dependent on certain circumstances that may occur in the future. come.

Relationships between humans and each other certainly do not all go well and there needs to be something that can provide comfort and trust to other humans, so it is necessary to establish an agreement or agreement as a way to unite the parties, including in the case of marriage.

Theoretically, an agreement itself has the meaning of an event where one person makes a promise to another person or where both people promise each other to carry out something. [[22]](#footnote-22)The substance of the agreement should ideally be based on an agreement regarding reciprocal rights and obligations. [[23]](#footnote-23)The existence of an agreement aims to realize a common goal of the parties entering into the agreement so that it does not result in losses for the parties bound by the agreement. This includes an agreement that must not conflict with the law, public order and morality.[[24]](#footnote-24)

A marriage must be established based on the belief in the Almighty God, where a happy and lasting family cannot be separated from religious teachings.[[25]](#footnote-25) Of course, in terms of marriage, the goal is to form a happy and eternal family. Another term for the purpose of marriage in Islam is to build a family that is *sakinah* (peace in the heart), *mawaddah* (love), and *warahmah* (tenderness of heart and empathy).

To realize the goals of marriage mentioned above, in terms of religious communities, each husband and wife are given rights, obligations and responsibilities. Considering that a wife is in a weaker position compared to women, the Government, through the provisions of family law as contained in the KHI, provides protection for women, one of which is the existence of divorce taklik which is detailed in the marriage book.

According to Islam, when the bride and groom finish carrying out the marriage contract, the husband always pronounces shigat taklik talak. Even though the shigat (pronunciation) must be done voluntarily, in Indonesia it is as if it is an obligation that must be carried out by the husband. Shigat taklik talak is formulated in such a way with the aim that the wife does not receive arbitrary treatment by her husband .

The content of the husband's agreement contained in the divorce agreement is a promise that the husband will not commit the following actions: 1) Leaving my wife for 2 (two) consecutive years, 2) Not providing her obligatory maintenance for 3 (three) months, 3) Harming her body or my wife's body, or, 4) Leaving (not caring about) my wife for 6 (six) months or more. All these promises are made by the husband as a form of commitment to the marital responsibilities he has carried out.

With the enactment of the KHI which, among other things, also regulates taklik talak, then taklik talak can be categorized as written law. If someone has said the divorce agreement to his wife and the conditions have been fulfilled according to what each of them desires, then the agreement is considered valid for all forms of divorce, whether the agreement contains an oath or contains ordinary conditions.

One of the reasons for maintaining the taklik talak is none other than because it does not violate the rules and rather provides rules that the husband must naturally obey to protect his wife from things that can make the wife lose her rights in the household, and also makes the husband pay more attention to his obligations to maintain peace. in the household, one of which is by protecting the rights of a wife.

From the explanation above, it shows that the taklik talak pronounced by the husband after the completion of the marriage contract is a form of marriage agreement for Muslims in Indonesia. Any violation of the divorce agreement, like an agreement, has legal consequences for each party.

* + 1. **Cancellation of Marriage is the Most Appropriate Effort to Take When There is a Violation of the Taklik Talak Marriage Agreement**

In KHI there is a contradiction in the regulations regarding legal remedies for a wife when her husband violates the provisions of the divorce agreement. In the provisions of Article 51 of the KHI which states that a violation of a marriage agreement gives the wife the right to request an annulment of the marriage, whereas in the provisions of Article 116 letter g of the KHI states that a wife has the right to file a divorce suit against a husband who violates the divorce agreement.

If a wife uses measures to annul a marriage as stipulated in Article 51 of the KHI, it is also legally contrary to the provisions regarding the reasons for annulment of a marriage as regulated in Article 70 and Article 71 of the KHI, where violations of the marriage agreement of taklik talak are not contained in these provisions. So in the end legal remedies regarding marriage annulment when there is a violation of the taklik talak marriage agreement are not used in the religious justice system in Indonesia.

Another alternative legal remedy for a wife when her husband violates the marriage agreement of taklik talak is to file a divorce suit at the Religious Court. This is of course strengthened by the provisions of Article 116 letter g KHI as well as the formulation of shigat taklik talak in the marriage book, which reads: [If I: 1) Leave my wife for 2 (two) consecutive years, 2) Do not provide obligatory maintenance to her 3 (three) months, 3) Hurt my wife's body or body, or, 4) Ignore (don't care about) my wife for 6 (six) months or more. And because of my actions, my wife was not happy and filed a lawsuit with the Religious Court, so if her lawsuit was accepted by the Court, then my wife paid IDR 10,000. to her]. Until now, this basis has been used as a basis for a wife to take legal action for divorce when her husband violates the divorce agreement.

According to the author, the legal action for divorce when the husband violates the divorce agreement is theoretically not ideal, because it is contrary to the Law of Agreement. In the Law of Contracts, it is stated that an agreement is an event where one person makes a promise to another person or where both people promise each other to carry out something. [[26]](#footnote-26)The existence of an agreement aims to realize a common goal of the parties entering into the agreement so that it does not result in losses for the parties bound by the agreement.

In Article 1320 of the Civil Code, the legal conditions for an agreement are regulated, namely including agreement, skill, a certain thing, and a lawful cause. If the legal conditions of this agreement are not fulfilled there will be legal consequences. In particular, if the "agreement" is violated, it will result in cancellation. That means the agreement can be canceled by the parties, because subjective terms are violated. Based on these provisions, if it is related to the context of a violation of the taklik talak marriage agreement, which theoretically is a form of a marriage agreement, then when the taklik talak marriage agreement is violated by the husband, it requires the marriage to be annulled by a wife. This is very relevant because the taklik talak marriage agreement contains obligations that must be fulfilled by the husband as agreed upon when the shigat taklik talak is read after the marriage contract. Thus, legal action to annul a marriage is the most appropriate effort to take when there is a violation of the marriage agreement of taklik talak.

* + 1. **Regulatory Determination**

Juridically, the KHI has regulated in detail regarding marriage agreements as regulated in Articles 45 to Article 52 of the KHI. In this provision, it is stated that taklik talak is a form of marriage agreement that can be entered into by the prospective bride and groom ( *see* Article 45 point 1). These provisions are certainly very much in line with the concept of a marriage agreement. In fact, the KHI regulates very widely the form of marriage agreements apart from relating to the assets of each husband and wife after marriage, as well as the existence of taklik talak as another form of marriage agreement.

The problem is related to the provisions regarding legal remedies for violations of the divorce agreement which still appear to be inconsistent/in line with the provisions regarding marriage annulment as regulated in Articles 70 to Article 76 of the KHI. Therefore, in order for a violation of the taklik talak marriage agreement to be used as a reason for the annulment of the marriage, the violation of the taklik talak marriage agreement must be contained in the provisions regarding the reasons for the annulment of the marriage as regulated in Article 70 and Article 71 of the KHI. Thus, in the future there needs to be a revision of the provisions on reasons for marriage annulment as regulated in Article 70 and Article 71 of the KHI by including violation of the marriage agreement taklik talak as a reason for marriage annulment.

The inclusion of violations of the taklik talak marriage agreement as a reason for annulment of marriage in the KHI is in line with the principle of implementing taklik talak, especially in this case taklik talak *syarthi* which contains the meaning of an oath (promise) which must be fulfilled by a husband according to the conditions specified in the marriage book, so that if the conditions or things agreed upon are violated by the husband, the result will be a divorce for his wife. This should be the ideal concept of marriage annulment which should be applied when there is a violation of the marriage agreement of taklik talak. This is not the case today, when the marriage agreement of taklik talak is violated, a wife has the right to file a divorce suit against her husband based on Article 116 letter g KHI.

Thus, in the future the provisions regarding marriage annulment and divorce lawsuits must be harmonized so that there is no overlapping of norms with each other. More than that, so that in the future regulations on violations of the marriage agreement of taklik talak as a reason for annulment of marriage have legal certainty.

# **CLOSING**

1. **Conclusion**

Based on the discussion described above, the following conclusions can be drawn:

1. Juridically, the Compilation of Islamic Law has regulated in detail regarding marriage agreements as regulated in Articles 45 to Article 52. However, the provisions regarding legal remedies for violations of the marriage agreement taklik talak still appear to be inconsistent/in line with the provisions regarding marriage annulment as regulated in Articles 70 to Article 76 Compilation of Islamic Law. Therefore, in order for a violation of the taklik talak marriage agreement to be used as a reason for the annulment of the marriage, the violation of the taklik talak marriage agreement must be contained in the provisions regarding the reasons for the annulment of the marriage as regulated in Article 70 and Article 71 of the Compilation of Islamic Law.
2. To ensure legal certainty that there are regulations regarding violations of the taklik talak marriage agreement as a reason for canceling the marriage, it is first necessary to carry out a series of substantive concepts related to the taklik talak marriage agreement from a theoretical aspect before finally determining the appropriate regulations. Firstly, taklik talak is a form of marriage agreement, because in shigat taklik talak it is formulated in such a way that the husband's obligations are intended so that the wife does not receive arbitrary treatment by her husband. Second, marriage annulment is the most appropriate measure to take when there is a violation of the marriage agreement of taklik talak. This is because taklik talak is theoretically a form of marriage agreement, so when the marriage agreement taklik talak is violated by the husband, it requires an annulment of the marriage by a wife. This is very relevant because the taklik talak marriage agreement contains obligations that must be fulfilled by the husband as agreed when the shigat taklik talak is read after the marriage contract. In contract law it is stated that violation of the "elements of agreement" will result in the legal consequence being that the agreement can be cancelled. Third, the regulation of violations of the taklik talak marriage agreement as a reason for the annulment of a marriage which fulfills the principle of legal certainty can be realized when there is a revision of the provisions regarding the reasons for the annulment of a marriage as regulated in Article 70 and Article 71 of the Compilation of Islamic Law by including violations of the taklik talak marriage agreement as a reason for annulment of marriage.
3. **Suggestion**

The suggestions that the author will convey in this research are as follows:

1. The government, in this case the Ministry of Religion, should immediately revise the shigat taklik talak contained in the marriage book by changing the editorial "submitting a lawsuit to the Religious Court" with the editorial "submitting a request for marriage annulment to the Religious Court". Apart from that, the Religious Court should request a fatwa to the Supreme Court regarding the issue of legal action for violations of the marriage agreement of taklik talak, bearing in mind that normatively there is an overlap in regulations.
2. The government and DPR should immediately revise the provisions regarding reasons for annulment of marriage as regulated in Article 70 and Article 71 of the Compilation of Islamic Law by including violation of the marriage agreement taklik talak as a reason for marriage annulment. This is deemed necessary, considering that currently there is a lack of synchronization between legal remedies for violations of the taklik talak marriage agreement and the provisions regarding marriage annulment as regulated in Articles 70 to 76 of the Compilation of Islamic Law.

# **BIBLIOGRAPHY**

Abdul Ghani Abdullah, *Pengantar Kompilasi Hukum Islam Dalam Tatanan Hukum Indonesia,* Jakarta: Gema Insani Press, 2014.

Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, Jakarta: Kencana, 2005.

Ahmad Rofiq, *Hukum Islam di Indonesia,* Catakan Keenam, Jakarta: Raja Grafindo Persada, 2003.

Amir Syarifuddin, *Hukum Perkwinan Islam di Indonesia*, Jakarta: Kencana, 2009.

Asghar Ali Engineer, *Pembebasan Perempuan*, Diterjeamhkan Dari *The Qur’an Modern And Modern Society,* Penerjemah Agus Nuryanto, Yogyakarta; LkIS, 2003.

Bambang Daru Nugroho dkk, “Legal Protection for Marriages of Traditional Beliefs Adherents in Indonesia”, *NVEO: Natural Volatiles & Essential Oils,* Vol.5, No.8, 2021.

Bambang Daru Nugroho, *Hukum Perdata Indonesia*, Jakarta: Refika Aditama, 2017.

Cik Hasan Bisri, *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional,* Jakarta: Logos Wacana Ilmu, 1999.

Johan Rofi, Udin Narsudin, dan Zulkarnain Koto, “Penerapan Asas Kebebasan Berkontrak Dalam Pembuatan Perjanjian Outsourcing Dan Perjanjian Kerja Waktu Tertentu”, *Jurnal Nuansa Kenotariatan*, Vol.3, No.1, Juli-Desember 2017.

Kamal Muchtar, *Asas-Asas Hukum Islam tentang Perkawinan*, Jakarta: Bulan Bintang, 1974.

Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Interpratama Offset, 2005.

R. Subekti, *Hukum Perjanjian,* Jakarta: Pembimbing Masa, 2010.

Sayyid Sabiq, *Fiqh Sunnah, Jilid III*, Beirut: Dar al-Fikr, 1983.

Sekararum Intan Munggaran, Sujana, dan Bambang Daru Nugroho, “Perlindungan Konsumen Terhadap Pencantuman Klausula Baku Dalam Perjanjian”, *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan FH Unpad,* Vol.2, No.2, Juni 2019.

Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D,* Bandung: Alfabeta, 2008.

Teresia Din, Lilik Mulyadi, dan Udin Narsudin, “Perlindungan Hukum Terhadap Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Otentik”, *Jurnal Penelitian Hukum Legalitas,* Vol.10, No.2, Agustus 2016-Januari 2017.

Udin Nasrudin, “The Concept Of Statement Of Heirs To Support Legal Certainty In Indonesia”, *International Journal of Latin Notary,* Volume 1, Number 1, September 2020.

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4. Bambang Daru Nugroho, *Hukum Perdata Indonesia* , Jakarta : Refika Aditama, 2017, p.115. [↑](#footnote-ref-4)
5. KHI is a collection of Islamic law relating to family law as jurisprudence for judges in resolving family disputes in court within the Religious Courts environment. KHI was established by Presidential Instruction Number 1 of 1991, then followed up by a Joint Decree of the Chairman of the Supreme Court and the Minister of Religion, dated March 21 1985. See Cik Hasan Bisri, *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional,* Jakarta: Logos Wacana Ilmu, 1999 , pp. 113-114. [↑](#footnote-ref-5)
6. *Vide* Article 1 letter e KHI. [↑](#footnote-ref-6)
7. Abdul Ghani Abdullah, *Pengantar Kompilasi Hukum Islam Dalam Tatanan Hukum Indonesia,,* Jakarta: Gema Insani Press, 2014, p.90. [↑](#footnote-ref-7)
8. *Ibid* , p.1. [↑](#footnote-ref-8)
9. Ahmad Rofiq, *Hukum Islam di Indonesia,* Sixth Note, Jakarta: Raja Grafindo Persada, 2003, p.159. [↑](#footnote-ref-9)
10. Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Interpratama Offset, 2005, p.93. [↑](#footnote-ref-10)
11. *Ibid* ., pp., 51 and 53. [↑](#footnote-ref-11)
12. *Ibid* ., p., 57. [↑](#footnote-ref-12)
13. Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D,* Bandung: Alfabeta, 2008, p. 3. [↑](#footnote-ref-13)
14. Sayyid Sabiq, *Fiqh Sunnah, Jilid III*, Beirut: Dar al-Fikr, 1983, p.223. [↑](#footnote-ref-14)
15. Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, Jakarta: Kencana, 2005, p.403. [↑](#footnote-ref-15)
16. Kamal Muchtar, *Asas-Asas Hukum Islam tentang Perkawinan*, Jakarta: Bulan Bintang, 1974, p.207. [↑](#footnote-ref-16)
17. The terms and conditions of the divorce agreement include: 1) Leaving my wife for 2 (two) consecutive years, 2) Not providing her with mandatory maintenance for 3 (three) months, 3) Hurting my wife's body or body, or, 4) Leaving (not caring about) my wife for 6 (six) months or more. [↑](#footnote-ref-17)
18. Asghar Ali Engineer, *Pembebasan Perempuan*, Translated from *The Qur'an Modern And Modern Society,* Translator Agus Nuryanto, Yogyakarta; LkIS, 2003, p.128. [↑](#footnote-ref-18)
19. Amir Syarifuddin, *Hukum Perkwinan Islam di Indonesia*, Jakarta: Kencana, 2009, p.226. [↑](#footnote-ref-19)
20. Teresia Din, Lilik Mulyadi, and Udin Narsudin, "Perlindungan Hukum Terhadap Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Otentik", *Legal Research Journal of Legality,* Vol.10, No.2, August 2016-January 2017, p.132. [↑](#footnote-ref-20)
21. Udin Nasrudin, "The Concept Of Statement Of Heirs To Support Legal Certainty In Indonesia", *International Journal of Latin Notary,* Volume 1, Number 1, September 2020, p.14. [↑](#footnote-ref-21)
22. R. Subekti, *Hukum Perjanjian,* Jakarta: Pembimbing Masa, 2010, p.1. [↑](#footnote-ref-22)
23. Sekararum Intan Munggaran, Sujana, and Bambang Daru Nugroho, "Perlindungan Konsumen Terhadap Pencantuman Klausula Baku Dalam Perjanjian", *Acta Diurnal: FH Unpad Notarial Law Journal,* Vol.2, No.2, June 2019, p.188. [↑](#footnote-ref-23)
24. Johan Rofi, Udin Narsudin, and Zulkarnain Koto, "Penerapan Asas Kebebasan Berkontrak Dalam Pembuatan Perjanjian Outsourcing Dan Perjanjian Kerja Waktu Tertentu", *Journal of Notarial Nuansa* , Vol.3, No.1, July-December 2017, p.3. [↑](#footnote-ref-24)
25. Bambang Daru Nugroho et al, "Legal Protection for Marriages of Traditional Beliefs Adherents in Indonesia", *NVEO: Natural Volatiles & Essential Oils,* Vol.5, No.8, 2021, p.10300. [↑](#footnote-ref-25)
26. *Ibid* . [↑](#footnote-ref-26)