

Redefining Marriage Tahlil Perspective of the Imam Mazhab

Mendefinisikan Ulang Nikah Tahlil Perspektif Imam Mazhab

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Abstrak

Tulisan ini bertujuan untuk menguraikan pandangan para imam mazhab mengenai konsep nikah tahlil, yang menjadi salah satu isu kontroversial dalam hukum Islam. Dengan menggunakan metode studi kepustakaan, penelitian ini mengumpulkan sumber primer dari kitab-kitab karya imam mazhab serta data sekunder dari artikel jurnal dan buku. Hasil kajian menunjukkan bahwa nikah tahlil menjadi perdebatan di kalangan ulama mazhab, baik Syafi'i, Maliki, Hanafi, maupun Hanbali, yang masing-masing memiliki pemahaman berdasarkan dalil dan argumentasi kaidah hukum yang jelas. Tulisan ini menegaskan bahwa praktik nikah tahlil sebaiknya dihindari, sebab mayoritas ulama (jumhur) merekomendasikan pelarangan terhadap bentuk pernikahan semacam ini. Dengan demikian, diharapkan hasil kajian ini dapat memberikan kontribusi bagi pengembangan hukum Islam dan pemahaman masyarakat terhadap isu nikah tahlil.

Kata Kunci: Nikah; Tahlil; Imam Mazhab

Abstract

This paper aims to outline the views of the imams of the madhhab regarding the concept of nikah tahlil, which is one of the controversial issues in Islamic law. Using the literature study method, this study collects primary sources from books by imams of madhhab as well as secondary data from journal articles and books. The results of the study show that nikah tahlil has become a debate among scholars of madhhab, both Shafi'i, Maliki, Hanafi, and Hanbali, each of whom has an understanding based on clear postulates and arguments of legal principles. This paper emphasizes that the practice of tahlil marriage should be avoided, because the majority of scholars (jumhur) recommend the prohibition of this form of marriage. Thus, it is hoped that the results of this study can contribute to the development of Islamic law and public understanding of the issue of tahlil marriage.

Keywords: Marriage; Tahlil; Imam Mazhab

Introduction

Marriage is one of the most fundamental social institutions in human life. As a means of continuing offspring and maintaining social order, marriage is regulated by various religious

norms and laws that apply in society. In Islam, marriage is not only seen as a social contract, but also as a form of worship aimed at maintaining honor and preserving legitimate offspring. However, in practice, Islamic marriage law has various dynamics and differences of views among scholars. One of the controversial issues in the study of jurisprudence is the concept of *nikah tahlil*, which often raises debates about its validity and ethics (Hussein, 2019).

Tahlil marriage, or marriage that is carried out with the aim that a woman who has been *talaqa* three times by her husband can return to her first husband after marrying another man, is one of the topics that has special attention from various schools of jurisprudence. The views of the imams of the *madhhab* on tahlil marriage are very diverse, ranging from those that are absolutely forbidden to those that allow with certain conditions (Maloko, 2019). Given the importance of this difference of opinion, understanding the concept of *nikah tahlil* from the perspective of various imams of various schools is very important to provide a more comprehensive understanding for Muslims. With this understanding, the *ummah* can be wiser in dealing with similar contemporary *fiqh* issues (Nikmatullah, 2023).

The phenomenon of tahlil marriage in Indonesia is inseparable from the social context and religious understanding of diverse communities. In some cases, *nikah tahlil* is carried out secretly as a shortcut for couples who want to refer after *talaq* three without having to go through legal procedures according to *sharia*. This phenomenon is often triggered by a lack of understanding of the true Islamic law and social pressures that require the couple to stay together in order to maintain the good name of the family (Anshori et al., 2023).

One of the main causes of the rise of tahlil marriage in Indonesia is the low level of Islamic legal literacy among the general public. Many couples do not understand the legal consequences of triple *talaq* and the legal conditions referred to according to *sharia*. In addition, cultural factors also influence, where people tend to prioritize resolving marriage problems quickly rather than complying with detailed religious rules. Another factor that contributes is the weak supervision of religious institutions on marriage practices that are not in accordance with Islamic law (Pratama, 2024).

The purpose of this study is to elaborate in depth the views of imams of *madhhab* on *nikah tahlil*, by highlighting the postulates they use and the arguments that underlie each opinion. This study is expected to provide a broader insight for readers, especially in understanding the treasures of diverse Islamic legal thought. In addition, this study also aims to reaffirm the importance of *ijtihad* in responding to legal issues that continue to develop in accordance with the dynamics of the times.

Method

The research method used in this study is a literature study method by collecting primary source literature from the opinions of imams of the school directly. In addition, secondary data is also the main part as a relevant support for this study through journal articles, books, and other sources. This paper deliberately re-elaborates various concepts and views by referring to the literature of books written by the imams of the *madhhab*. The data obtained was analyzed by reduction, then presented in the form of a descriptive narrative. From the results of the presentation of the data findings, a comprehensive conclusion was finally drawn regarding the topic being studied.

Results and Discussion

Definition of Marriage of Tahlil

Word *Tahlil* derived from the word *hallala* which means *halal*, *halal*. Refers to the event of an agreement between the first husband (*muhallalah*) towards (*tahlil*) a man who marries a

woman to later divorce her (Az-Zuhaili, 2011). Etymologically *Tahlil* means legalizing something that is haram by law (Syarifuddin, 2011). Associated with marriage will mean deeds. which causes a person who is originally illegal to carry out marriage to be allowed or halal. People who can cause it to be halal for others to get married are called *Muhallil*. Halal people perform marriages that are carried out *Muhallil* called *muhallalah*. Marry *Tahlil* is to marry a woman who is talaq three on the condition that after the second husband has legalized it (mingling) for the first husband, then the second husband divorces the woman. What is meant by marriage *Tahlil* is a *Muhallil* (the person who was told to marry someone else's ex-wife) married a woman who was rejected *Ba'in Kubra*, on the condition that, after being married and associated, he divorces the woman.

As in Q.S Al-Baqarah verse 230. What is meant by marrying another man in the verse is not just a marriage contract, but furthermore has carried out a biological relationship as befits the life of a husband and wife in general. According to sayyid sabiq in his book, namely *Fiqh Sunnah* Nikah tahlil is a widow who has been rejected by her husband and has undergone her iddah period and a man (*Tahlil*) to get married and have marital relations then she (*Tahlil*) so that the wife would return to her ex-husband (Sabiq, 1994). Furthermore, according to Ibn Rushd, marriage *Tahlil* is a marriage that is intended to legalize the ex-wife who has been married three times. For this reason, marriage *Tahlil* is the marriage of a man and a woman who have been talaq three times by their husbands. And after she got married, she was mentally angry again, so that her first husband could marry her again (Rusyd, 2004).

The second husband who had married the woman in the ordinary and then divorced her in the usual way so that the first husband could marry his ex-wife could actually be called *Muhallil*. However, there is no problem in this case, because the marriage has been valid naturally and legally. The husband who has rejected his wife three times often wants to return to his ex-wife. If you wait for the usual way according to the provisions of marriage, namely the ex-wife marries the second husband and lives like husband and wife, then because of something that cannot be avoided, the second husband divorces his wife and the iddah is also exhausted, it may wait a long time. To speed up his intention, he looked for a man who would marry his ex-wife in a pretence, usually with a condition that after the marriage contract took place, he would immediately be divorced before he had time to marry. This kind of marriage is called nikah *Tahlil* in the true sense of the word (Abidin & Aminuddin, 1999).

The recitation of the tahlil marriage contract cursed by the Prophet PBUH is the same as nikah *mut'ah*. That is, this tahlil marriage is not absolute but what is required, so that the period is determined, as the female guardian said: "*I will marry you to my son on the condition that if you have sexual relations with him, then there will be no more marriage with him, or you must give him talaq*". Then the man accepts the marriage greeting, this makes the tahlil marriage the same as the *mut'ah marriage*.

The Cause of Tahlil Marriage

The reason for the occurrence of khilaf among scholars is because of differences in understanding the pronunciation *haqiqi* and *majazi*. What is meant *haqiqi* that is, the pronunciation that shows its original meaning according to the formation of the pronunciation. As for *majazi* that is, the pronunciation is used for meanings other than the original meaning because there is a relationship between the two (original and non-original meaning) and there are indicators that it is impossible for the word to be interpreted in a *Essentials*. Imam Hanafi and Imam Maliki use the same hadith in their reference to their opinions on marriage *Muhallil*, *United States* "From Abdullah bin Masu'd: Allah SWT cursed *Muhallil* (the man who is permissible) and *Muhallal lahu* (the man who is permissible). Imam an-Nasa-i and Imam at-Tirmidhi issued the hadith and he recited it (Rusyd, 2004).

According to Ibn Rushd argues in the book, that Imam Maliki in understanding the word *la'ana* in this hadith indicates something that is forbidden. According to him, the curse there is like the curse of eating *riba* and drinking *khamr*, it shows the prohibition and the prohibition shows something forbidden (*haram*), even though the name of *shari'i* marriage does not depart from the forbidden marriage. Meanwhile, according to Imam Hanafi in understanding the word curse using the meaning of *majaz*, he understands the curse. Meanwhile, according to Imam Hanafi in understanding the word curse using the meaning of *majaz*, he understood that the curse was only a sin, so from this opinion the punishment of *the muhallil* marriage became valid.

Ibn Rushd explains the difference of opinion through the text below: The difference between the scholars lies in the words of the Prophet Saw, "*La'ana Allahu al-Muhallil*", al-Hadith. So the scholar who interprets *la'ana* with the meaning of sin only, the scholar says that the marriage is valid, the scholar who interprets the sin of the corruption of the intellect to something similar to the prohibition where the prohibition indicates that something is forbidden will be damaged, then the scholar says that the marriage is corrupt, then this is called a marriage that is damaged because of the prohibition. As explained above, there are two opinions on the difference between the two in *tahlil* marriage, *First*, namely the general words of the companions of the Prophet PBUH, one of which is the companions of Ibn Abbas r.a. then the dignitaries of the *tabi'in*, then agree on it the *jumhur* of *fuqoha* such as Abu Yusuf from the *Hanafiyah*, the *jumhur* of *Malikiyah* scholars, One of the opinions of *Shafi'iyah* and *Hanabilah* is: "*Tahlil* marriage when it has already been done, the woman who is married cannot be *halal* for the first". *Second*, it is the saying of Abu Hanifah: "When a person marries a *muthollaq* woman with the intention of *tahlil*, then it is as the opinion of the majority of people is *haram*, but the woman is *halal* for the first husband. Then in terms of the meaning of the word *muhallil* shows the validity of the marriage, because the word *muhallil* is a *halal* stipulation, if the marriage is *fasid* then it is not called *muhallil*.

The first opinion refers to the words of the Prophet PBUH which prohibits it by cursing *muhallil* and *muhallalah*, so it shows the marriage of *tahlil* and makes it not *halal muthollaqoh*, also with the *qiyas* method of viewing marriage with the intention of *tahlil* is not lasting or long-term and this is similar to *nikah mut'ah*. So it is *haram* to marry. While the second opinion points to Abu Hanifah's words using as-Sunnah and *ro'yu*, namely the hadith above there is *takhrij illat*. The Prophet himself called it by the word *muhallil*, thus indicating the validity of marriage. Then *ro'yu* Abu Hanifah punished the marriage with the validity of the marriage but only received the punishment of sin, so the marriage was not invalidated.

Tahlil Perspective of Hanafi and Syafii

In the opinion of Al-Murginany from the Hanafi madhhab, he is of the opinion as quoted in the book *al-Binayah Syarhul Hidayah*. In fact, if the goal is to unite and reconcile both parties to the husband and wife, then the man gets a reward. If there is a man who marries a woman with the aim of being *halal* for the first husband, then in that case there is a reward, al-Murginany told and other scholars. However, it is returned to them that it is actually known as something that is required, and there is no *khilaf* in the *makruh* of something that is required (Al-Hanafi, n.d.).

Imam Abu Yusuf is also from the madzhab of Hanafi himself, he punishes marriage on the condition that it remains valid but different from Imam Hanafi, for the issue of being allowed to marry the first husband, here Abu Yusuf forbidden. According to Abu Yusuf, marriage is allowed, but it is not *halal* for the first husband. Abu Yusuf considered this marriage not a marriage of a term of time, but the haste of something that was terminated according to *the Shari'a'*. So he gets punishment (sin) because of his *haram*, he likens it to an heir killing the person who inherits, then the heir is prevented (*haram*) from something that is inherited.

According to Imam Abu Hanifah, the *muhallil* marriage with this conditional contract, the marriage is valid (not void) only makruh. As explained in the book *al-Mabsuth*, if the marriage contract is perfect, then the marriage is valid, as for the conditions spoken in the contract, the condition is invalid, meaning that the conditions mentioned in the contract to legalize the wife to her ex-husband do not affect the validity of the marriage, as the text captions below:

Meaning: Ash-Syarkhosi said: "If the second husband marries her with the intention of being halal for the first husband without mentioning the conditions at the time of the marriage contract, it is valid and makes it halal for the first husband after the dukhul and divorce. If this condition is mentioned during the contract, then according to Imam Abi Hanifah (may Allah have mercy on him) he answered like that opinion (valid), but in this condition the law is makruh (asy-Syarakhasi, 1993).

Meanwhile, according to Imam Ash Shafi'i, when a man marries a woman who is thalaq three times, "I marry you to my daughter on the condition that if you have had sexual intercourse with her, then you must marry her," or say, "I marry you on the condition that I have given you up for your first husband, then I will marry you." Based on the conditions in this contract, there are two opinions of Imam Asy Shafi'i: *First*, the marriage is invalid, based on the words of the Prophet (peace be upon him), "Allah curses Muhalil and Muhallal Lahu", without distinguishing between them. *Second*, the marriage is valid but the conditions are void, because the contract is absolute and does not have a time limit. The perpetrator only requires thalak for himself and this has no effect on marriage. So what is void is only mahamya, just like when a man requires not to marry his wife or keep a concubine. This opinion is reinstated by the opinion of Imam Shafi'i in the book *Al-Umm*, namely: "Nikah *muhallil* which in the narration states that the Prophet (saw), his marriage is a form of nikah *mut'ah*, because the marriage is not absolute when the husband requires to marry his wife until intercourse occurs. There are times when the time is pushed back, and there are times when it is accelerated. The basic meaning is that a man marries a woman until he associates with her. If he has been with her, then there is no longer a marriage bond for the husband to his wife. For example, he said, "I married you for ten days." The Akad that says "I marry you for ten days" indicates that there is no more marriage between husband and wife after ten days."

In this opinion, *muhallil* marriage is mentioned as a *mut'ah* marriage in a conditional contract. So that this curse word is aimed at people who perform *muhallil* marriage with a conditional marriage contract. This curse word is not intended for people who perform *muhallil* marriage with an unconditional marriage contract. What is meant by this conditional is the time limit in the marriage contract. For example, I married you within ten days. In addition, the law of *muhallil* marriage can be valid if there is no mention of the condition of tahlil implied in the book of al-Umm: "Imam Shafi'i said: If a man arrives in a country and he wants to marry a woman, while both of them are obliged not to maintain the marriage except as long as the man stays in that country, or one day, or two days. or three days, whether it is the intention of the man and not the intention of the woman, or the intention of the woman not the intention of the man, or the intention of the two together and the intention of the guardian, the narnun of the marriage contract is carried out absolutely without any conditions in it, then the marriage is valid. Intention does not destroy marriage at all, because intention is only the word of the heart while people are forgiven for the words that come to their hearts. There are times when someone intends something but he doesn't, and there are times when someone intends something and does it. Thus, the woman happened later, and was not part of the intention.

Similarly, if the man marries her where both of them are bemiat, or one of them is obliged not to maintain the marriage unless there is sexual intercourse so that the wife becomes lawful for the first husband, then the marriage is valid, whether the guardian intends it with both of them, or intends something else, or does not intend it. Wali in this case has no meaning in

damaging something as long as the marriage does not occur with conditions that can damage the marriage itself".

According to the opinion of Imam Shafi'i on marriage *Muhalil* That is, the law is valid if the tahlil condition is not mentioned. In this matter of intention, it cannot damage the marriage contract itself. Because the problem of intention is a secret word of heart and is only known by oneself and Allah SWT. So this intention should be forgiven by Allah SWT. Because of this problem of intention, there are times when someone intends something but he does not do it, and there are times when someone intends something and does it. In addition, the law of marriage *Muhalil* According to Imam Shafi'i, it is invalid if there is a time limit on the conditional marriage contract. If there is a hidden intention in the heart to make it lawful for the sake of the first husband, then the law is still valid (Magfiroh & Nashrullah, 2022).

Thus, Imam Shafi'i interprets nikah *muhalil* with the word hakiki which means nikah *muhalil* means halal marriage if there is no mention of tahlil conditions in the contract. Imam Shafi'i uses the recitation of majazi in the hadith law about nikah *muhalil* which is narrated by Imam Tirmidzhi means that the marriage is valid which is carried out by re-legalizing the wife who is talaq three times without mentioning the tahlil conditions. The word curse in the hadith is intended for a marriage contract accompanied by tahlil conditions. It is not intended for a marriage contract that is not accompanied by tahlil conditions. Even if the intention of the marriage is tahlil or not.

Maliki and Hambali Perspective Tahlil

The Maliki and Hambali schools are of the opinion that marriage is actually a marriage *Tahlil* Even though without conditions, that is, a marriage that is carried out to make it halal to be married by her first husband, is an invalid, false, and void marriage, then this marriage is invalid, and does not become halal for her first husband with this marriage (Az-Zuhaili, 2011). The reason given is: Hadith narrated by Uqbah bin Amir: From 'Uqbah bin 'Amir, the Prophet PBUH said: Do you want me to tell you about the borrowed male goat? They said: Yes, O Messenger of Allah, the Prophet said: That is *Al-Muhalil*. Therefore, Allah curses women and muhallala lahu (HR. The fourth priest) (Az-Zuhaili, 2011). This shows the prohibition of tahlil marriage, because it is cursed for great sins. This is in accordance with the principle *Saddu ad-dzaraa'i*, the first group specializes in prohibition and annulment with what the husband requires, that if she is married by the second person, then she must divorce triple talaq with her second husband, or she requires that she must divorce him, or other conditions like this (Az-Zuhaili, 2011).

A marriage must use a valid contract, if both agree on conditions then it is invalid, Imam Malik said in the book *Syarah Muwatha'*: Imam Malik said in trouble *Muhalil* namely zauj agrees with zaujah or with his guardian zaujah to marry him so that he can be halal with his first husband, then Imam Malik continued: "Actually it cannot stand because of the damage of the contract", the contract is not sohih, when it comes first with this contract, the contract is not sohih so that it faces a new marriage, that is, when zauj marries zaujah on the basis of liking and wanting istimror (continuously), then it is obligatory to renew the contract, Because the first contract is invalid, if it has already been broken with a broken contract, then it is obligatory for him to dowry, where he has the right to dowry to make his farji valid, and zauj should not be accompanied by him, because the marriage is invalid (al-Khudoir, n.d.).

Then according to Imam Ibn Qayyim Al-Jauziyyah who belongs to the Hambali school states that marriage *Muhalil* including acts that are cursed by the Prophet PBUH, the marriage is equated with other actions such as tattooing, and those who ask to be tattooed, those who have their hair extensions and those who ask for their hair to be grafted, those who have their teeth charged and those who ask for their teeth to be filed, usury eaters, thieves, khamr drinkers, and others (al-Jauziyyah, 2000). He also classifies this marriage as one of the great sins. He

also argued that marriage *Muhallil* It is forbidden and forbidden either when it is required in the marriage contract or only limited to the intention in the heart.

In the book *Zadul Mád* He explained: There is no difference among the scholars of Medina, the scholars of hadith, and their fiqh scholars, between whether the marriage is required by speech or collusion and the intention in question. Because the intention in the contract is calculated, considered and has implications, that every act depends on the intention. What the words want is not the words themselves, but to show a meaning and intent. So that if the meaning and intention have been seen and understood, then the words are no longer important. Because the most important thing in a contract is the will and purpose. Words are just tools. Therefore, where the intent and purpose are stated, they have legal implications (al-Jauziyyah, 2000).

Before the marriage ban *Muhallil*, Some friends are still doing the wedding. Then, when the Prophet PBUH forbade marriage *Muhallil*, some of the companions who had done it, turned into people who were very forbidden, as Qabisah bin Jabir said, that he once listened to the statement of 'Umar bin Khattab saying: By Allah, I cannot give leniency to the perpetrators of marriage *Muhallil* so that *Muhallil* and *Muhallalahu* (The second and first husbands) I will give the punishment of stoning. Because it is a marriage that has a time limit, so it is almost the same as the implementation of marriage *muth'ah* (Mahjuddin, 2012).

So the marriage of a man who aims to legalize a woman who has *Ditalaq* by her husband, and no one knows her intention but Allah, so her marriage is *Dzahir* (real) valid, but not shari'a *Bathiniyyah*, even sinful. From the description above, Imam Malik's opinion is more acceptable and relevant. Because with the advent of marriage *Muhallil* then many negative possibilities will arise. According to Imam Malik, marriage must be based on love. If there is an intention to orient (engineer), it is not halal, aka haram. Similarly, the bride and groom know the haram of marriage or both do not know, still the marriage contract *Muhallil* it is void and damaged before or after dukhul. So if you have *Wathi* which is allowed in a perfect marriage and then she dies or dies, then it is halal for the first husband to marry her again, but if it is not like that, it is still in the category of haram for the first husband (A. A. Y. bin A. al-Qurtubi, 1980).

Imam Malik took the story of one of the Prophet's companions who wanted to marry his wife who he had rejected and then the Prophet PBUH forbade him so that the wife had tasted honey. This is the point of emphasis where the marriage is indeed a valid marriage without a grace period. Indeed, Rifaah bin Simwal rejected his wife Tamimah bint Wahab with triple talaq on the zama of the Prophet (peace and blessings of Allaah be upon him), then Abdurrahman bin Zahir married her, but before she touched him, she rejected Tamimah, Rifaah who knew this wanted to marry her again, then he asked the Prophet about it. The Prophet did not allow her to marry him and the Messenger said: "He is not halal for you so that he first tastes the sweetness of honey (al-Khudoir, n.d.)."

Apart from the Hadith of the Prophet PBUH, he also used *Aqwal* Companions, i.e. from the words of a companion like Umar Ibn Khattab he said: From the companion of Umar bin Khatab in the matter of the marriage of *muhallil*, he said: "It is not reported to me about a *muhallil* and a *muhallalah*, but I will surely stone both." So it is clear that if a law has been established by the Qur'an or al-Sunnah, then it is enough, especially with the addition of *qoulus sahabat*, which means that no other *istinbat* is needed, so the role of reason here is not needed (A. 'Umar Y. bin 'Abdullah bin M. al-Qurtubi, 2000).

Conclusion

This paper emphasizes that although there are differences of opinion among scholars, the practice of tahlil marriage should be avoided. The majority of scholars (*jumhur*) are more

likely to prohibit this form of marriage because it is considered contrary to the main purpose of the institution of marriage in Islam, which is to build a household that is *sakinah*, *mawaddah*, and *rahmah*. In addition, *nikah tahlil* is also considered to be able to damage moral and ethical values in society if it is carried out without paying attention to the correct sharia principles. With this study, it is hoped that readers can understand more deeply about the concept of *nikah tahlil* and the views of the imams of the *madhhab*. This study is also expected to make a positive contribution to the development of Islamic law, especially in responding to various contemporary problems that often cause confusion in society. A correct understanding of Islamic law is very important so that Muslims can carry out their religious teachings properly and correctly in accordance with the guidance of sharia. In conclusion, despite differences of opinion among scholars, Muslims should avoid the practice of *nikah tahlil* in order to maintain the integrity of the household and comply with the more universal teachings of Islam.

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