

## Review of Islamic Law Sociology Concerning Blind Chinese Wedding in Batu Bara District

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**ABSTRACT**, Marriage is a very sacred thing, the fiqh scholars define marriage as having something through a way that is stated in religion, with a goal according to human tradition. According to Islamic Sharia, this is something that justifies, but this is not the highest goal of marriage in Islamic Sharia. The highest goal is to maintain regeneration, maintain human genes, and each husband and wife can get peace of mind because his love and affection can be channeled. The rules regarding this marriage are actually to respect women and to differentiate between humans and animals, because with the rules regarding marriage, the human offspring in this world will be maintained in glory and the purpose of the marriage will be achieved. Even Islam regulates the purpose of marriage more than to nurture human descendants, namely by laying down rights and obligations for them, the following definition of marriage accommodates the values of the purpose of marriage, namely a contract that legalizes the association and assistance between men and women and limit their respective rights and obligations. So Positive Law and Islamic Law regulates marriage law so that the purpose of the marriage can be fulfilled, and the obligations and rights of each partner can be carried out. Every thing that has been declared and prohibited by Allah SWT must have a specific purpose and purpose, even the scholars who proposed fiqh discussed it in a discussion, namely in the issue of Maqasid Al-Sharia, one of which is maintaining offspring.

**KEYWORDS:** Marriage, Tahlil, Islam

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### I. INTRODUCTION

Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the one and only divinity.<sup>4</sup> From the above understanding it is clear that a marriage is carried out to create a harmonious husband and wife life, in order to form and foster a family, which is prosperous and happy at all times. Every married couple always yearns that the inner and outer bonds that are bound by the marriage contract will be stronger throughout their lives.

From the above understanding it is clear that a marriage is carried out to create a harmonious husband and wife life, in order to form and foster a family, which is prosperous and happy at all times. Every married couple always yearns that the inner and outer ties tied to the marriage contract are stronger and imprinted throughout life. that is, so that the man who marries his wife then divorces her, after having had a conjugal relationship with her, in some cases, this practice is often carried out for a fee.

In a tahlil marriage, there is not the slightest will to marry her. If it means to mix it up that day, and there is someone who hints at him to divorce it then this act is not allowed, where it means to mix it up for a day or two. It is different with a married person with a specific purpose, while the matter is in his hands. In this case, no one signaled to divorce his wife. From tahlil marriage, it is impossible to achieve the purpose of marriage that has been prescribed by Islam or that has been regulated by positive law and Maqhasid Al-Syariah from marriage, because it only aims to legalize the woman against her husband who has divorced her three times and as a livelihood the muhallil.

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## A. Definition of Tahlil Marriage

### 1. Marriage

According to the understanding of language, marriage means gathering and gathering. In the sense of jurisprudence, marriage is a contract that contains the ability to have a husband-wife relationship with the pronunciation of marriage / marriage or that means.<sup>5</sup>

According to the language, marriage also means gathering into one, as the Arabs say "the trees are married to each other" if they are inclined and collect.<sup>6</sup> 'Abdurrahman Aljaziri defines, marriage according to language is mixed and united/jimak or "wat".<sup>7</sup> According to Syara', marriage is a marriage contract, a contract that allows the husband to mix and have fun with the woman / wife, with wat and unite and more.<sup>8</sup> In the Qur'an surat An-Nisa 'verse 3 Allah commands:

Meaning: And if you are afraid that you will not be able to be fair to (the rights) of orphans (when you marry her), then marry the (other) women you like: two, three or four. then if you fear it will not be fair, then (marry) only one (266), or the slaves you have. such that it is closer to not doing wrong.

In the Sunnah, marriage is recommended among them:

In the hadith of the Prophet narrated by Imam Bukhari as follows: Meaning: "Reported by Abdan from Abi Hamzah from A'mas from Ibrahim from 'Ulqamah said: then we walked with Abdullah ra, then he said, when we were with the Prophet saw, he said: whoever is able to marry, let him marry because marriage can lower the gaze and more can maintain the honor. And whoever is not able, he should fast, because fasting is a shield for him."<sup>9</sup>

### 2. The Purpose of Marriage and Its Virtues

Since Adam was created, then God created his partner Eve. They are endowed with an instinct of inclination to love and love their opposite sex. When the instincts are combined between the two, it will bring peace of mind and peace of mind, so that it feels between the two how much they need each other and mean each other the presence of a partner by their side.

Imam al-Ghazali mentioned the priority of marriage, namely to have children (implement the sunnah of Allah SWT), to channel orgasm properly, to comfort the heart (by looking at each other and releasing longing so as to create peace and spirit to worship), form and manage the household and perform community obligations.<sup>10</sup>

Marriage is a legal contract in which a man and a woman unite with the aim of creating a life that lasts long and together under the authority of men on the basis of loyalty, chastity and the desire to regenerate and fill mutual obligations with a sense of security, peace and full of love.<sup>11</sup>

Sayyid Sabiq detailed; there are seven wisdoms of marriage, namely:

- a. In fact, the sex instinct is the strongest and most violent instinct which always demands a way out. When the solution cannot satisfy it, many people experience turmoil and confusion and break through the evil way. And marry the natural and biological path that is best and most suitable to channel and satisfy this instinct of sex. By getting married, the body becomes refreshed, the soul is calm, the eyes are preserved from seeing what is unclean and the feeling of enjoying enjoying halal goods is calm.
- b. Marriage is the best way to make children noble, to reproduce offspring, to preserve human life and to maintain a lineage which Islam is very concerned about.
- c. The instincts of fatherhood and motherhood will grow to complement each other in an atmosphere of life with children and will also grow feelings of kindness, love and affection which are good qualities that perfect one's humanity.
- d. Recognizing the responsibility of having a wife and bearing children creates a diligent and earnest attitude in strengthening one's talents and character.

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<sup>5</sup> Dewan Redaksi Ensiklopedi Islam, *Ensiklopedi Islam*, cet. 2 (Jakarta: PT. Ihtiar Baru van Hoeve, 1994), jilid IV, p. 32.

<sup>6</sup> Sayyid Abi Bakri as-Syuhuru bin Sayyidi al-Bakri bin as-Sayyidi Muhammad Syata ad-Dimya al-Misr, *Hasyiyatu I'anatu at-Thalibin* (Surabaya: Mahkota, t.t.), jilid III, p. 254

<sup>7</sup> 'Abdurrahman Aljaziri, *Kitab al-Fiqhi 'ala al-Mazahib al-Arba'atu*, cet. 1 (Bairut-Libanon: Dark al-Fikr, 2003), jilid IV, p. 3

<sup>8</sup> *Ibid.*

<sup>9</sup> al-Bukhar, *al-Bukhari*, jilid II, h. 673. Lihat juga. Muslim, *al-Muslim*, jilid II, p. 1018. Lihat. at-Tirmizi, *Sunan at-Tirmiz*<sup>3</sup>, jilid III, h. 392. Lihat. Ab- Da-d, *Sunan Ab<sup>3</sup> Da-d*, jilid II, p. 219.

<sup>10</sup> Al-Ghazali, *Adab an-Nikah*, terj. Muhammad al-Baqir, cet. 4 (Bandung: Karisma, 1994), p. 24.

<sup>11</sup> Ziba Mir-Hosseini, *Perkawinan Dalam Kontroversi Dua Mazhab: Kajian Hukum Keluarga Dalam Islam*, terj. Abu Bakar Eby Hara, et. al. (Jakarta: Icip, 2005), p. 19.

e. The division of tasks, where one manages and manages the household, while the other works outside, according to the boundaries of responsibility between husband and wife in handling their duties.

f. In a UN statement published by the daily "National" published on Saturday 6/6 1959, it was stated: "That people who have married wives have a longer life than those who are not married, either because they are widowed, divorced or deliberately single."<sup>12</sup>

### 3. Tahlil

Etymologically tahlil means legalizing something that is illegal.<sup>13</sup> associated with marriage will mean an act that causes a person who was previously illegal to perform the marriage to be permissible or halal. The person who can cause the halal of others to perform marriage is called muhallil. People who are halal to perform marriages performed by muhallil are called muhallalah<sup>2</sup>. Al Muhallil: Named or called muhallil because its purpose is halal in a place or object that was initially not halal. Al Muhalla lahu: that is, the ex-husband who told others to become muhallil for his benefit.<sup>14</sup>

Marriage tahlil is marrying a woman who is in thalak three with conditions after the second husband legalizes it (mixing) for the first husband, then the second husband divorces the woman<sup>4</sup>. What is meant by tahlil marriage is a muhallil (the person who is told to marry someone else's ex-wife) to marry a woman who is divorced ba'in kubra, provided that, after legalizing (being married and mingled) for the first husband, he divorces the woman.

According to Sayyid Sabiq in his book *figih sunnah nikah muhallil* is a man who marries a woman who has been divorced three times and his iddah period has expired and he performs dukhul (relationship between husband and wife) with him, then menthalak him so that the woman is halal married by the first husband . Furthermore, Ibn Rusyd in his book *Bidayah Al-Mujtahid*, defines the marriage of muhallil which is what is meant by his marriage to legalize the wife who was divorced by the three.<sup>15</sup>

Very strict hadith about this tahlil marriage:

Meaning: from Ibn Mas'ud RA, he said, Rasulullah SAW cursed muhallil (a person who marries a woman who is divorced three times to legalize her first husband) and muhallalah (ex-husband who told others to be muhallil). "(HR. Ahmad, An-Nasa'i, At-Tarmidzi at the same time consider this hadith authentic, from Ali narrated by Four faith hadith).<sup>16</sup>

At-Tarmidzi said, "According to the scholars, who practice this hadith is the opinion of tabi'in jurists, they are guided by the narration of Al-Hakim and Ibn Majah from the hadith of Uqbah Bin Amir that the Prophet SAW said:

Meaning: From uqhbah bin Amir, the Prophet SAW said, "Your actions want me to tell about at-tais al musta'ar (fake goat)? They (the companions) replied, "O Messenger of Allah. "He said," he is al muhallil, Allah curses al muhallil and almuhallalah.<sup>17</sup>

In this hadith shows that the prohibition of tahlil marriage, because basically nahi (prohibition) means pointing to void. Shaykh Taqiyuddin said, "the scholars agree to forbid tahlil marriage. The muftis also agreed that if in the marriage contract it is required tahlil (barrier) for the first husband, then the contract becomes void, Syarh Al Iqna 'is said, divorced her, or muhallil intended after legalizing the woman for her ex-husband, then he divorced her and did not withdraw her intention during the contract.

This kind of marriage is haram and illegitimate. "Because of this kind of cancellation of the tahlil marriage, the first husband still does not get the halal status of his ex-wife. Shaykhul Islam said, a marriage that was deliberately engineered by the ex-husband, either in a lapaz or habitual manner, namely muhallil would divorce his wife or intend to do it mentally, Rasulullah SAW had cursed the perpetrator in several hadiths, thus, a contract like this is not lawful for her ex-husband, and for Muhallil must not do it.<sup>18</sup>

In I'lam Al Muwaqi'in, Ibn Qayyim said that muhallil marriage is not allowed in any religion and was never performed by the companions of the Prophet SAW and its validity was never decreed by one muftipun.<sup>19</sup> Shaykh Shadiq Hasan said, the hadith that performed the muhallil marriage is narrated from the lines of a group of companions of the Prophet SAW with various chains, which are authentic and hasan.<sup>20</sup>

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<sup>12</sup> Disarikan dari Sayyid Sabiq, *Fikih Sunnah*, terj. Moh. Thalib, jilid VI, p. 19-21.

<sup>13</sup> Amir Syarifuddin, *Hukum Perkawinan di Indonesia*, (Jakarta:Kencana, 2011), p.103

<sup>14</sup> Al-Basam, Abdullah bin Abdurrahman, p.354.

<sup>15</sup> Ibnu Rusyd, *Bidayah Al-Mujtahid*, (Bairit: Daar Al-Fikri,Tt), Juz II, p. 44

<sup>16</sup> Aby Isya Ibn Muhammad Isya Ibn Saurah ,*Sunan Turmudzi*,(Mesir: Maktab Al-Matbah, 1968), Juz III, p. 418

<sup>17</sup> Al-Basam, Abdullah Bin Abdurrahman, p. 354

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

## II. THE LEGAL BASIS OF MARRIAGE TAHLIL.

In Islam, the law of tahlil marriage is haram and void according to the majority of scholars, Islam requires that the relationship between husband and wife in the ark of marriage be eternal and eternal and eternal, until death invites and separates, temporary marriage or mut'ah marriage has been annulled by Islam in ijma', Islamic law does not require divorce even if the divorce is allowed, because the job of divorce is very hated by Allah SWT.

Tahlil marriage is a pseudo marriage and has a period, so that the purpose of marriage that Islam wants is not achieved, therefore the engineers of this tahlil marriage get harsh criticism from Rasulullah SAW, as some hadiths of Rasulullah SAW say about this muhallil marriage among them are: the first is when someone asked about this muhallil to Ibn Umar which reads:

Meaning: Narrated from Nafi 'he said, "there was a man who faced Ibn Umar and asked about someone who married a woman who had been divorced by her husband three times, then divorced him. After that, his brother remarried without an agreement in order to be able to remarry his wife. Can the first husband remarry him? Ibn Umar replied, "It is not allowed but marriage on the basis of love. During the time of Rasulullah SAW, we considered this kind of marriage as adultery. (HR.Al-Baihaqi and Judge).<sup>21</sup>

The second hadith is a hadith narrated by Ali Bin Abu Talib which reads:

Meaning: Narrated by Ali Bin Abu Talib RA, indeed the Prophet SAW once said, "Allah SWT has cursed muhallil (the person who marries a woman who is divorced three so that her first husband can remarry) and muhallalah lahu (the person who marries his wife with three divorces and want to remarry her).<sup>22</sup>

The third hadith is a hadith which reads:

Meaning: Will you I tell the male goat on loan? They (the Companions) want the Messenger of Allah and the Prophet to say "muhallil". Allah cursed Muhallil and Muhallalah.<sup>23</sup>

The fourth hadith is a hadith from Ibn Abbas who asked about muhallil's marriage to Rasulullah SAW which was then answered by Rasulullah SAW as follows:

Meaning: "no, (ie not lawful), marriage must be done with love, not with fake, mocking the Kitabullah, then he feels the honey of a woman. "(Narrated by Abu Ishaq Al-Juzharni, from Ibn Abbas)".<sup>24</sup>

Apart from the hadith of the Prophet SAW, there are also words from companions such as Umar Ibn Khattaab, he said: True marriage is an eternal union to obtain offspring, raise children and build a prosperous household, while this muhallil marriage despite its name is marriage but just like lying, fraud is something that is not taught by Allah SWT and is forbidden for anyone. Ali Talib, Abi Hurairah, Uqbah bin Amir This tahlil marriage cannot be a valid isti according to the law of the first husband, if the marriage is only for the purpose of being able to remarry with his first ex-husband, they associate the marriage with the hadith of the Prophet SAW, with the threat that the Prophet SAW, cursed anyone who likes such a divorce.<sup>25</sup>

Having seen from the hadith and the opinion of the companions above, it is clear that this tahlil is a great sin and cursed for those who do it. When to legalize one's marriage with the consent of her ex-husband or not. The religion of Allah from the rule that forbids the honor of a woman is then legalized by a hired man who has no intention of marrying her, will not forming a family bond, not wanting to live with the woman he married, then divorced then the woman is halal for her ex-husband.

That act is prostitution and adultery as the companions of the Prophet SAW said, how can something that is forbidden become holy. accepted by a pure and holy mind.<sup>26</sup>

In accordance with the concept of Islamic law if a man divorces his wife up to three times, then he can no longer refer to his wife, unless the wife has remarried another man then in (the man) divorced her and expired iddah, marriage should be with a true marriage not for the purpose of tahlil, with a solemn marriage and already in a relationship between husband and wife, where each party has made honey from the second marriage. as the belief of Allah SWT which reads:

Meaning: Then if the husband divorces her (after the second divorce), then the woman is no longer halal for him until He marries another husband. then if the other husband divorces her, then there is no sin for the two (former

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<sup>21</sup> Abi Bakar Ahmad Bin Husain Al-Baihaqi, *Ash-Sunnah Ash-Shagir*, (Bairut: Daar Al-Fikri,Tth), Juz II, p.43

<sup>22</sup> Al-Bani, Muhammad Nasiruddin, p.204

<sup>23</sup> Al-Bassam, Abdullah Bin Abdurrahman, *Syarah Bulugul Maram*, p. 34.

<sup>24</sup> Ibnu Katsir, *Al-Qur'an A'dzim*, (Bairut: Al-Fikri,Tt), Juz 1, p.415

<sup>25</sup> Abdurrahman, p. 332.

<sup>26</sup> Sayyid Sabiq, p. 67

first husband and wife) to remarry if both parties think they will be able to carry out the laws of God. Those are the laws of Allah, He explained to the people who (want) to know.<sup>27</sup>

From the above verse, it can be concluded that a woman is not allowed for her first husband except with the following conditions:

- 1) The marriage must be with another man
- 2) The second man who marries that woman is legally married and has sex with her.
- 3) She is divorced from the man, divorced by thalak, died or other.
- 4) Its iddah period has expired.<sup>28</sup>

From the above explanation, a wisdom can be taken, namely so that a husband does not easily drop thalak three, because thalak three is lawful but is very hated by Allah SWT, a husband must think long about dropping thalak three to his wife if he has dropped the second thalak, if this you want to do that too, remember when happiness with your wife in the past and all that will end or will continue forever. The household that has been lived in so far does it only end with a word, namely with the word talak, if a husband thinks long enough for his future life then a husband will also think long enough to drop his divorce.

### **III. THE OCCURRENCE OF NIKAH TAHLIL.**

Three thalak marriages occur, but not infrequently it causes regrets. A household that was founded by two husbands and wives so far in harmony and peace, because of one thing they had to leave their ties. Often a divorce occurs outside of careful consideration and logic and thought, usually when a conflict occurs it seems just the fault, but if it is divorced, think back to the good that existed or what was before. Islamic Shari'at has stipulated that in order to return to this original marriage, the wife must have already entered into a marital relationship with another man. So the way we are trying to take in order to reunite is by way of the tahlil marriage. The reasons for this tahlil marriage are inseparable from the emergence of divorce between husband and wife. A marriage that Islam wants is an eternal marriage, but in certain circumstances sometimes there are things that must be a challenge.

In the life of a husband and wife that shows a crack in the household which can lead to divorce, actually Al-Qur'ah has explained it, the quarrel in the household which can lead to divorce, the dispute in the household starts from the failure of the rules set by Allah SWT for the life of husband and wife in the form of rights and obligations that must be fulfilled by husband and wife.

Allah SWT explains some efforts that must be taken in the face of quarrels in the household so that divorce does not happen as described in the words of Allah SWT in surah An-nisa verse 35 reads:

Meaning: And if you are worried about a dispute between the two, then send a judge from the male family and a judge from the female family. if the two judges mean to make improvements, surely Allah will give taufik to the husband and wife. Lo! Allah is Knower, Aware.<sup>29</sup>

Allah SWT anticipates that there will be no divorce, that is, anticipates the existence of nusyuz, quarrels or siqoq from the husband or wife, but sometimes does not succeed in the ways that have been made, then the last resort is none other than divorce. In general, human beings have materialistic nature, human beings always want to have a lot of jewelry and good, whether it is material jewelry such as gold, gems, vehicles, luxury homes, electronics, and sometimes like immaterial, such as position and rank, in this case often husband and wife are too demanding of rights and obligations as husband and wife.

The best jewelry in this world is a pious wife in this case in accordance with the teachings of Islam itself, pious women will not be found in a world that is black or immoral even though there are many beautiful women, pious women are found in legitimate marriage institutions, so that makes women The pious is not seen from the physical alone but seen from the noble behavior and morals. It is often found in this real world that a wife is materialistic and forces her husband to give things he cannot afford.

Basically, often the husband drops talaq two or talaq three at the same time to his wife in a state of anger, in this case the opinion of fiqh scholars also say that this kind of talaq does not fall because the talaq falls in unconscious state. Against talaq three, some judges decided to follow Umar's decision, talaq three at a ceremony was seen as really a third talaq fall, regret arose both parties, so then it makes sense, that is to hire someone to marry the woman, by prior agreement, that after mixing women that once, let him divorce. So after looking for stupid people who lack common sense, were hired by their husbands or husbands and after the

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<sup>27</sup> QS. Al-Baqarah/2: 230.

<sup>28</sup> Mahmud Yunus, *Hukum Perkawinan Dalam Islam*, (Jakarta: PT Hidakarya Agung, 1990), Cet Ke-12, p.40

<sup>29</sup> QS. An-Nisa'/4: 35.

intercourse of the woman was divorced and their wages were accepted. This is what is mentioned in the hadith "Taisul Must'mir" (borrowed goat).<sup>30</sup>

#### **IV. TAHLIL'S MARRIAGE STATEMENT.**

Akad in language is 'aqada', which literally means binding, joining, holding or in other words making an agreement. In Islamic law, a contract means a combination or combination of offer (ijab) and acceptance (qabul) which is valid and in accordance with Islamic law. Ijab is an offer from the first party, while qabul is the acceptance of the offer from the offer mentioned by the first party. So the marriage contract means a sacred covenant to bind oneself in marriage between a woman and a man to form a happy and eternal family.<sup>31</sup>

Marriage is essentially a contract, a contract is a religious ceremony for a marriage between two human beings, then the relationship between two people who agree to have a household is formalized before humans and Allah SWT. The marriage contract consists of:

- 1) Ijab or submission, which is a lapaz that is pronounced by a guardian from the bride's side or the party who is entrusted by the bride's party with the words, I will marry you (a woman in question whose name is clearly stated).
- 2) Qobul or acceptance, which is a lapaz that comes from the prospective groom or someone who has won the trust of the groom, by saying, I accept his marriage (clearly stated), with a dowry (mentioned by name).<sup>32</sup>

A new marriage is considered valid if it is carried out by means of a contract, and includes consent and qobul between the woman being proposed and the man who proposed to her, or the substitute party such as representatives and guardians, and is considered illegitimate only consensual without a contract.

As for the words in Arabic that are used in performing the consent and qobul, there are differences in opinion of the jurisprudence experts, the most appropriate word for that is "zawajtuka". But experts have an opinion, if those words are not used. The Hanafi, Tsairi, Abu Daud groups justify non-specific words, even all the words that are deemed suitable, as long as the meaning is legally understood, even with the words owner it is fine.<sup>33</sup> They reasoned that the Prophet SAW had veiled a friend to his partner with the words of the Prophet Muhammad, which reads:

Meaning: I have given him to you with a dowry from the Qur'an which you understand. (HR Bukhari).<sup>34</sup>

The jurists also argue that ijab and qabul can be done not in Arabic, if, the party in agreement or one of them does not understand Arabic.<sup>35</sup> The word tahlil marriage contract cursed by Rasulullah SAW is the same as mut'ah marriage. That is, this tahlil marriage is not absolute except what is required, until the appointed time, as the female guardian said: I marry you to my son on the condition, when you have sex with him, then there is no more marriage with him, or you have to divorce him. Then the man receives the marriage speech, the halini that makes tahlil marriage is the same as mut'ah marriage.

It can be concluded that this tahlil marriage is not absolute, it is an absolute marriage or marriage when it is required by certain conditions, such as time for example: I will marry you in two months, two years and so on. While in tahlil marriage is required at a certain time, it is required for another man to marry a woman who will be halal married to the previous husband, only until he has a relationship between husband and wife with the woman, then a marriage relationship between the two ends.

#### **V. THE LAW OF TAHLIL MARRIAGE AMONG THE SCHOLARS.**

The number of scholars, both salaf and khalaf, said that the tahlil marriage which was carried out under this condition was null and void. Whether it is said before the contract, or in the formulation of the contract, among the jurist's opinions are as follows: Imam Malik argues that this conditional marriage of muhallil can be cooked.<sup>36</sup>

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<sup>30</sup> Hamka, *Tafsir Al-Azhar*, (Jakarta: Pustaka Panjimas, 1982), Juz I, p. 213

<sup>31</sup> Mohd. Idris Ramulyo, *Hukum Perkawinan Islam*, (Bumi Aksara, 1996), Cet Ke-1, p. 1

<sup>32</sup> Saleh Al-Fauzan, *Fiqh Sehar-Hari*, Alih Bahasa, Abdul Hayyie Al-Khattani, (Jakarta, Gema Insani, 2006), p. 649

<sup>33</sup> Majlis Muzakarah Al-Azhar Panji Masyarakat, *Islam dan Masalah-Masalah Kemasyarakatan*, (Jakarta: Pustaka Panjimas 1983), Cet Ke-1, p. 115-116

<sup>34</sup> Abi Abdullah Muhammad Bin Ismail Al-Bukhari, *Sahih Al-Bukhari*, (Semarang: Maktabah Wa Matba'ah Usaha Keluarga ,Tt), p. 229

<sup>35</sup> Majlis Muzakarah Al-Azhar Panji Masyarakat, p. 116

<sup>36</sup> Ibnu Rusyd, p. 44

Sufyan Ats-Tsauri said, if a man marries a woman with the intention of tahlil, and then halfway he intends to keep the marriage, then I think he should divorce her and have a new marriage.<sup>37</sup> Ibrahim An-Nakha'i argued that tahlil marriage is not allowed unless there is a sincere desire to marry. Therefore, if there is one of the three parties, whether the first husband, the prospective second husband, or the woman, it aims to legalize the marriage. invalid.<sup>38</sup>

Imam Shafi'i also said it was canceled, if the conditions of the muhallil's marriage were mentioned during the contract, the legal basis was the hadith of the Prophet SAW which was narrated from Ibn Mas'ud.<sup>39</sup> As for the second legal basis is the "qiyas" Imam Syafi'i mengkikan on nikah mut'ah, Imam Syafi'i views tahlil nikah is not absolute but is required, until a certain period. The Maliki and Hambali Schools are of the opinion that actually a tahlil marriage, although without any conditions, namely a marriage done to make it lawful to marry her first husband, is a marriage that is haram, vanity, and canceled, so this marriage is not valid, and does not become lawful for her first husband with this marriage.<sup>40</sup>

There are reasons put forward are: The hadith narrated by Uqbah Bin Amir:

Meaning: Would you please let me know about the borrowed goat's genitals? "He is the one who performs the marriage tahlil of Allah, cursing those who legalize and those who are legalized."<sup>41</sup>

This shows the prohibition of holy marriage, because the damnation is given for a grave sin. This is in accordance with the principle of saddu adz-dzaraa'i, the first group that specializes in prohibition and annulment according to what is required by the husband, that if he marries the second person, then he must divorce triple divorce with his second husband, or he requires that he divorce her, or other conditions like this.<sup>42</sup>

## VI. CONCLUSION

Muhallil marriage in Indonesia is not regulated in Law Number 1 of 1974 concerning Marriage or other regulations concerning Marriage in Indonesia. In the Islamic Law Compilation, muhallil marriage is not explicitly regulated but is in the procedures for marriage and divorce and is a condition so that a husband and wife who have divorced three divorces can reconcile. In Islamic law, muhallil marriage in fiqh munakahat Chapter three divorce. The Indonesian Marriage Law prohibits muhallil marriage because it is not in accordance with the philosophy and purpose of marriage, which is to build an eternal and happy home. Whereas in Islamic law most scholars also prohibit muhallil marriage, and stipulate the muhallil marriage law is invalid based on the arguments of Al-quran and As-sunnah, because it contains a lot of harm and also harms women.

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<sup>37</sup> Ayyub, Syaikh Hasan, *Fiqih Keluarga*, Alih Bahasa, Abdul Ghopur, (Jakarta: Pustaka Al-Kautsar, 2008), Cet Ke-1, p.152.

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid*

<sup>40</sup> Wahbah Az-Zuhaili, *Fiqih Islam 9*, Alih Bahasa, Abdul Hayyie Al-Kattani, dkk (Jakarta: Gema Insani, 2011), p.142

<sup>41</sup> *Ibid*

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