

Tahlil Marriage Among the Sasak Tribe of Lombok Based on *Maqâshid al-Shari'a* Perspective and Its Relevance to Compilation of Islamic Law

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Abstract: *Tablil Marriage Among the Sasak Tribe of Lombok Based on Maqâshid al-Shari'a Perspective and Its Relevance to Compilation of Islamic Law.* This study examines the practice of *tablil* marriage carried out in several sub-districts in East Lombok Regency. *Tablil* marriage or *Cine Bute* or *muhallil* is carried out as a condition that reconciliation between ex-husband and ex-wife who has been divorced is permissible. *Tablil* marriage (*Cine Bute*) in the Sasak community is carried out secretly without authorization from the Office of Religious Affairs. This research is classified as qualitative research with an empirical normative approach. Data were collected using observation, interview and documentation techniques and were analyzed through the perspective of *maqâshid al-shari'a* and Compilation of Islamic Law (KHI). This research found that *tablil* marriage in East Lombok Regency was divided into three forms: common marriages, contractual marriages, and common marriages initiated by contract marriages. In the view of *maqâshid al-shari'a*, the *tablil* marriages carried out by the Sasak tribe do not fulfill the aspects of *dharûriyya*, *hajjiyya* and *tahsîniyya*. Among the factors that influence the *tablil* marriages performed by the Sasak tribe are the ease of divorce, the lack of public legal awareness, the low level of public education, the lack of understanding of religion and the weakness of law enforcement.

Keywords: *tablil* marriage, divorce, *maqâshid al-shari'a*, Islamic Law Compilation

Abstrak: *Perkawinan Tablil Suku Sasak Lombok dalam Perspektif Maqâshid al-Syari'ah dan Relevansinya dengan Kompilasi Hukum Islam.* Penelitian ini mengkaji praktik nikah *tablil* yang dilakukan di beberapa kecamatan yang ada di Kabupaten Lombok Timur. Nikah *tablil* atau disebut juga *Cine Bute* atau *muhallil* dilakukan sebagai syarat dibolehkan rujuk antara mantan suami dan mantan istri yang sudah ditalak *ba'in*. Praktik nikah *tablil* (*Cine Bute*) pada masyarakat Sasak dilaksanakan secara tersembunyi, tanpa disahkan oleh Kantor Urusan Agama. Riset ini tergolong riset kualitatif dengan pendekatan normatif empiris. Data dikumpulkan dengan menggunakan teknik observasi, wawancara dan dokumentasi, hasilnya setelah diolah, dianalisis melalui perspektif *maqâshid al-syari'ah* dan Kompilasi Hukum Islam. Hasil riset ini menemukan bahwa praktik nikah *tablil* yang ada di Kabupaten Lombok Timur terbagi dalam tiga bentuk, yaitu nikah *tablil* kontrak, nikah *tablil* alami dan nikah *tablil* kontrak alami. Dalam pandangan *maqâshid al-syari'ah*, praktik nikah *tablil* yang dilakukan oleh suku Sasak tidak memenuhi aspek *dharûriyyah*, *hajjiyyah* serta *tahsîniyyah*. Di antara faktor-faktor yang mempengaruhi nikah *tablil* yang dilakukan oleh suku Sasak adalah mudahnya perceraian, minimnya kesadaran hukum masyarakat, rendahnya pendidikan masyarakat, pemahaman agama kurang serta lemahnya penegakan hukum.

Kata kunci: nikah *tablil*, talak, *maqâshid al-syari'ah*, Kompilasi Hukum Islam

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Introduction

Islamic teaching that Allah SWT prescribes contains the purpose of (*maqâsid al-sharî'a*) that is useful for mankind. Muslim law expert formulates this protection in five protected aspects (*al-maqâshid al-khamsa*), namely *hifzh al-dîn* (saving religion), *hifzh al-nafs* (protecting soul), *hifzh al-'aql* (protecting the mind), *hifzh al-nasl* (protecting offspring) and *hifzh al-mâl* (protecting property).¹ Protecting offspring (*hifzh al-nasl*) can be realized by marriage. Ulama (*Salaf al-Sâlih*), as written in many books of *Turats* about the law of marriage, convey the purpose of marriage, which includes preserving good offspring, educating the soul, increasing the sense of love and affection, and unifying the feelings of man and woman.²

Meanwhile, the book of Islamic Law Compilation (KHI) is used as a unity guideline for solving problems in Indonesian marriage, inheritance and endowment law. It explains that marriage is "*a firm contract (mitsâqan ghalîzan) intended to obey the commands of Allah Subhanahu wa Ta'ala and doing worship*".³ The purpose of marriage is to build a long-lasting, peaceful (*sakîna*), prosperous (*mawadda*) and harmonious (*rahma*) family in line with religious guidance and state rules.⁴ The Qur'an and Hadits describe marriage in detail, expecting a marriage will be long-lasting.⁵

In Indonesia, divorce rates are pretty high. According to the National Statistics Center (BPS) records, there were 447,743 divorce cases in 2021,

¹ Ali ibn Muhammad al-Amidiy, *al-Ihkâm Fi Ushûl al-Ahkâm* (Beirut: Dâr al-Fiqr, 1987), p. 274.

² Amir Sahidin and Muhammad Alif Rahmadi, 'The Implementation of *Maqâsid al-Shari'ah* in Shaykh Yûsuf al-Qardhawi's *Fiqh al-Aqalliyat*', *JHI: Jurnal Hukum Islam*, 19.2 (2021): 295–312 <<https://doi.org/10.28918/jhi.v19i2.4997>>.

³ Usman Betawi, 'Nikah *Tablîl* dalam Hukum Islam', *Jurnal Hukum Responsif FH UNPAB*, 7.7 (2019): 66–75.

⁴ Muhammad Hori and Eliva Sukma Cipta, 'The Purpose of Marriage in Islamic Philosophical Perspective', *Journal of Islamic Studies*, 02.01 (2019): 18–25. About *sakîna*, see Abdul Qodir Zaelani, Issusanto Issusanto, and Abdul Hanif. "Konsep Keluarga *Sakinah* dalam Alquran." *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 2.2 (2021): 36-60.

⁵ Sopriyanto, 'Pandangan Hukum Islam, Hukum Perkawinan dan KHI Terhadap Praktik Nikah *Tablîl* (Studi Kasus di Desa Suka Jaya Kecamatan Muko-Muko Bathin VII Kabupaten Bungo)', *Nur El-Islam: Jurnal Pendidikan dan Sosial Keagamaan*, 6.1 (2019): 15–30 <<https://doi.org/10.51311/nuris.v6i1.116>>.

an increase of nearly 70% from the previous year, which recorded 291,677 points. A similar tendency also occurred in East Lombok Regency, where the number of divorces increased; from 1,214 cases in 2019 to 1,310 in 2020 and increased again to 1,434 points in 2021.⁶ Generally, divorces in East Lombok Regency are taken stealthily unless the husband or wife needs a divorce certificate to marry someone else. The factors causing this increase are economic difficulties, boredom, fading love, selfishness, and polygamy.⁷

According to Islamic law, a husband who has divorced her wife up to 3 times can no longer remarry his ex-wife (*rujû'*) unless the wife marries another man first. If, later on, the man divorces her, then the previous ex-husband is allowed to *rujû'* (remarry) his ex-wife. The man who marries the widow is called "*muhallil*," while the ex-husband is called "*muhalla labu*".⁸

The difficulty in implementing the above requirements makes some people take shortcuts by paying someone else to marry the ex-wife and then divorce her so the ex-husband can remarry her. This kind of practice is known as *Cine Bute* among the Sasak circle.

Tablil marriage is permissible if it usually takes place without any elements of closure. In other words, the man, who marries the widow, having been divorced three times by her previous husband, really intends to marry her, and there is no hidden motive. Unfortunately, such is not the case in the Sasak tribes of the Wanasaba district. In this community, *tablil* marriage (*Cine Bute*) is not a marriage in the truest sense but

⁶ Edo Pradipta Mahadika, Kusworo, and Ondo Riyani, 'Implementasi Kebijakan Pengelolaan Badan Usaha Milik Desa dalam Meningkatkan Perekonomian Desa di Kecamatan Jepara Kabupaten Jepara Provinsi Jawa Tengah', *VISIONER: Jurnal Pemerintahan Daerah di Indonesia*, 13.2 (2021): 375–90 <<https://doi.org/10.54783/jv.v13i2.440>>.

⁷ About polygamy, see Sopiani, Wiwin, Pelita Yatna, and Nurkholis Ulwi. "Penyuluhan Tetang Praktik Poligami Suku Sasak Perspektif Hukum Islam di Desa Tembung Putik Kec. Wanasaba Kab. Lombok Timur." *Al-Bayyinah: Jurnal Pengabdian Kepada Masyarakat*, 1.1 (2018): 15-21. Herlina Fitriana, "Dinamika Psikologis Istri Pertama yang Dipoligami: Studi Kasus pada Suku Sasak Nusa Tenggara Barat." *QAWWAM*, 15. 2 (2021): 21-38. Abdul Qodir Zaelani, "al-Adalah fi Qadhiyah al-Ta'addud fi Nadzri al-Falsafiyah al-Qanuniyyah al-Mi'yariyyah, wa al-Nafsiyyah wa al-Ijtima'iyyah." *al-Adalah*, 12.2 (2015): 903-914.

⁸ Muhammad Haikal, 'Konsep Nikah *Muhallil* Menurut Fikih Mazhab', *al-Mizan: Jurnal Hukum Islam dan Ekonomi Syariah*, 8.2 (2021): 132–45. Thahir Maloko, "Nikah *Muhallil*: Analisis Pendapat Empat Imam Mazhab." *Mazahibuna* (2019): 234-241.

falsity. The *tahlil* marriage only aims to open up legal opportunities for ex-husbands to marry their ex-wives by asking someone to perform the marriage.⁹ Such is what makes marriage forbidden because there is no seriousness/sincerity of the new husband to marry the woman.

Based on initial observations, *tahlil* marriages in Wanasaba District, East Lombok, tend to lead to illegal marriage. The union was carried out secretly, and the duration was concise. The wedding could only last a few days, even just a few hours after the *muhallil* (the man who pretended to be married) received a wage from *muhalla labu*. As stated by a local community leader, *Cine Bute (Tahlil Marriage)* was not exposed to the public, nor was it registered with the Religious Affairs Office (KUA) to protect the reputation of the perpetrators involved in the marriage. So not everyone knows about it.¹⁰

Although *tahlil* marriage is becoming rare, it can still be found among the people of Tanjung Luar, South East Lombok. As far as the author has been able to trace, there has never been any research related to this topic. Such is what prompted the writer to examine the practice and analyze it from the perspective of *maqâsid al-sharî'a* and the Compilation of Islamic Law. Through this research, the authors expect that the Sasak people may realize that the *nikah tahlil* practice, which has been practiced so far, is violated the purpose of marriage in Islam. Because it is not intended to build a household that is *sakîna, mawadda, wa rahma* but to restore the status of a woman who has been divorced by her ex-husband so that he can remarry her.

Research Method

This research is field research with a qualitative descriptive approach, using the perspective of *maqâsid al-sharî'a* and the Compilation of Islamic

⁹ Ahmad Sanusi and Epa Nurpiah, 'Praktik Perkawinan *Muhallil* di Padarincang Serang Provinsi Banten Indonesia', *JHI: Jurnal Hukum Islam*, 18.2 (2020): 271–91. Asman, Kurniati, and Marilang, 'Existence of Marriage Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia', *Jurnal Ilmiah al-Syir'ah*, 19.1 (2021): 16–29 <<https://doi.org/10.30984/jis.v19i1.1256>>.

¹⁰ Haikal.

Law.¹¹ The study was conducted in three locations in East Lombok Regency, including Suralaga, Suela, and Tanjung. The author applied is descriptive and qualitative analysis approach. The data were obtained directly from primary and secondary data sources,¹² either from interviews, observations and documentation activities or from books, documents, journal articles and others related to the *tablil* marriage.

Result and Discussion

As an area with the most populous in West Nusa Tenggara Province, East Lombok Regency holds various crucial social problems in family life, among others, is divorce. In the case of *raj'i* divorce, the husband and wife may return to marriage under a simple process.¹³ In the case of *ba'in* divorce, however, the husband and wife can not remarry unless the ex-wife marries another person. Only after this new husband divorces the woman, then the ex-husband has an opportunity to remarry his ex-wife.

The regulation regarding *tablil* marriage can be found in fiqh and the Compilation of Islamic Law (KHI), which becomes a guideline for the implementation of *tablil* marriage correctly.¹⁴ *Tablil* marriage in East Lombok Regency is generally conducted in a *sirri* (underhand marriage) without Religious Office Affairs (KUA) validation. People only need shar'i legality to remarry their ex-husband or wife.

¹¹ Emzir, *Metodologi Penelitian Pendidikan: Kuantitatif & Kualitatif* (Jakarta: Rajawali Pers, 2011), p. 35.

¹² Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D* (Bandung: Alfabeta, 2017), p. 43.

¹³ Yayan Sopyan and Helma Suryani, 'Marriage with Same Tribes in the Customary Law of Minangkabau Batipuh Ateh (A Legal Anthropology Approach)', *JHI: Jurnal Hukum Islam*, 18.2 (2020): 157–72. Damrah Khair, and Abdul Qodir Zaelani. "Mengungkap Fenomena Cerai Gugat di Bandar Lampung." (2020). Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani, 'Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga di Indonesia', *Jurnal al-Azhar Indonesia Seri Humaniora*, 6.1 (2021): 11–21 <<https://doi.org/10.36722/sh.v6i1.443>>.

¹⁴ Usman Betawi, Pagar, and Saidurrahman, 'Review of Islamic Law Sociology Concerning Blind Chinese Wedding in Batu Bara District', 9.8 (2020): 49–56 <<https://doi.org/10.35629/7722-0908034956>>. Fathoni Muh Hasyim, Liliek Channa AW, and Moh Mufid, 'The Walagara Marriage Ritual: The Negotiation Between Islamic Law and Custom in Tengger', *Journal of Indonesian Islam*, 14.01 (2020): 139–62 <<https://doi.org/10.15642/JIIS.2020.14.1.139-162>>.

According to the prevailing custom, five things must be implemented immediately: conversion to Islam, death person, demanding marriage, divorce, and conciliation. Many people understand that *tablil* marriage is permissible. For this reason, a person wanting to remarry his ex-wife after giving her three *talaqs* (divorce statements) tends to use *tablil* marriage as a solution to conciliate with their ex-spouse to avoid sin.¹⁵ Another compelling reason is fears something undesirable will happen if a husband and wife who divorces by three *talaqs* want to reconcile. Still, the wife has not married another person (*muhallil*) yet. So they move to another place to intervene before his wife marries someone else.¹⁶ Indeed, *tablil* marriage is permissible in Islamic teaching. Still, it is forbidden if conducted in a contradictory manner, for example, marriage with a time limit or under any conditions in the agreement, such as “*after sexual intercourse, the divorce occurs*”. This prohibition is based on the Usul Fiqh principle (*shadd al-dzari'at*), where a problem seems permissible but may be conveyed to criminal cases. Anything carried away into a forbidden act is considered *harâm* (unlawful).¹⁷

Tahlil Marriage Models in the Sasak Community

Three models of *tablil* marriage occur in the Sasak community of East Lombok Regency, as follow:

a. Common and legal Tahlil Marriage

Common *tablil* marriage means a marriage that is unplanned and without any agreements. This kind of *tablil* marriage also occurs in East Lombok. One of the couples who experienced this common *tablil* marriage was LM and SK. Both of them had been married for many

¹⁵ Haikal.

¹⁶ Muhamad Ali, 'Hukum Nikah Mut'ah dan Hubungannya dengan Pembentukan Keluarga Sakinah (Studi Keluarga Sakinah Model Kementerian Agama)', *Risalah: Jurnal Pendidikan dan Studi Islam*, 1.1 (2016): 30–41. Hayatullah Laluddin and others, 'The Contract of Marriage and Its Purposes from Islamic Perspective', *Asian Social Science*, 10.2 (2017): 139–44 <<https://doi.org/10.5539/ass.v10n2p139>>.

¹⁷ Hifdhotul Munawaroh, 'Sâd al-Dzari'at dan Aplikasinya pada Permasalahan Fiqih Kontemporer', *Jurnal Ijtihad*, 12.1 (2018): 63–84.

years. Once there was an intense discord, the husband, in a very emotional condition, dropped three *talaqs* to his wife. The couples divorced and lived separately while their children were with their fathers. Within a year, SK married another man, while LM was comfortable being a widower, taking care of his two children. In fact, since the divorce, LM regretted his decision because SK is a good wife. Only a tiny mistake and excessive emotion separated their marriage. On the other hand, SK still loved her ex-husband but could not do anything because she had now married a new husband.

After three years of marriage, SK divorced her new husband, and after the divorce, LM and SK's relationship was re-opened for the sake of the children and their love. They finally remarried and lived happily until now. Although only a few, similar cases can be found in East Lombok Regency, including Suralaga, Wanasaba and Suela.

b. Contractual *Tahlil* Marriage

It is called contractual *tahlil* marriage due to an agreement between the ex-husband of the woman and the *muhallil* to do the marriage and must obey special conditions as agreed by both parties. The form of agreement commonly occurs in *tahlil* marriage cases includes *muhallil* not having sexual intercourse and immediately divorcing his wife quickly. After both parties deal with the point of agreement, the marriage is planned and conducted. Generally, the "tahlil marriage" is conducted in a *sirri* (concealed) and simple way and is witnessed by the closest family as a refinement of the pillars and conditions of marriage. Needless to say, the marriage is not registered in the Office of Religious Affairs (KUA). The divorce, afterward, happens the day after the marriage. By doing such a fake marriage, the *muhallil* gets wages ranging from Rp. 1.000.000 to Rp. 2.500.000.

The case of *tahlil* marriages in one of the sub-districts in East Lombok is so high, although the number cannot be determined.¹⁸ But the occurrence of the practices can be comprehended from what a villager

¹⁸ MJ, a traditional figure in Lombok, 2021.

named Amaq HR (67 years old) explained. He explains that he often performs a *muhallil* because of his innocent personality and old age. He said, "I forgot how many times, but about 15 cases. I became *muhallil* because many people who have divorce cases three *talaqs* asked me to help them. By becoming *muhallil*, I help people to return to their husbands again".¹⁹

Amaq HR is not the only *muhallil* person in the village. Another villager, Amaq SN (55 years old), acknowledged that he is often asked to perform a *muhallil*, although not as often as Amaq HR. Amaq SN is younger, but his lust seems still high, making him rarely used as *muhallil* than Amaq HR. Amaq SN acknowledged being a *muhallil* in 6 cases of *tahlil* marriage, as he said: "There are about six times I became *muhallil*. I do it just to help my friend. I did not get along with everything. I only got married just last night, even though we were in the same house as the woman, but we had different bedrooms, and the following day we were divorced."²⁰

Based on a perpetrator's statement, it can be predicted that the case number of *tahlil* marriages in East Lombok Regency is plentiful. However, the number of practices is hard to be determined as the procedure is not revealed to the public, it is usually conducted in a limited way and does not involve many people. One witness of *tahlil* marriage said: "The implementation of *tahlil* marriage is conducted to help couples who want to reconcile. It is carried out secretly, and witnessed by a few persons, only to fulfill the pillars and requirements of Islamic marriage."²¹

The motive of being a contractual *muhallil* is to help others and get wages. As Amaq HS explained: "My main goal is to help. I did not charge tariffs because I only want to help people. By uniting the divorced couples, they can be happy, also their children".²² Amaq HS admitted that he became a contractual *muhallil* three times to mediate with his friend so they could reunite. In one case, he became a *muhallil* and asked for sexual intercourse with the woman, but the woman refused because,

¹⁹ HR, a villager of Lombok, 2021.

²⁰ Haikal.

²¹ Haikal.

²² Haikal.

according to the agreement, there was no intercourse in marriage. Then the woman increased the reward for the *muhallil* since the deal was agreed upon by the *muhallil*, the ex-husband and his ex-wife.

However, there are also contractual *tahlil* marriages that allow sexual intercourse. For example, the case between DN and MS. The couple was happy and loved each other at the beginning. But as DN still lives with her parents-in-law, quarrels between her and her husband's parents frequently occur. The dispute spread to MS's brother, and MS was cornered and blamed his wife. The conflict was exacerbated because DN also had a bad temper. Finally, she got three *talaqs* from her husband.

After divorcing his wife, MS migrated to Malaysia to work. After building a house and being bored of being widowers, MS and DN wanted to reunite, but they had already divorced by three *talaqs* the only solution was *tahlil* marriage. The wedding was conducted after finding the right person, a *muhallil* named SH. Even though the *tahlil* marriage ended in one night, DN had intercourse with SH, and MS didn't mind it, he even said: "*Actually, if it is the condition that must be followed to make us reunite, it is not a problem, because it is also a religious provision, so I take it easy*".

c. Common Marriage Initiated by Contractual *Tahlil* Marriage

Common agreement of *tahlil* marriage refers to a *tahlil* marriage based on a contract, but it turns into an ordinary marriage. This kind of case was done by MU and BA, who were divorced for a long time for various reasons. They finally planned to get married again by *tahlil* marriage with an agreement that the man, as a *muhallil*, got a reward of Rp 2.5000.000, but he has forbidden to intercourse with his wife and ended in divorce soon.

However, after the marriage and living together in the same house, the married couple felt they needed to cancel the agreement by returning the money to the ex-husband. Their married life was going well until now. Meanwhile, her ex-husband shortly married another woman and has also had a lasted marriage until now.

Tahlil Marriage of East Lombok in the Perspective of *Maqâshid al-Shari'a*

Among the Muslim Jurists, there are theories of *maqâsid al-shari'a*. According to ibn Hirz, there are three categories of *maqâsid al-shari'a*, namely immediate needs (*dharûriyya*), secondary needs (*hajjiya*) and complementary needs (*tahsîniyya*). In al-Ghazâli's view of *al-maqâshid al-khamsa*, there are five kinds of protection, namely, protection of religion (*hifzh al-dîn*), protection of soul (*hifzh al-nafs*), protection of mind (*hifzh al-'aqli*), protection of offspring (*hifzh al-nasl*) and protection of property (*hifzh al-mâl*).

a. *Dharûriyya* Level

Viewed from the concept of *maqâshid al-shari'a*, marriages can be classified as *dharûriyya* because it protects religion (*hifzh al-dîn*) and offspring (*hifzh al-nasl*). Maintaining offspring is also at the *dharûriyya* level because Islam strongly recommends marriage and prohibits adultery.

Tahlil marriage in East Lombok Regency contradicts *maqâshid al-shari'a* at the *dharuriyya* level. Several things that make the union not meet the *maqâshid al-shari'a* principles include the following conditions: (1) The marriage is not expected as it is only a temporary marriage aiming at facilitating ex-marriage couple being divorced under three *talaq* to reunite. In addition, it manipulates the marriage law by making an agreement violating the marriage principles, such as not allowing sexual intercourse and limiting the time.

Moreover, following Abdullah al-Syarkawi's view, this kind of marriage can be categorized as *mut'ah* marriage (contract marriage) a marriage conducted by a couple for a certain period, like one day, a week or a month. This marriage is also known as *muwaqqat* or *munqati* marriage. It is called *mut'ah* marriage because the man only wants to have fun for a while. Thus, it is similar to adultery.

Tahlil marriage and *mut'ah* marriage are two kinds of prohibited marriage in Islam. The two has similarity and the differences as well. The similarity is based on agreements while the differences are: (1) in terms of purpose, *mut'ah* marriage is generally to vent lust, while *tahlil*

marriage aims to legalize husband and wife relationship based on Islamic law. (2) in terms of essence, *tablil* marriage aims to rebuild a husband and wife relationship that has been divorced three times. So *tablil's* marriage is a consequence of the divorce and the only procedure for returning their marriage. But *mut'ah* marriage is not related to the marriage before and after. (3) in terms of cause, *mut'ah* marriage is not tied to the cause of incidents, while *tablil* marriage is due to *talaq ba'in* (divorce three times). (4) Regarding justification, *mut'ah* marriage aims to justify sexual intercourse between husband and wife. In contrast, *tablil* marriage not only justifies sexual intercourse but also provides a solution for the ex-husband and his ex-wife to remarry after a *talaq ba'in* (permanent divorce) (5). Regarding relationships, a *tablil* marriage is related to a previous marriage, whereas a *mut'ah* marriage is not.

b. *Hajjiya* Level

The incompatibility of the *tablil* marriage of East Lombok in the view of *maqâshid al-sharî'a* at the *hajjiya* level can be seen from the agreement between *muhallil* and *muhallal lah* to divorce immediately after the marriage ceremony or not to do certain things. Thus, the husband lost his rights because it was removed by the agreement made with *muhallal lah*. The deal indicates the falsity of the marriage contrary to natural marriage principles, namely to build an eternal relationship, obtain offspring, educate children and build a prosperous household. Therefore, it is not following *maqashid al-shari'a* at the level of *hajjiya*. Moreover, based on the views of the majority ulama', both Salaf and Khalaf, any *tablil* marriage conducted by any agreement is void, whether it is agreed before the contract or when the contract takes place.

c. *Tahsîniyya* Level

The *maqâshid al-sharî'a* of marriage at the *tahsîniyya* level can be seen through the implementation of *khutba* and *walima*. However, in the practice of *tablil* marriage that occurs in East Lombok, it is done in secret. There is no notification to the public, as only a few people attend it. Such is not following the provisions of *maqâshid al-sharî'a* in Islam.

Imam al-Ghazali advised people who will get married not to marry a woman because of *al-Hanâna*, a woman or widow who likes to miss and remember her ex-husband.²³

Legal Status of *Tahlil* Marriage of Sasak Tribe in the Perspective of Islamic Law

a. The Practice of Contract *Tahlil* Marriage

As mentioned earlier, the practice of *tahlil* marriage of East Lombok is quite similar to *mut'ah* marriages. *Mut'ah* marriages, indeed, is once ever being permissible in Islam. as narrated in a hadith:

عَنِ ابْنِ مَسْعُودٍ قَالَ: كُنَّا نَغْزُو مَعَ رَسُولِ اللَّهِ صَمَ لَيْسَ مَعَنَا نِسَاءٌ،
فَقُلْنَا: أَلَا نَخْتَصِي فَنَهَانَا عَنْ ذَلِكَ، ثُمَّ رَخَّصَ لَنَا بَعْدَ أَنْ نَنْكِحَ
الْمَرْأَةَ بِالثَّوْبِ إِلَى أَجَلٍ (روى احمد والبخارى ومسلم)

From Ibn Mas'ud said: we once fought with Rasulullah Shallallahu Alaihi Wassallam and did not bring a wife with us, then we asked: can we castrate (this genital area), Rasulullah forbid and gave us relief to a married woman with (dowry) piece of clothing until the specified time limit (HR. Ahmad, Bukhari and Muslim).²⁴

However, according to contemporary Sunnis 'ulema, the permission of *mut'ah* was only temporary and for a transitional period. It is a solution for people who are weak in faith and need a woman to channel their natural desires while traveling or fighting to expand Islam. To prevent them from committing adultery, Prophet Muhammad PUBH. When the situation is expected, the practice of *mut'ah* is prohibited, as mentioned in a hadith:

²³ Andi Yaqub, Iswandi, and Jabal Nur, 'Reconstruction of the *Sakinah* Family Criteria During the Covid-19 Period the Community Experienced Several Obstacles in Realizing the *Sakinah*', *al-Abkam*, 31.1 (2021): 1–24.

²⁴ Al-Imam Abu al-Husain Muslim bin al-Hajjaj al-Qusyairy an-Naisaburi, *Shahih Muslim* (Beirut: Dâr al-Kutub al-'Ilmiyyah, 1992), p. 1022.

يَا أَيُّهَا النَّاسُ، إِنِّي قَدْ كُنْتُ أَذِنْتُ لَكُمْ فِي الْإِسْتِمْتَاعِ مِنَ النِّسَاءِ،
وَأَنَّ اللَّهَ قَدْ حَرَّمَ ذَلِكَ إِلَى يَوْمِ الْقِيَامَةِ، فَمَنْ كَانَ عِنْدَهُ مِنْهُنَّ شَيْءٌ
فَلْيَخْلِ سَبِيلَهُ، وَلَا تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا (رومسلم)

I once allowed you to marry Mut'ah with women. And verily Allah has forbidden it until the day of judgment. Therefore, whoever has a woman he married by his side in Mut'ah marriage, let him separate from her and do not take what you have given them. (HR Muslim no 1406).²⁵

The hadith shows that *mut'ah* marriages, which were once permitted, have been forbidden in Islam. Thus every person who still practices *mut'ah* marriage is nothing more than practicing adultery wrapped in the religious procedure.

Based on the latter hadith, the 'ulama madhhab has unanimously agreed that *mut'ah* marriage is *harâm* (forbidden).²⁶ As Imam Shamsuddin al-Sarkhasi, a Hanâfite scholar, wrote, "*This mut'ah marriage is false according to our madhhab*".²⁷ Likewise, Imam al-Kasani, another Hanâfite scholar, wrote: *No temporary marriage or mut'ah*".²⁸ Similarly, Imam Mâlik bin Anas confirmed, "*If a man marries a woman with a limited time, so the marriage is invalid*".²⁹ Likewise, Imam Ibn Rushd, a Mâliki scholar, mentioned that "*The hadiths that forbid mut'ah marriage is kind of mutawatir (valid)*".³⁰ Imam al-Shâfi'i mentioned, "*The prohibited of mut'ah marriages are all kinds of marriage that are limited by time, both in the short or long term, such as the words to woman, I will marry you for one day, ten days or one month*".³¹ In a similar view, Imam al-Nawâwi,

²⁵ Jama'ah min al-'Ulama, *al-Mausû'ah al-Fiqhiyah al-Kuwaitiyah*, Juz 24 (Mishr: Dâr al-Shafwah, 1992), p. 334.

²⁶ Abdurrahman al-Juzairi, *al-Fiqh 'Ala al-Madzâhib al-Arba'ah* (Beirût: Dâr al-Fikri, 1990), p. 113.

²⁷ Syamsuddin al-Sarkhasi, *al-Mabsûth*, Juz V, (Beirût: Dâr al-Kutub al-Ilmiyah, 1989), p. 152.

²⁸ Al-Kasani, *Badâ'i al-Sanâ'i*, Juz II, (Beirût: Dâr al-Fikr, 1996), p. 272.

²⁹ Malik bin Anas, *al-Mudâwanah al-Kubrâ*, Juz II, (Beirût: Dâr al-Kutub al-Ilmiyah, 1994), p. 130.

³⁰ Ibn Rushd, *Bidâyah al-Mujtahid Wa Nihâyah al-Muqtashid* (Beirût: Dâr al-Hadist, 1990), pp. 325–34.

³¹ Al-Shâfi'i, *al-Umm*, Juz V, (Beirût: Dâr al-Kutub al-Ilmiyah, 1993), p. 85.

explained that: "*Mut'ah marriage is not allowed because marriage is an absolute contract, so it is not valid if limited by the time*".³² Similarly, Ibn Qudâmah confirmed that, "*This mut'ah marriage is a false marriage*". He also quoted the opinion of Imam Ahmad bin Hambal who asserted that *mut'ah* marriage is *harâm*.³³

Thus, *tablil* marriage, which only allows a divorced couple to remarry, is not following Islamic Law if the following procedure has not been met. In other words, a man divorces his wife three times, he no longer refers to his wife unless his wife remarries another man. If the man later divorces her, and her *iddah* (waiting period) expires, her ex-husband may marry her. Such is the right way of *tablil* marriage that follows Islamic law.

b. Marriage by Agreement

Imam Mâlik stated that *tablil* marriage could be annulled. Sufyan ats-Tsauri said that if a man marries a woman with the intention of *tablil*, then the couple, according to Sharia law, must be divorced, and then a new marriage occurs.³⁴ Ibrahim al-Nakhâ'i stated that *tablil's* marriage is not permissible unless there is a sincere desire to marry. If a man marries a woman intending to reunite the divorced spouses, the marriage is invalid.³⁵

Imam Shâfi'i also said it would be void if the marriage were carried out under the conditions stated in the contract. *Tablil* marriage is considered not absolute but only at certain times. Based on the thinking of Mâliki and Hambali, a *tablil* marriage, even though any conditions do not accompany it, is intended to justify the *talaq* relationship of three divorced couples, the law is *harâm* and must be annulled because ex-husbands are not explained in remarrying ex-wives except through correct marriage *tablil* and following Sharia guidelines.³⁶

³² Al-Nawâwi, *al-Majmû*, Juz XI, (Beirût: Dâr al-Fikr, 1996), p. 356.

³³ Ibn Qudâmah, *al-Mughnî*, Juz X, (Beirût: Dâr al-Fikr), p. 46.

³⁴ Ibn Rusyd, *Bidâyatul Mujtahid Wa Nihâyatul Muqtabshid* (Mishr: Dâr al-Hadist, 2004), p. 44.

³⁵ Syaikh Hasan Ayyub, *Fiqh Keluarga* (Jakarta: Pustaka al-Kautsar, 2008), p. 152.

³⁶ Mahadika, Kusworo, and Riyani.

c. Planned *Tahlil* Marriage

Tahlil marriages that are planned with the aim to facilitate divorced couples so that they can re-marry do not follow Shari'a provisions. So it is unlawful and invalid. The doer can be cursed, as the Prophet said:

لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُحِلَّ وَالْمُحَلَّلَ لَهُ (رواه الترمذي)

Rasulullah Shallallahu Alaihi Wasallam has cursed the man who justified (now husband) and is explained by (ex-husband). (HR. Tirmidzi)

Islam forbids a woman whose ex-husband has divorced from hiring a man to marry her without the sincere intention of building a happy family and living together.

d. The Absence of a Biological Relationship

One of the functions of marriage is to justify sexual relations between a man and a woman. If this is neglected, the shara' principle has been abandoned. In Islam, fulfilling biological needs is a fundamental factor for marriage. Marriage can be void if sexual function is not adequately accommodated. Likewise, in a *tahlil* marriage, sexual relations are the main thing, and there is no difference of opinion among the scholars regarding this matter, as confirmed in a hadith from Aisha ra:

أَنَّ رِفَاعَةَ الْقُرْظِيَّ تَزَوَّجَ امْرَأَةً ثُمَّ طَلَّقَهَا الطَّلَاقَ الثَّلَاثَةَ فَتَزَوَّجَتْ آخَرَ فَأَتَتْ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَتْ لَهُ أَنَّهُ لَا يَأْتِيهَا [أي: لا يجامعها، وفهم الرسول صلى الله عليه وسلم أنها تريد أن تعود لرفاعة] فقال صلى الله عليه وسلم: (لا، حَتَّى تَدْوَقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتِكَ [كناية عن الدخول بها والجماع] (رواه البخاري ومسلم)

"Rifa'ah al-Qurdhi had married a woman, then he divorced her three times, then the woman married another man, she went to Prophet Shallallahu Alaihi Wasallam and mentioned that he never had intercourse

with her, then Prophet Shallallahu Alaihi Wasallam understood that he wants to return to Rifā'ah. Prophet Shallallahu Alaihi Wasallam said: "No until you enjoy honey of each other". (HR Bukhari and Muslim).³⁷

In practice among the people of East Lombok Regency, there are many *tablil* marriages where it is agreed "not to have sexual intercourse", and *muhallil* must fulfill it. This kind of agreement is not following Shari'a principles. In ordinary marriages, sexual intercourse is one of the primary purposes of marriage for human regeneration. Even in Islam, sexual relations are not only carried out but must satisfy the parties, as in the hadith of the Prophet Muhammad.

وَفِي بُضْعِ أَحَدِكُمْ صَدَقَةٌ. قَالُوا يَا رَسُولَ اللَّهِ أَيُّتِي أَحَدْنَا شَهْوَتَهُ
وَيَكُونُ لَهُ فِيهَا أَجْرٌ قَالَ « أَرَأَيْتُمْ لَوْ وَضَعَهَا فِي حَرَامٍ أَكَانَ عَلَيْهِ
فِيهَا وَزْرٌ فَكَذَلِكَ إِذَا وَضَعَهَا فِي الْحَلَالِ كَانَ لَهُ أَجْرٌ »

Sexual intercourse among all of you (with your wife or enslaved person) is charity. The companions then asked Rasulullah Shallallahu Alaihi Wasallam, O Rasulullah, if coming to our wives with lust gets a reward. He replied, 'Is in it if you have intercourse with the unlawful you get sin. Therefore if you have intercourse with the lawful, you will be rewarded (HR Muslim).

Marriage has given rights and obligations to husband and wife. So the biological relationship is an essential aspect of a wedding that cannot be ignored.

e. Divorce Agreement

Marriage is an eternal relationship between a man and a woman to produce offspring and build a prosperous household. Marriage is a contract ordered by Islam. Meanwhile, divorce is the dissolution of marriage, which means the termination of something rated. In Islam, divorce is

³⁷ Abdurrahman al-Juzairi, *al-Fiqh 'Ala al-Madzâhib al-Arba'ah*, (Beirût: Dâr al-Fikri, 1990), p. 213.

prohibited except for urgent needs. Even if the sacred relationship cannot be continued, the divorce must be done correctly.

Divorce is the final solution to solving household conflict problems. Although divorce is not forbidden, God hates divorce. Divorce can be done if all means to maintain the household have been tried and failed.³⁸ Such provisions also apply to *tahlil* marriages. The wife must be divorced first by the *muhallil* then the ex-husband can remarry his ex-wife.

***Tahlil* Marriage in Sasak Tribe Viewed Through the Islamic Law Compilation (KHI)**

Chapter 43, paragraph (1) of KHI states that "*there is a prohibition on marriage between a man and a woman if the woman has been divorced three times by her husband, then it is not permissible to remarry her ex-husband*". This provision clearly refers to the *tahlil* marriage.³⁹ Even though *tahlil* marriage is permitted in Islam, as long as the pillars of marriage are fulfilled, what the Sasak people practice contains many shortcomings and weaknesses, one of the weaknesses is that the course has not met the objectives of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage. Such is because, in the *tahlil* marriages, the practice only aims to justify ex-husbands to marry ex-wives, not to form a *sakîna, mawadda, wa rahma* household, as desired by Islamic shari'a.

Another weakness of *tahlil* marriage, as has been practiced so far, is that it is not held publicly, let alone registered in an authoritative office. Almost all *tahlil* marriage in the Sasak tribe is held secretly (*sirri*) and is only attended by a few people. The legal consequence that may arise from such marriage is that the child born only gets civil rights from the biological mother. Apart from that, the wedding will not have authentic evidence in the form of a valid marriage certificate (marriage book). Such means that the relationship between the parties does not have a solid legal standing, including the status of children born from that

³⁸ Abdurrahman al-Juzairi, p. 214.

³⁹ Mahadika, Kusworo, and Riyani.

marriage. If the *tahlil* marriage is carried out following state regulations and without particular motives, the children born will have the right to get support such as food, drink, clothing, housing, medicine, education, etc. The child will also have the right to inherit his biological father's property if his father dies. Such requests, however, can never be obtained from an unauthorized marriage.⁴⁰

Factors Influencing the Occurrence of *Tahlil* Marriage in East Lombok

Among several factors encouraging couples to choose *tahlil* marriage is reuniting in a marital bond after three talaqs. In the case of MS and DN, the team loves each other but can not express it because they still live with the husband's parents. Unfortunately, they do not have a well-established mental readiness to reconcile the prominent family's character differences. After divorce, the couple regrets past mistakes and wants to remarry, but they must follow a religious procedure, namely *tahlil* marriage.

Another factor is loving their children. Children are always becoming the victims of every divorce. When their parent's divorce, the children must be separated from one of the two parents. This separation causes psychological disturbances as they need love from both parents. The child may become introverted, dreamy, easily sad and, lazy, not focus on all activities. Feeling sorry to see the children's condition, the divorced parents finally decided to reunite, even though they had to go through the required procedure, namely the *tahlil* marriage. Thus, loving children become a determining reason for the couple to choose *tahlil* marriage to rebuild their household.

The next factor is the lack of understanding of the community regarding the concept of *tahlil* marriage in Islamic marriage law. Many members of the community view that the *tahlil* marriage can be applied casually without having certain conditions and procedures. For them,

⁴⁰ Muhamad Taufiq, 'Nikah Sirri Perspektif *Maqâshid Syariah*', *al-Manhaj: Journal of Indonesian Islamic Family Law*, 1.2 (2019): 114–23 <<https://doi.org/10.19105/al-manhaj.v1i2.3138>>.

as long as the requirements for remarriage are met, even if it's just a formality, then the Shari'a requirements have been fulfilled. Formality, mainly if it contains an element of pretense, cannot eliminate formal/normative requirements. Those who do *tahlil* marriage seem never to think about the consequences of the marriage, not only to the ex-husband, *muhallil*, ex-wife and even their children.

Conclusion

Tahlil marriage in East Lombok Regency can be divided into three forms, (1) common *tahlil* marriage, which is a valid *tahlil* marriage under the Islamic teaching as no agreement between the ex-husband and *muhallil*. (2) The contractual *tahlil* marriage, a false *tahlil* marriage where there is an agreement between the ex-husband and *muhallil*. (3) common marriage initiated by contractual *tahlil* marriage, a *tahlil* marriage based on a contract but turns into a typical marriage.

Based on the view of *maqâshid al-sharîa*, only the first category among the practice of *tahlil* marriage in the Lombok Sasak is following Islamic law. As for classes (2) and (3), they deviate from the principles of *maqâshid al-sharîa*, both at the *dharûriyya*, *hajjiyya*, and *tahsîniyya* levels. At the *dharûriyya* level, the deviations occur in the form of legal manipulation through contract marriages (*mut'ah*). At the *hajjiyya* level, the variations occur in the form of marriage with conditions for divorce. While at the *tahsîniyya* level, the deviations arise in the form of carrying out secret marriages (*sirri*), and not publicly known. This deviation occurs because many community members misunderstand the concept of *tahlil* marriage, so the practice does not meet the provisions of Islamic law.

The Author Contributions

Zainal Arifin Haji Munir formulate the concept and research question. Zainal Arifin Haji Munir, Lalu Muhammad Nurul Wathoni, and H. Lalu Supriadi Bin Mujib conducted the research and collected the data. Zainal Arifin Haji Munir, Lalu Muhammad Nurul Wathoni, H. Lalu Supriadi Bin Mujib and Harapandi Dahri wrote the final report.

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