



NORMATIVE ANALYSIS OF SHEIKH BIN BAZ'S FATWA ON MARRIAGE WITH THE INTENTION OF DIVORCE

¹ Ahmad Raihan, ² Gusti Muzainah

^{1,2} Faculty of Sharia, Antasari State Islamic University

Jalan Ahmad Yani, Km. 4.5 Banjarmasin, Indonesia

Email: ahmad.raihan6402@gmail.com¹, drmuzainah232@gmail.com²

Abstract

Avoiding adultery is often a reason for people to hasten marriage. However, an interesting phenomenon that needs to be studied is "marriage with the intention of divorce," where a man marries a woman with the intention of divorcing her after fulfilling his needs or completing his studies, as a way to avoid adultery. An important concept to analyze in this context is "masalah mursalah". However, is this kind of marriage justifiable within the framework of the public good and is the fatwa allowing it based on the principles of "masalah mursalah"? This study used a qualitative approach and found that Sheikh Bin Baz's fatwa permits marriage with the intention of divorce and is not considered a betrayal of the future wife. However, it is important to note that this intention should not be mentioned during the marriage contract and should not be expressed directly to the future wife. In addition, this kind of marriage contradicts the principles of applying "masalah mursalah" and does not meet the objectives of marriage mentioned in the marriage law and Islamic law (KHI), namely happiness and permanence, and the realization of a *sakinah, mawaddah and rahmah* household life.

Keywords: Marriage, intention, divorce, fatwa, Syeikh Bin Baz, legal objectives, masalah mursalah

Abstrak

Menghindari perzinahan sering kali menjadi alasan bagi seseorang untuk mempercepat pernikahan. Namun, fenomena menarik yang perlu diteliti adalah "pernikahan dengan niat cerai," di mana seorang pria menikahi seorang wanita dengan niat untuk menceraikannya setelah memenuhi kebutuhannya atau menyelesaikan studi, sebagai cara untuk menghindari perzinahan. Konsep yang penting untuk dianalisis dalam konteks ini adalah "masalah mursalah". Namun, apakah pernikahan semacam ini dapat dibenarkan dalam kerangka kemaslahatan umum dan apakah fatwa yang mengizinkannya didasarkan pada prinsip-prinsip "masalah mursalah"? Penelitian ini menggunakan pendekatan kualitatif dan menemukan bahwa fatwa Syekh Bin Baz memperbolehkan pernikahan dengan niat

cerai dan tidak dianggap sebagai pengkhianatan terhadap calon istri. Namun, penting untuk dicatat bahwa niat ini tidak boleh disebutkan saat akad nikah dan tidak boleh diungkapkan secara langsung kepada calon istri. Selain itu, pernikahan semacam ini bertentangan dengan prinsip-prinsip penerapan "masalah mursalah" dan tidak memenuhi tujuan perkawinan yang disebutkan dalam undang-undang perkawinan dan hukum Islam (KHI), yaitu kebahagiaan dan keabadian, serta terwujudnya kehidupan rumah tangga yang sakinah, mawaddah, dan rahmah.

Kata Kunci : Nikah, Niat, Talak, Fatwa, Syekh bin Baz, Tujuan Hukum, Masalah Mursalah.

1. INTRODUCTION

Marriage is a sacred bond, formed by a pair of men and women who love each other and have affection between them. Islam considers marriage as a highly essential matter in individual, family, and societal life. Marriage is also seen as a safe and natural way to fulfill sexual instincts, maintain the continuity of offspring, and safeguard the dignity and integrity of women, preventing them from being trapped in dishonorable situations or exploited by others.¹

With the existence of a partnership formed by two different genders, namely men and women, a human being is born. Allah SWT has stated the following:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۗ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

“O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed, Allah is ever, over you, an Observer.”

According to the Indonesian Law No. 16 of 2019 regarding Amendments to Law No. 1 of 1974 concerning Marriage, it is explained that:

“Marriage is a physical and spiritual 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 Almighty God.”²

¹ Slamet Abidin Aminuddin, *Fiqh Munakahat* (Bandung: CV Pustaka Setia, 1999), 10.

² UU RI No. 16 Tahun 2019 Tentang Perubahan Atas UU No. 1 Tahun 1974 Tentang Perkawinan, Pasal

Meanwhile, in the Compilation of Islamic Law (KHI), marriage is defined as follows:

“Marriage in Islamic law is a covenant, a strong and solemn contract to obey the commandments of Allah, and fulfilling it is an act of worship.”³

One of the issues that often arises in the context of marriage is the issue of the intention of divorce (intention to divorce) that arises before the marriage takes place. This is a complex and controversial issue, requiring in-depth understanding and careful analysis.

According to Muhammad bin Abdillah al-Zarkasy, there is a similarity between marriage with the intention of divorce and temporary marriage (*nikah mut'ah*) in terms of a specific period or duration. Therefore, marriage with the intention of divorce is considered invalid because it shares similarities with temporary marriage. The principle applied here is that if two things are similar, the applicable law will be equated. However, the difference lies in the determination of time, where in temporary marriage, the duration is specified at the time of the contract, while in marriage with the intention of divorce, this time is internally determined within someone's mind.⁴

Marriage with the intention of divorce (*talak*) occurs due to complex social conditions within society and the pressures that individuals may experience. Contemporary scholars have studied this issue extensively, issuing differing fatwas (legal opinions) regarding such marriages. One of the scholars who has issued a fatwa on this matter is Sheikh Abdul Aziz Bin Abdullah Bin Baz, who also serves as the head of the Permanent Committee for Islamic Research and Issuing Fatwas, a fatwa committee in Saudi Arabia.

On one occasion, Sheikh Bin Baz, who served as the Chief Mufti in Saudi Arabia, was asked by a congregant about the legality of marrying with the intention of divorce (*talak*) for the wife. Sheikh Bin Baz responded that it is permissible according to Islamic law. When the congregant inquired whether such an action would be considered a betrayal to the wife, Sheikh Bin Baz explained that it is not regarded as betrayal.⁵

Therefore, it is important to analyze the fatwa from Sheikh Bin Baz regarding marriage with the intention of divorce, taking into consideration legal objectives such as Certainty, Justice, and Benefit. Subsequently, evaluating it from the perspective of *maslahah mursalah*, which is a concept in Islamic law referring to the interpretation and application of law based on general welfare not explicitly stated in religious texts. This

³ Instruksi Presiden No. 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam, Pasal 3.

⁴ Syaidun, “Nikah Dengan Niat Talak dalam Perspektif Ulama Mazhab,” *Jurnal, Fakultas Syariah, Institut Agama Islam, Ngawi*, t.t., 18–19.

⁵ Abdullah Bin Mâni', *Masâil al-Imam Bin Bâz* (Riyadh: Tadmuriyyah, t.t.), 185.

concept provides flexibility in dealing with situations not specifically addressed in Islamic law.

However, in the case of marriage with the intention of divorce, the concept of *maslahah mursalah* becomes crucial to analyze further. Questions arise regarding whether such marriages can be justified within the framework of general welfare and whether Sheikh Bin Baz's fatwa allowing it is based on the principles of *maslahah mursalah* and whether Sheikh Bin Baz's fatwa is in accordance with the principles of Legal Objectives, namely Certainty, Justice, and Benefit.

2. METHODS

This research aims to understand how marriage with the intention of divorce is viewed according to Sheikh Bin Baz's fatwa and how the perspective of “*maslahah mursalah*” applies to such marriages. The research uses a qualitative approach. The type of this research is normative legal research, where legal materials are collected through literature review and descriptive analysis techniques.

3. RESULTS

Methodology of deduction in islamic law by sheikh bin baz.

Sheikh Bin Baz's thoughts are predominantly characterized by an approach strongly anchored in the literal meaning (textual), with minimal use of metaphorical interpretations. His understanding tends to be oriented towards clarity and certainty in comprehending the verses of the Quran and hadith.⁶

This can be seen in Sheikh Bin Baz's fatwa, for example, regarding the practice of wearing *isbal* (lowering one's garment below the ankles). The fatwa declares that *isbal*, which involves wearing pants with the lower part covering the ankles, is considered haram regardless of the intention, whether it be for showing off (*riya'*) or not. According to this fatwa, wearing clothing that extends below the ankles is deemed a major sin and could lead the person to Hell. Sheikh Bin Baz treats this fatwa very seriously, and it has become

⁶ Amin Farid, *Analisis Pemikiran Abdul Aziz bin Baz dan Muhammad al-Maliki (Mencari Titik Kesepakatan Sunny & Wahaby Melalui Metodologi Istinbat Hukum)* (Fakultas Tarbiyah dan Keguruan, t.t.), 88.

a well-known ruling that is often copied and pasted by his followers and supporters in the online sphere.

The justification for this fatwa is based on the following evidence:

“Whatever is below the ankles of the lower garment will be in the Hellfire.” (Hadith narrated by Bukhari in his Sahih)

“There are three types of people whom Allah will not look at on the Day of Resurrection, nor will He purify them and theirs will be a painful punishment: the one who wears his lower garment below his ankles (musbil), the one who reminds others of his favors, and the one who sells his product by means of taking a false oath.” (Narrated by Muslim)

Both of these hadiths convey a similar meaning, prohibiting individuals from letting their garments hang below the ankles due to arrogance or other reasons. The Prophet Muhammad (peace be upon him) conveyed this prohibition in a general sense without specifying exceptions. Therefore, the prohibition of isbal is not limited only to arrogance, as the Prophet did not make exceptions in the mentioned hadiths or in others.

The Prophet Muhammad (peace be upon him) considered all acts of isbal to fall under the category of arrogance, as such actions are generally done for that reason. If someone does it without arrogance, the act may still serve as a means to achieve arrogance. The Prophet judged the means by the same standard as its intended purpose, and all acts of isbal are deemed excessive and can result in impurity and uncleanness.

Thus, Sheikh Bin Baz's opinion on the prohibition of isbal takes into consideration that the prohibition applies generally and is not restricted solely to the reason of arrogance.

Regarding the statement of the Prophet Muhammad (peace be upon him) to Abu Bakr As-Shiddiq (may Allah be pleased with him) when he said, "O Messenger of Allah, my lower garment often hangs down (slips below) unless I am cautious about it," the Prophet replied: "You are not among those who do it out of arrogance." (Hadith narrated by Bukhari and Muslim).

Here, the Prophet Muhammad (peace be upon him) made a distinction between someone who takes care of their clothing well and, if unintentionally, their garment slips down, they raise it back up. This person is not considered among those who engage in isbal out of arrogance. Individuals who sincerely take care of their clothing and rectify it after it

slips down are not included in the category of those who arrogantly let their garments hang down. Such actions will be forgiven.

However, for those who intentionally lower their garments, whether it be pants, sarongs, or robes, they fall into the category that will be warned against and will not receive forgiveness when their garments fall down. The prohibition of *isbal* in authentic hadiths is general in its wording, meaning, and intent.

Therefore, every Muslim must be cautious regarding *isbal*. They should fear Allah when it comes to such practices and avoid lowering their garments below the ankles based on the authentic hadiths. This should be done out of fear of Allah's wrath and punishment. Allah is the best guide (bestower of guidance).⁷

Therefore, based on the above, the writer presents four elements in Sheikh bin Baz's methodological approach:

1. Reference to the Quran and Hadith: Sheikh bin Baz utilizes the Quran and Hadith as the primary sources in determining Islamic laws. He adheres to these texts and seeks direct guidance from the explicit verses and hadiths.
2. Utilizing a Literal Approach: Sheikh bin Baz tends to employ a literal approach in interpreting Islamic texts. He strives to understand the texts in their literal sense and avoids allegorical or metaphorical interpretations unless there is clear evidence to support such interpretations.
3. Observance of Fundamental Principles in Islamic Law: Sheikh bin Baz pays attention to fundamental principles in Islamic law, such as safeguarding the interests of the community, preventing harm, and promoting benefit. He considers these factors when issuing fatwas and establishing Islamic laws.
4. Aligning Laws with Context and Reality: Sheikh bin Baz also takes into account the context and reality when establishing Islamic laws. He endeavors to ensure that these laws can be effectively applied in the daily lives of Muslims, aligning his perspectives with the current situations faced by the Muslim community.

The Legal Status of Marriage with the Intention of Divorce according to the Fatwa of Sheikh bin Baz

In response to a question about the permissibility of marrying with the intention of divorce (*thalaq*), Sheikh Bin Baz, may Allah have mercy on him, answered that it is not an

⁷ Fatwa Syaikh Abdul Aziz Ibn Abdullah Ibn Bazz dinukil dari Majalah Ad Da'wah, 218. Yang di kutip dari <https://www.rumahfiqih.com/konsultasi-958-ibnu-hajar-dan-imam-nawawi-vs-bin-baz-tentang-hukum-isbal.html>

issue if the intention is known only to the individual and Allah, without any conditions from the woman or her guardian. However, it is better to avoid such an intention, as discarding it is preferable and more aligned with a more perfect desire. This opinion represents the majority view of scholars, as explained by Abu Muhammad bin Qudamah in his book "Al-Mughniy" – may Allah have mercy on him.⁸

In response to a question posed to Sheikh Bin Baz, may Allah have mercy on him, regarding the permissibility of marrying with the intention of divorce (thalaq) without a specified time for the divorce, the questioner mentioned that a colleague had heard or read that Sheikh Bin Baz stated it is allowed to marry with the intention of divorce without a specific time for the divorce. The colleague further mentioned that Sheikh Bin Baz advised young people traveling far distances to marry in this manner, hoping that love would develop between the couple, and the marriage would be blessed by Allah with offspring, ensuring its longevity. The question sought further clarification.

Sheikh Bin Baz responded that indeed, this fatwa was issued by the Permanent Committee for Scholarly Research and Ifta', led by him and involving his participation. This opinion is also the majority view of scholars, as mentioned by Muwafiquddin Ibn Qudamah, may Allah have mercy on him, in his book "Al-Mughniy." However, the intention should only be known to the individual and Allah. This does not fall under the concept of mut'ah marriage.

However, if the agreement involves the woman's family or includes a specified time condition, then such a type of marriage is considered reprehensible (munkar) and is not permissible. It falls into the category of invalid (bathil) mut'ah marriage. The Prophet Muhammad, peace be upon him, prohibited it, declaring that Allah has forbidden it until the Day of Judgment. May Allah grant us His guidance.⁹

In a question addressed to Sheikh Ibn Baz, may Allah have mercy on him, it was mentioned that there is a fatwa circulated through audio tapes allowing someone to marry in another country (while traveling) with the intention of leaving the spouse at a specific time, such as after completing training or a duty. The question sought clarification on the difference between this type of marriage and temporary marriage (nikah mut'ah).

Sheikh Ibn Baz explained that there is already a fatwa from the Permanent Committee for Scholarly Research and Ifta', under his leadership, permitting marriage with the intention of divorce (thalaq) if the intention is known only to the individual and Allah. According to the majority of scholars, if someone marries in another country with the

⁸ Muhammad bin 'Abdil-'Aziz Al-Musnid, *Fatawa Islaamiyyah*, t.t., 235.

⁹ Al-Musnid, 235.

intention of divorcing the spouse after completing studies or work assignments, such an action is considered permissible. However, it is crucial that the intention is known only to the individual and his Lord and is not a formal requirement.

The difference with mut'ah marriage lies in the fact that mut'ah marriage has a predetermined time requirement, such as 1 month, 2 months, 1 year, 2 years, or another specified duration. After that period ends, the marriage automatically dissolves and results in divorce. This is what is known as null and void (bathil) mut'ah marriage. However, if someone marries according to what Allah and His Messenger have taught, but in the depths of their heart, they have the intention to divorce the spouse after completing a task in that country, this type of marriage is not problematic because intentions can change. The intention is known only to the individual and their Lord and is not a formal requirement. Therefore, there is no issue with such a marriage. This opinion represents the majority view of scholars, as explained by Muwaffiquddin Ibn Qudamah, may Allah have mercy on him, in his book "Al-Mughniy." This type of marriage is a way to protect individuals from adultery and wrongdoing.¹⁰

The Perspective of Maslahah Mursalah on Marriage with the Intention of Divorce According to Sheikh Bin Baz's Fatwa.

The application of maslahah mursalah in the determination of Islamic law has four conditions that must be fulfilled, including:

1. The generated benefit must have a level of daruriyah, meaning it is very essential and a top priority.
2. The benefit must be qath'iyyah, meaning it is very clear and definite, leaving no room for doubt.
3. The resulting benefit must be kulliyah, meaning it applies universally to the entire society without exception.
4. The application of maslahah mursalah must be based on universally recognized evidence in Islam, making it widely accepted and mu'tabarah.¹¹

By fulfilling these four conditions, the application of maslahah mursalah can become a method used to understand and derive legal rulings based on universal benefit in the context of Sharia. Additionally, the application of maslahah must be able to alleviate the difficulties that humans would face if such benefits were not applied. In other words,

¹⁰ Al-Musnid, 236.

¹¹ Hamka Haq, *Al-Syathibi* (Jakarta: Erlangga, 2007), 251.

if *maslahah* is not considered, humanity will encounter difficulties that can be addressed through the application of *maslahah*.

Allah Almighty also emphasizes in Surah Al-Hajj, verse 78, that “...and Allah has chosen you and has not placed upon you in the religion any difficulty...”

Marriage with the intention of divorce contradicts the application of *maslahah mursalah* (*daruriyah*, *qath'iyah*, *kulliyah*, and *mu'tabarah*) as it does not meet one or several of these conditions. Here is an explanation of why Marriage with the intention of divorce is not in line with the principles of applying *maslahah mursalah*:

1. *Daruriyah* (its benefit is very essential and primary): "Marriage with the intention of divorce" cannot be categorized as *daruriyah* because there is no very essential or primary interest fulfilled by engaging in this practice. Instead, this practice can lead to conflicts, emotional instability, and uncertainty in marital relationships.
2. *Qath'iyah* (its benefit is very clear and definite): "Marriage with the intention of divorce" also does not meet the *qath'iyah* requirement because the purpose or benefit of this practice is not clear and definite. This practice seems to contradict the fundamental principles of marriage that emphasize stability, happiness, and unity between husband and wife.
3. *Kulliyah* (its benefit is universal): "Marriage with the intention of divorce" cannot be categorized as a universally beneficial practice. Universal benefit is a benefit that applies to all individuals in society. However, this practice tends to cause instability in marital relationships, emotional uncertainty, and can harm one or both parties involved.
4. *Mu'tabarah* (its benefit is based on universal evidence from the entire context): "Marriage with the intention of divorce" also cannot be justified based on universal evidence or clear guidance from Islamic legal sources that regulate marriage. Marriage in Islam is expected to be a bond characterized by loyalty, love, and mutual support between husband and wife.

As for marriage with the intention of divorce, it has several negative and controversial impacts that can affect the well-being of the couple and may even lead to greater harm. Some potential impacts of marriage with the intention of divorce include:

1. *Marital instability*: Marriage with the intention of divorce can create instability within the marriage because the married couple may lack long-term commitment to sustain their relationship. This can result in uncertainty, lack of trust, and tension within the household.

2. Feelings of unfairness: Unaware of the intention of divorce, the spouse may feel unfairly treated. They might perceive that they have been trapped or deceived into a marriage that lacks clear goals or strong commitment.
3. Emotional impact: Marriage with the intention of divorce can have significant emotional consequences for the spouse facing divorce. Feelings of disappointment, fear, or emotional instability may arise when they realize that their partner only entered the marriage with the intention of divorcing them.
4. Financial loss: Divorce can entail substantial financial consequences for the involved parties. The divorcing couple may incur high legal costs, face complex asset divisions, and experience other financial repercussions resulting from the divorce.
5. Social impact and stigma: Marriage with the intention of divorce can create social stigma in the community. Couples who marry with such intentions may be perceived as irresponsible, unstable, or not serious about their marriage. This societal perception can influence how others view the couple and lead to social isolation or rejection.

In summary, based on these considerations, it is evident that marriage with the intention of divorce may benefit the initiator (husband) but can harm the wife and even the children born from such a marriage. Moreover, such marriages can pose risks to both parties, as outlined above. Therefore, this marriage contradicts the saying of the Prophet Muhammad (peace be upon him):

“Do not cause harm to yourself or to others.” (Narrated by Ibn Majah and Daruquthni).

Considering the four conditions mentioned above, "marriage with the intention of divorce" clearly does not meet the principles of *maslahah mursalah* that underlie the public interest in society. Marriage with the intention of divorce tends to cause losses and instability in marital relationships, contradicting the fundamental principles and values upheld in Islam.

Furthermore, Marriage with the intention of divorce is also inconsistent with the Legal Objectives because it contradicts the principle of providing legal certainty. Marriage is intended as a stable and enduring institution, while the intention to divorce creates uncertainty in that relationship.

Moreover, legal objectives also include Legal Justice, which means fair and equal treatment for all parties. The intention to divorce in advance can create injustice in marriage.

The legal objectives also aim to provide benefits, and marriage based on the intention of divorce tends not to provide positive benefits for the husband, wife, or the future-born child. Instead, it may bring more harm to them or the perpetrator.

As a result, marriage with the intention of divorce is not in line with the basic principles of legal objectives, which include legal certainty, legal justice, and benefits.

Furthermore, when related to marriage laws in Indonesia, marriage with the intention of divorce also contradicts the purpose of marriage in Law of the Republic of Indonesia No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, which states:

“Marriage is a physical and spiritual 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 Almighty God.”

And in Compilation of Islamic Law (KHI) Article 3:

“Marriage aims to realize a family life that is harmonious, full of love, and mercy.”

It is clear that marriage with the intention of divorce contradicts the purpose of marriage, which is to be happy and eternal or to realize a family life that is harmonious, full of love, and mercy. Therefore, such marriages are better avoided as they can cause losses and instability in marital relationships.

4. CONCLUSION

Sheikh Bin Baz, in his fatwa, explains that marrying with the intention of divorce is permissible and is not considered a betrayal to the prospective wife. However, it is important to note that this intention should not be mentioned during the marriage contract (akad nikah) and should not be expressed directly to the prospective wife. He distinguishes between marriage with the intention of divorce and temporary marriage (mut'ah). He states that mut'ah marriage has no legal implications after the expiration of a certain period, while marriage with talak (divorce) has the same legal consequences as a regular marriage if divorce indeed occurs later on.

Marriage with the intention of divorce contradicts the principles of applying *maslahah mursalah*, namely *Daruriyah*, *Qath'iyah*, *Kulliyah*, and *Mu'tabarah*, as it does not fulfill one or several of these principles. Such a marriage is also likely to result in loss and instability in marital relationships, conflicting with fundamental principles and values

upheld in Islam. From the perspective of the Legal Objectives, namely Certainty, Justice, and Benefit, marriage with such an intention does not meet these three criteria. Furthermore, when connected to the Objectives of Marriage mentioned in the Marriage Law and the Compilation of Islamic Law (KHI), marrying with the intention of divorce contradicts the purpose of marriage, which is to achieve happiness and lasting unity or establish a family life that is peaceful, affectionate, and full of mercy. Therefore, marriages of this nature are better avoided as they can lead to losses and instability in marital relationships.

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