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## Reconstructing the *Sighat ta'liq* in the compilation of Islamic law: A preventive approach to gender-based violence

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### ABSTRACT

This study aims to analyze and formulate a model for reconstructing the *sighat ta'liq* (conditional divorce pronouncement) within the Compilation of Islamic Law (KHI). The goal is to transform it into a preventive instrument against gender-based violence in marriage while maintaining respect for Islamic legal values and the national legal system. The central issue addressed is the current weakness of the *sighat ta'liq* in its preventive function; its normative construction remains unilateral, reactive, and formalistic, leaving wives with inadequate protection. Using a normative legal method, this study employs a document analysis approach to examine the KHI, relevant marriage laws, and the latest national and international academic literature. The analysis focuses on gender equity, human rights, and *maqāṣid al-syarī'ah* (the higher objectives of Sharia) to evaluate the normative relevance and conceptual reconstruction of *sighat ta'liq*. The findings indicate that while the *sighat ta'liq* possesses strong normative potential as a protective mechanism, its effectiveness depends on a reconstruction that emphasizes the wife's participation, legal certainty, and preventive sanctions against gender-based violence. An ideal reconstruction model would reposition the *sighat ta'liq* as a gender-equitable marriage contract clause that harmonizes *maqāṣid al-syarī'ah* with the national legal framework. In conclusion, reconstructing the *sighat ta'liq* can strengthen legal protections for wives, prevent gender-based violence, and contribute to the evolution of a gender-responsive Islamic family law theory. These findings have practical implications for policy reform within the KHI, strengthening religious court mechanisms, and future research on the implementation of justice-based Islamic law.

**Keywords:** *Sighat ta'liq*; Islamic law; gender-based violence; gender equity; *Maqāṣid al-syarī'ah*; legal protection.

## 1. INTRODUCTION

Gender-based violence remains a pressing global issue warranting rigorous scrutiny across various legal systems and society at large. Reports from the National Commission on Violence Against Women (Komnas Perempuan), along with research data on violence in Indonesia, indicate a high prevalence of domestic abuse and marital conflict. These cases often lack optimal normative resolution through existing legal frameworks. Within Islamic law, following *ṭalāq*, a former husband is obligated to provide financial maintenance (*nafkah*) to his former wife for three months or until childbirth in cases where the wife is pregnant (Mulyadi, 2024). Nevertheless, in practice, many husbands fail to fulfill this obligation during the *'iddah* period. Such cases are frequently inadequately addressed at the normative level through existing legal instruments. This aligns with gender justice scholarship, which emphasizes the necessity of equal rights and legal safeguards for women within the institution of marriage, a goal central to the objectives of *maqāṣid al-syarī'ah*, namely, the establishment of justice and public welfare (Mufti, 2025).

In the framework of positive Islamic law in Indonesia, the *sighat ta'liq* serves as a clause in the Compilation of Islamic Law (KHI). It is a conditional agreement pronounced by the husband following the marriage contract (*akad nikah*), designed to grant the wife the right to file for divorce if the husband violates specific agreed-upon conditions (Harahap & Siregar, 2025). However, empirical and normative studies suggest that, in practice, the *sighat ta'liq* is frequently reduced to a mere administrative formality. It lacks the substantive weight required to fulfill its protective function, rendering it ineffective in preventing violence within the family. Normative-empirical research by Elkarimah and Asriani (2025) underscores that while the *sighat ta'liq* is conceptually intended to guarantee women's rights and prevent discrimination, this understanding has yet to take deep root in marriage registration and the enforcement of religious law.

Contemporary Islamic legal discourse also highlights a normative debate regarding the status of *sighat ta'liq* within the national legal hierarchy. Febrianda et al. (2025) observe that although the *sighat ta'liq* talak is recognized in the KHI, it lacks a solid foundation in broader marriage legislation. Consequently, it is often treated as a formality devoid of strict legal consequences when its conditions are breached, particularly concerning protection against violence and the neglect of marital responsibilities. This suggests that despite its normative existence, its interpretation and implementation remain too weak to serve as preventive instruments against gender-based violence. Furthermore, the existing literature on the subject remains largely confined to sociological, procedural, or descriptive aspects; few studies have repositioned this clause within the framework of normative Islamic legal theory and gender justice. Previous research by Saputra et al. (2024) explored the role of *sighat ta'liq* in maintaining general marital harmony but did not specifically link it to a preventive legal mechanism against gender-based violence.

Although studies on *sighat ta'liq* have been conducted from sociological and procedural perspectives, a substantial gap remains in normative legal scholarship in systematically positioning *sighat ta'liq* as a preventive instrument against gender-based violence, grounded in the principles of gender justice and *maqāṣid al-syarī'ah*. Most existing research tends to be confined to descriptive analyses of the formal function of *sighat ta'liq* or to its characterization as a post-violation mechanism, without advancing an integrated normative reconstruction aligned with the national legal framework and theories of substantive justice.

The limitations of these previous studies reveal a significant literature gap within normative legal research, specifically a lack of systematic analysis regarding the meaning, values, and legal implications of the *sighat ta'liq* as a preventive tool. From a normative perspective, it is critical to evaluate whether the current phrasing reflects the principles of social and gender justice and how legal reconstruction might bolster the protection of women's rights within both Islamic and national legal structures. The framework of *maqāṣid al-syarī'ah* and gender justice theory provides a theoretical foundation for addressing these normative challenges and enriching the discourse on gender-responsive Islamic family law. Based on this context, the present study seeks to reconstruct *sighat ta'liq* within the Compilation of Islamic Law as a preventive legal instrument rather than one that functions merely in a reactive manner in addressing gender-based violence. This study undertakes a normative analysis of the existing formulation of *sighat ta'liq*, examining its alignment with the principle of gender justice within Indonesia's positive Islamic legal

framework. Furthermore, this study aims to develop recommendations for a more effective formulation of *sighat ta'liq*, capable of ensuring substantive legal protection for women. In this regard, *the sighat ta'liq* is also positioned as a legal mechanism that bridges Islamic family law and the gender-based violence protection regime within Indonesia's national legal system.

## 2. METHOD

This study employs normative legal research (doctrinal legal research), focusing on the legal norms, principles, and doctrines surrounding the *sighat ta'liq* in the Compilation of Islamic Law (KHI) and its relevance as a preventive instrument for gender-based violence. A normative approach was selected because the primary objective is to analyze, evaluate, and reconstruct existing legal norms based on legal systematics, normative rationality, and the values of justice, rather than measuring social behavior or empirical practices (Ibrahim, 2021; Marzuki, 2021). This study uses a combination of the statute, conceptual, and philosophical approaches. The statutory approach is used to systematically examine the regulations governing *sighat ta'liq* within the KHI and their connection to other regulations, such as the Marriage Law and women's protection acts. The conceptual approach explores the concepts of *sighat ta'liq*, gender justice, and legal protection from the perspectives of Islamic law and modern legal theory. Meanwhile, the philosophical approach delves into the fundamental values and purpose of the law (*ratio legis*), specifically through the framework of *maqāṣid al-syari'ah* and substantive justice theory as the foundation for normative reconstruction (Suteki & Taufani, 2020).

The legal materials used include primary, secondary, and tertiary sources. The primary materials include the KHI, statutory laws concerning marriage and the protection of women, and other official legal documents. Secondary materials encompass legal textbooks, reputable academic journal articles, and previous research relevant to *sighat ta'liq*, family law, and gender-based violence. Tertiary materials, such as legal dictionaries and Islamic law encyclopedias, are used sparingly to clarify specific terms and concepts (Soekanto & Mamudji, 2021). Data collection was conducted through systematic and critical library research, classifying legal materials based on their authority and relevance.

Data analysis was performed qualitatively using legal reasoning through grammatical, systematic, and teleological interpretation. This was done to assess the adequacy of current *sighat ta'liq* norms and to formulate alternative normative reconstructions that are more responsive to the prevention of gender-based violence (Ibrahim, 2021). The final stage of the research employs prescriptive and argumentative methods; the prescriptive method formulates the ideal reconstruction model for *sighat ta'liq* based on gender justice and legal protection, while the argumentative method provides the academic justification for the proposed model. Through this methodology, the study aims to provide scientific, conceptual, and normative contributions relevant to the advancement of Islamic family law in Indonesia.

## 3. RESULT AND DISCUSSION

### 3.1. The Regulation of *Sighat ta'liq* in the Compilation of Islamic Law and Legal Protection for Wives in Preventing Gender-Based Violence

The regulation of *sighat ta'liq* within the Compilation of Islamic Law (KHI) indicates that, formally, this norm serves as a component of Indonesian Islamic marriage law designed to offer legal safeguards for wives through a conditional agreement. Relevant articles in the KHI stipulate that a husband who pronounces the *sighat ta'liq* pledges that a divorce (*talak*) will be triggered if specific conditions are breached, such as failing to provide maintenance (*nafkah*), committing physical violence, deserting the spouse, or neglecting domestic responsibilities. Theoretically, these provisions establish a normative legal foundation to guarantee a wife's rights against arbitrary treatment by her husband. However, when evaluated through the lens of substantive legal protection and the prevention of gender-based violence, the current framework reveals significant limitations in both implementation and access to justice (Hutagalung & Gunawan, 2025; Padliantor, 2025).

First, it is crucial to emphasize that, in practice, the *sighat ta'liq* is frequently perceived as a mere administrative formality. It often lacks a direct impact on modifying a husband's behavior or deterring violent domestic conflicts. A normative study by Febrianda et al. (2025) asserts that although the *sighat*

*ta'liq* is recognized within the KHI, it does not hold a strong position within national marriage legislation compared to other positive statutes. Consequently, it is often viewed as a ritualistic procedure that fails to provide effective legal recourse when conditions are violated. Second, from the perspective of legal protection, the *sighat ta'liq* possesses significant potential to safeguard women's rights particularly regarding financial support, physical safety, and personal dignity. It can heighten a husband's awareness of his marital responsibilities and provide a protective mechanism against discriminatory or arbitrary actions. In reality, however, understanding of the function of *sighat ta'liq* remains exceptionally low among the general public, religious authorities, and even some officials at the Office of Religious Affairs (KUA), thereby severely limiting the realization of a wife's legal rights (Elkarimah & Asriani, 2025).

Furthermore, the standard *sighat ta'liq* clauses adopted in the KHI generally require the wife to provide evidence of a violation in a religious court to claim her rights. In many instances, this evidentiary process is time-consuming and fraught with bureaucratic hurdles, rendering its impact on preventing gender-based violence minimal. This indicates that the KHI framework is primarily reactive rather than effectively preventive; the *sighat ta'liq* is more often utilized as a legal remedy after violence has occurred rather than as an instrument that genuinely deters the abuse. A preventive approach requires norms that do not merely wait for a violation to occur but instead establish consequences that create a tangible disincentive for violent behavior from the outset (Saputra et al., 2024).

Moreover, examining the *sighat ta'liq* through the lenses of feminist theory and gender justice reveals a normative dilemma concerning the position of women in Indonesia's positive Islamic law (Jalil et al., 2025). According to Hutagalung and Gunawan (2025), even when a violation involves violence or neglect of maintenance, the legal consequence specifically the wife's customary obligation to pay *iwadh* (compensation) to finalize the divorce can place women at a legal and social disadvantage compared to their husbands. This suggests that the *sighat ta'liq*, as currently formulated, does not yet fully embody the principles of substantive gender justice.

An analysis from the perspective of *maqāṣid al-syarī'ah* reinforces the theoretical argument that the *sighat ta'liq* should ideally protect the five primary objectives of Sharia, including the preservation of life (*ḥifẓ an-nafs*) and honor. Research by Izharulhaq et al. (2024) shows that while the practice of *taklik talak* in Indonesia traditionally aims to guarantee a wife's rights, its current application remains far from ideal due to a lack of understanding regarding *maqāṣid* and weak reinforcement in positive law outside the KHI. Therefore, integrating *maqāṣid* principles into the regulation and implementation of *sighat ta'liq* is a vital step toward ensuring this norm functions as a genuine deterrent to gender-based violence rather than a static symbol of legal protection. Additionally, the *sighat ta'liq* remains optional and is often not a mandatory component of every marriage, leading many couples to omit it from their marital contracts. This demonstrates that despite its recognition in the KHI, social acceptance remains low due to inadequate socialization, limited family law education, and a lack of awareness regarding its importance in preventing marital conflicts. Further scholarship suggests that this lack of education and understanding is a primary factor limiting the effectiveness of *sighat ta'liq* as a protective instrument for women in contemporary social reality (Majid, 2025).

### **3.2. Normative Weaknesses of the *Sighat ta'liq* in the Compilation of Islamic Law and Their Impact on the Prevention of Gender-Based Violence**

Normatively, the *sighat ta'liq* within Indonesia's Compilation of Islamic Law (KHI) is formulated as a conditional agreement pronounced by the husband following the marriage contract (*akad nikah*) and recorded in the marriage book. It grants the wife the right to petition for divorce if specific conditions are breached. This provision is codified in Articles 45 and 46 of the KHI and carries implications for Article 116 regarding the grounds for divorce. On the surface, this clause appears to provide a normative basis for protecting the wife for instance, in cases where the husband fails to provide maintenance, inflicts physical harm, or deserts the wife for a specified period. However, when analyzed through the lens of substantive law and gender justice theory, several fundamental normative weaknesses emerge, undermining the effectiveness of the *sighat ta'liq* as a preventive instrument against gender-based violence (Hutagalung & Gunawan, 2025; Jalil et al., 2025).

First, a primary normative flaw of the *sighat ta'liq* lies in its unilateral and asymmetrical nature. In practice, only the husband possesses the right to pronounce the *sighat ta'liq* after the marriage ceremony; the wife does not hold an equivalent position to state a similar conditional promise. This creates a legal structure that bestows a specific privilege upon the husband, while the wife remains a passive recipient who can only file a lawsuit after a breach has occurred, rather than being an active subject capable of setting conditions within the marriage contract herself. Research by [Amelia et al. \(2025\)](#) asserts that this unilateral character results in an imbalance of legal protection, failing to reflect the principles of substantive justice and the equal rights of husband and wife in modern family law. Such an imbalance contradicts the egalitarian principles that should inherently underpin contemporary marriage regulations.

Second, although the *sighat ta'liq* is intended as a safeguard against a husband's arbitrary actions such as violence or neglect of responsibilities the norm remains inherently reactive. The agreement only becomes operational after the violence or violation has taken place and must be proven in a religious court. Consequently, its preventive function is stifled by lengthy legal proceedings and an often heavy burden of proof placed on the wife to secure a ruling that validates the breach. This demonstrates that the norm is not potent enough to create a deterrent effect before violence occurs, as there are no direct, effective normative sanctions against a husband who violates the terms without the involvement of litigation ([Fauzilla, 2025](#)).

Third, there is a distinct normative ambiguity in the definitions and phrasing of the conditions within the *sighat ta'liq*. While the KHI outlines certain conditions, such as desertion, failure to provide maintenance, or physical injury, these provisions are not clearly linked to automatic legal consequences outside of a court verdict. This ambiguity leaves the norm vulnerable to varying interpretations by legal officials and the public, creating interpretive gaps that weaken the intended legal protection ([Mahmuna, 2025](#)). For example, hermeneutic research by [Jalil et al. \(2025\)](#) indicates that the perception of *sighat ta'liq* as a "pending promise" varies among marriage registrars (penghulu), KUA officials, and religious court judges due to a lack of firm and uniform normative guidelines, thereby diminishing its efficacy in preventing violence.

Fourth, the normative weakness of the *sighat ta'liq* is linked to a lack of alignment between the KHI text and broader national contract law principles. Studies critiquing the position of the *sighat ta'liq* argue that the instrument does not conceptually meet the requirements of a valid agreement under general contract law, as it relies on a unilateral condition and does not involve both parties on equal footing. This creates a normative paradox that undermines its legal legitimacy as a tool for substantive protection and violence prevention, as it is seen to mirror the same unilateral actions such as controversial unilateral divorce practices often criticized in gender justice discourse ([Fizal, 2025](#)).

Fifth, these normative weaknesses are closely tied to a persistent patriarchal socio-cultural context that influences the interpretation and implementation of the law. Research shows that patriarchal dominance continues to overshadow the application of Islamic family law; many husbands view the *sighat ta'liq* as a mere ritualistic procedure rather than a significant legal commitment. This perception persists because the KHI, or higher-level legislation, lacks strong confirmatory norms to guide enforcement and provide strict sanctions for violations. As a result, the *sighat ta'liq* tends to function as a symbolic tool that falls short of providing real legal protection for wives ([Amelia et al., 2025](#)).

Sixth, from the perspective of gender justice theory, a norm that fails to provide equal space for both partners to establish conditions in a marriage contract can perpetuate traditional power structures that discriminate against women, even if the norm appears protective on the surface. When the agreement only recognizes the husband's right to draft the conditions of the *ta'liq*, it conflicts with the substantive principles of gender equality advocated in modern legal theory and gender-responsive family law practices. Gender justice scholarship emphasizes the importance of symmetrical contracts and mutual consent to ensure that both parties have equal capacity to determine their respective rights and obligations ([Jalil et al., 2025](#)).

### 3.3. The Relevance of *Sighat ta'liq* in the Compilation of Islamic Law Based on Gender Justice, Human Rights, and *Maqāṣid al-syarī'ah*

An examination of the *sighat ta'liq* within the Compilation of Islamic Law (KHI) reveals that this clause possesses significant potential relevance to the principles of gender justice, the protection of human rights (HAM), and the broader objectives of *maqāṣid al-syarī'ah* in Islamic jurisprudence. As a conditional contract included by the husband in the marriage agreement to restrict his own actions through specific contingencies, the *sighat ta'liq* theoretically reflects a protective intent toward the wife against arbitrary behavior. However, a deeper analysis is required to determine whether this norm truly aligns with three fundamental pillars: gender justice, human rights, and the objectives of Sharia (Padlianor, 2025).

First, from the perspective of gender justice, the relevance of *sighat ta'liq* becomes significant only if the norm is capable of fostering an equality of rights and obligations within the marital relationship, grounded in a recognition of each party's agency. Gender justice theory in Islamic family law scholarship emphasizes that legal norms must be non-discriminatory and provide equal space for women to participate in establishing marriage contract conditions that safeguard their interests (Mufti, 2025). This study suggests that *maqāṣid al-syarī'ah* theoretically accommodates substantive rather than merely formal gender equality within Islamic family law, aiming to achieve welfare and justice for both husband and wife. In the context of *sighat ta'liq*, this relevance is manifested when the marital clause ceases to be a mere administrative formality and instead becomes a responsive mechanism against the structural injustices experienced by wives, particularly in cases of violence or the neglect of rights.

Second, when analyzed through the lens of human rights (HAM), the *sighat ta'liq* carries a normative connection to principles affirming human dignity, protection from arbitrary treatment, and equality before the law. International documents such as the Cairo Declaration on Human Rights in Islam state that all human beings possess equal dignity and the right to be free from discrimination, including that based on gender. This principle is normatively relevant to the function of *sighat ta'liq*, which ought to provide a guarantee for the wife to receive legal protection when subjected to detrimental treatment (Jalil et al., 2025). However, in the context of implementation in Indonesia, obstacles remain because the *sighat ta'liq* has not been robustly integrated into the broader national legal system, such as the Marriage Law. Consequently, the rights contained within it are often delayed or rendered ineffective when faced with litigation mechanisms in religious courts. These structural barriers indicate that while *sighat ta'liq* is theoretically relevant to human rights principles, its operationalization into tangible protection for wives still requires normative reinforcement to align with both national and international human rights commitments (Merry, 2020; Zahrah, 2021).

Third, within the study of *maqāṣid al-syarī'ah*, the *sighat ta'liq* is relevant if the norm is oriented toward the five primary objectives of Sharia: the protection of religion (*hifẓ ad-dīn*), life (*hifẓ an-nafs*), intellect (*hifẓ al-'aql*), lineage (*hifẓ an-nasl*), and property (*hifẓ al-māl*). The *maqāṣid* principle positions the overarching goal of Islamic law as a tool to realize public benefit (*maslahah*) and prevent harm (*mafsadah*). In family law, this objective demands that legal norms function not only textually but also successfully protect the rights and dignity of all parties involved in a marriage (Auda, 2021). Contemporary studies affirm that integrating *maqāṣid al-syarī'ah* into the reform of Indonesian Islamic family law can drive interpretative shifts, making existing norms more responsive to social realities and gender rights (Amelia et al., 2025; Mufti, 2025). In the case of *sighat ta'liq*, its *maqāṣid* relevance is evident when the norm is positioned as a means to ensure the protection of the wife's life and honor for instance, by providing a legal avenue for a wife to extricate herself from an abusive marriage, thereby upholding the broader Sharia goal of creating welfare within the Muslim family.

Nevertheless, the degree of relevance the *sighat ta'liq* holds in fulfilling *maqāṣid al-syarī'ah* is heavily influenced by how the norm is understood and applied. Normatively, *sighat ta'liq* must be interpreted not merely as a rigid legal clause but as a concrete manifestation of the Sharia's goal to prevent *mafsadah* through the prevention of violence and the violation of rights (Auda, 2021). If, in its implementation, the *sighat ta'liq* is regarded only as a husband's promise without an enforcement mechanism or effective sanctions for breach, it fails to fulfill the substantive protective function intended by the *maqāṣid*. Given that *maqāṣid*

*al-syarī'ah* also aims to safeguard the authority of reason and the integrity of lineage, a *maqāṣid*-relevant *siġhat ta'liq* must provide a legal space that truly empowers the wife to maintain her dignity, make legal decisions when danger or violations occur, and prevent further damage within family relations (Fizal, 2025; Majid, 2025).

### **3.4. A Reconstruction Model of *Siġhat ta'liq* in the Compilation of Islamic Law as a Preventive Instrument for Gender-Based Violence within the Framework of Islamic and National Law**

Analysis of the *siġhat ta'liq* within the Compilation of Islamic Law (KHI) demonstrates that normative reconstruction is inevitable if this instrument is to function effectively as a tool for preventing gender-based violence (GBV) in marriage. This reconstruction is not intended as a deconstruction of Islamic legal values, but rather as a normative realignment to harmonize the clause with the principles of gender justice, human rights, and the objectives of *maqāṣid al-syarī'ah*, while remaining compatible with Indonesia's national legal system. An ideal reconstruction model must address existing structural weaknesses, bolster preventive functions, and affirm the position of the wife as an equal legal subject (Amelia et al., 2025; Harahap & Siregar, 2025).

First, the ideal reconstruction of *siġhat ta'liq* must involve a normative shift from a reactive instrument to a preventive one. Under the current KHI framework, the *siġhat ta'liq* only becomes operational after a violation occurs such as physical violence or neglect of maintenance and requires a burdensome evidentiary process in religious courts. The proposed model repositions the *siġhat ta'liq* as a deterrent clause that explicitly states the prohibition of gender-based violence and its legal consequences from the moment the marriage contract is solemnized. This approach aligns with the theory of preventive legal protection, which emphasizes that law should prevent violations before harm occurs, rather than merely offering remedies after the fact (Hadjon, 2020; Jalil et al., 2025).

Second, the reconstruction model must transform the character of *siġhat ta'liq* from a unilateral declaration by the husband into a reciprocal and participatory marriage agreement. Within the national legal framework, Article 29 of the Marriage Law provides the legal space for marriage agreements made upon the mutual consent of both parties. Therefore, the ideal *siġhat ta'liq* should be reconstructed as an integral part of an Islamic marriage contract that allows the wife to participate in formulating protective clauses, including anti-violence provisions, non-discrimination terms, and the fulfillment of economic rights. This model does not contradict *fiqh mu'amalat*, as the principle of akad (contract) in Islam necessitates mutual consent (*ridha*) and agreement between both parties (Zahrah, 2021).

Third, from a gender justice perspective, the reconstruction of *siġhat ta'liq* must eliminate the patriarchal biases still embedded in the KHI's normative structure. Gender justice demands substantive not merely formal equality between husband and wife in accessing legal protection. Consequently, the ideal model must stipulate that a violation of the *siġhat ta'liq*, particularly regarding GBV, can trigger automatic legal protection mechanisms. These may include the wife's right to court-mandated protection, temporary separation of residence, or the enforcement of economic rights, without necessarily waiting for a final divorce decree. This approach is consistent with gender-responsive law theory, which prioritizes the experiences and vulnerabilities of women in the formulation of legal norms (Merry, 2020; Rismilda, 2025).

Fourth, within the framework of *maqāṣid al-syarī'ah*, the reconstruction model must explicitly aim to protect life (*hiġz al-naġs*), honor (*hiġz al-'ird*), and lineage (*hiġz al-naṣl*). Gender-based violence is a form of *maġsadah* (harm) that directly contradicts the primary objectives of Sharia. Therefore, the ideal *siġhat ta'liq* clause should be formulated as a means of *sadd al-dzari'ah* (blocking the path to harm), rather than just a mechanism for dissolving a marriage. Contemporary studies on *maqāṣid*-based Islamic family law reform show that the reinterpretation of classical norms is entirely permissible as long as it serves to realize public welfare and prevent harm (Auda, 2021).

Fifth, to ensure compatibility with the national legal system, the ideal reconstruction model must be explicitly integrated into Indonesia's positive legal framework. This can be achieved through: (a) strengthening the status of *siġhat ta'liq* within the KHI as a mandatory and substantive norm; (b) harmonizing it with the Law on the Elimination of Domestic Violence; and (c) affirming the role of religious courts as institutions that not only adjudicate divorce but also perform a protective function for

GBV victims. This model reflects an integrated legal system approach, requiring coherence between religious law, national law, and international human rights standards (Nurlaelawati, 2020).

### **3.5. *Sighat ta'liq* as a Legal Bridge between Islamic Family Law and the Gender-Based Violence Protection Regime within Indonesia's National Legal System**

Based on Law Number 12 of 2022, marital property or *syirkah* refers to all assets acquired by the husband and/or wife, either individually or jointly, during the subsistence of the marital bond. Such assets are subsequently classified as joint marital property, regardless of in whose name the assets are registered.

*Sighat taklik talak* constitutes a declaration or pledge pronounced by the husband after the marriage contract, containing specific conditions that must be observed in the conduct of married life (Muhammad et al., 2025).

On a more limited scale, the increasing divorce rates across various regions in Indonesia indicate that divorce is frequently triggered by factors such as financial insecurity, physical limitations, and emotional instability within marital relationships (Adrian, 2025).

Legal awareness and *taklik talak* represent two interrelated elements within the context of Islamic family law. Legal awareness, understood as knowledge and comprehension of prevailing legal norms, plays a crucial role in shaping both the understanding and implementation of the substance and objectives of *taklik talak* (Widiyaningrum, 2025).

Discrepancy between the pledged declaration and its practical implementation highlights the need to strengthen *sighat ta'liq*. Such reinforcement is necessary to ensure that *taklik talak* functions effectively as a legal instrument supporting the role of the state in safeguarding women's rights within Indonesia's national legal system.

Conversely, the practice of Indonesian Family Law continues to exhibit normative tensions with Law Number 12 of 2022 on Sexual Violence Crimes (TPKS) and Law Number 23 of 2004 on the Elimination of Domestic Violence (PKDRT).

Therefore, an integrative approach is required, one that prioritizes the principles of *maqasid al-shariah*, such as *hifz al-nafs* (protection of life) and gender justice, while remaining aligned with the framework of the national legal system grounded in the values of Pancasila.

## **4. CONCLUSION**

This research concludes that the *sighat ta'liq* in the Compilation of Islamic Law currently fails to function optimally as a preventive instrument against gender-based violence due to its unilateral, reactive, and formalistic construction. While normatively intended to protect the wife, existing regulations are oriented toward post-violation resolution rather than early-stage prevention. Based on an analysis of gender justice, human rights, and *maqasid al-syari'ah*, the *sighat ta'liq* possesses a strong relevance for reconstruction as a participatory, equitable marriage agreement focused on substantive protection. Such reconstruction must be reinforced through harmonization with the national legal system and domestic violence prevention policies to ensure effective practical application. As this study is limited to normative legal research, further studies are recommended to develop empirical or comparative approaches to assess the effectiveness of implementing a reconstructed *sighat ta'liq* within various social contexts and religious court practices.

### **Ethical Approval**

Not applicable

### **Informed Consent Statement**

Not applicable

### **Author Contribution**

AHP as the corresponding author was responsible for conceptualizing the research idea, formulating the legal problem, and selecting the statute approach. She conducted primary and secondary literature searches, conducted vertical and horizontal synchronization analyses of the regulations studied, and prepared the initial draft of the overall manuscript. ENW as the co-author contributed to strengthening the theoretical foundation and conceptual review. He was responsible for examining the validity of legal norms, critically editing the legal arguments in the discussion, and reviewing the writing and citation structure to ensure it conforms to the journal's style.

### **Disclosure Statement**

The authors declare no potential conflict of interest.

### **Data Availability Statement**

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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### **Notes on Contributors**

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Asenda Hella Purwaninda is a student of the Law program at the Open University. In addition to studying at the Open University, she is also active in the Open University Model United Nations Club (UT MUN Club), an extracurricular activity at the Open University that trains UT students in diplomacy, public speaking, global issue analysis, leadership, and serves as a platform for self-development and networking for UT students in the fields of international relations and diplomacy.

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