

EXPLORING THE INFLUENCE OF SHAFII SCHOOL AND ITS CORRELATION IN
THE PRACTICE OF TAHLIL MARRIAGE IN INDONESIA

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Abstract

Tahlil marriage, a legal practice rooted in the Shafi'i school of jurisprudence, has been assimilated into customary law across several regions in Indonesia, including Aceh, Jambi, Bengkulu, and Lombok. The enduring influence of the Shafi'i school in Indonesia is attributed to its early introduction during the initial spread of Islam in the archipelago by Shafi'i scholars and preachers. This influence persists today, as seen in the prevalence of Islamic boarding schools that rely on classical Shafi'i fiqh texts as their core references. Among traditionalist communities, classical fiqh continues to guide societal practices such as worship, transactions, and marriage. Although tahlil marriage is not recognized as valid under Indonesia's positive law, some customary laws influenced by Islamic principles uphold it as a solution to reconcile couples following the pronouncement of triple divorce (talak tiga) outside the formal judicial system. Using a qualitative, literature-based approach, this study examines the concentration of the Shafi'i school in Indonesia as a key factor contributing to the persistence of tahlil marriage practices in various regions.

Key words: *Tahlil marriage, Shafi'ijurisprudence, customary law, Indonesia.*

Abstrak

Perkawinan Tahlil, sebuah praktik hukum yang berlandaskan Mazhab Syafi'i, telah dimasukkan ke dalam hukum adat di beberapa wilayah Indonesia, antara lain Aceh, Jambi, Bengkulu, dan Lombok. Pengaruh abadi mazhab Syafi'i di Indonesia dijelaskan oleh kemunculan awalnya pada awal penyebaran Islam di nusantara oleh para ulama dan pengkhotbah Syafi'i. Pengaruh ini masih ada hingga saat ini, terbukti dengan dominasi pesantren yang mengandalkan teks-teks klasik Fiqih Syafi'i sebagai sumber informasi utama. Dalam komunitas tradisional, Fiqih klasik terus memandu praktik publik seperti ibadah, transaksi, dan pernikahan. Meskipun perkawinan tahlil tidak diakui sah menurut hukum Indonesia yang positif, beberapa hukum adat yang didasarkan pada prinsip-prinsip Islam mendukungnya sebagai sarana rekonsiliasi pasangan setelah pengumuman talak tiga (talak tiga) di luar sistem peradilan resmi. Dengan menggunakan pendekatan kualitatif berbasis literatur, penelitian ini mengkaji konsentrasi mazhab Syafi'i di Indonesia sebagai faktor kunci yang berkontribusi terhadap pelestarian amalan Tahlil nikah di berbagai daerah.

Kata kunci: pernikahan *tahlil*, mazhab Syafi'i, hukum adat, Indonesia.

INTRODUCTION

A husband who has divorced his wife three times is forbidden to return to his wife. The ban will be lifted if his wife remarries another man and the two of them mix and then divorce and his iddah has expired. If it is desired, the re-establishment of the marriage bond between the two cannot be done by reference, but must be carried out with a new marriage contract and dowry as marriage in general. In this rule, the majority of scholars across both Maliki, Hanafi, Hanbali and especially Shafi'i agree on triple talaq as one of the deterrents to marriage.¹

The marriage of a woman who has been divorced three times by her husband to another man in family law is an interesting discussion. Because the marriage is often a tool to be able to justify the wife to be able to return to her first husband. So that the age of marriage that takes place is not lasting because it is intended only to abort the Prohibition of marriage. Marriage as above in jurisprudence is referred to as tahlil marriage or in Indonesia commonly referred to as 'Chinese blind' marriage. Marriage tahlil engineering is what is meant in this article.marriage.

Tahlil marriage has a problem that causes a lot of legal debate among scholars across schools related to how religion views the validity of this marriage, which is clear the scholars are not one voice in giving its legal status, whether legitimate or not and whether it is permissible or makruh or haram. According to the Shafi'i school, which is the focus of this article, the view that tahlil marriage is legal is valid, this opinion is also recognized among the scholars of the Hanafi school. But unlike the Maliki school which considers that tahlil marriage is a fasakh or broken marriage, so according to him this marriage is haram and invalid.²

The Indonesian understanding of the imposition of triple talaq which results in legal consequences in the form of a husband's prohibition to return to the wife he divorced three is strongly influenced by the teachings of the Shafi'i school. There are three types of divorce that have the status of triple divorce, namely divorce that is said three times at different times, or said three times at one time, or say three divorces at once at one time. In Indonesia, the pronouncement of three divorces at once according to traditionalists and some traditional leaders applies as a divorce that falls the third time, so that this becomes one of the factors in

¹ Abdul Ghofur Anshori, *Hukum Perkawinan Islam Perspektif Fikih dan Hukum Positif* (Yogyakarta: UII Press Yogyakarta, 2011), h.130.

² *Ibid.*, h.65

the occurrence of tahlil marriage.³ Although in the applicable marriage law, three divorces that are pronounced at the same time are not recognized as three divorces, but are considered to be one Raj'is so that afterwards they can be reconciled.

The practice of tahlil marriage in Indonesia has long historical roots, especially the customary law practices that develop in various regions are not a few that reconstruct religious law, especially the jurisprudence of the Shafi'i school. For example, such as the customary marriage law, the main points of which are motivated by the teachings of the Shafi'i school. So in this context, tahlil marriage is one of the ' legal products ' of the Shafi'i school which is then adopted in the form of customary law in various regions, especially muslim areas that are thick with the teachings of the Shafi'i school. This is a reasonable because Shafi'i school is the handle of the majority of Muslims in Indonesia since the beginning of its spread this is illegal and illegal.⁴

The pattern of tahlil marriage practice in Indonesia occurs on many factors, mainly due to the will of both parties who both want to return to the marriage bond and reunite with their children. Not least in cases in Indonesia, her own husband who sought the figure of another man as China buta alias muhallilyang then paid so that he would marry a wife who has been divorced three with the condition that the marriage is done in a short time limited to the occurrence of sexual intercourse. If both have had sexual intercourse, the other man should tune in immediately.⁵

The existence of the Shafi'i school as the majority school makes the equality of customary rules in various regions, especially in the context of marriage law. So tahlil marriage is one example of this equation, although between regions one with another adrift very far but apparently the teachings of this school has expanded first as a source of persuasiveness, where the laws that have been accepted and believed by the community.⁶ The strong influence of the Shafi'i school makes the legal wedge between customary law and Islamic law which is driven by the Shafi'i school. The dialectic between these two laws has been going on for a long time so that there is an adjustment of conflict resolution in the region with the Shafi'i school as a solution. The area in question as discussed above, which also has

³ Beni Ahmad Saebani dan Syamsul Falah, *Hukum Perdata Islam di Indonesia* (Bandung: Pustaka Setia, 2011), h.163.

⁴ Roibin, *Sosio-Antropologis Penetapan Hukum Islam dalam Lintasan Sejarah* (Malang: UIN-Maliki Press, 2010), h.120

⁵ Slamet Abidin dan Aminudin, *Fikih Munakahat* (Bandung: Pustaka Setia, 1999), h.21.

⁶ Daniel S Lev, *Hukum dan Politik di Indonesia* (Jakarta: LP3ES, 1990), h.13.

the practice of tahlil marriage, among others, Banda Aceh, Gresik, Lombok, Solok, coal and so on.

The relationship between the phenomenon of tahlil marriage that occurs in various regions in Indonesia with the theoretical basis of Shafi'i jurisprudence on tahlil marriage needs to be studied more deeply in order to get a meeting point as to what and how the teachings of this school are very influential, then how the dialectic between customary law and Shafi'i jurisprudence so that adat can accept it as a solution and jurisprudence can adapt so that it is then recognized.

Below are the key points regarding traditional marriages that align with the Shafi'i school:

- **The Influence of Shafi'i on Customary Law:**
The Shafi'i school has significantly shaped customary laws in various regions of Indonesia, such as Aceh, Jambi, Bengkulu, and Lombok. Traditional practices in these areas often reflect the teachings of Shafi'i jurisprudence, particularly in the context of marriage.
- **Integration of Shafi'i Jurisprudence into Customary Practices:**
Many traditional communities integrate Shafi'i fiqh into their customary marriage practices. For example, regulations concerning the role of a wali (guardian), the dowry, and the marriage contract are commonly aligned with Shafi'i principles, though the specific customs may vary locally.
- **Tahlil Marriage in Customary Contexts:**
Tahlil marriage serves as an example of how Shafi'i jurisprudence is adopted into customary law, acting as a solution for couples who wish to remarry after a triple divorce (talak tiga). Although such practices are not recognized by positive law, they persist in some areas due to their basis in Islamic principles as interpreted through the Shafi'i school.
- **Prominent Regional Examples:**
 - **Aceh:** Known for its strong implementation of Islamic law, Aceh's traditional marriage practices are heavily influenced by the Shafi'i school, particularly concerning regulations around divorce and remarriage.
 - **Java and Lombok:** Regions like Gresik (East Java) and Lombok have marriage customs that adhere closely to Shafi'i jurisprudence, emphasizing the role of the wali and the dowry as crucial elements.

➤ **Dialectic Between Customary and Islamic Law:**

In these regions, customary law serves as a medium for incorporating Shafi'i principles into everyday life. This integration creates unique marriage customs that blend traditional norms with Islamic legal standards, fostering a synthesis of cultural and religious practices.

METHOD

This study employs a library research method, which involves using documents such as books, legislation, and other library resources as primary sources. The data obtained are processed using qualitative procedures, focusing on descriptive analysis rather than statistical or numerical data. Qualitative research aims to generate insights through in-depth analysis, and in addressing legal issues, this study adopts a normative approach, positioning law as a structured system of norms.

This approach is supported by several relevant references. Creswell (2013), in his book *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, provides foundational knowledge on qualitative research methods, including document analysis as a valid approach for collecting and interpreting data. Bowen (2009), in his article *Document Analysis as a Qualitative Research Method* published in the *Qualitative Research Journal*, outlines the processes, advantages, and applications of document analysis, making it a highly relevant reference for this study. Furthermore, Neuman (2014), in *Social Research Methods: Qualitative and Quantitative Approaches*, offers a comprehensive explanation of how qualitative methods, such as literature reviews and document analysis, contribute to understanding complex social phenomena. Similarly, Suryabrata (2010), in *Metodologi Penelitian*, highlights the application of qualitative approaches in social and legal studies, providing a culturally relevant perspective, especially for research conducted in the Indonesian context. These references collectively enhance the validity and depth of the methodological framework applied in this study.

LITERATURE REVIEW

Marriage according to Law No. 1 of 1974 is described as the inner and outer bond between a man and a woman in a married relationship with the aim of forming a happy and

eternal family bond based on the Supreme Godhead. Whereas, according to the compilation of Islamic law (KHI), marriage is defined as a very strong contract or bond (*mišāqangalīzan*) to obey the commands of Allah, which is part of worship.

Establishing family ties means establishing the unity of the relationship between husband and wife together with their children in a container called a joint residence. If in practice, the husband and wife do not form a family and instead live in separate houses, or the possibility of the wife having the opportunity to sleep with another man, then this is not the purpose of marriage according to applicable marriage law. This is what happens in the practice of *tahlil* marriage. Therefore *tahlil* marriage is not appropriate and violates the norms in positive law.⁷

Legal review both in Islamic law and positive law, the phenomenon of *tahlil* marriage in some regions in Indonesia is a form of marriage that is not in line with the purpose of marriage itself, which is united in an eternal bond in the ark of the household. How not, this marriage practice begins with the agreement of termination of marital relations when sexual relations are completed. The contract that should be holy and full of commitment is lost because the purpose of *tahlil* marriage is only as a formality to return a wife who has already been divorced three.⁸

Issues regarding *tahlil* marriage have been widely reviewed, academics and legal activists have expressed their concerns in their scientific writings. But how this marriage practice can spread across regional borders and customary law in Indonesia has never been discussed. The hypothesis of the author in this study is trying to conclude that in the end can be drawn a common thread that as long as the teachings of the Shafi'i school are found in areas in Indonesia, the practice of *tahlil* marriage tends to continue to exist. As long as there is no serious reconstruction of jurisprudence, there will always be legal issues that are not in line with positive law, especially in the context of marriage.

RESULTS AND DISCUSSION

A. *Tahlil* marriage in the perspective of Shafi'i School

Shafi'i school as well as other schools agree that a husband who has imposed a triple divorce is forbidden to return to his ex-wife unless the ex-wife has married another man until both have had sexual intercourse and then divorced until the expiration of his *iddah*. It

⁷ Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Jakarta: PT Citra Aditya Bakti, 2019), h.85.

⁸ Moch. Isnaeni, *Hukum Perkawinan Indonesia* (Bandung: Refika Aditama, 2016), h.97.

is necessary for another man to be elected or in the definition of jurisprudence referred to as muhallil whose role is to justify the first husband so that he can return to his wife, as WahbahZuhaili, one of the scholars of the Shafi'i School of contemporary era, described in his book.⁹ But the understanding of marriage with another man is meant to be a natural marriage, meaning it is not engineered so that the process of marriage and divorce between a wife who has been divorced by her ex-husband with another man is really happening naturally there is no prior planning.

A triple divorce that has legal consequences in the form of a prohibition on the return of a husband to his wife is a divorce that is imposed three times in a row or at different times or a triple divorce that is imposed in one sentence at once. In the Shafi'i school, if a husband utters the phrase "I divorce you three " without any previous divorce, then the sentence has imposed a triple divorce (BA'in) and its legal consequences. So when the husband wants to return to his former wife must go through the tahlil marriage procession. The opinion of the Shafi'i school is based on the fatwa of Umar bin Khattab responding to Muslims at that time who carelessly played with the word divorce and easily dropped triple divorce. So to make Muslims aware Umar bin Khattab stipulates that saying three divorces in one sentence is the same as ruling on divorce three times in a row or saying it at different times.¹⁰

Legal practice tahlil marriage according to the view of the Shafi'i school is illegal if in the contract that is pronounced there are diction-diction that shows the intention tahlil or the will to do halal. Such as the temporary conditions of marriage, the necessity to divorce after sexual intercourse and so on.¹¹ Such a tahlil marriage contract will ruin the pronouncement of the contract so that the marriage that is done is considered void or considered invalid. Because with these requirements make tahlil marriage as well as marriage contract or MUT'ah which clearly the scholars deny it.¹² The similarity between

⁹ Wahbah Az-Zuhaili, *al-Fiqh al-Islām wa Adillatuhu* (Damaskus: Darul Fikr, 1985), h.477.

¹⁰ M. Anshary MK, *Hukum Perkawinan di Indonesia* (Yogyakarta: Pustaka Pelajar, 2015), h.68-69.

¹¹ Zakariyyā al-Anṣārī, *Fath al-Wahhab bi Syarh Manhaj at-Ṭulāb* (Beirut: Dar al-Kutub al-'ilmiyyah, 2018), h.74

¹² Muhammad Syafi'i Hadzami, *Taudhihul Adillah Fatwa-fatwa Mualim KH Sya'fi'i Hadzami Penjelasan tentang Dalil-dalil Muamalah - Muamalah, Nikah, Jinayah, Makanan/Minuman dan lain-lain* (Jakarta: PT Elex Media Komputindo, 2010), h.89.

tahlil marriage as above with MUT'ah marriage is the opinion of Jalaluddin Muhammad bin Ahmad al-Mahalli, one of the Shafi'i School of jurisprudence experts.¹³

The rules regarding the invalidity of tahlil marriage if there are tahlil requirements in the contract are the majority opinion of Shafi'i scholars. Although there are also other opinions and still within the scope of Shafi'i school that gives validity to the practice of tahlil marriage with tahlil conditions without considering it as an element of marriage cancellation. However, this second opinion is only a minority that opposes the opinion chosen by the majority of Shafi'i scholars.¹⁴

Different context if the tahlil marriage is performed there is no tahlil requirement in the contract while the agreements regarding tahlil are still carried out but outside the marriage contract so that the marriage contract is clean from things that affect it, then the practice of tahlil marriage like this is legal, the marriage contract is not void and sexual intercourse after it is also allowed. Although the way the wedding was done by engineering. however, the Shafi'i school recognizes its validity without any prohibition except that it is punished as a makruh act.^{15, 16}

The conditions referred to above are the conditions agreed upon in the agreement made outside the marriage contract, between the husband who divorces three with another male candidate muhallil. At present, this agreement is like a prenuptial agreement. This condition is what distinguishes the type of marriage in general. The agreement is made between the husband who has divorced his three wives with the prospective groom who will act as muhallil. In the agreement, muhallil is given the task of performing the contract, is required to want to have sexual relations with the husband's ex-wife, and finally must immediately divorce the woman. Therefore tahlil marriage in principle is not absolute. Because of its temporary nature that is limited by the agreement. So that when muhallil divorces the woman, then the marriage process ends tahlil.¹⁷

¹³ Jalaluddin Muhammad bin Ahmad al-Mahalli, *Kanzu ar-Rāgibīn Syarh Minhāj at-Ṭālibīn* (Kediri: Maktabah As-Salam, 2020), h.434.

¹⁴ Muhammad bin Abdur Rahman Asy-Syafi'i Ad-Damsyiqiy, *Rahmatul Ummah Berbagai Masalah Hukum Islam*, terj. Sarmin Syukur dan Luluk Rodliyah (Surabaya: Al-Ikhlās, 1993), h.369.

¹⁵ Zakariyyā al-Anṣārī, *Fath al-Wahhab bi Syarh Manhaj at-Ṭulāb* (Beirut: Dar al-Kutub al-'ilmiyyah, 2018), h.74.

¹⁶ Fazari Zul Hasmi Kanggas and Hifdhotul Munawaroh, "Nikah Tahlil Dan Hubungannya Dengan Rekayasa Dalam Syari'at Islam," *Journal of Indonesian Comparative of Syari'ah Law* 6, no. 1 (2023): 35–50, <https://doi.org/10.21111/jicl.v6i1.10174>.

¹⁷ Usman Betawi, *Tinjauan Sosiologi Hukum Islam tentang Pernikahan Cina Buta di Kabupaten Batu Bara* (Pasca Sarjana Universitas Islam Negeri Sumatera Utara: 2012), h.116.

Tahlil marriage can be said to be valid even if there is an intention between the bride and the interested parties to legalize the former wife who has been divorced three so that it is lawful to return to her first husband. The most important of these intentions as long as they are not stated in the marriage contract, the tahlil marriage is valid. In the Shafi'i school between contract and intention are two different things, which is clear in the context of marriage contract must be born either with spoken or with a gesture for the bride who is constrained to speak, while the intention is something that is pledged in the heart. Clearly, in the Shafi'i school a contract will be void determined by what is required, but the contract is not void by what is intended. So that even though among the parties who want tahlil marriage there is an intention to make it lawful by means of engineered marriage as long as it is not required in the marriage contract, this kind of marriage is still valid. Forgiveness is only a matter of the heart and the soul.¹⁸

Clearly, Imam Shafi'i in *al-Umm* commented on tahlil marriage. According to him, if there is a man as a muhallil marrying a woman in a tahlil marriage bond, where the intention of the man or the woman or one of the two has no other intention except for intercourse. Then the marriage has been said to be able to justify the woman as well as abort the prohibition to be able to return to her first husband of course after being divorced by husband muhallil. Imam Shafi'i also added that such a marriage is legal, either the intention of tahlil is intended by The Guardian of marriage with the bride and groom tahlil marriage, or is intended by parties outside the Guardian, including outside the bride and groom in this case is the first husband who ordered the practice of tahlil marriage, or there is absolutely no good intention on the Guardian and the bride and groom tahlil marriage but who intends is a party outside them then this marriage is still valid.¹⁹ The opinion of imam Shafi'i is the main basis of the validity of tahlil marriage. Therefore, Shafi'i scholars make it as a guideline in their books so as to assert that the teachings of this school give validity to the practice of tahlil marriage.

The implementation of the pillars of tahlil marriage at a glance is almost the same as the practice of marriage in general, especially with serial marriage in the context of marriage in Indonesia. Because these two marriages are the pillars of marriage that are carried out are also the same in the context of Shafi'i jurisprudence, regardless of the conditions that are carried out before the tahlil marriage contract. Including the contract

¹⁸ Zakiah Daradjat *et. Al.*, *Ilmu Fiqh* (Yogyakarta: Dana Bhakti Wakaf, 1995), h.103

¹⁹ Abu 'Abdillah Muhammad bin Idris al-Syafi'i, *Al-Umm*, (Beirut: Darul Wafa, 2001) h.206.

that is carried out is also the same, considering that if the contract in tahlil marriage has conditions as in the agreement, then the marriage is void and invalid.

Whether or not a practice enters into the discussion of Wadh'i law. While legally taklifi, Abu Husayn Yahya al - ' Imrani provides more extensive details based on certain conditions described as follows:

1. "I marry and marry, you to my daughter until she is lawful to marry again with her first husband, when you make it lawful(by sexual intercourse), then there is no longer a marriage bond between you and my son". So in view of the contract mentioned above, the scholars agree against and consider the marriage resulting from the contract to be a void marriage without any debate. Although it does not mention a specific time such as a matter of hours or days or months, but there are restrictions on marriage in the contract above, making it almost the same as a contract marriage (MUT'ah). Even according to Abu Husayn Yahya this kind of marriage is more despicable than MUT'ah marriage.
2. If in the marriage contract tahlil wali used the phrase "I marry you to my daughter because really you will soon divorce her after having sexual intercourse with her". The marriage contract resulted in two differences of opinion among the scholars as follows:
 - a. The marriage is invalid because the marriage contract is void and damaged so that the marriage is not valid.
 - b. There are conditions that are broken but the marriage contract is valid.
3. It is permissible and makrooh for tahlil marriage, even though it is done by engineering during the marriage contract, there are no time limits and other conditions that make the contract that is carried out an absolute contract as marriage in general has no addition or subtraction of pronouncement. While the agreements regarding the time limit, the provision of divorce after sexual intercourse must be done outside the contract or before the contract. Such a marriage is valid until the marriage is valid. The Solemnity of this marriage is a popular opinion and agreed upon by the majority of scholars in the

Shafi'i school. In other schools, the Hanafi school also agreed on the above law of marriage.²⁰

The legal Status of a *mokruk*h in a *tahlil* marriage is not a sufficient basis for declaring the marriage invalid. If there is no *haram* in it, then it can be called *haram*. For example, things that lead to the Prohibition of marriage, such as marrying siblings, marrying married husbands, or actions that are contrary to the basis and conditions of marriage, such as time restrictions, not using the services of a marriage guardian, and so on. *Mokruk*h's law is still applicable in principle, although it has not improved.

Shafi'i school in addition to providing validity also provides the conditions in order to maintain the validity of the practice of *tahlil* marriage as stated by Ahmad bin Husain Al-Ashfahani one of the scholars as well as *qadhi*(judge) in his time. According to him, if a husband has divorced his wife three times, he should not return between them in the marriage bond unless the following conditions have been met:

1. The wife's *iddah* ends after being divorced by the first husband who mentioned it three times.
2. The former wife above must have married another man as *muhallil* which in this case is called *nikah tahlil*.
3. In *tahlil* marriage, both must have sexual relations and both feel the delights of the relationship.
4. After the marriage, the former wife must first be divorced by the husband of *muhallilitu* with the status of *Bain* divorce.
5. Before returning to the first husband, the ex-wife must complete her *Iddah* from divorce with the husband of *muhallil*.²¹

Based on the description above, it is clear that *tahlil* marriage is not only a marriage procession that is only carried out by contract and then divorced. If so, then the marriage has not been able to abort the prohibition on the former wife returning to the first husband. Unless there is a requirement for sexual relations in the marriage. Sexual intercourse is also done not just insert the penis and then remove it just like that, but the relationship must be until both of them really feel the delights of the relationship.

According to WahbahZuhaili, sexual relations are the core of the marriage. From there the ban on the ex-wife to return to her first husband was lifted. So if in *tahlil* marriage

²⁰ Abi Husain Yahyā bin Abi al-Khair Sālim al-‘Imrāni, *Al-Bayān fī Mazhab al-Imām Syafi’i* (Beirut: Dar al-Minhaj, 2007), h.279.

²¹ Abu Syuja’, *Matan al-Gayah wa at-Taqrīb fī Fiqhi asy-Syafi’i* (Beirut: Dar al-Masyari, 1996),h.40.

in practice it does not come to sexual relations then after being divorced by the husband of muhallil the former wife is still haram to be able to return to her first husband.²² This view is also confirmed by Syihāb-Dīn Ahmad bin Ahmad in which the above provisions according to him is an agreement of Shafi'i scholars without any debate in it.²³

According to Imam Shafi'i sexual relations referred to in the terms of tahlil marriage above are considered valid even though they are carried out at times that are not allowed to have sexual relations, such as when the wife is menstruating or menstruating. The most important reason is that there has been sexual intercourse between the bride and groom, even though the wife is menstruating, the validity of tahlil marriage has been sufficient so that the former wife has 'halal' back to her first husband after he is divorced and his iddah expires. The opinion of Imam Shafi'i is also agreed upon by Imam Tsauri, Imam Hanafi and Imam Auzai, although it is contrary to the opinion of the Hambali school and the Maliki school because according to these two schools sexual relations must be carried out when it is permissible and still prohibit sexual relations when prohibited. According to them, having forbidden sexual intercourse is against the rights of Allah.²⁴

In addition to the conditions of validity of tahlil marriage above, Imam Nawawi who is also included in the Shafi'i School of Scholars provides additional conditions that are more specific for men who want to become muhallil. According to him, muhallil should have reached the age of puberty or can be said to be mature in a sense and able to do jima' or a relationship like husband and wife.²⁵ This means that the man who plays the role of muhallil must have reached puberty until he is able to release sperm during sexual intercourse. Therefore, the role of muhallil should not be sought by boys who have not reached puberty because they are not biologically capable of doing so. However, it does not matter if the boy has experienced puberty so that he is able to have sexual relations so that he has fulfilled the conditions as a muhallil even though he is classified as a slave. So there is no condition for muhallil whether he is a free person or a slave.²⁶

²² Wahbah Zuhaili, *Fiqih Imam Syafi'i Mengupas Masalah Fiqhiyah Berdasarkan Al-Qur'an dan Hadis*, alih bahasa Muhammad Afifi dan Abdul Hafiz (Jakarta: Almahira, 2012), h.595

²³ Syihāb ad-Dīn Ahmad bin Ahmad bin Salāmah al-Qolyūbi dan Syihāb ad-Dīn Ahmad al-Barlasi, *Hasyiyatān Qolyūbi – 'Umairah* (Beirut: Dār Ibn 'Aṣāṣah, 2005), h.247.

²⁴ Wahbah Zuhaili, *Fiqih Imam Syafi'i Mengupas Masalah Fiqhiyah Berdasarkan Al-Qur'an dan Hadis*, alih bahasa Muhammad Afifi dan Abdul Hafiz (Jakarta: Almahira, 2012), h., 475.

²⁵ Muhyi ad-Dīn Abi Zakariyyā Yahya bin Syaraf an-Nawawi, *Minhāj Ṭālibīn wa 'Umdat al-Muftīn* (Jedah: Dār al-Minhāj, 2005), h.384

²⁶ Syihāb ad-Dīn Ahmad bin Ahmad bin Salāmah al-Qolyūbi dan Syihāb ad-Dīn Ahmad al-Barlasi, *Hasyiyatān Qolyūbi – 'Umairah*, h.247.

A husband who has divorced his wife three times is forbidden to return to his wife. The ban will be lifted if his wife remarries another man and the two of them mix and then divorce and his iddah has expired.²⁷ If it is desired, the re-establishment of the marriage bond between the two cannot be done by reference, but must be carried out with a new marriage contract and dowry as marriage in general. In this rule, the majority of scholars across both Maliki, Hanafi, Hanbali and especially Shafi'i agree on triple talaq as one of the deterrents to marriage.²⁸

The validity of tahlil marriage in the Shafi'i school is not without observing the popular Hadith of the Prophet Muhammad regarding the Prophet's comments on tahlil marriage, where the Prophet Muhammad denounced by cursing the perpetrators of tahlil marriage, both men who married the former wife of the first husband (muhallil) and the first husband who told the other man to want to marry a wife whom he had divorced three (muhallal-lah) in the tahlil marriage agreement. Unless the Shafi'i school interprets it that the above hadith actually shows that tahlil marriage is valid. The inclusion of the diction "muhallil" in the Hadith indicates that the role of another man who marries an ex-wife who has been divorced by her first husband has actually been able to justify the ex-wife to her first husband, therefore the diction "muhallil" or "who justifies" is used to term the role of the other man.²⁹

Furthermore, the diction "anathema" in the Hadith is interpreted by the Shafi'i school not as an annulment of the tahlil marriage but the sin of the tahlil marriage committed. According to Imam Shafi'i a thing that is done if the motive contains elements that are contrary to Islamic law, it is left entirely to Allah, because Allah has the right to punish the perpetrator whether sinful or not. Technically, in the realm of Shafi'i law, it is only to provide a benchmark limited to the validity or invalidity of a worship, but regarding whether it is a sin or not, it is no longer the scope of jurisprudence. The view regarding the above sins is also used in the Hanafi School of jurisprudence, but it is different from the

²⁷ Abi Husain Yahyā bin Abi al-Khair Sālim al-'Imrāni, *Al-Bayān fī Mazhab al-Imām Syafī'i* (Beirut: Dar al-Minhaj, 2007), h.279.

²⁸ Abu 'Abdillah Muhammad bin 'Abd ar-Rahmān al-Syafī'i, *Rahmat al-Ummah fī Ikhtilāfi al-Immah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1987), h.219

²⁹ Muhammad Utsman Al-Khasyt, *Fiqih Wanita Empat Mazhab*, terj. Abu Nafis Ibnu Abdurrohlim (Bandung: Khazanah Intelektual, 2011), h.290.

view of Imam Hambali where according to him something that is illegal in practice, in addition to the law of sin, can also affect the validity of marriage.³⁰

B. Dynamics of Tahlil marriage practice in Indonesia

Tahlil marriage or in Indonesia known as blind Chinese marriage is one type of marriage that is controversial in addition to contract marriage (MUT'ah), running marriage, mitsar marriage, grebeg marriage, childfree marriage so that serial marriage. Known controversy because this kind of marriage is not commonly done especially the practice that is contrary to the principles and concepts of positive marriage law in force in Indonesia. The phenomenon of controversial marriages is sometimes born from Innate religious dogmas, customs to cultural influences from abroad. So tahlil marriage is a form of marriage that is Born From Religion which then cultivates into customary law.

The practice of tahlil marriage in Indonesia has the same basis as the explanation of Shafi'i jurisprudence discussed in the previous chapter. Engineering tahlil marriage in Indonesia is deliberately intended to be just a mere formality in order to abort the ban on the return of the former wife to the first husband who has divorced three. The ban is also legalized in the positive marriage law rules in force in Indonesia, precisely in Article 34 paragraph (1) letter (a) and Paragraph (2).³¹

The practice of tahlil marriage is almost the same as serial marriage because this marriage practice is also done secretly, meaning without registering and recording the marriage to the Office of Religious Affairs (Kua).³² This marriage is a marriage that is done under the hand of marriage that is only done with just an agreement of the parties involved without then being determined (istbatnikah) to KUA so that it meets the provisions of the applicable law.³³ Tahlil marriage is done only enough to meet the requirements and pillars taught by Islam, including the existence of a marriage contract, dowry, the presence of Guardians and witnesses and attended by the bride and groom. The difference with serial marriage is only in the intention that this marriage is only temporary just to abort the Prohibition of triple divorce and then end the marriage.

³⁰ Ahmad Azhar Basyir, *Asas-asas Hukum Muamalat Hukum Perdata Islam* (Yogyakarta: UII Press Yogyakarta, 2012), h.77.

³¹ Mahmudin Bunyamin dan Agus Hermanto, *Hukum Perkawinan Islam* (Bandung: CV Pustaka Setia, 2017), h.74.

³² Regia Rakhmat Ramadhan dan Tata Fathurrahman, "Akibat Hukum Perkawinan Cino Buto di Kabupaten Solok Terhadap Status Hak Waris Anak Dihubungkan dengan Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Hukum Islam", *Prosiding Ilmu Hukum*, Vol. 4, No. 2 (Agustus 2018): 578-584. <http://dx.doi.org/10.29313/v0i0.10476>

³³ Beni Ahmad Saebani, *Fiqh Munakahat* (Bandung: Pustaka Setia, 2001) h.84.

The practice of tahlil marriage in Indonesia is more prevalent among the Malay tribes scattered in the Sumatra region, especially with a Muslim majority population among which are Padang, Jambi, Bengkulu, Aceh Gayo and Aceh Pesisir. This marriage practice can also be found in the Sasak tribe in the Central Lombok region of West Nusa Tenggara province. While in Java, the practice of tahlil marriage is also found in Gresik, Banten and some areas in West Java. In these areas it is better known as Chinese blind mating or cinobuto, some call it interval mating and others in accordance with the origin of the local area.

The mention of nikah tahlil with the term blind Chinese originated from the Chinese ethnic immigrant population who settled in Aceh, it has a poor economic situation. Because of his need for money, he was willing to be paid to marry a woman in a blind Chinese marriage bond. According to history, husbands who have done triple talaq to their wives, they bring a man of poor ethnic Chinese descent to be muhallil by way of payment so that the Chinese men would obey him for the sake of the husbands could return to his wife. But before doing the contract, the ex-wife of the divorced three had made a prior agreement to the Chinese man, who basically after the contract, then he must want to have sexual intercourse with his ex-wife and after the Chinese man must immediately to divorce her. Although there are some cases where Chinese men who play the role of muhallil are reluctant to divorce the wife, because they feel they are compatible with the ex-husband's wife, so the tahlil marriage that was originally planned to take place while it was not expected to continue indefinitely. As a result, the wife who participated in the marriage was forced to undergo a marriage bond that she certainly did not expect. Not only that, sometimes pressures in the form of threats, psychological violence and sexual violence are felt by the wife of her Chinese husband.

Currently tahlil wedding in Aceh has changed unlike the custom in the past. The role of muhallil who used to use the services of Chinese men, in fact now they use the services of muhallil more than the men of their own tribe. As for the procedure, the following agreement with its payment still remains in force as in the past. However, even so, the term mention of blind Chinese marriage is still maintained because looking at the historical context of this type of marriage begins by involving the role of muhallil from Chinese men until the term blind Chinese has already become a name known by the Malay community,

especially Aceh.³⁴ However, there are also views that judge the term blind Chinese marriage as a racist term.

Shafi'i school as the legal basis for tahlil marriage practice in Aceh has developed into a culture that prevails in the indigenous people of Aceh, as well as recognized as part of carrying out Islamic religious orders.³⁵ Based on the studies that the author has done, customs are indeed one of the factors still the practice of this kind of marriage. Moreover, tahlil marriage has been going on long enough until now so that there is a dialectic of customary law against the community that makes the practice of marriage is considered a common thing. The ability to do so is based on the fact that no one forbids including traditional leaders, traditional heads or local scholars. Gradually this marriage practice actually developed into a legal solution when similar cases occurred again. Naturally, imitation imitation occurs in society, finally tahlil marriage is used as the last alternative option when husbands want to return to their former wives who have been divorced three. Because there are people who encounter the practice of tahlil marriage, it cannot be denied that someday the community will imitate this legal choice in order to return to their ex-wives.

There are also factors that come from the desire of the bride and groom, especially the husband. Feeling disappointed with what he had done to his ex-wife made him want to return to her immediately without waiting long. So try different ways so that tahlil marriage can be carried out. Because if this is not the case, the husband inevitably has to wait for his ex-wife to marry another man in a natural marriage bond without any engineering. So the possibility of returning to his ex-wife is very small, because between them there is not necessarily a divorce, it could even be that both of them live side by side forever when they marry as a natural marriage. On the basis of the above, look for another man who is willing to be invited to work together to engineer marriage with his ex-wife in a tahlil marriage bond.³⁶

While from the side of muhallil, there is also a factor in which for the sake of money they want to perform tahlil marriage as muhallil who is given the task of accepting the marriage contract and having sexual relations with his temporary wife until then divorcing her. Because being a muhallil is not a free thing, but there is a reward in the form of money

³⁴ Komnas Perempuan, "Pemaksaan Perkawinan" (Desember 2013), h.9.

³⁵ Noordjannah Djohantini *et. Al.*, *Memecah Kebisuan: Agama Mendengar Suara Perempuan Korban kekerasan Demi Keadilan Respon Muhammadiyah* (Jakarta: Komnas Perempuan, 2009), h.84.

³⁶ Slamet Abidin dan Aminudin, *Fikih Munakahat* (Bandung: Pustaka Setia, 1999), h.21.

from which they want to become muhallil. The agreement made between the parties involved not only contains the technical aspects of marriage but also contains the amount of the agreed fee to the muhallil.³⁷ Although a factor, men who act as muhallil there are also those who do it for free just to help a friend or brother to be able to return to his wife who has been divorced three. It was willing to do because it felt sorry for her so committed to helping her without being paid a dime.³⁸

By law, the position of the man who plays the role of Muhallil is that there is no element of barrier or prohibition that prevents him from marrying the woman. Muhallil selection is also done not carelessly, meaning still pay attention to the groups that may marry women in tahlil marriage, both in terms of mahram, semenda relationship and breastfeeding. This certainly adds to the tahlil marriage factor from the perspective of muhallil.

The practice of tahlil marriage in Indonesia is not only welcomed by public acceptance, but there are also groups of people who reject the practice of this engineered marriage, even though they are both adherents of the Shafi'i school. This is because there are some people who consider tahlil marriage is not a common marriage because the practice tends to resemble a contract marriage. In Indonesia, contract marriage has long been labeled as an abject act, because it is tantamount to prostitution wrapped in a contract contract, the contract is broken alias void. This kind of assessment has an impact on the perpetrators of tahlil marriage, they receive sanctions from the community in the form of exclusion, insults and other bad precedents. Moreover, it is the woman who feels the most humiliated because she is considered to have no self-esteem because she wants to be treated arbitrarily by the man who previously hurt her by giving her a triple divorce.³⁹

The reality in society is that many tahlil marriage perpetrators suffer from a very heavy psychological burden. They are impressed as if the goods are treated with pleasure without regard to feelings and self-esteem as an honorable man. In tahlil marriages, women are forced to do things that are clearly against their conscience. In order to fulfill her ex-husband's request, she must willingly and compulsorily share herself with a muhallil whom

³⁷ Regia Rakhmat Ramadhan dan Tata Fathurrahman, "Akibat Hukum Perkawinan Cina Buto di Kabupaten Solok Terhadap Status Hak Waris Anak Dihubungkan dengan Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Hukum Islam", *Prosiding Ilmu Hukum*, Vol. 4, No. 2 (Agustus 2018): 578-584. <http://dx.doi.org/10.29313/v0i0.10476>

³⁸ Usman Betawi, *Tinjauan Sosiologi Hukum Islam tentang Pernikahan Cina Buta di Kabupaten Batu Bara* (Pasca Sarjana Universitas Islam Negeri Sumatera Utara: 2012), h.185.

³⁹ Agustin Hanapi dan Fakhurrazi M. Yunus, *Nikah China Buta di Aceh Membongkar Praktek dan Dampaknya terhadap Perempuan* (Banda Aceh: Sahifah, 2017), 137.

her ex-husband is looking for without her knowledge. The reason, in this marriage procession, a woman should be invited to have sexual relations with other men because that is what is a condition that is said to be valid for tahlil marriage.⁴⁰

For example, as happened in Aceh, which according to Nur Rofi'ah this marriage practice has a lot of impact on women who perform tahlil marriages, because for the validity of tahlil the bride and groom in doing so must go through stages that should not be abandoned as follows:

- The practice of tahlil marriage even though it is temporary, sexual intercourse must be carried out so that each feels the delights of the relationship even though it is forced. In sexual intercourse both must be free from contraceptives, so that there is a possibility of pregnancy for the wife so that the iddah period after divorce must be withdrawn until she gives birth to a child from her husband muhallil. In addition, there is also the possibility that the woman could have contracted sex diseases such as HIV, Aids and other dangerous diseases. This possibility is very large considering that the role of muhallil is sometimes chosen from foreign men whose health standards are not known or who have a history of illness that is completely ignored.
- After sexual intercourse, in accordance with the content of the agreement before the marriage contract, the woman must accept a divorce from her muhallil husband. Although there are also some cases where the muhallil man is reluctant to divorce the woman, this certainly adds to the length of the bad impact felt by the woman.
- Although the tahlil wedding procession has been completed, religious leaders must first assess the stages that have been carried out. It is they who have the right to decide whether it is legal or not. Because if there are things that they consider lacking, then tahlil marriage must be repeated from the beginning along with all its stages, including sexual intercourse.⁴¹

The weight of the burden felt by women perpetrators of tahlil marriage makes the emergence of trauma. The Trauma causes the effect of excessive self-distrust so that it is afraid to start building a household again. The impression that they feel is that they are treated as if they are merchandise or rentals whose owners change one another. The sense

⁴⁰ *Ibid.*, 139.

⁴¹ Nur Rofiah, *Memecah Kebisuan: Agama Mendengar Suara Perempuan Korban Kekerasan Demi Keadilan Respon NU* (Jakarta: Komnas Perempuan, 2010), h.41.

of trauma is even increased when the practice of tahlil marriage that he did was known by the surrounding community.⁴²

In addition to traditional factors, the desire of the husband, and the economy of muhallil which are the main factors for the practice of tahlil marriage in Indonesia, there are also more fundamental factors why tahlil marriage is performed. That is, the factor of pronouncing talak three performed in one sentence. As the teachings of the Shafi'i school where only by saying "I divorce you three " then three divorces fall instantly for the wife even though there is no pledge of divorce that has previously been said. In Indonesia there are many husbands who divorce in this way, so the legal consequences of triple talaq also occur, so they must perform tahlil marriage when they want to return to their ex-wife.⁴³

C. The influence of the Shafi'i school and its correlation to the practice of Tahlil marriage in Indonesia.

As a school whose teachings exist in Indonesia, Shafi'i school has a long historical record. The process of spreading His teachings also cannot be separated from the process of Islamization in Indonesia. Because Islam is accepted by faith and implemented in the teachings of jurisprudence daily. In the study of the history of the entry of Islam in Indonesia, there are theories that indicate that the teachings of this religion were once brought by immigrants who adhere to the Shafi'i school. Apart from the debate in it, the theory that supports this is the Arab theory and The Theory Of India.

According to Arab theory, Islam entered from Mecca to the archipelago since the 7th century AD., where Umar bin Abdul Aziz, a caliph who was then in power, had a close relationship with Sri Indrawan, the king of Srivijaya at that time. This approach is also based on the similarity of the school at that time with today that the Shafi'i school is the school of the majority of Muslims in Indonesia. This theory was put forward in Iqdal-Farid by bin Abdur Rabbih. Meanwhile, according to Indian theory, Islam entered the archipelago from Gujarat where many travelers from Arabia who settled to India then spread Shafi'i Islam there. So then the people of Gujarat went to the archipelago and Islamized the people of the archipelago with the teachings of the Shafi'i school that they brought. Therefore, through the two theories above to be convinced that the existence of

⁴² Agustin Hanapi dan Fakhurrazi M. Yunus, *Nikah China Buta di Aceh Membongkar Praktek dan Dampaknya terhadap Perempuan* (Banda Aceh: Sahifah, 2017), h.139.

⁴³ *Ibid.*, h.131.

the Shafi'i school in Indonesia can not be separated from the traces of the propagators of Islam adherents of the Shafi'i school.⁴⁴

The existence of the Shafi'i school in Indonesia is also reinforced by the role of Wali Songo who also all adhere to the Shafi'i school. Wali Songo is known as an accomplished preacher who spread the teachings of Islam through local wisdom which is considered the most meritorious figure in the dissemination of Islamic teachings that are polite and easily accepted by the natives of the archipelago. Through the struggle of Wali Songo, many Kings in Java converted to Islam, it is evident that after the collapse of the Majapahit empire, many Islamic kingdoms or sultanates emerged. Such as Demak Kingdom, Islamic Mataram Kingdom, Cirebon Kingdom to Banten kingdom. Hindu-Buddhist influence was gradually conquered through Sufism, Arts and culture, marriage and Islamic-based education strategies.⁴⁵

Observing the origins of the spread of Islam in the archipelago as the author has stated, it becomes clear how the culture of religious society was formed until now. The magnitude of the influence of Shafi'i school and its contribution in the formation of law in Indonesia not only touched in the traditional legal order alone, but also contributed to the formation of national law. The Marriage Act and the compilation of Islamic law (KHI) are examples.

Although adult classical Islamic law is now being abandoned in favor of moving to a more progressive law, the teachings of the Shafi'i school in Indonesia are still preserved, especially in pesantren benches. While the Traditionalist community and some Indigenous elders still run Shafi'i School of jurisprudence as the main handle, so that the provisions of positive law become less noticed. Therefore, there is often a legal gap between customary and national law. Many customary provisions are not recognized in the realm of national law, either because they are no longer relevant or more to find policies that are more valuable to the public. Still encountered practices of serial marriage including tahlil marriage is one form of legal dilemma above. On the one hand, national law does not recognize it, but on the other hand, the product of customary law driven by the Shafi'i school is still flourishing and embraced by the community.

⁴⁴ Anny Nailatur Rohmah dan Ashif Az Zafi, "Jejak Eksistensi Mazhab Syafi'i di Indonesia", *Tamaddun: Jurnal Sejarah dan Kebudayaan Islam*, Vol.8, Issue 1, (Juli, 2020), h. 173-192. <http://dx.doi.org/10.24235/tamaddun.v8i1.6325>.

⁴⁵ *Ibid.*, h. 183.

Tahlil marriage is one of the legal products of the Shafi'i School of law. As explained above, Shafi'i school considers that tahlil marriage is a valid marriage even though the law is makruh. The familiarity of a legal act makes it not in the condemnation of society, because it is only the illegal law that makes people really stay away from it. Makruh is a legal act that is initially prohibited but has no implications in the form of sin even though avoiding it is a virtue that is worth a reward.⁴⁶

As a product of the Shafi'i School of law, reviews of the legal status of tahlil marriage can be found in classical jurisprudence that has long been taught in Islamic boarding schools in Indonesia until today. Clearly the books mention that the marriage tahlil law is makruh and valid as long as in the contract there is no tahlil conditions, marriage time limits and other conditions that make the marriage contract is broken. The teachings of classical jurisprudence have long been integrated into the pesantren curriculum, making it a standard study that must be taken by every santri. Among them are fathwahhab, fathulqorib, mahallidan and other Shafi'i books and their derivatives.

The traces of the teaching of the classic book with Shafi'i style are also inseparable from the role of the ulama who spread Islam in Indonesia. The classical books taught in pesantren as discussed above used to be a recognized source of legal reference. As well as in the 13th century the book of Minhaj at-Talibini by Imam Nawawi which was once a reference to religious law in the Kingdom of Samudera Pasai, the first Islamic kingdom in Indonesia.⁴⁷ After that in the 14th century the spread of the teachings of the Shafi'i school widened to the Kingdom of Malacca where the official Islamic law of the kingdom patterned Shafi'i school. So it becomes natural if the successor of the current ulama continues to teach and practice the teachings of the Shafi'i school, tahlil marriage is one of them.⁴⁸

Cases of tahlil marriages that occurred in Sumatra such as in Aceh, Jambi and other Malay areas, confirm that there are adherents of the Shafi'i school in the majority. The adherence of the adherents of this school shows that the level of alignment with Islamic law is still high compared to national law. This fanaticism is strengthened inversely proportional to the public's legal awareness of positive law which far considers aspects of

⁴⁶ Wahbah Zuhaili, *Fiqh Imam Syafi'i Mengupas Masalah Fiqhiyah Berdasarkan Al-Qur'an dan Hadis*, alih bahasa Muhammad Afifi dan Abdul Hafiz (Jakarta: Almahira, 2012), h. 514.

⁴⁷ Abdul Rahman Haji Abdullah, *Pemikiran Umat Islam di Nusantara* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1990), h. 120.

⁴⁸ M.B. Hoeker, *Islamic Law in Southeast Asia* (Singapore: Oxford University, 1984), h. 11-13.

benefit, especially Human Rights (HAM). Therefore, it is important for legal activists, especially the role of the Office of Religious Affairs (Kua) in each district to socialize the importance of legal awareness for every citizen regardless of ethnic background and origin of a teaching that is adopted.

Religious dogmas should be reconstructed regarding their legal relevance in view of the current situation. Public understanding should be stimulated little by little to look more broadly at the modern Islamic legal order that focuses on the trinity of legal objectives, namely certainty, expediency and legal justice. The importance of legal independence from classical jurisprudence towards contemporary jurisprudence that is more sensitive to the needs of the times, especially the clauses of jurisprudence related to social (muamalah). If not, then social inequality will continue to occur, jurisprudence is no longer seen as a solution and will itself bring down the existence of jurisprudence itself as the grip of Islamic law.

CONCLUSION

The practice of tahlil marriage in Indonesia is inseparable from the role of the Shafi'i school which has long been a reference for Community Law in Indonesia. The understanding of Shafi'i school has spread almost to all corners, making Indonesian people mostly adhere to the teachings of this school. This is reinforced by the propagators of Islam who are also Shafi'i. The existence of the Shafi'i school in Indonesia still survives, especially supported by scholars, community leaders and Indigenous leaders who use the Shafi'i school as a solution to problems when there is legal confusion that occurs in the community. The influence of the Shafi'i school makes the customary law that lives in the community affected, both in terms of worship, muamalah and marriage in particular.

The merging of the Shafi'i school into the customary law system makes a slice of law that tries to combine customary law with Islamic law. As the practice of tahlil marriage which is basically a legal product of the Shafi'i school, but because it meets customary law, tahlil marriage is also adopted as a legal solution for Indigenous people. Of course this is a consequence of marriage jurisprudence adopted by custom in full, then tahlil marriage is an integral part of the series of marriage jurisprudence in Shafi'i school. Although positive law is trying to shift the role of customary law, it cannot be denied that some Indonesian people still persist with their perception of customary law. This legal dependence makes positive law less effective, so that the teachings of the Shafi'i school such as the practice of tahlil marriage above still have a place in society.

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