

## A Comparative Analysis of Abū Ḥanīfa's and Imām Mālik's Views on Nikāḥ Taḥlīl

a,<sup>1</sup> Muh. Syakur b,<sup>2</sup>\* Sarmiyati, c,<sup>3</sup> Muhammad Zaki Tamami d,<sup>4</sup> Sumarjoko

<sup>a</sup> INISNU Temanggung, Indonesia ;

<sup>b</sup> INISNU Temanggung, Indonesia;

<sup>c</sup> İslam İlimleri, Selçuk Üniversitesi, Türkiye;

<sup>d</sup> INISNU Temanggung, Indonesia

<sup>1</sup> emha.syakur@gmail.com; <sup>2</sup>sarmiyati.77@gmail.com ; <sup>3</sup>zaki.tamami11@gmail.com;<sup>4</sup>sumarjoko.kusumo@gmail.com

\*Correspondent Author

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### ABSTRACT

*This study examines the legal perspectives on nikah muhallil (or nikah tahlil) according to Imam Abu Hanifah and Imam Malik, highlighting the differences in their jurisprudential methodologies and ethical considerations. Nikah muhallil refers to a marriage conducted to render a woman lawful for her first husband after she has been divorced three times (talāq thalāthah). Using a qualitative doctrinal and comparative approach, this research analyzes classical fiqh texts, prophetic traditions (hadith), and scholarly interpretations to understand the reasoning behind each scholar's position. The findings indicate that Imam Abu Hanifah permits nikah muhallil under certain conditions, emphasizing the validity of the marriage contract even if conditional terms are attached, while considering the intention of the second husband as relevant to the moral evaluation. In contrast, Imam Malik strictly prohibits marriages arranged solely to circumvent the prohibition of returning to a former spouse, asserting that such acts invalidate the contract and are morally equivalent to zina (fornication/adultery). The study concludes that both approaches, though differing in legal reasoning and ethical emphasis, contribute to the development of Islamic family law by balancing formal legal validity with moral and spiritual considerations. This comparative analysis provides insight into how classical juristic methodologies can inform contemporary applications of Islamic marital law.*

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## Introduction

The *tingkeban* Marriage in Islam is a Sunnah of the Prophet Muhammad (peace be upon him) as well as a natural human need aimed at establishing a family characterized by *sakinah*, *mawaddah*, and *rahmah*. The Qur'an emphasizes the noble purpose of marriage as stated in the following verse: "And among His signs is that He created for you spouses from among yourselves so that you may find tranquility in them, and He placed between you affection and mercy." (Qur'an, al-Rūm [30]: 21) This verse indicates that marriage is not merely a biological bond but a sacred institution that requires physical, psychological, and spiritual preparedness. Therefore, adequate knowledge of marital regulations, both prior to and following the marriage contract, is essential to realizing the objectives of marriage in accordance with Islamic law (Nuha, n.d.).

Islam places great emphasis on preserving the integrity of the family. Although divorce is legally permissible, it is regarded as the most detested of lawful acts. This is reflected in the Prophetic tradition: "The most detestable of lawful things in the sight of Allah is divorce. (Reported by Abū Dāwūd) Divorce affects not only the relationship between spouses but also undermines family stability, exposes private domestic matters, weakens social cohesion, and generates broader psychological and social consequences (Balai Pustaka, 2020). Accordingly, divorce should be considered a last resort after all avenues of reconciliation have been exhausted.

One of the most critical legal issues arising from divorce in Islamic family law concerns the implications of triple divorce (*ṭalāq thalāthah*). The Qur'an explicitly regulates this matter, stating: "And if he divorces her [for the third time], then she is not lawful to him thereafter until she marries another husband." (Qur'an, al-Baqarah [2]: 230) This verse constitutes the normative foundation of the concept of *nikāḥ taḥlīl*, namely the marriage of a woman who has been divorced three times to another man before she may lawfully remarry her former husband. However, in contemporary practice, *nikāḥ taḥlīl* is often misunderstood and, in some cases, deliberately manipulated through prearranged agreements to dissolve the second marriage shortly after its conclusion. Such practices contradict the objectives of Islamic law and are strongly condemned in the following hadith: "Allah has cursed the one who performs *taḥlīl* and the one for whom *taḥlīl* is performed." (Reported by al-Tirmidhī and Ibn Mājah)

Nikāḥ taḥlīl represents a complex juridical issue marked by significant اختلاف (differences of opinion) among classical Muslim jurists, particularly with regard to the validity of the marriage contract, the role of intention, and the objectives of marriage. These differences are clearly reflected in the legal reasoning of major Sunni schools of law, notably the Hanafi school represented by Abū Ḥanīfah and the Maliki school developed by Imām Mālik. Their distinct methodological approaches to legal interpretation result in divergent legal conclusions concerning nikāḥ taḥlīl. Based on this background, a comparative analysis of the views of Abū Ḥanīfah and Imām Mālik on nikāḥ taḥlīl is both necessary and significant. Such a study is expected to contribute to a deeper and more balanced understanding of the concept, while also offering valuable insights for addressing contemporary issues in Islamic family law.

### Method

This study uses a qualitative doctrinal legal research design with a comparative approach, focusing on the legal opinions of Abū Ḥanīfah and Imām Mālik on nikāḥ taḥlīl within Islamic family law. Classical fiqh texts, commentaries, and juristic works of both scholars and their leading disciples serve as primary sources, while contemporary scholarly works and journal articles provide secondary insights. Data were collected through library research and analyzed descriptively and comparatively. Descriptive analysis presents each scholar's position systematically, while comparative analysis identifies similarities, differences, and methodological approaches. The study applies uṣūl al-fiqh principles, including Qur'anic interpretation, Prophetic traditions, legal intent (niyyah), and objectives of Islamic law (maqāṣid al-sharī'ah), to understand how juristic methodologies shape rulings on nikāḥ taḥlīl and their relevance to contemporary Islamic family law.

### Results

#### The Legal Ruling on Nikah Muhallil According to Imam Abu Hanifah

The term muhallil originates from the Arabic root hallala, meaning "to make lawful" or "to permit." It refers to a practice in which a man (muhallil) marries a woman who has been divorced three times (talāq thalāthah) by her former husband (muhallal), with the intention of making her lawful for her first husband to remarry. This type of marriage, known as nikāḥ taḥlīl or nikāḥ muhallil, existed even before Islam and is often referred to as nikāḥ ḥalālah, signifying the act of rendering a previously prohibited union permissible.

Nikāḥ taḥlīl specifically addresses situations where a woman has been subjected to

triple divorce by her former husband, which legally prevents reconciliation between them. In such cases, the woman must marry another man and consummate that marriage before she can lawfully return to her first husband. Encyclopedic sources of Islamic law define *nikāḥ muhallil* as a marriage intended to render the woman lawful for her former spouse, typically involving a conditional agreement: once the marriage is consummated, it ends, thereby permitting her remarriage to her original husband. The man who facilitates this process is called the *muhallil*, while the former husband orchestrating it is referred to as the *muhallal*.

In terms of legal requirements, *nikāḥ muhallil* may include specific conditions expressed during the marriage contract, such as: "I marry you to him with the condition that the marital relationship ends after consummation." According to Imam Abu Hanifah, while such conditions may be included, they do not invalidate the marriage. The *nikāḥ* remains valid even if the stipulated condition is legally flawed or unenforceable, and the prohibition against attaching conditions applies only to matters unrelated to the permissibility of marriage itself. As stated in *al-Mabsut* and *Badai'i As-Shanai'i*, a marriage conducted with or without such conditions is valid, and the woman becomes lawful for her first husband once she has consummated the union with the second husband.

Furthermore, Imam Abu Hanifah emphasizes that the intention of the second husband matters: if his intention is to reconcile the divorced couple, the marriage carries spiritual merit; if his motive is solely to satisfy personal desire, the marriage is still legally valid but considered *makruh* (discouraged). Thus, under Hanafi jurisprudence, *nikāḥ muhallil* conducted according to these principles is considered valid and permissible, regardless of conditional stipulations included in the contract.

### **The Legal Ruling on Nikah Muhallil According to Imam Malik**

*Nikah muhallil* or *nikah tahlil* refers to a marriage intended to render a previously prohibited union lawful (Asy-Sarakhasi, n.d.). According to Islamic encyclopedic sources, *nikah muhallil* involves a man marrying a woman who has been divorced three times (*talāq thalāthah*) by her former husband and whose waiting period (*'iddah*) has ended, with the purpose of making her lawful for her first husband. However, Imam Malik and classical Maliki jurisprudence view such marriages with strong caution, as they are often akin to temporary or sham unions, whose primary aim is not the formation of a genuine marital bond.

Historical narrations indicate that the Prophet Muhammad (peace be upon him) strongly condemned *nikah muhallil*. For example, it is reported that Rifaah bin Simwal

divorced his wife Tamimah bin Wahab three times during the Prophet's era. Abdurahman bin Zahir then married her with the intention that she could later return to Rifaah. Upon inquiry, the Prophet forbade this, saying: "She is not lawful for you until she has first tasted the sweetness of marriage with another" (Malik, 2013). The Prophet further cursed both the muhallil (the man who facilitates the union) and the muhallal lahu (the man who is used to make the woman lawful). Similarly, Ibn Umar reported that a man who married a woman divorced three times and then divorced her so that her former husband could remarry her was prohibited from doing so. In the Prophet's time, such marriages were considered tantamount to adultery or unlawful sexual relations (Al-Baihaqi, 2009).

Imam Malik relied on these prophetic traditions (hadith), particularly those narrated by Ibn Mas'ud, which explicitly curse both the facilitator and the participant of such marriages. These hadiths were also authenticated by Imam al-Nasa'i and Imam Tirmidhi. According to Maliki jurisprudence, a nikah muhallil must have a valid marriage contract ('aqd). Any attempt to impose conditions aimed solely at rendering the woman lawful for her first husband invalidates the contract. As stated in al-Muwatta', if a man and woman enter such a union merely by agreement to satisfy the first husband, the marriage is considered invalid, and a new, legitimate contract is required. The woman is entitled to her dowry (mahr), while the intermediary (muhallil) has no right to claim it (Karim, n.d.).

Islam strictly prohibits using a woman's marital status to create sham or transactional marriages. Such acts, designed only to circumvent the prohibition of returning to a former spouse, are regarded as immoral and akin to prostitution or zina (fornication/adultery). As the companions of the Prophet emphasized, what is unlawful cannot be rendered lawful through human manipulation, and what is inherently impure or reprehensible cannot be sanctified (Abdurrahman, 2006). In summary, Imam Malik's legal position underscores the sanctity of marriage, condemns manipulative nikah tahlil, and emphasizes the need for genuine consent, lawful intention, and adherence to proper Islamic contractual procedures.

## Discussion

### **Comparative Analysis of Nikah Muhallil According to Imam Abu Hanifah and Imam Malik**

The concept of nikah muhallil or nikah tahlil marriages intended to make a woman lawful for her first husband after triple divorce has been addressed differently by Imam Abu

Hanifah and Imam Malik. According to Imam Abu Hanifah, *nikah muhallil* is legally valid even if it includes conditional terms, such as stipulations that the marriage will end after consummation to permit the woman's return to her first husband. As stated in *al-Mabsut* and *Badai'i As-Shanai'i*, "if the marriage contract is valid, the marriage is considered lawful, and any defective condition does not invalidate the contract" (Asy-Sarakhasi, n.d.; Al-Jaziri, 2017). Abu Hanifah emphasizes that the marriage remains permissible (*halal*) for the first husband after the woman has consummated her union with the second husband, while the intention of the second husband affects the moral valuation: if his intention is to reconcile the divorced couple, he gains reward, whereas a purely self-serving motive renders the act *makruh* (discouraged) but does not nullify the marriage.

In contrast, Imam Malik strongly rejects the permissibility of such marriages when the primary aim is to circumvent the prohibition of returning to a former spouse. He emphasizes the prophetic traditions that explicitly curse both the *muhallil* (the intermediary) and the *muhallal lahu* (the man used to make the woman lawful). Narrations cited in *al-Muwatta'* recount that the Prophet Muhammad (peace be upon him) forbade marriages arranged solely for this purpose, as in the case of Rifaah bin Simwal and Tamimah bin Wahab: "She is not lawful for you until she has first tasted the sweetness of marriage with another" (Malik, 2013). Imam Malik views any conditional arrangement intended to make a woman lawful for her former husband as invalid, as it corrupts the marriage contract. He further considers such acts morally equivalent to prostitution or *zina*, stressing that unlawful acts cannot be rendered permissible through human manipulation (Abdurrahman, 2006; Karim, n.d.).

The key difference between the two positions lies in their treatment of conditional *nikah muhallil* and the permissibility of the marriage for the first husband. Abu Hanifah focuses on the formal validity of the contract and allows conditional arrangements while maintaining legal permissibility for the first husband. Malik, however, prioritizes ethical and moral principles derived from prophetic guidance, rejecting manipulative marriages even if the contract is formally executed. Both schools underscore the significance of intention and adherence to Islamic legal principles, but they diverge on the permissibility of humanly contrived arrangements to circumvent prohibitions.

## Conclusion

Based on the perspectives of Imam Abu Hanifah and Imam Malik, it can be concluded that both scholars developed Islamic legal thought using distinct yet complementary methodologies. Imam Abu Hanifah, who lived in Kufa, a region far from Madinah with a

complex social environment, exercised caution in accepting hadiths and emphasized independent reasoning (ijtihad) to address legal issues not explicitly found in the Qur'an or Sunnah. His legal methodology relied on the Qur'an, Sunnah, the opinions of the Companions, and when clear textual evidence was lacking, he employed qiyas, istihsan, and istishab. The use of rational judgment (ra'y) did not negate the authority of the texts but served to resolve contemporary legal issues in accordance with Sharia principles. In contrast, Imam Malik based his rulings on the Qur'an, Sunnah, the practice of the people of Madinah ('amal ahl al-Madinah), the opinions of the Companions, qiyas, istihsan, and maslahah mursalah. Regarding nikah muhallil, Malik maintained a stricter moral and legal stance, asserting that such marriages were invalid due to the corruption of the contract. If performed with the intention of making the woman lawful for her first husband, the act was deemed prohibited (haram) and akin to zina. According to Malik, a valid marriage must be founded on sincere affection, genuine intention, and free of temporal conditions. Overall, the comparison illustrates how Abu Hanifah's pragmatic and flexible approach complements Malik's ethically grounded and tradition-oriented framework. Together, their methodologies enrich the understanding and application of Islamic family law, balancing rational reasoning with moral and textual fidelity.

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