

## TALĀQ KINĀYAH IN THE PERSPECTIVE OF THE HANAFI AND MALIKI MADHHABS: IMPLICATIONS FOR CONTEMPORARY ISLAMIC JURISPRUDENCE

Riska Mahdiana<sup>\*1</sup>, Alamsyah<sup>2</sup>, Hervin Yoki Pradikta<sup>3</sup>

E-mail: riskamahdiana1@gmail.com

E-mail: alamsyah@radenintan.ac.id

E-mail: hervinyoki@radenintan.ac.id

<sup>123</sup>Universitas Islam Negeri Raden Intan Lampung

<sup>\*</sup>corresponding author

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### Abstract

*The purpose of this study is to examine and uncover the substantive views of the Hanafi and Maliki schools of thought regarding talak kinayah, to identify the similarities and differences between these two schools, and to analyze the legal implications of talak kinayah on contemporary fiqh. This study employs a qualitative research method. It is descriptive-comparative in nature and uses library research as its type of study. The data are analyzed through the perspective of maqashid syariah to observe the implications of talak kinayah on contemporary fiqh. The study finds that both Imams acknowledge that talak kinayah can be used to pronounce divorce, but they differ in the requirement of intention (niyyah); the Hanafi school assesses the validity of talak kinayah based on context and situation, whereas the Maliki school requires a clear intention or evident signs (qarinah). In contemporary practice, this difference influences the determination of divorce legal status, for example, in cases of verbal talak or those conveyed through electronic media. This study contributes to the development of Islamic family law and serves as a foundation for adaptive legal regulations addressing non-formal divorces in the contemporary era.*

**Keywords:** *Kinayah Divorce, Hanafi, Maliki, Contemporary Fiqh.*

### INTRODUCTION

Marriage is a sacred bond between a husband and wife that is closely tied to faith and devotion to Allah. Therefore, marriage is not merely based on individual desire but also encompasses an element of worship. To build a family that is *sakinah*, *mawaddah*, and *rahmah*, marriage must be preserved and nurtured.<sup>1</sup> However, achieving this ideal is not

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<sup>1</sup>Riza Anissa Triana S and Sahrudin, "Analisis Terhadap Putusan Hakim Dalam Kasus Cerai (Studi Putusan Nomor 64/ Pdt.G./2013/PA.Mtr)," *Jurnal Private Law Fakultas Hukum Universitas Mataram* 3, no. 1 (February 2023): 115–21.

easy. Many married couples ultimately decide to divorce due to a lack of harmony within the household. One of the major contributing factors is conflict and differences of opinion.<sup>2</sup>

In many households, it is not uncommon for a husband to harbor resentment towards his wife, or vice versa. If such conditions persist, they can lead to harm (*maḍarrah*). Islam emphasizes the importance of patience and self-restraint in such circumstances.<sup>3</sup> Given that the continuity of marriage lies with the husband, the right to initiate divorce (*ṭalāq*) is granted to him.<sup>4</sup> The majority of jurists (*jumhūr al-fuqahā`*) agree that there are two types of *ṭalāq*: explicit (*ṣarīḥ*) and implicit or allusive (*kināyah*).<sup>5</sup> From the early stages of Islamic legal development, Islamic law has recognized and regulated the concept of implicit divorce (*ṭalāq kināyah*).

Initially, the application of *ṭalāq kināyah* was based on the principle that a husband's intent to divorce his wife could be accepted, even if it was not explicitly stated using the term "*ṭalāq*." The emphasis was placed on the husband's intention. However, over time, various Islamic schools of thought have proposed differing interpretations regarding the concept of *ṭalāq kināyah*. For example, the Ḥanafī school provides specific regulations on how *ṭalāq kināyah* should be understood and applied, while the Mālīkī school offers alternative provisions that consider the socio-cultural context of each community.<sup>6</sup>

In recent times, cases of divorce conveyed through social media platforms such as WhatsApp, Telegram, and Instagram have become increasingly common. Classical scholars such as Imām al-Shāfi'ī, Imām Mālīk, and Imām Abū Ḥanīfah classify divorce by writing—including messages sent via social media—as *kināyah*, since written words are not considered explicit expressions of divorce and therefore require an accompanying

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<sup>2</sup>Rusli Halil Nasution, "Talak Menurut Hukum Islam," *Al-Hadi* 3, no. 2 (2018): 707.

<sup>3</sup> Bagus Kusumo Hadi, Mohammad Mukri, and Edi Susilo, "Implikasi Hukum Khulu' Menurut Empat Madzhab Fiqh," *El-Izdiwaj: Indonesian Journal Of Civil And Islamic Family Law* 3, no. 2 (2022): 22-23.

<sup>4</sup> Musdalipa R and Lukman Hakim, "Studi Komparatif Antara Mazhab Maliki Dan Mazhab Hanafi Tentang Talak Mua'allaq Dengan Kalimat Insya Allah," *Jurnal Studi Keislaman* 2, no. 1 (2021): 44.

<sup>5</sup> Muhammad Yasin Yusuf, Intania Rafi'ah Ramadhani, and Sya'roni, "Hakikat, Majas, Sharih, Kinayah," *Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 10 (2024): 809.

<sup>6</sup> Muhammad Hanil, Erfandi. AM, and Muh. Chiyar Hijaz, "Pendangan Tokoh Masyarakat Tentang Talak Kinayah Dalam Perspektif Hukum Islam (Di Kelurahan Kaluku Bodoa, Kecamatan Tallo, Kota Makassar)," *JICN: Jurnal Intelek Dan Cendikiawan Nusantara* 2, no. 1 (2025): 354.

intention.<sup>7</sup> In daily life, phrases of *kināyah* are frequently used. For example, in a household setting, a husband might indirectly criticize his wife to discourage disobedience by saying, “A wise Muslim woman does not fall into the same trap twice.” Such remarks, though seemingly minor, can affect household harmony. Moreover, *kināyah* phrases can substitute for the explicit statement “I divorce you,” with more subtle expressions such as “Return to your parents’ home” or “You are free from me.” It is crucial to determine whether such phrases are intended as a declaration of divorce or carry other meanings.

Public knowledge regarding *ṭalāq kināyah* remains extremely limited; most people are only familiar with *ṭalāq ṣarīḥ* (explicit divorce). This lack of understanding poses a significant risk to marital stability. The use of ambiguous language in matters of divorce can be detrimental. A husband might pronounce a *ṭalāq kināyah* in jest, unaware of its legal implications and mistakenly believing that a divorce is only valid if stated explicitly. This misconception, stemming from a lack of knowledge, can lead to irreversible consequences.<sup>8</sup>

Previous literature on this subject includes the following: First, a thesis by Ahmad Alwi Mughoffar titled “A Comparative Study of the Legal Weight of *Ṭalāq Ṣarīḥ* and *Ṭalāq Kināyah* According to Imam Al-Ghazi and Imam Nawawi” (2023), which found that while both scholars agreed on the validity of explicit divorce, they differed on implicit divorce. Imam Al-Ghazi maintained that *ṭalāq kināyah* is only valid with a clear intention from the husband, whereas Imam Nawawi held that *ṭalāq kināyah* is valid as long as the utterance is intended as divorce, even if the intention is not clearly expressed. Second, a journal article by Umar entitled “An Analysis of the Legal Maxims of Divorce and Their Application in Family Law” (2024) concluded that a valid divorce must be based on legitimate grounds and reasons. If a divorce occurs without valid justification, the husband bears moral and religious consequences. Third, a journal article by Fitri Maylan Haq, Fatmawati, and Abd. Rauf Amin titled “A Comprehensive Analysis of *Ṣarīḥ* and *Kināyah* Expressions: Meaning,

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<sup>7</sup> M. Tatam Wijaya, “Jatuh Talak Via WA, Email, SMS, Atau Aplikasi Pesan Lainnya?” 22 Juli 2019, URL: <https://islam.nu.or.id/nikah-keluarga/jatuhkah-talak-via-wa-email-sms-atau-aplikasi-pesan-lainnya-taSpQ>

<sup>8</sup> Aqsol Zidan Hanafi and Khoirul Akhsan, “Hukum Penjatuhan Talak Dengan Bahasa Kiasan Dalam Perspektif Madzhab Syafi’i Dan Hukum Positif,” *Jurnal Ilmu Islam* 8, no. 3 (2024): 1455–1456.

*Application in Texts, and Legal Implications*” (2024) found that *ṣarīḥ* and *kināyah* expressions differ significantly in meaning and legal application. *Ṣarīḥ* expressions are self-evident and do not require additional intention, while *kināyah* expressions require interpretation to ascertain their meaning, and thus must be accompanied by intent.

This research presents several novelties compared to previous studies: First, while Ahmad Alwi Mughoffar’s study emphasized the differing views of Imam Al-Ghazi and Imam Nawawi, this research offers a new contribution by comparing the perspectives of the Ḥanafī and Mālīkī schools of thought on *ṭalāq kināyah*, focusing on their practical impact on Islamic family law. Second, unlike Umar’s study which addressed legal maxims of divorce in general, this research adopts a more specific and in-depth comparative approach to how *ṭalāq kināyah* is interpreted and implemented in the Ḥanafī and Mālīkī schools and explores its implications in contemporary Islamic jurisprudence. Third, while the study by Fitri Maylan Haq and colleagues focused on conceptual analysis of *ṣarīḥ* and *kināyah* expressions, this research introduces a new perspective by comparing two classical legal schools and contributes to a deeper understanding of interpretative diversity in Islamic family law.

To date, there has been no comprehensive study comparing the views of the Ḥanafī and Mālīkī schools specifically on the issue of *ṭalāq kināyah*. Therefore, this research seeks to explore the topic more thoroughly under the title: “*Kināyah Divorce in the Perspective of the Ḥanafī and Mālīkī Schools: Implications for Contemporary Islamic Jurisprudence.*” This study will focus on three main questions: (1) What are the views of the Ḥanafī and Mālīkī schools regarding *ṭalāq kināyah*? (2) What are the similarities and differences between these two schools concerning *ṭalāq kināyah*? (3) What are the implications of these differing views for contemporary Islamic jurisprudence? The objectives of this study, therefore, are: (1) To identify the views of the Ḥanafī and Mālīkī schools on *ṭalāq kināyah*; (2) To analyze the similarities and differences between these views; and (3) To examine the implications of these divergent interpretations for contemporary Islamic jurisprudence.

It is hoped that this research will enrich the body of knowledge in the field of Islamic legal studies, particularly regarding the topic of *ṭalāq kināyah*, which remains relatively unfamiliar to the general public.

## **METHOD**

This study employs a qualitative research method, as it adopts a descriptive-analytical approach aimed at describing and analyzing a particular phenomenon or issue under investigation. The type of research conducted is library research, which involves data collection through the examination and analysis of books, journals, records, literature, and various other relevant reports associated with the research problem. This study is descriptive-comparative, seeking to systematically describe the legal views of the Hanafi and Maliki schools regarding kināyah divorce and to compare the similarities and differences between the two perspectives. The analytical framework applied in this research is the *maqāṣid al-sharī'ah* approach. This approach is employed because it focuses on achieving the primary objectives of Islamic law. Through this lens, the study not only presents normative legal data but also evaluates its alignment with the public interest (*maṣlaḥah*) in the context of contemporary family law.

The data sources used in this study consist of primary and secondary sources. The primary sources include classical legal texts that specifically discuss the views of the Hanafi and Maliki schools, such as *Al-Fiqhu 'Ala al-Madhāhib al-Arba'ah* (Volume 4), *Bidāyat al-Mujtahid*, *Al-Majmū' Sharḥ al-Muhadhdhab*, and other works on Islamic jurisprudence. The secondary sources comprise scholarly books, academic journals, and relevant websites that support the topic under study.

## **RESULT AND DISCUSSION**

### **1. Definition of *Talāq Kināyah***

Etymologically, the term *talāq* derives from the Arabic word *itlāq*, which means "to release" or "to let go." In Islamic family law, *talāq* refers to the dissolution of the marital

bond between a husband and wife.<sup>9</sup> When a *talāq* is pronounced, the marital relationship is terminated, and the wife becomes unlawful (*ḥarām*) to her husband unless a new marriage contract is established in accordance with Islamic legal requirements.<sup>10</sup>

The term *kināyah* refers to an indirect or ambiguous expression. It is defined by classical scholars as follows:

*“An expression whose intended meaning remains hidden until clarified by contextual evidence.”*

A *kināyah* expression typically carries multiple meanings, requiring further clarification to determine the speaker's true intent. For instance, when a husband says to his wife, “Return to your parents' home,” the statement may imply divorce, but it may also merely suggest a temporary visit, depending on the context and the husband's intention.<sup>11</sup> Based on this understanding, *talāq kināyah* is a form of divorce declaration in which the husband uses figurative or allusive language that can carry dual interpretations—either indicating a divorce or something else. The legal effect of such a statement is contingent upon the husband's *niyyah* (intention) at the time of utterance.<sup>12</sup>

## **2. A Brief Biography of Imam Abu Ḥanīfah and Imam Mālik**

### **a. A Brief Biography of Imam Abu Ḥanīfah**

Imam Abu Ḥanīfah's full name was al-Nu'mān ibn Thābit ibn Zūṭā, though in some sources he is referred to as al-Nu'mān ibn Thābit ibn al-Marzubān. He was born in 80 AH (699 CE) in the city of Kūfah, Iraq, and passed away in 150 AH (767 CE) in Baghdad. Abu Ḥanīfah was a prominent jurist (*faqīh*) and a leading *mujtahid* who founded the Ḥanafī school of thought. The Ḥanafī madhhab, which originated with him, was further developed by his students and successors, and became known for its systematic use of *ijtihād*, particularly through the methods of *qiyās* (analogical reasoning) and *istiḥsān*

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<sup>9</sup> M. Muhsin and Soleh Hasan Wahid, “Talāk Di Luar Pengadilan Perspektif Fikih Dan Hukum Positif,” *E-Journal Al-Syakhsyiyah Journal Of Law and Family Studies* 3, no. 1 (2021): 68.

<sup>10</sup> Hilman Kamiludin, “Penjatuhan Talak Melalui Aplikasi WhatsApp Ditinjau Dari Hukum Islam Dan Hukum Positif,” *An-Nahdliyyah: Jurnal Studi Keislaman* 2, no. 2 (2023): 88.

<sup>11</sup> Mezi Watdila Idri, “Penerapan Sharih Dan Kinayah Dalam Perceraian.” *Sakena: Jurnal Hukum Keluarga* 9, no. 2 (2024): 48.

<sup>12</sup> Lutfiah and Titin Samsudin, “Lafadz Sharih Dan Kinayah Dalam Talak Dan Perceraian.” *As-Syams: Journal Hukum Islam* 2, no. 2 (2021): 8.

(juridical preference), thus often associated with the *Ahl al-Ra'y* (the people of rational opinion) of Iraq.<sup>13</sup>

Imam Abu Ḥanīfah was renowned not only for his profound scholarship but also for his noble character. He was known to be humble, dignified, intelligent, and gentle in demeanor. From a young age, he memorized the Qur'an and devoted himself to its study. In addition to mastering the Qur'an, he pursued the sciences of jurisprudence (*fiqh*) and Prophetic traditions (*ḥadīth*), studying under several notable companions of the Prophet or their close successors. Among his teachers were Anas ibn Mālik, 'Abdullāh ibn 'Awf, and Abū Ṭufayl 'Āmir, among others.

In the field of Islamic theology (*'ilm al-kalām*), he authored *al-Fiqh al-Akbar*, a foundational text outlining key theological principles. His contributions in ḥadīth include a collection known as *al-Musnad*. The works most directly attributed to him include *al-Fiqh al-Akbar*, *al-Ālim wa al-Muta'allim*, and *Musnad*.<sup>14</sup>

#### b. A Brief Biography of Imam Mālik

Imam Mālik was born in the city of Madinah in 93 AH (713 CE) and died on the 10th of Rabi' al-Awwal, 179 AH (798 CE). His full name was Abū 'Abdillāh Mālik ibn Anas al-Aṣḥabī al-'Arabī ibn Mālik ibn Abī 'Āmir ibn al-Ḥārith. As one of the four eminent imams of Sunni jurisprudence, Imam Mālik studied religious sciences under many scholars of Madinah, including Imam 'Abd al-Raḥmān ibn Hurmuz. He also studied ḥadīth under Nāfi', the freed slave of 'Abdullāh ibn 'Umar. Additionally, he received instruction in jurisprudence from Rabī'ah al-Ra'y.<sup>15</sup>

Imam Mālik was noted for his strong moral character, intellectual brilliance, courage, and steadfastness in upholding the truth. He was particularly firm and principled in issuing legal rulings. Endowed with a remarkable memory, he memorized both the Qur'an and numerous Prophetic traditions with exceptional precision.

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<sup>13</sup> Murni Utami, Noor Hafizah, and Nurul Izatil Hasanah, "Mazhab Hanafiah Dan Perkembangannya: Sejarah Dan Peta Pemikiran," *Journal Islamic Education* 1, no. 2 (2023): 24-25.

<sup>14</sup> Achmad Sopian, "Kitab Fiqh Al-Akbar Karya Imam Abu Hanifah," *An-Nawa: Jurnal Studi Islam* 3, no. 2 (2021): 80-81.

<sup>15</sup> Danu Aris Setiyanto, "Pemikiran Hukum Islam Imam Malik Bin Anas (Pendekatan Sejarah Sosial)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 1, no. 2 (2016): 106-107.

Among his notable works are *al-Muwatṭaʿ*, *Kitāb al-Aqdiyyah*, *Kitāb al-Nujūm*, *Ḥisāb Madār al-Zamān*, *al-Mudawwanah al-Kubrā*, *Tafsīr al-Qurʿān*, *Kitāb Masāʿil Islām*, *Risālah ilā al-Layth*, and *Risālah ilā Ibn Wahb*. However, only two of his works have survived in full and are widely available today: *al-Muwatṭaʿ*, which is a comprehensive collection of ḥadīth and legal rulings, and *al-Mudawwanah al-Kubrā*, which records Imam Mālik's fatwas and his legal positions on a wide array of issues.<sup>16</sup>

### 3. The Hanafi And Maliki Madhhabs' Views On Ṭalāq Kināyah

Divorce (*ṭalāq*) is a crucial element that affects the stability of marital life. It is categorized into two types: explicit divorce (*ṭalāq ṣarīḥ*) and implicit divorce (*ṭalāq kināyah*). *Ṭalāq ṣarīḥ* refers to clear and direct statements of divorce, requiring no further interpretation to understand their intent. In contrast, *ṭalāq kināyah* involves indirect or ambiguous expressions that do not explicitly indicate divorce but can be interpreted as such.<sup>17</sup> According to Abu Ḥanīfah and Imam Mālik, only expressions that directly use the word *ṭalāq* are considered *ṣarīḥ*, while all other expressions fall under *kināyah*.<sup>18</sup>

The Ḥanafī school maintains that the effectiveness of *ṭalāq kināyah* does not necessarily depend on deliberate intent or prior intention to divorce. Instead, the meaning is determined by the surrounding context in which the expression is uttered. If the context does not clearly indicate an intention to divorce, then a specific intention (*niyyah*) is required to validate the divorce.<sup>19</sup> In contrast, the Mālikī school holds that *ṭalāq kināyah* is not valid without an accompanying intention to divorce. This is because such expressions are not always used in legal or customary contexts to indicate divorce. Thus, intention becomes a necessary condition for the pronouncement to be considered valid.<sup>20</sup> The Mālikī position is based on the Prophetic statement:

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<sup>16</sup> Hervin Yoki Pradikta, Aizzatur Rodhiyah, and Tiara Rica Dayani, "Pandangan Mazhab Imam Maliki Dan Mazhab Imam Syafi'i Tentang 'Azl Sebagai Upaya Pencegahan Berketurunan," *El-Izdiwaj: Indonesian Journal Of Civil And Islamic Family Law* 4, no. 1 (2023): 35-36.

<sup>17</sup> Muhammad Hanil, Erfandi. AM, and Muh. Chiyar Hijaz, "Pandangan Tokoh Masyarakat Tentang Talak Kinayah Dalam Perspektif Hukum Islam (Di Kelurahan Kaluku Bodoa, Kecamatan Tallo, Kota Makassar)." *JICN: Jurnal Intelek Dan Cendekiawan Nusantara* 2, no. 1 (2025): 360.

<sup>18</sup> Lutfiah and Titin Samsudin, "Lafadz Sharih Dan Kinayah Dalam Talak Dan Perceraian." *As-Syams: Journal Hukum Islam* 2, no. 2 (2021): 7.

<sup>19</sup> Mezi Watdila Idafi, "Penerapan Sharih Dan Kinayah Dalam Perceraian." *Sakena: Jurnal Hukum Keluarga* 9, no. 2 (2024): 50.

<sup>20</sup> Lutfiah and Titin Samsudin, "Lafadz Sharih Dan Kinayah Dalam Talak Dan Perceraian." *As-Syams: Journal Hukum Islam* 2, no. 2 (2021): 8.



“Indeed, actions are judged by intentions”.<sup>21</sup>

Regarding the classification of *ṭalāq kināyah*, the Ḥanafī school divides it into three categories:

- a. Kināyah statements that clearly respond affirmatively to a request for divorce.
- b. Kināyah statements that may either affirm or reject a request for divorce.
- c. Kināyah statements that respond to a request for divorce but may also be interpreted as insults or derogatory remarks towards the wife.

According to the Ḥanafī view, if the husband and wife are engaged in a discussion about divorce (*mudhākarah al-ṭalāq*), then the divorce is legally effective regardless of intention—except in the second category, where the statement could imply either acceptance or rejection of the request. In such cases, the husband's intention remains necessary. In a calm and agreeable situation (*riḍā*), none of the three types are considered valid unless accompanied by intention. In a state of anger (*ghaḍab*), only the first type is deemed effective without requiring intention, while the second and third types still depend on it.<sup>22</sup>

According to Abū Ḥanīfah, expressions such as “You are distant,” “separated,” “forbidden,” “free,” “go back to your parents,” or “leave” do not require intention for the divorce to be valid. However, phrases such as “Your private parts belong to another,” “Empty your womb,” or “Go into hiding” require explicit intention.<sup>23</sup>

If a *kināyah* expression is apparent (*ẓāhir*) and pronounced with the intention to divorce but without specifying the number of divorces, and it is used as a response to the wife's request for divorce, then the husband's statement is accepted regarding both the divorce and the number of divorces. Abū Ḥanīfah opines that if the husband acknowledges one divorce, then only one is counted, and he must swear an oath accordingly. In contrast, hidden or unclear *kināyah* expressions—such as “Leave” or “Go away”—are treated similarly to apparent *kināyah*. If no number is intended, one divorce is enacted; if two or three are intended, then two or three are valid respectively.

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<sup>21</sup> Ibnu Rusyd, *Bidayatul Mujtahid* (Pustaka Azzam, 2007): 150.

<sup>22</sup> Abdul Rahman Al-Jaziri, *Kitab Al-Fiqh 'Ala Al-Madzhaib Al-Arba'ah* (Darul Kutub Al Ilmiah Beirut, 2003): 287-289.

<sup>23</sup> Imam An-Nawawi, *Al-Majmu' Syarah Al-Muhadzdzab* (Pustaka Azzam, 2015).

Regarding expressions like “observe your waiting period (*‘iddah*),” or “cleanse your womb,” Abū Ḥanīfah holds that a single divorce is enacted even without explicit intention, though the husband retains the right to reconcile.<sup>24</sup> This view is based on the Prophet’s statement:

*“ My ummah is excused for errors, forgetfulness, and thoughts within their hearts”.*

Intention (*niyyah*) without verbal expression is an internal act of the heart. The aforementioned ḥadīth demonstrates that intention alone is insufficient without accompanying action or expression.<sup>25</sup>

Imam Mālik’s view acknowledges the classification of divorce expressions into *ṣarīḥ* and *kināyah* as generally valid but asserts that such classifications may vary across individuals, cultures, and time periods. Thus, a given expression might be considered explicit by one community but metaphorical by another. For instance, the word *al-sarāḥ* (release/divorce) is rarely used by people to express divorce—whether clearly or metaphorically—so it cannot be conclusively said that the utterance of this word constitutes a divorce. Even if the word is known to denote divorce in certain customary or legal contexts, it might still be used in other contexts to mean something different. The Qur’anic verse in al-Aḥzāb (33:49) supports this:

*“O you who believe! When you marry believing women and then divorce them before you have touched them, there is no waiting period for you to count. So provide for them and release them in a gracious manner”.*

Here, the word *sarriḥūhunna* ("release them") does not definitively indicate divorce, which is part of Imam Mālik’s argument. Therefore, one cannot claim that anyone who utters such a word has thereby divorced his wife, regardless of whether he understands its implications or not.<sup>26</sup>

The Mālikī school divides *ṭalāq kināyah* into two categories: ambiguous (*muḥtamilah*) and apparent (*ẓāhirah*). The line separating these two categories is fine and often difficult to distinguish.<sup>27</sup> Ambiguous *kināyah* expressions are further subdivided into three types:

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<sup>24</sup> Teungku Muhammad Hasbi Ash Shiddieqy, *Hukum-Hukum Fiqh Islam* (PT. Pustaka Rizki Putra, 1997): 270-271.

<sup>25</sup> Ibnu Rusyd, *Bidayatul Mujtahid*: 150.

<sup>26</sup> Imam An-Nawawi, *Al-Majmu’ Syarah Al-Muhadzdzab* (Pustaka Azzam, 2015): 502-503.

<sup>27</sup> Desi Asmaret, “Perceraian Melalui Media Sosial (Medsos),” *MENARA Ilmu* XII, no. 6 (2018): 70.

- a. Expressions that linguistically imply divorce but are not customarily used for it, such as *manṭaliqah* (divorced woman) or *maṭlūqah* (released woman).
- b. Expressions that may or may not imply divorce, such as *idhhabī* (go), *inṣarifi* (depart), *anti ḥurrah* (you are free), or *ilqī bi-ahlik* (return to your family).
- c. Indirect expressions unrelated to divorce but uttered with the intention to divorce, such as: "Eat and drink," "Go inside and fetch me water," etc.<sup>28</sup>

Imam Mālik emphasizes that a husband's intention plays a decisive role in ambiguous *kināyah* expressions that are not clearly indicative of divorce. If the husband intends to divorce with expressions like "cleanse your womb," "go into hiding," "despise me," "leave," or "your private parts belong to another," then divorce is enacted accordingly – one or three depending on his specific intention.<sup>29</sup>

As for apparent *kināyah* (*ẓāhir*), Imām Mālik holds that no intention is needed for the divorce to be valid. Utterances such as "distant," "severed," "unlawful," "alone," "free," "separated," or "released" are sufficient in themselves.<sup>30</sup> If the husband claims he did not intend divorce, his statement is categorically rejected unless there is strong circumstantial evidence (*qarīnah*) to support his claim. According to Mālikī doctrine, if a husband has already consummated the marriage and utters a *kināyah ẓāhir*, his claim of less than triple divorce is not accepted – except in the case of *khul'* (divorce initiated by the wife with compensation). However, for a wife who has not been touched, his claim is valid, since any divorce issued in this case is considered *bā'in* (irrevocable). Examples include statements like: "Your bond is in your own hands," "There is no longer any connection between us," or "You are released and free".<sup>31</sup>

Islamic law stipulates that when a husband fulfills the pillars and conditions of divorce, the act is considered legally binding.<sup>32</sup> However, the schools of jurisprudence differ in defining these pillars. The following outlines the perspectives of the Hanafi and Mālikī schools:

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<sup>28</sup> Abdul Rahman Al-Jaziri, *Kitab Al-Fiqh 'Ala Al-Madzhahib Al-Arba'ah*: 290-291.

<sup>29</sup> Ibnu Rusyd, *Bidayatul Mujtahid*: 151-152.

<sup>30</sup> Imam An-Nawawi, *Al-Majmu' Syarah Al-Muhadzdzab*: 494.

<sup>31</sup> Ibnu Rusyd, *Bidayatul Mujtahid*: 151-152.

<sup>32</sup> Rosi Malinda, Moh.Nafik, and Fatimatuz Zahro, "Perbedaan Akibat Hukum Talak Tiga Yang Jatuh Di Luar Dan Di Depan Sidang Pengadilan Perspektif Fiqih Empat Mazhab." *MASADIR: Jurnal Hukum Islam*: 768.

a. The Pillars of Divorce According to the Hanafi School

In the Hanafi school, the pillar (*rukn*) of divorce is the utterance (*ṣīghah*) or expression that conveys the meaning of divorce. This can be linguistically, legally, or customarily understood to indicate separation. This view is notably supported by Al-Kāsānī, a leading scholar in the Hanafi tradition, whose opinions serve as primary references within the school.

b. The Pillars of Divorce According to the Mālikī School

The Mālikī school outlines four essential pillars: Divorce must be issued by a legally competent person, Divorce must be issued deliberately by the husband., The wife must be lawfully married to the husband, There must be an utterance, either explicitly (*ṣarīḥ*) or implicitly (*kināyah*).<sup>33</sup>

Based on the aforementioned pillars, it can be inferred that when using implied (*kināyah*) expressions in divorce, the husband's intent must be made clear. In such cases, the wife is entitled to inquire about the husband's true meaning, or alternatively, may present the matter for adjudication.<sup>34</sup>

#### **4. Similarities and Differences In The Views Of The Hanafi And Maliki Madhhabs On Ṭalāq Kināyah**

Divorce (*ṭalāq*) refers to the dissolution of the marital bond between husband and wife through the use of specific expressions, particularly the word *ṭalāq* and its equivalents. The pronouncement of divorce may be conveyed either verbally (oral declaration) or in written form. In classical Islamic jurisprudence, the expression of divorce is categorized into two types: explicit (*ṣarīḥ*) and implicit (*kināyah*) utterances.<sup>35</sup>

With regard to *ṭalāq kināyah* (implicit or indirect expressions of divorce), both the Hanafi and Maliki schools allow a husband to divorce his wife using such figurative language. However, the Hanafi school formulates its rulings on *ṭalāq kināyah* based on context and circumstances, thereby

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<sup>33</sup> Idris Siregar, Nur Tasya Hariany Sitorus, and Tari Nur Fajri, "Talaq Menurut Perspektif Hukum Dan Sosial Dalam Konteks Islam," *MANDUB: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 3 (2024): 166-167.

<sup>34</sup> Jamhuri and Zuhra, "Konsep Talak Menurut Ibnu Qayyim Al-Jauziyyah (Analisis Waktu Dan Jumlah Penjatuhan Talak)," *Media Syari'ah* 20, no. 1 (2018): 102.

<sup>35</sup> Khairizzaman and Arnia, "Talak Di Luar Pengadilan Dan Implikasinya," *Jurnal Tahqiq* 16, no. 2 (2022): 46-48.

adopting a more flexible approach. In contrast, the Maliki school emphasizes the husband's intention, which must be interpreted in light of the prevailing social and cultural norms.

The following are the points of convergence between the Hanafi and Maliki schools regarding *ṭalāq kināyah*:

- 1) *Ṭalāq kināyah* is considered a valid form of divorce expression, in addition to *ṭalāq ṣarīḥ* (explicit declaration).
- 2) *Ṭalāq ṣarīḥ* is restricted exclusively to the word *ṭalāq*; all other terms are classified under *ṭalāq kināyah*.
- 3) According to both schools, the husband's intention at the time of uttering *ṭalāq kināyah* is a critical factor in determining its validity.
- 4) For *ṭalāq kināyah* that is overt and unambiguous, intention is not required for the divorce to take effect.
- 5) Both schools agree that certain legal elements (*arkān*) must be fulfilled for a divorce to be deemed valid, although they differ in identifying and quantifying these elements.

The differences between the two schools are presented in the following table:

No	Aspect	Hanafi Madhhab	Maliki Madhhab
1	Context of Pronouncement	The validity of <i>ṭalāq kināyah</i> depends on the context and situation in which it is uttered.	Greater emphasis is placed on the husband's intention rather than the context and situation.
2	Emphasis on Intention	Intention is not required if the context and situation clearly indicate divorce; however, if the context does not clearly convey the meaning, then the	<i>Ṭalāq kināyah</i> is not valid without the husband's intention, unless there is external evidence ( <i>qarīnah</i> ) that clarifies the meaning.

		husband's intention is necessary.	
3	Pillars of Divorce	The essential element is the utterance that indicates divorce, regardless of the clarity of intention.	The pillars of divorce include: the divorce must be initiated by a legally competent person, done deliberately, involve a lawful wife, and include a valid utterance.
4	Consideration of 'Urf (Custom)	The role of local custom ('urf) is not taken into account when determining the validity of <i>ṭalāq kināyah</i> .	Local custom ('urf) is considered in assessing the validity of <i>ṭalāq kināyah</i> .

## 5. Analysis Of The Implications Of Differences In Hanafi And Maliki Views On Ṭalāq Kināyah For Contemporary Fiqh

The divergent views of the Hanafi and Maliki schools regarding *ṭalāq kināyah* (implied divorce) not only reflect the diversity of interpretations within classical Islamic jurisprudence but also carry significant implications for the application of contemporary fiqh. Islam governs various aspects of human life with the overarching aim of ensuring benefit (*maṣlaḥah*) and preventing harm (*mafsadah*). These objectives, known as *maqāṣid al-sharī'ah* (the goals of Islamic law), constitute a fundamental concept in Islamic legal theory that provides a rational foundation for the implementation of Islamic rulings by emphasizing the core purposes of the Sharī'ah: protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*).<sup>36</sup>

In the context of *ṭalāq kināyah*, *maqāṣid al-sharī'ah* can serve as a framework for assessing whether the differences between the two schools support the preservation of benefit and the avoidance of harm in today's context. The Hanafi and Maliki schools

<sup>36</sup> Muhaki and Husein Aziz, "Maqashid Al-Syari'ah Sebagai Instrumen Pembaharuan Fiqih Sosial Kontemporer (Telaah Terhadap Pemikiran Ibnu Ashur)," *Al-Ibrah* 9, no. 2 (2024): 125-152.

clearly differ in their views on implied divorce, and these differences inevitably impact contemporary Islamic legal discourse. A relevant example is the increasing incidence of divorce initiated through writing (including via social media), which classical scholars typically classify as *ṭalāq kināyah*—requiring accompanying intention (*niyyah*).

According to the Hanafi school, *ṭalāq kināyah* does not necessarily require a stated intention; the validity of the divorce is determined by the context and circumstances in which the statement was made. However, when the context is insufficient to clearly convey the intended meaning, intention becomes a necessary condition. This perspective offers flexibility in navigating complex social dynamics, particularly in cases of indirect or implicit communication. It allows adaptation to contemporary realities, such as divorce conveyed via text messages or social media, thereby reducing the risk of unintended divorce due to miscommunication.

This Hanafi position aligns with the *maqāṣid al-sharī'ah* principle of *ḥifẓ al-nasl* (preservation of lineage), as it helps maintain family harmony and prevents unintentional or unclear divorces. It also aligns with *ḥifẓ al-'aql* (preservation of the intellect) by mitigating the psychological stress experienced by spouses caught in legal ambiguity. Moreover, this view offers stronger legal protection for women by prioritizing the contextual meaning of the husband's words, clarifying the wife's marital status and preventing uncertainty regarding whether she remains a legal spouse or must observe the waiting period (*'iddah*).

Conversely, the Maliki school holds that *ṭalāq kināyah* is not considered valid unless it is accompanied by a clear intention to divorce, except when supported by external indicators (*qarīnah*) that clarify the husband's intent. This view safeguards individual rights—particularly those of women and children—by ensuring that divorce is not taken lightly and only becomes effective when there is deliberate intent. The Maliki stance also supports the objective of *ḥifẓ al-nasl* by protecting family continuity and preventing its disruption due to impulsive or unintentional speech. This cautious approach upholds personal dignity by ensuring that individuals are not subjected to the social consequences of divorce (e.g., being labeled a *divorcé/divorcée*) without serious cause.

If the Hanafi perspective were adopted in determining the validity of *ṭalāq kināyah*, courts could declare a divorce valid based solely on contextual factors, even if the husband denies intending divorce. This carries the risk of enacting a divorce that was never truly intended. In contrast, if the Maliki view were followed, courts would need to examine the husband's intent – although this can be difficult to prove without supporting *qarīnah*. While this approach offers protection from impulsive divorce, it may also open the door to manipulation, such as a husband falsely claiming he had no intention to divorce in order to evade legal consequences.

In contemporary *fiqh*, these differing perspectives influence how divorce is understood and applied in modern society. For instance, in situations where spousal communication is often indirect, the more flexible Hanafi approach may be more contextually appropriate. However, the stricter Maliki requirement for intention can help prevent misinterpretations and conflicts arising from ambiguous divorce declarations.

## CONCLUSION

The Hanafi and Maliki schools of thought both agree that *kināyah* (implicit) divorce is a valid form of divorce that can be utilized by a husband to terminate a marriage. They also concur that intention (*niyyah*) plays a significant role in determining the legal effect of such a divorce. However, the primary difference between them lies in their respective approaches to the requirement of intention. The Hanafi school adopts a more flexible stance by allowing a *kināyah* divorce to be valid even in the absence of explicit intention, as long as the surrounding context and circumstances support the meaning of divorce. This view is based on the Prophet Muhammad's statement: "My ummah is pardoned for what they do out of error, forgetfulness, and what they are compelled to do." In this regard, intention is considered an internal utterance of the heart and does not necessarily require verbal articulation. In contrast, the Maliki school maintains that *kināyah* divorce does not take legal effect unless there is a clear intention from the husband or strong *qarīnah* (indication) showing that the statement was indeed meant as a declaration of divorce. This position stems from the understanding that ambiguous divorce expressions do not definitively indicate divorce, as such statements could convey other meanings



depending on cultural context and common usage. Thus, the Maliki school adopts a more cautious approach to prevent unintended divorces that may arise from ambiguous expressions.

The implications of these differing perspectives in contemporary Islamic jurisprudence are significant when analyzed through the lens of *maqāṣid al-sharī'ah* (the higher objectives of Islamic law). The Hanafi approach, being more flexible, provides legal certainty regarding marital status, particularly in cases involving indirect communication such as text messages or social media. By considering context and circumstance, this view aligns with the objectives of preserving lineage (*ḥifẓ al-nasl*), intellect (*ḥifẓ al-'aql*), and religion (*ḥifẓ al-dīn*). On the other hand, the Maliki approach, which emphasizes the necessity of clear intention, aims to safeguard the integrity of the family unit and protect women from the consequences of impulsive or ambiguous statements. In the context of contemporary *fiqh*, both perspectives offer practical relevance depending on the characteristics of the society in which they are applied. The Hanafi view may be more appropriate in modern urban societies where indirect and digital communication is common, often leading to ambiguous expressions within domestic relationships. Meanwhile, the Maliki perspective is suitable for communities that prioritize caution and the preservation of familial stability. Therefore, it is recommended that future research explore the social and psychological impacts of *kināyah* divorce pronounced without clear intention, and how Islamic legal education grounded in *maqāṣid al-sharī'ah* can help minimize legal uncertainty and prevent conflict within the household.

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